



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 13, 2023

PUBLIC ACCESS OPINION 23-013
(Request for Review 2023 PAC 76977)

OPEN MEETINGS ACT:
Restriction of Public Comment is
Limited to Established and Recorded Rules
Governing Public Comment

Ms. Elisabeth Aikins
1N580 Bob O Link Drive
Winfield, Illinois 60190

The Honorable Rob Hanlon
President, Board of Education
Wheaton Warrenville Community Unit School District No. 200
130 West Park Avenue
Wheaton, Illinois 60189

Dear Ms. Aikins and Mr. Hanlon:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons discussed below, this office concludes that the Board of Education (Board) of Wheaton Warrenville Community Unit School District No. 200 (District) violated section 2.06(g) of OMA¹ at its June 14, 2023, meeting by imposing a restriction on public comment that was not authorized by its established and recorded rules.

¹5 ILCS 120/2.06(g) (West 2022).

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BACKGROUND

On June 16, 2023, Ms. Elisabeth Aikins submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA during its June 14, 2023, meeting by restricting her ability to address members of the Board.² Specifically, Ms. Aikins alleged that while she was addressing the Board during the period for public comment, the Board President interrupted her after she referenced a District hiring policy. Ms. Aikens stated that the Board President said she "could not discuss personnel issues[]" and would not permit her to continue addressing the Board.³ Ms. Aikins asserted that she intended to comment on "Board Policy, not a personal staff issue[]" and alleged that the Board purposely terminated her comment because she had "been emailing Dr. [Jeff] Schuler⁴ and the Board regarding my concerns related to mandated reporters in the district failing to report sexual misconduct against minors."⁵

On June 23, 2023, the Public Access Bureau sent a copy of the Request for Review to Mr. Rob Hanlon in his capacity as Board President. The Public Access Bureau also sent Mr. Hanlon a letter requesting a written response to Ms. Aikins' allegations and, for this office's confidential review, copies of any rules the Board had established and recorded concerning public comment, the agenda, open session meeting minutes, and any recording from the open session portion of the meeting in question.⁶ On June 27, 2023, Mr. Hanlon, on behalf of the Board, provided this office with a written answer, copies of Board of Education Policy 2:230 "Public Participation at Board of Education Meetings and Petitions to the Board[.]" the June 14, 2023, meeting agenda and draft minutes, as well as copies of what appear to be versions

²E-mail from Elisabeth Aikins to Public Access Counselors, [Office of the Attorney General] (June 16, 2023). Ms. Aikins' e-mail to this office initially stated that the meeting in question occurred on May 14, 2023, but she subsequently clarified in her reply that the relevant meeting took place on June 14, 2023.

³E-mail from Elisabeth Aikins to Public Access Counselors, [Office of the Attorney General] (June 16, 2023).

⁴According to the District's website, Dr. Jeff Schuler is the District's Superintendent of Schools. Community Unit School District 200, <https://www.cusd200.org/page/superintendent> (last visited July 27, 2023).

⁵E-mail from Elisabeth Aikins to Public Access Counselors, [Office of the Attorney General] (June 16, 2023).

⁶Letter from Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to The Honorable Rob Hanlon, President, Board of Education, Wheaton Warrenville Community Unit School District No. 200 (June 23, 2023).

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of the April 12, 2023, and June 14, 2023, meeting agendas annotated as scripts for use by the presiding officer at those meetings.⁷

On June 27, 2023, the Public Access Bureau forwarded a copy of the Board's written answer to Ms. Aikins and notified her of her opportunity to reply.⁸ Later that day, Ms. Aikins submitted her reply.⁹

On August 11, 2023, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to September 14, 2023, pursuant to section 3.5(e) of OMA.¹⁰

ANALYSIS

OMA declares that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2022). 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."

This office has issued several binding opinions concluding that section 2.06(g) generally precludes a public body from imposing restrictions on public comment that are not set out in its established and recorded rules. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 6-7; Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 5-7; Ill. Att'y Gen. Pub. Acc. Op. No. 19-009, issued October 1, 2019, at 5; Ill. Att'y Gen. Pub. Acc. Op. No. 21-009, issued September 21, 2021, at 5-6. Although OMA does not specifically address the nature of rules that a public body may enforce during the public comment portion of an open meeting, the first amendment to the United States Constitution ordinarily only permits in such a designated public forum "reasonable time, place and manner restrictions[]" that are

⁷Letter from Rob Hanlon, CUSD200 School Board President, Community Unit School District 200, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (June 27, 2023). Mr. Hanlon's letter references a May 14, 2023, meeting, but it is clear from the other records the Board submitted to this office that the letter pertains to the Board's June 14, 2023, meeting.

⁸Letter from Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Elisabeth Aikins (June 27, 2023).

⁹E-mail from Elisabeth Aikins to [Shannon] Barnaby (June 27, 2023).

¹⁰Letter from Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Elisabeth Aikins and The Honorable Rob Hanlon, President, Board of Education, Wheaton Warrenville Community Unit School District No. 200 (August 11, 2023).

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content-neutral. *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009) (quoting *Heffron v. Int'l Society for Krishna Consciousness*, 452 U.S. 640, 647, 101 S. Ct. 2559, 2564 (1981)) (examining whether the application of city council's rules for public comment violated plaintiff's first amendment rights). Such rules must be reasonably necessary to protect a significant governmental interest and must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6-7 (rule requiring submission of a request to address a public body at least five working days in advance of a meeting was unreasonable under section 2.06(g)).

The section of the Board's policy manual governing public comment provides:

**2:230 Public Participation at Board of Education
Meetings and Petitions to the Board**

The Board will allocate up to 30 minutes during each regular and special open meeting of the Board during which any person may comment to or ask questions of the Board regarding agenda or non-agenda items, subject to the reasonable constraints established and recorded in this policy's guidelines below. During public participation, public comment on any one subject may be limited to 20 minutes. It shall be the Board's practice not to directly engage in discussion or ask questions with the persons addressing the Board during Public Comments. Responses to comments to or questions of the Board are most often managed through policy 3:30, *Chain of Command*.

To preserve sufficient time for the Board to conduct its business, any person appearing before the Board is expected to follow these guidelines:

1. Sign in on the designated public comments form, stating name, address, and topic.
2. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President. This includes following the directives of the Board President to maintain order and decorum for all.
3. Identify oneself and be brief. Ordinarily, the time for any one person to address the Board during public

participation shall be limited to three minutes. In unusual circumstances, and when an individual has made a request to speak for a longer period of time, the Board President may allow a person to speak for more than three minutes. If multiple individuals wish to address the Board on the same subject, the group is encouraged to appoint a spokesperson.

4. Observe, when necessary and appropriate, the Board President's authority to:
 - a. Shorten the time for each person to address the Board during public participation to conserve time and give the maximum number of people an opportunity to speak;
 - b. Expand the overall 30-minute time allocation for public participation and/or the 20-minute allocation for any one subject; and/or
 - c. Determine procedural matters regarding public participation not otherwise covered in Board policy.
5. Conduct oneself with respect and civility toward others and otherwise abide by Board policy 8:30, *Visitors to and Conduct on School Property*. (Emphasis in original.)^[11]

This office has reviewed the recording of the open session of the Board's June 14, 2023, meeting. During the public comment portion of that meeting, Ms. Aikins addressed the Board about the District's plan to eliminate class sections.¹² After approximately one minute and thirty seconds, Ms. Aikins transitioned to speaking about District hiring policies, stating "I also want to address hiring policies in the District and strongly encourage District 200 to change their handbook to state that no adult with any conviction against—[.]"¹³ At that point, the Board

¹¹Wheaton Warrenville Community Unit School District No. 200, Board of Education Policy Manual, §2:230 (adopted August 24, 2022), available at https://www.boardpolicyonline.com/?b=wheaton-warrenville_cusd_200&s=672279.

¹²Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, YouTube (June 14, 2023), https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 20:27-22:05.

¹³Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, YouTube (June 14, 2023), https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 22:05-22:11.

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President interrupted Ms. Aikins, stating "[e]xcuse me ma'am you're not going to be able to comment on that, we're not [discussing] any personnel matters. You can deal directly with the Board[.] We'll be glad to take your name and information and talk to you one-on-one specifically about that but not at a public Board meeting. Thank you for understanding."¹⁴ Ms. Aikins stopped speaking and as she begins to leave the podium she said something else to the Board, which is inaudible on the recording. The Board President then reiterated that the Board requires members of the public who wish to address the Board about personnel matters to do so privately outside of a public meeting.¹⁵ Ms. Aikins did not complete her statement.

In its answer to this office, the Board acknowledged that it interrupted Ms. Aikins. The Board stated that based on the Board and the District's previous interactions with Ms. Aikins, Mr. Hanlon believed that the nature of her comments concerned a "matter under open investigation by the Department of Children and Family Services."¹⁶ Mr. Hanlon stated that those interactions "accelerate[d] my decision to interrupt" Ms. Aikins.¹⁷

The Board's response to this office did not specify which provision of Board Policy 2:230 provides for a restriction on comments concerning personnel matters. The Board implied, however, that the restriction was authorized by other guidance it has offered for public comments, noting that the Board "should have respectfully reminded Ms. Aik[i]ns to adhere to the Board's guidance on public comment read prior to the section of the meeting agenda."¹⁸ The June 14, 2023, annotated agenda that appears to be a meeting script provides, among other things, that "[t]o maintain confidentiality, the Board asks that any matters concerning personnel

¹⁴Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, June 14, 2023, *available at* https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 22:12-22:25.

¹⁵Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, June 14, 2023, *available at* https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 22:25-22:35.

¹⁶Letter from Rob Hanlon, CUSD200 School Board President, Community Unit School District 200, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (June 27, 2023), at [1].

¹⁷Letter from Rob Hanlon, CUSD200 School Board President, Community Unit School District 200, to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (June 27, 2023), at [1].

¹⁸Letter from Rob Hanlon, CUSD200 School Board President, [Wheaton Warrenville Community Unit School District No. 200], to Shannon Barnaby, Senior Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (June 27, 2023), at [1].

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or students be communicated to the Board privately."¹⁹ This office's review of the June 14, 2023, meeting recording confirmed that the Board President read a "preamble" before the period for public comment that was consistent with some of the language in the annotated agenda.²⁰ Notably, however, the Board President's statement did not include the portion of the annotated agenda restricting comment on personnel matters, nor did he otherwise state the Board's preference that personnel matters be communicated privately.²¹ The Board's response to this office did not explain how the language in the annotated agenda was made available to the public; the annotated agenda does not appear on the District's website.²² The agenda that is posted states: "Public comments are important to the Board. However, it is the Board's policy not to take action on items until time has been taken to gather information and discuss all options. Lack of action does not imply lack of interest in the issues."²³

The plain language of section 2.06(g) requires that the rules governing public comment not only be "established" but also "recorded" by the public body. When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶24, 962 N.E. 2d 444, 452 (2012). Because OMA does not define either "established" or "recorded," the terms must be given their ordinary and popularly understood meaning. See *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶15, 28 N.E.3d 747, 751 (2015). The dictionary can be used as a resource to ascertain

¹⁹Wheaton Warrenville Community Unit School District No. 200, Board of Education, Regular Board Meeting, Information: Public Comment (June 14, 2023). The annotated April 12, 2023, meeting agenda contains a similar statement: "To preserve confidentiality, the Board and its President request that items relating to either personnel or students be provided to the Board privately or in writing for consideration in a future closed session if necessary." Wheaton Warrenville Community Unit School District No. 200, Board of Education, Regular Board Meeting, Public Comments - Agenda & Non-Agenda Items (April 12, 2023).

²⁰Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, June 14, 2023, *available at* https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 8:50-10:23.

²¹Wheaton Warrenville Community Unit School District No. 200, Board of Education, Open Meeting, June 14, 2023, *available at* https://www.youtube.com/watch?v=F-zyQA2rsG4&list=PLEv2Kc9ticB3vHYOFJ-OH9nRTVoqT4r_R&index=3, at 8:50-10:23.

²²Wheaton Warrenville Community Unit School District No. 200, Board of Education, Regular Meeting (June 14, 2023), <https://cusd200public.ic-board.com/>.

²³Community Unit School District No. 200, Board of Education, Regular Board Meeting, Public Comments – Agenda & Non-Agenda Items (June 14, 2023).

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the ordinary and popular meaning of words. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶47, 39 N.E.3d 205, 213 (1st Dist. 2015).

Black's Law Dictionary defines "establish" as: "To settle, make, or fix firmly; to enact permanently." Black's Law Dictionary 688 (11th ed. 2019). "Enact" is defined as "[t]o make into law by authoritative act; to pass." Black's Law Dictionary 666 (11th ed. 2019). To "record" is defined as "[t]o deposit (an original or authentic official copy of a document) with an authority." Black's Law Dictionary 1527 (11th ed. 2019).

Under these definitions, it is clear that Board Policy 2:230 was "established" and "recorded" by the Board, as the policy states that it was adopted on August 24, 2022, and it has been incorporated into the Board's formal policy manual. Accordingly, this policy sets forth the rules that govern public participation at Board meetings. Board Policy 2:230 does not restrict public comment on personnel matters and there is no evidence that Board Policy 2:230 was formally amended to add this additional guideline prior to the June 14, 2023, meeting. Although the Board's answer to this office referenced the limitation on discussing personnel matters as written in the annotated agendas, there is no evidence the Board communicated to the public, either orally or in writing, that restriction before interrupting Ms. Aikins. The annotated agenda restricting public comment on personnel matters does not demonstrate that this limitation was established and recorded as part of the Board's formal rules or policies. Because that restriction was not established and recorded, enforcing it is contrary to the plain language of section 2.06(g), which expressly requires that a public body both establish and record its public comment rules.

Even if the Board had established and recorded a rule generally prohibiting the public from commenting on "personnel matters," it unclear that such a rule would be permissible under OMA. See *Leventhal v. Vista Unified School District*, 973 F. Supp. 951, 958-59 (S.D. Cal.) (concluding that California's version of OMA²⁴ did not authorize a school board "to silence public speech that may also touch upon related employment issues[]" and that the school board violated the first amendment by stopping a speaker from addressing concerns about a superintendent's qualifications and performance based on a public comment rule that prohibited criticism of public employees without their consent). This binding opinion does not determine whether a rule restricting comments on personnel matters is proper because the Board's lack of an established and recorded rule to that effect is dispositive. This office notes, however, that "[a]ny content-based restrictions, promulgated with reference to the content of the speech being restricted, are subject to strict-scrutiny, and must serve a compelling state interest and be

²⁴Cal. Gov't Code §§ 54954.3, 54960 (West 1996).

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narrowly drawn to achieve that purpose." *I.A Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d at 922-23.

For the reasons stated above, this office concludes that the Board violated section 2.06(g) of OMA by improperly limiting Ms. Aikins' statutory right to address the Board during its June 14, 2023, meeting, based on a restriction that is not among its established and recorded rules governing public comment.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On June 14, 2023, Ms. Elisabeth Aikins attended the regular meeting of the Board of Education of Wheaton Warrenville Community Unit School District No. 200.
- 2) On June 16, 2023, Ms. Aikins submitted a Request for Review to the Public Access Counselor alleging that the Board prohibited her from fully addressing members of the Board during public comment because the Board President believed that she intended to discuss a personnel matter. Ms. Aikins' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2022)).
- 3) On June 23, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Board President. The Public Access Bureau also sent the Board a letter requesting a written response, copies of any Board rules or policies governing public comment that were in effect at the time of the meeting in question, as well as copies of the agenda, minutes, and recording of the open session portion of that meeting.
- 4) On June 27, 2023, the Board provided this office with a written answer and the requested materials, as well as copies of annotated agendas for the Board's April 12, 2023, and June 14, 2023, meetings.
- 5) On June 27, 2023, this office sent a copy of the Board's answer to Ms. Aikins and notified her of her opportunity to reply. On the same day, Ms. Aikins submitted a reply.
- 6) On August 11, 2023, this office properly extended the time within which to issue a binding opinion by 21 business days, to September 14, 2023, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

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7) 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."

8) It is undisputed that the Board President interrupted Ms. Aikins while she provided public comment during the Board's June 14, 2023, meeting. The interruption occurred when Ms. Aikins referenced the District's hiring policy, and she was not permitted to finish her comments because the Board President believed Ms. Aikins intended to address a personnel issue.

9) Board Policy 2:230, which governs public comment, does not include an established or recorded rule restricting public comment on personnel matters.

10) The annotated copy of the June 14, 2023, Board meeting agenda states "[t]o maintain confidentiality, the Board asks that any matters concerning personnel or students be communicated to the Board privately." The Board did not read this statement during the June 14, 2023, meeting, but it implied that the statement was its basis for limiting Ms. Aikins' comments. The Board, however, did not demonstrate that it took action to establish and record this statement as a public comment rule or otherwise establish and record a restriction as to comments on personnel matters.

11) Accordingly, the Attorney General concludes that the Board violated section 2.06(g) of OMA when it prohibited Ms. Aikins from providing public comment regarding the District's hiring policies based on the assumption that she intended to comment on a personnel matter.

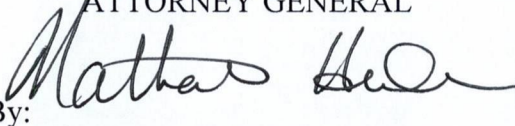
In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by refraining from applying unestablished and unrecorded rules to restrict public comment at future meetings and by otherwise conducting its future meetings in full compliance with OMA. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2022).

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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2022). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Ms. Elisabeth Aikins as defendants. *See* 5 ILCS 120/7.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By: 

Nathalina Hudson
Chief of Staff

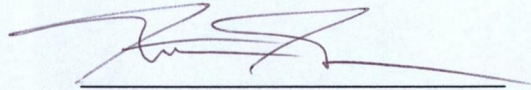
CERTIFICATE OF SERVICE

Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-013) upon:

Ms. Elisabeth Aikins
1N580 Bob O Link Drive
Winfield, Illinois 60190
Elisabeth.a.millar@gmail.com

The Honorable Rob Hanlon
President, Board of Education
Wheaton Warrenville Community
Unit School District No. 200
130 West Park Avenue
Wheaton, Illinois 60189
Rob.hanlon@cusd200.org

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on September 13, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
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