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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE
BOARD

20 Official Opinions of the Compliance Board 111 (2026)

March 24, 2026

Anne Arundel County Board of Education

We have received several complaints alleging that the Anne Arundel County Board of Education (the “Board of Education” or “Board”) violated the Open Meetings Act (the “Act”) by placing restrictions on public comment, by failing to notify the public of these restrictions via a meeting notice or agenda, by consulting with counsel during a meeting recess, and by engaging in side conversations during a meeting. For the reasons below, we find no violation with respect to the first two allegations. But we conclude that the Board violated the Act 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. We further find that the Board violated the Act when, during a meeting, members exchanged text messages with the attorney on policy issues. Finally, we find that the Board violated the Act by failing to timely respond to each of the complaints.

Discussion

A. Public comment

We begin with allegations that the Board of Education has improperly restricted public comments at meetings.¹ Several of the Complainants have alleged that the Board’s presiding officers have interrupted speakers, limited what they can say, or prevented them from speaking.

The Board disputes the Complainants’ characterization, but we find no violation of the Act regardless. “Although members of the public have the right to *observe* meetings, the Act does not afford the public the right to *participate* in a meeting.” 19 *OMCB Opinions* 5, 6 (2025). Thus, [a] public body’s handling of public comments is simply not

¹ The Complainants allege violations with respect to the Board’s handling of public comments at meetings on November 17, 2025, December 3, 2025, and January 8, 2026.

within the Act’s ambit.” 19 *OMCB Opinions* 222, 222 (2025) (internal quotation marks omitted). We find no violations of the Act with respect to public comment.²

B. Agenda

We next consider whether the Board of Education violated the Act by not referencing restrictions on public comment in a meeting notice or agenda. We find no violation based on this allegation.

With respect to notice, the Act requires a public body to give “reasonable advance notice” “[b]efore meeting in a closed or open session.” § 3-302(a).³ “Whenever reasonable, a notice . . . shall: (1) be in writing; (2) include the date, time, and place of the session; and (3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.” § 3-306(b). But the Act does not require the public body to disclose in the notice anything about meeting procedures that the body expects to adopt or enforce at the meeting.

As for agendas, the Act requires that, “before meeting in an open session, a public body . . . make available to the public an agenda: (i) containing known items of business or topics to be discussed at the portion of the meeting that is open” and “(ii) indicating whether the public body expects to close any portion of the meeting” § 3-302.1(a)(1). As we understand it, the restrictions on public comments raised by the Complainants were not items of business or topics discussed by the Board of Education at the meetings in question. Rather, the Complainants allege that the presiding officers simply imposed the restrictions. As such, we do not view the restrictions as something that needed to appear in a meeting agenda. For all these reasons, we find no violation based on the allegation that the Board did not reference the restrictions in a meeting notice or agenda.

Before moving on, we offer one additional observation. In response to one of the complaints before us, the Board said that “there was no pre-published agenda” for the November 17 meeting, as it “was not a regular business meeting” but, rather, “a Public Hearing on redistricting” with “no presentations and no votes or other actions taken.” To be clear, the Act does not distinguish between “public hearings” and “business meetings.” If a public body meets in an open session, it must prepare an agenda and make it available to the public. § 3-302.1(a)(1). Despite the Board’s apparent concession that it failed to do that for the November 17 meeting, however, we find no violation of the Act. The Board has directed us to the notice of the meeting, which appears to include all the details required

² We offer no opinion on whether the Board’s actions with respect to public comments violate other laws, as alleged by some Complainants. *See, e.g., 9 OMCB Opinions* 146, 146 n.1 (2014) (recognizing that “our authority extends only to the consideration of alleged violations of the Open Meetings Act”).

³ Statutory references are to the General Provisions Article of the Maryland Annotated Code.

of an agenda for that meeting: It specifies that the Board planned to take public comments at the meeting, which, as we understand it, was the only business that the Board intended to undertake.⁴ “Nothing in the Act prohibits a public body from using the same document as both the notice and agenda, provided the document satisfies the requirements of both § 3-302 and § 3-302.1.” 18 *OMCB Opinions* 88, 92 (2024) (quoting 16 *OMCB Opinions* 110, 116 n.9 (2022)). Because the notice for the November 17 meeting appears to include all the information required of an agenda, we find no violation of the Act.

C. Consultations with counsel during a meeting recess

Next, we address an allegation that the Board of Education violated the Act when, during a recess in a November 5, 2025, meeting,⁵ “small groups of the Board gathered in numbers constituting less than a quorum,” “ostensibly to seek clarification on the content of [a] motion under consideration by the body.” The Board of Education acknowledges that the recess was taken to “confer with counsel on legal/parliamentary issues related [to] motions and the redistricting policy and regulation” under discussion at the meeting. The Board further acknowledges that this recess involved the same practice that we found objectionable in another recent opinion, which we did not issue until after the November 5 meeting.

In that prior opinion, we concluded that the Board had violated the Act by convening in open session on September 17, 2025, “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.” 19 *OMCB Opinions* 347, 351 (2025); *see also* § 3-301 (requiring, generally, that public bodies meet in open sessions); § 3-305 (setting out exceptions to that rule, including consulting with legal counsel, and the procedure for closing a meeting, including “mak[ing] a written statement of the reason for closing the meeting, including a citation of the authority . . . , and a listing of the topics to be discussed”). We explained:

Although the conversation with the Board’s attorney involved fewer than a quorum of the Board’s members,^[6] the discussion was part of the body’s

⁴ “Information-gathering at the earliest stages of policy formation is part of the consideration of public business, even if members of the public body are simply briefed, do very little talking, and take no vote.” 15 *OMCB Opinions* 85, 87 (2021) (internal quotation marks omitted); *see also id.* at 87-88 (concluding that a local school board was conducting public business when it convened to hear public comments that would inform the board’s decision on whether to close certain schools).

⁵ The complaint at one point refers to a November 5, 2019, meeting but otherwise refers to a 2025 meeting, and the response addresses a meeting that took place on November 5, 2025. We thus assume that the reference to 2019 was a typo.

⁶ As its name suggests, the Open Meetings Act applies only when a public body “meets,” and “meet” under the Act

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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). 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.

19 *OMCB Opinions* at 351 (footnote excluded).

Unfortunately, the Board did not have the benefit of this guidance during its November 5 meeting, as our opinion did not come out until December 1, 2025. Thus, although we find that the Board violated the Act on November 5, for the same reasons articulated in our December 1 opinion, we commend the Board for “implement[ing] measures to avoid such a violation in the future.”

D. Side conversations within a meeting

We turn next to allegations that the Board of Education violated the Act by engaging in side conversations and exchanging text messages during an open session.

“While the Act does not afford the public any right to participate in . . . meetings, it does assure the public right to observe the deliberative process and the making of decisions by [a] public body at open meetings.” *City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980); *see also* § 3-3012 (“Except as otherwise expressly provided in this [Act], a public body shall meet in open session.”); § 3-303(a) (“Whenever a public body meets in open session, the general public is entitled to attend.”). Thus, “[w]hen a meeting falls within the scope of the Act, the public body must give the public the ability to observe the meeting in a meaningful way.” 14 *OMCB Opinions* 29, 31 (2020).

More than once, we have recognized that a public body falls short of this obligation when members of the body engage in substantive side conversations amongst themselves during an open session. This is true even when the side conversations involve fewer than a quorum of the body's members. For example, in a 2020 opinion, we found 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 open session. 14 *OMCB Opinions* 29, 31 (2020)). We acknowledged 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

“means to convene a quorum of a public body to consider or transact public business.” § 3-101(g). As we explained in our earlier opinion, however, the Act sometimes applies to discussions involving fewer than a quorum of a public body's members.

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.*

We reaffirmed this principle in a 2024 opinion, distinguishing between substantive side conversations that are subject to the Act and conversations that do not pertain to a body's public business and, thus, need not be open to the public. Thus, when members of a public body used the "chat" feature on a virtual meeting platform to engage in side conversations that the public could not see, we found that "[t]he Act did not require the [body] to disclose in real time the substance of the [members'] greetings to one another, messages about technical issues," such as a slide show freezing, "and purely social remarks (such as those about a [member's] growth of a beard)." 18 *OMCB Opinions* 59, 61 (2024). By contrast, we concluded that the public body *did* violate the Act when its members exchanged chat messages on "the substance of the public business that the [public body] was considering during the meeting," including a financial audit and what position to take on a proposed development project. *Id.* at 59-61.

These principles apply regardless of whether the side conversations take place in open session via electronic messages or through face-to-face encounters. For example, we concluded in a 2025 opinion that a public body violated the Act when its members convened a quorum in open session then divided into several small breakout groups to engage in simultaneous discussions with staff about budget matters. 19 *OMCB Opinions* 189, 189 (2025). Although members of the public were invited to follow individual members of the body and listen in on their conversations, "[t]he problem . . . [was] that it was impossible for any one member of the public to observe all the substantive communications among members of the [public body] during the meeting." *Id.* at 192. "Specifically, by having several substantive small-group discussions simultaneously during the meeting, the Council deprived the public of the ability to observe the entire deliberative process." *Id.* at 193.

Here, one of the complaints alleges that the Board of Education violated the Act during the November 5, 2025, meeting because "members of the Board engaged in private side conversations away from microphones preventing the public from hearing their discussions." The Complainants assert that "it is highly probable that the private discussions related to the substantive public policy issue under deliberation by the Board."

In response, the Board initially provided no insight into the substance of these side conversations, asserting that the Complainants had presented no evidence that members were "discussing anything related in any way to the Board's business at hand." But, as we

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have said before, “[w]hen a complainant requests an advisory opinion of this Board, “[t]here is no ‘burden of proof.’” 15 *OMCB Opinions* 132, 132 (2021) (quoting 3 *OMCB Opinions* 30, 32 (2000)). Instead,

[t]he Board reviews all of the information submitted to it. If that information is sufficient for the Board to reach a conclusion about a violation, the Board will issue an opinion containing that conclusion If the Board cannot reach a conclusion, either because the information is insufficient or the evidence available is evenly balanced, the Board will issue an opinion explaining the reason for its inability to reach a conclusion.

Id.

At the request of our staff, the Board of Education submitted a supplemental response, indicating that the members who engaged in side conversations during the meeting reviewed the recording to refresh their recollection and “did not recall specifically talking about redistricting,” the matter then under discussion by the body. The Board further asserted that the members

would not be surprised if one might have asked the other to confirm what someone else said earlier in the discussion; ask a parliamentary question (e.g., “are we still discussing so-and-so’s amendment or the primary motion[?]”); asking if they had heard some news item that had just come up on social media; or wondering whether they had seen a draft or received information about something on the days’ agenda. Not one of them recalled that they had any conversation about the substantive merits of a policy issue or pending action or vote.

Based on this record, we decline to find a violation of the Act with respect to allegations that Board members improperly engaged in face-to-face side conversations during the meeting. As we have previously recognized, a member of a body “might sometimes have a good reason to ask another member a question on the side instead of troubling the whole group with it; for example, a member who did not recognize an acronym used in the discussion might ask another what it meant.” 14 *OMCB Opinions* 29, 31 (2020). Although we cannot be sure what members discussed in side conversations at the November 5 meeting, the members’ recollections suggest that the discussions were of the non-substantive sort that we have said may occur outside of the public’s hearing.⁷

⁷ The Complainants point out that, during a December 3, 2025, meeting, a Board member (who was not among those seen having side conversations at the November 5 meeting) said that she was “extremely disappointed to be left out of conversations at recent Board meetings.” See Recording of December 3, 2025, Board meeting, https://www.youtube.com/watch?v=kOTsVN_bDmc&t=5166s (beginning around the 1:26:31 timestamp). Based on the record before us, however, we cannot conclude that the side conversations at the November 5 meeting were

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The Complainants also allege, however, that three Board members appeared to have exchanged text messages during the same meeting. The Board confirms this fact and has produced and/or described at least some of the text messages. We conclude that messages that the Board describes as texts “with family members and other persons not connected with the school system and not related to substantive Board business” were not subject to the Act. We reach the same conclusion about a text message that a member of the public sent to a Board member (“Do you by any chance have time to chat?”) that the Board member did not answer. *See 14 OMCB Opinions* at 31 (concluding that “the passive receipt of a text message, sent by a non-member to one member of the public body, generally does not violate the Act”).

“The exchange of text messages among the members of [the Board of Education], during the meeting and on the public business at hand, poses a more difficult question.” 4 *OMCB Opinions* at 31. In one text exchange, two Board members apparently discussed the procedure for proposing and voting on a variation of a redistricting plan:

[Board Member 1]: Can you add south river colony[?] Its [sic] not in the plan –

[Board Member 2]: No until U make the motion and it passes

[Board Member 1]: So that would be in an amendment once yours is apporved [sic]

[Board Member 2]: Mod to my motion

In our 2020 opinion on text messaging, we said that “[t]he transmission of substantive side messages among a few members, on the topic being discussed at that time, including suggestions of actions to be taken, deprives the public (as well as the other members) of the opportunity to observe the deliberations fully.” 14 *OMCB Opinions* at 31. The 2020 opinion involved “a series of detailed messages . . . on topics including the impacts of districting changes on various schools, how to bring down capacity at certain schools, whether one of the members should second a motion, and what schools would be impacted if the member voted against a motion.” *Id.* at 30.

Here, as we understand it, the text chain began with one member’s request to add specific communities to a proposed redistricting plan and, thus, referenced the substance of the matter then under discussion by the Board of Education. But the messages that followed did not involve the substance of that proposal but, rather, parliamentary procedure about how to bring the proposal before the Board for consideration. Thus, we cannot say that this exchange was part of “the deliberative process and the making of decisions by”

substantive in nature and, thus, subject to the Act’s openness requirements.

by the Board, *City of New Carrollton*, 287 Md. at 72, that was subject to the Act’s openness requirements.

We reach the same conclusion about a different text message in which a Board member asked another if she was “going to put forward a motion to retain Nantucket split articulation”—which we understand to be a reference to a specific redistricting proposal. Because the record before us does not indicate that the second Board member responded, we conclude that this text does not represent a discussion among members of the Board that was subject to the Act.

Finally, on the matter of text messages, the Board has said that “there were also a few texts between members and counsel over the course of” the November 5 “meeting, which contained motion form/content, parliamentary procedure, etc. (not atypical during Board meetings).” The Board asserts that “[t]hese are attorney-client privileged and not subject to disclosure,” but the Board “proffer[s] [that] . . . some of those were related to the agenda item in question.”

Without seeing the messages in question, it is difficult to ascertain which of them might have been subject to the Act. But based on the Board’s representations, it appears that at least some of these texts—those “which contain[ed] discussion of legal advice on policy issues”—were akin to the face-to-face conversations during the recesses at the September 17 and November 5 meetings that we have found to have violated the Act. Although such discussions might have fallen within the legal advice exception of § 3-305(b)(7)⁸ and, thus, might have been discussions that the Board could have had behind closed doors, the Board did not take the procedural steps necessary to exclude the public. The fact that the discussions took place by text rather than face-to-face is immaterial. We thus conclude that the exchange of at least some of these text messages violated the Act—either because they involved a substantive side conversation among members of the body that the public could not observe, or because they fell within an exception to the Act’s openness requirement but the Board did not take the procedural steps (voting to close the session and preparing a written closing statement) that would have authorized the body to exclude the public from that discussion. *See* 19 *OMCB Opinions* at 351.

E. The Board’s untimely response to the complaints

Finally, we address one procedural matter. The Act provides that “[a] public body shall file a written response to [a] complaint” alleging violations of the Act “within 30 days after it receives the complaint.” § 3-206. Here, the Board failed to file a timely response to some of the complaints and, upon receiving an extension, failed to file the response by

⁸ The legal advice exception allows a public body to convene in closed session to “consult with counsel to obtain legal advice.” § 3-305(b)(7).

the extended deadline. Although we are sympathetic to the fact that the Board received the complaints during the school district's holiday break, and a subsequent snowstorm closed district offices for several days, we find that the failure to respond timely to each of the complaints violated the Act. *See, e.g., 6 OMCB Opinions 203, 205 (2009).*

Conclusion

We find no violations of the Act with respect to allegations that the Board of Education has improperly restricted public comments at meetings or that the Board should have, but failed to, notify the public of these restrictions in a meeting notice or agenda. We do, however, find that the Board violated the § 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. We further find that the Board violated the Act when, during a meeting, members exchanged text messages with the attorney that "contain[ed] discussion of legal advice on policy issues." Finally, we find that the Board violated § 3-206 by failing to file timely responses to all the complaints.

This opinion is subject to the acknowledgement and announcement requirements of § 3-211.

Open Meetings Compliance Board

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