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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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KATHY ANN LONG,  
*Complainant,*

v.

GARY COMMUNITY SCHOOL CORPORATION,  
*Respondent.*

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Formal Complaint No.  
22-FC-177

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Gary Community School Corporation, through its Advisory Board, violated the Open Door Law.<sup>1</sup> Advisory Board President Robert Buggs filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

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

complaint received by the Office of the Public Access Counselor on December 16, 2022.

## **BACKGROUND**

This case involves a dispute over whether the Gary Community School Corporation Advisory Board (Board) violated the Open Door Law (ODL) by meeting privately to appoint two members to open seats.

On December 16, 2022, Kathy Ann Long (Complainant) filed a formal complaint with this office alleging the Board violated the Open Door Law. Specifically, Long alleges three of the four Board members met on December 6, 2022, without public notice to select two candidates to fill two district seat vacancies. The Board announced its decision a week later.

On January 12, 2023, the Board filed a response to Long's complaint. The Board argues that it is not a governing body subject to the Open Door Law because the school corporation is a distressed unit and is under the receivership of the state's Distressed Unit Appeal Board (DUAB). Therefore, in accordance with Indiana Code section 6-1.1-20.3-6.8(e), the emergency manager of the school corporation has the traditional powers and duties of the school board, which limits the scope of action the Board can take.<sup>2</sup>

Nevertheless, the Board contends that it called an executive session to review applicant résumés and two candidates

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<sup>2</sup> The Board cites Indiana House Bill 1315 (2018) throughout his response, which was codified into law and will be referenced by its statutory citation herein.

were selected. The Board takes exception to the complaint itself by calling it frivolous and politically motivated.

## 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).

Gary Community 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 district's Advisory 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 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). “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).

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). Additionally, the ODL mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c).

## **2. The Open Door Law and the Gary Community Schools Advisory Board**

This case is distinguishable from other ODL cases because advisory boards for school corporations statutorily designated as distressed units are markedly different from their non-distressed counterparts.

In accordance with Indiana Code section 6-1.1-20.3-6.8, the Gary Community School Corporation has been designated as a distressed unit. Therefore, the Board is limited to the following actions:

During the period that the Gary Community School Corporation is designated as a distressed political subdivision, the advisory board may vote to:

- (1) fill vacancies;
- (2) select officers; or
- (3) make appointments;

of the advisory board, and to present awards, recognition, and certificates to employees or supporters of the school corporation.

Ind. Code § 6-1.1-20.3-6.8(d). Additionally, the Board is limited to holding a meeting only once every three months. The emergency manager retains stewardship of other responsibilities of the school board. *See* Ind. Code § 6-1.1-20.3-6.8(e).

Nevertheless, even in its limited capacity, a distressed unit advisory board is still a governing body for purposes of the Open Door Law, even if its responsibilities are abridged.

Even if the advisory board is not the primary governing body of the school corporation, it is still a governing body. Under the ODL, “governing body” means two or more individuals who are any of the following:

The board, commission, council, *or other body of a public agency* which takes official action upon public business.

Ind. Code § 5-14-1.5-2(b)(2) (emphasis added). Even with its limited ability to take official action on school business, the Board still does so, albeit in a reduced capacity.

Therefore, when the Board meets to conduct the limited public business, it is authorized to act upon, it must conform to the provisions of the Open Door Law.

And so, it is in this case as well. When a governing body meets as a majority to appoint members to fill vacancies, it must do so in a manner consistent with the ODL.

While an executive session opportunity may be utilized to consider candidates, it may only do the following behind closed doors:

When considering the appointment of a public official, to do the following:

- (A) Develop a list of prospective appointees.
- (B) Consider applications.
- (C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

Ind. Code § 5-14-1.5-6.1(b)(10). Furthermore, it may not take final action outside a public meeting, which would include appointing members.<sup>3</sup> The remainder of the Board's response appears to be irrelevant and inapplicable to the complaint process and will not be considered.

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<sup>3</sup> Other unconfirmed reports indicate the advisory board may have also met to remove a library board appointment which would also qualify as final action.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Gary Community School Corporation Advisory Board violated the Open Door Law by gathering to appoint members to two vacant spots on the Board without public notice outside of a public meeting.



Luke H. Britt  
Public Access Counselor

Issued: February 2, 2023