



STATE OF INDIANA

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October 15, 2026

Re: Complaint 26-FC-132
Shadonna Smith (Complainant) v.
Merrillville Community School Corporation (Respondent)

This advisory opinion is issued in response to the above-mentioned complaint dated March 21, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on April 14, 2026, requesting a formal response by May 13, 2026. A formal response, submitted by Scott Pyle, attorney, on behalf of Respondent, was received in this office on May 13, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) by 1) failing to respond to a request made on March 2, 2026; 2) failing to provide the records requested on March 9, 2026; and 3) failure to provide records requested on March 13, 2026.

ANALYSIS

The public policy of 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." IC 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14- 3-3(a).

March 2, 2026, Request:

On March 2, 2026, the Complainant requested the school records of "Student A" via email. On March 17, 2026, Complainant filed a due process hearing request with the Office of Administrative Law Proceedings. That matter is pending before an ALJ.

This office is to issue advisory opinions to interpret the public access laws upon the request of a person or a public agency. However, this office may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3. IC 5-14-4-10(6).

This office will not be issuing an advisory opinion regarding Complainant's first claim in this complaint because doing so could put this office in violation of IC 5-14-4-10(6).

March 9, 2026, Request:

On March 9, 2026, Complainant emailed a request for "internal staff notes, digital correspondence, and emails generated between 2/24/26 and today, March 9th, regarding this IEP draft and the 'finger-counting' inquiry." This request regarded "Student B."

On March 10, 2026, Respondent emailed Complainant stating, "As for your request for notes and communications, there are not any digital communications around the development of this IEP. I have an email out to the providers on whether or not they have notes regarding your concern about finger counting."

Complainant claims the response was a "denial" and "contradicts the agency's known use of digital systems."

The Public Access Counselor has on numerous occasions opined that the public agency is not required to provide records that do not exist nor is it required to create such records. *Opinion of the Public Access Counselor 25-FC112*.

This office disagrees with Complainant that the response was a denial. The response indicated certain requested records did not exist and that the agency was still looking into other requested records. This response was not a denial.

Furthermore, IC 5-14-3-4(a), APRA provides:

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute. ...

(3) Those required to be kept confidential by federal law....

FERPA is a federal statute that classifies student educational records as confidential, with limited exceptions. Indiana also restricts educational records as confidential. IC 20-33-7-3(b). The relationship between FERPA and APRA is

complex and not always reconcilable. *Opinions of the Public Access Counselor* 14-FC-272 and 25-FC-386. See also, *Opinion of the Public Access Counselor* 26-FC-048.

This office has no jurisdiction over federal laws. It has jurisdiction over Indiana laws, specifically, Open Door Law (ODL) at IC 5-14-1.5 and APRA at IC 5-14-3. However, “this office can review when a Complainant disagrees with a public agency which fails to disclose by asserting FERPA.” *Opinion of the Public Access Counselor* 26-FC-048.

In the March 10th response, Respondent did not deny disclosure, nor did it assert FERPA as a reason for not disclosing the requested records. Therefore, this office does not have jurisdiction over the March 9, 2026, request.

March 13, 2026, Request:

On March 13, 2026, at 1:52 p.m., Complainant emailed Respondent to follow up on the March 10, 2026, response. In Complainant’s email, she makes an additional request for multiple additional public records and gave a deadline for production of Monday March 16, 2026. The request was for:

- 1) District Policies, and
- 2) Comprehensive Instructional Data and Service Logs

On March 13, 2026, at 7:33 p.m., Respondent replied to Complainant via email stating, “I am in receipt of your requests; however, I will not make your requested timeline due to being out of the office all day today and Monday. I will get you’re the requested information as soon as possible.”

Per Respondent’s email, that employee would not be back in the office until Tuesday, March 17, 2026.

Complainant filed the formal complaint on March 21, 2026.

With regards to the request for District Policies, if a public agency does not deny an APRA request, within a reasonable time after the request is received by the agency, the public agency shall either:

- (1) *Provide the requested copies to the person making the request; or*
- (2) *Allow the person to make copies:*
 - (A) *on the agency’s equipment; or*
 - (B) *on the person’s own equipment.*

IC 5-14-3-3(b).

APRA does not define the term “reasonable time.” This office has provided guidance on what would be considered a reasonable time for purposes of compliance with the APRA provisions. An informal benchmark this office observes for a typical response time would be thirty (30) days from the receipt of the request. *Opinion of the Public Access Counselor 20-FC-87.*

The complaint was filed even before the typical response time this office supports.

With regards to the request regarding the Comprehensive Instructional Data and Service Logs, this office opines the analysis regarding the March 9th request is necessary.

The Respondent did not deny the request, nor did it assert FERPA as a reason to deny the request.

Therefore, the Respondent did not violate APRA as alleged regarding the request for District Policies and this office does not have jurisdiction over the request for Comprehensive Instructional Data and Service Logs.

CONCLUSION:

This office does not provide an advisory opinion regarding the March 2, 2026, request.

This office does not have jurisdiction to provide an advisory opinion regarding the March 9th request.

This office opines, the Respondent did not violate APRA as alleged regarding the March 13, 2026, request for District Policies.

This office does not have jurisdiction to provide an advisory opinion regarding the request for Comprehensive Instructional Data and Service Logs in the March 13, 2026, request.


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