
OPINION OF THE PUBLIC ACCESS COUNSELOR

JOHN DOYLE,
Complainant,

v.

DUNELAND SCHOOL CORP.,
Respondent.

Formal Complaint No.
19-FC-20

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 Trustees for the Duneland School Corporation violated the Open Door Law.¹ Attorney Charles F.G. Parkinson filed an answer to the complaint on behalf of the school corporation. 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 February 26, 2019.

BACKGROUND

This case involves a dispute about whether the Duneland School Board's revisions to the district's policy concerning transfer students complied with the Open Door Law.

On July 16, 2018, the Duneland School Board voted to approve, on first reading, a series of policy updates titled on the meeting agenda as: "Policy Updates Vol 29 No 1." The policy updates included a revision to Policy 5111, which governs student eligibility to attend schools in the district. This includes the district's policy for out of district transfer students.

The next day, the *Chesterton Tribune* published an article indicating the Board's plan to re-evaluate its policy of accepting transfer students from outside the district at the Board's annual retreat later that summer. The article noted that members of the public would have a chance to comment on the transfer policy prior to any action by the board.

On August 7, 2018, the Duneland School Board gave final approval to a series of policy updates titled: "Policy Updates Vol 29 No 1." As amended, Policy 5111 expressly states that Duneland Schools "does not enroll students who do not have legal settlement as determined pursuant to I.C. 20-26-11." In other words, subject to limited exceptions, the Board's action ended Duneland Schools' acceptance of out of district students.

In September 2018, John Doyle (“Complainant”) and his wife Raymonda Doyle contacted the Board to inquire as to the status of the transfer policy issue because their granddaughter would be applying for out of district approval in January. Doyle claims Board member Ron Stone informed him that the Board had not decided on the policy.

Doyle also contends that he was told the Board would address the issue in early 2019. Doyle asserts that the school corporation informed his daughter-in-law on February 7, 2019, that open enrollment is closed to out of district students

It appears from the information provided, including public comments of Board members, as if the Board was not immediately aware of its passage under “Policy Updates Vol 29 No 1.” in August.

On February 21, 2019, Doyle filed a formal complaint with this office alleging the Board’s action constitutes a violation of the Open Door Law. Doyle contends the Board provided improper notice and took final action outside of a public meeting on Policy 5111.

Doyle’s concern is rooted in the fact that his granddaughter—who does not live in the district—is no longer eligible to attend Duneland Schools based on the changes adopted by the Board in August.

On March 14, 2019, the Board filed an answer to Doyle’s complaint denying any violation of the ODL. Specifically, the Board argues that Doyle’s assertions are not supported by the records of the district because they show the Board adopted a revision to Policy 5111 at the Board’s public meeting on August 7, 2018.

The Board also argues that it included the Policy 5111 amendment on the Board's agendas and made those agendas available to the public. The Board also asserts that it did not take final action on Policy 5111 outside of a public meeting.

ANALYSIS

The primary issue in this complaint is whether the action taken to amend Policy 5111 by Board of Trustees for the Duneland School Corporation comports with the Open Door Law.

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).

The parties agree that the Duneland School Corporation 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. There also is no dispute that the Board of Trustees for the Duneland School Corporation ("Board") is the governing body of the school corporation 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. Moreover, all final action by the Board must be taken at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c).

2. Doyle's Claims

The crux of Doyle's complaint is that the Duneland School Board amended Policy 5111 without notice to the public. Doyle does not allege that the Board's meeting itself was not properly noticed, only that the Board voted on an item without presenting or discussing the subject matter before the vote.

It is worth mentioning that Board President Brandon Kroft indicated publicly to the *Chesterton Tribune* that the Board members were not told that Policy 5111 was part of the policy updates approved by the Board on August 7. Kroft described the Board's action as inadvertent and stated he was confident that no Board members had knowledge of the changes or reason to believe that it was slipped in on purpose. At the same time, Kroft indicated to the *Tribune* that the Board intended to close the district anyway.

Under the ODL, a rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void. Ind. Code Ann. § 5-14-1.5-4(a). Therefore a properly noticed meeting can still entail improper action, even if the meeting is held publicly.

In this case, there is little doubt that the transfer policy was a matter of significance. It was referenced in meetings and the media by the Board members as an item of import, and generated public interest. The Board's words and actions counter the notion that the transfer policy action was a mere

oversight erroneously folded into a larger batch of policy updates and passed wholesale.

Either the Board intentionally obfuscated its passage, or more likely, was simply unaware it was included in “Policy Updates Vol 29 No 1.”

Thus, it should come as no surprise to the Board that the approval of the policy change, even if done at a properly noticed meeting, invited scrutiny. Consider the following from *Opinion of the Public Access Counselor 18-FC-55*:

The purpose of [Ind. Code Ann. § 5-14-1.5-4(a)] is to foster communication and dialogue between Board members during a public meeting. In turn, the fundamental purpose of the Open Door Law is that the public may be informed as to the decision-making processes of the Board as a whole. It is an opportunity not only for accountability and transparency, but also a chance for Board members to showcase their thoughtfulness and mindful consideration of the stewardship of public resources.

That written, not every single item can possibly be discussed at length.

...

Therefore, consent agendas as a construct for approving routine items are not prohibited by the Open Door Law nor does this Office believe they are antithetical to transparency. Items such as payroll approval, minute approval, claims under current contracts and the like can all qualify as routine items which do not require much, if any, discussion or deliberation.

Substantive items though, including large contracts, indeed merit more than mere cursory reflection. If thoughtful discussion is not a condition precedent for taking final action in these types of matters, then the entire construct of the Open Door Law is rendered useless. Therefore, I cannot agree with the blanket statement that board members are never required to deliberate before taking action.

On routine matters, perhaps yes, but not on issues of substance. The difference between what is and is not a routine matter is largely fact-sensitive; however, it is somewhat analogous to administrative function meetings for town boards and county boards of commissioners. Although they do not apply to schools, the idea is certainly instructive in distinguishing between weighty matters and those which can be addressed summarily.

There is little doubt that the transfer policy is one of substance. Passing it dismissively without discussion or unintentionally without explanation is contrary to the purpose of public meetings.

What is more, under the ODL, a final action must be taken at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c). “Final action” means “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.” Ind. Code § 5-14-1.5-2(g). Here, the vote concerned an amendment to the Duneland School Corporation’s policy governing the enrollment of out of district transfer students. Plainly enough, the Board took final action on the item at

two public meetings, which occurred in July and August 2018 respectively.

Still, it is troubling to this office and should be to any civically-engaged person that a governing body would vote to approve around 100 pages of policy updates without an understanding or awareness of the contents or regard for the results. That presumes the Board president's feeling that the action was inadvertent is accurate.

This complaint vividly illustrates what happens when officials, who are entrusted with authority over the policies that affect the everyday lives of citizens (i.e., where children attend school) are inadvertently or intentionally asleep at the wheel.

Some fine print does not necessarily have to be read and discussed aloud. An issue such as the district's transfer policy does. Although it seems the Board agrees, it also attempts to justify its actions retrospectively. This does a disservice to parental participation in their children's education. School corporations often preach the importance of interested, involved parents, yet often balk when those parents accept the invitation to engage.

Going forward, the Duneland School Board should be mindful that these types of matters require substantive discussion. Not every decision need be micro-managed and discussed at grievous length, but the whole point of having an Open Door Law is that the public gets to witness the decision-making processes of its representatives about the issues that affect them or their kids and grandchildren.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Board of Trustees for the Duneland School Corporation took final action on Policy 5111 by reference to an agenda item alone, and is susceptible to a court order overturning the vote for violating Indiana Code section 5-14-1.5-4(a).

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

Luke H. Britt
Public Access Counselor