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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRIAN C. PAYNE,  
*Complainant,*

v.

VIGO COUNTY SCHOOL CORP.,  
*Respondent.*

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Formal Complaint No.  
22-FC-4

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response a formal complaint alleging that the Vigo County School Corporation violated the Open Door Law.<sup>1</sup> Attorney Jonathan Mayes filed an answer on behalf of the Corporation. 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 January 12, 2022.

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

## BACKGROUND

In this case we consider whether an advisory committee established by a school board is subject to the Open Door Law, and if so, whether the committee's closed meetings constitute a violation of the law.

This office recently explored the issue of school advisory committees within Vigo County School Corporation (VCSC). *See Informal Opinion of the Public Access Counselor, 21-INF-13 (2021)*. This complaint followed soon after the previous informal guidance. In relevant part—and without the benefit of a response from the school—this office concluded as follows:

Here, the task force appears to be a direct offshoot of the School board. If so, there can be no question that the task force is a governing body subject to the Open Door Law. Therefore, to the extent the task force meets behind closed doors without the requisite notice being posted, it will be violating the Open Door Law.

That opinion is incorporated by reference. After acknowledging the informal opinion at a public meeting, the VCSC disagreed that the committee considering the closure of two of elementary schools was subject to the Open Door Law.

On January 11, 2022, Brian Payne (Complainant) filed a formal complaint against VCSC.

In response, VCSC argues the committee was an ad hoc assembly of parents, community members, administrators, and teachers selected by the Director of Elementary Education. VCSC asserts that it provided invitations to the public

and after an application process, the district set the committee roster.

The committee began meeting in July 2020 and providing recommendations, which were vetted by administrators and presented to the school board. The VCSC board ultimately ratified committee's recommendations. VCSC contends because the committee was *ad hoc*, it is not subject to the Open Door Law provisions.

## 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 Vigo County School Corporation (VCSC) 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 governing bodies are subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the VCSC's governing bodies 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. ODL applicability to committees and other bodies**

The Open Door Law, 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. Ind. Code § 5-14-1.5-2(a)(1)–(7). The ODL defines “governing body” as well. Ind. Code § 5-14-1.5-2(b).

Here, the parties disagree about whether the Open Door Law applies to the committee created by the VCSC administration. VCSC argues the committee is not subject to the ODL because it is not a governing body of a public agency and was not created by 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). In this context, the only public agency at play is the school corporation itself. Therefore, subsection (b)(1) is eliminated from the discussion, which leaves the latter two definitions.

Turning to subsection (b)(2), an advisory committee is, unquestionably, a deliberative assembly akin to a board, commission, council, or other body. As set forth above, “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).

Even if a committee does not have the authority to make binding decisions or take final action, it certainly took official action at its meetings.

The question remains whether a committee can take official action on public business.

“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). If a governing body is delegated authority to take official action on its agency’s public business, it satisfies the definition of Indiana Code section 5-14-1.5-2(b).

VCSC concedes that the committee was formed for the specific purpose of addressing the closure of two elementary schools. This is public business by any legitimate and reasonable definition. By all accounts, the administration commissioned the committee to do a portion of the school corporation’s work. The delegation came from executives of the public agency, who are delegated authority by the school board itself. The committee has specific charges to advise on school business, which qualifies as taking action on public business. VCSC’s executives have control over this and therefore they are an extension of the school corporation as a public agency.

VCSC hand-selected the committee roster and the committee’s purpose was clear and unequivocal: make recommendations as to school closures.

Notably, the binding appellate cases generally cited in this area of law focus exclusively on the “directly appointed” language of subsection (b)(3). This, however, appears largely because this was the only statutory language before the courts at the time. It does not appear as if any binding authority has been issued analyzing subsection (b)(2).

In the absence of such binding authority, this office is charged with construing the access statutes liberally. As

such, we can find no alternative position other than that of-  
ficial, formal, rostered groups specifically established by a  
public agency's administration for the purposes of taking of-  
ficial action on the agency's public business qualify as bodies  
subject to the Open Door Law.

To the extent this office has given alternative guidance in  
the past, it was likely a consequence of an overly narrow  
reading of the statutes and caselaw. This office will remedy  
that in future editions of the Public Access Handbook.

In the meantime, in 2021, this office has issued several pub-  
lished opinions clarifying the prior erroneous guidance.<sup>2</sup>  
VCSC should have been on notice of this as well.

Although it is VCSC's point is well taken that the school  
board went to some effort to publicly assess the initiative  
and invite public comment, the committee's deliberative pro-  
cess was shrouded in secrecy. By the time the recommenda-  
tions were presented, the damage had already been done.

The latter portion of 21-INF-13 bears repeating here as  
well:

As an aside, these types of governing-by-proxy  
arrangements have always been a great curiosity  
to this office. Not that they exist – delegation of  
responsibility is not inherently a bad thing – but  
rather the legal liberties agencies take to keep  
them secret. This is especially true for commit-  
tees who discuss controversial subject matters.

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<sup>2</sup> *Opinion of the Public Access Counselor 21-FC-156; Opinion of the Public  
Access Counselor 21-FC-36, Informal Opinion of the Public Access Counselor  
21-INF-08.*

The secrecy does nothing but invite more suspicion and scrutiny.

The point of open meetings is to keep the public informed, yes. But it has a dual purpose. Those who serve on boards can use public meetings as a platform to demonstrate that a task force's work is positively benefitting the public, the right people make up the task force, and to communicate that the task force is thoughtfully deliberating the issues at hand. To do otherwise is usually indicative of poor governance and a disregard of the community it serves.

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Vigo County School Corporation authorized an official committee to operate behind closed doors and take official action on public business outside of a public meeting contrary to the Open Door Law.



Luke H. Britt  
Public Access Counselor

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