



# STATE OF INDIANA

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December 20, 2010

Mr. Derek L. Morris  
DOC # 104145  
Miami Correctional Facility  
3038 W. 850 S.  
Bunker Hill, IN 46914-9810

*Re: Formal Complaint 10-FC-290; Alleged Violation of the Access to  
Public Records Act by the Lynhurst School*

Dear Mr. Morris:

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

## BACKGROUND

In your complaint, you allege that the School failed to respond to your public records request within seven days. Your request sought "a certified copy of all conduct reports, all disciplinary actions and sanctions, and all other relevant reports of the actions, character and delinquency on [sic] [T.E.], D.O.B. 2-9-92 that you have in your files/records to date."

In response to your complaint, Daniel M. Wilson, the School's principal, states that he investigated your allegations and found no evidence that you sent a request to the School. Nevertheless, the records you requested are confidential student records, and the School has no information on file indicating that you are allowed to see T.E.'s records.

## 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 dispute 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 nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, a request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, however the School avers it did not receive your request. If the School did receive your request, the agency would have a duty under the APRA to respond within seven days of receipt. I.C. § 5-14-3-9(b). While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request it did not receive. Therefore, if the School did not receive your request, it did not violate the APRA by not responding within seven days. *See Opinion of the Public Access Counselor 09-FC-44.*

As to the substance of your request, one exception to the public's general right to inspect and copy a public record applies when federal law classifies a record as confidential. I.C. § 5-14-3-4(a)(3). Here, the School cites to the Federal Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). FERPA operates to classify all "education record[s]" as confidential: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records or personally identifiable information contained therein...." 20 U.S.C. § 1232g(b)(1). "Education record" is defined as those records that are directly related to a student and maintained by an educational agency or institution or by a person acting for such agency or institution. 34 C.F.R. § 99.3. Based on these provisions, it is my opinion that FERPA operates to classify as confidential the records you requested.

## 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: Daniel M. Wilson