

August 9, 2007

William Sniadecki  
58976 Crumstown Hwy  
South Bend, Indiana 46619

*Re: Formal Complaint 07-FC-201; Alleged Violation of the Open Door Law by the South Bend Community School Corporation Board of Trustees:*

This is in response to your formal complaint alleging the South Bend Community School Corporation Board of Trustees (“Board”) violated the Open Door Law (“ODL”) (Ind. Code §5-14-1.5) when it held a meeting of five of the seven members which was closed to the public and without public notice. A copy of the Board’s response to your complaint is enclosed. I find that the South Bend Community School Corporation Board of Trustees violated the Open Door Law.

#### BACKGROUND

You are a member of the Board. In your complaint dated July 10, 2007, you allege five of the seven Board members met in a closed meeting without notice to the public on June 28. You allege the purpose of the meeting was to attack you. You were not provided notice of the meeting. One other Board member was invited to the meeting but did not attend because she believed the meeting was being conducted in violation of the ODL. The other five members of the Board were in attendance, as was the Superintendent.

The Board, by member Marcia Hummel, responded on July 11. Ms. Hummel admits to meeting with the Superintendent and two other Board members at approximately 9:00am on June 28. She indicates two other Board members arrived ten minutes later, and the meeting then lasted fifteen minutes. Ms. Hummel indicates the purpose of the meeting was not to attack you but to express “serious concerns” relating to the volatile behavior by another Board member during executive sessions of the Board. Ms. Hummel hoped the Superintendent could offer some guidance on the issue. I am assuming based on the facts the Board member they were discussing is you. Ms. Hummel further indicates an announcement was made during the July Board meeting to make the public aware that indeed five members “were present” at the same time in the Superintendent’s office.

## ANALYSIS

It is the intent of the ODL 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. I.C. §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. I.C. §5-14-1.5-3(a).

The Board is clearly a public agency under I.C. §5-14-1.5-2(a). A governing body means two or more individuals who are a public agency that is a board, a commission, an authority, a council, a committee, a body, or other entity and takes official action on public business. I.C. §5-14-1.5-2(b). A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include any social or chance gathering not intended to avoid this chapter. I.C. §5-14-1.5-2(c).

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 hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). An executive session may be held in only the instances listed in I.C. §5-14-1.5-6.1.

Here, there was a gathering of five of seven members of the Board. It is not my opinion the meeting was a chance or social gathering, as it is clear the meeting was planned and had a purpose. The question is whether the meeting was intended to take official action on public business.

“Official action” means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

I.C. §5-14-1.5-2 (d).

“Public business” means any function upon which the public agency is empowered or authorized to take official action. I.C. §5-14-1.5-2(e).

Official action is not limited to decision-making. Here, the members of the Board who met were doing so to discuss the actions of another Board member at executive sessions. They were certainly deliberating, if not also receiving information and making recommendations and perhaps even making decisions.

The public policy of the ODL is that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute. I.C. §5-14-1.5-1. Because I believe the outcome of such a meeting could directly affect the activity as well as make-up of the

Board, I find this meeting was intended to take official action, even if the members of the Board who attended did not believe they were taking official action.

#### CONCLUSION

For the foregoing reasons, I find that the South Bend Community School Corporation Board of Trustees violated the Open Door Law.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Marcia Hummel