

FAQ: 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 official action in a meeting open to everyone.

Since the Open Door Law impacts how governing bodies conduct public business, 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 voting.

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

If permitted by local board policy, a board member may participate in a meeting by any means of electronic communication that allows simultaneous communication. The board member may be considered present for purposes of establishing a quorum. The board member may vote only if the means of electronic communication allows the board member to be seen and heard. A board member is prohibited from participating electronically in meetings when the board is expected to vote on certain subjects, including adopting a budget and initiating a referendum.

3. Must all meetings of a school board be open to the public?

Unless the meeting is an executive session, the board meeting must be open to the public to allow the public to observe and record the meeting. School boards must allow members of the public who are physically present at the meeting the opportunity to provide oral comment.

4. Must school boards livestream their meetings?

School boards must provide on a publicly accessible platform of their choosing live transmissions of all meetings excluding executive sessions. School boards will also have to maintain archived copies of the live transmissions of its meeting on a publicly accessible

platform for at least 90 days.

5. What is an “executive session?”

An “executive session” is a meeting of the board for the purpose of discussing certain subjects. The public is not entitled to attend an executive session, but the board may invite persons to the meeting if necessary to conduct the purpose of the meeting. Newly elected board members may be invited to attend an executive session before they have been sworn in as an official member of the board.

6. 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. To interview and negotiate 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, employee specific compensation, or employment matters of individual employees.
- j. When considering the appointment of a public official, i.e., a member of the board, to:
 - (1) develop a list of prospective appointees; (2) consider applications; and (3) make one initial exclusion of prospective appointees from further consideration (any such exclusion may not reduce the number of prospective appointees to fewer than three).
- k. To train school board members with an outside consultant about the performance of their roles as public officials.
- l. To discuss either: (1) employee health care options with respect to special exceptions for coverage; or (2) employee handbook changes.
- m. To review negotiations on the performance of publicly bid contracts when public knowledge regarding the review would cause a likelihood of increased costs.

n. To discuss soliciting proposals for the purpose of awarding contracts for goods or services when: (1) proprietary data, trade secrets, or other information is contained in the bidder's proposal relating to the bidder's unique methods of conducting business or determining prices or premium rates to be charged for services under the terms of the proposal; and (2) public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of the information.

o. To have communications with an attorney that are subject to the attorney client privilege.

7. How is public notice of board meetings given?

Public notice of board meetings 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 that deliver by December 31 an annual written request for such notices.

If the school board adopts a policy to give notice of its meetings to persons (other than news media), notice must be given to those persons who deliver an annual written request for notices by December 31. Notice of meetings 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.

8. 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.

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

In addition to the date, time, and place of the meeting, the public notice of an executive session must identify the subject matter of the meeting by specifically referencing the enumerated instance(s) in statute for which executive sessions may be held and including the legal citation for the enumerated instance(s).

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

The 48-hour notice requirement does not apply to emergency meetings, but news media that 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.

11. 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 48-hour notice

requirement.

12. May a school board vote by secret ballot?

No. A board may not vote by secret ballot on any matter.

13. Must the school board use an agenda?

The use of an agenda is permissive. 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.

14. Must a school board keep memoranda and/or minutes of its meetings?

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, including identifying the means of electronic communication by which the member(s) participated;
- 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. (If a school board member participates in a meeting by electronic means of communication, all votes taken during the meeting must be by roll call.)

The memoranda and/or minutes of the meeting must be made available to the public upon request.

15. Must a school board keep memoranda and/or minutes of executive sessions?

Yes. The board must keep memoranda and/or minutes of executive sessions, but the content of the memoranda and/or minutes is slightly different. In addition to identifying the date, time, and place of the executive session and the members of the board who are present, absent, or participating electronically (and the electronic means by which a member(s) participated), the memoranda and/or minutes must identify the subject matter of the executive session by specifically referencing the enumerated instance(s) in statute for which executive sessions may be held and including the legal citation for the enumerated instance(s). The board must also 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.

16. May a school board recess during an open meeting, have an executive session, and reconvene the open meeting?

No. A governing body may not conduct an executive session during a meeting that is open to the public.

17. May 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 to meet in executive session “to receive information about and interview prospective employees” applies.

18. May a school board interview prospective appointees for filling a vacancy on the school board in an executive session?

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

19. May a school board exclude prospective appointees to the board from further consideration in an executive session?

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.

20. May a hearing to determine whether an employee's contract should be cancelled be held in an executive session?

Depending on the reasons for the proposed cancellation, the school board could cite either the provision allowing discussion of alleged misconduct and the employee's status or the provision allowing discussion of evaluation or employment matters of individual employees.

21. Are school board committees subject to the Open Door Law?

Yes. Committees appointed directly by the school board or its president to which authority to take official action on public business has been delegated must follow the Open Door Law. This requirement does not apply to: (1) agent(s) appointed by the school board to conduct collective bargaining on its behalf; or (2) committees appointed for the sole purpose of receiving information, deliberating, or making a recommendation to the school board and that include only one member of the school board.

22. May a majority of the board ever meet by using an electronic means of communication?

Yes, but only in very limited circumstances. The law allows a board to meet virtually under the following conditions: (1) the governor or executive of a political subdivision has declared a disaster emergency; (2) meeting in person would present an imminent risk to the health or safety of the members of the board and the public; and (3) one or more schools within the school corporation are closed at the time of the meeting because of the danger, threat, or emergency conditions that are the basis for the declaration of the disaster emergency.

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

Any person may file a lawsuit. Any person may also, prior to filing a lawsuit, seek an opinion from the Indiana Public Access Counselor on whether a meeting of a school board complied with the Open Door Law.

24. 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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