
OPINION OF THE PUBLIC ACCESS COUNSELOR

TAMARA M. OGLE,
Complainant,

v.

CARROLL CONSOLIDATED SCHOOL CORP.,
Respondent.

Formal Complaint No.
19-FC-141

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Carroll Consolidated School Corporation violated the Open Door Law.¹ Superintendent Keith E. Thackery filed an answer on behalf of the school 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 December 30, 2019.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

On December 30, 2019, Tamara M. Ogle (“Complainant”) filed a formal complaint alleging the Board of Trustees for Carroll Consolidated School Corporation (“Board”) violated the Open Door Law.

First, Ogle asserts that the Board failed to post public notice on the district’s website 48 hours before three executive sessions the Board convened between November 26, 2019 and December 10, 2019.

Second, Ogle contends that Board changed the location of its meeting on December 10, 2019, from the district office to the high school auditorium shortly before the meeting started. Ogle asserts the Superintendent and the Board could have provided the public more notice on the relocation of the meeting. She also notes there was not an emergency that warranted to the move.

Third, Ogle contends that the Board did not post the agenda for the meeting on December 10, 2019, at the new meeting location.

On January 30, 2019, Superintendent Keith Thackery filed an answer to Ogle’s complaint on behalf of the CCSC Board. Thackery asserts that the district posts the Board’s public notices 48 hours in advance at the Carroll Administration Office in Flora. Additionally, Thackery says the district emails public notices to local media and sends notices to nearby media by standard mail.

Superintendent Thackery acknowledges that the district posts public notices on its website but not always 48 hours in advance. Even so, Thackery notes that the Board has not

adopted a policy in accordance with Indiana Code section 5-14-1.5-5(b)(3)(B) that would require the district to provide additional advanced notice on its website 48 hours in advance.

Superintendent Thackery contends that the Board moved its meeting on December 10, 2019, from the district office to the high school auditorium because the Board expected a larger than average audience to attend. Thackery says the Board decided to relocate the meeting to accommodate the larger crowd and provide adequate seating.

Thackery asserts that the district posted a sign on the district office door—the original meeting location—stating the Board moved the meeting to the high school auditorium.

The Superintendent says the district posts meeting notices and agendas at the district offices for each meeting. Thackery does not dispute Ogle’s claim that the Board did not post the agenda at the new location at the auditorium.

ANALYSIS

1. The Open Door Law (“ODL”)

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. Accordingly, 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. *See* Ind. Code § 5-14-1.5-3(a).

Carroll Consolidated School Corporation is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Ind. Code § 5-14-1.5-2. The Board of School Trustees for CCSC is a governing body of the agency for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, 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. Public notice of meetings

Ogle contends the Board violated the Open Door Law by failing to post public notice for three executive sessions on the district's website 48 hours in advance.

Under the ODL, the governing body of a public agency must give public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting at least 48 hours—excluding weekends and legal holidays—before the meeting as follows:

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.* Ind. Code § 5-14-1.5-5(b)(1).

Ind. Code § 5-14-1.5-5(b)(1)(emphasis added). Ogle argues that the Board provided defective public notice for three executive sessions by not posting the notices on the district's website 48 hours in advance.

The ODL does not require the Board to do that. Superintendent Thackery contends the district posts the public notices of the Board's meetings at the administration office at least

48 hours in advance. For purposes of the ODL, this is enough.

Granted, the ODL authorizes the Board to adopt a policy to provide additional public notice to those who request it in writing by publishing notice on the district's website 48 hours before a meeting. *See* Ind. Code § 5-14-1.5-5(c).

Superintendent Thackery asserts that the district has no such policy and Ogle provided no evidence to the contrary. As a result, the Board has no obligation under the ODL to post public notice 48 hours in advance of any meeting.

As an aside, this office consistently advises public agencies to use their websites as a vehicle for delivering important information to the community about public meetings and business. Although the ODL does not require it, there is undoubtedly a measure of practical utility in doing so.

3. Relocating a meeting

Ogle argues the Board violated the ODL by changing the location of its meeting on December 10, 2019, without adequate notice. As set forth above, the ODL requires public notice 48 hours in advance for public meetings.

In this case, there is no dispute that the Board posted public notice of the meeting 48 hours in advance. Instead, Ogle takes exception to the Board's decision to change the location of the meeting.

Notably, neither Ogle nor the Board clearly indicate when the Board changed the location.

Undoubtedly, there are circumstances where an agency may need to change the location of a meeting to accommodate a

larger audience. The goal, of course, should be to provide notice 48 hours in advance. Still, the policy of the ODL champions openness, which sometimes requires an agency to stay nimble.

Here, there is no dispute that the Board posted adequate public notice for the meeting. The Board posted a sign at the original meeting location to inform the interested members of the public of the new location at the high school auditorium.

The buildings were merely two miles apart – and within the same school corporation – so it is unlikely there exists a plausible argument that the change in location deprived the public’s right to observe and record the meeting. If anything, it increased public access.

Ogle has not argued she or anyone else was actually denied access based upon any of the allegations in the complaint. On the contrary, had the meeting been held at the original location and persons were turned away for lack of capacity, this office would have likely received several complaints to that effect instead.

4. Meeting agenda

Ogle argues that the Board violated the ODL by failing to post the meeting agenda at the new location. Superintendent Thackery does not dispute this claim.

Under the ODL, if a governing body uses an agenda, it must post the agenda at the entrance to the meeting location before the meeting. Ind. Code § 5-14-1.5-4(a).

Notably, Ogle does not contend that the Board failed to post the agenda at the original meeting location and the district contends that it posted the agenda at the administration building before the meeting, which is its general practice.

Regardless, the ODL requires the Board to post the agenda at the entrance to the meeting location before the meeting. Thus, if a meeting location changes, a governing body should post it outside the meeting location.

In the view of this office, the Board substantially complied with the ODL, even if it did not post the agenda at the new location.

The whole idea with posting the agenda is informing the public of the business of the governing body before the meeting begins. When a Board moves a meeting to an auditorium to accommodate the public, the Board's agenda is, in all likelihood, clear to those interested.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Carroll Consolidated School Corporation did not substantively violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned to the right of the conclusion text.

Luke H. Britt
Public Access Counselor