



# STATE OF INDIANA

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September 24, 2009

Ms. Deborah Wessel  
R2 Box 142  
Solsberry, IN 47459

*Re: Formal Complaint 09-FC-193; Alleged Violation of the Open Door Law by the Board of Education of Eastern Greene Schools*

Dear Ms. Wessel:

This advisory opinion is in response to your formal complaint alleging the Board of Education of Eastern Greene Schools ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by failing to provide adequate public notice of a change in the time and location of its August 10, 2009 public meeting. For the following reasons, my opinion is that the Board violated the ODL because it did not provide sufficient notice of the change in meeting time and location.

## BACKGROUND

In your complaint, you allege that the Board's meeting was originally scheduled for August 10, 2009 at 7:00 p.m. in the library, but was actually held at 6:30 p.m. in the cafeteria. The change in time and location was noted on the August 10th meeting's agenda, but the Board did not provide any advanced notice of the time and location changes.

Superintendent Ty Mungle's response on behalf of the Board is enclosed for your review. Mr. Mungle acknowledges that the quarterly school newsletter mistakenly noted that the meetings would be held at 7:00 p.m. in the library, which was the time and location chosen by the previous Board. Mr. Mungle states that the current Board will adopt a standard meeting time and location and provide notice of the same on the Board's website and in the *Greene County Daily World*.

## ANALYSIS

It is the intent of the 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. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the ODL,

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. I.C. § 5-14-1.5-3(a).

Public notice of the date, time, and place of any meetings, executive sessions, or of *any rescheduled* or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a) (emphasis added). In addition to providing notice to any news media who by January 1 of the year have requested notice, the agency must post notice at the principal office of the agency or, if there is no office, at the building where the meeting will be held. I.C. § 5-14-1.5-5(b). Notice has not been given in accordance with Section 5 of the ODL if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. I.C. §5-14-1.5-5(h).

A one-time general notice of the regularly scheduled meetings may be provided by a public agency of meetings that are subject to the ODL. I.C. §5-14-1.5-5(c). Regular meetings may be rescheduled, but the ODL requires that “an *additional* notice *shall be given* where the date, *time*, or *place* of a regular meeting” has been changed. *Id.* (emphasis added). The additional notice must be provided in accordance with Section 5 of the ODL, which provides that:

(a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting.

\* \* \*

(b) Public notice shall be given by the governing body of a public agency by:

1. posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and
2. depositing in the United States mail with postage prepaid or by delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency.

I.C. §5-14-1.5-5. Thus, at least forty-eight (48) hours prior to the 6:30 p.m. meeting in the cafeteria, the Board was required to post a notice reflecting the change in the time and location and notify any media that had made a request for meeting notices by January 1, 2009. In my opinion, its failure to do so violated Section 5 of the ODL.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the ODL<sup>1</sup> by failing to provide sufficient public notice of the change in meeting time and location.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Ty Mungle, Eastern Greene Schools

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<sup>1</sup> An action may be filed by any person in any court of competent jurisdiction to obtain a declaratory judgment, enjoin violations of the ODL, or declare void any policy, decision, or final action taken at any meeting of which public notice is not given in accordance with the ODL. *See* I.C. §5-14-1.5-7(a)(3)(B). In determining whether to declare any policy, decision, or final action void, a court shall consider certain factors, including the extent to which the violation (A) affected the substance of the policy, decision, or final action; (B) denied or impaired access to any meetings that the public had a right to observe and record; and (C) prevented or impaired public knowledge or understanding of the public's business. I.C. §5-14-1.5-7(d). Not all violations of the ODL would result in a court finding that the action should be voided. Because no information is before me regarding the substance of the Board's August 10, 2009 meeting or the extent to which the change in meeting time/location affected the Board's action(s) at the meeting, I express no opinion regarding the appropriate remedy for the Board's Section 5 violation.