

# SCHOOL COMMITTEE

Chris Ryan, Chair

Ellen Grieco, Vice Chair

Jeanne Downs

Erin Gibbons

Jessica Polizzotte

Wayland Public Schools

Wayland, Massachusetts 01778

January 5, 2023

**Via FIRST CLASS MAIL and email**

Ms. Carrie Benedon, Director

Division of Open Government

Office of the Attorney General

One Ashburton Place

Boston, MA 02108

[opemneeting@state.ma.us](mailto:opemneeting@state.ma.us)

**Re: Response to Open Meeting Law Complaint against the Wayland School Committee filed by Mr. George Harris and Ms. Kim Reichelt on December 6, 2022**

Dear Ms. Benedon:

On December 6, 2022, the Wayland School Committee (“the Committee”) received an Open Meeting Law Complaint (“the Complaint”) from Mr. George Harris and Ms. Kim Reichelt alleging that the School Committee violated the Open Meeting Law at its November 10, 2022 meeting. Pursuant to M.G.L. c. 30A, § 23(b), a copy of the Complaint is attached hereto as Exhibit A. On December 23, 2022 the Committee requested an extension to reply to the Complaint and was granted such an extension by your office until January 5, 2023.

The Complaint alleges that the Committee violated the Open Meeting Law at its November 10, 2022 meeting when two members of the Committee separately communicated with the Committee’s attorney by passing a note to the attorney during the meeting. The Committee denies that the communications in question violated the Open Meeting Law.

1. **FACTUAL BACKGROUND**

The Committee is a five-member public body, meaning that a quorum of the Committee is three members. On November 10, 2022, the Committee held a meeting during which it discussed complaints against the Superintendent of Schools. The Committee had initially provided notice to the Superintendent that it intended to discuss the complaints in executive session, pursuant to M.G.L. c. 30A, § 21(1); however, the Superintendent exercised his right to have the Committee’s discussion take place in open session, and thus an open session was held. During the meeting, the Committee discussed the complaints, and the process the Committee would follow to investigate the complaints. The meeting was highly attended by members of the community, and the Committee provided two separate public comment periods during the meeting, during which numerous members of the public addressed the Committee.

On two occasions during the meeting, a single member of the Committee passed a note to the Committee’s attorney, who was seated at a table at the front of the room with the Committee. First, while the Superintendent addressed the Committee, the Committee’s Chair, Chris Ryan, passed a note to the Committee’s attorney. The note was not shared with any other member of the Committee. Later in the meeting, during public comment, the 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.

1. **ANALYSIS**

The two notes passed, each by a single member of the Committee, to the Committee’s attorney during the November 10 meeting do not constitute “deliberation” within the meaning of the Open Meeting Law. The Open Meeting Law defines “deliberation,” in relevant part, 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.” M.G.L. c. 30A, § 18 (emphasis added). The Division of Open Government (“the Division”) has consistently held that communications between a member of a public body and a non-member, do not constitute deliberation. See OML 2018-89 (“[C]ommunications between one member and the Town Administrator that do not otherwise reach a quorum of the Committee, even where an opinion is expressed, would not constitute deliberation”); OML 2018-114 (holding that communications by a member of a public body with two individuals who were not members of the public body, which took place outside the meeting room during a meeting of the public body, did not constitute deliberation where the communications did not reach a quorum of the public body.). Indeed, in a case with strikingly similar facts, the Division of Open Government held that a public body did not violate the Open Meeting Law when a member of the public body passed a note to the public body’s attorney during a meeting. See OML 2017-199 (“a note from a Board member to Board counsel, who is not a member of the Board, is not deliberation, as defined by the Open Meeting Law, because a quorum of the Board did not participate in the communication.”).

The cases cited in the Complaint are inapposite, as they each involved situations where a quorum of a public body communicated with the public body’s attorney in violation of the Open Meeting Law. In District Attorney for the Plymouth District v. Board of Selectmen of Middleborough, 395 Mass. 629 (1985), a Board of Selectmen entered executive session to discuss negotiation of a rubbish removal contract with its attorney, despite acknowledging that none of the statutory purposes for holding an executive session applied. The Supreme Judicial Court rejected the Board’s argument that the full Board’s consultation with its attorney should be exempted from the Open Meeting Law. The other case cited in the Complaint, Porcaro v. Town of Hopkinton, 12 Mass. L. Rptr. 154 (2000) involved an inappropriate use of executive session for a public body to discuss with its attorney topics that were required to be discussed in open session. Neither of these cases is analogous to the facts of this matter.

In the present case, neither of the two notes in question constitute deliberation. The Committee’s attorney is not a member of the Committee, and neither of the two notes at issue were shared with a quorum of the five-member Committee. Indeed, each of the two notes was a communication between a single member of the Committee and the Committee’s attorney and was not shared with anyone else. As noted above and in the authorities cited herein, such communications, in which a quorum of the public body does not participate, do not meet the Open Meeting Law’s definition of “deliberation.”

1. **CONCLUSION**

For all of the reasons set forth above, the Committee maintains that it did not violate the Open Meeting Law, and the remedies requested in the Complaint are not appropriate.

Thank you for your attention to this matter.

Sincerely,

Chris Ryan

Chair, Wayland School Committee

cc: Mr. George Harris

Ms. Kim Reichelt

Wayland School Committee