

November 26, 2003

L'Sana L. Djahspora
P.O. Box 64064
Gary, IN 46401

Re: Formal Complaint 03-FC-111: *Alleged Violation of the Open Door Law by the Gary Board of School Trustees*

Dear Mr. Djahspora,

This is in response to your formal complaint, received on October 29, 2003. In it, you allege that the Gary Board of School Trustees (Board) violated the Indiana Open Door Law (Open Door Law) when it denied you the opportunity to speak at a public meeting held on October 28, 2003.¹ Ms. Rochelle D. Moody, Attorney for the Gary Community School Corporation, responded to your complaint on behalf of the Board. A copy of her written response is attached for your reference.

For the reasons set forth below, it is my opinion that the Board did not violate the Open Door Law when it failed to provide you the opportunity to speak at a public meeting.

BACKGROUND

In your complaint, you allege that you were denied the opportunity to speak at a public meeting based solely on the Board's selective personal discrimination against you and the Board's indication that your comments would not be favorable to the Board. You allege that the determination voiced by Board president Michael Scott was reached privately. You also allege that there was "visible one-to-one conferencing" between Board members just before you were denied the opportunity to speak, and assert that this "visible one-to-one conferencing" was an illegal meeting. You further allege that at the end of the meeting, Board president Michael Scott indicated that there had been a predetermination to deny you the opportunity to speak at the public meeting. Finally, you allege that the Board violated its own policy in refusing to allow you to speak.

In its response, the Board states that you had access to the meeting and you were allowed to record the meeting, which is what the Open Door Law requires. The Board also alleges that

¹ This office recently issued an opinion in *Formal Complaint 03-FC-104, Alleged Violation of the Open Door Law by the Gary Board of School Trustees*, finding that the Board did not violate the Open Door Law when it denied you the opportunity to speak at an October 14, 2003, meeting.

nothing in the Open Door Law prohibits one Board member from talking to another Board member, and any such conversation does not constitute an illegal meeting. Finally, the Board asserts that its Policy does not require that you be permitted to speak. The Board attaches three exhibits to its response: the document marked “Exhibit A” purports to be the Board’s agendas for the October 28, 2003, executive session and meeting; “Exhibit B” purports to be the minutes of the October 28, 2003, meeting²; and “Exhibit C” is titled “Internal Board Operations Policy 119 Board Meeting Process” (the “Policy”)³.

ANALYSIS

The intent and purpose of the Open Door Law is 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 provisions of the Open Door Law are to be “liberally construed with the view of carrying out its policy.” IC 5-14-1.5-1. The Board is a governing body subject to the Open Door Law. IC 5-14-1.5-2(b)(2). Therefore, all meetings of the Board “must be open at all times for the purpose of permitting members of the public to *observe and record* them.” IC 5-14-1.5-3 (emphasis added).

Although the Open Door Law provides the public with an opportunity to attend and record public meetings, it does not require the governing body to provide the public with an opportunity to speak at public meetings. Therefore, it is my opinion that the Board did not violate the Open Door Law by denying you the opportunity to speak at the public meeting.

Neither do I find that the Board violated its own Policy. The Board adopted Policy 119, governing the Board Meeting Process, pursuant to Indiana Code 20-5-2-2. The Policy provides that citizens “may request” to speak at a Board meeting by signing the appropriate form, and “may” be permitted to address the Board if a request is made to speak. It places within the discretion of the Board President the authority to increase or decrease a speaker’s time, including, I think, the authority to entirely preclude a person from speaking. The Policy further contemplates that the Board may, as a body, vary the Board President’s determination, but there is no indication that the Board sought to take any such action related to persons speaking at the October 28, 2003, meeting. In my opinion, the right to speak under the Policy is permissive, and the authority to permit or restrict a member of the public from speaking rests within the Board President’s discretion. In reviewing this Policy, I think it does not matter whether the Board President makes his determination before or during the meeting at issue, so the allegation regarding the Board President making a “predetermination” regarding your right to speak prior to the meeting is not dispositive. In the end, it is clear that he exercised his discretion during the meeting, and the Board could have but did not overrule that determination at that time.

² The meeting minutes were incomplete. This office subsequently obtained and reviewed the complete copy of the meeting minutes.

³ The Board’s response references Policy 120; however, I have determined this to be a scrivener’s error. The response addresses in substance Policy 119, which is the relevant policy and which is provided as the exhibit to the response to your complaint.

Finally, I do not find any violation of the Open Door Law or other provisions based on your allegation that two Board members were talking to one another during the meeting. Initially, I would note that there is no evidence supporting this allegation, but beyond that, I agree with the Board that there is nothing in the Open Door Law that would preclude two Board members from openly conferencing with one another during a public meeting.

CONCLUSION

Because the Open Door Law does not guarantee the right to speak at a public meeting, it is my opinion that the Board did not violate the Open Door Law by denying you the opportunity to do so. Neither do I find that the Board violated its own Policy.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Rochelle D. Moody, Attorney for the Gary Community School Corporation