

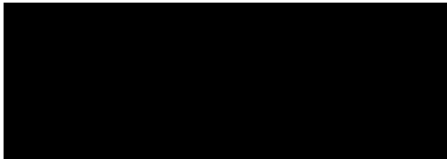


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

April 10, 2018

*Via electronic mail*



*Via electronic mail*

Mr. Thomas J. Lester  
HINSHAW & CULBERTSON LLP  
100 Park Avenue  
Rockford, Illinois 61101-1389  
tlester@hinshawlaw.com

RE: OMA Request for Review – 2017 PAC 46149

Dear [REDACTED] and Mr. Lester:

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 explained below, the Public Access Bureau is unable to conclude that the Rockford Public School District (District) No. 205 Board of Education (Board) violated OMA by improperly restricting public comment during its January 24, 2017, Board meeting.

**BACKGROUND**

On January 30, 2017, [REDACTED] submitted this Request for Review alleging that the Board interrupted her father, [REDACTED], and improperly prevented him from addressing it during the public comment portion of the January 24, 2017, meeting. Specifically, she alleged that the Board President, Kenneth J. Scrivano, repeatedly interrupted [REDACTED] and asked security staff to turn off [REDACTED] microphone before his allotted speaking time had expired. [REDACTED] also alleged that a District security office intimidated [REDACTED] into abandoning the remainder of his speaking time by approaching and standing near [REDACTED].

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On February 23, 2017, this office sent a copy of the Request for Review to the Board and requested a written response to the allegations therein, together with a copy of the Board's established and recorded rules regarding public comment. This office also asked for an explanation in response to ██████████ allegations that the Board restricted members of the public from addressing the Board for the full two minutes permitted under its rules, including the Board's basis for any restriction. On March 13, 2017, this office received the Board's response letter and the requested agendas and public comment rules. On March 31, 2017, ██████████ replied.

## DETERMINATION

### Section 2.06(g) of OMA: Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)), 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 Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4 ("The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules."). Although OMA does not specifically address the nature of rules that a public body may permissibly adopt, there are legitimate reasons for having rules to maintain decorum at public meetings "to assure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008).

Notwithstanding the legitimate interest in establishing rules governing decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based must be narrowly drawn to serve the purpose of preserving decorum. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). As the Ninth Circuit has explained:

An ordinance that governs the decorum of a city council meeting is not facially overbroad if it only permits a presiding officer to eject an attendee for *actually* disturbing or impeding a meeting. However, actually disturbing or impeding a meeting means actual disruption of the meeting; a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance. (Internal citations and ellipses omitted.) (Emphasis in original.) *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013).

In *Acosta*, the court struck down as overbroad a city ordinance that provided for the removal of "any person who commits disorderly, insolent, or disruptive behavior, including \* \* \* personal, impertinent, profane, insolent, or slanderous remarks." *Acosta*, 718 F.3d at 811. The court held that the ordinance was unconstitutional because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. *Acosta*, 718 F.3d at 813.

In response to this office's request for a copy of the Board's established and recorded rules regarding public comment, the Board submitted Rockford Public School District No. 205 Board of Education Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board" (Board Policy 2:230). Board Policy 2:230<sup>1</sup> lists a number of guidelines for speakers, including:

1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
2. Identify himself/herself by name and address (optional). Ordinarily, comments shall be limited to 2 minutes. However, at the start of the public participation portion of the meeting, the Board President may shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.
3. Conduct oneself with respect and civility toward others and otherwise abide by Board policy 8:30, *Visitors to and Conduct on School Property*.<sup>[2]</sup>

The Board also provided a copy of Rockford Public School District No. 205 School Board Policy 8:30, "Visitors to and Conduct on School Property", which prohibits "disrupt[ing] \* \* \* any school activity or function," and "threaten[ing], harass[ing] or intimidat[ion] [of] a staff member, a School Board member, sports official or coach, or any other person."<sup>3</sup>

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<sup>1</sup>Review by this office is limited to the OMA violation alleged in the Request for Review. This office makes no finding with respect to the propriety of the Board's policies concerning public comment, and this letter should not be construed as approval or endorsement of those policies.

<sup>2</sup>Rockford Public School District 205 School Board Policy 2:230, "Public Participation at Board of Education Meetings and Petitions to the Board."

<sup>3</sup>Rockford Public School District 205 School Board Policy 8:30, "Visitors to and Conduct on School Property."

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The Board's response to this office asserted that "[a]ny interruption of [REDACTED] was done for the purpose of restoring a level of decorum at the meeting."<sup>4</sup> The Board asserted that [REDACTED] addressed members of the public assembled at the meeting, rather than the Board, and that his arm motions and movement away from the podium was "causing a dangerous environment at the meeting which put all of those in attendance in jeopardy."<sup>5</sup> The Board further stated:

At no point in time did the Board President tell [REDACTED] his comments were over, but for security reasons, a security officer did walk up behind the podium, but did not touch or say anything to [REDACTED]. [REDACTED] chose to finish his comments and walk away. No threats were made to [REDACTED] by anyone connected with the Board or the School District.<sup>6</sup>

In reply, [REDACTED] argued that the Board first interrupted [REDACTED] public comment when he referenced payments allegedly made by the District to a company owned by the Superintendent's wife. [REDACTED] stated that the Board president referenced a rule prohibiting comments mentioning an individual, and that the interruption was improper because, "the Board President did not ask a question, nor did he stop [REDACTED] for the purpose to maintain a level of decorum."<sup>7</sup> [REDACTED] further disputed the Board's characterization of any part of [REDACTED] comments as indecorous or compromising the safety of the room.

This office has reviewed a video recording of the public comment portion of the Board's January 24, 2017, Board meeting.<sup>8</sup> [REDACTED] was called and walked up to a podium set in front of the Board members seated on a stage, and he spoke about the need for improved safety and further investment of public funds towards education. After approximately 40 seconds, [REDACTED] began to discuss the business dealings and personal ties of a particular board member, raising his voice and pointing at the Board. During this portion of [REDACTED]'s public comment, a Board member interrupted him, told [REDACTED] the rules prohibited him from

<sup>4</sup>Letter from Thomas J. Lester, Hinshaw & Culbertson LLP, to S. Piya Mukherjee, Assistant Attorney General, Public Access Counselor (March 13, 2017), at 2.

<sup>5</sup>Letter from Thomas J. Lester, Hinshaw & Culbertson LLP, to S. Piya Mukherjee, Assistant Attorney General, Public Access Counselor (March 13, 2017), at 2.

<sup>6</sup>Letter from Thomas J. Lester, Hinshaw & Culbertson LLP, to S. Piya Mukherjee, Assistant Attorney General, Public Access Counselor (March 13, 2017), at 2.

<sup>7</sup>Letter from [REDACTED] to S. Piya Mukherjee, Assistant Attorney General, Public Access Bureau (March 31, 2017), at 2.

<sup>8</sup>Rockford Public School District 205 Board, Meeting, January 24, 2017, available at <https://www.youtu.be.com/watch?v=OLQL7MWK4NM> (last visited November 8, 2017), 8:40-10:01.

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referencing individual members, and told ██████████ to comply with the rules or he would be asked to sit down. ██████████ proceeded to speak and stated that the Board was corrupt. Throughout the remainder of ██████████ public comment, he spoke in a raised voice but did not use profanity. However, he walked around the podium, turned away from the podium at times to address the audience, and approached the Board members while pointing and vigorously gesturing with his hands. After approximately 90 seconds, a Board member interrupted ██████████. ██████████ stated, "you are done," and called for the next speaker. While ██████████ continued to speak, an individual (presumably the security officer) approached ██████████ from behind as the Board member requested that the microphone be turned off.<sup>9</sup> ██████████ stopped speaking and walked away from the podium with more than 20 seconds of his allotted time remaining.

In contrast to the explanation provided in the Board's written response to this office, the video recording shows that the Board's first interruption of ██████████ public comment was because of the content of his comment – his reference to an individual – and not to maintain decorum at the meeting. Notably, the Board's rules do not expressly prohibit referencing individual persons. However, after this interruption, ██████████ was allowed to continue his comment, and was only interrupted again when he began moving around the meeting room, continued to raise his voice, and finally, walked in front of the podium toward the Board while repeatedly thrusting his finger in the direction of the Board. Although there is no indication that ██████████ intended to threaten or intimidate the Board, based on this office's review of the video recording, his animated conduct disrupted the decorum of the meeting to the extent that the Board's interruption of his public comment was not unreasonable. The facts here are distinguishable from the *Acosta* case in which the court struck down an ordinance because it permitted individuals to be ejected for the proscribed types of remarks even if those remarks did not disrupt meetings. Here, ██████████ demonstrative actions and conduct, not his remarks, appeared disruptive. Therefore, based on the available information, this office cannot conclude that the Board violated section 2.06(g) of OMA.

In accordance with the conclusions of this letter, this office requests that the Board review its rules governing public comment to ensure they are appropriately and narrowly tailored to regulate only those governmental interests relating to decorum and efficiency. 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 file. If you have any questions, please contact me at the Chicago office.

Very truly yours,

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S. PIYA MUKHERJEE

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<sup>9</sup>Rockford Public School District 205 Board, Meeting, January 24, 2017, available at <https://www.youtu.be.com/watch?v=OLQL7MWK4NM> (last visited November 8, 2017), 9:56-10:01.

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Assistant Attorney General  
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