

Playing Your Part

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

(madamson@isba-ind.org)

School is underway for another year and everyone across the state is immersed in the business of education. The public education process is extremely complex and this complexity emphasizes the importance of everyone operating within his or her lane. Staying within your personal role and responsibility boundaries has never been more important.

It is easy to understand why this is important and, since football season is upon us, I'll use an example that everyone can appreciate. The game underway is close, the game is critical, and the fans are both ready to praise or jeer depending on the result of the execution of the next play. Success is dependent upon each player performing their part during this crucial pass play. It should not be a problem; they have received the necessary instruction and repeatedly practiced to realize maximum success. The team lines up on the scrimmage line, but when the play is put into motion, one of the

receivers suddenly and without notice determines to run a different play pattern altogether. When the quarterback looks downfield, the player is not where he is supposed to be. The receiver's disregard for the play creates confusion among the other players, the play is broken, the opportunity lost, and the game result is compromised; all because one player decided to ignore the training, ignore the impact to the team, and strike out on his own.

Of course this example has multiple applications. You can equate the same thing using an orchestra, dance team, synchronized swimming, construction crew and on and on. The effectiveness of team efforts are dependent upon team members operating within their roles and responsibilities. Sometimes those roles are identical and other times they are complementary. However, when and if solo efforts are warranted, every member of the team knows the role the soloist is to play and how to support them in that position if necessary. No one upstages or departs from the script without team approval and support.

The same is true for the Superintendent and Board team. Their roles are complementary; superintendents are not board members and board members are not superintendents. However, they are dependent upon each other to ensure effective governance of the school district. Regardless of backgrounds, experiences, skill sets or other criteria, board members comprise a single decision-making body in this governance equation; it is one superintendent plus one board. Additionally, the emphasis on this complementary team relationship is necessary. School boards operate from a position of leadership, while superintendents, in the superintendent and board team relationship, from a position of management.

Essentially, it is important that board members not usurp their superintendent or building level administrators. Rather, the board should expect and empower their superintendent and administrators to perform their duties according to policy and procedure, follow line-of-authority, and work within the parameters of their role within the superintendent-board team. The team who consistently executes plays correctly always improves their opportunities for success.

Transgender Case Law Up-Date

by Lisa F. Tanselle, ISBA General Counsel (ltanselle@isba-ind.org)

Ever since the 2016 decision by the Fourth Circuit Court of Appeals in *G.G. v. Gloucester County School Board*, giving deference to the U.S. Department of Education's interpretation of Title IX as applied to transgender students, litigation on the rights of transgender students to use specific restrooms and locker rooms in public schools has increased. According to the National School Boards Association, there have been 30 cases filed on these issues. Two such cases now impact Indiana public school corporations.

Last year, the Seventh Circuit Court of Appeals, in *Whitaker v. Kenosha Unified School District*, upheld a preliminary injunction allowing a transgender student the right to use the bathroom consistent with his gender identity, as opposed to using the bathroom consistent with the student's biological sex. In the opinion of the appellate court, the school district had violated both Title IX and the Equal Protection Clause when it forced the student to use either the bathroom of the student's biological sex or a gender-neutral, single user bathroom. The

school district filed a petition of certiorari with the U.S. Supreme Court to challenge the decision, but subsequently withdrew the petition after agreeing to allow the student, now an alumni, to have access to the boys' restroom.

Shortly after the *Whitaker* decision, a transgender student enrolled in the Evansville-Vanderburgh School Corporation sought to use the male bathrooms in the high school instead of the female bathrooms. While his assigned gender at birth was female, the student recognized during his middle school years that he was transgender. He presented himself outwardly as a male and asked his teachers to address him by his chosen masculine name and to use the masculine pronoun when referring to him. When in high school, he was diagnosed with gender dysphoria and began undergoing hormone therapy. However, he did not seek permission to use the boys' restroom until the first semester of his junior year. When he did ask, he was told that he had to use the female restroom since that was the gender listed on his birth certificate. The student did not inform

school personnel of his gender dysphoria diagnosis or that he was undergoing hormone therapy.

The student filed suit in federal district court, asserting a violation of Title IX and the Equal Protection Clause. He sought a preliminary injunction against the school corporation. The student cited the *Whitaker* decision in support of his right to use the boys' restroom. The school corporation argued that the facts of this case were distinguishable from *Whitaker*, but the court rejected that assertion and found the student was likely to succeed on the merits of his claims. Thus, the district court ordered the Evansville-Vanderburgh School Corporation to permit the student to use the boys' bathroom.

The school corporation has indicated an intent to appeal this decision to the Seventh Circuit. In the meantime, all school corporations need to understand that any policy that forces a transgender student to use restrooms based on biological sex violates Title IX and may subject the school corporation to litigation.