



# STATE OF INDIANA

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January 31, 2012

Mr. Michael J. Berglund  
6565 Pennan Court  
Noblesville, Indiana 46062

*Re: Formal Complaints 12-FC-03; Alleged Violation of the Open Door Law  
by the Noblesville School Board*

Dear Mr. Berglund:

This advisory opinion is in response to your formal complaint alleging the Noblesville School Board ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Andrew Manna, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint you allege that the Board failed to provide proper notice for an executive session held on December 20, 2011. You provided with your formal complaint a copy of the notice posted by the Board, which consisted of the following:

Agenda  
School Board Meeting  
1775 Field Drive  
Noblesville, Indiana  
December 20, 2011

To commence at the conclusion of the Regular School Board Meeting

### Executive Session

- I. Personnel – IC 5-14-1.5-6.1
- II. Land Acquisition – IC 5-14-1.5-6.1

In response to your formal complaint, Mr. Manna advised that a meeting was held at your request with the School Board on December 8, 2011. At that time, you raised a

concern about the format of the executive session notice that had been previously posted. The previous version of the executive session notice was reformatted and a copy of the January 17, 2012 notice is enclosed for your reference. However, reformatting and verifying the appropriate version for the executive session notice did not occur prior to the December 20, 2011 executive session.

## ANALYSIS

It is the intent of the ODL 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. *See* I.C. § 5-14-1.5-1. Accordingly, 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. *See* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2)

This office has addressed this issue in the past. *See Opinions of the Public Access Counselor 07-FC-64; 08-FC-196; 11-FC-39.* In *Opinion of the Public Access Counselor 05-FC-233*, Counselor Davis wrote the following:

This office has stated on many occasions that “personnel issues” is wholly inadequate under the Open Door Law. First, there are several enumerated instances involving personnel-related matters that are permissible for an executive session. Accordingly, “personnel issues” lacks the required specificity, because the Open Door Law states that notice of an executive session must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. IC 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to IC 5-14-1.5-

6.1(b)(9),” for example, would satisfy the notice requirements.

I agree with the opinion of Counselor Davis and would also note that there are a number of personnel matters which may not be discussed in executive session. To the extent the Board conducts executive sessions to discuss personnel matters allowable under the ODL; the Board must cite the specific statutory instance allowing the executive session and the language of the statute. Here, the Board only provided “Personnel” and a general citation to the Indiana Code section. To the extent the Board intends to address personnel matters not specifically enumerated in I.C. § 5-14-1.5-6.1, the Board should address those matters at a meeting open to the public.

The same analysis would apply to the Board’s citation to “Land Acquisition” as part of the executive session notice. “Land Acquisition” is not a specifically enumerated instance for which an executive session may be held. I would assume the Board is referring to I.C. § 5-14-1.5-6.1(b)(2)(D) which provides a public agency may meet in executive session to discuss “The purchase or lease of real property by the governing body up to the time of a contract or option to purchase or lease is executed by the parties.” In the future, the Board would need to provide the specific citation and the language of the citation in its notice for executive session. Thus, the Board violated the ODL by failing to provide the citation to the specific statutory instance(s) that allow it to meet in executive session and the language of the statute in its December 20, 2011 executive session notice.

I would also note that pursuant to the notice requirements for an executive session, the Board is required to provide a specific time for when the executive session would commence. *See* Opinions of the Public Access Counselor 07-FC-11; 09-FC-249; 09-FC-250. Counselor Davis provided the following analysis on this issue in a 2007 advisory opinion:

The Hospital does not address your allegation that the annual meeting notice is deficient because it does not specify the time of the public meeting. The Open Door Law clearly states that notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meetings is required. The Hospital’s annual meeting notice, which recites that the public meeting will follow the executive session, is not sufficient notice under the Open Door Law. This error is compounded by the fact that the annual notice refers to executive sessions, which cannot be the subject of an annual meeting notice. The Hospital should post a new annual meeting notice that sets out the specific time of the public meetings. I note also that it is not clear that the public meeting will be held in the same place as the executive session, although that seems implied. A revised annual notice should correct this problem as well. *Opinion of the Public Access Counselor 07-FC-11.*

Accordingly, the Board violated the ODL when it failed to provide the specific start time for the executive session held on December 20, 2011. As the Board has advised and provided an example of its reformatted notice that is compliant with the ODL, I trust that this is in satisfaction of your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the ODL by providing insufficient notice for the December 20, 2011 executive session.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Andrew Manna