

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



September 20, 2021

VIA ELECTRONIC MAIL

██████████ Thompson, ██████████
██
Washington, D.C. ██████████

RE: Complaint Concerning D.C. Public Charter School Board’s Compliance with OMA
Complaint #OOG-2021-0001-M

Dear Mr. Thompson,

The Office of Open Government (“OOG”) received your complaint #OOG-2021-0001-M (“Complaint”) on April 5, 2021, which alleged the District of Columbia Public Charter School Board (“DC PCSB”)¹ violated the Open Meetings Act (“OMA”) by failing to follow the OMA’s “Notice of meetings” provision (D.C. Official Code § 2-576(1)-(3))². To address the issues raised in your complaint, I am issuing this Advisory Opinion pursuant to 3 DCMR § 10400 *et seq.*

The OMA reiterates the District government’s long-standing public policy “that all persons are entitled to full and complete information regarding the affairs of the government and the actions of those that represent them.”³ Public bodies must construe the OMA “broadly to maximize public access to meetings.”⁴ To that end, the OMA requires that public bodies provide advance notification to the public of their meetings. The notification must be posted on the public body’s website or the District government’s website,⁵ physically posted in the public body’s office or a location that is readily accessible to the public and published in the District of Columbia Register (“D.C. Register”).

¹It is not disputed that DC PCSB is a public body that is subject to the OMA. The OMA’s legislative history specifically states that DC PCSB is a public body subject to the Act. See Report of the Committee on Government Operations and the Environment on Bill 18-716, the Opening Meetings Act of 2010, at 4-5 (Council of the District of Columbia December 2, 2010). The DC PCSB has been the subject of past OMA advisory opinions. You may view these advisory opinions here: <https://www.open-dc.gov/documents/oma-complaints-resolved>

² Section 406 of the OMA.

³ D.C. Official Code § 2-572.

⁴ D.C. Official Code § 2-573.

⁵ The District government’s website is currently the OOG’s Central Meeting Calendar.

Upon review of the April 5, 2021 Complaint, DC PCSB’s website, DC PCSB’s response, and the OOG’s Central Meeting Calendar, I find that DC PCSB violated the OMA’s “Notice of meetings” provisions, found in D.C. Official Code § 2-576(1)-(3), because DC PCSB failed to timely provide public notice of its April 5, 2021, Special Meeting: (1) on its website; (2) on the Central Meeting Calendar; and (3) in the D.C. Register. Since DC PCSB’s notice was never published in the D.C. Register, its argument that it was impracticable to do so, is contrary to advice provided by the OOG and is therefore without merit.

This Advisory Opinion provides my rationale for these findings and instructs the parties and the public on the issue.⁶ The opinion concludes with directives for DC PCSB’s future compliance with the OMA.

I. BACKGROUND

A. The Complaint and DC PCSB’s Response to the Complaint.

On April 5, 2021, the OOG received the Complaint from Mr. ██████ Thompson regarding DC PCSB’s April 5, 2021, Special Meeting.⁷ The Complaint alleged that DC PCSB violated the OMA because it did not provide the public with timely notice of its meeting in the D.C. Register, on DC PCSB’s website, or on the Central Meeting Calendar. On April 6, 2021, the OOG sent the Complaint to DC PCSB and it responded on May 18, 2021. In its response, DC PCSB stated that the meeting notice was posted on its website 48 hours before the meeting, but admitted the notice was not posted a full two business days before the meeting. DC PCSB attributed the omission to staff error. DC PCSB stated it was unable to provide notice in the D.C. Register because the meeting was time-sensitive, and it was not practical to delay the meeting to comply with the D.C. Register’s notice limitations.

B. Complaint Conciliation Meeting.

On July 9, 2021, pursuant to 3 DCMR § 10404.1, I conducted a conciliation meeting with the you and DC PCSB. During the conciliation meeting, DC PCSB again admitted to the OMA violations. The matter was resolved through this process. However, by consent of both parties, I am issuing this advisory opinion to clarify the legal issues discussed in the conciliation meeting.⁸ A discussion of the legal issues follows.

⁶ See 3 DCMR § 10406.2.

⁷ Under the OMA, special meetings require the same notice as regular meetings. Only emergency meetings require different public notice requirements. See D.C. Official Code § 2-576(1).

⁸ “The Director may only issue an Advisory Opinion on a complaint resolved through conciliation with the consent of the parties and for the sole purpose of instructing the public on the issue in dispute.” 3 DCMR § 10404.2.

II. DISCUSSION

- A. By failing to provide timely public notice of its April 5, 2021, Special Meeting on its website, on the Central Meeting Calendar, and in the D.C. Register, DC PCSB violated the OMA’s “Notice of meetings” provisions.**

D.C. Official Code § 2-576 contains the OMA’s “Notice of meetings” provisions. This statutory scheme governs how to schedule, change, or cancel a public body’s meeting. The entirety of D.C. Official Code § 2-576 is provided for the reader’s convenience below:

Before meeting in an open or closed session, a public body shall provide advance public notice as follows: (1) Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting. (2) Notice shall be provided by posting: (A) In the office of the public body or a location that is readily accessible to the public; and (B) On the website of the public body or the District government (3) Notwithstanding the notice requirement of paragraph (2) of this subsection, notice of meetings shall be published in the District of Columbia Register as timely as practicable. (4) When a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members and may be provided under any method in paragraph (2) of this subsection. (5) Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 2-575(b), and a description of the matters to be discussed.

In its response to the Complaint, DC PCSB admitted that the meeting was not posted in the D.C. Register, or timely on either its website or on the OOG’s Central Meeting Calendar. DC PCSB advised that the notice was posted on its website, but not within two business days as required by statute. The OMA does not provide any exception to this provision regarding the timeliness of notice. As stated earlier, DC PCSB should have viewed the OMA broadly and interpreted in a manner that would have ensured the public’s access to its meeting. DC PCSB was required under D.C. Official Code § 2-576 to provide the public with notice before its meeting and DC PCSB had to provide the notice not less than 48 hours or 2 business days, whichever is

greater, before its meeting. The explanation given for improper notice was staff error. DC PCSB should not have held this meeting when improper notice was rendered and in violation of the OMA.

B. DC PCSB’s argument that it was not practicable to publish Notice in the D.C. Register is without merit and is contrary to legal advice issued by the OOG.

DC PCSB argues that the matter was time-sensitive, so it was not practical to delay the meeting to comply with the OMA’s D.C. Register’s notice requirement. The OMA requires public bodies to publish meeting notices in the D.C. Register “as timely as practicable.”⁹ The OMA does not define “practicable.” However, the OOG has opined¹⁰ that it is impracticable for a public body to publish notice in the D.C. Register in the limited instances where: (1) a public notice was initially timely sent to the D.C. Register for publication; (2) the public notice was rejected by the D.C. Register for publication; and (3) the corrected notice would not be published until after the meeting occurred.

In the instant case, DC PCSB failed to transmit its meeting for publication in the D.C. Register at all. There was no publication attempt made by DC PCSB. This public body chose to purposefully ignore the OMA requirements for its own purposes and hold an illegal meeting. This action was improper. If DC PCSB had attempted to comply and failed, I could view the action as impracticable. Given the facts of this matter, the option is not available. Therefore, DC PCSB may not rely on D.C. Register publication deadlines as grounds for its non-compliance.

For these reasons, I find DC PCSB’s April 5, 2021, Special Meeting notice was non-compliant with the OMA.

III. CONCLUSION AND COMPLIANCE DIRECTIVES

A. Conclusion.

DC PCSB’s April 5, 2021, “Special Meeting” notice was not compliant with OMA because: (1) it was not posted to DC PCSB’s website or the Central Meeting Calendar within two full business days as statutorily required despite it being posted 48 hours before the meeting; and (2) it was not published in the D.C. Register. DC PCSB admitted, with explanation, to these violations.

B. Compliance Directives.

I am requiring the following compliance directives for DC PCSB: (1) provide as much advance notice to the public as possible on its website or the Central Meeting Calendar, but not less than forty-eight hours or two business days, whichever is greater, before the meeting (D.C. Official Code § 2-576(1)); (2) publish all future meeting dates in the D.C. Register (D.C. Official Code § 2-576(3)); (3) report to the OOG within 30 days of the issuance of this advisory opinion

⁹ D.C. Official Code § 2-576(3).

¹⁰ The opinion has been provided in response to queries during OMA trainings conducted by the OOG.

on its plan to correct the staff error that resulted in non-compliance; and (4) undergo OMA training with OOG legal staff on dates to be determined by me.

Sincerely,



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

cc: Rick Cruz
Chairperson, District of Columbia Public Charter School Board

Sarah H. Cheatham,
General Counsel, District of Columbia Public Charter School Board