



MEMORANDUM

TO: State Board Members  
FROM: Becky Bowman  
DATE: April 25, 2012  
RE: Administrative Procedures for Determination of Noncompliance with 511 IAC 6.2-9-8(a), (b), or (c) and Order to Withhold Additional Funds

511 IAC 6.2-9-8(d) permits the State Board to make a determination of a school corporation's failure to comply with 511 IAC 6.2-9-8(a), (b), or (c)<sup>1</sup>, and if noncompliance is substantiated, order that additional state funds be withheld from the school corporation. This type of adjudication must be conducted in accordance with the Administrative Orders and Procedures Act (IC 4-21.5-3) and any procedures established by the Board. The attached procedures are presented for your consideration and approval.

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<sup>1</sup> 511 IAC 6.2-9-8 states:

- (a) *The school corporation shall take no action adverse to the special management team's operation of the school.*
- (b) *The school corporation shall take no action to dispose of or cloud the title of the real property on which the school is located.*
- (c) *The school corporation shall not remove or dispose of personal property located in the school or, if located outside the school, assigned to the school.*
- (d) *If the state board determines that the school corporation has:*
- (1) *taken an action or actions prohibited by subsections (a) through (c); or*
  - (2) *refused without just cause to enter into the contract required under section 6(b) of this rule;*
- the board may order the department to withhold additional state funds otherwise to be distributed to the school corporation in order to permit the special management team to operate the school notwithstanding the prohibited or refused action.*

## PROPOSED ADMINISTRATIVE PROCESS

Before filing a request for determination by the State Board, the Department shall send written notice to the school corporation. The written notice shall include the following:

- a. the details of the alleged noncompliance;
- b. the corrective action the corporation must take;
- c. the deadline by which the corrective action must be completed; and
- d. the consequence for failing to take corrective action within the prescribed time period.

### **ADMINISTRATIVE PROCESS -- Determination of noncompliance and withholding additional funds**

1. If the school corporation fails to correct the noncompliance, the Department shall file with the State Board Administrator a "Request for Determination of Noncompliance."
  - The "Request" must comply with content requirements of IC 4-21.5-3-8(b) and (c) and be served on school corporation per IC 4-21.5-3-1(b).
2. The State Board administrator shall notify the Administrative Law Judge (ALJ) per the Board's direction and provide a copy of the "Request."
3. The ALJ shall conduct the administrative proceeding per IC 4-21.5-3:
  - The ALJ may conduct a prehearing conference, but is not required to do so absent a party's request
  - Any prehearing conference and resulting order must comply with IC 4-21.5-3-18 and 19
  - The written notice of the administrative proceeding must comply with the content and timeline requirements of IC 4-21.5-3-20(c) and (a), respectively, and be served on both parties.
  - The administrative proceeding shall be conducted pursuant to IC 4-21.5-3-25 and 26.
  - Absent a party's request for an extension of time, the administrative proceeding shall be conducted no later than thirty (30) calendar days after the request is filed.
  - At the request of a party, the ALJ may grant a brief extension of time, but the administrative proceeding must be conducted no later than sixty (60) calendar days after the request is filed.
4. The ALJ shall prepare a **recommended** decision that:
  - complies with content requirements of IC 4-21.5-3-27(b),
  - includes a statement about the right to object, the 15-day timeline for filing an objection, the content of objection, and State Board's options upon review of the recommended decision, and
  - is mailed to parties within five (5) business days of the conclusion of the proceeding.
5. Except as provided below, the State Board shall review the recommended decision and issue a final order pursuant to IC 4-21.5-3-29, that affirms, modifies, dissolves, or remands.
  - If neither party objects to the recommended order and the State Board does not want to review any part of the recommended order, the Board shall affirm the recommended order per IC 4-21.5-3-29(c).

- If neither party objects, but Board wants to review, the Board shall provide written notice to the parties of its intent to review, identifying the specific issues to be reviewed per IC 4-21.5-3-29(e).
  - Either party may file a written objection in accordance with IC 4-21.5-3-29(d) within fifteen (15) calendar days of receipt of the recommended decision and serve a copy on the opposing party. The opposing party shall have fifteen (15) calendar days to file a response and serve a copy on the objecting party. The Board shall notify the parties of its intent to review the issues to which objections were filed, and if applicable, any other issues the Board will review. The written notice shall advise the parties of the specific issues to be reviewed and that:
    - each will have five (5) minutes for oral argument;
    - no new evidence will be admitted; and
    - Board members may ask questions regarding a party's argument or to clarify evidence already in the record.
6. The Board's final order shall:
- include a statement that the final order is subject to judicial review and the timeline for seeking such review, and
  - be mailed to the parties within five (5) business days of the Board's decision

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