



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 17, 2018

*Via electronic mail*

*Via electronic mail*

Mr. Daniel Ostrovsky  
Associate General Counsel  
Illinois Department of Human Services  
100 West Randolph Street  
Chicago, Illinois 60601  
Dan.Ostrovsky@illinois.gov

RE: OMA Request for Review – 2018 PAC 52300

Dear [REDACTED] and Mr. Ostrovsky:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Illinois School for the Deaf (School) Advisory Council (Council) did not violate OMA in connection with a discussion with a newspaper reporter.

On March 21, 2018, [REDACTED] submitted a Request for Review alleging that in early February, 2018, four members of the Council met with a reporter for the Jacksonville Journal-Courier to discuss matters related to the School without providing advance notice of that gathering. In support of his allegation, [REDACTED] stated that a newspaper article published that morning quotes one of the Council members, and he enclosed a copy of an e-mail from the reporter, which he described as confirming that the gathering took place, along with links to photographs of the gathering that showed four Council members in attendance. On March 30, 2018, this office sent a copy of the Request for Review to the Chair of the Council, as representative of the Council, and asked the Council to provide a written response to the allegation that the gathering of four members with the reporter constituted a Council meeting.

██████████  
Mr. Daniel Ostrovsky  
July 17, 2018  
Page 2

On May 11, 2018, counsel for the Illinois Department of Human Services, on behalf of the Council, provided a response to the Request for Review. This office forwarded a copy of that response to ██████████ on May 15, 2018; he did not reply.

### DETERMINATION

The requirements of OMA apply to each "meeting" of a public body. 5 ILCS 120/1 (West 2016). Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines "meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business[.]

The Office of the Attorney General has stated that "whether a gathering falls within the definition of meeting as used in the Act, would depend upon the peculiar facts in each situation." 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 126. "In theory, there is no absolute prohibition against the members of a public body attending an 'informational meeting' without triggering the application of" OMA, as long as the members do not make "[d]eliberational statements" or engage in "unrecorded discussions" among themselves. Ill. Att'y Gen. Op. No. 95-004, issued July 14, 1995, at 10-11. In that opinion the Attorney General concluded that the "mere fact that a majority of a quorum of the members of a public body attend and participate in a bona fide presentation on new legislative developments in an area of public concern" did not make the presentation subject to OMA, but the extensive discussions of public business by members of two county boards during the presentation did trigger the requirements of OMA. (Emphasis in original.) Ill. Att'y Gen. Op. No. 95-004, at 10-11; *see also Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982) (a gathering does not constitute a meeting for purposes of OMA when there is "no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, [and] no attempt to reach accord on a specific matter of public business.")

The Council's response to the Request for Review asserts that "the Council is currently composed of 12 members, three of whom are ex-officio members."<sup>1</sup> According to section 2.01 of the Council's by-laws, ex-officio members include the School's Superintendent and three other individuals identified by their positions, and are "ineligible to vote or hold

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<sup>1</sup>Letter from Daniel Ostrovsky, Associate General Counsel, Illinois Department of Human Services, to Leah Bartelt, Assistant Attorney General, Office of the Illinois Attorney General (May 11, 2018).

office."<sup>2</sup> Section 3.04 of the by-laws states that a "majority of membership of the Council shall constitute a quorum,"<sup>3</sup> but section 2.05 states that the School's Superintendent "is not a member and shall not vote or be counted toward a quorum."<sup>4</sup> The by-laws do not specifically address whether the other two current ex-officio members of the Council count toward a quorum. Even assuming they do, the Council would have eleven members that count toward a quorum. A quorum of the Council would therefore be six members, and a majority of that quorum would be four members. Both ██████████ and the Council assert that four members of the Council gathered together for a discussion with a reporter, and the Council's response explains that the gathering occurred on February 14, 2018. Thus, if four members of the Council engaged in deliberative discussions of public business during this gathering, all of the procedural safeguards and requirements of OMA would apply. It is undisputed that the Council did not post an agenda for this event. Therefore, this office must analyze whether the discussion of the Council members present at the gathering with the reporter constituted a meeting of the Council under OMA.

██████████ Request for Review does not describe the discussion that occurred on February 14, 2018, but attached for our review a copy of an e-mail from the reporter to him, which states only that the reporter recently met with some people who have a different perspective on an issue than the Illinois Association of the Deaf, of which ██████████ is the President. In its response to the Request for Review, the Council asserts that the meeting with the reporter took place in the home of Ms. Gwenn Eyer, one of the Council members, and was attended by three other Council members (Michelle Brown, Deb Gossrow, and John Miller), along with three other individuals. The Council stated that Ms. Eyer, Ms. Brown and Ms. Gossrow are parents of students at the School, and that the purpose of the meeting was for the reporter

[T]o interview [Ms. Eyer] about her views as a parent about [the School's] bilingual and bicultural environment and her daughter's experience at [the School.] Ms. Eyer said that Ms. Brown and Ms. Gossrow helped translate Ms. Eyer's statements into American Sign Language, for the benefit of some of the meeting attendees. Ms. Eyer said that the contribution of Ms. Brown, Ms. Gossrow and Mr. Miller to the interview was minimal, but that they helped

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<sup>2</sup>Advisory Council of the Illinois School for the Deaf, By-laws and Constitution § 2.01 (adopted December 6, 2013).

<sup>3</sup>Advisory Council of the Illinois School for the Deaf, By-laws and Constitution § 3.04 (adopted December 6, 2013).

<sup>4</sup>Advisory Council of the Illinois School for the Deaf, By-laws and Constitution § 2.05 (adopted December 6, 2013).

██████████  
Mr. Daniel Ostrovsky  
July 17, 2018  
Page 4

Ms. Eyer crystallize her own thoughts about some of the issues that [the reporter] was asking her about.<sup>[5]</sup>


The Council also attached for our review a copy of the article referenced in the Request for Review, which provides some background information relevant to this Request for Review.<sup>6</sup> The article states that the Illinois Association of the Deaf sent a letter in February to the Superintendent of the School detailing its concerns that certain School policies and practices are harming students and damaging the School's reputation. The article identifies Ms. Eyer as the parent of a deaf child who attends the School, and does not note that she is a member of the Council. The article quotes Ms. Eyer's positive opinions of the quality of her daughter's education at the School, and criticisms of the statements made in the Illinois Association of the Deaf's letter to the Superintendent. The article neither quotes nor describes any other members of the Council who attended the discussion between Ms. Eyer and the reporter, or mentions the Council in any way.

The available information does not include facts from which this office could conclude that the February 14, 2018, gathering with four members of the Council and a reporter was a meeting of the Council subject to the requirements of OMA. The Council's response to the Request for Review describes a discussion occurring primarily between Ms. Eyer and the reporter, with the other three members of the Council mostly listening and translating. The article written after the meeting occurred does not contradict the Council's description of the meeting, and ██████████ has not offered a contradictory description of the discussion that occurred. There is no information indicating that at any time during this discussion did four members of the Council engage in deliberative discussions of public business. Even if the reporter's interview of Ms. Eyer constituted a discussion of public business of the Council, the fact that three other Council members attended that interview, without any evidence that they engaged in deliberative discussion about that subject matter, does not transform that event into a Council meeting. Accordingly, this office concludes that the Council did not violate OMA in connection with the February 14, 2018, discussion. However, this office suggests that the Council exercise caution about such gatherings in the future due to the possibility that unanticipated deliberative discussions of public business could occur when a majority of a quorum of the members of a public body gather for reasons related to public business.

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<sup>5</sup>Letter from Daniel Ostrovsky, Associate General Counsel, Illinois Department of Human Services, to Leah Bartelt, Assistant Attorney General, Office of the Illinois Attorney General (May 11, 2018).

<sup>6</sup>See Greg Olson, ISD Staff, Parent Address Group's Concern, *Jacksonville Journal-Courier* (March 21, 2018), available at <https://www.myjournalcourier.com/news/article/ISD-staff-parent-address-group-8217-s-concerns-12769561.php>.

  
Mr. Daniel Ostrovsky  
July 17, 2018  
Page 5

This letter serves to close this file. If you have any questions, you may contact me at (312) 814-6437.

Very truly yours,

  
LEAH BARTELT  
Assistant Attorney General  
Public Access Bureau

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