



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

July 27, 2015

OM 15-14

Ms. Cynthia Boss

**Re: Boss v. Woonsocket School Board**

Dear Ms. Boss:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Woonsocket School Board/Committee (“School Committee”) is complete. By email correspondence dated May 23, 2014, you alleged the School Board violated the OMA when the full day Kindergarten Subcommittee (“Subcommittee”) convened non-public meetings or otherwise discussed public business outside the public purview.

In response to your complaint, Subcommittee board members Ms. Susan Pawlina and Mr. Jose Rivera provided affidavits. In relevant part, Ms. Pawlina states:

“8. There was never any meeting of any subcommittee of the Woonsocket School Board (‘School Board’) that advised on, investigated, or discussed the issue of full day Kindergarten at any time.

9. I never attended any meeting, other than those for the full School Committee, properly noticed under R.I. Gen. Laws § 42-46-6(a), at which any other member of the School Committee was present and during which full day Kindergarten was discussed.

10. To my knowledge, no other member of the School Committee, including Jose Rivera, ever attended any meeting, other than those for the full School Committee, properly noticed under R.I. Gen. Laws § 42-46-6(a), at which any other member of the School Committee was present and during which full day Kindergarten was discussed in any way.

11. I attended two administrative meetings in May 2014, at which the former superintendent of Woonsocket Schools and members of the Woonsocket Budget Commission were present and a full day Kindergarten proposal was discussed.

There were no other members of the School Committee present at either of said meetings.

12. To my knowledge, School Committee member Jose Rivera attended two administrative meetings in May 2014 at which the former superintendent of Woonsocket Schools, a member of the Budget Commission and the Mayor of Woonsocket were present and a full day Kindergarten proposal was discussed. There were no other members of the School Committee present at either of said meetings.”

In relevant part, Mr. Jose Rivera attests:

“8. There was never any meeting of any subcommittee of the Woonsocket School Board (‘School Board’) that advised on, investigated, or discussed the issue of full day Kindergarten at any time.

9. I never attended any meeting, other than those for the full School Committee, properly noticed under R.I. Gen. Laws § 42-46-6(a), at which any other member of the School Committee was present and during which full day Kindergarten was discussed.

10. To my knowledge, no other member of the School Committee, including Susan Pawlina, ever attended any meeting, other than those for the full School Committee, properly noticed under R.I. Gen. Laws § 42-46-6(a), at which any other member of the School Committee was present and during which full day Kindergarten was discussed in any way.

11. I attended two administrative meetings in May 2014, at which the former superintendent of Woonsocket Schools and members of the Woonsocket Budget Commission were present and a full day Kindergarten proposal was discussed. There were no other members of the School Committee present at either of said meetings.

12. To my knowledge, School Committee member Susan Pawlina attended two administrative meetings in May 2014 at which the former superintendent of Woonsocket Schools, a member of the Budget Commission and the Mayor of Woonsocket were present and a full day Kindergarten proposal was discussed. There were no other members of the School Committee present at either of said meetings.”

In an additional affidavit, Ms. Pawlina further attests that “[a]t no time, through any means (e-mail, telephone, letters, etc.) did Jose Rivera and myself ever discuss matters relating to full-day kindergarten.” Mr. Rivera also further attests that “[a]t no time, through any means (e-mail, telephone, letters, etc.) did Susan Pawlina and myself ever discuss matters relating to full-day kindergarten.”

Your rebuttals and relevant points are discussed below.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to determine whether this Department believes that an infraction has occurred, but instead to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the School Committee violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

To begin, you complain that “[p]rior to [the] May 14, 2014 [School Committee meeting] the public was not informed about the Woonsocket full day K Subcommittee’s activities, including the dates and times of its meetings.” This raises two (2) issues. First, the evidence is undisputed that the full day Kindergarten Subcommittee was comprised of only two members – Mr. Jose Rivera and Ms. Susan Pawlina. In this respect, your correspondence relates there are “exactly two members of the Woonsocket All Day Kindergarten subcommittee (Ms. Pawlina and Mr. Rivera.” Accordingly, for reasons that will become apparent below, there is no dispute that the All Day Kindergarten’s Subcommittee was comprised of only two (2) members.

Additionally, the evidence is clear that the public was informed about the Kindergarten Subcommittee’s activities prior to May 14, 2014. In fact, minutes for the School Committee’s January 22, March 26, and April 9, 2014 meetings, which were included as an exhibit to your August 27, 2014 rebuttal, demonstrate that the full day Kindergarten topic was “presented to the public,” at the latest, on January 22, 2014, at which time School Committee members Mr. Jose Rivera and Ms. Susan Pawlina were formally appointed to the full day Kindergarten Subcommittee. Indeed, the minutes of the January 22, 2014 meeting evince that Mr. Rivera had received “overwhelming” correspondence from parents “who are concerned with the Full Day Kindergarten and the 5/6 Academy” and he “encourage[d] anyone to be present at these meeting to state [ ] opinions and thoughts.” The minutes from the School Committee’s March 26 and April 9, 2014 meetings also indicate that the topic of full day Kindergarten was discussed. Accordingly, your assertion that the public was not informed about the full day Kindergarten Subcommittee until May 14, 2014, is contradicted by the evidence you submitted.

Despite the foregoing, the focus of your complaint, i.e., that the Subcommittee discussed matters related to full day Kindergarten outside the public purview, must still be examined. You further state that the Subcommittee’s meetings:

“were not advertised on the R.I. Secretary of State’s web site (or in any other place), the public was not notified or given an opportunity to attend/participate in any of the subcommittee’s meetings, which appears to have included a number of City officials. There are also no publicly-posted minutes for the public to review.”

After reviewing all the evidence presented, including your August 27, 2014 and September 17, 2014 rebuttals and accompanying exhibits, we conclude that the Subcommittee did not violate the OMA. Our reasoning follows.

The OMA provides that “[i]t is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” See R.I. Gen. Laws § 42-46-1. To accomplish this purpose, the OMA requires that “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.” See R.I. Gen. Laws § 42-46-3.

As described above, Ms. Pawlina and Mr. Rivera affirm, repeatedly, that neither Subcommittee member discussed the topic of full-day Kindergarten with the other Subcommittee member, through any means. Your complaint takes issue with this (and other) affirmations based on your contention that “public statements made by Mr. Rivera on March 26, 2014 directly contradict those made by Mr. Rivera and Ms. Pawlina in their Affidavits.” In relevant part, the March 26, 2014 School Committee meeting minutes indicate that Mr. Rivera and Ms. Pawlina:

“have already started conversations on thoughts of this very hot topic that this city is encountering...there is a subcommittee for [full day Kindergarten] and they are discussing where to go moving forward in conjunction with the leaders of our city...[Mr. Rivera] and S. Pawlina have had multiple conversations and their objective is by next week or the week after is to have something to provide to the public as an alternative to what may have been presented in the past.”

To this point, both Mr. Rivera and Ms. Pawlina attest that they “never attended any meeting, other than those for the full School Committee, properly noticed under R.I. Gen. Laws § 42-46-6(a), at which any other member of the School Committee was present and during which full day Kindergarten was discussed.” Mr. Rivera and Ms. Pawlina also attest that “[a]t no time, through any means (e-mails, telephone, letters, etc.) did [they] ever discuss matters relating to full-day kindergarten.” While you contend that “public records show that they did discuss full-day kindergarten” the March 26, 2014 meeting minutes comments that “[Mr. Rivera] and S. Pawlina have had multiple conversations,” is subject to different interpretations. In this respect, the meeting minutes that you direct our attention to provides no evidence that Mr. Rivera and Ms. Pawlina discussed the full day Kindergarten subject matter amongst themselves outside the public purview. Absent evidence that these “conversations” occurred between Mr. Rivera and Ms. Pawlina outside of a public meeting, your argument is purely speculative and contradicted by Mr. Rivera’s and Ms. Pawlina’s affidavits.

In fact, it appears that full day Kindergarten was a matter discussed by multiple city entities and officials, including members of the Subcommittee, the School Committee, the Budget Commission, the Superintendent’s Office, the Mayor’s Office, the Rhode Island Department of Education (“RIDE”), and city officials. Specifically, the May 14, 2014 School Committee meeting minutes confirm that:

“[t]he Mayor thanked the School Committee and other individuals who were very helpful in bringing this proposal to everyone this evening...[the Mayor] has worked closely with the department of education, RIDE, the subcommittee of the

School Committee to develop this comprehensive and fiscally sound FDK proposal.”

The minutes also indicate that Ms. Carolyn Dias, Budget Commission Member, presented “the fiscal aspect” of a full day Kindergarten PowerPoint presentation. Even you acknowledge in your August 27, 2014 rebuttal that “[m]ultiple sources document that there were conversations between subcommittee members Ms. Pawlina, Mr. Rivera, and others within local City government about full-day kindergarten prior to the School Committee’s vote to approve on May 14, 2014.” You do not appear to identify these “[m]ultiple sources,” and since both Subcommittee members attest that “[a]t no time, through any means” did they discuss this matter outside of School Committee meetings, we find insufficient evidence to conclude that the Subcommittee members discussed public business outside the public purview. Respectfully, your conclusion that “it’s simply hard to believe that neither member of the ‘All Day Kindergarten’ subcommittee talked, emailed, or shared any information with each other during the entire 5-month period,” is insufficient to support a violation.

Your rebuttal also argues that:

“[t]here are exactly two members of the Woonsocket All Day Kindergarten subcommittee. Even if just one of the All Day Kindergarten subcommittee members attended a meeting with School and City officials to discuss All Day Kindergarten, a quorum (50%) of the subcommittee was present and R.I.’s OMA requirements applied.”

As a matter of law, this statement is incorrect.

In order for the OMA to apply, a “quorum” of a “public body” must convene for a “meeting” as these terms are defined by the OMA. See Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d). Since one (1) member of a two (2) member subcommittee is not a simple majority, both members of the subcommittee would need to be present to satisfy the “quorum” requirement. It appears that you accept this factual conclusion because you state that “[e]ven if All Day Kindergarten subcommittee members Ms. Pawlina and Mr. Rivera were not both present in the same meeting room at the same time, their sequential communication with City and School officials on this same issue constitutes a rolling quorum.”

Although the definitions under R.I. Gen. Laws § 42-46-2 are seemingly straightforward, a quorum may be created, and a meeting “convened,” by unconventional means. In particular, this Department has previously recognized the “rolling” or “walking” quorum, where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions, including communications via email. See In Re: Pawtucket City Council, ADV OM 05-01 (warning against the “walking quorum,” where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so); In Re: South Kingstown School Committee Electronic Mail Policy, ADV OM 04-01 (series of email communications among a quorum of a Committee would satisfy the quorum requirement and

implicate the OMA). Reference to a “walking” or “rolling” quorum typically involves the situation where public business is conducted in a series of encounters that may not individually constitute a quorum, but that collectively do so. For instance, using a five member public body as an example where three members are a quorum, A may speak to B about a particular public matter and then B may speak to C about the same matter. Neither encounter, by itself, constitutes a quorum, but collectively a majority of the public body was able to discuss public business using B as a conduit.

While you argue that “[t]he process described in Ms. Pawlina’s Affidavit and in Mayor Baldelli-Hunt’s public statements constitutes a rolling quorum,” you have provided no evidence to support this conclusion. The fact that one member of the Subcommittee attended a meeting with other individuals, who are not members of the Subcommittee, does not by itself implicate the OMA. See Weaver v. Department of Environmental Management, OM 98-10 (conglomeration of individual staff members meeting on an ad hoc basis not a “public body”). The reason for this conclusion is that the “rolling” quorum requirement is not triggered until one individual discusses full day Kindergarten separately with each Subcommittee member, or otherwise circumvents the OMA by having a collective discussion (or taking action) by and through another person.

Here, no such evidence has been submitted to support a “rolling” quorum. Indeed, you offer only conclusory statements without any support.<sup>1</sup> For example, you claim that the Subcommittee had “communication[s] with City and School officials on this same issue,” however, you fail to identify the “City and School officials” and the Subcommittee member(s) who allegedly had conversations with each other. Similarly, in your September 17, 2014 rebuttal, you contend that “there is an abundance of evidence showing that the Woonsocket Full-Day Subcommittee members discussed Full-Day Kindergarten with other government officials, either together or on a rolling basis.” While we agree that there is evidence that Mr. Rivera and/or Ms. Pawlina discussed the full day Kindergarten matter with other government officials (indeed both Subcommittee members acknowledge this fact), there is simply no evidence that the two (2) Subcommittee members discussed the full day Kindergarten matter amongst themselves, either individually or as a “rolling” quorum. The absence of this evidence is dispositive.

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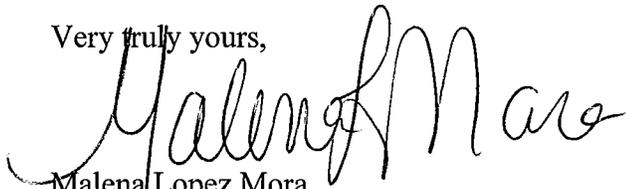
<sup>1</sup> Your September 17, 2014 rebuttal appears to take issue with paragraphs eleven (11) and twelve (12) of Mr. Rivera and Ms. Pawlina’s affidavits. Your rebuttal indicates that “Mr. Rivera asserts the Mayor was at 2 administrative meetings attended by Ms. [Pawlina] in May 2014, but he omits the Mayor from the people on his own meeting list. Ms. Pawlina asserts the Mayor was at 2 administrative meetings attended by Mr. Rivera in May 2014, but she omits the Mayor from the people on her own meeting list.” Respectfully, even if we assume for the sake of argument that Mayor Baldelli-Hunt did attend any of the May 2014 meetings, there is still no evidence that a “rolling” quorum was triggered as explained supra. In addition, preceding the information in paragraphs twelve (12) is the preface “[t]o my knowledge.” Since neither Mr. Rivera nor Ms. Pawlina attended the same meeting, neither Subcommittee member had actual knowledge concerning who was or was not present at the meetings they did not attend.

Frankly, in order to find that the Subcommittee privately discussed public business, we would have to rely on unsubstantiated evidence and draw conclusions based on inferences and assumptions. This Department has always required evidence of a violation and we see no reason to diverge from these legal principles now.<sup>2</sup> Based on the evidence that is before us, we find no violation.

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days from the date of the Attorney General's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing our file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Malena Lopez Mora  
Special Assistant Attorney General  
Ext. 2307

Cc: Ronald F. Cascione, Esquire.

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<sup>2</sup> In your September 17, 2014 rebuttal, you provide us with a copy of an April 10, 2014 letter addressed to the School Committee from former Superintendent Donoyan, and direct us to the last paragraph which states, in pertinent part, "I would like to schedule time to discuss this proposal with the FDK Sub Committee as well as each of you as soon as possible." Based on this letter, it appears you conclude that a meeting between the Superintendent and the Subcommittee took place sometime between April 10, 2014 and May 14, 2014 and that, since the Secretary of State's website "shows that no public meeting of the [Subcommittee] took place," an OMA violation occurred. Obviously, the existence of such a letter seeking a meeting, by itself, does not violate the OMA and no evidence has been submitted (or discovered) to suggest that this meeting did occur amongst both Subcommittee members. Indeed, as discussed above, the evidence is to the contrary. Moreover, the April 10, 2014 letter you provided is missing page two (2) and, as such, is incomplete and unreliable.