

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Open Government

September 4, 2014

Mr. Jesse B. Rauch
Executive Director
District of Columbia State Board of Education
441 4th Street NW
Suite 723 North
Washington, D.C. 20001

Please be advised that the Office of Open Government received on August 29, 2014, the enclosed complaint alleging the State Board of Education (SBOE) violated the Open Meetings Act. Specifically, the anonymous complaint alleged violation of D.C. Code §2-575(a). Upon inquiry of SBOE counsel, Ms. Kelly Davis, it is determined that the complainant is referencing a SBOE meeting which occurred on August 27, 2014 and not August 28, 2014.¹ Further, Ms. Davis confirms the SBOE did go into a short recess so that members could seek her advice as counsel.

Under D.C. Code §2-575(b)(4)(A), a meeting or portion of a meeting may be closed to consult with an attorney to seek legal advice, or to approve settlement agreements. However, D.C. Code §2-575(c)(1)(2) provides that a public body may not enter into a closed session until a majority of the members have voted in favor of closure; and the chair of the body shall read onto the record the reason for the closure. That reading must include the citation(s) to the Open Meetings Act allowing for certain subject matters to be discussed in closed session. Also, the citations must be included on a properly noticed agenda for the meeting pursuant to D.C. Code §2-575(d), as long as inclusion of the closed portion of the meeting is feasible (D.C. Code §2-576(5)).

As noted in the complaint and as described by Ms. Davis, it appears the recess was impromptu and it was therefore not feasible to include on the agenda a statement of intent to close the meeting to seek the advice of counsel. Accordingly, I find that the SBOE did not run afoul of proper notice of the closed portion of the meeting under D.C. Code §2-576(5), but did violate the protocol as set out in D.C. Code §2-575(c)(1)(2) for entering a closed session.

¹ The Complaint issued to info@bega-dc.gov, August 29, 2014, references a video of the meeting. As of 9/4/14, no video recording was posted on the SBOE site at <http://sboe.dc.gov/page/sboe-meeting-information>. Nor did the SBOE have a copy of the video ready for inspection as of 9/3/14. The Office of Open Government therefore makes its findings based on information posted on the SBOE website, and on communication with SBOE counsel.

Upon review of the SBOE site at <http://sboe.dc.gov/page/sboe-meeting-information>, I also find the SBOE has failed to comply with the timely posting of meeting minutes or transcripts for its July 2014 and August 2014 public meetings under D.C. Code §2-578.²

Although the Office of Open Government is afforded enforcement authority under D.C. Code §2-579 to seek injunctive or declaratory relief from the Superior Court of the District of Columbia for violating the Open Meetings Act, I am declining to take such action as there is no evidence to support, nor does the complaint suggest, the SBOE is engaging in a pattern or practice of willfully disregarding the provisions of the Open Meetings Act.³

To avoid future violations of the measure, the members of the SBOE are strongly encouraged to undergo Open Meetings Act training with the Office of Open Government. It is clear that the members of the SBOE will greatly benefit from understanding the procedural requirements of the act, and from discussing its application to the operations of the SBOE.

I look forward to scheduling training at a time and date convenient to you and your fellow board members. I may be reached by phone (481-3411) and/or email (traci.hughes@dc.gov) to set the training. Meanwhile, should you have any questions concerning compliance with the Open Meetings Act, please do not hesitate to contact me.

Sincerely,

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TRACI L. HUGHES, ESQ.
Director
Office of Open Government
Board of Ethics and
Government Accountability

Cc: Kelly Davis, Attorney-Advisor
State Board of Education

Enclosure

² See also, 12/12/13 Office of Open Government advisory opinion on the posting of draft meeting minutes and transcripts at http://www.bega-dc.gov/sites/default/files/documents/12.12.13%20OOG%20Opinion_HPTF_Meeting%20Record_Minutes%20Audio%20Video%20Transcripts.pdf

³ The decision of the Office of Open Government to decline court action at this time does not in any way prohibit a private cause of action for violation of the Open Meetings Act (D.C. Code §2-579(a)(1)).