

**BEFORE THE INDIANA STATE BOARD OF EDUCATION
NOTICE OF HEARING AND ADMINISTRATIVE PROCEEDING**

Proceeding No. Funding 09-062103

**REVISED NOTICE OF RECOMMENDATION AND ADMINISTRATIVE
PROCEEDING**

To:	Dr. Cheryl Pruitt, Superintendent Gary Community School Corporation 620 East 10 th Place Gary, IN 46402	Dr. Peggy Hinckley, Interim Superintendent Indianapolis Public Schools 120 E. Walnut Street Indianapolis, IN 46204
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Bernice A. N. Corley¹
Indiana Department of Education
200 West Washington Street, Ste. 225
Indianapolis, IN 46204

Notice is hereby provided that the Indiana State Board of Education ("State Board"), pursuant to IC 20-31-9.5-3(c), shall conduct an administrative proceeding to determine the amount of state special education grant funds that the Indiana Department of Education ("Department") shall withhold from state tuition support otherwise to be distributed to the Gary Community School Corporation and Indianapolis Public Schools that is necessary to fund the option for improvement implemented by the State Board, specifically, the operation of the turnaround academy.

The administrative proceeding will occur and the determination made during the regularly scheduled meeting of the State Board.

DATE: June 24 2013
TIME: 9:00 a.m.² (EST)
PLACE: Indiana State House
 200 West Washington Street, Room 233
 Indianapolis, Indiana 46204

The Department will present its recommendation (attached as Exhibit "A"), and representatives from the Gary Community School Corporation and the Indianapolis Public Schools will have the opportunity to be heard and present information regarding the Department's recommendation. **Any documents to be presented for the Board's consideration must be provided to and**

¹ Pursuant to I.C. 4-21.5-3-20(c)(2), Ms. Danielle Schockey is designated as the individual who will be presenting the recommendation on behalf of the Department. However, Ms. Corley's telephone number is 317.232.9153

² The Board meeting begins at 9:00. This proceeding is delineated as an adjudication item on the posted agenda, but the item may be taken out of order at the Board's discretion.

received by the State Board Deputy Administrator no later than 12:00 p.m. EST on June 21st, 2013. All information will be provided under oath, and the proceeding will be recorded. Board members may ask questions. The Board will make its determination subsequent to the presentation of information. The Board's determination shall be reduced to writing and be distributed to the parties within three business days.

Questions about the schedule or administrative procedures may be directed to:

Laura Naughton, Administrator
State Board of Education
115 West Washington Street
South Tower #600
Indianapolis, IN 46204
linaughton@doe.in.gov
317.232.6617

Per I.C. 4-21.5-3-20(c)(8), a party who fails to attend or participate in the proceeding may be held in default or have the proceeding dismissed under I.C. 4-21.5-3-24.

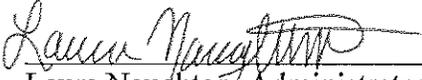
Dated: 6/11/13



Laura Naughton, Administrator
Indiana State Board of Education

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to Dr. Cheryl Pruitt and Dr. Peggy Hinckley by certified first class mail and was hand delivered to Ms. Corley on this the 10th day of June, 2013.



Laura Naughton, Administrator
Indiana State Board of Education

cc: Tracy Coleman (via email only)
Robert L. Lewis (via email only)
Hudnall Pfeiffer (email only)
Jon Laramore (email only)
file



MEMORANDUM

TO: State Board of Education
FROM: Danielle Schockey, Deputy Superintendent of Public Instruction
DATE: June 10, 2013
RE: Revised Recommendation for Indianapolis Public Schools and Gary Community School Corporation funding adjustments on remand from trial court order

On remand from the trial court's judicial review order in *Board of School Commissioners of the City of Indianapolis v. Indiana State Board of Education and Indiana Department of Education* (cause number 49D03-1206-MI-023257), issued on December 7, 2012, and pursuant to Ind. Code 20-31-9.5-3(c), the Indiana Department of Education ("Department") recommends that the State Board of Education ("Board") reconsider the May 2, 2012, determination regarding the appropriate amount of statute tuition support to be withheld from Indianapolis Public Schools ("IPS") and Gary Community School Corporation ("GCSC") to be used for the operation of turnaround academies.

May 2012 Determinations for State Tuition Support Withholding

On May 2, 2012, a determination by the Board was made through a formal hearing conducted pursuant to the Administrative Orders and Procedures Act ("AOPA"), Ind. Code 4-21.5-3, regarding amounts to be withheld from tuition support to be distributed to IPS from July 1, 2012, through December 31, 2012,¹ to be used for operation of the turnaround academies pursuant to I.C. 20-31-9.5-3(c) and 511 IAC 6.2-9-4(b). The Board determination adopted the recommendation presented by the Department.

The amounts that the Department recommended to be withheld from state tuition support to be distributed to IPS from July 1, 2012, through December 31, 2012, to be used for operation of the turnaround academies were as follows:

Emma Donnan Middle School	\$ 3,465,001.00
Arlington Community High School	\$4,949,568.72
Emmerich Manual High School	\$2,844,225.86
Thomas Carr Howe High School	\$ 4,125,829.72

¹For both IPS and GCSC, the Department's recommendation on amounts to be withheld from the calendar year 2013 state tuition support and federal funds was made subsequent to the ADM and special education child counts conducted in September and December 2012.



The recommended amounts represented each school's September 2011 Average Daily Membership (ADM) count multiplied by the IPS per pupil basic tuition support of \$7,331.56 plus applicable amounts for the state special education, honors, and vocational education grants for the last six months of calendar year 2012.

In calculating the recommended state tuition support amounts, the Department relied on what, at the time, was the most recent official ADM child count numbers for each of the schools. The September 2011 ADM child count was the annual formal child count on which every school corporation's state tuition support was based and was the foundation for the state tuition support calculations and distributions for calendar year 2012.

During that hearing, IPS argued that any withholding amount should ultimately be reconciled with the September 2012 ADM count due to the language in Ind. Code 20-31-9.5-3(c) that caps the amount of the withholding by the number of "affected students." On the Department's recommendation, however, the Board took the view that, because the withholding had to be begin well in advance of the 2012 ADM count, "affected students" had to be measured by the 2011 ADM counts, which was the most recent official count available.

That same day, the Board also conducted a formal hearing pursuant to the AOPA, Ind. Code 4-21.5-3, regarding amounts to be withheld from tuition support to be distributed to GCSC from July 1, 2012, through December 31, 2012, to be used for operation of the turnaround academies pursuant to I.C. 20-31-9.5-3(c) and 511 IAC 6.2-9-4(b). The Board determination adopted the recommendation presented by the Department. As with the IPS recommendation, the Department's recommendation for the withholding from GCSC state tuition support was based on the September 2011 ADM count.

Judicial Review of the May 2012 IPS Withholding Determination

Following the May 2012 hearing, IPS sought review in Marion Superior Court, arguing that the Department and the Board had misinterpreted the statutory term "affected students." On December 7, 2012, that Court held that the withholding amount should not have been based on the 2011 ADM count but rather should have been based on the students enrolled at the school in the fall of 2012. The court issued a declaratory judgment defining "affected students" under 20-31-9.5-3 to mean the students "who are currently being educated by that turnaround academy at the time when the state tuition support is being withheld." The Court therefore ordered "that the State Board's decision dated May 11, 2012 is hereby reversed and this matter is remanded to the State Board for further consideration."

While the Department and the Board have appealed the ruling (Court of Appeals docket no. 49A04-1301-MI-00002), it is the Department's recommendation that the Board comply with the trial court's remand order and dismiss the appeal.

Furthermore, although the Marion Superior court's order and remand applies by its terms only to the litigation between IPS and IDOE, its declaration as to the meaning of "affected students" applies equally to all other applications of Ind. Code 20-31-9.5-3(c), the only one of which to date concerns GCSC and its



turnaround academy, Theodore Roosevelt C&T. Therefore, it is the Department’s recommendation that, as the Board complies with the trial court’s order on remand, it should as a matter of equity and legal prudence also reconsider the withholding applicable to GCSC on the same terms.

Differences in Withholding Amounts, 2011 ADM v. 2012 ADM

The tables below show the differences between withholding amounts for each of the turnaround academies depending on which ADM count is used. Table 1 illustrates these differences with respect to IPS, and Table 2 with respect to GCSC.

Table 1

	Six Month Withholding Based on September 2011 ADM	Recommended Revised Six Mo. Withholding Based on September 2012 ADM	Withholding Amount Difference
Emma Donnan MS	\$3,465,001.00	\$1,517,540.16	\$1,949,460.84
Arlington Community	\$4,949,568.72	\$2,085,498.54	\$2,864,070.18
Emmerich Manual HS	\$2,844,225.86	\$1,792,977.96	\$1,051,247.90
Thomas Carr Howe HS	\$4,125,829.72	\$2,472,561.92	\$1,653,267.80
Total Withholding	\$15,384,625.30	\$7,868,578.58	\$7,516,046.72

Table 2

	Six Month Withholding Based on September 2011 ADM	Recommended Revised Six Mo. Withholding Based on September 2012 ADM	Withholding Amount Difference
Theodore Roos. C&T	\$4,523,896.50	\$2,782,578.25	\$1,741,318.25

Funding Available

During its 2013 session, the General Assembly, in Section 257 of HEA 1001, added a section to Ind. Code 20-31-9.5 to help facilitate the payment of dollars owed to Indianapolis Public Schools and GCSC following the December 7, 2012 decision from Marion County Circuit Court in the litigation filed by IPS against the Department and the Board.



The new section added by HEA 1001 is below.

Sec. 8. (a) If the state board, upon remand of the Marion County Circuit Court case of Board of School Commissioners of the City of Indianapolis v. Indiana State Board of Education and Indiana Department of Education (cause number 49D03-1206-MI-023257), determines that the Indianapolis public school corporation or any other school corporation is entitled to a distribution to correct the amount that was withheld under IC 20-31-9.5 during July through December 2012 from state tuition support and federal funds otherwise to be distributed to the school corporation, the following apply:

(1) The state board shall make distributions to the following:

(A) The Indianapolis public school corporation.

(B) Any other school corporation affected by a redetermination of the amount that was withheld under IC 20-31-9.5 during July through December 2012.

(2) Before making a distribution to a school corporation under this section, the state board must obtain from the recipient school corporation an agreement that the school corporation will dismiss and not pursue any claims against the state or any state officer or entity, the special management team, or the turnaround academy with regard to distributions received by the special management team or turnaround academy under IC 20-31-9.5 during July through December 2012.

(b) There is appropriated from the state general fund to the state board *for the 2012-2013 state fiscal year*, seven million four hundred five thousand eight hundred ninety-two dollars (\$7,405,892) to make distributions as provided in subsection (a). (emphasis added)

Accordingly, although \$ 9,257,364.97 is required to compensate both school corporations in full, the General Assembly only provided \$7,405,892, a total difference of \$1,851,472.97. The appropriation by the General Assembly represents 80% of the total amount owed to the corporations applying the definition of "affected students" declared by the trial court.

The text of HEA 1001 requires that, before the recently appropriated sums can be paid to IPS and GCSC, the SBOE determine, on remand from the trial court, that "the Indianapolis public school corporation or any other school corporation is entitled to a distribution to correct the amount that was withheld under IC 20-31-9.5 during July through December 2012 from state tuition support and federal funds otherwise to be distributed to the school corporation . . ." Moreover, the statute specifies that the funds are only available through the end of the current fiscal year, which ends June 30.

Recommendation for Action

Therefore, on remand from the trial court's judicial review order in *Board of School Commissioners of the City of Indianapolis v. Indiana State Board of Education and Indiana Department of Education* (cause number 49D03-1206-MI-023257), issued on December 7, 2012, and pursuant to Ind. Code 20-31-9.5-3(c), the Department recommends that the Board:



Glenda Ritz, Superintendent of Public Instruction

- 1) Reconsider the May 2012 determination regarding tuition support amounts to be withheld from IPS and GCSC and revise that determination based on the September 2012 ADM (rather than the September 2011 ADM), as shown in the above tables 1 and 2;
- 2) Determine that IPS and GCSC are entitled to a distribution to correct the amount that was withheld under IC 20-31-9.5 during July through December 2012 from state tuition support and federal funds otherwise to be distributed to the school corporation;
- 3) Determine that the amount appropriated by the General Assembly in HEA 1001 be allocated to IPS and GCSC at 80% of the difference for each school between the May 2012 withholding amount and the amount to be withheld based upon the September 2012 ADM count;
- 4) Issue a finding that the amounts provided to the corporations constitute 80% of the difference between the May 2012 withholding amount and the amount to be withheld based upon the September 2012 ADM count and has been agreed upon by each corporation as settlement in full.
- 5) Obtain from IPS and GCSC their agreements to dismiss and not pursue any claims against the state or any state officer or entity, the special management team, or the turnaround academy with regard to distributions received by the special management team or turnaround academy under IC 20-31-9.5 during July through December 2012.

Table 3

	Amount Owed	Amount Available	Difference from Amount Owed	Percentage of Total
		\$7,405,892		
IPS	\$7,516,046.72	\$6,012,837.39	(\$1,503,209.33)	80%
Gary	\$1,741,318.25	\$1,393,054.61	(\$348,263.64)	80%
Total	\$9,257,364.97	\$7,405,892.00	(\$1,851,472.97)	80%

