

September 19, 2005

Via Facsimile

Ms. Joanna T. Witulski
9111 Broadway Suite A
Merrillville, IN 46410-8122

*Re: Formal Complaint 05-FC-172; Alleged Violation of the Open Door Law by the
Indiana Council on Independent Living*

Dear Ms. Witulski:

This is in response to your formal complaint alleging that the Indiana Council on Independent Living (“Council”) violated the Open Door Law by failing to provide you with adequate interpreter services. I find that the Open Door Law does not apply to the provision of interpreter services by the Council, but the Council may be required by other applicable law to provide interpreter services for meetings of the Council.

BACKGROUND

You allege that when you attended the scheduled meetings of the Council of July 20, 2005 and August 10, 2005, you were not given interpreter services adequate to meet your needs. This is the gravamen of the complaint that you filed with the office of the Public Access Counselor, although you also raise issues concerning the cancellation of the July 10 meeting. I sent your complaint to the Council. In response, I received letters from Beth Quarles, Council Chair, Robert Sembroski, attorney for the Indiana Bureau of Rehabilitation Services, and Casey Cloyd, an attorney who was asked by Ms. Quarles to file a supplemental response on behalf of the Council.

Ms. Quarles stated that the July 20 meeting was cancelled because no quorum of the members of the Council would be present. Members of the public were told, as they arrived at the meeting which was scheduled for 10:00 a.m., that the meeting would have to be cancelled because a quorum would not be present. For the August 10 meeting, which was scheduled from

10:00 a.m. until 4:00 p.m., Ms. Quarles reported that no members of the public or of the Council were present at 10:21 a.m., although the interpreters engaged by the Council to interpret at the meeting were waiting. The interpreters left the meeting place at the time that Ms. Quarles arrived at 10:45 a.m., apparently in conformance with the policy that allows them to leave after waiting for a stated period of time. By 12:30 p.m., when Ms. Quarles stated that you arrived, there still was not a quorum of the Council. Expecting a final member of the Council to arrive at 2:00 p.m., Ms. Quarles attempted to arrange for interpreter services, but was told that no interpreter could be present at that belated hour. Because no other interpreter could be present, Ms. Quarles interpreted the meeting while she conducted and participated in the meeting.

Ms. Quarles apologized for any inconvenience caused by the transition and the need to appoint members of the Council. Ms. Quarles stated that business was able to be conducted at the August 10 meeting, implying that a majority of the Council was present. Mr. Sembroski's letter indicated that "the meeting that is the subject of the formal complaint" was not a meeting of the majority of the 20-member board; therefore, in his opinion, the meeting was not subject to the Open Door Law. Mr. Sembroski did not specify whether he was referring to the July or August meeting. Finally, the response of Mr. Cloyd indicated that the requirement at IC 5-14-3-8(d) does not apply to interpretive services; hence, no violation of the Open Door Law occurred.

ANALYSIS

It is the intent of the Open Door Law 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. 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. IC 5-14-1.5-3(a). A "meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. IC 5-14-1.5-2(c). Public notice of the date, time, and place of any meetings shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. IC 5-14-1.5-5(a). Notice has not been given in accordance with [section 5] if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. IC 5-14-1.5-5(h).

A public agency may not hold a meeting at a location that is not accessible to an individual with a disability. IC 5-14-1.5-8(d). As used in section 8, "accessible" means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. IC 5-14-1.5-8(b). *See 36 CFR 1191.*

The Council is a public agency and a governing body under the Open Door Law. IC 5-14-1.5-2(a) and (b). *See Opinion of the Public Access Counselor 01-FC-55.* Hence, a meeting of the Council must be held in a place that is accessible to an individual with a disability, as "accessible" is defined in section 8. From my research, it appears that, as Mr. Cloyd stated, the standards described in section 8 are concerned with the physical configuration of buildings. It appears that the standards would not apply where an individual with a disability is in need of

interpretive services. *See also Town of Merrillville v. Blanco*, 687 N.E.2d 191, 198 (Ind. App. 1998)(“The statute makes it clear that such hearings are to be held in facilities that permit barrier-free physical access to the physically handicapped.”). As Mr. Cloyd points out, this does not mean that the Council should not provide such services upon request. Indeed, other laws may require that those services be provided. *See IC 12-12-8-10(c)*(“The council shall ensure that all meetings of the council are open to the public and in accessible formats with sufficient advance public notice”).

Also, to the extent that your complaint alleges that Ms. Quarles could not have provided adequate interpreter services while conducting a meeting, I cannot offer an opinion, since I do not possess expertise or statutory authority to render an opinion on the adequacy of the service.

You did not directly raise an issue regarding conduct of the meetings of the Council, but I write to offer guidance on two issues. First, there are no provisions in the Open Door Law regarding when or how a governing body must cancel a meeting. It is not required that a meeting be cancelled at any particular time before the meeting’s start time, and in fact, if no quorum is assembled, the governing body may not be alerted to the need to cancel a meeting until the time for the meeting. Also, the governing body is not required to post or give any physical notice of the cancellation of a meeting, under the Open Door Law.

Another issue raised by your complaint is whether the Council’s meetings were conducted in conformance with its notice. Although notices of the July and August meetings were not provided, if the notices stated that the meetings were from 10:00 a.m. to 4:00 p.m., the time for the meetings was 10:00 a.m., irrespective of whether the notice gave a range of time. Notice of the August meeting was not given in accordance with the Open Door Law if the August meeting was convened no earlier than 2:00 p.m., as Ms. Quarles avers. In my opinion, this delay in the convening of the August meeting did unreasonably depart from the time stated in the notice, assuming the notice was as stated above. My opinion would be the same for the July meeting, except that since no majority was gathered, no meeting took place.

CONCLUSION

For the foregoing reasons, the Indiana Council on Independent Living did not violate IC 5-14-3-8 even if it did not provide adequate interpreter services at the August meeting; however, other applicable law may require that the Council provide adequate interpreter services for public meetings. The notice for the August meeting of the Council was not adequate under IC 5-14-3-5(h). The Council is not required under the Open Door Law to post notice of the cancellation of a meeting.

Sincerely,

Karen Davis
Public Access Counselor

cc: Beth Quarles
Robert Sembroski
Casey Cloyd