

March 16, 2006

Sent Via Facsimile

Andrew M. Gammill
The Indianapolis Star
13095 Publishers Drive
Fishers, IN 46038

*Re: Formal Complaint 06-FC-37; Alleged Violation of the Open Door Law by the
Metropolitan School District of Lawrence Township*

Dear Mr. Gammill:

This is in response to your formal complaint alleging that the Board of the Metropolitan School District of Lawrence Township ("School Board") violated the Open Door Law by meeting outside the public.

BACKGROUND

In your formal complaint filed February 14, 2006, you allege that on Monday, February 6, you attended a special meeting of the School Board. Before the meeting began, you witnessed three of the five school board members, Cheryl McLaughlin, Ed Stone, and Lori Petrucciani in a back room. At one point, you allege, the door was closed abruptly, separating the board members in the room from you and a teacher waiting in the board room. You attempted to listen through the door to determine what was being discussed. You heard the terms "PTO" and "the school boards association." These terms led you to believe that the public business of the School Board was being discussed.

You also allege that the President of the School Board, Ms. McLaughlin, has previously stated that the board routinely meets briefly before its meetings for "casual" and non-substantive purposes such as to determine which board members will hand out which awards at the public meeting session. She believed such casual conversations were not in violation of the Open Door Law.

I sent a copy of your complaint to the School Board. The School Board responded by letter, a copy of which is enclosed for your review. The School Board attorney David Day stated that the room to which you referred is the Superintendent's conference room that adjoins the board meeting room. Board members typically leave their coats in that room and pick up any written materials. The School Board denies that the door was abruptly closed; in fact, the School Board stated that Ms. McLaughlin opened the door upon realizing it was closed. Only two Board members, Ms. McLaughlin and Ms. Petrucciani recall being in conversation on February 6 prior to the special meeting. They do not recall Mr. Stone being present. Furthermore, neither board member recalls making any reference to "PTO." Each recalls Ms. Petrucciani asking Ms. McLaughlin about a board self-evaluation process sponsored by the Indiana school board association and Ms. McLaughlin said the board should discuss it.

Mr. Stone remembers walking into the room in the midst of conversation between the other two board members but does not recall anything specific about the conversation. Ms. Petrucciani and Ms. McLaughlin vaguely remember Mr. Stone entering the room but cannot pinpoint when that occurred. As to the prior comments of Ms. McLaughlin, Mr. Day stated that the Board sometimes makes brief arrangements for passing out awards utilizing the conference room. However, Mr. Day denied that the School Board meets for purposes of taking official action within the meaning of the Open Door Law.

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. 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). A "meeting" is a gathering of the 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). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. IC 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. IC 5-14-1.5-2(e).

From the version of events stated by Mr. Day, no discussion ensued between or among a majority of the School Board during the February 6 gathering prior to the public meeting. Without a majority present, no meeting would have taken place as "meeting" is defined in the Open Door Law. Hence, Ms. Petrucciani and Ms. McLaughlin could have gathered and had a conversation prior to the public meeting without violating the Open Door Law. Although apparently Mr. Stone entered the room at some point, neither Mr. Stone nor the two other members of the School Board recalls Mr. Stone gathering with them to take official action.

The School Board's version of events conflicts with yours, where you state that three members were present and closed the door in pursuance of a discussion of some type. I cannot resolve factual matters in dispute; hence, I can only advise you that if three members gathered

that day to take official action on public business, the gathering would have been in contravention of the Open Door Law.

Mr. Day has not specifically explained why using the conference room to make brief arrangements for passing out awards is not “official action” within the meaning of the Open Door Law. Rather, he implies that the law did not intend to encompass such ceremonial duties, yet in refuting that passing out awards is not official action, he does not specifically refer to the definitions of “official action” and “public business.” The definition of “official action” is fairly broad, and includes making decisions and recommendations. Also, presenting awards on behalf of the metropolitan school district appears to be a function upon which the School Board is empowered or authorized to take official action.

I acknowledge that discussion of mere ceremonial duties of a governing body seems to not strike at the heart of the purpose behind the Open Door Law, yet I cannot rule out such duties, however briefly undertaken, in the plain language of the definition of “official action” or “public business.” I recommend that such discussions take place in an open meeting if such a mundane task is assigned to the School Board itself. Also, nothing in the Open Door Law would prevent the Superintendent or other staff person from assigning specific Board members to present awards and noting those assignments in the packet materials in advance of the meeting.

CONCLUSION

For the foregoing reasons, I cannot determine whether the Metropolitan School District of Lawrence Township violated the Open Door Law on February 6, 2006.

Sincerely,

Karen Davis
Public Access Counselor

cc: David R. Day