

October 24, 2005

*Sent Via Facsimile*

Mr. Frank A. Rizzo  
2845 45<sup>th</sup> Street  
Highland, IN 46322

*Re: Formal Complaint 05-FC-192; Alleged Violation of the Access to Public Records Act by the Hanover Community School Corporation*

Dear Mr. Rizzo:

This is in response to your formal complaint alleging that the Hanover Community School Corporation (“School”) violated the Access to Public Records Act by failing to respond timely to your request and denying your request for records. I find that the School violated the Access to Public Records Act.

#### BACKGROUND

You made several requests for public records of the School regarding School Principal Jodi Gee. You faxed to the School an August 9 request on August 10, 2005. You requested information regarding Jodi Gee’s previous work experience, including work experience with previous employers. On August 11, you requested information regarding Jodi Gee’s educational training, including additional graduate level instruction that she obtained in order to comply with 511 IAC 1-1-8(e)(3) and (4). This request was faxed on that same date, August 11.

You mailed to the School two letters dated August 29, 2005. In the first, you requested the report of certified employees (DOE-CE/CP) due October 15, 2004, as well as a copy of the School Improvement Plan due June 30, 2004. In the second August 29 letter, you requested information on the selection and hiring process of the principal prior to the 2004-05 school year, including all applicants and candidates for the position, which candidates were presented to the school board, and any minutes, notes, sign in sheets and any other records of board meetings,

committee meetings, or interviews where candidates were discussed or interviewed. Finally, you also asked for wage information on Ms. Gee.

You allege that the first response from the School to your requests was received on September 1, 2005. In that letter, the School, represented by Richard Mayer of Spangler, Jennings & Dougherty, stated that you must set up a time to review the requested records. He also stated that information must be specifically identified by your request. He stated that if you would contact him and specifically identify what documents you wish to review, he would make arrangements for your review and copying. On September 20, 2005, Mr. Mayer wrote you a letter recounting a September 15 telephone conversation with you, in which Mr. Mayer reiterated his request that you specifically identify any records you wish to review. With reference to your August 9 and August 11 requests, Mr. Mayer stated that the documents that are in Ms. Gee's personnel file "are exempt from disclosure and will not be produced." He also stated that the report of certified employees is exempt from disclosure and would not be produced. Mr. Mayer stated he was determining whether the school improvement plan was privileged information. With respect to your August 29 request (respecting principal selection information), he stated that "by law and by the discretion of the School Corporation, any information that you elude (sic) to that is available will not be disclosed for your inspection." He asked that you specify a timeframe for the wage information. Finally, Mr. Mayer stated that you may review school board meeting minutes, except for "executive board minutes" relative to the interview of potential employees of the School.

I sent a copy of your formal complaint, which you filed on September 23, 2005, to the School. I received a responsive letter from Mr. Mayer. I enclose a copy of his response for your reference. Mr. Mayer suggests that in order to amicably resolve the matter, the School would make available the documents referred to in your complaint, except those documents for which disclosure is prohibited. The records that would be disclosed are: Ms. Gee's work experience, including work experience with previous employees (read, employers); Ms. Gee's educational training, except grade transcripts or testing scores, which are nondisclosable under IC 5-14-3-4(a)(7) and (b)(3); the certified employees' report; the school improvement plan; and minutes of regular board meetings "upon Mr. Rizzo's specific request." He declined to provide executive board meeting minutes or information on the hiring or selection process, but would provide the minutes for the public meeting where the school board approved Ms. Gee's hiring. Finally, Mr. Mayer claimed that any information regarding candidates for the principal position were being withheld in spite of your contention that IC 5-14-1.5-6.1(b)(10) mandates disclosure, because the whole purpose of an executive meeting would be jeopardized by disclosure of the candidates.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A request for a record must be stated with reasonable particularity. IC 5-14-3-3(a)(1). For requests that a public agency receives via U.S. Mail or by facsimile, the public agency must respond within seven (7) days, or the request is deemed denied. IC 5-14-3-9(b). When a public agency denies a written request for records, the public agency must issue the denial in writing, and the

denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

Personnel records of a public employee may be withheld at the discretion of the public agency. IC 5-14-3-4(b)(8). However, certain information from a personnel file must be disclosed: the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency. IC 5-14-3-4(b)(8)(A).

First, it is my opinion that all your requests for records including those requests concerning Ms. Gee's educational background and work experience were stated with reasonable particularity. The APRA does not require that a request be so precise that the record is named or identified specifically, only that the record or records be described so that the public agency can discern what information is sought. The School's September 1 and September 20 correspondence requesting that you "specifically identify any records you wish to review" appears to demand more than is required of you under IC 5-14-3-3(a)(1).

The complaint response of the School does not dispute that the School did not timely respond to your August requests for records. To be sure, the School's September 1 letter to you was untimely, and was deemed a denial under the APRA. Also, the September 20 letter to you explicitly denying you records in Ms. Gee's personnel file did not comport with the APRA. First, the School neglected to cite the specific exemption contained in IC 5-14-3-4(b)(8), by which it meant to deny you Ms. Gee's personnel file. In any event, the specific personnel file information you sought is required to be disclosed by the very terms of the personnel file exemption, including Ms. Gee's education and training background and previous work experience. The School's refusal to disclose information that is required to be disclosed to you was a denial under the APRA. *See* IC 5-14-3-4(c). I note that in its complaint response, the School indicated it will make the education and training background and previous work experience information available to you.

Also in its September 20 letter to you, the School denied the list of certified employees. No exemption was cited, and there is no exemption for this record to my knowledge. The school improvement plan also is not subject to any exemption that I am aware of. Although a public agency may issue an interim response stating that it must determine whether a record is subject to an exemption, in my opinion, the School should have been able to make this determination before the lapse of the more than four weeks after it received the August 29 request for the school improvement plan. The School in its complaint response has offered to make the list of certified employees and the school improvement plan available to you for inspection and copying.

It appears from the September 20 response that the School also denied you the records regarding the principal selection process, including executive school board minutes. As the School now acknowledges in its complaint response, school board minutes from the board's public meetings are available. Minutes and memoranda are specifically required to be available for inspection and copying under IC 5-14-1.5-4(c). Memoranda are required to be maintained

for executive sessions, and must be disclosed in accordance with IC 5-14-1.5-4(c). IC 5-14-1.5-6.1(d). Hence, the School may not decline to produce for you the memoranda from executive sessions of the school board. However, other documents that were prepared specifically for discussion or developed during discussion in an executive session may be withheld under IC 5-14-3-4(b)(12). If the School intends to withhold records that fall within this exemption, it should identify the records and cite the exemption. IC 5-14-3-9(c).

In your complaint, you contend that information about candidates for the school principal must be disclosed under IC 5-14-1.5-6.1(b)(10). This executive session instance allows a public agency to meet in executive session to consider the appointment of a public official. After an initial exclusion of prospective appointees, a governing body shall make available for inspection and copying “identifying information concerning the prospective appointees not initially excluded from further consideration.” Also, interviews of prospective appointees must be conducted in a public meeting. IC 5-14-1.5-6.1(b)(10).

A “public official” means a person who is a member of a governing body of a public agency or whose tenure and compensation are fixed by law and who executes an oath. IC 5-14-1.5-6.1(a). I do not believe that a school principal meets the definition of a public official. Rather, a school principal is an employee of the school corporation. Ind. Code 5-14-1.5-6.1(b)(10) would not apply to the hiring of a school principal. Also, the School is not required to disclose any personnel file information concerning applicants for public employment, even the information that is required to be disclosed under IC 5-14-3-4(b)(8)(A), which applies only to present or former employees of the agency. Of course, any information or records that were discussed or disclosed during the public meetings of the school board would not be subject to the personnel file exemption, since those records would have been disclosed in a public meeting.

#### CONCLUSION

For the foregoing reasons, the Hanover Community School Corporation violated the Access to Public Records Act when it failed to timely respond to your requests for records, and when it denied you information from a personnel file that it is required by law to make available to you. It also violated the Access to Public Records Act when it denied you the report of certified employees. Although it appears that the School now intends to comply, any continued denial of your right to inspect and copy the records is actionable under IC 5-14-3-9(e).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Richard A. Mayer