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March 24, 2004

**OFFICIAL OPINION 2004-2**

The Honorable Gregory Porter  
Indiana House of Representatives  
Third Floor State House  
Indianapolis, Indiana 46204

Re: Indiana Education Roundtable Recommendations to the Indiana State Board  
of Education

Dear Representative Porter:

This letter is in response to your request for an opinion regarding the following question:

With respect to the authority of the Indiana Education Roundtable ("Roundtable") in recommending passing scores to the Indiana State Board of Education ("Board") under Indiana Code section 20-1-20.5-10, does the Roundtable have statutory authority to fix the passing scores and is the Board's authority limited to approving or disapproving the Roundtable's recommendation?

**BRIEF ANSWER**

The legislature has devised a specific statutory scheme allowing experts from the Roundtable to evaluate information and then recommend to the Board the passing scores for ISTEP+. The Board maintains the authority to reject the recommendations, but it would not be in the spirit of the legislature's intent or statutory direction to allow the Board to independently formulate the passing scores outside of the method devised by the legislature.

## ANALYSIS

Under Article 8, section 1 of the Indiana Constitution, the legislature is given the authority to provide for a system of public schools in the state. The legislature maintains the exclusive authority to determine how the public school system of the state should be administered and carried out.<sup>1</sup> A board or commission created by the legislature to carry out the administration of the public school system possesses only the authority granted by statute.<sup>2</sup> The State Board of Education has no power except that which has been granted to the Board by statute.<sup>3</sup>

Among the general statutory duties of the State Board of Education, the Board must establish the educational goals of the state by developing standards and objectives for local school corporations, assess the attainment of those goals, and assure compliance with the standards set by the Board.<sup>4</sup> Additionally, the legislature has given the Board the authority to “authorize the development and implementation of the Indiana statewide testing for educational progress program (“ISTEP”)” and determine the date the test is administered.<sup>5</sup> The ISTEP+ program, as it has been referred to since 1995, is the statewide program measuring student achievement relative to national norms and to the academic standards set by the Board. By statute, the state superintendent is charged with the responsibility for overall development, implementation, and monitoring of the ISTEP+ program, while the Department of Education maintains the authority to prepare the detailed design specifications for the ISTEP+ program.<sup>6</sup>

According to statutory guidelines for ISTEP+, the Department of Education develops academic standards on subject matters set out in the statute, such as English, mathematics, and social studies. “Academic standards” refer to the skills and knowledge expected of a student at a particular grade level.<sup>7</sup> The State Superintendent appoints an academic standards committee consisting of teachers with expertise in the relative subject area. The academic standards committee submits recommendations on academic standards to the Education Roundtable for review.<sup>8</sup>

The Education Roundtable was created by statute in 1999 and consists of members appointed by the Governor and the state superintendent.<sup>9</sup> By statute, the Roundtable’s primary responsibility is to provide recommendations related to education to the Governor,

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<sup>1</sup> Cottongim v. Congleton, 199 N.E.2d 96, 100 (Ind. 1964).

<sup>2</sup> State v. Haworth, 122 Ind. 462, 23 N.E. 946 (Ind. 1890).

<sup>3</sup> Silver Burdett & Co. v. Indiana State Bd. of Educ., 72 N.E. 829, 834 (Ind. Ct. App. 1905).

<sup>4</sup> Ind. Code § 20-1-1-7.

<sup>5</sup> Ind. Code § 20-10.1-16-4.

<sup>6</sup> *Id.*

<sup>7</sup> Ind. Code § 20-10.1-16-1.

<sup>8</sup> Ind. Code § 20-10.1-16-6.

<sup>9</sup> Ind. Code § 20-1-20.5-4.

superintendent of public instruction, the legislature and the Board.<sup>10</sup> Specifically, as related to ISTEP+ testing, the Roundtable's statutory duties include the following:

Indiana Code section 20-1-20.5-9:

The roundtable shall make recommendations to the board for improving the academic standards under IC 20-10.1-16.

Indiana Code section 20-1-20.5-10:

The roundtable shall review and recommend to the board for the board's approval the following:

- (1) The academic standards under IC 20-10.1-16 for all grade levels from kindergarten through grade 12.
- (2) The content and format of the ISTEP program, including the following:
  - (A) The graduation examination.
  - (B) The passing scores required at the various grade levels tested under the ISTEP program.

Indiana Code section 20-1-20.5-11:

In making recommendations under section 10 of this chapter, the roundtable shall consider:

- (1) a variety of available national and international assessments and tests;
- (2) the development of an assessment or test unique to Indiana; and
- (3) any combination of assessments or tests described under subdivisions (1) and (2).

When the meaning of a statute is at issue, first and foremost, one should determine the intent of the legislature.<sup>11</sup> The words of the statute are to be given their plain and ordinary meaning.<sup>12</sup> The "goals of the statute and the reasons and policy underlying the statute's enactment" should be considered.<sup>13</sup> One must presume that the legislature is aware of existing statutes in the same area and must construe differing statutes together to produce a harmonious result.<sup>14</sup>

The Roundtable is required to "recommend to the board for the board's approval . . . the passing scores required at the various grade levels tested under the ISTEP program."<sup>15</sup> The legislature's use of the term "recommend" or "recommendation" is not defined in the

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<sup>10</sup> Ind. Code § 20-1-20.5-8.

<sup>11</sup> MDV Inv. v. City of Carmel, 740 N.E.2d 929, 934 (Ind. Ct. App. 2000).

<sup>12</sup> Ind. Code § 1-1-4-1(1); Town of Merrillville v. Merrillville Conservancy Dist., 649 N.E.2d 645, 649 (Ind. Ct. App. 1995).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Ind. Code § 20-1-20.5-10(2)(B).

statute. Given its plain and ordinary meaning, to “recommend” means to advise or endorse as appropriate.<sup>16</sup> The Roundtable acts solely in an advisory capacity and has no legislative authority to make its passing score recommendations effective; that duty is left to the Board. Such limited statutory authority to simply advise or counsel is not uncommon among governmental entities. Many other state agency actions are based on recommendations from advisory boards or committees.<sup>17</sup> At the same time, the Board is limited by statute in its ultimate approval of the Roundtable’s recommendations. “Approval,” also left undefined by the statute, commonly means to accept or to ratify.<sup>18</sup> The Board has been given no additional statutory authority to modify or amend the Roundtable’s recommendations. Elsewhere, statutory language granting the Board the authority to “authorize the development and implementation” of the ISTEP program under Indiana Code section 20-10.1-16-4, is additional confirmation of the Board’s more general endorsement and sanctioning powers.

The Board of Education has historically relied on the expertise of advisory committees to provide technical and professional assistance to the Board and has been granted the statutory authority to rely on such committees under Indiana Code section 20-1-1-1.<sup>19</sup> Presumably, the legislature recognized that the Board’s general supervisory role over the public school system could be assisted significantly by the aid of advisory committees whose members possess special knowledge and expertise.

The Education Roundtable brings leaders from business, industry, labor, education, communities, and the legislature together with the Governor and Superintendent of Public Instruction in order to improve student achievement in the state. Before giving recommendations to the Board regarding ISTEP+, the Education Roundtable must consider national and international assessments.<sup>20</sup> The statute expressly and clearly requires the Roundtable recommend passing scores to the Board. The legislature has devised a detailed statutory scheme allowing experts from the Roundtable to evaluate information and then advise the Board regarding the passing scores for ISTEP+. The Board maintains the authority to reject the recommendations, but it would not be in the spirit of the legislature’s intent or statutory direction to allow the Board to formulate the passing scores outside of the method devised by the legislature.

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<sup>16</sup> Webster’s New Collegiate Dictionary 984 (9th ed. 1988).

<sup>17</sup> See generally Ind. Code § 4-12-5-4 (Indiana Health Care Trust Fund Advisory Board); Ind. Code § 5-20-4-15 (Housing Trust Fund Advisory Committee); Ind. Code § 11-12-2-3 (Community Corrections Advisory Board); Ind. Code § 12-10-16-3 (Prescription Drug Advisory Committee to the Secretary of Family and Social Services); Ind. Code § 15-5-5.5-1 (Indiana Standardbred Advisory Committee to the Indiana Horse Racing Commission);

<sup>18</sup> Webster’s New Collegiate Dictionary 98 (9th ed. 1988).

<sup>19</sup> Ind. Code § 20-1-1-1(d).

<sup>20</sup> Ind. Code § 20-1-20.5-11.

Representative Gregory Porter

March 24, 2004

Page 5

**CONCLUSION**

It is my opinion that the Education Roundtable was created by the legislature in order to provide expertise to the Board of Education in making a final determination of passing ISTEP+ scores. The statute expressly provides the Roundtable should consider a variety of data and then provide the Board with recommended passing scores. The current statutory scheme provides the Board with the authority to reject the recommendations should it disagree with the Roundtable's analysis.

Sincerely,

Stephen Carter  
Attorney General

Gregory F. Zoeller  
Deputy Attorney General

cc: The Honorable Joseph E. Kernan  
Dr. Suellen Reed