



# STATE OF INDIANA

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June 26, 2012

Jill C. Vaughan  
3344 Breckenridge Drive  
Indianapolis, Indiana 46228

*Re: Formal Complaint 12-FC-141; Alleged Violation of the Access to Public Records Act by the Paramount School of Excellence*

Dear Ms. Vaughan:

This advisory opinion is in response to your formal complaint alleging the Paramount School of Excellent ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Cathleen Nevin, Chairperson, responded on behalf of the School. Her response is enclosed for your reference.

## BACKGROUND

On May 9, 2012, you submitted a request in writing to the School for the following records:

- Account verification for purchase of ping pong tables
- Receipts and account verification for purchase of Pleo dino robots
- Receipts and account verification for purchase of heart monitors
- Receipts and account verification for purchase of treadmill in Title 1 room
- Receipts and account verification for purchase of Everyday Mathematics Curriculum
- A current list of ALL grants to the School from 2010-2012
- School Board meeting minutes from April 2012
- School Board draft meeting minutes from May 2012

In the past, you allege that you have received draft and board meeting minutes within twenty-four (24) to forty-eight (48) hours after submitting the request. You note that the next Board meeting is quickly approaching and you have yet to have been provided with the May 2012 draft minutes or been informed when the remainder of the records will be disclosed. You believe that a reasonable period of time has passed for the School to produce the records, especially in regards to the meeting and draft minutes.

In response to your formal complaint, Ms. Nevin advised that you request records from the School on a fairly regular basis and a sincere effort is made to respond in a timely and reasonable manner. On May 9, 2012, the School responded to your request in writing and acknowledged its receipt. On June 12, 2012, you were informed that all records responsive to your request were now available. Ms. Nevin has been advised that the School's bookkeeper has been out of the office due to a medical condition, and her absence delayed the School's ability to identify the requested documents that were responsive to your request.

## ANALYSIS

The public policy of the APRA states that "(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." *See* I.C. § 5-14-3-1. Under Indiana law, a charter school is a public school. *See* I.C. § 20-24-4-1(4). Among other requirements, a charter school's charter must specify that records of the charter school are subject to inspection and copying to the same extent that records of a public school are subject to inspection and copying under the APRA and that meetings of the school's governing body are subject to the requirements of the Open Door Law ("ODL"). *See* I.C. § 20-24-4-1(13), (15). Consequently, the School constitutes a public agency for the purposes of Indiana's Public Access Laws. *See* I.C. § 5-14-3-2.1; I.C. § 5-14-1.5-2(a). Accordingly, any person has the right to inspect and copy the Schools' public records during regular business hours unless the public records are exempted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the School responded to your written request within the timelines provided by Section 9 of the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or



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redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

The ODL provides the following regarding memoranda:

(b) As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
  - (2) The members of the governing body recorded as either present or absent.
  - (3) The general substance of all matters proposed, discussed, or decided.
  - (4) A record of all votes taken, by individual members if there is a roll call.
  - (5) Any additional information required under IC 5-1.5-2-2.5.
- (c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying. I.C. § 5-14-1.5-4.

Memoranda are to be made available within a "reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings." *See* I.C. § 5-14-1.5-4(c). Meeting minutes are not required under the ODL, but if created, must be available for public inspection and copying. *Id.* Further, "draft minutes" are considered to be a public record pursuant to the APRA. *See Opinions of the Public Access Counselor 98-FC-8; 05-FC-23; 10-FC-264; and 12-FC-29*.

As to your request for the draft and meeting minutes of the School Board, you have provided, and the School has not challenged your assertion, that in previous requests made for such records, they have been produced in twenty-four (24) to forty-eight (48) hours. Here, while I understand the affect the bookkeeper's absence would have on the School's ability to produce accounting records, I do not believe the School has met its

burden to show that it produced the minutes and draft minutes in a reasonable period of time. At the time your formal complaint was filed, approximately twenty-nine days had passed since your original request for records was filed with the School. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172.* Although the APRA would not require, I would encourage all public agencies to communicate with a requestor should an unexpected incident arise that would delay the production of records. As the School on June 12, 2012 made available all records that were responsive to your request, it is my opinion that the School, except as noted above, complied with the requirements of the APRA in responding to your request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the School failed to produce the Board's meeting and draft minutes in a reasonable period of time. As to all other records, it is my opinion that the School complied with the requirements of the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage  
Public Access Counselor

cc: Cathleen Nevin