



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

August 8, 2012

Leslie R. Hanson  
15 E. Berry Street  
Greencastle, Indiana 46135

*Re: Formal Complaint 12-FC-192; Alleged Violation of the Open Door Law and Access to Public Records Act by the Greencastle Community School Board*

Dear Ms. Hanson:

This advisory opinion is in response to your formal complaint alleging the Greencastle Community School Board ("School") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* and Access to Public Records Act ("APRA"), I.C. § 5-14-3 *et seq.* Dr. Lori Richmond, Superintendent, responded on behalf of the School. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint you allege on June 18, 2012, you submitted a written request to the School for copies of executive session minutes from January to May 2012. Thereafter, you made two separate inquiries via telephone regarding the status of your request. On July 6, 2012, Dr. Richmond informed you that the School did not have minutes available for the months that were requested. Dr. Richmond was unable to answer your inquiry regarding the existence of memoranda from the executive sessions for the same time period. You were informed that Dr. Richmond was working with the School's lawyers to recreate minutes from the executive sessions that you had requested.

In response to your formal complaint, Dr. Richmond advised that due to personnel changes in the central office and staff unfamiliarity with the requirements of memoranda and minutes during executive session, the School failed to keep memoranda for the executive sessions that would be responsive to your request. Presently, and in the future, the School Board is and will keep memoranda of its executive sessions.

Executive session minutes from the period encompassed by your request were approved by the School on July 23, 2012 and the minutes provided the topics discussed by specific reference to the applicable statutory grounds permitted for executive session pursuant to I.C. § 5-14-1.5-6.1. The School regrets its unintentional oversight in this

matter, which was caused in large part by a number of Central Office support staff changes over the last few months. Upon timely request, any requesting patron will be provided with copies of memorandum and minutes of the executive session within a reasonable period of time after the meeting as required by I.C. § 5-14-1.5-4(c).

## ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

Executive sessions, which are meetings of governing bodies that are closed to the public, may be held only for one or more of the instances listed in I.C. § 5-14-1.5-6.1(b). Notice of an executive session must be given 48 hours in advance of every session and must contain, in addition to the date, time and location of the meeting, a statement of the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held. *See* I.C. § 5-14-1.5-6.1(d). The notice must be posted at the principal office of the agency, or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2)

Under the ODL, governing bodies that conduct meetings are required to keep memoranda. The ODL does not require that a governing body keep minutes; however if kept, minutes of a meeting must be open for inspection and copying under the APRA. *See* I.C. § 5-14-1.5-4(c). As for memoranda, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under I.C. § 5-1.5-2-2.4. I.C. § 5-14-1.5-4(b).

In the case of executive sessions, the memoranda requirements are modified in that the memoranda "must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given." *See* I.C. § 5-14-1.5-6.1(d). The public agency must also certify in a statement in the memoranda that no subject was discussed other than the subject specified in the public notice. *Id.*

As applicable here, it is my opinion that the School violated the ODL by failing to keep memoranda for its executive sessions held between January and May 2012 and by failing to make said memoranda available within a reasonable period of time after the meeting. The School has acknowledged its failure to comply with the requirements of the ODL in the past and advised of the steps it has taken to rectify its prior conduct. Further, the School has provided guidance as to its actions going forward and its committed compliance to Indiana Public Access Laws.

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.” *See* I.C. § 5-14-3-1. The School is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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. *See* 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 (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As detailed *supra*, it is my opinion that the School failed to provide all records that were responsive to your request within a reasonable period of time as required by I.C. § 5-14-3-3(b). As now all records appear to have been provided, I trust that this is in satisfaction of this portion of your formal complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the School violated the ODL by failing to keep memoranda for its executive sessions held between January and May 2012 and by failing to make said memoranda available within a reasonable period of time after the meeting pursuant to I.C. § 5-14-1.5-4(c). Further, it is my opinion that the School violated the APRA by failing to provide all records that were responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Dr. Lori Richmond