



STATE OF INDIANA

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September 17, 2010

Mr. John W. Krpan
13006 Brookmill Court
Laurel, MD 20708

Re: Formal Complaint 10-FC-185; Alleged Violation of the Access to Public Records Act by the Indiana School for the Deaf

Dear Mr. Krpan:

This advisory opinion is in response to your formal complaint alleging the Indiana School for the Deaf ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the School's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that after you received an offer of employment from the School, you requested a copy of the "Board Policy and Administrative Procedures" pertaining to how your salary was determined. You claim that Principal Mary Glenn, Director of Operations Rose Hemmelgarn, Missy Betzold of human resources, and Superintendent David Geeslin denied your request. You believe that because you asked for these records, the School withdrew your job offer.¹

In response to your complaint, Supt. Geeslin states that you accepted an offer to teach at the School. The School asked for verification of your teaching experience because your salary would be based upon your years of experience. However, Supt. Geeslin claims that you challenged the School's decision because a different school calculated your salary based upon 29 years of experience. The School, however, does not give credit for years of experience where less than 25% of the year is not spent teaching, and only one year of credit is given regardless of how many places a teacher teaches

¹ You also note in your complaint that you are a "Qualified Individual with a Disability" and "entitled for [sic] Title VII and EPA [sic] protection." As such, you believe the School's salary "determination is unlawful and discriminatory." Such allegations are outside of the scope of my authority to issue advisory opinions regarding alleged violations of the public access laws. *See* I.C. § 5-14-4-4(10). Consequently, I decline to address the merits of these allegations here.

within any given year. Supt. Geeslin notes that upon hearing this explanation, you requested administrative procedures that are used to evaluate teaching experience. The School informed you that no such document existed. He says that you continued to ask for the nonexistent document and refused to accept the pay that the School offered, so the School rescinded the offer. I also note that in one of the emails attached to the School's response, Ms. Hemmelgarn explained the School's teaching experience calculation to you. Her August 17, 2010, email to you reads, "There are no policies or procedures or rule book. Evaluation is strictly common sense. You only get credit for actual teaching, must teach at least 25% of the time for credit and cannot receive more than 100% credit for any time span."

ANALYSIS

The public policy of the 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." I.C. § 5-14-3-1. The School does not contest that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the School's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

If the School does not maintain records that contain information regarding the calculation of teaching experience, the School did not violate the APRA by failing to produce such records. *See, e.g., Opinion of the Public Access Counselor 10-FC-56* ("Where records are not yet created, a public agency does not violate the APRA by refusing to produce them."); *see also Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy..."). Moreover, it appears that Ms. Hemmelgarn provided you with an explanation of the School's calculation in her August 17th email to you even though the APRA did not obligate her to do so.

CONCLUSION

For the foregoing reasons, it is my opinion that the School did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Dr. David Geeslin