



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-OMD-236

November 7, 2022

In re: Kurt Wallace/Jefferson County Site-Based Decision Making Council
Appeals Board

Summary: The Office cannot find that the Jefferson County Site-Based Decision Making Council Appeals Board (“the Appeals Board”) violated the Open Meetings Act (“the Act”) when it is unclear from this record whether it imposed a condition of attendance at its meeting.

Open Meetings Decision

This is Kurt Wallace’s (“the Appellant”) third attempt to challenge his prohibited entry on Jefferson County Public Schools property while attempting to attend a meeting of the Appeals Board on July 28, 2022. In short, the Appellant attempted to attend the meeting, but he was not allowed to enter the building because of his refusal to wear a face-mask. This Office dismissed the Appellant’s second¹ attempted appeal because he failed to submit a complaint to the presiding officer of the public agency that conducted the July 28 meeting, the Appeals Board, as required under KRS 61.846(1). *See* 22-OMD-177. Rather, in 22-OMD-177, the Appellant had submitted a complaint to the Jefferson County Board of Education, which had enacted the face-mask policy but was not the agency conducting the July 28 meeting. Following that decision, the Appellant submitted a new complaint to the presiding officer of the Appeals Board, again raising his previous allegations.² In a timely

¹ As noted in 22-OMD-177 n.1, the Office rejected the Appellant’s first attempted appeal because he failed to include a copy of a complaint to *any* agency or a response thereto, as is required to initiate an appeal to this Office under KRS 61.846(1).

² The Appeals Board argues this appeal should be dismissed under 40 KAR 1:030 § 4 because it claims the Appellant is seeking reconsideration of this Office’s decision in 22-OMD-177. To the contrary, the Appellant is following this Office’s decision, and has submitted a complaint to the agency that actually conducted the July 28 meeting. *See* KRS 61.846(1). He is not seeking reconsideration of this Office’s decision dismissing his previous appeal, but rather, he is appealing the denial of his complaint that was properly submitted on September 19, 2022 to the presiding officer of the July 28

response, an attorney responded on behalf of the Appeals Board and the Board of Education, denying any violation of the Act had occurred.³ This appeal followed.

The purpose of the Act is to ensure that “the formation of public policy is public business and shall not be conducted in secret.” KRS 61.800. It is for this reason that “[n]o condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency.” KRS 61.840. This Office has previously noted that KRS 61.840 “vests the public with a virtually unconditional right to attend all meetings of a public agency.” 00-OMD-169. Therefore, “conditions” for the “maintenance of order” means an agency may take action to remove a person who is disrupting a meeting to the point where business cannot be done. *See, e.g.*, 14-OMD-022 (person was not so disruptive as to warrant his removal from the meeting).

But it is not clear from this record whether the Appeals Board was the agency actually responsible for enforcing the policy on the day of the meeting. According to the Appellant, he was prevented entry into the building by a police officer. There is no evidence in this record to conclude that the police officer was present on orders of the Appeals Board, or that the officer was enforcing a condition of attendance. Rather, it is more likely the police officer was present on orders of the Jefferson County Board of Education because the Board of Education is the agency charged with maintaining its property, and which promulgated the policy. *See* KRS 160.290. Regardless, this Office cannot decide factual disputes in this forum. *See, e.g.*, 19-OMD-187; 12-OMD-080. Because the Office cannot decide the factual question of which agency was responsible for the police officer’s presence outside the building, and because no evidence has been presented to conclude the Appeals Board was aware the officer was preventing individuals from attending its meeting, this Office cannot conclude that the Appeals Board impermissibly placed a condition on the attendance of its meeting.

A party aggrieved by this decision may appeal it by initiating 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

meeting. The Appeals Board also argues this appeal is moot because Jefferson County’s levels of Covid-19 community spread are currently low enough that the Board of Education’s face-mask policy is not currently being enforced. However, the face-mask policy is still in effect, and there is no reason to believe the Board of Education would not enforce it again if Covid-19 levels rise. More to the point, however, the Appeals Board has not admitted to violating the Act and agreed to follow the proposed remedy. For that reason, this appeal is not moot. *See, e.g.*, 17-OMD-021.

³ The Appellant argues the Appeals Board failed to timely respond to his complaint because a Board of Education attorney responded to the complaint. However, the Act provides that an agency’s “response shall be issued by the presiding officer, *or under his authority*, and shall constitute final agency action.” KRS 61.846(1) (emphasis added). On appeal, the Appeals Board states the Board of Education attorney was acting under its presiding officer’s authority in responding to the complaint. Accordingly, the Appeals Board timely responded to the request within 24 hours of receiving it.

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

Daniel Cameron
Attorney General

s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Kurt Wallace
Tyson Gorman
Maddie Shepherd
Amanda Herzog