
OPINION OF THE PUBLIC ACCESS COUNSELOR

JENNIFER HENDRIX,
Complainant,

v.

CARMEL CLAY SCHOOLS,
Respondent.

Formal Complaint No.
22-FC-34

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that Carmel Clay Schools violated the Access to Public Records Act¹ and the Open Door Law.² Attorney Jessica Billingsley filed an answer on behalf of CCS. In accordance with Indiana Code § 5-14-5-10, I issue the follow-

¹ Ind. Code § 5-14-3-1-10.

² Ind. Code § 5-14-1.5-1-8.

ing opinion to the formal complaint received by the Office of the Public Access Counselor on March 9, 2022.

BACKGROUND

This case involves a dispute about whether the Social Emotional Learning (SEL) Parent-Caregiver Advisory Committee (Committee) at Carmel Clay Schools (CCS) is subject to the Open Door Law. This case also considers whether Committee records are disclosable under the Access to Public Records Act (APRA).

On October 7, 2021, Jennifer Hendrix (Complainant) emailed CCS seeking a copy of the public notice for the Committee's meetings as well as confirmation that the meetings were open to the public.

The next day CCS's assistant superintendent informed Hendrix that parent committees as appointed by the superintendent are not open to other parents or members of the community.

This office addressed the status of the Committee in a previous opinion in December 2021.³ In that case, this office concluded that "groups specifically established by a public agency's chief executive for the purposes of taking official action on the agency's public business qualifies as an Open Door Law body." Based on our previous guidance, at the time this office declined to find CCS in violation of the Open Door Law and encouraged the school to revisit the issue.

³ *Opinion of the Public Access Counselor*, 21-FC-174 (2021).

After this office issued the first opinion, Hendrix filed another formal complaint alleging CCS violated the ODL by holding another Committee meeting on January 26, 2022.

Hendrix argues, based on opinion 21-FC-174, that excluding the public from the Committee meeting is a violation of the Open Door Law.

Hendrix filed a public records request with CCS seeking a variety of information regarding the members of the Committee and the process for selecting those members. In the complaint, Hendrix asserts that in the five months since she filed the request no records have been provided. For its part, CCS informed Hendrix that the names of the Committee members and other information about the Committee cannot be disclosed due to privacy concerns.

On March 9, 2022, Hendrix filed a formal complaint against CCS.

On April 28, 2022, CCS filed an answer to Hendrix's complaint denying her claims. CCS disputes the analysis of the PAC's 21-FC-174 opinion. Specifically, it disagrees that Indiana Code section 5-14-1.5-2(b)(2) would define superintendent-appointed committees as an "other body."

CCS also contends that if the school corporation were required to follow this office's interpretation there would be a decrease in parental involvement in CCS committees "for fear of public ridicule or "doxxing" by opponents in the community."

CCS believes that since the members are parents of students and they joined prior to the Public Access Counselor's position on superintendent-appointed committees,

that the members would be willing to have their names disclosed. And if so, they should be granted an opportunity to withdraw from committee participation.

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).

Carmel Clay Schools (CCS) 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, the school corporation's qualifying governing bodies are subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

The fundamental issue in this case is whether the Social Emotional Learning (SEL) Parent/Caregiver Advisory Committee (Committee) is a governing body of Carmel Clay Schools for purposes of the ODL and thereby making its related records subject to the Access to Public Records Act.

2. ODL applicability to committees & other bodies

The ODL, subject to limited exceptions, applies to all meetings of the governing bodies of public agencies. 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) to - (7). Additionally, the ODL defines “governing body.” Ind. Code § 5-14-1.5-2(b).

Here, the parties disagree about whether the Open Door Law applies to the Committee. CCS argues the Committee is not subject to the ODL because the superintendent formed it rather than the school board.

Under the Open Door Law, “governing body” means two or more individuals who are any of the following:

- (1) A public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business.
- (2) The board, commission, council, or other body of a public agency which takes official action upon public business.
- (3) 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.

Ind. Code § 5-14-1.5-2(b). Here, the dispute is whether subsection (b)(2) applies to the Committee. CCS is a public agency under the ODL. *See* Ind. Code § 5-14-1.5-2(a). We also know the Committee consists of two or more people taking official action⁴ on public business.⁵

⁴ “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, CCS does not dispute that the Committee at issue in this case consists of two or more individuals taking official action on public business. Instead, CCS argues that the Committee is not a singular and specific “board, commission, council, or other body;” and therefore it does not qualify as a governing body for purposes of the Open Door Law.

For its part, CCS argues:

Subsection (b)(2) begins with “the” – the definite article – indicating the nouns that follow in the series are both singular and specific: *the* board, the commission, *the* council, or *the* other body of a public agency.

...

If the General Assembly had intended for the statute to have the meaning ascribed to it by the Public Access Counselor, it would have started Subsection (b)(2) with the indefinite article “a” so that the subsection read: “a board, commission, council, or other body of a public agency which takes official action upon public business.”

Setting aside the grammatical awkwardness of the phrases “the other body” and “a other body”, if we are parsing out a non-exhaustive, disjunctive statutory list by diagramming sentences, we’ve perhaps lost the plot of the Open Door Law.

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

Even if we engage in a semantic debate over statutory construction, there exists no authority which would prescribe a definite article at the beginning of a list to modify the entirety of a list. “[W]hen a series of items are presented in the form of a list and the only conjunction used is an “or” between the last two items, all of the items should be read disjunctively”. *Bourbon Mini-Mart, Inc. v. Commissioner, Indiana Dept. of Environmental Management*, 806 N.E.2d 14 (Ind. Ct. App. 2004) (citing *Rose v. U.S. Postal Service*, 774 F.2d 1355, 1360–1361 n. 14 (9th Cir.1984)).

This office is keenly attuned to rules of statutory construction and even appreciates a well-argued position on grammar; however, we also balance those considerations with the legislative intent of the Open Door Law:

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter 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. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.

Ind. Code § 5-14-1.5-1. If these words—and the provisions that follow—mean that a public agency can establish secret committees populated with agreeable external stakeholders for the ease and comfort of vetting controversial topics, this office will leave that determination to the legislature or the courts. It will not happen right now on the PAC’s watch.

The law simply does not contemplate a public agency hand-picking groups of select community members as an established deliberative assembly to operate behind closed doors to receive information, deliberate, make recommendations, or set policy outside the view of the remainder of the public. Contrary to CCS's arguments, this position is in no way dissonant from the rest of the Open Door Law.

Caselaw analyzing the definition of governing body focuses on other types of relationships between committees and governing bodies and this opinion is not in conflict with any binding case law⁶ and has been the position of this office for nearly three years.⁷

CCS contends this office's interpretation of the law will upset its current lineup of "hundreds of committees." That appears to be a problem of its own making. For now, this analysis is limited to the issue presented: the Social Emotional Learning Parent-Caregiver Advisory Committee.

As a result, unless an exception applies, the meetings of the Committee must be open to the public. Additionally, the public is entitled to notice⁸ of any meeting or executive

⁶ As an aside, it should be noted that pursuant to *Indiana State Bd. of Health v. Journal Gazette Co.*, 608 N.E.2d 989 (Ind. Ct.App.1993), "The Legislature never indeed [the Open Door Law] to apply to gatherings of *agency employees* conducting the 'internal staff operations of public agencies.'" (Emphasis added).

⁷ *Opinion of the Public Access Counselor* 19-FC-127 (2019).

⁸ Ind. Code § 5-14-1.5-5.

session and the creation of a meeting memorandum⁹ (i.e., minutes).

Nothing in this opinion should stand for the ratification of intimidation or incivility toward members of any governing body. This office has been clear on that matter.¹⁰

However, to the extent a community member chooses to avail themselves of the responsibility of establishing policies of a public school system, they cannot hide their identities or activities while doing so. Therefore, the roster of members and their selection—to the extent they are documented—is public record. CCS does not cite a statutory exception to disclosure for these materials.

⁹ Ind. Code § 5-14-1.5-4.

¹⁰ Informal Opinion 21-INF-08 (2021).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Social Emotional Learning Parent-Caregiver Advisory Committee at Carmel Clay Schools is subject to the Open Door Law and its associated records are subject to the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

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