



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

January 8, 2021

Via electronic mail

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Via electronic mail

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RE: OMA Request for Review – 2020 PAC 65194

Dear Ms. Weiss and Mr. Bohman:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, the Public Access Bureau concludes that the Board of Education (Board) of Pearl City Community Unit School District No. 200 (District) did not violate the public recital requirement of OMA in connection with its August 19, 2020, and September 23, 2020, meetings

On October 13, 2020, Ms. Deborah F. Weiss submitted a Request for Review to the Public Access Bureau via e-mail alleging that the Board violated OMA in connection with its August 19, 2020, and September 23, 2020, meetings by "vot[ing] to approve the revision of 22 different School Board Policies without sharing the changes being proposed with the public."¹ Ms. Weiss alleged that during the Board's August 19, 2020, meeting, the Board held a "first

¹Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [1].

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reading" of the agenda item "Amended/New Board Policies," which simply consisted of the Board President, Mr. Chad Bremmer, reading the agenda item verbatim. The agenda item provided:

7. First Reading of Amended/New Board Policies - 2:220-School Board Meeting Procedure; 2:220-E9- Requirements for no physical presence of quorum and participation by audio or video during disaster declaration; 4:180-Pandemic Preparedness; 7:40- Non-public students, including parochial and home-schooled students; 7:190- Student Behavior; 7:190-E2- Student Handbook Checklist; 7:340- Student records; 7:345- Use of Educational Technology, student data and privacy; 2:250-E2- Immediately Available district public reports and records; 2:260- Uniform Grievance Procedure; 2:265- Title IX Sexual Harassment Grievance procedure; 2:265-E- Title IX Sexual Harassment Glossary of Terms; 5:10- Equal Employment Opportunity and Minority recruitment; 5:20 Workplace Harassment Prohibited; 5:100- Staff Development Program; 5:200 Terms and Conditions of Employment and Dismissal; 5:220- Substitute Teachers; 5:330- Sick Days, Vacation, Holidays, and Leaves; 7:10 Equal Educational Opportunities; 7:20 Harassment of Students Prohibited; 7:180- Prevention of and Response to Bullying, Intimidation, and Harassment; 7:185 - Teen Dating Violence Prohibited – Informational Only^[2]

Ms. Weiss alleged that "[t]he specific changes to current policies and/or the new policies being proposed were not described or shared in the reading[.]" claiming that the closest the Board came to identifying the proposed changes was when Superintendent Michael Schiffman stated that the recommended changes were included in the meeting's Board packet.³ She argued:

Even presuming that a person knows that the board packets, or a version thereof, is posted online and how to access them, and that this somehow constitutes public discussion, the specific changes being proposed to the board policies are not identified. The only document included in the board packet that references the school

²Pearl City Community Unit School District No. 200 Board of Education, Meeting, Agenda Item 7, First Reading of Amended/New Board Policies (August 19, 2020).

³Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [1].

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board policies serves primarily to describe why those identified policies are being changed as opposed to describing the actual changes themselves.^[4]

Ms. Weiss enclosed a copy of this document, titled "Revisions to Policies, Administrative Procedures, and Exhibits."⁵ The left-hand column has a row for each policy number and name, while the right-hand column gives corresponding descriptions. The descriptions vary in length and detail, with some indicating minor or technical changes. For instance, the description for both "7:40, Nonpublic School Students, Including Parochial and Home-Schooled Students" and "7:220-AP, Electronic Recordings on School Buses" is: "The procedure is unchanged. The footnotes are updated in response to a five-year review."⁶ Other descriptions note that the policy is new. For example, the description for "7:345, Use of Educational Technologies; Student Data Privacy and Security," is "NEW. The policy is created to facilitate implementation of 105 ILCS 85/ amended by P.A. 101-516, eff. 7-1-21, which requires districts to take a number of actions to protect online student data and to share general information about how student data is used."⁷ An example of one of the lengthier descriptions, for "7:340, Student Records," is:

The policy, Legal References, footnotes, and Cross References are updated. The policy is updated with continuous improvement changes based on feedback from the Ill. Council of School Attorneys. The Legal References are updated to include reference to 105 ILCS 85/. New policy 7:345 *Technologies; Student Data Privacy and Security*, has been added to the Cross References. The footnotes are updated in response to:

1. 105 ILCS 85/, amended by P.A. 101-516, eff. 7-1-21.

⁴Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [1].

⁵Pearl City Community Unit School District No. 200 Board of Education, August 19, 2020, Board Packet, at [44], available at https://www.pcwolves.net/UserFiles/Servers/Server_110375/File/8-19-20%20Brd%20Meeting%20Info%20for%20web%202.pdf.

⁶Pearl City Community Unit School District No. 200 Board of Education, August 19, 2020, Board Packet, at [45], available at https://www.pcwolves.net/UserFiles/Servers/Server_110375/File/8-19-20%20Brd%20Meeting%20Info%20for%20web%202.pdf.

⁷Pearl City Community Unit School District No. 200 Board of Education, August 19, 2020, Board Packet, at [46], available at https://www.pcwolves.net/UserFiles/Servers/Server_110375/File/8-19-20%20Brd%20Meeting%20Info%20for%20web%202.pdf.

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2. U.S. Dept. of Education (DOE) guidance on the Family Educational Rights and Privacy Act (FERPA) and virtual learning.
3. Updated joint guidance issued by the DOE and U.S. Dept. of Health and Human Services on the application of FERPA and the Health Insurance Portability and Accountability Act of 1996 to student health records.^[8]

Ms. Weiss further alleged that at the next Board meeting on September 23, 2020, "the relevant agenda item was read verbatim and then a single vote was taken to approve the revised policies as a group."⁹ The agenda item was unchanged from the previous meeting, except that instead of "First Reading" at the start it said "Approval," and instead of "Informational Only" at the end it said "Potential Action Item."¹⁰ She claimed that "[a]gain, there was no public description or discussion of the changes being proposed nor was there a vote as to proposed changes to each policy individually."¹¹ Ms. Weiss asserted: "This failure to share in an open meeting the actual changes to board policies being proposed and then to adopt those unspecified changes to 22 different policies in a single vote is concerning and seemingly violative of Illinois' Open Meeting[s] Act."¹²

The Public Access Bureau construed Ms. Weiss' Request for Review as alleging a potential violation of section 2(e) of OMA (5 ILCS 120/2(e) (West 2018), as amended by Public Acts 101-031, effective June 28, 2019; 101-459, effective August 23, 2019), which provides: "No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

On October 20, 2020, the Public Access Bureau forwarded a copy of the Request for Review to Board President Bremmer. This office also sent Mr. Bremmer a letter seeking

⁸Pearl City Community Unit School District No. 200 Board of Education, August 19, 2020, Board Packet, at [45], available at https://www.pcwolves.net/UserFiles/Servers/Server_110375/File/8-19-20%20Brd%20Meeting%20Info%20for%20web%202.pdf.

⁹Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [1].

¹⁰Pearl City Community Unit School District No. 200 Board of Education, Meeting, Agenda Item G.5., Approval of Amended/New Board Policies (September 23, 2020).

¹¹Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [1].

¹²Letter from Deborah F. Weiss, Whitted Takiff LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 13, 2020), at [2].

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copies of any audio or video recordings of the August 19, 2020, and September 23, 2020, meetings, and a detailed written response to the allegation that the Board improperly adopted a set of changes to its policies without first publicly reciting the nature of that matter and other information that would inform the public of the business being conducted.

On October 29, 2020, legal counsel for the Board unsuccessfully attempted to e-mail those materials to this office, but neither party received notice that the materials were not transmitted because the file size exceeded this office's e-mail receipt capabilities. On November 12, 2020, the Board's attorney re-sent this office the requested materials by e-mail, this time using a file-sharing service for the large audio files of the Board's open sessions from the two dates in question. He also provided copies of the Board packets that were posted on the District's website in advance of the Board's August 19, 2020, and September 23, 2020, meetings.

On November 13, 2020, this office forwarded a copy of the Board's written answer to Ms. Weiss. On November 24, 2020, she submitted a reply.

ANALYSIS

Section 1 of OMA (5 ILCS 120/1 (West 2018)) declares that "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." As cited above, section 2(e) of OMA effectuates this intent by providing that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

In *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶39, 77 N.E.3d 625, 633 (2017), the Illinois Supreme Court decided that final action must be preceded by a public recital during the same meeting at which action is taken. The Court explained that "[t]he language of section 2(e) does not mention an explanation, the significance of the action being considered, or the attendees' understanding. Rather, the plain meaning of the phrase 'public recital of the nature of the matter being considered' is that the public body must state the essence of the matter under consideration, its character, or its identity." *Springfield School District*, 2017 IL 120343, ¶46, 77 N.E.3d at 633-34. Providing examples that are instructive for the present matter, the Court advised that "while the 'nature of the matter' may be recited in nonspecific terms (**the approval of a loan, a contract, a purchase, a policy, or a resolution**), 'other information' is necessary to inform the public of the specific item of business (the purpose of the loan, the subject of the contract, the type of property being purchased, **the title of the policy**, or the purpose of the resolution)." (Emphasis added.) *Springfield School District*, 2017 IL 120343, ¶50, 77 N.E.3d at 634.

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The Court rejected as "time consuming and impractical[] * * * any suggestion that a public recital of 'key terms' is required[.]" stating that "[a] public body may choose to provide such information in its recital at the open meeting but is not compelled to do so by section 2(e)." *Springfield School District*, 2017 IL 120343, ¶61, 77 N.E.3d at 635-36. Rather, the Court held, "the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." *Springfield School District*, 2017 IL 120343, ¶64, 77 N.E.3d at 636.

In its answer to this office, the Board asserted that it "fully complied with Section 2(e) of the OMA at both its August 19, 2020 and September 23, 2020 meetings with respect to the announcement and approval of amendments to certain Board policies."¹³ The Board stated that during its August 19, 2020, meeting, Mr. Bremmer "read aloud all Board policies which were subject to updates[.]" and Dr. Schiffman noted that the changes were "all at the recommendation of 'PRESS,' the Policy Reference Education Subscription Service of the Illinois Association of School Boards."¹⁴ The Board explained that "PRESS is a service which serves as a reference point for school board policies throughout Illinois and many school boards adopt the PRESS policies verbatim[.]"¹⁵ noting that the descriptions in the "Revisions to Policies, Administrative Procedures, and Exhibits" document were created and provided to the District by PRESS. At the ensuing meeting on September 23, 2020, the Board further explained, Mr. Bremmer "read the policies to be amended and acted upon[.]" and the Board unanimously voted at that meeting to approve the changes "in the form proposed on August 19, 2020."¹⁶

Citing *Springfield School District*, the Board argued that "[t]he revised or amended policies do not need to be read verbatim at a public meeting in order to comply with Section 2(e) prior to taking final action."¹⁷ Additionally, the Board argued, "[t]he same Court confirmed that a public body need not recite key terms of the documents at issue, provide an

¹³Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 1.

¹⁴Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 2.

¹⁵Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at n.1.

¹⁶Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 2.

¹⁷Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 2.

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explanation of the terms, or the significance of the transaction."¹⁸ Rather, the Board contended, "posting detailed descriptions of proposed amendments to Board policies online in tandem with public recitation of the proposed policies to be amended, and public recitation of where to find the descriptions of the proposed amendments on the District's website, complies with" the public recital requirement of section 2(e) of OMA.¹⁹

In reply, Ms. Weiss maintained that the Board provided an insufficient public recital because it did not "identify the general nature of the matter under consideration, i.e. the changes to each policy that was being voted on[.]"²⁰ She argued:

In the context of changes to school board policies, unless the specific changes are specifically shared or at least accessible how can the particular issue or transaction be identified? The reality is that they can't. It is virtually impossible to determine what the changes to specific policies are/were unless they are specifically identified in the record in some way, which they weren't.^[21]

This office's review of the relevant portions of the audio recordings of the Board's August 19, 2020, and September 23, 2020, meetings confirmed that the Board's open session statements align with the descriptions the Board provided to this office. During the former meeting, Mr. Bremmer announced that the Board was holding a "first reading" of amended and new Board policies, and he read the policy number and title for each policy. Dr. Schiffman then stated that "all of those are recommendations by PRESS, so that's in your Board packet and the community packet as well, but that is all recommendations from PRESS and the legislation, so they keep our policy handbook updated, so that's why we look to approve those."²² Mr. Bremmer affirmed that the Board was taking no action on the matter that night.

¹⁸Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 2.

¹⁹Letter from Tyler J. Bohman, Robbins Schwartz, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (October 29, 2020), at 3.

²⁰Letter from Deborah F. Weiss, Whitted Takiff LLC, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 24, 2020), at 3.

²¹Letter from Deborah F. Weiss, Whitted Takiff LLC, to Joshua M. Jones, Deputy Bureau Chief, Office of the Illinois Attorney General, Public Access Bureau (November 24, 2020), at 2.

²²Pearl City Community Unit School District No. 200 Board of Education, Open Meeting, August 19, 2020, Audio File, at 43:09-43:24 (on file with Public Access Bureau, Office of the Attorney General).

It was at the subsequent meeting on September 23, 2020, that the Board was required to make a proper public recital prior to voting on the changes, and it did so. Mr. Bremmer stated that "the next item of business is the approval of amended and new Board policies."²³ In the same manner as at the prior meeting, Mr. Bremmer then read off the numbers and titles of the policies being amended or added. He asked if there was "a motion to approve those policies," a motion was made and seconded, and the Board held a unanimous roll call vote to approve the policy changes.²⁴

Under the Illinois Supreme Court's analysis in *Springfield School District*, the nature of the matter under consideration was Board policy changes, and the details sufficient to identify those changes were the numbers and titles of the policies. To satisfy section 2(e), the Board was not required to disclose the text of the changes before it voted, nor was it required to describe the specific changes or their key terms. As the Court noted, a public body may elect to provide such information to the public, but is not compelled to do so by section 2(e).²⁵ Further, no provision of OMA restricted the Board from approving the changes to the 22 policies collectively in one vote. Although the question of whether the Board's public recital was adequate concerns only what the Board stated during its September 23, 2020, meeting before voting on the changes, the Board also helped inform the public as to the conduct of its business with a "first reading" of the changes at its prior meeting on August 19, 2020, and by posting descriptions of the changes in the Board packet on the District's website. Under these circumstances, this office concludes that the Board satisfied the requirements of section 2(e) by providing an adequate public recital before voting to approve the policy changes at its September 23, 2020, meeting. Nevertheless, this office emphasizes that public bodies have discretion to provide additional details in public recitals to better inform the public of the business being conducted, and encourages public bodies to do so when practical. Briefly summarizing the nature of policy changes, rather than simply identifying policies and indicating that changes have been proposed, could significantly enhance the public's understanding of actions under consideration.

²³Pearl City Community Unit School District No. 200 Board of Education, Open Meeting, September 23, 2020, Audio File, at 26:56-27:04 (on file with Public Access Bureau, Office of the Attorney General).

²⁴Pearl City Community Unit School District No. 200 Board of Education, Open Meeting, September 23, 2020, Audio File, at 28:58-29:28 (on file with Public Access Bureau, Office of the Attorney General).

²⁵*Springfield School District*, 2017 IL 120343, ¶61, 77 N.E.3d at 635-36.

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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 file. If you have questions, please contact me at jjones@atg.state.il.us.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
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cc: *Via electronic mail*
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