

March 27, 2001

Mr. Michael Musa
9364 Promontory Circle
Indianapolis, IN 46236

Re: *Advisory Opinion 01-FC-17*; Alleged Denial of Access to Public Records by the Metropolitan School District of Lawrence Township, Marion County.

Dear Mr. Musa:

This is in response to your formal complaint, which was received on March 9, 2001. You have alleged that the Metropolitan School District of Lawrence Township ("School District") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you requested access to various documents from the School District but that you were denied access to a signed copy of a teacher's contract and were advised that some of the other documents requested did not exist. Mr. David Day, attorney for the School District, responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that you were entitled to a signed copy of the teacher's contract under Indiana Code section 20-1.6-4-3(b) and that School District improperly denied you access to it. The School District is not required, however, to produce documents that do not exist or that are not in their possession so the failure to produce the other documents you requested did not constitute denials under the APRA.

BACKGROUND

According to your complaint, you made a written request to the School District in February, 2001 for copies of a variety of documents concerning a particular teacher, including:

1. A copy of the teacher's employment contract and any agreements between the teacher and the School District;
2. Various financial records concerning the use of School District facilities;
3. Fee schedules for the use of School District facilities;
4. Financial Records for the Lawrence Central Performing Arts Association (LCPAA) and any agreements between the LCPAA and the School District;
5. Documents used that deal with faculty conduct or discipline, the determination of "other good and just cause" as used in Indiana Code section 20-6.1-4-10(7) and the determination of grounds for canceling an indefinite contract; and

6. Information concerning the investigation of allegations you raised against the teacher, status of any formal charges, and information concerning any final disciplinary action taken against the teacher.

On March 5, 2001, Assistant Superintendent Brad Eschelmann responded in writing to your request. The School District provided information concerning the teacher's employment arrangement, but denied you a copy of the teacher's signed contract on the basis that they had discretion not to disclose it under Indiana Code section 5-14-3-4(b)(8). The School District did provide you with a copy of a teacher's job description, an unsigned copy of the standard teacher contract and two memoranda concerning the prohibition on the use of school owned equipment for non-school or private functions. After receiving this response, you filed your formal complaint with this Office.

In response to your complaint, Mr. Day stated that he had advised the School District that the signed copy of the teacher's contract was not required to be disclosed under Indiana Code section 5-14-3-4(b)(8). After a conversation with this Office, however, Mr. Day agreed that under Indiana Code section 20-6.1-4-3(b) you were in fact entitled to a signed copy of the contract. According to his letter, you should have already received your copy. With respect to any of the items requested that were not produced, Mr. Day stated that since the School District does not have any records responsive to those requests, it is his position that the School District did not inappropriately deny you access to them under the APRA.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The School District is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the School District during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). There is nothing in the APRA that requires a public agency to create a new record in order to respond to a request.

According to your complaint, you requested a copy of the signed contract for a particular teacher. You were denied access to the signed contract under the authority of the APRA, specifically Indiana Code section 5-14-3-4(b)(8), which provides public agencies with discretion to disclose or not disclose information from public employees' personnel files.

The APRA is a statute of general application that applies to most public records. In some cases, the General Assembly has addressed the question of access to public records in more specific statutes.

Under the rules of statutory construction, "specific statutory provisions take priority over general statutory provisions." *White v. Indiana Parole Board*, 713 N.E.2d 327, *329 (Ind. App. 1999), citing *Ezzell v. State*, 246 Ind. 268, 271, 205 N.E.2d 145, 146 (Ind.1965).

With respect to a signed copy of a teacher's contract, there is a statute more specific than the APRA addressing your right to access a photocopy. It is my opinion that the signed contract for a public school teacher must be disclosed upon request. Under Indiana Code section 20-6.1-4-3(b),

(e)ach governing body shall provide the blank contract forms, carefully worded by the state superintendent, and shall have them signed. *These contracts are public records open to inspection by the people of each school corporation.*

[Emphasis added.] The School District should have provided you with a copy of the teacher's signed contract upon request and the failure to do so was an improper denial of access under Indiana Code section 20-6.1-4-3(b). As noted above, the School District reconsidered its position on this matter and did provide a copy of the signed contract to you.

The final question raised by your complaint was whether you were denied access to other documents you requested.¹ You state that you were denied access to other public records when the School District informed you that they did not have any records responsive to your requests. The School District, in my opinion, did not deny you access to these records under the APRA. The APRA governs access to the public records of a public agency; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.

CONCLUSION

It is my opinion that the Metropolitan School District of Lawrence Township improperly denied you access under Indiana Code section 20-6.1-4-3(b) by failing to provide you with a copy of a signed teacher's contract upon request. The failure to produce records that do not exist or not maintained by the School District, however, was not a denial of access under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. David Day, Attorney

MSD of Lawrence Township

¹I agree with Mr. Day that your complaint very general with respect to why you believe you were denied access by the School District. For the purposes of addressing your complaint concerning the public records other than the signed teacher's contract, I have assumed that you have considered the failure to produce public records, other than the signed teacher contract, a denial under the APRA.