



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 25, 2019

Via electronic mail
Mr. Josh Verbarg



RE: FOIA Request for Review – 2019 PAC 57353

Dear Mr. Verbarg:

The Public Access Bureau has received the enclosed letter in response to your Request for Review from the Heyworth Community Unit School District #4 Board of Education.

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 business days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2016). Please send a copy of your reply to the public body as well. If you have any questions about this matter, please contact me at [REDACTED]

Very truly yours,

A handwritten signature in black ink, appearing to read "Edie Steinberg".

EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

Enclosure

cc: *Via electronic mail*
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Christine G. Christensen

Please respond to the Monticello Office

Writer's Direct Email: jfunk@millertracy.com

April 12, 2019

(by email to

██████████@atg.state.il.us)

Ms. Edie Steinberg
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL 62706

Re: Open Meetings Act Request for Review- 2019 PAC 57353
Heyworth Community Unit School District No. 4

Dear Ms. Steinberg:

Please be advised I represent the Board of Education of Heyworth Community Unit School District No. 4. The School District has provided me with your correspondence dated April 4, 2019 (and received by email that same date) and the attached Request for Review filed by Josh Verbarg. The District has directed me to respond on its behalf.¹

Attached please find the following documents:

1. Board of Education Regular Board Meeting Open Session Agenda for March 20, 2019;
2. Email dated March 15, 2019 from Gina Marr, Executive Administrative Assistant, accompanying Agenda sent to all District staff (192 members) and to all news media which have filed an annual request for such notification, pursuant to Section 2.02(b) of the Open Meetings Act (*The Heyworth Buzz*, *The Pantagraph*, *WHOW News*, and *WPXN News*);
3. Board of Education Regular Meeting Minutes for March 20, 2019 (unapproved); and
4. Affidavit of Superintendent Lisa Taylor, dated April 11, 2019.

¹ As directed in your letter, this response only addresses the allegations regarding the posting of the agenda for the March 20, 2019 Board meeting. If a response or information is needed for any of Mr. Verbarg's remaining allegations, please advise.

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Agendas for regular and special Board meetings are prepared by or at the direction of Superintendent Lisa Taylor. She in turn provides the information to be included to Gina Marr, the Executive Administrative Assistant, and Tammy Tucker, the Payroll/HR Administrator, who together finalize, post and publish the agenda, as well as the Board packet to be distributed to Board members prior to all Board meetings. Unfortunately, Ms. Tucker was absent much of the day on Friday, March 15, 2019 and much of the following week, due to the illness and subsequent death of her mother. At 2:49 p.m. on Friday, March 15, prior to the March 20 regular Board meeting, Ms. Marr emailed the agenda for the meeting to all District staff and all news media outlets which had filed an annual request for notification of meetings, pursuant to Section 2.02(b) of the Open Meetings Act, 5 ILCS 120/2.02(b). District Exhibit 2. After work hours on that same day, Ms. Tucker emailed the Board packet, including the agenda and related documents, to all members of the Board of Education. Agendas and minutes of all Board meetings are regularly posted on the District's website (www.husd4.org) at the following link: https://www.husd4.org/apps/pages/index.jsp?uREC_ID=1122530&type=d&pREC_ID=1487622

Ms. Marr attempted to post the agenda on the District website on March 15; she and Ms. Tucker usually work double-check each other to make sure it is properly posted. When she completed the posting, Ms. Marr's user screen showed that the agenda had been posted. Due to a technical flaw in the website program's permission settings to access the Google Docs system, the agenda was not actually published for view by the public. The failure of the agenda to be properly posted was not discovered until March 20, shortly before the start of the Board meeting. The Technology Assistant subsequently corrected the problem and posted the agenda on the website, but not until March 21, the day after the Board meeting.

In addition, paper copies of Board agendas have regularly been posted on bulletin boards at the Unit Office and the High School Office at least 48 hours prior to meetings. Those bulletin boards are inside the buildings, however, and cannot be viewed by the public during non-business hours. District staff has posted agendas and other notices on the exterior doors of the High School building in the past, but those items have often been removed by students or damaged by weather. Paper copies of the agenda were posted on the bulletin boards on March 15, prior to the March 20 Board meeting, but were not posted on the exterior doors because of inclement weather and a concern that they would be removed by students.

The District has now purchased and installed a locked cabinet on the exterior of the Unit Office located at 522 E. Main Street in Heyworth. Additionally, a locked cabinet has been purchased and will be installed on the exterior of the High School Building, where Board meetings are typically held, prior to the next regular meeting of April 24. The agendas for all meetings will be posted in those cabinets, where they will be protected from weather and from tampering.

Section 2.02 of the Open Meetings Act provides in relevant part:

(b) Public notice shall be given by posting a copy of the notice at the principal office of the body holding the meeting or, if no such office exists, at the building in which the meeting is to be held. In addition, a public body that has a website that the full-time staff of the public body maintains shall post notice on its website of all meetings of the governing body of the public body. Any notice of an annual schedule of meetings shall remain on the website until a new public notice of the schedule of regular meetings is approved. Any notice of a regular meeting that is posted on a public body's website shall remain posted on the website until the regular meeting is concluded.... *The failure of a public body to post on its website notice of any meeting or the agenda of any meeting shall not invalidate any meeting or any actions taken at a meeting.*

(c) Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). *If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then that lack of availability does not invalidate any meeting or action taken at a meeting.*

5 ILCS 120/2.02 (emphasis added)

The District concedes that the agenda was not continuously available for the full 48-hour period prior to the Board meeting, but believes that was due to circumstances outside of its control.² The District believed that the agenda had been posted on its website continuously from Friday, March 15 until the March 20 Board meeting. Only because of a technical flaw on the Google Docs system was it not posted. The Superintendent did not learn that it had not been posted until the meeting was about to begin on March 20. The District has taken corrective action to make sure the paper agendas are posted where they can be viewed by the public for more than 48 hours prior to each meeting; moreover, a new system has been installed to ensure that agendas and other documents are available on the District's website as required.

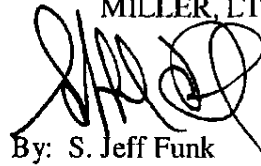
² Notice of the meeting was available at all times on the District's website, as part of the annual meeting schedule, found at: https://www.husd4.org/apps/pages/index.jsp?uREC_ID=1172776&type=d&pREC_ID=1421279

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For the above reasons, the District believes it has complied with the Open Meetings Act. If you have any questions or desire clarification or additional documentation, please do not hesitate to contact me.

Sincerely,

MILLER, TRACY, BRAUN, FUNK &
MILLER, LTD.



By: S. Jeff Funk

SJF/dms
Attachments
cc: Lisa Taylor, Superintendent