



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

March 4, 2022

OML 2022 – 41

VIA EMAIL

Michael J. Long, Esq.
Long & DiPietro, LLP
175 Derby Street, Unit 17
Hingham, MA 02043
[REDACTED]

RE: Open Meeting Law Complaint

Dear Attorney Long:

This office received a complaint from Sara Steele on September 14, 2021, alleging that the Tewksbury School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Committee on July 29, and you responded, on behalf of the Committee, by letter dated September 28.² The complaint alleges that the complainant was denied access to a Committee meeting held on July 21, and as a result was not able to speak publicly during the meeting.

Following our review, we find that the Committee did not violate the Open Meeting Law as alleged. In reaching this determination, we reviewed the original complaint, the Committee’s response to the complaint, the notice and minutes of the Committee’s July 21 meeting, as well as a letter from the Tewksbury Public Schools Superintendent to Ms. Steele dated July 14.

FACTS

We find the facts as follows. On July 14, the Tewksbury Public Schools Superintendent sent a letter to Ms. Steele alerting her that he would be investigating an incident in which Ms.

¹ All dates in this letter refer to the year 2021.

² We remind the Committee that the Open Meeting Law and the Attorney General’s Open Meeting Law Regulations require that, within 14 business days after receiving a complaint, a public body must meet to review the complaint’s allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. G.L. c. 30A, § 23; 940 CMR 29.05(5).

Steele may have “enter[ed] the Dewing School classrooms, observ[ed] students, question[ed] staff, possibly tak[en] photographs, and inspect[ed] facilities without authorization.” The letter further stated, “During the investigation period, I am requesting that you kindly refrain from entering any Tewksbury Public School building beyond the lobby area without my knowledge and express consent.”

The Committee posted notice for a meeting to be held on July 21 at 6:00 PM at the Tewksbury Memorial High School in the Large Group Instruction Room. The Committee convened its meeting as scheduled. At no time prior to the meeting did Ms. Steele request to attend the meeting or seek clarification regarding whether she was permitted to attend, nor did she attempt to enter the High School on July 21 to attend the meeting.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The 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. Access to a meeting must include the opportunity to be physically present, as well as to see and hear what is being discussed by the members of the public body. See OML 2017-135; OML 2015-38; OML 2014-3; OML 2013-189.³ A public body must be able to take reasonable steps to ensure the safety and good order of public meetings. See OML 2015-92. By “good order” we mean protection against violent, threatening or abusive behavior, and not merely behavior that may disrupt a meeting. Disruptive behavior should be addressed by removing the person from the meeting. See G.L. c. 30A, § 20(g).

The complaint alleges that Ms. Steele was denied access to the Committee’s July 21 meeting and was denied the opportunity to speak publicly at that meeting. We note that there is no dispute that the July 21 meeting was an open meeting accessible to the general public, but we review to determine whether the meeting was also accessible to Ms. Steele. Our review does not reveal that Ms. Steele attempted to attend the July 21 meeting and was denied access, nor that she sought clarification regarding whether the Superintendent’s letter prohibited her from attending the meeting. To the contrary, the Committee responds that the Committee Chair, and not the Superintendent, presides over Committee meetings and would be the person with authority to deny access to a meeting. The Committee also emphasizes that the Superintendent’s letter “request[ed]” that Ms. Steele “kindly refrain” from entering school buildings but was not a strict prohibition and was not intended to prohibit attendance at any public meeting, and had Ms. Steele sought clarification, the Superintendent could have confirmed that point.

On these facts, we find no evidence that Ms. Steele sought to attend the July 21 meeting or requested permission to attend and was denied access. We cannot, therefore, conclude that she was actually excluded from the Committee’s July 21 meeting. Compare OML 2018-77 (finding that a public body violated the Open Meeting Law by excluding the complainant from

³ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

its meetings after he expressed interest in attending but was told he was not allowed, and where there were no specific incidents of physical aggression, violence or threats of harm) with OML 2019-14 (finding that a public body did not violate the Open Meeting Law when the city administrator had issued a “no trespass” order to a particular individual prohibiting his presence at City Hall, but the individual never actually attempted or requested to attend a meeting and was denied access); see also OML 2018-138 (finding no violation of the Open Meeting Law when interview candidates were asked but not directed to wait outside the meeting room during portions of an open meeting).

Finally, we address the complainant’s related concern that she was unable to speak publicly during the Committee’s July 21 meeting. The Open Meeting Law states that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A § 20(f). The law does not require that a public body allow public participation, but rather gives the chair of the public body discretion to decide whether to permit public comment during a meeting. See OML 2017-189; OML 2014-23; OML 2012-78. Therefore, the Committee was not required by the Open Meeting Law to accept public comment at all, and if public comment was accepted and Ms. Steele had been in attendance, it would have been within the discretion of the Chair whether to permit the complainant to speak during the meeting. We offer no opinion as to whether Committee policy guaranteed members of the public the right to offer public comment on matters on the agenda, as Ms. Steele asserts. We do, however, encourage public bodies to allow for as much public participation as time and circumstances permit. See OML 2015-12; OML 2014- 129; OML 2012-59.

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,



Carrie Benedon
Assistant Attorney General
Division of Open Government

cc: Sara Steele (via email: [REDACTED])
Tewksbury School Committee, c/o Keith M. Sullivan, Committee Chair
(via email: [REDACTED])

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.