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**RE: Open Meeting Law Complaint**

Dear Ms. Mason, Attorney Lindquist, and Ms. Monach:

This letter addresses four complaints, each alleging that a local Special Education Parent Advisory Council (“SEPAC”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. In particular, this letter addresses complaints filed by Alicia Armes on April 29, 2019, regarding the Brockton SEPAC; by Gerry Mroz on June 11, 2019, regarding the Melrose SEPAC; and by Danna Perry on March 3, 2020, and Craig Haller on May 19, 2020, both regarding the Brookline SEPAC. The allegations of the four complaints vary, but resolution of all four complaints turns on a common question: whether the SEPAC, created pursuant to General Laws chapter 71B, section 3, is a “public body” subject to the Open Meeting Law.

Before receiving the four Open Meeting Law complaints addressed herein, the Division of Open Government had not previously received a complaint requiring resolution of the question whether a SEPAC constitutes a “public body” under the Open Meeting Law. The

informal guidance of this office, as posted in a Frequently Asked Question on the Division's website, has been as follows:

**Are Special Education Parent Advisory Council ("SEPAC") groups public bodies subject to the Open Meeting Law?**

While a SEPAC itself is generally not a public body subject to the Open Meeting Law, the leadership group may be a public body subject to the Open Meeting Law. Massachusetts law requires that membership in a school's SEPAC be offered to all parents of children with disabilities and other interested parties. See G.L. c. 71B, § 3. In many cases, the SEPAC establishes or elects a leadership or governing committee. That group of elected or appointed officers will likely constitute a public body under the Open Meeting Law, and it is therefore advisable that such groups comply with the Open Meeting Law's requirements.

Now that the issue has been formally presented to this office, and after review and analysis of the applicable statutes and regulations pertaining to the establishment of SEPACs as well as the structure and function of SEPACs, we conclude that the Brockton, Brookline, and Melrose SEPACs are not public bodies subject to the Open Meeting Law. We also conclude that whether a SEPAC's leadership group is a public body depends on the structure and role of that group. We find that the officers of the Melrose and Brockton SEPACs do not constitute public bodies; and that the Board of the Brookline SEPAC is a public body for limited purposes.

BACKGROUND

Each school committee in Massachusetts is required to establish a SEPAC, in accordance with General Laws chapter 71B, section 3. Specifically:

The school committee of any city, town, or school district shall establish a parent advisory council on special education. Membership shall be offered to all parents of children with disabilities and other interested parties. The parent advisory council duties shall include but not be limited to: advising the school committee on matters that pertain to the education and safety of students with disabilities; meeting regularly with school officials to participate in the planning, development, and evaluation of the school committee's special education programs. The parent advisory council shall establish by-laws regarding officers and operational procedures. In the course of its duties under this section, the parent advisory council shall receive assistance from the school committee without charge, upon reasonable notice, and subject to the availability of staff and resources.

G.L. c. 71B, § 3.

The Department of Elementary and Secondary Education also has promulgated regulations, which restate nearly verbatim the requirement that each school district establish a SEPAC, as well as define the role of a SEPAC:

Each school district shall create a districtwide parent advisory council offering membership to all parents of eligible students and other interested parties. The parent advisory council duties shall include but not be limited to: advising the district on matters that pertain to the education and safety of students with disabilities; meeting regularly with school officials to participate in the planning, development, and evaluation of the school district's special education programs. The parent advisory council shall establish by-laws regarding officers and operational procedures, and, in the course of its duties, the parent advisory council shall receive assistance from the district without charge, upon reasonable notice, and subject to the availability of staff and resources.

603 CMR 28.07(4).

In practice, SEPACs vary greatly from district to district in their membership, structure, and activities, as well as their relationship to the local school committee. Furthermore, although all SEPACs are required by law to “establish by-laws regarding officers and operational procedures,” there is variability in the role that the respective leadership groups. For example, some SEPACs have established a full leadership board and/or slate of officers, each with a well-defined role, whereas others operate with merely a chair or co-chairs, whose primary responsibility is to schedule and preside over meetings of the SEPAC. Some SEPACs take on a robust advocacy role, working closely with school committees and school officials to advise and advocate on issues of importance. Others exist primarily as a means to provide education and support to parents and caregivers, through speakers series, informational materials, and social events. Some SEPACs establish categories of membership, such as general membership and voting membership, and some require eligible members to register in order to vote. Some maintain and regularly update a membership roll; some do not.

Additional facts regarding the SEPACs that are the subject of these complaints will be presented below.

### DISCUSSION

The Open Meeting Law defines a “public body,” in relevant part, as “a multiple member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose[.]” G.L. c. 30A, § 18.

To determine whether a multiple-member entity is a public body subject to the Open Meeting Law, there are three factors we consider:

1. The entity must be “within” government and not excluded from the definition of “public body;”
2. The entity must be a “body” empowered to act collectively; and
3. The entity must serve a “public purpose.”

See OML 2017-118; OML 2016-102; OML 2012-20; OML 2011-42; OML 2010-1.<sup>1</sup>

We find that the Brockton, Brookline, and Melrose SEPACs do not meet the second prong of this analysis, and therefore are not public bodies subject to the Open Meeting Law. We also find that the officers of the Melrose and Brockton SEPACs do not satisfy the second prong of this analysis, although for a different reason, and therefore are not public bodies subject to the Open Meeting Law. Finally, we find that the Board of the Brookline SEPAC is a public body, but only for limited purposes.

#### I. The Brockton, Brookline, and Melrose SEPACs Are Not Public Bodies Subject to the Open Meeting Law

A fundamental component to finding that an entity is a body empowered to act collectively is the existence of a defined and ascertainable membership. As created by statute, SEPACs do not have a defined membership that is empowered to act collectively. See OML 2019-135; OML 2015-162; OML 2015-46; OML 2012-20. Rather, membership in a SEPAC is open to all interested parents and guardians as well as other community members. Although an individual SEPAC’s bylaws may further define eligibility for membership or impose a procedure for “joining” as a member, and a SEPAC may strive to maintain a current membership roll, a SEPAC’s membership is by its nature—and by law—fluid, with the membership of a SEPAC ever-changing. The application of the Open Meeting Law to such a body is inherently problematic.

The Open Meeting Law applies to “meetings” of public bodies. A “meeting” is defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction,” with some exceptions. G.L. c. 30A, § 18. “Deliberation” is further defined 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...” Id. Finally, the Law defines “quorum” as “a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.” Id. Therefore, the ability to identify a body’s membership and its quorum quotient is central to the application of the Open Meeting Law.

In the past, our office has declined to apply the Open Meeting Law to other advisory groups whose makeup is similarly fluid and undefined, finding in such situations that the group fails the second prong of the public body test. For example, we concluded that the Department of Early Education and Care Provider Working Team was not a public body for purposes of the Open Meeting Law, even though it was “within government” and served a “public purpose,” because the group “has no quorum requirement – [staff] meet with and solicit feedback from whichever members show up to meetings.” OML 2011-42. We similarly found that the Bedford Field Partnership Group was not a public body for purposes of the Open Meeting Law, even though it was within government, served a public purpose, and made recommendations to the board of selectmen on particular matters, because the group lacked a defined membership and had no set quorum of members required in order to make a decision. OML 2015-162. Instead, individuals decided “whether to attend and participate in any particular meeting and their

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<sup>1</sup> Open Meeting Law determinations may be found online at <https://www.mass.gov/the-open-meeting-law>

presence or absence [did] not affect the outcome of any action taken.” Id. We determined that the Herring River Technical Team, an intergovernmental group established to provide technical input on a restoration project, was not a public body for purposes of the Open Meeting Law, where it had no set number of members, no quorum requirement, and had no authority to make binding decisions regarding the project. OML 2019-135. In contrast, we found that another advisory group was a public body for purposes of the Open Meeting Law where a town bylaw provided that a personnel advisory committee shall consist of no fewer than three individuals but provided no membership criteria beyond that, yet in practice the town administrator appointed four designated individuals to serve as the committee. OML 2015-46.

Without a defined membership empowered to act collectively, we find that the Brockton, Brookline, and Melrose SEPACs fail the second prong of our test, and therefore are not public bodies subject to the Open Meeting Law. In reaching this conclusion, we acknowledge that some SEPACs do make efforts to maintain a membership list, and therefore might, at a given point in time, be able to calculate a quorum so as to identify whether a particular gathering and discussion constitutes a “meeting” for purposes of the Open Meeting Law. Nonetheless, we find that a body with such a fluid makeup, which carries out its advisory role based on whoever decides to attend a particular meeting, is not the type of body to which the Open Meeting Law applies.

Our conclusion here is consistent with the treatment of other, similar advisory committees in the public education realm that the Legislature has created, which share some characteristics with SEPACs. For example, each school district with a student population of English language learners above a designated threshold must establish and support, and periodically meet with, an English Learner Parent Advisory Council (“ELPAC”), consisting of volunteer parents or legal guardians. G.L. c. 71A, § 6A. Like SEPACs, all parents and guardians of English learners who volunteer to participate in an ELPAC “shall” be appointed to the council; there is no defined body size or makeup, as membership is guaranteed for all interested parents and guardians of English learners. 603 CMR 14.09. The Department of Elementary and Secondary Education “recommends” that ELPACs operate in “a manner consistent with the Open Meeting Law,”<sup>2</sup> but does not advise that ELPACs are required to comply with the Open Meeting Law.

Similarly, each vocational technical school district seeking approval for a vocational technical education program is required to establish both a “program advisory committee” and a “general advisory committee,” neither of which, by law, has a specifically defined membership or makeup. 603 CMR 4.03(1)(c); see also G.L. c. 74, § 2. However, the Department of Elementary and Secondary Education promulgated regulations expressly providing that meetings of both such committees “shall comply with the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25,” id., and accordingly we have applied the Open Meeting Law to such bodies. See OML 2017-150.

We therefore find that the Brockton, Brookline, and Melrose SEPACs are not public bodies and are not subject to the Open Meeting Law. Nonetheless, we strongly encourage

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<sup>2</sup> See Guidance for English Learner Parent Advisory Councils dated August 2018, available at <http://www.doe.mass.edu/ele/guidance/elpac.docx>.

SEPACs to advertise their meetings to the public, to allow all eligible members as well as other members of the public to attend meetings, and to provide opportunities for all interested members of the public to participate in the SEPAC's activities. We also note that individual SEPACs may, through their own bylaws, specify that all meetings shall be held in accordance with the provisions of the Open Meeting Law, even though they are not legally mandated to do so.

II. Whether a SEPAC's Leadership Group Is a Public Body Subject to the Open Meeting Law Depends on the Group's Role and Purpose. We Find That the Brookline SEPAC Board is a Public Body Subject to the Open Meeting Law For Limited Purposes, but the Officers of the Melrose and Brockton SEPACs Are Not.

Upon finding that a SEPAC as a whole is not a public body for purposes of the Open Meeting Law, we next examine whether a SEPAC's leadership group, as established through its bylaws, separately is a public body subject to the Open Meeting Law. Whereas we find that a SEPAC is not a "public body" because it does not have a defined membership with an identifiable quorum, a SEPAC's leadership makeup typically is clearly defined through its bylaws. Accordingly, we separately apply our three-factor public body analysis to the SEPAC leadership, to determine whether it is a public body that must comply with the Open Meeting Law even if the SEPAC as a whole is not. We reviewed the bylaws of each of the SEPACs that are the subject of this determination, as well as the bylaws of several other SEPACs in Massachusetts, and spoke with representatives of each of the three SEPACs at issue here to ascertain additional details regarding their function and operation. We conclude that the leadership groups of the Melrose and Brockton SEPACs are not bodies empowered to act collectively, and therefore fail the second prong of our public body analysis, although for different reasons than the SEPAC as a whole. We find that the Board of the Brookline SEPAC is a public body subject to the Open Meeting Law, albeit for limited purposes.

One of the hallmark characteristics of a public body is empowerment to take collective action. See OML 2010-1; OML 2018-136, n. 5. In contrast, we have explained that a group that serves primarily an administrative function, such as by compiling and conveying information, but is not empowered with specific decision making or policy authority and does not make formal recommendations to a public body, is not a public body subject to the Open Meeting Law. OML 2013-56. Therefore, we must consider the specific roles and responsibilities of each of the three SEPAC leadership groups at issue here, to determine whether the leadership groups have the authority to act as a body. See OML 2011-42. Leadership groups that are not structured in such a way as to allow for collective action, but rather that merely perform an administrative function on behalf of the SEPAC as a whole, will not be found to be public bodies under the Open Meeting Law. See OML 2016-79.

*Officers of the Melrose SEPAC*

First, we find that the officers of the Melrose SEPAC are not empowered or established to take collective action, and are not a public body for purposes of the Open Meeting. The Melrose SEPAC officers instead serve a limited, administrative role of calling and presiding over

meetings of the full Melrose SEPAC. They also perform other administrative functions, such as setting the agenda for meetings of the full Melrose SEPAC, and they may communicate with members of the school committee or other school officials such as the superintendent to report on the actions of the full Melrose SEPAC. However, other than the administrative functions established in the bylaws, the officers have no authority to independently take action on behalf of the Melrose SEPAC. Instead, decisions are made by vote of the members of the Melrose SEPAC who are present at any given meeting. For example, the full SEPAC might decide on topics for speakers or other programs, based on the interests and priorities of the SEPAC, and the officers then perform the administrative tasks of scheduling the speakers, reserving a meeting location, and publicizing the event.

#### *Officers of the Brockton SEPAC*

We find that the Brockton SEPAC officers perform a similar administrative function as in Melrose, and similarly are not a public body subject to the Open Meeting Law. The Officers of the Brockton SEPAC consist only of a President and Vice-President, who share responsibility for setting the agenda for the general Brockton SEPAC meetings, presiding at the meetings, recommending and monitoring subcommittees, acting as a liaison between the full SEPAC and school officials, and assisting in coordinating communication between the schools and the special education community. We find that the performance of these administrative responsibilities, shared by two officers, do not constitute the type of collective action that is required to satisfy the second prong of our public body analysis.

#### *Board of the Brookline SEPAC*

In Brookline, by contrast, we find that the SEPAC Board, as established by the Brookline SEPAC bylaws, is a public body that may take collective action and is subject to the Open Meeting Law when it engages in deliberation on matters within its jurisdiction. The Brookline SEPAC Board consists of a Chair or Co-Chairs, Secretary, Webmaster, and several School Liaisons. The School Liaisons include “[o]ne to two Voting Members per K-8 School,” “[o]ne to three Voting Members representing [Brookline Early Education Program] students,” “[o]ne to three Voting Members representing [Brookline High School] students,” and “[o]ne to two Voting Member representing Out of District students.” The bylaws further specify vote allocation for votes taken by the SEPAC Board, as follows:

Co-Chair(s), Secretary and Webmaster will have one vote each in matters to be decided by the SEPAC Board. Liaisons will vote based on the schools they represent with each school, out-of-district, and BEEP having one vote and Brookline High School having two votes. If there are multiple liaisons for a single school and they cannot agree on a vote for that school, the vote shall be recorded as “abstain”. If one member holds multiple roles, they may cast one vote for each of those roles.

Brookline SEPAC Bylaws, Article IV (Amended April 9, 2021).

The Chair, Secretary, Webmaster, and School Liaisons perform similar administrative functions as the SEPAC officers in Melrose and Brockton: the Chair or Co-Chairs set the agenda for each meeting of the SEPAC, preside over the meetings, and act as liaisons between the SEPAC and school administration; the Secretary maintains minutes of the SEPAC meetings, maintains records, and coordinates communication such as newsletters and other announcements; the Webmaster maintains the website; and Liaisons for each school assist in facilitating communication and promoting events within their respective schools. In addition, the Chair or Co-Chairs—but not the full Board—meet regularly with staff in the Public Schools of Brookline’s Office of Student Services to relay comments or concerns brought to their attention by parents, SEPAC members, or School Liaisons. The Board members do not, however, jointly discuss and decide which matters to discuss with the Office of Student Services, nor do they have authority to establish advocacy priorities or strategies. Therefore, in carrying out these tasks delegated to them through the bylaws and by practice, the members of the Brookline SEPAC Board do not take collective action, but rather are performing limited administrative functions to facilitate communication and serve the broader SEPAC.

In one respect, however, the bylaws expressly grant authority to and contemplate collective action to be taken by the Brookline SEPAC Board: to remove a Board member. Indeed, the bylaws define in detail the procedure and vote allocation among the Chair, Secretary, Webmaster, and School Liaisons for purposes of taking such a vote.<sup>3</sup> In so doing, the Brookline SEPAC Board would not merely be performing a ministerial or administrative task on behalf of the full SEPAC, but would independently be taking discretionary and collective action. Therefore, we find that the Brookline SEPAC Board is a public body for purposes of the Open Meeting Law, though its jurisdiction to act as a public body is extraordinarily limited. Accordingly, if a quorum of the Brookline SEPAC Board engages in discussions about the removal of a Board member, such discussions will likely constitute “deliberation,” as defined by the Open Meeting Law, and must take place only during a meeting held in compliance with the Open Meeting Law. The allegations of the Perry and Haller complaints do not pertain to discussions regarding the removal of a Board member, and therefore we find that the Brookline SEPAC Board did not violate the Open Meeting Law.

In sum, because of the limited authority granted to the Melrose and Brockton SEPAC officers and the administrative function that they perform, and the fact that they do not take collective action, we find that the Melrose and Brockton SEPAC officers are not empowered to take collective action and are not public bodies subject to the Open Meeting Law. However, we find that the Brookline SEPAC Board is a public body subject to the Open Meeting Law, because that Board is structured in such a way as to allow for collective action to be taken, although the matters that are considered within that Board’s jurisdiction to take collective action for purposes of the Open Meeting Law—removal of a Board member—are extraordinarily narrow.

If the responsibilities or authority of the Melrose or Brockton SEPAC officers or the Brookline SEPAC Board change, whether due to amendment of the respective bylaws or by practice, our conclusion as to whether they are subject to the Open Meeting Law may change.

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<sup>3</sup> We have been informed that the Brookline SEPAC Board has never had occasion to seek to remove a Board member and has never taken such a vote as contemplated in the bylaws.

Furthermore, whether the officers or leadership group of another SEPAC, subject to different bylaws and invested with different authority to act collectively, will be a public body subject to the Open Meeting Law will depend on the specific authority and function of that group.

### CONCLUSION

For the reasons stated above, we conclude that the Brockton, Brookline, and Melrose SEPACs are not public bodies subject to the Open Meeting Law. In addition, we conclude that the officers of the Melrose and Brockton SEPACs are not public bodies subject to the Open Meeting Law. Finally, we conclude that the Brookline SEPAC Board is a public body subject to the Open Meeting for limited purposes only, but did not violate the Open Meeting Law.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or with the Brockton, Brookline, or Melrose SEPACs. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



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**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.**