

July 6, 1999

Mr. Russell Phillips  
1306 W. State Road 114  
Rochester, Indiana 46975

*Re: PAC Opinion 99-5: Access to personnel file information under Indiana Code Section 5-14-3-4 (b)(8)(C).*

Dear Mr. Phillips:

This is in response to your letter of May 27, 1999, requesting an advisory opinion as to whether information concerning final action that resulted in discipline or discharge for a teacher in a school corporation must be disclosed under the Indiana Access to Public Records Act, IC 5-14-3-1, et. seq. You requested such information concerning a teacher in the Caston School Corporation, but were denied access on the basis that the superintendent, and not the school board, had disciplined the teacher and "final action" as used in the Access to Public Records Act only refers to actions of the board, not an administrative official to whom the school board delegates its authority. Mr. Paul C. Baker, Superintendent of Schools for the Caston School Corporation responded to your concerns in a letter dated June 15, 1999. A copy of his letter is enclosed for your reference.

For the reasons set forth below, it is my opinion that information required to be disclosed upon request under Indiana Code section 5-14-3-4(b)(8)(C) must be disclosed whether the discipline was levied by the governing body for the public agency or an administrative official of the public agency.

#### ANALYSIS

The Access to Public Records Act applies to public agencies, as that term is defined at Indiana Code section 5-14-3-2, which includes, among other entities, any school corporation. A public record, for the purposes of the Act, includes:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code section 5-14-3-4(b) sets forth categories of public records that may be disclosed at the discretion of a public agency. One such category is personnel files of public employees;

however, the General Assembly has mandated the disclosure of the following information upon a request under the Access to Public Records Act:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) Information concerning any disciplinary actions in which has been taken and that resulted in the employee being disciplined or discharged.

Indiana Code  $\text{\textasciix}5-14-3-4(b)(8)$  (Emphasis added.)

Attorneys for the Caston School Corporation have concluded that the term "final action" as used in Indiana Code section 5-14-3-4(b)(8)(C) means only final action of the school board for the Corporation, and not actions taken by the superintendent. The General Assembly, however, has not defined the term "final action," for the purposes of the Access to Public Records Act.

A definition of "final action" is provided in the Indiana Open Door Law, Indiana Code 5-14-1.5-1, et. seq.

"Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.

Indiana Code  $\text{\textasciix}5-14-1.5-2(g)$ . Certainly, final action as defined in the Open Door Law does indicate some action by a governing body, such as a school board, council or commission. This definition, however, applies only for the purposes of the Indiana Open Door Law, not the Access to Public Records Act. There is no case law interpreting "final action" as used in the Access to Public Records Act. We must, therefore, turn to the rules of statutory construction for guidance.

First and foremost, the General Assembly has explicitly stated that the Access to Public Records Act is to be construed liberally in favor of disclosure. Ind. Code  $\text{\textasciix}5-14-3-1$ . Keeping this in mind, in construing any statute, Indiana courts will look to the plain, ordinary, and usual meaning of the language unless the statute itself clearly provides a contrary meaning. *Marion County Sheriff's Merit Bd. v. Peoples Broadcasting Corp.*, 547 N.E.2d 235, 237 (Ind. 1989). Non-technical, undefined words are to be defined by their ordinary and accepted dictionary meaning. *Bulkomatic Transport v. Department of Revenue*, 629 N.E.2d 955, 957 (Ind. Tax 1994), *citations omitted*.

The plain meaning of "final" is "pertaining to or constituting the end result of a process or procedure; ultimate." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 492 (1981). "Action" means "an act or a deed." Id. at 13. In the context of the Access to Public Records Act, final action refers to an act or a deed that is the end result of a process or procedure of discipline. The fact that the school board delegated the authority to take action concerning a particular incident to the administrative officer for the school corporation

does not make the action any less final.

Indiana courts will also examine the statute as a whole, *Matter of Lawrance*, 579 N.E.2d 32, 38 (Ind. 1991), and will not presume that the General Assembly intended language used in a statute to be applied illogically or to bring about an unjust or absurd result, *State ex rel. Hatcher v. Lake Superior Court*, Room Three, 500 N.E.2d 737, 739 (Ind. 1986) as cited in *Riley v. State*, \_\_\_ N. E.2d \_\_\_ (Ind. 1999). If the meaning of "final action" as proposed by the Caston School Corporation is applied, then a school board could routinely refer all disciplinary actions to the superintendent and thus, avoid the disclosure of any information under Indiana Code section 5-14-3-4(b)(8)(C). There is no distinction in the Access to Public Records Act between persons who work for public agencies that have governing bodies, like school corporation employees, and persons who work for agencies that are headed by a single elected or appointed official. The term "final action," must apply to any public employee and, in this case, information concerning the final action of discipline or discharge taken against the employee of the school corporation must be disclosed under Indiana Code section 5-14-3-4(b)(8)(C).

### CONCLUSION

It is my opinion that information required to be disclosed upon request under Indiana Code section 5-14-3-4(b)(8)(C) must be disclosed whether the discipline was levied by the governing body for the public agency or an administrative official of the public agency to whom the governing body delegated its authority to take "final action" against the public employee.

Sincerely,

Anne Mullin O'Connor

cc: Superintendent Baker  
Enclosure