



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



April 1, 2026

VIA ELECTRONIC MAIL




RE: Request for Advisory Opinion Concerning the Community Review Panel's Compliance with the Open Meetings Act (#OOG-2025-0055)

Dear 

On August 1, 2025, the Office of Open Government (“OOG”) received your request for an advisory opinion (#OOG-2025-0055) (the “Request”) regarding the Community Review Panel’s (“CRP,” or the “Panel”) obligation to comply with the Open Meetings Act (“OMA”) by making its meetings open to the public. You have provided reasons why the CRP is a public body within the meaning of the OMA and requested that OOG review the matter and issue an advisory opinion to assist the CRP, and the Office of the State Superintendent of Education (“OSSE”) with understanding their legal obligations under the OMA.¹

The Office of Open Government has the statutory charge to ensure that public bodies adhere to the Open Meetings Act.² The OMA reiterates the District of Columbia’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 who represent them.”³ To support this policy, the OMA requires that its provisions be construed broadly to increase public access to public bodies’ meetings.⁴

I have reviewed and assessed your Request and pursuant 3 DCMR § 10407.1, and as the Director of Open Government, I am empowered to issue an advisory opinion at the request of a public official or an employee and on my own initiative.⁵ As ,

¹ Email from  to Office of Open Government on August 1, 2025.

² D.C. Official Code § 2-571, *et seq.*

³ D.C. Official Code § 2-572.

⁴ D.C. Official Code § 2-573.

⁵ D.C. Municipal Regulations Section 3-10407 – Public Body Requests for Advisory Opinions.

████████████████████ is not a public body, I am issuing this Advisory Opinion *sua sponte*.⁶

Based on OOG’s investigation results and the aforementioned (detailed background below), I find that the Community Review Panel is not a public body and is therefore not subject to the OMA. The Advisory Opinion begins with the facts, which include the formation and functions of the CRP, then a discussion of the OMA’s relevant Definitions and Open meetings provisions, and an examination of certain issues identified in OSSE’s response concerning the Request. The Opinion concludes with a summary of the reasons the CRP is not a public body under the OMA and advice to the Office of the State Superintendent of Education to ensure that the Office of Dispute Resolution Community Review Panel Guidance/Guidelines are not misleading to the public, specifically concerning its meeting procedures.

I. BACKGROUND

A. The Request

On August 1, 2025, you submitted the Request via email to OOG. Your Request, in part, states:

This is a request for an advisory opinion regarding the meetings held by the Community Review Panel (CRP) to advise the Office of the State Superintendent of Education (OSSE) regarding the hiring of Hearing Officers in Special Education Due Process Hearings.

We request an advisory opinion from your office regarding the obligation of the Community Review Panel to comply with the Open Meetings Act, D.C. Code § 2–572, making their meetings open to the public. This law requires D.C. agencies to open their meetings because of the policy that “all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.” We consider the Community Review Panel (CRP) to be a public matter, as these Due Process Hearings concern students with known or suspected disabilities in all DC public schools (both charter and DCPS).

Background of CRP:

The CRP functions as an advisory body to OSSE when choosing Hearing Officers to preside over Special Education Due Process Hearings. These independent Hearing Officers contract with OSSE’s Office of Dispute Resolution to resolve disputes between parents and their children’s schools about the identification, evaluation and programming for students with disabilities. These Hearings are the only venue through which students with known or suspected disabilities and their

⁶ D.C. Official Code § 2-579(g); 3 DCMR § 10407.

families can seek redress. A Hearing Officer gives the final decision on whether a child has received a Free and Appropriate Public Education, and can directly order Local Education Agencies to make changes to a child's educational program, complete evaluations, change the student's placement or provide other relief as permitted by IDEA...

The important role given to the CRP is explicitly stated in D.C. Code § 38–2572.02. (b) (d): “In selecting Hearing Officers for administering special education Due Process Hearings, OSSE shall submit potential candidates for review to a 7-member community review panel...Following its review of candidates for Hearing Officers, the community review panel shall forward its recommendations to the State Superintendent of Education.” Through this process, the CRP's meetings are the only chance that the public has to confer and gain information about the selection process of these important decision makers, the Hearing Officers, who resolve disputes between families and the DCPS or Charter schools that serve their children with disabilities.

Why should the OMA apply to the CRP?

We believe that the Open Meetings Act (OMA) should apply to the Community Review Panel for two main reasons. First is that it fits squarely with the definitions in D.C. Code § 2–574 concerning what is considered to be a “meeting” and a “public body.” Second, the CRP board is convening to advise a governmental agency in its hiring process, which is clearly a purpose covered by the OMA. According to D.C. Code § 2–574 (1), a meeting is defined “gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication.” The CRP is engaging in a meeting under this code because they are a quorum of members that are meeting at special times in order to vote and advise on public business in order to recommend specific Hearing Officer candidates to OSSE.

Next, D.C. Code § 2–574 (3) states that a public body is considered to be “any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, the board of trustees of a public charter school, or an advisory body that takes official action by the vote of its members convened for such purpose.”

There are currently public bodies that operate similarly to CRP that have the same function and are covered by the OMA. For example, the Advisory Group on

Community Use of Public Space’s primary purpose is to “provide... advice and recommendations regarding District policies and procedures related to the community use of public spaces.” Additionally, the Advisory Committee on Office Administrative Hearings is also an advisory body that advises the Chief Administrative Law Judge in carrying out their duties. Both of these organizations are similar to CRP because they all provide official advice and recommendations on issues related to public interest. However, unlike CRP, these public bodies are required to comply with OMA.

Given the D.C. Code and current examples, CRP is considered to be a public body because it is an advisory body that takes official action by the vote of its members; the action being the review of potential special education Hearing Officers. This public body has seven members made up of attorneys, parents, representatives, and educators... Therefore, we request your review of this matter and an opinion to assist the Community Review Panel and OSSE in understanding its legal obligations under the Open Meetings Act.⁷

The following is a summary of OSSE’s General Counsel’s email response to the Request and an informational meeting with OSSE’s General Counsel and Senior Assistant General Counsel, and a member of OOG’s staff concerning what is required by the Request.

B. Summary of Carol Epstein, OSSE’s General Counsel November 26, 2025, email response to the Request and a virtual meeting with Joan Lelma, Attorney Advisor (OOG) on November 20, 2025

To issue this response, OOG provided General Counsel Epstein with a redacted (for personal identifiable information) copy of the Request, thereby availing OSSE of the opportunity to respond to the said Request. The General Counsel requested a meeting with a member of OOG’s staff to discuss the Request.

On November 20, 2025, Attorney Lelma attended a virtual meeting with General Counsel Epstein and Senior Assistant General Counsel Chantel Mullen (OSSE) at which Attorney Lelma responded to their questions about whether OSSE should provide a formal written response to the Request and what the response should entail. Attorney Lelma informed General Counsel Epstein and Senior Assistant General Counsel Mullen that OOG prefers a written response to the Request and that the response should address whether the CRP is subject to the OMA, and if so, whether it is adhering to the statute.

General Counsel Epstein responded to the Request via email on November 26, 2025, and provided the following explanation regarding the CRP’s obligation to comply with the OMA by making its meetings open to the public. “... the Community Review Panel (CRP) is not and was never intended to be a public body and is therefore not subject to the Open Meetings Act

⁷ Email from [REDACTED] to Office of Open Government on August 1, 2025.

(OMA)...Rather, the C[RP] is an internal OSSE advisory group. This is evidenced by the applicable legislative history, statutory language, and structure and operational function of the C[RP].”⁸

With respect to the language of the OMA, General Counsel Epstein states the following.

The C[RP] does not meet the definition of a “public body” and does not hold meetings”; therefore, it is not subject to the requirements of the Open Meetings Act ... First, the C[RP] does not fit the definition of, nor does it function as or perform the work of a “public body.” A “public body” is one that conducts or advises on public matters, including advisory bodies...The C[RP]’s agenda and work are limited to internal applicant evaluations, it does not conduct or advise on public business. Second the C[RP] does not conduct its business in the structural or substantive form of “meetings.” ... “Meetings” require that a quorum of members be present and that the body considers, conducts, deliberates on, or advises on public business, and votes. *Id.* The C[RP] does not vote or have a quorum requirement. Instead, they rate the hearing officer interest packet and come to a consensus on the ratings. Furthermore, advisory bodies that fall within the scope of the D.C. Code § 2-574(1)(A) and (3) share consistent structural features: they are part of the District’s public governance framework, and their members are appointed through the Mayor’s authority. *See D.C. Code § 1–204.22(3)*. The members of the C[RP] do not share the structural features of a public body and are not appointed through the authority of the Mayor, they are chosen internally by OSSE staff...⁹

Concerning the legislative history of the CRP, General Counsel Epstein states as follows:

The plain language of the Committee Report indicates that the CRP was designed to be an administrative, agency internal review entity that would be embedded in the contracting process. *See Committee Report, p. 9 (B20-723) (July 10, 2014)* ...

The function of the CRP supports and reinforces the position that the C[RP] was neither intended nor created to be a public body. The CRP’s single function is to review and rate applicants whom OSSE has already screened for baseline qualifications through an OSSE managed Request for Information process.

The Office of the General Coun[sel] for the Council of the District of Columbia’s Legal Sufficiency Determination for the Act also makes clear that the CRP is considered part of an OSSE managed contracting process...¹⁰

General Counsel Epstein’s address of the CRP’s operational function is as follows:

⁸ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

⁹ *Ibid.*

¹⁰ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

The C[RP]'s unique structure and operational function, especially in comparison to District Advisory Bodies, clearly shows that it is not a "public body" and therefore not subject to the OMA. There are distinct and important fundamental differences between public advisory bodies whose appointments flow through the Mayor and groups like C[RP] who are managed by OSSE.

OSSE has three (3) public advisory bodies, The Higher Education Licensure Commission, The Public Charter School Finance Credit Committee, and the State Advisory Panel on Special Education, all are legally required to be, and are, compliant with the [OMA]. All three have very similar structures: mayoral appointments, defined terms, open meeting requirements, and public facing duties.

In addition to public advisory bodies, OSSE also has internal advisory groups. Advisory groups have a very different function, purpose, and intent than public advisory bodies. They are internal advisory groups, whose members are appointed directly by OSSE through OSSE managed application processes, and who serve in an internal consultative function. In addition to C[RP], examples of other OSSE advisory groups are the Superintendent's Advisory Councils; the Low Income Investment Fund Advisory Committee; and the Emergency Food Assistance Program (TEFAP) State Advisory Board.

The CRP is an advisory group. All seven CRP members are appointed by OSSE and not through the Mayor's Office of Talent and Appointments, which manages appointments for the District's roughly 180 public boards and commissions. The CRP has no residency requirement. CRP members serve voluntarily and without compensation and may be removed by OSSE at its discretion. The CRP does not operate on a regular schedule and convenes only when OSSE initiates the hearing officer selection cycle which is typically once every five years which is following the contract expiration period, or if there is a vacancy. There is no quorum requirement, and the CRP meetings proceed only when all members are available.

Lastly, CRP recommendations are nonbinding. OSSE retains decision making authority over candidates selected for hearing officer contracts...¹¹

The following is a summary of OSSE General Counsel's and Senior Assistant General Counsel's virtual informational meeting with two members of OOG's staff.

¹¹ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

C. Summary of a virtual meeting with OSSE's General Counsel and Senior Assistant General Counsel and OOG's staff members on February 23, 2026

On February 23, 2026, Chief Counsel Louis Neal and Attorney Lelma (OOG) attended a virtual meeting with General Counsel Epstein and Senior Assistant General Counsel Mullen (OSSE), at which the OOG's staff in attendance asked questions concerning how the CRP conducts its meetings and how the Panel's composition under specific circumstances is addressed, chiefly when a member is absent. Senior Assistant General Counsel Mullen stated that based on her research and inquiries made with certain members of staff at the Office of Dispute Resolution, the CRP does not take formal votes (with motion that is seconded) to reach a consensus on the names of applicants that are recommended to OSSE for hearing officer positions. Rather, Senior Assistant General Counsel Mullen explained that the CRP uses a two-step process at its meetings to agree on the applicants to be recommended to OSSE for hiring. The first is where each Panel member reviews the informational packets provided by OSSE with the applicants' information, and each member provides a score for each applicant. The second step at the Panel's meeting is a discussion among the members on how they score each applicant, and the members agree on the highest score for each applicant. Therefore, all the applicants receive a score, and all the scores (scored applicants) are submitted (recommended) to OSSE. However, not all applicants receive the same score, and according to the Senior Assistant General Counsel, OSSE may hire a lower scored applicant over a higher scored applicant, and vice versa.

OSSE's staff members at the meeting explained that if a member of the Panel is unable to serve, OSSE will ensure that a suitable replacement is found. As such, the Panel will not meet without the statutorily required seven (7) members present. When asked by OOG's staff members in attendance how does OSSE reconcile the following statement from the 2021 Office of Dispute Resolution Community Review Panel Guidelines with Senior Assistant General Counsel's description of how the Panel operates, she and General Counsel Epstein explained that the Panel's practice is inconsistent with the 2021 Guidelines, in so far as the Panel members do not vote as the Guidelines provide.

For convenience, rating forms shall be provided to each panel member to rate each individual applicant by rating factor. Each member shall vote for their highest rated applicants, but there must be a consensus among panel members for the applicant to be submitted to the OSSE representative for consideration. At the close of the meeting, one panel member shall submit an applicant recommendation form to the OSSE representative.¹²

¹² See

https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Final%20Community%20Review%20Panel%202021%200.pdf.

General Counsel Epstein notes that it is an inconsistency that needs to be corrected in the Guidelines to prevent any misconception by the public on how the Panel operates. She also concurs with the preceding of Senior Assistant General Counsel Mullen’s statement and corresponding explanation that the CRP members do not take formal votes at its meetings, and all the applicants are accorded a score, the scores are submitted to OSSE, and OSSE may not choose the highest scored applicant. Also, on February 25, 2026, Senior Assistant General Counsel Mullen provided OOG with a revised copy of what is now Office of Dispute Resolution Community Review Panel Guidance (“2025 Guidance”) and not Guidelines. More importantly, the 2025 Guidance does not describe how the members reach a consensus as “vote,” but that a Panel consensus takes place and the members agree.¹³

As per the 2025 Guidance, a panel consensus entails combining the individual conclusions reached by the CRP members into one technical document. A detailed consensus narrative justification is required concerning each applicant, explaining the strengths and weaknesses of each applicant based on each stated evaluation criteria. In addition, the 2025 Guidance provides that signed individual evaluation sheets must be given to the program representative at the end of the meeting, along with the completed and signed (by each member) consensus report.¹⁴

The following is a summary of information from OOG’s investigation pertinent to the matter.

D. Summary of Pertinent Research Information Concerning the Community Review Panel

The CRP for the Office of Dispute Resolution (“ODR”) at the OSSE was established by the “Special Education Due Process Hearing Independence and Transparency Act of 2014,” codified at D.C. Official Code § 38–2572.01, *et seq.* The Panel consists of seven members appointed by OSSE and is tasked with reviewing candidates’ applications and recommending them for hearing officer positions to administer special education due process in the District of Columbia. The composition of the CRP is provided at D.C. Official Code § 38–2572.02(c)(1), and is as follows:

- (A) One attorney knowledgeable in the field of special education who has experience representing parents and who is admitted to practice and in good standing in the District of Columbia;
- (B) One attorney knowledgeable in the field of special education who has experience representing schools and who is admitted to practice and is in good standing in the District of Columbia;

¹³ See attached, 2025 Office of Dispute Resolution Community Review Panel Guidance.

¹⁴ *Ibid.*

- (C) One educator knowledgeable in the field of special education and special education programming;
- (D) One representative from a charter school LEA who is knowledgeable in the field of special education and special education programming;
- (E) One representative from DCPS who is knowledgeable in the field of special education and special education programming; and
- (F) Two parents of individuals who are or at one time were eligible to receive special education and related services in the District of Columbia.

The statute provides that no member of the CRP may be an employee of OSSE.¹⁵ Further, pursuant to D.C. Official Code § 38–2572.03(a), OSSE may establish process to submit individual hearing officer’s records to the CRP for evaluation prior to the exercise of the one-year contract option. Pursuant to D.C. Official Code § 38–2572.04(a), subject to the Individuals with Disabilities Education Act (IDEA), the special hearing officer administering special due process hearings may restrict the practice of an attorney at the special hearing by way of an order, after a showing that the attorney has a pattern of filing frivolous pleadings.

The Organization, Notice of Meetings, and Meeting Format from Office of Dispute Resolution’s (“ODR”) CRP Guidelines in 2021 is as follows:

ORGANIZATION

The activities of the community review panel are governed by the “Special Education Due Process Hearing Independence and Transparency Act of 2014” and these guidelines. The community review panel will be convened by OSSE prior to the selection of Hearing Officers contracted to preside over Special Education Due Process Hearings.

NOTICE OF MEETINGS

OSSE shall provide written notice to members of the panel at least 14 days prior to the date of the scheduled meeting for applicant review. OSSE shall schedule the meeting and provide a meeting space for the panel.

MEETING FORMAT

All community review panel meetings are closed to the public. Attendance is limited only to the current seven members of the panel. A representative from OSSE shall be present to provide applicant information packets to the panel before the meeting begins and to collect applicant information packets and rating forms after the meeting has ended. However, the OSSE representative is not permitted in the room once the meeting has commenced. The community review

¹⁵ D.C. Official Code § 38–2572.02(c)(2).

panel shall convene for no more than 2 hours. For convenience, rating forms shall be provided to each panel member to rate each individual applicant by rating factor. Each member shall vote for their highest rated applicants, but there must be a consensus among panel members for the applicant to be submitted to the OSSE representative for consideration. At the close of the meeting, one panel member shall submit an applicant recommendation form to the OSSE representative. No applicant information, rating forms, or notes shall be removed from the meeting room during or after the meeting.¹⁶

OSSE’s Request for Information to Potential Respondents for Impartial Hearing Officers, Mediator and Facilitator Applicants, issued on August 1, 2025, in part is as follows:

INTRODUCTION

The Office of Dispute Resolution (ODR), within the Office of the State Superintendent of Education (OSSE), seeks a contractor to serve as an Impartial Hearing Officer (IHO), Mediator, and Facilitator.

PROGRAM BACKGROUND

ODR coordinates and manages the District’s special education dispute resolution options. The ODR program includes IHOs, who serve as Mediators and Facilitators to meet the agency’s specialized due process function as prescribed by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400. The qualified IHO will be procured under the exemption from competition provisions of the Procurement Practice Reform Act (PPRA) section 413 (3), for legal and negotiation services related to proceedings before administrative agencies, state or federal courts, including experts, attorneys, and mediators. All IHO applications will be reviewed and evaluated by a seven-member Community Review Panel (CRP) in accordance with “The Special Education Due Process Hearing Independence and Transparency Act of 2014,” DC Law 20-194.¹⁷

I now move to discuss the preceding information and the Request, commencing with what constitutes a public body under the OMA and whether the CRP is a public body within the meaning of the statute. This is followed by an examination of whether the gatherings of the CRP are considered meetings under the statute.

II. DISCUSSION

The CRP is not subject to the OMA. The CRP does not meet the statutory definition of a public body and OOG’s examination of its operations revealed that the CRP does not function as a public body. Although the CRP is established by statute and performs a governmental function,

¹⁶https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Final%20Community%20Review%20Panel%202021%200.pdf.

¹⁷<https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2025%20Impartial%20Hearing%20Officer%20RFI.pdf>.

it does not take “official action” as a collective body within the meaning of the OMA. The CRP also does not deliberate toward or vote upon a collective position. Rather, it transmits individual or aggregated evaluative inputs that OSSE may consider when selecting hearing officers. The gatherings of the CRP to perform this function within OSSE’s procurement process do not meet the definition of a meeting under the OMA. The CRP does not conduct its gatherings as a governmental deliberative body; it functions as a structured component of the agency’s procurement/hiring process. Accordingly, the CRP is not a “public body” subject to the OMA. A discussion of the factors leading to this determination follows.

A. A public body within the meaning of the OMA includes an advisory body that takes official action by the vote of its members convened for such purpose.

1. The Community Review Panel is not a statutorily created Public Body.

The determination of whether an entity is a “public body” under the OMA is dependent upon its formal establishment and its functional operation. The term “public body” in the OMA means “any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, the board of trustees of a public charter school, or an advisory body that takes official action by the vote of its members convened for such purpose.”¹⁸ The following entities are not public bodies under the OMA: a District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality); the District of Columbia courts; the Mayor’s cabinet; the professional or administrative staff of public bodies when they meet outside the presence of a quorum of those bodies; Advisory Neighborhood Commissions; and the Criminal Justice Coordinating Council.¹⁹

When an entity is not specifically excluded, the OMA’s presumption of openness leads us to conclude an entity is a public body, especially when it is created by statute. However, the statute may also point to the entity not being created as a public body, which is the case here. The CRP was created by statute, but its creation was to serve as a screening function within an agency selection process.²⁰ The Committee Report for B20-0723 distinctly states this intention: “Section 203: Clarifies that OSSE administers special education due process hearings and incorporates the review of community members into the existing contracting process for special education due process hearing officers.”²¹ The Panel’s function is embedded in a procurement

¹⁸ D.C. Official Code § 2-574(3).

¹⁹ Ibid., the temporary legislative measure concerning Criminal Justice Coordinating Council will expire on March 29, 2026.

²⁰ D.C. Official Code § 38-2572.02(d).

²¹ Council of the District of Columbia, Committee on Education, Report on Bill 20-0723, the “Special Education Student Rights Act of 2014,” at page 17 (July 15, 2014)

https://lms.dccouncil.gov/downloads/LIMS/31379/Committee_Report/B20-0723-CommitteeReport1.pdf.

process and is task-specific, so the statutory intent is not for the Panel to be a deliberative, independent entity. Thus, the CRP is not a statutorily created public body.

2. The Community Review Panel does not function as a Public Body or take official action by voting.

Even though the enabling legislation giving OSSE the authority to create the CRP did not design the “community review panel” as a public body, the OMA may apply if an entity functions as a public body and takes official action by voting. When determining an entity’s status as a public body, OOG examines the entity’s functional authority. In OOG’s *Advisory Opinion OOG-2019-004* (Local School Advisory Teams), OOG concluded that Local School Advisory Teams (“LSAT”) are subject to the OMA even though its statutory creation did not indicate it as a public body.²² Like OSSE, DC Public School (“DCPS”) was empowered by statute to create LSATs as functional entities within DCPS for a specified purpose. The operation of LSATs and their policy-making function and decision-making demonstrated that they performed a government function and took official action.²³ The conclusion rested on several factors: (1) the LSATs collectively deliberated concerning matters related to school level decisions; (2) the LSATs held regular meetings and took formal votes and (3) the LSATs formulated recommendations as a body on policy and budget matters related to public schools. The LSAT Advisory Opinion emphasized that the LSATs adopted positions by deliberation and agreement, and this was tantamount to “official action.” OOG ultimately found that the LSATs were public bodies because (1) they acted as an advisory body; (2) had a quorum of its members attending its meetings; and (3) engaged in deliberations and voting. All three criteria must be met for the OMA to apply.

In contrast, the CRP also does not function as an advisory body within the meaning of the OMA. The Panel’s consensus to recommend candidates for hearing officer positions to OSSE and how it scores candidates for (scored) submission to OSSE do not constitute voting as contemplated under the OMA.²⁴ The CRP also does not carry out an advisory function. OSSE has a procurement process where it receives scores and a summary of individual hearing officer applicant’s evaluation sheets scored by the CRP prior to making a selection.²⁵ OSSE’s Office of Dispute Resolution Community Review Panel Guidance of 2025 is clear that the nature of the proceedings at the CRP’s meetings are individual determinations followed by a group discussion for the purposes of an agreement, as opposed to a meeting where motions are made and votes are taken.

²² Office of Open Government, Board of Ethics & Government Accountability, Whether Local School Advisory Teams (“LSATs”) Are Public Bodies Subject to the Open Meetings Act (OMA Advisory Opinion, Aug. 8, 2019), <https://www.open-dc.gov/sites/default/files/DCPS%20LSAT%20Advisory%20Opinion.pdf>.

²³ *Id.* at p.3-5.

²⁴ D.C. Official Code § 38–2572.01, *et seq.*; D.C. Official Code § 2-574(3), § 2-574(1)(A).

²⁵ D.C. Official Code § 38–2572.02(d).

Assistant General Counsel Mullen explains that the consensus on the names of applicants that are recommended to OSSE for hearing officer positions are not reached via votes, but rather through discussion among the Panel’s members. The 2025 Guidance states in part: “A panel consensus is also required to combine the different conclusions reached by the CRP members into a single technical decision... Panel members should try to agree on each conclusion and its supporting rationale.”²⁶ In practice, Panel members complete scoring sheets reflecting their assessments of each applicant. The CRP then creates a single technical decision document, and these scores are transmitted to OSSE. The agency retains full discretion to select hearing officers and is not bound by the CRP’s scores. The CRP does not select candidates, rank applicants through a collective vote, or issue formal recommendations as a body. It only completes forms and submits them as a collective technical document. Unlike the LSATs, the CRP does not deliberate to reach a collective decision; the CRP does not take formal votes to reach a consensus; and the CRP does not issue a recommendation that reflects the judgment of the entity as a whole. Thus, it does not engage in formal deliberations or voting and is not a public body.

3. CRP’s non-binding recommendations are not determinative of whether it is a Public Body, but it further demonstrates that the CRP is an evaluative mechanism in OSSE’s contracting process.

The General Counsel also contends that the CRP is not a public body subject to the OMA because “CRP recommendations are nonbinding. OSSE retains decision making authority over candidates selected for hearing officer contracts.”²⁷ This issue is also discussed in Advisory Opinion #OOG-2019-0002-M, which cites the previous Opinion, #OOG-002_8.31.15. The Opinions discuss how an entity operates in practice is determinative of whether it meets the public body definition. One of the factors considered was whether the entity operated in an advisory capacity.²⁸ In that matter, the LSAT provided advice on policy that may be adopted by DCPS. The opinion also explains that acceptance of the advice given by a body to a government official/(s) is not a determinant of whether the entity is a public body within the meaning of the OMA.

In this matter, OSSE receives the Panel’s scores but is not required to select the hearing officer based upon the CRP’s highest scored applicant. The scores are not policy recommendations, but part of the contacting process. This issue alone is not dispositive on the question of whether CRP is a public body. At issue here is not whether the Panel provides a policy recommendation but whether OSSE adopts the Panel’s preferred candidate without deviation. The Panel forwards score sheets; it does not select, appoint, or bind OSSE to a hearing officer selection. Further, there are no formal votes, like the LSAT, only forms completed together. So, the CRP does not function as a public body; it does not take official action through

²⁶ See attached, 2025 Office of Dispute Resolution Community Review Panel Guidance. I will note that the publicly available outdated document, the Office of Dispute Resolution Community Review Panel Guidelines of 2021, describes the meeting procedures of the CRP with votes taken.

²⁷ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

²⁸ <https://www.open-dc.gov/sites/default/files/DCPS%20LSAT%20Advisory%20Opinion.pdf> at p.7.

voting and formal decision-making; and its decisions are nonbinding. Taken together, this looks far closer to a statutorily required evaluation committee than to a board or commission exercising governmental authority.

Based on the foregoing facts, the CRP does not take official action by the vote of its members convened for such purpose, as required by the OMA for the entity to be deemed an advisory body under the statute.²⁹ While the CRP may meet to facilitate the evaluation process, the output of its work is a compilation of evaluative inputs on forms provided by OSSE which the agency passes on to the Superintendent for the official action.

4. Response to OSSE’s Other Positions Regarding whether the CRP is a public body subject to the OMA.

The following responds to General Counsel Epstein’s statement that “advisory bodies that fall within the scope of the D.C. Code § 2-574(1)(A) and (3) share consistent structural features: they are part of the District’s public governance framework, and their members are appointed through the Mayor’s authority... The members of the C[RP] do not share the structural features of a public body and are not appointed through the authority of the Mayor, they are chosen internally by OSSE staff...”³⁰

OOG has found in two advisory opinions (#OOG-2019-0002-M and #OOG-002_8.31.15) that an entity is a public body where all the elements of a public body under the OMA are satisfied, notwithstanding the entity was established by agency directive and not by Mayor’s Order, legislation, or regulation.³¹ Also, not all public body members are appointed by the Mayor. The members of Boards of Trustees for public charter schools (“Boards of Trustees”) are not appointed by the Mayor and Boards of Trustees are public bodies under the OMA. Neither are all advisory bodies’ members appointed by the Mayor. One of the public bodies used by General Counsel Epstein to explain that the CRP is not a public body under the OMA, the Public Charter School Finance Credit Committee (the “Credit Committee”), three of its five members are appointed by the Mayor and two by the District of Columbia Public Charter School Board (“DC PCSB”).³² Even though advisory bodies such as the Credit Committee sometimes have bodies whose members are appointed by the Mayor who in turn appoint members to public bodies, as is the case with the two appointments to the Credit Committee by DC PCSB, this is not the deciding factor of the CRP’s non-public body status under the OMA.³³ The Panel does not have the elements of a public body as laid down in the statute.³⁴

²⁹ D.C. Official Code § 2-574(3).

³⁰ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

³¹ See <https://www.open-dc.gov/sites/default/files/DCPS%20LSAT%20Advisory%20Opinion.pdf>, <https://www.open-dc.gov/sites/default/files/DME%20Cross-Sector%20Collaboration%20Task%20Force%20OOG%20OPINION%20%2810.7.15%29%28OOG-0002%28Niles%29.pdf>.

³² See https://files.elaws.us/eRegs_DC/Register/2016/2016-04-01/mayor's_orders/61379.pdf.

³³ D.C. Code § 38–1802.14.

³⁴ D.C. Official Code § 2-574(3).

Noteworthy is that the Higher Education Licensure Commission (the “HELCC”) used by General Counsel Epstein in an effort to set the public body apart from the CRP and other public bodies she describes as “advisory groups” not subject to the OMA, notwithstanding Mayoral appointment of HELCC’s members, it was originally established by the Educational Institution Licensure Commission Act of 1976, and later restructured and renamed through legislation and mayoral directives.³⁵ This reinforces OOG’s preceding holding that the method by which a body was established, whether by legislation, Mayor’s Order, regulation, or agency directive is not in and of itself a determinant of its public body status under the OMA. The CRP is not a public body because it is none of the following: “an instrumentality, a board which supervises or controls an agency, the board of trustees of a public charter school, or an advisory body that takes official action by the vote of its members convened for such purpose.”³⁶ The latter is the one discussed chiefly in my opinion since whether the CRP should be categorized as an advisory body is the one description that is in issue.

Before examining the gatherings of the CRP to determine whether they are meetings under the OMA, the following statements by the General Counsel require addressing in the context of what constitutes a public body under the statute. The first is that “[t]he CRP is an advisory group. All seven CRP members are appointed by OSSE and not through the Mayor’s Office of Talent and Appointments, which manages appointments for the District’s roughly 180 public boards and commissions...”³⁷ As has been discussed in the preceding, the OMA does not require that a body be formed by Mayor’s Order to be considered a public body under the statute, and neither is appointment of the body’s members by the Mayor required to be deemed a public body under the statute. There are public bodies within the meaning of the OMA whose members were not appointed through the Mayor’s Office of Talent and Appointments. It follows that there are several public bodies subject to the OMA, that were not established and neither are the members appointed as described in OSSE’s response to the Request for Advisory Opinion. Among such are LSATs, which were created by the District of Columbia Public Schools and given delegated governmental responsibilities. Another is the Board of Trustees for DC public charter schools, which was established by legislation. Both bodies’ members are not appointed by the Mayor.³⁸

The second statement by the General Counsel in her determination that the CRP is an advisory group and not an advisory body subject to the OMA is that “the CRP has no residency requirement.”³⁹ In like manner to the appointment issue, the OMA does not have a residency requirement for public body members. The Credit Committee used in General Counsel Epstein’s comparison with the CRP and other bodies to deem the Panel a non-public body does not have a strict District of Columbia residency requirement. Mayor’s Order 2016-037 that establishes the Credit Committee states that “[t]he Committee shall consist of five (5) members, three (3) of whom shall be appointed by the Mayor and two (2) of whom shall be appointed by the Public

³⁵ D.C. Law 1-104; Mayor’s Order 89-120, dated May 31, 1989; Higher Education Licensure Commission Amendment Act of 2015; D.C. Code § 38-1303.

³⁶ D.C. Official Code § 2-574(3).

³⁷ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

³⁸ D.C. Code § 38-1802.05.

³⁹ *Ibid.*

Charter School Board (“PCSB”).⁴⁰ The Mayor’s Office of Talent and Appointments description of the membership positions states as follows concerning residency requirement: “Strong preference from DC residents from all 8 wards.”⁴¹ However, the OMA does not preclude District of Columbia residency requirement by public bodies for its members. One example of residency requirement for public body members is the Higher Education Licensure Commission.⁴² The absence of District residency requirement by the CRP does not determine its non-public body status within the meaning of the OMA.

The third statement by General Counsel Epstein in support of her conclusion that the CRP is not a public body under the OMA is as follows: “CRP members serve voluntarily and without compensation and may be removed by OSSE at its discretion.”⁴³

The OMA does not address compensation of public body members, and there are various public bodies that do not compensate their members. One such is the DC Commission on Arts and Humanities, whose members are appointed by the Mayor and serve three year term without compensation. The non-compensating public bodies include advisory bodies. Among them is the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (“COST”). Similarly to the outcome of the CRP’s function, the Administrative Law Judges that COST appoints are compensated. The hearing officers recommended by the CRP to OSSE, if hired, are compensated. However, while COST has the elements of a public body under the OMA, the CRP does not. The COST takes official action by the vote of its members convened for such purpose.⁴⁴ Also, the OMA does address the removal of public body members. Therefore, removal of Panel members by OSSE at its discretion is not dispositive of whether the CRP is a public body.

Furthermore, one of the public bodies used in General Counsel Epstein’s response to demonstrate that the CRP is not subject to the OMA, the State Advisory Panel on Special Education (the “Advisory Panel”), does not mandate compensation for its members. Mayor’s Order 2012-48 states that “[m]embers of the Advisory Panel shall serve without compensation, except that a member may be reimbursed for expenses incurred in the authorized execution of official Advisory Panel duties, if authorized in advance by the Office of the State Superintendent of Education (OSSE), or designee, and as supported by budget appropriation and authority.”⁴⁵ The Credit Committee shows more restraint in compensation by not providing any form of compensation for its members. Mayor’s Order 2016-037 states that “[t]he members of the Committee shall serve without compensation.”⁴⁶ The CRP’s members non-compensation is not a determinant of whether it is a public body under the OMA.

⁴⁰ See https://files.elaws.us/eRegs_DC/Register/2016/2016-04-01/mayor's_orders/61379.pdf.

⁴¹ See <https://motaboardsofapplytojob.com/apply/1GhvsY/Public-Charter-School-Credit-Enhancement-Fund-Committee-CDCR-26A2600>.

⁴² See <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/HELC%20Member%20Duties.pdf>.

⁴³ Email from General Counsel Carol Epstein (OSSE) to Attorney Advisor Joan Lelma (OOG) on November 26, 2025.

⁴⁴ D.C. Official Code § 2-574(3).

⁴⁵ See <https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/2012-48%20Establishment%20-%20State%20Advisory%20Panel%20on%20Special%20Education%20for%20the%20District%20of%20Columbia.pdf>.

⁴⁶ See https://files.elaws.us/eRegs_DC/Register/2016/2016-04-01/mayor's_orders/61379.pdf.

I, now move to discuss whether the gatherings of the CRP are meetings within the meaning of the OMA.

B. A meeting as defined by the OMA requires a quorum of the public body gathered to consider, conduct or advice on public business, which includes recommending and voting.

The OMA applies to public body meetings where there is a “gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business” (D.C. Official Code § 2-574(1)). Chance or social gatherings are not meetings under the OMA. However, a public body is not permitted under the OMA to cloak its public meetings in a chance or social gathering to circumvent the statute, which includes conducting public business in the absence of quorum.⁴⁷

The gatherings of the CRP are not considered meetings within the meaning of the OMA because the Panel is not a public body. As discussed in the preceding, the Panel does not take official action by the vote of its members present at the meetings.⁴⁸ Therefore, a discussion concerning quorum is not warranted.

Where an entity is found to be a public body under the OMA and a meeting within the meaning of the OMA has been conducted, all the requirements of the OMA must be adhered to.⁴⁹ Among the requirements are that “Notice shall be provided when meetings are scheduled and when the schedule is changed ... A public body shall attempt to provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.”⁵⁰ Also, open and closed session meetings must be recorded, and the former must be available to the public. D.C. Official Code § 2-578(a) states, “All meetings of public bodies, whether open or closed, shall be recorded by electronic means, and the recording shall be preserved for a minimum of 5 years; provided, that if a recording is not feasible, detailed minutes of the meeting shall be taken and preserved for a minimum of 5 years.” The CRP is not a public body, and as such, there is no requirement for its meetings to conform with the OMA.

I now move to discuss an assertion in the Request that there is a legal requirement for District of Columbia government agencies to open their meetings to the public.

C. Agencies are not public bodies within the meaning of the OMA.

You state in your Request as follows: “We request an advisory opinion from your office regarding the obligation of the Community Review Panel to comply with the Open Meetings Act, D.C. Code § 2-572, making their meetings open to the public. This law requires D.C.

⁴⁷ D.C. Official Code § 2-574(1)(B).

⁴⁸ D.C. Official Code § 2-574(3).

⁴⁹ Ibid.; D.C. Official Code § 2-574(1)(A).

⁵⁰ D.C. Official Code § 2-576(1).

agencies to open their meetings because of the policy.”⁵¹ District of Columbia agencies are not required under the OMA to make their meetings accessible to the public. Government agencies are not public bodies under the statute. However, a board which supervises or controls an agency is a public body within the meaning of the OMA.⁵² This is not the case concerning the CRP; it is not a board that supervises an agency and neither is it an advisory body within the meaning of the OMA. The Panel does not take official action by vote whenever it meets to recommend members as hearing officers to the OSSE. Thus, OSSE is not required to adhere to the OMA.

III. CONCLUSION

A. Conclusion

Based on the statute establishing the Panel and how the OMA defines a covered “public body,” the CRP is a time-limited advisory review mechanism to OSSE, not an independent deliberative public body, and therefore is not subject to the OMA. D.C. Official Code § 38-2572.02 establishes the statutory framework for special-education due-process hearing independence. The operative provisions require OSSE to: (1) submit potential hearing-officer candidates to a 7-member community review panel for evaluation; (2) ensure the panel is composed of specified stakeholder categories (attorneys, educators, LEA/DCPS representatives, and parents); (3) prohibit members from being OSSE employees; and (4) have the panel forward recommendations to the State Superintendent of Education after reviewing candidates. The statute does not require OSSE to grant the Panel delegated decision-making authority.

Thus, the Panel was created by statute and performs a governmental function. However, creation and function alone are not dispositive of OMA coverage. The CRP satisfies two of the three threshold elements of the OMA definition of a public body: (1) statutorily created entity; (2) performs a governmental function; and (3) takes official action by vote on public business. The CRP is a multi-member entity and was created by statute. It also performs a governmental function by participating in the evaluation of candidates for public positions. However, as OOG has previously explained, these characteristics alone are insufficient. The OMA requires that the entity also “take official action” as a body. The CRP was created by statute to perform a screening role inside OSSE’s executive selection process where the agency takes the official action.

The OMA only applies when there is a meeting of a “public body” that takes official action by vote on public business. Our investigation revealed that the CRP is not a public body and does not vote. Several statutory design features also point away from OMA coverage. The CRP is purely advisory to a single executive official (OSSE Superintendent). The Panel’s function is embedded in a procurement-style evaluation process. It forwards collective forms and it does not select, appoint, or bind the agency to a specific hearing officer selection. Hearing officers are procured and managed through OSSE’s dispute-resolution program, with the CRP’s review functioning as part of that administrative vetting. The CRP operates on a task-specific basis and is convened only during hearing officer selection cycles, rather than serving as a

⁵¹ Email from [REDACTED] to Office of Open Government on August 1, 2025.

⁵² D.C. Official Code § 2-574(3).

standing, continuously constituted body. The CRP also does not have independent supervisory nor policy authority over OSSE. The OMA applies to bodies that “supervise or control an agency” or “take official action;” the CRP does neither. The CRP does not function as an advisory body to the OSSE; it does not take official action by the votes of its members convened to recommend candidates (or submit scored candidates) for hearing officer positions to OSSE.⁵³ Therefore, I find that the Community Review Panel is not a public body within the meaning of the OMA and is it therefore not subject to the statute.

Lastly, I am providing a cautionary note regarding D.C. Freedom of Information Act (D.C. FOIA) compliance.⁵⁴ The challenge posed to OOG of the Community Review Panel as being subject to the OMA is not frivolous. It focuses less on what the statute *calls* the panel and more on how it functions in practice as described in the 2021 Office of Dispute Resolution Community Review Panel Guidelines. The Office of the State Superintendent of Education must ensure that the Office of Dispute Resolution Community Review Panel Guidance/Guidelines always correctly state the meeting procedures of the Panel and make its final document publicly available under D.C. FOIA.⁵⁵ This cautionary measure stems specifically from the description in the 2021 Office of Dispute Resolution Community Review Panel Guidelines that the Panel’s members vote to recommend or submit candidates for hearing officer positions to OSSE, and considering certain OSSE staff members’ explanation, is inconsistent with the CRP’s actual meeting procedures. The 2021 Office of Dispute Resolution Community Review Panel Guidelines invites an OMA challenge because that document describes an entity that functions as a public body. Even though the 2025 Guidance eliminates the description of “vote” for the Panel’s members to submit scored candidates to OSSE for consideration as hearing officers, I see fit to provide this caution to prevent any reoccurrence of misleading the public about how the CRP conducts its meetings. As of the date of this opinion, the 2025 guidance is not available for public viewing. To properly inform the public, update your policy documents and make them publicly available under D.C. FOIA requirements. We also encourage OSSE to revise or replace the 2025 Guidance to reflect the agency’s actual practice, described in detail in this advisory opinion.

Your Request is attached, along with the 2025 Guidance referenced in this Advisory Opinion. Please contact Attorney Lelma at joan.lelma@dc.gov, if you have any questions about this Advisory Opinion.

Sincerely,



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

⁵³ D.C. Official Code § 38–2572.01, *et seq.*; D.C. Official Code § 2-574(3), § 2-574(1)(A).

⁵⁴ Title II of Pub. L. 90-614, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).

⁵⁵ D.C. Official Code § 2-536(b).

CC: *Via Electronic Mail*
Ms. Carol Epstein, Esq.
General Counsel
Office of the State Superintendent of Education
1050 First Street, NE
Washington, DC 20002
Carol.Epstein1@dc.gov