

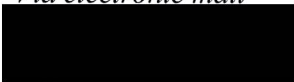


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 23, 2023

Via electronic mail



Via electronic mail

The Honorable Randi Workman
President, Board of Education
Bond County CUSD # 2
1004 Savannah Way
Greenville, Illinois 62246
randi.workman@bccu2.org

RE: OMA Request for Review – 2022 PAC 74672; 2022 PAC 74673

Dear [REDACTED] and Mr. Workman:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education (Board) of the Bond County Community Unit School District #2 (School District) violated the advance notice requirements of OMA in connection with its October 19, 2022, regular meeting, but did not violate those requirements with respect to its November 9, 2022, committee meetings.

BACKGROUND

On December 19, 2022, [REDACTED] submitted two Requests for Review to the Public Access Bureau alleging that the Board violated section 2.02 of OMA (5 ILCS 120/2.02 (West 2020)) by failing to provide sufficient advance notice of two meetings. In 2022 PAC 74672, [REDACTED] alleged that the Board did not post a copy of its October 19, 2022, regular meeting agenda on the School District website at least 48 hours in advance of holding the meeting. In 2022 PAC 74673, he alleged that the Board did not post copies of the agendas for its November 9, 2022, Finance and Facilities & Transportation Committee meetings, either online

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or at the meeting site prior to those meetings. He further asserted that the Board discussed at the committee meetings certain documents related to a construction project, but that the public could not fully understand the discussion because only Board members were given copies of the documents, and the discussion only referred to page numbers. [REDACTED] provided screenshots of meeting materials that were posted on the School District website at the time of the three meetings and photos of three different entrance doors to the committee meeting site.

As an initial matter, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) 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[.]" The provision further provides that the Request for Review "must include a summary of the facts supporting the allegation." 5 ILCS 120/3.5(a) (West 2020). Section 2(e) of OMA (5 ILCS 120/2(e) (West 2020)) provides, in relevant part, that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." As noted above, [REDACTED] contended that the Board did not have a proper public discussion at the November 9, 2022, committee meetings because the Superintendent vaguely referred to expenditures listed in a document instead of specifying the costs of the project. Although it would be consistent with the public policy that underpins OMA¹ for a public body's open session discussions to describe relevant information in documents under consideration to enhance public understanding of the business being conducted, OMA does not require a public body to provide the public with copies of documents distributed to board members or specifically identify details such as expenditures in such documents. Accordingly, OMA did not require the Board's committees to explain the pages it referenced at the November 9, 2022, committee meetings.

With respect to the posting of agendas for the October 19, 2022, and November 9, 2019, meetings, this office forwarded copies of the two Requests for Review to the Board on December 22, 2022, and asked it to provide written responses to [REDACTED] allegations, together with copies of the agendas and minutes for those meetings. On January 5, 2023, this office received the requested materials. The Board also provided a copy of contract with a vendor, Apptegy, and a proposal describing Apptegy's services. On January 10, 2023, this office forwarded copies of the Board's responses to [REDACTED]; he replied on January 17, 2023. On January 27, 2023, the Board submitted a supplemental response to 2022 PAC 74672.

¹See 5 ILCS 120/1 (West 2020) ("It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business.").

DETERMINATION

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2020). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) provides that "[a]n 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." (Emphasis added.) That provision further provides that "[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." (Emphasis added.)

Section 2.02(b) of OMA (5 ILCS 140/2.02(b) (West 2020)) similarly provides that "[p]ublic 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[.]" and that "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."

October 19, 2022, Meeting

In response to 2022 PAC 74672, the Board contended that it does not have full-time staff who maintain the School District website. The Board explained that the School District launched a new website and app on July 1, 2022, after entering into a contract with Apptegy, a software provider. The Board argued that "although designated District parties post or otherwise update content for the District's new website, Apptegy – and not the full-time staff of the District – maintains the new website."² In particular, the Board acknowledged that the School District can update the website, app, and notification system through Apptegy's "Thrillshare" platform, but it argued that the contract provides that "Thrillshare **not only manages [the District's] website**, but also [the District's] custom app, all of [the District's] social media channels, and [the District's] alerts and notification system[.]"³ Additionally, the

²Letter from Eugene J. Hanses, Jr., Guin Mundorf, LLC, to Teresa Lim, Assistant Attorney General, Public Access Bureau (January 5, 2023), at 3.

³Letter from Eugene J. Hanses, Jr., Guin Mundorf, LLC, to Teresa Lim, Assistant Attorney General, Public Access Bureau (January 5, 2023), at 3.

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Board contended that no full-time staff members work exclusively to maintain the website. Instead, those staff members "update the District website when necessary or desired" as part of their job duties.⁴ In its supplemental response, the Board stated it investigated the matter further and could not confirm that the October 19, 2022, meeting agenda was posted online prior to the meeting.

In reply to that answer, [REDACTED] disputed the Board's claim that it does not have any full-time staff members who maintain the School District website. He argued: "[OMA] does not say the website has to be the employee's full time responsibility, or only responsibility. Nor does it give any exemptions from posting meeting agendas on the website because a third party may be hosting the website."⁵

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). As noted above, section 2.02(a) of OMA provides that that "[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." (Emphasis added.) The definitions of "maintain" in Black's Law Dictionary include "[t]o continue (something)" and "[t]o continue in possession of (property, etc.)." Black's Law Dictionary (11th ed. 2019), available at Westlaw BLACKS. "Maintain" also has been defined as to "bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of." Black's Law Dictionary 859 (5th ed. 1979).

Having reviewed the School District's response and submitted materials, the available information indicates that Apptegy re-designed the website, but the School District directly controls the contents of the new site. According to Apptegy's proposal of deliverables, Thrillshare is a "publishing platform for schools, so **your team manages** all of your communication channels from a single place."⁶ (Emphasis added.) The platform allows schools "to assign roles and privileges to your team to update what they care most about. With this level of **customization and control**, [schools] can be confident about consistent messaging being

⁴Letter from Eugene J. Hanses, Jr., Guin Mundorf, LLC, to Teresa Lim, Assistant Attorney General, Public Access Bureau (January 5, 2023), at 3.

⁵Letter from [REDACTED] to Teresa Lim, Assistant Attorney General, Public Access Bureau (undated).

⁶Apptegy, Powering Your School's Identity, Scope & Deliverables.

shared with [their] community."⁷ (Emphasis added.) Thus, Thrillshare is a marketing tool in which a school can manage its own communications on various mediums, all from one centralized location.

Although Apptegy manages its product, Thrillshare, the customer is responsible for the continued operation of the website and controls its contents. The School District acknowledged that it can post and update information on the website using the publishing platform. The School District bears the upkeep of the website and provides for its continuance by updating the contents to keep students, parents, and other community members informed. This is readily distinguishable from circumstances in which this office has determined that a third party contractor rather than a public body "maintains" a website by operating it and controlling its content. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 70560, issued January 10, 2023 (housing authority not required to post agendas on its website because it demonstrated that a third-party website administrator posts materials for the authority on the website). Accordingly, this office concludes that the School District "maintains" its website for purposes of section 2.02(a) of OMA.

The Board also contended that it has no-full time staff members who are dedicated to maintaining the website. Yet, section 2.02 of OMA does not provide that the full-time staff member's duties must solely involve maintenance of the website. Section 2.02(a) simply provides that "[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 meeting[.]" Further, the Board did not deny that it has any full-time staff members who update the website as part of their duties. The Board merely contended that "it might be argued that the District used its full-time staff to maintain the District's website before Apptegy was engaged, but there have never been a full-time District employee whose sole and exclusive duty was to maintain the District's website."⁸ Accordingly, this office concludes that the Board is subject to the online posting requirements of section 2.02.

As noted above, the Board could not confirm that it posted a copy of its October 19, 2022, meeting agenda on its website prior to the meeting. However, it stated that the omission was inadvertent, and that its normal practice is to post copies of its meeting agendas online prior to the holding of those meetings. It further stated that it will continue its practice of posting its agendas online. Accordingly, no further remedial action is necessary, though this office reminds the Board that it must promptly post its meeting agendas online at least 48 hours in advance of holding those meetings.

⁷Apptegy, *Powering Your School's Identity, Scope & Deliverables*.

⁸Letter from Eugene J. Hanses, Jr., Guin Mundorf, LLC, to Teresa Lim, Assistant Attorney General, Public Access Bureau (January 5, 2023), at 3.

November 9, 2022, Committee Meetings

In response to 2022 PAC 74673, the Board denied that it failed to post physical copies of the November 9, 2022, meeting agendas for its Finance and Facilities & Transportation Committee meetings at least 48 hours in advance of the meetings. It asserted: "The agendas for committee meetings were physically posted at the District's principal office (its Unit, or District, Office) visible to the public commencing on Monday, November 7, 2022, at 3:45 p.m., and that posting continued until Thursday, November 10, 2022."⁹ It also stated that it sent copies of the agendas to media outlets and certain other parties on November 7, 2022, at 3:49 p.m.

[REDACTED] maintained that the Board failed to post physical copies of the committee meeting agendas. He referred this office to the photos he took of the three entrance doors to the high school library, the location of the meetings.

On February 17, 2023, and February 22, 2023, this office requested additional information from the Board regarding where it physically posted the agendas and how often the committees met. In response, the Board clarified that copies of the agendas were posted on the front door of its principal office located at 1004 Savannah Way, which is approximately a quarter mile from the high school. The Board asserted that its committees meet on an as-needed basis. According to the Board, the Policy and Curriculum Committee generally only meets a few times each year, while the Finance and Facilities & Transportation Committees meet more often because they address issues that frequently arise. The Board explained that the latter committees often meet once a month, set a week prior to a meeting of the full Board when the meeting's agenda includes an issue that the committees have been discussing. The committees will not meet, however, when there is nothing significant to review.

Based on the information submitted by the parties, the Board provided public notice of its November 9, 2022, committee meetings by posting physical copies of the meeting agendas at its principal office at least 48 hours in advance of the meetings, as required by section 2.02(b). Although the Board did not also post copies of the agendas at the meeting location, section 2.02(a) requires only that an agenda for each *regular* meeting of the public body be posted at the public body's principal office and location of the meeting. "Regular meeting" is defined as "[a] periodic meeting held at a time set in an organization's governing documents or under a standing rule or schedule that the deliberative assembly has adopted." Black's Law Dictionary (11th ed. 2019), *available at* Westlaw BLACKS. The available information indicates that the Finance and Facilities & Transportation Committees do not meet according to a periodic

⁹Letter from Eugene J. Hanses, Jr., Guin Mundorf, LLC, to Teresa Lim, Assistant Attorney General, Public Access Bureau (January 5, 2023), at 2.

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schedule or on dates set in advance at routine intervals. The Board's policy manual does not set a schedule of meetings for the two committees.¹⁰ The two committees generally only meet when an issue of importance arises. Because the Finance and Facilities & Transportation Committees did not hold "regular meetings" on November 9, 2022, this office concludes that the Board satisfied the physical posting requirement of section 2.02 of OMA.

With respect to the posting of committee agendas online, the Public Access Bureau has previously determined that the plain language of section 2.02(b) of OMA only requires notice of meetings of the *governing body* to be posted on a public body's website. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35899 36095, issued August 18, 2017, at 2 (finance committee not required to post its meeting agendas online because it was not school district's governing body); Ill. Att'y Gen. PAC Req. Rev. Ltr. 39074, issued April 12, 2018 (park district committee not required by OMA to post its meeting agendas on the park district website because it was not the governing body; the board of trustees was the governing body). The governing body of the School District is the Board rather than the Finance and Facilities & Transportation Committees. Accordingly, OMA did not require the two committees to post copies of the November 9, 2022, committee meeting agendas on the School District website.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

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cc: *Via electronic mail*
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¹⁰Bond Community Unit School District #2, Board Manual, 2:150 Committees, *available at* <https://www.bccu2.org/page/board-manual/>.