



# LAWS THAT BOARD MEMBERS SHOULD KNOW

By Lisa F. Tanselle, Esq., General Counsel



**T**here are many laws that impact a school board and how the board carries out its responsibilities. While a school board member is not expected to know all the laws (that is the responsibility of the attorney hired by the board), it is important for board members to understand some basic legal principles so that they correctly and legally fulfill their responsibilities. A few of the laws that all board members should know are summarized below.

## BOARD ORGANIZATION REQUIREMENTS

Indiana law requires school boards to “organize” annually by electing a president, vice-president, and secretary. The law requires this meeting to take place within the first 15 days of the beginning of the board members’ terms. Since most board members start their term of office on January 1, boards will have to fulfill this obligation no later than January 16, 2023. (Since January 16, 2023, is a holiday, this

deadline can be extended to January 17, 2023.)<sup>1</sup>

There is little guidance in state law regarding the roles of these officers. However, Indiana law does state that the president (and the superintendent) has the authority to call a special meeting.<sup>2</sup> Indiana law also states that the board president and secretary are authorized to sign contracts after they have been approved by a majority of the board.<sup>3</sup> If neither the board president nor board secretary are available to sign the contracts, the vice-president of the board may sign the contracts.

## BOARD COMPENSATION

Indiana law allows a board to pay itself up to \$2000/year for board services. The board is required to pass a resolution stating the amount of compensation the board members may receive. A board may also authorize the payment of a per diem for attendance at board meetings. The maximum per diem amount is established by the Board of School Trustees of the Indianapolis Public Schools.<sup>5</sup> Local school boards may then determine a rate that does not exceed that maximum rate. The current maximum per diem amount for regular meetings is \$112 and \$62 for special meetings.

## BOARD MEETINGS

In Title 20 of the Indiana Code, board meetings are defined as regular meetings or special meetings. Regular meetings are established by board resolution and are those monthly or bi-monthly meetings held each month for the conduct of board business.<sup>5</sup> All other meetings are considered special meetings.

Title 20 requires all board meetings to be held within the boundaries of the school corporation (with two or three exceptions). One of the exceptions allows a school board to hold up to two training sessions per year outside the boundaries of the school corporation.<sup>6</sup>

These provisions also require a quorum of the board to be present in order to conduct a meeting. A quorum is defined as a majority of the members of the school board. The law further states that action may be taken when approved by a majority of the members present unless a specific statute requires a greater number.

There are two instances wherein the law requires a greater vote: (1) when approving contracts (the law requires a majority of the entire board to approve of the contract)<sup>7</sup> and (2) when filling a vacancy on the school board (the law requires a majority of the remaining members of the board to approve of the person appointed to fill the vacancy).<sup>8</sup>

## SCHOOL BOARD MEMBERS SHOULD UNDERSTAND SOME BASIC LEGAL PRINCIPLES, INCLUDING:

- Board Organization Requirements
- Board Compensation
- Board Meetings
- Hiring and Firing Authority
- The Superintendent's Contract
- Staff Performance Evaluation Requirements
- Collective Bargaining
- Adopting a Budget

The Open Door Law applies to meetings of the governing bodies of public agencies, including school boards. The Open Door Law requires meetings of the governing bodies to be open to the public unless the law allows the board to meet behind closed doors, or in executive sessions.<sup>9</sup> The authority of the board to meet in executive session is very limited, and therefore board members should understand that the vast majority of their meetings will be meetings that are open to the public.

The Open Door Law also requires the public agency to give the public and news media organizations notice of its meetings. According to the Law, the agency must give the public at least 48 hours' notice of any meeting, with the 48 hours excluding Saturdays, Sundays, and legal holidays.<sup>10</sup> Notice is given by mailing, emailing, or faxing to news media the date, time, and place of the meeting and by posting the date, time, and place of the meeting at the administrative offices of the school corporation.

The school board is not required to use an agenda, but if it does, the agenda must be posted outside the location of the meeting room some time before the meeting.<sup>11</sup>

The Open Door Law requires the school board to give patrons who are physically present at the meeting the opportunity to provide public comment. The Law allows the board to adopt reasonable rules to regulate the taking of public comment.<sup>12</sup>

The Open Door Law also requires governing bodies to maintain notes and memoranda identifying the date, time, and place of the meeting, which board members were present and those who were absent, and a general summary of the matters

discussed or decided by the board. The notes can thereafter be approved as minutes of the meeting.<sup>13</sup>

Lastly, Indiana law allows a board member to participate in a meeting virtually if the board has adopted a policy that allows remote participation.<sup>14</sup> A majority of the board must still be physically present at the meeting. There are other limitations in statute regarding virtual participation in a meeting, including language that prohibits any member from participating virtually if the agenda for the meeting includes such matters as adopting a budget, initiating a referendum, and establishing fees.

### HIRING AND FIRING AUTHORITY

Indiana law requires the superintendent to bring to the board recommendations on the hiring of all employees. The board must approve the recommendations in order for the person's employment to be valid. The same is true when dismissing an employee: the superintendent must recommend a person's dismissal, and the board must approve of the dismissal.<sup>15</sup>

Once hired, Indiana law requires all teachers (or certified employees) to be given a regular teacher contract (with some exceptions).<sup>16</sup> The contract must be signed by the teacher and the board.<sup>17</sup> There is no contract requirement for noncertified employees. Those employees who do not need a specific license to perform their duties may, at the discretion of the board, be given a contract. But the vast majority of noncertified employees are employed without a contract, or on an at-will basis.

When terminating a teacher (or certified employee), Indiana law requires the school board to provide the teacher with due process and specifies a process for the administration and the school board to follow.<sup>18</sup> There are no due process requirements for the termination of a noncertified employee who does not have a written contract.

### THE SUPERINTENDENT'S CONTRACT

When hiring a new superintendent or entering into a new contract with an existing superintendent, Indiana law requires a school board to publish the proposed terms of the contract on its website and in the newspaper. The board is also required to give patrons the opportunity at a public meeting to comment on the proposed terms of the contract. The board must wait at least seven days after this public meeting before it can vote to enter into the contract.<sup>19</sup>

Indiana law also limits the length of the superintendent's contract to no more than three years. The board may renew an

existing contract for up to five years. The board is also limited as to the amount of money it may pay a superintendent in situations where the board chooses to buy out the superintendent.<sup>20</sup>

### STAFF PERFORMANCE EVALUATION REQUIREMENTS

Indiana law requires the annual evaluation of certified employees, including the superintendent.<sup>21</sup> The superintendent and other administrators are responsible for the evaluation of teachers. The board is responsible for the evaluation of the superintendent. The law identifies specific criteria for the evaluations.

### COLLECTIVE BARGAINING

School boards are required to bargain with teacher associations with respect to salary, wages, and fringe benefits.<sup>22</sup> Boards may not bargain any other topics. The law requires the school employer to hold a public hearing before it begins the bargaining process and again after it reaches a tentative agreement with the teacher association.<sup>23</sup> If the school employer and the teacher association cannot come to agreement on a master contract within a 60-day window, the statutory impasse procedures are triggered. These procedures could culminate with a fact-finder imposing the terms of the contract on the parties.<sup>24</sup>

### ADOPTING A BUDGET

The proposed budget for the school corporation will be prepared by the administration with input from the school board. Indiana law requires the proposed budget to be published in the newspaper and requires the school board to conduct a public hearing before voting to adopt the budget.<sup>25</sup> The school corporation's budget must then be submitted to the Department of Local Government Finance for certification.<sup>26</sup> 🗳️

### REFERENCES

- |                  |                                    |
|------------------|------------------------------------|
| 1. IC 20-26-4-1  | 13. IC 5-14-15-4                   |
| 2. IC 20-26-4-3  | 14. IC 5-14-15-3.5                 |
| 3. IC 20-26-4-8  | 15. IC 20-26-5-4.5                 |
| 4. IC 20-26-4-7  | 16. IC 20-28-6-4                   |
| 5. IC 20-26-4-3  | 17. IC 20-28-6-2                   |
| 6. IC 20-26-4-3  | 18. IC 20-28-7.5-2                 |
| 7. IC 20-26-4-8  | 19. IC 20-26-5-4.3                 |
| 8. IC 20-23-4-30 | 20. IC 20-28-8-6                   |
| 9. IC 5-14-15-1  | 21. IC 20-28-11.5-4                |
| 10. IC 5-14-15-5 | 22. IC 20-29-6-4                   |
| 11. IC 5-14-15-4 | 23. IC 20-29-6-1 and IC 20-29-6-19 |
| 12. IC 5-14-15-3 | 24. IC 20-29-6-15.1                |
|                  | 25. IC 6-11-17-3                   |