



# STATE OF INDIANA

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February 14, 2012

Claire Fiddian-Green  
Executive Director  
Indiana Charter School Board  
Via email: [cfgreen@doe.in.gov](mailto:cfgreen@doe.in.gov)

Re: *Informal Inquiry 12-INF-04; Charter Schools and Indiana's Public Access Laws*

Dear Ms. Fiddian-Green:

This is in response to your informal inquiry regarding at what point a charter school organizer ("Organizer") is required to adhere to Indiana's Public Access Laws, specifically the Open Door Law ("ODL"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. Accordingly, 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. See I.C. § 5-14-1.5-3(a).

As an initial matter, a charter school is a public school. See I.C. § 20-24-4-1(4). Amongst other requirements, a charter school's charter must specify that records of the charter school are subject to inspection and copying to the same extent that records of a public school are subject to inspection and copying under the APRA and that meetings of the school's governing body are subject to the requirements of the ODL. See I.C. § 20-24-4-1(13), (15). Consequently, the School constitutes a public agency for the purposes of the APRA and ODL. I.C. § 5-14-3-2.1; I.C. § 5-14-1.5-2(a).

You specifically request at what point an Organizer, as described in I.C. § 20-24-1-7, is required to adhere to Indiana's Public Access laws: on the date when the charter



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school sponsor (“Sponsor”) makes an official decision to approve the charter school application or on the date when the charter agreement (“Agreement”) is executed?

An Organizer is defined as a group or an entity that has been determined by the Internal Revenue Service to be operating under nonprofit status or has applied for such determination; and enters into a contract to operate a charter school. *See* I.C. § 20-24-1-7. A Sponsor, in regards to a charter school, is either a governing body, state educational institution that offers a four-year baccalaureate degree, the executive of a consolidate city, the charter board, or a nonprofit college or university that provides a four-year educational program for which it awards a baccalaureate or more advanced degree. *See* I.C. § 20-24-1-9. A Sponsor may grant a charter to an Organizer to operate a charter school. *See* I.C. § 20-24-3-1. An Organizer may submit to a Sponsor a proposal to establish a charter school, containing a wide range of information. *See* I.C. § 20-24-3-4. A Sponsor must notify an Organizer that submits a proposal pursuant to I.C. 20-24-3-4 of the acceptance or rejection of the proposal no later than seventy-five days after the Organizer submits the proposal. *See* I.C. § 20-24-3-9. The Sponsor must notify the Department of Education (“Department”) of the rejection or acceptance of any proposal submitted. *See* I.C. § 20-24-3-10(a), (b).

After the Sponsor has accepted an Organizer’s proposal, an Agreement is required to be executed pursuant to I.C. § 20-24-4-1. The time period between a Sponsor accepting an Organizer’s proposal and the entities executing an Agreement is typically six to eight weeks. During this time period, the Organizer provides any follow-up or requested information to the Sponsor, reviews the Agreement with legal counsel, and ultimately executes the Agreement. Many of the major policy decisions during the time period take place during meetings of the Organizer. Typically, once a Sponsor has accepted the Organizer’s proposal, an Agreement is executed by the parties.

The Agreement is a unique situation in that an entity contractually obligates itself to comply with Indiana’s Public Access Laws. I.C. § 20-24-3-4 does not contain an exhaustive list of what may be submitted by an Organizer to the Sponsor in its proposal to establish a charter school; however, the statute does not specifically reference either public access law or require that the Organizer comply with the ODL and/or the APRA during the interim period between the proposal’s acceptance and the execution of the Agreement. Alternatively, the Agreement *must* specify that that the records of the charter school relating to the school’s operation and charter and the records provided by charter school to the Sponsor and the Department that relate to compliance by the Organizer with the terms of the charter or applicable state or federal laws are subject to the APRA (emphasis added). *See* I.C. § 20-24-4-1(13), (14). In addition, the Agreement *must* also



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state that the Charter is subject to the requirements of the ODL (emphasis added). *See* I.C. § 20-24-4-1(15). Generally, the Organizer and Sponsor enter into an Agreement after the Organizer's proposal has been accepted. However, there is nothing that legally requires or guarantees that the entities will come to a meeting of the minds and execute an Agreement. As such, it is my opinion that an Organizer is not legally required to comply with Indiana's Public Access laws until at such time an Agreement is executed. However, I would note that coinciding with the spirit and intent of Indiana's Public Access Laws, specifically openness and transparency; nothing would prevent the Organizer from voluntarily complying with the ODL or APRA prior to the Agreement being executed.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "J. Hoage". The signature is written in a cursive style with a large initial "J" and a stylized "Hoage".

Joseph B. Hoage  
Public Access Counselor