

February 4, 2008

Johnathan Sandlin  
c/o John Emry  
62 West Jefferson Street  
Franklin, Indiana 46131

*Re: Formal Complaint 08-FC-29; Alleged Violation of the Access to Public Records Act by the Switzerland County School Corporation*

Dear Mr. Sandlin:

This advisory opinion is in response to your formal complaint alleging the Switzerland County School Corporation ("School") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the School's response to your complaint is enclosed for your reference. It is my opinion the School has not violated the Access to Public Records Act.

#### BACKGROUND

You previously filed a complaint against the School on October 10, 2007, and I issued *Opinion of the Public Access Counselor 07-FC-314* in response. In your present complaint you allege the School has now provided you with most of the records you requested but has not yet provided you with records related to a Section 504 agreement. When you inquired about it, the School's attorney Edward Hearn indicated by letter dated November 28, 2007 that he would look into the matter. Hearing no response, you sent another letter to Mr. Hearn dated December 17. Hearing no response, you filed this complaint on January 4.

The School responded to your complaint by letter dated January 21 from Edward Hearn. Mr. Hearn contends that the School does not maintain the "504 plan" and believes it was discarded after the 2005-2006 school year since it was valid only for that year.

#### ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. §5-14-3-1. Any

person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The School is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the School during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The retention of public records is not addressed by the APRA but is instead separately addressed in Ind. Code 5-15. The issue of retention of records is best addressed by the Indiana Commission on Public Records, as it is outside the purview of this office. I will caution the School, though, to be mindful of established retention schedules for all public records, since certainly the intent of the APRA is frustrated when public records are not preserved according to approved schedules.

#### CONCLUSION

For the foregoing reasons, it is my opinion the School has not violated the APRA by denying you access to a record it does not maintain.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Edward Hearn, Johnson & Bell