



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 9, 2023

Via electronic mail

[REDACTED]

Via electronic mail

Dr. Darcy G. Benway
Superintendent
O'Fallon Township High School District No. 203
600 South Smiley Street
O'Fallon, Illinois 62269
benwayd@oths.us

RE: OMA Request for Review – 2023 PAC 76616

Dear [REDACTED] and Dr. Benway:

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 explained below, the Public Access Bureau concludes that the Board of Education (Board) of O'Fallon Township High School District No. 203 ("District" or "OTHS") used an incorrect exception to enter closed session during its March 13, 2023, March 29, 2023, April 13, 2023, and April 24, 2023, meetings.

On May 15, 2023, [REDACTED] submitted a Request for Review alleging that the Board cited an incorrect exception for entering into closed session on March 13, 2023, March 29, 2023, April 13, 2023, and April 24, 2023. He alleged that although the Board's meeting minutes allude to entering closed session pursuant to section 2(c)(10) of OMA,¹ the context indicates that the true basis was disciplinary cases under section 2(c)(9) of OMA.²

¹5 ILCS 120/2(c)(10) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

²5 ILCS 120/2(c)(9) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

██████████
Dr. Darcy G. Benway

June 9, 2023

Page 2

On May 18, 2023, this office forwarded a copy of the Request for Review to Superintendent Darcy G. Benway on behalf of the Board and requested unredacted copies of the closed session minutes of the Board's March 13, 2023, March 29, 2023, April 13, 2023, and April 24, 2023, meetings for this office's confidential review. This officer also requested a written response to the allegation that the Board did not cite in open session, or sufficiently record in the meeting minutes, the correct OMA exception authorizing the closed sessions. On May 23, 2023, Dr. Benway provided a written response but not copies of the closed session minutes, explaining that they concern only student conduct and discipline. On May 25, 2023, ██████████ submitted a reply.

DETERMINATION

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). Accordingly, section 2(a) of OMA³ provides that all meetings of a public body must be open to the public unless the discussion falls within the scope of one of the exceptions set out in section 2(c) of OMA.⁴ The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope."⁵ Sections 2(c)(9) and 2(c)(10) of OMA concern:

- (9) Student disciplinary cases.
- (10) The placement of individual students in special education programs and other matters relating to individual students.

Section 2a of OMA⁶ requires that "a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting."

In the Board's response to this office, Dr. Benway stated that "the District identified the purpose of the Special Meetings on each agenda as 'Student Discipline.'"⁷ She asserted:

³5 ILCS 120/2(a) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

⁴5 ILCS 120/2(c) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

⁵5 ILCS 120/2(b) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

⁶5 ILCS 120/2a (West 2020).

⁷Letter from Darcy G. Benway, Ed.D., Superintendent, O'Fallon Township High School District No. 203, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 23, 2023), at 1.

██████████
Dr. Darcy G. Benway

June 9, 2023

Page 3


The District agrees that the more applicable exemption under 5 ILCS 120/2(c) to enter closed session related to student discipline would have been exemption (9); however, using exemption (10) "...other matters relating to individual students" would also be an allowable exemption as student discipline is an individual student matter. Again, in efforts to be transparent to the public, OTHS clearly identified each meeting's purpose on the agenda as student discipline. The District does not believe it is in violation of the Open Meetings Act, as the public is clearly made aware of the purpose of the meeting and the Board of Education. In each instance, entered closed session under an allowable exemption of the Open Meetings Act.

Moving forward, OTHS will use exemption "(9) student disciplinary cases" for closed sessions specific to student discipline.^[8]

In reply, ██████████ argued that exceptions 2(c)(9) and 2(c)(10) are distinct from each other for a reason, particularly allowing the public to understand the nature of the particular closed session discussions being held.

Sections 2(c)(9) and 2(c)(10) of OMA are not equally permissible grounds for entering closed session to discuss student disciplinary cases. It is well-settled that "[e]ach word, clause, and sentence of a statute must be given reasonable meaning, if possible, and should not be rendered superfluous or meaningless." *Board of Education v. Moore*, 2021 IL 125785, ¶20, 182 N.E.3d 94, 100 (2021). Interpreting section 2(c)(10) as authorizing closed session discussions of student disciplinary cases would render section 2(c)(9) superfluous or meaningless. Indeed, a citation to section 2(c)(10) rather than 2(c)(9) could lead the public to reasonably infer that the closed session related to a matter about individual students other than disciplinary cases. Section 2(b) of OMA reflects that each of the exceptions to the requirement to discuss public business openly has a distinct, specific scope. Thus, while Dr. Benway's assertion that the Board will use section 2(c)(9) for student disciplinary cases in the future is welcome, the Board's claim that it properly entered into closed session pursuant to section 2(c)(10) at its March 13, 2023, March 29, 2023, April 13, 2023, and April 24, 2023, meetings is mistaken. This office reminds the Board to strictly construe the scope of each OMA exception in


⁸Letter from Darcy G. Benway, Ed.D., Superintendent, O'Fallon Township High School District No. 203, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 23, 2023), at 2.


Dr. Darcy G. Benway
June 9, 2023
Page 4

the future when determining which if any exception applies to a potential closed session discussion.

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 joshua.jones@ilag.gov.

Very truly yours,


JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

76616 o 2c10 improper sd