

October 16, 2003

Teresa E. Ramey
404 Greenacres Drive
Crawfordsville, IN 47933

Re: Formal Complaints 03-FC-87; Alleged Violation of the Open Door Law by Family & Social Services Administration

Dear Ms. Bower and Ms. Guthrie,

This is in response to the formal complaint you have filed in this office, which was received on September 24, 2003. In it, you allege that the Indiana Family & Social Services Administration (the "FSSA") violated the Indiana Open Door Law (the "Open Door Law"), Indiana Code chapter 5-14-1.5. Specifically, you allege that final action was taken by committee members at the direction of the FSSA Bureau of Child Development (the "BCD"), in the form of a final secret vote. Joy A. Heim, Staff Attorney for the FSSA, responded in writing to your complaint. A copy of her response is attached for your reference.

For the reasons set forth below, it is my opinion that because the so-called committee was not a governing body as contemplated by the Open Door Law, there has been no violation of the Open Door Law.

BACKGROUND

The FSSA Division of Family and Children ("DFC") implements and operates the First Steps Early Intervention Program ("First Steps"), a federal program established to provide services for infants and toddlers with disabilities. DFC is responsible for administering the program in Indiana and ensuring that the program complies with the federal statute.

FSSA established First Steps Local Planning and Coordinating Councils ("LPCCs") in order to obtain and include local input in the First Steps program. LPCCs recommend to FSSA a fiscal agent to receive the funding for the LPCCs. By memorandum dated June 2, 2003 (the "June 2 Memorandum"), and addressed to LPCCs, FSSA required that LPCCs cluster to combine resources and use a single fiscal agent. FSSA's goal is to utilize funding in the most efficient and appropriate manner and to streamline the Request for Funds (the "RFF") process as

well as program administration. One such cluster was that established by Boone, Fountain, Hendricks, Owen, Parke, Putnam and Warren Counties (the “Cluster”).

On July 7, 2003, FSSA issued a memorandum (the “July 7 Memorandum”) to LPCCs establishing the Open Bid Process through which to recommend to FSSA a fiscal agent. In the memorandum, FSSA indicated that the 2004 RFF would require all newly formed clusters to participate in an open bid process for fiscal agent services. FSSA stated, “[d]ue to the important nature of this issue, the following procedures must be incorporated into your local Fiscal Agent selection process.” (July 7 Memorandum) (emphasis in original). The procedures were as follows:

- Public notice of the opportunity to apply for Fiscal Agent services must be published locally within the counties to be served.
- Letters of interest/intent must be accepted through July 21, 2003.
- LPCCs must have approval of the open bid process from BCD, including scoring tools and procedures prior to implementation. FSSA requested minutes from LPCC meetings in which the tool was designed and approved.
- LPCC members should adhere to by-laws and policies relating to conflict of interest.

On July 31, 2003, the BCD issued a memorandum (the “July 31 Memorandum”) to Stephanie Bower, LPCC Coordinator for Boone County; Teresa Ramey, LPCC Coordinator for Fountain, Parke and Warren Counties; Teresa Gutherie, LPCC Coordinator for Hendricks County; and Debra Kovach, LPCC Coordinator for Owen and Putnam Counties (collectively, “Cluster Coordinators”). BCD notified the Cluster Coordinators that the Cluster’s open bid process had been disapproved by the BCD. The BCD identified several specific concerns. The BCD asked each LPCC in the cluster to choose between two options for proceeding. The first option would allow the Cluster to retain control over the open bid process; the second option called for BCD to assume responsibility over the process.

Although there is no documentation explicitly saying as much, it appears that the second option was selected. Ms. Heim states in her response to your complaints, “It was at this point that the FSSA began to take a more active roll [sic] in assisting this Cluster with the development of the fiscal agent selection process.” Also, on August 22, 2003, the FSSA issued a memorandum (the “August 22 Memorandum”) to Cluster Selection Committee Members stating, “Attached is the evaluation criteria and scoring tool for the selection of a Fiscal Agent for Boone, Fountain, Hendricks, Owen, Parke, Putnam and Warren.”

The August 22 Memorandum established the procedures by which members of “the committee” were to evaluate applications submitted by parties interested in becoming fiscal agent. None of the information submitted to this office explicitly defines the committee mentioned in the August 22 Memorandum; however, Ms. Heim described the committee as “local representatives” in the FSSA’s response to your complaints. Ms. Heim elaborates as follows:

This group of persons meeting to discuss the RFF was not a governing body of a public agency. These persons were representatives of LPCCs within the Cluster. The members of this Cluster group were not appointed directly by a presiding office of a public agency to take official action upon public business. It was merely a workgroup made up of persons that volunteered or were selected to assist with this project.

For the purpose of this opinion, this group of persons will be referred to as the "RFF committee." According to the August 22 Memorandum, applications were to be scored by members of the RFF committee and submitted to FSSA by fax or e-mail. A representative of BCD was to tally votes, and the BCD would then notify the LPCC Chairpersons, RFF committee and the chosen fiscal agent. The August 22 Memorandum also cancelled the meeting previously scheduled for August 26, 2003.

Your complaint alleges that you requested and were denied a meeting on August 26, 2003, at which a final bid for fiscal agent for the Cluster was to be awarded. The complaints also allege that final action took place via e-mail or fax, and that the votes were to be kept secret.

In her response, Ms. Heim stated with respect to both the August 12, 2003, meeting and the August 26, 2003, meeting that FSSA did not violate the Open Door Law because the meeting was neither a public meeting subject to the Open Door Law, nor was it called by FSSA.

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." Ind. Code § 5-14-1.5-1. It is clear that the Family and Social Services Administration is a public agency. Ind. Code § 5-15-1.5-2. The question you have presented is whether a governing body of Family and Social Services Administration violated the ODL by taking final action outside of a public meeting.

A meeting is defined as "a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business." Ind. Code § 5-14-1.5-2(c). Meetings of a governing body must be held openly, with the exception of executive sessions, including affording the public the right to attend, observe and record these meetings. Ind. Code § 5-14-1.5-3(a).

A governing body is defined, in relevant part, as:

two (2) or more individuals who are:

- 2 the board, commission, council, or other body of a public agency which takes official action upon public business; or

3. any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Indiana Code §5-14-1.5-2(b).

Since you have alleged that the FSSA violated the ODL the question here is whether the RFF committee is a governing body of the FSSA which takes official action upon public business, or if it is a committee appointed directly by a FSSA governing body or its presiding officer to which authority to take official action upon public business has been delegated.

Indiana Code section 5-14-1.5-2(b)(2)

Indiana Code section 5-14-1.5-2(b)(2) provides that a governing body is any “board, commission, council, or other body of a public agency which takes official action upon public business. . .” The RFF committee was not created by any statute governing FSSA or by administrative rule governing FSSA. Rather, it appears as though the LPCC organized the RFF Committee for the sake of convenience. Therefore, it is my opinion that the RFF is not a governing body of the FSSA.

Indiana Code section 5-14-1.5-2(b)(3)

Indiana Code section 5-14-1.5-2(b)(3) provides that a governing body is “any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.” Here, each LPCC in the cluster was represented by two (2) individuals on the RFF committee. Each individual either volunteered or was selected to serve on the RFF committee. However, neither a governing body nor the presiding officer of a governing body appointed the committee. Therefore, it is my opinion that the RFF does not satisfy Indiana Code section 5-14-1.5-2(b)(3).

CONCLUSION

The RFF committee was not a governing body as contemplated by Ind. Code § 5-14-1.5-2(b). The RFF committee was not required to observe the requirements of the Open Door Law. Consequently, its failure to conduct an open meeting did not violate the Open Door Law.

Sincerely,

Sandra K. Bowman
Acting Public Access Counselor

Cc: Ms. Joy A. Heim, Staff Attorney
Family and Social Services