IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: GERY CHICO) OEIG Case #12-02216

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and "any other information it believes should not be made public." 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report's factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor's Office of Executive Inspector General ("OEIG") and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor's Executive Inspector General and to Gery Chico at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

I. ALLEGATIONS

On November 5, 2012, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) received a complaint alleging that then-Illinois State Board of Education (ISBE) Board Chair Gery Chico:

- opposed ISBE staff's recommendation that Illinois seek a waiver of the No Child Left Behind Act's requirement to set aside funds to provide supplemental educational services because his wife, Sunny Chico, owns a company that provides supplemental educational services; and

- [unfounded allegation redacted]

On February 10, 2014, during the investigation of the above allegations, the OEIG received a second complaint relating to Mr. Chico, which alleged that:

- [unfounded allegation redacted][1]; and
- [unfounded allegation redacted][2]

The OEIG concludes that his wife's ownership of a company that provides supplemental educational services could reasonably create the appearance of Mr. Chico's loss of "independence or impartiality"[3] in Board discussions and actions that may affect supplemental educational services providers. Thus, Mr. Chico was required to disclose this interest to the Board when he participated in the Board discussions and vote on ISBE's application to waive certain requirements of the federal No Child Left Behind Act. The OEIG's investigation of this conflict of interest allegation is detailed in this report, along with the investigation of the other allegations for which there was insufficient evidence to find violations.

II. BACKGROUND

A. Gery Chico, Sunny Chico, and SPC Educational Solutions

Gery Chico was ISBE's Board Chair from June 2011 to January 2015. In addition, Mr. Chico is a senior partner and shareholder in the law firm Chico & Nunes, P.C.

Mr. Chico's wife, Sunny P. Chico, is the president of the consulting firm SPC Educational Solutions[4] (SPC), and is a 90% owner of the company. SPC has been an approved supplemental educational services provider since the 2010-2011 school year.[5] Between January 2011 and April 2014, SPC received approximately $1.26 million from Chicago Public Schools for providing supplemental educational services.

B. ISBE's Conflicts of Interest Policies

ISBE's bylaws require all Board members to comply with the State Board Code of Conduct and conflicts of interest policy.[6] The Code of Conduct requires Board members to use best efforts to "avoid circumstances that present conflicts of interest or even the appearance of impropriety with respect to [their] position as a member of the State Board of Education."[7]

The conflicts of interest policy provides that a Board member has a conflict of interest in a matter:

> if the member's interest, either through business, investment or family, might reasonably create the appearance of or result in[:]

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[1] [Redacted]
[2] [Redacted]
[3] *See* ISBE Bylaws, Ex. C, State Board Conflicts of Interest Policy, § 1.1.
[4] SPC Educational Solutions is also known as SPC Consulting.
[5] Before they may offer supplemental educational services, providers must be approved by ISBE. ISBE's Board is not involved in this approval process.
[6] ISBE Bylaws, Art. III, § B.3.
[7] ISBE Bylaws, Ex. B, State Board Code of Conduct, ¶5 (adopted May 25, 1997).

1. using public office for direct or indirect private gain;
2. giving preferential treatment to any organization or person;
3. losing independence or impartiality of action;
4. making a government decision outside official channels; or
5. adversely affecting the confidence of the public in the integrity of the Board.[8]

Any Board member who has or may have a conflict of interest in a matter is required to disclose it to the other Board members, along with all material facts relating to it, before the Board takes action on the matter that is the subject of the conflict.[9]

ISBE's conflicts of interest policy provides that a Board member may ask ISBE's General Counsel or the Board to determine whether an interest constitutes a conflict of interest.[10] If the Board determines that a conflict of interest exists, the member with the conflict "shall not be present for discussion or vote regarding the matter."[11] A Board member with a potential conflict of interest may also voluntarily refrain from participating in a discussion or vote, absent a Board determination that a conflict exists.[12]

C. The Requirements of the No Child Left Behind Act Relating to Supplemental Educational Services

The No Child Left Behind Act of 2001 is a federal statute that requires, among other things, that school districts offer supplemental educational services to eligible students attending schools that fail to make the prescribed adequate yearly progress for a successive three-year period.[13] School districts that are required to offer supplemental educational services under the No Child Left Behind Act must set aside 20% of their Title I funds to fund these services, as well as to fund transportation expenses for eligible students who elect to transfer to another school.[14] In the 2011 to 2012 school year, Illinois school districts spent over $87 million on supplemental educational services as a result of this requirement.

D. ISBE's No Child Left Behind Act Waiver Application

On September 23, 2011, the U.S. Department of Education invited states to request waivers of "specific requirements of [the No Child Left Behind Act] in exchange for rigorous and comprehensive State-developed plans . . . ." Following that invitation, ISBE staff held meetings with stakeholder groups, school district administrators, teachers, parents, and others, to seek input relating to the waiver application. ISBE staff then drafted a waiver application that requested, among other things, a complete waiver of the supplemental educational services

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[8] ISBE Bylaws, Ex. C, State Board Conflicts of Interest Policy, § 1.1.
[9] *Id.* § 1.2.
[10] *Id.* § 1.3(i) & (ii).
[11] *Id.* § 1.4(iii).
[12] *Id.* § 1.3(iii).
[13] See 20 U.S.C. § 6316(b), (e). The Act defines supplemental educational services as "tutoring and other supplemental academic enrichment services" beyond the instruction provided during the school day. *Id.* § 6316(e)(12)(C).
[14] See *id.* § 6316(b)(10); 34 C.F.R. § 200.48(a)(2). Title I funds are federal grants to school districts for the purpose of supporting low-income students.

requirement. ISBE staff provided its draft waiver application to the ISBE Board, and, in an oral presentation on January 25, 2012, informed the Board that its proposed application requested a waiver of the supplemental educational services requirement, among other things.

On February 21, 2012, ISBE's Board voted to authorize the State Superintendent to submit a No Child Left Behind Act waiver application to the U.S. Department of Education, and ISBE submitted an application on February 23, 2012. Despite the staff's earlier recommendation that the application request a complete waiver of the supplemental educational services requirement, the version of the application ISBE submitted to the U.S. Department of Education on February 23, 2012 had been modified to retain a supplemental educational services set-aside requirement for certain types of schools for one year. In other words, if this waiver application was approved by the U.S. Department of Education, certain Illinois schools would be required to continue to set aside funds to hire supplemental educational service providers.

The U.S. Department of Education did not approve ISBE's waiver application in the form submitted on February 23, 2012, and asked ISBE to make changes that included removing the supplemental educational services requirement. ISBE subsequently submitted to the U.S. Department of Education a revised waiver application that sought a complete waiver of this requirement. On April 18, 2014, after ISBE and the U.S. Department of Education resolved disputes unrelated to the supplemental educational services provision, the U.S. Department of Education approved Illinois' waiver application.[15]

III. INVESTIGATION

As noted above, in this investigation the OEIG examined whether Mr. Chico violated ISBE's conflicts of interest policy by participating in Board discussions and the vote relating to Illinois' No Child Left Behind Act waiver application without first disclosing that his wife owns a supplemental educational services provider, [redacted]

[This redacted section concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

A. Mr. Chico's Actions Relating to the No Child Left Behind Act Waiver Application

In its examination of Mr. Chico's actions relating to the No Child Left Behind Act waiver application, the OEIG reviewed ISBE Board meeting agendas and minutes, Mr. Chico's audio-recorded remarks during Board meetings, and the waiver application. The OEIG also interviewed ISBE staff and Board members.

[15] The ISBE Board meeting minutes reflect that ISBE's staff occasionally updated the Board on the status of the waiver application while it was pending before the U.S. Department of Education, but the Board did not vote on it again.

1. ISBE Staff's January 25, 2012 Presentation to the Board, and Mr. Chico's Remarks Following the Presentation

ISBE Board meeting minutes and audio recordings of Board meeting proceedings reflect that during a January 25, 2012 ISBE Education Policy Planning Committee meeting, ISBE staff members made a detailed presentation to the Board regarding their recommendations for the No Child Left Behind Act waiver application. During that presentation, in addition to discussing other aspects of the draft waiver application, [Employee 1] informed the Board that the staff's draft waiver application requested a waiver of the supplemental educational services requirement, among other things.[16]

Following [Employee 1's] presentation, Mr. Chico made the following audio-recorded remarks regarding the recommended waiver of the set-aside requirement:

> [I]f a school is not performing well, I refuse to give them . . . greater flexibility. . . . I mean, I think that's a waste of money, you might as well just throw it out the window. If a school is not performing well, and now our . . . waiver says, "oh by the way, we're just going to ask for a waiver from that 20% set aside of Title I money, and 10% professional development money and let the districts figure it out." Isn't that what we're saying on Title I?

Shortly thereafter, during the same meeting, Mr. Chico made the following audio-recorded remarks:

> I'm not making a judgment on whether the stuff[17] is good but it gave the general public an idea that there was a framework to be looked at here. That once you were identified in that framework, if you weren't performing well, there were consequences; I mean, not draconian, some of it was helpful. I mean . . . you guys oversee things like . . . choice, tutoring, all that other stuff. All that went into this with a redirection of the Title I dollars, 20% of the Title I dollars. So now, we're . . . asking for a relief from that and the community at large is looking to see what we, the ISBE does. . . . I asked Susie,[18] I said, "you're not going to tell me that a school or a district that's been failing for 10 or 15 years, we're just now going to give them 20% more money and hope they figure it out." So, I mean I'm very, very concerned about this now being our reputation.

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[16] Specifically, [Employee 1] made the following audio-recorded remarks:

> [Y]ou're familiar with . . . offering choice or supplemental education services or being in restructuring status and corrective action. And there's also . . . financial mandates that come along with that if you're a school that is in improvement status you are required to reserve 20% of your Title I funds . . . for choice, SES, . . . and also a 10% set aside for professional development. This flexibility waives that. There's no longer the designation of . . . choice, SES, restructuring, corrective action. You're not designated that way anymore at the school level. And there's no longer the mandated . . . set asides for financial resources that come along with that.

[17] Mr. Chico explained in his October 7, 2014 interview that "stuff" referred to the No Child Left Behind Act.

[18] Mr. Chico confirmed in his October 7, 2014 interview that "Susie" was Deputy Superintendent Susan Morrison.

2. Mr. Chico's January 26, 2012 Postponement of the Board Vote on the Waiver Application

ISBE Board agendas reflect that the Board was originally scheduled to vote to approve the waiver application the day after [Employee 1's] presentation, on January 26, 2012. However, the vote on the waiver application was postponed, at Mr. Chico's direction. In audio-recorded remarks during the January 26, 2012 meeting, Mr. Chico explained that he wanted the Board to review the waiver application again because "I just want to be comfortable, I hope you want to be comfortable that we know exactly what we're doing and what we're getting into." The Board agreed to reschedule the vote to a special meeting on February 21, 2012.

3. Mr. Chico's Remarks at the February 21, 2012 Board Meeting and Vote on the Waiver Application

At the February 21, 2012 Board meeting, shortly before the Board voted on the waiver application, Mr. Chico made the following audio-recorded remarks regarding the No Child Left Behind Act's supplemental educational services requirement:

> [A] lot of parents have become used to things that they kind of view as their right right now . . . in the No Child Left Behind Law that will eventually change, go away, morph, whatever it is. Whether it's the right to leave a failing school, whether it's the right to receive free tutoring for their children, whether it's the other items that are in the SES[19] . . . provisions of the No Child Left Behind Law. And I've urged the superintendent not to just summarily end that stuff on day one of the waiver being accepted and leave ourselves in limbo for two years.

Following Mr. Chico's remarks, the Board, including Mr. Chico, voted unanimously to authorize the State Superintendent to submit a No Child Left Behind Act waiver application to meet the U.S. Department of Education's deadline.

4. ISBE's Submission of the Waiver Application to the U.S. Department of Education on February 23, 2012

On February 23, 2012, ISBE State Superintendent Christopher Koch submitted Illinois' waiver application to the U.S. Department of Education. As noted above, rather than requesting a complete waiver of the supplemental educational services requirement, as originally proposed by ISBE staff, the waiver application submitted to the U.S. Department of Education provided that in Fiscal Year 2013, school districts with two or more "priority" schools[20] would be required to set aside 10% of their Title I Part A funds to support extended learning activities, including supplemental educational services. The application provided that in following years, the set-aside would be based on a sliding scale.

5. Interview of [Employee 1]

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[19] Mr. Chico confirmed in his October 7, 2014 interview that "SES" referred to supplemental educational services.

[20] Chicago Public Schools, where SPC provided supplemental educational services, is a district with 2 or more priority schools.

On December 5, 2012, investigators interviewed [Employee 1].[21] [Employee 1] was the primary author of ISBE's No Child Left Behind Act waiver application.

[Employee 1] said that during the process of developing the waiver application, Title I directors[22] and school district personnel supported seeking a waiver of the supplemental educational services requirement, and supplemental educational services providers and parents were opposed to it. According to [Employee 1], ISBE received thousands of letters and calls from parents who objected to the proposed elimination of the supplemental educational services requirement. [Employee 1] said she nevertheless recommended seeking a complete waiver of the supplemental educational services requirement, based on the lack of data showing that these services are effective.

According to [Employee 1], around the time the waiver application was to be submitted to the Board for approval, her supervisor, ISBE Deputy Superintendent Susan Morrison, warned her that ISBE was going to have a problem securing Board approval of the application, and that Mr. Chico might have a vested interest in the matter because his wife owned a supplemental educational services provider. [Employee 1]understood that Mr. Chico had told Ms. Morrison that he would not approve the waiver application if it sought a waiver of the supplemental educational services requirement. [Employee 1] stated that based on her conversations with Ms. Morrison, she and her staff revised the draft waiver application to retain a supplemental educational services requirement for one year.

[Employee 1] said that after ISBE initially submitted the waiver application to the U.S. Department of Education, the Department raised concerns regarding ISBE's proposed one-year continuation of a supplemental educational services requirement, based on the lack of data on the effectiveness of these services. [Employee 1] said ISBE then revised the application to restore the request for a complete waiver of the supplemental educational services requirement, and resubmitted it to the U.S. Department of Education, along with other revisions.

6. Interview of ISBE Deputy Superintendent Susan Morrison

On December 17, 2012, investigators interviewed ISBE Deputy Superintendent Susan Morrison.

Ms. Morrison said that during the development of the waiver application, school district leaders made clear that the supplemental educational services requirement was an impediment for them, and that they wanted to have flexibility to use their funds for other purposes. According to Ms. Morrison, ISBE received numerous letters and calls from parents in support of retaining the requirement. Ms. Morrison said ISBE staff supported seeking a waiver of the requirement because there was no data showing that the requirement was effective.

Ms. Morrison said that after the Board meeting at which the proposed waiver of the supplemental educational services requirement was discussed, Superintendent Christopher Koch

[21] [Employee 1] has since left her employment with ISBE.
[22] Title I directors are district administrators in charge of Title I funds.

told her that Mr. Chico was "pushing back" on that part of the waiver application. Ms. Morrison said she did not recall having any conversations directly with Mr. Chico about the supplemental educational services issue.

Ms. Morrison said she and [Employee 1] felt strongly that the request for a complete waiver of the supplemental educational services requirement should not be changed. However, she said that she and [Employee 1] changed the application based on the conversations between Mr. Chico and Mr. Koch, because they felt they "had to do something to accommodate" Mr. Chico.

7. Interview of ISBE State Superintendent Christopher Koch Regarding the Waiver Application

On September 12, 2013, the OEIG interviewed then-ISBE State Superintendent Christopher Koch.[23]

According to Mr. Koch, when ISBE staff was developing the No Child Left Behind Act waiver application, school district personnel expressed an interest in using their Title I funds to hire more personnel, rather than continuing to pay the money to supplemental educational services providers. Based on his conversations with school district personnel, Mr. Koch believed that if school districts were not required to set aside funds for supplemental educational services, they would choose to spend these funds in other ways.

Mr. Koch said Mr. Chico did not tell him that he (Mr. Chico) would not approve the waiver application if it included a waiver of the supplemental educational services requirement. However, Mr. Koch said Mr. Chico made it clear that he would not approve the application if it did not include an adequate plan for ensuring that the school districts were accountable for how they spent their funds. Mr. Koch said he could not recall any Board member, other than Mr. Chico, expressing concerns about supplemental educational services.

Mr. Koch said that following the discussions about the waiver application at the Board meetings, Ms. Morrison or [Employee 1] revised the waiver application to retain the supplemental educational services requirement for Fiscal Year 2013. Mr. Koch said he considered this to be a significant change from staff's recommendation that the application include a request for a complete waiver of the requirement. Mr. Koch said the retention of the supplemental educational services requirement kept alive the possibility that providers of these services would continue to receive Title I funds.

Mr. Koch stated that after ISBE submitted the waiver application to the U.S. Department of Education, he received a call from the Department's point person for No Child Left Behind Act waiver applications. Mr. Koch said this individual advised him that the Department wanted ISBE to remove the one-year supplemental educational services provision from Illinois' waiver application.[24] Mr. Koch said that based on this conversation, ISBE revised the waiver

[23] In April 2015, Mr. Koch left his employment with ISBE.

[24] Mr. Koch noted that during the waiver process, most states sought a waiver of the supplemental educational services requirement.

application to seek a complete waiver of the supplemental educational services requirement. However, he said, the U.S. Department of Education still had not approved the waiver application as of the date of his OEIG interview, based on other unresolved issues.

According to Mr. Koch, the supplemental educational services requirement continued to be an issue in the school districts while Illinois awaited approval of the waiver application, and said that during the summer of 2013 (when Illinois' waiver application had been pending with the U.S. Department of Education for more than a year), he received an increased number of complaints from school districts about the requirement. Mr. Koch explained that each year, more schools fail to make the prescribed adequate yearly progress, and districts are required to set aside more of their funds for supplemental educational services. Mr. Koch said that because of the volume of complaints he received from school districts, he asked U.S. Education Secretary Arne Duncan to consider waiving the supplemental educational services requirement separately, while ISBE and the U.S. Department of Education continued to work to resolve the remaining issues relating to the waiver application.

Mr. Koch said he was unaware that Mr. Chico's wife was affiliated with a supplemental educational services provider until he (Mr. Koch) learned of an incident in which Ms. Chico's company contacted an ISBE staff member.[25] Mr. Koch stated that, in his opinion, Mr. Chico should have disclosed to the Board that his wife owns a supplemental educational services provider, before he participated in discussions relating to the supplemental educational services provisions of the waiver application.

8. Review of ISBE Board Meeting Minutes for Conflict Disclosures or Requests for Conflict Determinations by Mr. Chico Relating to the No Child Left Behind Act Waiver Application

As noted above, ISBE policy requires Board members to disclose any conflicts of interest to the other Board members, and provides that a Board member may ask the Board to determine whether an interest constitutes a conflict of interest.[26] ISBE Board meeting minutes are required to document when a Board member discloses an actual or potential conflict of interest to the Board.[27]

In light of these policies, investigators reviewed ISBE Board meeting minutes from September 23, 2011, when the U.S. Department of Education invited states to submit a No Child Left Behind Act waiver application, to February 23, 2012, when ISBE initially submitted its waiver application to the U.S. Department of Education. The minutes do not reflect that Mr. Chico disclosed to the Board any interest relating to the waiver application or SPC, or asked the Board to determine whether he had an interest that constituted a conflict of interest. In addition, the OEIG listened to and transcribed recordings of Board meetings during which there was significant discussion of the waiver application; those recordings do not reflect that Mr. Chico made any mention of his wife's affiliation with a supplemental educational services provider.

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[25] As discussed below, this incident occurred in October 2012.
[26] ISBE Bylaws, Ex. C, State Board Conflicts of Interest Policy, §§ 1.2 & 1.3(ii).
[27] *Id.* § 1.5.

9. Mr. Chico's Prior Recusals from ISBE Board Proceedings

In order to determine whether Mr. Chico was aware of ISBE's conflicts of interest policies before the Board discussed the No Child Left Behind waiver application, investigators examined ISBE Board meeting minutes from June 2011 (when Mr. Chico was sworn in as Board Chair) to January 25, 2012 (when Mr. Chico made remarks during the Board discussion of the proposed waiver application), for occasions when Mr. Chico recused himself.

ISBE records from that period reflect that Mr. Chico had previously recused himself from Board proceedings twice. Specifically, on October 19, 2011, Mr. Chico recused himself from a Board Operations Committee of the Whole discussion of a resolution to honor the Noble Network of Charter Schools, because his law firm had done work for the Noble Network before he was appointed ISBE Board Chair. Mr. Chico also abstained from the Board's vote on the resolution to honor the Noble Network the following day, on October 20, 2011.

10. Interviews of ISBE Board Members Regarding the Waiver Application

Between April 23, 2013 and February 27, 2015, investigators interviewed and obtained information from the seven individuals who were ISBE Board members during the time the Board discussed and voted on the No Child Left Behind Act waiver application.[28] All seven Board members said they were unaware that Mr. Chico's wife owned a supplemental educational services provider prior to their OEIG interviews. Four of the seven Board members said they would have wanted to know about Mr. Chico's connection to a supplemental educational services provider before they discussed the waiver application.[29]

11. Interviews of Former ISBE General Counsel Darren Reisberg

As noted above, ISBE policy permits Board members to seek a determination from ISBE's General Counsel as to whether an interest constitutes a conflict of interest.[30] In light of this policy, investigators interviewed Darren Reisberg, who was ISBE's General Counsel during the time the No Child Left Behind Act waiver application was drafted and initially submitted to the U.S. Department of Education. Mr. Reisberg was interviewed on December 11 and 28, 2012.

Mr. Reisberg said it was important for the Board Chair to participate in the discussions relating to the waiver application because the application was a "big deal," but said Mr. Chico should have disclosed any potential conflict of interest if he had one. Mr. Reisberg stated that he could not give an opinion as to whether Mr. Chico's wife's ownership of a supplemental educational services provider created a conflict of interest for Mr. Chico relating to the waiver application. Mr. Reisberg said Mr. Chico did not ask him to make a determination regarding whether he had a conflict of interest under these circumstances, but that if Mr. Chico had done so

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[28] At that time, there was one vacant seat on the Board.

[29] When asked whether they would have wanted to know about Mr. Chico's connection to a supplemental educational services provider, one of the remaining Board members said he did not see how that knowledge would have impacted his discussion or vote on the waiver application; the remaining two Board members said they did not know whether they would have wanted to know.

[30] ISBE Bylaws, Ex. C, State Board Conflicts of Interest Policy, § 1.3(i).

Mr. Reisberg would have advised him to raise the issue with the Board, and discuss on the record that he had a potential conflict.

B. [Redacted][31] [32] [33]

[This section, consisting of approximately 2 ½ pages, concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

C. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

D. [Redacted]

[These four paragraphs concern allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact them pursuant to 5 ILCS 430/20-52(b).]

E. Mr. Chico's Interviews and Written Statements

Investigators initially interviewed Mr. Chico on October 7, 2014. Following that interview, Mr. Chico requested a second interview, which took place on January 28, 2015. Mr. Chico also submitted written statements to the OEIG on December 5, 2014 and February 6, 2015.

1. October 7, 2014 Interview of Mr. Chico

On October 7, 2014,[34] the OEIG interviewed Mr. Chico regarding his actions relating to the [unfounded allegation redacted], the No Child Left Behind Act waiver application, and [unfounded allegations redacted.]

a. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).][35]

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[31] [Redacted]
[32] [Redacted]
[33] [Redacted]
[34] Although the OEIG contacted Mr. Chico's attorney on August 4, 2014 to schedule an interview, the October 7, 2014 date was ultimately chosen to accommodate Mr. Chico and his attorneys' schedules.
[35] [Redacted]

b. Mr. Chico's Statements about the No Child Left Behind Act Waiver Application

Mr. Chico said the No Child Left Behind Act waiver application represented "an enormous policy decision," and that the application's main focus was to implement a new measurement tool for teacher and principal performance. By contrast, Mr. Chico said, there was "next to nothing" about supplemental educational services in the waiver application, and he did not consider the change from seeking a complete waiver of the supplemental educational services requirement to retaining a set-aside requirement for certain schools for one year to be a substantial change to the application.

Mr. Chico acknowledged that his remarks to the Board on January 25, 2012 regarding the "20% set aside of Title I money" and regarding "choice, tutoring, all that other stuff" "that went into this with a redirection of the . . . 20% of the Title I dollars" referred, in part, to supplemental educational services, although he stated that he was referring to other types of tutoring as well. Mr. Chico acknowledged that his remarks to the Board on February 21, 2012 regarding the "right to receive free tutoring" and the "SES provisions" of the No Child Left Behind Act referred to supplemental educational services.

Mr. Chico said he discussed the waiver application with Mr. Koch and ISBE staff, but denied that he directed Mr. Koch or ISBE staff to include a provision in the waiver application that retained a supplemental educational services requirement. Mr. Chico also denied that he communicated to Mr. Koch, Ms. Morrison, or any other ISBE staff member that he would not approve the waiver application if it contained a request to waive the supplemental educational services requirement.

Mr. Chico said he has been married to Sunny Chico for nearly 13 years, and that they have a joint personal bank account and file joint tax returns. Mr. Chico said neither his wife nor anyone else at SPC expressed concerns to him about the proposed No Child Left Behind Act waiver application.

Mr. Chico said he did not disclose to the Board that his wife owns a supplemental educational services provider because he did not believe he had a conflict of interest. Mr. Chico said the waiver application had nothing to do with his wife's business, and he denied that his involvement in the waiver application process would reasonably create the appearance that he was using public office for direct or indirect private gain.

c. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

d. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).][36]

2. Mr. Chico's December 5, 2014 Written Statement

At the conclusion of his October 7, 2014 interview, Mr. Chico indicated that he wished to submit a written statement to the OEIG. On December 5, 2014, Mr. Chico submitted his written statement through counsel.[37] This statement focused on the issue of Mr. Chico's participation in the discussions relating to the No Child Left Behind waiver application.[38]

In his December 5, 2014 written statement, Mr. Chico maintained that the subject of supplemental educational services was a small part of the No Child Left Behind Act waiver application, and that the change to the supplemental educational services provision in the application was minor, and one of many changes. Mr. Chico stated that the change to that provision was not made at his request, and he denied that he threatened to withhold his support of the waiver application unless it included some form of tutoring services.

Mr. Chico further stated that "there is a complete lack of a causal relationship between the waiver and any personal interest" of his.[39] Mr. Chico said he has no financial interest in his wife's company, SPC. In addition, he said that many actions and decisions relating to the waiver application and SPC were unknown and outside his and ISBE's control. For example, Mr. Chico said, it was unknown and outside his control whether the U.S. Department of Education would grant the waiver application, whether the Chicago Public Schools would continue using private supplemental educational services providers, and whether individual schools and parents would choose SPC.

Mr. Chico argued that "[i]n light of his experience and record," he should be given "substantial deference in determining whether a conflict of interest exists." According to Mr. Chico, "the facts here clearly show that there could only have been a determination of 'no interest.'" Therefore, Mr. Chico argued, he had no obligation to disclose to the Board that his wife owns a supplemental educational services provider.

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[36] [Redacted]

[37] At Mr. Chico's request, his December 5, 2014 written statement is attached to this report, as Exhibit A.

[38] Mr. Chico also argued that the OEIG denied him due process by refusing to identify the sources of the allegations, or to produce documents from the OEIG's investigative file. The Ethics Act prohibits the OEIG from disclosing such information, however. *See* 5 ILCS 430/20-90 & 20-95.

[39] Mr. Chico also cited to *Croissant v. Joliet Park Dist.*, 566 N.E.2d 248 (Ill. 1990), in support of his argument that any interest he may have had was too remote to constitute a conflict of interest. However, in that case the court examined a conflict of interest statute that prohibited officeholders from having an actual interest (either direct or indirect) in contracts on which they may be called upon to act or vote. *See id.* at 250-51. ISBE's policy is broader than the statute examined in *Croissant*, in that it also prohibits ISBE Board members from taking any action that "might reasonably create[s] the *appearance* of . . . losing independence or impartiality of action . . . ." (emphasis added).

3. January 28, 2015 Interview of Mr. Chico

On December 10, 2014, Mr. Chico's attorney notified the OEIG that Mr. Chico wished to be interviewed a second time. To accommodate Mr. Chico and his attorneys' schedules, the second interview was scheduled for January 28, 2015.

In his January 28, 2015 interview, Mr. Chico reiterated that he had no involvement in the decision to change the waiver application to retain a supplemental educational services requirement. Mr. Chico told investigators that before ISBE submitted the waiver application to the U.S. Department of Education, the agency received a large volume of communications from parents that asked ISBE to retain a set-aside requirement for supplemental educational services. In addition, Mr. Chico noted that Deputy Superintendent Susan Morrison had indicated that ISBE needed to clarify that the waiver would not eliminate tutoring services, but rather would provide flexibility to local districts to determine whether to provide such services. Finally, Mr. Chico stated that Illinois used Massachusetts' successful waiver application as a model.

When asked whether he had considered disclosing to the Board that his wife owned a supplemental educational services provider, before the Board discussed supplemental educational services, Mr. Chico said he had had no reason to do so because the issue of supplemental educational services was never raised before the Board. Investigators then showed Mr. Chico transcripts of his remarks in Board meetings held on January 25, 2012 and February 21, 2012, in which he discussed supplemental educational services. Mr. Chico said the Board members were discussing general federal law, and that the provision in the waiver application that specifically addressed supplemental educational services was not raised. Mr. Chico said that because the connection between the waiver application and SPC was too attenuated, his participation in the Board discussions and vote on the waiver application did not create a conflict of interest.

4. Mr. Chico's February 6, 2015 Written Statement

Following his January 28, 2015 interview, Mr. Chico's attorney notified the OEIG that Mr. Chico wished to submit a second written statement. Mr. Chico submitted his second written statement, through counsel, on February 6, 2015.[40]

In his February 6, 2015 written statement, Mr. Chico again reiterated that he had nothing to do with the change related to supplemental educational services that was reflected in the waiver application ISBE submitted to the U.S. Department of Education on February 23, 2012. Mr. Chico stated that a large volume of communications from parents regarding their concerns about losing supplemental educational services prompted ISBE staff to "clarify that local school districts, not ISBE, would decide whether to offer Supplemental Services for students." Mr. Chico further noted that in making the change, ISBE staff essentially adopted language Massachusetts had used in its successful waiver application.

[40] At Mr. Chico's request, his February 6, 2015 written statement is attached to this report, as Exhibit B.

Mr. Chico stated that his actions relating to the waiver application did not give the appearance of an interest that would implicate ISBE's conflicts of interest policy because he was not involved in the amendment of the waiver application, and because any impact the application might have on his wife's business was, at best, unknown.[41]

IV. ANALYSIS

Based on the evidence gathered in this investigation, the OEIG concludes that Mr. Chico violated ISBE's conflicts of interest policy by participating in the discussions and vote relating to Illinois' No Child Left Behind Act waiver application without first disclosing to the Board that his wife owns a supplemental educational services provider. However, the OEIG concludes that there is insufficient evidence to find violations relating to the other allegations raised in this investigation.

A. Conflicts of Interest under ISBE Policy

1. Mr. Chico's Actions Relating to the No Child Left Behind Act Waiver Application Violated ISBE Policy

Mr. Chico was required to use best efforts to avoid circumstances presenting even the appearance of impropriety with respect to his position as an ISBE Board member, and to disclose any business or family interest to the Board that might reasonably create the appearance that he was unable to be independent or impartial. Mr. Chico's awareness of these obligations and his appreciation of the importance of avoiding even the appearance of impropriety are evidenced by his October 2011 recusal from the discussion and vote on the purely honorary resolution relating to the Noble Network. Despite his understanding of his obligations under ISBE's Code of Conduct and conflicts of interest policy, and without first disclosing his wife's ownership of a supplemental educational services provider to the Board, Mr. Chico made statements during Board discussions of the waiver application on January 25, 2012 and February 21, 2012 that specifically addressed the supplemental educational services requirement.

Mr. Chico acknowledged in his October 7, 2014 interview that he made statements in Board meetings about the supplemental educational services requirement. However, he maintained in his interviews and written statements that the supplemental educational services requirement was a minor, insignificant issue in the waiver application. The evidence contradicts this assertion. First, Superintendent Koch regarded the inclusion of a supplemental educational services requirement in the waiver application submitted to the U.S. Department of Education to be a significant change from ISBE staff's recommendation to request a complete waiver of the set-aside requirement. In addition, Ms. Morrison said she and [Employee 1] strongly felt that this change should not be made, an unlikely reaction if the requirement was immaterial. Moreover, the U.S. Department of Education considered the set-aside provision to be important enough that it asked ISBE to remove it during the negotiations between the Department and ISBE. Indeed, Mr. Koch received so many complaints from school districts about the supplemental educational services requirement while the waiver application was pending with the U.S. Department of Education that he asked the U.S. Education Secretary for separate relief

[41] Mr. Chico also reiterated his objection to the OEIG's refusal to identify the complainant.

from that requirement while negotiations over other provisions of the application continued. In short, the supplemental educational services requirement mattered.

Mr. Chico also maintained that he had no obligation to disclose to the Board that his wife owns a supplemental educational services provider before he participated in these discussions, because the connection between the waiver application and his wife's supplemental educational services company was too attenuated. While Mr. Chico believed that the connection between the waiver application and his wife's company was too attenuated, the more prudent course of action would have been to disclose it so others could form their own opinions. In addition, even though there is no evidence that Mr. Chico had an *actual* interest in retaining the supplemental educational services requirement, it is reasonable to conclude that there was at least an *appearance* that he may not be independent or impartial. SPC has received significant sums of money providing supplemental educational services, which would decrease or cease entirely if, as Mr. Koch believed, school districts would opt to spend their Title I funds in other ways if they were not required to set them aside for supplemental educational services. Additionally, four of the seven other Board members said they would have wanted to know about Mr. Chico's connection to a supplemental educational services provider before they discussed the waiver application.

The OEIG additionally notes that although there is no evidence that Mr. Chico threatened to withhold his vote on the waiver application if it contained a request to waive the supplemental educational services requirement, it appears that Mr. Chico did influence the ISBE staff to retain a set-aside requirement. As Mr. Chico himself told the Board on February 21, 2012:

> Whether it's the right to leave a failing school, whether it's the right to receive free tutoring for their children, whether it's the other items that are in the SES . . . provisions of the No Child Left Behind Law. *And I've urged the superintendent not to just summarily end that stuff on day one of the waiver being accepted and leave ourselves in limbo for two years.* (emphasis added)

In addition, [Employee 1] and Ms. Morrison said they changed the supplemental educational services provision of the waiver application to accommodate Mr. Chico.

The fact that Mr. Chico's wife owned a supplemental educational services company reasonably created the appearance that Mr. Chico may not have been able to be independent or impartial in the Board's discussions of the supplemental educational services provisions in the No Child Left Behind waiver application. Accordingly, Mr. Chico should not have made statements about ISBE staff's proposed request for a complete waiver of the supplemental educational services requirement without first disclosing to the Board that his wife owned a supplemental educational services provider.

The allegation that Mr. Chico violated ISBE's Code of Conduct and conflicts of interest policy when he participated in the discussions and vote regarding the No Child Left Behind Act waiver application, without first disclosing to the Board that his wife owns a supplemental educational services provider, is **FOUNDED**.

2. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

3. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

B. [Redacted]

[This paragraph concerns allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact it pursuant to 5 ILCS 430/20-52(b).]

1. [Redacted][42] [43]

[The next two subsections concern allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact them pursuant to 5 ILCS 430/20-52(b).]

2. [Redacted][44]

[The next two paragraphs concern allegations that the OEIG determined to be unfounded and the Executive Ethics Commission is exercising its discretion to redact them pursuant to 5 ILCS 430/20-52(b).]

V. FINDINGS/RECOMMENDATIONS

As a result of its investigation, the OEIG issues the following findings:[45]

- **FOUNDED** – ISBE Board Chair Gery Chico violated ISBE's Code of Conduct and conflicts of interest policy by participating in the ISBE Board's discussions and vote

[42] [Redacted]
[43] [Redacted]
[44] [Redacted]
[45] The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

relating to Illinois' No Child Left Behind Act waiver application without first disclosing to the ISBE Board that his wife owns a supplemental educational services provider.

- **UNFOUNDED** – [Redacted]
- **UNFOUNDED** – [Redacted]
- **UNFOUNDED** – [Redacted]
- **UNFOUNDED** – [Redacted]

Because Mr. Chico is no longer ISBE's Board Chair, the OEIG recommends that ISBE place a copy of this report in Mr. Chico's file.

No further investigative action is needed and this case is considered closed.

Date: September 25, 2015

Office of Executive Inspector General
for the Agencies of the Illinois Governor
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December 5, 2014

VIA: HAND DELIVERED

Mr. Ricardo Meza, Inspector General
Office of the Executive Inspector General
69 W. Washington Street
Suite 3400
Chicago, Illinois 60602

Dear Mr. Meza:

Gery Chico, by his attorneys, submits this response following his interview with staff from your office on October 7, 2014. Based upon that interview and the reasons set forth in this letter, we believe that all of your areas of inquiry have been addressed and that your office has no reason to pursue your investigation of Mr. Chico any further.

THE INVESTIGATION AFFORDED NO DUE PROCESS

By any and all legal and reasonable standards, Mr. Chico has been denied his fundamental constitutional rights throughout this process, and has been hampered, accordingly, in preparing this response. Mr. Chico first learned of an investigation when he was contacted by an Investigator from the Office of the Executive Inspector General for the State of Illinois ("OEIG") requesting that he appear and submit to questioning. Mr. Chico's Counsel contacted the Investigator in an effort to determine the specific allegations that were being made against Mr. Chico and to obtain copies of any relevant documents that might refresh Mr. Chico's memory and permit him to respond knowingly to OEIG inquiries during the scheduled interview. Additionally, in a letter dated January 30, 2014 to Investigator Margaret Marshall, Mr. Chico requested the information and documents necessary to properly prepare for the inquiry by the OEIG rather than to be "sandbagged" with questions or topics with which he was either not familiar or not prepared. The OEIG refused to provide further information regarding any allegations against Mr. Chico and refused to provide copies of documents that it intended to use in the interview of Mr. Chico.

Thereafter, Mr. Chico was served with a series of subpoenas requesting various documents without any further explanation as to the nature of the inquiry or the specific allegations against him. During the interview of Mr. Chico on October 7, 2014, he was not permitted to retain copies of the documents used in the interview; the OEIG refused to provide copies of the documents to Mr. Chico or his Counsel and the OEIG refused to identify persons who provided any allegations

EXHIBIT A

regarding Mr. Chico's actions. In response to a direct request by Counsel for Mr. Chico at the interview that he be provided the names of the person or persons making allegations against Mr. Chico, if any, the OEIG refused.

The actions taken by the OEIG in conducting this investigation lack the basic elements of fairness and due process. At the very minimum, due process requires notice of the charges against him and a meaningful opportunity to be heard in his own defense. Mr. Chico received neither. Despite a request that he be informed of the charges made against him, the OEIG refused to specify the violations that may have been involved and gave him no notice of those allegations. Production of additional documents that may have provided context for the particular sections of documents Mr. Chico was asked to review was also refused. Instead, documents were shown in small separate pieces, denying the ability to review the matter in its overall proper context for a response.

Mr. Chico had no opportunity to confront any accusers and had no meaningful opportunity to present a response at this critical stage of the process, the stage at which the OEIG determines whether a violation of rules or regulations has occurred. The actions of the OEIG offend our traditional notions of fair play and justice, especially where the mere issuance of a report by the OEIG without the opportunity for Mr. Chico to present a fully informed response could inflict significant damage to the reputation of Mr. Chico, who has served honorably and without compensation the people of the State of Illinois and the City of Chicago for decades.

THE ILLINOIS APPLICATION FOR ESEA FLEXIBILITY WAIVER

Nonetheless, after appearing and answering questions for well over two hours, it appears that only one of the several issues discussed during that interview warrants further discussion or clarity at this time.[1] On February 21, 2012, the Illinois State Board of Education ("ISBE") approved the submission of the Illinois Application for an Elementary and Secondary Education Act ("ESEA") Flexibility Waiver (the "Waiver"). During the OEIG's interview, your office suggested that Mr. Chico had a "conflict of interest" with regard to the Waiver. Despite numerous suggestions made by your office, the facts clearly show that Mr. Chico did **not** have any conflict of interest with regard to the content of that Waiver and had no obligation to disclose or to recuse himself from any participation regarding the Waiver.

[1] It appears to counsel that Mr. Chico satisfactorily responded to the OEIG inquiries regarding 1) the contract for services between Chico & Nunes, P.C. and Chicago State University and 2) the relationship between Chico & Nunes, P.C. and Noble Network of Charter Schools.

The Waiver was developed by ISBE staff in response to the desire of hundreds of local school districts throughout the State of Illinois that were seeking relief from the federally-mandated provisions of the ESEA (commonly referred to as the "No Child Left Behind Act"). The Waiver would grow to over 850 pages, including exhibits, and would be the subject of numerous public hearings and submissions from interested stakeholders. The Waiver covered proposed changes in measuring student achievement, measuring both teacher qualifications and performance, granting ISBE greater flexibility with districts having underperforming schools, granting school districts greater flexibility in using funds to support school improvement, as well as expanding the flexibility in the use of Twenty First Century Community Learning Center funds for "extended learning activities." It also sought to reduce the amount of duplicative and burdensome reporting requirements.

One very small component of the Waiver addressed the use of funds by school districts with underperforming schools. The final language in the Waiver concerning the State's lowest performing school districts reads, in part, "For FY13, districts with two or more priority schools must set aside 10% of their Title I Part A funds to support extended learning activities in priority schools, including Supplemental Education Services ("SES"). In following years set asides will be based on a sliding scale to support the implementation of the transformation plan." To the extent that a district chose to use SES in FY13, SES could be done through tutoring, although in many different forms. The form chosen by each school district was at its discretion. Private providers could be and were used to provide tutoring services. The actual selection process for a private provider would include three different selection levels, none of which involved ISBE: 1) the school district had to select the provider; 2) the individual school had to select that provider; and 3) the parents of each student had to select that provider. Several districts allowed for the choice among numerous providers within their districts and schools.

The Waiver itself went through several drafts. ISBE staff, outside consultants and volunteers worked on the actual document. ISBE's general counsel wrote and rewrote various passages of the document. At no time did Mr. Chico write, or direct any other person to write, any portion of the document. Among all the various items contained in the Waiver was a request by staff that the United States Department of Education ("USDOE") allow school districts the flexibility to choose how and if it would provide SES to their students at underperforming schools. The Waiver did not mandate the use of tutoring, direct how the tutoring was to be supplied, or which if any vendors would or would not provide tutoring services. Since its first draft, ISBE staff sought a complete waiver from the mandate that a district with schools in "improvement status"

allocate twenty percent of its funds for "choice/SES" (found on page four of the Waiver draft). Staff argued that schools and district leaders should have the flexibility to be allowed to make decisions about how best to help their students. ISBE's position never changed in any version of the waiver, although some of the final text clarified language from earlier drafts.

The contents of the Waiver were reviewed by the public at numerous meetings around the state prior to its presentation to the Board. In November and December of 2011, ISBE held many stakeholder meetings. The next meeting was held on January 9, 2012 and during the week of January 30, 2012, ISBE held three meetings with educators from teachers to superintendents. The feedback from surveys taken at the meetings included comments from attendees expressing their desire for the continuation of SES/tutoring services. ISBE staff advised attendees during these meetings that if SES services were working, the districts could keep them. It was their choice.

Subsequent to public meetings on February 14 and 15, 2012, there was a significant response from the parents of children receiving tutoring services and various tutoring providers, all of which expressed the desire to retain tutoring services under SES. ISBE ultimately received nearly 2000 letters from parents asking that tutoring services remain available to them. In addition, there was a logistical challenge – the state fiscal year start was four months away and any decision by the USDOE could take longer than that (It actually took two years for their final decision). There was a need to assure continuing compliance with federal law until the Waiver was granted and an orderly process for that change once it was to be implemented. As a result, the Waiver was modified several times by staff without any knowledge or input from Mr. Chico. The version that would be voted upon on February 21, 2012 altered the language of the request in a minor way regarding extended learning activities by allowing SES to continue if a district so chose. This was one of dozens and dozens of changes in nearly every area of the Waiver from earlier drafts. There were no less than fifty (50) changes of substance between the February 16 and February 21, 2012 versions alone, in a document that had dozens of covered topics. Staff would thereafter change the content of its final submission again as well, also without Mr. Chico's involvement.

The changes from February 16 to February 21/23 were not done at Mr. Chico's request, despite the insinuations made during his interview with the OEIG. Mr. Chico specifically denied that he directed or authorized the inclusion of tutoring services under SES in the Waiver. Moreover, Mr. Chico made no threats to withhold his support of the Waiver unless it included some form of tutoring services. Rather, the reason for the changes to the language of the Waiver filed on February 23 was to be consistent with language previously submitted by the State of Massachusetts (and recommended to staff by experts), which had also applied for a similar waiver.

Apparently, adopting consistent language would be more persuasive to the USDOE staff evaluating the Illinois application. The minimal language in the Waiver regarding choice and SES was included to give school districts greater flexibility in choosing remedies for underperforming schools and to give more flexibility to schools and community organizations in using their 21st Century Community Learning Center monies for other methods of "extended learning time." Again, this was very similar to what Massachusetts had done in its successful waiver.

On February 21, 2012, the Illinois State Board of Education voted to approve the Waiver application, in substantially the form in which it was presented to the Board by ISBE staff. The Superintendent was authorized to make changes he deemed necessary in response to further feedback. The summary of that agenda item did not mention either SES or tutoring. Nevertheless, staff was prepared for an "onslaught" of public participation during the meeting from providers and parents seeking the retention of tutoring services. In questioning Mr. Chico, the OEIG pointed to one small change in that document in Table 14, taken out of context, implying that he had something to do with is content. The actual reason for that change was specifically listed on page 10 of the Waiver, which was altered to include the following sentence, "SES providers and parents on the other hand, voiced concerns about losing tutoring services if the state did not mandate a set-aside specifically for SES." Around that same time, Deputy Superintendent Susie Morrison had specifically asked that "we clarify that the waiver would not eliminate tutoring services, but would provide flexibility to the local district on who should best provide such services." and on February 17, 2012, Superintendent Koch wrote in an email to his deputy "Susie, you will need to have tutoring effect data at your fingertips and talking points need to be shared with me prior to the event so we are ready." ISBE staff on February 6, 2012 answered persons asking questions about SES as follows: "SES will not be mandated, therefore, districts can select supplemental services that are beneficial to them." Mr. Chico played no role in these discussions or statements and played no role in the drafting of language of the Waiver.

Clearly there were many reasons that ISBE staff modified the language in Table 14 related to SES. None of that information was ever provided to Mr. Chico before the interview and demonstrates that the insinuation that he directed any changes for some speculative tenuous benefit is ludicrous.

SPC CONSULTING, LLC

SPC Consulting LLC ("SPC") is an educational services and consulting company owned substantially by Sunny Chico, Mr. Chico's wife. Mr. Chico has had no financial interest in that

company and does not (and did not) participate in any way in the company's business operations. Long before and at the time that the Waiver was under consideration, SPC served as a tutoring vendor to two local school districts. SPC had no contracts regarding tutoring with ISBE or any other agency of the State. SPC did not participate in the Waiver approval process. Since the Waiver was approved, SPC no longer provides tutoring services to any local school district.

We note initially that the OEIG apparently believes that SPC had an "indirect" financial interest in the Waiver simply because the subject of SES was addressed in one small section. The Waiver did not affect any of SPC's existing contracts, nor did it affect the decisions made by districts, parents and schools to use (or not use) SPC, and it did not increase or decrease funding for tutoring services under SES. While some parents and vendors did not want the mandate for use of SES for tutoring to become a discretionary choice, it remained completely unclear whether, given that flexibility, any local school district would alter its mix or amount of tutoring services. Most importantly, with or without the Waiver, nothing contained within it could determine whether SPC received more, less or any business from any local school district. The decision to do business with SPC was completely within the control of independent parties, not ISBE. Mr. Chico made it clear in his OEIG interview that he did not see any personal interest in his participation in the Waiver process, including his vote.

MR. CHICO HAD NO CONFLICT OF INTEREST ASSOCIATED WITH THE WAIVER

The ultimate question raised in your interview is whether Mr. Chico had a "conflict of interest" under State rules and regulations that would have required him to take different actions regarding the Waiver than those he did take. Review of all potentially applicable statutes and rules, when applied to these facts, demonstrates that Mr. Chico never had a conflict of interest.

Section 5 ILCS 420/3A-35 of the Illinois Governmental Ethics Act deals directly with conflicts of interest of governmental appointees. That section identifies potential conflicts ONLY with state contracts held by the appointee or other related parties. Since this Waiver involved no State contract, and since SPC had no applicable State contract, there can be no violation of this statute.

Likewise, the Illinois State Officers Ethics Act (5 ILCS 430) is inapplicable to this situation.

Lastly, the Bylaws of the Illinois Board of Education contain a Conflicts of Interest Policy (the "Policy") that loosely defines having an interest in a matter, through business, investment or family that might "reasonably create the appearance of or result in

1. using public office for direct or indirect private gain
2. giving preferential treatment to any organization or person
3. losing independence or impartiality of action
4. making a government decision outside official channels
5. adversely affecting the confidence of the public in the integrity of the Board"

Applying the Policy, Mr. Chico rightly determined that he had no potential conflict of interest regarding the Waiver. There was no personal gain to Mr. Chico as a result of the Waiver and there was no gain to SPC. There was no preferential treatment in this matter – certainly there were winners and losers, as is the case with most decisions, but Mr. Chico's alleged interest in the Waiver was not going to confer preferential treatment to SPC or, indirectly, to him. The history recited above contains no evidence whatsoever that Mr. Chico could not be independent and impartial. The Policy's criteria of making a decision outside of official channels or adversely affecting the confidence of the public are completely irrelevant to these facts.

Mr. Chico's belief that he had no interest that would fall under the Policy is likewise clearly demonstrated in the interview and the full set of materials involved in the Waiver. Mr. Chico denies knowing or believing that he had any "interest" in the Waiver contents, which contained only a few lines involving SES in a document over 850 pages long that focused on critical educational issues. Moreover, **ISBE has nothing to do with who does or does not get tutoring business offered as a part of SES.** The fact that SPC performed tutoring services has nothing to do with ISBE's Waiver application, regardless of how small or large those revenues might have been. The amounts presented at the interview were misleadingly large, since they referred to revenues over several years, without any comparison to expenses and the actual profit, if any, the company may have earned. Mr. Chico, as Chairman of ISBE, had a duty to the people of Illinois to act on propositions impacting educational matters of the State of Illinois. Similar to jurists, ISBE board members are obliged to recuse themselves only if there is a genuine conflict of interest. However, board members, and particularly a board's chairman, have a duty to do their jobs and fulfill their oath, unless a real conflict exists. For over twenty years in public service, Mr. Chico has accurately identified situations giving the appearance of conflicts of interest, and has properly recused himself from any and all actions pertaining to these matters. He was asked to serve because of his abilities in complex matters of education policy, such as the Waiver, and he did so.

Mr. Chico has a long history of disclosures, recusals and abstentions when appropriate while engaged in public service, including at ISBE. As an attorney, Mr. Chico fully recognizes and complies where applicable with such requirements. The OEIG inquired about a contract between his firm and Chicago State University, only to learn that **full disclosure had been made prior to the execution of the contract and had been ratified by the University.** The OEIG also inquired regarding legal services performed by Chico & Nunes, P.C. for Noble Charter Schools, only to again learn that he **had made no decisions in his position regarding that entity and had, in fact, disclosed the relationship and recused himself in a completely HONORARY resolution,** the only matter involving the entity that came before the Board. In light of his experience and record in such matters, Mr. Chico should be given substantial deference in determining whether a conflict of interest exists. Yet now the OEIG wants to "second guess" this decision years after it was made by an experienced public servant (serving without pay) who has a multi-decade ethical record free from suggestions of voting on matters in which he has an "interest." This investigation is the first time in all those years where an investigation has been initiated regarding Mr. Chico's disclosures of potential conflicts of interest (although the media has been eager to document the fact that he has readily and broadly made such disclosures when he considered it appropriate).

Finally, the USDOE Waiver is not the kind of transaction creating an interest that needed Board Action under the Policy. Section 1.4 of the Policy calls for the Board in cases where a covered interest exists to "seek other arrangements" or to obtain a vote from "non-interested members" that the matter is in the best interest of the Board and for the Board's own benefit, to be decided in the absence of the subject Board member. Each of these requirements envisions the clear financial or personal connection that would give a DIRECT financial benefit to that Board member. A waiver submission to the USDOE on behalf of hundreds of school districts, with a myriad of major policy issues, **none of which created any personal benefit** to Mr. Chico, is not the type of action and involvement that would be covered by the Policy and supports Mr. Chico's statement that he saw no need to invoke the Conflict of Interest Policy terms.

Examined objectively, there is a complete lack of a causal relationship between the Waiver and any personal interest of Mr. Chico (which is only suggested by the OEIG because of his wife's independent business). It was reasonable for Mr. Chico (or any other person) to believe that he did not have an interest in the Waiver because whether SPC would be ultimately affected required so many actions and decisions that were both unknown and outside of his or ISBE's control:

- Whether the Waiver would be granted by USDOE;
- Whether CPS would determine to reallocate funds from SES tutoring;

- Whether CPS would maintain any private vendors for any remaining funding, and which ones would remain;
- Whether individual schools would choose SPC; and
- Whether individual parents would choose SPC.

No legal precedent can be found which has ruled that such a speculative, remote and minimal connection in a public matter constitutes a reasonable basis for believing a potential conflict of interest exists. Seen from the reverse position, if Mr. Chico had presented this matter to the Board or anyone else for review, the facts here clearly show that there could only have been a determination of "no interest" – thus the matter is moot. There is, however, judicial guidance on the issue of what circumstances constitute a conflict of interest. The Illinois Supreme Court in *Croissant v. Joliet Park District, 141 Ill.2d 449 (1990)* ruled that where a board member voted upon on a matter that would affect the general public and a broad class of businesses, including one in which he held a personal financial interest, no conflict of interest existed. Under the Waiver, broad classes of school districts, school officials, teachers and vendors were affected, but that did not include any personal financial interest. The question of whether Waiver approval would actually result in a financial benefit to any member of the vendor class is even more speculative. This case, like *Croissant*, lacks the immediate, ascertainable interest that suggests a conflict of interest. Therefore, since no conflict of interest could exist, the remainder of the Policy was inapplicable to that matter. Using both his subjective belief and a separate objective analysis, Mr. Chico had no obligation to seek any further opinions, to disclose anything to the remainder of the Board, or to abstain from participating in the matter.

We expect that this information should address any concerns your office may have regarding Mr. Chico's actions regarding the Waiver. We would appreciate your prompt response in advising him that your inquiry has been closed as unsubstantiated. However, should the OEIG believe that Mr. Chico violated any specific rules or regulations pertaining to the Waiver or any other matter raised in your interview, we request that this response be attached to and made a part

of your report transmitted to the Governor's Office and the Executive Ethics Commission.

Very truly yours,

Michael J. Kralovec

Terence P. Gillespie

MJK:sk
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February 6, 2015

Mr. Ricardo Meza, Inspector General
Office of the Executive Inspector General
69 W. Washington Street
Suite 3400
Chicago, Illinois 60602

Dear Mr. Meza:

We submit this response on behalf of Gery Chico following his second meeting with you and your staff on January 28, 2015. Based upon these meetings and the materials provided to you, and for the reasons set forth in this letter, we again restate our position that all of your areas of inquiry have been fully addressed and that no further action by your office is warranted.

ESEA WAIVER IN TABLE 14

Based upon questioning during the interview with Mr. Chico by staff from the Office of the Executive Inspector General for the State of Illinois ("OEIG") on October 7, 2014, it was clear that the OEIG had questions about how the language in the ESEA Waiver, dated February 23, 2012, (the "Waiver") had been changed from earlier versions to include a reference to "Supplemental Services" and whether Mr. Chico had had anything to do with that change. Referencing the materials and information provided in our earlier correspondence with your office, once again Mr. Chico stated, as he had previously, that he had nothing to do with that change to the February 23,2012 ESEA waiver. Mr. Chico then went on to explain from his research of the matter how the change most likely came about. He noted that there were dozens of changes to the February 23rd draft from earlier versions. He particularly walked through what he found about the addition of the words "Supplemental Services" to Table 14 in the February 23 draft of the waiver.

He began by noting that in February of 2012 parents were sending in thousands of communications to ISBE staff about their concern over losing Supplemental Services for their children. This, in turn, prompted staff to need to clarify that local school districts, not ISBE, would decide whether to offer Supplemental Services for students.

EXHIBIT B

Furthermore, in February of 2012 ISBE staff also wanted to allow schools to extend their day using federal 21st Century Learning Grant funds. ISBE received a particular suggestion from the National Center in Time and Learning that Illinois follow what the State of Massachusetts had done in this regard in its successful waiver. Massachusetts mentioned in its waiver that local school districts could decide to include Tutoring or Supplemental Services as part of its extended day.

ISBE staff followed suit and pretty much adopted the language of the Massachusetts waiver and in Table 14 also mentioned that districts could chose to offer Supplemental Services as part of their extended day; it was the local district's choice.

Accordingly, the final language included by ISBE staff in the February 23,2012 ESEA waiver accomplished two things; it clarified that Supplemental Services were to be decided strictly at the local school district level and that local districts would decide whether to utilize Supplemental Services, if at all, as a part of their extended day. Mr. Chico gave the OEIG documents supporting each of these points, which the OEIG agreed to make a part of the record.

MR. CHICO HAD NO CONFLICT OF INTEREST ASSOCIATED WITH THE WAIVER

It is now abundantly clear from the most recent interview that the ultimate question is whether Mr. Chico had a "conflict of interest" under State rules and regulations that would have required him to take different actions regarding the amendment to the Waiver. We previously established that Mr. Chico did not violate any of the potentially applicable state statutes and rules regarding the amendment to the Waiver.

With no other source of authority to challenge Mr. Chico's actions, the OEIG has turned to the Bylaws of the Illinois Board of Education, and its Conflicts of Interest Policy (the "Policy"), regarding the potential existence of a potential conflict of interest. In your questioning on January 28, 2015, you specifically asked Mr. Chico whether acting on the Waiver might give the "appearance" of an interest in the matter that would invoke the terms of the Policy. His unequivocal denial of that assertion is supported both in the language of the Policy and by his long experience as an attorney and public official.

The Policy calls out five areas of inquiry, none of which are applicable to the amendment of the Waiver. First and foremost, despite the unsupported allegation, Mr. Chico denies that he was involved in the amendment to the Waiver in the first instance and has presented, at his own

expense and effort, documentation verifying his denial. Even if he had been involved in the amendment to the Waiver, however, the only "interest" you suggest he should have considered was the existence of his wife's tutoring business as part of her company's ("SPC") services. As he explained directly to you at his second interview, the existence of his wife's business had nothing to do with the amendment to the Waiver, nor did it ever rise to the level of becoming an "interest" of his that might have required further action. Applying that interest to the action being taken (the Waiver), it was clear that Mr. Chico was not:

1. using public office for direct or indirect private gain
2. giving preferential treatment to any organization or person
3. losing independence or impartiality of action
4. making a government decision outside official channels
5. adversely affecting the confidence of the public in the integrity of the Board

There was no private gain involved; there was no gain to SPC. There was no preferential treatment in this matter – any impact on SPC was at best unknown because of the numerous intervening decisions and decision-makers affecting SPC's tutoring business. The history of the Waiver itself, recited in detail in our previous letter, contains no evidence whatsoever that Mr. Chico could not be independent and impartial. Nor was he taking any action outside of official channels or affecting the integrity of the Board.

It was entirely reasonable for Mr. Chico (or any other person) to believe that he did not have an interest in the Waiver; reasonableness is all the Policy requires, not stretching beyond the bounds to include speculative, remote and *de minimis* matters involving a document over 850 pages long that focused on critical educational issues. He reminded you again that **ISBE has nothing to do with who does or does not get tutoring business offered as a part of SES.** To conclude otherwise would be to negate Mr. Chico's rationale with an alternative view made in hindsight.

THE ABSENCE OF MR. CHICO'S CONSTITUTIONAL PROTECTIONS CONTINUES

Lastly, we continue to remain deeply concerned about the lack of any credible evidence that has forced Mr. Chico into this time-consuming and expensive defense of this matter. Reviewing hundreds of emails, documents, transcripts and notes has revealed nothing to support your office's belief that Mr. Chico directed specific actions regarding changes to the Waiver. At

best, your office has proceeded based on an uncorroborated allegation made by an unidentified complainant. Despite your exhaustive efforts in this case, your office has failed to produce for us a single document, a single piece of evidence to support that belief, and we have to date seen no reply to the contrary evidence put before you. Despite repeated attempts to seek out the source of this allegation and to confront the accuser or other evidence to test the veracity of the charge, your Office continues to deny us any information that shows your inquiry has any credible basis. As we have stated previously, such actions of the OEIG offend our traditional notions of fair play and justice, especially where the investigation of such a charge by itself inflicts significant damage to Mr. Chico's reputation, a man who has honorably served the people of the State of Illinois and the City of Chicago without compensation for decades.

We now expect that this information should address any concerns your office may have regarding Mr. Chico's actions regarding the Waiver. We would appreciate your prompt response in advising him that your inquiry has been closed as unsubstantiated. However, should the OEIG believe that Mr. Chico violated any specific rules or regulations pertaining to the Waiver or any other matter raised in your interviews, we again request that this response, along with our prior correspondence, be attached to and made a part of your report.

Very truly yours,

Michael J. Kralovec

Terence P. Gillespie

MJK:sk
cc: Gery J. Chico, Esq., via e-mail
Marcus J. Nunes, Esq., via e-mail
Angela O. Luning, Esq., via e-mail
Ms. Margaret A. Marshall, via e-mail
Terence P. Gillespie, Esq., via e-mail

Office of Executive Inspector General

for the Agencies of the Illinois Governor

www.inspectorgeneral.illinois.gov

AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 12-02216 Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☐ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

A copy of the OEIG's report dated September 25, 2015, has been placed in Mr. Chico's file.

☐ We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within _____days from the original return date.

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

Signature

Illinois State Board of Education Deputy General Counsel
Print Agency and Job Title

Marcilene Dutton
Print Name

October 16, 2015
Date

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: Gery Chico) #12-02216

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

__X__ Below is my public response. Please make this response public if the summary report is also made public; or

__X__ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature Date 1/6/16

Attorney for Respondent, Gery Chico

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

See Attached

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January 6, 2016

Mr. Chad D. Fornoff, Executive Director
Executive Ethics Commission
State of Illinois
401 S. Spring Street
513 William Stratton Building
Springfield, Illinois 62706

RE: Proposed OEIG Final Report Regarding Gery Chico

Dear Mr. Fornoff:

The Office of the Executive Inspector General ("OEIG") Final Report regarding Gery Chico which you forwarded to my client is a disingenuous attempt to tarnish a dedicated public servant over a difference of opinion. Mr. Chico regrets that he yet again must file a response to point out the errors and inconsistencies in the OEIG's analysis and to ask this Commission to put an end to that effort.

SUMMARY

As the report indicates, the OEIG three years ago began an unsuccessful effort to tarnish the reputation of a committed volunteer public servant. Despite all its efforts, the Office had to concede that all five of the allegations initially presented against Mr. Chico were unfounded. Nonetheless, after all of the time and resources expended by the OEIG, including multiple "witness" statements and not one but two interviews with Mr. Chico, and after continually denying Mr. Chico basic due process, which included 1) lack of access to accuser and witness statements, 2) the ability to review in advance or to keep a copy for of documents he was asked to explain and the right to know the content of the alleged allegations. The OEIG is now left with his own self-serving determination that a "reasonable person" would have acted differently in order to support his "finding" of a violation of the ISBE Board policy regarding disclosure. There was no violation of any ethics statute, no demonstrated conflict of interest, no action contrary to the best interests of the citizens of Illinois, but simply a difference of opinion regarding Mr. Chico's duty to disclose certain information that **played no role** in his actions or those of the Board. Such a "determination" is the minimal result of the efforts to find any kind of issue and should not be accepted or promulgated with this Commission's imprimatur.

SPECIFIC ISSUES

The OEIG finding that Mr. Chico violated the Board policy by failing to disclose his wife's interest in a Supplemental Education Services provider is clearly erroneous and should be disregarded by the Committee

The "evidence" adduced from the record and the persons involved show only that Mr. Chico took his responsibilities seriously and made decisions in keeping with the best interests of the Board, even in the face of competing positions, including from Board staff, who clearly were not pleased to have their work subject to such scrutiny. Much of the remainder of the record here is simply irrelevant to the issue.

The investigation into this matter presented the following:

i. Board Meeting Minutes, Agendas and Audio-recorded remarks
ii. Interviews with ISBE staff and Board Members

Nothing in the Board Meeting minutes, agendas and audio remarks represents any actual evidence regarding whether Mr. Chico had a requirement to disclose under the Board's policy. Nonetheless, the materials in those sections are included in a vague illusory attempt to portray Mr. Chico's actions in a false light.

In the first section, the OEIG quotes Mr. Chico during the Education Policy Planning Committee Meeting of January 25, 2012 as strenuously desiring NOT to give low performing local school districts a complete waiver of certain set aside requirements, comparing it to throwing money out the window. In the second section the OEIG claims that Mr. Chico postponed the vote on the entire wavier application, which was over 800 pages (along with over a thousand more in the entire record) and covered numerous areas in its final form, the next day in order for the Board to review the entire document again. In the third section, Mr. Chico is quoted on February 21, 2012 as being in support of not summarily ending the rights of students to relief under the No Child Left Behind Law and for providing some transitional assistance, along with a vote to approve the overall waiver application. The fourth section notes that the Waiver Application was submitted to the U.S. Department of Education ("USDOE"), which during its negotiations with the Board on the entire Waiver Application sought also to amend the section involving the mandatory retention of supplemental educational services.

Omitted or downplayed from the entire section regarding the history of the Waiver Application in the first part of the report is the lengthy narrative and testimony by Mr. Chico about how that situation came about: his longstanding (originating from his chairmanship of the Chicago Public Schools) distrust of having unsupervised, poor performing schools with unrestricted monies to spend, the thousands of calls and letters received by ISBE from parents and others objecting to the proposed elimination (which staff obviously disagreed with) and the fact that the U.S. Department of Education had looked favorably on a request from Massachusetts (brought to ISBE by its own consultant) which had not sought complete elimination of the requirement.

This was not the only factual history that the OEIG ignored. The office conveniently omitted the highly speculative and attenuated relationship between being an SES provider and the Waiver Application. Substituting his own opinion for fact, the OEIG believes his conclusion that moneys to SPC "would decrease or cease entirely if, as Mr. Koch believed, school districts would opt to spend their Title I funds in other ways if they were not required to set them aside for supplemental educational services," is a reasonable one. It is not. It remains the result of a pyramid of speculation. Without knowing which districts would opt to spend their money differently, which districts SPC performed work for, which districts might retain SES, which schools might choose to use an SES provider, which SES provider might be chosen by schools, which SES provider parents might choose and what amount of services there would be, it is impossible to say what effect, if any, the Waiver Application may have had on any SES provider. Mr. Koch had no prescient abilities; there was no certain knowledge what any district might do. And Mr. Chico told that to the OEIG, on repeated occasions and in various ways. He told the OEIG that ISBE and its decisions had nothing to do with who does or does not get tutoring business offered as a part of SES and because of that he saw no need to disclose that attenuated relationship. But the OEIG simply disagrees and acts as prosecutor and judge where the facts are clearly otherwise.

The information in the Waiver Application history section actually bears no relationship to whether Mr. Chico had a potential conflict of interest. The information seems to be placed there to indicate that SES was discussed by the Board and Mr. Chico. That is undisputed. Mr. Chico acknowledges that SES was a part of the Waiver Application, although a small part, which the OEIG disputes. The OEIG continues to refuse to recognize that the waiver request was over 800 pages involving dozens of important issues and that the decision to maintain required services was a small part of the overall document. Moreover, the decisions regarding that topic were NOT made by Mr. Chico. The entire discussion about whether changes were requested to the proposed waiver request had nothing whatsoever to do with the only ethical issue the OEIG raises: whether Mr. Chico should have disclosed to the Board that his wife owned a company that provided SES services.

Likewise, the statements of witnesses are unreliable, based upon hearsay and self-interest and fail to address the operative issue, the decision whether or not to disclose information to the Board. Employee 1, the primary author of the Waiver Application, claims in hearsay that he was "told" by Susie Morrison that Mr. Chico "might have a vested interest in the matter" and that Mr. Chico had told her that Mr. Chico would not approve the Waiver Application if it sought a waiver of the SES requirement. Ms. Morrison, in her statement, did not recall ever having any conversations with Mr. Chico about SES. So someone is lying here. Either Ms. Morrison told that information to Employee 1 (highly unlikely since Mr. Chico also confirms never speaking to her about SES) or Employee 1 is lying about what he was told. Did the employee have motivation to lie? The remainder of his statement deals with the fact that he and Ms. Morrison did not want to alter that provision and were upset at the thousands of calls and letters from stakeholders asking for a change in position. Lastly, Employee 1 stated that the change in the Waiver Application was ultimately removed from the final action by the U.S. Department of Education, a smug self-satisfying note that points out its irrelevance. Whatever action was going to be taken by the Department played no role in evaluating Mr. Chico's non-disclosure to the Board of his wife's business.

Susie Morrison's statement again is based on hearsay. She claims that Mr. Koch told her that Mr. Chico was "pushing back" on the part of the Waiver Application eliminating the need for poor performing schools to use some funds for SES services. Mr. Koch specifically denies that Mr. Chico made the threat supposedly quoted to Employee 1, so that statement is now totally refuted (yet it remains as part of the report). An additional irrelevancy is Koch's statement that no other Board member expressed concerns about SES. The implication here is that Mr. Chico's concern was somehow overreaching. It was not. Examination of Mr. Chico's entire chairmanship shows that he was a diligent and deeply involved on all substantive matters, raising questions and guiding discussion among the Board. His behavior was no different here, although taken out of context by the OEIG to appear extraordinarily intrusive. Even the former general counsel specifically stated that Mr. Chico's active participation was important. The bigger question is why none of the other Board members spoke up. The demonstrated arrogance of staff towards this issue provides that answer: it is apparent that they took umbrage with anyone who challenged their position on any of the contents of the Waiver Application. And still, this had nothing to do with the disclosure issue. The OEIG, after including all these arranged circumstances, ultimately concludes "there is no evidence that Mr. Chico threatened to withhold his vote on the waiver application if it contained a request to waive the supplemental education services requirement." Despite Mr. Chico's detailed explanation about the policy and other reasons for a change in the waiver application and the admitted thousands of calls and letters received by Board staff, the OEIG accepts at face value the

statements of two biased and inaccurate "witnesses" trying to insinuate that the provision was changed to accommodate Mr. Chico. In doing so, the OEIG incredibly fails to accept Mr. Chico's statement and accompanying evidence that the change was driven by the public outcry, consultations with educational experts and additional knowledge of prior applications by others.

At this point it becomes obvious that the denial of Mr. Chico's due process rights has prejudiced the investigation. This issue was raised repeatedly by Mr. Chico and brushed aside by the OEIG. For example, had Mr. Chico been able to learn the identity of the witnesses and the substance of their conversations, he might have had the opportunity to speak with them and elicit greater details about their lack of first-hand knowledge and their bias against Mr. Chico's participation. Instead, the OEIG picks certain pieces from their statements, denies Mr. Chico the right to review the entire statements, bundles that information together with irrelevant other information in a "report" to create the appearance of a conflict and then "analyzes" his own assembly to conclude (after the obligatory "unfounded" determination regarding <u>every other</u> allegation) that "the more prudent course of action" would have been to make the disclosure.

A well-reasoned difference of opinion, however, does not result in a violation of the policy simply because others may have thought or done differently. The interviews with Board Members and the former General Counsel prove just that. When the OEIG interviewed the other Board members, presented with a "looking back" question, four of seven said they would have wanted to know about Mr. Chico's "connection" to a SES provider. Three other Board members did not say they would have wanted to know. Yet the OEIG ignores the most obvious fact: If Board members were not sure they even wanted to know about the "connection", how can the OEIG continue to say it was not reasonable for Mr. Chico, under all the circumstances, to decide likewise?

The same analysis applies to the interview with the former General Counsel. Reisberg's statement demonstrates the same complications, but he was clear on several points: Mr. Chico's participation in the Waiver Application was important to the Board operation. While he states that Mr. Chico should have disclosed any potential conflict of interest, given the same information as the OEIG, **he could not say whether the situation created a conflict of interest relating to the Waiver Application.** Again looking in hindsight, he said that had he been asked about the situation at the time, he would have advised for disclosure on the record. He did not say that failing to make that disclosure in this instance was a violation of the Board Policy. If he had, the OEIG would have been quick to include it; its omission shows again the lack of support for the so-called finding.

In his last act of equivocation on this issue, the OEIG mentions in a footnote that he is entitled to determine that an allegation is founded "when it has been determined that there is reasonable cause to believe that a violation of law or policy has occurred", hiding behind the idea that he need not be certain, or more probably sure than not, but only to have "reasonable cause to believe". Regrettably, the OEIG is wrong in two ways: the determination that there was reasonable cause to believe a policy violation occurred is clearly erroneous, and to use that incredibly low threshold to justify the remainder of an unsuccessful investigation is demeaning to the office and the Commission.

REDACTIONS

The limited finding above, even if accepted by the Committee, should not be published at all because it fails to achieve any of the Commission's goals. As documented above, the low-threshold determination by the OEIG (not proof, just "reasonable to believe") was ultimately based upon hindsight using very little believable and relevant evidence, none of which was subject to examination by Mr. Chico in order to develop the true circumstances more completely. After three years, the only alleged violation was a *de minimis* one upon which reasonable persons could and did disagree. The alleged violation has no lasting implications. The OEIG concedes that there was no actual conflict of interest and that Mr. Chico did not take any actions that were inappropriate, nor did he act in his own or his wife's financial interest. The circumstances here were unique; such a complicated, multi-issue policy involving as many varying stakeholders and officials is unlikely to arise again with similar facts. The OEIG is quick to point out the previous times that Mr. Chico disclosed a relationship and abstained from voting. He failed to include the fact that Mr. Chico has correctly resolved disclosure and abstention questions many times over his career. Ultimately, even if the finding were to be sustained, it would be unfair to Mr. Chico, who has spent his life in public service serving the people of the State of Illinois and the State of Illinois (every position being an unpaid one) to have his record tarnished over a difference of opinion.

And yet again, in total disregard of Mr. Chico's rights and record, the OEIG nearly three months earlier had already sent the report in its entirety to Illinois State Board of Education, which has placed the report in Mr. Chico's file without his ever being given a prior chance to see the entire report or raise all of these objections to its conclusion. Being now asked to file a response by this Committee is like asking him if he would like to be given a fire extinguisher now that the fire has already engulfed the entire house. Along with a determination not to publish, the correct remedy here is to recall that report and have it expunged from Mr. Chico's file, and he hereby respectfully requests that you do that as well. Failure to recall the report, expunge it from Mr. Chico's permanent

file and decline to publish it would cause unwarranted damage to Mr. Chico's reputation after a long career as a dedicated public servant. Publication of the report is unlikely to serve the interests of the Commission. Both Mr. Chico and the Inspector General who initiated the proceedings have moved on. The unsubstantiated conclusions are based on conflicting witness statements included without proper context, the ability for follow up questioning or any type of cross-examination to test their credibility. The answers given to the investigator were those solicited by the investigator who acts not only as investigator but judge as well. The Commission has the discretion to recall the report, expunge it from Mr. Chico's file and to decline to publish it. To fail to exercise that discretion and decline to publish would simply be wrong in this instance. The balance of the equities clearly favor Mr. Chico. The damage to Mr. Chico far outweighs any remote benefit from publication.

In the event the Committee decides to publish the report, Mr. Chico would ask that the irrelevant materials in the report identified above be redacted as well and that the Summary and Specific Issues Sections of this letter be included as part of that publication.

Very truly yours,

Michael J. Kralovec

MJK:sk
Enclosure
cc: Gery J. Chico, Esq., via e-mail
Marcus J. Nunes, Esq., via e-mail
Terence P. Gillespies, Esq., via e-mail