

STATE OF INDIANA ) IN THE SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NUMBER:

LETRISHA WEBER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 INDIANA STATE BOARD OF EDUCATION, and )  
 BRIAN MURPHY, in his official capacity as )  
 Executive Director of the Indiana State Board of )  
 Education, )  
 )  
 Defendants. )

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF**

Comes now the Plaintiff, Letrisha Weber, by counsel, Ann C. Coriden, and for her claims against the Defendants, Indiana State Board of Education (“SBOE”) and Brian Murphy, in his official capacity as Executive Director of the SBOE, states:

**INTRODUCTION**

1. This case challenges the validity and constitutionality of a recently adopted rule altering Indiana’s statutory school funding formula. After the amendment of 511 IAC 1-3-2(d) by the SBOE on September 2, 2020, some Indiana public school students receiving virtual instruction are funded at 100% while other Indiana public school students receiving virtual instruction are funded at 85%.

2. This change to the statutory school funding formula was the result of unconstitutional agency rulemaking, not the legislative process. By fully funding only some students receiving virtual education, students attending the same school and receiving the same virtual instruction may be funded at different levels.

3. Because the SBOE engaged in unlawful and unconstitutional rulemaking that significantly altered Indiana's statutory school funding formula, the new rule should be declared invalid and any further expenditures or appropriations made pursuant to the rule should be enjoined until the General Assembly fully and fairly funds all public school students.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to hear this complaint pursuant to Indiana Code Sections 34-14-1-1 and 33-28-1-2.

5. Venue in Marion County is appropriate pursuant to Indiana Trial Rule 75(A).

### **PARTIES**

6. Plaintiff is an individual residing in Marion County, Indiana.

7. Plaintiff is the parent of two children who attend public charter schools in Indiana.

8. In February 2020 and September 2020, one of Plaintiff's children participated in a hybrid model of education, attending school in person two days a week and virtually three days a week.

9. In February 2020 and September 2020, Plaintiff's other child attended school virtually five days a week.

10. Plaintiff is also an Indiana citizen and an Indiana taxpayer.

11. The SBOE is a legislatively established board.

12. The SBOE has rulemaking authority under Indiana Code 4-22-2.

13. In September 2020, Brian Murphy served as the executive director of the SBOE and, in that capacity, amended 511 IAC 1-3-2(d).

### **FACTS**

#### **Basic Tuition Support and ADM**

14. The General Assembly, as part of its constitutional mandate, has enacted a school

funding scheme based on a school corporation's average daily membership ("ADM").

15. ADM is determined by counting the number of eligible students enrolled on a fixed date in September. Ind. Code § 20-43-4-2(a). This is referred to as the fall count.

16. In addition to the fall count, a school corporation determines the number of eligible students enrolled on a fixed date in February. I.C. §§ 20-43-4-2(a); 20-43-4-9(a). This is referred to as the spring count.

17. Indiana Code Section 20-43-6-3 defines basic tuition support and distinguishes between school corporations that do not have any students who receive at least 50% virtual instruction and those school corporations that do have students who receive at least 50% virtual instruction. I.C. § 20-43-6-3(b) and (c).

18. School corporations with students who receive at least 50% virtual instruction are allocated 85% of the basic tuition support for those students. I.C. § 20-43-6-3(c).

19. Indiana Code Section 20-43-6-3 expressly requires ADM to be based on a school corporation's "current ADM for the year."

20. Prior to the start of the 2020-2021 school year, Senator Rodric Bray, President Pro Tempore of the Indiana Senate, issued an open letter to all Indiana school leaders advising them of the statutory school funding formula.

21. In his letter, Senator Bray explained, "Current state law stipulates that schools will receive 85% of the normal foundation funding for any student who received at least half of his or her instruction virtually. Changing this policy would require legislation to be passed by the General Assembly in our next session." Ex. A.

#### **Executive Order 20-05**

22. In response to the coronavirus pandemic, Governor Eric Holcomb issued Executive

Order 20-05, which authorized, among other things, the head of any state agency with authority to promulgate rules to waive, suspend, or modify any existing rule “where enforcement of the rule would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Orders and Procedures Act (AOPA) or any law to the contrary for the duration of this Executive Order” subject to the Governor’s prior approval. Ex. B.

23. Executive Order 20-05 remained in effect on September 2, 2020.

**Amendment of 511 IAC 1-3-2(d)**

24. During the September 2, 2020 SBOE meeting, the SBOE considered and approved the amendment of 511 IAC 1-3-2(d), which was amended to include a definition of “virtual instruction” for the first time.

25. As amended, 511 IAC 1-3-2(d) provides in part:

*(d) For purposes of determining a school corporation’s basic tuition support under IC 20-43-6-3 using the fall count of ADM as described in IC 20-43-4-9(a), “virtual instruction” means instruction that is provided in an interactive learning environment created through technology in which the student is separated from a teacher by time or space, or both, unless said instruction is being provided to a student that meets the following requirements:*

(1) The Student was not enrolled in a virtual education program (as defined in IC 20- 19-9-1), a dedicated virtual education school, or a virtual charter school (as defined in IC 20-24-1-10) on the date fixed in February 2020 by the board for a count of students under IC 20-43-4-3; and

(2) The student is enrolled in a school corporation in which fewer than one hundred percent (100%) of the students that were enrolled in that corporation on the date fixed in February 2020 by the board for a count of students under IC 20-43-4-3 were receiving instruction in an interactive learning environment created through technology in which the student for whom the instruction is being provided is separated from a teacher by time or space, or both.

(Emphasis added).

26. Murphy signed the amended rule on September 2, 2020. Ex. C.

27. By amending the rule, the SBOE changed the manner in which funding is allocated

to students. In short, students not receiving virtual instruction on the 2020 spring count would be funded at 100% for the fall of 2020 even if they were receiving virtual instruction on the 2020 fall count.

28. On the other hand, students receiving virtual instruction on the 2020 spring count would continue to be funded at 85% for the fall of 2020 regardless of how they received instruction on the 2020 fall count.

29. This amendment created a situation where two students receiving the exact same virtual instruction in the fall of 2021 could be funded differently, with one student receiving 100% of basic tuition support and the other student receiving only 85% of the basic tuition support.

30. The amendment effectively created two classes of Indiana students who receive virtual instruction—those who are funded at 100% and those who are funded at 85%—significantly altering the clearly defined statutory school funding formula without any legislative action.

**COUNT I: AMENDMENT OF 511 IAC 1-3-2(d) EXCEEDS THE SBOE’S  
RULEMAKING AUTHORITY**

31. Plaintiff hereby realleges and incorporates by reference the allegations in Paragraphs One through Thirty as though fully set forth herein.

32. The General Assembly is responsible for establishing school funding formulas through the legislative process and did so in Indiana Code Section 20-43-6-3 for all students, including those receiving virtual instruction.

33. The plain language of Indiana Code Section 20-43-6-3 requires that *all* students receiving virtual instruction are funded at 85% percent of the basic tuition support amount.

34. The General Assembly has not authorized Defendants to modify the statutory school funding formula, and the Senate’s President Pro Tempore sent written notice to school

officials stating that an amendment of the law was needed if students receiving virtual instruction were to receive funding in excess of 85%.

35. The amendment of 511 IAC 1-3-2(d) to define how basic tuition support would be calculated directly contracts the statutory school funding formula, which is based on the current year's fall count.

36. By promulgating a rule that alters how some virtual students are funded from the clear statutory mandates for all virtual students in Indiana Code Section 20-43-6-3, Defendants exceeded their rulemaking authority.

37. In so doing, Defendants also violated the constitutionally mandated separation of powers of Article 3, §1 of the Indiana Constitution.

38. As an *ultra vires* rule that directly conflicts with the statutory school funding formula, the amendment of 511 IAC 1-3-2(d) should be declared invalid.

**COUNT II: AMENDMENT OF 511 1-3-2 WAS NOT IN ACCORDANCE WITH  
EXECUTIVE ORDER 20-05**

39. Plaintiff hereby realleges and incorporates by reference the allegations in Paragraphs One through Thirty-Eight as though fully set forth herein.

40. 511 IAC 1-3-2(d) was not amended in accordance with the rulemaking procedures set forth in Indiana Code 4-22-2.

41. Instead, 511 IAC 1-3-2(d) was amended pursuant Executive Order 20-05.

42. However, Executive Order 20-05 only applies to existing rules where enforcement of the rule would be detrimental to the public welfare during the COVID-19 emergency.

43. Because 511 IAC 1-3-2(d) was amended to include for the first time a definition of “virtual instruction,” Defendants’ rulemaking exceeded the scope of Executive Order 20-05.

44. Likewise, because Defendants did not find that the enforcement of the prior version

of 511 IAC 1-3-2 would be detrimental to the public welfare, the amendment of 511 IAC 1-3-2(d) was not proper under Executive Order 20-05.

45. Even if the amendment was in accordance with Executive Order 20-05, which it was not, neither agency action nor executive order may alter the statutory school funding formula set forth in Indiana Code Section 20-43-6-3.

46. The amendment of 511 IAC 1-3-2(d) should be declared invalid.

**COUNT III: DISPARATE FUNDING SCHEME VIOLATES ARTICLE 8, SECTION 1 OF THE INDIANA CONSTITUTION**

47. Plaintiff hereby realleges and incorporates by reference the allegations in Paragraphs One through Forty-Six as though fully set forth herein.

48. Article 8, §1 of the Indiana Constitution requires the General Assembly to provide “for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.”

49. By funding only some students receiving virtual instruction at 100%, the SBOE’s amended school funding formula unconstitutionally levies a portion of the cost of public education to some Indiana students and their parents, including Plaintiff.

50. Indiana Code Section 20-43-6-3(c) as amended by 511 IAC 1-3-2(d) fails to provide a general and uniform system of schools and should be declared unconstitutional.

**COUNT IV: DISPARATE FUNDING SCHEME VIOLATES EQUAL PROTECTION PROVISIONS OF THE UNITED STATES AND INDIANA CONSTITUTIONS**

51. Plaintiff hereby realleges and incorporates by reference the allegations in Paragraphs One through Fifty as though fully set forth herein.

52. The statutory school funding formula as amended by 511 IAC 1-3-2(d) arbitrarily funds similarly situated students differently.

53. There is no basis, and none is even stated, to fund some students receiving virtual instruction at 85% of the basic tuition support amount and to fund other students receiving virtual instruction at 100% of the basic tuition support amount.

54. The amendment of 511 IAC 1-3-2(d) reflects a policy of funding students in the exact same educational programming at dramatically different levels and is impermissible.

55. This disparate treatment disproportionately impacts low-income students.

56. This funding discrepancy violates the equal protection clause of the 14<sup>th</sup> Amendment to the United States Constitution and Article 1, Section 23 of the Indiana Constitution and should be declared unconstitutional.

WHEREFORE, Plaintiff requests that the Court preliminarily enjoin the expenditure or appropriation of public funds based on 511 IAC 1-3-2(d), declare the amendment of 511 IAC 1-3-2(d) and the statutory school funding formula invalid and unconstitutional, permanently enjoin the expenditure or appropriation of public funds based on 511 IAC 1-3-2(d) until the General Assembly fully and fairly allocates funding for all public school students, award Plaintiff costs and attorney fees pursuant to Indiana Code Section 34-14-1-10, and award all other just and proper relief.

### **VERIFICATION**

I verify under the penalties of perjury that the above representations are true to the best of my knowledge and belief.

  
Letrisha Weber (Jan 26, 2021 14:07 EST)

Letrisha Weber

Respectfully submitted,

/s/Ann C. Coriden

Ann C. Coriden Atty. #22849-49  
Attorney for Plaintiff  
ANN CORIDEN LAW, LLC  
445 Fifth Street, Suite 110  
Columbus, Indiana 47201  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing complaint has been mailed by certified mail on the 26<sup>th</sup> day of January 2021 to:

Indiana State Board of Education  
143 W. Market St., Suite 500  
Indianapolis, IN 46204

Brian Murphy, Executive Director  
Indiana State Board of Education  
143 W. Market St., Suite 500  
Indianapolis, IN 46204

Indiana Attorney General  
302 W. Washington St.  
Indiana Government Center South 5<sup>th</sup> Floor  
Indianapolis, IN 46204

/s/Ann C. Coriden  
Ann C. Coriden Atty. #22849-49  
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## State of Indiana

## Senate

Senator Rodric Bray  
State House  
200 W. Washington Street  
Indianapolis, Indiana 46204  
Senate: (317) 232-9416  
E-mail: s37@iga.in.gov

President Pro Tempore  
Rules and Legislative Procedure, Chair

August 6, 2020

Dear School Leaders,

As schools across Indiana make preparations for and begin to return to school, I want to express my appreciation for the effort our schools have made to get back to the business of educating our children. The last few months have been incredibly challenging. I am also aware the next several weeks may be equally as challenging as we observe how effective the precautions and protocols put in place are in helping slow the advance of COVID-19 in Indiana's schools. The uncertainty can produce anxiety in administrators, teachers and the students and their families.

With some public schools looking to adjust their reopening plans for the 2020-21 school year, there have been many questions as to the level of funding. I want to make sure that school leaders understand the current state law for school funding as it pertains to virtual instruction, and how their school's FY 2021 funding may be impacted by their reopening decisions.

Current state law stipulates that schools will receive 85% of the normal foundation funding for any student who receives at least half of his or her instruction virtually. Changing this policy would require legislation to be passed by the General Assembly in our next session.

State leaders have said we favor fully funding students whose families choose virtual instruction this year due to the ongoing COVID-19 pandemic. I believe there is a strong appetite for making that change. However, there is no guarantee such an exception will be made for schools that don't give families the option of in-person instruction in a school building. Therefore, schools that don't offer in-person instruction should plan on operating under the current funding policy.

I know it is difficult to operate with uncertainty. My hope is this letter may provide a bit more clarity as schools begin to open across Indiana.

Sincerely,



Rodric Bray  
President Pro Tempore

## STATE OF INDIANA

EXECUTIVE DEPARTMENT  
INDIANAPOLISEXECUTIVE ORDER 20-05

**FOR: HELPING HOOSIERS DURING THE PUBLIC HEALTH EMERGENCY  
DECLARED FOR THE CORONAVIRUS DISEASE 2019 OUTBREAK**

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

**WHEREAS,** on March, 6, 2020, I issued Executive Order 20-02 which declared a public health emergency exists throughout the State of Indiana as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and a confirmed report that a fellow Hoosier had contracted this virus;

**WHEREAS,** on March 13, 2020, the President of the United States declared a national emergency in connection with COVID-19;

**WHEREAS,** since the declaration of a public health emergency, I have announced additional steps being taken to address and respond to the emergency including, but not limited to, signing Executive Order 20-03 and Executive Order 20-04, which are necessary and proper actions to protect the health, safety, and welfare of all Hoosiers in connection with the continuing and evolving threat posed to public health by COVID-19;

**WHEREAS,** this Executive Order is a supplement to, and deemed to be part of, Executive Orders 20-02, 20-03, and 20-04;

**WHEREAS,** as Governor, I have broad authority and powers, under Indiana law, to declare and respond to public health emergencies on behalf of our State, including, but not limited to: (a) making, amending, and rescinding the necessary orders, rules, and regulations to carry out Indiana's Emergency Management and Disaster Law, Ind. Code § 10-14-3 *et seq.*; and (b) suspending the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any of these provisions would in any way prevent, hinder, or delay necessary action in coping with the emergency; and

**WHEREAS,** the following actions are necessary and proper to address the significant economic impact of this public health emergency upon Hoosiers and to protect and preserve the economic health of Hoosiers and this state.

**NOW, THEREFORE,** I, Eric J. Holcomb, by virtue of the authority vested in me as Governor by the Constitution and the laws of the State of Indiana and for the duration of this public health emergency unless otherwise specified, do hereby order that:

**1. Department of Workforce Development (DWD):**

- A. The DWD shall interpret, consistent with federal law, Indiana's unemployment laws to provide benefits to claimants displaced by COVID-19.
- B. The DWD shall not assess certain experience rate penalties to employers as a result of employees receiving unemployment benefits related to COVID-19.
- C. If the DWD finds that if a claimant's untimely filing was due in part to the COVID-19 pandemic, the DWD shall not deny the claimant's benefits for that reason.
- D. The DWD shall permit individuals to continue to accrue unemployment eligibility if they elect to take leave due to COVID-19.

- E. The DWD shall seek federal authorization to provide unemployment benefits to those individuals who may not otherwise be eligible for unemployment benefits because they were short-term employees who now find themselves out of work due to COVID-19.

**2. Family and Social Services Administration (FSSA):**

- A. FSSA shall waive all premium payment requirements for the Healthy Indiana Plan (HIP), and the Children's Health Insurance Program (CHIP).
- B. FSSA shall waive upfront job search requirements for initial eligibility for Temporary Assistance to Needy Families (TANF) benefits, and re-investigation requirements for annual renewal of TANF benefits.
- C. FSSA shall delay renewal processing for all Medicaid and HIP recipients, if approved by the federal Centers of Medicare and Medicaid Services.
- D. FSSA shall suspend Telehealth restrictions and requirements for face-to-face encounters for healthcare services and prescribing which will permit the increased use of Telehealth for statewide services such as Medicaid-covered services, mental health services, and substance use disorder treatment and prescribing.
- E. FSSA shall permit Opioid Treatment Providers to increase the limits for take-home medications from 6 days to 30 days, or in the alternative, the maximum amount permitted by the federal Substance Abuse and Mental Health Services Administration.
- F. FSSA is granted the authority to modify or suspend its provider staffing, enrollment, and hiring requirements for providers and facilities enrolled with the Division of Mental Health and Addiction, Division of Disability and Rehabilitative Services, and Division of Aging.

**3. Indiana Department of Veterans Affairs (IDVA):**

- A. IDVA shall permit veterans to qualify for awards from the Military Family Relief Fund (MFRF) for basic needs such as food, rent, mortgage and utilities even if the veteran does not satisfy the requirements that: (1) the veteran's hardship be connected to his or her military service; and (2) the veteran served during a time of national conflict or war.
- B. The Director of the Department of Veterans Affairs may approve MFRF awards in excess of \$2,500 during the public health emergency.

**4. Department of Education (DOE):**

- A. All K-12 schools in Indiana, public or private, shall close and cease in-person instruction through May 1, 2020. All schools are encouraged to work with their local governments and county health departments to determine appropriate community uses for school facilities.
- B. All state-mandated assessments are cancelled for the 2019-2020 academic year.

**5. Essential Services**

- A. Providers of gas and electric utilities, broadband, telecommunication, water and wastewater services are prohibited from discontinuing service to any customer in the state as these services are essential to Hoosiers and Hoosier businesses particularly during this state of public health emergency.

**6. Department of Revenue (IDOR):**

- A. The Indiana Department of Revenue shall take such action as is necessary to ensure Indiana conforms to the relief provided by the United States Treasury Department and Internal Revenue Service under Notice 2020-17 by providing for an extension of time related to state income tax liabilities.

- B. Property taxes remain due on May 11, 2020, however counties are to waive penalties on payments made after May 11, 2020, for a period of 60 days. This waiver does not apply to tax payments which have been escrowed by financial institutions on behalf of property taxpayers.
- C. Subject to the approval of the IDOR, manufacturers making donations of medicine, medical supplies, or other goods in furtherance of fighting the COVID-19 pandemic will not be subject to Indiana use tax on those items donated. Further, subject to the approval of the IDOR, groups or organizations that are not manufacturers who make any donations of medicine, medical supplies, or other goods will not incur a use tax obligation if sales tax had not been paid on such items. In either instance, such donations shall not be construed to be a retail transaction subject to sales or use tax. Donation of such items will not entitle the donor to a refund of any sales or use tax previously paid to the department or to a vendor.
- D. The IDOR may waive any penalties and interest that are directly related to taxes, estimated payments or other amounts due if the due date for the underlying tax, estimated payment or other amount due is extended in response to the COVID-19 pandemic public health emergency, and such waiver shall continue for the duration of the extension.

**7. Office of Community and Rural Affairs (OCRA):**

- A. Community Development Block Grant funds may be redirected to assist with COVID-19 needs based on guidance from the United States Housing and Urban Development.

**8. Bureau of Motor Vehicles (BMV):**

- A. The Commissioner shall extend deadlines for renewal of driver's license or identification cards, vehicle registration renewals, title transactions, salvage titles, and off-road vehicle and snowmobile titles by suspending the imposition of administrative penalty fees (late fees).
- B. Suspension of the provision requiring a branch be open in every county.
- C. The 45-day notification requirement of the BMV found under Ind. Code § 9-25-5-2 as to those person(s) who the Bureau must manually notify to submit evidence of financial responsibility as a result of being listed as an operator in a motor vehicle accident report is waived.

**9. Indiana State Department of Health (ISDH):**

- A. The Commissioner of ISDH shall seek waivers of the physical presence requirement for certification and re-certification appointments for Women, Infants, and Children (WIC) program; seek waivers to extend certifications periods to keep issuing benefits while staff develop the capacity to offer telephone or video certification appointments; and identify and seek waivers for any additional rules that are impeding service or for any requirements that are not feasible to meet.
- B. ISDH shall permit the informal hearing for involuntary relocation determinations to be held at locations other than the resident's healthcare facility.
- C. The Commissioner of ISDH is authorized to waive requirements of the nursing home certificate of need statute, pursuant to Ind. Code § 16-29-7, as the Commissioner deems necessary to respond to COVID-19 issues for nursing homes and on terms and conditions appropriate for each situation.

**10. Public Licensing Agency (PLA):**

- A. Suspension of the requirement that a health care provider hold an Indiana license if he or she: (1) has an equivalent license from another State, and (2) is not suspended or barred from practice in that State or any State.
- B. Mental health professionals are permitted to practice via telemedicine.
- C. Advanced Practice Registered Nurses are permitted to provide services in multiple locations while under a single written collaboration agreement.

**11. Insurance Coverage for Hoosiers and Department of Insurance (IDO):**

- A. The Commissioner shall request insurers to institute a 60-day moratorium on policy cancellations for non-payment of premiums, which will apply to all lines of business. However, this moratorium would not suspend a policyholder's responsibility for continuing to make premium payments.
- B. The Commissioner of the IDOI shall request health insurers cover COVID-19 testing without requiring prior authorization.
- C. The Commissioner of the IDOI shall request health insurers not increase prices or coverage costs involving medical care given for COVID-19.
- D. Suspend the Indiana licensure requirement under the Indiana Medical Malpractice Act to permit health care providers licensed by another state to provide care in Indiana and be eligible for coverage from the Indiana Patient Compensation Fund.

**12. Department of Administration (IDOA):**

- A. Suspension of procurement rules as they apply to the purchase of goods, equipment and services by state and local governmental entities needed to respond to the COVID-19 public health emergency.

**13. All State Agencies**

- A. Any state agency as defined by Ind. Code § 4-2-6-1(a)(2) is hereby granted authority to extend any non-essential deadline of their agency for a period of no longer than 60 days if deemed necessary to respond to the threat of COVID-19.
- B. The head of any state agency as defined by Ind. Code § 4-2-6-1(a)(2) with authority to promulgate rules is authorized to waive, suspend, or modify any existing rule of their agency where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Orders and Procedures Act (AOPA) or any law to the contrary for the duration of this Executive Order, subject to my prior approval.
- C. All state agencies as defined by Ind. Code § 4-2-6-1(a)(2) shall publish a summary of and guidance for all benefits available or modified related to any and all actions taken by departments and agencies pursuant to this Executive Order. Such publication shall, at a minimum, be posted on the state agency's website.

IT IS SO ORDERED.



IN TESTIMONY WHEREOF, I, Eric J. Holcomb, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, on this 19<sup>th</sup> day of March, 2020.

Eric J. Holcomb  
Governor of Indiana

ATTEST: Connie Lawson  
Secretary of State



# INDIANA STATE BOARD OF EDUCATION

## Modification to 511 IAC 1-3 (Determining and Reporting Attendance and Membership for State Support)

In accordance with Section 13.B. of Executive Order 20-05, the undersigned hereby modifies 511 IAC 1-3, as provided in the attached document.

9/2/2020

Brian Murphy  
Executive Director  
Indiana State Board of Education

### Rule 3. Determining and Reporting Attendance and Membership for State Support

#### 511 IAC 1-3-1 Definitions

Sec. 1. (a) "ADA flat grant" means the distribution of funds provided for in IC 21-3-4.5 [IC 21-3-4.5 was repealed by P.L.246-2005, SECTION 227, effective January 1, 2006.].

(b) "Additional pupil count" or "APC" means the number of pupils enrolled in programs as specified in IC 21-3-2.1 [IC 21-3 was repealed by P.L.2-2006, SECTION 199, effective July 1, 2006.].

(c) "Aggregate days of attendance" means the total days of attendance accumulated by all students enrolled in grades K-12.

(d) "Aggregate days of enrollment" means the total student instructional days of enrollment accumulated by all students in grades K-12 during the regular school year.

(e) "Aggregate days of unexcused absence" means the total days of unexcused absence accumulated by all students under eighteen (18) years of age enrolled in grades kindergarten through 12.

(f) "Average daily attendance" or "ADA" means the result of dividing the number of aggregate days of attendance for the reporting period by the number of student instructional days during the reporting period.

(g) "Average daily enrollment" means the result of dividing the aggregate days of enrollment by the number of student instructional days during the regular school year.

(h) "Average daily membership" or "ADM" means the number of **eligible** pupils with legal settlement **enrolled** in the a school corporation ~~enrolled in the school corporation or in a transferee corporation on the second Friday following Labor Day. Kindergarten pupils attending half time or more shall be counted as one half (1/2). Beginning in the 2004-2005 school year, the ADM shall be adjusted on December 1 of that same year. The board shall monitor changes that occur after the ADM count, in the number of students enrolled in programs for children with disabilities, and shall, on December 1 of that same year and, beginning in the 2004-2005 school year, on April 1 of the following calendar year, make an adjusted count of students enrolled in programs for children with disabilities.~~ **day fixed by the board for a count of students under IC 20-43-4-3 and as subsequently adjusted not later than the date specified by the board.**

(i) "Board" means the Indiana state board of education.

(j) "Department" means the department of education.

(k) "Postgraduate student" means a person who has received a high school diploma or its equivalent.

(l) "Reporting period" means:

(1) for purposes of determining ADA for the ADA flat grant, the three (3) week period beginning the first Monday following Labor Day;

(2) for purposes of determining ADA for the regular school year, the period beginning the first day of the regular school year and ending the last day of the regular school year;

(3) for purposes of determining ADA for summer school, the period beginning the first day of the summer school session and ending the last day of the summer school session; and

(4) for other purposes, the period determined by the board.

(m) "Student attendance rate" means the result of dividing the number of aggregate days of attendance for the regular school year by the number of aggregate days of enrollment.

(n) "Truancy rate" means the result of dividing the number of aggregate days of unexcused absence for the regular school year by the number of aggregate days of enrollment.

(o) "Unexcused absence" means an absence from school that is:

(1) not authorized by the local school administrator or local school corporation rule; and

(2) a violation of IC 20-33-2.

An out-of-school suspension is not an unexcused absence.

### 511 IAC 1-3-2 Attendance and membership reporting requirements

Sec. 2. (a) ~~School corporations~~ **Each school corporation** shall annually submit **to the department** all reports ~~the department deems necessary for the calculation of state tuition support in accordance with the schedule established by the department.~~ **These All reports submitted to the department** shall be certified to the department by the superintendent or chief administrative official of the school corporation **submitting the report.**

(b) ~~Adjustments of ADA, ADM, APC, eligible regular bus students, or other reports for to a report the department deems necessary for the calculation of state tuition support may be requested if the school corporation determines that the reports as defined in 511 IAC 1-3 are report is unrepresentative.~~ Requests and reasons for the adjustment shall be submitted to the department. The school corporation may appeal a decision of the department to the board.

(1) If unusual circumstances affect attendance, the department may substitute the following method for determining ADA:

(A) School officials shall choose any three (3) of the past five (5) years' reported ADA, and compute an average.

(B) The current ADA shall be adjusted to the average computed above.

(2) If unusual circumstances occur on or about the ADM reporting date **fixed by the board**, the school corporation may petition the ~~department board~~ **board** to set an alternate date. ~~and may appeal the decision to the board.~~

(c) Post-graduate students shall not be counted for ADA or ADM reports.

(d) ~~All pupils shall be counted once by the corporation in which they have legal settlement. Pupils attending cooperative, joint, or area schools shall be counted by the sending corporation only.~~

(e) ~~The following students shall be counted by the receiving school corporation:~~

(1) ~~students placed in the school corporation by the Indiana welfare department;~~

(2) ~~wards of the court;~~

(3) ~~cash (private) transfers from another school corporation;~~

(4) ~~state employees' children under IC 20-26-11-10;~~

(5) ~~students placed in an institution operated by the Indiana department of mental health;~~  
and

(6) ~~foreign exchange students under IC 20-26-11-10.~~

(f) ~~School corporations shall initially report APC and eligible regular bus pupils at the same time as ADM is reported and the count shall be taken on the same day as ADM.~~

(g) ~~For purposes of calculating ADA for the ADA flat grant, school corporations shall count only those students in grades 1 through 12. A student in attendance during any part of a full student instructional day shall be counted as one (1). A student in attendance during any part of a partial student instructional day shall be counted as one half (1/2). A full student instructional day~~

shall be counted as one ~~(1)~~ in determining the number of student instructional days in the reporting period. A partial student instructional day shall be counted as one half ~~(1/2)~~.

**(d) For purposes of determining a school corporation's basic tuition support under IC 20-43-6-3 using the fall count of ADM as described in IC 20-43-4-9(a), "virtual instruction" means instruction that is provided in an interactive learning environment created through technology in which the student is separated from a teacher by time or space, or both, unless said instruction is being provided to a student that meets the following requirements:**

**(1) The Student was not enrolled in a virtual education program (as defined in IC 20-19-9-1), a dedicated virtual education school, or a virtual charter school (as defined in IC 20-24-1-10) on the date fixed in February 2020 by the board for a count of students under IC 20-43-4-3; and**

**(2) The student is enrolled in a school corporation in which fewer than one hundred percent (100%) of the students that were enrolled in that corporation on the date fixed in February 2020 by the board for a count of students under IC 20-43-4-3 were receiving instruction in an interactive learning environment created through technology in which the student for whom the instruction is being provided is separated from a teacher by time or space, or both.**