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April 17, 2019

OML 2019 – 30

Timothy Luff
Assistant Superintendent
Natick Public Schools
13 East Central Street
Natick, MA 01760

RE: Open Meeting Law Complaint

Dear Assistant Superintendent Luff:

This determination addresses a complaint that Ronald Alexander filed with this office on December 31 alleging that the Natick School Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ Between March and October, Mr. Alexander filed approximately 600 separate open meeting law complaints with the Committee. This determination addresses complaint #14. The complaint was originally filed with the Committee on March 22 and you responded, on behalf of the Committee, by letter dated November 29, following mediation and then an extension of time granted by our office.² The complaint alleges that, on January 10, Committee members improperly deliberated by email on Committee business outside of a noticed meeting.

Following our review, we find that the Committee violated the Open Meeting Law by deliberating by email. In reaching this determination, we reviewed the original complaint, the Committee's response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the open session minutes of the Committee's January 8 and January 22 meetings; a video recording of the Public Speak portion of the January 8 meeting³; and the January 10 email correspondence from Committee Chair Lisa Tabenkin.

¹ All dates in this letter refer to the year 2018.

² The parties engaged in mediation pursuant to 940 CMR 29.05(9), which concluded unsuccessfully in August. This office granted the Committee an extension until November 30 to respond to this complaint.

³ The video recording is available at https://www.youtube.com/watch?v=p_MRKWdwQZI.



FACTS

We find the facts as follows. The Committee is a five-member public body; thus, three members constitute a quorum. During "Public Speak" at a January 8 meeting, a parent stated that her child was bullied into suicide. Superintendent Peter Sanchioni immediately told her that such comment was out of order and asked her to stop speaking. When she refused to do so, the Committee recessed and left the room. The Committee reconvened approximately fifteen minutes later and discussed the remaining noticed topics before adjourning.

On January 10 at 4:49 P.M., Chair Lisa Tabenkin sent the following email to the Committee and Superintendent Sanchioni:

As I am sure you are all well aware that there has been a lot of talk about what happened at our meeting Monday night. There have been some harmful untruths being said and I want to clarify these issues for you.

I spoke with our attorney this afternoon and be assured that we did not break any OML and did not violate freedom of speech. Public Speak is there for any citizen to talk about anything that is happening within the district that is not on the agenda. People cannot speak about employees of the public schools or any student. That violates the individual's right to privacy which we need to protect. We have mechanisms and support in place to help any student that needs it. Public Speak is not that.

Please tell anyone that approaches you individual [sic] about this that SC cannot talk about personnel or students issue in public. Assure them that we have the appropriate supports in place to help all of your students if needed. You can also direct them to speak with administration if needed.

I know I do not need to say this but **Do not engage on social media.** I will be making a statement to this at our next SC meeting.

(emphasis in original)

One Committee member responded approximately one hour later, but only to Chair Tabenkin and Superintendent Sanchioni.

At the beginning of the Committee's January 22 meeting, Chair Tabenkin read a statement addressing the incident that occurred during the Public Speak portion of the January 8 meeting. She stated that concerns involving students and personnel would not be allowed during Public Speak so as to protect the privacy of those involved and that mechanisms are in place for engaging in such discussions outside of a public meeting. Chair Tabenkin further stated that the Committee cannot engage with individuals during Public Speak because the topics raised during that time have not been included on the posted notice. She then read the portion of the Open Meeting Law that explained the parameters of public participation during a meeting and

concluded that the Committee would not allow any member of the public to discuss the incident that occurred at the January 8 meeting. She welcomed comment on any other matter.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” G.L. c. 30A, § 18. The law defines “deliberation” as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that ‘deliberation’ shall not include the distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” Id. For the purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. Id.

The complaint alleges that the Committee deliberated by email on January 10 outside of a properly posted meeting. Here, the January 10 email from Chair Tabenkin to the Committee discussed the Committee’s overall policy of Public Speak, including how the matter would be addressed in the future and opinions on how Committee members should address the matter if they were approached by members of the public. The expression of an opinion of one public body member on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. See OML 2016-104; OML 2015-33.⁴ We find that the January 10 email sent by Chair Tabenkin violated the Open Meeting Law because the email reached a quorum of the Committee, discussed the matter involving “Public Speak” which was still pending before the Committee and within the Committee’s jurisdiction, and offered the Chair’s interpretation of how the matter should be handled going forward. See OML 2015-3; OML 2014-108; OML 2013-136; Boelter v. Board of Selectmen of Wayland, 479 Mass. 233, 243 (2018). The email went beyond mere scheduling or procedural information that the Open Meeting Law permits outside of a public meeting. See G.L. c. 30A, § 18, first clause; compare OML 2018-47. Recognizing that it is sometimes difficult to determine whether communication constitutes deliberation under the Open Meeting Law, our office cautions public bodies on the use of electronic communications. See OML 2014-80; OML 2017-88.

We must determine whether this violation was, as the complainant urges, an intentional one. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. This Office has not issued any determinations that advised the Committee that deliberating by email among a quorum of members on a matter of Committee business violated

⁴ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

the Open Meeting Law. Because we find no evidence that the Committee acted with deliberate ignorance of the law and where the Committee had not been notified of its obligations prior to the events addressed in this letter, we find that this violation was not intentional.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by deliberating by email. We order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law. We order the Committee to publicly disclose the January 10 email at its next meeting.⁵

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Ronald Alexander
Natick School Committee

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

⁵ The Committee must notify the Attorney General in writing of its compliance with the order to publicly disclose the email communications within 30 days of receipt of this letter. See 940 CMR 29.07(4).