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CHAIR  
**KAREN R. CALMEISE, ESQ.**  
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**STATE OF MARYLAND**  
**OPEN MEETINGS COMPLIANCE**  
**BOARD**

***19 Official Opinions of the Compliance Board 347 (2025)***

**December 1, 2025**

**Anne Arundel County Board of Education**

The Complainant alleges that the Anne Arundel County Board of Education (the “Board of Education” or “Board”) violated the Open Meetings Act (the “Act”) by recessing a meeting in the middle of deliberations and, during the recess, engaging in “off-the-record deliberation.” For the reasons below, we agree that the Board violated the Act.

**Background**

The Board of Education consists of seven nonpartisan elected members and one student member. Md. Code Ann., Educ. § 3-2A-01(a). A quorum of the Board is five. *See* Md. Code Ann., Educ. § 3-2A-06 (“The affirmative vote of at least five members of the county board is required for the approval of any action.”).

On September 17, 2025, the Board of Education convened in open session. About one hour and fifteen minutes into the meeting, the Board took up agenda item 7.07, the Superintendent’s recommendations on redistricting.<sup>1</sup> The Superintendent spoke for several minutes, after which the Board voted to take up the Superintendent’s two alternative recommendations. As a member of the Board began to speak on the agenda item, a staff member interrupted to ask for “a five to ten-minute break” to ensure that any of the Board members’ proposed amendments “might be aligned” to the Superintendent’s recommendations. The Board recessed the meeting for about nineteen minutes. The video recording does not show the Board members during the recess; viewers see a graphic that reads,

**Board Session Currently in Recess and Will Resume Shortly**

**Please Stay Tuned**

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<sup>1</sup> A recording of the meeting is available at <https://www.youtube.com/watch?v=fEObIuvDvEM&t=4440s> (last visited Dec. 1, 2025). The discussion on agenda item 7.07 begins around the 1:15:50 timestamp.

When the Board returned to open session, the Board President asked members to present any amendments to the Superintendent's recommendations. Members did so for the next forty minutes, after which the Board President asked for a motion. Another member of the body moved to recess. A few members exchanged remarks, but away from their microphones; from the video recording, it is not clear to us what they said. The Board of Education asserts that its "officers asked to confer with . . . Board counsel" to ensure that "possible motion formats and voting procedures" complied with "the Board's redistricting policy." The Board President recessed the meeting for about thirteen minutes. As with the earlier recess, the video does not show the Board members during the second recess, only the graphic indicating that the body was in recess. The Board asserts that, during the recess, the officers conferred with counsel and the other "members were moving around the room and having small sidebar discussions," though "[n]o more than four of them were together."

After the second recess, the Board's Vice President moved that the Board bring forward to a public hearing, as a Board recommendation, all of the Board members' proposed amendments for input and consideration. Another member seconded the motion, and the Board voted 8-0 to approve the motion. Shortly thereafter the Board adjourned the meeting.

### **Discussion**

The Complainant alleges that the Board of Education improperly engaged in "off-the-record deliberation" during the recesses, in violation of the Act. Specifically, she alleges that the Board engaged in closed sessions, without taking the requisite procedural steps. The Board denies meeting in closed sessions or engaging in secret deliberations, asserting that the Act did not apply during the recesses.

The Act generally requires that a public body conduct its meetings in the open, § 3-301,<sup>2</sup> except when the public body carries out a function outside the scope of the Act,<sup>3</sup> or discusses a matter that falls within one of fifteen exceptions that allow for closed meetings, § 3-305(b). Among these exceptions is § 3-305(b)(7), which allows a public body to close a meeting to "consult with counsel to obtain legal advice." Before meeting in closed session under one of the exceptions, however, the presiding officer must "conduct a recorded vote on the closing of the session" and "make a written statement of the reason for closing the meeting, including a citation of the authority under [§3-305(b)], and a listing of the topics to be discussed." § 3-305(d)(2).

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<sup>2</sup> Unless other noted, statutory references are to the General Provisions Article of the Maryland Annotated Code.

<sup>3</sup> With few exceptions, the Act does not apply to a public body when it is carrying out administrative, judicial, or quasi-judicial functions. § 3-103(a); *see also* § 3-101(b) (defining "administrative function"); § 3-101(e) (defining "judicial function"); § 3-101(i) (defining "quasi-judicial function").

The dispute here is whether the Board of Education convened in closed session during the recesses. The Complainant asserts that the Board did, as “members were observed whispering, walking around, and privately conferring.” The Board disagrees, asserting that at no point during either recess did a quorum of the Board convene. Thus, the Board says, there was no “meeting” during the recesses, much less a closed session.

“Meet,” under the Act, “means to convene a quorum of a public body to consider or transact public business.” § 3-101(g). In construing this term, “we have often applied the threshold ‘meeting’ requirement somewhat mechanically: if there was no quorum together at any one point in time, there was no ‘meeting’ and no violation.” 9 *OMCB Opinions* 283, 287 (2015). But we have also “steadily recognized that a purely mechanical approach to the term ‘meeting’ does not necessarily serve the purposes of the Act.” *Id.* at 286. Indeed, the Supreme Court of Maryland has said that the Act “should be construed so as to frustrate all evasive devices.” *J.P. Delphey Lts. P’ship v. Mayor and City of Frederick*, 396 Md. 180, 201 (2006) (emphasis omitted); *see also Community and Labor United for Baltimore Charter Committee (“C.L.U.B.”) v. Baltimore City Board of Elections*, 377 Md. 183, 189-90, 194-95 (2003) (finding that the Act applied to a gathering that the presiding chair deliberately kept just shy of a quorum so as to exclude reporters who sought to observe the members’ discussion).

In determining whether the Board of Education here “met” during the recesses, we note that the mere presence of a quorum in the same location does not, in and of itself, necessarily trigger the Act. *See, e.g.*, § 3-103(a)(2) (providing that the Act does not apply to “a chance encounter, a social gathering, or any other occasion that is not intended to circumvent [the Act]”). For example, in a 2015 opinion, we found that the Act did not apply when a majority of a public body’s members participated in a tour of a local school; we emphasized that the members, upon arriving at the school, split into groups, all smaller than a quorum, and “[t]here [was] no indication that the small groups interacted with each other in such a way as to create a quorum.” 9 *OMCB Opinions* 239, 240 & n.3 (2015)).

On the other hand, we have more than once found that the Act applied to a conversation among fewer than a quorum of a public body. For example, in another 2015 opinion, we found that a public body violated the Act when it recessed a meeting, and, during that recess, members of the body continued to discuss public business in order to reach consensus on a matter. 9 *OMCB Opinions* at 289. “Importantly, the body asserted that a quorum was never present at any one time during the recess.” 19 *OMCB Opinions* 189, 192 (2025). But while we recognized that maybe “only groups of less than a quorum communicated to each other during the recess,” we nonetheless emphasized that “[w]e do not read the Act . . . hypertechnically.” 19 *OMCB Opinions* 189, 192 (2025) (quoting 9 *OMCB Opinions* at 283-84). We thus construed the Act to prohibit “the use of recesses as a setting in which to consider public business behind closed doors,” as such a practice would “defeat the purposes of the Act.” 9 *OMCB Opinions* at 284, 288.

“In 2020, we applied similar logic, concluding that a public body violated the Act when two of its members—fewer than a quorum—exchanged text messages on a topic then under discussion by the body in an open session.” 19 *OMCB Opinions* at 192 (citing 14 *OMCB Opinions* 29, 31 (2020)). We recognized that “[t]he Act does not explicitly prohibit two members of a public body, when two is less than a quorum, from having side conversations with each other that the public cannot hear.” 14 *OMCB Opinions* at 31. But we said that “the Act . . . impose[s] on public bodies the duty to meet openly, and each member, as part of the collective whole, shares in the public body’s duty to avoid interfering with the ability of the public to observe the members’ conduct of public business during a public meeting.” *Id.* We thus concluded that “all substantive communications among members, during a public meeting of a quorum, regarding the topic then under discussion, are subject to the Act regardless of whether a quorum is actually involved in the particular communication.” *Id.* And just this year, we found that the Act applied when a public body convened a quorum in open session then split into breakout groups, each smaller than a quorum, to discuss public business simultaneously. 19 *OMCB Opinions* at 193.

In each of these prior opinions in which we found that the Act applied to conversations among fewer than a quorum of the body’s members, the body had already convened a quorum in a session open to the public. What we found troubling was that the body’s subsequent actions—involving substantive conversations among fewer than a quorum—precluded the public from observing the body’s entire deliberative process.

We have that same concern here with respect to the second recess at the Board of Education’s September 17 meeting. As the Board acknowledges, that recess involved a conversation among the Board’s officers and the Board’s counsel about how to proceed with redistricting in a way that was consistent with the Board’s existing policy. We think that topic unquestionably involved public business. And it clearly informed the body’s vote on how to proceed with the redistricting agenda item; a member of the body requested, and the President granted, the recess before a vote, apparently so that the officers could obtain counsel from their attorney.

We recognize that the Act allows a public body to obtain legal advice in closed session. *See* § 3-305(b)(7). But the Act permits that only if the body takes certain procedural steps, including a vote to close the meeting to the public and the preparation of a written closing statement. § 3-305(d). Here, the Board of Education asserts that this was not necessary because fewer than a quorum of the body’s members conferred with the Board’s counsel during the recess. But we find this scenario analogous to the substantive side conversations and breakout group discussions at issue in 14 *OMCB Opinions* 29 (2020) and 19 *OMCB Opinions* 189 (2025). Because the Board of Education had already convened a quorum in an open session, subsequent side conversations about public business during that session (even those during a recess) were part of the body’s entire

deliberative process. And if the Board wished to exercise its discretion to have this particular conversation with counsel in closed session,<sup>4</sup> it should have taken the requisite steps spelled out in § 3-305(d) to close the meeting to the public. We do not think that the Act allows a public body to get around this requirement by ensuring that fewer than a quorum of members confer with the body's attorney. As we have said before, consistent with Maryland Supreme Court precedent, "a public body risks violating the Act by manipulating a quorum so as to avoid the Act's mandates." 8 *OMCB Opinions* 56, 58 (2012). Because that appears to be what the Board of Education did here, we find a violation of § 3-301.

### **Conclusion**

We conclude that the Board of Education violated § 3-301 by convening in open session then excluding the public from a conversation among the Board's members and its attorney, without first having the Board's presiding officer conduct a recorded vote on closing the meeting and make a written closing statement. Although the conversation with the Board's attorney involved fewer than a quorum of the Board's members, the discussion was part of the body's entire deliberative process. Thus, to properly exclude the public from this part of the meeting, the Board should have taken the steps required of § 3-305(d).<sup>5</sup> The Board could not evade these requirements by merely adjourning the meeting and ensuring that fewer than a quorum of members conferred with the body's attorney.

This Opinion is subject to the acknowledgement and announcements requirements of § 3-211.

### **Open Meetings Compliance Board**

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<sup>4</sup> As we have said many times, the exceptions in § 3-305(b) are discretionary, not mandatory. *See, e.g.,* 4 *OMCB Opinions* 58, 62 (2004).

<sup>5</sup> We note that, even if the notice and agenda did not indicate that the Board of Education intended to convene in closed session, the Act does not preclude a public body from closing a meeting, if the need for closure becomes apparent during the open session. *See* § 3-302(b) (requiring, "[w]henver reasonable" and "if appropriate," that a notice "include a statement that a part or all of a meeting may be conducted in closed session"); § 3-302.1(a)(1) (requiring an agenda to "indicat[e] whether the public body expects to close any portion of the meeting"); 9 *OMCB Opinions* 141, 143 (2014) (recognizing that the Act does "not preclude a public body from deciding, either during a meeting or shortly before it, that it may need to close the meeting to seek counsel's advice or to discuss other topics that may permissibly be discussed in closed session").