
OPINION OF THE PUBLIC ACCESS COUNSELOR

JOHN KLAASSEN,
Complainant,

v.

EAST NOBLE SCHOOL CORP.,
Respondent.

Formal Complaint No.
23-FC-108

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the East Noble School Corporation violated the Open Door Law.¹ Attorney Mark D. Scudder of Barnes & Thornburg LLP filed an answer on behalf of the agency. In

¹ Ind. Code § 5-14-1.5-1-8.

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 October 17, 2023.²

BACKGROUND

This case involves a dispute over the East Noble School Corporation's (ENSC) library book vetting process.

On September 23, 2023, John Klaassen (Complainant) submitted a public records request to ENSC seeking the names of members who serve on the committee that reviews library book challenges. Klaassen contends this committee is subject to the Open Door Law in the same way other official governing bodies are subject. Therefore, he seeks minutes, notices, documentation of votes, etc.

ENSC denied Klaassen's request on October 2, 2023. The school corporation stated the committee is internal and would not have the same obligations as other official governing bodies in terms of documentation creation. In turn, Klaassen filed a formal complaint five days later. Klaassen contends the nature of the committee should subject it to the Open Door Law.

In turn, ENSC submitted its response on November 14, 2023. It argues the committee is not subject to the Open Door Law because it was formed by the superintendent to assist in decision making. As a result, any material generated during that decision-making process would be deliberative material. Additionally, because the committee is not a

² While this dispute originated with a public records request, the crux of the case is an ODL issue.

governing body of ENSC, it did not create documentary meeting material as required by the Open Door Law.

ANALYSIS

1. The Access to Public Records Act

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 (ENSC) 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's official committees are governing bodies for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

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).

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. Governing bodies

Governing bodies can take various forms based upon membership, origin, and whether they have been authorized to take official action on public business.

Here, a school superintendent formed what appears to be an *ad hoc* group to review a single library book upon the request of the Complainant. That group made a recommendation which was affirmed by the School Board in a public meeting.

Klaassen argues that the preliminary committee should be subject to the Open Door Law.

This office has taken the unpopular position that the Open Door Law is more expansive than some schools would like to agree in certain contexts. For a recent analysis of one such decision, see *Opinion of the Public Access Counselor 23-FC-17*.

Factors in our determination include the makeup of membership, official duties bestowed by a recognized authority, and whether an offshoot group is recognized and held out as a formalized committee.

One notable exception that this office cannot and will not deviate from is the court’s ruling in *Indiana State Bd. of Health v. Journal Gazette Co.*, 608 N.E.2d 989 (Ind. Ct.App.1993),

The Legislature never intended [the Open Door Law] to apply to gatherings of agency employees conducting the ‘internal staff operations of public agencies.

The court did not delineate between subject matters or who appointed the group, but rather stopped at extending Open Door Law provisions to internal gatherings of agency employees. Indeed, one could see the impracticality involved in foisting Open Door Law obligations on the internal workings of a public agency. Work would simply grind to a halt.

In this instance, that is where the analysis begins and ends. Even if it calls itself a committee and is appointed by a School official, the binding decision in *Indiana State Board of Health* wins the day.

There is no indication that anyone but internal staff made up the preliminary working group. This is distinguishable from other similar cases this office has addressed.

If an outside member of the public, a parent, or a board member sat on this committee, it could be a different conclusion.

As an aside, this office is aware that a statute takes effect in January 2024 to formalize a school book review process.³ The preliminary review process does not require a committee before it goes to the school board for review. Presumably, internal staff will make the initial decision. Without more, this process is not subject to the Open Door Law either until the school board convenes to review the internal recommendation.

³ Ind. Code § 20-26-5.5-1(a).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the East Noble School Corporation did not violate the Open Door Law nor did it run afoul of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: December 7, 2023