

October 3, 2001

Mr. Kevin G. Karagory  
1205 Riley Ct.  
LaPorte, IN 46350-3035

*Re: Advisory Opinion 01-FC-56; Alleged Denial of Access to Public Records by the LaPorte Community School Corporation.*

Dear Mr. Karagory:

This is in response to your formal complaint, which was received on September 11, 2001. You have alleged that the LaPorte Community School Corporation ("School Corporation") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the School Corporation denied you access to draft meeting minutes under the APRA because you did not receive the public records you requested immediately. Mr. Gary J. Schoof, Attorney for the School Corporation responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the School Corporation did not violate the APRA when a copy of draft meeting minutes were not produced upon request as there is no evidence that these draft minutes had been compiled, prepared or completed as of the date of your request.

## BACKGROUND

According to your complaint, on September 6, 2001, you hand-delivered a public records request to the School Corporation requesting copies of the Board meeting minutes of Tuesday, September 4, 2001, in draft or final form. You admit that the School Corporation did respond by memorandum to your request within twenty-four (24) hours after receiving it advising you that the records would be produced within a reasonable period of time. You considered this to be a denial of access under the APRA because the documents were or should have been readily available for production upon your request. You believe that since the Board meets every two (2) weeks, time is of the essence in providing this information so that you could review it prior to the next meeting. You did not indicate why you believed these draft minutes had already been prepared, only that to the best of your knowledge, the minutes were available on September 6th or 7th, the dates you visited the School Corporation offices. You have asked what is a reasonable time for production under these circumstances as part of the formal complaint you filed with this Office.

In his response, Mr. Schoof claims that the School Corporation did not violate the APRA with respect to your September 6th public records request. He notes that under the APRA, he advised the School Corporation to respond to your request within twenty-four (24) hours, which was done, and to produce the requested public records within a reasonable period of time. Mr. Schoof indicated that once the meeting minutes were compiled, you were contacted and advised that they were ready for you to pick

up. Although not mentioned in his response to your complaint, I contacted Mr. Schoof about the actual date of production. Unfortunately, because of changes in staff at the School Corporation offices, he was unable to verify the date that the minutes were made available to you, but could state that you had in fact received them.<sup>1</sup>

## 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." Ind. Code § 5-14-3-1. The School Corporation 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 Corporation 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).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. A public agency is required to make a response to a written request that has been hand-delivered within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(a). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

The APRA does not set any time periods for producing public records, merely for responding to the request. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions. The determination of what is a reasonable time for production therefore, depends upon the public records requested.

In this case, the issue concerns draft meeting minutes. The Open Door Law, which governs meetings of the School Board, does not require that meeting minutes be prepared or a time period under which they must be made available for inspection and copying. See, Ind. Code §5-14-1.5-4(c). If, however, meeting minutes had been prepared at the time of your request, it is my opinion that these draft minutes are public records that should have and could have been disclosed upon request.

I agree with you that the timely release of meeting minutes is important for the public's understanding of School Corporation business, but I also do not find it improbable that draft meeting minutes would not have been compiled, drafted or completed just two (2) days after the meeting took place. You state in your complaint that you believe that these draft minutes had been prepared as of the date of your request, or the date following. Mr. Schoof's response indicates that the draft minutes had not been compiled as of the date of your request. Without firm evidence that the draft minutes had in fact been prepared when you made your request and because the School Corporation responded to your request, I cannot find that the School Corporation's failure to produce them upon your demand violated the APRA. For these

reasons, it is my opinion that School Corporation's failure to produce the draft meeting minutes from their September 4th Board meeting upon your request of September 6th did not violate the APRA. The School Corporation has since produced these draft meeting minutes to you.

## CONCLUSION

It is my opinion that the LaPorte Community School Corporation did not violate the Access to Public Records Act by failing to produce draft meeting minutes upon demand as there is no evidence that as of the time of your request these draft minutes had been prepared, compiled or completed.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Gary J. Schoof, Attorney for LCSC

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<sup>1</sup> - According to School Corporation staff, you also made a request for the September 18th meeting minutes and those were picked up on your behalf on September 21, 2001. html>