



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 14, 2021

PUBLIC ACCESS OPINION 21-011
(Request for Review 2021-PAC-C-0385)

OPEN MEETINGS ACT:
Proper Remote Meeting During
a Public Health Emergency

Ms. Judy Rowling
20855 State Highway 3
Grafton, Illinois 62037

The Honorable Greg Brown
President, Board of Education
Jersey Community Unit School District No. 100
100 Lincoln Avenue
Jerseyville, Illinois 62052

Dear Ms. Rowling and Mr. Brown:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the Board of Education (Board) of Jersey Community Unit School District No. 100 (District) did not violate OMA by holding its September 16, 2021, meeting remotely because of the COVID-19 pandemic.

BACKGROUND

On September 17, 2021, Ms. Judy Rowling submitted a Request for Review to the Public Access Bureau alleging that the Board improperly held its September 16, 2021, meeting remotely via Zoom's videoconferencing software, with no in-person attendance by the public

allowed.¹ She provided a link to the Board's livestream video recording of the meeting² and a copy of the agenda, which, she noted, explained that the meeting would be held over Zoom because of the COVID-19 pandemic.³ The agenda stated, in pertinent part:

Due to the increasing metrics in the community and upon the recommendation of local officials, the Board may participate by audio or video conference without the physical presence of a quorum of the members due to the determination that an in-person meeting is not practical or prudent due to the current health emergency.^[4]

Ms. Rowling stated that this agenda language concerned her because she believed COVID-19 rates in the District were lower than they were earlier in the pandemic when the Board held certain meetings in person.⁵ Ms. Rowling alleged that the Board used the pandemic as a pretext to disallow in-person attendance. She stated that during the public comment portion of the meeting, she asked why the meeting was held by Zoom, and Board President Greg Brown responded that local officials advised the Board to meet remotely because of the "disruptive" nature of the Board's previous meeting; he did not mention COVID-19.⁶ Additionally, she alleged that "[t]he audio was extremely difficult to hear and having the meetings by Zoom clearly does not allow those folks who can't afford the internet to be a part of the meeting."⁷

¹E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

²While Ms. Rowling provided a link to Facebook, this office reviewed the District's livestream recording from the link included in the meeting agenda. Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

³E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

⁴Board of Education of Jersey Community Unit School District No. 100, Agenda (Opening Paragraph) (September 16, 2021).

⁵E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

⁶E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

⁷E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

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On September 30, 2021, the Public Access Bureau sent a copy of the Request for Review to Board President Brown. The Public Access Bureau also sent Mr. Brown a letter asking for a copy of any record reflecting that he had made the determination that an in-person meeting on September 16, 2021, was not practical or prudent due to the conditions of the COVID-19 pandemic.⁸ The letter asked the Board to "address in writing Ms. Rowling's allegation that the actual reason for meeting over Zoom was not the pandemic but concerns about order and decorum (and advice received to follow suit with other local public bodies)."⁹

On October 12, 2021, counsel for the Board, Mr. Brandon K. Wright, provided the Public Access Bureau with the Board's written response, which asserted that the Board properly conducted the meeting remotely.¹⁰ Mr. Wright explained that COVID-19 safety concerns arose from the Board's previous meeting on August 19, 2021, which was held in person:

At that meeting, there were numerous persons who refused to wear masks, despite masks being required. Due to the number of individuals anticipated to attend, and because many of those individuals refused to comply with mitigation requirements (including wearing masks) at the prior meeting, an in-person board meeting was likely to become a congregate setting unsafe for those in attendance.^[11]

On October 12, 2021, this office forwarded a copy of the Board's response letter to Ms. Rowling.¹² Later still on that same date, an Assistant Attorney General (AAG) in the Public Access Bureau sent Mr. Wright an e-mail seeking clarification as to whether there was

⁸Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Greg Brown, President, Board of Education, Jersey Community Unit School District No. 100 (September 30, 2021), at 1.

⁹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Greg Brown, President, Board of Education, Jersey Community Unit School District No. 100 (September 30, 2021), at 1.

¹⁰Letter from Brandon K. Wright, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (October 12, 2021).

¹¹Letter from Brandon K. Wright, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (October 12, 2021), at 2.

¹²Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Judy Rowling (October 12, 2021).

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any documentation reflecting that Board President Brown had made the determination that meeting in person on September 16, 2021, was not practical or prudent due to the COVID-19 public health emergency.¹³ Mr. Wright responded: "My understanding is that there are not any additional records, other than the language included on the agenda, to reflect that. I understand that these were verbal discussions between the Board President and the Superintendent, resulting in the finding being placed on the agenda itself."¹⁴ The AAG replied by asking whether "the Board President and Superintendent would sign affidavits attesting that the Board President personally determined that meeting in person for this meeting was not practical or prudent due to health risks of the pandemic?"¹⁵ On October 15, 2021, Mr. Wright provided this office with the requested affidavits.¹⁶ On October 18, 2021, this office forwarded a copy of each affidavit to Ms. Rowling.¹⁷ On October 24, 2021, Ms. Rowling submitted a reply.¹⁸

On October 25, 2021, the AAG e-mailed Mr. Wright to determine if the Board possessed a recording of its previous meeting on August 19, 2021, to verify the nature of the asserted disruption.¹⁹ On October 28, 2021, Mr. Wright provided this office with a copy of a recording of that meeting²⁰ and a copy of a police report documenting a police response to a call for service at the August 19, 2021, meeting.²¹ The police report states that "[B]oard members

¹³E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Brandon K.] Wright (October 12, 2021).

¹⁴E-mail from BKW to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 12, 2021).

¹⁵E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Brandon K.] Wright (October 12, 2021).

¹⁶E-mail from BKW to [Joshua] Jones, [Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 12, 2021).

¹⁷E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Judy] Rowling (October 18, 2021).

¹⁸E-mail from Judy Rowling to Joshua [Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

¹⁹E-mail from Josh Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to [Brandon K.] Wright (October 25, 2021).

²⁰Jersey Community Unit School District No. 100 Board of Education, Open Meeting, August 19, 2021, Video File (on file with Public Access Bureau, Office of the Attorney General).

²¹Incident Report, Jerseyville Police Department, Officer Seth Tefertiller #115, Jerseyville, Illinois, Incident No. 2021-006773, August 19, 2021, 5:53 p.m.

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were worried due to a large number of people indicating they wished to protest the school's mask mandate."²² When police arrived, they were advised of a member of the public in the meeting room who refused to either wear a mask or leave the room. The police spoke with the individual and advised her that the school possessed the authority to ask her to leave. The individual declined to leave.²³ The police were also advised of a large group of people in the building's entranceway who were unwilling to wear masks or leave. Those individuals moved to the school facility's parking lot at police request.²⁴

On November 12, 2021, this office extended the time within which to issue a binding opinion by 21 business days, to December 16, 2021.²⁵

ANALYSIS

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020).

Ms. Rowling's Request for Review questions the Board's authority to hold a remote meeting with no public attendance allowed on September 16, 2021. On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2020)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.²⁶ The Disaster Proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."²⁷ Since that time, the Governor has issued successive Gubernatorial Disaster Proclamations related to the COVID-19 pandemic. The Gubernatorial Disaster Proclamation in

²²Incident Report, Jerseyville Police Department, Officer Seth Tefertiller #115, Jerseyville, Illinois, Incident No. 2021-006773, August 19, 2021, 5:53 p.m.

²³Incident Report, Jerseyville Police Department, Officer Seth Tefertiller #115, Jerseyville, Illinois, Incident No. 2021-006773, August 19, 2021, 5:53 p.m.

²⁴Incident Report, Jerseyville Police Department, Officer Seth Tefertiller #115, Jerseyville, Illinois, Incident No. 2021-006773, August 19, 2021, 5:53 p.m.

²⁵Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Judy Rowling and Brandon K. Wright, Miller, Tracy, Braun, Funk & Miller, Ltd. (November 12, 2021).

²⁶Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

²⁷Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

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effect at the time of the September 16, 2021, meeting was issued on August 20, 2021.²⁸ From April 30, 2020, until July 23, 2021, the Disaster Proclamations contained language indicating that for purposes of OMA, attendance of more than ten persons at a meeting location was not feasible.²⁹ That language has not been included in the Disaster Proclamations issued since July 23, 2021.

In addition to the Disaster Proclamations, the Governor has also issued a series of Executive Orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in section 6:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.^[30]

Subsequent Executive Orders, through Executive Order 2021-14, issued June 25, 2021, contained similar provisions concerning remote attendance. No such provision, however, was included in Executive Order 2021-22, issued September 3, 2021, which was in effect at the time of the September 16, 2021, meeting.³¹ Executive Order 2021-22, however, reissued the mandate requiring "all individuals in Illinois who are age two or over and able to medically tolerate a face covering * * * to cover their nose and mouth with a face covering when in an indoor public place."³² This mask mandate was in effect at the time of the Board's September 16, 2021, meeting.

Although neither the August 20, 2021, Gubernatorial Disaster Proclamation nor Executive Order 2021-22 specifically addresses remote meetings, the General Assembly amended OMA on June 12, 2020, to provide a legal framework for public bodies to hold remote

²⁸Gubernatorial Disaster Proclamation, issued August 20, 2021.

²⁹Gubernatorial Disaster Proclamation, issued May 29, 2020, at 6, through Gubernatorial Disaster Proclamation, issued June 25, 2021, at 7.

³⁰Executive Order 2020-07, §6, issued March 16, 2020, at 3.

³¹Executive Order 2021-22, issued September 3, 2021.

³²Executive Order 2021-22, §1, issued September 3, 2021.

meetings during the COVID-19 pandemic.³³ Section 7(e) of OMA (5 ILCS 120/7(e) (West 2020)) contains ten subsections setting out various requirements to which public bodies must adhere to hold remote meetings. The following three are particularly at issue here:

[A]n 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; [and]

* * *

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link[.] 5 ILCS 120/7(e)(1), (e)(2), (e)(4) (West 2020).

³³See Public Act 101-640, effective June 12, 2020.

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In the Board's answer to this Request for Review, Mr. Wright argued that the Board's September 16, 2021, meeting complied with those requirements because: (1) the State was under a Disaster Proclamation; (2) Board President Brown properly determined that an in-person meeting was not practical or prudent due to the pandemic; and (3) the meeting—including the public comment portion of the meeting—was accessible to the public via Zoom.³⁴ In particular, Mr. Wright asserted that "[t]he Board President determined, due to ongoing pandemic, the more dangerous Delta variant of COVID-19, and to uphold the safety of the community at large, the September 16, 2021 meeting would be held via Zoom."³⁵

The affidavits the Board supplied support the Board's assertions. In his affidavit, Board President Brown attested:

Responsive to concerns over public health and safety following the August 2021 board meeting and because of the growing number of cases in our region, I, together with the Superintendent, made the determination to hold the September 16, 2021 board meeting remotely because an in-person meeting was not practical or prudent due to the health risks associated with COVID-19, and directed the Superintendent to place that determination on the agenda for the September 16, 2021 board meeting.^[36]

Correspondingly, in his affidavit, Superintendent Brad Tuttle attested that Board President Brown, after consultation with him, "made the determination to hold the September 16, 2021 board meeting remotely because an in-person meeting was not practical or prudent due to the health risks associated with COVID-19[.]"³⁷

In her reply, Ms. Rowling provided what she stated was a chart of active COVID-19 cases in Jersey County since January 15, 2021, in relation to the dates of the Board meetings held during that time period; she identified the meetings that were held remotely and the

³⁴Letter from Brandon K. Wright, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones. Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (October 12, 2021), at 3-4.

³⁵Letter from Brandon K. Wright, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones. Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, State of Illinois (October 12, 2021), at 2.

³⁶Brown Aff. ¶7.

³⁷Tuttle Aff. ¶8.

meetings that were held in person.³⁸ Ms. Rowling argued that the Board acted inconsistently as to which meetings it held remotely.³⁹ She also questioned when exactly the COVID-19 public health emergency would be considered over, and stated: "I am very confused as to the reasoning behind that these meetings must be virtual because school has been held face to face this entire year as well as there have been no extracurricular activities cancelled because of this pandemic since the school year started."⁴⁰ Ms. Rowling alleged that the Board had improperly denied a request from her and "several other community members * * * for a change in venue such as the outdoor football field so that we could all be face to face for the school board meetings[.]"⁴¹

The Governor's August 20, 2021, Disaster Proclamation, which declared the State a disaster area in light of the continued spread of COVID-19,⁴² was in effect at the time of the September 16, 2021, Board meeting and covered the District's jurisdiction. Although the Disaster Proclamation did not mention OMA as many of the previous Disaster Proclamations had, section 7(e)(1) does not specify that the Disaster Proclamation must reference OMA. When a Disaster Proclamation related to public health concerns is in place and covers the jurisdiction of a public body, the requirements of section 7(e)(1) are satisfied regardless of the particular COVID-19 case count on the date of a meeting or the fact that the public body had conducted in-person meetings when COVID-19 case counts were higher. Accordingly, the Board met the requirements of section 7(e)(1) for its September 16, 2021, meeting.

In order to assess Ms. Rowling's primary allegation that the Board did not meet the requirements of section 7(e)(2) on September 16, 2021, this office first reviewed the video recording of the prior, in-person meeting that the Board held on August 19, 2021.⁴³ The review confirmed that there was a disruption of the meeting involving COVID-19 public health

³⁸E-mail from Judy Rowling to Joshua [Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

³⁹E-mail from Judy Rowling to Joshua [Jones Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

⁴⁰E-mail from Judy Rowling to Joshua [Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

⁴¹E-mail from Judy Rowling to Joshua [Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

⁴²Gubernatorial Disaster Proclamation, issued August 20, 2021.

⁴³For this meeting, Executive Order 2021-18, §1, issued August 4, 2021, was in effect. This Executive Order, which pertains to schools, requires "the indoor use of face coverings by students, staff, and visitors who are over age two and able to medically tolerate a face covering, regardless of vaccination status, consistent with CDC guidance."

concerns. A member of the public not wearing a mask entered the meeting room, at which time a police officer approached and explained that she needed to leave if she would not abide by the mask requirement.⁴⁴ The member of the public refused to put on a mask or leave, delaying the meeting as the police officer and Board members discussed the matter with her. Eventually, the meeting proceeded even though this member of the public remained in the room without a mask; the police officer indicated that there was no desire to arrest anyone that evening, though the police report was later forwarded to the Jersey County State's Attorney's Office for potential criminal trespass charges.⁴⁵ The noise from the other maskless members of the public who were outside the meeting room grew louder as the meeting went on, however, causing the Board to take a recess to address the issue.⁴⁶ Members of the Board and the police officer also attempted to persuade the maskless member of the public to exit the meeting room, but she refused. The meeting resumed and later concluded with the maskless member of the public still in the room.

This office's review of the livestream recording of the Board's subsequent meeting on September 16, 2021, revealed that during public comment, Ms. Rowling complained that the meeting was being held remotely and asked the Board to explain why.⁴⁷ Board President Brown answered:

Based on the recommendation from the State's Attorney, the chief of police, they recommended that we conduct our meetings the same way that our city council and county board are at this time. Due to the fact that we had a very, in my opinion, and I can't speak on behalf of the Board – I'm speaking on behalf of myself, we had to take a recess at the last meeting, and that was definitely not a type of meeting that, in my opinion, that moved forward anything – positive, negative, either way. The recommendation came from

⁴⁴Jersey Community Unit School District No. 100 Board of Education, Open Meeting, August 19, 2021, Video File at 6:59 (on file with Public Access Bureau, Office of the Attorney General).

⁴⁵Incident Report, Jerseyville Police Department, Officer Seth Tefertiller #115, Jerseyville, Illinois, Incident No. 2021-006773, August 19, 2021, 5:53 p.m.

⁴⁶Jersey Community Unit School District No. 100 Board of Education, Open Meeting, August 19, 2021, Video File at 29:00 (on file with Public Access Bureau, Office of the Attorney General).

⁴⁷Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

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the State's Attorney and the chief of police that we hold this meeting the same way that our other city officials are.^[48]

Ms. Rowling asserted that the Board should hold its meetings in person, and stated: "I feel like that we have every right to all be together in a room, and I don't feel like that's asking too much."⁴⁹ One Board member responded, "as long as you comply by the rules," and Board President Brown echoed him, stating: "As long as you comply by the rules, I agree with that, totally. I didn't set the rules, but we have to abide by them as well."⁵⁰ After Ms. Rowling suggested that the Board vote to return to in-person meetings, Board President Brown thanked her for her input, and a Board member noted: "You still have every opportunity to express anything that you want to express to this group of folks here."⁵¹ The Board then moved on to the next public comment.

In context, it is evident that Board President Brown's remarks about the rationale for holding the September 16, 2021, meeting remotely directly concerned the conditions of the COVID-19 pandemic. In referencing the recess and "the rules," Board President Brown was referring to the disruptive noncompliance with the mask requirement during the previous Board meeting on August 19, 2021. This mask requirement was among the measures in Executive Order 2021-22 designed to protect the public health in response to the rapid spread of the Delta variant of COVID-19. Moreover, Board President Brown and Superintendent Tuttle's affidavits are persuasive. This office received no information contradicting their assertions that Board President Brown properly made the determination that an in-person meeting on September 16, 2021, was not practical or prudent as a result of the pandemic. Further, the agenda advised the public that this determination had been made. The Board thus met the requirements of section 7(e)(2) of OMA. Under these circumstances, despite requests from members of the public including Ms. Rowling to make suitable arrangements for an in-person meeting, the Board had the discretion to hold a remote meeting on September 16, 2021.

The last condition of section 7(e) at issue in Ms. Rowling's Request for Review is the requirement in section 7(e)(4) that during a remote meeting the public must be able to

⁴⁸Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

⁴⁹Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

⁵⁰Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

⁵¹Jersey Community Unit School District No. 100 Board of Education, Meeting, September 16, 2021, *available at* <https://www.youtube.com/watch?v=CJdXmONJ1kY>.

"contemporaneously hear all discussion, testimony, and roll call votes[.]" Although Ms. Rowling alleged that it was "extremely difficult to hear" the meeting, the livestream recording of the meeting is fully audible.⁵² There was some feedback when the first public commenter came on the phone line, as well as before Ms. Rowling began her public comment, but the livestream audio of their comments, and all discussion and roll call votes during the meeting,⁵³ is clear. Additionally, although Ms. Rowling alleged that holding the meeting via Zoom "does not allow those folks who can't afford the internet to be a part of the meeting[.]"⁵⁴ the plain language of section 7(e)(4) allows a public body to conduct a remote meeting via "a web-based link."

Accordingly, because the Board satisfied the procedural requirements set forth in section 7(e) of OMA to meet remotely on September 16, 2021, the Board did not violate OMA by holding a remote meeting without members of the public in attendance on that date.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On September 16, 2021, the Board of Education of Jersey Community Unit School District No. 100 held a meeting remotely via Zoom.
- 2) On September 17, 2021, Ms. Judy Rowling submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA by holding the meeting remotely rather than in person. Ms. Rowling's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)).
- 3) On September 30, 2021, the Public Access Bureau sent a copy of the Request for Review to Board President Greg Brown and asked the Board to provide a copy of any record reflecting that he as Board President had made the determination that an in-person meeting on September 16, 2021, was not practical or prudent due to the conditions of the COVID-19 pandemic. This office also asked the Board to address in writing Ms. Rowling's allegation that the concerns unrelated to the pandemic were the actual reason for meeting over Zoom.

⁵²E-mail from Judy Rowling to Joshua [Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (October 24, 2021).

⁵³No testimony was taken during the meeting.

⁵⁴E-mail from Judy Rowling to Public Access [Bureau, Office of the Attorney General] (September 17, 2021).

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4) On October 12, 2021, counsel for the Board furnished a written answer. On that same date, this office forwarded a copy of the answer to Ms. Rowling and also sent the Board's attorney an e-mail seeking clarification about whether the District possessed a record reflecting that Board President Brown had made the determination that an in-person meeting on September 16, 2021, was not practical or prudent due to the conditions of the COVID-19 pandemic. The Board's attorney confirmed that the District did not have such a record other than the meeting agenda, but stated that the finding was made in a discussion between the superintendent and Board President Brown. This office asked the Board's attorney whether those two individuals would sign affidavits to that effect and he confirmed that they would, supplying the affidavits on October 15, 2021. On October 18, 2021, this office forwarded a copy of each affidavit to Ms. Rowling.

5) On October 24, 2021, Ms. Rowling submitted a reply.

6) On November 12, 2021, the Public Access Bureau extended the time within which to issue a binding opinion by 21 business days, to December 16, 2021. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 7(e) of OMA provides the legal framework for public bodies to hold meetings remotely during the COVID-19 pandemic.

8) The conditions for public bodies to hold remote meetings include section 7(e)(1), which requires that "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[.]" A Statewide Gubernatorial Disaster Declaration related to public health concerns was in effect at the time of the September 16, 2021, meeting. Therefore, the remote meeting complied with section 7(e)(1).

9) Section 7(e)(2) requires that "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[.]" At the Board's prior meeting on August 19, 2021, COVID-19 safety concerns arose when dozens of members of the public protested the mask requirement in Executive Order 2021-18, which is designed to protect public health during the pandemic. One member of the public entered the meeting room and refused to either put on a mask or leave. Seeking to avoid the same public health risks, Board President Brown, the head of the public body, determined that an in-person meeting on September 16, 2021, was not practical or prudent because of the COVID-19 pandemic. Therefore, the remote meeting complied with section 7(e)(2).

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10) Section 7(e)(4) requires that when "attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration, * * * the public body must make alternative arrangements * * * to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link[.]" The Board livestreamed the meeting by Zoom and all discussion, testimony, and roll call votes are audible on the livestream video recording. Therefore, the remote meeting complied with section 7(e)(4).

11) The Board met the requirements of section 7(e) of OMA for its September 16, 2021, meeting.

In accordance with these findings of fact and conclusions of law, the Public Access Bureau concludes that the Board of Education of Jersey Community Unit School District No. 100 did not violate OMA by holding its September 16, 2021, meeting remotely.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and the Board of Education of Jersey Community Unit School District No. 100 as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By: 
Brent D. Stratton
Chief Deputy Attorney General

cc: *Via electronic mail*
Mr. Brandon K. Wright
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316 South Charter, PO Box 80
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bwright@millertracy.com

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-011) upon:

Ms. Judy Rowling
20855 State Highway 3
Grafton, Illinois 62037
judyrowling@gmail.com

The Honorable Greg Brown
President, Board of Education
Jersey Community Unit School District No. 100
100 Lincoln Avenue
Jerseyville, Illinois 62052
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Mr. Brandon K. Wright
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 14, 2021.



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Public Access Counselor

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