



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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March 25, 2025

Via electronic mail



Via electronic mail

Ms. Shanell Bowden
Senior Assistant General Counsel
Board of Education of the City of Chicago
1 North Dearborn Street, Suite 900
Chicago, Illinois 60602
smbowden@cps.edu

RE: OMA Request for Review – 2024 PAC 84055

Dear [REDACTED] and Ms. Bowden:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the City of Chicago Board of Education (Board) violated OMA in connection with its September 26, 2024, regular meeting by denying [REDACTED]'s request to address the Board based on rules that were not established and recorded in accordance with section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2022)).

On November 25, 2024, [REDACTED] submitted a Request for Review alleging that the Board violated OMA in connection with its September 26, 2024, meeting by denying his request to address the Board based on guidelines that require a lottery process and that do not allow a member of the public to address the Board if that individual had participated in the public comment period at any Board meeting or committee meeting within the last month. Subsequently, this office forwarded a copy of [REDACTED]'s Request for Review to the Board and asked it to provide a written response to the allegations, along with copies of the agenda and

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minutes of the September 26, 2024, meeting, as well as a copy of the Board's rules regarding public comment that governed the meeting.

On December 23, 2024, the Board's attorney provided this office with a written response, on behalf of the Board, as well as several exhibits, including copies of its agenda and a transcript of its September 26, 2024, meeting, and its rules and guidelines for public comment. On December 24, 2024, the Public Access Bureau forwarded a copy of the Board's written response to ██████████; he replied on January 7, 2025.

DETERMINATION

Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶ 24.

The plain language of section 2.06(g) requires that the "rules" governing public comment not only be "established" but also "recorded" by the public body. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6 (a public body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials). Because OMA does not define either "established" or "recorded," the terms must be given their ordinary and popularly understood meaning. *See Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 15. The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶ 47.

Black's Law Dictionary defines "establish" as: "To settle, make, or fix firmly; to enact permanently." Black's Law Dictionary 688 (11th ed. 2019). "Enact" is defined as "[t]o make into law by authoritative act; to pass." *Black's Law Dictionary* 666 (11th ed. 2019). To "record" is defined as "[t]o deposit (an original or authentic official copy of a document) with an authority." *Black's Law Dictionary* 1527 (11th ed. 2019).

Based upon the plain language of section 2.06(g), the Attorney General has issued several binding opinions concluding that section 2.06(g) generally precludes a public body from imposing restrictions on public comment that are not set out in its established and recorded rules. *See, e.g.*, Ill. Att'y Gen. Pub. Acc. Op. No. 23-013, issued September 13, 2023, at 7-8 (board improperly enforced annotated agenda restricting public comment on personnel matters because it was contrary to the plain language of section 2.06(g), which expressly requires a public body to establish and record its public comment rules); Ill. Att'y Gen. Pub. Acc. Op. No. 19-002,

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issued January 9, 2019, at 5-7 (board improperly enforced a rule on public comment that was not established and recorded in violation of section 2.06(g)); Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 6-7 (board violated section 2.06(g) by placing a condition on public comment that was part of its custom and practice but was not part of its established and recorded rules).

The Public Access Bureau has reviewed the materials provided by [REDACTED] and the Board. Section 2-4.1 of the Board's Rules provides:

At each regular and special meeting which is open to the public, members of the public and employees of the district shall be afforded time, subject to reasonable constraints, to comment to or ask questions of the Board. The Board President shall establish and publish guidelines that will govern the public participation portion of each meeting.¹

[REDACTED] alleges that the Board violated OMA in connection with its September 26, 2024, meeting by denying his request to address the Board based on new guidelines that require a lottery process and do not allow members of the public to address the Board if that individual had participated in the public comment period at any Board meeting, special meeting, or committee meeting within the last month or at a previous meeting.²

Although this office asked the Board to provide a detailed written response to the allegations raised by [REDACTED] in his Request for Review, the Board did not specifically address whether the implementation of its September 2024 guidelines violated OMA. However, in its response, the Board stated that based upon Rule 2-4.1, the Board President issued new guidelines on September 18, 2024, which set forth a randomized lottery process for thirty speaking slots for members of the public who had registered to speak at a meeting. The Board also explained that the guidelines restrict a person from speaking at more than one meeting per month and at back-to-back meetings. The Board's response explained that [REDACTED] was

¹Based upon the Chicago Public Schools website, it appears that Rule 2-4.1 has since been rescinded. See <https://www.cps.edu/sites/cps-policy-rules/board-rules/chapter-2/>. The public participation rule was replaced with Board Rule 1-7: Meeting Procedures, IV Public Participation, which states in part: "The Board President shall establish and publish guidelines that will govern the public participation portion of each Board Meeting[.]" recorded within Bylaws, Board Of Education Of The City Of Chicago, revised January 3, 2025. <https://drive.google.com/file/d/1zIBFP7fJFoUX5GuDjNqyh2Wgt-2Vn5vz/view> at 32-33 (last viewed March 18, 2025).

²The Chicago Board of Education website includes the Guidelines updated in September 2024 that are at issue here. Chicago Board of Education, Scheduled meetings, <https://www.cpsboe.org/meetings> (last viewed March 18, 2025); Guidelines for Public Participation at Chicago Board of Education Meetings, https://www.cpsboe.org/content/documents/guidelines_for_public_participation_at_cboe_september_2024.pdf (last viewed March 18, 2025).

denied an opportunity to speak at the September 26, 2024, regular meeting of the Board because he was afforded an opportunity to speak at the September 18, 2024, special meeting of the Board. In his reply, ██████████ states that the new guidelines were not made available to the public until September 26, 2024, and amounted to the arbitrary enactment of new rules that the Board did not vote to establish and improperly restricted the public's ability to address the Board by, among other things, allowing speaking slots to go unfilled.

At the time of the September 26, 2024, meeting, section 2-4.1 of the Board's Rules give the chair of the Board broad discretion to impose unspecified limitations on public comment which were are not "established and recorded by the public body[]" as required by section 2.06(g) of OMA. The Board labels as "guidelines" the Board President's public comment requirements that were put into effect in September 2024. Section 2.06(g) of OMA does not permit the head of a public body to unilaterally issue "guidelines" that restrict public comment or authorize a public body to delegate its statutory duty to establish and record rules to the head of the public body. Such guidelines are tantamount to ad hoc rules which were neither voted on by the Board nor set forth in its recorded rules. Accordingly, this office concludes that the Board violated section 2.06(g) of OMA in connection with its September 26, 2024, meeting by denying ██████████'s right to speak based upon rules that were neither established nor recorded.

Although OMA does not specifically address the types of public comment rules that a public body may adopt, those rules must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6; *see also I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly tailored to serve significant governmental interests). If the Board wishes to consider requiring a registration and lottery process, or to give preference to those who did not speak at a meeting within the past month, the Board should assess the necessity for such rules and the extent to which they would limit the statutory right to address public officials before voting on whether to establish and record them.³

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,

³For example, if the Board enacts a rule giving preference to those who did not speak at a meeting within the past thirty days, that rule should be narrowly tailored so that if there are open slots, those who spoke at a prior meeting should not be restricted from addressing the Board.

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please contact me at 312-814-5201 or at edie.steinberg@ilag.gov.

Very truly yours,

[REDACTED]

EDIE STEINBERG
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