UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

May 31, 2011

MEMORANDUM

TO: Matthew Gandal
Deputy Director for Technical Assistance and Outreach
Implementation and Support Unit
Office of the Deputy Secretary

FROM: Susan Winchell
Assistant General Counsel for Ethics and
Designated Agency Ethics Official

RE: Limited Waiver of Paragraph 2 of the Ethics Pledge and Authorization under 5 C.F.R. § 2635.502

The purpose of this memorandum is to provide a limited waiver of the restrictions in Section 1, Paragraph 2 of Executive Order 13490 (the Ethics Pledge or E.O.), and a limited authorization pursuant to 5 C.F.R. § 2635.502(d), to permit your participation in certain, limited, particular matters involving specific parties that involve your former employer, Achieve, Inc.. The purpose of this limited waiver is solely to permit you to coordinate technical assistance efforts being provided to Department of Education grantees under the Race to the Top (RTT) and Race to the Top Assessment (RTTA) programs.

Background

You previously served as Executive Vice President for Achieve, which is an independent, bipartisan, non-profit organization created in 1996 by governors and corporate leaders to work on education reform issues. Prior to beginning your position here you were employed by Achieve beginning in 1997, and served as Executive Vice President beginning in 2001. Through your work with Achieve you gained extensive experience building and nurturing multi-state networks and communities of practice (CoPs) and providing high-quality technical assistance on state policies and practices in the K-12 education arena. You lead the American Diploma Project of the American Diploma Project Network, a highly successful strategy for helping governors and other state executives raise education standards and strengthen accountability systems to prepare all students for success in college. You also oversaw Achieve's technical assistance work to states. Through these experiences you gained the practical skills required to oversee an effective technical assistance strategy and build and nurture successful CoPs in the

education arena. As a result of your well-regarded work, you also gained a national reputation and the necessary stature to ensure that you can work effectively with state officials at the highest levels.

In your current position you are responsible for overseeing technical assistance to RTT grantees and to other states to advance their reform plans, coordinating Department policy regarding technical assistance, and conducting significant outreach outside the Department to Chief State School Officers and Governors, among others, on issues relating to technical assistance and education reform. You are responsible for overseeing the administration of a $43 million contract awarded to ICF International for the RTT Technical Assistance Network. Working with the contractor, you oversee the development of strategic technical assistance activities designed to increase the capacity of states to effectively implement education reforms. These activities include planning meetings and conferences, developing technical assistance tools and materials, and providing technical assistance for RTT states and, in many cases, for all states on the four education reform areas. A key element of the technical assistance is the development of RTT grantee CoPs to support regular interactions across state teams to learn about and solve common challenges. The RTT Technical Assistance Network is using CoPs to provide RTT states the opportunity for cross-state learning and collaboration as well as support from leading experts utilizing both in-person and online mediums

Achieve is not currently a party to any grant awarded under RTT, and it is not reasonably foreseeable that Achieve will be hired by any RTT grantee to provide services in connection with these grants. However, individuals who are currently affiliated with Achieve may be identified as speakers and panel members for RTT technical assistance activities. Additionally, Achieve is the program management partner on one of the two RTTA grants – PARCC/Achieve – and received a supplemental grant from the Department (a similar supplemental grant was awarded to the other RTTA grantee). Although you are not responsible for implementing the RTTA grants or the RTTA supplemental grants, this limited waiver is necessary in order for you to be able to effectively perform the duties of your current position. This is because one of the four education reform areas for which you are responsible in terms of providing technical assistance to states, standards and assessments, overlaps with work PARCC/Achieve will be doing under the RTTA and the RTTA supplemental grants.

The RTTA and RTTA supplemental grants focus on developing high-quality common assessments aligned to college and career ready standards held in common across the participating states and one of the specific purposes of the RTTA supplemental grant awards is to assist states transition to common standards and assessments. Among the activities funded under the RTTA supplemental grant are meetings to help states plan for implementing new standards and assessments, developing analyses and tools to support that implementation, professional development for policy leaders and teachers in participating states, and funding travel to technical assistance activities related to standards and assessments being provided by the RTT Technical Assistance Network. Indeed, I understand some RTT grantee states have made inquiries about allocating resources that suggest they are focusing on this overlap and thinking about ways to

effectively and efficiently use funds across these two programs. Therefore, it is not possible for you to effectively perform the duties of your position if you cannot communicate and coordinate with the RTTA grantees, including PARCC/Achieve, about their efforts to assist states in their transition to common core standards and assessments.

Waiver

The Ethics Pledge provides that a political appointee will not, for a period of two years from the date of his appointment, participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer or former clients. *See* E.O. 13490, § 1, ¶ 2. Absent a waiver, you may not participate personally and substantially in any particular matter in which Achieve is, or represents, a party for two years from the date of your appointment.

Pursuant to the authority delegated under Section 3 of the Ethics Pledge, and after consultation with the Counsel to the President, I hereby certify, for reasons stated in this memorandum, that it is in the public interest for you to be granted this limited waiver of the restrictions of paragraph 2 of the Ethics Pledge as Deputy Director for Technical Assistance and Outreach in the Implementation and Support Unit (ISU), Office of the Deputy Secretary. I find that there is a strong public interest in having you serve in this position because you are extremely well qualified and have unique professional experiences that are critical to success in this job, including building and nurturing communities of practice (CoPs) among states in the education arena and a high level of stature in the field.

This waiver permits you to participate in the following activities, notwithstanding the fact that Achieve may be a party to matters under which such activities are conducted:

1) Planning and implementation of conferences and other activities for which individuals employed by Achieve are identified as potential conference speakers, participants, or resources; and
2) Coordinating technical assistance regarding standards and assessments with the RTTA and RTTA supplemental grantees, including PARCC/Achieve.

<u>Limited waiver</u>. This waiver permits you to participate in non-monetary specific party matters relating to providing technical assistance to RTT and RTTA grantees only for the purpose of facilitating and coordinating technical assistance activities. The waiver does not permit you to participate in any deliberation or decision affecting Achieve's financial interests, including the following:

- Any funding decision to award funds to Achieve, either directly or indirectly;
- Evaluation of work performed under a grant to which Achieve is a party, including compliance with the terms of the grant;

- Any decisions regarding extending an existing grant to which Achieve is a party;
- Any negotiations affecting financial arrangements regarding a grant to which Achieve is a party;
- Any disputes between the Department and Achieve;
- Any budget matters pertaining to a grant to which Achieve is a party;
- Eligibility determinations regarding Achieve; and
- Any new grant competitions to which Achieve is eligible and where it is reasonably foreseeable that Achieve will be a party, either because they have a history of applying for funding under a program or they have stated an intention to apply.

Additionally, the Deputy Secretary has agreed that any final funding decisions within the ISU will be made by a Department official at an organizational level above your current position.

Authorization

The Standards of Ethical Conduct for Employees of the Executive Branch require an employee to take appropriate steps to avoid an appearance of any lack of impartiality in the performance of the employee's official duties. 5 C.F.R. § 2635.502(a). Under section 502, when an employee knows that a person with whom he has a "covered relationship" is a party or represents a party to a specific party matter, the employee should not participate in the matter without informing an agency official and receiving authorization to participate. An employee has a "covered relationship" under this section with any entity for which he has, within the last year, served, *inter alia*, as an employee. 5 C.F.R. § 2635.502(b)(1)(iv).

Planning and implementation of meetings, conferences, and other activities for which individuals employed by Achieve are identified as potential conference speakers, participants, or resources; and coordinating technical assistance regarding standards and assessments with the RTTA and RTTA supplemental grantees, including PARCC/Achieve, are both particular matters involving specific parties in which Achieve is a party. Therefore, I hereby also provide a corresponding authorization pursuant to 5 C.F.R. § 2635.502(d) for the same reasons and with the same limitations as described above regarding the waiver of Section 1, Paragraph 2, of the Ethics Pledge.

Conclusion

Matters from which you must recuse will be referred to the ISU Director for disposition. Your disqualification from duties in connection with particular matters that are not covered by this waiver and authorization is not expected to impair materially your ability to perform the duties of your position. This limited waiver and authorization does not affect your obligation otherwise to comply with other provisions of the Ethics Pledge and

with all other Standards of Ethical Conduct for Employees of the Executive Branch and agency supplemental rules.

Please do not hesitate to contact me at 202/401-6003 if you have questions regarding this waiver.

cc: Tony Miller
Joanne Weiss
Charlie Rose
Phil Rosenfelt
Ann Whalen
Joe Conaty
Wendy Tada