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December 20, 2022

OML 2022 – 232

BY EMAIL

Donna Flaherty, Ed.D.
Executive Director
Accept Education Collaborative
dflaherty@accept.org

RE: Open Meeting Law Complaint

Dear Dr. Flaherty:

This office received a complaint from Judy Brasier on June 15, 2022, alleging that the Accept Education Collaborative (the "Collaborative") Board of Directors (the "Board") and Finance Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on May 9, and you responded, on behalf of the Board and Committee, by letter dated May 25.[1] The complaint alleges that Board and Committee did not post notice of their meetings; the Committee did not post minutes of its meetings; the complainant was given a fee estimate for responding to a public records request; and minutes of Board meetings were not timely posted online.[2]

After reviewing this matter, we find that the Board violated the Open Meeting Law by posting notice of its meetings to the Collaborative's website only, without having first complied with the procedures in 940 CMR 29.03(1)(c) and (3) for adoption of an alternate posting method, and that the Committee violated the Open Meeting Law by failing to post notice of its meetings. We find that the Board and Committee did not violate the Open Meeting Law in the other ways alleged. In reaching this determination, we reviewed the original complaint, the Board and Committee's response, and the complaint filed with our office for further review. We also

[1] Unless otherwise indicated, all dates in this letter refer to the year 2022.
[2] The complaint requests a hearing "[b]ecause these are more than 5 complaints." Nothing in the Open Meeting Law entitles a complainant to a hearing when a complaint includes five allegations, nor when a complainant files five separate complaints, and we do not find that a hearing is necessary or appropriate in this case.

reviewed meeting notices and minutes posted to the Collaborative's website, and reviewed records on file with our office regarding adoption of an alternate notice posting method.

FACTS

We find the facts as follows. The Collaborative is an "education collaborative" formed pursuant to General Laws Chapter 40, section 4E, to provide shared programs and services to the member school districts. The members of the Collaborative include 14 public school districts: Ashland, Dover-Sherborn, Framingham, Franklin, Holliston, Hopkinton, Medfield, Medway, Millis, Natick, Needham, South Middlesex Regional Vocational Technical, Sudbury, and Wellesley. The Board posts notice of its meetings as well as meeting minutes to the Collaborative's website, https://accept.org/governance/.

DISCUSSION

The Open Meeting Law requires that a public body post notice of every meeting at least 48 hours in advance, and include the date, time and place of the meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies of each such city or town. G.L. c. 30A, § 20(c). Alternatively, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. 940 CMR 29.03(3). If a regional or district public body adopts a website as the alternative posting method, the public body must notify the Attorney General of adoption of the alternative method, including the website address where notices will be posted, and the most current notice posting method on file with the Attorney General must consistently be used. 940 CMR 29.03(1)(c). The Attorney General maintains a publicly available spreadsheet listing the websites used by public bodies that have notified the Attorney General of adoption of an alternative posting method.[3] Although public bodies are welcome to post notice of their meetings in multiple locations, each public body has one official notice posting location for purposes of complying with the Open Meeting Law. See 940 CMR 29.03(2)(b)(3) & (c); OML 2021-94; OML 2020-20. [4]

The complaint alleges that neither the Board nor the Committee publicly posted how the public could attend their meetings, whether remotely or in person. Although we find that the Board posted notice of its meetings to the Collaborative's website, under a "Meeting Agendas" link on the website's "Governance" page, we have no record of ever receiving notice from the Board in accordance with 940 CMR 29.03(1)(c) that the Board adopted its website as an alternative posting method. In the absence of such adoption and notification, the Board should have posted notice of each meeting in each of the 14 cities and towns it serves, in the manner used for public bodies within each such city and town. The Board violated the Open Meeting Law by posting notice of its meetings only to the Collaborative's website. We acknowledge that the Collaborative's website likely is a more intuitive location for the public to look for the

[3] The spreadsheet is available on the Attorney General's website, https://www.mass.gov/the-open-meeting-law.
[4] Open Meeting Law determinations are available on the Attorney General's website, https://www.mass.gov/the-open-meeting-law.

Board's meeting notices rather than on the individual municipalities' websites or bulletin boards, and we recommend that the Board promptly vote to adopt the Collaborative's website as its official notice posting method and notify our office that it has done so.

With regard to notices for meetings of the Committee, the Committee acknowledges that until recently the Committee was not aware that it is a public body subject to the Open Meeting Law and had not posted notice of its meetings in accordance with the Open Meeting Law. Therefore, we find that the Committee violated the Open Meeting Law by failing to post notice of its meetings.[5] We order the Committee to create minutes for as many meetings as it deems possible to the best of its ability, through whatever means are available, including the notes and recollections of the attendees. In addition, to the extent the Committee engaged in email deliberation,[6] contrary to the requirements of the Open Meeting Law that all deliberation take place only during noticed meetings, it must publicly release all such emails, either by reading them aloud at an open meeting, or by attaching the emails to the minutes of an open meeting. See OML 2022-149; OML 2022-3.

Finally, we decline to review the remaining allegations contained in the complaint. The Division of Open Government's statutory authority concerns compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Open Meeting Law governs requests for meeting minutes, only. See G.L. c. 30A, § 22. Requests for other types of documents, such as communications between Committee members, are governed by the Public Records Law. See G.L. c. 66, § 10. Concerns about compliance with the Public Records Law should be directed to the Public Records Division in the Office of the Secretary of the Commonwealth. Because the allegation in the complaint regarding a request for communications concerns compliance with the Public Records Law rather than the Open Meeting Law, we decline to review it. See OML 2015-17; OML Declination 7-16-20 (Greater Lowell Technical School Committee); OML Declination 3-11-15 (Wayland School Committee); OML Declination 8-9-13 (Southwick Board of Selectmen). Similarly, we decline to review allegations that the Board and Committee did not post their meeting minutes to a website. The Open Meeting Law does not require that public bodies post their minutes to a website or elsewhere, but only that minutes be approved in a timely manner and made available within 10 days of a request. See G.L. c. 30A, § 22(c); see also OML 2017-98; OML 2017-25. Because the allegations regarding a failure to post meeting minutes to the Collaborative's website, if true, would not constitute a violation of the Open Meeting Law, we

[5] We note that as a subcommittee of the Board, the Committee is not required to separately vote to adopt a website as its official notice posting method and to notify the Attorney General; we consider a public body's adoption of a website as its official notice posting method to apply to all its subcommittees, even those later created. Therefore, if the Board chooses to vote to adopt a website as its official notice posting location and notify our office that it has done so, such adoption will apply for notices of Committee meetings as well.

[6] The Open Meeting Law defines deliberation broadly to include any "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; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." G.L. c. 30A, § 18. The Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. See OML 2020-93; OML 2020-160. Likewise, a one-way communication from one public body member to a quorum on business within a body's jurisdiction is deliberation, even if no other members respond. See OML 2020-136.

decline to review these allegations. See OML Declination 1-25-16 (Nahant Housing Authority Board of Commissioners).

CONCLUSION

For the reasons stated above, we find that the Board and Committee violated the Open Meeting Law. We order the Board's and Committee's immediate and future compliance with the Open Meeting Law and caution the Board and Committee that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law. We also order the Committee to create minutes for as many meetings as possible and to publicly release any emails in which Committee members deliberated outside of a noticed meeting, in accordance with the guidance provided above. The Committee shall certify to our office within 90 days of the date of this letter that it has complied with this order. See 940 CMR 29.07(4).

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 Board or Committee. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Carrie Benedon

Carrie Benedon
Assistant Attorney General
Division of Open Government

cc: Judy Brasier (via e-mail: brasierfamily7@gmail.com)
Susan Kustka, Chair, Accept Education Collaborative (via email: kustkas@holliston.k12.ma.us)

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.