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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ILA CHAUBEY,  
*Complainant,*

v.

WEST LAFAYETTE COMMUNITY SCHOOL CORP.,  
*Respondent.*

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Formal Complaint No.  
21-FC-36

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the West Lafayette Community Corporation, through its board of trustees, violated the Open Door Law.<sup>1</sup> Attorney Robert C. Reiling, Jr. filed an answer on behalf of the Board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 31, 2021.

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<sup>1</sup> Ind. Code § 5-14-1.5-1-8.

## **BACKGROUND**

In this case we consider whether the Open Door Law (ODL) applies to the Diversity, Equity, and Inclusion (DEI) Task Force Committee of the West Lafayette Community School Corporation. (WLCSC).

Ila Chaubey (Complainant) asserts that WLCS is preventing members of the public from attending meetings or gathering information about what is being discussed during the meetings of the school corporation's DEI committee. Chaubey contends that WLCS required DEI committee members to sign nondisclosure agreements and warned against speaking to anyone outside of the committee about its activity. Chaubey contends that WLCS Board President Alan Karpick indicated the DEI committee is an administration committee rather than a board committee; and thus, the committee meetings do not have to be open to the public.

As a result, on March 31, 2021, Chaubey filed a formal complaint with this office alleging a violation of the ODL. In essence, Chaubey argues that the DEI committee

On April 19, 2021, WLCSC filed an answer to Chaubey's complaint denying any violation of the ODL. Essentially, WLCSC argues that the DEI committee is an "administrative committee" organized by the superintendent; and thus, is not subject to the Open Door Law. WLCSC contends that most of the issues the DEI committee will consider are internal administrative matters dealing with curriculum, hiring practices, diversity training, and whatever other matters the committee believes is appropriate. The school district

contends these matters fall outside the scope of school board. We will supply additional facts as necessary.

## **ANALYSIS**

### **1. The Open Door Law**

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The West Lafayette Community School Corporation (WLCSC) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. The WLCSC board is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the board must be open at all times to allow members of the public to observe and record.

Here, the issue is whether the WLCSC Diversity, Equity, and Inclusion (DEI) committee, which the school district calls a task force on its website is subject to the ODL.

### **2. ODL applicability to committees and other bodies**

The Open Door Law applies to all meetings of the governing bodies of public agencies. *See* Ind. Code § 5-14-1.5-3(a). What constitutes a "public agency" is governed by statute *See* Ind. Code § 5-14-1.5-2(a)(1)-(7). Additionally, the ODL

defines what constitutes a “governing body.” Ind. Code § 5-14-1.5-2(b).

Here, the parties disagree about whether the ODL applies to the WLCSC’s DEI Task Force Committee. WLCSC argues that the DEI committee is not subject to the ODL because the school board did not appoint the committee. Instead, the school corporation asserts that the committee is an “administrative committee” organized by the superintendent.

It is true, as WLCSC implies, that the ODL expressly applies to a committee appointed directly by a governing body. Specifically, the ODL includes the following its definition of “governing body:”

Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter.

Ind. Code § 5-14-1.5-2(b)(3). WLCSC maintains that the inquiry ends here because the school board did not directly appoint members to the DEI Task Force Committee. Instead, the WLCSC contends the DEI committee is an administrative entity.

There is, however, more to consider when deciding whether the ODL applies. Even if the school board did not directly appoint the membership of the DEI committee, the task force committee does not necessarily (or automatically)

avoid the reach of the ODL. Under the ODL, “governing body” also means “two or more individuals who are...”

The board, commission, council, or *other body of a public agency* which takes official action upon public business.

Ind. Code § 5-14-1.5-2(b)(2) (emphasis added). In other words, the question is whether the DEI Task Force Committee is a governing body for purposes of the ODL based on the statute’s “other body of a public agency” language.

We know the WLCSC is a public agency under the ODL. *See* Ind. Code § 5-14-1.5-2(a). We also know that the Diversity, Equity, and Inclusion Task Force consists of two or more people taking official action<sup>2</sup> on public business.<sup>3</sup> What is less clear is whether the DEI Task Force committee is two or more people who are a *body* of a public agency, that is, an extension of WLCSC.

WLCSC, by its own admission, concedes that the district’s superintendent organized and directed the formation of the DEI Task Force Committee. Since the school corporation’s policies identify the superintendent as the chief executive and educational leader for WLCSC, it is difficult to square

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<sup>2</sup> “Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d).

<sup>3</sup> “Public business” means any function upon which the public agency is empowered or authorized to take official action. Ind. Code § 5-14-1.5-2(e).

the argument that a DEI Task Force committee set in motion by the Superintendent would not constitute a body of WLCSC.

Equally problematic for WLCSC's position is the Board President's acknowledgement at the school board's meeting on January 4, 2021, that at least two school board members had been working on the task force issue since the previous summer. The upshot of WLCSC's argument is the idea that the Superintendent could pursue the creation of the body— regardless of what it is called— without the green light from the school board. What is more, WLCSC set the criteria for, and selected the membership of the DEI Task Force, which even has its own page on the school corporation's website (just like the school board).

It is, of course, unclear how a court would decide this dispute. What is clear, however, is the purpose of the Open Door Law is 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.” Ind. Code § 5-14-1.5-1. As a result, the ODL requires this office is to liberally construe its provisions to carry out that purpose.

Toward that end, it is the conclusion of this office that the DEI Task Force is body of the WLSC that takes official action on public business. Consequently, the DEI Task Force is subject to the ODL.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the West Lafayette Community School Corporation's Diversity, Equity, and Inclusion Task Force Committee constitutes a body of the school corporation is subject to the Open Door Law. Toward that end, when a majority of the DEI Task Force gathers to take official action on public business, the provisions of the ODL apply.



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Public Access Counselor