

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



January 4, 2022

VIA ELECTRONIC MAIL

Ms. [REDACTED] Jablow
[REDACTED]
Washington, DC [REDACTED]
[REDACTED] [@earthlink.net](mailto:[REDACTED]@earthlink.net)

VIA ELECTRONIC MAIL

Mr. Rick Cruz, Chairperson
District of Columbia Public
Charter School Board
3333 14th Street, NW
Suite 210
Washington, DC 20010
rcruz@dcpcsb.org

RE: Resolution of Complaint Concerning the District of Columbia
Public Charter School Board
Complaint #OOG-2021-0002-M_4.30.21

Dear Ms. Jablow:

I appreciate your advocacy to ensure that the official actions of the District of Columbia Public Charter School Board (“DC PCSB”) are transparent and comply with the Open Meetings Act (“OMA”) (D.C. Official Code § 2-571 *et seq.*). Pursuant to 3 DCMR § 10400 *et seq.* I reviewed Complaint #OOG-2021-0002-M_4.30.21 (“Complaint”), which you submitted to the Office of Open Government (“OOG”) on April 30, 2021. The Complaint alleged the following OMA violations: (1) that DC PCSB failed to continuously make available for public inspection for five years, public meeting notices of seven board meetings it held in 2017 and 2018;¹ (2) that DC PCSB’s public meeting records did not record important events, including board votes; and (3) that DC PCSB public meeting records possibly omitted an entire meeting.

On June 16, 2021, DC PCSB responded to the Complaint. DC PCSB admitted that public meeting notices for seven DC PCSB meetings held between October 18, 2017, and October 31, 2018, were

¹The Complaint stated that the following DC PCSB meeting notices, recordings, or minutes were not on its website: October 18, 2017, Closed Executive Session; November 15, 2017, Closed Executive Session; December 13, 2017, Closed Executive Session; December 17, 2017, Closed Emergency Meeting; January 27, 2018, Closed Emergency Meeting; July 27, 2018, Closed Executive Session; and October 31, 2018, Closed Meeting. I note, pursuant to D.C. Official Code § 2-575(b), the OMA does not require that public bodies make electronic recordings or meeting minutes of closed meetings publicly available. So there is no OMA violation for failing to make closed meeting records publicly available.

no longer on its website. DC PCSB denied the allegation that board votes and entire meetings, were omitted from its records.

After reviewing the Complaint, DC PCSB's response to the Complaint, the OMA, the OMA's regulations, and meeting with you remotely,² I concluded my investigation. Based on my investigation, I find that: (1) DC PCSB's website did not include links to meeting notices and meeting records for seven DC PCSB meetings held between October 18, 2017, and October 31, 2018, when viewed by the Complainant; (2) the OOG's DC PCSB March 2019, advisory opinion addressed the Complaint allegations concerning its October 31, 2018, meeting and those issues were previously resolved by the OOG;³ (3) the allegations concerning all but its October 16, 2017, and October 23, 2017, public meetings became moot once DC PCSB re-published the missing meeting notices;⁴ (4) once the issues became moot, the Complaint's allegations concerning all but its October 16, 2017, and October 23, 2017, meetings became technical violations of the OMA and harmless error that did not infringe upon your rights; (5) DC PCSB's failure to notify the public of the canceled October 16, 2017, meeting and the rescheduling of the meeting to October 23, 2017, violated the OMA's "Notice of meetings" provisions;⁵ and (6) the OMA "Notice of meetings" violations are not time-barred. The analysis supporting my findings follows.

1. *Under the OOG's regulations, certain Complaint allegations became moot once DC PCSB re-published and provided public access to the missing meeting records.*

In its June 16, 2021, response to the Complaint, DC PCSB stated that it had inadvertently deactivated the meeting links or deleted the records of the meetings from its website.⁶ DC PCSB also denied the allegation that important events, such as board votes and entire meetings, were omitted from its public meeting records. DC PCSB explained that what appeared to you as the omission of important meeting events or an entire meeting resulted from rescheduling its October 16, 2017, public board meeting. I find DC PCSB's response to be credible. My investigation revealed that DC PCSB rescheduled its October 16, 2017, public board meeting to October 23, 2017, and public notice was published in the District of Columbia Register on August 25, 2017, but not on its website or the District government's website as required under the OMA.

On September 15, 2021, DC PCSB notified the OOG that it had reposted the missing public meeting records that the Complaint is based upon. Under the well-established doctrine of mootness, case law holds that an issue is moot when there is no longer a case or controversy.⁷ The

² I, along with the OOG legal staff, met with you virtually to discuss the Complaint on August 12, 2021.

³ In our March 28, 2019, advisory opinion, DC PCSB improperly noticed its October 31, 2018, meeting as closed to the public in violation of the OMA. You may view this advisory opinion here [DISTRICT OF COLUMBIA PCSB COMPLAINT \(open-dc.gov\)](#). The advisory opinion was issued in response to a complaint filed by you with the OOG.

⁴ 3 DCMR § 10403.1(f), states: "[T]he complaint becomes moot due to action taken by the Public Body," in the instant case DC PCSB's re-publishing of the missing meeting records.

⁵ D.C. Official Code § 2-578.

⁶ The Complaint did not allege that DC PCSB intentionally deactivated the links to the meeting records. My investigation did not reveal any malicious intent by DC PCSB as it relates to this matter. Therefore, I accept DC PCSB's explanation that the deactivation was incidental.

⁷ The mootness doctrine prohibits deciding a case if "events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (*en banc*) (internal quotations omitted).

OOG's regulations codify this well-established doctrine,⁸ which I find applicable to the facts before me. Therefore, pursuant to the OOG's regulations, I find that: (1) the Complaint allegations concerning all but the October 16, 2017, and October 23, 2017, public meetings became moot once DC PCSB re-posted the public meeting notice links to its website and you were provided access to the records; and (2) because the Complaint became moot, the deletion or deactivation of these meeting links by DC PCSB must be viewed as a technical OMA violation that did not result in harm to you.

II. DC PCSB violated the OMA's "Notice of meetings" provisions by failing to provide notification, to the public, on its website or the District government's website notice of its October 16, 2017, public meeting cancellation and notification of the October 23, 2017, rescheduled public meeting date.

DC PCSB timely published a cancellation notice in the D.C. Register for the October 2017, public board meeting. However, in addition to publishing meeting notices and cancellations in the D.C. Register, the OMA requires publication of these notices on the public body's website or the District government's website. DC PCSB failed to notify the public of the meeting cancellation and rescheduled meeting date on its website or the District government's website. This violated the OMA's "Notice of meetings" provisions.⁹ This lack of notification on its website possibly adversely affected the public's right to observe the meeting and pursuant to the District of Columbia School Reform Act of 1995 ("SRA") to provide comment on the matters under consideration.¹⁰

Therefore, I cannot find DC PCSB's failure to publish the cancellation and rescheduling of its October 16, 2017, meeting to October 23, 2017, on its website or the District government's website was a harmless error. I also do not find that this issue is time-barred pursuant to the OOG's regulations.¹¹ This is because DC PCSB posted on or about September 15, 2021, for the first time on its website the cancellation and rescheduling of its October 16, 2017, public board meeting, to October 23, 2017.¹² Therefore, the 60-day statute of limitations period for this issue began to run from on or about September 15, 2021.

⁸ DCMR § 10403.1(e) provides "[T]he violation committed is a technical violation of the Open Meetings Act that constitutes a harmless error that does not infringe upon the Complainant's rights under the Open Meetings Act.

⁹ See D. C. Official Code 10400.1 2-576(1)-(2). See also 3 DCMR § 10400.1, "Any person who does not receive proper notice of any open meeting and or records of open meetings of a Public Body in accordance with the provisions of the Open Meetings Act (D.C. Law 18-350; D.C. Official Code §10400.1 2-571 et seq.) may submit a complaint under the provisions of this chapter. If a meeting is timely published and posted as set forth in the Open Meetings Act, the Public Body has given proper notice of a meeting."

¹⁰ D.C. Official Code § 38-1802.14 (b)(3) in relevant part provides: ". . . all meetings of the Board shall be open to the public and shall provide a reasonable time during the meeting for public comment."

¹¹ 3 DCMR § 10400.2 states; "[A] Complainant shall submit a complaint to the Director within sixty (60) days following the date that the Complainant knew or reasonably should have known of the alleged violation. A complaint may refer to one or more open meetings." DC PCSB's response raised the issue of the Complaint's timeliness but left judgment on this issue to the OOG. Since I concluded that all but the October 16, 2017, and October 23, 2017, Complaint issues are moot, it is unnecessary to discuss whether those issues are time-barred.

¹² I likewise became aware of this violation on September 15, 2021. So, I could issue a Notice of Violation to DC PCSB regarding "Notice of meetings." However, this is unnecessary since the issue is not time-barred.

III. Recommendations

To ensure that all future DC PCSB meetings fully comply with the provisions of the OMA, the OOG recommends the following for immediate implementation by the DC PCSB: (1) that DC PCSB adhere to the OMA's and SRA's public notice requirements; and (2) that DC PCSB attend an OMA training within sixty (60) business days of the issuance of this binding advisory opinion.

IV. Conclusion

Based upon my investigation and analysis of the facts, I find that: (1) DC PCSB's website did not include links to public meeting notices or meeting records for seven DC PCSB meetings held between October 18, 2017, and October 31, 2018, when you viewed it prior to filing the Complaint; (2) the OOG's March 2019, advisory opinion disposed of the allegations concerning the October 31, 2018, meeting stated in the Complaint; (3) the allegations concerning all but the October 16, 2017, and October 23, 2017, public meetings became moot once DC PCSB re-published the missing meeting notices; (4) once the issues became moot, the Complaint allegations concerning all but the October 16, 2017, and October 23, 2017, meetings were technical violations of the OMA and harmless error that did not infringe upon your rights; (5) DC PCSB's failure to notice the public of the cancelled October 16, 2017, meeting and the rescheduling of the meeting to October 23, 2017, violated the OMA's "Notice of meetings" provisions; and (6) the OMA "Notice of meetings" violations is not time-barred.

This concludes my opinion on this matter. My findings are limited specifically to the facts and circumstances of this Complaint. For the reasons stated herein, and according to the OOG's regulations, to the extent that this matter is dismissed, a copy of the Complaint is being returned to you.¹³ Please know that OOG legal staff continues to monitor DC PCSB's website and its public meetings and the OOG will stress the OMA's "Record of meetings" and "Notice of meetings" requirements during its OMA training.

Sincerely,

Niquelle M. Allen, Esq.
Director, Office of Open Government
Board of Ethics and Government Accountability

Enclosure: Copy of OOG-2021-0002-M__4.30.21

cc: Sarah Cheatham, General Counsel, DC PCSB

¹³ 3 DCMR § 10403.2, provides, "[T]he Director shall return a dismissed complaint to the Complainant with an explanation of the reason(s) for dismissal."