



# Appropriate **USE OF EMAIL** by School Board Members

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**C**ommunicating with friends, family, and coworkers by electronic mail is commonplace these days. Using email can result in fast, efficient, and convenient communications. But are email communications between and among board members lawful? Are they appropriate? School boards are expected to act with

transparency and Indiana has two significant laws that help define how the public is to be informed of the actions taken by the school board. We'll look at these laws as they apply to email communications by and among board members.

## EMAILS AND THE OPEN DOOR LAW

Under the Open Door Law (ODL), a meeting is defined as a gathering of a majority of the members of the governing body of the public agency.<sup>1</sup> "Gathering" is not defined in the statute, but the presumption has been that a gathering requires the physical presence of board members. However, since the ODL was written before the introduction of many of the technological advances we enjoy today, a gathering could also include a meeting by telephone via a conference call or a meeting by computer via Skype or other similar electronic means. A key factor in determining whether there is a gathering is the ability to communicate simultaneously.

In 2013, the Public Access Counselor addressed whether the Indiana State Board of Education had a meeting when members of the Board engaged in email communications regarding the drafting of a letter that was sent to the leaders of the House and

Senate chambers.<sup>2</sup> Relying on a previous opinion issued by his office, the Counselor noted that there was not a simultaneous communication among the Board members because all replies to email messages occurred at various times. Therefore, the Counselor concluded there was no meeting and thus there was no violation of the Open Door Law.

However, the Counselor noted the email exchange could be viewed as a ratification of a final decision. He viewed this as “leaning against the public policy intentions of openness and transparency,” and cautioned against taking action that is hidden from public view.

More recently, and specific to a school board, the Public Access Counselor issued an informal opinion regarding the use of email communications outside of public meetings.<sup>3</sup> The Counselor again said that “while emails are not considered traditional ‘meetings,’ they could very well rise to the level of violating at least the spirit of the Open Door Law. This is especially so when a board presents mere cursory discussion—or no discussion at all—at a subsequent board meeting.” It is important to note that the Public Access Counselor acknowledged the usefulness of using email as a means of communication, and in fact commented that “ideas and thoughts may be exchanged via email—even in a ‘reply-all’ type of communication...” But, he ultimately advised the school board to “tighten-up its practices when it comes to using emails and ensure discussions of substantive issues are held in front of the public.”

## EMAILS AND THE ACCESS TO PUBLIC RECORDS ACT

The Access to Public Records Act (APRA) dictates what public records are considered to be confidential, what records must be released to the public, if requested by a patron, and what records may be released at the discretion of the public agency. The definition of a public record is very broad and, in general, includes any record, in any form, maintained by the public agency.<sup>4</sup>

Given this broad definition, very clearly, emails by and among employees of a school corporation are considered to be public records. What is not so clear is whether emails by and among school board members are also public records. Email communications by school board members at a school email address are records maintained by the school corporation and therefore are public records. However, the law is less than clear when emails are shared using personal or home email addresses. In fact, there have been two conflicting opinions from the office of the public access counselor on this issue. A former public access

counselor issued an opinion that such emails were not public records because they were not maintained by the agency, but the current public access counselor issued an opinion concluding that such emails are public records when used for the purpose of discussing school business. Lastly, it is important to remember that any email sent by a school board member to the superintendent or other employee of the school corporation, at a school email address, is a public record whether or not the board member uses a personal email address.

Being a public record does not necessarily mean the email must be disclosed to the public. As mentioned above, the APRA defines what public records must be released, those that are confidential and may not be released, and what public records the school corporation has the discretion to release. The authority to choose to not release a public record is very limited and therefore school board members should understand that most email communications among board members likely will have to be released if requested by a patron. In fact, it is a very common practice for patrons to submit a records request that asks for emails by and between the superintendent and school board members on specific issues, in an effort to reveal what was discussed or decided outside of a public school board meeting.

## SUGGESTED PRACTICES

Based on the above opinions and comments of the Public Access Counselor, board members should be careful in using email as a means of communication to one another. While it is lawful and appropriate to communicate by email, care needs to be taken to avoid the appearance that email is being used to decide issues of substance or controversy outside of a public board meeting. The best practice is to use email to communicate points of information or information that is procedural in nature. Additionally, board members should avoid using email to solicit the opinions of fellow school board members. And lastly, it is important to remember that emails are likely public records that may have to be released to the public and therefore school board members should be careful in creating and/or responding to an email communication. As is commonly suggested, don't write anything you don't want to see in the newspaper or on social media sites! 📧

## REFERENCES

- 1 IC 5-14-1.5-2(c)
- 2 Formal Complaint 13-FC-324
- 3 Informal Inquiry 17-INF-18
- 4 IC 5-14-3-2(f)