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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CHRISTOPHER N. HIATT  
*Complainant,*

v.

MUNCIE COMMUNITY SCHOOLS,  
*Respondent.*

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Formal Complaint No.  
21-FC-147

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging Muncie Community Schools violated the Open Door Law.<sup>1</sup> Attorney Alexander P. Pinegar filed an answer on behalf of MCS. 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 September 16, 2021.

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

## **BACKGROUND**

On September 14, 2021, the Board of Trustees for Muncie Community Schools (Board) held an executive session at 4:00 p.m. and a public meeting at 5:00 p.m.

Two days later, Christopher N. Hiatt (Complainant) filed a formal complaint with this office alleging the Board violated the Open Door Law (ODL). Specifically, Hiatt argues the Board failed to make the meeting agenda available before the meeting. Hiatt also asserts the Board did not provide information about whether it would receive public comment or the procedures necessary to participate.

Hiatt contends the Board distributed the meeting agenda to attendees after the president called the meeting to order. Moreover, Hiatt asserts the Board ejected him from the meeting after he stood up to address the Board president and objected that the Board would not have a public comment period.

On October 12, 2021, Muncie Community Schools filed an answer to Hiatt's complaint denying any violation of the Open Door Law.

Specifically, the Board argues that it posted the meeting agenda outside the conference room an hour before the meeting started. The Board contends that it also provided copies of the agenda and the public comment sign-in sheet on a table inside the meeting room. At the same time, the Board acknowledges additional copies were necessary, which the Board provided when it called the meeting to order.

The Board does not dispute that it removed Hiatt from the meeting. The Board argues Hiatt created a disturbance and did not stop interfering with the meeting after being invited to do so. The Board contends that Hiatt's removal from the meeting does not violate the ODL.

On October 25, 2021, Hiatt filed a reply to MCS's answer arguing the school corporation's answer to his complaint contained, among other things, outright lies. This opinion will provide additional facts to the extent 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).

Muncie Community Schools (MCS) 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. Moreover, MCS Board of School Trustees (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.

## 1.1 ODL definitions

Under the ODL, “meeting” means “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c). “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). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

Additionally, “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).

## 2. Meeting agendas

Hiatt argues the MCS Board violated the Open Door Law by failing to make the meeting agenda available before the meeting.

The Board contends that MCS’s executive secretary posted the agenda for the public meeting outside the Board’s conference room door an hour before the meeting. Additionally, the Board asserts the secretary placed copies of the agenda and the public comment sign-in sheet on a table inside the conference room door. The Board argues that more members of the public than usual appeared at the meeting, which resulted in the Board running out of the initial batch of cop-

ies. The Board contends that the executive secretary returned with additional copies just after the Board called the meeting to order.

Under the Open Door Law, “[a] governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.” Ind. Code § 5-14-1.5-4(a).

Here, Hiatt contends the MCS Board did not make the agenda available before the meeting. The Board argues it complied with the ODL by posting the agenda and providing copies at the meeting. The Board acknowledges that it momentarily ran out of copies because a more attendees showed up than usual at the meeting.

Notably, the ODL’s agenda provision does not require a governing body to provide individual copies of the meeting agenda to every person attending the meeting. If MCS provides each attendee a copy of the agenda, it is going above and beyond the letter of the law, which is commendable.

In any event, Hiatt has not provided sufficient evidence that MCS failed to post the agenda before the meeting.

### **3. Public comment and ejection**

Hiatt also contends the MCS Board violated the Open Door Law because of the its public comment procedure and his ultimate ejection from the meeting.

Since the ODL does not require the Board to receive public comment at public meetings, there is no violation of the

Open Door Law. As usual, this office recommends governing bodies provide a public comment period during meetings as a matter of good governance.

Additionally, this office has previously acknowledged that a governing body has the legal authority to maintain order at public meetings. Hiatt acknowledges in his complaint that he stood up to address the Board president with his objections about the public comment issue, which ultimately resulted in his removal from the meeting. The Board contends that Hiatt was complaining and disrupting the meeting prior to his removal.

Only in limited circumstances—none of which are relevant here—would removing a person from attending a public meeting result in a violation of the ODL. As a result, this office will defer to the judgment of the MCS Board in this case.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that Muncie Community Schools did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt  
Public Access Counselor