OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 8, 2022

Via electronic mail
[redacted]

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

RE: OMA Request for Review – Temporary File No. 2021-PAC-S-0073;
Permanent File No. 2021 PAC 68199

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 2020)). For the reasons explained below, the Public Access Bureau is unable to conclude that the Board of Education of New Trier Township High School District 203 (Board) improperly restricted public comment pursuant to its public comment rule that generally limits the public comment time period to 30 minutes per meeting.

In his April 24, 2021, Request for Review, [redacted] stated that the Board had recently implemented public comment rules that place a 30-minute time limit on the public comment period at Board meetings. He alleged that this policy violates section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)) because it would allow the Board to arbitrarily prohibit any number of individuals from addressing its members, and could result in the Board choosing speakers based only on the content of their speech.

On April 29, 2021, this office sent a copy of [redacted] Request for Review to the Board President and requested a written response to his allegation that the Board's rules violate section 2.06(g) of OMA by improperly restricting public comment. This office also requested a copy of the Board's current rules governing public comment. On May 11, 2021, this

office received those materials. On that same date, this office forwarded a copy of the Board's response to [redacted] and notified him of his opportunity to reply. On May 19, 2021, this office received his reply. On February 13, 2022, after the Public Access Bureau's access to its prior determinations was restored,[1] [redacted] submitted a supplemental reply.

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." "The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4.

Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that, under the First Amendment to the U.S. Constitution, public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly-tailored and serve a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923 (N.D. Ill. 2009). "For example, a public body may legitimately prescribe reasonable time limits for public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. 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; *Timmon v. Wood*, 633 F. Supp. 2d 453, 459 (W.D. Mich. 2008).

In response to this office's request for a copy of the Board's rules regarding public comment, the Board provided copies of two versions of Board Policy 2:230: the one in effect at the time of [redacted] Request for Review, which was last revised on December 16, 2019, and the one enacted on May 3, 2021. The former version provided: "Normally, a maximum of thirty minutes will be allocated for [the public comment] portion of the meeting; however, this time limit may be altered at the discretion of the presiding officer." The new version states:

> For an overall minimum of 30 minutes during each regular and special open meeting, any person may comment to or ask questions of the Board (*public participation*), as subject to the reasonable constraints established and recorded in this policy's guidelines below. Normally, a maximum of thirty minutes will be allocated

[1]Because of a breach to the Attorney General's Office's computer network, the Public Access Bureau was unable to access prior determinations for a period of time while this matter was pending.

> for this portion of the meeting; however, this time limit may be altered at the discretion of the presiding officer. The Board President shall have the authority to determine procedural matters regarding public participation not otherwise defined in Board policy. (Emphasis in original.)

In its response to this office, the Board argued that the Public Access Bureau has previously determined, in a non-binding determination in 2011 PAC 12740,[2] that a 30-minute time limit for public comment is reasonable. The Board stated that the model policy from the Illinois Association of School Boards suggests that school boards allow a minimum of 30 minutes of time for public comments, and that many school boards in Illinois follow these guidelines. Additionally, the Board stated that at its meetings from December 2020 through April 2021, it received between zero and seven requests for public comment, which permitted all speakers to contribute their public comments within the 30 minutes that were allotted. On certain occasions when "more members of the public than usual sought to participate during public comment to provide opinions on school reopening options during the pandemic[,]"[3] according to the Board, it extended the 30-minute time limit for public comment to 60 minutes.

The Board argued that by limiting public comment to 30 minutes, it can focus on its priorities of deliberating and acting on public business, and ensure it is able to conclude meetings at a reasonable hour. The Board further contended that [redacted] Request for Review failed to identify any instances in which its public comment policy was used to prohibit a member of the public from having the opportunity to provide public comment or "arbitrarily limit specific public comments."[4]

In his initial reply, [redacted] argued that the Board's "30 minute time limit is insufficient to ensure that any restrictions will, in fact, be 'content-neutral.'"[5] [redacted] stated that while the Board described its usual processes at its meetings, in which speakers are not arbitrarily chosen, he believes that the "Board President could, at any moment,

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[2]Ill. Att'y Gen. PAC Req. Rev. Ltr. 12740, issued April 22, 2011, at 3.

[3]Letter from Brian P. Crowley to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 11, 2021), at [3].

[4]Letter from Brian P. Crowley to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 11, 2021), at [3].

[5]Letter from [redacted] to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 19, 2021), at 2.

choose to alter the process for deciding which members of the public will be allowed to speak."[6] [redacted] stated that at a February 20, 2017, Board meeting, the Board President noted that the Board had received over 100 comment cards to submit public comment; the Board President reduced each speaker's allotted comment time from five minutes to three minutes, and allowed 57 minutes of public comments. [redacted] alleged that at this meeting, "many individuals were not afforded the opportunity to speak."[7]

[redacted] further argued that the Board could conduct more frequent meetings if it is concerned about concluding its monthly meetings at a reasonable time, and countered the Board's reliance on the Illinois Association of School Boards' policy by noting that this recommendation is for school boards to allow a *minimum* of 30 minutes for public comment.

In his supplemental reply regarding 2011 PAC 12740, [redacted] argued that this determination does not conclude whether a 30-minute time limit for public comment is reasonable. Rather, according to [redacted], this determination concerned an allegation regarding accommodation of a large crowd and an allegation regarding the reasonableness of a public comment rule requiring that public comments be submitted on cards prior to the meeting.

As an initial matter, in his reply, [redacted] also alleged that the Board "continues to ask speakers to provide an address before addressing the Board, and maintains this 'request' as a specific Board policy, despite your office's binding opinion that such a 'requirement' is not reasonable and is a violation of OMA."[8] (Emphasis in original.) However, [redacted] Request for Review alleged that the Board's public comment policy was improper only with regard to the time limit. Therefore, that claim is outside the scope of this matter. In this office's educational capacity,[9] this office notes that the Attorney General has issued a binding opinion which concluded that "requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA, even if such a rule is established and recorded by the public body." Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 7.

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[6]Letter from [redacted] to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 19, 2021), at 2.

[7]Letter from [redacted] to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 19, 2021), at 2.

[8]Letter from [redacted] to Jane Sternecky, Assistant Attorney General, Public Access Bureau (May 19, 2021), at 4.

[9]In addition to resolving Requests for Review, the Office of the Public Access Counselor is charged with providing advice and education to both the public and public officials. 15 ILCS 205/7(a), (b), (c) (West 2020).

Second, with regard to [redacted] allegation that the Board may have violated OMA by reducing each speaker's allotted time at its February 20, 2017, meeting, section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides, in pertinent part:

> 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 established in the Office of the Attorney General *not later 60 days after the alleged OMA violation*. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, *not exceeding 2 years after the alleged violation*, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation. (Emphasis added.)

More than 60 days had elapsed between the February 20, 2017, meeting and [redacted] Request for Review, and even if [redacted] only discovered this alleged violation while preparing his reply, more than two years had elapsed since this alleged violation. Accordingly, section 3.5(a) of OMA precludes this office from analyzing what transpired at the Board's February 20, 2017, meeting.

With regard to the applicability of the Public Access Bureau's determination in 2011 PAC 12740, this office agrees with [redacted] assertion that this non-binding determination did not come to any conclusions regarding the appropriateness of a 30-minute time limit on public comment. Rather, the determination letter concerned the accessibility of a public body's meeting and the public body's practice of requiring those who wished to provide public comment to fill out a comment card. Ill. Att'y Gen. PAC Req. Rev. Ltr. 12740, at 2-3. Nonetheless, the facts this office has received concerning [redacted] Request for Review do not indicate that the Board violated OMA in connection with its 30-minute time limit on public comment. The available evidence indicates that the Board's 30-minute time limit had, in recent history, permitted all interested parties to provide public comment. Thus, in practice, the rule had been reasonable for this public body under its particular circumstances. By permitting the Board President to extend the time to provide public comment based on the circumstances, the Board appears to have promulgated a rule that is designed to accommodate public comment while conducting meetings efficiently. Despite [redacted] claim that the Board *could* misuse its 30-minute time limit in an arbitrary or discriminatory manner, this office received no facts suggesting that the Board applied the rule in a manner that improperly restricts the right to public comment. Accordingly, based on the facts presented in this particular matter, this office concludes that the Board did not violate section 2.06(g) of OMA in connection with its 30-minute time limit on public comment.

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 questions, you may contact me by e-mail at jane.sternecky@ilag.gov.

Very truly yours,

[redacted]

JANE STERNECKY
Assistant Attorney General
Public Access Bureau

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