



STATE OF INDIANA

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October 1, 2020

Re: Informal opinion; 20-INF-7; Executive sessions of school boards

This informal opinion is in response to several inquiries regarding the recent use of executive sessions by school boards to develop 2020 back-to-school plans. In accordance with Indiana Code section 5-14-4-10(6), I issue the following informal opinion.

BACKGROUND

A frequent inquiry posed to this office during the public health emergency is whether school boards may hold executive sessions to develop back-to-school plans addressing the start of the 2020 school year. The Open Door Law authorizes executive sessions “[f]or discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.” Ind. Code § 5-14-1.5-6.1(b)(3).

As school boards have been developing plans for students physically returning to campus, executive sessions have been held under this statute. The inquiries seek this office to opine on the propriety of the practice.

Additionally, we received inquiries over the application of Indiana Code section 5-14-1.5-6.1(b)(1), which allows governing bodies to meet in executive session “[w]here authorized by federal or state statute.”

ANALYSIS

1. 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. Toward that end, 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).

1.1 Executive sessions

Despite the ODL's general rule of open meetings, the public may be excluded from certain meetings known as executive sessions. A governing body may only hold an executive session in the specific instances set forth under section 6.1 of the ODL. *See* Ind. Code § 5-14-1.5-6.1(b).

This informal inquiry concerns two of these instances: (1) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems. (b)(3); and (2) Where authorized by federal or state statute under subsection (b)(1).

1.2. School security plans

The executive session justifications are rooted in practicality in regard to the sensitivity of the subject matter being discussed. School safety and security plans may be held in closed door meetings to preserve the integrity and efficacy of the safety program itself. Active threats and responses should indeed be kept in-house to ensure those who intend to visit harm on schoolchildren or staff are not privy to those plans.

Back-to-school plans during the COVID-19 pandemic may be a separate issue, however, and not exactly what the legislature intended. While serious and not to be dismissed, COVID-19 is a passive threat insofar as public knowledge of public health plans will not give COVID a heads-up to target a child or a building. The virus, thankfully, does not have eyes and ears. The harm comes from the virus itself and not from knowledge of mitigation efforts.

It is difficult to imagine a scenario wherein those plans – or safety considerations generally - would be compromised if discussions were held during a public meeting.

As written, however, the statute is clear and unambiguous in that it includes school safety plans without qualification. To the extent school boards choose to

hold executive sessions under these auspices, the wording of the law would likely support that decision. The intent and purpose of the law, however, is another matter altogether.

Therefore it is the official position of this office that back-to-school pandemic plan discussions should be held in public.

1.3 Executive sessions under statutes other than the ODL

The second inquiry seeks clarification on the first justification for executive sessions listed under the Open Door Law. It is a generic catchall for instances where the legislature may have inserted the privilege of executive sessions in other parts of the Indiana Code.

For example, local domestic violence committees can hold executive sessions under the specific provisions of Indiana Code section 12-18-8-13. The Statewide Child Fatality Review committee can hold executive sessions in accordance with Indiana Code section 16-49-4-9. However, the only executive session not enumerated under the Open Door Law pertaining to school governing bodies is Indiana Code section 20-26-4-3(h), which allows a school board to hold two training sessions a year.

Still, implicit in the invocation of subsection (b)(1) is the requirement that the accompanying statute is also cited. If not, it does not give the public adequate notice of the executive session. Therefore any executive session notice that does not invoke the state or federal statute is deficient.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor