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April 17, 2019

OML 2019 – 31

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 #53. The complaint was originally filed with the Committee on April 27 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 the Committee failed to review within 14 business days a prior Open Meeting Law complaint that Mr. Alexander had filed, and also that discussing Open Meeting Law complaints in executive session violates the Open Meeting Law and does not qualify as a review of the complaint as required by the law.

Following our review, we find that the Committee did not violate the Open Meeting Law in the ways alleged. 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 notice and open and executive session minutes of the Committee's March 26 meeting. Finally, we spoke with you by telephone on February 1, 2019.

¹ All dates in this letter refer to the year 2018, unless otherwise indicated.

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.



FACTS

We find the facts as follows. On or about March 12, the complainant filed an Open Meeting Law complaint.

The Committee duly posted notice for a meeting to be held on March 26 at 6:00 P.M. The notice included the following topics: Public Speak; Action Items, which included approving the school calendar and invoices, Chairman's Report, Superintendent's Report, and Members Concerns; Executive Session; and Future Meeting Dates/Agenda Items. Specifically, the notice listed two Executive Session topics: 1) to discuss "complaints or charges brought against a public officer, employee, staff member or individual (open meeting law complaints filed . . .)" and then identified several specific dates in March when those complaints were filed; and 2) to discuss contract negotiations with nonunion personnel.³

The March 26 meeting was held as planned. The Committee first convened in open session at 6:00 P.M. and approved a unanimous vote by roll call to convene in executive session to discuss contract negotiations with nonunion personnel and complaints or charges brought against a public officer, employee, staff member or individual. Committee member Firkins Reed stated that these complaints referred specifically to open meeting law complaints, three of which were filed on March 8, one filed on March 13,⁴ three filed on March 15, one filed on March 18, two filed on March 19, two filed on March 20, and four filed on March 22.

During the executive session, the Committee discussed the 16 open meeting law complaints filed between March 8 and March 22 and unanimously voted to have the school administration and/or the school attorney respond to the complaints on behalf of the Committee. One of the complaints that the Committee discussed was the March 12 complaint.

The Committee reconvened in open session at 7:15 P.M. and discussed the remaining noticed topics. Specifically, Assistant Superintendent Tim Luff informed the Committee that as of March 23 the Committee had received 16 complaints, which were just discussed in executive session, from the complainant. He advised that more complaints had been received over the weekend and that the Committee was required to meet to review the complaints and respond within 14 business days.

DISCUSSION

The complaint alleges that the Committee failed to review the March 12 Open Meeting Law complaint within the timeframe required by the law. Within 14 business days of receipt of an Open Meeting Law complaint, a public body must review the complaint to ascertain the time, date, place, and circumstances that constitute the alleged violation. 940 CMR 29.05(4). Unless an extension has been granted by the Attorney General, the public body must review the

³ Although not raised in this complaint, we note that the executive session topics should have included the name of the person who filed the Open Meeting Law complaints to be discussed and the identity of the nonunion personnel with whom the Committee will be negotiating, if doing so would not have compromised the purpose for the executive session. See 940 CMR 29.03(1)(b); OML 2017-53; OML 2016-43; OML 2013-82; OML 2011-54.

⁴ The Committee refers to the March 12 complaint as being filed on March 13.

complaint's allegations; take remedial action, if appropriate; and send the Attorney General a copy of the complaint and a description of any remedial action taken. Id. Nothing in the regulations prevents a public body, once it has reviewed a complaint during a meeting, from delegating its response to an individual, such as the Superintendent or counsel. See OML 2017-148.⁵

Our office has unequivocally stated in past determinations that public bodies may meet in executive session under Purpose 1 to review Open Meeting Law complaints against the body. See OML 2015-105; OML 2013-82; OML 2012-119; OML 2011-6. Executive session Purpose 1 allows a public body to discuss "the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual." G.L. c. 30A, § 21(a)(1). We have determined that an Open Meeting Law complaint is by its nature "brought against[] a public officer," namely, the members of the public body. See OML 2012-119. Accordingly, we find that the Committee reviewed the complaint within 14 business days and was permitted to conduct its review in executive session during the March 26 meeting, and therefore did not violate the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Committee did not violate the Open Meeting Law. 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 Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.