

May 2, 2008

Jena Schmidt  
Charles A. Beard Memorial Schools  
345 North Adams Street  
Knightstown, Indiana 46148

*Re: Your informal inquiry*

Dear Ms. Schmidt:

This is in response to your informal inquiry received April 29, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write to inquire about records previously withheld from disclosure pursuant to a discretionary exception found in I.C. § 5-14-3-4(b). You indicate the records were withheld from disclosure by the superintendent, and the decision to withhold the records may or may not have been voted upon by the school board. You indicate that now a newly elected board member has asked to review the records in un-redacted form. You inquire whether the decision to release the records falls to the new administration or requires a vote from the board. You further inquire what the procedure is to address the issue if a vote must be made by the board. Finally, you inquire how this issue is reconciled with the Indiana School Boards Association Code of Ethics, which indicates a school board member has no legal status to bind the board outside of meetings.

The questions you ask generally relate to the roles and responsibilities of the school board versus the administration, namely the superintendent, of a school corporation. The relationship between the two and the roles and responsibilities of each are certainly outside the purview of this office and are not addressed by the Access to Public Records Act or the Open Door Law. I would recommend you seek advice regarding the matter from the Indiana School Boards Association.

Regarding the issue of nondisclosure of the records, the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) provides two general categories of records which may or must be withheld from disclosure upon request for access. I.C. § 5-14-3-4(a) contains a list of the mandatory exceptions to disclosure, or the confidential records. I.C. § 5-14-3-4(b) contains a list of records which are public records but may be withheld from disclosure at the discretion of the agency. When the school corporation or school board receives a request, a decision must be

made whether records which fall under the discretionary exceptions will be released. It is my opinion that generally when the board receives a request for records, it must be able to review the records in question to make a decision whether the records will be withheld from disclosure.

My opinion is based on the public policy of the APRA, which states, "(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." I.C. § 5-14-3-1. I cannot imagine how a board could fulfill this routine duty without knowledge of the content of the records it has been asked to disclose. This assumes, however, that the records requested of the board are records the board has the authority to release. In other words, the question is whether the records are public records of the board, or any writing, paper, report, study, map, photograph, book, card, tape recording or other material created, received, retained, maintained or filed by or with the board. I.C. § 5-14-3-2(m). In my opinion, the records of a school corporation generally fall under the jurisdiction of the board and as such would be public records of the board. As I previously indicated, though, the specific roles and responsibilities of the board versus the administration are outside the purview of this office.

Please do not hesitate to contact us if we can provide further assistance.

Best regards,



Heather Willis Neal  
Public Access Counselor