

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
September 8, 2022**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty, Sue Anne Gilroy, Rafael Sanchez, and John Krauss. Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Logan McCullough, Vocational Rehabilitation Counselor, Family and Social Services Administration; Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; and Chris MacDonald, Internal Affairs Officer, Indiana Department of Child Services.

II. Adoption of Amended Agenda and Approval of Minutes

The Agenda was amended as FSSA withdrew their request for Formal Advisory Opinion 2022-FAO-016. Commissioner Sanchez moved to adopt the amended agenda, and Commissioner Gilroy seconded the motion, and the Commission passed the amended agenda (5-0).

Commissioner Gilroy moved to approve the Minutes of the July 14, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0-1). Commissioner Krauss abstained.

III. Request for Formal Advisory Opinion

2022-FAO-014

Logan McCullough, Intake Vocational Rehabilitation Counselor

Jessica Keyes, Ethics Officer

Family and Social Services Administration

Logan McCullough (Mr. McCullough) serves as an Intake Vocational Rehabilitation Counselor (VRC) with the Vocational Rehabilitation (VR) program within the Indiana Family and Social Service Administration’s (FSSA) Division of Disability and Rehabilitative Services (DDRS). Mr. McCullough previously served at FSSA in a different role, providing services for individuals who are blind and visually impaired in the VR program in Area 12. In his new role, Mr. McCullough’s primary responsibilities include providing counseling and guidance to individuals with disabilities to assist them in achieving employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and providing coverage for (while transitioning out of) caseloads of participants in the VR program.

In Mr. McCullough's new role as VRC, he is not tasked with working exclusively with any specific population of individuals served by the VR program, but it is possible that he could have the opportunity to work with individuals with low vision.

In September of 2021, Mr. McCullough's wife earned a certification in one-on-one Braille training. FSSA's Ethics Officer, Jessica Keyes, reports that there are no other known certified one-on-one Braille trainers within the State. Because of her unique certification, Mr. McCullough's wife would like to contract with FSSA as a vendor for the VR program, providing one-on-one Braille training services for VR program participants who are blind or visually impaired and who could benefit from that training. Ms. Keyes notes that there are other Braille training services available in the State, such as Bosma services, but no other known one-on-one trainers.

Mr. McCullough could be in a position to refer VR program participants to Braille training services, including services provided by his wife, should she enter into a contract with FSSA to provide one-on-one Braille training.

Ms. Keyes provides that Mr. McCullough would not be in a position to review and release payment for claims to his wife if she were to contract with FSSA, nor would he have any direct supervision over her and her services. Further, Ms. Keyes reports that Mr. McCullough would not have a direct financial interest in any contract in which his wife may enter with FSSA.

The Commission considered this information and Ms. Keyes' request for a Formal Advisory Opinion at the July 14, 2022, Commission meeting. The Commission tabled this matter pending the preparation of a proposed screen by Ms. Keyes for the Commission's further consideration.

Ms. Keyes prepared a proposed screen for the Commission's review that documents the process by which FSSA would address any potential conflicts of interests or the appearance of such conflicts in any intake, counseling or referral process of VR program participants with a diagnosis of Blindness or Visual Impairment that Mr. McCullough may encounter at FSSA.

The proposed screen establishes a two-tier screening process: First, Mr. McCullough's supervisor will screen all applicants to be assigned to intake counselors in Mr. McCullough's counseling area to identify and reassign any applicants with a primary diagnosis of Blindness or Visual Impairments. Second, if Mr. McCullough should encounter an applicant in his caseload with a diagnosis of Blindness or Visual Impairment or who requests information on related services, Mr. McCullough will not continue to counsel, nor will he provide any referral to services; instead, he will refer the individual to a Specialty Counselor.

Ms. Keyes has requested the Commission's determination as to whether there are any ethical concerns with Mr. McCullough's wife's vendor contract with FSSA and whether the proposed screen sufficiently addresses any potential ethics concerns.

The analysis stated the following:

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(2) prohibits a state employee from participating in any decision or vote, or matter relating to that decision or vote, if the employee has knowledge that any of the following have a financial interest in the outcome of the matter: (1) the employee him or herself; (2) an immediate family member; (3) a business organization in which the employee is serving as an officer, director, member, trustee, partner or employee, or (4) an organization with whom the employee is negotiating or has an arrangement concerning prospective employment. Under 42 IAC 1-5-13, immediate family member includes a spouse. Thus, Mr. McCullough cannot participate in a decision or vote, or matter related to a decision or vote, if he knows his wife has a financial interest in the outcome of the matter. The Code defines “financial interest” in IC 4-2-6-1(a)(11) to include “an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services” The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee. If Mr. McCullough’s wife enters into a contract with FSSA to provide one-on-one Braille training services to VR program participants, Mr. McCullough would be in a position to potentially refer participants to his wife for services. Mr. McCullough’s wife’s financial interest under the proposed contract would create a potential conflict of interests for Mr. McCullough under this provision of the Code.

Under IC 4-2-6-9(b), an employee who identifies a potential conflict of interests must notify his or her Ethics Officer and Appointing Authority in writing. The employee also is required to take one of two actions: The employee must either request an advisory opinion from the Commission or file a written disclosure statement with the Commission.

In this matter, Ms. Keyes requested the Commission’s Formal Advisory Opinion on what ethical considerations exist under the proposed FSSA contract with Mr. McCullough’s wife and the sufficiency of the proposed screen FSSA has designed to address Mr. McCullough’s potential conflict of interests. Having reviewed the proposed screen presented by Ms. Keyes, the Commission finds that it adequately addresses Mr. McCullough’s potential conflict of interests once it is signed as part of a disclosure filed with the Commission pursuant to IC 4-2-6-9(b)(2).

B. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency and who files a disclosure [form](#) with the Inspector General *prior* to the contract’s execution between the agency and third party.

Ms. Keyes’ proposed screen states that Mr. McCullough will not have a direct financial interest in a proposed contract between his wife and FSSA. The Commission confirmed that Mr. McCullough does not have an ownership interest in his wife’s company and will not serve as an employee such that he may have a financial interest in his wife’s contract with FSSA for the application of this rule. Therefore, Mr. McCullough would not have a financial interest in his wife’s proposed contract with FSSA, and this rule will not apply.

C. Confidential information

As a state employee, Mr. McCullough is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. The definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. McCullough is exposed to or has access to such confidential information in his role at FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his wife, in any manner.

D. Nepotism

The nepotism rule, found at IC 4-2-6-16, consists of the following four prohibitions: (1) an individual employed in an agency may not hire a relative, (2) an individual may not be employed in the same agency in which his or her relative is the appointing authority, (3) an individual may not be placed in a relative’s direct line of supervision, and (4) an individual may not contract with or supervise the work of a business entity with which a relative is a partner, executive officer or sole proprietor.

“Relative” includes a wife. Under FSSA’s proposed screen, Mr. McCullough will not supervise or address any quality and outcomes issues related to work performed by his wife in her role providing contracted services to FSSA. The proposed screen also provides that Mr. McCullough will not be involved in the negotiation, administration or coordination of any contract between his wife and FSSA. As such, this rule would not apply.

Commissioner Sanchez moved to approve the Commission’s findings, and Commissioner Gilroy seconded the motion, which passed (5-0).

IV. Ethics Director’s Report

State Ethics Director Sean Gorman started his report with the introduction of the newest Commissioner to the State Ethics Commission: John Krauss.

Director Gorman also reported that OIG Personnel have issued 33 Informal Advisory Opinions since the July SEC meeting. Opinions focused mostly on Conflicts of Interests, Post-Employment, Outside Employment, Political Activity, and Gifts.

Additionally, Director Gorman noted that the OIG’s annual Legal and Ethics Conference is set for November 15, 2022. The Conference will be held in the Auditorium of the Indiana Government Center – South. CLE credit will be available. More information will be provided once the program is finalized.

Finally, the bi-annual Ethics Training is being finalized with assistance from the State Personnel Department. SPD will roll-out the training to State Employees tentatively in October.

V. Adjournment

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission. Commissioner Krauss seconded the motion, which passed (5-0).

The public meeting adjourned at 10:18 a.m.



Eric J. Holcomb
Governor

Kristina M. Box, MD, FACOG
State Health Commissioner

September 30, 2022

State Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

RE: Limited Charitable Use of State Property by IDOH Employees and Contractors

State Ethics Commission,

The Indiana Department of Health wishes to submit its proposed policy titled "Limited Charitable Use of State Property by IDOH Employees and Contractors" for the consideration of the Commission. IDOH seeks approval of this policy pursuant to IC 4-2-6-17 which prohibits state employees and special appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the State Ethics Commission.

It is the hope of IDOH that approval of this policy will allow the agency's employees limited use of state property to participate in charitable activities that are related to public health and IDOH's mission while remaining in compliance with Indiana's Code of Ethics. The proposed policy outlines an approval procedure that will include review by the agency's ethics officer as well as final approval from the State Health Commissioner or designee.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read 'Erin R. Elam'.

Erin R. Elam
Staff Attorney and Ethics Officer
Office of Legal Affairs

To **promote**, **protect**, and **improve** the health and safety of all Hoosiers.



<p>Title: Limited Charitable Use of State Property by IDOH Employees and Contractors</p>	<p>Policy #: IDOH-COS-OLA-00_</p>
<p>Scope:</p> <p><input checked="" type="checkbox"/> All Staff</p> <p><input type="checkbox"/> Limited Staff: <u>Scope of application if limited staff</u></p>	<p>Approvals:</p> <p>_____</p> <p>Kristina Box, MD, FACOG</p> <p>_____</p> <p>Date</p>
<p>Effective dates: Click or tap to enter a date. to Click or tap to enter a date.</p>	

Purpose

The purpose of this *Policy* #TBD is to establish guidelines for the limited use of state property/resources for charitable use by state employees, contractors and special state appointees of the IDOH. IC 4-2-6-17 prohibits state employees and special state appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the State Ethics Commission.

Definitions

Agency: The Indiana Department of Health or IDOH.

All Staff: All persons performing work on behalf of the Agency, including, but not limited to, full-time and part-time employees, Agency Leadership, Agency Management, contractors, students, interns, and unpaid volunteers. Any Subset of All Staff shall be defined as Limited Staff.

Policy Statement

IDOH recognizes that at times there is a fine line between the mission and the work of the agency and those of charitable organizations that support and promote public health causes. At



times work begun at IDOH evolves into an independent entity to broaden the scope of permissible activities. IDOH believes that continued support of these organizations and their activities is consistent with IDOH's mission to promote, protect and improve the health and safety of all Hoosiers. To the extent that such activities are not considered official state business but have received approval pursuant to this policy, employees are permitted to use state property.

Procedures and Responsibilities

The parameters of permissible use of state time for charitable purposes under this policy are as follows:

1. The employee's use of state property must not interfere with the performance of public duties.
2. The employee's use of state property must be for the benefit of another governmental entity or a charitable organization exempt from federal income taxation under 26 U.S.C. §501(c)(3).
3. The charitable organization must be engaged in activities related to public health and the Department's Mission.
4. The state property must not be used to promote religion, attempt to influence legislation or governmental policy or attempt to influence elections to public office, or violate any other state or federal law or regulation.
5. The employee must obtain the prior written approval as outlined below to utilize state property for the activity.
 - a. The employee must obtain initial written approval of the employee's supervisor.
 - b. Initial approval must be reviewed by the agency's Ethics officer.
 - c. Final written approval must be obtained from the State Health Commissioner or designee.

The supervisor or State Health Commissioner or designee may approve or not approve the use of state property considering agency needs.

6. All approvals must be screened by the agency's Ethics Officer. The Ethics Officer will ensure the use of state property does not violate the state ethics rules, including the following:
 - a. 42 IAC 1-5-1 Gift Rule
 - b. 42 IAC 1-5-6 and 42 IAC 1-5-7 Conflicts of Interest
 - c. 42 IAC 1-5-13 Ghost Employment
7. Use of state property may not violate any other state ethics rules. All IDOH employees must comply with all rules in the Code of Ethics, found in IC 4-2-



6 and 42 IAC 1. This policy does not allow employees to use state time for charitable purposes or for any other purposes than official state business. Also, this policy does not allow employees to solicit donations from anyone who has a business relationship with IDOH.

8. Use of state property for charitable purposes must always be subordinate to its use for official state business.

Legal Authorities and References

- IC 4-2-6-17
- IC 4-2-7-5
- 42 IAC 1-5-1 Gift Rule
- 42 IAC 1-5-6 Conflicts of Interest; Decisions and Voting
- 42 IAC 1-5-7 Conflicts of Interest; Contracts
- 42 IAC 1-5-12 Use of State Property
- 42 IAC 1-5-13 Ghost Employment
- Information Resources Use Agreement (IRUA), State of Indiana Office of Technology
- IDOH-COS-OTC-01-Information Resources Use Agreement (IRUA) Policy
- IDOH-COMM-01- Policy Management

STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2022-06-0168

IN RE THE MATTER OF COURTNEY CREASEY

AGREED SETTLEMENT

1. Respondent admits to the facts as alleged in the Ethics Complaint filed by the Office of Inspector General on September 8, 2022, to a violation of Indiana Code § 4-2-6-11(b)(3), the post-employment “cooling off” period restriction.
2. Respondent agrees to pay a fine in the amount of two hundred fifty dollars (\$250.00). Respondent understands the Inspector General will prepare a letter of reprimand noting the violation. The letter will be posted to and become a part of Respondent’s State personnel file. The State Ethics Commission (Commission) will not impose any further penalties under Ind. Code § 4-2-6-12. Respondent shall make payment to the “Indiana State Ethics Commission” within sixty (60) days from the date that the Commission accepts this agreement.
3. The parties acknowledge that this agreement reflects the entire agreement between the parties, that an approval of these terms by the Commission shall result in the final disposition of this proceeding, and that Respondent is waiving an alternative statutory right to a public hearing in Ind. Code § 4-2-6-2 to contest the complaint.

Dated this 19 of September, 2022

Courtney Creasey
Courtney Creasey, Respondent

David Cook
David Cook, Inspector General

APPROVED this 13th day of October, 2022, by the State Ethics Commission in a public meeting by a vote of ____ to ____.

Katherine J. Noel
State Ethics Commission Chair