



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



July 21, 2025

VIA ELECTRONIC MAIL



**RE: Resolution of Complaint Concerning Sela Public Charter School
Board's Compliance with the Open Meetings Act
(#OOG-2024-0011)**

Dear 

On December 17, 2024, the Office of Open Government (“OOG”) received your complaint (#OOG-2024-0011) (“Complaint”) alleging that Sela Public Charter School Board (“SPCSB”) “seem to violate at least the spirit”¹ of the Open Meetings Act (“OMA”) because of a directive with certain public comment requirements posted by the chairperson of SPCSB concerning the latter’s open session meetings. In addition, you expressed concern that the public comment guidelines provided by the chairperson of SPCSB “would seem to constitute viewpoint discrimination.”²

The OMA reiterates the District of Columbia government’s (the “District”) long-standing public policy that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.³ To support this policy, the OMA provisions “shall be construed broadly to maximize public access to meetings.”⁴ After reviewing and assessing your complaint⁵, I find that SPCSB did not violate the OMA, because while the statute requires a public body’s meetings to be open to the public with specific exceptions,⁶ the OMA does not require a public body to allow public comment at such meetings. Further, SPCSB’s Bylaws do not address public comment. Content of speech permitted by a public body in public session is also not addressed by the OMA. As such, I find no OMA violation and must dismiss this matter pursuant to 3 DCMR § 10403.1(b) because the action complained of does not violate the OMA. The justification for the dismissal follows.

My analysis begins with the facts, then a discussion of the OMA’s meeting procedures provisions. I conclude with a discussion of my enforcement authority under the OMA.

¹ Email from  to Office of Open Government (OOG) on December 17, 2024.

² Ibid.

³ D.C. Official Code § 2-572.

⁴ D.C. Official Code § 2-573.

⁵ 3 DCMR § 10400 *et seq.*

⁶ D.C. Official Code § 2-575 (a), (b).

I. BACKGROUND

A. The Complaint

On December 17, 2024, you submitted the Complaint via email to the OOG. Your Complaint, in part, states:

Our charter school (Sela Public Charter School) has public meetings once a month - and no guidance for these meetings has ever been publicly posted. In response to recent parental concerns - the new Board Chair posted the following directive:

Open Session / Public Comment Requirements: – Negative/constructive commentary or feedback on Sela staff and/or staff performance is [] strictly prohibited in open session and public comment. This is reserved for closed session [] (board members) or through writing to the full board (non-board members). – Public Comment can be positive or congratulatory in nature and is, in fact, encouraged. – Public Comment is timed (15 minutes) and not all comments/voices may have time to be heard during the meeting, in which case written formats are encouraged. We hear one [] speaker at a time; please be brief. The Board does not commit to answering questions or making commitments during this time. If such actions are necessary, they will be done in [] writing and posted publicly sometime after the meeting (after debate/agreement by Board). – Speakers should use “I” statements based on personal experience or thoughts/feelings. Do not repeat hearsay or assumptions but do use facts and precise language/data. Public Comment time is a courtesy, not a requirement, unless an announcement has been made to: [] Change in the mission, goals, academic expectations, and governance structure; Change in the grades served; Change in enrollment; Change in location of the school or to add an additional facility/campus. Abuse of this courtesy can result in immediate changes to the agenda.

These guidelines seem to violate at least the spirit of the Open Meetings Act. Moreover, as SCOTUS has repeatedly indicated, state actors may not discriminate against speech based on the ideas or opinions it conveys.

See *Rosenberger v. Rector and Visitors of Univ. of Va.* 515 U. S. 819, 829–830 (1995) (explaining that viewpoint discrimination is an “egregious form of content discrimination” and is “presumptively unconstitutional”); *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019) (internal citations omitted).

Accordingly, these guidelines would seem to clearly constitute viewpoint discrimination. That is, once a school board allows public content - they cannot then censor public comment based on viewpoint to sanitize the meeting and its attendant meeting notes.

The following is a summary of SPCSB chairperson's email response to the Complaint.

B. Summary of SPCSB chairperson's January 13, 2025, email response to the Complaint

In order to issue this response, OOG provided the chairperson of SPCSB with a redacted (for personal identifiable information) copy of the Complaint, thereby availing the chairperson of the opportunity to respond to the said Complaint. The chairperson responded via email on January 13, 2025, and provided the following explanation for how public comments are conducted at SPCSB's meetings and the reasons SPCSB has not violated the OMA as alleged in the Complaint. The chairperson explains that in November of 2024, SPCSB commenced allowing fifteen minutes for public comment at its meetings, if the time permits. The chairperson further explains that disparaging remarks or the filing of complaints against members of staff of Sela Public Charter School is prohibited during the time allotted for public comment, as SPCSB has provided more appropriate ways for filing complaints.

The chairperson relates that SPCSB has complied with the OMA by permitting open attendance and viewing of its meetings, but the OMA does not require that the public participate, vote, or speak at a public body's meeting. In addition, the chairperson asserts that the cases cited in the Complaint are inapplicable to SPCSB's meetings and the Complaint must be dismissed.⁷

I now move to discuss the Complaint, commencing with public comment in relation to the OMA.

II. DISCUSSION

A. The OMA does not require a public body to allow public comment at open meetings, and therefore, the action complained of is beyond the scope of the OMA, as the OMA does not address public comments at open session meetings. A public body's enabling legislation may require public comment and the said legislation and body's by-laws may regulate how the comments are made.

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)). The term "public body" 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."⁸ The OMA applies when members of a public body meet as a quorum and conduct any form of public business.

⁷ Email from the chairperson of SPCSB to Attorney Advisor Joan Lelma (OOG) on January 13, 2025.

⁸ D.C. Official Code § 2-574(3).

While the OMA applies to a public body's meetings, there are specific matters concerning a public body's meetings that are not addressed by the OMA. One such is the public's right to comment at a public meeting. The OMA is silent on this matter.

D.C. Official Code § 2-574(a) deems a meeting open to the public, if the public is permitted to be physically present, the news media is permitted to be physically present, [and] or the meeting is televised. There are specific exceptions that allow a public body to have closed session meetings.⁹ Notwithstanding the preceding, the public's right of access to a public body's meetings does not equate to the public's right to comment at such meetings.

Based on the preceding, the chairperson's guidelines for public comment at SPCSB meetings, which includes a prohibition of negative comments on the performance of the staff of Sela Public Charter School and allowance of positive comments concerning the staff's performance, have not violated the OMA. Furthermore, Sela Public Charter School's (otherwise known as D.C. Hebrew Language Charter School) by-laws do not address public comments at SPCSB's meetings. SPCSB would only be required to allow public comment at its meetings if the SPCSB's enabling legislation mandated a period for public comment. There is no such mandate. However, in the absence of a statutory requirement, SPCSB may allow public comment at its open sessions. Additionally, SPCSB has the right to regulate the time allotted for and the duration of the public's comments at such meetings, unless SPCSB's enabling legislation or by-laws specifically addresses how public comments are to be made, which includes the duration.

Most relevant to this matter is the Charter School Agreement between the District of Columbia Public Charter School Board and D.C. Hebrew Language Charter School, doing business as, Sela Public Charter School, dated July 1, 2013 (the "Agreement"), which provides information on how it intends to conduct its meetings. The Agreement, which concerns public comment, among other matters, provides: "[w]ith respect to open meetings, Sela PCS will encourage families, students, teachers, other staff and other stakeholders to attend, listen, and comment on the school's educational program by posting meeting notices and agenda on the school website, at the school, and at the meeting location if different from the school site."¹⁰ The Agreement appears to provide that there should be a period for public comment. However, the interpretation of the terms of the Agreement and any enforcement of its terms is the jurisdiction of the District of Columbia Public Charter School Board (DCPCSB).¹¹

Considering SPCSB's by-laws do not provide for public comment and SPCSB is not obligated by its by-laws to allow public comment at its meetings, the Complaint does not raise issues within the scope of the OMA. Furthermore, as I have explained in the preceding, if SPCSB permits public comment, the determination on how such comments are received and its content does not rest with the Office of Open Government. It is governed by the terms of the Agreement, which is enforced by DCPCSB. The question of whether SPCSB has engaged in

⁹ D.C. Official Code § 2-575(b).

¹⁰ <https://www.dcpsb.org/sites/default/files/media/file/2013-07-01-SELA-Charter-Agreement.pdf>.

¹¹ See D.C. Official Code § 38-1802.11(a)(3). The statute provides that DCPCSB is empowered to monitor whether a school is meeting its charter obligations; and D.C. Official Code § 38-1802.13(a) permits DCPCSB to revoke or decline to renew a charter if the school violates its charter agreement.

viewpoint discrimination and has thus violated the Agreement is also a matter under DCPCSB's jurisdiction.

B. OOG advocates for openness and transparency of District of Columbia Government. While OOG's authority to enforce the OMA does not specifically speak to the public's First Amendment right to freedom of speech, the Complaint requires addressing this issue.

You state in your Complaint that the guidelines provided by the chairperson of SPCSB "seem to violate at least the spirit of the Open Meetings Act,"¹² and "the guidelines would seem to clearly constitute viewpoint discrimination."¹³ I have provided the reasons in the preceding discussion why the guidelines presented by the chairperson for the public's comments at open meetings do not violate the OMA. In addition, as it relates to the alleged appearance of viewpoint discrimination, OOG adheres to the following: "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."¹⁴ However, while the OOG is fully guided by the preceding statement of policy and advises, instructs, and enforces the OMA to ensure that the exceptions to the right of the public to a public body's meetings are narrowly construed,¹⁵ this does not extend to an examination of a body's determination of the content of the public's speech during public comment. Therefore, I am not required to determine whether the guidelines presented by the chairperson on behalf of SPCSB violate the public's First Amendment right to freedom of speech.

As mentioned above, public charter schools in the District of Columbia are governed and monitored by DCPCSB. If a charter school fails to meet its obligations, DCPCSB is responsible for monitoring and enforcing the charter agreement. The question of whether SPCSB's policies for receiving comments amount to viewpoint discrimination and/or violate its charter is for DCPCSB to resolve, as DCPCSB is empowered to monitor the charter school's operations and take corrective action, if necessary. You may submit a complaint to DCPCSB here: <https://dcpcsb.org/complaints>.

III. CONCLUSION

The public body's receipt of public comments in the public body's open sessions does not raise issues violative of the OMA unless the public body's enabling statute or by-laws require the receipt of those comments. The facts alleged in the Complaint do not amount to a violation of the OMA. Further, the Complaint's allegations that the chairperson's guidelines for SPCSB "seem to violate at least the spirit of the Open Meetings Act,"¹⁶ and "the guidelines would seem to clearly

¹² Email from [REDACTED] to Office of Open Government (OOG) on December 17, 2024.

¹³ Ibid.

¹⁴ D.C. Official Code § 2-572.

¹⁵ D.C. Official Code § 2-573.

¹⁶ Email from [REDACTED] to Office of Open Government (OOG) on December 17, 2024.

constitute viewpoint discrimination”¹⁷ are outside the scope of the OMA. I am only empowered to seek injunctive and declaratory relief when certain OMA violations have occurred.¹⁸ Because your complaint does not establish a violation of the OMA, I am dismissing it for the reasons stated herein, and under the OOG’s regulations.¹⁹ Attached is a copy of your Complaint.²⁰

If you have any questions or concerns, contact OOG Attorney Joan Lelma at joan.lelma@dc.gov.

Sincerely,



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

¹⁷ Ibid.

¹⁸ See D.C. Official Code § 2-579.

¹⁹ 3 D.C.M.R. § 10403.1 (“The Director [of Open Government] may dismiss a complaint on one or more of the following grounds: . . . (b) The action complained of does not violate the [OMA]).

²⁰ See 3 DCMR § 10403.2.