



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Juana León, Administrative Services Manager
The Children's Trust

FROM: Martha D. Perez, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 2021-96, Voting Conflict, §2-11.1(d)

DATE: June 24, 2021

CC: COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible voting conflict of interest by The Children's Trust board members on Resolution 2021-B-ECR (Early Childhood Community Research Demonstration Projects)

Background:

The Children's Trust Board (TCT) is an independent special district established by Miami-Dade County in Art. CIII, Sections 2-1521 through 2-1531 of the Miami-Dade County Code (TCT ordinance).

You have advised that Resolution of TCT 2021-B- ECR, entitled, "Authorization to negotiate and execute contracts with six providers, identified herein, and selected following a competitive solicitation for early childhood community-research demonstration projects within high-need communities, in a total amount not to exceed \$1,939,358.00, for a term of 12 months, commencing October 1, 2021, and ending September 30, 2022, with four remaining contract renewals," will be considered at an upcoming meeting of TCT board.

This Resolution seeks funding to contract with six (6) agencies to engage in early childhood community-research demonstration projects which will focus on implementing and evaluating programs with high-need populations and underserved communities in Miami-Dade County to support early childhood development. These projects require active partnerships between these community-based early childhood organizations and qualified research partners.¹

¹ Community-based services take place in schools, childcare centers, or home-based locations. Projects are expected to demonstrate positive teacher, family, or child-level outcomes. The

The recipient providers are: FIU Board of Trustees ²; Miami Lighthouse for the Blind and Visually Impaired, Inc. (MLB) ³; Reading and Math, Inc. ⁴; Sundari Foundation ⁵; U. of M. Dept. of Psychology; and U. of M. School of Medicine

You inquire on behalf of TCT board members Daniel Bagner, Constance Collins, Magaly Abrahante, Tiombe Bisa Kendrick-Dunn, Richard Dunn, Dorothy Bendross-Mindingall, Sandra West and Alexandra Martin, regarding whether they would have a voting conflict of interest under Section 2-11.1(d) of the County Ethics Code or TCT Conflict of Interest and Code of Ethics Policy/Bylaws, in voting or otherwise participating in Resolution 2021-B-ECR.

You make this inquiry in light of the relationships between these board members and the contract providers:

1. Daniel Bagner works for FIU Center for Children and Families which is a research partner of the Sundari Foundation project, providing training to the staff. However, the FIU Board of Trustees contract will be awarded to university departments that are unrelated to Dan Bagner and the Center for Children and Families. ⁶

ultimate goal is to identify, implement and evaluate strong early childhood programs and practices that demonstrate equitable outcomes for all young. Kindergarten readiness includes domains of language/ literacy/ communication, cognition, approaches to learning, physical health/motor development, self-help, and social/emotional development.

² FIU Board of Trustees contract would be awarded to the following departments: Nicole Wertheim College of Nursing and Health Sciences; Department of Humanities, Health, and Society; Herbert Wertheim College of Medicine; Department of Obstetrics and Gynecology at FIU's Herbert Wertheim College of Medicine; Department of Communication.

³ MLB is a non-profit organization which among its diverse services, it provides programs for children ages birth to thirteen including home visitation, Pre-K, school- age programs, and summer camp. "From music education to pre-employment service, from programs for children to adults to seniors, Miami Lighthouse works with people to help build their skillsets and abilities, strengthen their connections to others, and foster their enjoyment of life."

⁴ Reading and Math, Inc., is a national nonprofit that replicates evidence-based Reading Corps programs which combine the power of national service with instructional science to help struggling students transform into confident learners and help adults achieve economic stability. Reading & Math, Inc., administers the expansion and replication of Reading Corps in Florida, and provides technical assistance to other states interested in scaling these programs to help more children achieve grade-level reading and math proficiency.

⁵ Sundari is a 501 (c) (3) non-profit organization, aka, The Lotus House, which provides sanctuary, support, education, tools, and resources to improve the quality of life of homeless women, youth, and children. Sundari has a childcare center on site.

⁶ Dr. Bagner is also the Director of FIU's Early Childhood Behavior Lab and a Psychology professor at FIU. Research for the Lab is conducted under the auspices of the Center for Children

2. Constance Collins is the Founder, President and Executive Director of Sundari Foundation (Sundari)- the lead agency for this project.
3. Magaly Abrahante is an Asst. Superintendent at Miami-Dade County Public Schools (M-DCPS). While the program benefits children who attend MDCPS, Dr. Abrahante has no oversight and reaps no benefit from the program.
4. Tiombe Bisa Kendrick-Dunn is a Psychologist at M-DCPS.
5. Richard Dunn works part-time for M-DCPS.
6. Dorothy Bendross-Mindingall is a M-DCPS board member.
7. Sandra West is the appointee for the Miami-Dade County PTA/PTSA.
8. Alexandra Martin is the MDC-SGA representative.

Board members #2 through #8 will be referred to collectively as M-DCPS Personnel for purposes of this inquiry. One of the providers- Reading and Math, Inc., has a community partnership with M-DCPS through the operation of the Florida Reading Corps program within Miami-Dade County public school PreK classrooms. The district provides support in the form of using their staff for internal coaches which is an integral part of the program. While the Resolution benefits children who attend Miami-Dade County public schools, M-DCPS Personnel has no oversight and reap no personal benefit from the program.

Discussion:

This office may consider and opine on whether a TCT board member has a conflict of interest, pursuant to the County Ethics Code, affecting his or her vote or participation in a funding allocation from TCT. *See* RQO 19-06

TCT's Conflict of Interest and Code of Ethics Policy states, *inter alia*, that a board member shall not vote on any matter presented to the CT Board if the member will receive a *direct* financial benefit from the board action. TCT's Bylaws also provides that, "Board members will act in such a manner to avoid the appearance of impropriety. No member shall serve as a staff member of any agency when The Children's Trust provides more than fifty (50) percent of the agency's budget, and The Children's Trust's funds may pay no portion of a Board member's salary".

There are no facts indicating that any of the board members will be receiving a direct financial benefit from the board action, therefore, a conflict analysis under TCT rules is not applicable.

The Ethics Code at Section 2-11.1(d), establishes a voting conflict if: (1) the board member has an enumerated relationship (officer, *director*, partner, of counsel, consultant, *employee*, fiduciary, etc.) with any entity affected by the vote; (2) the board member has an enumerated relationship with an entity affected and the matter would affect him or her in a manner distinct in which it

and Families and the Dept. of Psychology. Neither the Lab nor the Psychology Dept. is being allocated funds from this provider agreement with FIU Board of Trustees.

would affect the public generally; and, (3) the board member might, directly or indirectly, profit or be enhanced by the board action.⁷ *See* RQO15-04

Daniel Bagner: While Dr. Bagner has an enumerated relationship (employee) with FIU, the university department which employs him is not a recipient of the funding and there are no facts suggesting that he would benefit, be enhanced, or receive any special benefit from this vote; there is no unique impact which would create a voting conflict for this board member as he does not work in the specific departments that will benefit from the funding allocated to FIU Board of Trustees as part of this Resolution⁸; nor does he have any supervision or control over employees of those FIU departments that will receive funding. Additionally, Dr. Bagner will not be affected by this vote in a manner distinct from the public generally. *See* INQs 2020-107 and 2020-108

Although FIU has a research partnership with one of the recipients (Sundari), to hold that Dr. Bagner, by virtue of his employment with a partnering entity might profit or be enhanced, directly or indirectly, by the funding to this provider is too remote to create a voting conflict.

Consequently, we do not find that Dr. Bagner has a conflict prohibiting his participation and vote in this Resolution.

Constance Collins: As the Executive Director of Sundari, Ms. Collins has an enumerated relationship with an entity (Sundari) which is affected by the funding subject of this Resolution. Therefore, she has an automatic voting conflict under Section 2-11.1(d) of the County Ethics Code. *See* INQs 2020-107, 20-51, 20-50, 17-247, 14-212, 13-165, INQ 04-131 (*citing to relevant para. in RQO 03-06*)

Consequently, we recommend that Ms. Collins refrain from voting or participating in this Resolution or any other funding matters directly or indirectly affecting Sundari where she serves as the Executive Director because she has an automatic conflict of interest with an entity affected by the vote and, recusal is in accordance with COE opinions as well as the heightened appearance of impropriety standard in TCT Policy and Bylaws.

⁷ This section of the County Ethics Code applies to the Mayor and members of the Board of County Commissioners (BCC); however, by implication, members of The Children's Trust board may be included for purpose of analysis because, as an independent special district, the role and authority of TCT members mimics the role of the BCC, as ultimate decision-makers of contracts allocating funds such as the ones described herein.

⁸ In voting conflict analysis, this office has generally followed the opinions of the State Ethics Commission which construe the term "agency" to constitute the lowest departmental unit within which the employee's influence might reasonably be considered to extend. Hence, Dr. Bagner's "agency" for purpose of this inquiry, is the department(s) where he exercises a degree of influence (i.e., supervision and control).

M-DCPS Personnel: These board members do not have a prohibited relationship with any of the recipient providers of the Resolution nor any supervision or control over employees of these entities.⁹ While this Resolution will benefit children attending the Miami-Dade County public schools (the board member's employer), none of these board members would be affected by this vote in a manner distinct from the public generally.

Although M-DCPS (the board members' employer) has a community partnership with one of the recipients (Reading and Math, Inc.), to hold that the board members, by virtue of their employment with a partnering entity might profit or be enhanced, directly or indirectly, by the funding to this provider is too remote to create a voting conflict. Rather, M-DCPS will benefit in this Resolution by way of its contribution to the overall purpose, i.e., active partnerships to invest in the implementation and evaluation of strong early childhood community research demonstration projects to serve "high-need populations and underserved communities in Miami-Dade County." Any benefit or enhancement is not attributable to any individual M-DCPS Personnel board member. *See* INQs 2020-47, 2020-47, 2020-48 and 2020-53

Consequently, we do not find that M-DCPS Personnel have a conflict prohibiting their participation and vote in this Resolution.

Conclusion

Under the details provided concerning this Resolution of TCT authorizing the execution of contracts with six providers for early childhood community-research demonstration projects within high-need communities, we recommend that Ms. Collins recuse herself from the participation and vote on this Resolution. As to the remaining board members, we do not find a conflict of interest, based on the information provided by TCT staff, which would preclude them from participating and voting on this Resolution.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

⁹ M-DCPS partners with Reading and Math, Inc., one of the recipients of this Resolution's funding allocation. This partner provides reading and math boost programs in the M-DCPS Pre-K through third grade to predominantly Black and Latino students

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.