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December 1, 2010

Office of the Attorney General
Division of Open Government
One Ashburton Place
Boston, MA 02108

Re: Navedo Complaint – November 10, 2010

To Whom It May Concern:

On behalf of the Foxborough School Committee (the Committee), I have been asked to respond to an open meeting law complaint which the Committee received on November 10, 2010. In the complaint, Andres Navedo alleges that, on June 21, 2010, the Foxborough School Committee “did not properly inform the public of the reason and purpose to enter into executive session.” As I see it, the complaint raises the following 3 questions: 1) Was the statement of the reason for the executive session sufficient; 2) Were the minutes of that executive session sufficient; and 3) Did the Committee release the minutes in a timely manner. I will address each question separately.

1) Was the Statement of the Reason for Entering Executive Session Sufficient? - The Committee agrees that the statement of the reason for executive session could have been more precise. The Chairperson could also have included “to conduct contract negotiations with nonunion personnel.” Her statement of the reason was meant to include all of exception #3¹, but it is true that the Chairperson did not state specifically that the purpose for going into executive session also included conducting contract negotiations with nonunion personnel (the Superintendent).

The complaint alleges that the Committee’s right to discuss negotiating strategy regarding the Superintendent’s contract “was lost when the Committee allowed the

¹ Under the Open Meeting Law in effect on June 21, 2010, the relevant purpose for entering executive session was contained in purpose #(3): To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating strategy of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

Superintendent to be present throughout the meeting.” The Committee respectfully disagrees. They were not concerned about discussing negotiating strategy in the Superintendent’s presence because they wanted and needed his input. There is no requirement that the Superintendent be absent while the Committee discusses its negotiating strategy. The decision to have him there was within the Committee’s discretion.

2) Were the Minutes of the June 21, 2010 Executive Session Sufficient? - The Committee acknowledges that, under the new Open Meeting Law, which went into effect 10 days after the meeting in question, the executive session minutes should have contained a summary of the discussion on the Superintendent’s contract, including the fact that the Committee negotiated an Addendum to the contract, which was attached to the minutes. The Addendum was done in anticipation of the fact that the 2010-2011 school year would require a new financial structure. This was because the Superintendent could access his pension and was limited by law as to how much salary he could earn in addition to his pension.

Although all the facts about the executive session on June 21, 2010 were made public by the Committee at its October 18, 2010 meeting, the Committee remains willing to amend the executive session minutes of June 21, 2010.

3) Were the Minutes Released in a Timely Manner? - It is clear that the Committee could have released the minutes sooner, but it was following its long-standing practice of voting on executive session minutes at the next scheduled executive session. The Committee met on July 22nd, August 30th, September 20th, and October 4, 2010, but it did not go into executive session after June 21, 2010 until October 18, 2010. The Committee knows now that future executive session minutes must be approved within 30 days of the original meeting. In this case, following its normal practice, the Committee waited nearly 120 days, until October 18, 2010, the first executive session since June 21, 2010. At that October 18th meeting, the Committee voted to approve and release the executive session minutes, the subject of which was also fully aired in open session on October 18, 2010.

In the October 18th open session, the Superintendent explained why he did not want to make his decision until after the school year started. The Committee agreed with the Superintendent’s reasoning. He did not want to create a distraction. He said he chose not to make this announcement public on the first day of the school year because he felt the school system needed to get off to a terrific start. Foxborough High School had undergone some renovations, and the Committee was concerned about whether the high school was going to open on time or not. In addition, the Committee and the Superintendent were exploring options about retaining his services for the 2011-2012 school year. The Committee assumed that those discussions would take place in the fall.

Actions Contemplated or Taken

- 1) The Committee will work to be more precise in announcing the purpose for which it goes into executive session. In this case they could also have announced that they were going to conduct contract negotiations with nonunion personnel in addition to discussing bargaining strategy.
- 2) The Committee is open to amending the executive session minutes of June 21, 2010 to include a summary of the discussion. Going forward, the Committee, pursuant to the new Open Meeting Law, will strive to include in the minutes a summary of the discussion on each subject discussed in executive session.
- 3) The Committee will also amend its policy on approving executive session minutes to voting approval at the next Committee meeting or within 30 days, whichever occurs first.

The Committee does not see the need to nullify the actions of the June 21, 2010 executive session. Those actions have been fully vetted and explained in open session at the Committee's October 18, 2010 meeting as well as in the local newspapers, the Foxboro Reporter and the Attleboro Sun Chronicle. The Committee does not believe the contract negotiations with the Superintendent should be re-discussed in open session. Negotiating the Superintendent's contract is an appropriate action to be taken in executive session. The reasons for amending his contract and for delaying the announcement of it have been fully explained to the public.

The Committee intends to comply with the Open Meeting Law. The Committee hopes this letter convinces you of their resolve to guide their actions in conformity with the law as recently amended.

If you need anything further, please do not hesitate to contact me.

Very truly yours,


Michael C. Loughran

MCL:tmb
Enclosure

cc: Foxborough School Committee (w/o enclosure)
Christopher Martes, Superintendent (w/o enclosure)