



INDIANA STATE BOARD OF EDUCATION

TO: Indiana State Board of Education
FROM: Timothy Schultz, General Counsel—Indiana State Board of Education
RE: School Corporation Reorganization Requests
DATE: December 12, 2018

Introduction

Recently, a school corporation submitted a request to reorganize to the Indiana State Board of Education (“Board”) pursuant to IC §20-23-4-38(b). Specifically, the corporation requests that the Board approve a proposed plan to subdivide the school corporation into two separate entities.¹ While Title 20 permits the reorganization and/or subdivision of school corporations, there are a number of issues the Board should consider before moving forward with a request for reorganization.

Questions Presented

Question 1: Must a county committee be created prior to submitting a reorganization request to the Board?

Response: No. A school corporation may rely upon IC 20-23-4-38(b) to submit a reorganization request to the Board without creating a county committee.

Question 2: What does Indiana law require a local governing body include in its reorganization request?

Response: Pursuant to IC 20-23-4-38(b), a reorganization request must identify the justification for the reorganization request, the general characteristics of the reorganized school corporation(s), the composition of the reorganized local governing body(ies) (elected, appointed, compensation, qualifications, etc.), as well as a summary of the impact the reorganization will have on the school corporation(s) financial obligations.

Question 3: Must the Board establish minimum standards for evaluating a reorganization request?

Response: Yes. Indiana law requires the Board to “adopt a set of minimum standards...[that] all school corporations must meet, insofar feasible.” This memorandum proposes the Board adopt the proposed minimum standards below when evaluating a reorganization request.

1. A reorganization request must identify how the reorganized school corporation(s) is better suited to provide efficient and adequate educational opportunities for all students compared to the existing school corporation organization.
2. A reorganization request must describe the impact the reorganization will have on educational opportunities of students, local community interests, the community as a whole, and the economic interests of the community.
3. How the proposed reorganization will allow for more equalized educational opportunities.
4. Provide a detailed accounting of how the assets and financial obligations of the school corporation will be impacted pursuant to the reorganization, and coordinate with the Indiana Department of Local Government Finance to ensure compliance with any applicable laws or regulations.
5. A statement of assurances that the reorganized school corporation(s) shall abide by all applicable state and federal laws.
6. A good faith analysis of the impact the proposed reorganization will have on the socioeconomic and demographic composition of the school corporation(s).
7. Any additional information requested by the Board.

¹ IC 20-23-4-7

Legal Analysis

I. Whether a school corporation is required to create a county committee prior to submitting a reorganization request to the Board

Indiana Code contemplates the reorganization of school corporations through the creation of a county committee or by submission of the proposed changes by the local governing body or the State Superintendent after the dissolution of the county committee.² Specifically, IC 20-23-4-38(b) provides that after a county committee has been dissolved, if the local governing body or the State Superintendent considers further reorganization necessary to improve educational opportunities for the students, the local governing body or the State Superintendent shall submit proposed changes to the Board.

To ensure that a request to reorganize a school corporation under IC 20-23-4-38(b) is legally permissible in situations when the original county committee was dissolved decades ago, Board staff submitted a request to the Office of the Indiana Attorney General (“OAG”). The request sought guidance regarding whether a school corporation that was previously created by a county committee, which has since been dissolved, can take advantage of IC 20-23-4-38 and submit the proposed reorganization plan without creating a new county committee, regardless of the amount of time since the dissolution of the committee. In response, the OAG issued Official Opinion 2018-11, affirming that a school corporation may rely upon IC 20-23-4-38(b) to submit a reorganization request to the Board without creating a county committee despite the length of time since the county committee was dissolved.

II. Statutory Requirements of a Reorganization Plan Submitted to the Board by a School Corporation pursuant to IC 20-23-4-38(b).

A school corporation must obtain Board approval of a reorganization request before it can formally adopt and implement a proposed reorganization.³ In order to properly submit a request for Board consideration and approval, the plan must satisfy a number of mandatory statutory requirements. The following sections are merely intended to provide a summary of the statutory requirements that a proposed reorganization plan must address, and are not intended to be an exhaustive list. A school corporation requesting a reorganization should review Title 20 to ensure compliance with all statutory requirements.

A. Justification for the Reorganization Request and General Characteristics of the Reorganized School Corporation(s).

Pursuant to IC 20-23-4-12(c), any reorganization request submitted to the Board must identify the educational improvements the plan's adoption will make possible. Further, the request must include any other data or information the school corporation considers appropriate. In addition to identifying the educational improvement, the reorganization request must provide the name of the reorganized school corporation(s), as well as a general description of the boundaries of the school corporation.⁴ If the boundaries do not follow the boundary of an existing civil unit of government or school corporation, the description must set out the boundary as near as reasonably possible by streets, rivers, other similar boundaries.⁵ If the previous descriptions are not possible, then the boundaries must be identified by section lines or other legal descriptions.⁶

² IC 20-23-4-11 & IC 20-23-4-38

³ IC 20-23-4-37.

⁴ IC 20-23-4-12(a); IC 20-23-4-16(1)-(2).

⁵ IC 20-23-4-12(e)

⁶ IC 20-23-4-12(e).

B. Creation of Local Governing Bodies for School Boards

In order for a reorganization plan to be properly submitted to the Board for consideration and approval, the plan must describe the resulting board of school trustees/school board (hereinafter referred to as “local governing body”). The plan must identify how the local governing body complies with all applicable State law, which includes, but is not necessarily limited to IC 20-23-4, IC 20-23-8, and IC 20-26-4.

Pursuant to IC 20-23-4-12(a)(3), IC 20-23-4-16(3)-(4), and IC 20-23-8-7, with respect to the local governing board, the reorganization plan must include whether the number of members will be three, five, or seven.⁷ Additionally, the plan must identify whether the members are elected or appointed as well as the manner by which the elections or appointments are made.

1. Elected Local Governing Body: IC 20-24-4-27

If the members are elected, the election must occur at the general election at which county officials are elected.⁸ If the members of a governing body are elected, the members shall be elected in accordance with one of the six options set forth in IC 20-23-4-27, or in accordance with IC 20-23-4-35. Indiana Code 20-23-4-27 provides the following six options:

Option 1:

Members of a governing body may reside anywhere in the school corporation and shall be voted upon by all registered voters living within the school corporation voting at any governing body member election.

Option 2:

The school corporation shall be divided into two or more districts with one or more members of the governing body residing within each of the districts. The plan may also provide that one or more members of the governing body may reside anywhere in the school corporation. The plan:

- must set out the number of members to be elected from each district;
- may provide for the election of an equal number of members from each district; and
- must set out the number, if any, to be elected at large without reference to governing body member districts.

All candidates must be voted on by all voters of the school corporation.

Option 3:

The school corporation shall be divided into three districts of approximately equal population. In a district divided into three districts, if:

- the governing body consists of three members, one member must reside in each district;
- the governing body consists of five members, two members may not reside in any one district; and
- the governing body consists of seven members, at least two shall be elected from each district.

Candidates shall be voted on by all registered voters of the school corporation voting at any governing body member election.

⁷ Pursuant to IC 20-23-8-7(b), a nine member local governing body is permissible in limited circumstances.

⁸ IC 20-23-4-27; IC 20-23-8-7; IC 20-23-4-29.1.

Option 4:

The school corporation shall be divided into two or more electoral districts. Each member:

- serves from one electoral district;
- must be a resident of the district; and
 - must be voted upon by the registered voters residing within the electoral district and voting at any governing body member election.

The plan must set out the number to be elected from each electoral district and may provide for election of an equal number of members from each district. The plan must provide that not less than one less than a majority of the governing body may reside anywhere in the school corporation and must be voted upon by all its registered voters voting at any governing body member election.

Option 5:

The school corporation consists of one (1) electoral district that must embrace the entire community school corporation from which a majority of the members of the governing body shall be elected by all the registered voters of the community school corporation voting at a governing body member election. The other electoral districts must be subdivisions of the community school corporation. Each of the remaining members of the governing body:

- (A) serves from one (1) of the latter electoral districts;
- (B) must be a resident of that district; and
- (C) must be voted upon by registered voters voting at a governing body member election.

The plan must set out the number to be elected from each district and may provide for the election of an equal number of members from the district.

Option 6:

The community school corporation shall be divided into two or more electoral districts. Each member:

- serves from one electoral district;
- must be a resident of that district; and
- must be voted upon only by the registered voters residing within that district who vote at a governing body election.

The plan must set out the number of members to be elected from each electoral district in the school corporation and may provide for election of an equal number of members from each district.

It is important to note that pursuant to IC 20-23-8-8, if the plan provides for electoral districts, where a member of the governing body is elected solely by the voters of a single district, the districts must be as near as practicable equal in population. The districts shall be reapportioned and their boundaries changed, if necessary, or recertified, if changes are not necessary, by resolution of the governing body not later than December 31 of the year next following the year in which a decennial census is taken to preserve the equality of the local governing body.

Moreover, if the reorganization plan provides for the election of the governing body members, then the judge of the circuit court, or in the case of a united school corporation, the judge of the circuit court of the county having the most students enrolled in the united school corporation, shall appoint interim governing body members in accordance with the reorganization plan approved by the state board. IC 20-23-4-31. Further, the appointed interim members shall serve until their successors are elected. Alternatively, the

reorganization plan may provide for an alternative method of appointing the interim members by one or more of the class of officials listed in section 20-23-4-28(e).⁹

As noted above, if a reorganization plan provides for election of members of the governing body, the members of the governing body shall be elected at a general election. Further, IC 20-23-4-29.1 requires that each candidate must file a petition of nomination in accordance with IC 3-8-2.5 that is signed by the candidate and by ten registered voters residing within the boundaries of the school corporation. The filing must be made within the time specified by IC 3-8-2.5-4.

Indiana Code 20-23-4-29.1 also requires that all nominations shall be listed in the form prescribed by IC 3-11-2. If the reorganization plan provides that the members of the governing body shall be elected by all the voters of the school corporation, candidates shall be placed on the ballot in the form prescribed by IC 3-11-2, without party designation, with the candidate(s) who receive the most votes being elected. Alternatively, if the plan provides that members of the governing body are to be elected from residence districts by all voters in the community school corporation, nominees for the governing body shall be placed on the ballot in the form prescribed by IC 3-11-2, including reference to the candidate's residence district and without party designation. The ballot must state the number of members to be voted on and the maximum number of members that may be elected from each residence district. Finally, if the plan provides that members of the governing body are to be elected from electoral districts solely by the voters of each district, nominees residing in each electoral district shall be placed on the ballot in the form prescribed by IC 3-11-2, without party designation. The ballot must state the number of members to be voted on from each electoral district.

Indiana Code 3-8-1 governs the qualifications for governing board candidates. Specifically, IC 3-8-1-1 explains that a person is not qualified for a governing board unless the person is registered to vote in the election district the person seeks to represent not later than the deadline for filing the declaration or petition of candidacy or certificate of nomination. Further, IC 3-8-1-34 requires that a candidate for a governing board must have resided in the school corporation for at least one year before the election. Similarly, if the candidate is seeking to represent an election district that consists of less than the entire school corporation, the candidate must have resided in the district for at least one year before the election.

2. Appointed Local Governing Body: IC 20-23-4-28

If the reorganization plan requires that the board of school trustees/local school board members be appointed, the plan must identify when the appointments are made and who makes the appointments. Furthermore, reorganization plans that require appointment of the board of school trustees/local school board members must adhere to the requirements contained in IC 20-23-4-28. According to IC 20-23-4-28, the appointed members of the governing body may reside anywhere in the school corporation, or alternatively, the school corporation can be divided into two or more districts, any one of which may embrace the entire school corporation. Further, each member serves from a particular district and must be

⁹ (e) A plan providing for the appointment of members of the governing body must designate the appointing authority. The authority may be the same for each governing body member and must be one (1) or more of the following:

- (1) The judge of the circuit or superior court.
- (2) The city executive.
- (3) The legislative body of a city.
- (4) The board of commissioners of a county.
- (5) The county fiscal body.
- (6) The town legislative body.
- (7) The township executive.
- (8) The township legislative body.
- (9) A township executive and legislative body jointly.
- (10) More than one (1) township executive and legislative body jointly.

a resident of the district. The plan must set out the number to be appointed from each district and may provide for an equal number of members from each district. The reorganization plan may provide that the first appointments of the governing body members are for staggered terms of not more than four years. Thereafter, appointments shall be made for terms of four years. All terms of office expire June 30 in the applicable year.

As previously noted, a reorganization plan providing for the appointment of members of the governing body must designate the appointing authority. The authority must be one or more of the following: (1) the judge of the circuit or superior court, (2) the city executive, (3) the legislative body of a city, (4) the board of commissioners of a county, (5) the county fiscal body, (6) the town legislative body, (7) the township executive, (8) the township legislative body, (9) a township executive and legislative body jointly, or (10) more than one township executive and legislative body jointly.

Depending on the type of entity with appointment authority, some additional statutory requirements may be imposed. First, if an appointment is to be made by a body, the appointment must be made by a majority vote of the body in official session. Second, if the appointment is conducted by township executives, the appointment must be made by a majority vote of the executives taken in joint session. Finally, if the appointment authority is vested with township legislative bodies, the appointment must be made by a majority vote of the total number of township legislative body members by a majority vote of the members, taken in joint session.

3. Local Governing Bodies with Elected and Appointed Members:

Pursuant to IC 20-23-8-7(a)(5), a local governing board may consist of both elected members and appointed members. If a reorganization plan allows for both elected and appointed local governing body members, the plan must identify the number of appointed members, when and by whom each of the appointed members are appointed, a general description of the manner of appointment that conforms with the requirements of IC 20-23-4-28, the number of elected members, and a general description of the manner of election that conforms with the requirements of IC 20-23-4-27.

4. Miscellaneous Local Governing Body Requirements

In addition to the requirements pertaining to the election or appointment of members to local governing bodies that a reorganization plan must account for, the plan must also detail the compensation, if any, of the members of the regular and interim board of school trustees, which may not exceed the amount provided in IC 20-26-4-7.¹⁰ Further, the plan must identify the qualifications required of the members of the local governing body, including any limitations on residence and term of office.¹¹ Additionally, members of local governing boards are prohibited from serving an elected/appointed term of more than four years, but are permitted to serve multiple consecutive terms.¹²

Furthermore, a reorganization plan should identify if any limitations on the residence, term of office and/or other qualifications for local governing body members.¹³ A proposed plan should also identify when the plan will take effect, if approved by the Board, and may include additional details to make the provisions

¹⁰ IC 20-23-4-12(a)(4).

¹¹ IC 20-23-4-12(a)(5).

¹² IC 20-23-4-12(f).

¹³ IC 20-23-8-7(a)(6)

of the plan workable.¹⁴ Plans should confirm that the resulting reorganization will adhere to the requirements contained in IC 20-26-4, which governs the operations of local governing bodies.

C. Financial Components of a Reorganization Request.

If a reorganization request seeks to subdivide an existing school corporation, the request must provide for the disposition of assets and liabilities as well as the disposition of any outstanding school bonds.¹⁵ Furthermore, the reorganization request must provide data showing the assessed valuation, number of resident students in ADA in grades 1 through 12, the assessed valuation per student, and the property tax levies of each existing school corporation to which the plan applies.¹⁶ The assessed valuation data must be current to the year the in which the request is submitted to the Board.¹⁷

Pursuant to IC 20-23-4-12(d), the reorganization request shall base the assessed valuations and tax levies on the valuations applying to taxes collected in the year the preliminary plan is prepared, or the year notice of a hearing or hearings on the preliminary plan is given by the school corporation. The assessed valuations may base the resident ADA figures on the calculation of the figures under the rules under which they are submitted to the State Superintendent by existing school corporations, and shall set out the resident ADA figures for the school year in progress if the figures are available for that year, or the immediately preceding school year if the figures are not available for the school year in progress. So long as the requesting school corporation attempts in good faith to comply with these statutory requirements, the data summary statement is sufficient regardless of whether the statement is exactly accurate.¹⁸

Concurrent with a school corporation's obligations set forth in IC 20-23-4-12(a)(6)-(7) and IC 20-23-4-16, IC 20-39-2-1 requires that the "state superintendent shall exercise the supervision over school funds and revenues that is necessary to ascertain their safety, secure their preservation, and secure their application to the proper object." To ensure that the obligations contained in IC 20-39-2-1 are fulfilled, the Department has established a Finance Division, with the stated goal of "to provide customer services, fiscal responsibility and accountability, through established best practices, to the programs incorporated in the IDOE while operating with optimal efficiency and aligning all available resources around student learning."¹⁹

Therefore, in order to satisfy the duties set forth in the above referenced statutes, school corporations that request a reorganization must submit all necessary financial information to the Department, which shall conduct a review of the proposed subdivision of assets and other financial obligations. After conducting a timely review of the financial components of a reorganization request, the Department will present a recommendation to the Board, detailing if the proposed reorganization complies with state law.

¹⁴ *Id.*

¹⁵ IC 20-23-4-12(a)(6), (7); IC 20-23-4-16(5).

¹⁶ IC 20-23-4-12(c)(2); IC 20-23-4-16(5), (6).

¹⁷ IC 20-23-4-12(c)(3); IC 20-23-4-16(5), (6).

¹⁸ IC 20-23-4-12(d).

¹⁹ <https://www.doe.in.gov/finance>.

III. Board’s Minimum Standards for Evaluation of Reorganization Plans.

Pursuant to IC 20-23-4-18, the Board is required to review each school corporation reorganization plan that is submitted for approval. However, approval of a reorganization plan is subject to the statutory requirements outlined in section II of this memorandum and the Board’s minimum standards adopted under IC 20-23-4-18. Below is a list of proposed minimum standards for the Board’s consideration and adoption.

1. Pursuant to IC 20-23-4-18(b), a reorganization request must “furnish efficient and adequate educational opportunity for all students in grades 1 through 12”:
 - A reorganization request must identify how the reorganized school corporation(s) is better suited to provide efficient and adequate educational opportunities for all students compared to the existing school corporation organization. Additionally, if the reorganization request will result in the subdivision of an existing school corporation into two or more school corporations, the reorganization request must specifically address how the creation of an additional school corporation(s), and the resulting additional administration and duplication of services, will produce the statutorily mandated “efficient and adequate educational opportunit[ies] for all students in grades 1 through 12.” IC 20-23-4-18(b).
2. OAG Official Opinion No. 2011-3 reads “[i]n determining whether either reorganization is necessary...consider the state policy located at Ind. Code § 20-23-6-16. This section states in relevant part that ‘the school corporation shall give consideration to the educational opportunities for students, local community interest, the effect on the community as a whole, and the economic interests of the community relative to establishing the boundaries of the school corporation that is involved in the school corporation reorganization, consolidation, or annexation attempt.’”²⁰ Based upon the guidance contained in the OAG opinion, a reorganization request must describe the impact of the reorganization will have on the educational opportunities for students in the following ways:
 - Educational opportunities for students:
 - Explain how the reorganization will increase educational opportunities for students within the school corporation(s).
 - Will the reorganization have an impact on the availability of career and technical education opportunities for students within the current boundaries of the school corporation? If so, please provide a detailed analysis of this impact.
 - Will the reorganization have an impact on the availability of special education services for students within the current boundaries of the school corporation? If so, please provide a detailed analysis of this impact.
 - Will the reorganization have an impact on the availability of Graduation Pathways opportunities for students within the current boundaries of the school corporation? If so, please provide a detailed analysis of this impact.

²⁰ **IC 20-23-6-16 Community school corporation; state policy**

It is the policy of the state that whenever a community school corporation (as defined in IC 20-23-4-3) seeks to:

- (1) reorganize into a community school corporation under IC 20-23-4 or IC 20-23-16-1 through IC 20-23-16-5;
- (2) enter into a territorial annexation under IC 20-23-5 either as an acquiring school corporation or a losing school corporation (as defined in IC 20-23-5-4);
- (3) consolidate with another school corporation under IC 20-23-6; or
- (4) consolidate with another school corporation into one (1) metropolitan school district under IC 20-23-7;

the school corporation shall give consideration to the educational opportunities for students, local community interest, the effect on the community as a whole, and the economic interests of the community relative to establishing the boundaries of the school corporation that is involved in the school corporation reorganization, consolidation, or annexation attempt.

- Will the reorganization have an impact on the availability of transportation opportunities for students within the current boundaries of the school corporation? If so, please provide a detailed analysis of this impact.
 - Explain how the reorganization will impact curriculum opportunities currently offered by the school corporation (e.g. Advance Placement and Dual Credit courses, industry certifications, etc.).
- Local community interest:
 - Identify, and provide supporting materials, any opportunities that the local community has had to comment or participate in regards to the proposed school corporation reorganization.
 - Effect on the community as a whole:
 - Identify any actions that the school corporation has taken to determine the impact the reorganization will have on the community, and provide the results of such actions.
 - Using specific examples, explain if the reorganization will have a positive or negative impact on the community.
 - Economic interests of the community relative to establishing the boundaries of the school corporation that is involved in the school corporation reorganization, consolidation, or annexation attempt:
 - Identify how the proposed reorganization will improve the economic interests of the community.
 - Explain what impact, if any, the proposed reorganization will have on property values within the community.
 - Explain if the reorganization request is being pursued to increase or decrease local tax requirements of the community.
3. The Indiana School Reorganization Act of 1959²¹ (the "1959 Act") provided the authorization and procedure for reducing the number of local school districts through consolidation, the purpose being to provide "more equalized educational opportunities for publicly enrolled students in grades 1-12 in the school corporations of Indiana."²²
- Explain how the proposed reorganization will accomplish the 1959 Act's intended goal of consolidating school districts to allow for more equalized educational opportunities for all students.
4. Pursuant to IC 20-23-4-12(a), (c), (d), and IC 20-23-4-16, provide a detailed accounting of how the assets, facilities, and financial obligations (contracts, debts, bonds, etc.) of the school corporation will be divided pursuant to the reorganization. All materials must be provided to both the Board and the Department, and the school corporation shall provide any additional information as requested by the Board or the Department. To the extent the school corporation's reorganization request will impact financial obligations governed by the Indiana Department of Local Government Finance ("DLGF"), the requesting school corporation must also coordinate with the DLGF to ensure

²¹ Acts of 1959, Chpt. 202, pp. 451-474 (ultimately responsible for reducing the number of Indiana's local school districts from 966 to under 400).

²² Historical Note, p. 4, SCHOOL REORGANIZATION COMMISSION COLLECTION, Indiana State Library Rare Books and Manuscripts Collection, available at

http://www.in.gov/library/files/L591School_Reorganization_Commission_Collection.pdf.

compliance with any applicable laws or regulations. The requesting school corporation is required to provide the Board with documentation demonstrating that the DLGF has been contacted and has determined the proposed reorganization is legally permissible.

5. A statement of assurances that the reorganized school corporation(s) shall abide by all applicable state and federal laws, including by not limited to IC 20-23-4, IC 20-23-8, IC 20-26-4, IC 3-8-1, 3-8-2.5, and 3-11-2. The statement of assurances must also confirm that the reorganization will not contravene any outstanding court order or other legal requirement currently imposed on the school corporation(s).
6. A good faith analysis of the impact the proposed reorganization will have on the socioeconomic and demographic composition of the school corporation(s).
7. The requesting school corporation must provide any additional information requested by the Board when reviewing a reorganization request.

IV. Next Steps Subsequent to a Reorganization Plan being submitted to the Board.

After adoption of the minimum standards, a local school board must include the standards in the plan along with the other statutory requirements and submit the same to the Board. Pursuant to IC 20-23-4-18, upon receiving a reorganization request, the Board is required to hold a public hearing within the county where the school corporation is located. However, a public hearing is not required if the plan that does not meet the minimum standards adopted by the Board unless the Board waives the attainment of a minimum standard in writing as permitted pursuant to IC 20-23-4-18(c). Within sixty (60) days of the public hearing, the Board must take action to approve or disapprove all or part of the plan. If the Board fails to approve part or all of a plan, a revised plan may be resubmitted to the Board within 90 days after the initial rejection by the Board.

After the Board approves a reorganization plan, the Board shall give written notice of the approval to the requesting school corporation and the circuit court of the county in which the school corporation is located. IC 20-23-4-20. After notice is given, the reorganization request must still be approved by a petition, as outlined in IC 20-23-4-20, by a special election pursuant to the requirements contained in IC 20-23-4-21, or as permitted by IC 20-23-4-22 if the reorganization does not alter the boundaries of the existing school corporation.