



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 31, 2018

Via electronic mail



Via electronic mail

Sr. Efraín Martínez
Director/Principal
Jose Clemente Orozco Academy
1940 West 18th Street
Chicago, Illinois 60608
emartinez10@cps.edu

Re: OMA Request for Review – 2014 PAC 32435

Dear [REDACTED] and Sr. Martínez:

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 discussed below, this office concludes that the Local School Council (LSC) of Jose Clemente Orozco Academy (Academy) did not make its November 20, 2014, meeting reasonably accessible to the public.¹

On November 24, 2014, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that members of the public were not allowed access to the LSC's November 20, 2014, meeting, and that the LSC did not take alternative measures to afford access. Specifically, she alleged that "[b]oth front and back doors to the school were locked and no attendant was there to let people in during the entire duration of the meeting[.]" even though "[t]here were vacant seats and space especially after the children were sent to the gym."² She claimed that "[t]hose who were not allowed in the room and were in the hallway were not given an alternative way to participate. They were not given agendas and there were no speakers, or an

¹This office notes that the LSC currently has a different membership than it had at the time of the meeting at issue.

²Letter from [REDACTED] to Lisa Madigan, Attorney General (November 24, 2014).



alternate room of any opportunity for them to hear the meeting."³ Further, she claimed that "[t]he LSC took a vote to stay in the current space even after being informed that there were people in the hallway and people not being let into the building and the gym was available and would have accommodated those wanting to attend."⁴

On December 3, 2014, the Public Access Bureau forwarded a copy of the Request for Review to the Academy's Principal, Mrs. Nancy Paulette-Aguirre, and asked the LSC to provide this office with copies of the agenda and minutes of its November 20, 2014, meeting, together with a written response to the allegation that the public was denied access to the meeting. On December 11, 2014, Mrs. Miriam Arriaga, then-LSC Chairperson, submitted those materials on behalf of the LSC. The agenda included as an item: "Approval and vote to request, Mrs. Barbara Byrd-Bennett, CEO of the CPS, the suspension or dismissal of the school principal, Mrs. Nancy Paulette-Aguirre."⁵ Ms. Arriaga stated that the LSC did not limit access to the meeting, but rather that Chicago Public Schools "security limited access to latecomers per the building's fire code."⁶ Additionally, she asserted that "[t]he LSC does not have access to whether school entrances remain locked. The 50+ attendees (as indicated by the sign in sheet), and news media present demonstrate that the public was indeed allowed to attend."⁷ As to [REDACTED] claim that the LSC could have moved the meeting to accommodate the crowd, she further stated:

Due to the commotion that ensued because of limited space, the LSC considered moving the meeting to an alternate location. However, in an effort to continue the meeting with minimal interruptions, the majority of LSC members decided to continue the meeting in the original location. The OMA does not specify that public meetings must be moved in order to accommodate a crowd that is larger than anticipated.^[8]

³Letter from [REDACTED] to Lisa Madigan, Attorney General (November 24, 2014).

⁴Letter from [REDACTED] to Lisa Madigan, Attorney General (November 24, 2014).

⁵Jose Clemente Orozco Academy Local School Council, Agenda Item 9, Approval and vote to request, Mrs. Barbara Byrd-Bennett, CEO of the CPS, the suspension or dismissal of the school principal, Mrs. Nancy Paulette-Aguirre (November 20, 2014).

⁶Letter from Miriam Arriaga, LSC Chairperson, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 11, 2014).

⁷Letter from Miriam Arriaga, LSC Chairperson, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 11, 2014).

⁸Letter from Miriam Arriaga, LSC Chairperson, to Josh Jones, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (December 11, 2014).

Separately, on December 16, 2014, Mrs. Paulette-Aguirre submitted a response corroborating the allegations in the Request for Review. In particular, with respect to any attempts to accommodate the crowd in attendance, she stated:

Many parents were protesting when they realized that they were not going to provide them with access to room 104/106. Some of the parents who were already in room 104/106 asked the LSC to have the meeting in a larger room. In response to this request, Mr. Montes de Oca [Director of LSC Relations] directed the LSC to make a motion and to vote for it. The majority of the LSC voted to remain in room 104/106 despite of knowing that we could have accommodated all of them in the gym. In previous occasions the location of the LSC was changed to accommodate the attendants.^{9]}

On December 23, 2014, [REDACTED] replied, reiterating her claims.

DETERMINATION

Under OMA, "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2016). "[C]itizens shall be given * * * the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2016).

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 does not have the authority to review alleged violations of other statutes, such as whether the LSC violated the Illinois School Code (105 ILCS 5/1-1 *et seq.* (West 2016)) by requiring staff members who had clocked out and were attending the meeting on personal time to instead supervise students.

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2016)) provides that "[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." "By its plain terms, section 2.01 requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d

⁹Letter from Nancy Paulette, Jose Clemente Orozco, School Principal, to [Josh] Jones (December 16, 2014).

352, 359 (4th Dist. 2003). Thus, "an open meeting in an inconvenient place violates the Act." *Gerwin*, 345 Ill. App. 3d at 359.

In *Gerwin*, the leading Illinois case on meeting room accessibility, the plaintiffs appealed the dismissal of their lawsuit against a county board for allegedly violating section 2.01 of OMA by holding a meeting in an inconvenient place. *Gerwin*, 345 Ill. App. 3d at 353. When a local landfill informed the county board that it wanted to expand, opponents collected 500 signatures on petitions and took out large advertisements in local and regional newspapers encouraging citizens to attend upcoming meetings. *Gerwin*, 345 Ill. App. 3d at 354. After an overflow crowd attended a meeting of a committee of the board, a board member asked whether the upcoming board meeting could be moved to a bigger room, but the meeting was not moved. *Gerwin*, 345 Ill. App. 3d at 355. The plaintiffs alleged that the landfill had asked supporters to arrive early for the board meeting to fill the meeting room, and they did so; only a few protesters were allowed entrance. *Gerwin*, 345 Ill. App. 3d at 356. About 100 members of the public were relegated to the area outside the meeting room, where no seating was available and it was uncomfortable, and the plaintiffs alleged that the Board "made no arrangements to accommodate them." *Gerwin*, 345 Ill. App. 3d at 356.

Addressing the meaning of "convenient," the court stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. Still, the court found that "[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings 'at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.'" (Emphasis in original.) *Gerwin*, 345 Ill. App. 3d at 361. Accordingly, as quoted above, what section 2.01 requires instead is "reasonable accessibility." *Gerwin*, 345 Ill. App. 3d at 362 ("Renting a football stadium for public meetings might be inconvenient, or unadvantageous, to the public as a whole because of the cost. By the same token, holding public meetings in a small room might be inconvenient to the public because persons wanting to attend would have difficulty gaining admittance."). Because the reasonableness of the meeting space was a question of fact that needed to be explored, the court held that the trial court had improperly dismissed the plaintiffs' claims. *Gerwin*, 345 Ill. App. 3d at 362.

In this case, it is undisputed that certain members of the public were not allowed access to the meeting room for the LSC's November 20, 2014, meeting. The parties dispute whether the LSC was required to take steps under the circumstances to provide the public with reasonable access to the meeting.

The open session minutes of the meeting provide, in pertinent part:

A parent interjected to say that parents were outside the classroom and the security guards would not let them in. Parents began to express their dissatisfaction with this situation and argued that * * * all the parents had been invited, it was an open meeting, which was breaking the law and that that all the parents should be allowed into the room. The principal [said] that the room was already at capacity. Mr. Willy Montes de Oca explained that "this was the council meeting. The council is the only one in this case by law decides what will happen, whether to continue with the meeting or not. Also, the meeting should not be interrupted so they can finish on time. Otherwise the council will have to decide to continue or cancel". Mr. Montes de Oca also clarified that "here there is no violation of the open meeting together. The place is open; all arrived and as anywhere first come first serve. The meeting for this space has a maximum capacity; therefore there is no more capacity. The council decides whether you want to move to another place or not, but this is the LSC meeting. The council is the one who decides. The public in this case should not interrupt the meeting of the council. That's all I recommend and they decide whether to continue the meeting or not, they have the last word."

Ms. Arriaga said "thank you very much to all and the council has decided to continue with the meeting and next is the principal's presentation." Ms. Paulette said "I do not understand how that was decided no one asked me to stay or cancel and I am part of the council". Mr. Montes de Oca suggested that a motion be made and vote carried out.¹⁰

A motion then passed to stay in room 104/106.¹¹

Upon review, the facts this office received concerning the LSC's November 20, 2014, meeting demonstrate that the LSC failed to provide reasonable access to the meeting under the circumstances. The available information indicates that the LSC should have anticipated and prepared for a large crowd on that date, as the agenda provided that the LSC would consider the controversial matter of suspending or dismissing Principal Paulette-Aguirre. Members of the

3. ¹⁰Jose Clemente Orozco Academy Local School Council, Meeting, November 20, 2014, Minutes

3. ¹¹Jose Clemente Orozco Academy Local School Council, Meeting, November 20, 2014, Minutes

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public raised concerns about the size of the meeting room during the meeting and proposed that it be moved, but the LSC declined, despite apparently having the gym as an alternative location that could have accommodated the excluded members of the public. In its response to this office, LSC did not explain why it did not attempt to take any steps to accommodate the members of the public who were locked out of the meeting room and out of the building altogether, such as moving to a larger room or setting up an overflow room. Although a public body is not required to ensure that every meeting is accessible to every member of the public who wishes to attend, a public body must take steps in response to increased public interest in order to ensure that its meetings are reasonably accessible. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 37216 37291 37970, issued February 24, 2016, at 7, 10 (more public comment sign-ups than usual should have signaled to public body that it would have to take measures to accommodate large crowd in order to provide reasonable access). Because the LSC did not take measures to try to accommodate the public and provide reasonable access to the meeting even after being notified that additional parents wanted to attend, the Public Access Bureau concludes that the LSC violated section 2.01 of OMA in connection with its November 20, 2014, meeting.

In this instance, there are no available means for the LSC to remedy its violation. This office advises the LSC to take steps to ensure that its future meetings are reasonably accessible to the public, and reminds the LSC to otherwise adhere to all of the requirements of 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, please contact me at the Chicago address on the first page of this letter or (312) 814-8413.

Very truly yours,

[REDACTED]
JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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