



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 6, 2018

*Via electronic mail*

*Via electronic mail*

Ms. Nicole Carrethers  
Chairperson  
Beasley Academic Center Local School Council

RE: OMA Request for Review – 2018 PAC 52881

Dear [REDACTED] and Ms. Carrethers:

This determination 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 Beasley Academic Center (School) Local School Council (Council) violated OMA by failing to post the agenda for its April 2, 2018, special meeting at a place where it was continuously available for public review for the full 48 hours in advance of the meeting.

**BACKGROUND**

On April 26, 2018, [REDACTED], a member of the Council, submitted a Request for Review to the Public Access Bureau alleging that the Council violated OMA by (1) not posting a notice 48 hours in advance of its April 2, 2018, special meeting where members of the public could see it; (2) adding the item "adding an additional candidate to the forum" to the agenda during its April 10, 2018, meeting and later in the same meeting voting on that issue; and (3) voting during the closed session of its April 10, 2018, meeting on whether to add an additional candidate to the forum. On May 24, 2018, this office forwarded a copy of [REDACTED] Request for Review to the Council and asked it to provide a detailed written response

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to the allegations raised by ██████████ Request for Review.<sup>1</sup> On June 1, 2018, Ms. Nicole Carrethers, Chairperson of the Council, responded on behalf of the Council, and subsequently provided this office with copies of the audio recordings of the April 2, 2018, and April 10, 2018, meetings, including the recording of the April 10, 2018, closed session. On June 1, 2018, this office forwarded a copy of the Council's response as well as the response from the interim principal to ██████████ he did not reply.

### DETERMINATION

The public policy of this State as provided in OMA is 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." (5 ILCS 120/1 (West 2016)). *See also Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989) (the intent of OMA "is to assure that agency actions be taken openly and that their deliberations be conducted openly.").

#### April 2, 2018, Meeting

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides that "[p]ublic notice of any special meeting \* \* \* shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special \* \* \* meeting[.]" Correspondingly, section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2016)) 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." Additionally, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) provides, in pertinent part:

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). (Emphasis added.)

Accordingly, the Public Access Bureau has determined that if a public body does not post meeting notices on its website, it "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

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<sup>1</sup>The Public Access Bureau previously sent the Request for Review to the interim principal of Beasley Academic Center, who provided a response to our office, in which she informed this office that Nicole Carrethers was the Chair of the Council. Letter from Lauren Norwood, Interim Principal, to [Edie] Steinberg, [Assistant Attorney General, Public Access Bureau] (May 14, 2018).

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as on or near the front door or facing outward from a 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.

██████████ alleges that the notice was posted on the counter of the School's office on March 29, 2018, which was during spring break "when no one was present to observe the notice as school was not in session. The meeting was held upon return to school Monday, April 2, 2018."<sup>2</sup> The School's spring break was from Monday, March 26, 2018, through Friday, March 30, 2018.<sup>3</sup>

A review of the records provided to this office establishes that on March 29, 2018, Ms. Carrethers asked the interim principal to post the agenda in both buildings and asked the Council's secretary to post the agenda on the School's website.<sup>4</sup> On June 13, 2018, Ms. Carrethers informed an AAG that the agenda for the April 2, 2018, special meeting was posted in the School's main office and on the Council's board in the foyer of the School but that it was not posted on the School's website. A review of the agenda states that a "Special Call Meeting" will be held on "Monday, April 2, 2018 (5:30 p.m.)."<sup>5</sup> Item 7 of the agenda provides: "Principal Selection (Closed Session/ Interview/ Vote)."<sup>6</sup> A notice of the meeting, but not the agenda, was posted on the School's website; the notice states that "[t]he Principal selection process is underway. We are now in the process of conducting interviews. A special call meeting will be held on Saturday 3/24/18 at 10 am and Monday 4/2/18 @ 5:30 pm."<sup>7</sup> This notice was posted by the Council's secretary on March 22, 2018.<sup>8</sup> The April 2, 2018, meeting minutes show that apart from approving the agenda and minutes of the Council's previous meeting, the meeting consisted of a closed session discussion of candidates for principal and open session votes that narrowed the field of candidates to three and established a process for making a final selection.

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<sup>2</sup>E-mail from ██████████ to [Steve] Silverman, [Bureau Chief, Public Access Bureau, Office of the Illinois Attorney General] (April 26, 2018).

<sup>3</sup>Letter from Lauren Norwood, Interim Principal, to [Edie] Steinberg, [Assistant Attorney General, Public Access Bureau] (May 14, 2018).

<sup>4</sup>E-mail from Nicole Carrethers to Lauren Norwood, Anya N. Hickman, *et al.*, (March 29, 2018).

<sup>5</sup>Beasley Local School Council, Special Call Meeting, Agenda (April 2, 2018).

<sup>6</sup>Beasley Local School Council, Special Call Meeting, Agenda (April 2, 2018).

<sup>7</sup>Beasley Academic Center, Principal Selection Update, available at [https://www.beasleyac.org/apps/news/show\\_news.jsp?REC\\_ID=497868&id=0](https://www.beasleyac.org/apps/news/show_news.jsp?REC_ID=497868&id=0).

<sup>8</sup>E-mail from Nicole Carrethers to Edie Steinberg attaching computer screenshot from the Council Secretary, "**Principal Selection Update** \* \* \* Updated: 3/22/2018[.]" (Emphasis in original.)

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Although the notice of the meeting was continuously posted on the School's website, the meeting agenda was not continuously available for public review during the entire 48-hour period preceding the April 2, 2018, meeting. Accordingly, this office concludes that the Council violated the agenda posting requirement of section 2.02(c) of OMA. However, because the general subject matter of the only substantive topic addressed at the meeting, the principal selection, was included in the posted notice, this office further concludes that the Council's failure to post an agenda which was continuously available for public review did not meaningfully deprive the public of advance notice of the public business conducted at the meeting. Therefore, no action by the Council is required to remedy its violation of section 2.02(c) of OMA.

#### **April 10, 2018 Meeting**

##### Section 2.02(c) of OMA

██████████ alleges that during its April 10, 2018, meeting the Council improperly voted on whether to add a candidate to the principal selection process, because that issue had been added to the agenda earlier in the meeting. A review of the minutes reveals that during the April 10, 2018, meeting, ██████████ made a motion, which the Council passed, "to add an item under old business pertaining to adding Principal Norwood to the principal finalist list with the other 3 candidates."<sup>9</sup> Later on in the meeting the Council voted in open session not to add Ms. Norwood as a fourth candidate.<sup>10</sup> ██████████ informed an AAG that at a subsequent meeting the Council voted and chose a new principal for the School.

Section 2.02(a) of OMA provides that "[t]he requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." Accordingly, adding the item to the agenda and deliberating on whether an additional candidate should be considered was permissible under OMA. However, whether the Council violated OMA by voting on that motion is governed by section 2.02(c) of OMA, which provides that "[a]ny 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." (Emphasis added.)

OMA does not contain a definition of "general subject matter." The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this

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<sup>9</sup>Beasley Academic Center Local School Council, Meeting, April 10, 2018, Minutes 1-2. The audio recording of the Council's open meeting corroborates the description in the minutes.

<sup>10</sup>Beasley Academic Center Local School Council, Meeting, April 10, 2018, Minutes 1. The audio recording of the Council's open meeting corroborates the description in the minutes.

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provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific they needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a \* \* \* general notice if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

The Public Access Bureau has previously determined that "the General Assembly's use of the term 'general subject matter' signifies that a meeting agenda must set forth the main element(s), rather than the specific details, of an item on which the public body intends to take final action." Ill. Att'y Gen. PAC Req. Rev. Ltr. 45667, issued February 16, 2017, at 4-5 (agenda item listing "Appointment of City Administrator" set forth the general subject matter of a vote to award a five-year contract for that position).

This office has reviewed the agenda for the April 10, 2018, meeting, which lists as the third bullet point under item eight (8), under old business, "Principal Selection (Closed Session/Vote)." The Council's agenda notified those persons who may have been interested in attending the meeting that it would vote on matters regarding the selection of the principal. Thus the agenda sufficiently identified the general subject matter of its vote on whether to add a fourth candidate for principal.

Moreover, the Council's vote on whether to add a fourth candidate was not a form of "final action" that the Council was required to identify on the agenda. OMA does not define "final action," and no Illinois court has precisely defined that term. However, in *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (5th Dist. 1989), the court examined whether a board's decision in closed session to authorize a request for mediation as an alternative to the negotiations it had been conducting with the secretaries' union was a final action, and concluded that it was not; instead, the board's authorization of mediation was merely a step towards reaching final action on the union's contract. Accordingly, "final action" generally must bring a matter to a resolution. Compare *Davis v. Board of Education of Farmer City – Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978) (adoption of resolution in closed session stating tentative intent to terminate superintendent's employment "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action[.]" where board subsequently took final action to terminate the superintendent's employment in open session); with *Kosoglad v. Porcelli*, 132 Ill. App. 3d 1081, 1092 (1st Dist.

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1985) (vote to remove commissioner from police board in open session was final action);<sup>11</sup> *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 ("a component of a public body's process of reaching final action generally does not, itself, constitute final action.").

Here, in voting not to add a fourth candidate to the principal finalist list, the Council only took a step in furtherance of reaching final action. The Council's vote did not resolve the matter—final action on hiring a principal took place at a subsequent meeting. Because the Council's vote declining to add an additional principal candidate to its finalist list did not constitute final action on the selection of the principal, the Council was not required to specifically include the general subject matter of that vote on its April 10, 2018, meeting agenda. Nevertheless, as discussed above, the agenda did identify the general subject matter of the principal selection process that the Council addressed.

#### Section 2(e) of OMA

██████████ alleges that during the closed portion of its April 10, 2018, meeting, the Council voted against adding a candidate to the principal finalist list. Section 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.)) provides that "[n]o *final action* may be taken at a closed meeting." (Emphasis added.) While a public body may take a preliminary vote in a closed session, a public body must take all final actions in an open meeting. *Bd. of Educ. of Springfield Sch. Dist. No. 186 v. Attorney Gen. of Illinois*, 2017 IL 120343, ¶¶ 73-74, 77 N.E.3d 625, 637 (2017). As explained above, the vote concerning adding a principal candidate to be considered was not a final action. In addition, the vote took place in open session.<sup>12</sup> Accordingly, the Council did not violate section 2(e) of OMA.

The Office of the Public Access Counselor is charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7 (West 2016). Therefore, this office notes that section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)), provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." The recording of the open session of the meeting reveals that the Council passed a motion to go into closed session to discuss principal selection. The minutes of the open portion of the April 10, 2018, meeting state: "Discussed going to candidates schools, having them visit Beasley for a visit, create bio to share with teachers/staff, discussed

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<sup>11</sup>For an analogous articulation of "final action" outside of the OMA context, *see U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1813 (2016) (final agency action "[f]irst \* \* \* must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 1168 (1997))).

<sup>12</sup>Beasley Academic Center Local School Council, Meeting, April 10, 2018, Minutes 1. The audio recording of the Council's open meeting corroborates the description in the minutes.

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whether or not to add L. Norwood to the final candidate list."<sup>13</sup> The Council should be aware that while section 2(c)(1) of OMA, 5 ILCS 120/2(c)(1) (West 2017 Supp.), allows a public body to discuss the appointment or employment of specific individuals in closed session, it does not allow closed session deliberation regarding the principal selection process in general. Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3 (because section 2(c)(1) only permits public bodies to discuss the relative merits or conduct of individual employees, public body exceeded the scope of the exception by discussing in closed session general budgetary matters that could impact employees).

In accordance with the conclusions in this determination, this office requests that the Council review its practices to ensure that it is in compliance with OMA at future 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 (312) 814-5201.

[REDACTED]  
EDIE STEINBERG  
Assistant Attorney General  
Public Access Bureau

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<sup>13</sup>Beasley Academic Center Local School Council, Meeting, April 10, 2018, Minutes 4.