



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

July 13, 2021

*Via electronic mail*

*Via electronic mail*

Mr. Brian P. Crowley  
Franczek  
300 South Wacker Drive, Suite 3400  
Chicago, Illinois 60606  
bpc@franczek.com

Re: OMA Request for Review – 2021 PAC 67372

Dear [REDACTED] and Mr. Crowley:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, this office concludes that the Evanston Township High School District 202 (District) Board of Education (Board) did not impermissibly restrict public comment at its March 8, 2021, meeting.

On March 10, 2021, [REDACTED] submitted a Request for Review alleging that the Board failed to read all pre-submitted comments it received at its March 8, 2021, meeting in violation of the Open Meetings Act (OMA). In support of his Request for Review, [REDACTED] attached copies of five comments that he alleged were either not read or only partially read, and he speculated that there could be more. This office construed [REDACTED] allegation as alleging a violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)).

On March 19, 2021, this office forwarded a copy of the Request for Review to the Board and requested that it provide a detailed written response to the allegation, along with copies of the Board's established and recorded rules for public comment, and the agenda, minutes, any audio or video recordings of the March 8, 2021, meeting. The Board responded on April 7, 2021. [REDACTED] replied to the Board's response on April 13, 2021.

## DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.) Under the plain language of section 2.06(g), a public body must establish and record rules and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 7.

The Board's March 8, 2021, meeting was held remotely on Zoom pursuant to section 7(e) of OMA (5 ILCS 120/7(e) (West 2018), as amended by Public Act 101-640, effective June 12, 2020), and the agenda for the meeting stated that public comments could be submitted in writing prior to the meeting to a designated e-mail address. The Board explained that it has established and recorded Board Policy 2:230 pertaining to public participation at meetings. That policy states, in pertinent part:

2. Identify oneself and be brief. Ordinarily, comments shall be limited to three minutes.
3. The maximum time period for citizen participation is sixty minutes. If there are more than 20 speakers, the Board President will allocate time among the speakers to ensure that citizen comment does not exceed sixty (60 minutes). \* \* \* Upon a simple majority vote of the Board, the citizen participation time can be extended beyond the 60-minute limit.<sup>[1]</sup>

In its response to the Request for Review, the Board explained that it received 81 written comments from the public for the March 8, 2021, meeting, and further explained:

To read as many comments as possible within the designated 60-minute time period established by Board policy, the Board President approved limiting each comment to 45 seconds. This required certain comments to be abbreviated, but the District posted the entire text of each email on its website. The Board secretary read each comment in the order it was received via e-mail. No preference was given based on the content of the email.<sup>[2]</sup>

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<sup>1</sup>Evanston Township High School District 202 Board of Education, Policy 2:230 *Public Participation at Board of Education Meetings and Petitions to the Board* (adopted October 21, 2019).

<sup>2</sup>Letter from Brian P. Crowley, Franczek, to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau (April 7, 2021), at 2.

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The Board stated that it read aloud during the meeting the first 68 of the 81 comments it received by e-mail. With respect to the specific comments attached to [REDACTED] Request for Review, the Board explained that it read one of those comments during the meeting, although it abbreviated the comment to limit its duration to 45 seconds. It acknowledged it did not read the other comments but asserted that those specific e-mails were received later in the day than the e-mails containing the 68 comments that were read, and that it was unable to read aloud all 81 comments within the 60-minute time that its rules establish for public comment.

In his reply, [REDACTED] argues that the Board improperly "applied pre-Covid public speaker comment standards to make the case that the Board acted reasonably and applied an appropriate level of discretion by continuing to limit public comment to pre-submitted written emails, and further to limit those written comments to a 45 second reading."<sup>3</sup> He alleged that the Board acted unreasonably by limiting public interaction only to pre-submitted written comments read at the meeting by a Board member, and that the Board's limitation of each comment to 45 seconds was arbitrary, given that the Board allocated 90 seconds to each of approximately 50 comments that were read at its prior meeting. Finally, [REDACTED] argues that the posting of unread comments on the District's website does not compensate for its failure to read those comments at the meeting.

This office has reviewed the video recording of the March 8, 2021, meeting, which confirms that an Assistant Superintendent read public comments aloud for 60 minutes. He acknowledged that he was unable to completely read each comment within the 45 seconds he set aside for each comment, and when time expired before he completed reading a comment, he noted that the complete comment would be available on the District's website. Although he read the comments quickly, the Assistant Attorney General who reviewed the video recording was able to understand what was being said.

Based on the available information, the Board conformed with its established and recorded public comment policy when it limited the public comment period to 60 minutes, and reduced the time allotted to each commenter because it received more than 20 comments. There is no indication that the Board declined to read certain comments based on their content; it asserted that it read the first 68 comments it received by e-mail, and [REDACTED] does not contest that assertion. Although the Board restricted public comment at its March 8, 2021, meeting, it did so pursuant to its established and recorded rule setting forth time limits.

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<sup>3</sup>Letter from [REDACTED] to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (April 13, 2021), at 1.

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Moreover, there is no basis for this office to find that the Board's policy of limiting the public comment period to 60 minutes violates section 2.06(g) of OMA. Although OMA does not specifically address the types of public comment rules that a public body may adopt, rules designed to maintain order and decorum are permissible to ensure that meetings are conducted efficiently. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5 (a public body may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum which are necessary to further a significant government interest). However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25 (N.D. Ill. 2009). A rule that promotes order and decorum, such as a rule specifying the amount of time members of the public have to address public officials, does not violate the first amendment to the United States Constitution provided that it is reasonable in time and scope. *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that because a five-minute time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, the time limit did not violate the speaker's rights under the first amendment to the United States Constitution). For the same reasons, the Attorney General has found that section 2.06(g) of OMA permits "a public body [to] legitimately prescribe reasonable time limits for public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5.

Limiting the total time for public comments to 60 minutes is not unreasonable. Requiring public bodies to provide an unlimited opportunity for public comment could significantly impede a public body's ability to transact public business. Additionally, under the circumstances of this meeting, in which 81 members of the public submitted comments to be read, reducing the time allotted to each speaker from three minutes to 45 seconds each, was not unreasonable. This office has previously determined that a public body violated section 2.06(g) of OMA when it reduced public comment time from three minutes to one minute per person because more than 15 members of the public had signed up to speak at a meeting. Ill. Att'y Gen. PAC Req. Rev. Ltr. 55981, issued March 26, 2019. There, the public body's established and recorded rule set forth a total time limit of 45 minutes, and a limit of three minutes per person unless more than 15 people sought to participate. When 19 people indicated their interest in providing comment, the public body limited each speaker to only one minute; the public comment period therefore lasted only 23 minutes. The Public Access Bureau concluded that this restriction violated section 2.06(g) of OMA because the one-minute-per-speaker time limit was more restrictive than necessary to meet the 45-minute total time limit on public comment. Ill. Att'y Gen. PAC Req. Rev. Ltr. 55981, issued March 26, 2019, at 4-5.

The Board's actions at this meeting are clearly distinguishable, as it heard public comment for the full 60 minutes described in its rules. [REDACTED] argues that the Board violated

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section 2.06(g) OMA **both** by limiting each comment to 45 seconds and by failing to read aloud 13 of the comments that were submitted. However, in order to read all 81 comments that were submitted for this meeting, without reducing its traditional three-minute limit on speakers, the Board might have had to set aside more than four hours for public comment. Section 2.06(g) of OMA does not require the Board to hold four hours of public comment. Given that a 60-minute total time limit for comments is not unreasonable, reducing the time allotted for each comment allowed the Board to accommodate more members of the public by reading aloud their comments. Had the Board not reduced the time at all—allowing up to three minutes for each comment—it might have read as few as 20 comments at the meeting. Had the Board allowed 90 seconds for each comment (which [REDACTED] described as occurring at its prior meeting), it might have read as few as 40 comments, which is fewer than half the comments that were submitted. Faced with the choice between partially reading the majority of the comments submitted or reading a smaller group of comments completely, the Board's decision to furnish less comment time to more people did not violate section 2.06(g) of OMA.

[REDACTED] also argues that "pre-Covid" standards should not be applied to this meeting, because it was held remotely, and that "[t]he correct standard to be applied is found in the Public Access Counselor's July 2020 OMA Covid guidance."<sup>4</sup> To make it possible for public bodies to continue to function during the COVID-19 pandemic, Governor Pritzker issued executive orders relaxing OMA's in-person quorum requirement and rules for remote participation by members of public bodies.<sup>5</sup> The General Assembly subsequently amended OMA to create a framework for public bodies to be able to hold remote meetings without the physical presence of a quorum of their members during such public health emergencies.<sup>6</sup> These amendments did not contain any requirements for public comment during remote meetings, and section 2.06(g) of OMA has remained unchanged. [REDACTED] statement above notes that the Public Access Counselor issued guidance to public bodies discussing the new section 7(e) of OMA and the sections of Governor Pritzker's executive orders relating to OMA.<sup>7</sup> That guidance was issued pursuant to the Public Access Counselor's authority statutory authorization to provide advice and education concerning the requirements of OMA and the Freedom of Information Act.

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<sup>4</sup>Letter from [REDACTED] to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (April 13, 2021), at 1.

<sup>5</sup>*See, e.g.*, Executive Order 2020-07, §6, issued March 16, 2020; Executive Order 2021-05, §1, issued March 5, 2021 (re-issuing and extending prior executive orders relating to OMA).

<sup>6</sup>*See* 5 ILCS 120/7(e) (West 2018), as amended by Public Act 101-640, effective June 12, 2020.

<sup>7</sup>Public Access Bureau, Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf) (last updated July 2, 2020).

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15 ILCS 205/7(a) (West 2018). Although the Public Access Counselor encouraged public bodies to make available multiple opportunities for the public to address officials in connection with meetings held remotely, that guidance does not state that time limits on public comment that would be considered reasonable when imposed during in-person meetings would be unreasonable when imposed during meetings in which members and the public attended remotely. Binding Opinion 14-012 and the case law discussed above therefore govern this office's analysis of [REDACTED] allegation and the Board's actions at the March 8, 2021, meeting relating to public comment, despite the fact that the public attended the meeting remotely.

Finally, [REDACTED] urges this office to reconsider its prior determinations concluding that a public body's acceptance of public comment by e-mail only satisfies OMA for meetings that the members and public attend remotely. Specifically in reference to this meeting, [REDACTED] notes that the Board's requirement that all comments be pre-submitted by e-mail did not allow members of the public to "adjust[ ] their comments so the most salient and pertinent information would be read" once the Board decided to devote no more than 45 seconds to each submission.<sup>8</sup>

This office has previously determined:

Allowing public comment to be submitted via e-mail allowed members of the public to address the substance of their comments to the [public body]. Section 2.06(g) does not require public bodies to answer questions or otherwise interact with the public. This provision merely provides the public with a statutory right to address the Board, which it was permitted to do via e-mail[.] Ill. Att'y Gen. PAC Req. Rev. Ltr. 62329, issued April 6, 2020, at 3.

The members of the public who submitted written comments to the Board in advance of the March 8, 2021, meeting may have drafted their comments differently had they been notified in advance that the Board would devote only 45 seconds to reading each comment. However, the Board accepted written comments until shortly before the meeting began. There is no information indicating that the Board was aware, when it posted the agenda for the meeting, that it would receive so many comments that it would need to shorten the time allotted to read each comment aloud. The circumstances of this particular meeting—the large number of comments pre-submitted for the meeting and the reasonable limitations authorized by the Board's established and recorded rules which were imposed in order to read aloud portions of most of the comments submitted—do not demonstrate that limiting public comment to written comments is

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<sup>8</sup>Letter from [REDACTED] to Leah Bartelt, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General (April 13, 2021), at 1-2.

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insufficient to satisfy OMA generally. Moreover, it is not apparent that allowing members of the public to comment live on Zoom or by phone, or attend the meeting in person, would have allowed the remaining 13 members of the public to voice their comments during the meeting. Unread comments were the result of the time limit outlined in the Board's established and recorded rules, and not its chosen method for accommodating public comment at a meeting that was not held in person. For these reasons, this office declines to reverse its prior determinations on this issue or find that the Board's acceptance of public comment by e-mail only at its March 8, 2021, meeting violated OMA.

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 matter. If you have any questions, you may contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter.

Very truly yours,



LEAH BARTELT

Deputy Public Access Counselor

Public Access Bureau

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