

STATE OF INDIANA
BOARD OF FIREFIGHTERS PERSONNEL STANDARDS AND EDUCATION

Troy Dulaney,	Administrative Cause Number: DHS-2307-001968
Petitioner,	Agency Number: 2023-01
V.	
Indiana Department of Homeland Security,	
Respondent.	

OBJECTION TO NON-FINAL ADMINISTRATIVE DECISION

COMES NOW, the Respondent, by counsel, and objects to the following findings of fact and/or conclusions of law contained in the Non-final Administrative Decision issued by OALP in this matter: (1) the conclusion that IDHS did not meet its burden that the Petitioner violated 655 IAC 1-1-12(j)(12); and (2) the absence of a conclusion as to whether the Petitioner failed to uphold a student's right to dignity as alleged in the Firefighting Board's original order. In support of these objections, the Respondent states as follows:

1. On 06/05/2023, the Firefighting Board issued an administrative order permanently revoking certain firefighter certificates held by Dulaney.
2. Dulaney filed a Petition for Review pursuant to IC 4-21.5 and this litigation ensued.
3. On 06/27/2024, OALP conducted an evidentiary hearing in this matter.
4. On 09/24/2024, OALP issued a non-final administrative decision in this matter.
5. The ALJ concluded that IDHS failed to meet its burden that Dulaney violated 655 IAC 1-1-12(j)(12).¹
6. In reaching this conclusion, the ALJ noted that there was "insufficient credible evidence that Dulaney showed examinees questions and answers **during** the examination."²

¹ While IDHS defended the administrative action as the named Respondent, the original order was issued by the Firefighting Board.

² Emphasis/bold in original text. See paragraph 13 on page 17 of the non-final administrative decision.

7. This conclusion by the ALJ relies on an interpretation of 655 IAC 1-1-12(j)(12) that imposes a temporal constraint to the actual time and duration of the examination related to the prohibition of the discussion of test questions and answers.
8. 655 IAC 1-1-12(j)(12) provides that “[a] proctor shall not discuss any test question or possible answer thereto with any student taking the examination.”
9. The language in subdivision (j)(12) is not temporally constrained exclusively to the actual time and duration of the examination. It also includes the discussion of test questions and answers *before* the examination. Any other interpretation would create an absurd result where proctors could discuss test questions and answers right before an exam and avoid any liability and potential sanction.
10. There is sufficient credible evidence in the record to support the conclusion that Dulaney showed examinees questions and answers *before* the examination.
11. Additionally, the ALJ did not even address whether Dulaney failed to uphold a student’s right to dignity as alleged in the Firefighting Board’s original order.³ The evidentiary record in this matter is replete with findings that the students suffered an indignity because of Delany’s actions.

WHEREFORE, the Respondent respectfully objects to the non-final administrative decision issued by OALP in this matter, and requests that the Board of Firefighters Personnel Standards and Education modify the decision accordingly, and impose the appropriate sanction based on its reasoned judgment.

Respectfully submitted,



Tyler E. Burgauer
Deputy General Counsel
IN. Dept. of Homeland Security

³ See 655 IAC 1-1-7(b)(1).

302 W. Washington St., Room E208
Indianapolis, IN 46204
tyburgauer@dhs.in.gov
Attorney No. 34526-29

Date: 10/9/2024

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 10/09/2024 a copy of this objection was sent via email to the following:

- a. Troy Dulaney via Attorney Christopher Jeter [chris@mjcattorneys.com]
- b. Office of Administrative Law Proceedings [oalp@oalp.in.gov]
- c. Board of Firefighters Personnel Standards and Education [firefighterboard@dhs.in.gov]

/s/ Tyler E. Burgauer
Tyler E. Burgauer
Attorney No. 34526-29