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STATE OF RHODE ISLAND, PROVIDENCE, SC.	**SUPERIOR COURT**
NICOLE SOLAS, ***Plaintiff,***	
vs.	**C.A. No. PC-2022-04727**
SOUTH KINGSTOWN SCHOOL COMMITTEE, ***Defendants.***	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Rhode Island's Open Meetings Act ("OMA") sets out a broad and unequivocal standard to guarantee public access to information about government's activities: "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy." R.I. Gen. Laws § 42-46-1.

Courts have reinforced this statutory mandate time and again. Quoting James Madison in deciding an OMA case, the Rhode Island Supreme Court wrote:

> "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps, both. Knowledge will forever govern ignorance; And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." … In a democratic society, the gateway to such knowledge is access to information and the adequate means of acquiring it. This principle has been recognized by the General Assembly, and is embodied in the Open Meetings Act.

Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 788 (R.I. 2005) (citations omitted).

This case is about public access to critical deliberations and decisions made by the BIPOC Advisory Board ("Advisory Board"), which the South Kingstown School Committee ("School Committee") created and funded in order to assist the Committee in producing policies

involving hiring, discipline, and curriculum—policies that significantly affect the school district's operations.

Under the OMA, *"[e]very* meeting of *all* public bodies shall be open to the public." R.I. Gen. Laws § 42-46-3 (emphasis added). A "public body" includes "board[s] … of … municipal government." *Id.* § 42-46-2(5). And a "meeting" is "the convening of a public body to *discuss* and/or act upon a matter over which the public body has supervision, control, jurisdiction, *or advisory power*." *Id.* at (1) (emphasis added).

The question here is whether the Advisory Board is a "public body" within the meaning of the OMA. The OMA's plain language shows that the answer is yes. The Advisory Board was specifically created by the School Committee to discuss matters of broad public concern on a regular and recuring basis. The School Committee appointed several members to the Advisory Board, and chose some of them as voting members of the Committee's Policy Subcommittee. And the School Committee provided public funds to the Advisory Board. Indeed, these were its sole source of funding.

What's more, the Advisory Board was vested by the School Committee with "*advisory power*" over the development and implementation of significant school policies and operations. Policies the Advisory Board created were communicated to and adopted by the School Committee. That "exercise of advisory power," as the Supreme Court has unequivocally said, "is enough to bring it under the [OMA's] umbrella." *Solas v. Emergency Hiring Council of State*, 774 A.2d 820, 825 (R.I. 2001).

Even under the strictest possible interpretation of the OMA, the Advisory Board meets the definition of a "public body." But because the OMA "should be construed broadly and interpreted in a light favorable to public access," *id.* at 824, there is no doubt that the public should have access to the deliberations and decisions of an entity that has had a critical role in the development of policies affecting all South Kingstown students and their families.

STATEMENT OF FACTS

On July 22, 2020, the School Committee unanimously approved a motion "to *create* an equity and antiracist advisory board." 30(b)(6) Dep. Ex. 1 (attached as Exhibit 1) (emphasis added); *see also* 30(b)(6) Dep. (attached as Exhibit 2) at 13:5-12.

The stated purpose of the Advisory Board is "to advocate for *equity in the education* of students who identify as Black, Indigenous, and People of Color (BIPOC) in South Kingstown schools, inspiring a healthier and *just community and school system for everyone*." School Committee's Resp. to Att'y Gen. Compl. (attached as Exhibit 3) at 1 ¶ 3 (emphasis added); Am. Comp. ¶ 20; Answer ¶ 20. The School Committee specifically charged the Advisory Board with creating various school policies and to work with the school district to advance and implement those policies. Ex. 2 at 13:16–21; 15:10–17. This included policies pertaining to the school district's hiring and disciplinary processes and the crafting of a comprehensive "antiracism" policy that would inform practices and operations throughout the school district. Wildman Dep. (attached as Exhibit 4) at 24:14–19; 55:11–15.

In order to accomplish that work, the School Committee signed a contract with the Advisory Board that allocated $5,000 to the Advisory Board to conduct regular and recurring meetings. 30(b)(6) Dep. Ex. 14 (attached as Exhibit 5); *see also* Am. Compl. ¶¶ 41–43, Answer ¶¶ 41–43. This payment represented the *sole* source of the Advisory's Board's funding. Ex. 4 at 87:12–15.

The School Committee then appointed two members to the Advisory Board, who were also voting members of the School Committee's Policy Subcommittee. Am. Comp. ¶ 40; Answer ¶ 40; *see also* Ex. 2 at 35:16–24; 34:6–11. The Policy Subcommittee is responsible for developing all school policies and then sending those policies to the School Committee for final approval. *Id.* at 35:25–36:8. The School Committee later expanded the number of appointed Advisory Board members, who also serve on the Policy Subcommittee, from two to three. 30(b)(6)Dep. Ex. 12 (attached as Exhibit 6) at SKSD.00103; Ex. 2 at 54:14–23; 55:15–19.

On October 27, 2020, the School Committee unanimously voted "to continue [the] BIPOC Advisory Board." 30(b)(6) Dep. Ex. 7 (attached as Exhibit 7) at SKSD.00170.

The Advisory Board met every week on a regular and recurring basis. *See* 30(b)(6)Dep. Ex. 13 (attached as Exhibit 8) at SKSD.00025. Among other things, the Advisory Board discussed, created, edited, and reviewed school policies and practices and reviewed school curriculum. *Id.* at SKSD.00041.

Membership on the Advisory Board was restricted based on race. 30(b)(6) Dep. Ex. 5(attached as Exhibit 9) at Defendant's 06836; Savastano Dep. (attached as Exhibit 10) at 33:2–10. Only individuals who self-identified as "black, indigenous, or a person of color" could be members of the Advisory Board. Ex. 4 at 45:1–16.

Under the School Committee's by-laws, the Committee could have created a subcommittee "to assist in the completion of [the School Committee's] business[,] … [including] for a specific purpose such as fact-finding, studying issues and/or making recommendations to the full Committee." *See* 30(b)(6) Dep. Ex. 6 (attached as Exhibit 11) at 3. However, such a subcommittee would be subject to the OMA. *Id*. Additionally, the School Committee could not lawfully restrict membership of such a subcommittee based on race. Ex. 2 at 28:25–29:9.

On May 15, 2021, Nicole Solas, a South Kingstown resident and mother of school-aged children, learned of the existence of the Advisory Board. She thereupon asked School Superintendent Linda Savastano, for permission to attend meetings of the Advisory Board. Ex. 10 at 108:12–15. The Superintendent directed Ms. Solas to Robin Wildman, who informed Ms. Solas that the Advisory Board meetings "aren't open to the public." Savastano Dep. Ex. 24 (attached as Exhibit 12). Ms. Solas later emailed Ms. Savastano expressing concern that these meetings were closed to the public when the Advisory Board was receiving public money and was producing policies that were later considered and adopted by the School Committee. *Id.*

The OMA gives Ms. Solas a legal right to attend all public meetings. Am. Compl. ¶ 66, Answer ¶ 66.

CASE HISTORY

On May 21, 2021, Ms. Solas filed an administrative complaint with the Office of the Attorney General regarding the School Committee's refusal to open meetings of the Advisory Board. (Attached as Exhibit 13). The complaint was filed within 180 days of "an unannounced or improperly closed meeting." R.I. Gen. Laws § 42-46-8(b).

On May 10, 2022, the Attorney General found that the Advisory Committee is not a "public body" under the OMA, and closed the administrative complaint. Att'y Gen. Op. attached as Exhibit 14.

Ms. Solas then filed this action on August 3, 2022, within "ninety (90) days of the attorney general's closing of the complaint." R.I. Gen. Laws § 42-46-8(c).

ARGUMENT

I. The plain language of the OMA, and the principal holding of *Solas*, require that entities with "*advisory power*" over matters of "*significant public concern*" be subject to the OMA.

The plain language of the OMA requires that the Advisory Board's meetings be open to the public. Under the OMA, a "public body" is "any department, agency, commission, committee, *board* ... or *any subdivision thereof*." R.I. Gen. Laws § 42-46-2(5) (emphasis added). The OMA defines a "meeting" as "the convening of a public body to *discuss* and/or act upon a matter over which the public body has supervision, control, jurisdiction, or *advisory power*." *Id.* at (1) (emphasis added).

The Advisory Board is a "board" that was established by the School Committee, which is a municipal body. [1] It is indisputable that the School Committee established the Advisory Board to "discuss" matters of significant public concern in public education. Thus, the only question is whether the Advisory Board exercises "advisory power" within the meaning of the OMA.

The Rhode Island Supreme Court addressed this question in *Solas*, 774 A.2d at 824, which is the seminal OMA case applying the OMA's plain language in defining a "public body."

[1] *Coventry Sch. Comm. v. Richtarik*, 411 A.2d 912, 915 (R.I. 1980) ("[S]chool Committees are … 'municipal bodies.'").

In that case, the Governor created an Emergency Hiring Council ("EHC") to "*use its experience*" to make suggestions to the Governor regarding hiring processes for state employees "and [to] generally improve the quality and delivery of the personnel system." *Id*. Like the Advisory Board here, the EHC included government officials and employees who met regularly to discuss matters of public concern. *Id*. Applying the plain language of the statute, the Supreme Court found that an entity charged with advisory power over matters of significant public concern is "public body" subject to the OMA. *Id.*

Here, the School Committee empowered the Advisory Board to act in an influential advisory capacity, which the Advisory Board did by drafting comprehensive school policies pertaining to "anti-racism," employee hiring practices, and disciplinary matters, among other things. The Advisory Board then communicated directly with the School Committee regarding these matters, and the School Committee ultimately implemented major school policies based on the Advisory Board's recommendations and advice. In other words, the Advisory Board was, indeed, an advisory board—that is, a "board" that "discuss[ed]" matters over which the School Committee has power, and then exercised "advisory power" accordingly. R.I. Gen. Laws § 42-46-2(5), (1). It was established to perform "public business," and did in fact, engage in public business. *Id.* (3).

That means that, under the OMA, the Board's work must be "performed in an open and public manner," so that "citizens [are] advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy." R.I. Gen. Laws § 42-46-1. And yet it was not.

A. The School Committee established the Advisory Board to discuss matters of significant public concern.

In *Solas*, the Court held that a primary factor in determining whether an advisory board is a public body subject to the OMA is whether matters discussed by an advisory body are of "significant public interest,", or include "matters of great interest to the citizens of this state." 774 A.2d at 824-25.

By the School Committee's own admission, the Advisory Board was created and funded to discuss and make recommendations on matters of significant public concern that are of great interest to the citizenry. Am. Compl. ¶¶ 19–21; Ans. ¶¶ 19–21. According to the School Committee, the purpose of the Advisory Board is "to advocate for *equity in the education* of students who identify as Black, Indigenous, and People of Color (BIPOC) in South Kingstown schools, inspiring a healthier and *just community and school system for everyone*." Ex. 3 at 1 ¶ 3 (emphasis added); Am. Comp. ¶ 20; Ans. ¶°20. The School Committee's corporate representative testified pursuant to Rule 30(b)(6) (meaning that her testimony "bind[s]" the Advisory Board, *Sabre v. First Dominion Cap., LLC*, No. 01CIV2145BSJHBP, 2001 WL 1590544, at *1 (S.D.N.Y. Dec. 12, 2001)), that the Advisory Board was created to "work with our school district in order to make sure that—that we were participating in equity and that we were focusing on … discussions in our schools so that we were not being a racist school system." Ex. 2 at 13:17–21. She further agreed that "one of the purposes of the BIPOC Advisory Board [was] to make recommendations to the school committee regarding anti-racism policies within the district." *Id.* at 15:10–17.

Robin Wildman, who was hired by the School Committee to facilitate the work of the Advisory Board, agreed. When asked, "[I]s it your understanding that…the BIPOC Advisory Board, the board was to identify policies and practices and then make recommendations to the school committee regarding those policies and practices?" she responded, "Yes." Ex. 4 at 24: 14–19. She further testified that it was "the Advisory Board's desire" to "provide recommendations to the school committee on curriculum," *id.* at 53:21–24, and that it was the intent of "the BIPOC Advisory Board [to] provide recommendations regarding discipline policies within the school district." *Id.* at 55:11–14.

Of course, advocating for "equity in education" and creating "a healthier and just community and school system for everyone" are matters of "significant public" concern, and of "great interest" to the community and its citizens. *Solas*, 774 A.2d at 824–25. Likewise, facilitating discussions to ensure that the South Kingstown School District was "not being a

racist school system" is of public concern. And, providing recommendations on school policies, curriculum, and disciplinary matters within the school district all plainly satisfy this test.

In short, the Advisory Board was created and charged with making recommendations on matters of significant public concern of interest to this state's citizens. It then plainly performed that work. That means that, like the hiring board in *Solas*, its operations should be open to the public.

B. The School Committee vested the Advisory Board with "advisory power," which the Advisory Board exercised.

The School Committee vested the Advisory Board with "advisory power," which the Advisory Board then exercised. Under a plain reading of the OMA and *Solas*, this means the Advisory Board is a public body subject to the OMA. In *Solas*, the Supreme Court held that, "A literal reading of the act demonstrates that all meetings to discuss or act upon matters over which the council has supervision, control, or advisory power, are required to be open to the public." *Id.* at 825. The Court went on to find that "the plain language of the statute provides [that] **a council's exercise of advisory power is enough to bring it under the act's umbrella.**" *Id.* (emphasis added). The same is true here.

The Advisory Board is literally identified and named by the School Committee as the BIPOC **Advisory Board**. Ex. 2 at 13:13–18. This was not happenstance; when the School Committee established and created the Advisory Board, it discussed the name and decided it would be an "Advisory Board" rather than a "task force." Wildman Dep. Ex. 1 (attached as Exhibit 15) at SKSD.00080. The reason is because "advisory board just feels more like a long-term strategic partnership with a group … that we want to be the vehicle for change." Markey Dep. (attached as Exhibit 16) at 28:3–8 (quoting the Committee Chair). In other words, the Advisory Board was established specifically to advise on official school matters in a "long-term" and influential way.

The School Committee further identified the broad sweep of the "influential advisory capacity," *Solas*, 774 A.2d at 824, in which the Advisory Board acted. According to the Vice

Chairperson of the School Committee, Sarah Markey, the Advisory Board was established to "look at policies and practices and help make recommendations to how we could really address racism in the district." Ex. 16 at 43:15–22.

The evidence makes clear that the School Committee expected the Board to act on those recommendations. As Ms. Markey stated when voting to establish the Advisory Board, "It only works if the school committee is willing to take action on what the [Advisory Board] identifies." *Id.* at 25:5–24. Ms. Markey further agreed that she "want[ed] the [S]chool [C]ommittee to be informed by guidance from the BIPOC Advisory Board,", and that the School Committee was expected to "really center what this advisory group does in the … day-to-day, month-to-month work of the school committee." *Id.* at 29:7–10, 49:20–23. Similarly, Robin Wildman outlined the goals of the Advisory Board to "edit all policies that … reflect an antiracism lens … planning Fall programming," and "assit[ing] and advis[ing] in rewriting curriculum." Ex. 8 at SKSD.00041.

Thus, according to both the School Committee and the Advisory's Board facilitator, there can be no doubt that the Advisory Board was empowered by the School Committee to act in an "influential advisory capacity." *Solas*, 774 A.2d at 824.

C. The Attorney General's conclusion to the contrary was based on incomplete evidence.

The Attorney General initially found that the Advisory Board is "more focused on promoting general advocacy than on carrying out any particular role or authority that has been designated to it." Ex. 14 at 6. But the Attorney General was acting on an incomplete factual record. The evidence now accumulated shows that the work of the Advisory Board goes far beyond mere "advocacy," and extends to substantive work on all manner of issues that affect school policy and operations.

Specifically, the Advisory Board created and drafted an "anti-racism" policy for the School Committee. 30(b)(6) Dep. Ex. 9 (attached as Exhibit 17); Ex. 2 at 46:23–47:3. That policy was an "umbrella policy" intended to encompass many other policy areas for the District.

Gitahi Dep. (attached as Exhibit 18) at 26:11–23. Ms. Wildman sent the policy directly to the School Committee members, the District Superintendent, and the Director of Curriculum, Ex. 17, and the Director of Curriculum then agendized consideration of that policy at a meeting of the Policy Subcommittee. 30(b)(6) Dep. Ex. 10 (attached as Exhibit 19); Ex. 2 at 49:3–8. According to the School Committee's corporate representative, this was an "unusual" step, *id.* at 50:20–21; typically, a school committee member, a member of the administration, a directive from the state education agency, other school districts, or the legal team would prepare and send a policy to the School Committee for consideration." *Id.* at 49:13–50:4. In other words, with respect to the anti-racism policy, the Advisory Board had a uniquely influential role.

Mr. Gitahi, an Advisory Board member, and a voting member of the Policy Subcommittee later presented the Advisory Board's draft "anti-racism" policy to the Policy Subcommittee, which agreed to a motion to forward that policy to the full School Committee, 30(b)(6)Dep. Ex. 15 (attached as Exhibit 20) at SKSD.00246, and the School Committee then unanimously approved that new "anti-racism" umbrella policy. Gitahi Dep. Ex. 13 (attached as Exhibit 21) at SKSD.00268.

The Advisory Board also helped create, edit, and offered recommendations on a Hiring Policy for the District. 30(b)(6)Dep. Ex. 19 (attached as Exhibit 22) at SKSD.0177. That document was edited by the Advisory Board and presented at the Policy Subcommittee, which then unanimously forwarded it to the School Committee for consideration. *Id.* The School Committee then adopted the Hiring Policy that had been edited by the Advisory Board "as presented," meaning without further revisions. 30(b)(6)Dep. Ex. 21 (attached as Exhibit 23) at SKSD.00220–21; Ex. 2 at 85:12–21.

Precisely the same considerations led the Supreme Court in *Solas* to conclude that the EHC was subject to the OMA. The EHC exercised "significant influence" over the hiring practices of state government, and the Governor's Executive Order establishing that EHC stated that it was the intent of the EHC to "*use its experience* to suggest to the Governor reforms to the State personnel system [in order to] streamline hiring processes … and generally improve the

quality and delivery of the personnel system." *Solas*, 774 A.2d at 824 (emphasis added). The School Committee established the Advisory Board so that it could also "use its experience" to influence the District's hiring policies, and the Board did so by editing and crafting a Hiring Policy for the District that was later adopted whole-cloth by the School Committee. Thus, like the EHC in *Solas*, the Advisory Board exercised "significant influence" over the District's policies.

Indeed, not only were the members of the Advisory Board and Policy Subcommittee created and appointed by the School Committee, as described below, but the evidence shows that the work of the Advisory Board was closely intertwined with that of the School Committee.

For example, the Advisory Board, via Robin Wildman, sent a draft of the "anti-racism" policy that it created directly to School Committee members as well as the District Superintendent and Director of Curriculum. Ex. 17. The Advisory Board also kept minutes of its meetings, and sent those directly to School Committee members, the Superintendent, and the Director of Curriculum. 30(b)(6), Exs. 2, 4 (attached as Exhibits 24 & 25).

Moreover, the School Committee's own attorney communicated directly with the Advisory Board—not the School Committee or its officials—and provided substantive recommendations and revisions to policies that the Advisory Board created. Ex. 4 at 93:17-94:15. The rendering of legal advice to the Advisory Board by the School Committee's counsel shows that the Advisory Board is a public body, such that it would be appropriate for the School Committee's attorney to provide the Board with legal services and advice. *Cf. DiLuglio v. Providence Auto Body, Inc.,* 755 A.2d 757, 766 (R.I. 2000) ("[W]here the advice and assistance of the attorney are sought and received in matters pertinent to the attorney's profession as a lawyer, [an attorney-client] relationship can still arise even in the absence of an express agreement.").

The Attorney General thought the Advisory Board was not subject to the OMA because it only "acts as an advisory group that makes recommendations but lacks any specific authority." Ex. 14 at 7. But that conclusion was wrong. First, the OMA does not require that an entity

exercise "specific authority" before it falls within the OMA's ambit—only that it exercise "advisory power." R.I. Gen. Laws § 42-46-2(1). The Advisory Board here certainly exercised advisory power. Second, the record makes clear that the activities of the Advisory Board and its relationship with the School Committee that created it go far beyond that of an entity that only offers recommendations. In fact, the Advisory Board drafted policies, communicated those policies directly to the School Committee and voted on policies at the Policy Subcommittee, which were then adopted by the School Committee.[2]

D. The School Committee's creation of the Advisory Boad evaded state law.

The School Committee could have created a recommendatory body as a subcommittee instead of creating the Advisory Board. Why did it not do so? Because under the OMA and the Committee's own bylaws, any such subcommittee would have been obviously subject to the OMA. *See* Ex. 11 at 3. ("Sub-committees shall post and conduct their meetings in accordance with RIGL 42-46."). In fact, the purpose of a subcommittee under the School Committee's by-laws is to assist in "the completion of [the School Committee's business." To that end, "Sub-committees will be charged by the full Committee for a specific purpose such as fact-finding, studying issues and/or making recommendations to the full Committee." *Id.* That is the same charge that was given to the Advisory Board; namely, to assist the School Committee with its public business by "making recommendations to the full Committee" regarding various policies and district operation issues.

But if the Advisory Board *had* been established as a subcommittee, the School Committee's own by-laws would have made it clear that it was subject to the OMA. *See id.* The School Committee instead chose to go the Advisory Board route no doubt in hopes of evading the plain requirements of the OMA. This Court should not permit such an effort to evade the law.

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[2] Indeed, the School Committee's corporate representative could recall no other entity that received school funding and provided policy proposals to the School Committee in the manner that the Advisory Committee has done here. Ex. 2 at 25:13–26:11.

Perhaps another reason the School Board chose to create the Advisory Board instead of going the legal route of establishing a subcommittee is because membership on the Advisory Board was restricted by race. Ex. 9 at Defendant's 06836 ("The Advisory Board is for BIPOC only."); Ex. 10 at 33:2–10. The School Committee, of course, cannot lawfully establish a subcommittee based on race. Ex. 2 at 28:25–29:9. To the extent the School Committee intended to avoid the OMA by separately creating and funding the Advisory Board, or sought to employ this route in order to restrict membership based on race, it should not be permitted to do indirectly what it would be prohibited from doing directly. *See Smith v. Turner*, 48 U.S. 283, 328 (1849) ("[W]hat cannot be done directly cannot be done indirectly, but that the act, which, when done indirectly, is equivalent to its being done directly, must be clearly the same thing as that which is forbidden.")

Whatever the reasons are that the School Committee decided to close the work of the Advisory Board to the public, the Committee appears to have changed position since this case was filed. At the conclusion of her deposition, the School Committee's corporate representative was asked, "Do you think members of the public should have been allowed to attend meetings of the BIPOC Advisory Board?" She answered, "I would say yes, they should have been allowed to, yes." She was then asked, "And why is that?" She answered, "It's supposedly a public group, so I would assume the public should be privy to the discussion." Ex. 2 at 93:14–25. *See Sabre*, 2001 WL 1590544, at *1 ("A 30(b)(6) witness testifies as a representative of the entity, his answers bind the entity."). In other words, the School Committee's corporate representative agreed that the meetings of the Advisory Board should have been open to the public. This Court should also make that finding.

II. The Advisory Board easily satisfies the other factors showing that it is a "public body."

In *Solas* and its progeny, Rhode Island courts have set out other factors to determine whether an entity is a "public body" under the OMA. *See also Pontarelli v. Rhode Island Bd. Council on Elementary & Secondary Educ.*, 151 A.3d 301, 307–08 (R.I. 2016). Those factors

are: (1) whether the entity was created by a government agency subject to the OMA; (2) whether it is staffed with public officials and (3) funded with public money; and (4) whether it exists to meet regularly to discuss public matters. *Solas*, 774 A.2d at 823–25.

The fact that all those factors are met here is either undisputed, or clearly established by the record.

A. The Advisory Board was created by the School Committee.

The Advisory Board was created by the School Committee, which is itself subject to the OMA. R.I. Gen. Laws § 42-46-2(5); Am. Compl. ¶ 4, Answer ¶ 4. In *Solas*, the court found that the EHC was a "public body" subject to the OMA in significant part because it was "created by executive order." 774 A.2d at 823. *See also* Attorney General Advisory Opinion No. 99-13 (a three-member committee appointed by the Mayor of Warwick to advise him on the issue of hiring a new Policy Chief, constituted a "public body" within the meaning of the OMA). In this case, the Advisory Board was created, approved, and reauthorized by elected members of the School Committee.

On July 22, 2020, the School Committee unanimously approved a motion "to *create* an equity and antiracist advisory board." Ex. 1 at 6 (emphasis added); *see also* Ex. 2 at 13:5-12. Not only did the School Committee "create and approve" the Advisory Board, Am. Compl. ¶ 19, Answer ¶ 19, but on October 27, 2020, it again unanimously voted "to continue [the] BIPOC Advisory Board." Ex. 7 at SKSD.00170. According to the School Committee's corporate representative, this action was so uncommon that in her seven years as a School Committee member, she had never seen the Committee vote on "recommitting itself to another advisory group." Ex. 2 at 40:20–24. *See also* Ex. 16 at 47:11–15 (Committee member Markey had no recollection of the School Committee ever "creating and approving another community group as an advisory board for the school committee."). As the Attorney General found in reviewing this Complaint, "The School Committee clearly has a role in the creation and direction of the BIPOC [Advisory Board]." Ex. 14 at 5.

Thus, the School Committee, apparently without precedent, not only created the Advisory Board, but reauthorized and recommitted itself to the public work of the Advisory Board. That not only satisfies the element of government creation of a public body established in *Solas*, but goes far beyond it.

B. The School Committee appointed members to the Advisory Board to also serve as voting members of the Policy Subcommittee.

The inclusion of public officials on the Advisory Board also demonstrates that the Advisory Board is a "public body." One of the stated purposes of the OMA is that "citizens be advised of and aware of the *performance of public officials* and the *deliberations* and decisions that go into the making of public policy." R.I. Gen. Laws § 42-46-1 (emphasis added). The *Solas* case determined that an advisory council that "combine[d] senior executive branch staff members with employees," was a public body under the OMA. 774 A.2d at 824.

The same is true here. It is undisputed that the School Committee first appointed two members to the Advisory Board, who are also voting members of the School Committee's Policy Subcommittee, which is subject to the OMA. Am. Compl. ¶ 40; Answer ¶ 40; *see also* Ex. 2 at 35:16–24; 34:6–11. The School Committee's corporate representative was aware of no other time in which the School Committee appointed members of an advisory group to the Policy Subcommittee. The School Committee later expanded the number of appointed BIPOC Advisory Board members who also serve on the Policy Subcommittee from two to three. Ex. 6 at SKSD.00103; Ex. 2 at 54:14–23; 55:15–19.

These facts contradict those on which the Attorney General relied when he issued his decision on the administrative complaint in this case. Specifically, in his letter, the Attorney General quoted a sworn affidavit from Robin Wildman, who attested that the Advisory Board's "officers were not … appointed by a subdivision of state or municipal government, but instead were volunteers … ." Ex. 14 at 3. The record shows instead the School Committee expressly created three positions on the Advisory Board who were also voting members of the Policy Subcommittee, Am. Compl. ¶ 40; Answer ¶ 40; *see also* Ex. 2 at 35:16–24; 34:6–11, and the first

of those Advisory Board members (and later others) were appointed by the School Committee to join the Policy Subcommittee. Ex. 18 at 37:19–39:7.

The Attorney General also found that "the OMA applies when a quorum of a public body convenes a meeting…but here … there is no set membership or number of members." Ex. 14 at 8. But testimony from an appointed Advisory Board member and voting member of the Policy Subcommittee also refutes this assertion. While it is true that some Advisory Board members would attend meetings on a sporadic basis, "a core group" of five members "were at every meeting." Ex. 18 at 15:13–16:1. Importantly, of those five, two were the District-paid facilitators, and the other three were appointed by the School Committee. *Id., See, also* 30(b)(6) Dep. Ex. 11 (attached as Exhibit 26) (identifying Rob Cruz and Maghnee Gomes as BIPOC Advisory Board members who are also voting members of the Policy Subcommittee).

Thus, like the Emergency Hiring Council in *Solas*, the Advisory Board and Policy Subcommittee were created and staffed by government officials.

C. The School Committee funded the Advisory Board with public money, which was the Advisory Board's sole source of funding.

Another significant factor showing that the Advisory Board is subject to the OMA is that it receives public funding from the School Committee. The Attorney General's Office has identified the receipt of public monies as an important factor in determining whether an entity is a public body. *See Finnegan v. Scituate Town Council*, OM 97-05 (citizen council appointed by Town Council to advise on hiring a police chief was a public body when the citizen members received an honorarium and lunch and evening meals from the Council); *Schmidt v. Ashaway Volunteer Fire Ass'n*, OM 98-33 (because members of the Fire Association did not receive a salary or other public funds from a public entity, the Association was not a "public body."); *Montiero v. Providence Sch. Bd. Nominating Comm'n*, OM 02-25 (because no public money was spent on commission, the commission was not a "public body.").

In this case, it is indisputable that the Advisory Board received public funds from the School Committee for the purpose of operating the Board. Specifically, the Advisory Board's

facilitator, Robin Wildman, signed a contract with the School Committee on March 24, 2021, for "[f]acilitation of the BIPOC Advisory Board … for 25 meetings." Ex. 5; *see also* Am. Compl. ¶¶ 41–43, Answer ¶¶ 41–43. **This payment represented the *sole* source of the Advisory Board's funding.** Ex. 4 at 87:12–15.

The definition of "public body" in the OMA specifically identifies some entities, including public libraries, that are "funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds" as public bodies. R.I. Gen. Laws § 42-46-2(5). Here, the School Committee funded the Advisory Board with 100% of its funding, all from public money.

D. The Advisory Board had regular and recurring meetings.

The frequency and regularity of meetings of the Advisory Board also show that the Advisory Board is a public body. In *Pontarelli*, 151 A.3d at 308, the court found that a Compensation Review Committee ("CRC") created by the Department and Board Council on Elementary and Secondary Education was not a public body in large part because the CRC "does not meet on a regular basis." Instead, that was an "informal, *ad hoc* working group." *Id.* at 303 (emphasis in original); *see also* OM 19-23 (because a Fisherman's Advisory Board did not meet did not meet on a regular basis and instead convened "as-needed" it was not a public body). The *Pontarelli* court contrasted that with *Solas*, where the EHC "was required to meet at least biweekly." 151 A.3d at 307–08 (quoting *Solas*, 774 A.2d at 824).

Here, the Advisory Board met and conducted business at regular, recurring meetings—making it more like the hiring committee in *Solas*, than the *ad hoc* entity in *Pontarelli*.

In fact, the Advisory Board is *required by contract* with the School Committee to meet for 25 meetings. Ex. 5. And that is precisely what it has done—met every week on a regular and recurring basis. *See* Ex. 8 at SKSD.00025. (The Board had regular "weekly meetings."). As with the hiring committee in *Solas*, the Advisory Board's regular, weekly meetings to discuss matters of significant public concern show that the Advisory Board is a public body.

In reviewing the administrative complaint in this matter, the Attorney General found that "the BIPOC Committee more closely resembles the advisory body in *Pontarelli*," than it did the EHC in *Solas*. Ex. 14 at 7. But the distinguishing factors for the Supreme Court in *Pontarelli* were that the entity in that case did "not meet on a regular basis, nor was [it] created by an executive order." *Pontarelli*, 151 A.3d at 308. Here, of course, the Advisory Board *was* created by the School Committee and *did* meet on a regular basis.

III. The remedy for the OMA violation must be a declaration that the policy is null and void, and that any action taken against Plaintiffs in reliance on that policy is also null and void.

When a public body violates the notice provisions of the OMA, any action taken pursuant to an agenda item that is found illegal should be declared void by the Court. *See Anolik v. Zoning Board of Review of City of Newport*, 64 A.3d 1171, 1176 (R.I. 2013). In this case, the School Committee adopted both a "Hiring policy" (Exhibit 21) and an "anti-racism policy" (Exhibit 23), based upon recommendations of the Advisory Committee. Since those policies were adopted pursuant to recommendations which were developed as a result of an illegal meeting, the policies must be declared null and void.

CONCLUSION

Based on the foregoing, summary judgment should be entered in favor of Plaintiff Solas. This Court should declare that the Advisory Committee was a public body under the Open Meetings Act, and that all of its meetings, minutes, actions and other activities were subject to the OMA. This Court should order that any future meetings of the Advisory Committee be public, and that it produce all of its minutes and records for public inspection. This Court should also declare any actions taken by the School Committee pursuant to the recommendations of the Advisory Committee that were promulgated during its meetings that were closed to the public. Finally, it this Court should place this matter down for hearing on Plaintiff's request for attorneys' fees and statutory fine.

Respectfully submitted,
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CERTIFICATION

I hereby certify that on May 29, 2024, I served this document through the electronic filing system on the following attorneys of record:

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