

# SCHOOL COMMITTEE

Chris Ryan, Chair

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Jessica Polizzotte

 Wayland Public Schools

 Wayland, Massachusetts 01778

January 5, 2023

**FIRST CLASS MAIL**

Ms. Carrie Benendon, Director

Division of Open Government

Office of the Attorney General

One Ashburton Place

Boston, MA 02108

**Re: Response to Open Meeting Law Complaint against the Wayland School Committee filed by Ms. Kimberly Sklar Reichelt on November 16, 2022**

Dear Ms. Benedon:

On November 16, 2022, the Wayland School Committee (“Committee”) received the attached Open Meeting Law Complaint (“the Complaint”) from Ms. Kimberly Sklar Reichelt alleging that the School Committee violated the Open Meeting Law at both its October 26, 2022 and November 10, 2022 meetings. Pursuant to M.G.L. c. 30A, §23(b), a copy of the Complaint is attached hereto as Exhibit A. On December 2, 2022 the Committee requested an extension to reply to this complaint and was granted such an extension until December 15, 2022 by your office. On December 15, 2022, the Committee requested a second extension to reply to this complaint and was graciously granted such an extension until January 5, 2022 by your office.

The Complaint alleges that the Committee violated the Open Meeting Law with respect to its October 26 meeting by: (1) denying the right to be represented by counsel; and (2) discussing topics not permitted under purpose 1; and further alleges that the Committee violated the Open Meeting Law with respect to its November 10, 2022 meeting by: (1) failing to post the full listing of topics; (2) failing to provide at least 48 hours’ notice; and (3) failing to include sufficient details in its meeting notice.

The Committee denies that it violated the Open Meeting Law as alleged.

**I. FACTUAL BACKGROUND**

October 26, 2022 Meeting

By letter dated October 18, 2022, the Committee Chair notified the Superintendent of Schools, Dr. Omar Easy (“the Superintendent”) that it had scheduled an executive session agenda item for its October 26, 2022 meeting under M.G.L. c. 30A, § 21(a)(1) (“Purpose 1”) to discuss a complaint regarding the Superintendent’s alleged actions at a meeting of the School District’s Administrative Council on October 13, 2022.[[1]](#footnote-1) (Exhibit B) This agenda item was scheduled following the receipt by members of the school committee of verbal complaints from members of the Administrative Council regarding the October 13 Administrative Council meeting. Between the date of the October 18 notice and the October 26 meeting, additional verbal complaints were received by members of the Committee from Administrative Council members. These additional complaints concerned both the October 13, 2022 meeting, as well as complaints about the manner in which the Superintendent handled the performance evaluations of certain Administrative Council members.

Following delivery of the October 18, 2022 notice, the Superintendent’s legal counsel contacted the Committee’s legal counsel to discuss the October 26 executive session. Counsel had a telephone conversation on October 24, 2022, at which time the Committee’s counsel stated that the Committee did not intend to make any substantive determinations regarding the complaints during the October 26 meeting, but instead discuss the process it would follow to investigate the complaints. During that conversation, the Superintendent’s counsel did not indicate whether he intended to attend the October 26, 2022 meeting, did not indicate any scheduling conflict existed, and did not request to reschedule the meeting.

On October 26, 2022, the Committee’s counsel received a text message from Superintendent’s counsel at 12:49 p.m. in which he stated he was at a “family funeral/memorial” and would not be at the meeting that evening. He further stated that he had asked the Superintendent to let him know whether he wished to proceed “or ask to kick it over.” The Committee’s counsel responded via text at 1:35 p.m. and asked for clarification given that no scheduling conflict had been previously mentioned. The Superintendent’s counsel responded via text message at 1:59 p.m. Without directly requesting a postponement, he suggested alternative dates for the meeting, none of which were feasible from a scheduling perspective. The Committee’s counsel responded again at 2:13 p.m. seeking clarification of the request and requesting a brief call with the Superintendent’s counsel. The Committee’s counsel received no response to this text message, and no response to a subsequent phone call that afternoon. The Committee’s chair and vice-chair consulted and made the determination to move forward with that evening’s meeting as scheduled.

The October 26 meeting took place as scheduled, with the Committee entering executive session under Purpose 1. The Superintendent attended the meeting and made no request of the Committee to postpone or continue the meeting. The Superintendent stated at the outset that he was exercising his right to record the meeting and was permitted to do so. The Chair read a summary of the verbal complaints which had been received, which included the Superintendent’s actions at the October 13 Administrative Council meeting, as well as the Superintendent’s failure to complete performance evaluations for certain members of the Administrative Council. The Committee did not discuss the merits of the complaints, but rather discussed procedure, and voted to engage an outside investigator to investigate the complaints. The Committee then discussed whether to place the Superintendent on paid administrative leave during the pendency of the investigation. After much discussion, the Committee voted unanimously not to place the Superintendent on administrative leave at that time, but to continue the discussion at a future executive session meeting to be scheduled for November 10, in part to give the Superintendent an opportunity to confer further with his legal counsel.

November 10, 2022 Meeting

On November 8, 2022, the Committee provided the Superintendent with official notice of the Purpose 1 executive session to be held on November 10, 2022, to continue discussion of the complaints which had begun on October 26 (Exhibit C). On November 7, 2022, the Superintendent’s counsel notified the Committee’s counsel by letter that the Superintendent was exercising his right to have the discussion regarding the complaint take place in open session, rather than executive session. On November 8, 2022, the Committee Chair sent the agenda for the November 10, 2022 meeting to school department administrative personnel for posting (Exhibit D). The meeting was scheduled with only one agenda item, the continuation of the discussion of the complaints against the Superintendent. The meeting notice used the language from § 21(1) for the item regarding the discussion of the complaint against the Superintendent (“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,” and added “complaint against an administrator, pursuant to M.G.L. c. 30A, § 21(1).” This is the same language the Committee had used for the October 26 executive session notice, although the November 10, 2022 notice did list the item as an Open Session item.

The administrative staff member responsible for posting the notice reviewed it and, not knowing that the Superintendent had requested the discussion take place in Open Session, erroneously believed based on the language of the agenda item, that it should have been an Executive Session item. The staff member thus changed the item to Executive Session prior to posting it. The notice was originally posted on November 8, 2022 at 11:42 a.m., which was more than 48 hours’ in advance of the scheduled meeting (Exhibit E).

On the evening of November 8, the Chair reviewed the posted notice and discovered that the item had erroneously been posted as executive session, rather than open session. In addition, throughout the day on November 8, it had become evident to the Chair that there was a great deal of public interest in the meeting, and it was likely that many members of the community would seek to attend the meeting. The Chair determined that the location originally chosen for the November 10 meeting – the School Committee room at the District’s Central Office – was likely too small to accommodate the size of the crowd anticipated. On the morning of November 9, the Chair notified administrative staff of the error in the notice and the need to revise the agenda to reflect an open session discussion of the complaints, as well as the need to find a larger venue for the meeting. Staff then worked to secure a larger location for the meeting. All of the larger rooms in the Town Building where the District’s Central Office is located were unavailable, so the decision was made to move the meeting to the High School South Building Lecture Hall, which was the most convenient location capable of accommodating a large crowd and is also where the majority of the Committee’s regularly scheduled meetings take place. At 2:24 p.m. on November 9, a revised meeting notice was posted with the new meeting location and reflecting that the discussion would take place in open session (Exhibit F).

In addition to its meeting on November 10, the Committee also held a regularly scheduled meeting on November 9, 2022. During the public comment portion of the November 9 meeting, several members of the public spoke about the Committee’s scheduled November 10 meeting, with some questioning why the agenda for the November 10 meeting did not include a public comment period. Based on the feedback received during this meeting, the Chair and Vice-Chair conferred and determined that it would be appropriate to add a public comment period to the November 10 meeting. At 10:20 a.m. on November 10, a second revised meeting notice was posted, with a public comment period added to the agenda (Exhibit G).

**II. ANALYSIS**

1. October 26, 2022 Meeting

1. **The Committee provided the Superintendent the right to be represented by counsel.**

The Complaint alleges that the Committee denied the Superintendent his right under Section 21(a)(1) to be represented by counsel during the October 26, 2022 executive session. As a preliminary matter, the Committee asserts that the Complainant does not have standing to assert a violation of the Superintendent’s individual rights. Section 21(a)(1) sets forth a number of rights that an individual possesses in the event that the individual is the subject of an executive session discussion under Purpose 1. (“If an executive session is held, *such individual shall have the following rights*” . . . “*The rights of an individual* set forth in this paragraph are in addition to the rights that *he may have* from any other source . . . and the exercise or non-exercise of *the individual rights under this section* shall not be construed as a waiver of any rights of the individual.”). The statutory language is clear that the rights enumerated in Purpose 1 are rights that belong to the individual, who may choose to exercise or not exercise the rights at his discretion. This portion of the Complaint thus alleges a violation of the Superintendent’s individual rights, which the Complainant does not have standing to assert.

However, even assuming that the Complainant does have standing to assert a violation of the Superintendent’s rights under Purpose 1, the Committee committed no such violation. As required by statute, the Superintendent received notice of the executive session discussion more than 48 hours in advance, which notice included notice of his rights under Purpose 1. In this case, the Superintendent received the required notice on October 18, eight days in advance of the scheduled meeting. At no time prior to October 26 did the Superintendent or his legal counsel request a postponement of the meeting or indicate that there was any scheduling conflict. It was not until 1:59 p.m. on October 26, approximately three (3) hours before the scheduled meeting, that the Superintendent’s counsel sent a text message which might be interpreted as a request for a postponement. The alternative dates suggested by the Superintendent’s counsel were not feasible, and the Committee’s counsel did not receive a response to his further attempts to discuss the matter with the Superintendent’s counsel both via text message and phone. In these circumstances, the Committee was under no obligation to postpone the scheduled meeting to accommodate this eleventh-hour request. The Superintendent was provided with ample notice of the meeting and his rights under Purpose 1. He attended the meeting and exercised his rights under Purpose 1 by being present for the Committee’s deliberations, speaking on his own behalf, and recording the meeting. It is the responsibility of the individual to arrange for counsel or another representative to be present if the individual seeks to exercise that right, and the Committee did not violate Section 21(a)(1) by moving forward with the meeting under the circumstances.

2. **The Committee did not discuss professional competence in executive session.**

The Complaint alleges that the Committee improperly discussed the professional competence of the Superintendent during the October 26 executive session, in violation of Section 21(a)(1). The Committee denies that it discussed professional competence in executive session and asserts that the Complainant misunderstands Section 21(a)(1). In the Complaint, the Complainant states:

“Section 21(a)(1) states (emphasis added): “A public body may meet in executive session **only** for the following purposes. 1. To discuss the reputation, character . . . **rather than professional competence** . . .”

It is telling that in referencing the alleged violation, the Complaint does not include the full statutory language of Purpose 1, as it is the remaining language of Purpose 1 on which the Committee’s executive session discussion was based. Purpose 1 provides in full:

“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**.” (emphasis added)

The Committee’s discussion in executive session on October 26 was for the purpose of discussing complaints against the Superintendent. The complaints involved both the Superintendent’s conduct during the October 13 Administrative Council meeting, as well as the manner in which he conducted performance evaluations of certain Administrative Council members. The assertion in the Complaint that the Committee “discussed the Superintendent’s alleged failure to complete performance evaluations – a matter of professional competence and thus explicitly off-limits for Executive Sessions” is not accurate. The Committee’s discussion was related to complaints against the Superintendent, pursuant to the last clause of Purpose 1. These complaints included allegations related to his completion of performance evaluations, among other things.

The Committee’s discussion was not a discussion of professional competence, especially where the discussion did not involve any attempt to evaluate the substance of the complaints. The discussion related entirely to the existence of complaints against the Superintendent, and how the Committee would proceed to investigate the complaints. The Committee did not attempt to make any determinations regarding the merits of the complaints, or whether any action should be taken in response to the complaints. The discussion was limited to how the Committee would go about reviewing the complaints, and the Committee ultimately voted to hire an outside investigator to perform an investigation. Consequently, the Committee appropriately entered executive session under Purpose 1 to discuss complaints against the Superintendent and did not inappropriately deliberate over professional competence.

B. November 10, 2022 Meeting

1. **The Meeting Notice Included a Full Listing of Topics to be Discussed at the Meeting**

The Meeting Notice for the November 10 meeting included a full listing of topics reasonably anticipated to be discussed (and actually discussed) at the meeting. The Meeting Notice initially included one topic: “[t]o 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 – complaint relative to administrator.” As noted previously, the wording of this item was based on the statutory language, and is the wording typically used when such discussions are held in executive session pursuant to Purpose 1. In this case, the Superintendent elected to have the discussion held in open session, however the topic for discussion did not change and so the Committee maintained the language it typically has used.

The Complaint alleges that because the language of the notice expressly excluded discussion of professional competence, the Committee violated the Open Meeting Law when it discussed complaints against the Superintendent which included, among other things, allegations relating to the manner in which he completed performance evaluations of certain Administrative Council members. This allegation is essentially the same as the allegation discussed in Section II.A.2. above, in that it conflates the discussion of professional competence with the discussion of complaints against the Superintendent. The Committee maintains that, as on October 26, its discussion on November 10 was limited to the complaints against the Superintendent and how the Committee would respond. Just as on October 26, there was no discussion about the merits of the complaints, but rather a discussion of the process the Committee would follow in responding to the complaints. To the extent that any discussion is deemed to have taken place among the Committee regarding professional competence – and the Committee denies that any such discussion did – such discussion was not anticipated by the Chair, and further would not have been prohibited under the open meeting law, since the November 10 discussion took place in open session.

2. **The Committee properly posted notice of the November 10 meeting more than 48 hours in advance, and properly amended the notice.**

The Committee properly posted notice of the November 10 meeting on November 8 at 11:42 a.m., more than 48 hours in advance of the meeting, as required by law. The Complaint alleges that the Committee violated the Open Meeting Law when it amended the meeting notice within the 48 hour period prior to the meeting. However, the law permits a public body to amend a properly posted meeting notice within 48 hours of the meeting, and the Committee had legitimate reasons to do so in this case. See 940 CMR 29.03(1)(d) (“The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.”); see also Open Meeting Law Guide and Educational Materials, published by the Office of the Attorney General (January, 2018), at p.10. (“If a notice is revised, the revised notice must also conspicuously record both the date and time the original notice was posted as well as the date and time the last revision was posted.”)

In the present case, the meeting notice was revised two times after it was initially posted more than 48 hours in advance of the meeting. The first revision occurred on November 9 at 2:24 p.m. and included two changes: the change of meeting location to a larger venue to accommodate the expected public interest, as well as the correction to indicate that the discussion of the complaints would take place in open session, rather than executive session. The second revision took place on November 10 at 10:20 a.m. and included one change: the addition of public comment as an agenda item. [[2]](#footnote-2) Both revised notices were made with as much notice to the public as possible. The first revised notice was posted on November 9 when the Chair discovered that the original meeting notice incorrectly listed the agenda item for executive session, rather than open session, and also determined that the original meeting location would likely be too small to accommodate the expected crowd. The Division of Open Government has held in the past that the obligation of public bodies to make meetings accessible to the public include the obligation to seek a meeting location which can accommodate the size of the anticipated crowds. See OML 2018-25. Here, when the Chair became aware of the growing public interest in the topic, he appropriately sought out and secured a larger location in Town for the meeting, and had the notice revised and re-posted accordingly. At the time that the first revised notice was posted, it was not the Committee’s intention to have a public comment period during the November 10 meeting. However, after members of the public spoke out at the Committee’s meeting on the evening of November 9 and questioned why no public comment would be permitted on November 10, the Chair made the determination that it would be appropriate to add a public comment period to the November 10 agenda. Accordingly, a revised meeting notice was posted on the morning of November 10, adding public comment.

Notably, all three of the updates made in the two revised meeting notices had the effect of making the meeting more accessible to the public. There is no dispute that the original meeting notice was posted in compliance with the law; as such, the Committee’s legitimate revisions to the meeting notice, undertaken to accommodate public interest in the meeting, in no way violate the law.

**C. The Committee Did Not Deliberate Outside a Posted Meeting**

The Committee denies the allegation in the Complaint, unsupported by any evidence, that the Committee deliberated outside a public meeting. Specifically, the Complaint states that the Committee “gives the appearance of having deliberated outside a public meeting in multiple ways, but most conspicuously by their inclusion of the administrator evaluations into the scope of the investigation.”[[3]](#footnote-3) In support of this allegation, the Complaint points to confusion among Committee members at the November 10 meeting about whether the complaints which were the subject of the October 26 executive session discussion included complaints regarding the Superintendent’s completion of performance evaluations. The Complainant suggests that the Committee did not discuss complaints regarding the completion of evaluations on October 26, and then inappropriately inserted that topic into the discussion of the complaints at the November 10 meeting.

Setting aside the fact that the Complainant’s suggested version of events does not establish that inappropriate deliberation took place, the simple fact is that the scope of the complaints the Committee discussed during both meetings included complaints about the Superintendent’s completion of performance evaluations of certain Administrative Council members. The Complainant is correct that there was some apparent confusion among members of the Committee during the November 10 meeting regarding whether the complaints they discussed on October 26 included complaints related to the Superintendent’s completion of performance evaluations. This confusion may have been attributable to the fact that, as noted throughout this response, the Committee’s discussion about the complaints (in both meetings) was limited to the procedure the Committee would follow to investigate the complaints, rather than a substantive discussion of the merits of the complaints. Beyond the Chair’s reading of a summary of the complaints at the outset of the October 26 executive session, the specifics of the complaints and their allegations were not discussed by the Committee on October 26. Thus it is possible that Committee members incorrectly recalled the full scope of the complaints that were the subject of their vote to investigate on October 26. The Committee would be happy to discuss with the Division how it might provide additional information to demonstrate that the scope of the complaints discussed at the October 26 meeting and the November 10 meeting were the same.

**III. CONCLUSION**

Based on the information set forth above, the Committee asserts that it has not violated the Open Meeting Law and that the remedies requested in the Complaint are inappropriate.

Thank you for your attention to this matter, and please do not hesitate to contact me if I can provide any additional information.

Sincerely,

Chris Ryan

Chair, Wayland School Committee

cc: Wayland School Committee

 Ms. Kimberly Sklar Reichelt

1. The Administrative Council is a group of School Department Administrators with whom the Superintendent meets on a regular basis and is not a public body subject to the Open Meeting Law. [↑](#footnote-ref-1)
2. Contrary to the allegations in the Complaint, the change in meeting location was made in the first revised meeting notice on November 9, not in the second revised meeting notice on November 10. The only change in the second revised meeting notice on November 10 was the addition of public comment. [↑](#footnote-ref-2)
3. In spite of the reference to “multiple ways,” the Complaint does not elaborate on any of the other ways the Complainant believes the Committee “gives the appearance of” improper deliberation. [↑](#footnote-ref-3)