



STATE OF INDIANA

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October 11, 2012

Ms. Jimella Harris
4609 Woodlynn Court
Fort Wayne, Indiana 46816

*Re: Formal Complaint 12-FC-271; Alleged Violation of the Open Door Law
by the East Allen County Schools*

Dear Ms. Harris:

This advisory opinion is in response to your formal complaint alleging the East Allen County Schools ("School") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Jennifer Hull, Attorney, responded in writing to your formal complaint on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that the School held a public hearing on September 4, 2012 to approve the financing of capital projects. The opportunity for public comment was given and you attempted to read a prepared statement. You allege that you were rudely interrupted by School Board President Janice Witte, who repeatedly requested that you stop presenting your comments. No other member of the public made any comments during your first hearing on the Woodlan project and only one member of the public had questions about the Heritage project. Your comments were timed at four minutes, but were likely less due to you read quickly, without emphasis, because of Ms. Witte's interruptions.

As a result of Ms. Witte's interruptions, the local newspaper's report on the hearing attributed a comment to you that was inaccurate and described your comments as "lengthy." You allege that Ms. Witte's actions are a disservice to the purpose of the public hearing for public comments. Ms. Witte's rudeness in repeatedly talking over your comments inhibited the public's receipt of your comments and is a violation of the ODL.

In response to your formal complaint, Ms. Hull advised that on August 2, 2012, in accordance with Indiana statute, the School published notices regarding public hearings to be held with respect to a proposed lease and amended lease for two separate building projects. These projects involve school buildings known as Woodlan and Heritage. The

hearings were held during the School Board's public meeting on September 4, 2012. Both the notice and the agenda clearly indicated that the public was invited to speak. Specifically, the notice provided that public comment would be heard with respect to the necessity of the proposed lease/lease amendment and whether the rent to be paid by the School was "fair and reasonable." A copy of the notices and agenda are enclosed.

Ms. Witte, School Board President, presided over the Board's September 4, 2012 meeting. During the meeting and hearings, Ms. Witte utilized a script which was prepared in advance. Prior to welcoming public comment, Ms. Witte set for parameters for the speakers, including that their comments be related to whether the proposed lease or amended lease was "fair and reasonable" and that the statements be limited to three (3) minutes in length. A copy of Ms. Witte's script is enclosed.

Upon reaching the podium, Ms. Hull provided that you immediately began speaking about issues unrelated to the proposed lease for Woodlan and the amended lease for Heritage. As evidenced by the written statement that was provided in your formal complaint, your initial comments were completely unrelated to the topics at hand. Upon hearing your initial comments, Ms. Witte quickly attempted to redirect you back to the issues at hand. You ignored Ms. Witte's comments and continued with your presentation. After repeatedly trying to get your attention, the School Board resigned itself to allow you to continue. You were given a 30 second warning, and when the three minutes was up, Ms. Witte attempted, without success, to have you conclude your comments. You continued to speak and ultimately you were able to present all comments that had been prepared. Other than a few unsuccessful attempts to redirect your presentation to the topics at hand, you were permitted to provide all comments on September 4, 2012.

The School is well are of the public's statutory right to provide comments during hearings related to lease arrangements for public school buildings pursuant to I.C. § 36-1-10, *et seq.* However, pursuant to I.C. § 36-1-10-13(d), the public is "only entitled to be heard at the hearings as to whether the execution of the lease is necessary and whether the rental is fair and reasonable for the proposed structure or system." Both notices published by the School and Ms. Witte's instructions mirror the language of the statute. Your initial comments referenced an entirely different subject, at which time Ms. Witte attempted to redirect you to the topic at hand. Notably, the portion of your statement which was related to the leases at issue was uninterrupted. Further, the School's limiting public comment to three (3) minutes at hearings of this type is not unreasonable; regardless you were permitted to finish your presentation despite the three minute warning that was provided. *See Brademas v. South Bend Community School Corp.*, 783 N.E.2d 745 (Ind. Ct. App. 2003).

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



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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).

Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. See *Opinion of the Public Access Counselor 08-FC-149, citing Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 751 (Ind. Ct. App. 2003), *trans. denied*, 2003; see also I.C. § 5-14-1.5-3. Indiana law does require a governing body to allow public testimony in certain instances, most commonly in relation to hearings related to financing and budgetary issues. The School held a public hearing as required by I.C. § 36-1-10, *et seq.* I.C. § 36-1-10-13(a) provides that:

- (a) After the leasing agent and the lessor have agreed upon the terms and conditions of the lease but before the execution of the lease, the leasing agent shall publish notice, in accordance with IC 5-3-1, of a public hearing to be held before the leasing agent. The cost of the publication of the notice shall be paid by the lessor. Notice of the hearing must be given at least ten (10) days before the hearing is held.

Pursuant to I.C. § 36-1-10-13(d), "All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether the rental is fair and reasonable for the proposed structure or system.

As applicable here, the parties do not dispute that the School provided notice pursuant to the requirements of I.C. § 36-1-10, *et seq.* Nor do I believe it is alleged that the School did not allow you to complete your presentation; rather you provide that Ms. Witte violated the ODL by interrupting your comments. The School attributes Ms. Witte's interruptions to the fact that your comments were not addressing the issues for which the public hearing was convened. To the extent that your comments went beyond whether the execution of the lease was necessary and whether the rental was considered to be fair and reasonable for the proposed structure or system, it is my opinion that the School did not violate the ODL or I.C. § 36-1-10 by attempting to limit your comments. Even if it could be said that the School would have acted contrary to the ODL or the applicable statute by attempting to restrict your comments, you were allowed to finish your presentation. As such, it is my opinion that the School did not violate the ODL.

CONCLUSION

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

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Jennifer Hull