

January 18, 2005 Question Regarding Whether Burriss Laboratory School's Building-Based Teams are Subject to the Open Door Law

To: Jay McGee  
Burriss Laboratory School

From: Karen Davis  
Public Access Counselor

Date: January 18, 2005 (originally sent via e-mail on January 17, 2005)

Re: Informal Inquiry Response

You have asked me to render an opinion regarding whether the meetings of a building-based team are subject to the Open Door Law. These so-called "building-based teams" are the school committees that are appointed by a school principal under the Strategic and Continuous School Improvement and Achievement Plans statute. See IC 20-10.2-3. It is my opinion that the school committees are **not** subject to the Open Door Law.

The Open Door Law is a statute of general applicability that is broad in scope and remedial in nature. Its provisions are to be liberally construed. IC 5-14-1.5-1. The intent of the legislature in enacting the Open Door Law is that 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. *Id.*

Except for executive sessions, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3. The issue presented by your question is whether school committees are governing bodies of public agencies. "Governing body" is defined in pertinent part as two (2) or more individuals who are: a public agency that is a board, a commission, an authority, a council, a committee, a body, or other entity; and takes official action on public business. IC 5-14-1.5-2(b). I note at the outset that an alternative definition of a "governing body" does not apply here: a committee that is appointed directly by the governing body or its presiding officer. See IC 5-14-1.5-2(b)(3). The school committees are appointed by the school principal, who is not a presiding officer of a governing body.

The relevant definition of the term "public agency" is: Any advisory commission, committee, or body **created by statute, ordinance, or executive order** to advise the governing body of a public agency, except medical staffs or the committees of any such staff. IC 5-14-1.5-2(a)(5) (emphasis added).

I refine the issue, then, to be: whether the school committees are an advisory committee created by statute, ordinance, or executive order to advise the governing body of a public agency, in this case, the school board?

Under IC 20-10.2-3-1, the principal of each school must coordinate the development of an initial three year strategic and continuous school improvement and achievement plan and an annual review of the plan. To quote directly from this section, "the initial plan and annual review must be made with input from a committee of persons interested in the school, including administrators, teachers, parents, and community and business leaders appointed by the principal." IC 20-10.2-3-1. The committee must submit a school's initial plan to the superintendent; the superintendent may make written recommendations of modifications to the plan, and shall return the plan and any recommendations to the school committee; and the school committee shall submit the plan and the written recommendations of the superintendent to the governing body. IC 20-10.2-3-2. The governing body may establish the plan by approving it. When the plan is presented to the governing body, the governing body must either accept or reject the plan; it may not revise the plan. IC 20-10.2-3-2(d).

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It is clear that the committee advises the governing body, (because the school board is not bound by the committee's determination of the plan). However, I do not believe that IC 20-10.2-3-1 created a committee as contemplated by IC 5-14-1.5-2(a)(5). I did not find any caselaw in Indiana that construes the phrase "created by statute" in the context of IC 5-14-1.5-2(a)(5). Black's Law Dictionary defines "create" as "to bring into being; to cause to exist"; and a similar definition is found in Random House Webster's College Dictionary: "to cause to come into being." The plain meaning of the phrase "created by statute," then, is "the statute causes the committee to come into being." While I believe the statute provides that a committee in each school building will have certain duties, I do not believe that the committee is thereby "created by statute," since no committee exists as of the law's enactment. Note that I do not reach this conclusion merely because an administrator appoints the committee members. There are various commissions and committees that are created by statute, where the statute contemplates that committee appointments will take place at a later time. However, under the Open Door Law, the committee itself must be created by statute, using words such as "the \_\_\_ Committee is hereby established" (or "created.").

Note that answering your question in the negative does not prevent a school committee from opening its meetings to the public if it so desires; this may be a good policy decision.

I hope that this is helpful to you as you determine the school committees' obligations under the Open Door Law. I appreciate your questions about the Open Door Law.