



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 6, 2019

Via electronic mail
Mr. Josh Verbarg



Via electronic mail
Mr. S. Jeff Funk
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter, P.O. Box 80
Monticello, Illinois 61856
jfunk@millertracy.com

RE: OMA Request for Review – 2019 PAC 57353

Dear Mr. Verbarg and Mr. Funk:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)).

On March 21, 2019, this office received Mr. Josh Verbarg's Request for Review alleging that the Board of Education (Board) of Heyworth Community Unit School District #4 (District) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2018)) by not properly posting the agenda for its March 20, 2019, meeting.¹ On April 4, 2019, this office forwarded a copy of Mr. Verbarg's Request for Review to the Board and asked it to provide a written response to the allegations.

On April 12, 2019, Mr. S. Jeff Funk, an attorney for the Board, responded on behalf of the Board, stating that on March 15, 2019, District staff posted paper copies of the agenda on the bulletin board inside the District office and high school but no agenda was visible from outside of the District office or high school. The response also acknowledged that due to

¹Mr. Verbarge also alleged that the Board violated OMA by cancelling meetings. However, the cancellation of meetings is not governed by OMA, and, therefore, this office will not address that allegation.

Mr. Josh Verbarg
Mr. S. Jeff Funk
December 6, 2019
Page 2

the absence of certain personnel and technical difficulties, the Board failed to post the agenda on its website in advance of its March 20, 2019, meeting. The Board also conceded that the agenda was not continuously available for the full 48-hour period prior to its Board meeting, but contended that the reason for the failure was due to circumstances outside of its control because of inclement weather and a concern that students might remove the agendas. The District has since purchased locked cabinets to place the Board's agendas outside of the District office and the high school. On May 1, 2019, Mr. Verbage replied, stating that the District made no attempt to post the agenda where it could be continuously viewed, and although he informed the Board at the meeting of its failure to properly post its agenda, the Board proceeded to take action on numerous items on the agenda

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)) provides, in pertinent part:

An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. A public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body.

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) further provides:

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.

The Public Access Bureau has previously determined that a public body "should post meeting notices in a location where they may be continuously viewable from the outside of [the building where the meeting is being held], such as on or near the front door or facing outward from a

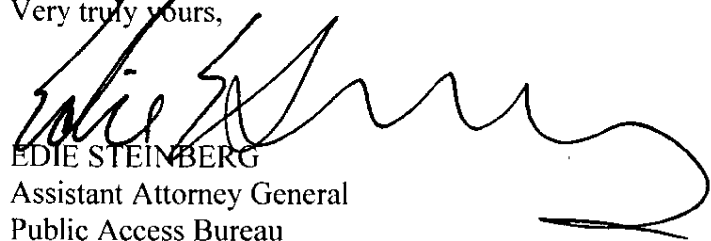
Mr. Josh Verbarg
Mr. S. Jeff Funk
December 6, 2019
Page 3

window." Ill. Att'y Gen. PAC Req. Rev. Ltr. 29886, issued September 16, 2014, at 2-3; *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 48574, issued August 22, 2017.

Although it appears that personnel and technical difficulties interfered with the District's ability to post the notice on its website, there is no indication that the District staff attempted to place the agenda in a physical location such as in a window or on a door for continuous viewing as required by OMA. The decision not to do so was within the District and the Board's control. Because it is undisputed that the agenda for the Board's March 20, 2019, meeting was not posted in a location available to the public during the entire 48-hour period preceding the meeting, this office concludes that the Board violated OMA. While it does not appear practical at this point for the Board to remedy this violation by reconsidering and re-voting on all final actions taken at the meeting, this office requests that the Board reconsider and revote on the agenda items for "Curriculum Adoption Cycle"² and "Changes to Board Policies"³ after providing proper advance notice for those actions. If it has not already done so, the Board should take steps to ensure that notices of and agendas for all future meetings are posted in a place where they are continuously available for public review 48 hours in advance of its meetings.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at [REDACTED] or at the Chicago address below if you have questions. Thank you.

Very truly yours,


EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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²Heyworth Community Unit School District No. 4, Regular Board Meeting, Agenda Item B.1 (March 20, 2019).

³Heyworth Community Unit School District No. 4, Regular Board Meeting, Agenda Item D.1 (March 20, 2019).

Mr. Josh Verbarg
Mr. S. Jeff Funk
December 6, 2019
Page 4

cc: *Via electronic mail*
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