

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 3, 2023

Via electronic mail



RE: OMA Request for Review – 2023 PAC 78138

Dear 

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2022)). For the reasons set forth below, the Public Access Bureau has determined that no further action is warranted with respect to your Request for Review alleging that the Morton Community Unit School District No. 709 (District) Board of Education (Board) violated OMA on September 5, 2023.

In your Request for Review, you alleged that the Board violated OMA at its September 5, 2023, meeting by allowing speakers to make anti-LGBTQ+ statements "with no apparent corrective action nor even admonishment by the school board[,] and by holding its meeting in a standing room-only space.¹ Specifically, you alleged that you and other members of the LGBTQ+ were targeted with *ad hominem* attacks, which made you feel unsafe and caused a child to experience a panic attack. You also alleged that "[t]his 'school administration' building is a 'converted' CHURCH, and we were crammed into [its] basement with standing-room only." (Emphasis in original.)² The Request for Review provided a link to a recording of the meeting.

Section 2.01 of OMA: Meeting Location

Section 1 of OMA (5 ILCS 120/1 et seq. (West 2022)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 of OMA further provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed

¹E-mail from  to Public Access Counselor (September 14, 2023).

²E-mail from  to Public Access Counselor (September 14, 2023).

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or acted upon in any way." Section 2.01 of OMA (5 ILCS 120/2.01 (West 2022)) provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (2003). Section 2.01 requires "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362 (quoting *State ex rel. Badke v. Village Board of Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993)). In addressing the meaning of "convenient" for purposes of section 2.01 of OMA, the *Gerwin* court stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361.

You did not allege that the lack of seating or that the building being a converted church deterred you or any other individuals from attending the September 5, 2023, Board meeting. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) West 2022)) provides that "[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[.]" and that the submission " must include a summary of the facts supporting the allegation." This office's review of the video of the meeting at issue confirmed that you attended and provided public comment. This office also observed that several seats in the front row remained open throughout the public comment portion of the meeting. Without receiving facts suggesting that anyone who wished to attend the meeting was unreasonably restricted from doing so because of the meeting location and the lack of seating, this office has no basis to conclude that the location of the September 5, 2023, Board meeting was not sufficiently open and convenient as required by section 2.01 of OMA. Nevertheless, when preparing its meeting room environments, the Board may wish to consider additional seating to accommodate members of the public, particularly when the Board expects an increase in attendance due to the nature of the agenda items being considered.

Section 2.06(g) of OMA: Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2022)) 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 primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that, under the First Amendment to the U.S. Constitution, public bodies may promulgate reasonable, content-neutral "time, place, and manner" restrictions that are narrowly-tailored and serve a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923 (N.D. Ill. 2009). "For example, a

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public body may legitimately prescribe reasonable time limits for public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. In contrast, content-based restrictions, which are "those that target speech based on its communicative content[,] are generally prohibited. *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226 (2015). Moreover, courts have explained:


The government bears a particularly heavy burden in justifying viewpoint-based restrictions in designated public forums. Viewpoint discrimination is an egregious form of content discrimination. Content-based restrictions are subject to strict scrutiny. Viewpoint-based restrictions receive even more critical judicial treatment. *Mesa v. White*, 197 F.3d 1041, 1047 (10th Cir. 1999) (quoting *Church on the Rock v. City of Albuquerque*, 84 F.3d 1273, 1279 (10th Cir. 1996)).

In other words, while a public body may put a stop to disruptive conduct—such as screaming obscenities—that interferes with the ability to proceed with a meeting in an orderly manner, public bodies must be careful not to silence speakers based on their perspectives.

You expressed concern that "[i]t was emotionally traumatic to be subjected to hate speech [a]nd targeted for anti-LGBTQ+ sentiments without any apparent attempt to remind the audience as to their responsibility to uphold a safe space for public discourse."³ There is no indication that the Board deliberately fostered an overly hostile environment or that any public comment actually caused a disturbance that impeded Board business. Instead, this office's review of the video indicated that the Board attempted to preserve decorum when it reminded the members of the public in attendance to respect all speakers' comments and refrain from interrupting them while they addressed the Board.⁴ Further, there is no indication that any member of the public was denied an opportunity to address the Board. While aspects of certain comments may have been perceived as offensive to certain individuals attending the meeting, the comments were not profane, threatening, or otherwise disruptive such that they interfered with the proceedings or the ability of other individuals to exercise their statutory right to participate in public comment. Because your submission does not provide facts suggesting that the Board violated OMA on September 5, 2023, this office has determined that no further action is warranted in this matter.

³E-mail from [REDACTED] to Public Access [Counselor] (September 14, 2023).

⁴Morton Potter TV, *Morton School Board Meeting ... September 5, 2023*, YouTube at 36:26-36:36 (September 26, 2023), https://www.youtube.com/watch?app=desktop&feature=shared&fbclid=IwAR0ZbJhVmHod_OqT3bNCF3Y3_clnBMOzpOBow04qQdXicZY0HhHM98QX4aemAdl4kkbhTxWY7W1mGdqGLtqVT0C091XcAFdpORlppEfVjtKpN OUbGjfOvz1PZCbDKio&v=8NNy4ZMs4&mibextid=Zxz2cZ


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This letter serves to close this matter. If you have any questions, please contact me at matthew.goodman@ilag.gov or the Chicago address on the bottom of the first page of this letter.

Very truly yours,



MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Tim Braker
President, Board of Education
Morton Community Unit School District No. 709
1050 South Fourth Avenue
Morton, Illinois 61550
timothy.braker@mcusd709.org