Published July 2, 2024

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

COURT DELAYS EFFECTIVE DATE OF PENSION REFORM LAW

The Circuit Court of Sangamon County issued a temporary restraining order and preliminary injunction on Wednesday, May 15, that delays the effective date of the Pension Reform Law until underlying litigation contesting the validity of the law is decided. The Law was scheduled to take effect on June 1, 2014.

Two immediate questions raised by the Court's action concern the grandfathering of employment contracts for TRS earnings limitation purposes, and the payment of required annual employee contributions.

School districts and joint agreements that were considering entering into new employment agreements with their administrators or staff for purposes of establishing higher TRS creditable earnings limitations for those employees should proceed with their plans. This is because any action to dissolve the temporary restraining order or injunction, or any

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

final decision to uphold the Pension Reform Law in its current form, could result in the Law being enforced retroactively to June 1, 2014. If so, this would subject Tier I TRS members to a creditable earnings limitation based on the current Tier II member limitation for their earnings during the 2013-2014 school year. Entering into employment contracts that would go into effect prior to June 1 which establish a higher earnings limitation effectively addresses this possibility.

With respect to the payment of annual required employee contributions for Tier I members, an announcement on the home page of TRS' website today states that the Court's order "means that after June 1, 2014 and until further notice, current Illinois law will govern the calculation of TRS pensions and cost-of-living adjustments as well as the administration of all benefits." School districts and joint agreements should therefore continue paying the required contributions for Tier I members at the now-current rate of 9.4% of their creditable earnings. For Tier II members, required contributions were set at 9.4% of their creditable earnings under both current law and the Pension Reform Law, so no change in the payment of their contributions will be required.

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Should you have any questions, please contact one of our attorneys at our Flossmoor Office at 708-799-6766.

Confidentiality Issues in Online Educational Services: Guidance and Best Practices from U.S. Department of Education

With the increased use of technology by school districts to enhance student learning comes challenges with regard to student privacy and security practices. These challenges prompted the U.S. Department of Education to create the Privacy Technical Assistance Center ("PTAC") as an informational resource to help educators, online educational

---

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

service providers, and parents. On February 25, 2014, the PTAC published a document titled "Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices," which provides guidance on access to and protection of student information in connection with the use of online educational services. The "online educational services" addressed in the PTAC guidance include "computer software, mobile applications (apps), and web-based tools provided by a third-party to a school or district that students and/or their parents access via the Internet and use as part of a school activity."

Since schools may use online educational services that require students and parents to log in and create personal accounts and that collect student data, the new PTAC guidance highlights the role that the *Family Educational Rights and Privacy Act* ("*FERPA*") plays in protecting personally identifiable information ("PII") about students in the context of such services. Under *FERPA* (as well as the parallel provisions of the *Illinois School Student Records Act*), the unauthorized disclosure of PII contained in student education records is prohibited and schools must obtain consent from

parents (or eligible students) before disclosing PII, unless an exception to the consent requirement applies. In the case of online educational services, PTAC indicated that if students are not required to log in to access these services, no PII is disclosed and *FERPA* does not apply. Similarly, an online service provider's collection of metadata (*e.g.*, how long a student took to perform an online task, how many attempts were made, how long the student's mouse was positioned over an item, etc.) that does not contain any "direct or indirect" student identifiers is not protected by *FERPA*. The new PTAC guidance encourages schools to determine whether the use of an online educational service requires the disclosure of a student's *FERPA*-protected information on a case-by-case basis.

Although *FERPA* generally prohibits the disclosure of PII from a student's education records without parent consent, there are several exceptions to this rule –two of which are noted in the PTAC guidance in relation to online educational services. "Directory information" (*e.g.*, student name and address) may be disclosed if a school district establishes the specific elements or categories of directory information that it intends to disclose, publishes those elements or categories in a

public notice, and gives parents and opportunity to opt out of such disclosures. The PTAC guidance also notes that information may be disclosed to or by online service providers under *FERPA*'s "school official exception," which authorizes schools to disclose PII contained in education records if the provider (1) undertakes a function that school district employees would typically perform; (2) meets *FERPA*'s criteria for being a school official with "a legitimate educational interest" in students records as set forth in the district's yearly notification of *FERPA* rights; (3) is under the "direct control" of the school district when it comes to storing and using the records; and (4) limits the use of records for educational purposes and refrains from re-disclosure unless specifically authorized or as permitted by *FERPA*.

Since *FERPA* sets the minimum requirements for privacy of PII in education records, the PTAC guidance urges school districts to adopt a "comprehensive approach to protecting student privacy.., including steps to ensure that any *FERPA*-protected information shared with an online service provider is not to be sold to third parties or used for any other purpose other than that of the original disclosure." The PTAC guidance

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

further notes that students' privacy rights implicate privacy laws other than *FERPA* and cautions school districts that disclosure of information must comply with such other laws as well. In Illinois, this means that disclosures must also comply with the Illinois Student School Records Act and its implementing regulations.

The PTAC guidance concludes with a list of "best practices" for school district compliance with the laws governing disclosure of education records to and use by online educational service providers, including:

- Maintaining awareness of other relevant federal, state, or local laws in addition to *FERPA*;
- Being aware of which online educational services are currently in use in the district;
- Having policies and procedures in place to evaluate and approve online educational services;
- When possible, using written contracts or agreements when employing online educational service providers which contain terms requiring providers to comply with the laws governing access to, use of, and disclosure of students' record information;

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

- Taking extra steps to protect student confidentiality before entering into any agreement with an online service provider using a of Click-Wrap application;
- Being transparent with parents and students; and
- Obtaining parental consent before sharing student information, even when it is not required by *FERPA*.

Compliance with all applicable student records and confidentiality laws is essential if educators plan to take full advantage of the new technologies designed to enhance student learning. If you have any questions concerning the new PTAC guidance or legal requirements governing online educational service usage, please contact one of our attorneys at our Flossmoor Office at 708-799-6766.

Hot Off The Presses: Federal

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

School Climate and Discipline Guidance Package

On January 8, 2014, the U.S. Department of Education's Office for Civil Rights (OCR) and U.S. Department of Justice Civil Rights Division (DOJ) issued a joint "School Climate and Discipline Guidance Package" to assist schools with creating positive, safe environments and understanding civil rights obligations. OCR noted that schools continue to struggle with creating safe environments that are welcoming to students and that schools still have discriminatory disciplinary practices that disproportionately impact students of color and students with disabilities. The Guidance Package was therefore issued to ensure school district compliance with federal civil rights law, offer alternatives to student suspensions and expulsions, and provide useful information to school resource officers.

The Guidance Package includes four resources:

1. OCR/DOJ's January 8, 2014 *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, which

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

addresses administering discipline without discriminating against students on the basis of race, color, or national origin;

2. *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, which describes key principles and related action steps to improve school climate and student discipline;

3. *Directory of Federal School Climate and Discipline Resources*, which provides an index of federal technical assistance and other guidance related to school climate and discipline; and

4. *Compendium of School Discipline Laws and Regulations*, which provides and compares the states' legal requirements relative to school discipline.

The Guidance Package is available on the DOE's website at: *http://www2.ed.gov/policy/gen/guid/school-discipline/index.html*.

Summary of OCR/DOJ's January 8, 2014 *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

In the January 8, 2014 *Dear Colleague Letter* that is included in the Guidance Package, OCR/DOJ explain that this Guidance has been issued to assist schools on how to identify, avoid, and remedy discriminatory discipline and provide all students with equal educational opportunities, as required by Title IV and Title VI of the *Civil Rights Act of 1964*. Specifically, OCR/DOJ address the administration of student discipline in a manner that does not discriminate on the basis of race, color, or national origin, and provides flowcharts showing OCR/DOJ's analysis when investigating discrimination claims, as well as examples of discriminatory school policies and practices.

The *Dear Colleague Letter* explains that schools are expected to maintain, and provide to OCR/DOJ upon request, accurate and complete data on student discipline policies, practices, and administration. When OCR/DOJ cannot determine whether a school is in compliance, the school may be required to implement data-related remedies, such as developing and implementing uniform standards for the content of discipline files; developing and training all staff on uniform standards for entry, maintenance, updating, and retrieval of data

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

accurately documenting the school's discipline process and implementation, including racial impact; and/or keeping data on teacher referrals and discipline to assess whether particular teachers refer large numbers of students by race (and conducting follow-up with such teachers to determine underlying causes). The *Dear Colleague Letter* further provides examples of various remedies that may be imposed by OCR/DOJ if a school is found to be in violation of Title IV or VI, and its Appendix summarizes action steps for schools.

We recommend that school districts and special education joint agreements review the Guidance Package and consider whether a comprehensive review of school climate and student discipline policies and practices are necessary. The action steps, data-related remedies, and examples of OCR-imposed remedies should be read in conjunction to determine what may need to be addressed at the classroom, building and district/cooperative-wide levels.

If you have questions about these new Department of Education publications or would like to discuss your school district or joint agreement policies and practices on student discipline in light of the new Guidance Package, please contact

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

our attorneys in our Flossmoor Office at 708-799-6766.

Round-Up of New Public Acts Affecting Special Education

Public Act 98-0219 (effective 8/09/13): Initial IEPs and Part-Time Student IEPs Must Be Implemented Within 10 School Attendance Days

Section 14-6.01 of the *School Code* has been amended to provide that initial IEPs and IEPs for part-time students must be implemented no later than 10 school attendance days after prior written notice is given to the parents (rather than previous "no later than the beginning of the next school semester").

Public Act 98-0338 (effective 8/13/13): Expansion Of School Social Worker Qualifications And Services

---

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Section 14-1.09.2 of the *School Code* has been amended to provide that school social work services may include implementing social and emotional education programs and services, establishing and implementing bullying prevention and intervention programs, and evaluating program effectiveness. Also, social work services may be provided by individuals who have a Type 73 School Service Personnel Educator License or a Professional Educator License with a school support service endorsement in the school social worker area.

Public Act 98-0383 (effective 8/16/13): Mediation Now Triggers "Stay-Put" Placement; District Responses To State Complaints Must Be Provided To Parents

Section 14-8.02a of the *School Code* has been amended to provide that a student must remain in his or her present educational placement and continue to receive special education and related services when a school district and parent voluntarily agree to participate in mediation, unless the district and parent agree otherwise. The amendment further provides that if the parties' dispute is not resolved through mediation, the parent has 10 days after conclusion of mediation to file a due process request in order to continue the "stay-put" placement and services.

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

This Act also creates a new Section 14-8.02e that requires the ISBE to adopt State complaint procedures consistent with the *IDEA* regulations and that such procedures must require a school district to submit a written response to a complaint, a copy of which must be provided simultaneously to the parent or parent's attorney, within the time line prescribed by ISBE.

Public Act 98-0517 (effective 8/22/13): Transition Plans Must Include Goal(s) For Independent Living Skills

Section 14-8.03 of the *School Code* has been amended to provide that transition plans for all students with disabilities must now include at least one post-secondary goal in the area of independent living skills (rather than previous "as appropriate"), in addition to post-secondary goals for education or training and employment.

Public Act 98-0339 (effective 12/31/13): Prescriptions No Longer Required For School-Based OT Services

Effective December 31, 2013, the *Occupational Therapy Practice Act* (225 ILCS 75/3.1) has been amended to provide that a referral from a physician or other health care provider is not

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

required for evaluation or intervention for children and youths if an occupational therapist or occupational therapy assistant provides services in a school-based or educational environment, including the child's home.

Please contact our attorneys in our Oak Brook (630/928-1200) or Flossmoor (708/799-6766) offices if you have any questions about these new Public Acts.

New Law Addresses Right to Access Students' Social Network Accounts

On January 1, 2014, the Illinois Right to Privacy in the School Setting Act, Public Act 09-0129, will go into effect. The Act addresses school officials' ability to obtain access to the "pages" of students' social network accounts. The new law

---

covers both public elementary and secondary school districts, as well as nonpublic schools "recognized by the State Board of Education." It also applies to post-secondary institutions.

Once the Act takes effect, elementary and secondary schools must notify students and parents that they may "request or *require*" a student to surrender a "password or other related account information" in order for school officials to access "the student's account or profile on a social networking site if the school has reasonable cause to believe that the student's account on a social networking website contains evidence that the student has violated a published disciplinary rule or policy." (Emphasis added.) This notice must be published in the elementary or secondary school's disciplinary rules, policies, or handbook or be communicated to the parents and students "by similar means."

Under the Act, a "social networking website" is defined as an Internet-based service which "allows individuals to 1) construct a public or semi-public profile within a bounded system created by the service; 2) create a list of other users with whom they share a connection within the system; and 3) view and navigate their list of connections and those made by others within the

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

system." FaceBook and Twitter are two very popular examples of social networking websites covered by the Act. E-mail is not included in the definition of a "social networking website."

School districts and joint agreements should comply with the Act. That said, we believe that the Act raises constitutional concerns that should be fully considered before deciding to seek access to a student's social network account or profile. The Act does not define what constitutes a student's "semi-public profile". This, in turn, raises the question of exactly what content of a student's social networking profile may be accessed. This is of critical importance because last year, one federal court held that students have a reasonable expectation of privacy in their ***private*** social networking accounts/profiles, and that a search of a ***private*** profile may violate a student's right to be free of an unreasonable search in violation of the Fourth Amendment to the U. S. Constitution. The same federal court determined that school officials may be held liable for violating a student's freedom of expression under the First Amendment to the U. S. Constitution for punishing a student who engaged in out-of-school postings that did not contain threats of violence, pose a safety risk, or cause a substantial

disruption to the educational environment.

Again, school districts should amend their student discipline policy and procedures as contemplated by the Act, and publish the amendment in their student-parent handbook. However, school districts and joint agreements should proceed with caution in this area once the Act takes effect. Before actually requesting or requiring access to a student's social network account, all relevant circumstances would need to be evaluated in light of applicable constitutional standards. If you have any questions or concerns about how your school district or joint agreement will implement the Act, please contact our attorneys at our Flossmoor Office (708-799-6766) or our Oak Brook Office (630-928-1200).

Naming Names: PAC Issues an

Published July 2, 2024

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Opinion Requiring Employee Names in Board Actions

The Office of the Illinois Attorney General's Public Access Counselor (PAC) has issued a decision finding that a school board violated the Open Meetings Act (OMA) when it took final action on an employment matter without identifying the employee by name.

In the case reviewed by the PAC, the school board held a dismissal hearing in closed session and then went back into open session to vote on the recommendation for the "dismissal of Employee A". The local media filed a request for review when the board refused to release the name of the employee. The PAC explained that the OMA requires a public recital of the nature of the matter being considered *and* other information that will inform the public of the business being conducted prior to any final action by the public body. The PAC indicated that the recital must provide sufficient information for the public to understand the effect of the board's action before it votes on the employee discipline or dismissal. The PAC found that the

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

board deprived the public of meaningful information concerning the practical effect of its decision by identifying only "Employee A" and by failing to provide even basic information as to whether the board was dismissing a support staff member, a teacher, a principal, or the superintendent. This opinion is consistent with a non-binding opinion issued by the PAC in 2011, wherein the PAC found that a school board was required to identify the specific names of employees who had submitted resignations in order to provide a sufficient description of the matter being considered and the action to be taken by the board.

Because Illinois courts have yet to address this issue directly, the PAC's interpretation of the OMA is the only guidance for school districts and special education joint agreements. Therefore, we recommend that an employee's name be included in the recitation when a board takes final action concerning employee discipline, resignation, or dismissal. Also, the PAC's decisions imply that a board may be required to name employees in other final actions that directly impact specific employees, such as hiring decisions, reclassifications, and leave requests. If you have any questions or would like to discuss this further, contact one of our attorneys at the Flossmoor

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

(708-799-6766) or Oak Brook (630-928-1200) office.

Amendments to ISSRA Regulations

Effective June 19, 2013, the *Illinois School Student Records Act* (*ISSRA*) regulations are amended to provide for revised definitions of "health-related information," "permanent record," and "school student record," as well as a revised definition of the responsibilities of the designated "official records custodian."

The regulatory amendments add that **"health-related information"** also includes documentation regarding the acknowledgement by a student athlete and his/her parents of the school district's concussion policy adopted pursuant to 105 ILCS 5/10-20.53 and 34-18.45.

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

The definition of a **"permanent record"** has been modified to provide that while scores on college entrance exams are included in a student's permanent records, parents may request, in writing, the removal of any score received on college entrance examinations from the student's academic transcript. Accordingly, the notice requirements of the regulations have also been amended to include notification to students and their parents of the right to request removal of such scores from a transcript by submitting a written request stating the name of each examination and the date(s) of the scores to be removed.

The definition of **"school student record"** now also includes any information received pursuant to Section 22-20 of the *School Code* (report by law enforcement agency) and Sections 1-7 and 5-905 of the *Juvenile Court Act of 1987* (law enforcement records transmitted to the appropriate school official by a local law enforcement agency under a reciprocal reporting system). In addition, **video or other electronic recordings** created and maintained by law enforcement professionals working in the school or for security or safety reasons or purposes are excluded from student records. The regulatory amendments have revised this exclusion by providing that the content of such

video or other electronic recordings **may become part of a "school student record" to the extent that school officials use and maintain this content for a particular reason (*e.g.*, disciplinary action, compliance with a student's IEP) regarding a specific student.** Further, video or other electronic recordings which become part of a student's records are not a public record under *FOIA* and will be released only in conformance with the *ISSRA* and *FERPA*.

Finally, Section 375.40(g) of the *ISSRA* regulations has been amended to add that the official records custodian must take **all reasonable measures to protect student records** through administrative, technical, and security safeguards against risks, such as unauthorized access, release or use.

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

New Guidance on Braille Instruction

In response to concerns voiced by parents and advocates about a significant decrease in Braille instruction, the U.S. Department of Education's Office of Special Education Programs (OSEP) has issued guidance to reaffirm the importance of Braille and Braille instruction for blind and visually impaired students.

OSEP reiterates in this *Dear Colleague Letter* that Braille instruction is a requirement under the Individuals with Disabilities Education Act (*IDEA*) and that a student's need for Braille instruction should be considered on a case-by-case basis and without undue delay. OSEP explains that the *IDEA* mandates that Braille instruction be provided to a student with blindness or visual impairment unless the individualized education plan (IEP) team determines that Braille is not appropriate for that particular student. The IEP team's determination must be based on an evaluation, which should be thorough and rigorous and include various modalities, a data-based media assessment, and a functional visual assessment. OSEP emphasizes that the

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

evaluation must assess the student's current and ***future*** needs.

OSEP explains that when Braille instruction is required to receive a free and appropriate public education (FAPE), the IEP team must ensure that systematic, regular instruction is provided by appropriately trained personnel, and that sufficient instructional time is allotted for the student to become proficient in Braille. Further, an IEP team may not deny Braille instruction to a student due to shortages of trained personnel, availability of alternative reading media, or the amount of time needed to provide Braille instruction. Several OSEP-funded programs and other resources available to school personnel for providing appropriate interventions, services, instruction, and materials to students with blindness and visual impairments are referenced in this *Dear Colleague Letter* as well.

Published July 2, 2024

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Recent Opinions Concerning Illinois Sunshine Laws

Over the last few months, the Illinois Appellate Court and the Illinois Attorney General have issued several opinions concerning Illinois' Open Meetings Act ("OMA") and Freedom of Information Act ("FOIA"). These opinions address several important issues including the format for electronic document production, what matters may be discussed in closed session, the propriety of closed session votes on personnel matters, the interplay between the Illinois School Student Records Act and FOIA, and final action on non-agenda items. The Appellate Court decisions are binding legal authority on other parties; the Attorney General opinions, while they may be cited as persuasive authority, are not binding upon non-parties.

Here is a brief summary of each opinion.

ELECTRONIC DOCUMENT FORMAT

Fagel v. Illinois Department of Transportation

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

Published July 2, 2024

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

A citizen served the Illinois Department of Transportation with a FOIA request asking that it provide him with information concerning the State's "Red Light Running Camera Enforcement System" in an electronic "Excel Format." The Department e-mailed a "locked" Excel document which prevented the citizen from "manipulating" the data contained in the spreadsheet. Unsatisfied with the Department's response, the citizen asked the Attorney General to review his request which it did. The Attorney General sided with the Department and determined that it had complied with its obligations under FOIA. The citizen subsequently filed suit. A Circuit Court Judge determined that the Department violated FOIA and entered an order requiring the Department to provide him with an "unlocked" version of the Excel document. The Department appealed that order.

The Appellate Court agreed with the Circuit Court Judge and upheld the ruling noting that Section 6 of FOIA requires public bodies to respond to request by providing documents in the form requested when it is feasible to do so. The Appellate Court decided that, because providing a locked document prevented the citizen from making full use of the Excel

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

spreadsheet so in effect, the Department had not responded to the request. The Court also found that it was "feasible" for the Department to provide the citizen with an unlocked version of the spreadsheet because the Department maintained the spreadsheet in an unlocked format and provided the Attorney General with an unlocked version. Finally, the Appellate Court agreed with the Circuit Court Judge that FOIA does not contain an exception to Section 6's requirement based on a fear, real or imagined, that the information contained in the document may be "manipulated" by the recipient.

The Department's position was not only rejected by the Appellate Court, it proved to be expensive as well because the Appellate Court also upheld the Circuit Court judge's award of attorney's fees to the citizen in the amount of more than $12,000.

THREATENED LITIGATION EXCEPTION FOR CLOSED SESSION

Public Access Opinion 13-008

Closed session discussions are permissible under Section 2(c)11 of OMA when a public body determines that

litigation is probable or imminent. The President of the Board of Trustees of the New Lennox Public Library District alleged that the Board violated OMA when it held a closed session to discuss three letters that it had received from the Illinois Library Employee Plan threatening to file suit if it did not receive reimbursement for claims that it had paid. The Attorney General disagreed, determining that the letters received by the Board containing threats to file suit provided a basis for the Board to conclude that litigation was imminent or probable. Therefore, it was proper for the Board to hold a closed session meeting to discuss "strategies, postures, theories and possible consequences of potential litigation." However, the Attorney General found that the Board violated the Act because it failed to enter into the closed session minutes the basis for its finding that litigation was probable or imminent.

Public Access Opinion 12-013

A citizen alleged that the Finance Committee of the Washington County Board violated OMA when it held a closed session discussion of its landfill ordinance after receiving a letter from a company questioning the legality of the ordinance, inviting the Board to meet to discuss it and, stating that if

the matter is not resolved, the company "may" file suit.

The Attorney General concluded that the closed session discussion violated Section 2(c) 11 of the Act because the Board did not have a reasonable basis to believe that litigation was imminent or probable as the letter indicated that litigation could possibly be filed as opposed to expressing a definite intent to file a lawsuit. The Attorney General also opined that, even if there was a reasonable basis for believing that litigation was imminent or probable, the Board did not discuss litigation strategies, theories or probable consequences. Instead, it discussed the substance of the ordinance and whether or not it should meet with the company.

FINAL ACTION IN OPEN SESSION

Lawrence v. Williams

A three-member school district electoral board held a hearing on objections to candidate petitions and voted to sustain the objections. After the meeting where this vote was taken but before the board's next meeting, a written opinion was prepared and signed by all three members. However, at the next

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

and final scheduled meeting of the board where the written decision was issued, only one member was present, short of a quorum. The Election Code requires that electoral board decisions be served upon the parties in open meetings. The Appellate Court voided the electoral board's decisions, not only because of the Election Code violation, but also because the issuing of the written decision was a legally mandated "final action." Under OMA, such a final action could only take place at a public meeting where a quorum is present.

Public Access Opinion 13-006

A citizen alleged that the Edgar County Airport Advisory Board violated OMA when it conducted a straw vote to determine who would fill a Board vacancy. The Advisory Board discussed filling the vacancy and identified four people who were interested in being appointed to the position. Thereafter, it distributed paper ballots with the names of the four candidates to the Advisory Board members and asked them to circle their choice and place the ballots in a coffee can. After counting the ballots the person with the most votes received the recommendation to the County Board for appointment to the Board.

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

The Attorney General concluded that this process violated OMA. The Attorney General determined that despite the fact that the Advisory Board's straw vote was nonbinding, it still constituted a "final action" within the meaning of OMA inasmuch as the County Board adopted the recommendation. Since the straw vote was a "final action," the Advisory Board members were obligated to reveal their choice to the public and make a record of how each of them voted.

Public Access Opinion 13-007

An individual alleged that the Board of Education of the Springfield Public School District violated OMA when six of its seven members signed an undated separation agreement with the District's Superintendent in closed session without any public discussion as to its terms and before the Board publicly voted on it. The School Board contended that it acted properly because it ultimately held a public vote approving the agreement.

The Attorney General decided that the execution of the separation agreement in closed session was a "final action" and that Section 2(e) of OMA prohibits a public body

from taking final action on a matter in closed session without a public recital of the matter under consideration. The Attorney General also concluded that a violation of Section 2(e) of the Act is not cured by the fact that the Board subsequently ratified the closed session action by through a public vote.

Public Access Opinion 13-003

The Illinois Federation of Teachers alleged that Western Illinois University Board of Trustees violated OMA when it voted to terminate a tenured faculty member in closed session. Prior to the closed session vote, the Board engaged in closed session discussions during which one member questioned whether the vote had to take place in open session. Despite these concerns, the Board's vote took place in closed session.

The Attorney General decided that the University did indeed violate the Act. While the Board was entitled to discuss "appointment, employment, compensation, discipline, performance, or dismissal of specific employees," the vote to terminate the faculty member was a "final action" that was required to take place in open session in accordance with Section 2(e) of OMA.

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

AGENDA NOTICE SPECIFICITY

Public Access Opinion 13-002

A citizen complained that Chicago Park District Board violated OMA when it voted to increase the price of admission to the Art Institute of Chicago without any reference in its agenda to the fact that this matter would be voted on. The Attorney General agreed that it did.

Noting that Section 2.02(c) of OMA requires public bodies to post board meeting agendas listing the items which it intends to consider at the meeting not less than 48 hours before the meeting takes place, the Attorney General determined that the vote to increase the admission fee violated OMA because the agenda failed to contain any reference to the "general subject matter" of fee increases. The Attorney General also rejected the Park District's contention that the fact that a District Board Committee listed the admission fee increase on its agenda constituted substantial compliance with Section 2.02(c) of the Act.

REDACTING NAMES FROM STUDENT RECORDS

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

Published July 2, 2024

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Access Opinion 12-014

A citizen alleged that Pleasantdale School District 107 violated FOIA when it failed to comply with her request for a "raw data for the current 4th graders' Math scores on the 2011 Fall Illinois Test for Basic Skills" with the names of individual students redacted. The request also asked the School District to color code the placement level of each child in an Excel or Word document.

The Attorney General determined that the School District violated Section 3 of FOIA. In doing so, the Attorney General rejected the School District's claim that it did not have the records the citizen sought and that it would have to create a new document to comply with the request. The Attorney General noted while FOIA does not require the School District to compile data that it does not ordinarily keep, redacting the names of the students and scrambling information does not constitute the creation of a new document.

The Attorney General also rejected the School District's contention that the requested test score data was automatically exempt from disclosure under FOIA because its

release would constitute a violation of the Illinois School Student Records Act. The Attorney General concluded that once the identifying information has been redacted, the document is no longer a "student record" and must be disclosed.

* * *

As you can see, the requirements of OMA and FOIA are numerous and nuanced. Nevertheless, public bodies are required to comply with them and face significant consequences should they fail to do so. If you have any questions, contact one of our attorneys at our Flossmoor Office at 708-799-6766 or our Oak Brook Office at 630-928-1200.

Reminder About Board

Published July 2, 2024

PETRARCA, GLEASON, BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Organizational Meetings

Pursuant to law, every school board must hold its organizational meeting no later than 28 days after the consolidated election. Further, new board members cannot be seated until after the official canvass of the results by the county election authority. The deadline for the canvass is not until 21 days after the election. Therefore, the effective window period to hold all school board organizational meetings this year begins no earlier than Tuesday, April 30, and ends no later than Tuesday, May 7. If your Board does not have a regular meeting scheduled during that week-long period, a special meeting must be called.

The only tasks which must be performed at the organizational meeting are these:

1) Swear in and seat new board members.

2) Elect board officers, including president, vice president and secretary.

3) Set the board's regular meeting schedule.

19730 Governors Highway, Suite 10, Flossmoor, IL 60422-2083
Telephone: **708.799.6766** | Facsimile: 708.799.6866

PETRARCA, GLEASON,
BOYLE & IZZO, LLC
ATTORNEYS AT LAW

Other business may be, but need not be, conducted at the organizational meeting.

If you have any questions about organizational meetings or the transition to new board terms, please contact one of our attorneys at 708/799-6766 (Flossmoor) or 630/928-1200 (Oak Brook).