
OPINION OF THE PUBLIC ACCESS COUNSELOR

CHARITY SCOTT

Complainant,

v.

INDIANAPOLIS PUBLIC SCHOOLS,

Respondent.

Formal Complaint No.

19-FC-19

Luke H. Britt

Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Board of School Commissioners for the City of Indianapolis violated the Open Door Law.¹ Board Administrator Zachary J. Mulholland filed answer to the complaint on behalf of the board. In accordance with Indiana Code § 5-

¹ Ind. Code §§ 5-14-1.5-1 to -8

14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 21, 2019.

BACKGROUND

This case is about an alleged violation of the Open Door Law associated with the search for a new superintendent by Indianapolis Public Schools (“IPS”).

On December 3, 2018, IPS announced that Superintendent Dr. Lewis Ferebee had been selected as the next Chancellor of D.C. Public Schools. As a result, Dr. Ferebee would resign and his last day would be in early January 2019.

Board President Michael O’Connor drafted a memorandum outlining his recommendations for the a superintendent selection process and timeline

On January 29, 2019, the IPS Board of Commissioners convened two properly noticed executive sessions, one before a review session and one after, to discuss matters related to collective bargaining, litigation, real estate, and certain personnel issues.

Two days later, at the Board’s action session, O’Connor read the memo publicly and presented it to the full Board for discussion. The Board voted 7 to 0 to approve the search process set out in the memo.

On February 21, 2019, Charity P. Scott filed a formal complaint with this office alleging the IPS Board violated the Open Door Law.

Scott asserts that the action item for approving the superintendent search process was not on the agenda for the review

session on January 29, and was not added to the action session agenda until 1:00 p.m. the day of the meeting, which was January 31. Scott contends there was no public discussion of the superintendent search process.

Essentially, Scott implicitly asserts that the Board violated the ODL by taking impermissible official action on the memorandum during one or both of the executive sessions the Board held on January 29.

Notably, the IPS Board convened three community input sessions on February 27th, March 7th, and March 13th respectively.

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 (“IPS”) 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. The IPS Board of School Commissioners is the governing body of the school corporation for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

Thus, 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. Agendas

Scott contends the Board did not include the action item for the superintendent search process on the review session agenda on January 29, and did not add it to the action session agenda until the day of the meeting, which was January 31.

The Board asserts that the search process memo was not presented or discussed at any meeting of the Board prior to the public action session on January 31. What is more, the Board concedes that it updated the agenda for its public action session to include the “Superintendent Selection Process & Timeline,” which included the final memorandum.

Under the Open Door Law, if a governing body uses an agenda, the agenda must be posted at the entrance to the meeting location before the meeting. Ind. Code § 5-14-1.5-4(a). Although the ODL does not specify what agenda items are required, it does state that “a rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.” *Id.*

Here, Scott does not claim that the IPS Board failed to post an agenda on January 29 or January 31. Rather, she maintains that the Board omitted the search process item entirely from the agendas for the former, and improperly added the item to the agenda for the latter.

The Board maintains that it did not present or discuss the “Superintendent Search Process & Timeline” at any meeting

prior to the meeting on January 31. Scott's complaint does not offer any evidence to contravene the Board's assertion. The Open Door Law does not require a governing body to include items on an agenda that it will not present, discuss, or consider at the meeting.

Further, nothing in the ODL prohibits a governing body from amending an agenda for a public meeting. This office has consistently acknowledged meeting agendas to be a worthwhile endeavor, but the purpose is not to strictly bind a governing body to the items listed on the schedule.

Here, the parties agree that the IPS Board amended or updated the agenda for the Board's public action session on January 31st to include the superintendent search process item. Scott contends the change in the agenda did not occur until the afternoon of the meeting. The ODL does not prohibit a governing body from amending a meeting agenda as described here.

This office has consistently stated that if the nature of the agenda item is reasonably expected to generate increased public interest, it should appear on the posted agenda before the meeting. If that is not practical, then it makes sense to table the issue until a later date.

Because the IPS Board is not prohibited from amending its meeting agenda under the ODL, it did not violate the statute by adding the President O'Connor's memo recommending IPS Superintendent selection process and timeline.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Board of School Commissioners for the City of Indianapolis 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