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**STATE OF MARYLAND**  
**OPEN MEETINGS COMPLIANCE**  
**BOARD**

***18 Official Opinions of the Compliance Board 52 (2024)***

**April 19, 2024**

**Montgomery County Board of Education**

The Complainant alleges that the Montgomery County Board of Education (the “Board of Education” or “Board”) violated the Open Meetings Act (the “Act”) by failing to provide notice of a meeting and by failing to meet in open session before convening in closed session. The Board of Education disputes the allegations. For reasons we explain below, we find that the Board failed to satisfy certain requirements of the Act with respect to notice, agendas, and closing a meeting to the public.

*A. Notice*

“Before meeting in a closed or open session,” the Act requires a public body to “give reasonable advance notice of the session.” § 3-302(a).<sup>1</sup> The Complainant alleges that the Board of Education failed to provide any notice of a meeting that took place at 5:30 p.m. on January 22, 2024. She asserts that the meeting did not appear on an online calendar of upcoming meetings, nor did it appear in a list of meetings on BoardDocs, an online platform that the Board of Education uses for posting agendas.

The Board responds that the meeting was specially scheduled on an urgent basis and the Board added the meeting to two online calendars on the school district’s website at 11:30 a.m. January 22, six hours before the meeting. In support, it has produced screenshots of the calendars,<sup>2</sup> each reflecting a “closed session (virtual)” on January 22 and a corresponding link to a resolution indicating that the Board of Education would meet in closed session under § 3-305(b)(1) and (b)(7)<sup>3</sup> to receive legal advice about a personnel

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<sup>1</sup> Statutory references are to the General Provisions Article of the Maryland Annotated Code.

<sup>2</sup> The screenshot of one calendar indicates that it was taken on February 20, 2024, nearly a month after the January 22 meeting took place. The screenshot of the other calendar is undated.

<sup>3</sup> The Act generally requires a public body’s meetings to be open to the public, § 3-301, except when the public body

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matter. The Board also has produced an article from the website MoCo360.com, published at 3:39 p.m. January 22—more than an hour-and-a-half before the meeting—indicating that the Board planned to meet later that day in closed session. The Board acknowledges, however, that the meeting did not appear in the list of meetings on BoardDocs, which, the Board asserts, “does not list calendar entries for meetings that do not have agendas.”

Based on the submissions, it appears that the Board of Education did, contrary to the Complainant’s allegation, provide *some* advance notice of the meeting, as the website MoCo360.com reported on the closed session before it occurred. But we nonetheless find two violations of the Act, for the following reasons.

First, the content of the meeting notice was deficient.<sup>4</sup> As mentioned above, the Board of Education asserts that it provided notice to the public by adding the January 22 meeting to two online calendars hours before the meeting. But according to the Board’s response, the entries on the calendar described the meeting only as a “closed session (virtual).” The linked resolution similarly described only a closed session. This was deficient because, “[b]efore meeting in closed session under one of the exceptions” in § 3-305(b), “[a] public body must meet in open session.” 16 *OMCB Opinions* 30, 31 (2022) (quoting 11 *OMCB Opinions* 74, 74 (2017)); *see also* § 3-305(d) (setting forth the procedure for closing a meeting). Thus, “even when a public body intends to hold an open session ‘only for the purpose of voting to close the session,’” 16 *OMCB Opinions* 30, 31 (2022) (quoting 12 *OMCB Opinions* 25, 25, (2018)), “the content of [the meeting] notice . . . must make clear that the body will meet in open session” first, 16 *OMCB Opinions* at 31 (citing 8 *OMCB Opinions* 150, 158 (2013)). “A notice that describes only a ‘closed’ meeting effectively excludes the public from the open portion of that meeting and thereby violates the mandate of § 3-301<sup>[5]</sup> that a public body’s meetings be open except as otherwise expressly provided.” *Id.* (cleaned up). Because the notice here “did not indicate that the [Board] would first meet in an open session that the public would be allowed to attend, the

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carries out a function outside the scope of the Act, such as an administrative function, § 3-103(a), or discusses a matter that falls within one of fifteen exceptions that allow for closed meetings, § 3-305(b). Section 3-305(b)(1) permits a public body to meet in closed session to discuss certain personnel matters, and § 3-305(b)(7) allows closed sessions to “consult with counsel to obtain legal advice.”

<sup>4</sup> Although the basis of the complaint was a perceived lack of notice and the record establishes that the Board of Education did provide some notice, we would be remiss if we did not point out other violations that are apparent from the submissions. Because our primary purpose is to provide guidance “so as to prevent future violations of the Act,” 12 *OMCB Opinions* 98, 101 (2018), we often point out violations that were not raised by a complaint. *See, e.g.*, 17 *OMCB Opinions* 83, 90 (2023) (finding a violation of § 3-104, requiring certain public disclosures following an open session adjourned to convene in closed session to perform an administrative function, even though the Complainant did not raise that issue); 16 *OMCB Opinions* 12, 16-17 (2022) (finding a violation of § 3-305(c)(2)(iii) based on a public body’s failure to cite the proper statutory authority in a written closing statement, even though not raised in the complaint).

<sup>5</sup> Section 3-301 states, “Except as otherwise expressly provided in [the Act], a public body shall meet in open session.”

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notice violated § 3-302.” 17 *OMCB Opinions* 42, 44 (2023); *see also* 12 *OMCB Opinions* 19, 19 (2018) (finding that a public body violated § 3-302 by “wording its meeting notice in such a way as to convey that no part of the meeting would be public”).<sup>6</sup>

Second, the Board of Education’s response indicates that the meeting “did not have an agenda.” But, “before meeting in an open session,” the Act requires a public body to “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 in accordance with § 3-305 . . . .” § 3-302.1(a). Because the Board of Education was required, before meeting in closed session, to convene in the open, it should have prepared and made available to the public an agenda. Its failure to do so—apparently based on the mistaken belief that this “was a stand-alone closed session” without an open session—was a violation of § 3-302.1(a).

Before moving on to the Complainant’s next allegation, we offer a few additional observations about notice. “Because the Act does not ‘require any specific interval between notice of a meeting and the holding of the meeting itself,’” 16 *OMCB Opinions* 55, 57 (2022) (quoting 5 *OMCB Opinions* 83, 84 (2006)), “we have said that the Act is ‘flexible with regard to the timing and method of giving notice, particularly where exigent circumstances require a public body to convene on short notice,’” 16 *OMCB Opinions* at 57 (quoting 8 *OMCB Opinions* 137, 143 (2013)). “Generally, we ‘will not second-guess a public body’s decision that it must meet on short notice, at least without evidence suggesting an improper motive.’” 16 *OMCB Opinions* at 58 (quoting 15 *OMCB Opinions* 5, 6 (2021)). With respect to timing of a meeting notice, “[t]he touchstone of reasonableness is whether a public body gives notice of a future meeting as soon as is practicable after it has fixed the date, time, and place of the meeting.” 15 *OMCB Opinions* 51, 51-52 (2021). Here, the record does not make clear exactly when the Board of Education determined that it needed to meet on January 22; thus, we cannot offer an opinion as to whether the Board gave notice as soon as practicable after it fixed the date, time, and place of the meeting. Nonetheless, we remind the Board of its obligation to provide notice of any urgently called meetings as soon as practicable.

We also reiterate our earlier guidance that “[w]hen a meeting must be called on an urgent basis, the public body may need to take extra measures to provide the best notice feasible under the circumstances.” 10 *OMCB Opinions* 22, 28 (2016); *see also* 9 *OMCB Opinions* 110, 115 (2014) (“[L]ast-minute meetings require the public body to make extra efforts to get the word out to the press, and ideally to the members of the public, who follow its activities.”). Here, it is not clear whether the Board took any such extra steps. At least

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<sup>6</sup> As here, the meeting at issue in 12 *OMCB Opinions* 19 (2018) involved a closure under § 3-305. When a public body meets in closed session to perform an administrative function, the Act generally does not apply, *see* § 3-103(a), unless the body has recessed an open session to perform an administrative function in closed session, *see* § 3-104 (requiring, under those circumstances, that a public body make certain public disclosures after the closed session).

one media outlet apparently knew about the January 22 meeting before it took place, but we do not know if the Board of Education provided separate notice to the press or simply posted notice on the two online calendars. We thus remind the body that, to provide adequate notice of special meetings called on an urgent basis, it should consider, for example, posting on social media, alerting the press, or sending notice through email subscriber lists—not simply posting notice on calendars. *See 17 OMCB Opinions* 134, 139 (2023).

*B. Meeting in Open Session Before Convening in Closed Session*

The Complainant next asserts that the Board of Education violated the Act by meeting in closed session without first meeting in open session. As noted above, a public body must meet in open session and take a vote to close the meeting before convening in closed session under § 3-305. The Complainant asserts that there was no such open meeting or vote to enter closed session.

The Board of Education denies the allegations. The Board asserts that it held an open meeting via Zoom, during which it voted to go into closed session. According to the Board, any member of the public could have accessed the open session by clicking on a “Watch Live Meetings” button on the Board’s website. The Board has provided a link to the recording of the meeting, during which a Board member moved to enter closed session and the Board thereafter voted to do so.

Because we have already concluded that the Board of Education failed to provide adequate notice of the meeting, we further conclude that the inadequate notice “produced a domino effect, making it impossible for the Board to comply with the Act’s procedural requirements for meeting in closed session.” *15 OMCB Opinions* 136, 139 (2021); *see also* § 3-305(d) (requiring a public body, before meeting in closed session, to conduct a recorded vote on the closure, make a written statement explaining the reason and statutory authority for the closure, and afford the public an opportunity to object). While the Board followed at least some of the Act’s requirements by entertaining a motion to close the session and voting to enter closed session, “the Board’s inadequate notice—describing only a closed session—effectively excluded the public from what the Board describes as the ‘open’ portion of its meeting.” *15 OMCB Opinions* at 139; *see also 8 OMCB Opinions* at 158 (recognizing that a notice that describes only a “closed” meeting “effectively exclude[s] the public from the open portion of that meeting”). “And because the meeting was effectively closed from the start, the Board did not provide the public an opportunity to object to the closure.” *15 OMCB Opinions* at 139. Accordingly, we find that the Board violated § 3-305(d) by not fully following the proper procedures for closing a meeting. *See id.*; *see also 16 OMCB Opinions* 12, 14 (2022).

### **Conclusion**

We find that the Board of Education violated § 3-302 by wording its meeting notice in such a way as to convey that no part of the meeting would be public. Because the inadequate notice effectively closed the meeting from the start, the Board did not provide the public an opportunity to object to the closure. We thus find that the Board also violated § 3-305(d). Finally, we find that the Board violated § 3-302.1(a) by failing to make available to the public an agenda for the January 22 meeting. This Opinion is subject to the acknowledgement and announcement requirements of § 3-211.

### **Open Meetings Compliance Board**

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