



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

August 12, 2022

MEMORANDUM FOR JAMES F. LANE

FROM: Marcella Goodridge-Keiller, Designated Agency Ethics Official  
U.S. Department of Education 

SUBJECT: Limited Waiver of Executive Order 13989 for James F. Lane

Executive Summary

Pursuant to Section 3 of Executive Order 13989 (January 20, 2021) (Executive Order), and for the reasons stated below, I hereby grant a limited waiver of the requirements of Section 1, Paragraph 2 of the Executive Order for Dr. James F. Lane. I have determined this waiver is necessary and it is in the public interest to grant this waiver to enable Dr. Lane to effectively carry out his duties as Senior Advisor in the Office of the Secretary (OS) and his delegated authority to perform the functions and duties of the Assistant Secretary in the Office of Elementary and Secondary Education (OESE) at the U.S. Department of Education (Department).

The Executive Order requires all covered political appointees in the Biden-Harris Administration to abide by several commitments. In particular, Section 1, Paragraph 2 of the Executive Order provides that an appointee may not participate in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer for two years from the date of appointment.

Section 2(k) of the Executive Order defines "former employer" as "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner," and it excludes certain government entities and international organizations. Section 2(j) of the Executive Order defines "particular matter involving specific parties" with the same definition found in section 2641.201(h) of title 5, Code of Federal Regulations. Thus, a "particular matter involving specific parties" is a matter that "typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case." 5 CFR 2641.201(h)(1). This definition also includes "any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties." Further, Section 2(m) of the Executive Order defines "directly and substantially related" to an

appointee's former employer as "matters in which the appointee's former employer... is a party or represents a party."

The purpose of Paragraph 2 of the Ethics Pledge is to address concerns that a former employer may have or appear to have privileged access to a covered appointee. A waiver of the Executive Order's restrictions may be granted when the literal application of the restriction is inconsistent with the restriction's purpose or when it is in the public interest to grant a waiver.

Dr. Lane serves as a Senior Advisor in OS and is delegated the authority to perform the functions and duties of the Assistant Secretary in OESE. As Senior Advisor in OS, Dr. Lane provides advice directly to the Secretary of the Department, who is responsible for the overall direction, supervision, and coordination of all activities of the Department and is the principal adviser to the President on Federal policies, programs, and activities related to education in the United States. Further, Dr. Lane has extensive expertise in the area of elementary and secondary education and serves as a principal adviser to the Secretary of the Department on everything related to elementary and secondary education, consistent with the mission of OESE. OESE's mission is to empower States, districts, and other organizations to meet the diverse needs of every student by providing leadership, technical assistance, and financial support.

From November 2020 until January 2022, Dr. Lane served as a board member of the Council of Chief State School Officers (CCSSO). We have determined that CCSSO is Dr. Lane's former employer under Section 2(k) of the Executive Order, which defines a "former employer" relationship to include service as an "employee, officer, director, trustee, or general partner." Therefore, absent a waiver, Dr. Lane is restricted from participating in any particular matters involving specific parties that is directly and substantially related to CCSSO for two years from the date of appointment. Dr. Lane was appointed to his position as Senior Advisor on January 3, 2022, and this disqualification would last until January 4, 2024.

Managing an ongoing recusal for Dr. Lane would negatively impact the Department's and Administration's mission to support all stakeholders and engage the community in the areas of elementary and secondary education. The successful accomplishment of this mission relies on extensive, open, and collaborative communications within the Department; with other federal government agencies; with education communities, organizations, and leaders; and with the general public. Without this waiver, the recusal would preclude the efficiencies of the Department and impose severe limitations.

### Background

Dr. Lane possesses an extensive background of experience and expertise in the area of elementary and secondary education. Most recently, in June 2018, he was appointed by the Governor of Virginia to serve as the Commonwealth of Virginia's 25th Superintendent of Public Instruction. Prior to this appointment, Dr. Lane was a division superintendent in Chesterfield County, Goochland County, and Middlesex County in Virginia. Throughout Dr. Lane's career, he has served as an assistant superintendent, a principal, and an assistant principal after beginning his career as a teacher and band director.

Prior to his appointment as Senior Advisor on January 3, 2022, Dr. Lane served as a Board Member of CCSSO. CCSSO is a non-profit organization comprised of public officials who lead departments of elementary and secondary education throughout the United States. CCSSO's Board of Directors manages the overall business affairs of CCSSO and serves as the governing body of the organization. The Board of Directors has a president, a president-elect, a past president, and six directors who are elected by members of the CCSSO membership. Dr. Lane's specialized expertise as a former state superintendent is why he was chosen by his peers to be a Board Member for CCSSO in November 2020.

CCSSO has three core priorities: (1) response and recovery, (2) equity, access, and critical infrastructure, and (3) modernizing the education system. Their mission, through leadership, advocacy, and service, is to assist chief state school officers and their organizations in achieving the vision of an education system that enables all children to succeed in school, work, and life.

In the past two years, in addition to his positions with CCSSO and the Commonwealth of Virginia, Dr. Lane has held the following positions: (1) Ex Officio Board Member of the Virginia Early Childhood Foundation, (2) Ex Officio Board Member of the Virginia Council on Economic Education, (3) Board Member of the Council for the Accreditation of Educator Preparation, (4) Secretary of the Virginia Board of Education, (5) Commissioner of the Education Commissioner of the States, (6) Commissioner of the Virginia Public School Authority Board of Commissioners, (7) Board Member of the Virginia Association of Secondary School Principals, (8) Member of the Virginia Early Childhood Advisory Committee, and (9) Council Chairman of the Virginia Council on the Interstate Compact on Educational Opportunity for Military Children.

Dr. Lane's position as Board Member of CCSSO falls under the definition of former employer under Section 2(k) of the Executive Order. The Department, and specifically OESE, has a longstanding history of partnership and collaboration with CCSSO. Dr. Lane was advised that he is required to recuse himself from particular matters involving specific parties that are directly and substantially related to CCSSO. Dr. Lane has abided by these restrictions, and other OESE staff members have participated in these matters in his place. However, it is essential that the lead Senior Advisor on elementary and secondary education be able to engage with CCSSO and its members to ensure the Department is building the best possible policies for the Administration in elementary and secondary education, and for the Department to understand state leaders' perspectives on how new Department policies will be implemented in states, districts, and schools. Absent a waiver of the applicable Executive Order restrictions, Dr. Lane will not be able to carry out these critical duties.

### Analysis

In accordance with Section 3 of the Executive Order, it is in the public interest to grant Dr. Lane a limited waiver of the of the requirements of Section 1, Paragraph 2 of the Executive Order to enable him to effectively carry out his duties as Senior Advisor in OS and the functions and duties of the Assistant Secretary of OESE.

In making this assessment, I have considered the relevant factors set forth in Section 3 of the Executive Order, which include: (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment; (ii) the uniqueness of the individual's qualifications to meet the government's needs; and (iii) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

#### *Government Need*

The government has a critical need for Dr. Lane's expertise and for him to carry out the functions and duties as Senior Advisor to the Secretary in the area of elementary and secondary education. Dr. Lane has an extensive background in elementary and secondary education. The position of Senior Advisor involves serving as the principal advisor to the Secretary on everything related to elementary and secondary education. Dr. Lane's background shows that he has extensive knowledge in this area, making him the best candidate to perform these functions and duties. The recusal has limited the ability of Dr. Lane to engage with CCSSO in significant matters that require leadership to advance Administration priorities related to elementary and secondary education. Should the recusal stand and render Dr. Lane unable to meet with CCSSO, he will be unable to provide essential advice and direction to the Secretary. The Secretary and the Administration would be deprived of his credentials and expertise, of which a critical need exists within the Department.

#### *Unique Qualifications*

Dr. Lane is uniquely well-qualified for this position with the Department. He recently served as Superintendent of Public Instruction for the Commonwealth of Virginia. He also served as division superintendent in three Virginia School divisions, and as an assistant superintendent, a principal, an assistant principal, a teacher, and a band director. In addition to his positions with CCSSO and the Commonwealth of Virginia, Dr. Lane has served with nine other non-profit and state government organizations related to education in the past two years. This extensive background in elementary and secondary education makes him particularly adept at navigating the functions and duties of a Senior Advisor on elementary and secondary education, and Dr. Lane's unique qualifications are essential to ensuring that the Department is building the best possible policies for the Administration in elementary and secondary education.

#### *Other Limitations*

As noted above, continuing Dr. Lane's ongoing recusal with CCSSO, a non-profit organization, would result in substantial limitations in his ability to perform the essential duties of his position and would significantly and negatively impact important OESE and OS mission areas. It is essential for anyone carrying out these duties to engage with state leaders and learn their perspective on how new Department policies will be implemented. If Dr. Lane continues to be unable to attend meetings and engage with CCSSO, his position at the Department will be drastically limited, and the Department's goals and efficiencies will suffer.

## Conclusion

The significant public interest in OS's and OESE's ability to accomplish its mission requires that Dr. Lane be able to fully perform his duties as Senior Advisor on elementary and secondary education. Due to the scope of Section 1, Paragraph 2 of the Executive Order, a broad application of this prohibition would be detrimental to the Department. Without a waiver, Dr. Lane would be restricted from participating in any particular matters involving specific parties that is directly and substantially related to CCSSO for two years prior to the date of appointment.

As described above, Dr. Lane's prior position was that of a Board Member of CCSSO, a non-profit organization. Dr. Lane was elected to serve on the CCSSO Board of Directors in part because of his position with the Commonwealth of Virginia. The purposes of the Ethics Pledge restrictions with respect to Dr. Lane's former position with CCSSO may be satisfied through the limitations contained in this limited waiver.

For the foregoing reasons, I grant Dr. Lane a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order to enable him to effectively carry out his duties as Senior Advisor in OS and perform the functions and duties of the Assistant Secretary of OESE.

Pursuant to this waiver, Dr. Lane may participate in specific party matters arising at the Department where CCSSO is a party or represents a party, and he is permitted to participate in those specific party matters, including meetings or other communications, where CCSSO is present. This waiver does not otherwise affect Dr. Lane's obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. Specifically, this waiver does not permit Dr. Lane to participate in any party-specific matter directly affecting the financial interests of CCSSO, including but not limited to contracts or grants.

CC: Stuart Delery, Counsel to the President, Office of the White House Counsel