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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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KRISTEN M. GATER,  
*Complainant,*

v.

WESTFIELD WASHINGTON SCHOOL CORP.,  
*Respondent.*

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Formal Complaint No.  
21-FC-138

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging Westfield Washington Schools, through its school board, violated the Open Door Law.<sup>1</sup> Attorney Andrew Manna 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 August 20, 2021.

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<sup>1</sup> Ind. Code § 5-14-1.5-1 to -8.

## BACKGROUND

This case involves a dispute about whether the Board of Trustees for the Westfield Washington School Corporation violated (Board) the Open Door Law (ODL) by failing to post adequate public notice for a special work session.

On August 17, 2021, the Board held its regular board meeting at 7:00 p.m., which adjourned a little over an hour later. The Board then convened a special work session immediately following the regular board meeting to address and receive public comments on the district's COVID-19 protocols.

On August 20, 2021, Kristen Gater (Complainant) filed a formal complaint with this office alleging the Board violated the Open Door Law by failing to provide public notice for the special work session that followed the Board's regular meeting. Specifically, Gater argues the Board's original notice listed a 5:30 p.m. start time for the special work session.<sup>2</sup> She contends at some point in the 48 hours before the meetings, the Board changed the time and location of the special session without public notice.

Gater asserts it was only after the meetings concluded that the Board posted an amended public notice of the special

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<sup>2</sup> Gater included a screenshot of the Board's agenda with her complaint. Although the image lacks clarity, it appears to show a 5:30 p.m. start time for the special work session. Although Gater contends the screenshot includes a time stamp substantiating her claim that the notice was retroactively amended, the date and time are unclear.

work session indicating it would immediately follow the Board's regular meeting.

On September 28, 2021, the Board filed an answer to Gater's complaint denying that it violated the Open Door Law.

## 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).

Westfield Washington 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 WWSC Board of School 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 Board must be open at all times to allow members of the public to observe and record.

#### 1.1 ODL definitions

Under the ODL, "meeting" means "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c). "Official action" means to: (1) receive infor-

mation; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

## **2. Public notice**

Gater argues, in part, that the Board failed to provide proper public notice for a special work session it held after the regular meeting on August 17, 2021. Essentially, she contends that the Board changed the time and location of the meeting without providing notice, and retroactively amended the original notice to match what actually happened. Conversely, the Board argues that it provided adequate public notice.

Generally, the Open Door Law requires an agency to provide public notice of the date, time, and place of any meeting, executive session, or of any rescheduled or reconvened meeting at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code § 5-14-1.5-5(a). The agency must post a copy of the public notice at the agency’s principal office or if there is no such office at the location of the meeting. Ind. Code § 5-14-1.5-5(b).

Here, it is important to acknowledge a glaring factual dispute in this case: It is not clear whether the Board held two special work sessions (before and after the regular meeting) or just the work session after the meeting. In its answer the Board asserts that it met for a work session at 5:30 p.m. and again after adjourning the regular meeting.

The meeting minutes reference the special session after the regular meeting but do not mention a special work session before the regular meeting.

Notably, the Board concedes that it added the special work session on the morning of August 17, 2021, as an extension to the Board's meeting. The Board asserts that it posted notice of the additional work session the same day. This is not sufficient public notice under the Open Door Law.

The Open Door Law expressly requires public notice for all meetings of an agency's governing body. The regular meeting and the special session are distinguishable gatherings for purposes of the ODL; and thus, each require public notice in accordance with the law.

The Board contends that it added the special work session in an "emergent manner" to discuss a mask mandate that went into effect on August 17, 2021.

It is true that the ODL allows a governing body to dispense with the 48 hours advance public notice for a meeting called to deal with an actual or threatened emergency to government operations. *See* Ind. Code § 5-14-1.5-5(d).

This office has addressed this issue several times during the pandemic and is not persuaded that discussing a mask mandate constitutes an immediate emergency involving actual

or threatened injury to person or property, or actual or threatened disruption of the governmental activity, which is required by statute. Immediacy is a tacit consideration for this type of exception to the Open Door Law.

Additionally, this office does not consider the work session to be an extension of the regular public meeting as argued by the Board. If that were true, it presents another problem for the Board's claim that it called the meeting in response to an emergency; and thus, advance public notice was not necessary.

In any event, based on the information presented, the Board did not provide public notice in accordance with the Open Door Law for the work session it held after the regular meeting.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Board of Trustees for Westfield Washington School Corporation violated the Open Door Law by failing to provide public notice for the special work session.

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

Luke H. Britt  
Public Access Counselor