
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANDREA BORDENKECHER,
Complainant,

v.

HAMILTON SOUTHEASTERN SCHOOLS,
Respondent.

Formal Complaint No.
23-FC-62

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to two formal complaints alleging Hamilton Southeastern Schools, through its Board of Trustees, violated the Open Door Law.¹ Attorney Christopher P. Greisl filed an answer on behalf of the Board. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to both formal complaints received by the Office of the Public Access Counselor on July 27, 2023.

¹ Ind. Code § 5-14-1.5-1, to -8.

BACKGROUND

In this case we consider whether the Hamilton Southeastern Board of School Trustees (Board) took official action on public business by amending a document outside of a public meeting using a shared online document editor.

Andrea Bordenkecher (Complainant) alleges the Board took official action outside of a public meeting by discussing student handbook changes vis-à-vis Google Docs or a similar shared document editor. In March 2023, the Board took steps to publicly amend the student handbook, which the Board subsequently modified on July 26, 2023.

As a leadup to the handbook modification, on July 23, 2023, the *IndyStar* published an article suggesting that the potential changes may have been discussed outside a public meeting.

Bordenkecher filed her complaint four days later.

In response, the Board does not dispute the existence of a shared document. Instead, it argues the superintendent created the document as a conduit of communication between the administration and Board, however, robust public discussion exists despite the document.

Insofar as the handbook is concerned, the Board maintains that plenty of official action was taken by the Board in several meetings between March and July, including public comment forums and public work sessions.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so the people may be fully informed. The ODL's provisions are to be liberally construed with the view of carrying out its policy. *See* Ind. Code § 5-14-1.5-1. Therefore—unless an exception applies—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* Ind. Code § 5-14-1.5-3(a).

Hamilton Southeastern Schools is a public agency for the purposes of the Open Door Law. *See* Ind. Code § 5-14-1.5-2(a)(2). Therefore, the HSE School Board of Trustees is a governing body subject to its provisions. *See* Ind. Code § 5-14-1.5-2(b)(2).

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). “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).

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). Additionally, the ODL mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

2. Online document editing and the Open Door Law

Bordenkecher suggests the use of a shared document among Board members is a violation of the Open Door Law because it is akin to deliberating or taking other official action without a public meeting.

This office agrees that the potential for abuse exists with such an arrangement.

The danger with disruptive technologies—as convenient and intuitive as they may be—is that the legislature cannot possibly keep up with every conceivable iteration of tools and how they may impact the access laws. Therefore, it falls to this office to make determinations as to their appropriate use based upon context and existing laws.

Past opinions have addressed the pitfalls of social media, virtual meeting platforms, texts, emails, and other programs of which governing bodies avail themselves as an easy end around to the heavy lifting of government transparency.

And so it is here. Online document editors, as well as group chats, message boards, listservs, etc., probably have no place in the work of governing bodies given the restrictions of the Open Door Law, unless it is on a read-only basis.

As noted by the Board, some limited use of group email can be utilized for operational or administrative updates, so long as simultaneous conversation is not involved.

Programs like Google Docs or similar editors, however, enable members of a governing body to draft substantive documents in real time with their colleagues, doing the work of deliberating as if they were together in a work session or public meeting. This practice is antithetical to the spirit of the Open Door Law. The better play is to delegate an individual to draft a working document and discuss potential amendments in public.

While neither this office, nor the author of the Board's response, can say for sure what was edited or discussed through track changes or otherwise or even whether it was done simultaneously, this situation certainly gives rise to an inference that the Board conducted public business behind closed doors as a group.

Although it appears the prejudice to the public was mitigated by several hours of public meetings over the handbook revisions, even the appearance of impropriety sullies those efforts. Subsequent remedial measures may have prevented impairment of public knowledge or understanding of the public's business, but legitimate concerns were raised, nevertheless.

Therefore, the official position of this office is that, unless extraordinary circumstances apply, shared online document editing by a governing body is contrary to the legislature's intent that deliberation and other official action must be conducted in a public meeting.

CONCLUSION

Based on the foregoing, it is the opinion of this office that unless extraordinary circumstances apply, governing bodies should limit use of online document editing technology to avoid violations of the Open Door Law.



Luke H. Britt
Public Access Counselor

September 13, 2023.