

STATE OF INDIANA ) IN THE MARION CIRCUIT COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO.: 49C01  
49C01 13 10 PL 038953

GLEND A RITZ, CHAIR )  
INDIANA STATE BOARD OF EDUCATION & )  
INDIANA SUPERINTENDENT OF PUBLIC )  
INSTRUCTION )  
Plaintiff, )

-VS-

DANIEL ELSENER, TONY WALKER, )  
DAVID FREITAS, CARI WHICKER, )  
SARAH O'BRIEN, ANDREA NEAL )  
BRAD OLIVER, B.J. WATTS, TROY ALBERT )  
GORDON HENDRY, in their individual capacities )  
as members of the Indiana State Board of )  
Education )  
GEORGE ANGELONE, in his official )  
capacity as Director of Legislative )  
Services Agency )  
Defendants )

FILED

202

OCT 22 2013

*Elizabeth A. White*  
CLERK OF THE MARION CIRCUIT COURT

**VERIFIED COMPLAINT FOR DECLARATORY**  
**AND INJUNCTIVE RELIEF**

This is a complaint for declaratory and injunctive relief, in which Plaintiff challenges the actions of certain members of the Indiana State Board of Education for violation of Indiana's Open Door Law. The Plaintiff, Glenda Ritz, by counsels Bernice A.N. Corley and Michael G. Moore, respectfully requests this Court to issue an Order in favor of Plaintiff against the Defendants enjoining the Defendants from continued violations of Indiana's Open Door law, from attempting to compel the Department of Education from entering a memorandum of understanding for the purposes of sharing data and from attempting to issue findings to the Indiana State Board of Education in contravention of Indiana Code § 20-31-8-4, to enjoin the Legislative Services Agency of Indiana from taking action and to declare relief in favor of the

Plaintiff pursuant to Trial Rule 57, Indiana Code §§ 5-14-1.5 *et seq.*, 34-14-1 *et seq.* and 34-26-1 *et seq.* In support, the Plaintiff states the following:

**Facts Common to Both Allegations**

**I. The Plaintiff**

1. The Plaintiff, Glenda Ritz, is the Superintendent of Public Instruction (“Superintendent”) for the State of Indiana;
2. Pursuant to Indiana Code 20-19-3-2, the Superintendent is the Director of the Department of Education;
3. Pursuant to I.C. 20-19-2-2(d), the Superintendent serves as the Chair of the Indiana State Board of Education;

**II. The Defendants**

4. The Defendant Board members are each an individual member of the Indiana State Board of Education;
5. Each Defendant was appointed by the Governor to serve on the Board;
6. Defendant, George Angelone, is the Director of the Legislative Services Agency;

**III. Legislative Services Agency**

7. Indiana Legislative Services Agency (“LSA”) is a bipartisan service and administrative agency for the General Assembly to assist it in the performance of its constitutional responsibilities as a separate and independent legislative branch of state government. I.C. 2-5-1.1-7
8. It is an agency created by the Legislative Council (I.C. 2-5-1.1-1). The President *Pro Tempore* and the Speaker of the House alternate chairing and co-chairing duties for the Council. I.C. 2-5-1.1-2

9. LSA's duties are "bill drafting, research, code revision, fiscal, budgetary, and management analysis, information, administrative, and other services as are requested by the council"; I.C. 2-5-1.1-7(e)

10. The Indiana State Board of Education is composed of the Superintendent (I.C. 20-19-2-2(d)) and ten (10) members, each of whom are appointed by the Governor of Indiana (IC 20-19-2-2(a)). The Superintendent serves as the Chairperson and a voting member of the Indiana State Board of Education ("Board");

11. On October 16, 2013, the ten named individual member Defendants, all of whom are members of the State Board, wrote a letter to Indiana Senate President Pro Tempore, David Long, and House Speaker, Brian Bosma, requesting the State Legislature to issue a directive to George Angelone, Director of LSA, to take certain action with respect to Indiana's 2012-2013 A-F grading system of schools. See attached affidavit of Glenda Ritz marked as Exhibit Nbr. 1 and The single letter signed by the ten individual members of the State Board of Education dated October 16, 2013 and marked as Exhibit Nbr. 2

12. On October 18, 2013, as a direct result of the Board member's letter, Senate President Pro Tempore, David Long, and House Speaker, Brian Bosma, issued a letter to George Angelone, Director of LSA, directing the Director and his staff to begin the work requested by the individual Board members. See Exhibit Nbr. 3 attached hereto.

#### IV. Indiana's Open Door Law—I.C. 5-14-1.5 *et seq.*

13. The Open Door Law ("ODL"), Indiana Code 5-14-1.5, originally passed by the Indiana General Assembly in 1977 and most recently amended in 2008, was enacted to permit the public access to meetings held by public agencies;

14. Indiana Code 5-14-1.5-7 provides that an action may be filed by any person in any

court of competent jurisdiction to (1) obtain declaratory judgment, (2) enjoin continued violations of the law, and, to (3) declare void any policy, decision, or final action;

15. The Indiana State Board of Education is a "public agency" with a "governing body" as those terms are defined in I.C. 5-14-1.5-2(a) and, therefore, subject to the requirements of the Open Door Law;

16. "Governing body" is defined by I.C. 5-14-1.5-2(b) as two (2) or more individuals who are a public agency (in this case a "board") who take official action on public business;

17. "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business; I.C. 5-14-1.5-2(c)

18. "Official action" means to receive information, deliberate, make recommendations, establish policy, make decision, or take final action." I.C. 5-14-1.5-2(d)

19. The ODL provides that all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. 5-14-1.5-3, executive sessions are excepted. IC 5-14-1.5-6.1. In addition, public notice of a meeting must be given at least 48 hours prior thereto. IC 5-14-1.5-5.

20. The Board's and LSA's offices are located in Indianapolis, Marion County. Venue is proper in Marion County and all of the events causing this action occurred in Marion County;

**COUNT I—Violation of Indiana's Open Door Law**  
**Indiana State Board of Education**

21. The allegations of paragraphs 1 through 12 are alleged and incorporated herein by reference;

22. The individual Board member Defendants' each violated Indiana's Open Door Law by meeting in secret to take official action and to draft, or direct the drafting of, the October 16, 2013 letter to Senator pro tempore Long and Speaker Bosma;

23. In order to have taken this action, the individual Board members would have had to "receive information, deliberate, make recommendations, establish policy, make decision, or take final action" (I.C. 5-14-1.5-2(d)) with each other or with Board counsel(s) or staff;

24. Any meeting involving these individual members would not have been an executive session under I.C. 5-14-1.5-6.1. That section provides fourteen examples of meetings that can occur in an executive session;

25. Whatever meeting that occurred involving the individual Board members would not have fit within any of the types of meetings allowed to occur in private in an executive session;

26. Plaintiff is a Chair of the Indiana State Board of Education and would have been part of any decision to plan or to hold an executive session;

27. An executive session could not have occurred without the Plaintiff's involvement, knowledge or consent, or the opportunity to participate in said session;

28. Plaintiff was unaware of the individual board members' decision to schedule an executive session or to take an official action;

29. Plaintiff was not noticed of the individual Board members' decision to take an official action. They did so in secret and without the consent or knowledge of the Plaintiff who is a member and the chair of the Board in which the individual member Defendants serve;

30. Additionally, I.C. 5-14-1.5-6.5(c) and (d) provide:

"....(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated."

31. No public notice was given informing the general public of an executive session and the decision to make a request to the State Legislature constitutes a "final action" and an "Official action."

32. Any nonpublic meeting with Board counsel or staff to plan the drafting of the letter to the Legislative Council's chair and co-chair would likewise violate Indiana's Open Door Law. Public agencies may not seek legal advice from their attorneys in private about matters which are not related to litigation because "official action" means "receive information" even when it is from the public agency's counsel. *Simon v. City of Auburn*, 519 N.E.2d 205, 209 (Ind. Ct. App. 1988); I.C. 5-14-1.5-2(d). Likewise, Board members may not meet in private with Board staff to strategize taking action as these members did;

33. The Board member defendants are each subject to the provisions of Indiana's Open Door Law and are subject to the jurisdiction of this Court;

34. Each member of the Board violated the protections of the Open Door Law;

**COUNT II**  
**DECLARATORY JUDGMENT—GEORGE ANGELONE**  
**INDIANA LEGISLATIVE SERVICES**

35. The allegations of paragraphs 1 through 12 are alleged and incorporated herein by reference;

36. LSA's duties are "bill drafting, research, code revision, fiscal, budgetary, and

management analysis, information, administrative, and other services as are requested by the council"; I.C. 2-5-1.1-7(e)

37. The directive to LSA does not fit within the statutory duties of LSA;

38. The directive to LSA is a direct result of the official action taken by the Board that occurred in secret, without notice and without involvement by all Board members;

39. The directive was predicated on a violation by the individual Board members of Indiana's Open Door Law;

40. LSA should be enjoined from taking any action on the directive;

#### **Prayer for Relief**

WHEREFORE, pursuant to Trial Rule 57, Indiana Code §§ 5-14-1.5 *et seq.*, 34-14-1 *et seq.* and 34-26-1 *et seq.*, Plaintiff prays for the following relief:

a. Declare that the actions of the individual Board members violated Indiana's Open Door Law;

b. Preliminary and permanently enjoin the Defendant Board members, George Angelone, Legislative Services Agency, and all persons and entities acting under their direction or in concert with them, from taking any further action unless or until the members comply with the requirements of Indiana's Open Door Law;

c. Award Plaintiff her costs, if any, incurred in prosecuting this lawsuit; and

d. Order such other and further relief as this Court may deem appropriate.

VERIFICATION

I hereby swear and affirm under the penalties of perjury that the above and foregoing is true and correct.




\_\_\_\_\_  
GLENDA RITZ, Chair, Indiana State Board of Education  
Superintendent of Public Instruction

Respectfully submitted,

Indiana Department of Education  
115 W. Washington Street  
South Tower, Suite 600  
Indianapolis, Indiana 46204  
317-232-9153

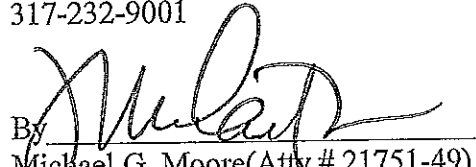
By

  
\_\_\_\_\_  
Bernice A.N. Corley (Atty # 22315-49)  
Attorney for Plaintiff

Respectfully submitted,

Indiana Department of Education  
115 W. Washington Street  
South Tower, Suite 600  
Indianapolis, Indiana 46204  
317-232-9001

By

  
\_\_\_\_\_  
Michael G. Moore (Atty # 21751-49)  
Attorney for Plaintiff



# INDIANA STATE BOARD OF EDUCATION

100 N. Senate Ave., RM N1049  
Indianapolis, IN 46204

October 16, 2013

Senate President Pro Tempore David Long  
House Speaker Brian Bosma  
State House  
200 W. Washington St.  
Indianapolis, IN 46204

## RE: LSA Support for Calculating A-F Grades

Dear Senator Long and Speaker Bosma,


We are writing to express our concern regarding the delay by the Indiana Department of Education ("Department") in providing A-F Grades for the 2012-2013 school year to the State Board of Education ("Board"), and to request the assistance of Legislative Services Agency ("LSA") in calculating the grades in time for the Board's official approval this November.

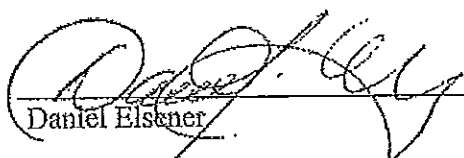
As members of the Board, we send this letter out of concern for ensuring that school accountability information is provided to Indiana schools, educators, and families in as timely a manner as possible. We are now mid-way through October, and the Department has yet to report 2012-2013 A-F grades or release teacher effectiveness ratings as required under Indiana law.

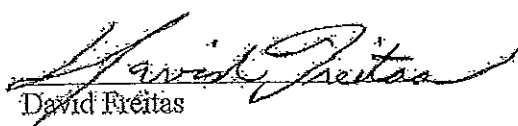
Although the typical A-F calculation timeline may have been affected by the ISTEP testing interruptions that occurred this past spring, the validity studies on ISTEP data were completed by the testing vendor (CTB/McGraw-Hill) and the Department's independent third-party expert in July. At that point, the Department was in a position to rely upon ISTEP data for purposes of calculating A-F grades, which the Department's staff has stated takes no more than three days. However, it wasn't until September that the Department finally released the underlying accountability data for schools and corporations. Now, almost a full month later, the Department still has not provided preliminary A-F grades or teacher effectiveness ratings.

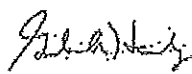
The delay in providing A-F grades prevents schools, educators, and families from having important information related to their school's overall performance. Moreover, without the calculation of A-F grades, Indiana cannot comply with state and federal accountability requirements. Finally, without the release of grades, the Department cannot identify updated Focus and Priority schools, which receive increased support from the Department, and the Board is not able to identify schools for which it is statutorily required to hold a hearing and consider interventions pursuant to Ind. Code 20-31-9-4.




  
Troy Albert

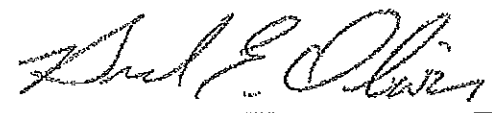
  
Daniel Elsener

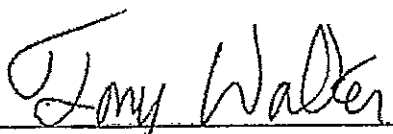
  
David Freitas

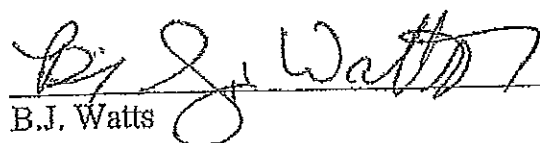
  
Gordon Hendry

  
Andrea Neal

  
Sarah O'Brien

  
Brad Oliver

  
Tony Walker

  
B.J. Watts

STATE OF INDIANA  
INDIANA GENERAL ASSEMBLY  
200 W. WASHINGTON STREET  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204

Brian C. Bosma  
Speaker of the House

Phone: (317) 232-9605  
Email: H88@iga.in.gov

David C. Long  
President Pro Tempore

Phone: (800) 382-9467  
Email: S16@in.gov

October 18, 2013

Mr. George Angelone  
Executive Director, Legislative Services Agency  
200 West Washington Street  
Indianapolis, Indiana 46204


Dear George,

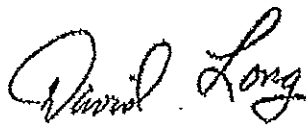
Please see the enclosed letter from the members of the Indiana State Board of Education (Board), which we received late last evening by e-mail. As you will see, it expresses the Board's concerns that the delay in the issuance in the A-F grades for the 2012-2013 school year will have a negative effect on a number of important segments of our education system. The letter requests that we instruct the Legislative Services Agency (LSA) to enter into a data sharing Memorandum of Understanding with the Department of Education as soon as possible and provide the calculation of the A-F grades for the 2012-2013 school year to the Board. As you know, this request is consistent with the results of the Grew-Sheldrake report issued in September, which recommended that "ongoing access to all data and computer programming necessary for [LSA] to replicate results and respond to various inquiries from legislators about the system."

Please allow this letter to serve as our official request that you and your staff begin this work as soon as possible. We would appreciate LSA providing the A-F calculations to the Board as soon as possible, so that the Board can review them and prepare to issue grades expeditiously.

Please let either of us or our Chiefs of Staff know if you need any additional information from us to begin your work. Thank you for your continued cooperation and diligence.

Sincerely,

  
Brian C. Bosma  
Speaker of the House  
118<sup>th</sup> General Assembly

  
David Long  
President Pro Tempore, Indiana Senate  
118<sup>th</sup> General Assembly

Enclosure



STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

**AFFIDAVIT OF GLENDA RITZ**

PERSONALLY appeared before me, Glenda Ritz, who being duly sworn by me states upon her oath and personal knowledge the following:

1. I am over the age of eighteen (18) years of age and am competent to testify as to the matters set forth herein, having first-hand knowledge thereof.
2. I am Indiana's Superintendent of Public Instruction. As such, I serve both as the Chair of the State Board of Education (hereinafter "SBOE") and the Director of the Department of Education (hereinafter "Department").
3. SBOE is obligated to place schools in an A-F scale based on the Department's findings. I.C. 20-31-8-4
4. A school's students' performance on ISTEP program test is the *primary and majority means* for assessing a school's improvement, per Indiana Code sections 20-31-8-1. (emphasis added)
5. April 2013, during the administration of the ISTEP test, approximately 482,000 students took the ISTEP online. Unfortunately, there were significant system failures in the delivery of the online test resulting in 78,269 students' tests sessions being interrupted.
6. On June 10, 2013, the Department retained Dr. Richard K. Hill of National Center for the Improvement of Educational Assessment (hereinafter "NCIEA") to conduct an independent third party validation process of ISTEP scores.
7. On July 2013, National news reported on Indiana's A-F system and concerns of corruption.
8. On August 2, 2013, Speaker of the Indiana House of Representatives, Brian Bosma (hereinafter "Speaker Bosma") and President Pro Tempore of the Indiana Senate, David Long (hereinafter "President Pro Tem Long") announced the formation of an independent review of A-F system by John Grew and Bill Sheldrake (hereinafter "Grew Sheldrake"). See Exhibit Nbr. 4
9. On August 7, 2013, during a SBOE meeting, I informed the SBOE members of the Grew Sheldrake investigation, I further stated that after the investigation the Department and SBOE would work together to determine the A-F process for 2012-2013 school year.
10. On September 4, 2013, during the SBOE meeting, I updated the SBOE members that the Grew Sheldrake report was expected to be released later that week. Also, Dr. Richard K. Hill presented



to the SBOE members regarding the validity of ISTEP results and the invalidation of certain scores.

11. On September 6, 2013, Grew Sheldrake report was released and SBOE staff provided copies to SBOE members.
12. On September 18, 2013, Department released ISTEP scores to schools. Parents/guardians were provided until September 30, 2013 to request their student(s)' ISTEP test be rescored, as is their right by statute.
13. On September 30, 2013, the window closed for parents/guardians to request their student(s)' ISTEP test be rescored.
14. On October 2, 2013, during a SBOE meeting, the SBOE members received an update from Grew and Sheldrake on their findings. The SBOE members voted on the process for calculating 2012-2013 grades. Debbie Dailey, accountability data expert and Department staff, informed the SBOE, during her presentation on A-F, that preliminary 2012-2013 grades could not be calculated until ISTEP rescoring was completed and delivered to the Department by CTB-McGraw Hill. Ms. Dailey shared that after rescoring is received, preliminary grades could be issued around Thanksgiving. See attached Affidavit of Laura Naughton and transcription marked as Exhibits Nbrs. 5 and 6. See attached Affidavit of David Galvin and compact disc marked as Exhibit Nbr. 7 and 8.
15. SBOE meets monthly, with dates issued a year in advance. SBOE meetings are conducted subject to Indiana State Board of Education Meetings and Meetings Procedures (hereinafter "Procedures"). See attached Indiana State Board of Education Meetings and Meeting Procedures marked as Exhibit Nbr. 9. The Procedures provide for regular meetings, special meetings, and executive sessions. The Procedures provide that all of the various types of meetings are to be noticed in accordance with Indiana's Open Door law. Specifically, public notice for SBOE meetings is to be posted outside the office of the State Superintendent. Following the regular SBOE meeting, on October 2, 2013, as SBOE Chair, I convened no meeting of the SBOE, nor did I receive notice that a meeting had been called.
16. On October 17, 2013, at 9:10 p.m., Claire Fiddian-Green (hereinafter "Ms. Fiddian-Green"), Technical Advisor for SBOE, emailed a letter to me (hereinafter "the letter"). The email copied all members of the SBOE, as well as various SBOE staff members. See Exhibit Nbr. 2
17. The letter was on SBOE letterhead and was addressed to Speaker Bosma and President Pro Tem Long. The letter was signed by all members of the SBOE, except for me. The letter copies me

along with a few members of the Indiana House of Representatives and Senate. See Exhibit Nbr.

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18. In the letter, members of the SBOE requested Speaker Bosma and President Pro Tem Long direct Indiana Legislative Services Agency (hereinafter "LSA") to enter into a data sharing memorandum of understanding with the Department, so that LSA could calculate A-F grades for the 2012-2013 school year as soon as possible. The letter states that LSA would be an "alternate solution" to the release of grades by the Department.
19. On October 18, 2013, Speaker Bosma and President Pro Tem Long sent a letter to the Executive Director of Legislative Services Agency, George Angelone ("Mr. Angelone"). The letter serves as the "official request" that LSA enter into a memorandum of understanding with the Department, so that LSA may make calculations for A-F grades for the 2012-2013 school year and provide the results to the SBOE as soon as possible, so the Board can review the calculations and prepare to issue grades. The letter did not copy me nor the Department. See Exhibit Nbr. 3.
20. On October 18, 2013, Mr. Angelone contacted Department staff in order to develop the memorandum of understanding, as LSA was directed by Speaker Bosma and President Pro Tem Long.
21. The letter, sent by SBOE members to members of the General Assembly, is an official action, wherein the SBOE members decided a course of action respecting public business, namely, A-F grade calculations and category placements. SBOE members made a policy decision to pursue A-F calculations without ISTEP data, which by law is the primary manner for assessing school improvement.
22. There was no public notice of the individual SBOE members' decision to meet and decide to take this official action.
23. As Chair of the SBOE, no meeting of an executive session could have occurred without my knowledge, consent and the opportunity to participate.
24. The SBOE recently implemented an electronic meeting policy, which allows members to participate via electronic means;
25. The first I learned of the individual SBOE members' decisions to seek official action was in the letter I received via Ms. Fiddian-Green's email to me. I convened no meeting through traditional means nor did I utilize the electronic meeting procedures.
26. Recently, the SBOE adopted a staffing resolution naming SBOE staff consisting of a technical advisor, general counsel, and executive director. See Exhibit Nbr. 10 Ms. Fiddian-Green is the

technical advisor to the SBOE and serves as the Special Assistant to the Governor for Education Innovation and co-leader of the Center for Education and Career Innovation (CECI). The SBOE was recently made part of CECI through an executive order.


27. The letter drafted would have involved SBOE staff at the direction of individual SBOE members.

I was not made aware of nor was I involved in these discussions. Accordingly, they occurred in secret, without public notice or the opportunity for public comment.

28. Even though I am a member, and more importantly the Chair of the SBOE, I was not contacted by SBOE counsel, nor any other SBOE staff, on the decision to seek official action. I was also not contacted by any SBOE staff or by Ms. Fiddian-Green prior to the letter being sent, nor was a place made available for my signature on the letter.

I affirm under the penalties of perjury that the foregoing representations are true.

**FURTHER AFFIANT SAYETH NOT.**

  
Glenda Ritz, Affiant  
Superintendent of Public Instruction  
Chair, Indiana State Board of Education

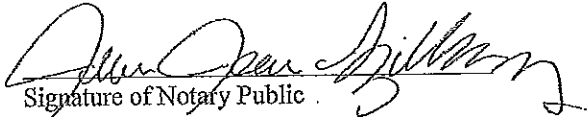
STATE OF INDIANA            )  
                                      ) SS:  
COUNTY OF MARION         )

Before me, a Notary Public in and for said County and State, personally appeared Glenda Ritz, and acknowledged the execution of the foregoing instrument as his/her voluntary act and deed, and who, being first duly sworn upon his/her oath, swears that the statements and representations made herein are true and accurate to the best of his/her knowledge and belief.

WITNESS MY HAND AND NOTARIAL SEAL this 22<sup>nd</sup> day of October, 2013.

Marion  
County of Residence

September 25, 2019  
My Commission Expires

  
Signature of Notary Public  
Jillian Jean Szalankiewicz  
Printed Name:





STATE OF INDIANA  
INDIANA GENERAL ASSEMBLY

200 W. WASHINGTON STREET  
THIRD FLOOR STATE HOUSE  
INDIANAPOLIS, INDIANA 46204

Brian C. Bosma  
Speaker of the House

Phone: (317) 232-9605  
Email: H88@iga.in.gov

David C. Long  
President Pro Tempore

Phone: (800) 382-9467  
Email: S16@in.gov

August 2, 2013

Mr. John Grew, Executive Director,  
State Relations and Policy Analysis  
Indiana University  
101 West Ohio Street, Suite 1776  
Indianapolis, Indiana 46204

Mr. William Sheldrake, President and Founder  
Policy Analytics LLC  
One North Pennsylvania Street, Suite 530  
Indianapolis, Indiana 46204

Dear John and Bill,

As you know, Indiana has received national attention this week due to the concerns with the A-F metric for grading Indiana's schools. As you may also know, the Indiana General Assembly, during the 2013 legislative session, expressed its concerns about this same issue when it passed House Enrolled Act 1427. In that bill, we required the State Board of Education to "go back to the chalkboard" on the A-F metric and to come up with a new metric, one based on achievement and growth, by November 15, 2013.

Since then, however, the issue has been brought to the forefront in negative ways and our concerns about the previous assessment system are increasing. We write to you today to ask you to undertake a critical task - to examine the previous A-F metric, by completing the following tasks:

- Assessing the previous A-F assessment tool;
- Determining its validity;
- Ascertaining the fairness of previous grades given to schools;
- Determining whether manipulations of the system occurred; and
- Making recommendations to the State Board of Education and/or the General Assembly as to what next steps may be appropriate.

We realize how challenging a task this is. We also understand that you will need some resources to accomplish it. As the Chairman and Vice Chairman of the Legislative Council, we will support you in any way we can - with staff and financial resources. We also need to have your assessment completed by Labor Day. Given the gravity of the situation, we feel this research merits immediate attention.

PLAINTIFF'S  
EXHIBIT

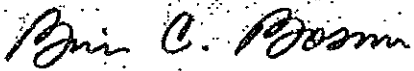
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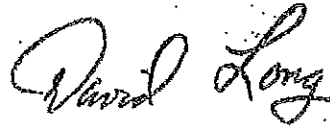
Mr. John Grew  
Mr. William Sheldrake  
August 2, 2013  
Page 2

Thank you for considering our request to serve the citizens of Indiana in this manner. Your input will be so important to the families and, most importantly, to the students of our state.

Sincerely,



Brian C. Bosma  
Speaker of the House  
118<sup>th</sup> General Assembly



David Long  
President Pro Tempore, Indiana Senate  
118<sup>th</sup> General Assembly

cc: Minority Leader Scott Pelath  
Minority Leader Tim Lanane

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

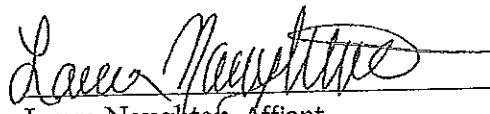
**AFFIDAVIT OF LAURA NAUGHTON**

PERSONALLY appeared before me, Laura Naughton, who being duly sworn by me states upon her oath and personal knowledge the following:

1. I am over the age of eighteen (18) years of age and am competent to testify as to the matters set forth herein, having first-hand knowledge thereof.
2. I am employed with the Indiana Department of Education (hereinafter "Department"). Part of my duties was to serve as the Administrator to the Indiana State Board of Education (hereinafter "SBOE").
3. In addition, during this period of time, I was responsible for the documents and things used at the meetings.
4. On October 2, 2013, I served as the Administrator to the Board. In the role of Administrator, I am present from the call of order to adjournment. The October meeting was called to order around 9:00 a.m. and adjourned sometime after 3:00 p.m.
5. Every SBOE meeting is recorded. The full length of the October 2, 2013 meeting may be accessed at <http://media.doe.in.gov/sbe/2013-10.html>
6. Due to the length of the October 2, 2013 meeting, I caused to be created, a record which reflects a portion of the exchange between a SBOE member, Troy Albert and Debbie Dailey, Department staff regarding the expected release of preliminary A-F grades by the Department. See Exh. Nbr. 6
7. The transcript, identified as Exhibit number 6, is a true and accurate transcription of the relevant portions of the testimony, dialogue and exchanges that occurred during the October 2, 2013 State Board of Education meeting between Board members, the chair and witnesses;

I affirm under the penalties of perjury that the foregoing representations are true.

**FURTHER AFFIANT SAYETH NOT.**

  
Laura Naughton, Affiant  
Department of Education



STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF MARION                )

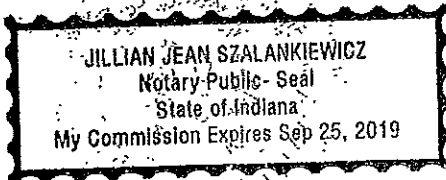
Before me, a Notary Public in and for said County and State, personally appeared Laura Naughton, and acknowledged the execution of the foregoing instrument as his/her voluntary act and deed, and who, being first duly sworn upon his/her oath, swears that the statements and representations made herein are true and accurate to the best of his/her knowledge and belief.

WITNESS MY HAND AND NOTARIAL SEAL this 22<sup>nd</sup> day of October, 2013.

Marion  
County of Residence

September 25, 2019  
My Commission Expires

Jillian Jean Szalankiewicz  
Signature of Notary Public  
Jillian Jean Szalankiewicz  
Printed Name:



From the October 2, 2013 State Board of Education meeting: Video Part 4 - 61:11-63:11

Mr. Troy Albert: Can I ask a question?

Superintendent Ritz: Yes, Troy.

Troy: How soon will schools know their grade?

Superintendent Ritz: Debbie?

Troy: Now that you have that guidance, what is the timeline?

Superintendent Ritz: To preliminarily know their grade

Debbie Dailey: Right, I do want to note that before we release final preliminary grades, we will need final ISTEP grades or scores. At this point we are still waiting on rescoring for ISTEP. We will be moving forward with any calculations on preliminary ISTEP scores.

Superintendent Ritz: Right, the rescore window just ended September 30<sup>th</sup>. So now we have all that data and now we have to look at those "appeals" from the schools and parents, so to speak. And then we will be moving forward with that. So, do we have an estimated time, do you think Debbie?

Debbie: To actually calculate the data is fairly quick. We can probably calculate the data in a few days. My concern is more along the side of quality assurance, and doing review since this is only year two of calculating A-F. We don't have an established baseline of what to expect; any changes in grades, how many schools will actually change grades, etc. What's acceptable; if a school changes 3 letter grades over the course of the year, how in depth do we actually need to look at that school, that school's data. So my concern is more on the quality side of this, and not necessarily on the calculation side. Obviously, we've spent a lot of time re-running the calculations, so we're very familiar with how to run the calculations. That part can run very quickly. I am more concerned with the quality side of this, and getting to that comfort level of knowing that the data that we have calculated is what we expected to see.

Troy: Reasonably, are you thinking Thanksgiving?

Debbie: Yes, before.

Superintendent Ritz: Before.

Debbie: Well before.

Superintendent Ritz: Thank you, Debbie.



STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

AFFIDAVIT OF DAVID GALVIN

PERSONALLY appeared before me, David Galvin, who being duly sworn by me states upon his oath and personal knowledge the following:

1. I am over the age of eighteen (18) years of age and am competent to testify as to the matters set forth herein, having first-hand knowledge thereof.
2. I am employed with the Indiana Department of Education (hereinafter "Department") as the Executive Director of Communications. In my role as Executive Director of Communications I oversee the Department staff which is responsible for recording the State Board of Education meetings.
3. Every SBOE meeting is recorded. The full length of the October 2, 2013 meeting may be accessed at <http://media.doe.in.gov/sbe/2013-10.html>
4. Due to the length of the October 2, 2013 meeting, I caused to be created, a compact disc (CD) which captures a portion of the exchange between a SBOE member, Troy Albert and Debbie Dailey, Department staff, regarding the expected release of preliminary A-F grades by the Department. See Exh. Nbr. 8
5. The CD, identified as Exhibit number 8, is a true and accurate depiction of the relevant portions of the testimony, dialogue and exchanges that occurred during the October 2, 2013 State Board of Education meeting between Board members, chair and witnesses;

I affirm under the penalties of perjury that the foregoing representations are true.

**FURTHER AFFIANT SAYETH NOT.**



David Galvin, Affiant  
Department of Education



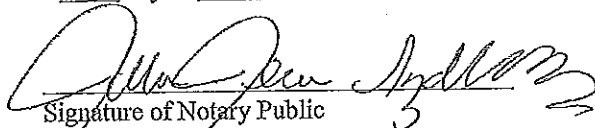
STATE OF INDIANA                     )  
  ) SS:  
COUNTY OF MARION                 )

Before me, a Notary Public in and for said County and State, personally appeared David Galvin, and acknowledged the execution of the foregoing instrument as his/her voluntary act and deed, and who, being first duly sworn upon his/her oath, swears that the statements and representations made herein are true and accurate to the best of his/her knowledge and belief.

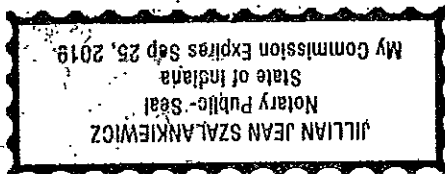
WITNESS MY HAND AND NOTARIAL SEAL this 22<sup>nd</sup> day of October, 2013.

Marion  
County of Residence

September 25, 2019  
My Commission Expires

  
Signature of Notary Public

Jillian Jean Szalankiewicz  
Printed Name:



# INDIANA STATE BOARD OF EDUCATION MEETINGS AND MEETING PROCEDURES

## MEETINGS

### Regular Meetings

The Board will establish an annual meeting calendar, with at least one meeting per month. The Chair shall determine the location of regular meetings and advise the Board.

### Special Meetings

The Chair or three Board members may call special meetings to address issues as needed. Special meetings will be held at a date and time convenient to the members and at a location determined by the Chair.

### Cancellation of Meetings

The Chair may cancel a meeting up to 72. The Chair's decision shall be final unless three or more Board members object in writing (including email or facsimile) to the cancellation within 48 hours of the Chair's notification. Meetings may not be cancelled with less than 72 hours notice unless such cancellation is due to an unforeseen emergency.

### Executive Sessions

The Board may meet in executive session for the reasons specified in IC 5-14-1.5-6.1 and shall comply with the notice requirements of IC 5-14-1.5-5. The Chair or three Board members shall determine when an Executive Session is needed.

## BOARD MEETING PROCEDURES

### Public Notice

In accordance with IC 5-14-1.5-5, public notice of each Board meeting and Executive Session shall include the date, time, and location of the meeting, and shall be posted outside the State Superintendent's office (Room 229 State House) at least 48 hours prior to the meeting (excluding Saturdays, Sundays, and legal holidays). Notice of the meeting will also be posted on the Board's website at <http://www.doe.in.gov/ido/sboe>. An agenda shall be included as part of the public notice.

### Agenda Format – Order of Business

The order of business for a regular meeting is as follows:

- I. Call to Order
  - a. Roll Call
  - b. Pledge of Allegiance
- II. Approval of the Minutes
- III. Statement from the Chair
- IV. Board Member Comments and Reports
- V. Public Comment
- VI. Best Practices – Innovations in Education – Student Successes
- VII. Discussion
- VIII. Consent Agenda
- IX. New Business - Action

PLAINTIFF'S  
EXHIBIT

9

Adopted by the Board  
May 1, 2013

#### X. Board Operations

The order of agenda items may be changed during the course of a Board meeting at the Chair's discretion.

#### Agenda Preparation and Dissemination

Both the Chair and the Board members may add items to each Board agenda. Reporting or discussion items may be added to the agenda before the meeting, or may be added during a meeting as is consistent with Ind. Code § 5-14-1.5. Items that require a Board Resolution or a vote must be submitted to the State Board Administrator at least ten business days before a Board meeting. The Chair shall provide a written agenda, together with supporting background and related materials, in electronic format to the Board at least five business days before a Board meeting.

#### Rules of Order

The conduct of the meeting shall be at the discretion of the Chair; provided, however, that each Board member shall have the right and responsibility to participate fully in the meeting, ask questions and provide input on any issue before the Board, move the Board to a vote on agenda items, and discharge his or her duties fully as outlined in IC 20-19-2.

#### Quorum

Per IC 20-19-2-2(c), a quorum consists of six members of the Board, and a quorum must be present to take official action as described in IC 5-14-1.5-2(d).

#### Voting Method

Votes by the Board are taken by alphabetical roll call of the Board members, with the Chair voting last. Each member's vote shall be recorded in the minutes. At the Chair's discretion, the vote may be taken by voice.

#### Election of Secretary

The Board shall annually elect a member to serve as Secretary. Any member may nominate without being recognized by the Chair. A nomination does not have to be seconded. When no other nominations are offered, the Chair will close the nominations. If there is only one nominee, the Chair shall declare the nominee elected. If there are two or more nominees, the Board shall vote by a show of hands. A nominee must receive at least six votes to be elected.

#### Minutes

The Secretary may designate the State Board Administrator or other Department staff to take notes and prepare draft minutes of the meeting for the Secretary's review. The Secretary shall review, edit, and return the minutes to the State Board Administrator for final drafting and distribution to Board members. The minutes and all other Board records shall be maintained in the office of the Superintendent as required by IC 20-19-2-6. Approved minutes shall be posted on the Board's website within ten business days of the Board meeting at which the minutes were approved.

#### Public Participation at Board Meetings (Per the Policy adopted by the Board on 2/8/1996)

1. The State Board of Education shall, at its regular monthly business meeting, accept comment from any interested person on subjects related to the Board's responsibilities.
2. The Board shall not accept comments on specific adjudications that are governed by the

Administrative Orders and Procedures Act (Ind. Code 4-21.5) or by other statutory procedures that limit public participation. Persons who wish to participate in these proceedings may obtain procedural information from the Board office.

3. A person who desires to speak to the Board must register at the Board meeting room on the day of the meeting. Registration sheets shall customarily be available at least thirty (30) minutes prior to the start of the Board meeting, and registration shall close five (5) minutes before the start of the meeting. Required registration information shall include the name and address of the person providing the comments, the name of the organization (if any) that the person represents, and the topic to be discussed.
4. Public comments are subject to the following rules:
  - a. Statements are limited to five (5) minutes in length.
  - b. No person may speak more than once on the same topic.
  - c. Comments shall be directed to the Board, not to an individual Board member, and questions will not be entertained.
  - d. Statements shall not be abusive or argumentative, and persons making statements shall not debate statements made by other persons.
5. The Board chair shall enforce these rules and may, subject to appeal to the Board, take actions necessary to maintain order at the Board meeting. Such actions may include, but are not limited to:
  - a. interrupting a person making a statement if the statement is too lengthy, unduly repetitive or otherwise violates these rules; and
  - b. limiting the total amount of time devoted to public statements based on the number of persons wishing to make statements and the length of the Board's agenda.

#### **Public Comment Registration**

- When an individual registers to provide public comment, s/he will indicate on the sign-in sheet the specific agenda item on which s/he wishes to comment or that s/he will be making only general comments.
- Public comment on a specific agenda item will be taken at the time the agenda item is before the Board. General comments will be taken during the Public General Comment segment of the agenda.

STATE BOARD OF EDUCATION RESOLUTION

REGARDING STAFFING

WHEREAS, the State Board of Education ("SBOE") approved a resolution on July 19, 2013, authorizing Dan Elsener to work with Claire Fiddian-Green to create a staffing plan for the SBOE;

NOW, THEREFORE, BE IT RESOLVED THAT, the SBOE appoints the following staff: Anne Davis as SBOE Director, Michelle Gough McKeown as General Counsel for the SBOE, and Claire Fiddian-Green as a Technical Advisor to the SBOE;

BE IT FURTHER RESOLVED THAT, Dan Elsener is directed to create a job description for the Executive Director, General Counsel, and Technical Advisor; and

BE IT FURTHER RESOLVED THAT, the SBOE authorizes the Director to administer the SBOE budget and to spend SBOE funds as necessary to implement SBOE directives, initiatives, and policies.

ADOPTED ON:

