

UNDERSTANDING INDIANA'S OPEN DOOR LAW

The Indiana General Assembly enacted the Open Door Law with the intent “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.” IC 5-14-1.5-1. This intent is furthered by requirements in the law that public governing bodies, including school boards, give public notice of all meetings and take action and conduct most deliberations in a meeting open to everyone.

Since its passage in 1977, the Open Door Law has been a source of litigation and therefore it is critical that school board members understand the requirements of the law. This document answers some of the more frequently asked questions concerning the Open Door Law as it applies to school board meetings.

1. What constitutes a “meeting” of a school board?

A “meeting” occurs whenever a majority of the school board meets for the purpose of taking “official action upon public business.” “Official action” includes receiving information, deliberating, making recommendations, establishing policy, making decisions and taking final action.

Excluded from the definition of a meeting are the following activities: social or chance gatherings; on-site inspections of projects or programs; traveling to and attending meetings of organizations devoted to betterment of government; board member orientation; administration of the oath of office; and collective bargaining discussions with bargaining adversaries.

A series of gatherings of less than a majority of the board held within a period of seven days and on the same subject matter may constitute violations of the law under certain circumstances.

2. Are school board committees covered by the Open Door Law?

Yes. Committees created by statute to advise the school board and committees appointed directly by the school board or its president must follow the Open Door Law. This requirement does not apply to agent(s) appointed by the school board to conduct collective bargaining on its behalf.

3. Must all meetings of a school board be open for the purposes of allowing members of the public to observe and record them?

Yes, unless the meeting is an executive session.

4. Must a board member be physically present to participate in a meeting?

A board member may participate in a meeting by any means of electronic communication, subject to local board policy. The board member may be considered present for purposes of establishing a quorum. The board member may vote only if the board member can be seen and heard. A board member is prohibited from participating electronically in meetings where certain subjects are scheduled to be voted upon.

5. When are school boards authorized to meet in executive session?

Executive sessions are authorized in the following instances:

- a. Where authorized by federal or state statute.
- b. To discuss strategy with respect to: (1) collective bargaining; (2) the initiation of litigation (judicial action or administrative law proceeding) or litigation that is either pending or has been specifically threatened in writing; (3) the implementation of security systems; (4) specific real property transactions up to the time a contract or option to purchase or lease is executed by the parties; or (5) school consolidation.
- c. To discuss the assessment, design and implementation of school safety and security measures, plans and systems.
- d. Interviews and negotiations with industrial or commercial prospects.
- e. To receive information about and interview prospective employees.
- f. With respect to any individual over whom the board has jurisdiction:
 - i. To receive information concerning the individual's alleged misconduct; and
 - ii. To discuss, prior to a determination, that individual's status as an employee, student or independent contractor who is a physician or a school bus driver.
- g. For discussion of records classified as confidential by state or federal statute.
- h. To discuss before any placement decision an individual student's abilities, past performance, behavior and needs.
- i. To discuss a job performance evaluation of individual employees.
- j. When considering the appointment of a public official (not an employee), to: develop a list of prospective appointees; consider applications; and make one initial exclusion of prospective appointees from further consideration.
- k. To train school board members with an outside consultant about the performance of their roles as public officials.

6. What must the public notice of an executive session contain?

A public notice of an executive session must state its subject matter by specific reference to the enumerated instance(s) for which executive sessions may be held.

7. How much notice is required for meetings?

Except for an emergency meeting, public notice of the date, time and place of any meeting, executive session or any rescheduled or reconvened meeting must be given at least forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) before the meeting.

This requirement does not apply to reconvened meetings (not including executive sessions) where the announcement of the date, time and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof and there is no change in the agenda.

8. How is public notice given?

Public notice is given by 1) posting a copy of the notice at the main office of the school corporation or, if no office exists, at the building where the meeting is to be held; and 2) delivering notice (via U.S. mail, electronic mail or fax) to all news media which deliver by December 31 an annual written request for such notices.

Public notice must be given to persons who deliver an annual written request by December 31 only if the school board adopts a policy. Notice may be delivered by electronic mail or by posting on the school corporation's website.

Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time or place of the regular meeting is changed.

9. How much notice is required for an emergency meeting?

The news media which have requested notice of meetings must be given the same notice as is given to the members of the school board and the public must be notified by posting a copy of the notice at the principal office of the school corporation.

10. What constitutes an "emergency" for purposes of having an emergency meeting and avoiding the notice time requirements?

The emergency must involve actual or threatened injury to person or property, or actual or threatened disruption of governmental activity in order to avoid the notice time requirement.

11. When can a school board use a secret ballot?

Never, not even to elect officers.

12. Must the school board use an agenda?

The use of an agenda is permissive, not mandatory. A school board that uses an agenda must post a copy of the agenda at the entrance of the location of the meeting before the meeting begins.

13. Must a school board keep memoranda and/or minutes?

Yes. As the meeting progresses, the following memoranda must be kept:

- a. The date, time and place of the meeting;
- b. The members of the governing body recorded as present, absent or participating by an electronic means of communication (as well as the means of electronic communication);
- c. The general substance of all matters presented, discussed or decided; and
- d. A record of all votes taken by individual members if there is a roll call.

These requirements for memoranda and minutes are modified when the board is meeting in executive session. The memoranda and minutes for an executive session must identify the subject matter considered by specific reference to the enumerated instance(s) for which public notice is given. The board must certify by a statement in its memoranda and minutes that it discussed no subject matter in the executive session other than the matter specified in the public notice.

14. Can a school board recess during an open door meeting, have an executive session and later reconvene?

No. A governing body may not conduct an executive session during a meeting.

15. Can a school board interview a superintendent applicant in an executive session?

Yes. A superintendent candidate is a prospective employee so the provision allowing a governing body in executive session “to receive information about and interview prospective employees” applies.

16. Can a school board interview in executive session a prospective appointee for filling a vacancy on the school board?

No. School boards are specifically prohibited from interviewing prospective appointees in executive sessions. Nothing in state law, however, requires a school board to interview prospective appointees.

17. Can a school board in executive session exclude prospective appointees to the board from further consideration?

Yes. A school board is allowed to make one initial exclusion of prospective appointees from further consideration in executive session. No such initial exclusion can reduce the number of prospective appointees to fewer than three, unless there are fewer than three prospective appointees.

18. Can a hearing be held in an executive session to determine whether an employee’s contract should be cancelled?

Yes, provided the hearing involves alleged misconduct or evaluation of an employee.

19. Does the Open Door Law regulate the release of information concerning collective bargaining?

For the purposes of bargaining or discussion the following apply:

- a. Any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.
- b. If a mediator is appointed, any report the mediator may file at the conclusion of a mediation is a public record open to public inspection.
- c. If a factfinder is appointed, any hearings the factfinder holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations the factfinder makes are public records open to public inspection.

20. Who can bring a lawsuit alleging a violation of the Open Door Law?

Any person. Any person may also, prior to filing a lawsuit, seek an opinion from the public access counselor on whether a meeting of a school board complied with the Open Door Law.

21. What can a court do if it finds that a school board violated the Open Door Law?

A court can:

- a. Issue a declaratory judgment;
- b. Enjoin continuing, threatened or future violations; or
- c. Declare void any policy, decision or final action taken at an illegal meeting.

If a court voids a policy decision or final action, it can enjoin the board from later acting on the same subject matter until the board has substantially considered the matter at meetings that comply with the Open Door Law.

If a plaintiff seeks and receives an opinion from the public access counselor prior to filing a lawsuit, and then prevails in the lawsuit, the court shall award to the plaintiff reasonable attorney's fees, court costs and other reasonable expenses of litigation.

Additionally, a court may assess a civil penalty against individual members of the school board or the superintendent if they act with specific intent to violate the law. The penalty can be up to \$100 for the first violation and increases to a maximum of \$500 for each additional violation.

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