



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 21, 2024

Via electronic mail

The Honorable Eric Bush
President, Board of Education
Mokena School District 159
11244 Willowcrest Lane
Mokena, Illinois 60448
bushe@mokena159.org

RE: OMA Request for Review – 2024 PAC 80238

Dear Mr. Bush:

The Public Access Bureau has received the enclosed Request for Review under section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2022)) from Ms. Kelli MacMillan alleging that the Mokena School District 159 (District) Board of Education (Board) violated OMA by refusing to provide Ms. MacMillan, a duly elected member of the Board, with access to closed session minutes and verbatim recordings. Ms. MacMillan further alleges that the Board reached the decision to deny her access by reaching a "will of the board" outside of an open meeting. This office construes Ms. MacMillan's Request for Review as alleging violations of sections 2(e) (5 ILCS 120/2(e) (West 2022), as amended by Public Act 103-311, effective July 28, 2023), 2.06(e), and 2.06(f) (5 ILCS 120/2.06(e), (f) (West 2022)) of OMA. This office has determined that further action is warranted.

In order to further evaluate this matter, we ask the Board or its legal representative to respond in writing to the allegations in Ms. MacMillan's Request for Review. In your response, please address whether the Board refused to provide Ms. MacMillan with access to closed session minutes and verbatim recordings and, if so, how and when it reached that decision and whether that decision constituted a final action of the Board. Please provide this office with any correspondence to or from Ms. MacMillan regarding this decision, as well as any correspondence between any members of the Board and/or other District personnel regarding this decision.

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As required by section 3.5(b) of OMA (5 ILCS 120/3.5(b) (West 2022)), please provide this information to our office within 7 business days after receipt of this letter. As we review this matter, we will notify you if we require additional records or information. Please note that under OMA, this office is required to forward a copy of any response to the requester and to provide the requester with an opportunity to reply. 5 ILCS 120/3.5(c) (West 2022). The Act also permits the Board to provide a redacted version of its response for release to the requester. Accordingly, **if you claim that any portion of your written response is confidential, please send two versions of your response letter: a complete copy for this office's confidential review and a redacted version suitable for this office to forward to the requester.** If you believe that other documents or information would be helpful to us as we review the issues, you may submit additional records or affidavits.

Please contact me at (773) 590-7878 or benjamin.silver@ilag.gov if you have questions or would like to discuss this matter. Thank you.

Very truly yours,



BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

Attachment

cc: *Via electronic mail*
The Honorable Kelli MacMillan
Member, Board of Education
Mokena School District 159
11244 Willowcrest Lane
Mokena, Illinois 60448
macmillank@mokena159.org

Via electronic mail
Mr. Mark Cohen
Superintendent
Mokena School District 159
11244 Willowcrest Lane
Mokena, Illinois 60448
cohenm@mokena159.org

From: [Kelli MacMillan](#)
To: [Public Access](#)
Subject: [EXTERNAL] Request for Review - time urgency
Date: Tuesday, February 20, 2024 5:13:29 AM

Leah Bartelt, Public Access Counselor
Office of the Attorney General
500 S. 2nd Street
Springfield, Illinois 62701

Re: Mokena District 159 Open Meetings Act Request for Review

Note: Documents provided that may be deemed confidential are assumed to remain protected and confidential with the Office of Attorney General. Please contact me as soon as possible if that is not accurate.

Dear Ms. Bartelt,

I am a resident of Mokena and parent to multiple children attending District 159 schools. I was elected to serve on the Mokena District 159 Board of Education in April 2023. Transparency from our public bodies is a fundamental value I hold and one I take extremely seriously as a newly elected official. Unfortunately, I have found myself in a place where I must choose to stay true to maintaining transparency for our public and serving my community over keeping peace amongst the Mokena Board of Education.

I request your office review (3) situations concerning district practices subject to the IL Open Meetings Act. The first of these is very time sensitive. The board is set to vote on destroying closed meeting recordings I have requested to review pursuant to the right afforded to me in IL Open Meetings Act.

Item 1: Denying a duly elected board of education member access to closed session minutes upon request.

Please note: the Board of Education is poised to vote to destroy the recordings I've requested to review on Wednesday, February 21st. I realize this is a short timeline but wanted to highlight this factor. The meeting verbatim recordings I was denied access to are set to get our Board of Education's approval to destroy. The Board President has informed me that it is not "the will of the board" to grant me access (based on deliberations not conducted in an open meeting, see also #3 below), which leads me to conclude that the board will vote in favor of destroying these recordings.

Documentation

1A: Email correspondence between myself and District 159 Superintendent, Dr. Mark Cohen and District 159 Board of Education President, Mr. Eric Bush. For reference, Mrs. Julie Oost is a fellow, duly elected board member that agreed to accompany me in my review.

1B: Mokena District 159 Board Policy 2:220, highlighted section pertaining to Verbatim Record of Closed Meetings.

1C: Board of Education February 20, 2024, tentative agenda with closed meeting minutes a part of the consent agenda section

Item 2: The Board of Education votes for action in open meetings occur after our Administration has taken steps to execute personnel changes and legal agreements.

Documentation

2A: Personnel reports for 5/17/23, 6/21/23, 11/15/23, 12/20/23, 1/17/24 to demonstrate recent examples. I've highlighted some of the relevant "effective dates" which precede the BOE meeting / formal action.

2B: Legal settlement agreement provided to the Board of Education for approval on 2/21/24 after our Superintendent facilitated the execution on 2/15/24. When verbally questioned on

it, the Superintendent maintains it is essentially not a Board of Education business and that he shall not be micromanaged.

Item 3: The Board of Education President, Eric Bush and the Superintendent, Mark Cohen have developed a fictitious concept they call “the will of the board”. They utilize this deceptive practice to prevent the Board of Education from deliberating or acting at open meetings. In between open meetings, Eric Bush is collecting board member votes which are not disclosed. He is not contacting all board members for their vote. It is unclear which board members have “voted” or how many. The position each board member that does vote holds is also not disclosed. Eric Bush does not transparently share the vote tally with all board members or the public. He is using this tactic to prevent and circumvent topics from being deliberated at an open meeting. It appears he is using this mechanism to silence certain board members to further an agenda. Most often, Eric Bush and Mark Cohen verbally purport something to be “the will of the board”.

A good recent example of this is shown in Item #1 above where Eric Bush cited “the will of the board” when denying a duly elected official access to closed meeting verbatim recordings.

Documentation

3A: Email / text correspondence that cites the “will of the board” not supported or transparently voted in an open meeting.

Please contact me at 714-504-4410 for further information. I am concerned to not violate the oath I took to maintain confidentiality, etc. I trust that would not be the case by sharing this information with your office.

Sincerely,
Kelli MacMillan