OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 3, 2019

Via electronic mail
The Honorable Tammy Hines
Board Member
Columbia Community Unit School District No. 4
Board of Education
[redacted]

Via electronic mail
Dr. Gina Segobiano
Superintendent
Columbia Community Unit School District No. 4
5 Veterans Parkway
Columbia, Illinois 62236
segobiano.gina@columbia4.org

RE: OMA Request for Review – 2018 PAC 53820

Dear Ms. Hines and Dr. Segobiano:

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 explained below, the Public Access Bureau concludes that the Columbia Community Unit School District No. 4 (District) Board of Education (Board) violated the requirements of OMA in connection with its May 17, 2018, and June 25, 2018, meetings.

On June 29, 2018, Ms. Tammy Hines, a member of the Board, submitted a Request for Review alleging that the Board violated OMA during its May 17, 2018, meeting. Specifically, Ms. Hines asserted that after returning from closed session, the Board approved

three motions that were identified on the agenda only as "personnel items,"[1] which Ms. Hines alleges did not sufficiently identify the general subject matter of the Board's final actions. Ms. Hines also alleged that an agenda for the May 17, 2018, meeting was improperly modified less than 48 hours before the May 17, 2018, meeting.

Ms. Hines' Request for Review also alleged that the Board violated OMA by not posting a copy of the agenda for its June 25, 2018, special meeting on the District's website at least 48 hours before that meeting commenced; she asserted that the agenda was not posted until six to eight hours before the meeting.[2]

On August 7, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to respond to Ms. Hines' allegations. Additionally, this office asked the Board whether the District's website was maintained by a full-time staff member. On August 13, 2018, this office received the Board's response. On August 15, 2018, this office forwarded the Board's response to Ms. Hines; she did not reply.

DETERMINATION

"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).

Notice of Final Action at May 17, 2018, Meeting

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[a]n 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." Further, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not contain a definition of "general subject matter."

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[1]Columbia Community Unit School District 4 Board of Education, Agenda Item XI., Items for Action after Closed Session, A. Personnel Items (May 17, 2018).

[2]Ms. Hines' Request for Review contained additional allegations, however, Ms. Hines withdrew those allegations on August 1, 2018. E-mail from Tammy Hines to Shannon Barnaby (August 1, 2018).

The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, adding section 2.02(c) to OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

> [T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * **general notice** if you're going to have and take final action, **as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon**. (Emphasis added.) Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5.

The minutes from the May 17, 2018, Board meeting indicate that after returning from closed session, the Board voted to approve: (1) an assignment of the Columbia Middle School principal; (2) 2018-2019 non-union employee salaries; and (3) 2018-2019 administrative salaries.[3] The agenda included language similar to that provided in section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018),[4] stating that the Board would be enter closed session for:

> Purposes of employment or dismissal of employees, appointment, compensation, discipline, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public

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[3]Columbia Community Unit School District No. 4 Board of Education, Meeting, May 17, 2018, Minutes 6.

[4]The Board's agenda item for closed session also used certain language from sections 2(c)(2) and 2(c)(8) of OMA (5 ILCS 120/2(c)(2), 2(c)(8) (West 2017 Supp.), as amended by Public Act 100-646, effective July 31, 2018). Those exceptions, which concern collective bargaining and school security, are not relevant to the actions disputed by Ms. Hines.

> body or against legal counsel for the public body to determine its validity.[5]

The following agenda item stated:

> Items for Action after Closed session
> A. Personnel Items[6]

In its response to this office, the Board appears to assert that the language in the closed session section of its agenda coupled with the reference to action on personnel items after closed session provided the public with advance notice of the motions that the Board approved on employee appointment and compensation. When read in tandem, these agenda items may be construed to indicate that the Board would take some form of action concerning personnel.

This office has previously determined that an agenda item for "personnel matters" did not provide sufficient advance notice of a public body's vote to approve an employment contract. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 13540, issued June 22, 2011, at 4. Likewise, here, "personnel items" could encompass virtually any matter relating to any District personnel. Further, the language in the closed session section of the Board's agenda did not reasonably identify the general subject matter of the Board's actions. Even though compensation and appointment were among the subjects identified as potential topics of discussion, the list included other irrelevant employment-related topics. Although section 2.02(c) does not require that the agenda identify the subject of possible final action by name or the specific action being contemplated, the Board's agenda item was too imprecise to provide meaningful notice to the public that the Board would take action concerning the assignment of an administrator and the compensation of employees and administrators.

The Board argued that a superintendent's report and an amended agenda provided to Board members contained a more specific description of the actions to be taken after closed session. However, it is undisputed that members of the public did not receive copies of those materials at least 48 hours prior to the meeting. As discussed above, the intent of section 2.02(c) of OMA is to ensure that an agenda provides **members of the public** with sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action. Providing additional information only to Board members has no relevance to the Board's

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[5]Columbia Community Unit School District 4 Board of Education, Agenda Item X., Closed Session (May 17, 2018).

[6]Columbia Community Unit School District 4 Board of Education, Agenda Item XI., Items for Action after Closed Session, A. Personnel Items (May 17, 2018).

obligation under section 2.02(c) to provide members of the public with sufficient advance notice concerning the Board's votes.

Accordingly, this office concludes that the Board violated the notice requirements of section 2.02(c) of OMA with respect to its May 17, 2018, votes on: (1) an assignment of the Columbia Middle School principal; (2) 2018-2019 non-union employee salaries; and (3) 2018-2019 administrative salaries. However, this office has confirmed that on September 25, 2018, the Board re-voted on the two motions approving employee and administrator salaries[7] and on July 19, 2018, the Board resolved the issue concerning the assignment of an administrator by a vote in open session to approve the Columbia Middle School principal's contract.[8] Therefore, no additional action is necessary to remedy these violations.

Amending of May 17, 2018, Meeting Agenda

Section 2.02(a) of OMA requires the posting of an agenda at least 48 hours in advance of the holding of a meeting. A public body may not take final action on a matter unless it has been properly posted on the agenda at least 48 hours prior to a meeting. *See Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1122-1123 (4th Dist. 2002).

In its response to this office, the Board acknowledged that an amended agenda was provided to Board members at their desks immediately before the start of the May 17, 2018, meeting. As noted above, the revision to the relevant agenda item appears to have been intended to provide the Board with additional information; it did not add or remove any items proposed for final action. It is undisputed, however, that the publicly posted agenda remained unchanged, and continuously available for viewing, for the 48 hours before the meeting commenced.

The requirements of OMA in section 2.02 of OMA are limited to publicly posted agendas that provide advance notice to the public. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 25275, issued December 17, 2018, at 3. Therefore, although section 2.02(a) of OMA does not permit a public body to take final action on an agenda item that was revised on a publicly posted agenda less than 48 hours before the meeting commenced, no provision of OMA prohibits a public body from separately amending an internal agenda to provide additional details on agenda items to better inform board members of what is expected to transpire at a meeting. Accordingly, this

[7]Columbia Community Unit School District No. 4 Board of Education, Meeting, September 25, 2018, Minutes 6.

[8]Columbia Community Unit School District No. 4 Board of Education, Meeting, July 19, 2018, Minutes 6 (August 16, 2018).

office concludes that the Board's amendments to the internal version of its May 17, 2018, meeting agenda did not violate section 2.02(a) of OMA.

Meeting Notice for June 25, 2018, Special Meeting

Section 2.02(a) of OMA provides, in pertinent part, that "[p]ublic notice of any special meeting * * * shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special" meeting. Section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) further provides:

> Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. **In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body**. (Emphasis added.)

Accordingly, under section 2.02(b) of OMA, a public body is required to post a copy of the agenda of a special meeting on its website 48 hours before the meeting, if its full-time staff maintains the website. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 39850, issued July 31, 2017, at 3-4.

Ms. Hines' Request for Review alleged that that the Board violated OMA by not posting notice of its June 25, 2018, special meeting on the District's website at least 48 hours before that meeting commenced. The Board's response to this office acknowledged that the agenda was not timely posted to the website but explained that the full-time staff member responsible for the website posting was on vacation when the agenda should have been posted. The Board argued that its failure to post the agenda to its website did not violate OMA because it provided proper physical notice of the special meeting by posting copies of the meeting agenda on the front door of the District office 48 hours before the meeting and by e-mailing the agenda to the faculty and staff of the District and members of the Board.

Under the plain language of section 2.02(b) of OMA, the Board was required to post notice of the June 25, 2018, special meeting at the Board's principal office **and** on its website. Adopting the Board's argument that a public body with a website maintained by a full-time staff member somehow complies with this provision by only posting an agenda at the Board's principal office and by e-mailing the agenda to Board members is contrary to the plain language of section 2.02(b), which expressly requires the posting of the agenda on the website. *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶16,

25 N.E.3d 570, 576 (2013) (Where the language of a statute is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express."). There are no exceptions to OMA's website posting requirements for situations in which individuals responsible for website posting are on vacation—it is incumbent on a public body to make alternative arrangements to fully comply with the advance notice requirements of OMA.[9] Accordingly, this office concludes that the Board violated section 2.02(b) of OMA by failing to post the agenda for its June 25, 2018, meeting to the District's website 48 hours before the meeting commenced .

Because the Board indicated in its response to this office that it is taking measures to prevent similar errors in the future[10] and because at least one copy of the agenda was posted at the District's principal office and available for public inspection at least 48 hours before the meeting, no further remedial action is required in this instance.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter closes this matter. If you have questions, you may contact me by mail at the Chicago address on the first page of this letter, by e-mail at sbarnaby@atg.state.il.us, or by phone at (312) 550-4480. Thank you.

Very truly yours,

[redacted]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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[9]Notably, section 2.02(c) of OMA provides, in pertinent part: "If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting." In contrast to the foreseeable circumstances of this matter, the Public Access Bureau has previously determined that a village council substantially complied with the notice requirements of OMA when its agenda was posted four days before the meeting but was inadvertently removed from the council's website by its agenda management software provider during an update to its system. *See* Ill. Att'y Gen PAC Req. Rev. Ltr. 25618, issued December 5, 2013.

[10]The Board's response to this office indicated that the individual responsible for posting the agenda on the District's website will provide the relevant posting instructions to other persons so that the agenda can still be posted in her absence.