OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 5, 2017

Via electronic mail
[redacted]

Via electronic mail
Mr. J. Todd Faulkner
Partner, Franczek Radelet P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
jtf@franczek.com

RE: OMA Request for Review – 2017 PAC 47809

Dear [redacted] and Mr. Faulkner:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Education of Glen Ellyn School District 41 (Board) did not violate the notice or openness requirements of OMA in connection with its May 1, 2017, meeting.

On May 10, 2017, [redacted] and [redacted] submitted the above-captioned Request for Review alleging that during the Board's May 1, 2017, regular meeting, "the meeting was moved, without notice, to a different location."[1]

On May 16, 2017, this office sent a copy of the Request for Review to the Board and asked it to provide this office with copies of the May 1, 2017, meeting agenda, minutes, and open session recording (if one was made), together with a written response to the allegation that the meeting was moved without notice. On May 25, 2017, the Board provided those materials and a written response stating that it did provide proper notice of the location change. On June 5, 2017, [redacted] submitted a reply alleging that no vote was taken to suspend and reconvene the

[1]Request for Review from [redacted] and [redacted] to Public Access Counselor (May 10, 2017).

meeting, and therefore that the Board's actions after the meeting recommenced are void. On June 9, 2017, the Board responded by stating that a vote to suspend and reconvene the meeting was not necessary under OMA but was in fact taken, enclosing an affidavit from the Board's Recording Secretary, Ms. Nancy Mogk, and a copy of the "Board Motion Sheet" she used to track votes. On June 13, 2017, [redacted] replied by questioning why the Board held such a vote if it was unnecessary.

ANALYSIS

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

As an initial matter, 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 2016)). *See* 15 ILCS 205/7(c)(3) (West 2016). Accordingly, this office is not authorized to review alleged violations of other statutes or a public body's own governing documents.

Under section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)), "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) adds that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(a) further provides:

> Public notice of any special meeting except * * * any reconvened meeting, shall be given at least 48 hours before such meeting[.] * * * The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.

In its response to this office, the Board explained that its May 1, 2017, meeting was held at the District Office until the building lost power at approximately 9:15 p.m.; at around 9:32 p.m., the Board adopted a motion to suspend and reconvene the meeting at an elementary school one mile away. The meeting then recommenced at approximately 9:58 p.m. With respect to the notice provided to the public, the Board stated:

> As those present at the meeting moved to Churchill School, a sign was posted at the front entrance of the District Office which read: "Due to power outage, the meeting has been moved to Churchill School, 240 Geneva Road, Glen Ellyn." Additionally, a custodian remained at the District Office to direct anyone who came to the building to attend the meeting to go to Churchill School. To the best of the District's knowledge, no one came to the District Office while the custodian was on duty after the meeting was relocated to Churchill School. Finally, as the meeting was being moved, a pop up alert was posted on the District's website, a posting was made to the District's Facebook page and an e-News notice was sent to District subscribers, all of which contained notice of the move to Churchill School.
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> * * * To the best of the District's knowledge, virtually all, if not all, people present at the meeting at the District Office moved to Churchill School. At approximately 12 midnight, the District's Director of Communications left Churchill School and returned to the District Office to relieve the custodian whose shift was ending. The Director of Communications remained in her car in the parking lot near the front entrance to the District Office until the meeting at Churchill adjourned at approximately 1:44 a.m. on May 2, 2017. No one came to the District Office while the Director of Communications was present[.][2]

The Board's response demonstrates that the Board took appropriate measures to notify the public as to the unexpected location change. The members of the public in attendance at the meeting at the District Office were notified of the move when it was announced in open session. Additionally, it is uncontested that the Board posted a sign notifying the public of the location to which the meeting was moved, assigned a staff member to stay at the District Office and direct any members of the public who arrived to the new meeting location, and gave notice of the move on the District's website and Facebook page.

[redacted]eplied to the Board's response to this office by alleging that no vote was made to suspend and reconvene the meeting because the meeting minutes only document that a motion on that matter was made and seconded. He stated: "The result is that all actions taken by the Board following the 'reconvening' are void and * * * by moving meeting locations, without

[2]Letter from Todd Faulkner, Franczek Radelet, to Joshua M. Jones, Supervising Attorney, Public Access Bureau (May 25, 2017), at 2.

notice and without voting on the motion to 'suspend and reconvene' the Board was not acting in a manner consistent with the requirements of" OMA.[3] However, OMA does not govern parliamentary procedure, and under the plain language of section 2.02(a) of OMA, a meeting can be reconvened without further notice as long as an announcement of the time and place of the reconvened meeting is made at the original meeting and there is no change in the agenda. In any event, Ms. Mogk's affidavit establishes that a vote was, in fact, taken to suspend and reconvene the meeting, despite the omission from the minutes. Because the available information demonstrates that the Board took sufficient steps to notify the public of the change in location during its May 1, 2017, meeting, and otherwise conducted the meeting openly, this office concludes that the Board did not violate those requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at the Chicago address on the first page of this letter. This letter serves to close this matter.

Very truly yours,

[redacted]

JOSHUA M. JONES
Supervising Attorney
Public Access Bureau

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[3]Letter from [redacted] and [redacted] to Joshua Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General (June 5, 2017).