



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



June 26, 2023

VIA ELECTRONIC MAIL

[REDACTED]@ [REDACTED]

**RE: The Board of Trustees of Eagle Academy Public Charter School and the District of Columbia Public Charter School Board—Compliance with the Open Meetings Act
(Complaint # OOG-2022-0007-M)**

Dear [REDACTED]:

On September 22, 2022, the Office of Open Government (“OOG”) received your Complaint #OOG-2022-0007-M (the “Complaint”) that alleged violations of the Open Meetings Act (“OMA”)¹ by the Board of Trustees of Eagle Academy Public Charter School and the District of Columbia’s Public Charter School Board.²

Pursuant to 3 DCMR § 10400 *et seq.*, I have reviewed the Complaint; the responses from the Eagle Board and DC PCSB; [DC PCSB’s website](#), including its Eagle Academy-specific pages (for the [Capitol Riverfront](#) and [Congress Heights](#) campuses); the *District of Columbia Register*; [Eagle Academy’s application to amend its charter](#) (to expand its enrollment to include the fourth and fifth grades) (“Eagle’s application”); and controlling law.

After conducting an investigation and reviewing the aforementioned, I find that: (1) the Eagle Board, by not responding to OOG’s request for its February 2022 public meeting notice, has conceded your allegation that the Eagle Board did not provide proper public notice of its February 9, 2022, public meeting;³ (2) DC PCSB has no duty under the OMA to monitor public charter schools’ boards of trustees for OMA compliance; (3) the Eagle Board has not complied with the OMA’s “[r]ecord of meetings” requirements⁴ or the corresponding regulations⁵ because OOG found no evidence of the

¹ Title IV of Pub. L. 90-614, added by D.C. Law 18-350, effective March 31, 2011 (D.C. Official Code § 2-571 *et seq.*).

² The public bodies implicated in the Complaint are (1) the District of Columbia’s Public Charter School Board, the agency with oversight-responsibility for the District’s public charter schools, *see* D.C. Official Code § 38-1802.14(a)(1) (section 2214(a)(1) of the District of Columbia School Reform Act of 1995); and (2) the board of trustees that oversees Eagle Academy Public Charter School. For clarity, I will abbreviate the school as “Eagle Academy” or “Eagle,” its board of trustees as the “Eagle Board,” and the District of Columbia’s Public Charter School Board as “DC PCSB.”

³ *See* 3 DCMR § 10400.1, authorizing the filing of a complaint where a public body does not provide a proper public meeting notice.

⁴ D.C. Official Code § 2-578 (section 408 of the OMA).

⁵ 3 DCMR § 10409.4, .5.

Eagle Board’s posting written detailed minutes of its meetings on its website, and it did not respond to OOG’s request to inspect the electronic recordings, if any, of its meetings; (4) the OMA does not govern DC PCSB’s maintenance or posting, nor the accuracy, of individual charter schools’ boards’ meeting records; (5) any discrepancy between DC PCSB’s statement that *it* sent letters to Advisory Neighborhood Commissioners, and the letters’ own authorship/return-address designations, is a harmless technical error;⁶ (6) Eagle’s transmission to DC PCSB of its application was not a “meeting” for OMA purposes; (7) DC PCSB posted public comment letters referred to at its September 19, 2022, public meeting, but not the two recordings you mentioned in the Complaint and the failure to post the recordings may violate the D.C. Freedom of Information Act,⁷ but not the OMA, so I do not have the authority to take enforcement action against DC PCSB regarding that issue; and (8) while the District of Columbia School Reform Act of 1995 (“SRA”)⁸ requires public-comment periods the OMA does not.⁹

Next, I will set out the details of the Complaint and the positions taken by the public bodies’ responses.

I. **BACKGROUND**

On September 22, 2022, OOG received the Complaint. On October 13, 2022,¹⁰ you amended the Complaint to include allegations concerning the submission of public comments that DC PCSB posted into an “After Deadline” folder of public comments rather than its folder of timely comments.

You allege as follows:

(1) Eagle’s “application references Eagle’s board voting unanimously on this expansion at [its] February 2022 meeting,” but such a February meeting would have occurred without OMA-compliant advance notice. You were unable to find notice or records of any February 2022 meeting.

(2) A March 1, 2022, e-mail from Eagle’s Chief External Affairs Officer suggests that DC PCSB had “assist[ed]” the Eagle Board “in a potential violation of the OMA.”

(3) You cannot “find anything about” alleged Eagle Board meetings in January or February 2021, and a large range of records from other meetings from school years

⁶ The same would be true if this were an OMA violation. See DCMR § 10403.1(e) that provides, “The 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.”

⁷ [D.C. Official Code § 2-531 et seq.](#)

⁸ Approved April 26, 1996 (110 Stat. 1321–107; D.C. Official Code § 38-1800.01 *et seq.*).

⁹ Absent any statutory requirement public bodies may provide a period of public comment.

¹⁰ 3 DCMR § 10400.2 requires that complaints be submitted “to the Director [of Open Government] within sixty . . . days following the date that the Complainant knew or reasonably should have known of the alleged violation.” Here, I am deeming the Complaint timely because—assuming your allegations to be true for purposes of calculating timeliness—an ongoing course of conduct would have continued until at least September 19, 2022, including the Eagle Board’s and DC PCSB’s mutual “assist[ance]” in obscuring meeting records from your knowledge.

before the current one are either unavailable or have disappeared. Even for the current school year, dates of meetings are available, but minutes are not.

(4) There are inadequate records of October and December 2021, Eagle Board meetings, and DC PCSB's website is ambiguous about the exact date of a September 2021 Eagle Board meeting.

(5) Eagle and DC PCSB report conflicting information about their having informed Advisory Neighborhood Commission ("ANC") members of Eagle's application and did not post alleged comments received from the public.

(6) For its September 19, 2022, meeting, DC PCSB did not act equitably in permitting public-comment.

On October 19 and 21, 2022, respectively, the Eagle Board and DC PCSB responded to the Complaint. Both public bodies deny violating the OMA. On December 9, 2022, OOG requested additional records via email from Eagle's Chief Executive Officer and Chief Financial Officer, Dr. Joe M. Smith (or an opportunity for an in-person inspection of the requested records). Dr. Smith and the Eagle Board did not respond to OOG's request.

Below, I will discuss the Complaint allegations and provide my analysis of each one.

II. DISCUSSION

The Complaint includes seven paragraphs. There is some overlap among the allegations, so I will take them in the order that they first appear in the Complaint.

A. **The OMA requires timely public notice of public body meetings. The Eagle Board convened a meeting on February 9, 2022, but did not provide proof of posting an OMA-compliant public meeting notice.**

The OMA's "[n]otice of meetings" section requires that, "[e]xcept 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."¹¹ Your first allegation¹² is that the Eagle Board met on February 9, 2022, without providing an OMA-compliant public meeting notice.¹³ In response, the Eagle Board concedes that it met in February 2022, and states that "[t]he meeting notice was posted

¹¹ See D.C. Official Code § 2-576(1) (section 406(1) of the OMA).

¹² The section of the Complaint numbered "3" effectively duplicates claim number "1," so I am merging them into this part.

¹³ The Complaint also alleges that the Eagle Board did not publish the public meeting notice in the *District of Columbia Register*, but that point is facially meritless. The OMA does require public bodies to publish notices of their meetings in the *District of Columbia Register*, but public charter schools' boards of trustees are exempt from the requirement. See *id.* par. (3).

on Eagle’s website.” However, the Eagle Board did not provide proof of the notice posting.

To verify whether the Eagle Board electronically posted an OMA-compliant public meeting notice, OOG wrote to Dr. Smith on December 9, 2022, and asked (1) for the Eagle Board to either produce or allow OOG staff to inspect any public meeting notice, and (2) for the Eagle Board to state when any public meeting notice was posted. OOG directed the Eagle Board to respond no later than December 22, 2022 (9 business days after the request),¹⁴ but the Eagle Board never responded. OOG could not independently verify the existence of this electronic notice.

DC PCSB responded that “this allegation . . . relates solely to Eagle PCS’s actions.”

The Eagle Board did not respond to OOG’s request to provide OOG with a copy of its February 2022 public meeting notice. It also failed to provide an opportunity for OOG’s legal staff to inspect the public meeting notice. The Eagle Board did not make a statement to OOG’s legal staff affirming the *timeliness* of its posting. Based on the foregoing, I find that the Eagle Board has conceded your first allegation and that it violated the OMA’s “[n]otice of meetings” section.

B. The OMA does not require DC PCSB to oversee the OMA compliance of public charter schools’ boards of trustees.

Your second allegation is that DC PCSB “assist[ed] [Eagle] in a potential violation of the OMA.” You suggest that DC PCSB and Eagle Board are jointly culpable for insufficient public notice of the Eagle Board’s February 2022 meeting. Your argument relies on an e-mail exchange with DC PCSB’s Chief External Affairs Officer. You wrote the following: “[P]er her March 1, 2022 email to me, to comply with the [OMA], DC charters can post their board information at either ‘a single location accessible by one click from the school’s homepage OR link to DC PCSB’s website’ with school profiles. That response suggests that neither Eagle nor [DC] PCSB was complying with the law”¹⁵

DC PCSB responds that, even to any extent that it *does* monitor and facilitate public charter schools’ transparency practices, it is doing so following its own School Transparency Policy,¹⁶ issued under the SRA, not the OMA. The Eagle Board adds that DC PCSB “did not assist Eagle in any way with the posting or conduct of its meetings. DC []PCSB monitors to ensure that Eagle conducts the meetings and has randomly listened in remotely.”

I agree with DC PCSB. A public body is not responsible for monitoring the posting of another public body’s public meeting notices. Notwithstanding DC PCSB’s *internal* practice of providing a landing site for compliance with its *own* School Transparency Policy, the OMA, and its regulations do not create an obligation to ensure other public bodies’ compliance with the OMA. There is no OMA violation by DC PCSB when the board of trustees of a public charter school, a public body that DC PCSB oversees, holds a meeting that fails to comply with the OMA, even though DC PCSB provides a website where individual schools’ boards may post public meeting notices.

¹⁴ See 3 DCMR § 10405.7 (“The Director may request further information from . . . the Public Body . . . , to be provided within a reasonable time, and in no event less than five . . . business days . . .”).

¹⁵ (Emphasis omitted.)

¹⁶ [2019-03-18 Vote School Transparency Policy ZAT B BBF.docx \(dcpsb.org\)](#).

Accordingly, the second allegation is meritless as a matter of law. I need not, and do not, opine on the underlying facts and find no OMA violation.

C. The Eagle Board violated the OMA when it failed to make electronic recordings and detailed meeting minutes of its meetings available to the public.

The Complaint’s fourth paragraph asserts that records, including minutes, from several Eagle Board meetings over a range of dates¹⁷ are unavailable on the Internet. The Eagle Board responded generally, without particular reference to minutes: “All meetings are publicly noticed. The dates on the meeting calendar are also provided to [DC PCSB]. Any changes in the dates are noticed publicly and to [DC PCSB]. . . . [The Eagle Board’s February] meeting was held on February 9, 2022.” DC PCSB responded that any involvement in the Eagle Board’s minutes posting is under its School Transparency Policy under the *SRA*, not the *OMA*.

The OMA requires that (1) public bodies record all of their meetings (both open and closed portions) in at least audio format and that (2) the open portions of recordings “be made available for public inspection” and “be preserved for a minimum of 5 years.”¹⁸ If neither video nor audio recording is not feasible—which is not alleged by any of the parties here—“detailed minutes . . . shall be taken and preserved for a minimum of 5 years.”¹⁹ Any such minutes (or at least the draft, not-yet-ratified version) “shall be made available for public inspection as soon as practicable, but no later than . . . , . . . in the case of a board of trustees for a public charter school, . . . 30 business days after the meeting.”²⁰ The rest of “the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.”²¹

In this case, the evidence and admissions from the parties do not establish that the Eagle Board has “available” a full complement of recordings or (if the recording was not feasible) detailed meeting minutes. The Eagle Board did not produce any such files on request, nor can users retrieve more than a few records themselves. As recently as May 22, 2023, OOG can still observe that [the Eagle Board’s website](#) carries a link to a folder called “[Board Minutes since 2019](#)” that, as you correctly observe, is incomplete. For example, only the folders labeled “August 3, 2022”, “May 18, 2022”, “November 23, 2021”, and “November 20, 2019” appear to contain readable (at least to an external user) copies of minutes. The other dates appear to be associated only with shortcuts (such as iCloud shortcuts) not visible to the public. I note that, until a 2020 amendment, “[g]overning bodies of individual public charter schools” were excluded from the definition of public bodies subject to the OMA.²² Still, it

¹⁷ It is difficult to catalog which specific meetings the Complaint is challenging, but the specific dates are not material to this analysis.

¹⁸ See D.C. Official Code § 2-578(a), (b)(2) (section 408(a), (b)(2) of the OMA).

¹⁹ See *id.* subsec. (a).

²⁰ See *id.* subsec. (b)(1).

²¹ See *id.* par. (2).

²² Fiscal Year 2021 Budget Support Emergency Act of 2020, § 4057(a), effective August 19, 2020 (D.C. Act 23-404; D.C. Official Code § 2-574(3)); Fiscal Year 2021 Budget Support Congressional Review Emergency Act of 2020, § 4057(a), effective October 26, 2020 (D.C. Act 23-426; D.C. Official Code § 2-574(3)); Fiscal Year 2021 Budget Support Act of 2020, § 4057(a), effective December 3, 2020 (D.C. Act 23-407, D.C. Law 23-149; D.C. Official Code § 2-574(3)).

appears that the Eagle Board has not rendered complete minutes of meetings *since* 2020: September 22, 2021, meeting is associated with a dead link.

Accordingly, I agree with your third allegation (*i.e.*, the fourth paragraph of the Complaint). I find the Eagle Board in violation of the OMA “[r]ecord of meetings” provisions because neither the Eagle Board’s response nor OOG’s investigation of its site establishes that recordings or minutes (let alone other components of “the full record”) of public meetings since public charter school boards of trustees became subject to the OMA are reliably “available for public inspection.”

The OMA and its regulations require public bodies to make the full records of meetings “available for public inspection” and, in the case of minutes, to post them to “the Public Body’s website or the District government’s website”. The Eagle Board failed to post readable versions of its minutes or produce recordings on request (or contend that recording was not feasible). Therefore, I find that the Eagle Board violated the OMA’s “[r]ecord of meetings” requirements.

D. Under the OMA, DC PCSB is not responsible for the maintenance, posting, or accuracy of meeting records of boards of trustees of public charter schools.

Your fourth allegation asserts that two sets of minutes posted by DC PCSB and one school-year calendar each show a different date (within September) for the Eagle Board’s September 2021 meeting. You also allege that the Eagle Board met in October 2021. You assert that the October 2021 meeting “doesn’t appear . . . on the charter board calendar file,” and that the Eagle Board met in December 2021 but did not post the minutes.²³

The Eagle Board’s initial response repeated its earlier argument: “All meetings are publicly noticed. The dates on the meeting calendar are also provided to DC[]PCSB. Any changes in the dates are noticed publicly and to DC[]PCSB.”

DC PCSB’s response to the fourth claim is that it is not responsible for the Eagle Board’s OMA compliance, though it “will follow up on the allegation of inaccurate information in posted documents.” DC PCSB reiterates that any information on its site about individual public charter school boards’ meetings “are maintained or removed pursuant to our School Transparency Policy, not the OMA. DC PCSB does not review documents posted under the School Transparency Policy for compliance with the OMA.” While this may be true, the OMA and its regulations require that public bodies post meeting records—including public meeting notices with agendas, and detailed meeting minutes or transcripts where required— on the website of the public body or the District government, currently, the central meeting calendar the OOG maintains.²⁴ “If there are documents provided to [a public body] and discussed during the public portion of a meeting, those documents must be posted” as well.²⁵ Boards of Trustees of public charter schools whose information they elect to post on the DC PCSB website remain subject to the OMA’s posting and record retention requirements.²⁶

²³ You also mention an Eagle school in Nevada that supposedly performs more openly than its District counterpart. Even assuming this is true, it is not relevant. For a public body to comply with the OMA, it need not “outperform” other public bodies in transparency, including those in other jurisdictions.

²⁴ See D.C. Official Code § 2-576(2)(B) (section 406(2)(B) of the OMA); 3 DCMR § 10409.4, .5.

²⁵ OMA Advisory Opinion - Posting of Meeting Minutes, Transcripts, Electronic Recordings at 2 (Dec. 12, 2013).

²⁶ See D.C. Official Code §§ 2-576(2), 2-578.

As with the second claim, DC PCSB’s maintenance of any notices or other records of Eagle Board meetings falls outside of the scope of the OMA. Therefore, I find your fourth allegation is meritless concerning the DC PCSB. However, to comply with the OMA the Eagle Board must post accurate public meeting records and meeting information on the respective websites. The OMA requires that Eagle Board provide this information to ensure that the public receives “full and complete information” about the public body’s actions.²⁷ Posting inaccurate information defeats the OMA’s public policy.

E. Section 6 of the Complaint contains several disparate allegations, and none rises to an OMA violation.

1. *Text of the Complaint*

I will begin with an excerpt²⁸ from section 6 of the Complaint. You write as follows:

Eagle’s . . . application mentions attached minutes from Eagle’s February 2022 board meeting. But I was unable to find those minutes in the materials for the PCSB meeting on September 19, 2022.

And I can find no minutes for any Eagle board meeting on the school’s website. Like the other attachments that Eagle’s application references, those minutes were publicly unavailable when Eagle’s application was posted by [DC] PCSB for public comment back in August.

Eagle’s application also says it sent letters to the ANC commissioners around its schools to notify them of this expansion. But in the materials for this meeting posted on the [DC] PCSB website, there are only undated letters from Eagle to the ANCs, while the [DC] PCSB report states that [DC] PCSB—NOT Eagle— notified the ANCs in early August. So who notified whom—and when?

As of Sunday morning, September 18, 2022, PDFs of the following (which were posted on the [DC] PCSB website with meeting materials for the September 19, 2022 [DC] PCSB meeting) were created on the following dates, per adobe acrobat:

Eagle’s application (dated 6/6/22): created on 6/7/22

[DC] PCSB notice of expansion (undated, but showing up in my downloads folder with an 8/5/22 date): created on 8/3/22 . . .

[DC] PCSB board report (dated 9/19/22): created on 9/8/22

This date range suggests an almost 2-month gap between the time Eagle Academy submitted its application . . . to [DC] PCSB and the time that public notification of it was made by [DC] PCSB.

²⁷ See *id.* § 2-572 (section 402 of the OMA (“Statement of policy”).)

²⁸ (Links omitted and some formatting changed.)

Those dates are particularly problematic because at the 1 hour, 35 minute, 52 second mark of . . . the 9/19/22 . . . meeting . . . , [the DC PCSB] chair . . . mentions that [DC] PCSB received 22 letters from Eagle parents as well as 2 audio recordings of public feedback.

But none of those letters is in the materials for the 9/19/22 meeting, and the board report dated September 19, 2022, explicitly says that “no public comment has been received to date.” So where are the letters and public comment?

The allegations above make several points regarding violations of open government principles regarding posting of meeting minutes, notifications to ANC Commissioners, notification regarding the application, and public comments. Further, the allegations also assert that DC PCSB failed to make a complete copy of Eagle’s application that included attachments available for you to access on the internet.

Based on these allegations, I find one instance where the Eagle Board violated the OMA. I also find that DC PCSB may have failed to meet its obligations to provide you information without a D.C. FOIA request. The analysis of each excerpt of the Complaint below supports my findings.

2. *Analysis*

a. *Posting of the Eagle Board’s minutes online by Eagle and DC PCSB.*

“Eagle’s . . . application mentions attached minutes from Eagle’s February 2022 board meeting. But I was unable to find those minutes in the materials for the [DC] PCSB meeting on September 19, 2022. And I can find no minutes for any Eagle board meeting on the school’s website. Like the other attachments that Eagle’s application references, those minutes were publicly unavailable when Eagle’s application was posted by [DC] PCSB for public comment back in August.”

The essential allegation of this excerpt of the Complaint is that neither the Eagle Board nor DC PCSB posted minutes of certain meetings onto their respective websites. This alone does not establish an OMA violation.

As for DC PCSB, the OMA does not require one public body to post records of the meetings of a *different* (though admittedly affiliated) public body. Therefore, DC PCSB is not responsible under the OMA for the disposition of the Eagle Board’s meeting records. As conceded by DC PCSB, it has some *oversight* role under the SRA,²⁹ but that is outside of the scope of the Director of Open Government’s enforcement authority.

²⁹ *E.g.*, D.C. Official Code § 38-1802.11(a)(1) (section 2211(a)(1) of the SRA) (“An eligible chartering authority: (A) Shall monitor the operations of each . . . school to which the eligible chartering authority has granted a charter; [and] (B) Shall ensure that each such school complies with applicable laws and the provisions of the charter granted to such school . . .”).

As for the Eagle Board’s duty to post minutes, the posting of minutes is required only *if* the electronic recording was not feasible at the time of the meeting.³⁰ Here, because no party has asserted that electronic recording was unavailable, as stated *supra*, regarding your third allegation (*i.e.*, the fourth paragraph of the Complaint), I find the Eagle Board in violation of the OMA “[r]ecord of meetings” provisions because neither the Eagle Board’s response nor OOG’s investigation of its site, establish that the Eagle Board posted electronic recordings or meeting minutes (let alone other components of “the full record”).

b. *Notice to Advisory Neighborhood Commissioners.*

The Complaint continues:

“Eagle’s application also says it sent letters to the [Advisory Neighborhood C]ommissioners around its schools to notify them.... But in the materials for this meeting posted on the [DC]PCSB website, there are only undated letters from Eagle to the ANCs, while the [DC]PCSB report states that [DC]PCSB—NOT Eagle—notified the ANCs in early August. So who notified whom—and when?”

This excerpt does not establish an OMA violation. You maintain that the DC PCSB report—entitled “Charter Amendment: Eagle Academy . . . Grade Expansion”—associated with its September 19, 2022, meeting states that DC PCSB sent letters to certain ANC Commissioners “informing them of Eagle[’s] request to . . . increas[e] its grade band,” while the letters themselves purport to come from Eagle. It is important to note that the letters did not operate as notice of any meetings but were merely notice of the *filing* of Eagle’s expansion application. Accordingly, this point of the Complaint raises, at most, a minor inaccuracy of substantive meeting records but not of the notice *of the occurrence* of any meeting. Because your claim of the inaccuracy of the meeting records is a technical point of no practical consequence, I do not find an OMA violation.

The OMA states that the District’s public policy is to provide the public with “full and complete information regarding the affairs of government and the actions of those who represent them.”³¹ So, I agree that, as a general principle, DC PCSB and the Eagle Board must record their public business accurately. Furthermore, the allegation raises a minor discrepancy—you concede that letters were sent to the ANC Commissioners but you object that DC PCSB misreported the sender of the letters—that caused you no harm, let alone harm that “infringe[d] upon [your] rights under the [OMA].”³²

Accordingly, I do not find an OMA violation.

³⁰ See generally [OMA AO HPRB JAN52022.pdf \(open-dc.gov\)](#) (“[P]osting both is unnecessary for most public bodies Electronic meeting recordings are sufficient and detailed enough for the public to ascertain what occurred during a public body’s meetings.”).

³¹ The OMA’s statement of policy and rules of construction are set forth in sections 402 and 403, D.C. Official Code §§ 2-572, 2-573 (“The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them. . . . This [act] shall be construed broadly to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit closure of meetings only as authorized by this act.”).

³² *Cf.* 3 DCMR § 10403.1(e) (Director of Open Government may disregard “harmless error that does not infringe upon the Complainant’s rights under the [OMA]”).

c. *Notification of Eagle's application.*

The Complaint continues:

“As of...September 18, 2022, PDFs of the following...were created on the following dates...:

“Eagle’s application (dated 6/6/22): created on 6/7/22

“[DC] PCSB notice of expansion...created on 8/3/22

“[DC] PCSB board report...created on 9/8/22

“This date range suggests an almost 2-month gap between the time Eagle Academy submitted its application . . . to [DC] PCSB and the time that public notification of it was made by [DC] PCSB.”

Eagle’s ministerial submission of an application for grade expansion is not a meeting under the OMA. Generally, the OMA ensures that the District’s public bodies deliver notice of, conduct openly, and retain and provide access to records of the public body’s meetings. A “meeting” under the OMA is a “*gathering* of a quorum of the members of a public body . . . at which the members consider, conduct, or advise on public business . . . , regardless whether held in person, by telephone, electronically, or by other means of communication.”³³

As discussed above, the Eagle Board constructively conceded that it did not give proper notice of its February 2022 meeting. The separate action of transmitting the application to DC PCSB does not constitute a “meeting” under the OMA. Therefore, I do not find a violation of the OMA because these were ministerial acts, not a meeting under the OMA.

d. *DC PCSB’s posting of public comments.*

Finally, the Complaint states:

“[A]t...the 9/19/22 [DC]PCSB meeting...chair Lea Crusey mentions that [DC]PCSB received 22 letters from Eagle parents as well as 2 audio recordings of public feedback. But none of those letters is in the materials for the 9/19/22 meeting, and the board report...explicitly says that ‘no public comment has been received to date.’ So where are the letters and public comment?”³⁴

Your objection seems to be that DC PCSB received public submissions, outside of the meeting itself, that were mentioned during the meeting but are not posted to the internet.

The OMA requires that “the full record . . . be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.”³⁵ OOG has opined that the “full record” includes “documents provided to the [public body] and discussed during the public portion of a meeting.”³⁶ Here, DC PCSB’s Chairperson discussed 22 letters from parents and 2 audio recordings.

³³ D.C. Official Code § 2-574(1) (section 404(1) of the OMA) (emphasis added).

³⁴ (Some formatting simplified.)

³⁵ See D.C. Official Code § 2-578(b)(2) (section 408(b)(2) of the OMA).

³⁶ See [OMA Advisory Opinion - Posting of Meeting Minutes, Transcripts, Electronic Recordings](#) at 2, 3 & n.12 (Dec. 12, 2013).

These records must be publicly available as part of the “full record” of DC PCSB’s September 19, 2022, meeting.

However, DC PCSB responds that, “[e]ven assuming these [public submissions] are ‘records’ required to be made available to the public under the OMA, all items *were* made available as of September 19, 2022,”³⁷ and the Complaint does not refute DC PCSB’s assertion—you do not allege that you attempted to contact DC PCSB to arrange an inspection, only that letters and recordings do not appear in the *online* “materials for the 9/19/22 meeting.” My review of the DC PCSB website confirms DC PCSB’s assertion that the written public comments are online and publicly available since September 19, 2022.³⁸ However, I did not find the two audio recordings mentioned.

If the audio recordings exist and are not posted to the DC PCSB website, your claim might raise a Freedom of Information Act of 1976 (“D.C. FOIA”)³⁹ issue. The affirmative-disclosure section of D.C. FOIA provides that public bodies that have a website must upload, for public access, “[c]orrespondence and materials referred to therein[, created on or after November 1, 2001], . . . relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, . . . states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party.”⁴⁰ The two public comments in audio format, whether “correspondence” in their own right or merely attachments “referred to” in correspondence, might fall within that category of public records that is subject to mandatory posting under D.C. FOIA. However, I can take no further action under the OMA.

e. DC PCSB’s obligation to provide Eagle’s application under D.C. FOIA.

While the exclusion of the dated ANC correspondence from the Eagle application and the resulting DC PCSB meeting record does not violate the OMA, it could possibly run afoul of the affirmative disclosure provision of D.C. FOIA.⁴¹ You allege here that DC PCSB’s meeting record is incomplete because that public body did not include in its meeting record Eagle’s application with ANC correspondence that included dated letters. As I discuss above, Eagle’s application, in its entirety, may be correspondence that you are entitled to have access to under the affirmative-disclosure provision of D.C. FOIA. I do not have enforcement authority under D.C. FOIA. The remedy to gain access to records that you are denied access to under D.C. FOIA is to file an administrative appeal with the Mayor’s Office of Legal Counsel or a civil action to compel release of the records in D.C. Superior Court.

3. Conclusion as to section 6 of the Complaint.

In summary, with respect to DC PCSB I find there is no violation of the OMA established by

³⁷ (Emphasis in original.)

³⁸ DC PCSB’s website states “All written comments will be made available to the public. Comments sent by email, postal mail or hand-deliver[y]/courier will be posted on the page of the item open for public comment or in the general comment link. We do not edit personal identifying information from submissions. Please submit only information that you wish to make available to the public.” You may find the language at dcpcsb.org/public-comment and public comments for the September 19, 2022, public hearing are at dcpcsb.egnyte.com/fl/6Dvqp85UJb.

³⁹ Title II of Pub. L. 90-614, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

⁴⁰ See D.C. Official Code § 2-536(a)(5), (b) (section 206(a)(5), (b) of D.C. FOIA).

⁴¹ D.C. Official Code § 2-536.

section 6 of the Complaint. However, DC PCSB may be required to furnish records under D.C. FOIA. With respect to the Eagle Board, the failure to post its meeting minutes online violated the OMA.

F. The OMA does not mandate public comment periods.

The final section of the Complaint also relates to public comment, though specifically concerning two individuals. You argue that DC PCSB impedes or prevents public comments, or at least selectively does so.

However, the OMA does not require that public bodies permit public comment. I realize that the *SRA* requires DC PCSB to “provide a reasonable time during the meeting for public comment,”⁴² but that requirement appears in the SRA, not the OMA. (The same applies to DC PCSB’s own posted “Public Comment” page/policy.⁴³ It is beyond the scope of the OMA.)

The OMA, of course, compels public bodies to permit the public to *observe* open portions of meetings (*i.e.*, *passively*, without participating/interacting); but, as you admit concerning the September 19, 2022, meeting, DC PCSB fulfills this requirement by live-streaming its meetings.⁴⁴

Accordingly, I find this final point is meritless as a matter of law. I have not investigated the underlying allegations and take no position on their factual basis.

III. CONCLUSION AND DIRECTIVES

A. Conclusion

Based upon my investigation and analysis of the facts, I find that: (1) the Eagle Board, by not responding to OOG’s request for a copy of its February 2022 public meeting notice, conceded your allegation that the Eagle Board did not give the public OMA-compliant notice of its meeting; (2) DC PCSB has no duty under the OMA to monitor charter schools’ governing boards’ OMA compliance; (3) the Eagle Board does not post detailed meeting minutes (except for a few scattered exceptions) that are accessible on its website, and did not respond to OOG’s request for electronic recordings of its meetings; (4) the OMA does not govern DC PCSB’s maintenance or posting, nor the accuracy, of the boards of trustees of public charter schools’ meeting records; (5) any inaccuracy in DC PCSB’s statement that *it*, as opposed to Eagle, sent letters to two Advisory Neighborhood Commissioners is a harmless technical error; (6) Eagle’s transmission of its application to DC PCSB was not a “meeting”

⁴² *Id.* § 38-1802.14(b)(3) (section 2214(b)(3) of the SRA).

⁴³ [Public Comment | DC PCSB](#).

⁴⁴ Effective March 17, 2020, the Council of the District of Columbia amended the OMA to permit remote meetings not only by televising them but by otherwise “tak[ing] steps reasonably calculated to allow the public to view or hear the meeting while the meeting is taking place, or, if doing so is not technologically feasible, as soon as reasonably practicable thereafter.” See D.C. Official Code §§ 2-575(a)(4) & nts., 2-577(a)(1) & nts. Through section 5 of the Post-Public Health Emergency Protections Extension Temporary Amendment Act of 2022, effective December 21, 2022 (D.C. Law 24-226; D.C. Official Code §§ 2-575(a)(2)–(4), 2-576(6), 2-577(a)(1)), the Council intends to extend this policy until December 31, 2023.

for OMA purposes; (7) DC PCSB's not posting to the internet the audio public comments and the complete Eagle application might trigger an affirmative-disclosure requirement under D.C. FOIA, but not the OMA, so I can take no action on that point; and (8) while the SRA mandates a period of public comment the OMA does not.

B. Directives

The Eagle Board must take the following actions to ensure future OMA compliance:

(1) Record all meetings by electronic means.

(2) Make the full record of meetings, including audio or video recordings, available to the public. If bandwidth/storage capacity permits, the Eagle Board should post the electronic recordings of the open segments of meetings to its website. OOG will contact the Eagle Board to arrange an inspection of the full records of its meetings, including audio or video.

(3) Include at the bottom of all future draft and final agendas the statement "This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov."

(4) Ensure that if it posts meeting notices and other records to its website and the DC PCSB website, the content is the same.

(5) Complete (or retake) OMA training with OOG within 60 days of the receipt of this advisory opinion.

If you have any questions regarding this advisory opinion, do not hesitate to contact me or the OOG legal staff.

Sincerely,

/s/

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

cc:
Sarah H. Cheatham, General Counsel, Public Charter School Board
Aaron Lentner, Chairperson, Board of Trustees of Eagle Academy
Dr. Joe M. Smith, CEO/CFO, Eagle Academy