

December 22, 2006

Cathy McKinney
10383 W. CR 150 S.
Norman, IN 47254

Re: Formal Complaint 06-FC-209; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Medora Community School Corporation

Dear Ms. McKinney:

This is in response to your formal complaint alleging that the Medora Community School Corporation (“School”) violated the Access to Public Records Act and the Open Door Law. I find that the School may not post a general notice regarding executive sessions. I also find there is insufficient evidence to show that the School’s Board of Trustees met prior to the November 17 meeting. I find that the contract of the Superintendent was provided, albeit not within a reasonable period of time.

BACKGROUND

You are a member of the School’s Board of Trustees (“Board”). You complain that the Board holds executive sessions prior to each and every open session, with the same blanket statement for reasons. As your second Open Door Law issue, you believe a meeting of a majority of the Board occurred prior to the November 17 meeting as the other board members arrived with a copy of the bylaws in hand while you were handed a copy at the opening of the meeting. You also have not been provided a copy of the Superintendent’s contract, although you have requested it repeatedly. The most recent request for the contract was on November 20.

I sent a copy of your complaint to the School. Superintendent Andrew Day responded, a copy of which is attached for your reference. As to your claim that executive sessions have not been properly called, he stated that prior to the executive session meetings, it is unclear as to which of the permissible items may be discussed because board members bring items to the meeting that may be unknown to the administration at the time of setting the agenda. Hence, the

minutes of the meetings reference only those items allowed by law to be discussed. Greater detail in the minutes would jeopardize the privacy rights of others.

No meeting occurred prior to the November 17 public session. The secretary of the Board distributed copies of the bylaws to all members of the Board at the opening of the public session. Finally, the contract has been provided on December 5. The delay was due to the need for the administrative assistant to prepare payroll on November 20 when your written request was received. Since the assistant was away for the Thanksgiving holiday until November 27, you were provided the contract after the holiday, on December 5.

ANALYSIS

Open Door Law

Except as provided in section 6.1 of the Open Door Law, 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). Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. IC 5-14-1.5-5(a). Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions. IC 5-14-1.5-5(c). Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). IC 5-14-1.5-6.1(d).

Nothing in the School's complaint response refutes your assertion that the executive sessions are held as regular meetings with the same blanket statement for reasons. You have not provided an example of the notice, but the School's response provides only a reason for this practice; it does not dispute your account. The practice of the School to provide only "blanket" reasons for an executive session that is regularly held prior to the public meeting, and allowing members to bring additional agenda items to the executive session should be discontinued immediately. An executive session may not be the subject of a regular meeting notice, per IC 5-14-1.5-5(c). Instead, the Board must determine at least 48 hours in advance of each executive session the purpose for the session, and state the purpose or purposes in each notice.

With respect to a meeting of the Board prior to the public session on November 17, the School denies that any such meeting occurred. I cannot resolve factual disputes. On the record before me, there is insufficient evidence to find that the School met in violation of the Open Door Law on November 17.

Access to Public Records Act

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). In your complaint you allege that you have yet to receive the

Superintendent's contract. You had apparently asked for it prior to November 20, when you submitted a written request. The School asserts that the administrative assistant was handling the payroll, and then would be absent until after Thanksgiving. There are no set timeframes in the APRA within which a public agency is required to disclose the records. We have stated that records should be disclosed within a reasonable period of time. Although a public agency may regulate material interference with the regular discharge of the functions or duties of the public agency or public employees, IC 5-14-3-7(a), this does not operate to deny to any person the rights secured by the APRA. IC 5-14-3-7(c).

On one hand, the administrative assistant's handling of the payroll and the intervening holiday militate against a finding that the time was unreasonable. However, you state that November 20 was not the first time you requested the record. The request was very specific, was for a current record, and as such, the record should have been readily available for you to inspect and be allowed to copy yourself. *See* IC 5-14-3-3(b). The contract was provided eight calendar days after the end of the holiday. In my opinion, the contract should have been provided in a timelier manner.

CONCLUSION

For the foregoing reasons, I find that the Medora Community School Corporation violated the Open Door Law when it meets in executive session without posting a specific notice of the purpose for the particular executive session. In addition, the School should have provided the superintendent's contract in a reasonable period of time.

Sincerely,

Karen Davis
Public Access Counselor

cc: Superintendent Andrew Day