



# STATE OF INDIANA

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November 28, 2012

Ms. Claire Fiddian-Green  
Indiana Charter School Board  
151 W. Ohio Street  
Indianapolis, Indiana 46204

*Re: Informal Inquiry 12-INF-49*

Dear Ms. Fiddian-Green:

This is in response to your informal inquiry regarding the application of I.C. § 5-14-1.5-3.6 to charter schools authorized by the Indiana Charter School Board (“Board”). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response. My opinion is based on applicable provisions of the Open Door Law (“ODL”), Ind. Code § 5-14-1.5-1 *et seq.*

## BACKGROUND

You inquire whether a charter school authorized by the Board, an independent state agency created by the Indiana General Assembly in 2011, falls under the application of I.C. § 5-14-1.5-3.6. Specifically, you would like to determine whether charter schools authorized by the Board meets the definition “of a governing body of a public agency of the state.” If such charter school would qualify as a governing body of a public agency of the state, you inquire whether its members may participate in board meetings electronically in accordance with I.C. § 5-14-1.5-3.6.

## 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. *See* I.C. § 5-14-1.5-1. 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).

In regards to electronic meetings of state agencies, I.C. § 5-14-1.5-3.6 provides that under certain conditions, a member of the governing body of a state agency who is not physically present at a meeting of the governing body may participate in a meeting of

the governing body via electronic communication. Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates by electronic communication is considered to be present, counted for the purposes of establishing a quorum, and may vote. *See* I.C. § 5-14-1.5-3.6(e). However, I.C. § 5-14-1.5-3.6(a) only applies to a governing body of a public agency of the state, including a body corporate and politic established as an instrumentality of the state. *See* I.C. § 5-14-1.5-3.6(a). Under the ODL, a governing body is defined as follows:

- (b) "Governing body" means two (2) or more individuals who are:
  - (1) a public agency that:
    - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
    - (B) takes official action on public business;
  - (2) the board, commission, council, or other body of a public agency which takes official action upon public business; or
  - (3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body does not constitute a governing body for purposes of this chapter. *See* I.C. § 5-14-1.5-2(b)

For the purposes of the ODL, "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e).

There is not dispute that the Board itself would qualify as a governing body of a state agency pursuant to I.C. § 5-14-1.5-2(b)(1). As to whether the charter school would also be considered a governing body of the Board, Indiana law provides that the Board would be considered a "Sponsor", while the charter school would be considered an "Organizer" *See* I.C. §§ 20-24-1-7; 20-24-1-9. A Sponsor 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. 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. *Id.* As a Sponsor, the Board would grant the charter school its charter after the school had submitted various information and followed procedures adopted under state law. After the Sponsor has accepted an Organizer's proposal, an Agreement is required to be executed pursuant to I.C. § 20-24-4-1. Among other requirements, the Agreement 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).

The Indiana Code does not provide that the charter school becomes a governing body of the agency that granted the charter. While the Board is considered to be a governing body of a state agency, the Organizer is defined as a group or entity that has been determined by the Internal Revenue Service to be operating under nonprofit status or has applied for such determination. I am not aware of any law, rule, or order issued by the Board that would authorize the charter school to take official action on behalf of the Board. In addition, the members of the charter school board are not appointed directly by the Board or the Board's presiding officer. Rather than being a governing body of the Board, it is my opinion that the charter school would be a separate and distinct entity that is sponsored by the Board to operate a charter school. Although the charter school must follow various reporting guidelines to the Board, this does not automatically qualify the charter school as a governing body of the Board. If the General Assembly intended for the charter school to be a governing body of the Board, it would not have been necessary to include in the Agreement that charter school would be subject to the ODL, as governing bodies of public agencies are already legally obligated to comply with such laws.

Based on the following, it is my opinion that a charter school authorized by the Board does not meet the definition of a "governing body of a public agency of the state." As a result, it is my opinion that that a charter school sponsored by the Board would not be eligible to meet pursuant to the guidelines established by I.C. § 5-14-1.5-3.6.

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage  
Public Access Counselor