



CITY OF WORCESTER, MASSACHUSETTS
Law Department

David M. Moore
City Solicitor

May 30, 2019

The Honorable Joseph M. Petty
Mayor, Worcester, Massachusetts

Re: *School Committee Members - Open Meeting Law Complaint*

Dear Mayor Petty:

On May 9, 2019 you received a formal complaint filed by Isabel Gonzalez-Webster on behalf of the Worcester Coalition for Education Equity alleging that three members of the Worcester School Committee violated the Open Meeting Law. In particular, the complaint alleges that Committee Member John Monfredo was playing "an active roll trying to get other [School] Committee members to support a new contract for the Superintendent." Mr. Monfredo acted, it is alleged, as "a leader in publishing [his] opinion as a newspaper ad while the School Committee was still deliberating this issue." The complaint further alleges that Members Dianna Biancheria and Brian O'Connell "contributed to the open meeting violation by responding to Mr. Monfredo's request affirmatively."

I have looked into these allegations and report to you as follows:

The Open Meeting Law, G.L. c.30, §§18-25, requires that "all *meetings* of a public body shall be open to the public" (unless the subject matter qualifies for an executive session). The Open Meeting Law defines a "meeting" as a *deliberation* by a public body with respect to any matter within the body's jurisdiction; but "meeting" does not include site visits, social or media gatherings, etc., "so long as the members do not deliberate." The Law defines a "deliberation" 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."

The Worcester School Committee is a seven-member public body created by the city charter with six members elected directly and the seventh seat filled by the mayor, ex officio, who automatically becomes the chair of the committee. Under the charter the mayor is the city councilor-at-large who receives the highest number of votes on a separate ballot for mayor.

The three individuals named in the complaint as violators, John Monfredo, Dianna Biancheria and Brian O'Connell, are members of the Worcester School Committee.

Maureen Binienda is the superintendent of schools. Her employment contract was to expire on June 30, 2019. She was seeking an extension of that contract. The School Committee voted previously to authorize the mayor to negotiate a three-year extension of her contract. Negotiations took place for several weeks throughout the Spring.

In April, supporters of Ms. Binienda decided to run an ad in the Worcester Telegram showing support for Ms. Binienda. The ad was to be financed by an anonymous donor. The organizers of the ad effort began soliciting individuals via email blasts to have their names appear in that ad. Member Monfredo, while not an organizer of the ad campaign, participated in the solicitation of names to sign the ad. On Friday, April 19, 2019, at 5:17 p.m., Mr. Monfredo sent an email to at least 56 individuals inviting them to "Sign up to support Superintendent Binienda." (The content of his email appears as an exhibit hereto). This email was not sent to any member of the School Committee.

Earlier that afternoon, at 2:36 p.m., Mr. Monfredo sent an email to School Committee Member Dianna Biancheria asking her if she would like to be included in the planned Telegram ad. Two days later, on Sunday April 21, 2019, Mr. Monfredo sent an email to School Committee Member Brian O'Connell asking if he had any names to add.

The ad ran in the April 24, 2019 editions of the *Worcester Telegram*. It contained the names of dozens of people including three members of the School Committee: John Monfredo, Dianna Biancheria and Brian O'Connell.

Mr. Monfredo's actions in the publication of the Telegram ad did not constitute a "deliberation" because he was communicating through the ad to the general public and not "between or among a quorum of" the School Committee. When asked why he contacted only two of his colleagues concerning the inclusion of their names in the planned newspaper ad, Mr. Monfredo explained that he believed that they were the only two who shared his position on the terms for the extension of the superintendent's contract. He believed that one member was opposed to any extension and another who would support only a one-year extension with only a small salary increase. He did not know the position of the remaining two members. He formed these conclusions based on public statements made by members of the committee.

Likewise, there is no evidence that Committee members Biancheria or O'Connell violated the law in connection with the Telegram ad because, assuming that they had any discussions, either with each other or with Mr. Monfredo, or both, they did not extend to a quorum of the committee.

The complaint makes allegations only against Members Monfredo, Biancheria and O'Connell. The complaint also relies on another member of the School Committee, John "Jack" Foley, as a witness saying that Mr. Foley "said he knew" that Mr. Monfredo was "playing an active roll" in trying to get other School Committee members to vote to extend the superintendent's contract because Mr. Foley, as it is alleged, said that "he

had been forwarded an email originally send by Mr. Monfredo expressing his opinion which was sent to the School Committee members requesting their support.”

Mr. Foley, in a telephone interview, states emphatically that he did not receive an email from School Committee colleague John Monfredo, or from anyone else, urging him to support an extension of the contract of Superintendent Binienda. He states that he did not tell Ms. Gonzalez-Webster that he was forwarded an email written by Mr. Monfredo asking him to support Ms. Binienda for superintendent. He did receive an email from an individual who is not a member of the School Committee, or otherwise associated with it, asking if he wanted to add his name to the Worcester Telegram newspaper ad then being planned.

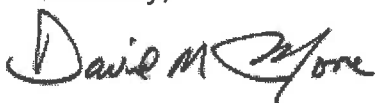
Mr. Foley did not place his name in the ad, nor did he communicate his views on the proposed extension of the superintendent’s contract with any of his School Committee colleagues (except during posted meetings).

It is my conclusion that the factual allegations in the complaint are both insufficient to establish a violation and not supported by the statements and actions of Mr. Monfredo, Ms. Biancheria or Mr. O’Connell. In addition, some of the allegations in the complaint are refuted by the one witness cited by the complainant.

I recommend that the School Committee adopt a motion accepting and adopting this report and requesting that it be forwarded to the Attorney General in accordance with the Open Meeting Law and the regulations adopted thereunder.

The fourteen business-day period allowed by law to respond to this Complaint expired on May 30 while the next meeting of the School Committee is scheduled for June 6. To resolve this and comply with the law as closely as possible, I have asked the complainant to agree to extend the deadline to June 6 so long as I provide my report to the complainant on or before May 30. I also requested the Attorney General to approve and extension of the time to file this report in light of the time period between meetings of the School Committee. The Attorney General approved that request on May 29, 2019. I received no response from the complainant but have sent a copy of this report to her on May 30, 2019. Nothing in this plan pre-empts the authority of the School Committee to revise or reject this report in whole or in part or to make any changes that it seems appropriate.

Sincerely,

A handwritten signature in dark ink, appearing to read "David M. Moore". The signature is fluid and cursive, with the first name "David" being more prominent.

David M. Moore
City Solicitor

cc: Isabel Gonzalez, Coalition For Education Equity

Content of John Monfredo Email Blast Sent Friday, April 19, 2019, at 5:17 p.m:

Hi folks. As you may be aware, a lot has been happening in the Worcester Schools, not the least of which is a vociferous political push to oust Superintendent Maureen Binienda, who throughout her professional life has worked as a *tireless advocate for all children and continues to be a tireless educator with an abundant of energy.*

I have received a message from a friend indicating that an anonymous benefactor is planning on placing an ad supporting Maureen — her accomplishments and her goals— and underscoring that she deserves a fair contract. I'm contacting you because I feel confident you'll want to be included among the many who are working on this.

There is no cost just your support for Maureen. If interested I need the names by Sunday evening. Please reach out to friends and relatives as well. The ad will appear in Wednesday's newspaper.

Thanks and enjoy the holiday weekend!

John Monfredo