OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 25, 2018

Via electronic mail
[redacted]

Via electronic mail
The Honorable Karen Disharoon
President, Board of Education
Dunlap Community Unit School District No. 323
3020 West Willow Knolls Road
Peoria, Illinois 61614
kdisharoon@dunlapcusd.net

RE: OMA Request for Review – 2017 PAC 50648

Dear [redacted] and Ms. Disharoon:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Dunlap Community Unit School District No. 323 Board of Education (Board) violated the advance notice requirements of OMA in connection with its November 28, 2017, special meeting. However, the Public Access Bureau concludes that the Board did not otherwise violate OMA.

On December 11, 2017, [redacted] submitted this Request for Review alleging that the Board violated OMA by failing to make verbatim recordings of certain closed session meetings in which the Board discussed the termination of the School District's superintendent. [redacted] also alleged that the Board improperly modified the agenda(s) for unidentified meetings related to the hiring of the interim superintendent. On December 28, 2017, this office sent a copy of the Request for Review to the Board and requested that it provide this office with copies of the agendas, meeting minutes (both open and closed), and closed session verbatim recordings for the meetings in question. This office also requested that the Board respond in writing to the allegations in the Request for Review.

On January 4, 2018, the Board responded, providing copies of the requested materials and a written response. With respect to the first allegation, the Board provided copies of the verbatim audio recordings from five closed sessions where the Board discussed the termination of the School District's superintendent. The Board asserted that it had reviewed the closed session recordings in question and had no reason to believe that any portion of the meetings was not recorded. In addition, the Board President, who was responsible for recording each of the closed sessions, confirmed that, to her knowledge, all of the referenced closed meetings were recorded in their entireties. With respect to the second allegation, the Board speculated that its November 28, 2017, special meeting was the meeting referenced in the Request for Review. The Board asserted that, because of the need to secure an interim superintendent, the Board President amended the November 28, 2017, special meeting agenda less than 48 hours before the meeting to include additional discussion items. The Board also confirmed that no final action took place during the November 28, 2017, special meeting. [redacted] did not submit a reply.

DETERMINATION

The intent of OMA is to "ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly[,]" and to ensure that individuals are "given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016).

Adequacy of Closed Session Verbatim Recordings

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2016), as amended by Public Acts 100-201, effective August 18, 2017; 100-465, effective August 31, 2017) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." In addition, section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides that "[a]ll public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording."

[redacted] Request for Review alleged that the Board failed to record portions of its closed session meetings where it discussed the termination of the School District's superintendent. Although [redacted] did not identify specific closed session meetings, the Board provided the verbatim audio recordings for its October 2, 2017, October 18, 2017, November 2, 2017, November 15, 2017, and November 21, 2017, meetings, wherein the Board discussed the termination of the superintendent. The Board's response to this office asserted that it had reviewed the closed session recordings in question and had no reason to believe that any portion of its closed meetings was not recorded. Similarly, this office's review of the audio recordings

revealed lengthy and thorough discussions of the topic in question and provided no basis to conclude that the closed sessions were not recorded in their entireties. Because this office has not received any evidence indicating that the Board failed to adequately keep verbatim recordings of the closed sessions of its meetings, this office concludes that the Board did not violate the verbatim recording requirement of section 2.06(a) of OMA.

Amendment of Special Meeting Agenda

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides, in pertinent part:

> An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body. Any agenda of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded. The requirement of a ***regular meeting agenda*** shall not preclude the consideration of items not specifically set forth in the agenda. (Emphasis added.)

Section 2.02(a) of OMA also provides that "[p]ublic notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda[.]"

The Public Access Bureau has previously concluded that, because the plain language of section 2.02(a) of OMA only authorizes consideration of items not set forth on a regular meeting agenda, a public body violates OMA by discussing matters during a special meeting which are not listed on the agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 30368, issued December 17, 2014, at 4. In this instance, the Board acknowledged that it amended the agenda for its November 28, 2017, special meeting less than 48 hours before that meeting began and discussed the items it had added, but maintained that it did not improperly discuss those agenda items because it did not take final action on them. In support, the Board cited *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120 (4th Dist. 2002), in which the court stated that a public body may deliberate and discuss—but not take final action— on matters that do not appear on a regular meeting agenda. *Rice*, 326 Ill. App. 3d at 1123 ("We find 'the consideration of' items not specifically set forth in the agenda to be in the nature of deliberations and

discussion and not actions taken."). However, the plain language of section 2.02(a) only authorizes "the consideration of items" that are not listed on a *regular* meeting agenda; it is irrelevant whether or not the Board voted to take action on items discussed at a special meeting which did not appear on the agenda. By amending the special meeting agenda to add items less than 48 hours before the meeting began, the Board did not provide sufficient advance notice as required by section 2.02(a) of OMA. Accordingly, this office concludes that the Board held an improper discussion during its November 28, 2017, special meeting. Nonetheless, because the Board did not take final action in connection with any of the three added agenda items during that special meeting, no remedial action is necessary at this time. This office reminds the Board that a public body is limited at special meetings to discussing items listed on the agenda posted at least 48 hours in advance of the meeting.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address on the first page of this letter.

Very truly yours,

[redacted]

CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Mr. Jay E. Greening
Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, Illinois 61602-1154
jay.greening@mhtlaw.com