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By Email Only (openmeeting@state.ma.us)

Division of Open Government
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

**Re: Open Meeting Law Complaint Dated December 6, 2022 –
Wayland School Committee**

To the Division of Open Government:

We are herewith submitting for your further review the above-captioned Open Meeting Law Complaint against the Wayland School Committee (“Committee”). We are also responding to Chair Chris Ryan’s letter on behalf of the Committee, dated January 5, 2023, to Director Carrie Benedon.

Our Complaint alleges that the Committee violated the Open Meeting Law by conducting a portion of its November 10, 2022, open meeting in private when member Ellen Grieco exchanged notes with the Committee’s attorney. A copy of the Complaint (with two exhibits) is attached herewith.¹

FACTS

The five-member Committee held an open meeting on November 10, 2022.² The meeting was highly fraught and contentious; some 35 members of the public spoke 43 times. According to Mr. Ryan, the purpose of the meeting was to “discuss[] complaints against the Superintendent of Schools.”³ Attorneys for both the Committee and Superintendent sat around the meeting table with the five Committee members.

To fully understand this Open Meeting Law Complaint, it is essential to understand the nature of the complaints against the Superintendent. Chair Ryan attempted to explain the context of those complaints at elapsed meeting time 0:07:06:

¹ At the time the Complaint was filed, we understood that two notes were passed to the Committee’s attorney, but we did not know until Mr. Ryan informed us in his letter that he had passed one of them. We do not address here whether Mr. Ryan’s action violated the Open Meeting Law.

² A video of the meeting may be viewed at <https://www.waycam.tv/government-on-demand>. The Complaint provides the elapsed times for the events discussed herein. A complete transcript of the meeting appears at <https://docs.google.com/document/d/1aAeNs7nU7ZLqEePbII7PcEp5eZ-GHadsPHx1Xqdz6Ic/edit>.

³ See also Complaint Exhibit 1 (posted meeting notice).

Just occurred to me that I actually I wanted to provide a little background information before the public comments which I didn't do, just so that there's context for what you're saying. So the background information is that this is not a disciplinary meeting. This is a continuation of a prior meeting held in executive session that discussed complaints received by members of the School Committee about the Superintendent's alleged behavior during the October 13, 2022, administrative council meeting, as well as his failure to properly complete evaluations of his direct reports. The Superintendent has elected to have this discussion take place in open session, which is his right under the Open Meeting Law. So that's the purpose of today's meeting, what I've just described.

The facts as stated in Mr. Ryan's letter are essentially correct, save for a material misstatement and omission. Mr. Ryan writes:

[T]he Committee's Vice-Chair, Ellen Grieco, passed a note to the Committee's attorney. The note was not shared with any other member of the Committee. The Committee's attorney wrote on the paper that Ms. Grieco had handed him, and passed the note back to Ms. Grieco, again not sharing the note with any other members of the Committee.

Mr. Ryan's letter omits noting that six minutes after the attorney returned Ms. Grieco's note to her and she reads it (at elapsed time 1:09:56, as detailed in our Complaint), she made the following statement at the meeting:

I'm happy to have another meeting. With respect to Kim's OML comment, I asked the lawyer, and his view is that this⁴ is covered by our agenda today. So I'm happy to have another meeting. I'm happy to reschedule the meeting. But to me, that piece of this is the most concerning piece. And so I would like that to be part of the discussion.

Thus, Ms. Grieco shared with the other four members of the Committee, and with the public, the substance of her note to the lawyer, as well as the lawyer's response. Mr. Ryan's claim that Ms. Grieco's note was not shared with any other member of the Committee is untrue, as is his claim that the attorney's response was not shared with any other members.

Some further explanation of Ms. Grieco's statement is in order. "Kim" is Kim Reichelt, one of the complainants and a former member of the Committee. "Kim's OML comment" refers to the following statement by Ms. Reichelt at elapsed meeting time 0:40:50:

⁴ "this" refers to Ms. Reichelt's expressed concern (see below at time 0:40:50) that discussion of complaints against the Superintendent would necessarily relate to the Superintendent's professional competence, which was not within the posted meeting notice (agenda). (Of course, the Open Meeting Law requires that discussion of an individual's professional competence be conducted in open session, but such discussion was explicitly excluded in the open meeting notice.) Ms. Grieco said "this" concern was "covered by our agenda today," meaning the lawyer saw no issue.

Very brief, just a procedural comment that I want to make. I understand the Vice Chair's [Ms. Grieco's] comment about the wording that was on the agenda⁵ and why it was there, but it's the wording that was on the agenda. That's what you're bound by. So I just want to make sure you're clear on that—[that] you're not talking about professional competence. I don't care why you chose that language. But that's what's on the agenda. So I just think you should all be clear about that. You can turn to your attorney and ask him. I was the Open Meeting Law czar [when a member of the Committee]. Given what I know about Open Meeting Law, I will file a complaint if you talk about professional competence.

Ms. Reichelt suggested above that “you should all be clear about that” and “turn to your attorney and ask him” whether the wording on the agenda is “not talking about professional competence.” And that is exactly what Ms. Grieco did on behalf of and for the benefit of the Committee when she began to write her note to the attorney at elapsed time 1:00:00. Indeed, Ms. Grieco said she was speaking “[w]ith respect to Kim’s OML comment,” which is why she wrote the note to the attorney.

DISCUSSION

It is incontrovertible that the full Committee engaged in deliberation about Ms. Grieco’s note to the attorney and the attorney’s response to it as a result of her public statement. See, e.g., OML 2022-164 (“A one-way communication from one public body member to a quorum on matters within the body’s jurisdiction constitutes deliberation for purposes of the Open Meeting Law, even if no other public body member responds.”). Ms. Grieco herself brought the content of the note and the attorney’s response to the attention of the full Committee during the meeting; hence, deliberation occurred about the notes.

OML 2017-199, cited by Mr. Ryan, is inapposite to the present situation because a quorum of the Committee did, indeed, participate in the communication. It participated in two ways. First, Ms. Grieco’s note was passed to the attorney on behalf of and for the benefit of the Committee, as described above, in response to Ms. Reichelt’s request or suggestion that the Committee seek the advice of its attorney. Second, the full Committee participated in the communication via deliberation when Ms. Grieco revealed her contact with the attorney.

We reassert the pertinence of District Att’y for the Plymouth Dist. v. Board of Selectmen of Middleborough, 395 Mass. 629, 634 (1985) and Porcaro v. Town of Hopkinton, 12 Mass. L. Rptr. 154 (July 2000) (Middlesex Super. Ct.), both cited in the Complaint, because a quorum of the Committee did communicate (through Ms. Grieco) with its attorney in violation of the Open Meeting Law. For that reason, the attorney-client privilege does not protect communications during an open meeting between members of the Committee and the Committee’s attorney.

In any event, Ms. Grieco’s statement above to the full Committee and to the public waives the attorney-client privilege concerning the notes written by Ms. Grieco and the Committee’s

⁵ See Complaint Exhibit 1.

attorney. See M.S. Brodin & M. Avery, Massachusetts Evidence § 5.4.5 (8th ed. 2007) (“Disclosure of the communication to a third person (other than a necessary agent of the attorney or client) destroys the privilege.”).

CONCLUSION

For the reasons given above, the Committee violated the Open Meeting Law when the Committee, through Ms. Grieco, sought the advice of its attorney during a supposedly open meeting. In so doing, the public was denied the opportunity to witness the open exchange of all communications during its deliberations. The public is entitled to know the exact content of the subject notes.

Sincerely,

/s/ George H. Harris and Kimberly Sklar Reichelt

Encl: Open Meeting Law Complaint dated December 6, 2022

cc: Chris Ryan (via email)