

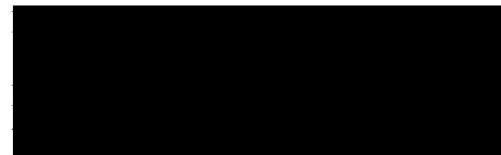


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

August 23, 2024

*Via electronic mail*



*Via electronic mail*

Mr. Todd K. Hayden  
Attorney  
Robbins Schwartz  
550 Warrenville Road, Suite 460  
Lisle, Illinois 60532  
thayden@robbins-schwartz.com

RE: OMA Request for Review – 2024 PAC 79869

Dear [REDACTED] and Mr. Hayden:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)).

In an e-mail to the Public Access Bureau on January 23, 2024, [REDACTED] alleged he "went to an open public meeting" of the Exceptional Children Have Opportunities (ECHO) Joint Agreement Executive Board of Directors (Board) "and was kicked out by The Assistant [Superintendent] Dr. Arresola and Superintendent Dr. Thomas."<sup>1</sup> In his Request for Review, received by this office on January 24, 2024, [REDACTED] alleged that he attempted to attend the January 23, 2024, meeting, but was told he could not attend the meeting by Dr. Arresola because he was on paid administrative leave as an ECHO employee. [REDACTED] alleged that he was improperly escorted out of the Board meeting, claiming he attended the meeting as a resident rather than an employee.

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<sup>1</sup>E-mail from [REDACTED] to Public Access [Bureau] (January 23, 2024).

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On January 29, 2024, the Public Access Bureau forwarded a copy of the Request for Review to the Board. This office asked the Board to provide copies of any notices, agendas, minutes, and recordings of the January 23, 2024, meeting for this office's review, and a written response to the allegation that the Board violated OMA by prohibiting attendance at the meeting by ██████████

On February 8, 2024, the Public Access Bureau received the requested materials, absent a recording of the meeting and the minutes from the meeting, from the Board's attorney. The Board's attorney provided a complete version of its response for this office's confidential review and a non-confidential version suitable to forward to ██████████<sup>2</sup> That same day, this office forwarded a copy of the non-confidential response to ██████████ he submitted two substantive replies that same day.

### DETERMINATION

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 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."

In its non-confidential response to this office, the Board provided context about ██████████ employment with ECHO; at the time of the January 23, 2024, meeting, he "was on a paid administrative leave pending an internal investigation into allegations of serious misconduct, including failure to disclose on his employment application that he was terminated from another school district for misconduct toward students."<sup>3</sup> The Board noted that "[o]n January 10, 2024, he was notified in writing of the fact that he was being placed on administrative leave with pay during the investigation. Importantly, this written notice also informed ██████████ that during the investigation he was not to appear on any ECHO Joint Agreement property unless otherwise notified."<sup>4</sup> The Board stated that when he arrived at the

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<sup>2</sup>5 ILCS 120/3.5(c) (West 2022) ("Upon request, the public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review.").

<sup>3</sup>Letter from Todd K. Hayden, Robbins Schwartz, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (February 7, 2024), at 2.

<sup>4</sup>Letter from Todd K. Hayden, Robbins Schwartz, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (February 7, 2024), at 2.

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meeting, "ECHO then reminded ██████ of his paid administrative leave status and that he was not to be on ECHO property without permission during the investigation[.]"<sup>5</sup> Further, the Board stated that "█████ ultimately left the meeting but remained on property while calling the local police department. The responding officer interviewed Dr. Thomas and was informed that ██████ was an employee on paid administrative leave with a directive not to be on ECHO property without permission. The officer then escorted ██████ off of ECHO property."<sup>6</sup> The Board noted that no public business conducted at the January 23, 2024, meeting pertained to ██████; in contrast, the Board explained, "ECHO has specifically invited ██████ to attend the February 13, 2024 Board meeting as it will then discuss the results of its internal investigation and his employment status."<sup>7</sup>

The Board's confidential response included additional context about the underlying circumstances of ██████ placement on administrative leave and made arguments for why ██████ was properly disallowed to attend the January 23, 2024, Board meeting.

In his first reply, ██████ argued:

I number one am a resident and taxpayer of Echo Joint agreement District. Secondly Illinois State Statute supersedes district laws or policies. I was attending the meeting as a resident of the district not as an employee. Also no classrooms are attached to the district office of Echo the School Pace itself sits on the other side of the building. I called the police because the Superintendent assaulted me by getting in my face and told me I am not to be at the meeting. I was escorted out by the Board President Dr. Evans from the meeting. In accordance with the Illinois Open Meetings act nothing in the law restricts me from attending a public meeting that is in accordance to the law. I am a duly paying tax member of this body. \* \* \* I will ask this is not dismissed as my rights were violated as a citizen and taxpayer of the district.<sup>[8]</sup>

In his second reply, ██████ included the language of the policy section of the

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<sup>5</sup>Letter from Todd K. Hayden, Robbins Schwartz, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (February 7, 2024), at 2.

<sup>6</sup>Letter from Todd K. Hayden, Robbins Schwartz, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (February 7, 2024), at 2.

<sup>7</sup>Letter from Todd K. Hayden, Robbins Schwartz, to Katie Goldsmith, Assistant Attorney General, Public Access Bureau (February 7, 2024), at 3.

<sup>8</sup>E-mail from ██████ to [Katie] Goldsmith and Todd Hayden (February 8, 2024).

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OMA statute, 5 ILCS 120/1 *et seq.* (West 2022), and argued that "[a]s stated Below the only exception is to closed meetings. This in fact was an open meeting to the public to discuss the public business."<sup>9</sup>

OMA applies to "public bodies" as defined by the statute.<sup>10</sup> Thus, OMA applies to the Board but not to ECHO employees, law enforcement, or others. 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 2022)). 15 ILCS 205/7(c)(3) (West 2022). Neither OMA nor FOIA governs a school district's ability to place an employee on administrative leave and/or bar the employee from the premises. Therefore, this office does not have the authority to overturn or limit the ECHO administration's personnel decision as it relates to ██████████ presence on ECHO property while placed on administrative leave for an investigation into matters pertaining to threats to student safety. *See, for instance, Jones v. Bay Shore Union Free School District*, 170 F. Supp. 3d 420, 435 (E.D.N.Y. 2016) ("There is nothing in" New York's version of OMA (N.Y. Pub. Off. § 100 *et seq.*) "limiting a board's authority to restrict access to an individual for safety reasons, while still keeping the meeting open to the general public."). ██████████ argument that he sought to attend the meeting as a local taxpayer rather than an employee is unavailing, because the capacity in which he intended to attend the meeting is irrelevant to the fact that he is a person whom the ECHO administration felt was necessary to keep off school property as part of a misconduct investigation. These are not circumstances in which ██████████ was restricted from attending a meeting pertaining to him specifically, and there is no indication that the meeting was not otherwise accessible to the general public. Given that ██████████ was removed from the January 23, 2024, meeting because of the administration's disciplinary proceeding against him, rather than by the Board for a reason pertaining to OMA, this office concludes that the Board did not violate OMA in connection with the meeting.

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<sup>9</sup>E-mail from ██████████ to [Katie] Goldsmith and Todd Hayden (February 8, 2024).

<sup>10</sup>"Public body" includes:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof. 5 ILCS 120/1.02 (West 2022).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have questions, please contact me at [katherine.goldsmith@ilag.gov](mailto:katherine.goldsmith@ilag.gov).

Very truly yours,

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KATIE GOLDSMITH  
Assistant Attorney General  
Public Access Bureau

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