
OPINION OF THE PUBLIC ACCESS COUNSELOR

CARY E. PATTERSON,
Complainant,

v.

INDIANAPOLIS PUBLIC SCHOOLS,
Respondent.

Formal Complaint No.
19-FC-101

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indianapolis Public Schools (“IPS”) violated the Open Door Law.¹ Zachary Mulholland, Board Administrator for the IPS Board of School Commissioners filed a response to the complaint. In accordance with Indiana Code

¹ Ind. Code §§ 5-14-1.5-1 to -8

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 4, 2019.

BACKGROUND

This case involves a dispute about whether Indianapolis Public Schools (“IPS”) provided adequate public notice for a pre-bargaining public hearing as required by Indiana law.

On September 10, 2019, the IPS Board of School Commissioners held a pre-bargaining public hearing. Cary Patterson (“Complainant”) contends that IPS failed to provide adequate public notice for the hearing.²

Patterson asserts that she contacted IPS on September 15 to request the date and time for the public hearing. IPS informed Patterson that the board held the hearing five days earlier.

On October 4, 2019, Patterson filed a formal complaint with this office alleging IPS failed to provide written notice to the public. Patterson asserts that she did not see any meeting notice posted online or in teachers’ lounges. Patterson also supplemented the complaint with a screen shot of a Facebook post by a member of the Indianapolis Education Association’s (“IEA”) bargaining team stating that she had not been made aware of any kind of meeting.

On October 25, 2019, IPS filed an answer with this office disputing Patterson’s complaint. In essence, IPS argues that it properly noticed and convened the pre-bargaining hearing

² Patterson also asserts that the Indianapolis Education Association (“IEA”) has not made any attempt to follow the Open Door Law. The IEA is not a public agency; and thus, is not subject to the ODL.

in accordance with the requirements of the ODL and Senate Enrolled Act 390 (“SEA 390”).

Specifically, IPS contends that it posted notice of an update to 2019 board meeting schedule on September 5, 2019. IPS says that it posted physical notice at the administration building, concurrently distributed email notice to individuals and media who requested such notice, and posted the notice on the district’s online calendar.

What is more, IPS maintains that it provided Patterson with a copy of the public notice of the meeting, SEA 390 guidance from the Indiana Education Employment Relations Board, and additional information regarding the process and timeline for collective bargaining. IPS also says it invited Patterson to be added to the email distribution list for public meeting notices.

ANALYSIS

1. The Open Door Law

It is the intent of the Open Door Law (“ODL”) 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. *See* Ind. Code § 5-14-1.5-1. Except as provided in section 6.1, 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. Ind. Code § 5-14-1.5-3(a).

There is no dispute that Indianapolis Public Schools is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. *See* Ind. Code § 5-14-1.5-2. Additionally, the Board of School Commissioners (“Board”) is a

governing body of IPS for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

So, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

2. Senate Enrolled Act 390

In addition to past requirements, Senate Enrolled Act 390 (“SEA 390”), promulgated during the 2019 session of the Indiana General Assembly set forth additional requirements for collective bargaining beginning with the fall 2019 bargaining season. In response, the Indiana Education Employment Relations Board and this office offered guidance as to the ramifications and consequences of the new law.

Notably, the first requirement of SEA 390 is that all public schools must engage the public via a public hearing with testimony before formal negotiations begin.

Patterson contends that IPS did not provide public notice for the hearing held on September 10, 2019. Indiana Code section 20-29-6-1(a) provides:

School employers and school employees shall:

- (1) have the obligation and the right to bargain collectively the items set forth in section 4 of this chapter;
 - (2) have the right and obligation to discuss any item set forth in section 7 of this chapter;
- and

(3) enter into a contract embodying any of the matters listed in section 4 of this chapter on which they have bargained collectively.

What is more, the recently added subsection (b) says:

Notwithstanding any other law, before a school employer and school employees may privately negotiate the matters described in subsection (a)(1) during the time period for formal collective bargaining established in section 12 of this chapter, *the parties must hold at least one (1) public hearing and take public testimony to discuss the items described in subsection (a).*

Ind. Code § 20-29-6-1(b)(emphasis added). This hearing must be noticed consistent with Open Door Law requirements in that notice of the date, time, and location of the meeting must be given 48 hours in advance in the following manner:

The governing body of a public agency shall give public notice by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held.

The governing body of a public agency shall give public notice by delivering notice to all news media which deliver an annual written request for the notices not later than December 31 for the next succeeding calendar year to the governing body of the public agency.

Ind. Code § 5-14-1.5-5(b)(1), -(2). Based on the information provided, the IPS Board provided the requisite notice five days prior to the hearing. To be sure, if it had not provided

notice, a violation would have occurred. Individualized notice or social media notice, however, is not required by law. Nonetheless, IPS has seemingly offered Patterson a heightened version of notice by including her in an email notification pool of recipients.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Board of School Commissioners for Indianapolis Public Schools did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor