

February 22, 2005

Diana Ireland
221 E. Sherman Street
P.O. Box 258
Sweetser, Indiana 46987

*Re: Formal Complaint 05-FC-20; Alleged Violation of the Open Door Law by the
Marion Community Schools Board of School Trustees*

Dear Ms. Ireland:

This is in response to your formal complaint alleging that the Marion Community Schools Board of School Trustees (“School Board”) violated the Open Door Law (“ODL”) by failing to post notice of an executive session. I find that the School Board did not violate the Open Door Law.

BACKGROUND

You state in your formal complaint that on January 12, 2005, the School Board voted in a public meeting to approve the Superintendent’s recommendation to, among other recommendations, terminate you from your secretarial position with the school corporation. You also allege that no discussion was held by the School Board members prior to taking a vote on the matter, which was one of several contained in an agenda item titled “Bargaining Unit/Classified Personnel Report.”

You believe that the School Board met in executive session prior to the January 12, 2005 public meeting. The executive session, you believe, was pertaining to you and was “to discuss, before a determination, the individual’s status as an employee,” as well as to discuss “initiation of litigation or litigation that is either pending or has been threatened specifically in writing.” You admit that through your counsel, you had provided notice that you were contemplating a lawsuit in regard to your suspension and termination. You claim that the School Board did not provide notice of an executive session.

I sent a copy of your formal complaint, filed on January 24, 2005, to the School Board. I received a written response from the School Board's attorney Josef Musser. I enclose a copy of his response for your reference. In its response, the School Board states that it did convene an executive session on January 12 at 5:00 p.m. The School Board enclosed a copy of the notice and the memoranda of the executive session. According to the School Board, this executive session was to discuss a particular grievance filed by the Marion Teachers Association, not relating at all to your threatened litigation or to your termination. Further, the School Board denies that it met outside the January 12 public meeting with respect to any issue of your employment.

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. The Open Door Law's provisions for open meetings are to be liberally construed, and any exceptions narrowly construed. Ind.Code 5-14-1.5-1. Accordingly, 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. IC 5-14-1.5-3(a). The School Board is a governing body for purposes of the Open Door Law. IC 5-14-1.5-2(b).

One exception to the requirement that meetings be conducted in public is called an executive session. A governing body may meet in executive session for any of the purposes stated in IC 5-14-1.5-6.1(b). An executive session is a meeting from which the public may be excluded. IC 5-14-1.5-2(f).

Notice must be given of an executive session at least 48 hours prior to the executive session, excluding Saturdays, Sundays, and legal holidays. The notice must contain the date, time and place of the meeting. IC 5-14-1.5-5(a). Also, the notice must state the subject matter by specific reference to the enumerated instance or instances for which the governing body may meet in executive session. IC 5-14-1.5-6.1(d).

You have alleged that the action that was taken in the public meeting on your termination was preceded by an executive session, which was undertaken without the requisite notice. You do not specify upon what evidence you base your belief. However, I note that the School Board supplied me with a notice and memoranda for an executive session that occurred at 5:00 p.m. on January 12, the same date as the public meeting. However, this executive session did not involve any matters regarding your employment. Further, the School Board attorney assured me that at no time did the School Board meet in executive session or otherwise concerning your termination prior to the January 12, 6:00 p.m. meeting. He stated that the School Board's action without discussion on various employment-related matters recommended by the Superintendent did not support an inference that the School Board had already taken official action on these matters. Rather, the School Board's action raises an equally compelling inference that the recommendations were well within the discretion of the Superintendent with regard to staffing matters.

CONCLUSION

For the foregoing reasons, I find that the Marion Community Schools Board of School Trustees did not violate the Open Door Law.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Josef Musser