



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 24, 2018

Via electronic mail

Mr. Kirk Allen
[REDACTED]

kirk@illinoisleaks.com

Via electronic mail

[REDACTED]

Via electronic mail

Mr. Steven M. Richart
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
3030 Salt Creek Lane, Suite 202
Arlington Heights, Illinois 60005
srichert@hlerk.com

Re: OMA Requests for Review – 2018 PAC 51302; 2018 PAC 51308

Dear Mr. Allen, [REDACTED], and Mr. Richart:

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 discussed below, this office concludes that the Board of Education (Board) of Jasper County Community Unit School District No. 1 did not violate OMA in connection with its January 18, 2018, meeting.

On January 19, 2018, Mr. Kirk Allen filed a Request for Review with the Public Access Bureau alleging that the Board's rules allowing two minutes for public comment and five minutes comment time for individuals signing up a week in advance of the meeting are unreasonable. Mr. Allen alleged that the wording of the rules was vague and specific terms used in the rules were undefined. He further alleged that the Board's rule allowing the Board president the discretion to shorten public comment was unreasonable. Mr. Allen alleged that the Board applied its rules to prevent him from speaking for more than two minutes at its January 18, 2018, meeting.

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On January 19, 2018, [REDACTED] submitted a Request for Review to this office alleging that at the January 18, 2018, Board meeting:

Almost every one ran out of time for speaking due to an unreasonably short 2 min[ute] allowance (unless you notify them a week ahead that you would like to speak then they "may" allow up to 5 min). I have attended many meetings around this area and this is by far the shortest time per speaker I have seen and it does not allow people to convey their message properly because they are so limited. Also the way I read rule 3[,] on the sheet they are saying the board president has the authority to shorten the time for a speaker even more if he see fit, which I believe is not allowed as it would violate a person[']s civil rights if they were cut short (on an already short amount of time allowed) because the board wants to "conserve time."^[1]

On January 24, 2018, the Public Access Bureau sent copies of the Requests for Review to the Board and requested that it provide a detailed written answer to the allegations together with a copy of the Board's established and recorded rules for public comment and any recordings of the public comment portion of the Board's January 18, 2018, meeting. On February 2, 2018, counsel for the Board provided this office with a written answer, a copy of the Board's rules for public comment, and a video recording of the January 18, 2018, meeting. On February 5, 2018, this office forwarded a copy of the Board's answer to Mr. Allen and [REDACTED]. Mr. Allen provided a written reply on February 5, 2018.

DETERMINATION

It is "the public policy of this State that its citizen shall be 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). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

¹E-mail from [REDACTED] to Public Access, Office of the Attorney General (January 19, 2018).

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Standing

As a preliminary matter, this office notes that the Board's answer to this office stated "[REDACTED] did not even attempt to make a public comment. Although [REDACTED] was present at the meeting, the District's rules regarding public comment were not enforced against him and, therefore, he has no standing."² Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)³ however, broadly provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation." OMA does not restrict "standing" to the person whose rights were most directly affected by the alleged violation. To the contrary, OMA expressly provides that any person who believes a public body has violated OMA may file a Request for Review. *See also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 4. Although this office generally has not reviewed a public body's rules concerning public comment absent some allegation that the public body had enforced one or more rules to restrict at least one person's right to public comment, [REDACTED] has alleged specific violations here: that he observed persons who could not complete their comments because the two minute time limit was enforced. Accordingly this office has authority to review those allegations.

Rules for Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016), provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Indeed, the Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable

²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matt Hartman, Assistant Attorney General, Public Access Bureau (February 2, 2018), at 1.

³Section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2016)), to the contrary, restricts the filing of a request for review to "[a] person whose request to inspect or copy a public record is denied by a public body[.]" (Emphasis added.)

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"time, place, and manner" restrictions that are narrowly-tailored and necessary to further a significant governmental interest. See *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 4. However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. See *I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25; *Timmon*, 633 F. Supp. 2d at 459.

The Board's established and recorded rules that Mr. Allen and [REDACTED] allege are unreasonable state:

The individuals appearing before the Board are expected to follow these guidelines:

* * *

2. Identify him or herself and be brief. Ordinarily, such comments shall be limited to 2 minutes. In unusual circumstances, a person may be allowed to speak for more than 2 minutes. A person who has given advance notice to the Superintendent one week before the meeting may be allowed to speak for 5 minutes.
3. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.^[4]

Two-Minute Public Comment Time Limit

In support of the allegation that the Board's two-minute time limitation for public comment in Rule 2 is unreasonable, Mr. Allen alleged that he had more to say but stopped speaking after he was informed by the Board that he had ten seconds remaining of his two minutes of speaking time. The Board asserted that its two minute per speaker time limit is a

⁴Jasper County Community Unit School District #1, School Board, Public Participation at School Board Meetings and Petitions to the Board (last amended May 16, 2011).

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reasonable restriction on public comment because it "is merely trying to conserve time, which is a significant government interest."⁵

A rule that promotes order and decorum by specifying the amount of time members of the public have to address a public body does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that because a five-minute time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, the time limit did not violate the speaker's rights under the first amendment to the United States Constitution); see also *Shero v. City of Grove*, 510 F. 2d 1196, 1203 (10th Cir. 2007) (concluding that in a public forum, a city council could impose a three-minute time limitation on public comment because it was "appropriately designed to promote orderly and efficient meetings.") Therefore, the Attorney General has found that "a public body may legitimately prescribe reasonable time limits for public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5.

The Delaware Attorney General, while finding that a school board placed an improper restriction on the content of a member of the public's comments to the board, observed that the school board's "2 minutes per speaker * * * limitation on time was a reasonable restriction under the First Amendment." Del. Att'y Gen. Op. No. 05-IB01, issued January 3, 2005, at 5. Similarly, the Public Access Bureau has suggested that a public body wishing to impose time limitations on public comment could establish a reasonable rule of "two or three minutes per person per meeting, or a limit on the total amount of time spent on public comment, pursuant to section 2.06(g) of OMA." Ill. Att'y Gen. PAC Req. Rev. Ltr. 37850, issued December 7, 2017, at 5.

Here, the Board established the two-minute time limitation within Rule 2 to conserve time. The rule promotes the Board's significant interest in holding orderly and efficient meetings and encourages speakers to organize their comments before addressing the Board on the topic of their choosing. The available information provides no basis from which this office could conclude that a person would be unable to effectively address the Board in the two-minute time limit provided in Rule 2. Because the Board's rule serves to advance a significant governmental interest, is narrowly tailored to that interest, and does not interfere with alternative means of communicating with the Board, this office concludes that Board did not violate section 2.06(g) of OMA by enforcing the two-minute public comment rule at the January 18, 2018, meeting.

⁵Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Matt Hartman, Assistant Attorney General, Public Access Bureau (February 2, 2018), at 5.

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Five-Minute Public Comment Time Limit for Speakers Providing One-Week Notice

Mr. Allen also contested the portion of Rule 2 which provides that a person who gives one week of advance notice to the superintendent may receive five minutes of public comment time. In particular, Mr. Allen alleged that newcomers to Board meetings might not be aware of the rule.

The Attorney General has held that a county board's enforcement of its rule requiring 5 working days advance notice to speak at public meeting violated section 2.06(g) of OMA because it "unreasonably restrict[ed] members of the public from exercising their statutory right to address the Board." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. In that matter, individuals were not allowed to address the county board unless a board member requested permission from the board for the member of the public to speak or the individual provided 5 working days advance notice to the county board and identified the topic upon which they wished to speak. The Board's rule here differs from the county board's rule at issue in that Binding Opinion. The first part of Rule 2 allows all speakers the right to provide public comment for two minutes—a speaker must provide one-week advance notice only if they wish to speak for more than two minutes. Because Rule 2 affords all speakers at least two minutes of public comment time, which this office has concluded is a reasonable rule under section 2.06(g) of OMA, the Board's rule granting five minutes of public comment time to speakers who gave one week notice is not unreasonable when it is applied in a content-neutral manner.

Mr. Allen's initial objection was that the rule allowing for the opportunity to speak for five minutes may not have been known to individuals who had not attended previous Board meetings. However, the rule was established and recorded by the Board and was last amended in May 2011. Mr. Allen has not suggested that the rule was unavailable to anyone who wished to review it before the January 18, 2018, meeting.

In addition, Mr. Allen alleged that the Board's Rule 2 is unreasonable because it is vague and has undefined terms. Specifically, he cited to Rule 2's use of the terms "ordinarily," "[i]n unusual circumstances," and "may be allowed" as the basis for his assertion that the rule is unreasonable. With respect to the "may be allowed" provision in Rule 2, Mr. Allen asserted that the rule does not guarantee that a person who has given one week advance notice will be afforded five minutes of public comment time. Similarly, Mr. Allen alleged that Rule 3 is unreasonable because it grants the Board president discretion to shorten public comment time. However, based on this office's review of the recording of the public comment period, the Board did not interfere with or prohibit any person from addressing the Board at the January 18, 2018,

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meeting based on those portions of Rule 2 or any portion of Rule 3. The Public Access Bureau has consistently declined to review a public body's established and recorded rule unless a member of the public attempted to address public officials during an open meeting and was improperly restricted from commenting based on the public body's enforcement of the rule. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 47847, issued May 22, 2017 (allegation that public comment rules violate OMA insufficient to merit further action absent facts indicating that the rules were enforced to improperly restrict any member of the public from addressing public officials).* Accordingly, the Public Access Bureau makes no determination with respect to these allegations.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (217) 782-9054.

Very truly yours,

[REDACTED]

MAIT HARTMAN
Assistant Attorney General
Public Access Bureau

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