

Discussion of COVID Plans in Executive Session

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Over the past few weeks some school boards have inquired as to whether the local COVID plans relating to mask mandates, close contacts, and quarantine requirements can be discussed in an executive session. In an executive session, school board members would be able to discuss among each other the various issues related to the elements of the plan without members of the public present. The Open Door Law allows the school board to meet in an executive session for various reasons. The statutory reason appropriate to discuss the COVID plan is for the “discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.” See IC 5-14-1.5-6.1(b)(3).

The Indiana Public Access Counselor wrote an [informal advisory opinion](#) on this issue in October 2020 with respect to school boards drafting their Back-to-School plans for in-person instruction for the 2020-2021 school year. In this informal opinion, the Public Access Counselor states the wording of the law could support a school board meeting in an executive session to discuss its COVID plans but the intent of this provision would not. Thus, the Public Access Counselor takes the position that such plans should not be discussed in executive session.

The Public Access Counselor interprets the Indiana Open Door Law and the Indiana Access to Public Records Law. Opinions written by the Public Access Counselor are not binding on a court of law. Informal opinions are those the Public Access Counselor writes when several persons and/or entities have asked about the same topic. In the informal opinion letter on the topic of discussing back-to-school plans in executive session, the Public Access Counselor explains the basis for its official position that such plans should be discussed in public meetings.

The Public Access Counselor states the general rule of the Open Door Law is to require public agencies to conduct business and take action openly so the public may be informed of the actions of local and state government. The Open Door Law allows for specific topics to be discussed in executive session before taking action in a public meeting. The Public Access Counselor states the “justifications [for executive sessions] are rooted in practicality in regard to the sensitivity of the subject matter being discussed. School safety and security plans may be held in closed door meetings to preserve the integrity and efficacy of the safety program itself. Active threats and responses should indeed be kept in-house to ensure those who intend to visit harm on schoolchildren or staff are not privy to those plans.”

The Public Access Counselor further states the back-to-school plans address the “passive threat” of COVID-19; although it is a threat to the public health, it is not a targeted threat to a child or building as an active shooter is and the intent of the legislature was to address active threats when allowing school boards to meet in executive session to discuss security plans and systems. The Public Access Counselor further supports its position by stating it is “difficult to imagine a scenario wherein those plans ... would be compromised if discussions were held during a public meeting.”