



STATE OF INDIANA

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December 12, 2016

Ms. MaryAnn Ruegger
7050 Central Avenue
Indianapolis, Indiana 46220

Re: Formal Complaint 16-FC-284; Alleged Violation of the Open Door Law by the Ace Preparatory Academy Charter School¹

Dear Ms. Ruegger:

This advisory opinion is in response to your formal complaint alleging the Ace Preparatory Academy Charter School (“School”) violated the Open Door Law (“ODL”), Indiana Code § 5-14-1.5-1 et. seq. The School has responded via Mr. John Shertzer, Board Chair. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 28, 2016.

BACKGROUND

Your complaint dated October 27, 2016 alleges the School has violated the ODL by conducting an executive session without notice.

You allege that on or about September 28, 2016, the School held a properly noticed public meeting. You attended this meeting, but then were escorted out as the School entered into an executive session to discuss “budget” and “personnel matters”. You contend this is an inappropriate subject matter for an executive session. You also take exception with the meeting’s agenda not being posted with the meeting notice, however, a copy was available to meeting attendees.

The School responded by stating the agenda was made available to attendees but was not posted along with the notice. The School also concedes that an executive session was held earlier than planned as the Board determined it was necessary for subsequent discussion. It states the executive session was held properly and the subject matter was appropriate for a closed door meeting. Furthermore, no action was taken during the executive session.

¹ Due to a clerical error, this Opinion was originally published without regard to the School’s response. It has been edited to reflect the additional information. Revised 1-11-2017.

ANALYSIS

It is the intent of the Open Door Law (“ODL”) that 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 Indiana Code § 5-14-1.5-1*. Section 6.1 provides an exception, allowing public agencies to conduct executive sessions which are closed to the public in order to discuss strategies with respect to certain specified topics.

Section 6.1 enumerates very specific, subject-matter intensive justifications for holding an executive session. They may be held only in those narrow circumstances. Moreover, notices for executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under the Open Door Law.

The notice for the executive session called for a closed-door meeting to discuss “financial health”, however, that subject matter is not an enumerated instance of appropriate discussion topics under the Open Door Law. The School construes the personnel matters cited in section 6.1(b)(6) to include matters of budget impact, however, 6.1(b)(6) is clearly an authorization to discuss personnel misconduct and not employment considerations. Even if the School had cited 6.1(b)(9) to discuss job performance, it may not discuss “salary, compensation, or benefits of employees during a budget process.” All financial matters, even if it involves individual employees, must be discussed during an open meeting.

Furthermore, it appears as if the Board went into executive session earlier than the prescribed notice. This Office scrutinizes executive session much closer than regular meetings due to the fact that they are the only instances when a majority of a governing body can discuss certain matters behind closed doors. In light of this, notice of time, date and location should be followed to the letter and any deviation would be considered non-compliance.

You also amended your complaint to question whether a non-member may be part of an executive session. Please be advised that a governing body may invite any non-board member into an executive session who may be necessary to carry out a discussion. See Indiana Code § 5-14-1.5-2(f).

Please do not hesitate to contact me with any questions.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. John Shertzer