

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



November 5, 2019

VIA ELECTRONIC MAIL

D. Scott Barash
General Counsel
District of Columbia Public Schools
1200 First Street, NE, 10th Floor
Washington, DC 20002
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RE: Complaint Concerning Maury Elementary School LSAT Compliance with the OMA
Complaint #OOG-2019-0007-M

Dear Mr. Barash:

As you are aware, on August 5, 2019, I issued an advisory opinion and concluded that Local School Advisory Teams (“LSATs”) are public bodies subject to the Open Meetings Act (D.C. Official Code § 2-571 *et seq.*) (“OMA”).¹ In an August 29, 2019 advisory opinion,² I also found that the Maury Elementary School Local Advisory Team (“Maury LSAT”) violated the OMA, on April 23, 2019, by failing to record its meeting by electronic means (D.C. Official Code § 2-578(a)); and, the Maury LSAT violated the District of Columbia Freedom of Information Act by failing to make its meeting minutes available to the public (D.C. Official Code § 2-536(a)(7)). To ensure future compliance with the OMA, I directed that the Maury LSAT undergo the Office of Open Government’s (“OOG”) OMA training. The current members of the Maury LSAT completed OMA training on October 21, 2019.

On September 13, 2019, the OOG received Complaint #OOG-2019-0007-M (“Complaint”), which alleged OMA violations by the Maury LSAT. The OOG provided your office with a copy of the Complaint. In a subsequent telephone conversation between OOG staff and a DCPS attorney, DCPS admitted to the Complaint allegations concerning the Maury

¹View the Advisory Opinion here: <https://www.open-dc.gov/documents/whether-local-school-advisory-teams-lsats-are-public-bodies-subject-oma>.

² The complaint was filed with the OOG on May 23, 2019. View the Advisory Opinion here: https://www.open-dc.gov/sites/default/files/Maury%20LSAT%20Advisory%20Opinion_August%2029%202019%20%28004%29.pdf.

LSAT's violations of the OMA. For reasons discussed below and pursuant to the OOG's regulations, OOG staff asked the complainant to withdraw the Complaint because the OOG had not yet trained the Maury LSAT on the OMA. Since DCPS admitted to the violations, the OOG's request to withdraw the Complaint was an attempt to resolve the Complaint through conciliation.³ The complainant did not want to withdraw the complaint.⁴ Thus, I am issuing the following Advisory Opinion, pursuant to the OOG's statutory authority, to resolve OMA complaints.

The purpose of the OMA is to provide the public with full and complete information regarding the affairs of government and any official actions taken by government officials (D.C. Official Code § 2-572). For that reason, the OMA requires that a public body: (1) publicly provide advance notice of its meetings; (2) timely publish in the D.C. Register a yearly calendar of meetings and notice of its upcoming meetings (D.C. Official Code §§ 2-576(1); 2-576(3)); (3) record all meetings by electronic means (D.C. Official Code § 2-578(a)); and, (4) timely make open meeting records publicly available (D.C. Official Code § 2-578(b)).

As discussed below, the Maury LSAT admitted it violated the OMA by: (1) failing to provide the statutory required notice to the public of its September 10, 2019 meeting (D.C. Official Code §§ 2-576(1); 2-576(5)); (2) failing to record the meetings by electronic means (D.C. Official Code § 2-578(a)); and (3) failing to make draft meeting minutes publicly available within three business days after the meeting, and the full record including any recording or transcript, within seven business days of the meeting (D.C. Official Code § 2-578(b)).

I. BACKGROUND

The Complaint and DCPS' Response to the Complaint.

The OOG received the Complaint on September 13, 2019, which alleges the Maury LSAT violated the OMA by failing to notice to the public its September 13, 2019 meeting and to record the meeting by electronic means. DCPS admits to the OMA violations. Due to DCPS' admission, pursuant to 3 DCMR § 10401.2, and for the following reasons the OOG asked the complainant to withdraw the Complaint: (1) at the time of the September 10, 2019 meeting, the Maury LSAT consisted of newly elected members that were not OMA trained; (2) the OOG firmly established October 21, 2019, as the date the Maury LSAT would receive OMA training; (3) after it was notified of the September 10, 2019, OMA violations, DCPS advised the Maury LSAT on OMA compliance for future meetings; and (4) DCPS distributed to the LSATs updated LSAT Guidelines that included the OMA requirements for lawfully conducting meetings. The complainant declined to withdraw the Complaint and requested that the OOG issue this advisory opinion. An analysis of the OMA as applied to the admitted violations follows.

³ 3 DCMR § 10404 empowers the OOG to conciliate complaints as a means of resolution.

⁴ 3 DCMR § 10401.2, reads; "[A] Complainant may withdraw a complaint at any time prior to the Director's issuance of an advisory opinion"

II. DISCUSSION

A. *The Maury LSAT violated the OMA when it failed to provide advance public notice of its September 10, 2019, meeting.*

Before a public body may lawfully conduct a meeting, the OMA requires that it provide specific forms of advance public notice. D.C. Official Code § 2-576 governs how to schedule, change or cancel meetings. The OMA “Notice of meetings” provisions require public bodies to provide advance public notice of meetings and a planned meeting agenda prior to conducting a meeting.⁵ The OMA also requires that public bodies post meeting notices, as follows: (1) physically in the office of the public body or a location that is readily accessible to the public; and, (2) electronically on the website of the public body or the District government.⁶ A public body must post these notices not less than 48 hours or 2 business days, whichever is greater, before a meeting.⁷ Additionally, a public body must timely publish an annual schedule of its meetings⁸ and notice of forthcoming meetings⁹ in the D.C. Register. The Maury LSAT failed to provide any advance public notice of its September 10, 2019 meeting. It also did not provide a physical or electronic posting of the meeting notice with agenda as required by the OMA, nor did it provide publish these items in the D.C. Register as required by the OMA.

To explain the Maury LSAT’s failure to provide public notice in the D.C. register, on October 28, 2019, in email to OOG staff, a DCPS attorney stated that the Office of Documents and Administrative Issuances (ODAI) policy only allows District government employees access to publish meeting notices and meeting schedules in the D.C. Register. Since the ODAI policy only permits District government employees to publish in the D.C. Register and the Maury LSAT is not comprised of any DC government employees, it could not publish proper notice. Therefore, I will not find the Maury LSAT in violation of D.C. Official Code §§ 2-576(1); 2-576(3) because it is unclear if the Maury LSAT members could publish their notices with the ODAI.¹⁰ Notwithstanding, until these issues are clarified, I require all LSATs to also publish their yearly calendars and notices of upcoming meetings on the central meeting calendar that the OOG maintains.

B. *The Maury LSAT violated the OMA by failing to record its September 10, 2019, meeting by electronic means and timely making the records of this meeting publicly available.*

1. *D.C. Official Code § 2-578(a) requires that all meetings whether open or closed to be recorded by electronic means.*

D.C. Official Code § 2-578(a) requires that “all meetings of public bodies, whether opened or closed shall be recorded by electronic means. . . .” A public body may comply with the statute by recording the meeting using a cellular device, digital recorder, lap top, video recorder, or other electronic means. The Maury LSAT admits that it did not record the September 10,

⁵ D.C. Official Code § 2-576.

⁶ D.C. Official Code § 2-576(2).

⁷ D.C. Official Code § 2-576(1).

⁸ D.C. Official Code § 2-576(1).

⁹ D.C. Official Code § 2-576(3).

¹⁰ D.C. Official Code § 2-576(1) regulates more than the D.C Register publication requirements. Therefore, my finding is limited to the extent that this provision requires publication in the D.C. Register.

2019, meeting by electronic means. Therefore, I find its failure to do so violated D.C. Official Code § 2-578(a).

2. *D.C. Official Code § 2-578(b) provides the schedule for making meeting records publicly available.*

D.C. Official Code § 2-578(b) contains the OMA’s “Recording of meetings” provisions. It requires that a copy of the meeting minutes must be available for public inspection no later than three (3) business days after the meeting.¹¹ An OOG Advisory Opinion, issued on December 12, 2013, interpreted the requirements of D.C. Official Code § 2-578(b)(1) as follows: “[A]s the majority of boards and commissions are unable to post meeting minutes within the (3) business days required under the Open Meetings Act, draft meeting minutes must be posted within three (3) business days upon the conclusion of the meeting, with a notation at the top of the document that full meeting minutes will be posted to the website on the next meeting date of the board or commission.”¹² With respect to electronic recordings, the OMA requires a public body to make the meeting transcript or recording available no later than seven (7) business days after the meeting.¹³

The Maury LSAT did not make any of its September 10, 2019 meeting records publicly available on a timely basis, in accordance with the OMA. DCPS admits to the failure of the Maury LSAT to timely make the records publicly available. Therefore, I find that the Maury LSAT violated the OMA’s “Record of meetings” provisions.

III. CONCLUSION AND COMPLIANCE DIRECTIVES

A. Conclusion

The Maury LSAT violated the OMA when it failed to take the following actions: (1) provide the statutory notice to the public of its September 10, 2019 meeting; (2) record the September 10, 2019, meeting by electronic means; and (3) make draft meeting minutes publicly available within three business days of the meeting, and the full record of the meeting, including any recording or transcript, available within seven business days after the meeting. However, because ODAI’s policy restricts access to publish in the D.C. Register to District government employees, the Maury LSAT did not violate the OMA’s requirements to publish meeting notices in the D.C. Register (D.C. Official Code §§ 2-576(1); 2-576(3)).

The Maury LSAT has taken corrective measures, with respect to its September 20, 2019 meeting, prior to the issuance of this Advisory Opinion. The Maury LSAT has published, albeit untimely, the September 10, 2019 public meeting notice and meeting minutes on its website. However, these retroactive measures are ineffective to cure the public’s right to attend a meeting that has already occurred. Additionally, the Maury LSAT failed to electronically publish the required draft meeting agenda for the September 10, 2019 meeting (D.C. Official Code § 2-576(5)).

¹¹ D.C. Official Code § 2-578(b)(1).

¹² See OMA Advisory Opinion-Posting of Meeting Minutes, Transcripts, Electronic Recordings at https://www.opendc.gov/sites/default/files/12.12.13%20OOG%20Opinion_HPTF_Meeting%20Record_Minutes%20Audio%20Video%20Transcripts.pdf

¹³ D.C. Official Code § 2-578(b)(2).

B. Compliance Directives

Previously, I have directed the public body at fault to publish the missing records to its website or to the central meeting calendar. The Maury LSAT has partially complied by publishing the missing meeting minutes and meeting notice on its website. But the OMA requires publication of the meeting agenda. Therefore, I direct the Maury LSAT to publish the September 10, 2019 draft meeting agenda on its website immediately. Also note that the newly elected Maury LSAT completed an extensive OMA training on October 21, 2019 and has addressed additional questions to the OOG since the training. Therefore, I do not find that additional OMA training by the OOG is warranted at this time.

Due to its inability to publish in the D.C. Register, I also direct that the Maury LSAT immediately obtain credentials from my office to also publish its upcoming meeting notices and schedule of annual meetings on the central meeting calendar. My staff will continue to monitor the Maury LSAT's meeting activities to ensure the public's right to notice of its meetings and access to its open meeting records are protected.

Sincerely,



NIQUELLE M. ALLEN, ESQ.
Director, Office of Open Government
Board of Ethics and Government Accountability

cc: Complainant

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