

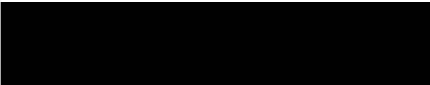


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 15, 2022

Via electronic mail



RE: OMA Request for Review – 2022 PAC 70010

Dear [REDACTED]:

The Public Access Bureau received your February 18, 2022, Request for Review alleging potential violations of the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2020)) by the Board of Education of the Algonquin Community Unit School District No. 300 (Board). Specifically, your Request for Review alleged that the Board was "lying regarding threats and pandemic concerns" and should not hold its February 20, 2022, special meeting remotely.¹

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" and that the submission "must include a summary of the facts supporting the allegation."

You submitted your Request for Review to this office via e-mail on February 18, 2022, which was before the February 20, 2022, meeting was scheduled to commence. No violation related to any February 20, 2022, meeting could have occurred until the meeting took place. In particular, the meeting could have been cancelled. Because you submitted your Request for Review before the Board held its special meeting scheduled for February 20, 2022, your submission was premature.

The Office of the Public Access Counselor, however, is also charged with providing advice and education to both the public and public officials. *See* 15 ILCS 205/7(a),

¹E-mail from [REDACTED] to Public [A]ccess [C]ounselor (February 18, 2022).

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(b), (c) (West 2020). This office notes that section 7(e) of OMA (5 ILCS 120/7(e) (West 2020)), sets forth the requirements for meetings held remotely because of a public health emergency. Sections 7(e)(1) and 7(e)(2) provide, in pertinent part:

(e) Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area;

(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster[.]

As referenced in your Request for Review, in advance of the February 20, 2022, meeting, a notice on the School District website stated:

The District 300 Board of Education will host a Virtual Special Board Meeting on Sunday, February 20, 2022 at 6 p.m.

An in-person meeting is not practical or prudent at this time because of pandemic related concerns. The District 300 Board of Education has received argumentative and divisive communications that have raised concerns about the safety of members of the public who would attend this Board Meeting. For these reasons, this Special Meeting will be conducted in a virtual format and can be viewed on the District 300 YouTube channel.^[2]

²District 300, District 300 Board of Education to Host Virtual Special Board Meeting on February 20th at 6 p.m., available at <https://www.d300.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=2649&ViewID=dc687af4-502e-40ec-afcc-878bbf4f560b&RenderLoc=0&FlexDataID=19821&PageID=1>.


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The School District also provided a link to the special meeting agenda and instructions for how to submit written comments to be read during the meeting.

Based on the language on the School District's website, it appears that a determination was made pursuant to section 7(e)(2) of OMA that an in-person meeting on February 20, 2022, would not be practical or prudent because of circumstances brought about by the COVID-19 public health disaster. Although you dispute the basis for this determination, section 7(e) affords public bodies the flexibility to determine for themselves the best method to balance public health concerns while also facilitating the attendance of their members and accommodating public participation when a Gubernatorial disaster declaration related to public health concerns is in effect, as it was at the time of the Board's February 20, 2022, meeting.³ Section 7(e)(2) of OMA does not set forth criteria that must be satisfied to justify the determination by the head of the public body that an in-person meeting is not practical or prudent, or otherwise provide a basis for the Public Access Counselor to evaluate the reasonableness of the determination.

For the reasons stated above, this office will take no further action as to this matter and this letter closes this file. If you have any questions, you may contact me at laura.harter@ilag.gov.

Very truly yours,


LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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³Gubernatorial Disaster Proclamation issued February 4, 2022.