
OPINION OF THE PUBLIC ACCESS COUNSELOR

MOLLIE A. TROTTIER,
Complainant,

v.

ROCHESTER COMMUNITY SCHOOL CORPORATION
BOARD OF TRUSTEES,
Respondent.

Formal Complaint No.
21-FC-50

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Board of Trustees of the Rochester Community School Corporation violated the Open Door Law.¹ Attorney Phillip Zimmerly filed an answer on behalf of the board. In accordance with Indiana Code § 5-14-5-10, I issue

¹ Ind. Code § 5-14-1.5-1-8.

the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 28, 2021.

BACKGROUND

This case involves a dispute over the general meeting practices by the Board of Trustees of the Rochester Community School Corporation (Board).

On April 6, 2021, the Board held a study session where it presented a restructuring plan to the public. Mollie Trottier (Complainant) posits this was the first time the Board referenced the plan in public. Labeled as “Growth Opportunities for the District,” it was announced to parents over email immediately after the meeting. Trottier suspects the school administration was tasked with developing the plan and a way forward had already been ratified by the Board.

Trottier, a frequent audience member at Board meetings, did not recall this plan being announced prior to the study session. She also did not find any reference to the plan in the minutes of meetings she did not attend. Trottier suspects the Board may have discussed the plan in executive sessions on March 1 and 15, 2021, although those meetings were for the purposes of orientation and job performance evaluations respectively.

Trottier alleges the announcement on April 6 caused a stir in the local community taken aback by the proposal. At a special meeting on April 13, the Board held a Q & A session about the proposed plan. Trottier alleges the Board apologized and admitted their communication and transparency could be better. This is confirmed in the meeting minutes as well. Similar statements were made during the regular

meeting of the Board on April 19 when the restructuring plan was officially voted upon. The minutes do not reflect any statements regarding transparency.

Trottier argues that these statements are proof positive of official action being taken behind closed doors to direct and develop the plan. She poses several questions in her complaint regarding the appropriate use of executive sessions and what kinds of actions can be taken behind closed doors.

Trottier filed a formal complaint on April 28, 2021.

For its part, the Board responded on May 18, 2021, via attorney Philip R. Zimmerly. The Board states the restructuring plan had been in place as far back as October 2020 when the Board conducted a walk-through of an elementary school to observe overcrowding in the building.

In response, the Board called a December study session to discuss the matter. At that meeting, the Board tasked the superintendent with finding a solution.

As for the March 1, 2021, executive session, the Board argues the session was appropriate as orientation took place with consultant Dr. James M. Halik of Compass-Keynote Consulting.²

As part of a training exercise during the orientation, Dr. Halik encouraged the Board to brainstorm and set goals for the superintendent regarding the overcrowding issue. That

² Incidentally, Dr. Halik was the principal of the sitting public access counselor's middle school, and in whose office the writer of this opinion spent a considerable amount of time for varying degrees of troublemaking.

brainstorming session resulted in a concrete action plan days later.

During the March 15 session, the plan was indeed mentioned by the superintendent (ancillary to the noticed subject matter) but not to any detailed degree and the Board did not participate in the discussion.

Between March 15 and the April 6 study session, the administrative team for the school corporation took action to develop the details of the realignment plan which were subsequently announced publicly. The remainder of the factual background is not in dispute.

The Board argues, however, that all notices and discussions thereto were appropriate and within the bounds of the law, including the two executive sessions in question. It was the administrative team that carried out the realignment details mutually exclusive from the Board. This was the charge to the superintendent pursuant to the December 2020 meeting.

Moreover, the Board argues the public had the opportunity for input on several occasions before taking final action to officially vote on the plan.

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 the Rochester Community 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. Additionally, the Board of Trustees (Board) is a 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.

2. Executive Sessions

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

There exists a heightened requirement for executive session notice and for good reason. While the law allows some latitude to a governing body to meet behind closed doors, the public in turn is entitled to specific notice as to why.

The ODL requires public notice of executive sessions to state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). Ind. Code § 5-14-1.5-6.1(d). Subsection (b), of course, lists the specific subject matters that are authorized for an executive session.

It appears the Board noticed the meetings properly in that training school board members with a consultant and discussing job performance evaluations are appropriate purposes for an executive session. *See* Ind. Code §§ 5-14-1.5-6.1(b)(9) & (11).

The March 15 meeting does not appear to be troublesome. A guest – the superintendent – may have mentioned the realignment plan, but so long as it was not discussed in any measurable detail, the Board did not violate the law.

It is no secret that some school boards micromanage superintendents and administration more than others. Some boards are more hands-off, setting policy while the administration executes the day-to-day operations. Some boards are more involved. There's no wrong or right way; whatever works best for that school is the best way.

From the information provided, it appears for this realignment plan, the hands-off way was the approach dictated by the December 2020 mandate to the superintendent. The administration is not subject to the Open Door Law and can

go about its business without calling meetings or giving notice. The transparency comes when the Board publicly scrutinizes and ratifies the administration's actions.

The March 1 meeting, however, presents a potential trouble spot.

This office scrutinizes issues surrounding executive sessions closely as they are the only opportunities to exclude the public from public business. Some of those opportunities are completely justified. Some can be abused for the sake of convenience or to avoid uncomfortable confrontation. Some can simply be downright misinterpreted.

Training sessions with a consultant pursuant to Indiana Code section 5-14-1.5-6.1(b)(11) expressly limits the conversation to a governing body's "performance of the role of the members as public officials." This office interprets that strictly to mean the general roles of school board members in terms of jurisdiction, procedure, and responsibilities. It is not an opportunity to discuss substantive school matters in any manner of detail.

Unfortunately, that appears to be the case by the Board's own admission. Based on its response, the brainstorming of specific potential solutions goes beyond training and is the actual work of conducting school business. The discussion should have been generic, broad, and germane only to the functional parts the board members play within the organization and general strategies to be effective in those roles.

Issues of school consolidation and realignment can be some of the most controversial matters schools face. Governing body members can shy from scrutiny by retracting behind

closed doors to have deliberations about contentious matters.

This has always been a curiosity to this office as public meetings are a way to demonstrate thoughtfulness and meaningful consideration of a sensitive issue. So long as discussions would not compromise safety or an expectation of privacy, deliberations in public meetings are a golden opportunity for elected or appointed officials to demonstrate why they are the right people for the positions in which they sit.

Rochester is not one of those school corporations that historically has had systemic or persistent interactions with this office. Furthermore, the March 1 meeting was not a fatal flaw. The subsequent meetings made up for those discussions.

Even so, the Board should be mindful of the important function public meetings has in bridging the gap between the public and those who represent them. The Board's statements seemingly demonstrate an understanding of this, and it is the sincere hope of this office that they continue to take this position.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Board of Trustees of the Rochester Community School District violated the Open Door Law at the March 1, 2021, meeting but have subsequently remedied any harm visited upon the public for the oversight.



Luke H. Britt
Public Access Counselor