



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 22, 2021

Via electronic mail



Via electronic mail

Dr. Sanjay Rao
President, Board of Education
Butler School District 53
2801 York Road
Oak Brook, Illinois 60523
c/o smorris@butler53.com

RE: OMA Request for Review – 2021-PAC-C-0321

Dear [REDACTED] and Dr. Rao:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). For the reasons set forth below, the Public Access Bureau will take no further action with respect to [REDACTED] request for Review alleging that the Board of Education (Board) of Butler School District 53 (District) potentially violated OMA during its July 12, 2021, meeting. This office, however, offers certain guidance to both parties in this letter.¹

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides:

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 not later than 60 days after the alleged violation. * * * The

¹In addition to resolving Requests for Review, the Office of the Public Access Counselor is charged with providing advice and education to both the public and public officials. See 15 ILCS 205/7(a), (b), (c) (West 2020).

request for review * * * must include a summary of the *facts supporting the allegation.* (Emphasis added.)

[REDACTED] first alleged that the Board "[t]ook action hiring a new district principal without posting notice to the public."² Section 2.02(c) of OMA provides that "[a]ny agenda * * * shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The agenda for the Board's July 12, 2021, meeting contained items properly providing notice of possible final action to approve new principals at two schools.³ Accordingly, the available information does not support this allegation.

[REDACTED] next alleged that the Board's closed session discussion "included conversation on the process for hiring a new principal and the scope of the job."⁴ Section 2(a) of OMA (5 ILCS 120/2(a) (West 2020)) provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2020)). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2020). When asked the basis for this allegation, [REDACTED] stated that the Board did not discuss the hiring process in open session and that the closed session lasted almost two hours. She alleged that the Board went into closed session pursuant to the section 2(c)(1) exception (5 ILCS 120/2(c)(1) (West 2020)),⁵ which concerns specific employees of the public body, and that the

²E-mail from [REDACTED] to Public Access Counselor and Robert Berlin, State's Attorney (August 29, 2021).

³Board of Education of Butler School District 53, Agenda Items 9.1, Approval, Brook Forest Elementary Principal, and 9.2, Approval, Butler Junior High Principal (July 12, 2021).

⁴E-mail from [REDACTED] to Public Access Counselor and Robert Berlin, State's Attorney (August 29, 2021).

⁵Section 2(c)(1) of OMA permits a public body to go into closed session to discuss:

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.

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Board must have discussed matters other than the one candidate being considered in closed session.

In seeking to verify the OMA exceptions on which the Board relied to enter closed session on July 12, 2021, this office reviewed the minutes of the meeting posted on the District's website and discovered that the minutes do not document the legal basis for the Board's vote to enter closed session.⁶ Section 2a of OMA (5 ILCS 120/2a (West 2020)) requires that "a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting." The Board must comply with the requirement to record in the minutes the legal bases for its closed sessions in the future.

This office's review of the audio of the meeting revealed that the Board entered closed session pursuant to section 2(c)(1) of OMA, but also pursuant to section 2(c)(2) of OMA (5 ILCS 120/2(c)(2) (West 2020)),⁷ which concerns collective bargaining and salary schedules for classes of employees. Additionally, the basis for the claim that the Board discussed only one person under section 2(c)(1) is not evident, as other personnel decisions were on the agenda for the meeting, and the Board also properly could have discussed any other matters concerning specific employees, independent contractors, volunteers, or legal counsel. Therefore, while it would have been improper for the Board to deliberate about the hiring process and the scope of the principal position without focusing on specific employees, the facts presented are insufficient to warrant review of the closed session verbatim recording.

[REDACTED] remaining allegations concern section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Although [REDACTED] alleged that Board President Sanjay Rao "caused the public to not ask further questions" when he "shut down a board member's question about candidate qualifications," and also "shut down the D53 union president by telling her what she could/could

⁶This office notes that although [REDACTED] broadly alleged that Board has a history of not posting meeting minutes properly, a brief review of the BoardDocs portion of the District's website indicates that minutes are regularly available. *See* <https://go.boarddocs.com/il/butler53/Board.nsf/Public>.

⁷The section 2(c)(2) exception permits a public body to discuss in closed session "[c]ollective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees."

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not say to the Board[,]"⁸ this office's review of the recording of the meeting revealed that the Board held two public comment periods, which did not end until no one else asked to speak. It is not apparent that any members of the public were prohibited from addressing the Board. [REDACTED] allegation concerning the union president refers to Dr. Rao's admonition to stick to the topics of the meeting. **This office notes that although a public body must limit its discussion during a special meeting to the items on the agenda,⁹ OMA imposes no such limitation on public comment during special meetings.** Accordingly, the Board should refrain from insisting that public comment be limited to the subjects of a special meeting in the future. Nonetheless, the union president completed her remarks to the Board. Because it is unclear that the union president was unable to fully address the Board during the public comment portion of the meeting, no further action is warranted as to that allegation. To the extent the union president may have been restricted from speaking during another part of the meeting, OMA only provides members of the public with an opportunity to address public officials during the designated public comment period.

With respect to the allegation that the Board did not read aloud written submissions from the public during its July 12, 2021, meeting, the Board was not required to do so. The Board properly provided for verbal public comment during the meeting. The Board's public comment rules do not require written submissions to be read aloud during meetings.¹⁰ The meeting agenda directed the public to virtual participation instructions on the District's website.¹¹ That webpage provides Zoom meeting links and states that "[a]ttendees are given the opportunity to speak and address the Board at designated Citizen Comments areas within the agenda."¹² In contrast, the webpage provides that "[w]ritten correspondence to the Board shall be presented to the Board in the next regular Board packet."¹³ Under these circumstances, the Board did not violate OMA because it did not read aloud written submissions from the public during the meeting.

⁸E-mail from [REDACTED] to Public Access Counselor and Robert Berlin, State's Attorney (August 29, 2021).

⁹5 ILCS 120/2.02(a) (West 2020).

¹⁰Butler School District 53, Policy Manual, §2:230 (adopted October 21, 2019).

¹¹Butler School District 53, Procedures for Virtual Meetings, <https://www.butler53.com/boe/virtual-meetings> (last visited September 14, 2021).

¹²Butler School District 53, Procedures for Virtual Meetings, <https://www.butler53.com/boe/virtual-meetings> (last visited September 14, 2021).

¹³Butler School District 53, Procedures for Virtual Meetings, <https://www.butler53.com/boe/virtual-meetings> (last visited September 14, 2021).

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Lastly, as to [REDACTED] allegations that "the Board does no [sic] list Board member emails or a general Board email for community members to submit[.]" and that "[t]he D53 superintendent does not respond to community emails nor does he share them with the Board[.]"¹⁴ the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). Because these allegations do not concern requirements of OMA or FOIA, the Public Access Bureau does not have the authority to review them.¹⁵

This letter serves to close this matter. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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¹⁴E-mail from [REDACTED] to Public Access Counselor and Robert Berlin, State's Attorney (August 29, 2021).

¹⁵Although [REDACTED] also argued that the discussion about the new art teacher's qualifications should have occurred before the Board's vote on the matter, OMA governs the transparency with which public bodies meet and conduct public business, rather than the sufficiency or order of their deliberations.