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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 20-IB04

January 14, 2020

VIA EMAIL

The Honorable Kimberly Williams
State Representative, 19th District
Kimberly.williams@delaware.gov

RE: FOIA Petition Regarding the Odyssey Charter School

Dear Representative Williams:

We write in response to your correspondence alleging that the Odyssey Charter School Board of Directors (“Board”) violated Delaware’s Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 (“FOIA”). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 regarding whether a violation of FOIA has occurred or is about to occur. As discussed more fully herein, we determine that the Board’s Nominating Committee has not violated FOIA by issuing an agenda noticing its intent to hold an executive session.

BACKGROUND

The Nominating Committee of the Board of Directors noticed a public meeting for December 14, 2019 with two agenda items, an open session discussion of “applications for open Board of Directors positions and recommendation for Board to fill positions” and a potential executive session to discuss “qualifications for job or personnel matters.”¹ You filed a Petition questioning whether this Committee had the authority to hold an executive session. More specifically, you asked: “[e]xecutive session only applies to the board (with a quorum present) not to a board’s subcommittee, correct?”² The Petition further notes that this seems to be a “practice” of the Board.

¹ Petition.

² *Id.*

The President responded on the Board’s behalf on December 23, 2019 (“Response”), stating that the Board is a public body and “[l]ikewise, the Committee, which was established by the Board, is also a ‘public body,’ as defined by FOIA.”³ The Board states therefore the Board’s Nominating Committee has the right to hold an executive session under FOIA for certain purposes. Furthermore, the Board reveals that its Nominating Committee did not hold an executive session at the December 14, 2019 meeting and conducted its business at the meeting in open session. Thus, the Board contends the Petition is moot.

DISCUSSION

The Board states in its Response that both the Board itself and its subcommittee, the Nominating Committee, are public bodies.⁴ We agree. FOIA’s open meeting requirements apply to public bodies.⁵ These requirements mandate that a meeting of a public body be held in open session, unless the topics of discussion fall within one of the exceptions enumerated in the statute.⁶ Those exceptions include nine limited topics that a public body may discuss in executive session. Accordingly, any public body subject to FOIA may hold an executive session for an authorized purpose.

³ Response.

⁴ See also 29 Del. C. § 10002(h).

⁵ 29 Del. C. § 10004.

⁶ *Id.*

CONCLUSION

Based on above, we cannot find on this record a basis to conclude that the Board's Nominating Committee violated FOIA by issuing an agenda noticing its intent to hold an executive session.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Aaron R. Goldstein

Aaron R. Goldstein
State Solicitor

cc: Josiah Wolcott, Esq., Odyssey Charter School Board President