
OPINION OF THE PUBLIC ACCESS COUNSELOR

BRET L. CARPENTER,
Complainant,

v.

EAST NOBLE SCHOOL CORP. BD. OF TRUSTEES,
Respondent.

Formal Complaint No.
21-FC-106

Luke H. Britt
Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Board of Trustees for East Noble School Corporation violated the Open Door Law.¹ Attorney Daniel Diggins filed an answer on behalf of the Board. 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 July 28, 2021.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

This case involves a dispute about whether a school board violated the Open Door Law by having a member of the public removed from a board meeting.

On July 12, 2021, the Board of Trustees (Board) of East Noble School Corporation convened in special session at the administration building at 6:00 p.m. The Board holds a public comment period during public meetings in accordance with the district's published rules of participation.

During the meeting, Bret L. Carpenter (Complainant) addressed the Board during the public comment period, which was the fourth item on the agenda.

Carpenter contends that he was criticizing the Board for what he describes as an unconstitutional policy of prohibiting the public from criticizing board members or their policies. Carpenter asserts that the Board allowed to speak for one minute and fifteen seconds before he was asked to stop.

Carpenter states that the Board had him escorted from the building by law enforcement when he refused to stop talking. Since the Board receives public comment at the beginning of public meetings, Carpenter argues that his removal prevented him from being able to observe and or record the remainder of the meeting. As a result, Carpenter filed a formal complaint alleging the Board violated the Open Door Law by having him removed the meeting.

On September 13, 2021, the Board filed an answer to Carpenter's complaint. The Board argues that Carpenter violated paragraph H of the school corporation's Rules of Participation, which provides the following:

The presiding officer may:

1. prohibit public comments which are frivolous, repetitive, or harassing;
2. interrupt, warn, or terminate a person's statement when the statement is too lengthy, personally directed, abusive, obscene, or irrelevant;
3. request any individual to leave the meeting when that person behaves in a manner that is disruptive of the orderly conduct of the meeting;
4. request the assistance of law enforcement officers in the removal of a disorderly person when that person's conduct interferes with the orderly progress of the meeting;
5. call for a recess or an adjournment to another time when the lack of public decorum so interferes with the orderly conduct of the meeting as to warrant such action;

The Board asserts that as a result of Carpenter's abusive, disorderly, and disrespectful behavior, he was asked to leave the meeting, and law enforcement escorted him out of the building when he refused to leave. The Board notes that the meeting continued in an orderly manner after Carpenter's removal.

ANALYSIS

1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, 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).

East Noble School Corporation is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the ENSC Board of Trustees (Board) is a governing body 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 school board must be open at all times to allow members of the public to observe and record.

2. Carpenter's claim

Carpenter argues the Board violated the Open Door Law by having him removed from the public meeting on July 12, 2021. The Board contends that it had Carpenter removed as a result of his abusive, disorderly, and disrespectful behavior, which the Board argues violates the district's Rules of Participation.

Under the Open Door Law, the public enjoys the right to observe and record public meetings. *See* Ind. Code § 5-14-1.5-3(a). The ODL does not, however, guarantee the right to speak or participate in a public meeting. As a result, a governing body is not generally required to receive public comment during a meeting.

Indeed, the right to observe and record a public meeting is not absolute. In other words, the right to observe and record does not secure a right to disrupt and obstruct. What is more, a school board has statutory authority to prepare, make, enforce, amend, or repeal rules, regulations, and procedures:

(A) for the government and management of the schools, property, facilities, and activities of the school corporation, the school corporation's agents, employees, and pupils and for the operation of the governing body; and

(B) that may be designated by an appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

Ind. Code § 20-26-5-4(a)(18). Construed together, it follows that a school board has authority to enact policies governing public participation at school board meetings provided those policies do not conflict with state statute or other peremptory laws.

Notably, the Board offered little substance in its answer to Carpenter's complaint. The Board relies exclusively on a few factual recitations and conclusory statements to support its position. In other words, the Board does not explain how

Carpenter's commentary or behavior warranted his invitation to leave the building and subsequent forced removal from a public meeting.

This office will not make arguments on behalf of an agency when addressing a complaint. Based on the information provided to this office, the Board has not made an argument supporting its conclusion that Carpenter's behavior or commentary violated the district's public participation policy.

If it did, there is no problem under the Open Door Law with Carpenter's removal. If Carpenter's behavior did not violate the policy, there is a problem with the Open Door Law because the public has a right to observe and record public meetings. Granted, as stated above, the right to observe and record is not absolute. Even so, a governing body cannot interfere with it by arbitrarily or capriciously enforcing a local policy.

If a constituent criticizes a public agency or governing body's policies during a designated public comment period, that does not inherently constitute abusive, disorderly, or disrespectful behavior that would justify removal from the meeting in accordance with a local policy. This office cannot agree that policy criticism is synonymous with abusive language and behavior.

At the same time, Carpenter's behavior and commentary may have reached that level. It is certainly possible. The meeting minutes state that Carpenter addressed the Board with his opinion that corporation has violated his constitutional rights and is restricting freedom of speech. Once again, however, the meeting minutes describe Carpenter's

comments as “abusive and criticizing” without further explanation.

Indeed, if the Board would have presented a cogent argument on this issue, it would have been useful and possibly persuasive on this matter.

In any event, this office recommends using caution in the practice of removing a member of the public from a public meeting unless it is truly supported by policy and the law.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees of East Noble School Corporation did not carry its burden to justify depriving Carpenter's ability under the Open Door Law to observe and record the public meeting on July 12, 2021.

A handwritten signature in black ink, appearing to be 'LH Britt', enclosed in a thin black rectangular border.

Luke H. Britt
Public Access Counselor