

RESIDENCY REQUIREMENTS

for School Board Members:

A MERE TECHNICALITY?



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Indiana law requires each school corporation to establish a plan for the election or appointment of members to the school board. This plan is often referred to as the organization or reorganization plan for the school corporation and contains such information as the number of the members of the governing body, the qualifications of the members, and the election or appointment term for the members.¹ Indiana law also limits the specific options available for the election or appointment of school board members.²

One of the more common options for the selection of school board members includes establishing residency requirements for individual members of the board in their organization plans. These residency requirements generally require some board members to reside in a particular district or township in



order to be eligible to serve on the school board, while allowing other members to reside anywhere within the boundaries of the school corporation. Other school boards have chosen to allow all members to be elected on an at-large basis, meaning there is no requirement to reside in a particular district or township.

The Metropolitan School District of Washington Township is one of our school corporations that has chosen to require three board members to reside in specific districts, while allowing two other members to reside anywhere within the township. Their plan further states that no more than two persons from the same residence district may be elected to the school board. At the

general election held in the fall of 2018, one of the residence district seats was slated for election. The incumbent school board member filed for re-election, and another resident also filed for the board seat. The “challenger” filed a petition for nomination with election officials that correctly identified her current address and indicated she was running for the District 2 seat. Having received more votes than the incumbent, the challenger was declared the winner. However, the day after the election, the incumbent was informed that the successful candidate did not reside in District 2, and in fact, resided in District 1. Nine days after the election, the incumbent filed a petition to contest the election on the grounds that the successful candidate was not eligible for the board seat since she did not meet the residency requirement.

The trial court held a hearing on the petition on December 11, 2018. Shortly thereafter, the judge issued a ruling in favor of the successful candidate. Some factors that were relevant to the judge were that the successful candidate did not misrepresent her address and was unaware of the fact that she did not reside in District 2. Thus, in the opinion of the judge there was no fraud or misrepresentation on the part of the successful candidate. Also relevant to the judge was the fact the incumbent board member had spoken with the challenger on several occasions, but did not investigate his opponent’s eligibility to run for the seat before the election even though the filing documents were public records. In reviewing applicable cases, the judge noted that courts liberally construe the statutes governing post-election contests so that “the will of the people in the choice of public officers may not be defeated by any merely formal or technical objections” and that the Indiana law strongly disfavors post-hoc disenfranchisement of voters. Based on this caselaw, the judge believed the incumbent had the opportunity and the responsibility to investigate the eligibility of the other candidate and challenge her eligibility before the election as opposed to after the election. Lastly, while the judge acknowledged that requiring school board members to reside in different districts served to promote “geographic diversity,” the judge concluded that, in this case, because all voters within the boundaries of the school corporation were able to vote on the members from the residents’ districts, the resident requirement was a mere formal or technical issue when weighed against the disenfranchisement of voters. Based on the court’s decision, the successful candidate was sworn into office and began serving as a school board member January 1, 2019.

The defeated incumbent school board member however filed

an appeal with the Court of Appeals, claiming that the successful candidate did not reside in District 2 and therefore was statutorily ineligible for the school board seat. He further argued that the trial court erred in concluding that he could not challenge the successful candidate's eligibility after the election. The appellate court noted the relevant sections of Indiana law that specifically allow for post-election challenges to the election of a school board member.³ In particular, the court noted one of the statutory reasons available for contesting an election was a candidate's eligibility. The appellate court further described the process for filing a challenge and the statutory language directing a trial court to declare as elected the qualified candidate who received the highest number of votes in cases where the court determines a candidate is in eligible. Based on these statutes, the Court of Appeals concluded Indiana Code clearly permits a post-election contest to the eligibility of a candidate who won the office and therefore the incumbent board member was entitled to raise the residence issue post-election.

The appellate court then reviewed the school corporation's plan, which required the successful candidate to be a resident of District 2. Since the challenger was not a resident of District 2,

and no one disputed that fact, the court concluded she was clearly ineligible for the seat on the school board.

In response to the trial court's conclusion that the residency requirement was a mere formal or technical issue, and that unseating the successful candidate would improperly disenfranchise the electorate who voted for her, the appellate court noted it found no Indiana case that held a candidate's residency, as it pertains to his or her eligibility for office, was a mere technicality. It distinguished two Indiana cases cited by the trial court, in particular, *White v. Indiana Democratic Party ex rel. Parker*.⁴

In the *White* case, a challenge was made to White's election based on the fact that he did not meet the residency requirement for the elected office. However, when the election was held, White was a proper resident. The Indiana Supreme Court noted the particular statute that allowed for a challenge to the election and concluded the claim of eligibility had to be analyzed at the time the challenge was brought. Since White was a resident at that time, the Court upheld his election. The court of appeals in this case thus opined that it did not read *White* "as prohibiting a post-election challenge to the continued eligibility of a candidate simply because the ineligibility could have been discovered prior to the election."

Not finding any relevant Indiana case, the court relied on a case written by the Supreme Court of Kansas that concluded "given the importance of geographical representation on school boards, ... disqualification by nonresidency, continuing and not corrected at any stage by the candidate, is not a technical irregularity."⁵ The Indiana Court of Appeals thus concluded residency was a fundamental eligibility requirement to hold the school board seat.

Lastly, the appellate court acknowledged a strong disinclination to overturn the results of an election after the fact, but ultimately concluded that the successful candidate remained statutorily ineligible for the school board seat she currently holds. In the opinion of the court, "to hold that [the defeated incumbent school board member] cannot now challenge [the current eligibility of the successful candidate] would be to effectively read the post-election challenge statutes out of the Indiana Code."

Note: The successful candidate has filed a petition to transfer with the Indiana Supreme Court, but we do not yet know whether the Court will hear the case. 🗳️

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REFERENCES

- 1 See IC 20-23-8-7
- 2 See IC 20-23-4-27 and IC 20-23-4-28
- 3 See IC 3-12-8
- 4 963 N.E.2d 481 (Ind. 2012)
- 5 See *In re Massey*, 605 P.2d 147, 150 (Kan. 1980)