



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

24-OMD-133

June 5, 2024

In re: Robert Mattheu/Cassidy Elementary School-Based  
Decision-Making Council

**Summary:** The Office lacks jurisdiction to consider a complaint alleging that the Cassidy Elementary School-Based Decision-Making Council (“the Council”) violated the Open Meetings Act (“the Act”) because the complaint was not first submitted to the presiding officer of the public agency accused of violating the Act.

***Open Meetings Decision***

On May 14, 2024, Robert Mattheu (“the Appellant”) submitted a complaint to the Superintendent of the Fayette County Public Schools, claiming the Council violated the Act at its February 26, 2024, meeting when it conducted two anonymous votes regarding the removal of a subject from the school curriculum. As a remedy, the Appellant proposed that the Council “revisit their decision” and “go on the record with their discussion and vote and . . . properly document the votes in their meeting minutes.”<sup>1</sup> In response, on May 15, 2024, the Superintendent confirmed receipt of the complaint and stated it would “be addressed.” Subsequently, on May 20, 2024, the Superintendent stated the “violation was confirmed” and “reconsideration of that decision was placed on the agenda for the March 25, 2024, meeting.”<sup>2</sup> However, the Appellant states that the minutes for the March 25, 2024, meeting indicate the Council, with an anonymous vote, decided against revisiting their February 26, 2024, decision. This appeal followed.

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<sup>1</sup> The Appellant also proposed that all Fayette County School-Based Decision-Making Councils “be properly trained in both open meetings and open records law to avoid future violations.”

<sup>2</sup> The Superintendent also stated, “[W]e have ensured that all [School-Based Decision-Making Councils] in Fayette County schools receive proper training on open meetings and open records laws to prevent future violations.”

As an initial matter, the Office must be assured of its jurisdiction before it may render a decision under KRS 61.846(2). A complainant's request for the Attorney General to review an agency's denial of a complaint submitted under the Act is a statutory proceeding created by the General Assembly as an act of legislative grace. As such, a complainant must strictly comply with KRS 61.846 before invoking the Attorney General's jurisdiction to review the complaint. See, e.g., 22-OMD-177.

To invoke the Attorney General's review under KRS 61.846(2), a complainant "shall begin enforcement" under subsection (1) of the statute. KRS 61.846(1). That provision requires the complainant to "submit a written complaint to the presiding officer of the public agency suspected of" violating the Act. *Id.* Accordingly, to begin enforcement, the complaint may not be submitted to just any person at "the public agency suspected" of committing the violation, but to the agency's "presiding officer" specifically. In 22-OMD-177, the Office dismissed a complaint alleging the Jefferson County Public Schools Site Based Decision Making Council had violated the Act because the complainant failed to submit his complaint to the presiding officer of that agency. Rather, he submitted his complaint to the Superintendent of the Jefferson County Public Schools and the school district's general counsel.

Similarly, here, the complainant submitted his complaint to the Superintendent of the Fayette County Public Schools, not to "the presiding officer" of the Council. School-based decision-making ("SBDM") councils are public agencies, separate and apart from local boards of education. See KRS 160.345(2)(a). The meetings of SBDM councils "shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply." KRS 160.345(2)(e). SBDM councils are comprised of parents, teachers, and either a principal or school administrator. *Id.* Further, they are chaired by the school's principal or administrator. KRS 160.345(2)(b). Superintendents work with SBDM councils to prepare and select the school's curriculum, but superintendents are not members of SBDM councils. KRS 160.345(2)(g).

The Superintendent of the Fayette County Public Schools was not the presiding officer of the Council's February 26 and March 25 meetings at which the Council allegedly took anonymous votes. Rather, the presiding officer was the Cassidy Elementary School principal. See KRS 160.345(2)(b). The Appellant did not provide a copy of a complaint submitted to the presiding officer of the Council. Accordingly, the Appellant did not comply with KRS 61.846(1) before initiating his appeal to the Office, and the Office dismisses the appeal.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.846(4)(a). The Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that

action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
**Attorney General**

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

Robert Mattheu  
Andria Jackson  
Demetrus Liggins  
Alex Garcia