

Introduction to the Open Meetings Act for Boards of Trustees for DCPCS

Training Series I

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The Office of Open Government (OOG) is within the Board of Ethics and Government Accountability (BEGA).

The Office of Open Government promotes open governance in the District of Columbia (D.C. Official Code § 1-1162.05b).

This includes enforcing the Open Meetings Act and Regulations.

**THE OFFICE OF OPEN
GOVERNMENT (OOG)**



The Office of Open Government's Director is Niquelle Allen, Esq.

OOG is staffed as follows:

Louis Neal, Chief Counsel;
Anthony J Scerbo, Attorney Advisor;
Brandon Lewis, Attorney Advisor;
Joan Lelma, Attorney Advisor;
Kimberly Brown, Paralegal Specialist; &
Kevin Brown, IT Specialist.



The Office of Open Government educates public bodies and the public on Open Meetings Laws.

The Office of Open Government provides training and advice to public bodies on adherence to the Open Meetings Act (D.C. Official Code § 2-579(g) & § 2-580).

The Office of Open Government provides training and guidance on the implementation of D.C. Freedom of Information Act (D.C. FOIA).

THE OFFICE OF OPEN GOVERNMENT (OOG)

A stylized icon of a person's head and shoulders, with a white circle for the head and a green semi-circle for the shoulders, positioned in the top left corner of the slide.

THE OFFICE OF OPEN GOVERNMENT (OOG)

The Office of Open Government advocates for openness and transparency of D.C. Government (D.C. Official Code § 2-572).

The Office of Open Government enforces the Open Meetings Act - “... may bring a lawsuit in the Superior Court of [DC] for injunctive or declaratory relief ...” (D.C. Official Code § 2-579).

Openness & Transparency

The Open Meetings Act requires (with specific exceptions) that most meetings of a public body and its decisions be open to the public, and certain records from the body's meetings are available to the public (D.C. Official Code § 2-578).

The Open Meetings Act is designed to give the public confidence in the decision-making process of the members of a public body.



What Constitutes a Meeting Under The Open Meetings Act?

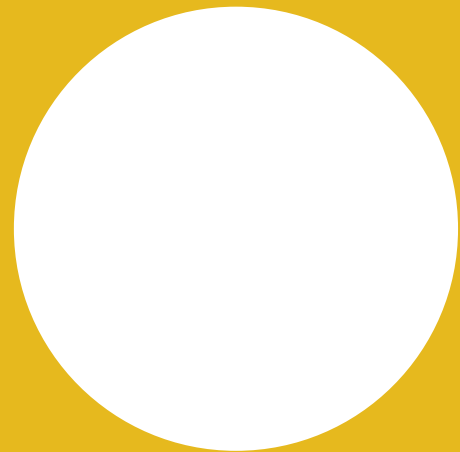
There are three elements to ascertain whether the OMA applies to a meeting.

- ▶ **I**ntity of the entity
- ▶ **C**omposition of the public body
- ▶ **P**urpose for which the properly constituted public body gathers.
- ▶ **WHAT, WHO, & WHY**

Checking the three elements under the OMA.

- ▶ Is the entity a public body within the meaning of the OMA? D.C. Official Code § 2-574(3)
- ▶ Is there a quorum of the members of the public body? D.C. Official Code § 2-574(1)
- ▶ Is the meeting of the properly constituted public body held to consider, conduct, or advise on public business? § 2-574(1)
- ▶ If your response is “YES” to all three questions, a meeting has been identified under the OMA.

Identity - What - Public Body



The following entities must adhere to the Open Meetings Act:

- ▶ Government Councils (including the Council of the District of Columbia);
- ▶ Boards;
- ▶ Commission or similar entity;
- ▶ Board of Directors of an instrumentality;
- ▶ Board which supervises or controls an agency;
- ▶ An Advisory Body taking official action by vote of its members so convened; and
- ▶ Board of Trustees of a Public Charter School.

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Identity - **What** - Not Public Body

- ▶ A District Agency or Instrumentality (except the board that supervises or controls the agency or the board of directors of an instrumentality)
- ▶ The District of Columbia Courts
- ▶ The Mayor's Cabinet
- ▶ Advisory Neighborhood Commissions (ANCs)
- ▶ Professional Staff of public bodies meeting outside a quorum of those bodies



Composition - **Who** - Quorum of Public Body

- In the absence of Enabling Legislation, Mayor's Order, or Regulations, a QUORUM is at least half of the members of the board of a public body plus one member or a simple majority. A public body can also determine what constitutes a quorum in the body's by-laws.
- In the absence of a quorum, a public body must not conduct public business within the meaning of the OMA to subvert the statute.

MEMBERS OF BOARD	NUMBER PRESENT	LOWEST TARGET	QUORUM
10	6	6	YES
10	5	6	NO
10	8	6	YES
10	4	6	NO

WHY? Public Business Includes The Following:

- ▶ Gathering Information;
- ▶ Taking Testimony;
- ▶ Deliberating;
- ▶ Discussing;
- ▶ Recommending; or
- ▶ Voting.

Means of Gathering -

MEANS UNDER OMA:

- ▶ In Person;
- ▶ Via Telephone; or
- ▶ Via Video Conference.

NOT MEANS UNDER OMA:

- ▶ Chance or Social Gathering (except, when held to circumvent the OMA); or
- ▶ Press Conference.

Gathering Under OMA

NOTE, e-mail correspondences between members of a public body do not constitute proper means of gathering for a public meeting under the Open Meetings Act (D.C. Official Code § 2-577(c)). For e.g., if members of a public body decide to conduct public business via email in lieu of meeting in person or virtually. **This is not permitted.**

Vote By Email - NOT PERMITTED

A public body is not permitted under the OMA to vote on public business via email.

What if the public body, such as a Board of Trustee for Public Charter School has an agreement with another entity to take votes on public business via email and its by-laws provide likewise? D.C. Official Code § 2-577(c) - It is not allowed under the OMA.

“Email exchanges between members of a public body shall not constitute an electronic meeting.”



Subcommittee Meetings

A subcommittee meeting of a public body, without a quorum of the public body present, does not constitute a gathering for public business under the Open Meetings Act.

MEETINGS - NOTICE

All meetings properly constituted to conduct public business as defined under the Open Meetings Act, unless specifically and legally exempt, are presumed to be open to the public, and the public must receive advanced notice of the date, time, location, and draft agenda (D.C. Official Code § 2-576).



NOTICE OF A MEETING CONTINUES:

- ▶ As much notice as possible, but notice must be given 48 Hours or 2 Business Days before each meeting, whichever is greater;
- ▶ Notice must be physically posted in the school, office, or a place readily accessible to the public;
- ▶ Notice must be posted, along with proposed agenda, on the school's website AND the District Government's website (Central Meeting Calendar at www.open-dc.gov); and
- ▶ The Boards of Trustees of DCPCS must timely post upcoming meetings and an annual schedule of meetings.
- ▶ Note, Boards of Trustees of Public Charter Schools are not required to publish meeting notices in D.C. Register.

CONTENTS OF THE NOTICE

Notice must include:

- Time
- Date
- Location
- and Proposed Agenda.

If there will be a Closed Session, notice must include the OMA Citation and state the reason justifying the Closure.

CONTENTS OF THE NOTICE - AGENDA

The following statement **MUST** be included at the end of all Draft and Final Meeting Agendas:

“This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.”

VALID REASONS FOR A CLOSED MEETING (D.C. Official Code § 2-575(b))

- **Court Order/Statute**
- **Specific Negotiations – Contract, including employment contract**
- **Attorney/Client Privilege, or to Approve Settlement Agreements**
- **Trade Secrets**
- **Preparation, administration, or grading of scholastic, licensing, or qualifying examinations**
- **To discuss matters such as appointment, employment, and discipline of government appointees, employees, or officials, or of Public Charter School personnel, if the body is the Board of Trustees of a Public Charter School**
- **To discuss matters involving personal identifiable information (such as official school records with date of births and grades) of students**

VALID REASONS FOR A CLOSED MEETING - CONTINUES

- **Concerning Boards of Trustees of a Public Charter School, to meet with an eligible chartering authority to be evaluated – mere presence of the authority is insufficient**
- **Training members of a public body or staff**
- **Specific Collective Bargaining Negotiations**
- **Deliberation concerning an adjudication action**
- **Public Safety – To protect the public from potential terrorist activity or substantial danger to public health and safety**
- **Investigations of alleged criminal or civil misconduct or violations of laws or regulations – If disclosure would harm the investigation**

HOW TO ENTER CLOSED/EXECUTIVE SESSION

- 1) Open the Public Meeting and Establish a Quorum
- 2) Move to Enter Executive Session/Second the Motion - (Motion Must incl. Reference to OMA Citation, to Justify Closed/Executive Session)
- 3) Take Roll Call Vote – and if Motion Passes - Enter Closed/Executive Session
- 4) Note, roll call vote is not required if the meeting is in person; a show of hands meets the requirement. Roll call vote is only required if the meeting is held electronically.

PROTOCOL FOR CLOSED/EXECUTIVE SESSION

- ▶ **Only Discuss the Matter(s) Referenced in the Draft Agenda**
- ▶ **Record what is Discussed in Executive Session**
- ▶ **Re-Open the Public Meeting, and when Appropriate Report Publicly any Official Action taken in Closure and Adjourn**

OPEN MEETINGS

A Public Body's Meeting
Must Be Open to the Public,
UNLESS the OMA Permits
Closure.



A Meeting is Open if:

Public is
Permitted to be
Physically
Present

News Media is
Permitted to be
Physically
Present

Meeting is
Televised



RECORDING REQUIREMENTS

D.C. Official Code § 2-578

- ▶ **ALL** Meetings Shall Be Recorded!
 - ▶ Open AND Closed Sessions
 - ▶ **ONLY** Where a Recording is Not Feasible, Detailed Meeting Minutes Shall Be Taken



PUBLICATION REQUIREMENTS

DRAFT DETAILED MEETING MINUTES MUST BE PUBLICLY AVAILABLE NO LATER THAN **THIRTY (30) BUSINESS DAYS** AFTER MEETING; A NOTATION MUST BE INCLUDED AT THE TOP OF THE DOCUMENT THAT DETAILED MEETING MINUTES WILL BE POSTED TO THE WEBSITE ON THE NEXT MEETING DATE.

AUDIO RECORDINGS, VIDEO RECORDINGS, AND TRANSCRIPTS (COPY OF THE FULL RECORD) MUST BE AVAILABLE NO LATER THAN **SEVEN (7) BUSINESS DAYS** AFTER THE MEETING.

* Ensure there are no copyright restrictions in posting minutes publicly.



RECORD MAINTENANCE

3 DCMR § 10409.8 requires compliance with District record preservation law and the District of Columbia General Records Schedules (DGRS) concerning the disposition of its electronic meeting recordings and written meeting minutes.

D.C. OFFICIAL CODE § 2-578(a) requires preservation of all meeting records for a minimum of 5 years.

ELECTRONIC MEETINGS

When A Meeting Is Held Electronically (Video Conference, Teleconference, or Other Electronic Means), The Same Requirements Apply As With In-Person Meetings -

- ▶ **Reasonable arrangements must be made to accommodate the public's right to attend;**
- ▶ **Meetings must be recorded;**
- ▶ **All votes must be taken by roll call (show of hands is sufficient for in-person meetings); and**
- ▶ **All other provisions of the OMA must be adhered to.**

PUBLIC COMMENT

- Only if the public body's enabling legislation mandates a period for public comment.
- However, a public body may allow public comment absent a statutory requirement to do so.
- A public body has the right to regulate the time allotted and duration of public comments if they choose to allow them, unless the requirement is expressed in enabling legislation or by-laws.



HOW TO CANCEL A MEETING

- A Meeting Cancellation is a Change in Schedule.
- In most instances, the public must be provided with as much notice as possible, but Not Less Than 48 Hours or 2 Business Days, whichever is greater, before the scheduled time of the cancelled meeting.
- To establish a record, the meeting notice to the public, must state “Cancelled.”



EMERGENCY MEETING

A Public Body May Hold An Emergency Meeting,
But The Presiding Officer **MUST**:

- ▶ Provide its members and the public with notice at the same time (D.C. Official Code § 2-576(4));
- ▶ Open the meeting with a statement explaining the subject of the meeting;
- ▶ Explain the nature of the emergency; and
- ▶ Explain how public notice was provided.



COMPLAINTS

An aggrieved party, including anonymous parties, may complain to the Office of Open Government for relief if a meeting was conducted in violation of the OMA (DCMR 3-10400).

- A complaint may refer to more than one open meeting;
- Submit in writing, in person, online, by mail, or via email; and
- OOG may request additional info; dismiss the complaint; conciliate the complaint; or issue a binding Advisory Opinion (3 DCMR 10401.1).



ENFORCEMENT

“The Office of Open Government may bring a lawsuit in the Superior Court of the District of Columbia for injunctive or declaratory relief for any violation of [the OMA] before or after the meeting in question takes place ...” (D.C. Official Code § 2-579(a)).

If the Court finds that a meeting contravened the OMA, the Court may order an appropriate remedy, such as, requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be VOID (D.C. Official Code § 2-579(d)).

If the Court finds that the public body engages in a pattern or practice of violating the OMA, the Court may impose a civil fine of not more than \$500 per violation (D.C. O C § 2-579(e)).



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Attorney Advisors, Anthony J Scerbo; Brandon Lewis; and Joan Lelma



Paralegal Specialist, Kimberly Brown; and IT Specialist, Kevin Brown



**You may contact us with
questions or concerns
relating to the OMA.**

Thank you!

Office of Open Government (OOG)

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www.open-dc.gov