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August 28, 2023

VIA ELECTRONIC MAIL

Luke H. Britt
Indiana Public Access Counselor
402 West Washington Street, Suite W470
Indianapolis, Indiana 46204-2745

Re: Indianapolis Public Schools

Dear Counselor Britt:

I write as counsel for the Indiana Charter School Network (“ICSN”) regarding official action taken by the Board of School Commissioners for the City of Indianapolis (“IPS Board”) outside of any properly noticed public meeting. ICSN’s formal complaint concerns a lawsuit that the IPS Board filed in Marion County on August 21, 2023 under Cause Number 49D01-2308-PL-032783 (“Lawsuit”). A true and accurate copy of the complaint in the Lawsuit is attached as Exhibit A. The IPS Board never approved the filing of the Lawsuit in a properly noticed public meeting as required by the Open Door Law. *See* Ind. Code § 5-14-1.5-3. This approval of the Lawsuit behind closed doors without any discussion in public violates the plain language of the Open Door Law’s provision that official action must only be taken in an open meeting. *Id.* And it violates the Open Door Law’s purpose—to ensure 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.” Ind. Code § 5-14-1.5-1.

The IPS Board filed the Lawsuit to prevent the application to the IPS Board of a recently enacted Indiana statute that requires Indiana’s school corporations to offer to lease or sell any school building that they intend to close. Ind. Code § 20-26-7.1. The IPS Board filed the Lawsuit against the Indiana Attorney General, the Indiana Secretary of Education, and the individual members of the Indiana Board of Education. The IPS Board seeks a preliminary injunction preventing the defendants from enforcing the statute against the IPS Board.

Only a school board has the power to bring litigation on behalf of a school corporation. The governing statute setting out the powers of Indiana school boards states that:

In carrying out the school purposes of a school corporation, the governing body acting on the school corporation's behalf has the following specific powers:

- (1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law. However, a governing body may not use funds received from the state to bring or join in an action

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against the state, unless the governing body is challenging an adverse decision by a state agency, board, or commission.

Ind. Code § 20-26-5-4. The statute gives the IPS Board the exclusive power to authorize the filing of a lawsuit on behalf of IPS. *Id.* While a series of statutes applies specifically to the IPS Board, the General Assembly has provided that the IPS Board is bound by Ind. Code § 20-26-5-4. *See, e.g.,* Ind. Code § 20-25-3-2.

The IPS Board has never approved the filing of a lawsuit in an open meeting. The IPS Board's most recent open meeting occurred on July 27, 2023. Neither the minutes for this meeting, nor the minutes for the IPS Board's May and June meetings, show that the board approved the bringing of a lawsuit. The minutes for the May, June, and July meetings of the IPS Board are attached as Exhibits B, C, and D, respectively. The IPS Board has not yet held an open meeting in August and will not do so until August 29, 2023. The IPS Board also conducted executive sessions on July 15, 2023 and July 25, 2023. The notices of those executive sessions are attached as Exhibits E and F, respectively. These notices do not indicate that the IPS Board was discussing possible litigation

This record shows that the IPS Board has taken official action to authorize the Lawsuit without voting on it at a properly noticed open meeting as required by the Open Door Law. ICSN respectfully requests that you issue a formal opinion that the IPS Board's actions have violated the Open Door Law. To the extent you require additional information, ICSN is happy to provide it.

Sincerely,



Mark J. Crandley

Enclosures