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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DERRICK A. HILL  
*Complainant,*

v.

THE DISTRESSED UNIT APPEALS BOARD,  
*Respondent.*

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Formal Complaint No.  
17-FC-250

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Distressed Unit Appeals Board ("DUAB") violated the Indiana Open Door Law ("ODL").<sup>1</sup> Executive Director Courtney L. Schaafsma responded on behalf of the DUAB. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 15, 2017.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## BACKGROUND

Derrick A. Hill (“Complainant”) filed a formal complaint alleging the DUAB—via its appointed emergency manager—violated the ODL by forcing the Gary Community School Corporation Board of Trustees (“Board”) to hold a series of meetings amounting to a serial meeting.<sup>2</sup>

### Procedural History

In 2017, the Indiana General Assembly designated the Gary Community School Corporation (“GCSC”) a distressed political subdivision. *See* Ind. Code § 6-1.1-20.3-6.8. As part of the new law, the DUAB appointed an emergency manager to serve as the *de facto* superintendent and administrator until GCSC’s designation as a distressed political subdivision is terminated. Germane to this controversy is the following language:

The emergency manager shall consult with and consider recommendations from the fiscal management board and the governing body, but the emergency manager has full responsibility and authority related to financial and academic matters of the school corporation, and the emergency manager may act, as specified in this chapter, on these financial and academic

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<sup>2</sup> The Complaint form submitted by Mr. Hill, via Mr. Clorius Lay, was incomplete. Based upon the narrative of the complaint, it appears as if, but not certainly so, that the complaint is against the Indiana Distressed Unit Appeals Board, the Emergency Manager designated as interim school administrator, and/or the Gary Community School Board itself. While this Office initially considered dismissing the Complaint as deficient, it nevertheless invited the DUAB to respond. Complaining parties are encouraged to adhere to the technical formalities of the complaint filing process as if they were submitting to a court of law. This removes the possibility of confusion, inaccuracy and delay.

matters without the approval of the fiscal management board or the governing body.

Ind. Code § 6-1.1-20.3-6.8(e)(2). Further, the statute expressly states that the governing body—the GCSC Board—may not meet more often than once each month. Ind. Code § 6-1.1-20.3-6.8(d). Notably, the statute also requires the emergency manager to consult with and consider recommendations from the Board, but the emergency manager maintains full responsibility and authority related to the financial and academic and academic matters without the approval of the Board. *See* Ind. Code § 6-1.1-20.3-6.8(e)(2). Essentially the Board’s ability to take official action is limited to making recommendations to the emergency manager, which may or may not be considered.

At the request of the Board, the emergency manager planned a series of meetings to update non-majority groupings of board members on the goings-on of the process and to keep them informed. Based on the response from the DUAB, at least two of these meetings took place with three members of the Board, however, the timeline of these meetings is unclear. The Complainant considers these meetings a violation of the serial meeting prohibition in the Open Door Law.

## ANALYSIS

It appears as if the emergency manager simply proposed a solution that ensured compliance between the Open Door Law and Indiana Code section 6-1.1-20.3-6.8, yet it was met with hesitation from Board members.

It is unclear whether the formal complaint is directed exclusively at the DUAB and its emergency manager or whether the Complainant intended to include the school Board as well.

Based on the information provided to this Office, no evidence exists to substantiate an allegation that the DUAB or any of its agents coerced or forced the Board to conduct a serial meeting. The GCSC Board is a sovereign governing body and may act or not act accordingly.

What is more, the statutes governing distressed political subdivisions make it clear that the governing body of a distressed unit may only take official action once per month and is limited to making recommendations. The legislature has removed any decision-making authority save for the once-per-month meeting until GCSC's designation as a distressed unit is terminated. The only official action the Board can take is making recommendations during that meeting.

A basic condition precedent of triggering the requirements of the ODL is the authority and ability of a governing body to take official action on public business. This general authority was stripped from the school Board when the legislature designated GCSC a distressed unit and limited the Board to taking official action once per month.

If a governing body is disallowed from taking official action any other time, then it is a legal impossibility that the Board would be in violation of the ODL even if it met as a collective, let alone during a serial meeting. Given the parameters set by Indiana Code section 6-1.1-20.3-6.8, there is no prejudice to the public if the Board meets because it lacks the authority to take official action on public business.

Even if the Board did have the authority to take official action other than during their monthly meeting, no evidence exists that a serial meeting took place. Unless an exception applies, the requirements for a serial meeting violation are set forth in Indiana Code section 5-14-1.5-3.1:

[T]he governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

- (1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.
- (2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

The Complainant has provided no evidence that the three-member meetings took place within one week's time. And once again, it would be the school Board violating the serial meeting statute, not the DUAB or the emergency manager. One of the three-member meetings was during the same week as an individual meeting, the condition precedent for a violation fails as the accompanying meeting must include at least two (2) additional members. Finally, as discussed above, the Board is not authorized to take official action on public business during those meetings.

In any case, the Open Door Law, the judiciary, and this Office, have made it clear that there is an element of intent underlying the philosophy of the ODL and its requirements.

The intent behind the individual and non-majority gatherings of the school board was simply to keep Board members in the loop during the time when official action was taken from them. If anything, this was a voluntary effort on the part of the emergency manager to keep the Board informed on the affairs of GCSC. Open Door Law requirements were discussed before these meetings and taken into consideration. The update sessions were not an intentional subversion of the law nor were they conducted with the purpose of undermining transparency.

Even if the Complainant provided evidence sufficient to establish the technical conditions of a serial meeting, the school board does not have the authority to take official action on public business other than once per month. In the future, to maintain absolute adherence to the Open Door Law, it is my recommendation that the update sessions by the emergency manager be limited to groups of two or less

individuals, thereby eliminating the perception of non-compliance, even if none legally exists.

## **CONCLUSION**

Based on the foregoing it is the opinion of the Public Access Counselor that the Distressed Unit Appeals Board, its emergency manager, and the Gary School Corporation Board of Trustees did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

**Luke H. Britt**  
Public Access Counselor