



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2016

PUBLIC ACCESS OPINION 16-014
(Request for Review 2016 PAC 44337)

OPEN MEETINGS ACT:
Right to Record an Open Meeting

Mr. Adam Chudzik
Norwood Park Watchdog
4252 North Octavia Avenue
Norridge, Illinois 60706

The Honorable Srbo Radisavljevic
President, Board of Education
Norridge School District 80
8151 West Lawrence Avenue
Norridge, Illinois 60706

Dear Mr. Chudzik and Mr. Radisavljevic:

This is a binding opinion issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, this office concludes that the Board of Education of Norridge School District 80 (Board) violated section 2.05 of OMA (5 ILCS 120/2.05 (West 2014)) by prohibiting Mr. Adam Chudzik from recording the open session of the Board's September 20, 2016, meeting. Further, this office concludes that the Board's written policy that requires any person who wishes to record a meeting to provide advance notice to the Board President or Superintendent impermissibly conflicts with the requirements of OMA.

BACKGROUND

On October 3, 2016, Mr. Chudzik submitted a Request for Review to the Public Access Counselor alleging that the Board improperly prohibited him from recording the open

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session of the Board's September 20, 2016, meeting.¹ Specifically, Mr. Chudzik alleged that approximately 10 minutes prior to the start of the meeting, he asked the Board President, Mr. Srbo Radisavljevic, whether he could record the open session, and was told that he could not.² Mr. Chudzik explained that although he "did not make a special request, for example, to be near power outlets[.]" Mr. Radisavljevic informed him that he was not permitted to record that meeting because he had not provided sufficient advance notice of his intent to do so.³ Mr. Chudzik alleged that the Board violated section 2.05 of OMA by prohibiting him from recording the meeting.⁴

On October 12, 2016, the Public Access Bureau sent a copy of the Request for Review to Mr. Radisavljevic, as representative of the Board, and asked for a written response to the allegations therein, including how much advance notice the Board requires from members of the public who seek to record Board meetings.⁵ This office also requested a copy of any established and recorded Board rule regarding the public's right to record its open meetings.⁶ On October 25, 2016, the Board's outside counsel submitted a written response in which the Board acknowledged that it had prohibited Mr. Chudzik from recording the open session after he provided notice to the Board President shortly before the meeting was convened.⁷ Counsel for the Board also enclosed a copy of Board Policy 2:220, which provides, in pertinent part:

Any person may record or broadcast an open Board meeting.
Individuals wishing to record meetings must notify the Board
President or Superintendent in advance. Special requests to
facilitate recording or broadcasting an open Board meeting, such as
seating, writing surfaces, lighting, and access to electrical power,

¹E-mail from Adam Chudzik, Norwood Park Watchdog, to Public Access (October 3, 2016).

²E-mail from Adam Chudzik, Norwood Park Watchdog, to Public Access (October 3, 2016).

³E-mail from Adam Chudzik, Norwood Park Watchdog, to Public Access (October 3, 2016).

⁴E-mail from Adam Chudzik, Norwood Park Watchdog, to Public Access (October 3, 2016).

⁵Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Srbo Radisavljevic, President, Board of Education, Norridge School District 80 (October 12, 2016).

⁶Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Srbo Radisavljevic, President, Board of Education, Norridge School District 80 (October 12, 2016).

⁷Letter from Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC, to Leah Bartelt, Esq., Assistant Attorney General, Public Access Bureau (October 25, 2016).

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should be directed to the Superintendent at least 24 hours before the meeting.

Recording meetings shall not distract or disturb Board members, other meeting participants, or members of the public. The Board President or other presiding officer may designate a location for recording equipment, may restrict the movements of individuals who are using recording equipment, or may take such other steps as are deemed necessary to preserve decorum and facilitate the meeting.^[8]

The response to this office explained that the Board "implements its policy by requiring 24-hours' advance notice of *any request* to record a meeting. It is the Board's position that 24-hours' advance notice of such request is a reasonable rule to govern the right to record a meeting under Section 2.05 of OMA."⁹ (Emphasis added.) The response further stated:

The Board meeting on September 20 was held in the Leigh School Learning Resource Center ("LRC"). At the time of the meeting, there were children and students present in the LRC, and their images would likely have been recorded (e.g., amongst bookcases behind the Board members, and in other places in the LRC). In addition to Board Policy 2:220, the possibility that images of children and students present in the LRC may also have been recorded was unacceptable and [an] additional reason to deny the recording request without 24-hours' notice. Given Mr. Chudzik's request immediately prior to convening the meeting, there was no opportunity to plan a location for recording equipment that would have obviated the concern.^[10]

On November 4, 2016, this office forwarded a copy of the Board's response to Mr. Chudzik.¹¹ He did not reply.

⁸Norridge School District 80 Board of Education, Policy 2:220 (Jan. 15, 2013).

⁹Letter from Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC, to Leah Bartelt, Esq., Assistant Attorney General, Public Access Bureau (October 25, 2016), at 1.

¹⁰Letter from Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC, to Leah Bartelt, Esq., Assistant Attorney General, Public Access Bureau (October 25, 2016), at 2.

¹¹Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Adam Chudzik (November 4, 2016).

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On December 2, 2016, this office extended the time within which to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA.¹²

ANALYSIS

Section 2.05 of OMA provides, in pertinent part: "[A]ny person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings." See also 1980 Ill. Att'y Gen. Op. 102, 103 (analyzing section 2.05 of OMA (Ill. Rev. Stat. 1979, ch. 102, par. 42.05) and advising that "there is no provision in the Open Meetings Act * * * which grants a public body the authority to prevent recording (other than to preserve decorum and prevent interference with the proceedings).").

In binding opinion No. 12-010, issued June 5, 2012, the Attorney General concluded that a reasonable rule authorized by section 2.05 is one that is "designed to prevent disruptions or avoid safety hazards and [that] do[es] not unduly interfere with the right to record." Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 4. At issue in the opinion was a rule adopted by the Lake County Board of Review that required any individual seeking to record a meeting to provide advance notice to the clerk of the board. Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 3-4. The Board of Review had prohibited a member of the public from recording a meeting because he had not given advance notice to the clerk. Instead, he had contacted an employee of the board, who had directed him to notify the Sheriff's Office that he intended to record the meeting. Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 2. Although he received permission from the Sheriff's Office to enter the building with his recording equipment and to record the meeting, the Board of Review prohibited him from doing so because he had not provided advance notice to the clerk of the board. Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 2-3.

In considering the reasonableness of the Board of Review's "advance notice" rule, the Attorney General determined that the board had failed to demonstrate that its rule was "necessary to prevent interference with the proceedings or protect the safety of those in attendance." Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 4-5. The Board of Review had argued that the purpose of the rule was to ensure that an individual seeking to record a meeting could get his or her equipment through a security checkpoint, and so that the board's members would be aware that the meeting would be recorded. Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 5. The Attorney General concluded that the rule "does not appear to be the least restrictive approach" to

¹²Letter from Leah Bartelt, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Adam Chudzik, Srbo Radisavljevic, President, Board of Education, Norridge School District 80, and Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC (December 2, 2016).

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eliminating difficulties at the security checkpoint, and that the Board of Review had not explained how the lack of advance notice would have disrupted its proceedings. Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 5.

Additionally, with respect to the propriety of a rule requiring advance notice of intent to record a meeting in general, the Attorney General explained:

[A]s a practical matter, any rule requiring advance notice of recording a meeting would be difficult or impossible to enforce, given that many members of the public routinely carry cellular phones or other electronic devices capable of recording. ***More importantly, because OMA specifically provides that meetings may be recorded, any public body that prescribes a rule requiring advance notice of recording a meeting would have a steep burden to overcome in order to demonstrate that such a rule is reasonable.*** (Emphasis added,) Ill. Att'y Gen. Pub. Acc. Op. No. 12-010, at 5.

The policy of Norridge School District 80 Board of Education – Board Policy 2:220 – requires a person to notify the Board President or Superintendent "in advance" of his or her intent to record a Board meeting. The Board has not cited any compelling reason for requiring advance notice to be given. It also has not alleged that advance notice is necessary "to prevent disruptions or avoid safety hazards[.]" As a result, the Board has not met its burden of demonstrating that advance notice of recording is reasonable.

Moreover, although the written policy requires 24-hours' advance notice only when the person seeking to record the open meeting has a special request "to facilitate recording or broadcasting ... such as seating, writing surfaces, lighting and access to electrical power," the Board has explained that in practice, it requires 24-hours' advance notice of ***any*** request to record. Even assuming that the Board could validly require some advance notice of an intention to record an open meeting, because Mr. Chudzik did not make a special request to facilitate his recording, the policy did not provide him with notice that he would be required to request such permission at least 24 hours in advance of the meeting.

The Board nonetheless argues that its enforcement of a 24-hour notice requirement to prohibit Mr. Chudzik from recording its September 20, 2016, meeting was reasonable because the meeting was held in the Learning Resource Center of one of the District's schools, where "there were children and students present" whose images may have been recorded. According to the Board, without more notice of Mr. Chudzik's intent to record the

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meeting, "there was no opportunity to plan a location for recording equipment that would have obviated the concern."¹³

The Board's regular meetings are held at the Learning Resources Centers of the District's two elementary schools. Given that section 2.05 of OMA clearly provides that "any person may record the proceedings at meetings required to be open," if the Board is concerned that recording the proceedings at the locations of its regular meetings might give rise to concerns regarding the privacy interests of students, then it is obligated to select a location for its meetings where the right to record the meeting is not curtailed. Alternatively, the Board may consider other potential remedies, such as prohibiting children from accessing the part of the Learning Resource Center visible from the meeting area, to eliminate the stated concern and still ensure the public's right to record its meetings.¹⁴ Importantly, the Board did not explain in its response what steps it would have taken to address this concern if Mr. Chudzik had provided 24-hours' advance notice of his intent to record the meeting and why those steps could not have been taken immediately prior to the state of the meeting.

In summary, the Board has failed to demonstrate that its requirement of advance notice, even when special accommodations for recording are not requested, is necessary "to prevent disruptions or avoid safety hazards." Accordingly, the Board's advance notice requirement violates section 2.05 of OMA.¹⁵

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On September 20, 2016, Mr. Adam Chudzik attended an open meeting of the Board of Education of Norridge School District 80.

¹³Letter from Alan T. Sraga, Engler Callaway Baasten & Sraga, LLC, to Leah Bartelt, Esq., Assistant Attorney General, Public Access Bureau (October 25, 2016), at 2

¹⁴In this regard, we note that the September 20, 2016, meeting was called to order at 7 p.m. and adjourned at 10:39 p.m.; therefore, the meeting did not take place during the regular school day while children were attending classes. Norridge School District 80 Board of Education, Meeting, September 20, 2016, Minutes 1, 7.

¹⁵Because Mr. Chudzik's request to record the proceedings of the September 20, 2016, meeting did not involve special accommodations, this opinion does not address that portion of the Board's rules governing special requests. As a result, nothing in this opinion should be interpreted as a determination of whether a 24 hour advance notice requirement in such circumstances is permissible.

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2) On October 3, 2016, Mr. Chudzik submitted a Request for Review to the Public Access Counselor alleging that the Board improperly prohibited him from recording the open session of its September 20, 2016, meeting by asserting that his notice of intent to record, given shortly before the meeting convened, did not satisfy the Board's requirement that such notice be given "in advance" of a meeting. The Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2015 Supp.)).

3) On October 12, 2016, the Public Access Bureau sent a copy of the Request for Review to the Board and asked for a written response to Mr. Chudzik's OMA allegation, together with a copy of any Board rule addressing the recording of the Board's open meetings by members of the public.

4) The Board's outside counsel, on behalf of the Board, provided a written response to this office on October 25, 2016. The response acknowledged that the Board President prohibited Mr. Chudzik from recording the September 20, 2016, meeting, and explained that Mr. Chudzik's notification did not comply with the Board's advance notice requirement. On November 4, 2016, this office sent a copy of that response to Mr. Chudzik. He did not reply.

5) On December 2, 2016, this office extended the time within which to issue a binding opinion by 21 business days, to January 4, 2017. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 2.05 of OMA provides that "any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings."

7) Although the Board's prescribed policy concerning the public's right to record its open meetings – Board Policy 2:220 – requires a member of the public to furnish notice of an intention to record the proceedings "in advance," the policy does not specify when a person must provide that notice. The Board explained, however, that it implements its policy by requiring 24-hours' advance notice in all cases.

8) The Board has failed to demonstrate that enforcing Board Policy 2:220 to prohibit Mr. Chudzik from recording the meeting because he did not provide 24-hour's advance notice of his intention to record was reasonably necessary to prevent interference with the meeting or to protect the safety of those in attendance. Therefore, prohibiting Mr. Chudzik from recording the meeting based on its policy violated section 2.05 of OMA.

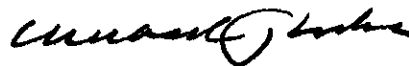
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In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by revising its policies to be consistent with the principles outlined in this opinion, and by otherwise conducting its future meetings in full compliance with OMA. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2014)).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Adam Chudzik as defendants. *See* 5 ILCS 120/7.5 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

cc: Mr. Alan T. Sraga
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CERTIFICATE OF SERVICE

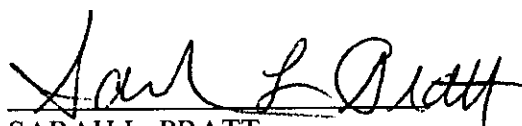
Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-014) upon:

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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 28, 2016.



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