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November 20, 2025

**MEMORANDUM FOR RECORD**

Dr. Joshua L. Michael, Ph.D  
President, MSDE  
200 West Baltimore St.  
Baltimore, Maryland 21201

**Re: SCPSBOE COUNSEL'S RESPONSE TO THE OIGE'S 11/19/2025  
CORRESPONDENCE**

Dear President Michael:

Upon review of the OIGE's correspondence of 11/19/2025, we note the IG is again inserting words into laws and policies where they do not exist. This time, inserting the word "policy" into § 4-205 of the Maryland Education Article when that section addresses only "rules" and "regulations," apparently not understanding the significant difference of these terms in the context of school board governance. The OIGE also misapplies § 3-1204 of the Maryland Education Article which does not trump the Board's authority to take action in closed session as authorized by the "personnel exception" to the Open Meetings Act of the Maryland General Provisions Article, and because the hiring or firing of legal counsel is *not* a matter directly relate to the *raison d'être* of the board, i.e., education.

# **1. A “Policy” is Not a “Rule,” Nor is it a “Regulation” as Contemplated by § 4-205.**

To rebut Board Counsels’ previous arguments concerning OIGE Findings 3 – 7, the IG insists that Board Counsels’ interpretations are “not controlling.” He asserts that § 4-205 of the Maryland Education Article “assigns the power to interpret Board Policy solely to the County Superintendent.” [Corr., para. 8 (emphasis added).]

To the extent that Ed. Art. § 4-205 is even applicable (see *infra*), that statute makes zero mention of the word “policy.” Rather, it provides that,

*“...each county superintendent shall decide all controversies and disputes that involve: (i) The rules and regulations of the county board; and...”* [Ed. Art. § 4-205; corr. para. 8 (emphasis added)].

By injecting the word “policy” into its analysis of § 4-205, the OIGE appears to be trying to convince either a) that the word “rules” in school board governance also means or includes “policies;” or b) that the word “regulations” as used in school board governance means or includes “policies;” or c) that the Maryland Legislature’s intent was really to include “policies” in this code section but didn’t do so explicitly; or perhaps d) all three. He provides no authority for any of these propositions.

To the contrary, a “policy” in the context of school board governance is neither a “rule” nor a “regulation” - all three terms are clearly distinguishable as follows:

**Policy.** Local board policies “establish a framework or guideline for the operation of the school system, and inform the public of the board’s position, clarify expectations, and [e]nsure continuity.” [See *Maryland School Law Deskbook*, sec. 1:80]. Local board policies identify the direction that a particular board, elected by the people, would like to see the school system pursue. Only the local board creates local policy, and they may do so by employing a ‘policy committee’ - as many in Maryland do – to create an initial draft for the board’s review, modification and adoption; or they may be more hands-on and develop their own policies *ab initio*; or a combination or some other method. They may, and should, solicit the opinion and guidance of the local superintendent, but the superintendent is not the final authority.

**Regulation.** Regulations, however, *are* created by the local superintendent who is, as the executive for the system, charged with executing or implementing the board’s adopted policies. Regulations (or ‘procedures’) “contain important details, assign specific responsibility for tasks, and provide step-by-step instructions” so that staff and others over which the board has jurisdiction can act accordingly. [Id., at 1:81] “[T]he local superintendent can change regulations and procedures as needed.” [Id.] As a matter of comity, while board approval is normally not required before their promulgation, “the board reviews them to ensure that the intent of the policy is being carried out.” [Id.]

**Rule.** “Rules” in the context of school board governance pertains to how a school board conducts parliamentary procedure, i.e., conducts its business during open or closed meetings. For example, when is it proper to rescind a decision made at an earlier session; or may one member interrupt after another member has been given the floor to speak, etc. While some boards vote to employ their own homegrown rules of procedure, others may vote to simply adopt Robert’s Rules of Procedure. SCPSBOE has opted for the latter, as stated in its board handbook.

These meanings provide clarity as to why the Legislature would authorize local superintendents to interpret both regulations and parliamentary procedure. That is, in the case of regulations, the superintendent was the one who propounded them in conformity with board policy. In the case of the rules of parliamentary procedure, the superintendent serves as the board secretary and in that administrative capacity is competent to decide as well as remain neutral.

On interpreting policy, however, she does *not* have complete competency since it was the board who created it (directly or by proxy), debated it, and adopted it after debate. It makes sense that the board gets the benefit of the doubt that its interpretation is correct, and if a controversy does arise among members, then they may debate further and come to some consensus themselves.

Hence, the OIGE’s unilateral insertion of “policies” into its analysis of § 4-205 of the Education Article to uphold its Findings 3 – 7 is a fallacy. As such, the OIGE fails to rebut the Board’s arguments that it did not violate any Procurement Law or its own policies as alleged.

## **2. § 4-205 of the Education Article Is Irrelevant Here Since There was No “Controversy or Dispute” as to Policies 200-14 and 100-9 in the First Place.**

The OIGE seems to further argue that the Board had a duty under § 4-205 to solicit the superintendent to decide some controversy or dispute that the Board was supposedly having in interpreting its Policies 200-14 and 100-9. Assuming, *arguendo*, that § 4-205 does authorize the superintendent to interpret board policies, the OIGE’s facts in its Investigative Synopsis show no such controversy or dispute. Nowhere does the IG state, for example, that Board members were trying to determine if an attorney fit into the classification of a “school building, an improvement, or supplies” - the categories of contracts that policy 200-14 considers by its reference to § 5-112 of the Education Article.

Nor was there any problem interpreting Policy 100-9. No Board member was confused, for example, that *adoption* of a new policy, or *amending* an existing policy, was tantamount to *rescission* of an existing policy – the only act that Policy 100-9 does contemplates. No Board member was arguing or disputing at any time – according to the OIGE facts – that the Board could not rescind Policy 100-18 until it put the rescission out for a “first and second read.”

The OIGE fails to show that the Board was required to solicit the superintendent's alleged authority to interpret policies when there was no dispute concerning the meaning of either 200-14 or 100-9 in the first instance.

### ***Alleged Violations of § 3-1204.***

While we recognize that the OIGE has no authority to investigate violations of the Open Meetings Act (OMA), § 3-1204 closely parallels the OMA's provisions concerning a board's ability to move into closed session to discuss certain matters that, for various reasons, deserve confidentiality. These exceptions, found at § 3-305(b) et. seq. of the General Services Article, include the "personnel matters" exception, to wit:

*"(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction; or (ii) any other personnel matter that affects one or more specific individuals;" § 3-305(b)(i), (ii).*

The Open Meetings Compliance Board (OMCB) provides interpretation of the Act's provisions. The OMCB has determined that boards can "take action," i.e., vote, after moving into close if the matter on which they are taking such action falls within one of the exceptions enumerated in § 3-305(b) of the Act. [1OMCB94-5, at 73 ("[t]aking action in closed session: allowed if exception permits closure." [J.P. Delphey Ltd. P'Ship v. Mayor & City of Frederick 396 Md. 180 (2006)].

In other words, if a board states that it will meet in public to discuss the demotion or removal of a schoolteacher, then they may conduct a vote on that particular issue and concerning that particular teacher. This does not violate the OMA.

The OMCB has also determined that meeting to discuss legal counsel and, specifically, retention or employment of legal counsel, falls within the "personnel matters" exception. [See 3 OMCB 340, 343 (2003) (concluding that a discussion about whether to renew attorney's contract involved a "performance appraisal" and fell within the exception); and 7 *Official Opinions of the Compliance Board* 125 (2011) p. 128 ("Nonetheless, we can state as a general matter that a public body may invoke the "personnel matters" exception to close a session for the purpose of allowing one member to "rant" about the public body's attorney.")].

Consequently, when the Board moved into closed session on February 19, 2025, to discuss both the termination of prior legal counsel and the hiring of current legal counsel, they did so under the authority of the General Services Article and OMA "personnel matters" exception. Because it was authorized to move into closed session to discuss both matters, it was - under

the OMCB opinions above - authorized to “take action” by vote on both issues.<sup>1</sup>

Undersigned counsel communicated with the OMCB on the date of this Memorandum, specifically as to the effect of § 3-1204 of the Education Article on the ability of the Board to take action by vote on a legitimate issue that led to the closed session. OMCB informed that § 3-1204 of the Education Article is not implicated because the hiring and/or termination of legal services is not directly related to education. That is, § 3-1204 requires that action be taken only in open session when the matter acted upon is directly related to education, e.g., textbook adoption, curriculum, uniform policy, etc. The Board’s hiring of a new attorney to provide legal counsel is not directly related to the education of students, neither is the termination or discipline of an employee, etc. and which requires confidentiality.

### ***Conclusion***

The OIGE in its latest correspondence again fails to show that there was a dispute or controversy regarding interpretation of the local board policies referred to in its Investigative Synopsis that would require the Board to solicit the decision-making authority of the local superintendent under Ed. Art. § 4-205. He fails to show that Ed. Art. § 4-205 even grants authority to the superintendent to interpret local board policies, even if a genuine dispute had occurred, since a policy is by definition and practice not a rule and not a regulation – the only two things that Ed. Art. § 4-205 enumerates. The OIGE further fails to show that § 3-1204 trumps the Board’s ability to meet and take action on confidential “personnel matters.”

For foregoing, SCPSBOE maintains that the IG’s conclusion that it is subject to and violated the provisions of the Maryland Procurement Law is invalid; that it did not violate its own policies or § 3-1204 by having “taken action” on a confidential personnel matter in closed session.

Thank you for your kind consideration,

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Marc D. Schifanelli, Esq.  
Counsel, SCPSBOE

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<sup>1</sup> The OMCB in September delivered an opinion regarding complaints that the SCPSBOE had made several violations contrary to the OMA, and while answering the complaints recognized that the Board had voted in closed session on the contracts in question and found no violation regarding the action taken nor any other violations. [attached]

**WES MOORE**  
*Governor*

**ARUNA MILLER**  
*Lt. Governor*



**RUNAKO KUMBULA ALLSOPP, ESQ.,**  
**CHAIR**  
**KAREN R. CALMEISE, ESQ.**  
**ANDREW G. WHITE, ESQ.**

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

***19 Official Opinions of the Compliance Board 259 (2025)***

**September 29, 2025**

**Somerset County Board of Education**

The Complainant alleges that the Somerset County Board of Education (“Board of Education” or “Board”) violated the Open Meetings Act (the “Act”) by failing to provide adequate notice of an emergency meeting on February 13, 2025, and by failing, in the notice or agenda of an April 15, 2025, meeting, to disclose the purpose or statutory authority for a planned closed session. She also suggests that the Board may have improperly met in secret, in advance of the February 13 meeting, to reach consensus on a matter. For the reasons below, we find no violations of the Act.

**Discussion**

*A. February 13, 2025, meeting*

The Complainant first alleges that the Board improperly voted to rescind a Board policy on February 13, 2025, and appointed new legal counsel, “without adequate public notice or discussion.” The submissions establish the following facts:

On January 23, 2025, the Board of Education provided notice that it would meet at 5:30 p.m. on February 11, 2025, for a budget work session.

On February 11, the Board provided notice that the budget work session would be postponed until 5:30 p.m. on February 13, due to inclement weather.

On February 12, around 2 p.m., the Board chairperson emailed other members of the body saying that he was “declaring an Emergency Meeting to meet directly after the Board work session concerning the budget that [wa]s scheduled for Thursday, February 13, 2025, at 5:30pm.” The emergency meeting, he said, would start at 6:45 p.m.

On February 13, around 9:30 a.m., the Board publicized the emergency session, via text and instant messaging apps, and by posting on the Board’s website. The Board indicated that the body planned to consider “policy 100-18” during an open session then convene in closed session to discuss “confidential personnel matters.”

At 5:30 p.m. that day, the Board convened for the budget work session. After concluding its discussion of budget matters, the Board voted to repeal and rescind Board Policy 100-18, which had established a procedure for hiring Board counsel. After that vote, the Board of Education entered closed session, during which the body discussed a contract for legal counsel.

We understand the Complainant to be raising two separate concerns about what transpired on February 13. We address each in turn.

*1. Notice*

First, the Complainant alleges that the Board of Education failed to provide adequate notice of the 6:45 p.m. “emergency meeting” because the Board provided only about nine hours’ notice that the body would be discussing Policy 100-18. The Board of Education responds that the emergency session was not a separate meeting but, rather, “an additional item” that was added “to [a]n already existing agenda” for the budget work session.

We understand why the Complainant (and perhaps other members of the public) considered the “emergency meeting” a separate meeting from the budget work session. In an email to members of the Board of Education, the chairperson himself described it as an “[e]mergency meeting” to follow the budget work session. Moreover, the Board’s communications to the public described an “emergency meeting,” not an amendment to the agenda for the budget work session.

That said, we have, on at least one prior occasion, accepted a public body’s assertion that a newly announced meeting was, in fact, an extension of an already scheduled meeting. In 19 *OMCB Opinions* 2 (2025), a public body announced that it was canceling a public comment period that was planned as part of a 4:15 p.m. open meeting and instead scheduling a “joint town hall” to take place at 7 p.m. the same day. *Id.* at 2. A revised agenda, included in the news release, listed the town hall meeting as an agenda item for the previously scheduled 4:15 p.m. open session, and, at the start of the town hall, a clerk described it as “the next item on[the] agenda.” *Id.* at 3. We concluded that the town hall was part of an ongoing meeting and not an entirely new, separate meeting.

Here, the Board of Education prepared one agenda for February 13, listing the budget work session, the motion to repeal Board Policy 100-18, and the closed session as

separate items that the Board intended to address in one meeting.<sup>1</sup> A single video recording posted on the Board’s website<sup>2</sup> captured both the budget work session and the subsequent emergency session; the recording shows members of the Board sitting around a table in the Board’s meeting room to discuss budget matters, after which the presiding officer asked for a motion to adjourn, another member so moved, and the body voted to adjourn the budget session. The members of the Board then moved to a dais in the same room and, about four minutes later, the Board chairperson called the emergency session to order.

Although some of these facts suggest that the budget work session was a separate meeting from the emergency session, we think that, on balance, the record shows that the Board convened once, to address various separate matters. We thus conclude, as we did in 19 *OMCB Opinions* 2 (2025), that the Board of Education convened just one meeting.

Returning, then, to the question of notice, we consider whether the Board provided adequate notice of the February 13 meeting. The Act requires that, “[b]efore meeting in a closed or open session, a public body . . . give reasonable advance notice of the session.” § 3-302(a).<sup>3</sup> Because “[t]he Legislature’s use of the term ‘reasonable advance notice’ does not lend itself to a brightline test,” 4 *OMCB Opinions* 51, 55 (2004), “we have measured the adequacy of a meeting notice by considering its content,<sup>[4]</sup> its timing, and the method by which the public body provided the notice,” 18 *OMCB Opinions* 138, 140 (2024) (citing 8 *OMCB Opinions* 76, 80 (2012)).

As already noted, the Board initially gave notice on January 23 that the body would meet on February 11, but the Board rescheduled the meeting to February 13 due to inclement weather. The Board provided notice of the postponement on February 11, the same day as the inclement weather and two days before the new date. We have no evidence that the Board failed to provide notice of the meeting as soon as practicable after the Board set the date, time, and location of the meeting—either when the Board first provided notice of the original meeting date, or when the Board advised the public that the meeting would be postponed due to inclement weather. *See, e.g.*, 18 *OMCB Opinions*

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<sup>1</sup> The agenda is available at [https://files-backend.assets.thrillshare.com/documents/asset/uploaded\\_file/3497/Scps/b8c3c7f8-2c74-41d4-a413-56a3280a413a/February\\_13\\_2025\\_Open\\_Budget\\_Work\\_Session\\_-\\_S.pdf?disposition=inline](https://files-backend.assets.thrillshare.com/documents/asset/uploaded_file/3497/Scps/b8c3c7f8-2c74-41d4-a413-56a3280a413a/February_13_2025_Open_Budget_Work_Session_-_S.pdf?disposition=inline) (last visited Sept. 29, 2025).

<sup>2</sup> The video recording is available at [https://townhallstreams.com/stream.php?location\\_id=136&id=65664](https://townhallstreams.com/stream.php?location_id=136&id=65664) (last visited Sept. 29, 2025).

<sup>3</sup> Statutory references are to the General Provisions Article of the Maryland Annotated Code.

<sup>4</sup> “Whenever reasonable, a notice . . . shall: (1) be in writing; (2) include the date, time, and place of the session; and (3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.” § 3-302(b).

179, 180 (2024) (applying that standard “[i]n matters involving allegations that a body has failed to provide enough notice of a meeting”). We thus find no violation with respect to the Board’s notice to the public that the body planned to meet on February 13.

The Complainant’s grievance, however, is specific to an item of business that the Board of Education took up on February 13—that is, the repeal of Board Policy 100-18. We thus consider also whether the Board of Education violated the Act by adding this item of business to the agenda.

Section 3-302.1 of the Act requires, “before [a public body] meet[s] in an open session,” that the body “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 . . . .” § 3-302.1(a)(1). “If an agenda has been determined at the time the public body gives notice of the meeting . . . , the public body shall make available the agenda at the same time the public body gives notice of the meeting.” § 3-302.1(a)(2). “If an agenda has not been determined at the time the public body gives notice of the meeting, the public body shall make available the agenda as soon as practicable after the agenda has been determined but no later than 24 hours before the meeting.” § 3-302.1(a)(3).<sup>5</sup> But “[n]othing in [§ 3-302.1] may be construed to prevent a public body from altering the agenda of a meeting after the agenda has been made available to the public,” § 3-302.1(e), in order to add “topics that were not known when the agenda was made,” 14 *OMCB Opinions* 42, 43 (2020).

That apparently is what the Board did here, adding to the agenda the motion to repeal Board Policy 100-18 and the closed session discussion about a personnel matter. There is some indication that the Board of Education may have known, at least by February 7, that it would soon consider repealing Board Policy 100-18 and discuss a contract for new legal counsel. Counsel for the Board asserts that, as of that date, her law firm had drafted a contract for the Board’s consideration. But the record does not establish that the Board knew either on January 23, when the body first provided notice of the February meeting, or on February 11, when the body rescheduled the meeting, that the Board would consider the contract for new counsel *at the February meeting*. Counsel asserts that the body did not add the emergency items to the February 13 meeting agenda until February 12, as reflected in the Board chairperson’s email to the body’s other members. The record thus does not establish that the Board omitted a known item of business from the agenda that it issued on January 23. And the body was “not require[d] . . . to post subsequent updates to an agenda it ha[d] already made available online” (though “we encourage that practice to

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<sup>5</sup> These timing requirements do not apply “[i]f a public body is unable to comply . . . because the meeting was scheduled in response to an emergency, a natural disaster, or any other unanticipated situation.” § 3-302(b). Under those circumstances, the body “shall make available on request an agenda of the meeting within a reasonable time after the meeting occurs.” *Id.*

the extent it would timely and practicably inform interested members of the public”). 14 *OMCB Opinions* 46, 48 (2020). We thus find no violation based on the Board of Education adding the motion to repeal Board Policy 100-18 and the personnel matter to the agenda. Nor do we find a violation based on the Board notifying the public of this addition about nine hours before the body took up those items.

Nonetheless, we reiterate what we said in 14 *OMCB Opinions* 89 (2020):

Agendas published with a meeting notice can make the difference in whether a member of the public attends the meeting or not. For that reason, . . . “last-minute and unexplained changes in meeting agendas often lead the public to conclude that the public body is trying to rush a matter through without public scrutiny.” In short, given the policy of the Act to “increase[] the faith of the public in in government,” § 3-102(b), public bodies should adhere as closely to the agendas that they have posted as circumstances allow.

*Id.* at 91 (quoting 14 *OMCB Opinions* 75, 77 (2020)).

## *2. Alleged secret meeting*

The Complainant’s second allegation with respect to the February 13 meeting is that the Board’s decision to appoint new legal counsel “was arranged prior to any open vote.” She infers this from the fact that the draft contract for new counsel was dated February 7, and the attorneys who were hired were already present at the February 13 meeting. She suggests that “decisions may have been made outside of open session by certain board members.”

We find no violation based on the information before us. For one thing, the Act does not apply to individual members of a public body but, rather, to the body as a whole. *See, e.g.*, 2 *OMCB Opinions* 77, 77 (1999). For another, “[t]he Act does not require a public body to conduct its business in a meeting,” 15 *OMCB Opinions* 148, 151 (2021); it “simply sets forth the requirements that apply when a quorum of the public body *does* convene to transact public business,” 16 *OMCB Opinions* 101, 102 (2022) (emphasis added) (quoting 94 *Opinions of the Attorney General* 161, 173 (2009)); *see also* § 3-101(g) (“‘Meet’ means to convene a quorum of a public body to consider or transact public business.”).

To the extent that the Complainant alleges that the Board of Education impermissibly met in secret, ahead of the February 13 meeting, we find no violation. Whether a public body has “met” is often a matter of dispute, particularly when a complainant has obtained email messages exchanged among members of the body and alleges that these communications rose to the level of a “meeting” under the Act. *See, e.g.*,

19 *OMCB Opinions* 204 (2025) (involving such a dispute). Even when a public body has denied that it has “met,” we have sometimes concluded that an exchange of emails on public business, among a quorum of the body, over a relatively short period of time, constituted a “meeting” that violated the Act because the public had no notice or an opportunity to observe. *See, e.g., id.* at 207-09. Here, however, the Complainant merely references “the appearance that the decision” to repeal Board Policy 100-18 and hire new counsel “was made privately in advance.” She has alleged no facts from which we could determine that a secret meeting occurred in violation of the Act. We thus decline to find a violation based on the record here. *See, e.g., 15 OMCB Opinions* 132, 134 (2021) (declining to find a violation when the complainant inferred that a meeting must have taken place but the public body denied that any such meeting occurred); 4 *OMCB Opinions* 67, 68 (2004) (same); *cf. 16 OMCB Opinions* 69, 75 (2022) (noting that we ordinarily do not address “hypothetical or speculative allegations”).

*B. April 15, 2025, meeting*

Finally, the Complainant alleges that the Board of Education violated the Act with respect to a closed session on April 15, 2025. Specifically, the Complainant alleges that the Board “posted an agenda stating that the Board would enter executive session,” but “no purpose or statutory authority was provided in the notice to the public.”

We find no violation. Neither a notice nor an agenda must disclose a public body’s reason for entering closed session or the statutory authority for closing a meeting. As to the notice, the Act requires only that it include, “[w]henever reasonable” and “if appropriate,” “a statement that a part or all of a meeting may be conducted in closed session.” § 3-302(b)(3). As for the agenda, the Act requires only that it “indicat[e] whether the public body expects to close any portion of the meeting.” § 3-302.1(a)(1)(ii). Those requirements were met here. The notice advising the public that the Board of Education would meet on April 15 for a regularly scheduled meeting indicated that regular meetings “begin at 4:00 PM with a motion to immediately convene into a closed session to discuss confidential and business matters” and “reconvene to an open session for public viewing at 6:00 PM.”<sup>6</sup> The agenda similarly reflected a motion to enter “executive closed session.” We thus find no violation based on this allegation.

### **Conclusion**

We conclude that the February 13 “emergency meeting” was part of the budget work session that took place the same day. We further find that the Board of Education provided

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<sup>6</sup> An archived version of the notice is available at <https://web.archive.org/web/20240919181937/https://www.somerset.k12.md.us/page/meeting-dates> (last visited September 29, 2025).

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reasonable advance notice of the meeting, and the Board did not violate the Act by altering the agenda to include items of business that the Board addressed during the part of the meeting that it referred to as the emergency session. To the extent that the Complainant alleges that the Board of Education improperly met in secret, in advance of the February 13 meeting, we have no basis in the record to conclude that a secret meeting took place, and we find no violation. Finally, we find no violation with respect to the notice and agenda of the Board's April 15 meeting omitting the purpose or statutory authority for an expected closed meeting, as the Act does not require meeting notices or agendas to include those details.

**Open Meetings Compliance Board**

*Runako Kumbula Allsopp, Esq.*

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