

January 9, 2004

Mr. Frank A. Nagy
6840 Seeger Drive
Evansville, Indiana 47712

*Re: Formal Complaint 03-FC-138:
Alleged Violation of the Open Door Law by the Evansville-Vanderburgh
School Corporation*

Dear Mr. Nagy:

This is in response to your formal complaint alleging that the Board of Trustees for the Evansville-Vanderburgh School Corporation (Board) violated the Indiana Open Door Law (Open Door Law) by failing to meet in a room of adequate size for the public to observe and record the meeting. The Board's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Board did not violate the Open Door Law.

BACKGROUND

On December 8, 2003, the Board held its regular meeting at the School Corporation's administrative office building in the room normally utilized for that purpose. The meeting was scheduled to begin at 7:00 p.m. You allege that you arrived for the meeting at 6:40 p.m., and at that time the meeting room was full and you were required to remain in the lobby outside the meeting room. An audio speaker was located in the lobby to allow for people in the lobby to hear the discussion taking place in the meeting room. On December 9, 2003, you signed a complaint subsequently filed with this office alleging that the Board's failure to hold its meeting in a larger room violated the Open Door Law. The Board's response indicates that by fire code the meeting room has capacity for 109 people, and that in the overwhelming majority of school board meetings there is ample seating within the designated room for any member of the public who wants to attend. In those circumstances where there is an overflow crowd, the Board has equipped the lobby outside the room with a public address system that permits people in the lobby to listen to the discussion occurring within the meeting room. According to the Board, the lobby has capacity for 37 additional persons. The Board's response and supporting documentation acknowledges that the meeting room was filled for the December 8, 2003, meeting, but notes that the overflow crowd was accommodated in the lobby outside the meeting room. There is no indication or allegation that any member of the public was turned away or

was otherwise unable to hear what was occurring in the meeting room.¹ The Board's supporting documentation further indicates that early in the meeting a large contingent present in the meeting room left to allow for some if not all of the overflow crowd to enter the meeting room. Based on these facts, the Board contends that there is no basis to find a violation of the Open Door Law.

ANALYSIS

The intent and purpose of the Open Door Law is 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." Ind. Code § 5-14-1.5-1. Accordingly, the Open Door Law requires that "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." IC 5-14-1.5-3(a). Toward that end, a public agency is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. IC 5-14-1.5-5(a). The only specific requirement set forth for the meeting location and room is that the meeting room must be accessible for persons with disabilities. IC 5-14-3-8. There is no provision in the Open Door Law that requires a governing body to meet in a venue with a specific meeting room size or capacity. That said, if evidence indicates that the meeting room was so inadequate as to constitute an infringement on the public's right to observe and record the meeting, the governing body may be found to have violated the Open Door Law. *See* IC 5-14-1.5-3(a); *Advisory Opinion 00-FC-13, Alleged Violation of the Open Door Law by the Board of the Franklin Township Community School Corporation.*

Based on the facts presented here, I decline to find that the Board violated the Open Door Law. The Open Door Law does not specifically require that a governing body meet in a room of any particular size, or that it meet in a room that can seat or otherwise accommodate every person that desires to attend that meeting. Indeed, such a requirement would be impractical for several reasons. A governing body cannot precisely predict the numbers of persons that will attend its meetings, and even where it can reasonably predict the attendance based on the issues to be presented, a room of adequate size may not be available to the governing body. This would be particularly problematic for those governing bodies that are required by other law to meet within a specific geographic location or in a particular building. Then too, the Open Door law would not be satisfied but rather would be undermined by a rule or an interpretation that would require a governing body to cancel a meeting attended by, for example, 101 persons simply because the meeting room could only accommodate 100 of those persons.

While the Open Door Law does not require a specific room meeting size, it nonetheless provides guidance to governing bodies to suggest that the meeting location be adequate to accommodate the public's right to attend the meeting. *See* IC 5-14-1.5-3(a). A violation may be found if there is evidence to suggest that the governing body infringed on that right by meeting in a room or under circumstances that defeated the public's right to observe and record the meeting. No such evidence is presented here. Indeed, the Board met in the room regularly utilized for Board meetings. That room is large and holds more than 100 people. More

¹ Your complaint suggests that the Board members do not always turn on their microphones when speaking, but you do not contend that this occurred on the December 8, 2003, meeting, and there is no evidence to suggest that any part of the discussion was withheld from people in the lobby.

significantly, that room is apparently large enough to hold every person who wishes to attend in the overwhelming majority of meetings.² Moreover, the Board's attitude toward overflow crowds in general and specific to the meeting at issue suggests that the Board met the letter and spirit of the Open Door Law. The Board equipped the hallway with an audio system that permitted people attending the meeting in that location to hear what was occurring in the meeting room. And, with regard to this meeting, the Board momentarily suspended its business to allow for one contingent of the public to exit once their business was completed, and to allow for anyone in the lobby to at that time enter the vacated seats in the meeting room. There is no allegation or evidence to suggest that you were unable to observe and record the meeting from your vantage point in the lobby, or that you were precluded from entering the meeting room as the seats were vacated during the meeting. Neither is there any allegation or evidence that the Board sought to meet in a room too small to handle public attendance, or that it refused to try to accommodate any member of the public that desired to attend its meeting.

CONCLUSION

For the reasons set forth above, I find that the Board did not meet in violation of the Open Door Law.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Patrick A. Shoulders

² In making this finding based on the complaint and response, I take into consideration that prior to filing your complaint regarding the December 8, 2003, meeting, you contacted this office and alleged that the meeting room had been full on three prior occasions.