



# STATE OF INDIANA

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March 3, 2010

Ms. Dare Hawes  
719 South Michigan Street  
Plymouth, IN 46563

*Re: Formal Complaint 10-FC-30; Alleged Violation of the Open Door Law by the Plymouth Community School Corporation*

Dear Ms. Hawes:

This advisory opinion is in response to your formal complaint alleging that the Board of the Plymouth Community School Corporation ("PCSC" or "School Board") violated the Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.* Enclosed is the response that PCSC sent to my office regarding your allegations.

## BACKGROUND

### I. Your Complaint.

In your complaint, you allege that PCSC violated the ODL by taking final action outside of a public meeting. The alleged final action consisted of the School Board's response to "an alleged criminal matter of computer tampering." You cite to two letters written by Superintendent Dan Tyree dated November 6, 2009, and December 9, 2009, as well as a press release issued on January 22, 2010, wherein Mr. Tyree referenced "the School Board," "the school," "Us," and "We." You allege that Mr. Tyree is referring to the PCSC School Board when he uses pronouns like "us" and "we." You further claim that "there is absolutely no record of this public School Board taking any 'official action' . . . or making any 'final action' decision at a public school board meeting." However, you claim that the above-referenced documents show that the PCSC board decided to terminate the investigation into the computer tampering issue, which you argue was "final action" within the meaning of the ODL.

You argue that the following excerpts from Mr. Tyree's letters support your position:

The School Board is looking at various options for putting this matter to rest once and for all. One of those options

involves engaging an independent expert.... (Letter dated November 6, 2009.)

Please take this letter as the School's response.... [T]he School is likely to go forward with this forensic analysis by an independent expert.... (Letter dated December 9, 2009.)

You acknowledge that the December 9<sup>th</sup> letter is “*only* the thoughts and work produce of Tyree as it is not copied to the School Board or to the PCS [sic] attorney.” You state that the School Board “had no discussion nor [sic] made any decisions IN PUBLIC about the ‘various options’ they were looking at, their desire to ‘go forward,’ or their ‘response’ -- despite Superintendent Tyree’s written assertions.”

You also cite to the following excerpts from a press release that Mr. Tyree read at the PCSC School Board’s January 21, 2010:

[W]e were ready to proceed with the investigation.... We have offered.... We offered....

The Plymouth Community School Board has acted in good faith to meet the requests of the Edison Family, their supporters, and advocates throughout the entirety of this matter....

We are now terminating the investigation and consider this case closed.

In providing these excerpts, you argue that “Superintendent Dan Tyree asserts in these documents that the [PCSC School Board] had knowledge of and authorized these actions, but according to the official record these matters were NEVER ever ‘received, deliberated, had [sic] recommendations upon them, etc.’ or were [sic] final actions by the board taken in ANY public meeting, in serious violation of Indiana’s Open Door Law.

## **II. PCSC’s Response.**

My office forwarded a copy of your complaint to PCSC. In response, PCSC’s attorney, Edward R. Ruiz, denies that PCSC violated the ODL. Mr. Ruiz states that, contrary to your representations in your complaint, you were not at the January 21, 2010 School Board meeting and, consequently, could not hear Mr. Tyree read the press release as you allege. Mr. Ruiz argues that the ODL does not apply in this matter because Mr. Tyree is not a “public agency” within the meaning of the ODL. He further argues that even if the School Board “participated in conjunction with Tyree, no public action was ever even initiated that would require a public hearing.”

Mr. Ruiz claims that the investigation that you refer to in your complaint “is not nor ever was an action undertaken by the school corporation or its board.” Rather, Mr. Tyree acted on his own in response to your complaints to the School Board about the “computer tampering” issue. Mr. Ruiz explains:

In an effort to appease Ms. Hawes and ultimately put to rest her baseless allegations, Tyree offered to get together with [a teacher who resigned as a result of the computer tampering situation], a citizen from the community, and himself to pick an independent third party computer expert to review the teacher's computer history. This offer was made to ensure all findings would be unbiased and neutral. They would then make public their findings.

Tyree informed the school board only to the extent as to why he was seeking an investigation, to clear the air. His actions, however, are clearly within the scope of his position as superintendent. He therefore did not have approach [sic] the board for their [sic] approval as, at this time, nothing had yet been put in place to require their involvement.

Mr. Ruiz further states that Mr. Tyree located a citizen to help find a computer expert. He then made several attempts to gain the cooperation of the former teacher, but the teacher did not respond. As a result, Mr. Tyree chose to withdraw his offer.

Mr. Ruiz states that his offers were neither discussed nor debated by the school board because doing so was unnecessary. He maintains that Mr. Tyree "made an offer that was conducted and controlled solely by him and well within his abilities as school superintendent."

Mr. Ruiz also counters that the School Board took no action on these matters. He explains:

The offer made by Superintendent Tyree was ultimately withdrawn due to the lack of cooperation on the part of the teacher and budgetary concerns. It was a failure of the parties to meet a mutual agreement to initiate an investigation. Had that agreement been reached, Superintendent Tyree would have been required to *then* approach the school board to request funding, which would create the need for a public meeting to discuss the issues at hand. Only at this point would a public meeting be required per I.C. 5-14-5 [sic]. However, the process never made it to this point and I.C. 5-14-5 [sic] is inapplicable here.

## ANALYSIS

The General Assembly enacted the ODL intending 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. Accordingly, 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). PCSC does not dispute that its School Board is a “governing body” within the meaning of the ODL.

Here, you allege that the School Board took action outside of a public meeting. Under the ODL, a “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. IC 5-14-1.5-2(g). A final action must be taken at a meeting open to the public. IC 5-14-1.5-6.1(c).

It is important to note that the ODL does not require a governing body to hold a public meeting every time its members engage in some sort of official action. Public meetings are only necessary if the governing body engages in official action while in a meeting, which is a “gathering of the majority of the governing body.” I.C. § 5-14-1.5-2(c). Thus, even if the School Board received information, deliberated, made recommendations, established policy, or made decisions, it did not violate the ODL unless it did so during a gathering of a majority of its members. As I have noted, however, if the School Board actually *voted* on a course of action, that would have constituted final action that should have occurred at a public meeting under subsection 6.1(c) of the ODL.

The School Board denies that it met to engage in any official action on the subject of Mr. Tyree’s “offer” to investigate the alleged computer tampering issue. Rather, the School Board maintains that Mr. Tyree, on his own initiative, conceived of and communicated the offer and -- when the former teacher did not participate -- withdrew the offer without the participation of the School Board. Even if the School Board did participate in Mr. Tyree’s efforts, doing so did not violate the ODL unless the School Board either (1) held a meeting of a majority of its members to discuss that issue, or (2) voted on some aspect of the issue. The School Board denies that it ever met or took any vote on these matters.

I understand that the School Board’s position might seem to contradict Mr. Tyree’s letters and press release. The School Board maintains that Mr. Tyree’s statements do not indicate that the School Board was involved in the process. Rather, the School Board argues that Mr. Tyree’s references to “we” and other inclusive language referred to “the ‘greater good’ for the PCSC and its community.”

The Public Access Counselor does not sit as a finder of fact in matters where the parties dispute the relevant facts. Therefore, I express no opinion regarding the factual matters upon which you and the School Board disagree (i.e., whether or not the School Board met in secret and/or voted on these matters). However, I offer the following legal analysis regarding each party's position: Based on the aforementioned legal authority, it is my opinion that if the School Board neither met nor voted upon Mr. Tyree's "offer" and subsequent withdrawal of his "offer," the School Board did not violate the ODL. If, however, a majority of the School Board met to engage in official action related to this issue or if the School Board voted on a related aspect thereof, the School Board violated the ODL because either such action should have occurred in a meeting that was open to the public.

If you believe that the School Board continues to violate the ODL following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to I.C. § 5-14-1.5-7(a), which include filing an action in court to obtain a declaratory judgment; to enjoin continuing, threatened, or future violations of this chapter; or declaring any policy, decision, or final action void.

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the School Board neither met nor voted on the issue of Mr. Tyree's "offer" and subsequent withdrawal of the same, the School Board did not violate the ODL.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Edward R. Ruiz, Morris & Ruiz, P.C.