



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 5, 2018

Via electronic mail
Mr. Kirk Allen
PO Box 593
Kansas, Illinois 61933
kirk@illinoisleaks.com

Via electronic mail
Mr. Aaron Beard
kjd214@yahoo.com

RE: OMA Requests for Review – 2018 PAC 51302; 2018 PAC 51308

Dear Mr. Allen and Mr. Beard:

The Public Access Bureau has received the enclosed response to your Requests for Review from the Attorney for the Board of Education of the Jasper County Community Unit School District 1 (District). Additional confidential documents provided to the Public Access Counselor have been withheld.

You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 120/3.5 (West 2016). Please send a copy of your reply to the District as well.

If you have questions about this matter, please contact me at (217) 782-9054.

Very truly yours,

Matthew Hartman

MATTHEW HARTMAN
Assistant Attorney General
Public Access Bureau

Enclosure

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Mr. Aaron Beard
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cc: *Via electronic mail*
Mr. Steven M. Richart
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Steven M. Richart
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February 2, 2018

Via Electronic Mail and U.S. Mail

Mr. Matt Hartman
Assistant Attorney General, Public Access Bureau
Office of the Attorney General
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mhartman@atg.state.il.us

RE: OMA Requests for Review- 2018 PAC 51302 (Allen); 2018 PAC 51308 (Beard)

Dear Mr. Hartman:

We are writing in response to your January 24, 2018, request for more information regarding the above-referenced Requests for Review, which were received by Jasper County Community Unit School District No. 1 ("District") on the same day. We represent the District in this matter and submit the requested response on the District's behalf.

Mr. Aaron Beard and Mr. Kirk Allen submitted Requests for Review challenging the District's public comment rules and practices under the Illinois *Open Meetings Act*, 5 ILCS 120/1 *et seq.* ("OMA"). Specifically, they allege that on January 18, 2018, the Board enforced its established and recorded public comment rules to unreasonably limit public comment by limiting each person to two minutes of public comment. Both requesters also challenge the District's policy that allows someone to address the Board for five minutes if he or she gives a week's advance notice of his/her intent to do so. As is evident from the enclosed records, the District's policy does not unreasonably limit the public from participating in public comment and, in fact, provides participants an adequate opportunity to voice their concerns.

As a preliminary matter, Mr. Beard did not even attempt to make a public comment. Although Mr. Beard was present at the meeting, the District's rules regarding public comment were not enforced against him and, therefore, he has no standing. Regardless, because Mr. Kirk did make a public comment, we address both Requests for Review in this response.

By way of background, both requesters are affiliated with Edgar County Watchdogs, which is a local watchdog group that has most recently focused a significant amount of time and energy in criticizing the District. Members of this group have filed at least four Requests for Review with your office grounded in OMA and the Illinois *Freedom of Information Act*, 5 ILCS 140/1 *et seq.* ("FOIA"), submitted numerous FOIA requests, and attended several Board meetings in the past few months in which they were allowed to provide public comment under the Board policy. The Edgar County Watchdogs do not hesitate to use public comment to promote their own agenda and discuss matters not related to any public business or decisions facing the Board. For

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example, at the January 18, 2018, Board meeting, Mr. Allen used his two minutes to discuss a Board member calling the police when she felt threatened by him after the conclusion of another Board meeting. (See related Request for Review, 2017 PAC 51019.) His comments were personal, had nothing to do with action items by the Board, and were meant to merely harass and belittle the Board members. As discussed by multiple participants of the January 18, 2018, public comment, the District's resources and taxpayer dollars are being drained because of this group's actions. Despite the Board's continued application of its public comment policy since 2011 and the Edgar County Watchdogs participation in public comment, this is the first time the policy has been challenged. Even in challenging the policy now, neither requester can point to a specific moment where a speaker was cut-off or asked to stop speaking.

In reviewing the policy and the history of public comments, it is the District's position that the two-minute rule without advance notice and five-minute rule with a week's advance notice provide ample opportunity for community members to ask questions or make comments regarding the District's public business. There is no history of community member dissatisfaction with the two minute time limit policy.

You requested that the District provide a copy of the Board's established and recorded rules for public comment, and any audio or video recordings of the public comment portion of the January 18, 2018, Board meeting. Additionally, you asked that the District (1) identify what rules for public comment it had established and recorded, which of those rules it enforced during the public comment portion of the January 18, 2018, meeting, and how the established and recorded rules that were enforced during the meeting tend to accommodate the public's right to address the Board under 2.06(g) of OMA; (2) address whether a time limit of two minutes per speaker affords members of the public sufficient opportunity to effectively address the Board; and (3) explain how a five minute time limit for speakers who have signed-up in advance of the meeting promotes the public's right to address the Board. Each request is addressed below.

A. Exhibits.

- | | |
|-----------|--|
| Exhibit A | School Board Policy 2:230, Public Participation at School Board Meetings and Petitions to the Board |
| Exhibit B | January 18, 2018, Board of Education, Regular Meeting Audio Recording (note that public comment begins at approximately 13:27) |
| Exhibit C | Log/Timeline of Public Comments on January 18, 2018 |

Due to the size of the meeting recording, we have included it on a flash drive with the hard copy of this letter.

B. Rules for Public Comment and Enforcement of Rules at the January 18, 2018 Board Meeting.

The below chart summarizes the established and recorded rules in Exhibit A, which rules were enforced during the January 18, 2018, Board meeting, and how those rules were enforced.

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Established and Recorded Rules	Rules Enforced	How Rules Were Enforced
Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.		
Identify him or herself and be brief. Ordinarily, such comments shall be limited to 2 minutes. In unusual circumstances, a person may be allowed to speak for more than 2 minutes.	X	The Board enforced this rule by announcing at the initiation of public comment that, unless advance notice was provided, each speaker will have two minutes. This was reinforced when the Board President gave a 10-second warning to each speaker. All speakers were given a full 2 minutes to speak.
A person who has given advance notice to the Superintendent one week before the meeting may be allowed to speak for 5 minutes.	X	One member of the public had called the District at least a week in advance of the Board meeting and was granted 5 minutes of public comment time. The Board gave her the full 5 minutes to speak.
Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.		
Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.	X	One speaker, who actually spoke out against the Edgar County Watchdogs, attempted to give public comment twice but the Board President informed him that because he already spoke, he could not speak again.
Conduct oneself with respect and civility toward others and otherwise abide by Board policy, 8:30, <i>Visitors to and Conduct on School Property</i> .		

C. The Established and Recorded Rules Enforced During the Public Comment of the January 18, 2018, Board Meeting are Reasonable.

Under Section 2.06(g) of OMA, "any person shall be permitted the opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). The Attorney General's Office and the courts have consistently found that, although OMA does not specifically address the rules that a public body may adopt, the public body may generally adopt

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reasonable "time, place, and manner" restrictions that serve a significant governmental interest. See 2014 PAC 29739 (discussing sign-in restrictions); *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (holding a three-minute time restriction to be reasonable). "A time limit for public participation at a council meeting is a reasonable time, place, and manner restriction that is narrowly tailored and serves a significant interest. Time limits serve a significant governmental interest in conserving time and in ensuring that others ha[ve] an opportunity to speak." *I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923 (internal citations and quotations omitted).

The Requests for Review challenge two time limit rules: First, Mr. Allen and Mr. Beard challenge the District's established and recorded rule requiring all public comments without advance notice be limited to two minutes. Second, they challenge the District's established and recorded rule allowing for individuals who provide one week advance notice the opportunity to speak for five minutes. Both rules were implemented to ensure efficient and orderly meetings and to accommodate as many individuals as possible who may wish to speak at the Board meeting. Accordingly, the District's limits are reasonable and consistent with the spirit of OMA.

1. *Limiting Public Comment to Two Minutes is Reasonable and Accommodates All Participants.*

The District's two-minute rule for public comment is not unreasonable, and as clearly demonstrated in the recording, does not prohibit anyone from articulating his or her concerns. It is well-established that a three-minute time limit for public comment by each speaker is reasonable. See *Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007) (finding a three-minute rule at a city council meeting did not violate First Amendment); *I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923. Although there is no guidance that directly addresses whether a two-limit restriction is reasonable, it by no means is a novel time restriction. There are several cases and examples in which a public body applied a two-minute time limit, the restriction was acknowledged by the courts, and went unopposed. First, in *Collinson v. Gott*, a board of county commissioners in Maryland implemented a two-minute speaking rule and the board president announced that those who wished to make a public comment would have two minutes each to do so. 895 F.2d 994, 996 (4th Cir. 1990) (in a divided opinion, the court, in relevant part, addressed whether implementing an *ad hoc* rule to maintain decorum was unreasonable). Second, in *Save Our Children v. Minneapolis Public Schools, Special School District No. 1*, a school board was involved in the very contentious closing of five schools and limited each of the thirty-seven public comments to a two-minute time limit. A07-1003, 2008 WL 2105826, at *2 (Minn. Ct. App. May 20, 2008). Neither the plaintiffs nor the court in that case took issue with the two-minute restriction. Third, in *Schmidt v. Larkin*, the board of county commissioners in Nevada also had a two-minute rule and when a member of the public was deemed to be disruptive, that person was reasonably expelled. 2010 WL 6761220 (Nev. Dist. Ct.) (Nov. 15, 2010). The court went on to note that, "A speaker may disrupt a public meeting by speaking too long, by being unduly repetitious or by extended discussions of irrelevancies." *Id.* (internal citations omitted). Once again, the two-minute restriction was not brought up as an issue.

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In implementing the two-minute rule, the District is merely trying to conserve time, which is a significant government interest. The two-minute rule prevents speakers from being unduly repetitious, rambling, going on tangents, or bringing up irrelevant matters. Additionally, it ensures that anyone who wishes to make a public comment, will have time to do so. Even when controversial matters, such as school closings, are discussed at a board meeting, a two-minute time restriction has been enforced. *Save Our Children v. Minneapolis Public Schools*, A07-1003, 2008 WL 2105826, at *2 (Minn. Ct. App. May 20, 2008). Surely if public comment for such matters may be reasonably limited to two minutes, then more mundane matters, such as those discussed at the January 18, 2018, Board meeting, may also be reasonably limited to two minutes. The Board's general message is the same as that of Franklin D. Roosevelt's: "Be sincere, Be brief, Be seated." And, without any evidence to the contrary, that is exactly what each speaker at the January 18, 2018, Board meeting was successfully able to do.

There simply is no practical reason or legal authority in support of a two-minute restriction being unreasonable. In fact, experience has demonstrated the exact opposite. Mr. Allen spoke at the public comment and, as indicated in the record, he said everything he had to say in his two minutes. He voluntarily sat down after making his statement and conveniently did not indicate he had anything else to say until he filed his Request for Review. The video recording clearly demonstrates that the only enforcement of the two-minute limit was through an announcement made at the beginning of public comment and the ten second warnings; no one was cut-off, asked to stop, or otherwise prohibited from completing their comment. Most speakers came forward with an outline of what they wanted to say and all were able to effectively communicate their messages. Imposing a two-minute rule for comments is not uncommon or inadequate. The Oscars, for example, limit comments after awards to 45 seconds and candidates running for public office are often asked to respond in one minute or less at public debates. Clearly, if those time limits are considered reasonable, then a two-minute limit for public comment must also be reasonable.

2. *Providing Advance Notice to Speak for Five Minutes is Reasonable and Efficient for the District and Members of the Public.*

The District's policy granting individuals five minutes to speak during public comment if the individuals provide the District with one week advance notice accommodates the public and the District in the event that an individual wants to provide a more detailed comment. The District's policy ensures all speakers have a fair opportunity to speak about public matters while conserving time overall.

The one-week advance notice provides the District the opportunity to determine how many speakers will be present at the meeting and allows it to plan what items will be on the agenda and include the individual speaker if desired. This function would not be fully served by a shorter advance notice requirement. When the advance notice is given, the District adds the names of the speakers to the agenda and, if needed, moves other agenda items to other meeting dates. It is respectful of the Board members' time and the attendees' time by providing them notice of how long the meeting will last. For example, Susan Lindley, who provided a week's advance notice

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of her intent to make a public comment at the January 18, 2018, Board meeting, appeared on the agenda. See <http://www.cusd1.jasper.k12.il.us/board-of-education/board-meetings/2017---2018-School-Year/January-18-2018-Regular-Meeting>. This helps facilitate an orderly meeting and gives individuals the opportunity to participate in an even more meaningful way. This policy has provided an additional avenue for the public, which has even been used recently by individuals from the Edgar County Watchdogs group, in maintaining productive and efficient Board meetings. Admittedly, this option typically would be used for regular meetings, where members of the public have more than 48 hours' advance notice of the meeting dates. However, there are occasions where the public has more than a week's notice of special meetings, and in any event, if the two minute time limit is reasonable and not unduly restrictive, then the failure to offer five minutes at special meetings does not unduly restrict the public's opportunity for public comment.

Overall, the District's time limit restrictions are reasonable and properly balance the interests of the District, the public at large, and the speaker. With that said, the District is currently reviewing its policy and is considering establishing a two-minute time limit uniformly and eliminating the option to provide advance notice for five minutes of public comment. Regardless, the recorded and established rules that were enforced during the January 18, 2018, Board meeting were reasonable and accommodated all the speakers.

Conclusion

For the reasons set forth above, the District has committed no violation under OMA. The District requests a finding to this effect and the dismissal of Mr. Allen's and Mr. Beard's Requests for Review. If you have any questions or require any further information, please do not hesitate to contact us.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP



Steven M. Richart

Enclosures

cc: Andy Johnson, Superintendent