

January 2, 2008

Frank Rizzo  
2845 45<sup>th</sup> Street  
Highland, Indiana 46322

*Re: Formal Complaint 08-FC-18; Alleged Violation of the Open Door Law by the  
Hanover Community School Corporation*

Dear Mr. Rizzo:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation (“Corporation”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by taking final action on administrative contracts outside of a public meeting and by taking final action on policies by reference to agenda item numbers only. It is my opinion the Corporation violated the Open Door Law by taking final action on agenda items and in doing so referring to the items only by agenda number or item. It is my opinion the Corporation did not violate the Open Door Law by taking final action relating to administrative contract roll-overs in a non-public meeting.

#### BACKGROUND

In your complaint you allege the Corporation’s Board at the December 17, 2007 meeting voted on the roll-over of administrative contracts but had already taken final action in an executive session. You allege that based on the information provided at the meeting you were unable to determine which contracts were to be rolled over and which were not. You claim that if you could not determine such, neither could the Board members who were voting. As such, you allege the Board must have made a decision regarding the vote prior to the meeting. You further allege that at the meeting the Board voted on several items by listing only the agenda item numbers. You filed this complaint on December 27. You allege that you intend to file legal action regarding this matter within thirty days. As such, your complaint was granted priority status pursuant to 62 IAC 1-1-3.

The Corporation responded to your complaint by letter dated January 2 from attorney Barbra Stooksbury. Ms. Stooksbury contends the Corporation did not take final action on any administrative contracts at the December 17 meeting. The item about which you filed your complaint is Section IX of the agenda: Approval of Personnel Report/Recommendations. The

Corporation's accrediting agent mandates that only the superintendent evaluates administrators. At the December 17 meeting, the Board voted to delegate to the superintendent the duty to notify administrators whose contracts will not be rolled over for an additional year.

Regarding your allegation that the Board took final action on items referred to only by agenda item number, Ms. Stooksbury contends that the relevant documentation regarding each item was available in the "board packet" and was available to the public upon request. Ms. Stooksbury submits that the provision of the ODL indicating a final action adopted by reference to agenda number alone is void (See I.C. §5-14-1.5-4(a)) should not be so strictly construed. She claims the intent of the ODL was carried out because the information was available for review prior to the meeting and because these policies were addressed at the November meeting.

### ANALYSIS

It is the intent of the Open Door Law 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. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, 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. I.C. §5-14-1.5-3(a).

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c).

The first issue you raise is whether the Corporation violated the ODL when the Board took final action related to administrative contracts. Ms. Stooksbury contends the Corporation did not take final action on any administrative contracts at the December 17 meeting. The item about which you filed your complaint is Section IX of the agenda: Approval of Personnel Report/Recommendations. The Corporation's accrediting agent mandates that only the superintendent evaluates administrators (the Board only evaluates the superintendent). At the December 17 meeting, the Board voted to delegate to the superintendent the duty to notify administrators whose contracts will not be rolled over for an additional year. The determination as to which contracts would be rolled over would be made by the superintendent, as I understand it. Based on this explanation and the lack of any evidence a secret meeting took place, it is my opinion the Board did not take final action prior to the meeting but instead voted at the December 17 meeting to delegate to the superintendent authority that the accrediting agency requires the superintendent to exercise.

The second issue you raise is whether the Corporation violated the ODL when it voted on several items and referred to those items only by agenda numbers. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void. I.C. §5-14-1.5-4(a). Here, the draft minutes indicate one Board member moved to approve the eighteen policies listed except for #3. The motion was seconded and unanimously carried. It is my understanding the Board did not specifically refer to the substance of the items but instead only referred to the items by agenda number. Ms. Stooksbury contends that the statute must not be construed so strictly. This issue has been addressed by this office in the past, both by former

Counselor Davis in *Opinion of the Public Access Counselor 06-FC-211* and by me in *Opinion of the Public Access Counselor 07-FC-354*. Following both of those opinions, I continue to believe the law is straightforward on this issue. If the Board took final action (i.e. voted) on the proposed policy changes and referred to the items only by agenda number or item, the final action is void.

To clarify something Ms. Stooksbury addressed, I point to my opinion in *Opinion of the Public Access Counselor 07-FC-354*. Ms. Stooksbury interpreted my indication that the final action may be void as an indication that the public access counselor has discretion in determining whether an action is void under I.C. §5-14-1.5-4(a). Let me clarify that the public access counselor has no authority to declare the action void. I used the term “may be” rather than “is” because I could not determine from the complaint whether final action was actually taken during the meeting.

### CONCLUSION

For the foregoing reasons, it is my opinion the Corporation violated the Open Door Law by taking final action on agenda items and in doing so referring to the items only by agenda number or item. It is my opinion the Corporation did not violate the Open Door Law by taking final action relating to administrative contract roll-overs in a non-public meeting.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Dr. Michael Livovich, Superintendent of Schools, Hanover Community School Corporation  
Barbra Stooksbury, Bose McKinney & Evans LLP