



# INDIANA STATE BOARD OF EDUCATION

## Resolution to Designate Board Staff as Administrative Law Judges Pursuant to IC 4-21.5-3-9

June 13, 2018

*Whereas*, the Indiana State Board of Education (“Board”) is an administrative agency<sup>1</sup> subject to the requirements contained in the State’s Administrative Orders and Procedures (“AOPA”);<sup>2</sup>

*Whereas*, in the course of fulfilling its statutory duties, the Board must take “agency actions”<sup>3</sup> which includes issuing “orders”<sup>4</sup> and “final agency actions;”<sup>5</sup>

*Whereas*, pursuant to AOPA, there are a number of requirements that must be satisfied before, during, and after the Board takes an action under AOPA;

*Whereas*, in order to efficiently comply with the requirements set forth under AOPA, the Board may designate qualifying Board staff as administrative law judges (“ALJ”) pursuant to IC 4-21.5-3-9, which reads, in relevant part:

Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

- (1) act as an administrative law judge;
- (2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or
- (3) designate one (1) or more:

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<sup>1</sup> IC 4-21.5-1-3: "Agency" means any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article. Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government, the legislative department of state government, or a political subdivision.

<sup>2</sup> See IC 4-21.5.

<sup>3</sup> IC 4-21.5-1-4: "Agency action" means any of the following:

- (1) The whole or a part of an order.
- (2) The failure to issue an order.
- (3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.

<sup>4</sup> IC 4-21.5-1-9: "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:

- (1) a license; or
- (2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4).

<sup>5</sup> IC 4-21.5-1-6: Final agency action" means:

- (1) the entry of an order designated as a final order under this article; or
- (2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

- (A) attorneys licensed to practice law in Indiana; or
- (B) persons who served as administrative law judges for a state agency before January 1, 2014;  
to act as an administrative law judge.

A person designated under subdivision (3) is not required to be an employee of the agency. A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

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*Resolved*, that all Board staff who are attorneys licensed to practice law in Indiana shall be designated as ALJs with the authority to review administrative orders, requests for review, hold hearings, draft proposed determinations, and grant or deny rehearing requests as well as requests to stay effectiveness of a final order;

*Be it further resolved*, that Board ALJs will have the authority to manage the procedural requirements and the initial review of facts and applicable law, but Board ALJs will not have the authority to issue final orders or final orders based on a rehearing until the Board votes to approve, modify, remand, or deny the order.

ADOPTED June 13, 2018