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 CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The South Kingstown School Committee ("Committee") does not deny that it created and funded the BIPOC Advisory Board for the express purpose of advising on critical school policies that affect the operations of the entire district. It argues instead that the Advisory Board is not a public body under the Open Meetings Act ("OMA") because the Board does not have "decision-making authority with respect to District policies," Mem. Of Law in Supp. Of Def.'s Obj. to Pl.'s Mot. for Summ. J. & Cross-Mot. for Summ. J. ("Resp.") at 30, and "many of the suggestions [the Board] made were omitted from District's policies." *Id*. at 26. But that formulation contravenes the plain language of the OMA, and the Supreme Court's cases interpreting what "public body" means under that law.

A "meeting" of a "public body" is one in which the body "discuss[es] and/***or*** act[s] upon a matter over which the public body has … **advisory power**." R.I. Gen. Laws § 42-46-2(1) (emphasis added). *See also Accent Store Design, Inc. v. Marathon House, Inc.*,

674 A.2d 1223, 1226 (R.I. 1996) ("It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings."). As the Supreme Court has said, "**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.**" *Solas v. Emergency Hiring Council of State*, 774 A.2d 820, 825 (R.I. 2001) (emphasis added).

The record is clear that the Advisory Board was charged and funded by the School Committee to advise on school policies, which the Board subsequently did. This Court need go no further: this alone brings the Board's activities within the requirements of the OMA. That is particularly true because the OMA "should be construed broadly and interpreted in a light favorable to public access." *Id.* at 824.

ARGUMENT

I. *Pontarelli* supports a finding that the Advisory Board is a "public body."

The School Committee first contends that the Advisory Board is not a public body because "the School Committee voted to allow … [Nonviolent Schools Rhode Island 'NSRI')]…to 'create an equity and anti-racist advisory board," and the Board "was composed of volunteers from the community." Resp. at 21–22. Neither contention is accurate.

In fact, the School Committee *itself* created the Board, Amended Verified Complaint ("Compl.") ¶ 19; Answer ¶ 19, and then later voted unanimously "to continue [the] BIPOC Advisory Board." Pl.s' Mem. Of Law in Supp. Of Mot. for Summ. J. ("Mem.") Ex. 7 at SKSD.00170. In other words, the School Committee has it backwards:

the *School Committee* created the Advisory Board, and the *School Committee* charged it with advisory power; only then did the Advisory Board engage in advisory activities.

Nor is it correct to say that the "School Committee had no role in selecting the members of the BIPOC [Advisory] Board," which was only composed of "volunteers." Resp. at 21–22. Robin Wildman, who was the Advisory Board facilitator, was not a volunteer. She was hired and paid by the School Committee to coordinate the activities of the Advisory Board. Mem. Ex. 5; *see also* Compl. ¶¶ 41–43, Answer ¶¶ 41–43. And, of the "core group" of five Advisory Board members, Mem. Ex. 18 at 15:13–16:1, one was an associate of Ms. Wildman, who was also paid as a "facilitator." Mem. Ex. 26. The remaining three were *appointed* by the School Committee as members of the Advisory Board to serve as *voting* members of the Policy Subcommittee. Compl. ¶ 40; Answer ¶ 40; *see also* Mem. Ex. 2 at 35:16–24, 34:6–11, 54:14–23, 55:15–19; Mem. Ex. 6 at SKSD.00103; . Under the test established in *Pontarelli v. R.I. Bd. Council on Elementary & Secondary Educ.,* 151 A.3d 301 (R.I. 2016), therefore, the Advisory Board is a public body, not the other way around.

More importantly, the two critical factors absent in *Pontarelli*—which led the Supreme Court to find that the Compensation Review Committee ("CRC") in that case was not a public body—are both present here. Specifically, the *Pontarelli* court found that, "the CRC … does not meet on a regular basis, nor was the CRC created by an executive order." *Id.* at 308. But here, the Advisory Board was created by executive action; in fact, by a unanimous legislative vote of the School Committee – a vote that the School Committee subsequently reaffirmed. What's more, the Advisory Board was

required by contract with the School Committee to meet on a regular and recurring basis. Mem. Ex. 5. And the Board did, in fact, meet every week on that regular and recurring basis. *See* Ex. 8 at SKSD.00025. So, the Advisory Board here is unlike the CRC in *Pontarelli* in the two ways the court found most significant in finding that the CRC was not a public body.

Rather, as explained in Plaintiff's Memorandum in Support of Summary Judgment (at 5–9), the Advisory Board is more like the advisory body in *Solas*, which *was* a public body, because it met regularly, "use[d] its experience to suggest … reforms," and enjoyed "supervision, control, or advisory power" over matters of "significant public interest." 774 A.2d at 824–25 (internal marks & citation omitted).

The School Committee argues that the Advisory Board's activities were limited because "the policies that included input from the BIPOC [Advisory] Board were often sent back to the Policy Subcommittee … or adopted by the School Committee without the BIPOC Board's suggested changes." Resp. at 23. But that is irrelevant, and ignores *Solas*'s holding that a body's "exercise of advisory power is enough to bring it under the act's umbrella." 774 A.2d at 825. Additionally, it omits the critical facts that the School Committee appointed members of the BIPOC Advisory Board to the Policy Subcommittee, and that the Advisory Board members on the Policy Subcommittee also created, revised, presented, and *voted on* the Advisory's Board's policies while serving in their capacities as members of the Policy Subcommittee. Mem. Ex. 20 at SKSD.00246; Mem. Ex. 21 at SKSD.00268. In other words, the Advisory Board didn't just create policy, but its members also presented and voted on policies the Advisory

Board created after they were simultaneously appointed (for that very purpose) to the School Committee.

Another critical distinction with *Pontarelli* is that the duties of the CRC in that case differ markedly from the duties of the Advisory Board in this case. The CRC in *Pontarelli* was created "to review requested and proposed salary adjustments for … employees." 151 A.3d at 302–03. The purpose of the Advisory Board is broader: it was charged by the School Committee with creating District-wide policies "to advocate for equity in … education" in order to "inspire[e] a healthier just community and school system for everyone." School Committee's Resp. to Att'y Gen. Compl. (Mem. Ex. 3) at 1 ¶ 3 (emphasis added); Compl. ¶ 20; Answer ¶ 20.

The CRC's recommendations in *Pontarelli* were just proposed numbers—an important matter, but still mainly an issue of number-crunching. By contrast, the Advisory Committee in this case was creating and developing public policies for an entire school system—and that process necessarily involves discussion, deliberation, comparison and contrast, of social, political, and moral values; questions of expertise and educational performance—all the complex, non-quantifiable matters that go into policy formulation. And the entire point of the OML is for *that* sort of "public business [to] be performed in an open and public manner [so] that the 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. The OMA, in other words, is meant "to protect the public's right to participate in the political process." *Tanner v. Town Council of Town of E. Greenwich*, 880 A.2d 784, 793 (R.I. 2005). By cutting the

public out of that process at the most critical stage—the creation and development of public policy—the School Committee violated a core purpose of the OMA, offending the principle of transparent government.

II. The central holding of *Solas* shows that the Advisory Board is a public body.

Perhaps recognizing that *Solas* controls here, the School Committee attempts to reword the central holding of that case, and in doing so, adds requirements to the OMA that do not exist. It suggests that in order for an entity to be a public body under the OMA, it must have "supervisory authority or veto power." Resp. at 25. But that is not what *Solas* said.

While an entity with "supervisory authority" may certainly be subject to the OMA —that much is obvious from its plain language—that is not the *only* way in which an entity is subject to the Act. Instead, the OMA lists a series of powers over which it applies. These include: "supervision, control, jurisdiction, *or advisory* power." R.I. Gen Laws § 42-46-2(1) (emphasis added). In other words, "supervisory authority" is one way in which an entity will be subject to the OMA, but not the only way. "Advisory power," such as the Advisory Board enjoyed is another. In fact, *that* was the central holding of *Solas:* a body's "exercise of advisory power is enough to bring it under the act's umbrella." 774 A.2d at 825.

Additionally, the School Committee adds a new requirement to the OMA which simply does not exist in the statute or the cases interpreting it. According to the School Committee, because the Advisory Board purportedly had "no decision-making authority on behalf of the District," Resp. at 26, it is not subject to the OMA. But the requirement

of "decision-making" authority exists nowhere in the OMA—and to add such a requirement to the law in the guise of interpretation would render the phrase "advisory power," which is found in the OMA, ineffectual and meaningless, in violation of basic statutory construction rules. *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011) ("statutes should not be construed to achieve meaningless … results."); *State v. Gonsalves*, 476 A.2d 108, 111 (R.I. 1984) ("This court should not adopt a construction that would defeat the evident purpose of the statute."). Instead, the OMA is intended to make the "deliberations and decisions that go into the making of public policy," open to the public. R.I. Gen. Laws. § 42-46-1. Whether the entity has "decision-making authority" or not, if it engages in deliberations and decisions on public policy matters, as the Advisory Board does, it excises "advisory power" and is subject to the OMA—as was true in *Solas*.

The Advisory Board is an "advisory committee," specifically created, funded, and designed to exercise "advisory power." *See* ADVISORY COMMITTEE, Black's Law Dictionary (12th ed. 2024) ("A committee formed to make suggestions to an executive or legislative body or to an official."). It was formed expressly to meet to make suggestions and recommendations to the School Committee. Consequently, its "meetings" fall within the OMA.

If the School Committee is dissatisfied with the terms of the OMA, its remedy is with the Legislature, not this Court, which has an obligation to enforce the law as it is written.

III. No deference is due to the Attorney General's opinion, and this Court reviews *de novo* the meaning of the OMA.

The School Committee contends that this Court must "give[] great deference to the Attorney General['s]" administrative opinion. Resp. at 26. That is not true. Instead, all "questions of law—including statutory interpretation—are reviewed *de novo*." *Grasso v. Raimondo*, 177 A.3d 482, 487 (R.I. 2018) (quoting *Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I.*, 943 A.2d 1045, 1049 (R.I. 2008)); *see also Arnold v. R.I. Dep't of Labor & Training Bd. of Rev.*, 822 A.2d 164, 167 (R.I. 2003) (State courts conduct *de novo* review of determination of law made by an agency). That is because the "Court is the final arbiter of questions of statutory construction, and such questions are subject to *de novo* review by [the] Court." *Unistrut Corp. v. State Dep't of Lab. & Training*, 922 A.2d 93, 98 (R.I. 2007). This case, of course, involves the interpretation of the OMA, and, as such *no deference* is owed to the Attorney General's opinion. *Cf. Tanner*, 880 A.2d at 796, 798–99 (finding no need to defer to Attorney General's OMA opinion because court is the "final arbiter of questions of statutory construction." (citation omitted)). Because the definition of a "meeting" of a "public body" under the OMA is clear and unambiguous, and it includes entities that have "advisory power," like the Advisory Board here, R.I. Gen. Laws § 42-46-2(1), the Court is "not required to give *any* deference to the agency's reading of the statute." *Unistrut Corp.*, 922 A.2d at 98–99 (emphasis added).

The School Committee cites *Bodo v. Charlestown* to support its argument that the Attorney General is entitled to deference. No. WC NO. 93-0624, 1997 WL 839921, at *2

(R.I. Super. Ct. May 22, 1997), *aff'd sub nom. Fischer v. Zoning Bd. of Town of Charlestown*, 723 A.2d 294 (R.I. 1999). But that decision contradicts the Supreme Court's rulings in *Grasso*, *Arnold*, and *Unistrut Corp.*, which all make plain that this Court must conduct a *de novo* review and provide no deference to the Attorney General.

In any event, *Bodo* is completely unlike this case. It involved a party who had been denied zoning relief, and then sought to open an executive session meeting between the Solicitor for the Town of Charlestown and the Town's Zoning Board of Review. *Id.* at *2. That case involved issues of attorney-client privilege and other matters not present in this case. It also involved one zoning permit under specific facts, rather than far-reaching policy debates about the best way to govern a school district. R.I. Gen. Laws. § 42-46-1 (core purpose of the OMA is to open meetings when a public body is engaged in "the deliberations and decisions that go into the making of public policy.")

The other Attorney General opinions cited by the School Committee, as well as several other cases cited in Plaintiff's Motion for Summary Judgment, support Plaintiff's position that the Advisory Board is a public body under the OMA. In *Solas v. RIDE's Educators of Color Committee,* OM 22-45 (R.I.A.G. July 27, 2022), for example, the Attorney General found that the Educators of Color Committee was not a public body because it (1) did not have a set membership, (2) was open to *all* Rhode Island educators, and (3) did not hold regularly scheduled meetings. *Id.* This case is the opposite on all three points: the Advisory Board did have a core membership composition, Mem. Ex. 18 at 15:13–16:1; its meetings *were not* open to all members of the public—they were initially restricted based on race!, Mem. Ex. 9 at Defendant's 06836; Mem. Ex. 10 at

33:2–10—and where the Advisory Board *did* hold regular and recurring meetings. Mem. Ex. 5; Mem. Ex. 8 at SKSD.00025.

Finally, at the time the Attorney General issued his opinion in this matter, the factual record was incomplete. Discovery since has revealed facts that were not available to the Attorney General, regarding issues that are critical to the Attorney General's findings. Specifically (as discussed in detail in Plaintiff's Motion for Summary Judgment at 10–12), the record is now clear that the Advisory Board's work goes far beyond mere "advocacy," and extends to substantive work on all manner of issues that affect school policy and operations, including drafting school policies, directly communicating with School Committee members regarding those policies, editing policies after input from the School Committee's attorney, and voting on policies as members of the Policy Subcommittee. We also now know that there was a "core group" of Advisory Board members for whom determining a quorum can be readily ascertained. Mem. Ex. 18 at 15:13–16:1. In short, the Attorney General appeared to base his opinion on the assumption that the Advisory Committee was acting in an advocacy role only, and did not have a core group of members. Both assumptions have now been disproven.

IV. The School Committee's Attorney was communicating with and rendering legal advice to the Advisory Board.

The School Committee's Attorney was communicating with the Advisory Board and rendering substantive legal advice to the Advisory Board on policies the Advisory Board created or revised. Mem. Ex. 4 at 93:17–94:15. The School Committee contends that these activities did not form an attorney-client relationship between the attorney and

the Advisory Board. Resp. at 30. That is probably not true, because an attorney-client relationship can be created "where the advice and assistance of the attorney are sought and received in matters pertinent to the attorney's profession as a lawyer," *DiLuglio v. Providence Auto Body, Inc.*, 755 A.2d 757, 766 (R.I. 2000)—but it is also not material for purposes of this Motion.

What is material is that the School Committee's attorney was communicating with and rendering advice to the Advisory Board's paid facilitator, Robin Wildman. Ms. Wildman is not on the School Committee, and is not on the Policy Subcommittee. That the School Committee's attorney thought it appropriate to provide legal advice to Ms. Wildman on matters pertaining to school policies shows that the Advisory Board was acting in concert with, or at the behest of, the School Committee. Thus, the School Committee not only created the Advisory Board, reauthorized the Advisory Board, funded the Advisory Board, but also rendered legal advice to the Advisory Board. This is yet another factor showing that the Advisory Board is a "public body." *See* Mem. Ex. 14 at 5 (Attorney General opinion finding that "The School Committee clearly has a role in the creation *and direction* of the BIPOC [Advisory Board].") (emphasis added).

V. The remedies under the OMA are statutory and should be applied in this case.

The School Committee contends that if this Court were to find an OMA violation, it should not "declar[e] any of the [School Committee's] policies null and void," and, "when considering any award of attorneys' fees," should consider what the School Committee claims is the Plaintiff's lack of harm. Resp. at 31.

But the remedies set out in the OMA are mandatory and do not turn on questions of harm. The OMA says:

> The court *shall* award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust. The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars ($5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

R.I. Gen. Laws § 42-46-8(d) (emphasis added).

As this language makes clear, attorney fees are mandatory for a prevailing plaintiff, "except where special circumstances would render an award unjust." *Id.* There is no requirement in the OMA that a plaintiff be "harmed" by the unlawful adoption of the policies, or that the plaintiff attend other meetings to "advocate for changes to the draft policies," as the School Committee argues. Resp. at 31.

Indeed, such a requirement would be nonsensical, because *all* citizens are harmed when the public's business is closed to the public. That is because hiding the public's business from the public undermines democracy, and contradicts the state's declared public policy: "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.

Nor is there any basis for arguing that "special circumstances" here would make a fee award "unjust." In this case, Plaintiff asked to attend Advisory Board meetings so

that she could observe the "the deliberations and decisions that go into the making of public policy," *id.*, but school officials denied her request. Mem. Ex. 10 at 108:12–15; Mem. Ex. 12). She then filed a complaint with the Attorney General regarding this OMA violation—and did so before bringing this Complaint. In other words, she did everything she could to *avoid* litigation, and only reluctantly brought suit to enforce the requirements of the OMA when it was clear she had no alternative.

Finally, the OMA grants this Court discretionary authority to "declare null and void any actions of a public body found to be in violation of this chapter." R.I. Gen. Laws § 42-46-8(d). That remedy exists to prevent public bodies from imposing policies on the public when the public was prevented from being "advised of and aware of the performance of public officials" during the formation of those policies. *Id.* at 42-46-1. Since the policies deliberated on and created by the Board were done without public input or scrutiny, that is the appropriate equitable remedy.

CONCLUSION

Summary judgment should be awarded to Plaintiff; the Court should award her statutory attorney fees, and should declare the offending School Committee policies invalid.

Respectfully submitted,
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CERTIFICATION

I hereby certify that on July 25, 2024, I served this document through the electronic filing system on the following attorneys of record:

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