

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



August 30, 2021

VIA ELECTRONIC MAIL

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

RE: Guidance on the Retention of a Public Body’s Meeting Records and the Public Inspection of Meeting Records Under the Open Meetings Act

Dear Chairperson Cruz:

This correspondence is in response to your request for clarification regarding the Open Meetings Act’s (“OMA”) public meeting record retention and public inspection requirements. You specifically requested guidance regarding the length of time that the District of Columbia Public Charter School Board’s (“Board”) records must be made available for public inspection over the course of the OMA’s five-year record retention period. An analysis of your question follows.

The purpose of the OMA is to provide the public full and complete information regarding the affairs of government and any official actions taken by government officials.¹ To that end, the OMA requires that records of meetings be made, preserved and available for public inspection. The OMA’s “Record of meetings” provisions, set forth in D.C. Official Code § 2-578, governs record preservation and public inspection of public meeting records. Yet, it does not define the term “public inspection” or specify how long the Board’s Public Meeting Materials and electronic meeting recordings must remain on the Board’s website. However, the Office of Open Government (“OOG”) has provided guidance on the issue.

On December 12, 2013, OOG issued an advisory opinion that interpreted the term “public inspection” to require public bodies to post public meeting notices, agenda, and meeting minutes on their websites (“Public Meeting Materials”).² The advisory opinion also established the requirement that public bodies make electronic recordings available to the public upon request and directed public bodies to post Public Meeting Materials for a minimum of one year, from the date of the meeting, and up to five-years, if server capacity allows. It also required public bodies to

¹ D.C. Official Code § 2-572.

² See OOG advisory opinion, “Posting of Meeting Minutes, Transcripts, Electronic Recordings” here <https://www.open-dc.gov/documents/oma-advisory-opinion-posting-meeting-minutes-transcripts-electronic-recordings>.

make electronic meeting recordings available to the public upon request during the record retention period.

In light of that 2013 advisory opinion, OOG now interprets the term “public inspection” in D.C. Official Code § 2-578(b) in concert with D.C. Official Code § 2-576(2)(B) where notice shall be provided by posting on the website of the public body or the District government’s website.³ Public inspection requires: (1) posting meeting notices, agenda, and detailed meeting minutes on a public body’s website; and (2) making electronic meeting recordings available upon request. The OMA’s “Record of meetings” provisions, found in D.C. Official Code § 2-578, are also instructive. D.C. Official Code § 2-578(a) requires preservation and retention of all meeting records for a minimum of five-years.

Based upon OOG’s previous advisory opinion and the provisions of the D.C. Code mentioned above, I am requiring the Board to maintain Public Meeting Materials on the Board’s website for at least one year and for up to five-years, if the server capacity on your website allows.⁴ If the Board’s website’s server capacity will be jeopardized by this requirement, the information may be stored offsite and made available upon request after one year. You must note on your website what information has been removed and how the public may request the information. The Board must report to OOG in thirty (30) business days from the date of this correspondence if its server capacity prohibits retention on its website for longer than one year.

Regarding public portions of electronically recorded meetings, the Board does not need to post these files on the Board’s website, but they must be made available to the public upon request. With respect to closed sessions, the public is not entitled to access meeting minutes, transcripts, or electronic recordings of closed sessions.⁵ If the Board has the capacity to post electronically recorded meetings to the Board’s website, the files should be posted with Public Meeting Materials.⁶ If server capacity will be jeopardized, electronically recorded meetings may simply be stored and made available upon request. The Board must report to OOG in thirty (30) business days from the date of this correspondence if its server capacity will be jeopardized.

If there is a need to discuss this matter further, please do not hesitate to contact me or my staff at 202-481-3411 or opengovoffice@dc.gov.

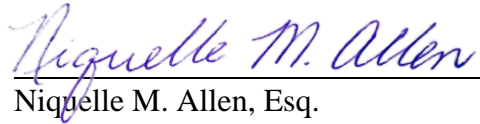
³See OOG advisory opinion, “Posting of Meeting Minutes, Transcripts, Electronic Recordings” here <https://www.open-dc.gov/documents/oma-advisory-opinion-posting-meeting-minutes-transcripts-electronic-recordings>.

⁴ You are cautioned not to dispose of public meeting records after expiration of the five-year retention period. 3 DCMR § 10409.8 states: “A Public Body shall retain all electronic recordings of meetings and written minutes pursuant to District law and shall comply with the District of Columbia General Records Schedules concerning the disposition of its electronic meeting recordings and written meeting minutes.” Please confer with the D.C. Archivist before disposing of any records.

⁵ D.C. Official Code § 2-578(b).

⁶ D.C. Official Code § 2-578(b)(2).

Sincerely,



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

cc: Sarah H. Cheatham, General Counsel
D.C. Public Charter School Board