

The

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JOURNAL

THE MAGAZINE OF THE INDIANA SCHOOL BOARDS ASSOCIATION



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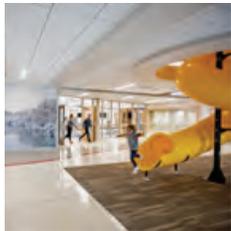
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Terry Lancer | 317.797.6595

tlancer@lancerbeebe.com

Mark Beebe | 317.750.5373

mbeebe@lancerbeebe.com

lancerbeebe.com

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ISBA OFFICERS

PRESIDENT

 **Tom Simpson**
601 Greenland Lane
Yorktown, IN 47396
Yorktown

FIRST VICE PRESIDENT

 **Rebecca Gardenour**
503 Captain Frank Rd.
New Albany, IN 47150
New Albany-Floyd Co.

SECOND VICE PRESIDENT

 **Steve Corona**
428 W. Sherwood Terrace
Fort Wayne, IN 46807
Fort Wayne

PAST PRESIDENT

 **Dr. Robert M. Stwalley, III**
30 Thise Court
Lafayette, IN 47905
Lafayette

DIRECTORS

REGION 1

 **Thomas K. Hoffman**
2115 W. Lincoln Hwy
Merrillville, IN 46410
Crown Point

REGION 2

 **Rebecca Linnemeier**
12359 North Camelot Trail
Milford, IN 46542
Wawasee

REGION 3

 **Tim Ehlerding**
1718 West Monroe St.
Decatur, IN 46733.
North Adams

REGION 4

 **Milton Hess**
822 Lakeview Dr.
Logansport, IN 46947
Logansport CSC

REGION 5

 **Layla Spanenberg**
931 Twelve Oaks
Carmel, IN 46032
Carmel-Clay

REGION 6

 **Wade Beatty**
11725 N State Road 140
Knightstown, IN 46148
Charles A. Beard

REGION 7

 **John Preble**
1748 Spruce Drive
Linton, IN 47441
Linton-Stockton

REGION 8

 **Jack Russell**
1713 Pathway Dr. South
Greenwood, IN 46143
Center Grove

REGION 9

 **Travis Nolcox**
1930 E 350 S
Princeton, IN 47670
North Gibson

REGION 10

 **Lee Ann Wiseheart**
1573 Meadow Lane
New Albany, IN 47150
New Albany-Floyd Co.

STAFF

Terry Spradlin, *Executive Director*
Lisa F. Tanselle, Esq., *General Counsel*
Julie M. Slavens, Esq., *Senior Counsel/Director of Policy Services*
Steve Horton, *Director of Board Services*
Adam VanOsdol, *Communications Specialist/Content Strategist*
Rae Anne Motsinger, *Comptroller*
Talia Bynm, *Administrative Assistant*

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ISBA Journal Editor – *Adam VanOsdol*

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ASSOCIATION**

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SCHOOL BOARDS IN THE NEWS

More than 800 projects were submitted for funding consideration to the Indiana Economic Development Corporation (IEDC) as part of the \$500 million READI grant program (Regional Economic Acceleration and Development Initiative). The projects proposed include many related to education and workforce development, including:

- ▶ \$16.5M for the **Warrick County Career Pathways center** providing career training programs to students attending Boonville, Castle, and Tecumseh high schools
- ▶ \$900,000 for the **Indiana First Region Career and Technical Education Cooperative** that would be based on the campus of Vincennes University and serve Knox County high school students
- ▶ \$2M for a **College Completion Pathways** initiative expanding opportunities for high school students in North Central Indiana to earn dual credits from Ivy Tech Community College and industry-recognized skill certifications
- ▶ \$1M to support **dual credit courses** at Batesville High School
- ▶ A pilot project for **sharing instructors** among rural East Central Indiana school districts
- ▶ \$2M to support the **Digital Manufacturing Makerspace and Ag Science Center** at Seymour High School
- ▶ \$4.9M toward construction of a new **Panther Vocational Training Center** at Jennings County High School
- ▶ \$5M to support a **Fabrication, Innovation, Technology, and Engineering (FITE) Center** to be constructed and operated by the Vigo County School Corporation
- ▶ \$2.5M for **youth apprenticeships** for high school students in Marion, Hamilton, and Madison counties, and other work-based learning opportunities

The annual Dollars to the Classroom report released in mid-December by the Indiana Office of Management and Budget shows Indiana school corporations spent just under \$41M on school board activities in 2020, an increase of 2.6% compared to 2019.

Quotable:



Elaine Murphy

“Parents are passionate about our kids. They just are. And we expect that, and we always encourage them to reach out with their concerns about their children. We also expect civility. We may disagree, but we must always be respectful.”

– Elaine Murphy, *president of the New Albany Floyd County school board* (News and Tribune, January 1, 2022)



Tom Rhoades

“I don’t think we can ever stop trying to find the middle ground. Right now we are so polarized in so many areas that I don’t think very many people are looking for common ground. The common ground is what unites all of us – or the majority of us. This nation was founded on the idea of common ground and compromise. So we have to keep striving for that.”

– Tom Rhoades, *former president of the school board of the M.S.D. of Southwest Allen County* (WANE, December 2, 2021)

First-year teachers in some Indiana school districts will be earning 40% more than they did a dozen years ago.

- ▶ In the **Duneland School Corporation**, newly hired teachers will earn \$49,000, which is 47% higher than what starting teachers earned here in 2010.
- ▶ The **Lake Central Board of School Trustees** has set a beginning teacher salary of \$52,000, an increase of 44% since 2013.
- ▶ First-year salaries in the **Indianapolis Public Schools** rise to \$50,400 next year, a 41% increase from 2011 when teacher pay started at \$35,684.
- ▶ The **Greenwood Community School Corporation** hikes new teacher pay to \$47,258, a remarkable 48% increase from 2012 when the starting pay stood at \$32,033.
- ▶ The new collective bargaining agreement in the **Danville Community School Corporation** boosted the minimum teacher salary to \$50,000 beginning next year. That represents a 45% increase versus 2014 when the minimum salary was \$35,000.
- ▶ Starting teacher pay is rising to \$45,000 in the **North West Hendricks School Corporation**, a 45% bump compared to ten years ago when new teachers made \$31,000.



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KEEPING THE PUBLIC IN PUBLIC SCHOOLS

By Tom Simpson, ISBA President



Virtually all of us have heard or even uttered the phrase, “If you don’t have anything nice to say, don’t say anything at all.” In doing some research on the origin, the authority on all things (Google) attributes the basis for this phrase to Alice Roosevelt Longworth, daughter of our 26th U.S. President Teddy Roosevelt. Her actual quote was “If you don’t have anything nice to say, come sit next to me,” or “If you can’t say something good about someone, sit here by me.”

The exact wording may be lost to history, but the inference appears to suggest that she was willing to take the brunt of or the bite out of someone’s potential criticism. For most of us, especially if you are serving as a school board president, those words likely ring true.

Public comment at local school board meetings has taken on a whole new meaning for many of us in the last 12-18 months. Prior to 2020, most board meetings were sparsely attended save for occasional local issues such

as a referendum. Contrast that dynamic with the present where virtually every school board in Indiana has seen increased public attendance, even to the point of moving meetings to a larger venue to accommodate the crowd. Additionally, that crowd may include groups or speakers from outside your districts, as well as local patrons.

The most common topic of contention for virtually everyone has been masking. For some school corporations, the “alphabet soup” of CRT, DEI, and SEL has also spurred emotional and sometimes heated debate. The worst of these exchanges have created anger, animosity, and genuine fear among local school board members, even prompting a few to resign out of principle or concern for their emotional and physical well-being. Due to the lack of civility and the inability to simply conduct board business, some school corporations have curtailed or even temporarily suspended public comment at their meetings. That is unfortunate and not consistent with our standing in the communities we serve.

My guess is if you were to poll sitting public school board members, a significant majority would likely echo two sentiments; they have never seen anything like the current climate, and it’s not what they expected when they decided to run or serve. Regardless, we must find a way to reach common ground with parents and patrons.

So, what’s the answer, and how do we restore civil discussion once again? The first step is to accept that our job as elected school board members is not to convince a dissenting opinion that we are right. Among the early lessons I learned as a new board member was the job is not a popularity contest. There will always be someone unhappy with a “big” topic decision; it comes with the territory.

To be clear, there’s nothing wrong with sharing, in the appropriate forum (which may not be in a regular board meeting!), the reasoning behind a decision. But let’s remember that we have been elected to serve and make decisions on behalf of our constituents. With that responsibility comes a duty to listen, gather data, and ultimately make policy that benefits all or

the majority of the students in the district.

Parents and critics often forget that the majority of public school boards are made up of patrons with children or grandchildren in the school system. Some are former educators and administrators. They are neighbors. They are the people sitting next to you at your kid’s soccer match or recital. School board members aren’t in it for the money. The job doesn’t come with special powers or privileges, and it requires far more specialized training and continuing education than most other offices. Contrary to popular belief, it also involves far more time than the one or two public meetings each month. I would propose that public school boards are perhaps the most dedicated of all elected officials, given the scope and importance of the job and how precious the commodity they are entrusted with... our kids.

With all that said, school boards aren’t looking for sympathy, but rather a shared empathy and willingness to walk alongside each other to do the work that ensures our students are given the very best education and preparation for their future, wherever that may be.

In conclusion, school boards must encourage and welcome civil input from our patrons. We are PUBLIC schools, and we serve the public. Parents absolutely should be knowledgeable and involved in their school system. Attending school board meetings is one way, but I would posit that the best place for parents to start is to meet your teachers and principals, get

to know your superintendent, and volunteer if possible. They will discover that the vast majority of staff are incredibly dedicated, passionate, and caring professionals who work extremely hard to prepare children to succeed. They’ll realize that teachers don’t have hidden agendas or ulterior motives, but rather a single-minded calling to grow and nurture eager minds.

As an eternal optimist, I believe better days are ahead. I also believe that public school boards and parents still share the ultimate and most important common ground. We want what is best for your child! Let’s start there and keep it that way! 🍀

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GRASSROOTS ADVOCACY WORKS!



MAKING THE CASE FOR OUR PUBLIC SCHOOLS

By Terry Spradlin, Executive Director



ARE YOU READY?

Are you ready to engage in state-level grassroots advocacy to help inform, influence, and shape sound K-12 education policy? Are you ready and willing to be a champion of our public schools and to be an advocate for the more than 1 million Hoosier students in our classrooms?

The second regular session of the 122nd Indiana General Assembly convened on January 4, 2022. This will be a “short session” that is required by law to conclude no later than March 14. While there will not be a state budget to work on, it is anticipated that K-12 education policy will remain a priority issue among the hundreds of bills introduced for consideration. Lobbyists often use the “marathon not a sprint” analogy in budget sessions to implore patience and persistence by allies and advocates, but a condensed short session is a frenetic sprint to the finish line!

ARE YOU READY, AND WILL YOU HELP?

The Indiana School Boards Association (ISBA) is dedicated to improving the quality of education provided by public schools throughout the state of Indiana. ISBA recognizes the role of the General Assembly in enacting legislation that impacts public education and is committed to representing the interests of its member school corporations when addressing legislative initiatives. You have a role to play, too. The ISBA Code of Ethics states that a school board member should honor the high responsibility that membership demands by “recognizing responsibility as a State official to seek the improvement of education throughout the State.” This statement supports the role school board members have to communicate with state policymakers on issues impacting public education.

If you were among the approximately 800 people in attendance at one of the 10 ISBA Fall Regional Meetings, you heard the report on the 2022 Legislative Priorities and received information in the booklet about the Legislative Action Network (LAN). This column will be a quick read to refresh you on what you need to know to lend your voice during the legislative session. If you are a newer school board member or have been a casual observer of the state legislature and grassroots advocacy, please know that your voice matters. We need to be ready to be a strong voice and united champion for K-12 public education while advocating for the ISBA 2022 legislative priorities. Let us unite to collectively elevate our advocacy efforts, as much as is at stake.

HOW DOES ISBA SET ITS PRIORITIES?

ISBA relies on four committees comprised of regional representatives of our school board members to help provide leadership and direction to govern the work of the Association. The Legislative Committee is a 20-member committee with two school board members from each of the 10 ISBA regions. The Legislative Committee meets annually during the summer to set annual legislative priorities and develop and affirm foundational statements. The legislative priorities are a short list of proactive agenda items ISBA hopes to accomplish during each session to support our mission. The foundational statements are principles that guide the Association’s positions on the many bills impacting K-12 education that are not explicitly addressed in the priorities. I liken the foundational statements to a compass and roadmap to ensure that we effectively represent your views. Once approved by the committee, these core documents move to the Delegate Assembly for adoption. Every school board is entitled to have a member represent it at the Delegate Assembly. The 2021 Delegate Assembly convened on October 11, 2021, where these documents were approved unanimously by voice vote.

WHY IS YOUR INVOLVEMENT IN ADVOCACY IMPORTANT?

Especially at a time when social and political challenges confront K-12 public education more than ever before, your voice representing the best interests of Hoosier students must be heard. You have clout! You have firsthand understanding of your school corporation's goals, student achievement outcomes, and resource needs. You regularly deal with the complexities of school corporation budgeting and financial matters. You are an informed source of information about education policy. Finally, you have a story to tell and can relate how proposed legislation impacts your school community.

One bill comes to mind from the 2019 session to illustrate what the strength in numbers of school board members speaking up and out at the right time, and with a unified message, can achieve. Senate Bill 246 was on the third reading calendar in the Senate that would have greatly restricted when school corporations can conduct a referendum. This bill was adversarial

to local control and would have restricted the ability of school corporations to generate necessary funds for projects, programs, or personnel. It took a tremendous effort and a timely response to a call-to-action alert from educators and school board members to contact area senators in opposition to the bill, to kill the bill. One legislator told me that he changed his position to align with our position on the bill because he "heard from 12 constituents over the (prior) weekend asking for his vote against the bill." The senator considered this a significant number that was enough to sway his position. The bill was not called down on the last day for the third reading of bills and we prevailed in killing the proposal. This is powerful evidence of what we can accomplish together!

Some might be inclined to think that their personal efforts will not make a difference, but this perspective leads to apathy. Apathy leads to inactivity, or passivity. Passivity subsequently leads to passage of legislation detrimental to public education. Let's not be a part of the silent majority!

If we are not passionate to defend the pillar of American



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democracy, then why should we expect legislators to share our views and positions? Engagement in the advocacy process can make all the difference. Sharing “your local story” is impactful, too. To assist school board members to be successful advocates in the policymaking process, ISBA has created the **Legislative Action Network**.

LEGISLATIVE ACTION NETWORK

While your ISBA lobby team strives to be in the right place at the right time, our voices are more effective when our efforts are complemented by a troop of school board members participating in the **Legislative Action Network**, ISBA’s formal grassroots advocacy program. The LAN is designed to help unify and mobilize “the voice” of school board members and increase State House visibility. Through this program, we provide you with the information, resources, strategies, and guidance to engage in the grassroots advocacy process. The program to cultivate and coordinate the localized grassroots advocacy efforts is through each school board’s designated legislative liaison, although we encourage all board members to engage in grassroots advocacy.

Duties of the Legislative Liaison

- ✓ Know and support the 2022 ISBA Legislative Priorities
- ✓ Know your area legislators: <http://iga.in.gov/legislative/find-legislators/>
- ✓ Track ISBA Legislative Services/LAN communications and provide timely updates on legislative session activities at school board meetings. We suggest making this a regular board meeting agenda item
- ✓ Identify ISBA legislative priorities for which you will be willing to testify, if necessary, during committee hearings on these bills
- ✓ Communicate regularly via email, phone calls, or letters with area legislators
- ✓ Make yourself a contact and trusted source for your legislators within your district
- ✓ Coordinate email, phone call, or letter writing campaigns to your area legislators, media, and the broader community, especially in response to call-to-action alerts
- ✓ Organize legislative forums or attend “Third House” meetings hosted by other organizations

To become your school corporation’s Legislative Action Network Liaison, please have your superintendent send your name and preferred contact information to Talia Bynm at tbynm@isba-ind.org.

ISBA Legislative Services and Web Resources

Legislative services are one of the four core services that ISBA provides to members. Lisa Tanselle, General Counsel, and I am your registered lobbyists who are your “boots on the ground.” We cover committee hearings, testify on bills, and communicate regularly with legislators. The legislative services from ISBA include:

- ✓ State House representation
- ✓ Weekly ISBA legislative updates (typically every Friday during session)
- ✓ Bill tracking list service (updated in real time each session day)
- ✓ Live legislative update webinars (once per month)
- ✓ Call-to-action legislative alerts (as needed on critical issues)
- ✓ Website resources
- ✓ ISBA Advocacy Guide (third edition available on the Legislative Services page of the ISBA website)
- ✓ 4th Annual State House Day (February 15, 2022; more details below)

The first step in effective grassroots advocacy is to get informed. Preparation will make you a more confident and successful advocate. There are many resources available to help you build your knowledge base. The Legislative Services page of the ISBA website includes key resources to follow the 2022 session and adoption of new K-12 laws, including:

- ✓ The bill tracking list
- ✓ ISBA Legislative Priorities and Foundational Statements
- ✓ A library of the weekly legislative updates
- ✓ A link to help you to identify your area legislators
- ✓ Legislators’ contact information lists
- ✓ How a bill becomes a law process overview
- ✓ ISBA Advocacy Guide

The ISBA Legislative Services page is located at: <http://www.isba-ind.org/legislative.html>. The Indiana General Assembly



INDIANA SCHOOL BOARDS
ASSOCIATION

2022 CALENDAR AT-A-GLANCE

January 25

School Board Leadership Webinar

Online

January 27

School Board Leadership Webinar

Online

February 2

School Board Leadership Webinar

Online

February 15

ISBA State House Day

Indianapolis Marriott Downtown

April 18 – May 4

Spring Regional Meetings

Statewide

June 8

School Law Seminar

Ivy Tech Conference Center (Indianapolis)

June 15

Budget/Finance Seminar

Ivy Tech Conference Center (Indianapolis)

August 19

Collective Bargaining Seminar

Ivy Tech Conference Center (Indianapolis)

October 3-4

Annual Conference

Indiana Convention Center

November 1-17

Fall Regional Meetings

Statewide

December 7

School Law Seminar

Ivy Tech Conference Center (Indianapolis)

For more information on ISBA meetings and locations visit our website at www.isba-ind.org

website is naturally the best resource to track the activity of the legislature and is located at: <http://www.iga.in.gov>

COME TO INDY FOR THE 4TH ANNUAL STATE HOUSE DAY – FEBRUARY 15, 2022

Culminate your advocacy efforts and help ensure a successful legislative session for K-12 public education by participating in ISBA's 4th Annual State House Day on February 15, 2022, at the Indianapolis Downtown Marriott. The State House Day event will include an exclusive briefing on key K-12 education bills moving in the session, two legislator panels (one featuring the caucus leaders and one with the leaders of the education committees), and State House office visits or calls with your area legislators. We invite two members (preferably the board president and legislative liaison) to represent your board at this event. ISBA will be sending detailed information about this event, including registration, regularly beginning in January. If you have any questions about the event, please contact Talia Bynm (tbynm@isba-ind.org) or myself (tspradlin@isba-ind.org).



ISBA State House Day, 2019

CONCLUSION

Be ready! Please take time to acquaint yourself with the full details of the ISBA 2022 Legislative Priorities and Foundational Statements. Resolve to write a letter, send an email, or make a call to your area legislators now and throughout the session. Together we are better when we stand up for Hoosier students and high-quality schools with a unified voice. Your local engagement and leadership are paramount to our success. Thank you for your ongoing contributions and response to the call-to-action alerts to support K-12 public education in Indiana. Let's keep "fighting the good fight!" 🎓

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GETTING OUT OF THE BLOCKS

Planning the Start and Strategy for the Race Before it Begins

By Steve Horton, Director of Board Services



In the last edition of *The Journal*, I appreciated Dr. Michael Adamson's track and field relay race reference, both on a personal and professional level. When I was a teacher, years ago, I coached track and field, and additionally, my youngest son's passion is competing as a runner. I would agree with Dr. Adamson that among the many track events, the most exciting and fun to watch are the relays. An important consideration for every team is not just the baton exchange, but also the start. Sprinters refer to it as "getting out of the blocks." Often that is where a race is won or

lost. A disciplined and well-trained runner will think about the start and strategy for running the race before it begins.

I have thought about the start quite a bit lately, as I begin my responsibilities as director of board services with ISBA. I realize that my service is not a sprint, but a marathon. However, the start is just as important to me. I want to be focused, like any runner, on what is ahead. That means getting around Indiana and meeting school board members and administrators and learning about what is important to your school corporation and school community. It

is valuable to consider where you have challenges and where your board is succeeding. Perhaps those challenges are relational, communication, meeting process and protocol, or coming together to develop long term goals. Those are all areas where I hope to be a valuable resource for your team.

In my eight years of service with the Ohio School Boards Association prior to coming to Indiana, I had the privilege of working with dozens of school district leadership teams. I enjoyed helping boards understand their roles and responsibilities, prepare for the future through strategic planning, work through conflict, and strategize for better communication. When there was a need, I facilitated many superintendent searches.

In all my work in Ohio, and as I have collaborated with colleagues in the school board associations across the country, one thing has been very clear: the challenges you face in your board governance and school leadership are shared by your colleagues nationwide. You could say we are all in the same boat, but the reality is that you do have a unique school corporation and community, and it is of the utmost importance to me to focus on those unique needs and customize my work with you as an outside consultant.

In the world of school governance, there is no such thing as just starting once. Here are some ways you should prepare to get out of the blocks.

YOUR NEXT SCHOOL YEAR:

There is always a next school year. Consider as an individual board member and governance team your steps for being prepared for the new academic year. Here are some to-do items for you to think about and work on preferably before the next school year begins:

- ▶ **Look at your strategic initiatives.** This should be an ongoing process, but certainly as you are looking to next year make sure your team's goals and objectives are aligned with the strategic plan. A good measure for the board is to ask yourselves, if we make this decision how will it support our strategic plan?
- ▶ **Use the summer well.** The most effective boards I have worked with make a summer retreat a part of their annual schedule. Ideally it should prioritize two separate chunks of work. One is to review data from the previous year. Make sure your work is data driven and not focused on hearsay or anecdotal evidence. Your superintendent and his or her administrative team will work with you to understand and

interpret the data effectively. The second part of the retreat is to look ahead. What are your greatest needs and priorities, and how do those translate to your superintendent's goals and objectives for the next school year?

- ▶ **Understand your financial picture.** Board governance is multi-faceted, and one of the functions is good stewardship of your communities' financial resources. As a board, you rely on your administration to create the budget, but you approve the budget. While there is a fine line between oversight and overreach, it is critical that you understand what is in your budget, how resources are being allocated, and what the future looks like. An effective board member will seek to understand but let the financial people of the corporation do their jobs.

ONBOARDING NEW BOARD MEMBERS:

More times than not, school boards struggle at orienting new members. Orientation is far more than job training. Well-planned and executed orientation is a statement of acceptance and value to the organization. My start as a new school board member was being shown to my seat at the table where I had a name plate and reference books for my library. The rest was left to "sink or swim." I would suggest there is a better way to bring new members into your work as a board. Here are some things to think about and are typically overseen by the board president or superintendent:

- ▶ If your board has documented protocols or standards that govern the way you work and communicate (hint, this is a very good idea), it is important to **get those to the new member before they are sworn into their duties**. Consider that it is not just important information, but it is also a way of saying welcome, we are glad you are here.
- ▶ **Offer to have lunch** with the new member or members. Make this a time to get to know the new person and establish a working relationship, trust, and open communication.
- ▶ **Make sure new members are familiar** with the organizational chart and schedule time for new people to meet with key administrators and learn about their work within the organization.
- ▶ **Schedule a tour of the district** and offer an opportunity to meet building level administrators. Don't assume that new members are already familiar with the district and that this step is not necessary.

It is true that these things take time but consider that you are building relationships for the future.

BUILDING CONSENSUS FOR A NEW PROJECT:

Perhaps you are considering new facilities or a facilities upgrade, community engagement, or restructuring the budget to reduce expenses. These are examples of big decisions that deserve a good start. I have seen too many boards flounder and struggle over who has the best idea. That is the perfect path to division and split decisions that do not ultimately benefit your children. I believe strongly in five basic consensus-building steps for decision making. Here they are:

1. **State the problem clearly.** Too often boards end up at odds with their community because they moved forward without ensuring that stakeholders fully understand the issue or need. It takes more effort than you may realize.
2. **Seek to hear each member’s “non-negotiables.”** We all have those things that would prevent us from supporting a decision if they were not considered. Get them on the table.
3. **Allow the superintendent to move forward with the non-negotiables as criteria for developing potential solutions.**

4. **Brainstorm ideas that incorporate the needs of each member.** You may not get everything you want as an individual, but it is important that your needs are heard and considered.
5. **Decide on the best course of action.** It is not about who has the best idea that will win the majority but what is the solution that best satisfies the needs of the whole.

There you have it. Three distinct ideas to help you and your governance team get out of the blocks well.

How you start is as important as how you finish. Whether it is the next school year, bringing in new board members following the upcoming election, or making a big decision, a poor start means you waste important time and energy correcting course before hitting your stride and crossing the finish line.

Personally, if I can meet as many of you as possible and assist you in your work, then I have indeed gotten out of the blocks well. Here is to a productive and fruitful 2022! 🎓



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INDIANA COURT CONCLUDES ACTIONS OF COUNTY HEALTH DEPARTMENT AND SCHOOL CORPORATION DURING PUBLIC HEALTH EMERGENCY WERE LAWFUL

By Lisa F. Tanselle, Esq., General Counsel



Parents of two high school students, acting pro se, sued the county health department and the school corporation their children attended over decisions to close schools and implement virtual instruction during the public health emergency, as declared by the governor at the end of the 2019-2020 school year and continuing through the 2020-2021 school year. Their two children were identified as students with a disability under Section 504 of the Rehabilitation Act of 1974, and pursuant to that law, had learning plans that specified certain

accommodations in the classroom setting for the students. The accommodations included being seated in the front of the classroom, being seated in an area free from distractions, reducing classroom distractions, and being seated away from main traffic areas.

The parents' complaint alleged violations of Section 504, the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act (ADA), Section 1983 due process violations, as well as negligence on the part of county health employees for failing to follow the executive orders issued by the governor. The trial court granted a motion to dismiss submitted by the health department and school corporation, finding no legal basis for their complaints.

The parents appealed to the Indiana Court of Appeals, which issued a unanimous ruling December 3, 2021, affirming the trial court's decision.¹

The appellate court first addressed the parents' claim that the school corporation failed to accommodate their children's disability during the pandemic in violation of

Section 504, the IDEA, and the ADA. The court dismissed the IDEA complaint after the parents conceded that their children did not qualify for IDEA benefits. As to the alleged violations of Section 504 and the ADA, the court noted that to establish disability discrimination, the parents had to show that: (1) the school corporation intentionally acted on the basis of a disability; (2) the school corporation refused to provide a reasonable accommodation; or (3) the school corporation's rule disproportionately impacted disabled individuals.

The court found that the parents did not allege any facts showing that the school corporation intentionally discriminated against the two high school students because of their disability or that the school corporation's decision to offer virtual instruction disproportionately impacted students with disabilities. Thus, the court focused on whether the school corporation refused to provide a reasonable accommodation to the students.

For the parents to succeed on this claim, they had to show that the accommodation they requested was reasonable and that the school's refusal to provide the accommodation effectively denied their children the benefit of a public education. According to the court, the parents were unhappy with the virtual instruction being provided by the school corporation, which was described as eLearning lessons in the form of video-conferenced classes. The parents objected to this virtual instruction and requested either in-person instruction or "traditional e-learning courses," described as pre-recorded classes that the children could watch on-line when they chose and allow them to work at their own pace and set their own learning schedule.

The court concluded that the parents' requested accommodations were not reasonable since implementing either accommodation would have resulted in a fundamental alteration of its educational services and impose an undue hardship on the school corporation. In the opinion of the court, the parents did not seek a modification of the school's virtual instruction, but in fact, sought a completely different form of instruction.

The court then considered whether the students were effectively denied the benefit of a public education when the school refused to implement the parents' requested



accommodation. The court noted the difficulties the parents encountered when taking steps to ensure that their children availed themselves of the virtual instruction and acknowledged that virtual instruction was not the equivalent of in-person learning, but concluded that the educational services the student received during the pandemic satisfied the school's duty to offer a free public education under Indiana law.

The court then addressed the parents' claims that employees of the county health department violated Governor Holcomb's Executive Order 20-02. The trial court found nothing on the part of the county health department that could be construed as an actionable violation of the executive order. The appellate court concluded the parents had no private right to enforce the executive order and that the claim was properly dismissed. But it also considered the parents' argument that health officials violated the executive order by closing schools. The parents believed these decisions violated statements in a press release by the Centers for Disease Control and Prevention (CDC) that said it was critically important for public schools to open. The court found this statement was not a protocol or a guideline and that the governor's executive order did not restrict the ability of the health department to issue recommendations concerning school closures during the pandemic.

Next, the parents asserted that the health department (by recommending no in-person instruction) and the school corporation (by following the department's recommendation for several weeks in the 2020-2021 school year) violated Indiana's Home Rule Act. The parents alleged that the Home Rule Act prohibits local governmental units from regulating conduct that is regulated by a state agency.² In the opinion of the parents, the decisions to close schools and offer virtual instruction prohibited the implementation of the ILEARN statewide assessment and, in turn, precluded the Indiana Department of Education from meeting its statutory duty to publish a report that included the statewide assessment scores.³ The appellate court found that the Home Rule Act does not confer a private right of action for an alleged violation and that there were no facts suggesting



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“ School corporations are complex organizations with many moving parts. Corporations must have clear policies to guide the day to day operations in order to operate effectively. Rossville Schools have been fortunate to team up with ISBA and utilize their Comprehensive Policy Management Services (CPMS). CPMS has been instrumental in guiding Rossville School's policy development to ensure policies are up-to-date, on point, and necessary. I have been extremely pleased with the service and hold it in high regard.”

- Dr. James Hanna, Superintendent
Rossville Consolidated Schools

“ We are very thankful to ISBA for their continued support through their policy service. Our board greatly appreciates their ability to adapt legal requirements and policy to fit the individual needs of our school district. **Their customer support and availability are remarkable and set their service apart from others.”**

- Scot D. Croner, PhD, Superintendent
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that the actions of the county health department and the school corporation invaded the province of the Department of Education's authority or obligation to create a performance report.

In response to the parents' argument of Section 1983 violations, the court noted they waived their claims of a procedural due process violation but also that the parents did not allege a cognizable property or liberty interest that was affected by the decisions of the health department or the school corporation. As to the substantive due process violations, the court found that the parents had to show that (1) the law infringed on a fundamental right or liberties deeply rooted in our nation's history or (2) the law did not bear a substantial relation to permissible state objectives. The court further noted that the parents had to demonstrate that the State's conduct was arbitrary and capricious. The court reviewed several decisions addressing constitutional challenges to state action taken in response to a public health crisis. Considering those cases and Indiana statutes that give local health boards the authority to take any action authorized by

statute or rule to control communicable diseases and allow them to close schools when necessary to prevent and stop epidemics, the court found no substantive due process violation. In the opinion of the court, parents "do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over the subject." Lastly, the court addressed the parents' equal protection claim that their children had their accommodations taken away by school closures and that those actions were arbitrary and irrational and impeded their fundamental right to receive an education. Finding that education is not among the rights explicitly protected by the U.S. Constitution and that, for purposes of the equal protection clause, persons with disabilities are not considered members of a suspect class, the court applied a rational basis standard. Under such a standard, government action is presumed constitutional that can only be overcome by a clear showing of arbitrariness and irrationality. The court found that the actions of the health department and the school corporation furthered the governmental interest of protecting public health and treated the students in this case no differently than anyone else, and thus affirmed the dismissal of the parents' equal protection claim.

The parents had alleged that the two county health officers were negligent by failing to research CDC guidelines on school closures, causing the parents to disrupt their workday and suffer emotional distress from the inadequacy of the education their children were receiving. The court dismissed this claim after finding that the health officers' actions were conducted within the scope of their employment under the Indiana Tort Claims Act and that none of their actions constituted criminal, malicious, willful and wanton behavior, or behavior calculated to benefit them personally.

Lastly, the parents alleged that the health officers failed to follow the governor's executive order by making recommendations contrary to CDC guidelines. The court interpreted the executive order as requiring local health officials to cooperate with the State Department of Health in its response to the public health emergency and found no evidence of failure on the part of the county health officers to cooperate with the state health department. 🎓

REFERENCES

1. Jennifer Reinhoehl and Jason Reinhoehl v. St. Joseph County Health Department, Dr. Robert Einterz, Dr. Mark Fox, and Penn-Harris-Madison School Corporation, 21A-CT-433, December 3, 2021
2. IC 36-13-8(a)(7)
3. IC 20-32-5-116

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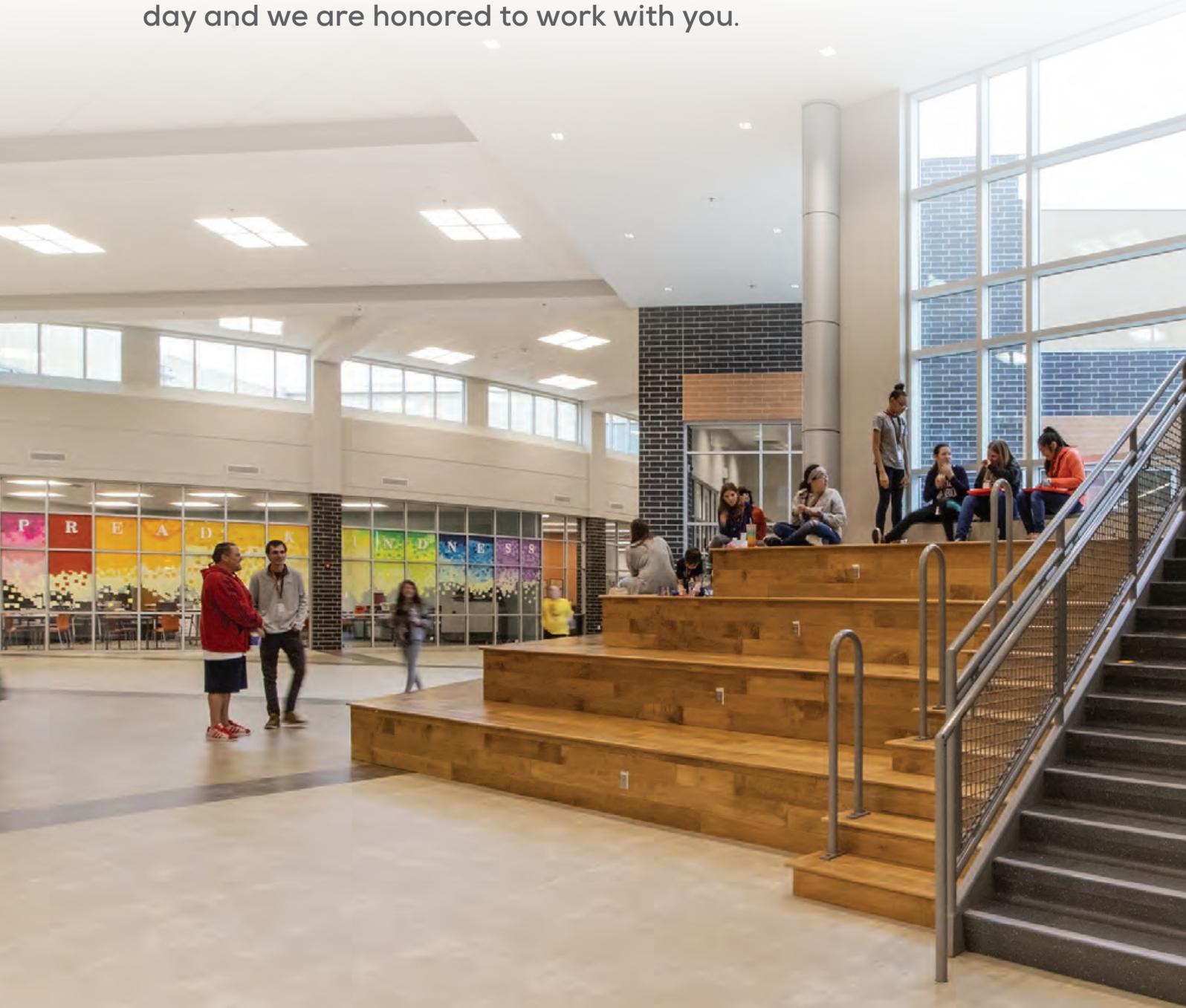
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Policy Advisor

By Julie M. Slavens, Esq., Senior Counsel/Director of Policy Services

CONSTITUTIONAL CONSIDERATIONS FOR PUBLIC PARTICIPATION POLICY

Allowing members of the public to speak at school board meetings is at the forefront of many school board members' considerations to the extent it has not been in a long time, not only in Indiana but also in many other states in the country.

Under Indiana's Open Door Law, it is clear members of the public only have the right to attend, observe, and record school board meetings; they do not have the right to address the board or individual board members, nor engage in disruptive behavior during the school board meeting.

Given the law, it is up to a school board to determine whether or not members of the public will speak at its meetings. This is accomplished through a school board-adopted public participation policy.

While the school board has a wide berth of discretion as to the provisions of its public participation policy, there are a few parameters it must keep in mind when considering the policy. There are constitutional issues and rights to be considered, namely the First Amendment Free Speech rights of individuals. A recent case is illustrative of this point.

The case is out of Ohio and involves a school board's policy on public participation and how it was applied by the board against citizens addressing the board at one of its meetings. The policy required individuals who wanted to speak during the public comments portion of the school board agenda to fill out a form

at least two business days before the day of the meeting, and the form had to be filled out in person during the business hours of the school district's central office. The board required this process in order to "conduct its meetings in a productive and efficient manner that assures that the regular agenda of the Board is completed in a reasonable period of time" and for a "fair and adequate opportunity for the input to be considered." The school board set up this process to address problems it experienced in that past wherein individuals would sign up to speak but would not attend the meeting. The policy also stated the circumstances the presiding officer had the authority to address during the public comment portion of the agenda. The particular circumstance at issue in this case was the presiding officer could "interrupt, warn, or terminate a participant's statement when the statement is too lengthy, personally directed, abusive, off-topic, antagonistic, obscene, or irrelevant."

The case involved four persons who wanted to address the board after a school shooting occurred, and the board was considering allowing certain employees to be armed while at school. Three of the four persons did not fill out the required form, believing the fourth person who did sign the form also signed them up to speak at the meeting. During the meeting, the person who did sign up spoke at the meeting with a prepared speech in which his remarks were directed at the board members. He did not curse or use obscene language, but he did use the word

“threatening” about the board’s actions and accused the board members of pushing their pro-gun agenda. The board president interrupted him and asked him not to use the word “threatening,” and another board member told him to stop putting words in board members’ mouths and stating things that are not facts. Eventually, the presiding officer had the person removed. The court viewed a video of the patron’s speech and stated the person was calm throughout the speech and did not speak more than the allotted three minutes set out in the public participation policy. The other three patrons who are the Plaintiffs in the case were denied the opportunity to speak as they did not fill out a form.

All four patrons sued the school board claiming the policy violated the First Amendment Free Speech Clause and that the Board violated the patron’s Free Speech rights when board members interrupted him and removed him from the meeting.

The court found the policy did violate the First Amendment, as its provisions contained impermissible viewpoint discrimination. Moreover, as applied to the patron, the Board violated his Free Speech rights by interrupting him and removing him from the meeting. The court also found the preregistration requirement did not violate the Free Speech Clause. The court’s reasonings for its ruling are explained below.

VIEWPOINT DISCRIMINATION

The court reviewed the content of the policy particularly focusing on the provision mentioned above and especially on the following words: personally directed, abusive, and antagonistic. While the policy itself did not define these words, the court

looked to the dictionary definitions, finding abusive to mean harsh, insulting, hostile to one’s feelings; antagonistic to mean showing dislike or opposition; and personally directed to mean either harassing or abusive statements towards a particular person. The court found these words implied the board could stop a person from speaking when the person began to speak in opposition to the board’s actions or expressed dislike of the board’s actions or a particular board member.

The court stated a board can restrict the subject matter or topic a patron may address at a board meeting through its policy or procedures, but the policy must be viewpoint neutral. In other words, the board could not only allow the person to speak if they agree with the board’s actions or position on the subject matter. To allow such would deny a person his Free Speech rights when speaking to a governmental entity. The purpose of the Free Speech Clause is to allow citizens to speak about their opinions on public matters whether they agree with the governmental entity’s policies or not. The government is not allowed to restrict the speech of citizens to the viewpoint of the government when it permits the citizens to speak in its forum, the court ruled.

Based upon the above, the court ruled the policy as written violated the First Amendment, as the language allowed the board to stop persons from speaking when the speech was in opposition to the board or board members personally. In addition, the court found the policy as applied in this case violated the Free Speech rights of the patron as he was interrupted when he began to state he was opposed to the board’s plan and accused the board of making threats.



PREREGISTRATION REQUIREMENTS

The plaintiffs argued that preregistration requirements violated their Free Speech rights by limiting their ability to speak at any board meeting, especially if a person worked during the day, as the person would have to take time off to go the central office of the school district and preregister. This requirement was more burdensome to persons who worked during the day, as the policy required each individual who wanted to speak to sign up themselves; no one else could sign up for them to speak.

The court found this was not a Free Speech issue, as it did not address the content or the viewpoint of the patron's speech. These requirements applied to any person who wished to speak at school board meetings regardless of their viewpoint. The court ruled these requirements were reasonable time, place, and manner requirements. Under the First Amendment, governmental entities could impose reasonable time, place, and manner restrictions on citizens' speech if they have a significant governmental interest for requiring the time, place, or manner restriction. In this case, the court found the school board wanted to be sure its business was conducted in an efficient manner and that patrons who want to speak to the board are not denied the opportunity. In the recent past, the board would have citizens register and then not attend the meeting. The preregistration requirements better ensured the persons who wanted to speak would be allowed to do so, the court ruled.

With respect to the argument that patrons who worked during the day were overly burdened, the court ruled that while the preregistration requirement did effectively restrict them from speaking at school board meetings, there were other opportunities to communicate with the board members, such as writing or sending an email, talking to them at school events, or calling them. The court pointed out that school board members had email addresses that were listed on the school district's website; so the preregistration requirements did not completely restrict the communication avenues available to working patrons. (The case is Ison v. Madison Local School District Board of Education, 3 F.4th 887 (6th Cir. 2021).)

PUBLIC PARTICIPATION POLICY CONSIDERATIONS

Given the case law and the provisions of the Open Door Law, school boards should review their current policy or procedure for



public participation at board meetings and be sure the provisions are viewpoint neutral. School boards have flexibility in other areas and should keep in mind that they can restrict public comments to agenda items only or to specific agenda items; they may have a separate agenda item for public comments usually at the beginning or the end of the agenda; and the policy may restrict the amount of time each person may speak (generally the period of time allowed for each person is three to five minutes). If a board chooses to do a general public comment agenda item, it would typically be for subjects other than the designated agenda items. An important parameter to include is that the person will address the board and not an individual board member, and that individual board members will not respond to comments or answer questions posed to them or the board. The policy or procedures should also include a provision that the board president will monitor the public comments and will enforce the policy and/or parameters adopted by the board. The policy and/or procedures should be published whenever the board posts the notice of its board meetings.

The Indiana Public Access Counselor has also weighed in on the issue of public participation at school board meetings in an informal opinion. The opinion addresses the various provisions of a public participation policy and provides insights on addressing patrons who may not act in a civil manner at a board meeting. The informal opinion was issued in October and may be found at <https://www.in.gov/pac/files/informal/21-INF-8-1.pdf>.

While worth reading in full, the informal advisory opinion confirms that “a public comment forum during a meeting is a privilege and a courtesy extended by a governing body to the public.” In addition, “reasonable rules, restrictions, and regulations can be placed on commenting, if the forum is opened. It is up to each governing body to set those policies and enforce them as objectively as possible. They can include viewpoint neutral rules regarding time limits, keeping comments relevant to agenda and pending business items, and prohibition on malicious re-marks. These types of measures should pass scrutiny so long as they are enforced consistently.” 🐾

If you have any questions about the information discussed in this publication, please contact Julie M. Slavens, by phone at (317) 639-0330 ext. 111 or by e-mail at jslavens@isba-ind.org.



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EDITOR'S NOTE:

This is the first article in a year-long series featuring Clarksville Community School Corporation.



CLARKSVILLE COMMUNITY SCHOOL CORPORATION **DEMONSTRATES INNOVATIVE USES OF ESSER FUNDS**

By Haley Querbach for the Clarksville Community School Corporation



Tina Bennett, *Superintendent,
Clarksville Community School
Corporation*

Clarksville Community Schools educates nearly 1,400 students from across Southern Indiana every school year. An all “A” and “B” district, Clarksville offers a small school community paired with big opportunities. Clarksville students boast high graduation rates year in and year out, and one out of every three graduates earns an honors diploma. Clarksville High

School graduates go on to become doctors, lawyers, ministers, business owners, professors, collegiate athletes and more. This is an ever-growing corporation with student success at the heart of every decision.

Clarksville stands out in so many ways, but one thing it shares with school districts all around the world is the need to provide safe, healthy in-person education during the coronavirus pandemic. This unprecedented crisis has challenged schools like

never before, resulting in learning gaps that must urgently be addressed and bringing increased attention to students’ social, emotional, and mental health.

Federal funding provided in response to the pandemic presents a unique opportunity to drive improvements that make schools even stronger than before. Clarksville’s allocation of ESSER (Elementary and Secondary School Emergency Relief) funds totals a little more than \$3 million.

“When it came to deciding how to implement this money in our corporation,” explained Clarksville Superintendent Tina Bennett, “the main goal was to apply it to initiatives and programs that were forward thinking. It was our effort to be proactive instead of reactive. We realize that these funds have the power to

**“IT WAS OUR EFFORT TO BE PROACTIVE
INSTEAD OF REACTIVE. WE REALIZE THAT
THESE FUNDS HAVE THE POWER TO INSPIRE
STUDENT SUCCESS WHILE CATAPULTING OUR
CORPORATION FORWARD.”**

– Tina Bennett, *Superintendent, Clarksville Community School Corporation*

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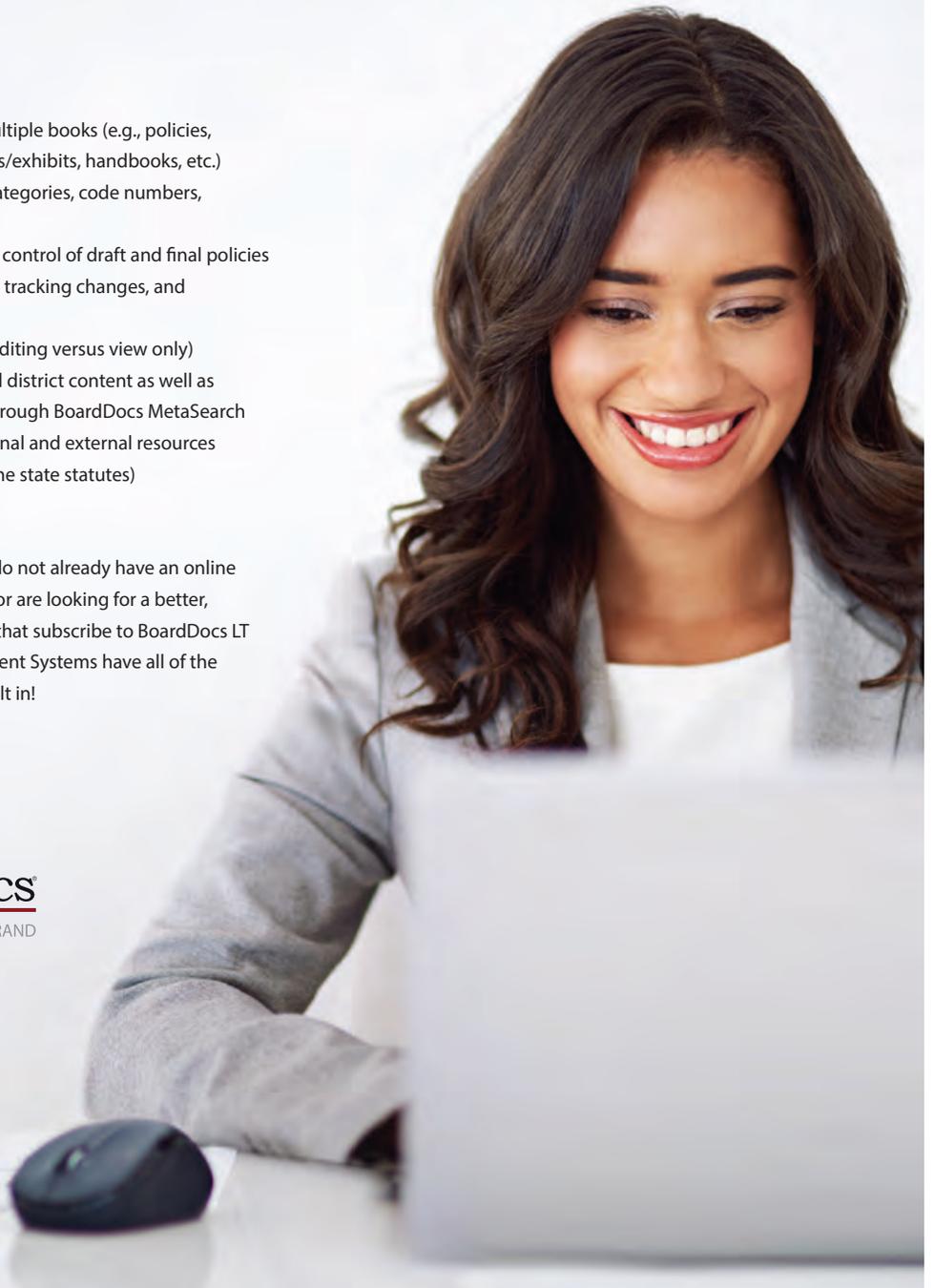
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inspire student success while catapulting our corporation forward.”

Clarksville created a multi-year spending plan that looks beyond short-term recovery efforts and Covid mitigation measures like ventilation improvements and PPE to build a foundation for sustained transformation.

MODERN CLASSROOMS PROJECT

The first area that Clarksville Community Schools leaders chose to apply ESSER funds was the Modern Classrooms Project (MCP). This research-backed instructional model serves students at all levels of understanding, both inside and outside the classroom, by combining blended instruction through teacher-created videos, a structure where students control the pace of their own learning, and grading where students progress from one lesson to another once they demonstrate mastery. The innovative teaching model empowers teachers to differentiate instruction and build strong relationships with students by leveraging technology to maximize 1:1 and small group interactions. In Modern Classrooms, teachers spend less time managing student behavior and more time supporting student success. Students are appropriately challenged each day and develop ownership in their learning. They see a purpose in every task completed as they work toward mastery of each skill.

Clarksville teachers who have opted-in to the initiative are enthusiastic about the change. Jaime Lamkin, a seventh-grade math teacher at Clarksville Middle School and a top 10 finalist in 2021 for Indiana Teacher of The Year, explained how the model empowers teachers to meet the needs of all students. “When I began the process of being trained in Modern Classroom this summer, I was extremely excited about the prospect of learning a new way to differentiate instruction. Modern Classroom provides a structure that allows students to work at their

own pace in order to learn the material and achieve their highest capability. While the plans I made had to be greatly changed due to the ramifications of the pandemic leading to me selecting a few units to use for Modern Classroom, I still see the potential this structure provides in truly accelerating learning for those students who are often held back in a typical classroom while also providing more opportunities for remediation and more individualized instruction for those students who require more time and attention.” Lamkin continued, “This year has brought about struggles which have not allowed me to use the Modern





Classroom structure as much or how I intended. It takes a great deal of time to prepare each Modern Classroom unit. If schools are willing to regularly provide teachers with extra time to plan and prepare for the use of Modern Classroom within their instruction, I believe that Modern Classroom is a powerful tool that would allow us to provide more individualized instruction to ensure every student can achieve their highest potential. With extra time, support, and resources, Modern Classroom provides a structure that allows for true differentiation to take place. Differentiation is the answer to many of education’s struggles, and Modern Classroom is the best program that I’ve seen in my 23 years of education as far as providing teachers with concrete steps to differentiate.”

For more information, visit www.modernclassrooms.org/indiana.

CAMP INVENTION

Clarksville has prioritized interventions and supports for at-risk and disadvantaged students who have incurred the most significant educational setbacks as a result of the disruptions caused by the pandemic. But to ensure that high-achieving students aren’t forgotten, the district chose to use ESSER Funds for scholarships for high-level learners to attend a summer camp called Camp Invention. This is a STEM-based (Science, Technology, Engineering, and Math) camp that allows high-ability students to design, construct, and test creations. During this experience, 80 Clarksville Community Schools students were able to express their creativity while working collaboratively with other like-minded students. Camp Invention is focused on nurturing creativity, innovation, real-world problem solving, and the spirit of invention. Students walked away with skills and experiences in leadership, perseverance, resourcefulness, and a mindset that encourages entrepreneurship.

Abby Coffman, Clarksville’s High Ability Coordinator, shared, “Our students were

incredibly fortunate to have the opportunity to attend Camp Invention subsidized entirely by our school corporation funds, something that otherwise would have been impossible for many of our families. Teachers and students both benefit from constructing their understanding of concepts like velocity and trajectory while ‘chucking’ ducks at various world famous landmarks or testing the principles of sound by building their own working microphone. The week of Camp Invention made lasting impacts on our budding inventors and their families, and our school community is stronger for it.”

In addition, Clarksville has given its teachers the opportunity to use ESSER Funds to pay for ELL (English Language Learner) and High Ability Certifications. Five teachers are currently taking advantage of this opportunity.

ACCELERATING LEARNING

Clarksville Community Schools invested in extended day opportunities to help close learning gaps caused by the pandemic. Extra learning is provided to any student who would like to take part, whether it’s for the whole session, or if they would like to pop in on an as-needed basis. Free transportation makes this learning accessible to all students. Teachers are motivated to give extra time, as they receive a stipend to participate.

Stephanie Anderson, ELL Coordinator/Extended Day Learning Tutor, commented, “One of the benefits I’m seeing through extended day learning is that my students are having opportunities to enrich their creative thinking while filling in the gaps in their foundational skills.”

Clarksville also enhanced its summer programming with the launch of an intensive academic summer camp for grades 3-12. Students who enrolled in the one-month camp were provided both transportation and meals.

To increase the tools in each teacher and support staffs’ toolbox, Clarksville Community Schools partnered with Centerstone on training in the areas of children’s mental health, trauma-informed schools, LGBTQ cultural competency, collaborative and proactive solutions, and implicit bias.

Clarksville is also expanding Social Emotional Learning (SEL). The district is moving slowly with this initiative, in order to be intentional with the development of the program. Clarksville is currently in Phase 1 and has partnered with Clark & Floyd Systems of Care to facilitate schoolwide focus groups to identify the needs of students, staff, and families. During Phase 2, the district will complete a mental health profile assessment, with the



“ONE OF THE **BENEFITS** I’M SEEING THROUGH EXTENDED DAY LEARNING IS THAT MY STUDENTS ARE HAVING **OPPORTUNITIES TO ENRICH THEIR CREATIVE THINKING** WHILE FILLING IN THE GAPS IN THEIR FOUNDATIONAL SKILLS.”

– Stephanie Anderson, *ELL Coordinator, Clarksville Community School Corporation*

ultimate goal of developing its very own Clarksville Systems of Care.

The Clarksville Community School Corporation administrative team and school board have put deliberate thought and effort into the creation of a multi-year ESSER spending plan that invests in innovation and protects the health and safety of the school community.

A series of exciting initiatives are underway with the potential to increase student motivation and engagement, improve staff retention, and help teachers avoid burnout.

The strategic approach to spending ESSER funds will benefit the students and staff of the Clarksville Community School Corporation for years to come.” 🐼



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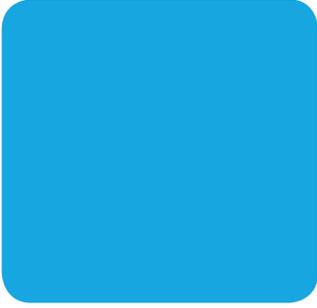
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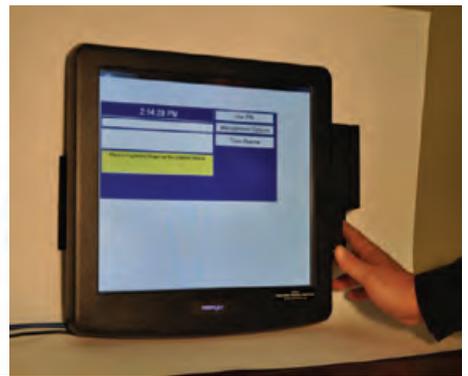
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