



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 12, 2023

Via electronic mail



Via electronic mail

Mr. Steven M. Richart
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RE: OMA Request for Review – 2023 PAC 76446

Dear [REDACTED] and Mr. Richart:

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 explained below, the Public Access Bureau concludes the Community Consolidated School District 15 (District) Board of Education (Board) improperly authorized a personnel transaction during closed session on April 12, 2023, where the District implemented the transaction without the Board having taken corresponding final action in open session.

In his Request for Review, submitted May 3, 2023, [REDACTED] alleged that the Board violated OMA in connection with the removal of Dr. Kerry Wilson from her Principal position on April 21, 2023. [REDACTED] stated that the Board had adopted a transfer of Dr. Wilson to a position as an Assistant Director of Human Resources effective July 1, 2023, but suddenly and unexpectedly terminated her employment as Principal on April 21, 2023. [REDACTED] cited a local news article quoting Superintendent Laurie Heinz as stating that the Board was involved in Dr. Wilson's sooner-than-anticipated removal from the Principal position: "[P]lease realize the board of education, members of my cabinet, and I have taken great time as well as care, even if you can't see it and despite misinformation circulating, in making the

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decision to begin Dr. Wilson's transition to human resources a few months sooner than originally anticipated."¹ ██████████ alleged that the Board improperly took final action by removing Dr. Wilson from the position by April 21, 2023, behind closed doors.

On May 5, 2023, this office sent a copy of the Request for Review to the Board and asked it to provide this office with copies of any notices, agendas, minutes, and recordings of the meetings, open or closed, in which the Board discussed removing Dr. Wilson sooner than July 1, 2023, after adopting that as the effective date. This office also requested a written response to the allegation that the Board improperly decided to terminate Dr. Wilson's Principal position on or around April 21, 2023, outside of a properly-noticed open meeting. On May 25, 2023, the Board furnished those materials, including a complete version of its response for this office's confidential review and a redacted version for forwarding to ██████████. On May 30, 2023, ██████████ submitted a reply.

DETERMINATION

"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." (Emphasis added.) *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Final Action

Section 2(e) of OMA² provides, in pertinent part, that "[n]o final action may be taken at a closed meeting." The term "final action" generally does not encompass intermediate steps taken by a public body in the process of resolving a matter. *Gosnell*, 179 Ill. App. 3d at 176 (concluding that a board of education's closed session decision to pursue mediation as an alternative to its ongoing negotiations with the secretaries' union was part of the process of reaching a final action rather than final action itself). However, reaching a consensus and implementing a decision outside of an open meeting is final action rather than an intermediate step. *See Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 2013 IL App (1st) 122446, ¶ 29, 996 N.E.2d 664, 670 (vacating the board's decision to deny disability benefits because the board had circulated the decision for signatures privately rather than voting on it in open session); Ill. Att'y Gen. PAC Req. Rev. Ltr. 58555, 58614, 58615, issued August 20, 2019, at 3 (public body took final action by reaching a consensus to prohibit camping at a park and

¹Steve Zalusky, *Abrupt removal of Rolling Meadows junior high principal upsets students, parents*, Daily Herald (Apr. 26, 2023, 8:48 p.m.).

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

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implementing that decision by posting "no camping" signs before voting on the matter at a subsequent meeting).

In its response to this office, the Board confirmed the background that it had voted in open session on March 8, 2023, to transfer Dr. Wilson from Principal of Plum Grove Junior High School to Assistant Director of Human Resources, effective July 1, 2023. The Board indicated that it had discussed Dr. Wilson's employment in closed session on April 12, 2023,³ but asserted that it had properly approved her transfer in open session at its next meeting on May 10, 2023. Citing Board policies,⁴ the Board's attorney argued that the Board "did not need to, nor did it, exercise authority to reassign Dr. Wilson immediately as the Superintendent had the authority to do so."⁵ The Board's attorney did, however, acknowledge the Board's role to a degree in claiming that "it was appropriate for the Board of Education to allow the Superintendent to reassign Dr. Wilson effective immediately."⁶ The Board's attorney continued:

The ability for the Superintendent to gather feedback and opinions from Board members is a necessary step to ensure collaboration between the Superintendent and her employer. Thus, it would be unreasonable to consider the Superintendent's simple check-in with the Board to be final action taken in closed session. While the Board's discussion may have provided guidance to the Superintendent, it did not in any way constitute final action under the OMA.^[7]

The Board's attorney analogized this matter to *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, 77 N.E.3d 625. In that case, the Court concluded that a school board did not take final action in closed session when the members

³The Board entered closed session pursuant to section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022), which permits closed session discussion of, among other things: "The appointment, employment, compensation, discipline, performance, or dismissal of specific employees[.]"

⁴Community Consolidated School District 15 Board of Education, Policy Manual, §§3:050, 3:060, 5:200, 5:240, available at <https://go.boarddocs.com/il/ccsd15/Board.nsf/Public?open&id=CCRQH4695484>.

⁵Letter from Steven M. Richart, Hodges Loizzi Eisenhammer Rodick & Kohn, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 25, 2023), at 4.

⁶Letter from Steven M. Richart, Hodges Loizzi Eisenhammer Rodick & Kohn, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 25, 2023), at 4.

⁷Letter from Steven M. Richart, Hodges Loizzi Eisenhammer Rodick & Kohn, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 25, 2023), at 5.

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signed a severance agreement for a school principal because the final action occurred at a subsequent meeting when the Board voted to approve the agreement. *Springfield School District*, ¶¶ 73-74, 77 N.E.3d at 637. Similarly, the Board's attorney argued, the Board may have discussed the reassignment in closed session on April 12, 2023, but did not take final action on the reassignment until open session on May 10, 2023.

As to the timing of the Board's open session vote on May 10, 2023, in relation to the transfer of Dr. Wilson several weeks prior, the Board's attorney claimed:

Final actions that are retroactive happen often due to the cyclical nature of board meetings. Here, the Board's final action taken on May 10, 2023, applied retroactively to the reassignment of Dr. Wilson, effective April 24, 2023. Retroactivity is common for personnel matters due to the infrequency of Board meetings and the need for personnel actions between meetings.^[8]

The Board's attorney also analogized this matter to *Gosnell v. Hogan* and *Davis v. Board of Education of Farmer City-Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978), for the argument that the Board's approval of the personnel transaction was intermediate in nature. In the latter case, a board of education adopted a resolution in closed session "finding [the superintendent's] performance to be unsatisfactory for reasons specified in detail and reciting a 'tentative opinion and judgment' of the Board that he not be rehired." *Davis*, 63 Ill. App. 3d at 498. The school board directed its secretary to notify the superintendent of its tentative decision within 24 hours, and set final action on the superintendent's contract for the next school board meeting to be held in two weeks. *Davis*, 63 Ill. App. 3d at 498. The court concluded that the school board's tentative decision in closed session "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action." *Davis*, 63 Ill. App. 3d at 499.

In his reply, ██████████ asserted that while the Board's attorney "is now framing the change in status of Dr. Wilson's employment as a punitive measure[,]" the Board and Superintendent Heinz have told the public "numerous times that Dr. Wilson's immediate removal was based upon an urgent need at the District office of Human Resources, and it was a career step that Dr. Wilson allegedly had interest in."⁹ ██████████ argued that under the District's "Terms and Conditions of Employment and Dismissal," the Board makes decisions on dismissal

⁸Letter from Steven M. Richart, Hodges Loizzi Eisenhammer Rodick & Kohn, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (May 25, 2023), at 6.

⁹Letter from ██████████ to Joshua Jones, Deputy Bureau Chief, Office of the Attorney General (May 30, 2023), at [1].

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recommendations from the superintendent; "If there were a situation that the public was not aware of that would've caused the Superintendent to exercise his/her rights under" the Terms and Conditions provisions for "Removal for cause; notice and hearing; suspension, it wasn't relayed in any way during open meetings."¹⁰ ██████████ noted that the Board's May 10, 2023, vote on the reassignment occurred seven days after he submitted his Request for Review. This office sent a copy of the Request for Review to the Board five days before the meeting on May 5, 2023. ██████████ contended:

I would argue that final action actually occurred on April 21st when the Superintendent removed Dr. Wilson's access to Plum Grove Junior High and turned off her computer credentials. For the District to say the reason for this delay is because of the length of time between board meetings is not based in reality. They had every opportunity to tell the public this change was going to occur on April 12th meeting. It is a violation of the OMA if final action is taken without a discussion and vote in open session. Explaining their delay in this manner is like saying that I was speeding yesterday, but I'm not speeding right now, so I didn't break the law.^[11]

This office's review of the April 12, 2023, closed session verbatim recording confirmed that the Board discussed Dr. Wilson's employment under section 2(c)(1), which was not improper because the exception permits the discussion of such employment matters concerning specific employees. This office's review also confirmed that the Board reached an agreement to move up Dr. Wilson's transfer date. The closed session minutes correspondingly document that a decision was made in closed session to transfer Dr. Wilson to the new position within the month of April. This was not an intermediary measure; it disposed of Dr. Wilson's continued employment as Principal at an earlier date than the July 1, 2023, transfer that the Board approved at its March 8, 2023, meeting. While delineating the extent to which the Superintendent has the authority expedite the removal of an employee from her position as principal and move up her reassignment to a different role is outside the scope of the Public Access Bureau's purview, the Superintendent did not merely solicit input from Board members for her consideration before making a unilateral decision; the Superintendent plainly sought and obtained the Board's consent in closed session. Similarly, although the Board's attorney argued that the Superintendent had the authority to suspend Dr. Wilson, the Superintendent did not do

¹⁰Letter from ██████████ to Joshua Jones, Deputy Bureau Chief, Office of the Attorney General (May 30, 2023), at [2].

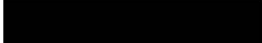
¹¹Letter from ██████████ to Joshua Jones, Deputy Bureau Chief, Office of the Attorney General (May 30, 2023), at [2].

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so, and the information presented in this matter indicates that the District did not give the public the impression that the sudden removal from the Principal position was disciplinary in nature or otherwise based on alleged misconduct.

Although the Board favorably cited *Davis v. Board of Education of Farmer City-Mansfield Community Unit School District No. 17*, the school board's decision-making process in that case offers a helpful contrast to the Board's course of action here. Whereas the school board in *Davis* (1) unambiguously reached only a tentative intent in closed session to refrain from rehiring the superintendent, (2) planned to make a final decision on the rehiring in open session at its ensuing meeting, and (3) did not implement the decision until that open session approval, here the Board's closed session decision was not tentative, and it was implemented with finality before the Board took a vote in open session after the submission of [REDACTED] Request for Review. The Board's reliance on *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois* is similarly misplaced. In that matter, a quorum of the school board signed, but did not date, a proposed separation agreement with the superintendent in closed session; the school board's attorney repeatedly advised the board "that they would have to take a public vote on the agreement[.]" *Springfield School District*, 2017 IL 120343, ¶ 6, 77 N.E.3d at 628. The Court rejected this office's conclusion that signing the agreement in closed session constituted impermissible final action, as the signing of the agreement in closed session was preliminary and the school board did not intend to finalize and implement the agreement until it voted to approve the agreement at its ensuing meeting. *Springfield School District*, 2017 IL 120343, ¶¶ 72-74, 77 N.E.3d at 637. The Court in *Springfield School District* explained that the facts and analysis were similar to *Grissom v. Board of Education of Buckley-Loda Community School District No. 8*, 75 Ill. 2d 314, 326-27 (1979), and *Jewell v. Board of Education, Du Quoin Community Unit Schools, District No. 300*, 19 Ill. App. 3d 1091, 1094-95 (1974), as in those cases the school boards also made preliminary/tentative findings in closed session and then publicly voted when they returned to open session. Thus, the Court in *Springfield School District* did not discuss circumstances in which a school board decided to remove an employee from her current position in closed session, then voted on the matter weeks later after the removal took effect.

The Board's argument that a public body complies with OMA by approving a decision in closed session as long as it openly takes final action at another meeting after the decision has already been implemented is contrary to the intent of the Act. 5 ILCS 120/1 (West 2022) (requiring public bodies to take action openly). Taken to its logical conclusion, such an interpretation would mean that a school board could approve a costly project in closed session unbeknownst to the public, expend the money for the project, and then place the matter on the agenda for a vote after the project has been completed. Given OMA's central purpose of ensuring that the public is kept informed about the conduct of the people's business, the statute cannot reasonably be construed to empower a governing body to make and enact contractual

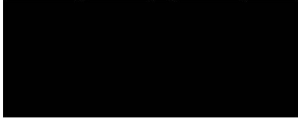

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changes in private as long as it later follows with *pro forma* public approval after the changes have taken effect.

Accordingly, this office is unable to conclude that the Board acted with the requisite openness in authorizing the early removal of Dr. Wilson as principal and transferring her to another position. Given the finality of that transaction and the Board's subsequent vote in open session, however, no remedial action is available. This office cautions the Board to refrain from the same manner of privately making and implementing decisions in the future.

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 joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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