



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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April 22, 2009

Ms. Jeanne Black
17880 Hirshbrunner Road
Darlington, WI 53530

Dear Ms. Black:

This letter is in response to your March 14, 2009, email to the Wisconsin Department of Justice ("DOJ") in which you indicate that you would like to file a complaint against the Administration and School Board ("the Board") of the Darlington Community School District ("the District") arising out of the denial of requests you have made for accommodations related to attendance at certain meetings of the Board.

According to your email and the attachments accompanying it, meetings of the Board were scheduled to take place on March 3 and March 16, 2009, in the Darlington Elementary/Middle School ("DEMS") Board Room. The agendas for each of those meetings included an item labeled "Review DEMS Boilers" with the following description: "Over the last couple of years the District has had some work completed on the DEMS boilers. Mr. Scott Staley will be present to explain what needs to be done with the boilers."

Prior to both the March 3, 2009, meeting and the March 16, 2009, meeting, you submitted a written request to District Administrator Joseph A. Galle ("Galle") and to members of the Board asking that the location of each of those meetings be moved to the Darlington High School on the ground that conditions in the DEMS Board Room could pose a health threat to attendees. More specifically, in your email exchanges with Galle, you indicated that persons—apparently including yourself and others—with certain respiratory conditions such as asthma and allergies cannot attend activities in the DEMS Board Room due to indoor air quality problems at that location. Galle denied your requests to change the location of either the March 3, 2009, meeting or the March 16, 2009, meeting.

In the alternative, if the meeting locations were not changed, you requested that the Board provide you with an audio and video recording of the two meetings in question. Galle denied those requests, as well, informing you that the Board was not planning to record the meetings, but that you could create your own recording, as long as your activities did not interfere with the meeting.

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You have also indicated that, on March 4, 2009, you had a conversation with Scott Staley of Staley Plumbing and Heating about his scheduled appearance at the March 3, 2009, Board meeting. Mr. Staley informed you that he had been unable to attend that meeting due to a family matter. The minutes of the March 3, 2009, Board meeting that are posted at the Board's internet website, likewise reflect that, because Mr. Staley was unable to attend that meeting, the Board decided to table the discussion of the DEMS boilers until the next regular Board meeting.

Your email asks DOJ "to look into" the above facts, but it does not specify what provisions of law you believe may have been violated or how any such violations are alleged to have occurred. Accordingly, this letter will attempt to respond to your apparent concerns to the extent that they can be inferred from the materials that you have submitted.

Your first concern appears to be that the denial of your accommodation requests regarding the March 3 and March 16, 2009, Board meetings may have violated the federal Americans With Disabilities Act ("ADA"). The DOJ, however, does not enforce the ADA. Nor does this office ordinarily provide interpretations of federal statutes. In addition, the DOJ cannot provide legal analysis to private citizens regarding the interpretation or application of any laws—state or federal—other than the Wisconsin open meetings and public records laws. If you need assistance regarding possible violations of the ADA by a unit of local government, you may wish to contact the United States Department of Justice at the following address:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYA
Washington, D.C. 20530

You also may wish to consult with a private attorney about any potential rights and remedies under general laws related to persons with disabilities. Help in seeking private legal counsel can be obtained, free of charge, from the State Bar of Wisconsin's Lawyer Referral and Information Service. The phone number for that service is: (800) 362-9082.

Your second concern appears to be that the Board's refusal to move the location of its March 3 and March 16, 2009, meetings may have violated Wisconsin's open meetings law. Section 19.82(1) of the Wisconsin Statutes requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law." This provision has long been interpreted by DOJ as meaning that every meeting subject to the open meetings law must be held in a location that is "reasonably accessible to all citizens, including those with disabilities." 69 Op. Att'y Gen. 251, 252 (1980).

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In selecting a meeting facility that satisfies this accessibility requirement, a local governmental body has more leeway than does a state governmental body. In the case of a state governmental body, a meeting facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *without* assistance. See secs. 19.82(3) and 101.13(1), Wis. Stats.; 69 Op. Att'y Gen. at 252. In the case of a local governmental body, however, a meeting facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *with* assistance. 69 Op. Att'y Gen. at 253.

In your situation, the Board is a local governmental body. Its meetings must, therefore, be held in a location that people with functional limitations can enter, circulate, and leave with assistance. It is unclear from your email and supporting materials whether you are alleging that the air quality conditions in the DEMS Board Room preclude persons with respiratory conditions like asthma and allergies from entering and moving about in that room. If such an allegation were made and found to be true, however, it could support a conclusion that the DEMS Board Room is completely inaccessible, even with assistance, to persons with such respiratory limitations, which would be a violation of the open meetings law.

The key question, then, would be whether it is true that the air quality conditions in the DEMS Board Room preclude persons with respiratory conditions such as asthma and allergies from entering and moving about in that room. That is a factual question that cannot be answered by DOJ in a letter of this nature. Such a factual issue could only be resolved in an open meetings law enforcement action in which all of the parties would have an opportunity to develop a complete factual record regarding all of the legally relevant circumstances. Such a complete record might or might not ultimately support the conclusion that the DEMS Board Room is not reasonably accessible to people with respiratory limitations.

Because you have indicated that you would like to file a complaint against the Board and the District, I construe your email as requesting the Attorney General to commence an open meetings law enforcement action based on the above claim. As a general matter, both the Attorney General and the local district attorneys have the authority to enforce the open meetings law. Sec. 19.97(1), Wis. Stats. In most cases, however, enforcement at the local level has the greatest chance of success due to the need for intensive factual investigation, the district attorneys' familiarity with the local rules of procedure, and the need to assemble witnesses and material evidence. 65 Op. Att'y Gen. Preface, ii (1976). The DOJ usually only gets involved in matters of statewide concern. Your concerns appear to be local in nature. The DOJ, therefore, will not be taking any enforcement action regarding this matter at the present time.

If you have not already done so, you may file a verified (written, signed, and sworn) open meetings law complaint with the Lafayette County District Attorney pursuant to section 19.97(1) of the Wisconsin Statutes. Whether to commence an enforcement action in response to a

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complaint is entrusted to the broad discretion of the prosecutor. *See State v. Karpinski*, 92 Wis. 2d 599, 607, 285 N.W.2d 729 (1979). If you file a complaint and the district attorney does not commence an action within 20 days, then you may commence an enforcement action yourself, pursuant to section 19.97(4). If you prevail in such an action, the court may order that you be compensated for the actual and necessary costs of bringing the action, including reasonable attorney fees if you have been represented by legal counsel. Additional information about the complaint process can be found in DOJ's Open Meetings Law Compliance Guide, a copy of which is enclosed for your convenience.

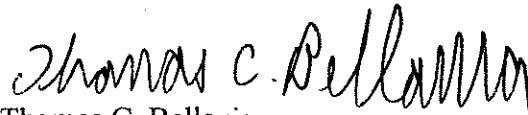
Your third concern appears to be that the Board may have violated the open meetings law by denying your requests to provide you with an audio and video recording of the two meetings in question. Under section 19.88(3), a governmental body is required to make and preserve some kind of record of its motions and roll call votes. The open meetings law does not, however, require a governmental body to make an audio or video recording of its meetings. The denial of your requests for audio and video recording of the two meetings, therefore, does not violate the open meetings law. Moreover, as previously noted, DOJ cannot assist you with questions related to the possible applicability to this issue of the ADA or other laws governing the rights of persons with disabilities.

Your final concern appears to be that the Board may have violated the open meetings law by not discussing the review of the DEMS Boilers at the March 3, 2009, meeting even though that topic was included in the public notice for that meeting. The open meetings law does not require that a governmental body must actually discuss every item contained in a meeting notice. What it requires is that a governmental body may *not* discuss any subject that has *not* been reasonably identified in the meeting notice. *See* sec. 19.84(1) and (2), Wis. Stats. It is perfectly reasonable and appropriate for a governmental body to postpone a previously planned discussion until a future meeting where, as in your situation, a key participant in the planned discussion (*i.e.*, Mr. Staley) turns out to be unavailable to attend the originally noticed meeting. The Board's decision on March 3, 2009, to table the boiler review discussion to a future meeting thus did not violate the open meetings law.

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I hope that the information provided in this letter is helpful to you and thank you for your interest in compliance with the open meetings law. Please note that the opinions contained in this letter do not constitute a formal opinion of the Attorney General or the DOJ under section 165.015(1).

Sincerely,



Thomas C. Bellavia
Assistant Attorney General

TCB:rk

Enclosure

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