



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 27, 2023

PUBLIC ACCESS OPINION 23-016
(Request for Review 2023 PAC 78356)

OPEN MEETINGS ACT:
Improper Closed Session Discussion of
Removing Book from Curriculum

Ms. Mary Grzywa
2691 North 2409th Road
Marseilles, Illinois 61341

The Honorable Darren Crawford
President, Board of Education
Yorkville Community Unit School District 115
800 Game Farm Road
Yorkville, Illinois 60560

Dear Ms. Grzywa and Mr. Crawford:

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 Yorkville Community Unit School District 115 (District) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2022), as amended by Public Act 103-311, effective July 28, 2023) during its August 7, 2023, meeting by holding an improper closed session discussion concerning the removal of a book from a curriculum.

BACKGROUND

On September 28, 2023, Ms. Mary Grzywa submitted a Request for Review to the Public Access Bureau alleging: "The board held closed sessions at their meetings to discuss curriculum. Decisions from the closed meetings were given on May 22, 2023 and August 7, 2023. The topic of the discussion was the use of the book" *Just Mercy* by Bryan Stevenson "in an

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English class."¹ Ms. Grzywa provided a link to a news article about the controversy over the Board's decision to pull the book from the curriculum after returning from closed session during the August 7, 2023, meeting.² The article stated that "[e]arlier this year, a parent's objection to the book triggered the district's uniform grievance procedure[.]" which resulted in a determination by the District's administration that use of the book did not violate Board policy.³ The parent appealed that decision to the Board, which discussed the matter in closed session on May 22, 2023, and then in open session voted to add a second text as an alternative option to *Just Mercy*.⁴ "[T]he board subsequently removed the option of reading 'Just Mercy' as part of the course at its Aug. 7 meeting[.]" the article continued, but "why the board revisited the issue and reversed its decision remains unclear. The discussions were held in closed session."⁵ Ms. Grzywa argued that "[t]he board owes the public full disclosure of their debate on the matter."⁶

¹E-mail from Mary Grzywa to Public Access [Bureau, Office of the Attorney General] (September 28, 2023).

²Mark Foster, *'Just Mercy' – What's the book at the center of controversy in Yorkville about?*, Shaw Local News Network (September 28, 2023, 5:00 a.m.), <https://www.shawlocal.com/kendall-county-now/2023/09/28/just-mercy-whats-the-book-banned-by-yorkville-school-board-about/>.

³Mark Foster, *'Just Mercy' – What's the book at the center of controversy in Yorkville about?*, Shaw Local News Network (September 28, 2023, 5:00 a.m.), <https://www.shawlocal.com/kendall-county-now/2023/09/28/just-mercy-whats-the-book-banned-by-yorkville-school-board-about/>.

⁴Mark Foster, *'Just Mercy' – What's the book at the center of controversy in Yorkville about?*, Shaw Local News Network (September 28, 2023, 5:00 a.m.), <https://www.shawlocal.com/kendall-county-now/2023/09/28/just-mercy-whats-the-book-banned-by-yorkville-school-board-about/>.

⁵Mark Foster, *'Just Mercy' – What's the book at the center of controversy in Yorkville about?*, Shaw Local News Network (September 28, 2023, 5:00 a.m.), <https://www.shawlocal.com/kendall-county-now/2023/09/28/just-mercy-whats-the-book-banned-by-yorkville-school-board-about/>.

⁶E-mail from Mary Grzywa to Public Access [Bureau, Office of the Attorney General] (September 28, 2023).

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On October 2, 2023, the Public Access Bureau determined that further action was warranted as to the allegation concerning the August 7, 2023, meeting.⁷ The Public Access Bureau sent a copy of the Request for Review to the Board President, Mr. Darren Crawford. The Public Access Bureau also sent Mr. Crawford a letter asking for copies of the August 7, 2023, meeting agenda, minutes (both open and closed sessions), and closed session verbatim recording. This office also asked the Board to respond in writing to the allegation that it violated OMA by discussing whether to remove the book from the curriculum in closed session.⁸

On October 20, 2023, counsel for the Board provided the Public Access Bureau with those materials, as well as various materials about the grievances filed by the parent of a student in the District that served as the basis for the Board's deliberations about the book. In a written answer to Ms. Grzywa's allegations, counsel for the Board denied that the Board had violated OMA.⁹

As background, the Board explained that its August 7, 2023, closed session discussion stemmed from a parent's complaint to the District on January 21, 2023, under Board Policy 2:260,¹⁰ which sets forth the District's Uniform Grievance Procedure (UGP).¹¹ The complaint alleged District employees failed to comply with Board Policy 6:80, "Teaching About

⁷Ms. Grzywa's Request for Review about the May 22, 2023, meeting was untimely because it did not indicate that she did not discover facts about the alleged violation from that meeting within 60 days after it occurred despite using reasonable diligence. *See* 5 ILCS 120/3.5(a) (West 2022) (requiring a Request for Review to be filed within 60 days after an alleged violation occurred except that "[i]f facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation."). Notably, the Board approved the May 22, 2023, minutes during the open session portion of its June 26, 2023, meeting. Yorkville Community Unit School District 115 Board of Education, Meeting, June 26, 2023, Minutes 2.

⁸Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Darren Crawford, President, Board of Education, Yorkville Community Unit School District 115 (October 2, 2023), at 1.

⁹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023).

¹⁰Yorkville Community Unit School District 115 Board of Education, Policy Manual, § 2:260 (adopted February 28, 2022).

¹¹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 4.

Controversial Issues."¹² The District investigated the complaint, and, on April 26, 2023, then-Superintendent Tim Shimp issued a decision letter finding the complaint to be unsubstantiated.¹³ In accordance with the next step in the UGP, the parent escalated the complaint to the full Board on May 9, 2023.¹⁴ The parent alleged that the "Yorkville High School Principal and English Department Leader * * * knowingly allowed school board policy 6.8 to be violated by assigning a novel in which the theme was America is systemically racist against black and brown people, which is a political opinion not a fact."¹⁵ The Board placed the item "Evidence Concerning Curriculum Objection/Uniform Grievance" on the agenda for its May 22, 2023, meeting,¹⁶ and adjourned to closed session to discuss the matter during the meeting.¹⁷ The open session minutes document that the following motion was approved when the Board returned to open session:

Motion to amend the Superintendent's decision regarding the UGP about *Just Mercy* and Direct the Superintendent to inform the complainant and the accused of the findings that there was inconclusive evidence that Board policy was violated and direct the administration to provide students with an opportunity to choose between reading *Just Mercy* by Bryan Stephenson and another piece of literature that provides a balanced viewpoint to learn the objectives outlined in the curricular unit.^[18]

On May 31, 2023, the parent filed a new complaint against three named District employees "regarding what I feel is an attempt to hide assignments from me regarding the book

¹²Yorkville Community Unit School District 115 Board of Education, Policy Manual, § 6:80 (adopted March 20, 2023).

¹³Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 4.

¹⁴Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 4.

¹⁵Letter from [redacted] to Yorkville School District Y115, Complaint Manager, Dr. Baughman (May 9, 2023).

¹⁶Yorkville Community Unit School District 115 Board of Education, Regular Meeting, Agenda Item 8.07 (May 22, 2023).

¹⁷Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 4.

¹⁸Yorkville Community Unit School District 115 Board of Education, Meeting, May 22, 2023, Minutes 15.

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'Just Mercy.'"¹⁹ In this complaint, the parent alleged a violation of Board Policy 6:210, "Instructional Materials," which provides that "[a]nyone may inspect any textbook or instructional material."²⁰ The parent alleged that the District had not provided access to instructional materials about the book, and stated towards the end of the complaint: "I ask that a board member also inspects the requested materials to make sure the assignments do not further violate school board policy 6:80."²¹ The Board stated that it "revisited this issue at the August 7, 2023, Committee of the Whole Board Meeting[,]"²² under the agenda item "Reconsider Action on Curriculum Objection/Uniform Grievance Appeal."²³ The Board proceeded to explain why it believed its closed session discussion during the meeting was proper.

On October 23, 2023, this office forwarded a copy of the Board's response letter to Ms. Grzywa.²⁴ On October 27, 2023, she submitted a reply, maintaining that the Board violated OMA during closed session on August 7, 2023.²⁵

On November 20, 2023, this office extended the time within which to issue a binding opinion by 21 business days, to December 27, 2023.²⁶

¹⁹E-mail from [redacted] to [Board members] (May 31, 2023).

²⁰Yorkville Community Unit School District 115 Board of Education, Policy Manual, § 6:210 (adopted January 27, 2020).

²¹Letter from [redacted] to School Board Members (May 31, 2023), at 2.

²²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 5.

²³Yorkville Community Unit School District 115 Board of Education, Agenda Items 3.06, 7.02 (August 7, 2023).

²⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mike Curtis and Mary Grzywa (October 23, 2023). This office notes that Mr. Curtis filed a similar Request for Review to Ms. Grzywa's (2023 PAC 78412), but this office discusses only Ms. Grzywa's Request for Review in this binding opinion for the sake of simplicity.

²⁵Letter from Mary Grzywa to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Steve Richart, Partner, Hodges, Loizzi, Eisenhammer, Rodick & Kohn (October 27, 2023).

²⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Mary Grzywa and Steve Richart, Partner, Hodges, Loizzi, Eisenhammer, Rodick & Kohn (November 20, 2023).

ANALYSIS

OMA is intended "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(a) of OMA

Section 2(a) of OMA provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Such exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be *strictly construed, extending only to subjects clearly within their scope.*" (Emphasis added.) 5 ILCS 120/2(b) (West 2022), as amended by Public Act 103-311, effective July 28, 2023. Section 2(c) of OMA²⁷ provides that "[a] public body may hold closed meetings to consider the following subjects[.]" and then enumerates 40 exceptions that permit public bodies to discuss certain specific subjects in closed session.

The Board's response to this office explained that the Board publicly cited the following four OMA exceptions before entering closed session to discuss issues involving the book:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act.

* * *

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-

²⁷5 ILCS 120/2(c) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

* * *

(10) The placement of individual students in special education programs and other matters relating to individual students. [and]

(11) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting. 5 ILCS 120/2(c)(1), (c)(4), (c)(10), (c)(11) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

The Board's response to this office acknowledged, however, that it "did not actually utilize" the section 2(c)(11) exception during the August 7, 2023, closed session.²⁸

This office has reviewed the verbatim recording and minutes²⁹ of the closed session portion of the Board's August 7, 2023, meeting. The recording shows that at the outset of the discussion, the Board acknowledged that the purpose of the closed session was not really to discuss the grievance, but to decide whether to uphold its previous decision about the book or to remove it from the curriculum entirely. The vast majority of the discussion concerned the merits of having *Just Mercy* as a part of the curriculum, what other curriculum options the Board had, and the Board's approach to curriculum matters in general. The Board made brief references to the parent who filed the grievance on a handful of occasions, and alluded to the parent's child—not by name—a couple times. The Board also named certain employees at times,

²⁸Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 9.

²⁹The minutes consist of less than one line of text to document a closed session that lasted an hour and 20 minutes. This office reminds the Board that section 2.06(a)(3) of OMA (5 ILCS 120/2.06(a)(3) (West 2022)) requires minutes to include "a *summary of discussion* on all matters proposed, deliberated, or decided, and a record of any votes taken." (Emphasis added.)

but did not deliberate about performance issues or relative merits of specific employees.³⁰ With these facts in mind, this office considers the parties' arguments.

Section 2(c)(1) of OMA

Section 2(c)(1) of OMA permits public bodies to adjourn to closed session to discuss employment-related topics about specific employees, such as a particular employee's performance, discipline, and dismissal. *Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, 359 Ill. App. 3d 321, 325 (2005).

The Board asserted that during its August 7, 2023, closed session, "the Board clearly was discussing a complaint against three specified employees, as expressly allowed under 2(c)(1)."³¹ The Board acknowledged that "much of" its "discussion centered around the appropriacy of the book for students," but argued that "it clearly was for the purpose of resolving the UGP complaint against specific employees."³² The Board analogized this matter to *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (1989), where the court concluded that while discussing complaints against a superintendent in closed session under section 2(c)(1), the school board also permissibly discussed potential solutions to his performance issues.³³ The Board claimed: "Similarly here, the Board discussed the UGP complaint against specific employees in closed session in connection with the teaching of *Just Mercy*, together with a discussion of action in connection with *Just Mercy* as a means of resolving the UGP complaint."³⁴

In reply, Ms. Grzywa argued:

It is entirely possible to discuss curriculum and policy in open session, closing only for the actual personnel matter. * * * The

³⁰Yorkville Community Unit School District 115 Board of Education, Closed Session Meeting, August 7, 2023, Audio File (on file with Public Access Bureau, Office of the Attorney General).

³¹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 6.

³²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 7.

³³Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 6-7.

³⁴Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 7.

rhetorical analysis appropriateness of *Just Mercy* can be discussed without discussion of specific staff actions or divulging confidential material. The board acknowledged in its response that the conversation in closed session was primarily concerning the curriculum choice of *Just Mercy*, so the argument that this session was for the purpose of personnel issues is inaccurate. The intentional co-mingling of curriculum discussion with personnel matters has deprived the public of transparency to which they are entitled regarding this curriculum decision.^[35]

The Board's argument about the applicability of section 2(c)(1) does not align with the substance of the closed session discussion. It is abundantly clear from the verbatim recording that the Board was not in closed session to evaluate any specific employee's job performance or actions, but to make a curriculum decision about the book *Just Mercy*. In the *Gosnell* decision cited by the Board, the court held that both complaints against a superintendent as well as solutions to underlying problems could be discussed in closed session because of the risk of revealing confidential information about the superintendent in open session and unduly inhibiting "discussion of the solutions without making reference to the problems[.]" *Gosnell*, 179 Ill. App. 3d at 176. That ruling is inapposite because it is not as though the Board here folded limited remarks about the appropriateness of the book into an over-arching discussion about how specific employees performed their job duties, or that a Board discussion about specific employees was somehow otherwise inextricable from a discussion about the curriculum; rather, the Board held a lengthy closed session discussion that focused on the appropriateness of curriculum materials without deliberating about specific employees. Because the Board's closed session discussion did not revolve around the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the District, or otherwise fall within the scope of the section 2(c)(1), that exception did not authorize the closed session discussion.

Section 2(c)(4) of OMA

OMA defines "quasi-adjudicative body" as "an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges." 5 ILCS 120/2(d) (West 2022), as amended by Public Act 103-311, effective July 28, 2023. "The point of the [section 2(c)(4)] exception is to allow bodies authorized by statute to conduct [adjudicatory] proceedings to have a measure of confidentiality

³⁵Letter from Mary Grzywa to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Steve Richart, Partner, Hodges, Loizzi, Eisenhammer, Rodick & Kohn (October 27, 2023), at 2.

in evaluating the information that's presented at an open hearing." Remarks of Rep. Currie, April 20, 1993, House Debate on House Bill No. 1332, at 60.

Citing several provisions of the School Code,³⁶ the Board argued that "school boards act as quasi-adjudicative bodies and are required to provide due process to individuals in multiple scenarios, including but not limited to: the suspension or expulsion of pupils [citation], the removal or dismissal of tenured teachers [citation], and disputes related to the residency of pupils [citation]."³⁷ The Board's August 7, 2023, closed session discussion, however, did not involve any of those topics. The Board has not identified, and this office is not aware of, a specific statutory basis in the School Code for a school board to act as a quasi-adjudicative body with respect to deciding whether to remove a book from a course curriculum. Rather, the Board cited the catch-all provision authorizing school boards "[t]o adopt and enforce all necessary rules for the management and government of the public schools of their district[.]"³⁸ and argued that the Board was acting as a quasi-adjudicative body because its UGP "requires that '[w]ithin 30 school business days after an appeal of the Superintendent's decision, the Board shall affirm, reverse, or amend the Superintendent's decision or direct the Superintendent to gather additional information.'"³⁹

The Board asserted that the May 22, 2023, open session minutes reflect that "[f]or this quasi-adjudicative matter, evidence was provided by District administrators in open session, and a written memorandum and the original unit plan and proposal for *Just Mercy* from February 2021 were submitted."⁴⁰ Those minutes do summarize an open session discussion about the purpose of including the book in the curriculum (including the book proposal), the contents of

³⁶105 ILCS 5/10-22.6 (West 2022) (setting forth adjudicatory process for expulsions and certain suspensions of pupils); 105 ILCS 5/24-12 (West 2022), as amended by Public Act 103-500, effective July 1, 2023 (setting forth adjudicatory process for removal or dismissal of certain teachers); 105 ILCS 5/10-20.12b (West 2022) (setting forth adjudicatory process for pupil residency disputes).

³⁷Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 9.

³⁸105 ILCS 5/10-20.5 (West 2022).

³⁹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 10 (quoting Yorkville Community Unit School District 115 Board of Education, Policy Manual, § 2:260 (adopted February 28, 2022)).

⁴⁰Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 10.

the book, and how the assignment of the book was received by students.⁴¹ The Board asserted that it had also met the final condition of section 2(c)(4) in that "[t]he written decision setting forth the Board's determinative reasoning was sent to the Parent on August 14, 2023, in compliance with the UGP Policy. [Citation.] This decision has been made available by the District in response to FOIA requests, with redactions to protect privacy of students."⁴² The Board did not argue that during closed session on August 7, 2023, it considered "[e]vidence or testimony presented * * * in closed hearing *where specifically authorized by law*[]" (emphasis added) as the language of section 2(c)(4) plainly requires in order for the exception to apply on that basis.

In her reply, Ms. Grzywa contended:

The Board claimed that discussion of curriculum and the curriculum's adherence to school district policy can be defined as quasi-adjudicative because a UGP complaint existed. However, it is when there is controversy about curriculum elements and the underlying philosophy of the school district's education policy that UGP complaints will be filed regarding curriculum or policy. This is precisely when transparency and the public interest dictate open public discussion and understanding of the logic behind board decisions.^[43]

As with the Board's argument about the applicability of section 2(c)(1), the Board's argument about section 2(c)(4) does not align with the contents of the closed session discussion. Again, within the first few minutes of the closed session discussion, Board members acknowledged that they were not actually there to decide a pending grievance, but to make a curriculum decision about *Just Mercy*. The Board did spend a short time discussing the parent's May 31, 2023, complaint that she was not being afforded access to instructional materials, but this discussion did not concern "evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law." The Board then spent more than an hour discussing what to do about *Just Mercy* as a curriculum matter moving forward.

⁴¹Yorkville Community Unit School District 115 Board of Education, Meeting, May 22, 2023, Minutes 6-7.

⁴²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 11.

⁴³Letter from Mary Grzywa to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Steve Richart, Partner, Hodges, Loizzi, Eisenhammer, Rodick & Kohn (October 27, 2023), at 2.

The Board had issued its final decision on the parent's grievance about District employees using the book in the curriculum on May 22, 2023. The Board did not identify any reconsideration process under its UGP that might have required the Board to discuss that matter again in its August 7, 2023, closed session discussion. The Board describes the parent's May 31, 2023, grievance as both alleging that certain employees denied her access to instructional materials related to the teaching of the book and requesting that a Board member inspect those supplemental materials to review whether educators' assignments complied with school policy 6:80, which requires the superintendent to ensure presentations and discussions of sensitive and controversial topics are age-appropriate, educational, informative, and balanced.⁴⁴ Although there is no indication that the parent made an express request for reconsideration, the Board nevertheless chose to reconsider its May 22, 2023, decision to keep the book as a classroom text with the addition of an alternative text. However, the parent's January 21, 2023, May 9, 2023, and May 31, 2023, complaints related to *Just Mercy* were not against the book itself—they were against certain District employees for allegedly violating policies about teaching controversial issues and granting access to instructional materials. Thus, if the Board was legitimately acting as a quasi-adjudicative body resolving those grievances, it would have discussed "evidence or testimony" concerning whether those specific employees violated Board policies. It did not.

Instead, the closed session verbatim recording reveals a wide-ranging discussion about curriculum that contrasts with the limited scope of the Board's May 22, 2023, open session discussion about *Just Mercy*, according to the minutes of that meeting.⁴⁵ As the Board noted, one or more District administrators at the May 22, 2023, meeting did read from a February 2021 memorandum⁴⁶ about originally selecting the book for an English literature curriculum. But the verbatim recording of the August 7, 2023, closed session indicates that it was not until then that an administrator offered to circulate the document to the rest of the Board for the first time.⁴⁷ Even if the Board had "presented" (as opposed to alluded to or referenced) the memorandum in open session on May 22, 2023, as required to qualify under section 2(c)(4), the closed session discussion generally involved Board members sharing their personal opinions about the book and broader curriculum issues—not considering evidence or testimony as a quasi-adjudicative body

⁴⁴Yorkville Community Unit School District 115 Board of Education, Policy Manual, § 6:80 (adopted March 20, 2023).

⁴⁵Yorkville Community Unit School District 115 Board of Education, Meeting, May 22, 2023, Minutes 6-7.

⁴⁶Memorandum from English II Course Team/Department Chair, YHS, *Alex Bola, Eric Fuerst, Michelle Lillig, Tom Regnier, Jose Romero, Megan Steben and Kim Zoephel*, Yorkville Community Unit School District 115, to Dr. Nick Baughman, Associate Superintendent for Learning and Instruction (February 2021).

⁴⁷Yorkville Community Unit School District 115 Board of Education, Closed Meeting, August 7, 2023, Audio File at 39:50-40:02 (on file with Public Access Bureau, Office of the Attorney General).

of alleged violations of Board policies by employees. For the reasons explained above, the section 2(c)(4) exception did not authorize the Board's August 7, 2023, closed session discussion.

Section 2(c)(10) of OMA

As stated above, section 2(c)(10) of OMA permits public bodies to enter closed session to discuss "[t]he placement of individual students in special education programs and other matters relating to individual students." By its plain language, section 2(c)(10) is confined to matters concerning individual students, rather than matters that broadly relate to groups of students, such as which book to include in a class curriculum.

The Board argued that "at least certain portions of the Board's discussions fit into the allowed exception for the purpose of discussing matters pertaining to individual students[.]"⁴⁸ The Board argued:

[T]he Board's closed session discussion was proper as the Curriculum Objection/Uniform Grievance Appeal concerned a discussion of "matters relating to individual students." * * * As demonstrated in the Parent's original complaint, the Parent alleged that the use of *Just Mercy* created a "difficult and distressing situation" and "hostile and emotionally unsafe learning environment for [my child.]" [Citation.] This is further acknowledged in the verbatim recording where the Board twice reiterates that the UGP stems from a single Parent's complaints. As the complaint and subsequent UGP were both brought by the same District Parent, the underlying UGP appeal before the Board clearly related to an individual student.^[49]

In reply, Ms. Grzywa argued: "The Board claimed it was impossible to discuss the curriculum and policy without referring to * * * [an] individual student named in the UGP complaint. It is entirely possible to discuss curriculum and policy in open session[.]"⁵⁰

⁴⁸Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 8.

⁴⁹Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (October 20, 2023), at 8.

⁵⁰Letter from Mary Grzywa to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, and Steve Richart, Partner, Hodges, Loizzi, Eisenhammer, Rodick & Kohn (October 27, 2023), at 2.

During closed session on August 7, 2023, the Board momentarily alluded to an individual student as part of a more than hour-long discussion about the appropriateness of *Just Mercy* and broader curriculum issues impacting whole classes of students. Section 2(c)(10) is unambiguously narrow in pertaining only to individual student matters. Had the General Assembly intended to permit school boards to go into closed session to debate the appropriateness of matters pertaining to broad categories of students, such as books or curriculums, it would have provided an exception for those discussions in section 2(c) of OMA. Because the Board's August 7, 2023, closed session discussion was not limited to matters involving an individual student, the Board's reliance on section 2(c)(10) is unavailing for all but a few seconds of the verbatim recording in which a particular student is referenced.

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 September 28, 2023, Ms. Mary Grzywa submitted a Request for Review to the Public Access Bureau alleging that the Board of Education of Yorkville Community Unit School District 115 improperly adjourned to closed session on August 7, 2023, to discuss removing the book *Just Mercy* from a course curriculum. Ms. Grzywa's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA.

2) On October 2, 2023, the Public Access Bureau sent a copy of the Request for Review to the Board President, Darren Crawford, and asked the Board to provide copies of the August 7, 2023, meeting agenda, minutes (both open and closed sessions), and closed session verbatim recording. This office also asked the Board to respond in writing to the allegation that it violated OMA by discussing removing the book from the curriculum in closed session.

3) On October 20, 2023, counsel for the Board provided the Public Access Bureau with those materials, as well as certain materials about the grievances filed by the parent of a student in the District that served as the basis for the Board's deliberations about the book. The Board denied that it had violated OMA during closed session on August 7, 2023.

4) On October 23, 2023, this office sent a copy of the Board's answer to Ms. Grzywa. On October 27, 2023, she submitted a reply.

5) On November 20, 2023, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to December 27, 2023, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c). Section 2(c)(1) authorizes closed session discussion of, among other things, "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees[.]" Section 2(c)(4) authorizes closed session discussion of "[e]vidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, * * * provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning." Section 2(c)(10) authorizes closed session discussion of "[t]he placement of individual students in special education programs and other matters relating to individual students."

7) The Board argued that it properly held a discussion concerning *Just Mercy* in closed session on August 7, 2023, pursuant to the exceptions in sections 2(c)(1), 2(c)(4), and 2(c)(10) of OMA.

8) The Board's closed session discussion about *Just Mercy* and related curriculum matters was not authorized by any of the exceptions upon which the Board relied to close the meeting.

9) Section 2(c)(1) is inapplicable because the Board was not in closed session to deliberate about specific employees' job performance or other matters concerning specific employees. Instead, the Board entered closed session to deliberate on whether a specific book should be part of the curriculum for an English class.

10) Section 2(c)(4) is inapplicable because even if the Board acts as a quasi-adjudicative body to resolve grievances, the grievance at issue in this matter was against employees rather than the book itself. Instead of entering closed session as a quasi-adjudicative body to assess whether employees violated Board policies, the Board discussed whether to keep *Just Mercy* as a classroom text. Further, the closed session discussion involved minimal, if any, evaluation of evidence or testimony presented in an open hearing, or in a closed hearing where specifically authorized by law.

11) Section 2(c)(10) is inapplicable to all but less than a minute of the recording in total, as the allusions or references to an individual student were momentary in nature, and the Board spent the overwhelming majority of the closed session discussing curriculum matters that broadly impact whole groups of students.

In accordance with these findings of fact and conclusions of law, the Board is directed to remedy this violation by disclosing to Ms. Grzywa and making publicly available the August 7, 2023, closed session verbatim recording. The discrete portions of the recording that

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The Honorable Darren Crawford
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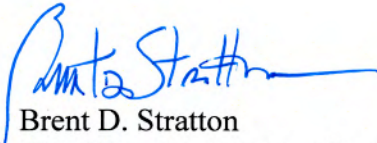
refer to a particular student may be redacted. The Board is further directed to revise its August 7, 2023, closed session minutes to provide a meaningful summary of all matters proposed, deliberated, or decided, and then to disclose to Ms. Grzywa and make publicly available those minutes as well. As 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).

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. Mary Grzywa as defendants. *See* 5 ILCS 120/7.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

cc: Mr. Steve Richart
Partner
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
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Itasca, Illinois 60143

CERTIFICATE OF SERVICE

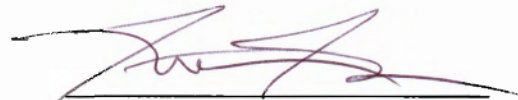
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-016) upon:

Ms. Mary Grzywa
2691 North 2409th Road
Marseilles, Illinois 61341
mary@grzywa.net

The Honorable Darren Crawford
President, Board of Education
Yorkville Community Unit School District 115
800 Game Farm Road
Yorkville, Illinois 60560
boe@y115.org

Mr. Steve Richart
Partner
Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP
500 Park Boulevard, Suite 1000
Itasca, Illinois 60143
srichart@hlerk.com

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 December 27, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
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