



Angélica Infante-Green
Commissioner

State of Rhode Island
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Shepard Building
255 Westminister Street
Providence, Rhode Island 02903-3400

March 4, 2024

By electronic and first-class mail

Steven Brown
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**Re: Your February 28, 2024 letter re the February 27 Meeting of
the Council on Elementary and Secondary Education**

Dear Steve,

I was acting as legal counsel to the Council on Elementary and Secondary Education at the meeting on February 27, 2024, and am writing in reply to the above on behalf of Board of Education Chair Michael Grey and Council Chair Patricia DiCenso.

You make two basic points: (1) that the Council's 24-hour advance sign up requirement is "burdensome, unnecessary, detrimental to public participation, and an outlier in public body 'public comment' policies"; and (2) that the Council should consider "scheduling meetings in an alternative location, whether within the RIDE building or elsewhere, when they have strong reason to suspect there is likely to be a large presence from the public."

As to the 24-hour advance sign-up requirement, it has been an explicit requirement of the Council Bylaws since *at least* 2015, when the present version of the Bylaws were adopted (and probably for well before then). Thus, while Art. II, § 6 makes optional whether to even have an Open Forum, Art. II, § 8 makes clear that if there is an Open Forum:

All those desiring to speak during the Open Forum portion of a meeting shall have been invited by the Chair prior to the meeting or shall have filed a request through the Department of Elementary and Secondary Education at least twenty-four (24) hours prior to the time of the meeting setting forth the agenda item(s) or other item(s) to be addressed.

Id.

Contrary to what you may have been told, no member of the public or public official who properly signed up to speak was denied the opportunity to speak at the February 27 meeting.

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I am aware that at least two elected officials who did not sign up claimed some right to speak, but as I advised the Council Chair last evening, such an “elected official exception” is not recognized in the Bylaws or in applicable law, and Art. VII, § 1 provides that before the Bylaws may be “amended, suspended or altered . . . *written notice of the substance of the proposed change has been mailed to the members of the Council at least three (3) weeks prior to such meeting.*” *Id.* (emphasis added).

I should add that the Council was forced to take a recess because the chanting and rude shouting of demonstrators made it impossible for Council Members to hear each other or those presenting to the Council, which is the reason that Building Security – not the Council Chair or any Member or any staff – called for police assistance.

As to the adequacy of the meeting venue, the Council has, with very rare exceptions, been able to successfully accommodate in-person attendance to all interested members of the public at Room 501 at 255 Westminister Street, and as you know, the meetings are livestreamed on Capitol TV. Indeed, the advance sign-up requirement enables the Council to have some indication as to how many members of the public will likely be interested in attending – a number which varies wildly and would be impossible to predict in the absence of the sign-up requirement – and the Council has changed venues when the sign-up number suggests such a change is necessary (which was not the case with respect to the meeting on February 27).

Although public bodies are required to permit in-person attendance at their meetings, it is well settled in Rhode Island that they are not obligated to provide unlimited seating to accommodate every member of the public who wishes to attend. In analyzing the issue, the Attorney General has equated the provision of seating at public meetings to the availability of seating in courtrooms. Just as courtroom capacity limitations do not infringe upon the constitutional guarantee of a public trial, likewise meeting room capacity limitations do not violate the OMA. *See In re Town of West Warwick*, R.I.A.G. No. ADV-OM-99-02 (March 11, 1999) (“As a courtroom can only seat a finite number of the public, the Open Meetings Act similarly does not expressly impose a requirement of unlimited seating.”); *see also Daniels v. Warwick Long Term Facilities Planning Committee*, R.I.A.G. No. OM-14-02 (January 16, 2014); *Brunetti, et al. v. Town of Johnston*, R.I.A.G. No. OM-17-19 (June 30, 2017); *Wilcox v. Richmond Town Council*, R.I.A.G. No. OM-23-24 (October 19, 2023).

Most recently, the AG issued a guidance document in anticipation of the expiration of Executive Order 21-72, which provided for virtual and hybrid meetings of public bodies during COVID-19. In its guidance, the AG reiterated that the OMA does not require public bodies to permit in-person attendance to an unlimited number of people where not feasible due to, *inter alia*, fire codes. *See Guidance on Public Bodies Returning to In-Person Meetings and Remote Public Participation in Open Meetings* (RIAG, February 15, 2024).

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All that being said, I know that Council Chairs Grey and DiCenso agree that offering members of the public the opportunity to make their views known in order to influence educational policy decisions is “deeply important,” and along with Board and Council Members, will carefully re-evaluate ways that this important goal can be accomplished while balancing the equally important goal of ensuring that the Board and Council can conduct business in an orderly and respectful manner and effectively discharge their responsibilities to that very same public. I also know that Council Chairs Grey and DiCenso share my appreciation and respect for you and the goals of your organization.

Feel free to call if you think further discussion would be helpful.

Very truly yours,



Anthony F. Cottone,
RIDE Chief Legal Counsel

Copy by email: Michael Grey
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