

Lee Ann Clary  
605 South Crea Street  
Decatur, IL 62522

Via Email and Mail

August 16, 2020

Joshua M. Jones  
Deputy Bureau Chief  
Public Access Bureau  
500 South Second Street  
Springfield, IL 62701

Re: My Request for Review of Decatur Public School District #61

Dear Mr. Jones:

Pursuant to your letter of August 11, 2022 enclosing the response on behalf of Decatur Public School District #61 (DPS61) by its legal representative dated August 10, this is my response. Please note that I am not currently represented by legal counsel and I am not skilled in legal technical requirements, nor do I have access to legal references and resources. This response is made as a public citizen for whom the Open Meetings Act was intended to protect and benefit.

In this regard, please be advised that after further information and review, it is clear that DPS61 is responding to allegations regarding "improper private discussions" while it was my understanding and intent that all aspects of the discussions including decisions taken would be included in this review of compliance with or violation of the Open Meetings Act. Specifically, the deliberations and decisions with regard to three related actions do not appear to be exempted from open meetings requirements. The three discussions /decisions that did not occur in open meetings as required are:

1. The decision to pursue construction of a new building.
2. The decision to at least partially fund the building with ARP ESSER funds already allocated to DPS61.
3. The decision to obtain a waiver of referendum from the state legislature to raise up to half the cost of any building partially funded with ARP ESSER funds.

It is impossible for the public to know if any board approval was made with regard to the above decisions apparently taking place in closed session. My request for review includes any of the above three decisions that may not have received adequate board approval or that was not brought before any board or committee, but was never the less acted upon without public access.

Please accept this as clarification or amendment to my request for review. I understand that it may be necessary for you to request additional response from DPS61 and expect that I will be afforded a similar opportunity to respond.

**A. DPS61 Response dated August 10, 2022**

- DPS61 does not claim to have held any discussions or made any decisions in open meeting.
- DPS61 relies on the exemption to hold closed meetings for “the purchase or lease of real property ... including meetings held for the purpose of discussing whether a particular parcel should be acquired.”
- Discussions of “whether and how a specific property would meet the needs of the District” were **separately preceded by and independent of** discussions and a decision to pursue building and funding a new school building. Those discussions and decisions to pursue building and funding a new school building were not contingent on the purchase of Lincoln Park or any other site. Those discussions and decisions are not subject to the exemption claimed.
- The precedent cited by DPS61 (*Galena Gazette Publications, Inc. v. County of Jo Davies*) is not applicable to the facts and circumstances at issue. The precedent involved the issue of a sub-lease as a condition of the lease while the issue at hand does not involve the same direct conditional relationship. Most importantly, it is common practice and according to Illinois law to pursue building and funding a new school building in the open and to require public approval via referendum. DPS61 took action to, and successfully removed a required referendum (see Illinois General Assembly HB4700 Enrolled, p. 506 – also linked by DPS61 in its FAQs on the matter of building a school in Lincoln Park) without public knowledge or approval.
- The precedent cited by DPS61 considers whether both material and peripheral considerations of a lease of real property fall within the exemption from open meeting requirements. Including peripheral issues in the exemption is not in the public interest for public schools. Extended, it would allow school boards to exclude staffing, districting and curricula from open meetings as peripheral considerations to how the real property was to be used. The court argued that it could not “rewrite a statute by ignoring its plain meaning or adding provisions that the legislature could have supplied but did not.” DPS61 is in essence arguing that the court did add provisions that the legislature could have supplied but did not.

## **B. The Decision to Pursue Construction of a New School Building**

- DPS61 made a separate decision to pursue construction of a new school building that preceded its subsequent search for possible real estate sites which DPS61 states began on October 12, 2001. That decision was not for the purchase or lease of real property and was unrelated to any real estate transaction or “for the purpose of discussing whether a particular parcel should be acquired.” It was unrelated to any “particular parcel.” When and how that decision was made is unknown to the public and was not discussed or made in open meeting.
- DPS61 stated in Amendment 1 to its Application: 2021-2022 ARP-ESSER – LEA American Rescue Plan (ESSER III) - E3 (copy previously provided to the Public Access Bureau) that it was applying for funds for “new construction of a new building.” The application was not specific to any real estate transaction. DPS61 subsequently noted after its attempt to purchase Lincoln Park that its application for funds for any such construction is not “location-specific” (see Decatur Herald and Review, July 30-31, 2022). Accordingly, DPS61 currently continues to search for possible real estate sites. The discussions and decisions regarding the “new construction of a new building” at issue are therefore necessarily independent of the purchase of real property or discussing whether a particular parcel should be acquired and considered and stated so by DPS61.
- DPS61 did not disclose its decision to pursue construction of a new building in its only publicly distributed information regarding CARES act funding which is found at [How DPS Will Spend CARES Act Funding | Engage DPS \(dps61.org\)](https://engage.dps61.org/how-dps-will-spend-cares) (<https://engage.dps61.org/how-dps-will-spend-cares>) nor did it publicly disclose the decision otherwise.

## **C. The Decision to Fund the Building with ARP ESSER Funds**

- DPS61 discussed and made a decision to apply to use ARP ESSER funds allocated to it in order to construct a new school building. That decision was not for the purchase or lease of real property and was unrelated to any real estate transaction or “for the purpose of discussing whether a particular parcel should be acquired.” When and how that decision was made is unknown to the public and was not discussed or made in open meeting. Discussions and decisions necessarily occurred prior to acceptance of Amendment 1 to the ARP-ESSER Application (see above and below) on 5/20/2022.
- DPS61 stated in Amendment 1 to its Application: 2021-2022 ARP-ESSER – LEA American Rescue Plan (ESSER III) - E3 (copy previously provided to the Public Access Bureau) that it was applying for funds for “new construction of a new building.” The application was not specific to any real estate transaction. DPS61 subsequently noted after its attempt to purchase Lincoln Park that its application for funds for any such construction is not site-specific. Accordingly, DPS61 currently continues to search for possible real estate sites. The discussions and decisions to apply for ARP ESSER funds for the “new

construction of a new building” are therefore necessarily independent of the purchase of real property or discussing whether a particular parcel should be acquired and considered and stated so by DPS61.

- DPS61 did not disclose its decision to pursue funding a new building with ARP ESSER funds in its only publicly distributed information regarding CARES act funding which is found at [How DPS Will Spend CARES Act Funding | Engage DPS \(dps61.org\)](https://engage.dps61.org/how-dps-will-spend-cares) (<https://engage.dps61.org/how-dps-will-spend-cares>) nor did it publicly disclose the decision otherwise.

#### **D. The Decision to Obtain a Waiver of Referendum from the State Legislature**

- DPS61 petitioned the Illinois General Assembly to remove a referendum that would otherwise have been required by The School Code in order to build the new school building at issue and encumber the taxpayers within the School District.
- DPS61 did not discuss or disclose related discussions or its action in open meeting nor did it otherwise disclose them to the public.
- On or about April 9, 2022 the required referendum was removed (see Illinois General Assembly HB4700 Enrolled, p. 506 – also linked by DPS61 in its FAQs on the matter of building a school in Lincoln Park) without public knowledge or approval. Its removal was contingent upon funding the new school building with at least 50% of the cost coming from “any COVID-19 pandemic relief program or funding source, including, but not limited to Elementary and Secondary School Emergency Relief Fund Grant proceeds.”
- This removal of referendum was contained in an enormous budget bill that was passed without notice of the removal to the public. It was not publicized by DPS61 or noted in open meeting at any time prior to an emergency press release by DPS61 on June 27, 2022 that was prompted by citizen discovery of surveyors present at the proposed site for the new building in Lincoln Park. No state legislator representing citizens of the District informed the public before or at the time of passage of the bill and no legislator has come forward as the sponsor of the provision.
- This removal of referendum deprived citizens and taxpayers of what was otherwise their right to approve or disapprove the use of their funds for up to 50% of the cost of the new school building. Based on a preliminary proposed budget of \$35-\$38 million prepared for the Lincoln Park site by architects for DPS61, taxpayers within the School District were put at risk for up to \$19 million or possibly much more depending on the final selection of the building and site. The risk to tax payers is significant and is now heightened by the unavailability of ARP ESSER funds for the long-term construction project after September 30, 2024.

- There is no exception to the Open Meetings Act to allow DPS61 to consider and act to remove a referendum requirement in closed session. DPS61 discussions and decisions in this regard have nothing to do with purchase or lease of real property and cannot be reasonably understood by any party to be an exception to open meeting requirements.
- DPS61 acted with intent to conceal the removal of referendum and evidenced that intent by continuing to conceal its effects even after announcing the legislation on June 27, 2022. The DPS61 press release of that date described the removal of referendum as being based on use of ESSER funds noting that use of ESSER funds would have no effect on the local tax levy, but omitted that the local tax levy was put at risk by the legislation. On July 13, 2022, DPS61 published a set of FAQs which falsely stated that the “waiver of referendum” was simply their permission to build a new school with ARP ESSER funds and that it would have no effect on taxpayers because of the use of ARP ESSER funds (see FAQ – “How will it (the school project) affect taxpayers?”). DPS61 repeated those false and misleading statements to the press which repeated them without question.
- This violation of the Open Meetings Act is intentional and is grossly egregious for the reasons cited above.

DPS61 sought to conceal every aspect of the proposed new school building in question that it could from its citizens for as long as it possibly could. The individual violations of the Open Meetings Act above are part of a concerted effort to avoid giving public access. They should be considered in combination and to be extremely egregious.

I will be pleased to provide further response and information as needed. Please feel free to contact me at the number previously provided.

Sincerely,

Lee Ann Clary

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