
OPINION OF THE PUBLIC ACCESS COUNSELOR

LEO CAVINDER,
Complainant,

v.

LA PORTE COMMUNITY SCHOOL CORPORATION,
Respondent.

Formal Complaint No.
24-FC-31

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the La Porte Community School Corporation violated the Access to Public Records Act.¹ Attorney Nicholas T. Otis filed an answer on behalf of the School Corporation. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 4, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider whether Leo Cavinder (Complainant) was wrongfully denied access to documents regarding superintendent Dr. Mark Francesconi's retirement.

On February 12, 2024, the Board of Trustees for the LaPorte Community School Corporation (School) announced the retirement of Dr. Mark Francesconi, the former superintendent of the School.²

Two days later, Leo Cavinder (Complainant) submitted a records request asking for all electronic communications from January 1, 2024 to February 12, 2024 between Jane Larson (Assistant Superintendent of Secondary Education), Ben Tonagel (Assistant Superintendent of Elementary Education), Ryan Seaburg (President of the School Board of Trustees), and Mark Francesconi (Superintendent of Schools) concerning Dr. Francesconi's retirement.

On March 4, 2024, Mr. Cavinder was contacted by Mr. Nicholas Otis with a letter from Ryan Seaburg notifying staff that Mark Francesconi would be retiring effective immediately. Mr. Cavinder alleges that there had been suspicions about the retirement of Dr. Francesconi, and that it was forced. As a result, the Complainant alleges the La Porte Community School Corporation withheld the factual basis for Dr. Francesconi's removal.

² <https://www.wndu.com/2024/02/13/laporte-school-corp-announces-retirement-supt-mark-francesconi/>

On March 22, 2024, Mr. Otis also sent Mr. Cavinder Dr. Francesconi's Retirement Agreement with the LPCSC School Board dated February 9, 2024.

After these received documents, Mr. Cavinder filed with this office on April 4, 2024, alleging that he was not given the factual basis for Dr. Francesconi's retirement.

For its part, in its response to the formal complaint, the School contends no other records are responsive to Mr. Cavinder's request.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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 La Porte Community School Corporation (LPCSC) is a public agency for purposes of APRA; and therefore, is subject to law's requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy LPCSC's public records during regular business hours. Ind. Code § 5-14-3-3(a).

The public record in question is the factual basis for Dr. Francesconi's retirement in this case.

2. Factual Basis for a disciplinary action

Pursuant to Ind. Code § 5-14-3-4(b)(8)(C) “the factual basis for a disciplinary action in which final action has been taken that resulted in the employee being suspended, demoted, or discharged” is not a document exempt from disclosure.

Essentially, there is a three-pronged test to trigger the creation and disclosure of a factual basis under APRA:³

- 1) Disciplinary Action, and
- 2) Final Action that results in
- 3) Suspension, Demotion, or Discharge.

APRA does not define the terms *factual basis*, *disciplinary action*, *final action*, *suspension*, *demotion*, or *discharge*. As a result, this case requires an interpretation of Indiana Code section 5-14-3-4(b)(8) by this Office.

As set forth above, our legislature has vested the Public Access Counselor with the power to “issue advisory opinions to interpret [Indiana’s] public access laws.”⁴

(U)ndefined words and phrases in a statute must be given their plain, ordinary and usual meaning. Words and phrases in a statute are given their plain and ordinary meaning unless they are technical words and phrases having a peculiar and appropriate meaning in the law requiring definition according to their technical import.

³ Opinion of the Public Access Counselor 18-FC-34, 22-FC-73

⁴ Ind. Code § 5-14-4-10(6).

In order to determine the plain and ordinary meaning of words, courts may properly consult English language dictionaries.

Walling v. Appel Service Company, Inc. 641 N.E.2d 647, 649 (Ind. Ct. App. 1994) [Citations omitted.] quoting *Ashlin Transportation Services, Inc. v. Indiana Unemployment Ins. Board*, 637 N.E.2d 162, 167 (Ind. Ct. App. 1994).

2.1 Disciplinary Action

To satisfy the first prong of the factual basis test there must be a disciplinary action. The term *disciplinary action* is not defined under APRA. Indeed, reasonable minds may—and frequently do—disagree about what constitutes a disciplinary action in this context.

There have been numerous cases prior where an employer has put their employee(s) on administrative leave, potentially in an attempt to convince the employee to “voluntarily resign.” Events like this often have a coercive flavor to them, and according to the courts are considered “constructive discharge” in some contexts.

Mr. Cavinder suggests that due to a difference in opinion facing a financial crisis at the LPCSC, Dr. Francesconi was facing disciplinary action instead. Because of the capabilities of this office, there is no way to verify disagreements of fact. Only from the facts this office has been presented with and has access to, it is difficult to substantiate Mr. Cavinder’s suggestions. Multiple sources cite a quote from Dr. Francesconi, wishing the Corporation the best, suggesting an amicable split.

For the sake of completeness and robustness, this office proceeds to analyze the situation on the other two prongs for a factual basis if this resignation was a result of disciplinary action unknown to the public.

2.2 Final Action Resulting in Suspension, Demotion, or Discharge

The next two prongs of the factual basis test are whether the result of a final action is a suspension, demotion, or discharge. These terms, again, are not statutorily defined under APRA or Title 20 of the Indiana Code.

In previous cases and under the right circumstances, administrative leave acts as a final action.⁵ However, because there is no evidence of a disciplinary action, the only final action perceivable by this office is signing the Retirement Agreement (“agreement”) on February 9, 2024.

This agreement was sent to Mr. Cavinder and additionally shows that in section 3(a), Dr. Francesconi and the school board agrees to the following:

If either party is asked about the retirement of the Superintendent, a neutral statement will be given; i.e., it was amicable, and in the mutual interest of the parties.

Furthermore, section 4 of the agreement states the following:

The parties mutually waive, release and discharge each other from any and all claims, liabilities, demands and causes of action, known

⁵ Opinion of the Public Access Counselor 17-FC-181

or unknown, related to Superintendent's employment and/or his retirement. The claims release include, but are not limited to, claims for wrongful discharge, constructive discharge...

As a result, there is no final action such as wrongful discharge or constructive discharge to argue due to this agreement. The only final action taken by the LPCSC School Board was signing this agreement and that does not lead to the "suspension," "demotion," or "discharge" of Dr. Francesconi.

2.3 Voluntary Resignations

LPCSC contends that resignations do not trigger the disclosure of a factual basis under APRA. Essentially, LPCSC contends resignations are not the result of any disciplinary action; and thus, no factual basis is required because the Superintendent voluntarily and mutually consented to resign their positions.

Once again, the word "voluntary" is not defined in statute. Its dictionary definition is "proceeding from the will or from one's own choice or consent" or "unconstrained by interference."⁶

In no acceptable context does voluntary imply coercion or an ultimatum. Here, there is no immediately perceivable coercive action taken by LPCSC, only rumor as to a potential disagreement. Additionally, due to the agreement that the

⁶ Merriam-Webster.com, *Voluntary*, <https://www.merriam-webster.com> (last visited April. 12, 2018).

parties engaged in, he is unable to argue that wrongful discharge or constructive discharge occurred. It follows that this office cannot assume any facts not presented.

CONCLUSION

Based on the foregoing and the information provided, this office cannot make a conclusive determination on a factual disagreement as to whether the employee's resignation was voluntary or forced. As a result, this office cannot find LPCSC in violation of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: July 16, 2024