



## 2019 Winding Down with a Flurry of Activity Critical to K-12 Public Education in Indiana

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

Where has 2019 gone? It seems unimaginable that the Thanksgiving holiday is upon us and the fall semester is rapidly ending. What a busy time this has been! Thank you to the approximately 1,000 school board members and superintendents that have attended the ISBA Fall Regional Meetings/Dinners that started on November 4. The 10th and final meeting (Region 6) was Wednesday in Hagerstown.

During the 16-day period of the Regional Meetings, there was the general election on November 5th with 13 school corporation referenda on the ballot, the close of the collective bargaining window on November 15th, and the Red for Ed Rally on Tuesday in conjunction with Organization Day of the second regular session of the 121st Indiana General Assembly. What an impressive turnout for the rally with several thousand educators at the State House! Their voices were loud and clear, and we appreciate their advocacy efforts that were supportive of K-12 public education.

Speaking of busy, we are finishing the year with two webinars and a seminar that I hope you have marked on your calendar. At year's end, **ISBA will have held 58 events (44 in-person events and 14 webinars), with 252 total CAP points and 180 total hours of professional development available to ISBA members.**

### **ISBA Legislative Action Network Grassroots Advocacy Training on December 3**

ISBA is continuing its efforts to elevate the visibility and effectiveness of our legislative advocacy efforts by empowering you, our members, to speak up and out on behalf of K-12 public education at the right time and with the right message in communication with legislators. The ISBA Legislative Action Network (LAN) is our formal program to help unify and mobilize "the voice" of school board members and increase State House visibility through designated legislative liaisons. To assist our legislative liaisons and all board members with these goals, we will be providing an opportunity for Legislative Action Network advocacy training via a webinar on December 3, from noon to 1:30 p.m. For more information on this webinar and to register, [CLICK HERE.](#)

### **ISBA December School Law Seminar on December 11**

This semi-annual, day-long seminar will be held at the Ivy Tech Conference Center in Indianapolis. Topics will include "Referendum: What's New, What's the Same, What Do You Need to Know?" and "Keeping Schools Safe: Searches, SROs, Alternate Placements, and Other Strategies." To view the full agenda and to register, [CLICK HERE.](#)

### **"Funding for At-Risk Students in Indiana: Issues and Recommendations" Webinar on December 12.**

This webinar will feature Dr. Rob Toutkoushian, professor at the University of Georgia, who will highlight the findings of a new study, "Funding for At-Risk Students in Indiana: Issues and Recommendations." This study was commissioned by ISBA, IAPSS, IASBO, IUSA, and IRSRA. Dr. Toutkoushian presented his study findings and recommendations to the Interim Study Committee on Fiscal Policy on October 15, 2019. Please join us for this webinar and learn more about this important topic. The webinar will close with a Q&A session. To register for this webinar, [CLICK HERE.](#)

### **2019 Membership Engagement Survey**

ISBA would like to ask for your feedback on how we are doing in serving you as we work to enhance our programs and services and plan the calendar of events in 2020. Would you please be so kind to take a few minutes of your day to complete the 2019 ISBA Membership Survey available: [TAKE SURVEY](#) We value your feedback and your response will be greatly appreciated!

Next up, the 2020 session of the Indiana General Assembly – signifying that we have much important work to continue to do to support and defend the pillar of America's democracy, K-12 public education. Thanks for all that you do to lend your voice and your service to your school community!

# Happy (and Legal) Holiday Celebrations

By Lisa F. Tanselle, ISBA General Counsel  
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With several holidays just around the corner, now is a good time to remember that the First Amendment prohibits public school corporations from endorsing, sponsoring, and/or promoting a particular religious belief or practice. At this time of the year, holiday decorations and holiday programs can make everyone feel “wonderful,” but care must be taken to not offend the Establishment Clause.

Nearly four years ago, one Indiana school corporation was sued by a student and parent, alleging that the annual Christmas program violated the First Amendment. For 45 years, the Concord Community School Corporation hosted a program entitled, a “Christmas Spectacular.” Approximately 600 students participated in the program each year by either performing or designing and creating costumes, sets, and props. The first half of the program, which was usually 60 minutes, consisted of a variety of musical and dramatic performances by students that were secular in nature.

The second half of the program, however, consisted of a live nativity scene performed by students and several biblical readings. This segment normally lasted about 30 minutes. The student and parent objected in particular to the live nativity scene, and asserted the program violated the Establishment Clause. Because of the lawsuit, the school corporation altered the second half of the program by including songs related to other cultural celebrations, including Hanukkah and Kwanzaa, eliminating the biblical readings, shortening the nativity scene performance, and using mannequins for the scene. After years of litigation, the Seventh Circuit Court of Appeals concluded the altered version of the Christmas program did not violate the Establishment Clause. The court looked at the entire program, noting that “the Santas, jingle bells, and winter wonderlands of the first half promoted the secular aspects of the holiday season.” As to the second half of the program, the court found that the changes to the second half of the program reduced the religious impact of the celebration. The court thus concluded that “a reasonable audience member, sitting through the 90-minute [program],

would not understand the production to be ratifying a religious message.” (For a complete understanding of the case, see [Freedom From Religion Foundation, Inc. v. Concord Community Schools, 885 F.3d 1038](#) (7th Cir. 2018).)

The message from the Seventh Circuit as well as other courts is that a holiday program does not have to consist of just secular performances. Religious music and dramatic performances may be part of a holiday program, but care must be taken to ensure that the religious portions do not dominate the program. Additionally, if religious songs and performances are part of the program, those religious selections should include several religious celebrations and not just one particular religion. The same principles apply with respect to holiday decorations. Displays in public spaces of a school building should be secular in nature or include a variety of religious symbols.

Happy Holidays to all!



70<sup>th</sup> Annual Fall Conference Photo Collage

**SAVE THE DATE!!!**

**71<sup>st</sup> ANNUAL ISBA/IAPSS FALL  
CONFERENCE**

**SEPTEMBER 28 – SEPTEMBER 29,  
2020**

**UPCOMING EVENTS**

12.3.2019--ISBA Legislative Action  
Network Grassroots Advocacy Training—  
[REGISTER HERE](#)

12.11.2019--ISBA December School Law  
Seminar—[REGISTER HERE](#)

12.12.2019--“Funding for At-Risk Students  
in Indiana: Issues and Recommendations”  
Webinar—[REGISTER HERE](#)

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## Public Hearing Requirements for Superintendent Contracts

by Julie M. Slavens, ISBA Senior Counsel | Dir. of Policy Services  
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In 2012, the Indiana General Assembly passed a law requiring a school board to have a public meeting to discuss a proposed superintendent contract. At this public meeting, the school board is required to allow comments from the public on the terms of the superintendent contract. The statute is IC 20-26-5-4.3. While it is obvious the statute applies to contracts for new superintendents, it applies when a school board is revising a contract with the school corporation's current superintendent as such contracts would be a "new" contract "entered into" by the school board as it will contain new terms and provisions relating to fiscal issues such as salary and benefits. Provisions that do not change the monetary value of the contract as currently written would not trigger the application of this law. Below is a summary of the requirements of this law.

The board is required to have a public meeting at which public comment is heard on a proposed superintendent contract with its new or current superintendent at least 7 days before the contract is approved by the school board. (If the proposed contract is with a new superintendent, the board is not required to disclose the name of the superintendent.) The board does not have to have a special or a separate meeting for public comments on the proposed superintendent contract; it can be done during a regular meeting of the board but the notice for the public comment portion must be published in accordance with the law. Since the board must give notice of this public meeting, it would be best practice to have the public meeting at the beginning of the school board meeting.

Notice of the meeting is required to be given in accordance with I.C. 5-3-1. This law requires the notice to be published in the local newspaper at least 10 days before the meeting for public comments is to take place. This notice for the meeting must be posted on the school corporation website in addition to the newspaper publication requirement.

The notice must contain the following information:

- 1) the day, time, and place the board will meet to discuss and hear objections to and support for the proposed superintendent contract; and
- 2) set forth the details of the contract, including the actual monetary value of the contract including all benefits and any additional compensation for each year of the contract. (Rather than setting out the various fiscal terms of the contract, it may be the better practice to include the entire contract in the notice.)

Once the public comment meeting has taken place, the board may approve the contract no less than 7 days after the meeting. After the school board approves the contract, it must be posted on the school corporation's website. While the law does not address the specific location of the superintendent's contract on the website, it is best practice and in the interest of transparency to post it in a manner where it may easily be found by the public on the school corporation's website.

# Difficult Decisions

By Dr. Michael T. Adamson, ISBA Director of Board Services  
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Everyone likes being a board member when things are running smoothly or when the board is making popular decisions. However, the enjoyment quickly disappears when decisions that will likely be unpopular or controversial must be made.

Questions regarding how to make those difficult decisions are regular queries at seminars and board training workshops. Unfortunately, there is not a single right answer that fits all the scenarios that could confront a school board. However, here are a few tips that can assist any board as it confronts and deals with unpleasant decisions:

1. Remember that every board member has been elected (or appointed) to make decisions, or more appropriately, to contribute to the decision-making process. It may not be pleasant, and it might not be what you want to deal with when you are faced with a tough decision. Still, you were not elected to disappear from the difficulties of the office, you were elected because your constituents wanted you to represent their best interests in your local school district.
2. Unless your superintendent is the object of the decision, he or she is the person you rely on for the information necessary to inform your decision-making process. Your superintendent may not be the only source of information, but he or she should be the person who orchestrates the conversation and secures the objective data necessary to guide and frame a difficult decision. This does not insinuate that boards blindly accept information that is not supported by objective data. However, it clearly suggests that superintendents are all school boards' go to people. Additionally, a board should expect superintendents to make recommendations for boards' considerations in these situations, especially to anchor any recommended action, aligning it with policy, process and impact on district personnel, operations, etc.
3. Difficult decisions are not personal. If they truly are personal, then you should recuse yourself from the decision entirely. Decisions by board members with legitimate conflicts of interest or ethical conflicts are best resolved by members of the board not affected. That does not suggest that the member with the conflict could not make the right decision, it only relieves any suspicion from the public that a vote they might cast would be completely objective because of their conflict. If you legitimately have a conflict, that is your ticket out of the decision-making process. If not, carry your weight and stay the course.
4. Keep your thought process as neutral as you can. It is important that you not allow your own biases, opinions, alliances, or sentiments rule your decision-making process. If possible, weigh every issue on its own merit, without inserting the personalities involved or impacted, and then determine what your recommendation might be.
5. Once the board makes a decision, put the issue behind you and move on. If the issue was decided in a split vote and you are in the minority, live with it. Obviously, this is easier for some issues, but it is imperative to effective board governance that members whose votes were in the minority of a final decision not use the vote to continually revisit the issue in future sessions. You were not elected to get your way; you were elected to make educated decisions and vote your convictions.

Lastly, making easy and/or popular decisions is the icing on the cake, but the board's collective character, as well as individual members' characters are tested when the decisions are difficult, controversial, and contested, both in the board room and perhaps, in the court of public opinion. Be resolved to pass the test by using your passion to accent your decisions, not override them. Being a board member is not about winning a popularity contest, it is about conscientiously contributing your best effort every time you meet.

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As a board member, you know policy-making is a top priority of any school board's governance responsibility. The policies put in place should comply with current Indiana and federal laws and reflect the educational values of the school corporation and the community.

ISBA is your resource for Indiana public school policy development and management. Through a yearly subscription, ISBA can provide your school corporation with:

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- Policy Evaluation, Customization, & Manual Coding
- Quarterly Policy Updates Report and Webinar Meetings
- Sample Policies and Policy Lists
- Policy Training

Learn more about CPMS on our website at <http://www.isba-ind.org/cpms.html>.