

April 11, 2007

Stephanie Hoel  
614 North 4<sup>th</sup> Street  
Elwood, IN 46036

*Re: Formal Complaint 07-FC-73; Alleged Violation of the Open Door Law by the  
Elwood Community School Corporation*

Dear Ms. Hoel:

This is in response to your formal complaint alleging that the Elwood Community School Corporation (“School” or “School Board”) violated the Open Door Law by discussing the school reconfiguration matter in an executive session on February 8, 2007. I find that the School Board violated the Open Door Law.

#### BACKGROUND

You allege that the School Board met in an executive session on February 8, 2007 and discussed the upcoming decision concerning reconfiguration. You believe that all discussion and data collected should be thrown out because of this violation. The allegation of improper discussion is based on the memoranda of the executive session, which you enclosed with your complaint.

The School provided a response to your complaint. I enclose the letter from Mr. Thomas W. Austin, Superintendent. Superintendent Austin stated that in reviewing his notes of the meeting of February 8 and the memoranda, he did refer to the elementary grade level reconfiguration in response to a board member’s inquiry concerning when the public forums were to be conducted. His response was limited to the time, date and place for the forums. There was no presentation of data or discussion about issues associated with reconfiguration. The requested remedy exceeds the scope of the technical violation.

## 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). An executive session is a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. IC 5-14-1.5-2(f).

There are 13 enumerated instances for which an executive session may be held. *See* IC 5-14-1.5-6.1(b). Because the purposes for the Open Door Law are remedial, its provisions are to be liberally construed with the view of carrying out its policy. IC 5-14-1.5-1. Therefore, exceptions to open meetings, such as those set forth in IC 5-14-1.5-6.1(b), are to be narrowly construed.

There is no question that the executive session instances for which the School Board met on February 8 would not include discussions concerning reconfiguration of the elementary school. Superintendent Austin concedes that grade level reconfiguration was raised during the closed door session, by a board member who inquired about the timing of the public forums. The memoranda tend to reflect the extent of the discussion to be timing of the forums and the expected dates of a recommendation. This discussion, whether prompted by a question by a board member or not, was not appropriate in the executive session. This was at least a technical violation of the Open Door Law.

An action may be filed by any person in any court of competent jurisdiction to obtain a declaratory judgment, enjoin violations of the Open Door Law, or declare void any policy, decision, or final action taken at an executive session in violation of the Open Door Law. *See* IC 5-14-1.5-7(a). In determining whether to declare any policy, decision, or final action void, a court shall consider certain factors, among other relevant factors:

- The extent to which the violation:
- (A) affected the substance of the policy, decision, or final action;
  - (B) denied or impaired access to any meetings that the public had a right to observe and record; and
  - (C) prevented or impaired public knowledge or understanding of the public's business.

IC 5-14-1.5-7(d). This standard is often referred to as a “substantial compliance” standard. In other words, not all violations of the Open Door Law would result in a court finding that the action should be voided.

With the information before me, I am not convinced that the extent of the violation would merit voiding the actions taken to date. Nevertheless, I urge the School to adopt an effective program of compliance with the Open Door Law. I also suggest the very practical solution of

informing a member who raises questions outside of the proper purpose that such questions or comments will not be entertained during the closed door meeting, and why.

#### CONCLUSION

For the foregoing reasons, I find that the Elwood Community School Corporation violated the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Superintendent Thomas Austin