



STATE OF INDIANA

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July 9, 2012

Donna J. Watson
5051 Main Street
Amo, Indiana 46103

*Re: Formal Complaint 12-FC-144; Alleged Violation of the Open Door Law by
the Mill Creek Community School Corporation*

Dear Ms. Watson:

This advisory opinion is in response to your formal complaint alleging the Mill Creek Community School Corporation ("School") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Our office forwarded a copy of your formal complaint to School Board President Maralee Edmondson. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you provide that on May 15, 2012, five students from Cascade High School were suspended for participating in a senior prank. In response to the School's actions, several students held a sit-in to protest and an employee of the school was terminated due to the Superintendent "swore she was on tape letting the kids in" to perform the prank. You allege that the students gained access to the School with the permission of a School Board Member, who had a key to the facility.

On May 16, 2012, you allege that several board members appeared in the School's administration building and were in contact with one other member of the School Board by telephone. The School decided to hold an emergency executive session that evening. It later cancelled the meeting after the School determined it failed to provide proper notice under the ODL.

On May 21, 2012, you learned that the School was having an executive session. You are not aware of how long the notice was posted. The notice for the May 21, 2012 executive session was provided to you upon request. It was after the May 21, 2012 executive session that a school employee stated that she had been suspended for five days, may no longer work at Cascade High School, and the disciplinary action will be on her permanent record. You allege that the School is violating the ODL by making decisions outside of public meeting and you want the School Board to understand that

executive session are not to be held simply because the School Board does not want to reach a decision in public.

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. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, 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. *See* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Exceptions listed pursuant to the statute include receiving information about and interviewing prospective employees to discussing the job performance evaluation of an individual employee. *See* I.C. § 5-14-1.5-6.1(b)(5); § 5-14-1.5-6.1(b)(9). Notice of an executive session must be given 48 hours in advance of every session, excluding nights and weekend, and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). This requires that the notice recite the language of the statute and the citation to the specific instance; hence, “To discuss a job performance evaluation of an individual employee, pursuant to I.C. § 5-14-1.5-6.1(b)(9)” would satisfy the requirements of an executive session notice. *See Opinions of the Public Access Counselor 05-FC-233, 07-FC-64; 08-FC-196; and 11-FC-39.*

The notice for the executive session held by the School on May 21, 2012 that you submitted with your formal complaint provides the following:

**“Mill Creek Community School Corporation
Board of Trustees
Notice of Executive Session
May 21, 2012
7:00 p.m.**

The Board of School Trustees of the Mill Creek Community School Corporation will meet in executive session at 7:00 p.m. on May 21, 2012 in the board room of the Administrative Services Center located at 6631 S CR 200 W, Clayton, Indiana for the following purpose(s) in accordance with I.C. 5-14-1.5-6.1(b)(2)(C), 6(A)(B), and 9.

For discussion of strategy with respect to the implementation of security systems

With respect to any individual over whom the governing body has jurisdiction;

- A. To receive information concerning the individual's alleged misconduct;
- B. To discuss, prior to any determination, that individual's status as an employee, student, or independent contractor who is a physician; or a school bus driver.

To discuss a job performance evaluation of individual employees.”

The notice provided by the School would abide by the guidelines for notice that are required for an executive session. However, without the benefit of a response from the School, I am unaware if the School posted the notice of the executive session more than forty-eight hours, minus holidays and weekends, prior to the meeting. As such, it is my opinion that the School has failed to meet its burden to demonstrate that the notice was posted in compliance with the ODL.

“Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action may not be taken during an executive session. The Indiana Court of Appeals has said, though, that the governing body may make decisions in executive session so long as the final action is taken at a public meeting. *Baker v. Town of Middlebury*, 753 N.E.2d 67, 71 (Ind. Ct. App. 2001).

Without the benefit of a response from the School, it is difficult for me to issue an opinion as to whether it complied with the requirements of the ODL, specifically I.C. § 5-14-1.5-6.1(b) as to the May 21, 2012 executive session. The burden is on the School to demonstrate that it complied with the requirements of law. For example, if the School took final action at the executive session or discussed issues beyond those found in the notice, it would have acted contrary to the ODL. Further, if the School had already made a determination regarding a student or employee prior to the executive session, it would not have been allowed to meet pursuant to I.C. § 5-14-1.5-6.1(b)(6)(B). From what has been provided, it is my opinion that the School has failed to meet its burden to show that it complied with the requirements of the ODL.

CONCLUSION

Based on the foregoing, it is my opinion that the School has failed to meet its burden to demonstrate that it complied with the requirements of the ODL. As such, it is my opinion that the School acted contrary to the requirements of ODL as to its May 21, 2012 executive session.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: Maralee Edmondson