

SEPTEMBER
2020

e-Dition



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State Pivoting to Adapt Coronavirus Mitigation Strategies

By **Terry Spradlin**, Executive Director, tspradlin@isba-ind.org



In the August issue of e-Dition my column examined the uncertain status of funding for school corporations that would result from the Fall ADM Count scheduled on September 18, based on the strict interpretation of state law. In question was whether funding for virtual education instruction would be fully funded at 100% per ADM if students were receiving more than 50% of instruction virtually. I emphasized in that column that extraordinary measures from the state were needed to respond to the extraordinary times facing school corporations. In the last few weeks, the state has pivoted from previous guidance to provide new definitive guidance that should prove helpful for school corporation governance during the pandemic due to COVID.

FALL ADM COUNT

On Wednesday, September 2, the State Board of Education (SBOE) provided a solution to the ADM funding matter by accepting a recommendation to authorize Brian Murphy, Executive

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Director of the SBOE to modify 511 IAC 1-3-2 to address virtual learning and corresponding tuition support funding. The modification allows students who are in virtual instruction settings on the ADM Fall Count Day, but were not enrolled in a virtual setting on the Spring 2020 count date in February, to be funded at 100% and not at 85% (as current law requires). The ADM Fall Count date remains September 18, 2020. Under the Governor's Executive Order 20-05, the SBOE Executive Director has the authority to modify any agency rule which "would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Orders and Procedures act or any law to the contrary" and the modification is effective only for the duration of the public health emergency, which currently ends October 2, 2020. The rule modification applies only to the Fall Count Date and not to the February Count Date as it is currently not covered by the public health emergency.

ISBA supports the rule modification as a sensible approach to ensure full funding for school corporations in providing multiple modes of instruction, including virtual instruction, to students until the February ADM count. This is a necessary action in response to the pandemic, the public health emergency of the state, and in support of school corporations' health and safety plans. We appreciate this action by the SBOE and thank the members of the SBOE, Governor Holcomb, President Pro Tempore Bray, Speaker Huston, and the staff of both the Governor's Office and State Board of Education for identifying or supporting this solution.

ISDH COVID-19 DASHBOARD INFORMATION

Dr. Kristina Box, the state's health commissioner, and Dr. Lindsey Weaver, chief medical officer, for the Indiana State Department of Health have shared information and news during two recent press conferences held by the governor pertaining to the development of community and school COVID-19 dashboards. ISDH is responding, in part, to calls from the K-12 school community for these dashboard resources and guidance. First, the ISDH has announced a county level color-coded system that will be updated weekly with two metrics to determine the trend in COVID-19 community spread: 1) Number of new cases in the past week per 100,000 residents; and, 2) Percent positivity as determined by the number of positive tests divided by the number of tests administered. Each metric will be assigned a score of 0 to 3 and the average of the two scores will be the county's total score for the week. Average scores will place a county into one of four colors – blue, yellow, orange, and red. Each color category comes with recommendations for local and school officials to consider based on what the metrics show concerning community spread. Scoring does not trigger a state requirement of any action but provides local information and recommendations.

In addition, please stay tuned for a weekly school-level dashboard report that will provide positive cases by categories including students, teachers, and staff. This dashboard report should become available in mid- to late-September.

To view the color-coded map of the state and by county, click [HERE](#).

Confidentiality Breaches



By **Dr. Michael Adamson**, Director of Board Services, madamson@isba-ind.org

Breaches in confidentiality are always causes for concern. Willful breaches pose a real problem for school boards and superintendents and, as such, must be addressed promptly. However, the problem created by a board member who breaches confidentiality is a board problem, not an administrative one, even though s/he may be causing problems for the administration. Before attempting any corrective action, ensure that the information being shared outside of the board room actually qualifies as confidential. Assuming it does, then the following steps are appropriate to contain and resolve the issue.

Step 1

The board president and another member should address the confidentiality breach with the board member, stressing the problems that leaking sensitive information can cause the district. Sometimes, that alone is sufficient to cause the member to comply.

Hopefully s/he understands and agrees to comply. If so, then the problem is resolved; however, s/he only gets one pass. Ultimately, how the guilty member responds to the is critical. If the member says s/he is going to comply, but subsequently does not, the next step must immediately follow, without exception. Likewise, if the member states that s/he is not going to comply, or if s/he will not affirm that they will comply, the next step is the only alternative.

Step 2

Stop ALL executive sessions! It is too risky to chance that sensitive information will be leaked. This is a real disadvantage to superintendents because s/he needs to converse with the board from time-to-time on sensitive matters that are not appropriate for public meetings. Regardless, the risk that confidential information will be unethically shared outweighs any benefit to the superintendent who continues to confide in the board by sharing confidential information in executive sessions.

Rationale

Board members cannot be denied access to lawful board assemblies, regular meetings or special meetings. Consequently, since they cannot be denied access, the only alternative is to eliminate any opportunity where confidential information might be shared.

Obviously, the board member may question why executive sessions have ended and if s/he asks for an explanation, the board president should not hesitate to respond honestly by stating that because the member has continued to share confidential information with unauthorized individuals, or that s/he has not indicated a willingness to abide by the confidentiality expectations of the board regarding confidential information, no executive sessions will be scheduled until the board is satisfied the confidentiality issue is resolved.

Breaches in confidentiality are the only reason the board or the superintendent should vary from the unspoken board member standard that expresses, "What one member knows, all members know."

Duration

The moratorium on executive sessions because of confidentiality breaches should remain in effect as long as the errant board member remains on the board or until there a plausible reason for the board to consider the problem has been resolved.

Board Member Conflict Of Interest, Criminally Speaking



By **Lisa Tanselle**, General Counsel, ltanselle@isba-ind.org

Board members strive to avoid situations where they may have a conflict of interest in action being considered by the school board. In some cases, the situation may be a conflict of interest under common law, defined by a 1920 Indiana Supreme Court opinion as taking action that has a tendency to injure the public. In other cases, it may be a conflict of interest as perceived by the community. Lastly, the situation might be a conflict of interest as defined in the criminal code, which could result in the board member being prosecuted for a Level 6 felony.

Criminal Conflict of Interest Statute (IC 35-44.1-1-3)

Most board members are familiar with the statute that says it is a crime for a board member to have a pecuniary interest in or derive a profit from a contract entered into or a purchase made by the governmental entity served by the board member. A pecuniary interest is defined as an interest in a contract or purchase that will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant (generally considered to be \$250 or more). This statute absolves the board member from prosecution for a potential criminal conflict of interest if the board member announces the conflict at a public meeting before the contract is entered into or purchase is made and thereafter, the board member files a written disclosure with the school corporation, the State Board of Accounts, and the clerk of the circuit court.

The most common scenario that could lead a school board member to consider whether he/she has a pecuniary interest in a contract is the situation where the school administration recommends the employment of a spouse or child of an individual board member. A spouse and a child under the age of 18 are defined as “dependents” of the public servant and therefore trigger application of the statute. In fact, the ISBA has historically advised school board members to file the conflict of interest form prepared by the State Board of Accounts whenever a dependent of a board member is initially hired, and then every year thereafter.

Recently, however, the law was changed to say that it is not an offense under the statute in cases where the dependent “receives compensation through salary or an employment contract for services provided as a public servant.” As a result of this change, board members no longer need to announce the fact that a proposed employment contract is one that involves a spouse or child and board members no longer need to file the conflict of interest disclosure statements required by the statute.

If a board member is uncertain about having a conflict of interest in a contract or a purchase, the board member should seek the advice of local counsel. Prudence may suggest that a disclosure be made just to be sure the public is aware of the potential conflict of interest.

Verification of Residency of Students



By **Julie Slavens**, Senior Counsel and Dir. of Policy Services, jslavens@isba-ind.org

On August 27, 2020, the Indiana Department of Education (IDOE) released a memorandum on the topic of the verification of student residency for membership attendance. The memorandum addresses the IDOE expectations and guidance for verifying the residence of students for membership count purposes. The memorandum indicates schools need to keep records verifying the residency of the students enrolled in the school corporation. The memorandum also indicates upon enrollment of a new student the school corporation must get records of the student’s residence and upon re-enrollment each year the residence information needs to be verified by the parent or guardian of the student. If the residence is the same no additional information is needed. If it is not, the school corporation must obtain proof of the new residency.

The IDOE memorandum on student residency verification can be found [HERE](#).

The IDOE memorandum indicates various documentation that may be used for the verification of residence and states a school board “must annually adopt or readopt a policy that specifies documentation, not to exceed three items, required to verify Indiana residency.” The determination of the residency of a student has been and is an administrative function and not a policy consideration for the school board. In addition, the statement implies a policy is required by law or regulation. No law or regulation exists requiring such a policy. School boards are not required to adopt (or readopt) a policy setting out the appropriate documents needed to verify the residency of an enrolled student.

ISBA contacted the IDOE to verify no law, rule, or regulation existed requiring such a policy; IDOE verified there is no such requirement for school board policy. The memorandum was released due to issues of students from out of state enrolling in Indiana schools stating the student lives in Indiana. School corporations with boundaries on the state line particularly should adhere to the guidance in the memorandum and be vigilant about verifying a student’s resident’s for membership count purposes, but this would not require these school corporations to adopt a policy but rather put in place administrative procedures to address this issue.

Teacher Appreciation Grant Policy

In the prior eDition issue, information was included concerning the distribution of the Teacher Appreciation Grant monies (TAG) if the ADM count date was moved to December of 2020. Given the action taken by the Indiana State Board of Education at its September meeting, the ADM count date remains as September 18, 2020. Thus, the TAG monies should be distributed on time this school year and school corporations should receive the TAG monies on or before December 5, 2020. As a reminder in order to receive the TAG monies, a school corporation must submit its TAG policy to the IDOE on or before September 15, 2020.

The IDOE guidance on the TAG monies policy and related issues can be found [HERE](#).

Join us for a VIRTUAL Fall Conference!

By **Terry Spradlin**, Executive Director, tspradlin@isba-ind.org
& **Brooke Orner**, Events and Communications Manager, borner@isba-ind.org



We know that physical events aren't possible right now. However, the responsibilities of board members and superintendents never stop. The ISBA/IAPSS Annual Fall Conference has been a one-stop shop for boardmanship training, instruction, and innovative ideas to implement in your school corporation. We don't want our members to miss out on this information, in spite of a pandemic.

As a result, we will be hosting a robust, engaging, and interactive *VIRTUAL 71st Annual ISBA-IAPSS Fall Conference*.

Fall Conference Details

Safety is our number one priority for all members, exhibitors, and guest speakers that attend our Fall Conference. In order to keep you safe and follow social distancing protocols, ISBA and IAPSS are hosting the 2020 Fall Conference in a fully **virtual** format!

Don't miss out on an opportunity to educate yourself about new rules and regulations, best practices, innovative program initiatives, and success stories from fellow school corporations, the Indiana Department of Education, nationally recognized keynote speakers and others!

Can't make it?

By registering, you will have access to watch any of the 25 clinic sessions and 2 keynote sessions for up to 30 days afterwards!

On September 28th and 29th, join us from the comfort of your office or home as we discuss the following strands:

- **Hot Topics for ISBA/IAPSS Members**
- **Optimizing School Budgets and Financing**
- **Developing Educational Statesmanship**
- **Ensuring Safe, Secure, and Supportive Learning Environments for Hoosier Students**
- **Ushering a New Era of Graduation Pathways and School Accountability**

For the Fall Conference agenda, click [HERE](#).

The virtual Fall Conference will offer the same access to build your own agenda, "attend" clinic sessions, interact with presenters, and network with exhibitors! We will also be offering 10 gift card prizes daily to attendees who earn the most points while visiting the Virtual Exhibitor Hall. Many exhibitors will also be offering their own door prizes as well.

By registering to attend, you will be able to hear from Governor Eric Holcomb and Dr. Woodrow "Woody" Myers, Democrat gubernatorial candidate, on their K-12 education agendas during the Day 1 General Session; and, from a dynamic national keynote speaker, Dr. Omēkongo Dibinga, on "Finding Common Ground in Uncommon Times" during the Day 2 General Session.

This will be a highly-engaging, interactive virtual conference that you won't want to miss!

DEMONSTRATING EXEMPLARY LEADERSHIP IN UNPRECEDENTED TIMES

ISBA / IAPSS

71st Annual Virtual Fall Conference
September 28 & 29, 2020

**CLICK HERE TO REGISTER FOR THE VIRTUAL FALL
CONFERENCE!**

ISBA in the News

- » [State launching new guidelines for schools during pandemic](#)
- » [Schools that don't offer in-person instruction could lose funding, top lawmaker says](#)

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