

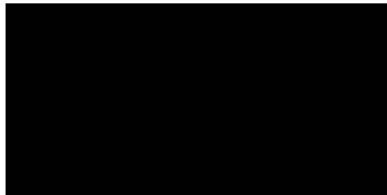


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 12, 2022

Via electronic mail



RE: OMA Request for Review – 2022 PAC 72478

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2010)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

In your Request for Review, received July 3, 2022, you alleged that the Board of Education (Board) of Hinsdale Township High School District 86 violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020), as amended by Public Act 102-653, effective January 1, 2022) by restraining a Board member from giving public comment on confidential Board matters during the public comment period of the Board's June 23, 2022, meeting. Specifically, you allege that the Board member presiding over the meeting interrupted her fellow member twice while she attempted to comment, during the period designated for public comments, about draft minutes of a prior closed session Board meeting.

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Your Request for Review argues that section 2.06(g) of OMA permits "any person" the right address the public body, and that it does not matter whether the person wishing to speak happens to be a member of the public body. However, the Attorney General has previously noted that "[s]ection 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, now requires that all public bodies subject to the Act provide an opportunity for **members of the public** to address public officials at open meetings." (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4; *see* Ill. Att'y Gen. Pub.

July 12, 2022

Page 2

Acc. Op. No. 21-009, issued September 21, 2021, at 4 ("A public body violates section 2.06(g) of OMA when it prohibits 'public comment' during a meeting by denying **members of the public** an opportunity to address the members of the public body in open session.") (Emphasis added.). Relying on that statement, this office determined that no further inquiry was warranted on an allegation that a public body violated OMA when it prevented a member of the public body from voicing her opinions and concerns during the public comment portions of its meetings. Ill. Att'y Gen. PAC Req. Rev. Ltr. 52413, issued April 6, 2018. In that matter, this office concluded that "section 2.06(g) is intended to provide the right to address the Board to members of the public, not to the Board members themselves." Ill. Att'y Gen. PAC Req. Rev. Ltr. 52413, issued April 6, 2018, at 2; cf. Ill. Att'y Gen. PAC Req. Rev. Ltr. 66974, issued March 3, 2021, at 2 (noting that 2.06(g) of OMA is not intended to secure the right of public body members to speak during meetings).

Section 2.06(g) of OMA was adopted to ensure that members of the public have at least one designated time period at every public meeting during which they can address public officials. Prior to its enactment, any right to address the public body was derived only from statutes governing specific governmental entities or policies adopted by them. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. In contrast, public officials who are members of public bodies are entitled to fully participate in meetings and are not reliant on provisions within OMA to ensure that they can communicate with their fellow public officials. Although a public official constitutes a "person" under the common definition of that term, it is apparent that the purpose of section 2.06(g) was not to ensure that **public officials** "shall be permitted an opportunity to address public officials" at public meetings. *See also Higgs v. Houston-Philpot*, No. 302767, 2012 Mich. App. LEXIS 677, at *6 (Mich. Ct. Appeals Apr. 17, 2012) (construing Michigan's Open Meetings Act; "We fail to see how the purpose of the OMA is achieved when individual members of the public body are permitted to present their personal disagreements about the decision-making of the public body to which they are a member during the public comment segment of the meeting."). Most public bodies permit only a limited amount of time for public comment, such as 30 minutes or 60 minutes. It would undermine the intent of section 2.06(g) to construe that provision as requiring public bodies to permit their members to seek to use a portion of the time that the General Assembly intended to devote to members of the public. *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose "or yield an absurd or unjust result.").

Accordingly, because you have alleged that the Board prohibited a Board member rather than a member of the public from addressing public officials at its June 23, 2022, meeting, this office will take no further action as to this matter. 5 ILCS 120/3.5(a) (West 2020) ("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[.] * * * The request for review * * * must include a summary of the facts supporting the allegation.").



July 12, 2022

Page 3

This file is closed. If you have any questions, you may contact me at the
leah.bartelt@ilag.gov or (312) 814-6437.

Very truly yours,



LEAH BARTELT
Public Access Counselor
Public Access Bureau

72478 o no fi war sd

cc: *Via electronic mail*
The Honorable Erik Held
President, Board of Education
Hinsdale Township High School District 86
5500 South Grant Street
Hinsdale, Illinois 60521
eheld@hinsdale86.org