

## **DISTRESSED UNIT APPEAL BOARD ADMINISTRATIVE POLICIES AND PROCEDURES**

### **Rule 1. Purpose and Applicability; Administrative Support.**

Sec. 1. The purpose of these Rules is to establish policies and procedures to govern administrative proceedings before the Distressed Unit Appeal Board (DUAB). These policies, procedures, procedural requirements, and evidentiary controls are established in accordance with IC 6-1.1-20.3 and are deemed essential to assure that the administrative appeals before the DUAB are conducted in the most uniform and objective manner possible.

Sec. 2. The Department of Local Government Finance (DLGF) shall provide the DUAB with the staff and assistance that the DUAB reasonably requires. The DLGF's General Counsel shall serve as the primary point of contact for DUAB-related inquiries.

### **Rule 2. Definitions.**

Sec.1. "Petition" defined.

"Petition" means a:

- (a) request for relief filed with the DUAB by the governing body and the superintendent of a school corporation under IC 6-1.1-20.3-8.3; or
- (b) request to have the political subdivision designated as a distressed political subdivision by the fiscal body and executive of a political subdivision (or governing body and superintendent of a school corporation) under IC 6-1.1-20.3-6; or
- (c) request for technical assistance by the executive of a political subdivision, including a school corporation, under IC 6-1.1-20.3-15.

Sec. 2. "Quorum" defined.

"Quorum" means a majority of the voting membership of the DUAB.

***Note: Since the DUAB has five (5) voting members, a quorum is at least three (3) voting members.***

### **Rule 3. Delivery of Petition.**

Sec. 1. A petition to the DUAB must be filed with the chairperson of the DUAB by:

- (a) personal delivery;
- (b) deposit in the first class United States mail;

- (c) registered or certified mail;
- (d) private carrier;
- (e) fax; or
- (f) electronic mail (e-mail) as an attachment.

A copy of the petition shall be sent to the General Counsel of DLGF at the same time the original petition is sent to the chairperson of DUAB.

Sec. 2. (a) The postmark date on a petition, correctly addressed and sent by United States:

- (1) first class mail;
- (2) registered mail; or
- (3) certified mail;

shall constitute prima facie proof of the date of filing.

- (b) The date on which the petition is deposited with a private carrier, as shown by a receipt issued by the carrier, shall constitute prima facie proof of the date of filing if the document is sent to the DUAB by the carrier.
- (c) The date-received stamp affixed to a petition filed by personal delivery shall constitute prima facie proof of the date of filing.
- (d) The date-received affixed to a fax of a petition sent by a school corporation or political subdivision shall constitute prima facie proof of the date of filing.
- (e) The date-received affixed to an email of a petition sent by a school corporation or political subdivision shall constitute prima facie proof of the date of the filing.

#### **Rule 4. Valid Petitions and Scope of Review.**

Sec. 1. Prior to submission of a petition to the DUAB, the petition shall be approved in the form of a resolution by the school board of the school corporation or the fiscal body of the political subdivision.

Sec. 2. (a) Failure to comply with the petition content requirements specified in Rules 5 or 6, as applicable, may be cause for the petition to be returned to the school corporation or political subdivision for correction. The chairperson shall send written notice to the school corporation or political subdivision if correction is required. A petition will not be considered received until all noticed defects have been cured and a revised petition is submitted to the chairperson.

(b) A petition that has not been corrected and resubmitted within fourteen (14) calendar days of the date on which the chairperson sends written notice of the defect shall be deemed denied.

(c) A petition that has been denied may be resubmitted.

Sec. 3. (a) Timely-filed amendments by the school corporation or political subdivision to the original petition are permitted.

(b) A petition may be amended once, without approval of the DUAB, if the amendment is made within ten (10) calendar days after the date of filing of the original petition. Amendments must be filed in the same manner as an original petition.

(c) Additional amendments or amendments sought more than ten (10) calendar days after the date of filing of the original petition may only be filed with the written approval of the chairperson of the DUAB.

**Rule 5. Contents of a School Corporation's Petition Requesting Relief through the State Counter-Cyclical Revenue and Economic Stabilization Fund.**

The contents of the petition shall include the following:

(a) The loan amount being requested;

(b) Specific reasons why a loan is needed;

(c) The plan for how the loan will be used by the school corporation;

(d) A pro forma financial plan by fund, including a description of the repayment plan for the loan including details as to whether the school corporation currently maintains a structural surplus or deficit. The plan should include a plan of how any structural deficit will be eliminated if one exists;

(e) A description of any and all efforts the school corporation has taken to secure temporary cash flow loans from the Indiana Bond Bank or a financial institution;

(f) Structure and maturity of current debt (including voter-approved debt), itemized (for each bond issue) and aggregated;

(g) Statement on future capital financing needs (including the amount and timing of any future bond issues);

(h) Collective bargaining agreements for the past five (5) years, including descriptions of any salary increases (include step increases);

- (i) Healthcare plans and contribution rates for the past five (5) years (for teachers, administrators, and school board members), including deductibles, co-pays, co-insurance, and out-of-pocket maximums;
- (j) Total revenue from all sources for each of the past five (5) years;
- (k) Total expenditures for each of the past five (5) years;
- (l) Detailed expenditures for the most recent completed year (including a breakdown of any travel expenses);
- (m) A list of all contracts valued at \$50,000 or more and the specific value of each (including all employment contracts);
- (n) Enrollment for each of the past five (5) years and projected enrollment for the next five (5) years;
- (o) Number of full-time equivalent (FTE) employees (broken down by teachers, administrators, etc.) for each of the past five (5) years;
- (p) Total certified net assessed values for each of the past five (5) years;
- (q) Detailed list of all real property owned by the school corporation;
- (r) Detailed list of all new construction over the last ten (10) years (include a description of the project, total cost, and relevant year(s))
- (s) Latest calculation of the proportion of dollars spent on student instruction;
- (t) Balances of all funds on the final day of the month as of the two (2) most recent semi-annual settlements. For example, a petition filed on June 5, 2016 should include the balances of all funds on December 31, 2015 and June 30, 2015, whereas a petition filed on July 5, 2016 should include the balances of all funds on June 30, 2016 and December 31, 2015;
- (u) Amount of EduJobs funds actually drawn (with dates) and remaining amounts to be drawn, if any; and
- (v) Any other information the school corporation considers pertinent.

**Rule 6. Contents of a Petition Requesting Designation as a Distressed Political Subdivision;  
Contents of a Petition Requesting Technical Assistance.**

Sec. 1. The contents of a petition requesting designation of the petitioner as distressed shall include the following:

- (a) Identification of the condition or conditions under IC 6-1.1-20.3-6.5 that apply to the petitioner;
- (b) A pro forma financial plan by fund, including details as to whether the petitioner is currently running a structural surplus or deficit (include a plan of how any structural deficit will be eliminated if one exists);
- (c) A description of any and all efforts the petitioner has taken to secure temporary cash flow loans from the Indiana Bond Bank or a financial institution;
- (d) Structure and maturity of current debt (including voter-approved debt), itemized (for each bond issue) and aggregated;
- (e) Statement on future capital financing needs (including the amount and timing of any future bond issue);
- (f) Collective bargaining agreements for the past five (5) years, including descriptions of any salary increases (include step increases);
- (g) Healthcare plans and contribution rates for the past five (5) years, including deductibles, co-pays, co-insurance, and out-of-pocket maximums;
- (h) Total revenue from all sources for each of the past five (5) years;
- (i) Total expenditures for each of the past five (5) years;
- (j) Detailed expenditures for the most recent completed year (including a breakdown of any travel expenses);
- (k) A list of all contracts valued at more than \$50,000 and the value of each (including all employment contracts);
- (l) Number of full-time equivalent (FTE) employees (broken down by job type) for each of the past five (5) years;
- (m) Total certified net assessed values for each of the past five (5) years;
- (n) Detailed list of all real property owned by the petitioner;
- (o) Detailed list of all new construction over the last ten (10) years (include a description of the project, total cost, and relevant year(s))
- (p) Balances of all funds on the final day of the month as of the two (2) most recent semi-annual settlements. For example, a petition filed on June 5, 2016 should include the balances of all funds on December 31, 2015 and June 30, 2015, whereas a petition filed

on July 5, 2016 should include the balances of all funds on June 30, 2016, and December 31, 2015;

(q) Identification of a minimum of three candidates who would be qualified to serve as the Emergency Manager of the petitioning unit under IC 6-1.1-20.3-7.5; and

(r) Any other information the petitioner considers pertinent.

Sec. 2. The contents of a petition requesting technical assistance pursuant to IC 6-1.1-20.3-15 shall include the following:

(a) A detailed explanation (with reference to the fiscal health indicators developed under IC 5-14-3.7-16 or IC 5-14-3.8-8) of why the petitioner believes it is at risk of becoming a distressed political subdivision;

(b) Detailed information concerning steps the petitioner has taken to remediate its financial difficulties;

(c) Identification of possible solutions to the petitioner's financial difficulties; and

(d) Any other information the petitioner considers pertinent.

### **Rule 7: Hearings**

Sec. 1. Hearings shall be conducted by a quorum of the DUAB members. The DUAB may only take action upon the vote of a majority of the DUAB members. A majority of DUAB members present, if less than a quorum of all DUAB members, is not sufficient for the DUAB to act.

Sec. 2. The DUAB may request additional information from the petitioner at a hearing.

### **Rule 8: Initial Hearing.**

Sec. 1. The DUAB shall conduct an initial hearing within a reasonable time from the date of receipt of a petition. The chairperson of the DUAB shall set the initial hearing date and time for a petition.

Sec. 2. The purpose of the initial hearing is for the DUAB to review the petition and ask questions of the representatives of the school corporation or political subdivision about the unit's financial condition and operating practices.

Sec. 3. The DUAB may take final action on a petition at the initial hearing.

Sec. 4. The school corporation or political subdivision shall provide the following to the DUAB:

(a) Copies of documentary evidence and summaries of statements of testimonial evidence at least fourteen (14) calendar days before the initial hearing;

(b) A list of witnesses and exhibits, if any, to be introduced at the hearing at least fourteen (14) calendar days before the initial hearing; and

(c) Any other documents, testimony, or exhibits requested by the DUAB.

Sec. 5. Copies of all materials provided to the DUAB at the initial hearing shall become part of the administrative record.

### **Rule 9. Other Hearings.**

Sec. 1. The DUAB may conduct additional hearings as necessary in the discretion of the chairperson of the DUAB.

### **Rule 10. Final Hearing.**

Sec. 1. Within a reasonable time after the initial hearing, the chairperson of the DUAB shall set the date for a final hearing.

Sec. 2. The DUAB shall take action on the school corporation's or political subdivision's petition at the final hearing. In the case of a school corporation or political subdivision that requests technical assistance pursuant to IC 6-1.1-20.3-15, the DUAB shall use the final hearing to deliver a plan for the provision of assistance to the petitioning unit.

Sec. 3. The DUAB shall hear and consider any evidence, exhibits, briefs, and testimony submitted by the petitioner prior to taking final action on a petition.

Sec. 4. The DUAB shall determine the relevance of the evidence, exhibits, briefs, testimony, documents, and any other factors.

### **Rule 11. Final Determination.**

Sec. 1. Not more than seven (7) calendar days after taking final action on a petition, the DUAB shall issue a written final determination. The final determination shall reflect the final vote of the DUAB and any recommendations made by the DUAB. In the case of a school corporation or political subdivision that requests technical assistance pursuant to IC 6-1.1-20.3-15, the final determination shall memorialize the assistance provided by the DUAB to the petitioning unit.

Sec. 2. The chairperson of the DUAB (or his or her designee) shall sign the final determination on behalf of the DUAB.

Sec. 3. A copy of the final determination shall be provided by the DUAB to the governing body of the petitioning unit, the county auditor, the State Treasurer, the State Auditor, the DLGF, and the State Board of Accounts. In the case where a school corporation has petitioned for relief through the State Counter-Cyclical Revenue and Economic Stabilization Fund, the DUAB shall also forward a copy of its recommendation to the State Board of Finance.

**Rule 12. Waiver of Deadlines.**

The chairperson of the DUAB may waive any deadlines.

**Rule 13. Electronic Meetings Policy.**

Sec. 1. It is the policy of the DUAB that its official action be conducted openly and in compliance with IC 5-14-1.5, commonly known as the Open Door Law. The DUAB affirms that physical attendance at a DUAB hearing is always preferable to participation by electronic means of communication, but recognizes that the physical attendance of a member at a DUAB hearing may not always be possible. The purpose of this Rule is to aid in the conduct of the DUAB's business.

Sec. 2. This Rule applies to a hearing of the DUAB called for the purpose of conducting the business of the DUAB, as authorized by IC 6-1.1-20.3, and in which any DUAB member participates by a permitted electronic means of communication.

Sec. 3. A DUAB hearing may not be convened unless at least two (2) members of the DUAB are physically present at the place where the meeting is to be conducted as indicated in the Notice of Public Hearing.

Sec. 4. A member of the DUAB not physically present at a meeting may participate in the meeting by a permitted electronic means of communication so long as that electronic means of communication permits:

- (a) the DUAB member;
- (b) all other DUAB members participating in the hearing; and
- (c) all members of the public physically present at the place where the hearing is conducted as indicated in the Notice of Public Hearing;

to simultaneously communicate with each other during the hearing.

Sec. 5. A member of the DUAB who participates in a meeting by a permitted electronic means of communication:

- (a) shall be considered present at the meeting; and
- (b) may vote at the meeting.

Sec. 6. A member of the DUAB who participates in a meeting by a permitted electronic means of communication shall be counted for purposes of establishing a quorum as that term is defined by Rule 2, Section 2.

Sec. 7. All votes of the DUAB during a hearing where any member participates through a permitted electronic means of communication shall be taken by a roll call vote in which the name of each DUAB member will be called individually and each member will be asked to cast his or her vote aloud.

Sec. 8. Indiana Code 5-14-1.5-3.6(d) requires each member of the DUAB to physically attend at least one (1) hearing of the DUAB annually. If the DUAB does not conduct a hearing in a year, each member of the DUAB must physically attend the next-scheduled hearing.

Sec. 9. A DUAB member who intends to participate in a hearing of the DUAB by a permitted electronic means of communication must provide written notice of such intent to the DUAB chairperson at least forty-eight (48) hours prior to the time the DUAB hearing is scheduled to begin, exclusive of weekends and holidays, to allow for adequate arrangements to be made. Exceptions to the forty-eight (48) hour notice requirement may be granted at the discretion of the chairperson.

Sec. 10. This Rule does not affect the right of any DUAB member, pursuant to IC 6-1.1-20.3-4, to appoint a designee or have that designee participate in a DUAB hearing and vote in that DUAB member's stead.