



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

December 1, 2022

TO: Sandra D. Bruce
Inspector General
Office of Inspector General
U.S. Department of Education
550 12th Street, S.W.
Washington, D.C. 20202

Lisa Brown
General Counsel
Office of General Counsel
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202

Re: Request for Investigation into Ethics Violation by Deputy Chief of Staff Donna Harris-Aikens

Dear Ms. Bruce and Ms. Brown,

Protect the Public's Trust (PPT) is a non-partisan watchdog dedicated to promoting integrity in government and restoring the public's trust in government officials. Unfortunately, over the last few years, both integrity and public trust have been difficult to find in the highest ranks of the federal government. For instance, the voices of outside special interests advocating policies targeting American parents and keeping school doors closed to children have seemed to earn disturbingly eager acceptance by senior officials at the Department of Education (ED). Records obtained via a public information request by PPT shed light on one such top-ranking official's ongoing relationship with her former employer, likely in violation of her ethical obligations.

It has come to our attention that a Department Deputy Chief of Staff may have acted inconsistently with her ethical obligations by providing privileged access and undue influence in ED's policymaking process to her former employer, the National Education Association ("NEA"). Accordingly, we request that an investigation be conducted and appropriate action be taken to ensure government acts in the interest of all Americans, not connected special interests.

Overview

In January 2021, Ms. Donna Harris-Aikens left her role as the Senior Director of Education Policy and Practice at the NEA and joined ED as a Senior Adviser of Policy and



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Planning. Ms. Harris-Aikens is now Deputy Chief of Staff at ED. Almost from the moment she joined the Department, Ms. Harris-Aikens appears to have systematically violated the ethical obligations under the Biden Administration Ethics Pledge and applicable federal ethics regulations through her interactions with her previous employer, the NEA.

Ms. Harris-Aikens' apparent violations were discovered in communications obtained by PPT via a Freedom of Information Act request and demonstrate an intimate working relationship between Ms. Harris-Aikens and the NEA over several months, starting from the very beginning of Ms. Harris-Aikens work in the Department. The frequency, depth, and tone of Ms. Harris-Aikens coordination with the NEA makes it worryingly unclear whether her role representing the NEA's interests truly ended when she joined the ED.

Ms. Harris-Aikens is Bound by Ethics Restrictions as a Political Appointee

As a political appointee of the Executive Branch, Ms. Harris-Aikens is bound by applicable ethics laws and regulations, including the Biden Administration Ethics Pledge (the "Pledge"). The Pledge is a binding contractual obligation which every appointee in every executive agency is required to sign and commit to following. In joining ED, Ms. Harris-Aikens was required to affirm the Pledge's obligations, including the following restriction on "revolving door" conflicts of interest:

2. Revolving Door Ban – All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.¹

The Pledge is broad in its sweep, defining a "particular matter involving specific parties" as inclusive of:

[A]ny 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 participating in the meeting or other event is open to all interested parties.²

Political appointees like Ms. Harris-Aikens are also bound by 5 C.F.R. § 2635.502(a), which requires appointees to consult with ethics officials and receive approval prior to participating personally and substantially in a particular matter involving specific parties where a reasonable person with knowledge of the relevant facts would question the appointee's

¹ Executive Office of the President, *Executive Order 13989: Ethics Commitments by Executive Branch Personnel*, 86 Fed. Reg. 7029 (Jan. 25, 2021) (§ 1(2)) ("Biden Ethics Pledge").

² *Id.* at § 2(j).



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impartiality. Under section 2635.502(b)(iv), this requirement extends to matters in which one of the parties involved is an organization that employed the appointee within the last year.

Additionally, under section 2635.502(a)(2), an appointee should consult with an ethics official prior to taking any actions, even those not specifically described in the section, that “would raise a question regarding his impartiality.” Thus, an appointee should consult with an ethics official and potentially abstain from participation in matters not specifically covered under section 2635.502(a) when they nevertheless raise a concern about the appointee’s impartiality.

Ms. Harris-Aikens’ Relationship with the NEA is Restricted under Ethics Rules

Ms. Harris-Aiken’s former employer prior to joining the Department was the NEA. In fact, almost the entirety of Ms. Harris-Aiken’s career was spent with the NEA prior to joining ED in January 2021. Ms. Harris-Aikens served as the NEA’s Director of Education Policy and Practice for eight and a half years before her promotion to the NEA’s Senior Director of Education Policy and Practice. Ms. Harris-Aikens served in this senior leadership position in the NEA for two and a half years leading up to the moment she joined ED.

Under the terms of the Pledge, Ms. Harris-Aikens is clearly prohibited from participating in any matter that is directly and substantially related to the NEA. Similarly, under 5 CFR § 2635.502(a) Ms. Harris-Aikens is required to receive approval from an ethics official prior to participating personally and substantially in particular matters that involve the NEA and would raise a reasonable question about her impartiality in the matter.

Ms. Harris-Aikens Violated Her Ethics Obligations

As evidenced by the communications discovered through PPT’s Freedom of Information Act request, Ms. Harris-Aikens was in regular contact with the NEA from the moment she left to join ED about Department policymaking, received their input and feedback on draft policies – even receiving entire policy proposals from the NEA – and set up special briefings for the NEA to provide them privileged access to information on ED’s policies privately before they were made public. To our knowledge, Ms. Harris-Aikens never followed any procedure for receiving the approval of an ethics official prior to beginning and maintaining her substantial and direct coordination with the NEA on matters before ED.

Ms. Harris-Aikens’ relationship with the NEA in her role at ED began almost immediately upon her joining ED and continued through at least the first year of the administration:³

³ Department of Education, October Production ED FOIA 22-01055-F, <https://protectpublictrust.org/wp-content/uploads/2022/11/22-01055-F-OPAQUE-October-Production.pdf>



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- On January 24, 2021, Ms. Harris-Aikens personally contacted her former boss, NEA President Rebecca Pringle, and American Federation of Teachers (“AFT”) President Randi Weingarten to schedule a coordinating call with them, saying that ED “wanted to make sure you both have an opportunity to hear directly from the Department before any public activity.”
- On January 26, 2021, Ms. Harris-Aikens agreed to fulfill the NEA’s request to coordinate ED’s Deputy Assistant Secretary for Communications and Outreach with the NEA’s own communications staff.
- On February 11, 2021, Ms. Harris-Aikens sent an email to the NEA and AFT seeking a time to “brief” both organizations by giving them advance knowledge about unreleased documents from the CDC and the Department: “The hope is to have both Becky [President of the NEA] and Randi [President of the AFT] plus one or two key staff with the understanding that the conversation, information, etc. is on a strict confidential and embargoed status.”
- On February 12, 2021, as follow up to the briefing Ms. Harris-Aikens provided to the NEA and AFT regarding CDC and ED policy that was not yet public, Ms. Harris-Aikens received a message of gratitude from the AFT and an advanced copy of the AFT’s public response to the policies.
- On March 2, 2021, Ms. Harris-Aiken was included in an email from the NEA seeking to “connect” Ms. Harris-Aikens with two other women at ED, Ms. Montserrat Garibay and Ms. Emma Leheny, because all three were formerly at the NEA and were now “together at Ed, fighting the good fight for our students and schools.”
- On March 6, 2021, Ms. Harris-Aikens received an embargoed copy of the NEA and AFT’s joint policy framework for COVID response.
- On March 17, 2021, Ms. Harris-Aikens received a request from the NEA to connect the NEA with whomever at ED leads work on special education. Ms. Harris-Aikens provided the NEA with the contact information of an ED staff member and details about her role.
- On March 17, 2021, Ms. Harris-Aikens received from the NEA its executive action proposals regarding policy that the NEA sought President Biden to enact via executive order.
- On May 24, 2021, Ms. Harris-Aikens responded to a request from the NEA for information on who at ED oversees equity grants and for the public comment link.



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- On September 2, 2021, Ms. Harris-Aikens received an embargoed copy of the NEA's national member survey and the NEA's policy analysis regarding COVID policy for school reopening.

These communications demonstrate that Ms. Harris-Aikens has had intimate involvement with the NEA from the beginning of her work with the Department of Education and continuing through at least September 2021. It appears that Ms. Harris-Aikens has used her role at ED as a means for her former employer, the NEA, to have streamlined access to ED and advance notice and input on ED's policy proposals.

Ms. Harris-Aikens' conduct represents the exact type of revolving door arrangement between an administrative agency and an outside interest group that President Biden's Pledge and 5 CFR § 2635.502 seek to avoid. Ms. Harris-Aikens' ongoing, intimate coordination with the NEA and her apparent role as a conduit for these outside interest groups to channel their desires into ED's policymaking process would clearly give a reasonable person reason to doubt her impartiality in executing her duties.

Conclusion

It is no secret that the American public's trust in institution and those charged with leading them is at an all-time low. Double standards have deepened people's cynicism and the proliferation of senior officials who show blatant disregard for even minimum standards for ethical conduct has eroded faith in government. Consistent enforcement and proper accountability for officials who violate their ethical obligations are some of the few, key ways to repair the public's mistrust and shattered confidence in its leaders.

As a Deputy Chief of Staff for the Secretary of Education, Ms. Harris-Aikens is a sophisticated official who should be well familiar with the ethical obligations required of her in the important role she fills. As a senior official at ED, Ms. Harris-Aikens' execution of her duties affects the lives of America's over 70 million schoolchildren and their teachers. It is precisely because Ms. Harris-Aikens' role is so important that her repeated apparent violations of her ethical commitments – particularly her ethics pledge upon joining the administration -- are so concerning.

The American public deserves to be assured that political appointees are carrying out their duties in an ethical, impartial manner without favoritism toward their former employers. Protect the Public's Trust therefore asks your office to begin an immediate and thorough investigation into Ms. Harris-Aikens' ongoing relationship with her former employer, the National Education Association.



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Protect the Public's Trust appreciates your dutiful attention to this important issue and looks forward to the outcome of your investigation.

Sincerely,

Michael Chamberlain
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