

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)

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#### FOR MORE INFORMATION

Visit our website :

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## 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.