

SEPTEMBER  
2018



# e-Dition

## 2019 Legislative Priorities Adopted by the ISBA Delegate Assembly

by Terry E. Spradlin, ISBA Executive Director ([tspradlin@isba-ind.org](mailto:tspradlin@isba-ind.org))

The Indiana School Boards Association (ISBA) is dedicated to supporting and improving the quality of education provided to Hoosier children in every classroom throughout the state. ISBA recognizes the leadership role of the General Assembly in enacting legislation that impacts K-12 public education and is committed to representing the interests of its school board members when addressing legislative initiatives. There will be much at stake in the 2019 budget session as there will be a new two-year state budget adopted and more than 100 bills introduced affecting public schools and students. We need to be ready to be a strong champion for K-12 public education!

Simply put, the ISBA supports programs and policies to provide exceptional learning opportunities for Hoosier children. Given that more than 94 percent of all K-12 students attend a public school, the parents of more than 1 million students have spoken and have made public schools the "schools of choice." We believe that through local control, we have created a rich and diverse public education system that provides a multitude of programs and curricular offerings to students. Through these opportunities we are preparing a new generation of students to be college and career ready that will in turn help drive the economic growth and prosperity of the state.

### ISBA Membership Input

It is with this philosophy and mindset that ISBA listened to its membership during discussions at the Spring Regional Meetings about legislative proposals and priorities. The initial feedback gathered on key issues was subsequently presented to the ISBA Legislative Committee that met on July 14th, and continued working on our Foundational Statements and the 2019 Legislative Priorities into the month of August. Once the committee adopted both, these core documents were presented to the ISBA Delegate Assembly on September 10, 2018. The Foundational Statements and 2019 Legislative Priorities were adopted by separate motions and unanimous votes (no dissenting vote voiced) and are available for viewing at: <https://www.isba-ind.org/legislative-priorities-and-foundational-statements.html>

### 2019 Legislative Priorities

The following is a list of ISBA's legislative priorities for 2019. Do know that we will be talking about the full legislative agenda in more detail during the Fall Regional Meetings that are October 29 through November 15. I also will share at those meetings details about our new grassroots advocacy program, the ISBA Legislative Action Network.

### Top Priority: Increased Tuition Support Funding to Support K-12 Students

The ISBA supports the adequate funding of public schools that is annually adjusted to keep pace with or ahead of inflation. According to a 2018 report from the National Center for Education Statistics, Indiana ranked 36th in the nation (in 2015) for instructional spending per pupil at \$9,529, compared to the U.S. average of \$11,454.

State tuition support appropriations have not kept pace with inflation since 2010 when using the U.S. Bureau of Labor Statistics CPI Inflation Calculator. Had tuition support funding kept pace with inflation over this period, \$270 million more would have been available to school corporations for per pupil dollars in FY 2018, and more than \$573 million in total for the 2017-2019 biennium (Downs, 2018). An appropriation amount above the projected inflationary rate (currently 2.9 percent) in the next biennium will help school corporations keep up with the cost of doing business and allow for reasonable salary increases that are needed to maintain a high-quality teacher workforce in Hoosier classrooms.

(continued on page 4)

## Are Your Executive Sessions Lawful?

By Dr. Michael T. Adamson, ISBA Director of Board Services

([madamson@isba-ind.org](mailto:madamson@isba-ind.org))

Executive sessions are normal occurrences for all Indiana School Boards and the ability to meet in private without an audience is a statutory privilege. However, executive sessions are only lawful for a limited number of reasons and Boards who meet in private for other than the specific statutory reasons can face reprimands, be assessed fines, or have former decisions rescinded until they are properly decided in a public meeting. That is pretty bad, but worse than the legal consequence is the damage to a Board's integrity in the eyes of their constituents.

Keep in mind . . . the reasons for meeting in an executive session are specific, not general. There is little latitude for interpretation. The most often abused executive session criterion is meeting to discuss personnel when, in fact, not all discussions about personnel meet the criteria for an executive session. The discussions that are permissible are those about

employee performance evaluations or those to receive information concerning alleged misconduct and to discuss, before determining, employee status. The second most often abused reason is meeting with an outside consultant. Meeting with an outside consultant, like an ISBA staff member, private consultant, and so on, in an executive session is permissible; however, it is only permissible when that person is training the Board on its roles as public officials.

Executive sessions must be advertised 48 hours before meeting, excluding weekends and holidays. Plus, the specific statutory reason must be stated in the advertisement.

Consequently, the question arises, "Can the Board entertain a discussion about another item that legitimately meets the executive session criteria if it is meeting on another executive session topic?" So, essentially, the Board has advertised and is meeting on a specific executive session topic, but another topic arises that qualifies for executive session privilege, but it has not been advertised. In short, the answer is "NO!" The Board should

not entertain the receipt of any information or engage in any discussion for reasons other than those that have been properly advertised. Some Boards have attempted to "beat" the system by advertising every reason that the Board could meet, just in case something comes up! Needless to say, that approach is not only dishonest; it is an invitation for someone look into your business.

You must also take minutes of your executive session, but those minutes only reflect the time the meeting was convened, for what purpose, who was in attendance, and when it was adjourned. No action can be taken and no decisions rendered or rehearsed. (The only exception to this is when the Board is meeting as a result of a vacancy on the Board. In this case, the Board may develop a list of prospective appointees, consider applications, and make an initial exclusion of prospective appointees.)

More questions? Give us a call! We are always here to assist you with information that will enable you to make the best decisions that ensure your compliance under the Open Door Law.

---

## It's Time to Bargain!

By Lisa F. Tanselle, ISBA General Counsel ([ltanselle@isba-ind.org](mailto:ltanselle@isba-ind.org))

September 15 marked the beginning of the formal bargaining window. For those school boards with collective bargaining agreements that have expired or will expire this year, it is time to bargain a new master contract with the teachers association. The bargained contract can only include provisions related to salary, wages, and salary and wage related fringe benefits, such as insurance benefits and paid time off. It may also include a grievance procedure. Lastly, the collective bargaining agreement cannot put the employer in a position of deficit financing.

Indiana law limits the bargaining period to 60 days. Thus, all bargaining must be completed by November 15. The school board's role in the bargaining process varies among our school corporations. Some boards include a member or two on the bargaining team. Other boards allow administration and/or a professional negotiator to represent them at the bargaining table. Indiana law also permits a school board

to meet in an executive session with the superintendent, administrators, or the bargaining agent to discuss "strategy with respect to collective bargaining." This gives the school board the opportunity to converse with its bargaining team about proposals that have been submitted and steps that can be taken in order to reach agreement with the teachers association. But, whatever the level of involvement of the board during the bargaining process, any agreement negotiated by the teams must be approved, or ratified, by the governing body. The teachers association must also ratify the agreement in order for it to be a binding contract.

If a ratified contract is not submitted to the Indiana Education Employment Relations Board (IEERB) by November 15, IEERB will declare the parties to be at impasse. Impasse means that IEERB will appoint a mediator who will attempt to help the parties reach agreement on the terms of the collective

bargaining agreement.

The mediation process can last up to 30 days and allows for the mediator to meet with the parties for as many as three sessions.

If mediation is successful, the parties will submit a ratified contract to IEERB. If mediation is not successful, then the parties will exchange Last Best Offers (LBOs). The LBO is a critical document as it identifies the terms each party wants in the collective bargaining agreement and requires each party to prove that the proposed agreement will not cause deficit financing. LBOs submitted by the school employer and the teachers association will be presented to a factfinder appointed by IEERB. The factfinder will conduct an investigation, which may include a public hearing, and review the LBOs. The factfinder must select one of the party's LBO, considering four criteria: the financial impact of the LBO and whether it will cause the school employer to engage in deficit financing; the public interest; past agreements and contracts between the parties; and comparisons of wages and hours of employees of other public agencies. The LBO selected by the factfinder becomes the final and binding collective bargaining agreement for the parties.

Mark Your Calendars!!

# 70TH ANNUAL ISBA/IAPSS FALL CONFERENCE

September 30-October 1, 2019  
Indiana Convention Center  
Indianapolis, IN

## ISBA/IAPSS Fall Conference

Check out page 4 of this e-Dition for a picture recap of the 69<sup>th</sup> Annual Fall Conference, and make sure to save the date for 2019!

### FAST FACTS ON INDIANA K-12 EDUCATION

Indiana has been a leading state in the implementation of school choice policies. Families have many options in which school their child attends through transfers (whether traditional public, charter, or non-public through choice scholarship vouchers). According to data released earlier this year by the Indiana Department of Education, even with the diversity of choices, a plurality of parents continue to choose other traditional public schools when they transfer their students.

There were 135,340 K-12 transfer students reported in SY 17-18

○ 55,728, or **41%**, transfer students chose traditional public schools

- 44,112, or **33%**, chose public charter schools
- 35,500, or **26%**, chose non-public schools

### ISBA IN THE NEWS

[PREP Football: Racist Overtones at Lowell-Morton Game?](#) (Julie Slavens is quoted)

#### STAFF

Terry Spradlin—Executive Director  
Lisa Tanselle, Esq.—General Counsel  
Dr. Michael Adamson—Director of Board Services  
Julie Slavens, Esq.—Staff Attorney  
Brooke Orner—Coordinator of Conferences  
Rae Anne Motsinger—Comptroller/Office Manager  
Kayla Baldwin—Administrative Assistant



#### FOR MORE INFORMATION

Visit our website :

WWW.ISBA-IND.ORG  
317.639.0330

## Board Vacancy or Holdover of Office?

by Julie M. Slavens, ISBA Staff Attorney ([jslavens@isba-ind.org](mailto:jslavens@isba-ind.org))

The period of time to file to run for school board ended at noon on August 24, 2018. Sometimes school boards have seats that are up for election for which no one filed to run, including the incumbent. This is often considered a board vacancy due to the language in IC 20-23-4-30(c) and IC 20-26-4-4(c) indicating a vacancy occurs when no petitions for candidates are filed for the school board seat. But this is not a board vacancy under the Indiana Constitution, Article 15, Section 3, providing the incumbent stays in office until the successor is "elected and qualified." This provision is commonly referred to as the "holdover" provision. The state constitution provision reads as follows:

Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

The statutes cited above are in conflict with the constitutional provision because if no one filed for the seat, no successor for the board seat can be elected and qualified for it.

Which provision takes precedent – the constitutional holdover provision or the state law?

The constitutional holdover provision prevails. Under Indiana law, the state constitution is the superior law; if a provision of the state constitution is in conflict with a state statute, the constitutional provision prevails. (See, IC 1-1-2-1, which states the hierarchy of law governing Indiana is first, the Constitution of the United States and of Indiana and second, all statutes of the general assembly of the state in force, and not inconsistent with such constitutions.) Therefore, in the situation of no one filing a candidacy petition for a school board seat up for election, no board vacancy exists; but the incumbent holds the seat until a person is elected and qualified. (Indiana courts have also held the purpose of the constitutional holdover provision is to avoid vacancies in offices.)

What are the options for the incumbent board member?

1. The incumbent may stay on the school board since the next election for the seat is in four years, and may complete the four-year term.
2. The incumbent may resign from the school board by following the legal process of filing a written resignation with the circuit court clerk thereby creating a vacancy for the remainder of the school board to fill. The incumbent may resign at any time after the beginning of the holdover term; in other words, the incumbent may continue on the school board for any part or all of the term. It is recommended the incumbent not resign until after the beginning of the term, so the resignation clearly creates a vacancy and the holdover provision does not come into play when the school board fills the vacancy created by the resignation of the incumbent occurring between the petition filing deadline and the end of the incumbent's term. The incumbent who holds over the school board seat is not required to take the oath of office since holding over under the constitutional holdover provision is part of their original term.

(continued from page 1)

**Other ISBA Legislative Priorities:**

- ✓ Enhanced Teacher Recruitment and Retention Programs
- ✓ Expand State-supported Prekindergarten Programs in Indiana
- ✓ Change Kindergarten ADM Cut-off Date to September 1
- ✓ Expand Criteria of Safe Havens Grant and Secured Schools Grant
- ✓ School Board Vote on Local Redevelopment Commissions
- ✓ Tax Credits for Public Schools and Public School Foundations
- ✓ Assistance for Financially Distressed Schools
- ✓ Capital Referendum (Controlled Project) Ballot Language
- ✓ Tax Deduction for School Textbooks/Supplies

Please take time to acquaint yourself with the full details of the ISBA Foundational Statements and 2019 Legislative Priorities. Through the new ISBA Legislative Action Network to be announced soon, we intend to take ISBA advocacy efforts to the next level.

## 2018 ISBA/IAPSS Fall Conference Photo Recap



We had a wonderful 69<sup>th</sup> Annual Fall Conference this year! We had an efficient Delegate Assembly first thing Monday morning. We followed that up with our Monday General Session where we awarded Dr. Debra Howe the Lorin A. Burt Outstanding Educator Award, Bill Wilson the Outstanding Boardmanship award, and announced that Dr. Jeff Butts (MSD of Wayne Twp.) is the IAPSS 2018 Superintendent of the Year. We followed up our awards with a spectacular presentation on school safety by Michael Dorn of Safe Havens International. We had clinic sessions geared to school corporations of all sizes, along with time in the exhibit hall for valuable discussion. We opened on Tuesday with a General Session presentation from Dr. Jennifer McCormick, who gave a wonderful presentation about what the IDOE is working on currently. Don't miss out on this opportunity for next year, when we celebrate 70 years of ISBA/IAPSS Fall Conferences!