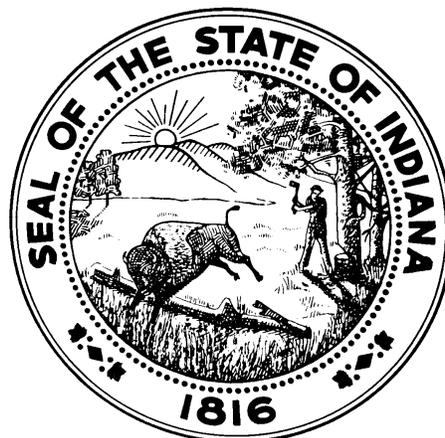


STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF

PAID ADMINISTRATIVE LEAVE
METROPOLITAN SCHOOL DISTRICT
OF PERRY TOWNSHIP
MARION COUNTY, INDIANA

July 1, 2005 to June 30, 2007



FILED

02/09/2009

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SCHOOL OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Teacher/Basketball Coach	Mark Barnhizer	07-01-05 to 05-26-06
Assistant Principal	John Ralston	07-01-05 to 06-30-08
Teacher	M. Leila Livengood	07-01-05 to 06-30-08
Treasurer	William Brown Robert Harris	07-01-05 to 06-30-07 07-01-07 to 06-30-08
Superintendent of Schools	Dr. H. Douglas Williams Dennis Nichols (Interim) Dr. Thomas Little	07-01-05 to 07-01-07 07-02-07 to 06-30-08 07-01-08 to 06-30-09
President of the School Board	Marsha Hicks Susan Adams Barbara Thompson Stephen Maple	07-01-05 to 06-30-06 07-01-06 to 06-30-07 07-01-07 to 06-30-08 07-01-08 to 06-30-09



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE METROPOLITAN SCHOOL DISTRICT
OF PERRY TOWNSHIP, MARION COUNTY

We have examined the records of the Metropolitan School District of Perry Township for the period from July 1, 2005 to June 30, 2007, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Examination Results and Comments.

STATE BOARD OF ACCOUNTS

July 16, 2008

PAID ADMINISTRATIVE LEAVE
METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
EXAMINATION RESULTS AND COMMENTS

EMPLOYEES ON PAID ADMINISTRATIVE LEAVE

We noted three employees who were placed on paid administrative leave during the examination period.

Former Perry Meridian High School Teacher and Varsity Basketball Coach, Mark Barnhizer, submitted a letter of resignation on November 9, 2005, effective at the end of the 2005-2006 school year. The last day Mr. Barnhizer physically worked as either a teacher and/or coach was November 9, 2005. Handwritten notations on the Teacher's Service Record showed that Mr. Barnhizer was placed on administrative leave with pay beginning November 10, 2005, through the end of the school year which constituted 122 "days lost."

No written documentation of how Mr. Barnhizer came to be put on administrative leave, including who ordered and/or approved the leave, was presented for examination. William Brown, former School Corporation Associate Superintendent of Business Services, conveyed former Superintendent of Schools, Dr. H. Douglas Williams, asked for a letter of resignation from Mr. Barnhizer in November 2005. The minutes of a meeting of the Board of Education on November 21, 2005, note Mr. Barnhizer's resignation effective May 26, 2006. The minutes also make no mention or approval of Mr. Barnhizer being placed on administrative leave with pay.

Mr. Barnhizer continued to receive his normal bi-weekly paycheck during the leave up to June 23, 2006. Mr. Barnhizer's Teacher's Service Record showed he did not use any accrued sick or personal leave time during the leave period. The total gross salary Mr. Barnhizer was paid during his administrative leave was \$51,610.88. Additionally, Mr. Barnhizer received benefits from the School Corporation such as Social Security, Medicaid, retirement funding, and insurance totaling \$17,667.97 for total questioned costs of \$69,278.85. (See Schedule of Questioned Costs, page 27)

We asked School Corporation personnel for a written opinion from the School Corporation's Attorney whether Mr. Barnhizer's paid administrative leave was in accordance with all Federal laws and regulations, and State laws, including IC 35-44-2-4. The School Corporation's Attorney, in an email dated March 13, 2008, stated "I am not aware of any legal authority for paid administrative leave in that (Barnhizer) situation." The School Corporation Attorney contrasted Mr. Barnhizer's situation to that of another teacher (unrelated to any other individual referenced elsewhere in our Examination Report) who had just recently been put on paid leave by the Board of Education while the Board considered cancellation of that teacher's contract. The School Corporation Attorney stated "The leave in that matter is specifically authorized by Ind. Code 20-28-7-3(8). It is my understanding that the Barnhizer matter was never documented as a contract cancellation matter, so there was no pending matter in which leave could be granted." The School Corporation Attorney further added "If Barnhizer was simply sent home and kept on the payroll, unless he used accrued paid leave, there was no legal authority to pay him."

Assistant Principal John Ralston was placed on paid administrative leave beginning on October 12, 2006, through the start of Christmas break on December 21, 2006. Mr. Ralston returned to work on January 4, 2007. Handwritten notations on Mr. Ralston's Teacher's Service Record indicated he was suspended with pay for 47 days. According to School Corporation Officials, Mr. Ralston was placed on paid administrative leave by former Superintendent, Dr. H. Douglas Williams.

Mr. Ralston continued to receive his normal bi-weekly paycheck during his time on leave. Mr. Ralston's Teacher's Service Record showed he did not use any accrued sick or personal leave time during the leave period. The total gross salary Mr. Ralston was paid during his administrative leave was \$15,783.03. Additionally, during the leave period, Mr. Ralston received benefits from the School Corporation such as Social Security, Medicaid, retirement funding, and insurance totaling \$5,859.34 for total questioned costs of \$21,642.37. (See Schedule of Questioned Costs, page 27)

PAID ADMINISTRATIVE LEAVE
METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
EXAMINATION RESULTS AND COMMENTS
(Continued)

Teacher, M. Leila Livengood, was suspended with pay for 2 days beginning Friday, February 3, 2006, and concluding Monday, February 6, 2006. According to School Corporation Officials, Ms. Livengood was placed on paid leave by former Superintendent of Schools, Dr. H. Douglas Williams.

Ms. Livengood received her normal bi-weekly paycheck during her time on leave. Ms. Livengood's Teacher's Service Record showed she did not use any accrued sick or personal leave time during the leave period. The total gross salary Ms. Livengood was paid during her administrative leave was \$755.65. Additionally, during the leave period, Ms. Livengood received benefits from the School Corporation such as Social Security, Medicaid, retirement funding, and insurance totaling \$164.10 for total questioned costs of \$919.75. (See Schedule of Questioned Costs, page 27)

The employees' teacher's contracts as well as the master teachers' contract in all three cases did not provide for "administrative leave." Furthermore, information was not presented for examination that any School Corporation policies provided for paid administrative leave or that the School Board was considering cancellation of the contracts. No information was presented for examination of School Board action in accordance with IC 20-28-7-1 et seq. in regards to the three situations referenced above.

IC 35-44-2-4 states in part:

"(a) A public servant who knowingly or intentionally:

- (1) hires an employee for the governmental entity that he serves; and
- (2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity; commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony."

IC 20-28-7-3(8) states: "Pending a decision on the cancellation of a teacher's contract, the teacher may be suspended from duty."

IC 20-28-7-4 states: "If a permanent or semipermanent teacher is suspended under section 3(8) of this chapter, and except as provided in IC 20-28-9-18, the governing body may not, while the teacher is suspended, withhold from the teacher any salary payments or other employment related benefits that before the suspension the teacher was entitled to receive."

Unless specifically authorized by statute, severance pay, or other payments to employees upon separation from employment, must be supported by the written opinion of the attorney for the governmental unit stating that the payments are in accordance with all federal laws and regulations and state laws, including IC 35-44-2-4, and a properly enacted Home Rule ordinance or resolution, as applicable. (Accounting and Uniform Compliance Guidelines Manual for Indiana Public School Corporations, Chapter 9)

PAID ADMINISTRATIVE LEAVE
METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
EXAMINATION RESULTS AND COMMENTS
(Continued)

FURTHER INVESTIGATION

A multitude of responses from School Corporation Officials and representatives, both current and those responsible during the period of examination are included on pages 8 through 26. Some of the responses conflict with the written position referenced herein of the School Corporation Attorney at the time of our examination. Accordingly, we are forwarding a copy of our Examination Report to the Prosecuting Attorney of Marion County and the Attorney General of the State of Indiana for further investigation and resolution.

QUESTIONED COST FINDINGS

The Schedule of Questioned Costs provided herein is based upon a definition by the United States Office of Inspector General (OIG) as follows: "5 USC APPENDIX - INSPECTOR GENERAL ACT OF 1978 Sec. 5 01/24/94 '(f) As used in this section - (1) the term 'questioned cost' means a cost that is questioned by the Office because of - (A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; (B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or (C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable; . . ."

PAID ADMINISTRATIVE LEAVE
METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
EXIT CONFERENCE

Mark Barnhizer, former Teacher and Varsity Basketball Coach, was contacted via certified mail and invited to an exit conference on June 12, 2008, to discuss the contents of this report. Mark Barnhizer did not attend.

The contents of this report were discussed on June 17, 2008, with M. Leila Livengood, Teacher. The official response has been made a part of this report and may be found on pages 21 and 22.

The contents of this report were discussed on June 25, 2008, with Dr. H. Douglas Williams, former Superintendent of Schools; and William Brown, former Associate Superintendent of Business Services. The official response has been made a part of this report and may be found on pages 8 through 19.

The contents of this report were discussed on June 26, 2008, with Barbara Thompson, President of the School Board; Susan Adams, Vice President of the School Board; Stephen Maple, School Board member; Dennis Nichols, Interim Superintendent of Schools; William Brown, former Associate Superintendent of Business Services; Robert Harris, Business Manager; Michael Bagley, Director of Operations; Frank Giles, Director of Technology; James Fitzwater, Director of Information Systems; Cynthia Maude, Information Systems; Jon Baily, School Corporation Attorney; and T.J. Little, Superintendent of Schools effective July 1, 2008. The official response has been made a part of this report and may be found on page 20, 23, and 24.

The contents of this report were discussed on July 16, 2008, with John Ralston, Assistant Principal. He intended to respond but no response received.

The contents of this report were discussed on July 22, 2008, with Nancy Walsh, School Board member. The official response has been made a part of this report and may be found on pages 25 and 26.

JOSEPH H. YEAGER, JR.
Partner
Direct 317.237.1278
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BAKER & DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204-1782
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July 25, 2008

Via Hand Delivery

Mr. Bruce A. Hartman
State Examiner
Indiana State Board of Accounts
302 W. Washington Street
4th floor, Room E418
Indianapolis, Indiana 46204

Re: Metropolitan School District of Perry Township

Dear Mr. Hartman:

We have reviewed the Preliminary Discussion Draft ("the Draft") issued by your office concerning three educators in the Metropolitan School District of Perry Township. We and our client, Dr. Douglas Williams, take very seriously the suggestion that Indiana's Ghost Employment Statute may have been violated. As explained below, both the facts, including years of open Indiana practice, and the law utterly refute that allegation. We respectfully request that the draft be withdrawn accordingly.

The Personnel Acts At Issue Were Authorized Under Indiana Law.

Mark Barnhizer

Former teacher and coach Mark Barnhizer resigned from his position as part of a negotiated resolution of allegations of misconduct against him. Contrary to the allegations in the Draft, the Perry Township Board of School Trustees ("the school board") was fully informed both of the fact of the resignation and that the resignation would be effective at the end of the school year. Dr. Williams, then superintendent, sent the following email to all school board members on November 10, 2005:

----- Original Message -----

From: "H. DOUGLAS WILLIAMS" <dwilliams@msdpt.k12.in.us>
To: "JO ELLEN BUFFIE" <JBuffie@aol.com>; "RUBIE ALEXANDER"
<RALEX4806@aol.com>; "TRACI BERRY" <tberry3588@aol.com>; "SUSAN M.
ADAMS"
<sadams@msddecatur.k12.in.us>; "RUBIE ALEXANDER"
<ralexander@msdpt.k12.in.us>; "ROBERT W. WILLSEY"
<rwillsey@msdpt.k12.in.us>; "GAYLE F. HOUCHIN" <gayle-h@sbcglobal.net>;
"HICKS, MARSHA" <marshahicks@yahoo.com>
Sent: Thursday, November 10, 2005 9:24 AM
Subject: Mark Barnhizer

>I met with Mark Barnhizer last night and he submitted his resignation
> officially effective at the end of the current year as both coach and
> teacher. He will be on leave from now until that date, not coaching
> or
> teaching for the remainder of the year. We will approach one of the
> assistants to complete the current year. I will ask to meet with the
> student athletes today to explain that the request for the
> resignation
> was my decision, not that of administrators at the school level.
>

In addition, Dr. Williams informed at least the president and vice president of the school board, Ms. Marsha Hicks and Ms. Traci Berry, in person about this – including the fact that Mr. Barnhizer would be paid through the effective resignation date – on around November 10, 2005. The school board approved this action during its meeting on November 21, 2005. See personnel report presented at the meeting, attached to this letter as Exhibit 1.

Therefore, the school board was fully aware of and indeed expressly ratified the arrangement surrounding Mr. Barnhizer's resignation. (And, of course, if members of the Board had disagreed with it in any way, they surely would have – but never did – address it in some fashion.) The school board was well within its authority to ratify the arrangement. *See* Ind. Code § 20-26-5-4(19) (the school board may "ratify and approve any action taken by . . . any employee of the school corporation after such action is taken . . ."); *see also* McQueeney v. Glenn, 400 N.E.2d 806, 811-12 (Ind. Ct. App. 1980) (school board ratified superintendent's offer of transfer or termination to school secretary, who turned in her keys noting her resignation, by approving the matter in a subsequent board meeting). With this arrangement, the school board and superintendent agreed, as a condition of the resignation, for Mr. Barnhizer to receive pay until his resignation was effective at the end of the school year.

This arrangement was within the powers granted to a school corporation under Indiana law. Indiana law permits public employees to resign from employment effective sometime in the future. See Ind. Code § 5-8-4-1, et seq. As the Draft notes, there clearly is statutory authority for a teacher to be suspended pending a decision on cancellation of the teacher's contract. See Ind. Code § 20-28-7-3(8). In that situation, the suspension must be with pay. Ind. Code § 20-28-7-4. In order for a teacher to be suspended without pay, the school corporation must follow certain procedures including, for example, 30-40 days notice, a hearing, etc. Those statutes certainly support the notion that teachers may – indeed generally must – be paid during any suspension.

But apart from any particular statute, the superintendent and board were fully authorized to accept Mr. Barnhizer's resignation to be effective at the end of the school year and agree that he would be paid until that date. Under Indiana law:

A school corporation has (1) all powers granted to the school corporation by statute or through rules adopted by the state board; and (2) all other powers necessary or desirable in the conduct of the school corporation's affairs, even if the power is not granted by statute or rule.

Ind. Code § 20-26-3-3(b).

Indiana law is also clear that the school corporation's powers extend beyond any of those specifically enumerated:

The powers that school corporations have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that school corporations have under subsection (b)(2). The omission of a power from a list does not imply that school corporations lack that power.

Ind. Code § 20-26-3-3(c).

Moreover, "Any doubt as to the existence of a power of a school corporation must be resolved in favor of the existence of the power." Ind. Code §20-26-3-2(b). Indiana courts have confirmed the broad powers of school corporations. See e.g. Indiana State Bd. of Ed. v. Brownsburg Community School Corp., 865 N.E.2d 660 (Ind. Ct. App. 2007) (noting that Indiana law "create[s] a presumption in favor of the existence of a school board's authority").

The Draft wrongly assumes that teachers may be suspended with pay only while considering canceling the contract. This is incorrect. Ind. Code § 20-28-9-21 provides grounds for which a teacher may be suspended without pay where the reason is other than cancellation of contract. Therefore, by implication, the teacher may be suspended with pay if the reason is for something not listed in § 20-28-9-21. There is no other way to reasonably read the statute: in

order to suspend a teacher without pay, the reason must be enumerated in § 20-28-9-21; otherwise, the teacher may be suspended with pay.

Indiana law also grants the school board enumerated powers to take (or ratify) various actions directly related to the arrangement in this matter. Specifically, the school board may (1) take charge of, manage, and conduct the educational affairs of the school corporation; (2) employ, contract for, and discharge personnel as the governing body considers necessary for school purposes; (3) fix and pay salaries and compensation of persons and services; and (4) exercise any other power and make any other expenditure in carrying out the governing body's general powers and purposes. See Ind. Code § 20-26-5-4 (emphasis added).

Further, the Indiana Certified Educational Employee Bargaining Act ("CEEBA") provides in the collective bargaining context that a school employer may: (1) direct the work of the corporation's employees; (2) suspend or discharge employees in accordance with Indiana's collective bargaining statutes; (3) maintain the efficiency of school operations; (4) relieve employees from duties because of lack of work or other legitimate reason through procedures established in the collective bargaining statutes; and (5) take actions necessary to carry out the mission of the public schools as provided by law.

In fact, the practice of accepting resignations for a future date, and continuing to pay salary in the interim, is longstanding and common among Indiana school corporations, as confirmed by the three attached letters from former superintendents (see Exhibits 2-4). The interpretation of the laws governing school districts by district administrators themselves should be granted significant weight, especially given substantial reliance upon such a common sense interpretation.¹ Not only does this demonstrate that the power is "necessary and advisable" under Ind. Code § 20-26-3-3(b), but it only makes sense. There are obviously times (as illustrated by this experience as well as those referenced in the attached exhibits) where a school corporation finds it in the best interests of the school to have an employee relinquish his or her duties while a situation is investigated, but it is unknown whether there are particular substantiated grounds for terminating the employee. Under the statute, the school may withhold

¹ "The meaning attached by people affected by an act may have an important meaning on how it is construed." 2B Sutherland Statutory Construction 49:6 (7th ed.). "A practical construction given a statute by the public generally, as indicated by a uniform course of conduct over a considerable period of time, and acquiesced in and approved by a public official charged with the duty of enforcing the act, is entitled to great weight in the interpretation which should be given it, in case there is any ambiguity in its meaning serious enough to raise a reasonable doubt in any fair mind." Id. See also Sutto v. Bd. of Medical Reg. and Examination, 180 N.E.2d 533, 565 (Ind. 1962) (rejecting chiropractor's challenge to the Board's interpretation of the Indiana chiropractor reciprocity statute; "While the custom and practice of the Board in the interpretation and administration of the [law] is not binding upon us, however, because the same interpretative rules and practice have been consistently followed by the Board, since the Act was put into effect, they are entitled to great weight as an aid in the interpretation of the statute by this court."); Heminger v. Police Comm'n of the City of Fort Wayne, 314 N.E.2d 827, 837-38 (Ind. Ct. App. 1974) (rejecting challenge to police merit law for alleged internal conflict, finding no actual conflict in the controlling statute based in part on the Commission's consistent interpretation of the statute; "An interpretation placed upon a statute by an administrative agency or, in the instant case, the Police Commission, while not controlling, must nevertheless be accorded great weight.").

pay only if enumerated grounds exist. Otherwise, though, there is nothing that prevents the school from relinquishing that employee's duties so long as the teacher continues to be paid. What the Draft suggests is that a school is hamstrung from managing its employees in any fiscally responsible way: its only option would be to suspend someone for specifically enumerated grounds and institute the due process measures required by statute. That is not what the law requires, and that is not how school corporations have operated.

Accepting Mr. Barnhizer's resignation and agreeing to pay him in the interim was done with complete transparency in the district's best interests, was authorized by the broad powers granted to school corporations, and is consistent with common practice.

John Ralston and Leila Livengood

John Ralston and Leila Livengood were suspended pending the outcome of a criminal investigation (and received letters giving them notice of that), as permitted by Ind. Code §§ 20-28-7-3(8); 20-28-7-4. Therefore, there can be no claim of wrongdoing surrounding those suspensions.² Moreover, the Indiana Court of Appeals has clearly explained, even under a prior statutory scheme governing school districts that granted them far less power than do current statutes, that the laws referenced above relating to a school corporation's authority to hire, manage, and end employment relationships authorize Indiana schools to suspend employees with pay. Bd. of Tr. of Hamilton Heights Sch. Corp. v. Landry, 560 N.E.2d 102 (Ind. Ct. App. 1990). To find otherwise would jeopardize the safety and functioning of Indiana's schools by disastrously undermining school administrators' authority to suspend employees with pay when appropriate.

The Ghost Employment Statute Cannot Apply Here.

There is absolutely no basis for alleging ghost employment under any of these facts. First, the statute cannot even apply to situations where an existing employee is placed on paid leave pursuant to the agreed terms of a resignation. The statute applies only to (1) hiring an employee and then failing to assign any duties, or assigning the employee duties not related to the public entity and (2) assigning an existing employee duties unrelated to the public entity. See Ind. Code § 35-44-2-4. Under the plain language of the statute, it does not apply to a situation where an employee's resignation was accepted and he or she continued to be paid until an agreed upon effective date.

² Ironically, the Board placed Dr. Williams on paid leave shortly after Mr. Ralston's suspension. Therefore, most of Mr. Ralston's suspension was served under the Interim Superintendent, not Dr. Williams, and most of the responsibility for the time that Mr. Ralston remained suspended cannot be attributed to Dr. Williams. The Interim Superintendent denied Mr. Ralston's requests to return but is not named in the Draft report.

Second, all of the reported cases concerning the ghost employment statute involve the precise activities the law was designed to address: a public employee commandeering public funds or support for his own pecuniary or political gain by either "hiring" and paying those never meant to be public employees or by assigning public employees to work in his or her private business venture, political campaign or personal affairs. See:

- In re Riddle, 700 N.E.2d 788 (Ind. 1998), where prosecutor hired and assigned a deputy prosecutor duties running the prosecutor's private law practice for no additional compensation above his public paycheck.
- Brown v. State, 684 N.E.2d 529 (Ind. Ct. App. 1997), where the Clerk of Courts assigned employees to support his political campaign as part of their job duties.
- In re Hampton, 533 N.E.2d 122 (Ind. 1989), where a license branch manager placed his wife and children on the payroll of the license branch.
- Fadell v. State, 450 N.E.2d 109 (Ind. Ct. App. 1983), where an assessor assigned employees to perform work for his private trucking company as well as personal tasks such as picking up his children and washing his car.

These cases could not be more different from the facts at issue here. They involve willful abuse of taxpayer funds by using a public employee to perform personal or political favors for another employee. As the court noted in Riddle, "The criminal act of ghost employment involves dishonesty, fraud, and deceit." 700 N.E.2d at 793. The acts at issue in Perry Township were not for the private benefit of anyone and involved no dishonesty, fraud or deceit; they were personnel matters handled with full knowledge of the school board and conducted in the district's best interests given the circumstances. Perhaps the State Board of Accounts would recommend that, for audit purposes, such issues in the future be more thoroughly documented. But there is no ground for suggesting any criminal activity.

Even if the ghost employment statute could be construed to apply to paid suspension of an employee or to suspension of an employee from his duties pending the effectiveness of his resignation -- which it cannot -- the more specific statutes granting school corporations the authority to attend to personnel matters in the manner that best serves the district should govern this matter over the more general ghost employment statute. See Weiss v. Ind. Parole Bd., 838 N.E.2d 1048, 1053 (Ind. Ct. App. 2005) (noting the well-established proposition under Indiana law that where a conflict exists between a generally applicable statute and a more specific statute, the latter controls).

To find a violation of the ghost employment statute in the facts at issue would do violence to Indiana's schools by drastically limiting each district's authority to manage its relationships with its employees, an act that would impose its harshest consequences on Indiana's public school students.

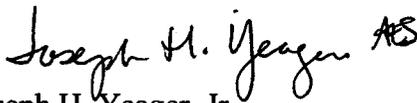
Mr. Bruce A. Hartman

7

July 25, 2008

Thank you for your consideration of these issues. Please contact us if we may provide any further assistance.

Very truly yours,

 AS
Joseph H. Yeager, Jr.

JHY/jd
Enclosures

METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
6548 Orinoco Avenue
Indianapolis, Indiana 46227

TO: Board of Education
FROM: Michael W. Sipe
SUBJECT: Personnel Report
DATE: November 21, 2005

Please Approve:

EMPLOYMENT OF TEMPORARY CERTIFIED STAFF

<u>NAME</u>	<u>ASSIGNMENT</u>	<u>COLLEGE</u>	<u>EXP.</u>	<u>EFFECTIVE</u>
John Sincroft	Teacher at Perry Meridian High School	B.A./Univ. of Indpls.	None	11/14/05-5/26/06
Don Elbreg	Teacher at Jeremiah Gray-Edison	B.A./Ball State	None	11/7/05-3/31/06
Eric Stinson	Teacher at Perry Meridian High School	B.S./Indiana State	4 years	11/14/05-5/26/06

TWO CERTIFIED RESIGNATIONS

<u>NAME</u>	<u>ASSIGNMENT</u>	<u>REASON</u>	<u>EFFECTIVE</u>
Mark Barnhizer	Teacher at Perry Meridian High School	Personal	May 26, 2006
Gerald Goebel	Physical Therapist - RISE	Moving	November 15, 2005

TWO PATERNITY LEAVE REQUESTS

<u>NAME</u>	<u>ASSIGNMENT</u>	<u>EFFECTIVE</u>	<u>TO RETURN</u>
Steve Cullingford	Teacher at Glens Valley Elem.	February 27, 2006	March 3, 2006
Kent Grimes	Teacher at Henry Burkhardt Elem.	October 28, 2005	November 11, 2005

TRANSFER OF CERTIFIED STAFF

<u>NAME</u>	<u>FROM</u>	<u>TO</u>	<u>EFFECTIVE</u>
Jenny Moore	Social Studies at Perry Meridian Middle School	Social Studies at Southport Middle School	January 2, 2006

COACHING RECOMMENDATIONS

<u>NAME</u>	<u>ASSIGNMENT</u>	<u>STATUS</u>	<u>EFFECTIVE</u>	<u>INDEX</u>
Jessica Brosius	Winter Guard Sponsor at Southport High School	Recommendation	October 25, 2005	.07
Todd Barnard	Assistant Wrestling Coach at Southport Middle School	Recommendation	October 26, 2005	.045
Todd Barnard	Assistant Wrestling Coach at Perry Meridian Middle School	Recommendation	November 1, 2005	.045
Robert Wasson	Girls' Tennis Coach at Perry Meridian Middle School	Resignation	October 25, 2005	
Absolom Bryant	Assistant Wrestling Coach at Perry Meridian Middle School	Resignation	October 24, 2005	
Jason Daugherty	8 th Grade Football Coach at Perry Meridian Middle School	Resignation	October 18, 2005	
Austin Anderson	Assistant Girls' Swim Coach at Southport High School	Recommendation	October 24, 2005	.09
Ryan Morgan	Assistant Boys' Basketball Coach at Southport High School	Recommendation	October 24, 2005	.09

COACHING RECOMMENDATIONS

<u>NAME</u>	<u>ASSIGNMENT</u>	<u>STATUS</u>	<u>EFFECTIVE</u>	<u>INDEX</u>
Ryan Morgan	5 th Grade Boys' Basketball Coach at Mary Bryan Elementary	Resignation	September 26, 2005	
Nathan Hartinger	Assistant Wrestling Coach (50% Position) at Southport High School	Resignation	November 1, 2005	
Carl Schieb	Assistant Wrestling Coach at Southport High School	Resignation	November 1, 2005	
Mark Barnhizer	Basketball Coach at Perry Meridian High School	Resignation	May 26, 2006	
Cory Shrum	Assistant Wrestling Coach at Southport High School	Recommendation	November 8, 2005	.09
Syndy Ortwein	Assistant Musical Director at Perry Meridian High School	Recommendation	October 27, 2005	.02
Syndy Ortwein	Orchestra Director at Perry Meridian Meridian Middle School	Recommendation	October 27, 2005	.03
Jeff McClain	5 th Grade Boys' Basketball Coach at Mary Bryan	Recommendation	September 26, 2005	.035
B.J. O'Connor	8 th Grade Head Boys' Basketball Coach at Perry Meridian Middle School	Recommendation	November 11, 2005	.13
Ben Rhoades	Varsity Assistant Boys' Basketball Coach at Perry Meridian High School	Recommendation	November 11, 2005	.15
Ben Rhoades	8 th Grade Boys' Basketball Coach at Perry Meridian Middle School	Resignation	November 11, 2005	
Bruce Kalb	Varsity Assistant Boys' Basketball Coach at Perry Meridian High School	Resignation	November 11, 2005	
Bruce Kalb	Varsity Boys' Basketball Coach at Perry Meridian High School	Recommendation	November 11, 2005	.30
Tony Schofield	Elementary Wrestling Coach, Grades K-2, Southport High School	Recommendation	November 3, 2005	.25
Kristin (Roberts) Romeril	Assistant Softball Coach, Southport High School	Resignation	November 2, 2005	

SUPPORT STAFF RECOMMENDATIONS

<u>NAME</u>	<u>FROM</u>	<u>TO</u>	<u>STATUS</u>	<u>EFFECTIVE</u>
Angela Sledge	RISE Interpreter	Mary Bryan Elementary	Recommendation	October 25, 2005
Jill Maude	RISE Interpreter	Mary Bryan Elementary	Recommendation	November 9, 2005
Shawna Householder	Receptionist	Southport Middle School	Recommendation	October 24, 2005
Sherrie Anderson	Special Education Aide	Rosa Parks-Edison Elem.	Recommendation	November 4, 2005
Jamie Applegate	RISE Aide	Southport Elementary	Recommendation	November 11, 2005
Dolores Figueroa	Custodian	Southport High School	Recommendation	November 12, 2005
Ruth Copeland	Custodian	Southport High School	Recommendation	November 12, 2005
Elizabeth Alexander	RISE Aide	Decatur Central High School	Recommendation	November 14, 2005
David Alexander	Custodian	Rosa Parks-Edison Elem.	Recommendation	October 29, 2005
Linda Eaton	Custodian	Perry Meridian Middle School	Recommendation	November 12, 2005
Beth Case	Cook	Southport High School	Recommendation	November 7, 2005
Nicole Burton	Substitute Bus Driver	Transportation	Recommendation	November 14, 2005
Mary Ann Motley	Bus Driver	Transportation	Recommendation	November 14, 2005
Carol Patterson	Cook	Clinton Young Elementary	Recommendation	November 14, 2005


Michael W. Sipe
Director of Personnel

To: Dr. H. Douglas Williams

From: Dr. E. B. Carver, Retired Superintendent of Schools

Re: Release of employees

Date: July 22, 2008

In my twenty-four years as Superintendent of Schools, it became necessary on several occasions to release an employee from his/her position before the end of the contracted year.

The school corporation paid the total salary and benefit package for several of these individuals even though they were not working or on school grounds. In my professional judgment, it was in the best interests of the students and community for these individuals to be released immediately.

I feel it is the responsibility of the Superintendent to make these decisions, and I would inform the School Board of my decision at a later date.

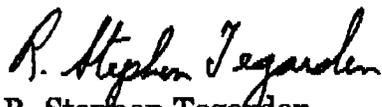


Exhibit 2

TOTAL P.002

To Whom It May Concern:

I have been asked to comment on the administrative practice of acquiring the resignation of an undesirable professional staff member in exchange for a designated period of paid administrative leave. In my sixteen years as a public school superintendent, I am aware of this practice being used on several occasions, and I have utilized this strategy, at least, once. The rationale behind this practice is pretty straight forward and very logical. First, the staff member is separated from the organization immediately, and a permanent replacement can be secured so that children and program are as minimally disrupted as possible. If the staff member were continued in the "limbo" of suspension, uncertainty would clearly adversely affect the children under his/her care. Second, the economics of this strategy is absolutely uncontested. Rather than a very costly and acrimonious dismissal process (which may, or may not be successful), this form of separation is immediate, permanent, and comparatively very inexpensive. In the instance I remember using this procedure, I was even able to extract assurance that the resigning staff member would permanently relinquish his teaching license, and never apply for a renewal. My contention is that, when used appropriately, this practice is in the best interest of any school corporation from the standpoint of program continuity, welfare of children, and stewardship of public funds.



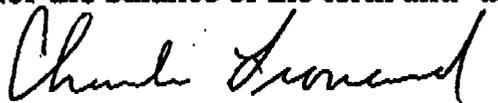
R. Stephen Tegarden
formerly Superintendent of Schools in:
Glastonbury, Connecticut (1986-1993)
Carmel, Indiana (1993-2000)

Exhibit 3

July 23, 2008

To Whom It May Concern:

During my tenure as superintendent of the Hamilton Southeastern Schools there were at least two situations where teachers were suspended with pay. We also had at least one instance where we felt it was in the best interest of the students to remove a teacher from the classroom before the end of the semester. In exchange for that teacher's resignation - effective at the end of the semester - we agreed to pay her for the balance of the term and "assign her to home."


Charles Leonard, Superintendent

Hamilton Southeastern Schools (1984 - 2001)

Exhibit 4

TOTAL P.003

Memorandum

To: Indiana State Board of Accounts

From: Members of M.S.D. of Perry Township Board of Education

Re: Audit Report Draft Regarding Employees on Paid Administrative Leave

Date: July 25, 2008

We thank you for the opportunity to respond to your draft and respectfully request your reconsideration of the draft in its current form.

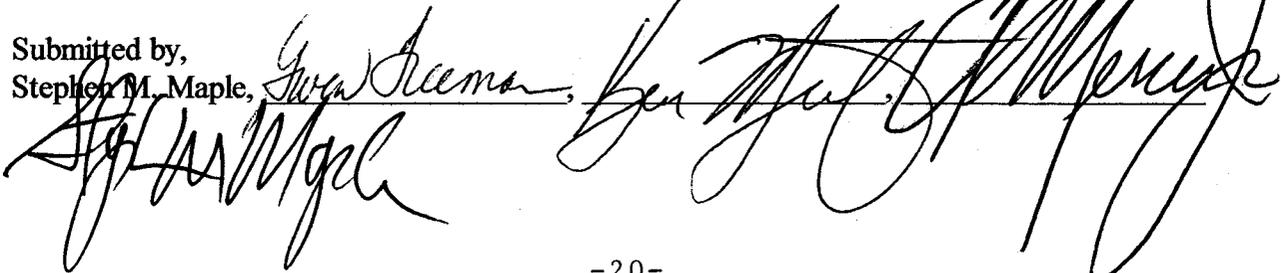
Facts: Mark Barnhizer, John Ralston, and M. Leila Livengood were suspended with pay by then superintendent H. Douglas Williams. Barnhizer resigned, while Ralston and Livengood were reinstated. All three performed no teaching or administrative duties for the school during their suspension. This procedure has been used for years by Perry Township without comment in any audit, and is used by a number of school districts within Indiana.

Law: I.C. 20-26-5-4 permits the board to determine the nature and extent of the employees duties, and delegate that to the superintendent under I.C. 20-29-2-15 which clearly permits the superintendent to act for the governing body in dealing with the school employees. Under I.C. 20-29-4-3 Williams acted within that authority to suspend all three employees. There appears no requirement that the suspension be in writing. The employee must continue to be paid until his or her contract is cancelled under I.C. 20-28-6-8. To further emphasize the school's authority for its agent, the superintendent, to suspend is I.C. 20-26-3-1, which gives each school corporation all the powers needed for the effective operation of the school, and I.C. 20-26-3-2 which states that "any doubt as to the existence of a power of a school corporation must be resolved in favor of the existence of the power." See also, I.C. 20-26-3-3 and 4.

Discussion: Williams was acting in good faith under his authority as superintendent and agent of the school corporation. The terms and conditions of any settlement relating to a suspension is clearly to be left to the school under I.C. 20-26-3-1 et seq. (Home Rule). Certainly the State Board of Accounts can note its concern for a lack of documentation - as a matter of an audit concern. But to claim any authority to determine any school employee suspension settlement is not within SboA's power under the School Home Rule statute. Likewise, its observation as to any alleged criminal violation of "ghost employment" under I.C. 35-44-2-4 is *ultra vires*, and not within the appropriate scope of an audit within the context of an employee's suspension.

Therefore, the SboA is requested to incorporate any reference to these employee suspensions as a failure of documentation into an audit, delete any reference to ghost employment or misconduct, and not refer the report for action to the Attorney General or county prosecutor nor require H. Douglas Williams or any of the affected employees to pay the school district.

Submitted by,
Stephen M. Maple,



8717 Ridge Hill Drive
Indianapolis, Indiana 46217-4641
June 17, 2008

Mr. Todd E. Caldwell, Auditor In Charge
Indiana State Board of Accounts
302 West Washington Street
Room E418
Indianapolis, Indiana 46204-2765

Re: Preliminary Confidential Draft;
Exit Conference Officials' Response;
Indiana State Board of Accounts Audit;
MSD of Perry Township

Dear Mr. Caldwell:

This letter shall serve as my Official Response to your Certified Letters dated June 5, 2008 and June 10, 2008, the Preliminary Confidential Draft and the Exit Conference Officials' Response to the Audit of MSD of Perry Township, Indianapolis, IN.

On February 3, 2006, I was requested by my Principal, Mrs. Ruth E. Turner, to attend a meeting at the Abraham Lincoln Elementary School with the MSD of Perry Township Personnel Director, Mr. Michael W. Sipe. During the meeting that morning, I was directed by Mr. Michael W. Sipe and Mrs. Ruth E. Turner, my supervisors, to collect my personal items, leave the Abraham Lincoln Elementary School and promptly go home on Administrative Leave. I did not want to leave the school at that time and it was by no means my choice to take Administrative Leave at that time. It was my sincere desire to remain at school and continue teaching my elementary art students for the entire day. However, I was directed by the above mentioned supervisors to leave the school and go home at that time. If I had not followed my supervisors' directive, I would have been considered insubordinate. Insubordination is an offense that can be punishable by termination of my teaching contract. Therefore, I had no choice but to go home and remain at home on Administrative Leave until I was given clearance to return to school by my MSD of Perry Township supervisors.

Mrs. Ruth E. Turner, Abraham Lincoln Elementary School Principal, called me on the telephone on Monday afternoon, February 6, 2006, and advised me that I had clearance to return to my teaching position at school on Tuesday morning, February, 7, 2006. I did return to Abraham Lincoln Elementary School first thing on Tuesday morning, February 7, 2006, and promptly resumed my normal teaching duties.

Mr. Todd E. Caldwell
Indiana State Board of Accounts
302 West Washington Street
Room E418
Indianapolis, IN 46204-2765

Page #2 of 2
June 17, 2008
Preliminary Confidential Draft
Exit Conference Officials' Response
Audit of MSD of Perry Township

I wish to make it perfectly clear that it was not my idea to take Administrative Leave on February 3, 2006 or February 6, 2006, but I had no other option. Therefore, I do not feel that I should be facing any of the allegations that are stated in the Preliminary Confidential Draft that you mailed to me on June 10, 2008 nor do I feel that I should have to pay any portion of the total amount of \$919.75 stated in the Preliminary Confidential Draft.

I am a dedicated, loyal and conscientious teacher and I have never ever been a ghost employee on the MSD of Perry Township payroll. I respectfully request that the Final Audit Report of this audit of MSD of Perry Township not infer or imply in any way that I was ever a ghost employee of MSD of Perry Township. In addition, I respectfully request that there is no insinuation or implication in the Final Audit Report that I ever willingly participated in any action that could be considered a Class D Felony during my tenure as an employee of MSD of Perry Township.

Any further communication from your Indiana State Board of Accounts Office regarding this issue should be sent to my legal representative, Ms. Casey Patterson, ISTA UniServ Director. Ms. Patterson can be reached at (317) 598-8464.

Sincerely,



M. Leila Livengood

Attachments: (2)

Memorandum

To: Indiana State Board of Accounts

From: Member and past President of the MSD of Perry Township Board of Education

Re: Audit Report Second Draft – Regarding Employees on Paid Administrative Leave

Date: February 2, 2009

The State Board of Accounts audit of the Metropolitan School District of Perry Township for the period from July 1, 2005 to June 30, 2007 includes findings on unauthorized paid leaves given to three certified employees. To provide context for those finding, I offer the following as an individual Board member and President of the Board at the time the audit report was first presented:

In an unofficial sampling of Indiana public school districts, it is clear that paid leaves are often used as a temporary measure until an employee disciplinary matter can be brought to the school board. When tenured employees are involved, this leave is always paid leave but it lasts no longer than it takes to prepare a hearing or reach a written agreement with the employee. The paid leaves identified by the State Board of Accounts audit were not followed by the statutory due process required for teachers and principals, and were clearly not an interim measure until the matter could be brought to the school board. The paid leaves identified by the audit were the final resolution of each matter and were never brought to the Perry School Board for a vote. It is the duty of the Board, not the School District administration, to accept or reject any agreement with the employee or provide the hearing the employee is entitled to receive. As required by the Open Door Law any "final action" by the Board must be by vote in a public meeting. It is my understanding that the authority to take "final action" on a disciplinary matter cannot be delegated by a school board to their administration.

The audit findings are factually accurate based on my experience as a Perry Board member. However, it is a substantial disappointment that the State Board of Accounts chose not to recommend that the former employees that authorized or benefited from unauthorized paid leave repay Perry taxpayers. It is my hope that the decision to refer the Perry audit report to the Marion County Prosecutor and the Attorney General will result in justice for Perry taxpayers.



Barbara Thompson

Individual Board member

January 29, 2009

Response to Perry Township Audit report

My experience on the Perry Township Board left me with many concerns about the lack of accountability the system provides in educational spending. The people ultimately responsible, the Board, are not typically educators and really have no knowledge base to make decisions even if they are given the information. It was my experience in Perry that we were not even given the information and in many cases denied the opportunity to make decisions we were required to make by law. The only entity available to help with accountability and lawful distribution of money is the State Board of Accounts. When auditing, if the State Board of Accounts is not pointed in the right direction, there is very little chance they will stumble on unlawful spending practices or mismanagement of funds. I believe if someone had not told the auditor about the paid leaves, these situations would not have been found. The budget is just too massive to audit in such a short time. I am pleased that the State Board of Accounts has reported their findings as a matter of fact and honestly. As a Board, we experienced much political and personal pressure to do otherwise. As long as there continues to be no accountability and no consequence for breaking the policies and laws, the mismanagement and unlawful spending of taxpayer dollars will continue.

I was secretary of the Board when Mr. Barnhizer resigned. I read about his resignation in the Friday letter Dr. Williams sent to the Board. We voted to accept his resignation. At no time, did Dr. Williams ask Board that Mr. Barnhizer continue to receive pay after his resignation.

I was president of the Board when Mr. John Ralston was arrested for allegedly battering his wife. Dr. Williams informed me of his arrest and assured me that he felt Mr. Ralston was innocent. I was not aware that Mr. Ralston was on leave or was being paid for that leave.

I knew nothing about the incident involving Ms. Livengood.

Respectfully submitted,



Susan M. Adams

**State Board of Accounts July 1, 2005 to June 30, 2007 Audit of the
Metropolitan School District of Perry Township**

**Exit Conference Comments by
Board of Education Member Nancy K. Walsh as an
Individual Board of Education Member**

On Tuesday July 21, 2008, I requested a conference with Todd Caldwell, State Board of Accounts ("SBOA") representative and contact for the SBOA's pending audit reports for the Metropolitan School District of Perry Township for the period July 1, 2005 to June 30, 2007. My purpose was to obtain information that would allow me to make a fully informed decision as to whether I wished to offer comments as an individual Board member on the pending Perry audit reports.

I understand that I am permitted to meet with the SBOA concerning the Perry audit reports to gather information and offer my perspective on the concerns noted in the draft Perry audit reports as long as I made it clear that I am not necessarily speaking for the School District, its Board of Education, or my fellow Board members. I made these declarations to Mr. Caldwell by e-mail in advance of our July 21, 2008 meeting and again at the outset of our meeting.

As a foundation for the reports on the two Perry audits, Mr. Caldwell explained to me that:

1. The pending Perry audit was conducted on a predetermined schedule. The two-year audit period is the normal audit period.
2. Seven SBOA employees, including two supervisors, were involved in the preparation and review of the pending Perry audits. Normally only one supervisor is involved but a second supervisor was included in the Perry audit when the auditors noted the possibility of a recommendation that former employees would be asked to repay the Perry Schools.
3. The SBOA conducts over 3,000 audits each year. Todd Caldwell will have worked for the SBOA for nineteen years on August 7, 2008.
4. The SBOA does not make a finding that the law had been violated. Instead, it makes a finding that an action such as the paid leave authorized for Barnhizer/Ralston/Livengood was authorized by statute, contract, or Board policy.
5. The SBOA has determined that paid leave for certificated employees of Indiana school districts is only permitted when cancellation of a certificated employee's contract is pending. Paid leave as a part of the resolution of a disciplinary matter involving a certificated employee must be authorized by the Board of Education policy, a contract, or statute. No such policy, contract, or statute has been drawn to the attention of the

SBOA, and it is the audit position of the SBOA that no such authority exists.

6. In the course of the exit conferences on the pending Perry audits, nothing had changed the SBOA's audit position that paid leaves given to three Perry employees; specifically Barnhizer, Livengood, and Ralston, by former Superintendent Williams were not permitted by Indiana law.

Based upon the factual statements set forth above, I determined to submit the following statement as my comment following my exit conference with Mr. Caldwell on July 21, 2008:

I agree with the assessment of the SBOA with respect to the paid leave given to the certificated employees during the audit period, i.e. that there was no authority for the paid leave. The decision of Williams and Brown to authorize paid leave to resolve disciplinary matters should have been made by the Board of Education, not two individuals who had access to the taxpayers' checkbook. The Board of Education should always have the *advice* of the Superintendent and professional staff in making key decisions, but it is the *Board's* duty to make decisions that have the effect of establishing policy. The Board of Education has a duty prescribed by law to represent the unique interests and perspective of the taxpayers who pay for the Perry Schools. Parents rely on the Perry Schools to educate their children and allocate funds consistent with the Indiana State law. Two top administrators effectively excluded the perspective of the community from key decisions about the operation of their school district. Excuses for Williams' and Brown's poor leadership and mismanagement aside, the SBOA audit and non-compliance with the law speaks for itself.

This comment represents my individual assessment of the preliminary findings of the SBOA as described above and does not necessarily represent the view of the Metropolitan School District of Perry Township, or its Board of Education, individually or collectively.

Respectfully,



Nancy Walsh
July 25, 2008

PAID ADMINISTRATIVE LEAVE
 METROPOLITAN SCHOOL DISTRICT OF PERRY TOWNSHIP
 SCHEDULE OF QUESTIONED COSTS

	<u>Questioned Costs</u>
Mark Barnhizer, former Teacher and Basketball Coach, and Dr. H. Douglas Williams, former Superintendent of Schools, jointly and severally: Employees on Paid Administrative Leave, pages 4 and 5	\$ 69,278.85
John Ralston, Assistant Principal, and Dr. H. Douglas Williams, former Superintendent of Schools, jointly and severally: Employees on Paid Administrative Leave, pages 4 and 5	21,642.37
M. Leila Livengood, Teacher, and Dr. H. Douglas Williams, former Superintendent of Schools, jointly and severally: Employees on Paid Administrative Leave, pages 4 and 5	<u>919.75</u>
Totals	<u><u>\$ 91,840.97</u></u>