



STATE OF INDIANA

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April 18, 2011

Ms. Jimella Harris
4609 Woodlynn Ct.
Fort Wayne, IN 46816

Re: Formal Complaint 11-FC-75; Alleged Violation of the Open Door Law by the East Allen County Schools

Dear Ms. Harris:

This advisory opinion is in response to your formal complaint alleging the East Allen County Schools (“Schools”) violated the Open Door Law (“ODL”), Ind. Code § 5-14-3-1 *et seq.* The Schools’ response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Schools’ violated the ODL by refusing to take public comments during their regular meetings and, instead, adopting a policy whereby public input is taken in small group settings where only two or three of the seven-member school board (“Board”) is present.

In response to your complaint, Board President Janice Witte states that several months ago, the Board modified the manner in which it accepted comments from the public. Ms. Witte explains that the Board divides into three groups that meet in different rooms and interact with members of the public. An administrator in each room takes notes so that Board members can listen and dialogue with members of the community and hear their concerns. Ms. Witte claims that the Board has received “many, many positive comments from . . . constituents regarding this new format for public input.”

ANALYSIS

The General Assembly enacted the ODL intending that the official action of public agencies be conducted and taken openly unless otherwise expressly provided by statute in order that the people may be fully informed. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public

agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a).

As Counselor Neal noted in *Op. of the Public Access Counselor 08-FC-149*, Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. See *Opinion of the Public Access Counselor 08-FC-149*, citing *Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; see also I.C. § 5-14-1.5-3 (“All meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.”). “Indiana law does require a governing body to allow public testimony in certain instances (e.g. a hearing on a proposed budget), but as a general rule the ODL does not guarantee the right to speak at a meeting.” *Opinion of the Public Access Counselor 08-FC-149*. Consequently, it is my opinion that the City did not violate the ODL by failing to allow public commentary at its regular meetings.

Moreover, based on the information you have provided regarding the Schools’ new format for receiving public commentary, I do not see where the Board has violated the ODL. By its terms, the ODL applies only to meetings of “governing bodies” of public agencies. I.C. § 5-14-1.5-2(b). The ODL defines a “meeting” as “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” I.C. § 5-14-1.5-2(c). Thus, if the small group sessions only included two or three of the seven-member Board, the Board did not hold a “meeting” subject to the ODL because no quorum of the Board was present at any of those meetings.

That said, I caution the Board to be aware of the ODL’s prohibition of serial meetings, which provides that certain gatherings of less than a majority of a governing body are deemed a “meeting” for purposes of the ODL:

Serial meetings

Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

(1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.

(2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.

(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.

(4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the

member participates in the gathering by telephone or other electronic means, excluding electronic mail.

I.C. § 5-14-1.5-3.1.

CONCLUSION

For the foregoing reasons, it is my opinion that the Schools have not violated the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Janice Witte