
OPINION OF THE PUBLIC ACCESS COUNSELOR

NATHANIEL ADAMS,
Complainant,

v.

LANESVILLE COMMUNITY SCHOOL CORP.,
Respondent.

Formal Complaint No.
22-FC-17

Luke H. Britt
Public Access Counselor

This advisory opinion is in response a formal complaint alleging the Lanesville Community School Corporation, through its Board of Trustees, violated the Open Door Law.¹ Superintendent Steve Morris 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 February 7, 2022.

¹ Ind. Code § 5-14-1.5-1-8.

BACKGROUND

The Lanesville Community School Corporation (LCSC) Board of Trustees held a regular public meeting followed by an executive session on December 21, 2021.

Nathaniel Adams (Complainant) contends he was unable to attend, so he made a request with LCSC for public records related to the board meetings. Specifically, Adams requested the following:

copies of any and all public notices regarding the meetings held on December 21, 2021, any minutes of the meetings ..., and the memoranda of the meetings.

LCSC provided Adams with copies of the public notices for the meetings along with the meeting agenda and minutes from the public meeting. When Adams inquired about a memorandum for the executive session, LCSC informed him that there were no minutes or memoranda recorded because executive sessions are not open to the public.

As a result, on February 7, 2022, Adams filed a formal complaint alleging the LCSC board violated the Open Door Law by failing to provide adequate public notice and failing to create a meeting memorandum for the executive session on December 21.

On February 9, 2022, LCSC filed a response to Adams' complaint through Superintendent Steve Morris. LCSC disputes Adams' claims, explaining the school board provided all the requested records that were available.

On March 9, 2022, this office followed up with Superintendent Morris for clarification. Specifically, after reviewing the

Adams' request, it appears he was seeking executive session memoranda in accordance with Indiana Code section 5-14-1.5-6(d), which requires an attestation that a governing body discussed only the subject matters included in the public notice. Morris confirmed those records did not exist because the school board confirms the information during their subsequent meetings.

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).

The Lanesville Community School Corporation (LCSC) 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 school corporation's governing bodies are subject to the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the LCSC Board of Trustees 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 information; (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).

Here, the issue presented involves the primary exception to the ODL’s open meeting requirement: executive sessions.

2. Executive sessions

Under the Open Door Law, “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. The governing body may also admit an individual who has been elected to the governing body but has not been sworn in as a member of the governing body.” Ind. Code § 5-14-1.5-2(f).

The ODL authorizes executive sessions in limited, specific circumstances, which must be properly and specifically noticed by reference. *See* Ind. Code § 5-14-1.5-6.1(b)(1) to – (15).

Notably, the ODL requires meeting memoranda for executive sessions, like all other meetings, but with modified requirements. Specifically, Indiana Code section 5-14-1.5-6.1(d) provides the following:

the memoranda and minutes from an executive session must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice

Here, the subject matter of the executive sessions is not at issue, but rather their documentation. A school board holding an executive session should document the proceedings for posterity.

LCSC concedes that the memoranda are absent in this case. Even so, the school corporation argues it was an inadvertent mistake and the school board orally confirms the information during a subsequent meeting. This is not enough to satisfy the Open Door Law. There should be a written attestation of the integrity of the proceedings—an affirmative written statement—that no subject matter was discussed other than that in the notice.

We trust the school board will heed these recommendations in the future and comply with the law going forward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Lanesville Community School Board did not properly maintain memoranda of executive sessions as required under the Open Door Law.



Luke H. Britt
Public Access Counselor

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