



STATE OF INDIANA

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March 29, 2023

Luke Szulczewski

VIA EMAIL: lukecadet7@gmail.com

Re: Informal Inquiry 23-FC-3; Public Comment at School Board Meetings

Dear Mr. Szulczewski:

This informal opinion considers the requirement of school board meeting attendees to provide a home address when signing up for public comment.

BACKGROUND

You assert that at a December 12, 2022, meeting of the School Town of Munster Board, you chose to avail yourself of the public comment opportunity. Upon doing so, you were instructed to provide, among other information, your home address. You contend that this does not serve any discernable purpose and would place a “chilling effect” on those who wish to comment.

Your inquiry is whether a school district has discretion to place a requirement on a public commenter to provide a home address.

ANALYSIS

1. Open Door Law

The Open Door Law (“ODL”) requires the governing body of a public agency to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. *See* 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).

School boards are governing bodies for purposes of the ODL. *See* Ind. Code § 5-14- 1.5-2(b). So, unless an exception applies, all meetings must be open at all times to allow members of the public to observe and record.



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What is more, beginning in July 2022, the legislature placed an additional mandate specifically on school boards to allow for a meaningful oral public comment period prior to any final action taking place at a regularly scheduled public meeting.¹

It is true that the statute also provides an opportunity for schools to place “reasonable rules” to govern the public comment portion of meetings to ensure civility and orderly procession of the commenting audience. This is not necessarily to restrict speech or place an undue burden on attendees, but rather to prevent any one individual or group from monopolizing or abusing the process to the detriment of the remainder of the audience.

What reasonable rules look like has not been statutorily defined and therefore places the burden on this office to interpret the legislature’s intent. Therefore, we approach each problem individually and no opinion from this office should be treated like an absolute fiat.

Anecdotally, there have been circumstances that warrant some tighter regulations of comments on a time, place, and manner basis. These are situations with significant unrest, disruptions, and agitation. At times, some manner of crowd control becomes important for the safety and enjoyment of the audience as a whole. For example, there have been outlying, one-off instances of like-minded groups packing a first-come, first-served comment list to freeze out opposing views. In those cases, there may be some justification for creative—albeit reasonable—ways to govern public comment. Prioritizing residents of the district could be one of those measures.²

As a general matter, however, nothing in the Open Door Law speaks to identifying one’s exact residence as a condition precedent before qualifying to speak at a meeting. Boards may want to get a feel for who in the audience is from their district and who is not, so there would be no problem with asking whether the commenter is from the district. Making it a requirement to speak, however, does not have basis in the law. Absent unique circumstances, it should not be an obligation to indicate where one lives before providing comment at a school board meeting.

¹ Ind. Code § 5-14-1.5-3(d)(1).

² It should be noted that township advisory boards may restrict public comment to those residents of the township in Ind. Code § 36-6-6-6. Notably, the General Assembly did not include similar language in the school board public comment statute.



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CONCLUSION

Based on the foregoing, it is the opinion of this office that a requirement to provide an exact address before providing public comment to a school board is not consistent with the Open Door Law.

Sincerely,

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

Luke H. Britt
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