

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MORGAN ) CAUSE NO. 55D03-2412-PL-002692

MORGAN COUNTY )  
CORRESPONDENT, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BOARD OF EDUCATION OF THE )  
MOORESVILLE CONSOLIDATED )  
SCHOOL CORPORATION, )  
 )  
Defendant. )

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY  
RELIEF UNDER THE OPEN DOOR LAW**

Plaintiff, Morgan County Correspondent, LLC, d/b/a *The Morgan County Correspondent* (“*The Correspondent*” or “Plaintiff”), by counsel, for its complaint against the Board of Education (the “Board” or “Defendant”) of the Mooresville Consolidated School Corporation (“MCSC”), and in accordance with the Indiana Open Door Law (“ODL”), Ind. Code §§ 5-14-1.5-1–8, alleges as follows:

**PARTIES**

1. Morgan County Correspondent, LLC is a limited liability corporation located in Morgan County, Indiana, that publishes a newspaper, *The Morgan County Correspondent*.
2. The MCSC is a public agency that primarily operates within a boundary consisting of Brown Township, Harrison Township, and Madison Township in Morgan County, Indiana. *See* Ind. Code § 5-14-1.5-2(a).
3. The Board is the governing body of the MCSC. The supervision of MCSC is

under the authority of the Board. *See id.* § 5-14-1.5-2(b).

### **JURISDICTION AND VENUE**

4. This action arises from the Board’s acts and omissions in violation of the ODL in connection with filling a MCSC Board vacancy.

5. This Court has jurisdiction over the subject matter of this action and the Board. Ind. Code § 5-14-1.5-7.

6. Venue is proper in Morgan County pursuant to Ind. Code § 5-14-1.5-7(a), which provides: “[a]n action may be filed [under this chapter] by any person in any court of competent jurisdiction.”

### **THE OPEN DOOR LAW**

7. The Indiana Open Door Law provides that the state of Indiana “and its political subdivisions exist only to aid in the conduct of the business of the people of this state”; “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”; and that its purpose is “remedial, and its provisions *are to be liberally construed* with the view of carrying out its policy.” *See* Ind. Code § 5-14-1.5-1 (emphasis added).

8. The ODL mandates, with some enumerated exceptions, that “all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.” Ind. Code § 5-14-1.5-3(a).

9. A “public agency” under the ODL includes “[a]ny county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.” Ind. Code § 5-14-1.5-2(a)(2).

10. MCSC is a public agency under the ODL and Defendant Board is MCSC's governing body. Ind. Code § 5-14-1.5-2(a)(2); *id.* § 5-14-1.5-2(b)(2).

11. The Open Door Law explicitly requires a governing body to take final action on public business at a meeting open to the public. Ind. Code § 5-14-1.5-6.1(c). "Final action" means "a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order." Ind. Code § 5-14-1.5-2(g).

12. Under the Open Door Law, an "executive session" is a "meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose." *Id.* § 5-14-1.5-2(f).

13. Ind. Code § 5-14-1.5-6.1(b)(10) states that when a governing body is considering the appointment of a public official, it may hold an executive session to "(A) Develop a list of prospective appointees [;] (B) Consider applications [;] [and] (C) Make one (1) initial exclusion of prospective appointees from further consideration."

14. Ind. Code § 5-14-1.5-3(d) "applies only to the governing body of a school corporation," like Defendant, and requires that it "*shall* allow a member of the public who is physically present at the meeting location . . . to provide oral public comment" and "the taking of oral public comment on a topic *must* occur before the governing body takes final action on the topic." Ind. Code § 5-14-1.5-3(d) (emphasis added).

15. Ind. Code § 5-14-1.5-7 allows a plaintiff to file an action to "(1) obtain a declaratory judgment; (2) enjoin continuing, threatened, or future violations of this chapter; or (3) declare void any policy, decision, or final action: (A) taken at an executive session in violation of section 3(a) of this chapter; (B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter; (C) that is based in whole or in part upon official action taken at

any: (i) executive session in violation of section 3(a) of this chapter; (ii) meeting of which notice is not given in accordance with section 5 of this chapter[.]” Ind. Code § 5-14-1.5-7(a).

16. Ind. Code § 5-14-1.5-7 requires that “[r]egardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced . . . within thirty (30) days of either: (A) the date of the act or failure to act complained of; or (B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred[.]” Ind. Code § 5-14-1.5-7(b).

17. “In any action filed under this section, a court shall award reasonable attorney’s fees, court costs, and other reasonable expenses of litigation to the prevailing party if . . . the plaintiff prevails[.]” *Id.* § 5-14-1.5-7(f).

18. A plaintiff is still eligible for attorney’s fees even if the public access counselor has not issued an advisory opinion if “the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.” *Id.*

## **FACTS**

19. On October 1, 2024, MCSC Board member Dr. William E. Roberson, Sr. died, leaving his seat on the Board vacant.

20. Subsequently, the Board began a search for a new member. To open the application pool, At-Large Board Member Matt Saner, a resident of Brown Township, moved to the Brown Township seat to create an opening in the At-Large position, which provided opportunities for more community members to apply. *See Minutes of Special Meeting of the*

MCSC Board (October 30, 2024) (attached hereto as Exhibit A); *see also* MCSC Press Release, *Brimmage Appointed to Mooresville School Board* (attached hereto as Exhibit B).

21. On November 21, 2024, the Board noticed an executive session for November 25, 2024, for the stated purpose of considering the appointment of a public official, including to “[d]evelop a list of prospective appointees” and to “[c]onsider applications,” followed by a public meeting at 6:30 p.m. *See* Notice of Meeting and Executive Session(s) (attached hereto as Exhibit C).

22. The Board had held previous executive sessions on October 8, 2024, October 30, 2024, and November 20, 2024, for this same stated purpose.

23. On November 25, 2024, the Board convened in executive session at 6:00 p.m. (the “November 25 Executive Session”) at the Mooresville Schools Education Center.

24. *The Correspondent’s* reporter Jared Quigg was present at the Mooresville Schools Education Center to cover the 6:30 p.m. Board meeting.

25. The Board held the executive session at 6:00 p.m. and it lasted approximately 30 minutes.

26. Upon information and belief, the Board fully discussed all prospective appointees for the vacant board seat and eliminated all but one—Deon Brimmage—during the November 25 Executive Session, taking final action on public business in secret and in violation of the ODL.

27. The Board convened for a public meeting at approximately 6:30 p.m. with Board President Matt Saner and Board Members Jennifer Reed, David Oberle and Timothy Cummins present.

28. In explaining that the Board would move forward with filling the vacant Board seat, Mr. Saner stated that the Board made and approved a motion the previous month to move

Mr. Saner from an at-large appointment into the Brown Township appointment to give the Board extra time to do their due diligence and find qualified candidates for the remaining At-Large seat.

29. Mr. Saner stated the Board had considered five outstanding candidates and that the Board would move forward with filling the seat.

30. Mr. Saner asked for questions or comments from the Board and then said that hearing none, he would entertain a motion to nominate a candidate.

31. Mr. Saner did not solicit any public comment at this time or entertain any public comments or discussion.

32. Ms. Reed made a motion to appoint Deon Brimmage to the vacant At-Large Board seat. Mr. Oberle seconded that motion. Mr. Saner asked that all in favor of the motion say “aye,” and all Board members replied, “Aye.”

33. Mr. Saner asked if any Board member was opposed to Ms. Reed’s motion and no Board member responded.

34. Approximately 90 seconds after this exchange began, Mr. Saner announced that the motion carried 4-0 and that although Mr. Brimmage was not present at the meeting, the Board was excited to serve with Mr. Brimmage, get him up to speed, and get him sworn in.

35. In under two minutes total, the Board voted 4-0 to appoint Deon Brimmage to the vacant Board position.

36. The Board solicited no public comment before unanimously voting to appoint Mr. Brimmage, and there was no public discussion among Board members at the meeting about Mr. Brimmage or any other candidate for the vacant Board seat.

37. According to the November 25, 2024, meeting minutes, attached hereto as Exhibit D, the Board opened the floor for public comment and questions for other action items on the

meeting agenda.

38. On December 16, 2024, Plaintiff, by and through undersigned counsel, submitted a formal complaint, attached hereto as Exhibit E, to the Office of the Public Access Counselor (“PAC”) alleging that “[t]he Board failed to allow the public to comment on final action as required by the Open Door Law” and “took prohibited final action during an executive session.”

39. The PAC has not issued any opinion, formal or otherwise, regarding Plaintiff’s complaint.

40. At the time of filing, the PAC confirmed via email to counsel for Plaintiff, attached hereto as Exhibit F, that the office was not able to issue an advisory opinion before February 2025.

41. According to Ind. Code § 5-14-1.5-7(b), Plaintiff has thirty (30) days to file this action.

**COUNT I**  
**Unauthorized Official Action in Executive Session**

42. Plaintiff incorporates the previous paragraphs of the Complaint as though fully set forth herein.

43. The Board violated the Open Door Law by taking unauthorized official action on public business during its November 25 Executive Session.

44. Ind. Code § 5-14-1.5-6.1(b)(10) authorizes a governing body, when considering the appointment of a public official, to convene in executive session to do the following: “(A) Develop a list of prospective appointees [;] (B) Consider applications [;] [and] (C) Make one (1) initial exclusion of prospective appointees from further consideration.”

45. Upon information and belief, the Board fully discussed all candidates for the vacant Board position and eliminated all but one during the November 25 Executive Session,

taking official action on public business in secret and in violation of the ODL.

46. The Board emerged from the November 25 Executive Session and, upon convening a public session, immediately—and unanimously—voted to appoint the same previously unknown candidate, Deon Brimmage, from the five individuals being considered, in less than two minutes. *See* Ex. D.

47. The Board held no public discussion—substantive or otherwise—and solicited no comment from the public at the public meeting about the topic of appointing a new school board member.

48. In violation of the ODL, upon information and belief, the Board excluded all prospective applicants for the vacant seat except for one in secret, thus taking unauthorized action on public business during the November 25 Executive Session.

49. Because the Board took unauthorized action on public business during the November 25 Executive Session, the Court should declare void the decision and final action by the Board pursuant to Ind. Code § 5-14-1.5-7(a)(3)(C)(i). The Plaintiff is also entitled to declaratory and injunctive relief pursuant to Ind. Code § 5-14-1.5-7(a)(1) and (a)(2).

**COUNT II**  
**Failure to Allow Public Comment**

50. Plaintiff incorporates the previous paragraphs of the Complaint as though fully set forth herein.

51. The Open Door Law provides: “the governing body of a school corporation . . . shall allow a member of the public who is physically present at the meeting location . . . to provide oral public comment[.]” Ind. Code § 5-14-1.5-3(d).

52. The required comment period must occur before the governing body takes final action on a topic. *Id.*



53. At its November 25, 2024, public meeting, the Board did not receive, allow, or even invite the public to offer oral public comment on the topic of appointing an applicant to fill the Board vacancy prior to taking final action on the issue in violation of Ind. Code § 5-14-1.5-3(d). *See* Ex. D.

54. Because the Board failed to allow public comment as required by the ODL, Plaintiff is entitled to declaratory and injunctive relief pursuant to Ind. Code § 5-14-1.5-7(a)(1) and (a)(2).

### **REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Expedite the hearing of this case as required under Ind. Code § 5-14-1.5-7(h);
  2. Declare void the decision and final action by the Board pursuant to Ind. Code § 5-14-1.5-7(a)(3)(C)(i);
  3. Declare the Board failed to allow the public to provide oral public comment as required by statute in violation of the Open Door Law, Ind. Code § 5-14-1.5-3(d);
  4. Enjoin the Board from all continuing, threatened, or future violations of the Open Door Law;
  5. Award Plaintiff reasonable attorney's fees in an amount to be shown to the Court;
- and
6. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

*/s/ Kristopher L. Cundiff*

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