



STATE OF INDIANA

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February 2, 2011

Ms. Claudia G. Benyon
1035 Arroyo Rd.
Greenwood, IN 46143

Re: Formal Complaint 11-FC-08; Alleged Violation of the Access to Public Records Act by the Clark-Pleasant Community School Corporation

Dear Ms. Benyon:

This advisory opinion is in response to your formal complaint alleging the Clark-Pleasant Community School Corporation ("Clark-Pleasant") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* Clark-Pleasant's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on December 20, 2010, you requested "copies of all documents pertaining to [you] including but not limited to documents used in support of the Sept. 18, 2009 and May 17, 2010 letters of reprimand from Shelley Gies and Terry Thompson." In response to your request, Clark-Pleasant informed you that you were free to view your personnel folder, but you note that "no materials can be placed in [your] file without [your] signing them." On October 11, 2010, you met with Principal Shelley Gies and "she had a huge notebook in front of her" at that time. You claim she said, "This [referring to the notebook] is stuff I have collected over the past several years. There are some things in here I want to talk about." You want access to the notebook's contents because you believe they form the basis of the letter of reprimand dated September 18, 2009. In that letter, Ms. Gies cites to incidents from 2006, 2008, and 2009 and to meetings in which you "supposedly exhibited unprofessional demeanor...." You note that according to your contract, a teacher shall receive a copy of any materials that are to be placed in her personnel file, and that no materials may be used in the discipline or evaluation of a teacher unless the teacher has previously seen a copy of the materials.

Attorney Charles R. Rubright responded to your complaint on behalf of Clark-Pleasant. Initially, he argues that the public access counselor has no authority to opine on

issues concerning the Collective Bargaining Agreement (“CBA”) between Clark-Pleasant and the teachers it employs, although he denies that any such violation occurred. With respect to alleged violations of the APRA, Mr. Rubright claims that Clark-Pleasant complied with the APRA by granting you access to your personnel file. He argues, however, that your request for “all documents pertaining to [you]” was not reasonably particular because such request would require Clark-Pleasant to search through all of the documents that it maintains. He also argues that the APRA does not require a public agency to make copies at its expense and forward those copies to a requester at no charge. Rather, he maintains that Clark-Pleasant fulfilled its obligations under the APRA by making responsive records available to you, and notes that you reviewed your personnel information in person on January 4, 2011.

Mr. Rubright also notes that your representative contacted Clark-Pleasant and requested copies of your “old evaluations.” Clark-Pleasant granted that request, and you picked up copies of those records from Clark-Pleasant’s Office of the Human Resources Director on January 21, 2011.

ANALYSIS

The public policy of the APRA 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. Clark-Pleasant is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy Clark-Pleasant’s public records during regular business hours unless the public records are excepted from disclosure under the APRA. I.C. § 5-14-3-3(a).

To the extent that your complaint alleges violations of the CBA between you and Clark-Pleasant, I do not have the authority to opine on contractual disputes or other legal matters beyond the scope of the public access laws. *See* I.C. § 5-14-4-10. Consequently, the following analysis is confined only to those portions of your complaint alleging violations of the APRA.

With regard to your request for records pertaining to your employment with Clark-Pleasant, Mr. Rubright is correct that several of my public access counselor predecessors and I have opined that the APRA does not require public agencies to search through records -- electronically or manually -- to determine what records might contain information responsive to a request. *See Ops. of the Public Access Counselor 10-FC-57; 08-FC-124; 04-FC-38.* The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176.* Consequently, it is my opinion that Clark-Pleasant did not violate the APRA when it responded to your request for “all documents

pertaining to [you]” by providing you with access to your personnel file but refusing to search through all Clark-Pleasant records for any reference to you.

That said, your complaint notes that you desire access to the contents of the notebook that Ms. Gies brought with her to the meeting on October 11, 2010. I do not see in your original request where you sought access to the notebook specifically, but in my opinion a request for access to the contents of the notebook would be reasonably particular, assuming that the notebook still exists. I note, however, that even if the notebook still exists, Clark-Pleasant could still deny access to it -- or portions of it -- under one or more exceptions to the APRA. *See* I.C. § 5-14-3-4. In any event, I hope that Clark-Pleasant’s production of “old evaluations” in response to the request of your representative satisfies this aspect of your complaint.

Finally, I agree with Mr. Rubright that Clark-Pleasant is not obligated to provide you with copies for free. The APRA permits a public agency to charge a fee for copies of public records. I.C. § 5-14-3-8. Public agencies may require a person to pay the copying fee in advance. I.C. § 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee, *Op. of the Public Access Counselor 07-FC-124*, or to mail records to you at its expense. *Op. of the Public Access Counselor 10-FC-59*.

CONCLUSION

For the foregoing reasons, it is my opinion that Clark-Pleasant did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Charles R. Rubright