

#30  
Received  
7/31/17



### OPEN MEETING LAW COMPLAINT FORM

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

Please note that all fields are required unless otherwise noted.

#### Your Contact Information:

First Name: Allen Last Name: Nitschelm

Address: P.O. Box 1072

City: Acton State: MA Zip Code: 01720

Phone Number: 9786214207 Ext. \_\_\_\_\_

Email: Allen@TheHomesteader.com

Organization or Media Affiliation (if any): Acton Forum

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual     Organization     Media

#### Public Body that is the subject of this complaint:

City/Town     County     Regional/District     State

Name of Public Body (including city/town, county or region, if applicable): Acton-Boxborough Regional School District, Acton MA

Specific person(s), if any, you allege committed the violation: Chair Amy Kirshnamurthy

Date of alleged violation: 7/26/17

**Description of alleged violation:**

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

AB Regional School Committee held an open meeting starting at 8 am on 7/26. On the agenda, it listed #2, Chairman's Introduction, "Distribution of related materials concerning release of executive session minutes of 4/26/17 and 5/2/17 (no discussion or deliberation). A four-page handout on this was available for distribution to the public. The Chair then read the first two pages of the memo, which mentioned "Allen Nitschelm" or "Acton Forum" about ten times. The statement as read and distributed contained material inaccuracies, inappropriate innuendo, and half-truths. Mr. Nitschelm, who was in attendance but had not seen the memo in advance, rose to address some of the inaccuracies. Addressing them during the meeting was important so that his corrections would be available to the audience, to anyone watching a future broadcast of the meeting, and so that the minutes would accurately reflect his response. Nitschelm was prohibited from speaking. He tried several times but was repeatedly cut off by the Chair. When Nitschelm approached the podium, he was followed by one of two police officers who were present at the meeting. It was clear that had Nitschelm continued to attempt to speak, he would be stopped by the officer and subject to removal and possible arrest. Nitschelm then took his seat and the misstatements were allowed to stand unchallenged. This violated Nitschelm's right and is an improper control of the content of Nitschelm's speech and thus a violation of the law. Nitschelm acknowledges the right of a Chair of a Committee during a public meeting to control whether the public may speak, to make sure the topic of the speech is germane, and to limit speaking times to reasonable limits. In this instance, no comments were allowed from the audience, other than the lengthy statement read by the Chair. Had no public participation been allowed during the meeting, Nitschelm would not be filing this complaint. However, later on, during agenda item 3, the Chair invited members of the community to address the School Committee and two audience members were allowed to speak. This proves that the public comments that Nitschelm wanted to make were not denied for any valid purpose but instead were to stop Nitschelm from addressing the specific issue, which is an improper control of the content of Nitschelm's speech. The mistake was compounded in that false information and statements were made and the Chair refused Nitschelm the opportunity to correct them.

What action do you want the public body to take in response to your complaint?

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A public apology to Allen Nitschelm and Acton Forum by the School Committee and its Chair;  
A five-minute time for Nitschelm to correct the record at a future School Committee meeting at a time on the agenda of his choosing, without interruption by the Chair, including the distribution of a rebuttal statement;  
A public acknowledgement that the School Committee violated Allen Nitschelm's First Amendment rights and the Open Meeting Law through its selective enforcement.

**Review, sign, and submit your complaint**

**I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

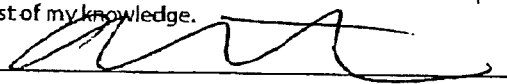
**II. Consulting With a Private Attorney.**

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

**III. Submit Your Complaint to the Public Body.**

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: 

Date: 7/31/17

For Use By Public Body. Date Received by Public Body: For Use By AGO. Date Received by AGO:



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Name of Public Body (including city/town, county or region, if applicable): Acton-Boxborough Regional School District, Acton MA

Specific person(s), if any, you allege committed the violation: \_\_\_\_\_

Date of alleged violation: 4/26/17

## Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

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The Acton-Boxborough Regional School Committee (SC) held an executive session on April 26, 2017. Acton Forum recently learned that the subject of that meeting concerned the former Superintendent of Schools who has since left the School District. Acton Forum published the unredacted executive session minutes on July 20 and learned that the topics of discussion contained multiple Open Meeting Law violations. (1) The stated purpose of the meeting was a pretext. There was an allegation of improper management style by the Superintendent, which is a subject that the School Committee may properly discuss, but not in executive session. There was no valid reason for an executive session under these circumstances. (2) Even if the stated purpose had been valid, the discussion of the incident in question took up only 60-90 minutes of the nearly four-hour meeting. Lengthy discussion of subject matters outside the incident were improper, especially when the time to discuss them greatly exceeded the time to talk about the initial incident. Thus, it appears that the real purpose of the executive session was other than for the public exemption cited. (3) The discussion for the majority of the meeting was about the performance of the Superintendent. According to DESE regulations, Superintendent of School evaluations are to be done in public. It was improper to have extended discussions of the Superintendent's performance in executive session. (4) The minutes to this meeting were released almost wholly redacted; as the discussion revolved around the Superintendent's performance, those portions of the meeting should have been released unredacted. This may be addressed in an additional filing based on a previous OML complaint. (5) The public statements about the content of the meeting were false and misleading. These statements were distributed by the School and publicly repeated at a May 24 School Committee meeting. Not discussing what happened in executive session may be proper; misleading the public about what happened is not. If an executive session is held and the Committee decides to discuss what happened, but refuses to release the minutes unredacted, then any discussion should be truthful.

We believe the meeting contained numerous intentional violations of the OML. It had been planned well in advance and the subject of the meeting and the SC both had attorneys present. Memos were brought to the meeting about the Superintendent's performance outside of the incident in question, which is proof that the meeting was effectively about his evaluation and not about the reasons publicly stated to go into executive session.

What action do you want the public body to take in response to your complaint?

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We ask the SC to issue a statement that the executive session of April 26, 2017 was improperly held and a violation of the state's Open Meeting Law, and the School Committee members who were responsible for the meeting resign from public office. We ask that the minutes of this meeting be officially released, unredacted.

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Signed: \_\_\_\_\_

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