

THE SCHOOL DISTRICT OF PHILADELPHIA BOARD OF EDUCATION

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February 17, 2021

Mary Catherine Roper
Deputy Legal Director
American Civil Liberties Union
Eastern Region Office
PO Box 60173
Philadelphia, PA. 19102

Sent via email: mroper@aclupa.org

Dear Mary Catherine Roper,

I write in response to your letter dated February 9, 2021, on the topic of “Compliance with the public requirements of the Sunshine Act.” The Board of Education takes the requirements of the Sunshine Act seriously and has put in place a plan for public participation that meets both the spirit and letter of this law. The Sunshine Act requires, as a general rule, that agencies “provide a *reasonable* opportunity at each advertised regular meeting and advertised special meeting for residents ...or for taxpayers ... to comment on matters of concern, official action or deliberation which are or may be before the Board or council prior to taking official action.” 65 Pa.C.S.A. § 710.1 (emphasis added). The Board of Education’s plan for public participation includes posting materials publicly, typically three weeks in advance of Board meetings; seeking and responding to public questions on all agenda items; allowing unlimited written testimony which is posted in full in advance of each meeting and summarized by board members during each meeting; and having a comment period that offers opportunities for 10 student speakers and 30 adult speakers to provide spoken comments during a meeting.

While Section 710.1(a) of the Sunshine Act does *permit* an agency to defer the comment period of a meeting if it determines that there is not sufficient time for public comment at a particular meeting, this does not mean that the comment period must be unlimited or deferred. Rather, the use of the term “period” supports the interpretation that the opportunity for public comment occurs within a defined, reasonable, time period. The Sunshine Act requires the Board to provide a reasonable opportunity for the public to provide comment; it does not mandate unlimited live speaking opportunities. Even if a meeting were broken up into several meetings with an unlimited speaker process in place, additional speakers could register to speak at each reconvened meeting and business would never be able to be conducted. This is counter to the primary purpose of the Sunshine Act, which is for the agency to carry out business in public.

The ACLU’s reliance on *Alekseev v. City Council of City of Philadelphia*, is misleading. In *Alekseev*, the Philadelphia City Council did not permit any public comment at its regularly scheduled meetings. 607 Pa. 481, 482, 8 A.3d 311, 312–13 (2010). The Board of Education not only allows for a reasonable public comment period at its regularly scheduled meetings, it also solicits public input well in advance of the meetings. Likewise, the issue in *McGrath v. Bd. of School Directors of the City of Scranton* was not about the established process to provide for public participation; rather, the primary issue was that

due to technical difficulties, members of the public were unable to witness the meeting and that not every member of the public “*who had registered in advance* to offer public comment was granted access to the school board’s Zoom platform to provide remarks during the meeting.” 2020 WL 5904514, at *1 (Pa.Com.Pl.) (emphasis added).

In regard to the two minute time allowance, guidance from the Office of Open Records, the Commonwealth agency tasked with providing annual training on the Sunshine Act, states: “Agencies are permitted to establish rules to oversee public comment by, for example, limiting the time for each commenter.” See, <https://www.openrecords.pa.gov/SunshineAct.cfm> (last accessed February 11, 2021); 65 P.S § 67.1310(a)(3). The Board’s procedures not only allow speakers to comment for up to two minutes, they also permit anyone who wishes to provide commentary that exceeds two minutes the opportunity to submit written testimony without restriction on length.

Notably, the Board’s established procedures are in line with the posted speaker policies of large school districts around the country as well as other Pennsylvania districts. *See* New York Panel for Educational Policy, aka New York City Board of Education (45-minute speaker registration window; speakers may speak for 2 minutes); Los Angeles Unified School District (7 speakers may speak on each topic being voted on at the meeting, with 15 speaker limit on general topics); Chicago Public Schools (capped at 30 speaking slots with each speaker allocated up to 2 minutes); Miami-Dade County Public Schools (90 minute limit for public comment at each meeting, with each speaker limited to 2 minutes); Clark County School District (unlimited written comment accepted; no spoken comment); Houston Independent School District (2 minutes per speaker and speakers must speak on a topic on the agenda; if a large number of speakers, the board can reduce speaker time to 1 minute per speaker depending on number of speakers); Lower Merion School District (45 minutes of public speakers, with 3 minute limit); West Chester School District (during the pandemic is only taking comments via Google form, accept 5 Google form comments on each item they are voting on, which will be read into the record; Pittsburgh School District (3 minute time limit, with speakers only allowed during speaker meeting, not during action meetings); Reading School District (allows speakers for the first 30 minutes of a meeting).

Finally, while the Board is cognizant of the Sunshine Act’s provisions which permit a court to void actions taken at unauthorized meetings, the Board has not conducted any unauthorized meetings and does not take action without public comment. Moreover, the Act expressly states that “the judicial relief under section 713 (relating to business transacted at unauthorized meeting void) shall not be available on a specific action solely on the basis of lack of comment on that action.” 65 Pa.C.S.A. § 710.1(b).

Across the Commonwealth and country, we have seen the possibilities and challenges of holding public meetings during the COVID-19 pandemic. The rapid advances in technology that have made holding meetings via a virtual platform possible have provided us with the opportunity to hear from constituents who would have been unable to participate when participation meant coming in person to a meeting on a busy week night. This means that more members of the public are now able to address the Board, a practice and diversity of perspective that the Board welcomes. At the same time, the virtual platform has also meant that live testimony could in fact be almost unlimited, to the detriment of the conduct of Board business and the ability of the public to attend long enough to watch the Board conduct its votes. We saw this recently in Miami where the Board of Education opened its meeting to unlimited speakers and then held a 29-hour meeting. Few members of the public could watch that entire meeting, and a limitless period of public speaking would remove any predictability for the public to actually see and hear how the Board votes.

Mary Catherine Roper
February 17, 2021
Page 3

We believe that our procedures are not only reasonable and compliant under the letter and spirit of the law, but also will allow for the Board to continue to offer speakers the option to comment virtually or in-person even when we return to in-person meetings, and for more people to participate in and observe the Board's business.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joyce S. Wilkerson".

Joyce S. Wilkerson, President
Board of Education