

February 9, 2021

Joyce Wilkerson, School Board President
The School District of Philadelphia
440 N. Broad Street, Philadelphia, PA 19130

Via email to jwilkerson@philasd.org



RE: Compliance with the public comment requirements of the
Sunshine Act

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
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Central Region Office
PO Box 11761
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Western Region Office
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412-681-7736 T
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Dear School Board President Joyce Wilkerson:

We write to you on behalf of parents and other concerned citizens who were prevented from providing public comment by the Board of Education of the School District of Philadelphia during its meeting on January 28, 2021 because of the Board's new policy that allows only 10 students and 30 non-students to provide public comments at the Board's meetings. This policy is unlawful and violates the Sunshine Act, which guarantees the rights of residents of Philadelphia to provide public comment on matters that are or may be before the Board. While we appreciate the Board's need to manage its meetings, the Sunshine Act does not allow it to limit the number of individuals who can provide public comment. We therefore request that the Board remove such restrictions for its February 25 meeting and all future meetings.

The Sunshine Act requires that the Board provide a reasonable opportunity at each advertised regular meeting for residents or 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 P.S. § 710.1. Critically, if there is insufficient time at a regularly-scheduled meeting for all public comments, the Board may not simply refuse to hear from those residents. Instead, the Board has the ability to "defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting." 65 P.S. §710.1. However, it does not allow the Board to limit the number of people who may speak merely due to time constraints; all attendees of such meetings must be permitted to speak. *See Alekseev v. City Council of Philadelphia*, 8 A.3d 311, 315 (Pa. 2010) (agency violates Sunshine Act if it "does not permit public attendees to comment at its regularly scheduled meetings"). Those members of the public who are prohibited from speaking at an advertised meeting are deprived of their right to offer public comment. *See McGrath v. Bd. Of School Directors of the City of Scranton*, 2020 WL 5904514, at *8 n.6 (Pa.Com.Pl. Oct. 4, 2020) (agency violates Sunshine Act when it proceeds with official action over a video meeting if it does not permit "all scheduled speakers to offer public comment"). A policy of limiting the number of commenters, without giving them an option to speak to the Board, violates the Sunshine Act.

In addition, the Board's two-minute limit on comments—the shortest time limitation we have seen—does not in its current form provide a "reasonable opportunity" for members of the public to express their views to the Board. 65 P.S. §710.1. We appreciate that the Board is

trying to ensure that more individuals are able to provide public comments. However, the way to balance that concern with the requirements of the Sunshine Act is to for the Board to allow an individual who has more to say additional comment time after everyone has already had a chance to speak.

The Sunshine Act's requirements should not be taken lightly. As the Board is aware, the Act gives a court the authority to void any actions that the Board takes at a meeting where it violates the public-comment requirements. 65 P.S. § 713. Willful violations of the Sunshine Act—that is, knowing what the Act requires and nevertheless choosing to disregard its mandates—not only entitle litigants to attorney's fees for a civil lawsuit, but they also expose the members of the Board to potential criminal liability. *Id.* at § 714-714.1.

For all of these reasons, we ask that the School Board comply with the Sunshine Act at its next meeting on February 25 by ensuring that each resident who wishes to comment is given the reasonable opportunity to do so, including those residents who were prevented from commenting at the last meeting. In subsequent meetings, if the School Board faces time constraints, it can comply with the Sunshine Act by scheduling an additional comment period, either at the next regular meeting or by scheduling a special meeting to be held in advance of the next regular meeting. If the Board enforces its limits on the number of people who can speak it could face legal action, including liability for attorney fees. If you would like to discuss this issue with us, please feel free to contact me at 215-592-1513 x116 or at mproper@aclupa.org.

Sincerely,



Mary Catherine Roper
Deputy Legal Director

s/ Andrea C. Anastasi

Andrea C. Anastasi
Legal Intake Manager

Cc: Leticia Egea-Hinton, School Board Vice President, lehinton@philasd.org;
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Lynn Rosner Rauch, School District of Philadelphia General Counsel *via fax* to 215-400-4121