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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 25-IB39

August 1, 2025

VIA EMAIL

Kane Dennison-Gomez
dennisongomezk@hotmail.com

RE: FOIA Petition Regarding the Christina School District

Dear Kane Dennison-Gomez:

We write regarding your correspondence alleging that the Christina School District violated the Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 (“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. For the reasons set forth below, we find that the Policy Review Committee of the Christina School District Board of Education violated FOIA at its July 1, 2025 meeting by discussing the below-referenced proposed policy that was not included on the meeting agenda.

BACKGROUND

On July 1, 2025, the Policy Review Committee of the Board of Education held a meeting. The agenda including the following policies for discussion: (1) Policy 01.10 – School Attorneys; (2) Policy 01.12 – Board-Staff Communications; (3) Policy 01.18 – Responsibilities of Members of the Board; and (4) Policy 01.22 – Superintendent Work. The Committee considered each of these policies separately, placing each on the shared screen of the virtual meeting during the discussions. After the policies listed on the agenda were discussed, other policies, including a new policy proposing qualifications for serving as board president, were shared and discussed. This Petition followed.

In the Petition, you claim that the meeting included discussions about a policy not listed on the agenda, which would require a Board member to serve for more than a year on the Board before becoming eligible to serve as president or vice president. You also allege that the

Committee expressed the intent to “rush and seek legal advice” on this new proposed policy.¹ You allege that the agenda did not contain sufficient detail to inform the public that this proposed board member qualification policy would be discussed. The Petition included a link to the video recording of the meeting.²

The District, through its legal counsel, replied to your Petition (“Response”). The District acknowledges that a policy related to qualifications for the school board presidency was discussed at the Committee’s July 1, 2025 meeting, and the Committee conferred regarding the need for legal counsel to review the proposal prior to taking action. However, the District argues that it provided proper notice for this policy regarding board presidency qualifications through another policy on the agenda entitled “Responsibilities of Members of the Board.” The District asserts that the policy regarding “Responsibilities of Members of the Board” provided sufficient notice to any member of the public with an intense interest in policies related to the specific roles of Board members, including the qualifications for holding those roles. The District notes that it did not take a vote regarding this board presidency qualification proposal, and the discussion took place in a properly noticed public meeting.

DISCUSSION

The public body has the burden of proof to demonstrate compliance with FOIA.³ In certain circumstances, a sworn affidavit may be required to meet that burden.⁴ A meeting of a public body must be open to the public, except in limited circumstances,⁵ and an agenda for a public meeting must include a “general statement of the major issues” which a public body expects to discuss⁶ and must be worded in “plain and comprehensible language.”⁷ Delaware courts have opined on the means to determine the sufficiency of an agenda:

In order that the purpose of the agenda requirement be served, it should, at least, “alert members of the public with an intense interest

¹ Petition.

² *Id.*, “CSD Board of Education Policy Committee Meeting - July 1, 2025,” <https://www.youtube.com/watch?v=1HRwzpFwS8> (last visited July 25, 2025).

³ 29 Del. C. § 10005(c).

⁴ *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

⁵ 29 Del. C. § 10004.

⁶ 29 Del. C. § 10002(a).

⁷ *Chem. Indus. Council of Del. v. State Coastal Zone Indus. Control Bd.*, 1994 WL 274295, at *8 (Del. Ch. May 19, 1994).

in” the matter that the subject will be taken up by the [public body]. In other words, members of the public interested in an issue should be able to review a notice and determine that an issue important to them will be under consideration. . . . FOIA provides an informational right to allow public involvement in government.⁸

FOIA is intended to ensure that public business is done in the open, so that citizens may hold public officials accountable. While the public body must provide enough information to alert the public that a subject will be undertaken, the agenda’s description need not provide for “every alternative that may take place with respect to a specific subject under consideration.”⁹

In this case, this Committee’s purpose is to review policies, and the July 1, 2025 meeting agenda listed four specific policies for consideration. When each policy was considered for review, the proposed policy was placed on a shared screen and discussed by Committee members.¹⁰ The District claims that “Policy 01.18 – Responsibilities of Members of the Board” offered sufficient notice to the public that qualifications for the presidency would be discussed at this meeting. However, this proposal does not relate to the responsibilities and roles of a member; it involves a separate topic, the qualifications to serve in the president position. The agenda and format of this meeting also make it clear that this policy was a separate subject matter unrelated to Policy 01.18. After reviewing the four policies on the agenda, the Committee discussed and shared access to other policies not listed on the agenda, including this policy about the qualifications for the board presidency, which a Committee member introduced as a new proposal.¹¹ As such, we find that the Committee violated FOIA by discussing this proposed policy without listing it on the agenda.¹²

Having found that the Committee violated FOIA, we consider whether any

⁸ *Lechliter v. Del. Dep’t of Natural Res. & Envtl. Control*, 2017 WL 2687690, at *2 (Del. Ch. Jun. 22, 2017) (quoting *Ianni v. Dep’t of Elections of New Castle Cnty.*, 1986 WL 9610, at *4 (Del. Ch. Aug. 29, 1986)).

⁹ *Lechliter v. Becker*, 2017 WL 117596, at *2 (Del. Ch. Jan. 12, 2017) (finding that an agenda stating a lease amendment would be presented and considered was sufficient notice that a vote on the lease amendment might occur).

¹⁰ Petition, “CSD Board of Education Policy Committee Meeting - July 1, 2025,” <https://www.youtube.com/watch?v=1HRwzpFwS8> (last visited July 25, 2025).

¹¹ *Id.*

¹² The fact that a vote was not taken is not determinative of whether notice was required for the item. *See* 29 Del. C. § 10002(j) (“‘Meeting’ means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.”); *Levy v. Bd. of Educ. of Cape Henlopen Sch. Dist.*, 1990 WL 154147, at *4 (Sept. 28, 1990) (finding that committee meetings were required to be noticed in accordance with FOIA, even though they were “for the purpose of *discussing* public business”) (emphasis in original).

remediation is appropriate to recommend. Section 10005(a) states that any “action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery.” The authority to invalidate a public body’s action, or to impose other relief, is reserved for the courts.¹³ The Delaware Court of Chancery stated that the “remedy of invalidation is a serious sanction and ought not to be employed unless substantial public rights have been affected and the circumstances permit the crafting of a specific remedy that protects other legitimate public interests.”¹⁴ In this case, we recommend that the Committee discuss the proposed policy at a future meeting held in compliance with FOIA’s open meeting requirements. We also recommend that at future meetings, the Committee discuss policies that are properly noticed on the Committee’s meeting agenda.

CONCLUSION

For the foregoing reasons, we determine that the Committee violated FOIA at its July 1, 2025 meeting by discussing this proposed policy that was not included on the meeting agenda.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: Alpa V. Bhatia, Attorney for the Christina School District

¹³ 29 Del. C. § 10005.

¹⁴ *Ianni*, 1986 WL 9610, at *7.