

**From:** Samuelson, Jennifer <[Jennifer.Samuelson@vermont.gov](mailto:Jennifer.Samuelson@vermont.gov)>  
**Sent:** Thursday, February 1, 2024 11:36 AM  
**To:** Diop, Mohamed <[Mohamed.Diop@vermont.gov](mailto:Mohamed.Diop@vermont.gov)>; Fearon, Grey <[Grey.Fearon@partner.vermont.gov](mailto:Grey.Fearon@partner.vermont.gov)>; Gleason, Kimberly G <[Kimberly.G.Gleason@vermont.gov](mailto:Kimberly.G.Gleason@vermont.gov)>; Jepson, Lyle <[Lyle.Jepson@vermont.gov](mailto:Lyle.Jepson@vermont.gov)>; Kolbe, Tammy <[Tammy.Kolbe@vermont.gov](mailto:Tammy.Kolbe@vermont.gov)>; Lovett, Tom <[Tom.Lovett@vermont.gov](mailto:Tom.Lovett@vermont.gov)>; O'Farrell, Jennifer <[Jennifer.OFarrell@vermont.gov](mailto:Jennifer.OFarrell@vermont.gov)>; Werner, Richard <[Richard.Werner@vermont.gov](mailto:Richard.Werner@vermont.gov)>; Wilburn, Aaliyah <[Aaliyah.Wilburn@partner.vermont.gov](mailto:Aaliyah.Wilburn@partner.vermont.gov)>  
**Cc:** Gaidys, Maureen <[Maureen.Gaidys@vermont.gov](mailto:Maureen.Gaidys@vermont.gov)>; Sprague, Suzanne <[Suzanne.Sprague@vermont.gov](mailto:Suzanne.Sprague@vermont.gov)>  
**Subject:** Fw: January 23, 2023 meeting

Good morning. Please see the below as an FYI. In accordance with Open Meeting Law, please do not reply all.

Kind regards,

Jennifer

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**From:** Samuelson, Jennifer <[Jennifer.Samuelson@vermont.gov](mailto:Jennifer.Samuelson@vermont.gov)>  
**Sent:** Thursday, February 1, 2024 11:34 AM  
**To:** eburrows <[eburrows@leg.state.vt.us](mailto:eburrows@leg.state.vt.us)>; Bouchey, Heather <[Heather.Bouchey@vermont.gov](mailto:Heather.Bouchey@vermont.gov)>; CopelandHanzas, Sarah <[Sarah.CopelandHanzas@vermont.gov](mailto:Sarah.CopelandHanzas@vermont.gov)>; Hibbert, S. Lauren <[Lauren.Hibbert@vermont.gov](mailto:Lauren.Hibbert@vermont.gov)>  
**Cc:** Gaidys, Maureen <[Maureen.Gaidys@vermont.gov](mailto:Maureen.Gaidys@vermont.gov)>; Trevor Squirrel <[TSquirrel@leg.state.vt.us](mailto:TSquirrel@leg.state.vt.us)>; Mark MacDonald <[MMacDonald@leg.state.vt.us](mailto:MMacDonald@leg.state.vt.us)>; Christopher Bray <[cbray@leg.state.vt.us](mailto:cbray@leg.state.vt.us)>; Virginia Lyons <[VLyons@leg.state.vt.us](mailto:VLyons@leg.state.vt.us)>; dweeks <[dweeks@leg.state.vt.us](mailto:dweeks@leg.state.vt.us)>; Seth Bongartz <[SBongartz@leg.state.vt.us](mailto:SBongartz@leg.state.vt.us)>; Carol Ode <[COde@leg.state.vt.us](mailto:COde@leg.state.vt.us)>; Sprague, Suzanne <[Suzanne.Sprague@vermont.gov](mailto:Suzanne.Sprague@vermont.gov)>; [aarsenault@leg.state.vt.us](mailto:aarsenault@leg.state.vt.us) <[aarsenault@leg.state.vt.us](mailto:aarsenault@leg.state.vt.us)>; [mcarpenter@leg.state.vt.us](mailto:mcarpenter@leg.state.vt.us) <[mcarpenter@leg.state.vt.us](mailto:mcarpenter@leg.state.vt.us)>; Kevin Christie <[KChristie@leg.state.vt.us](mailto:KChristie@leg.state.vt.us)>; [egraning@leg.state.vt.us](mailto:egraning@leg.state.vt.us) <[egraning@leg.state.vt.us](mailto:egraning@leg.state.vt.us)>; Rebecca Holcombe <[RHolcombe@leg.state.vt.us](mailto:RHolcombe@leg.state.vt.us)>; Sibilial, L <[lsibilia@leg.state.vt.us](mailto:lsibilia@leg.state.vt.us)>  
**Subject:** Re: January 23, 2023 meeting

Hello, Rep. Burrows, and thank you for your email. I'm not sure that I understand several issues that you raise, but I will provide below some context for the Board's current rulemaking activities in the hope that this will address your stated and underlying concerns. First, the January 23, 2024 meeting to which you refer was a combined meeting of the Rule Series 2000 (Education Quality Standards or "EQS") and Rule Series 2200 (Independent Quality Standards or "2200") committees. Due to

quorum issues, the meeting was warned as a special meeting of the State Board of Education ("SBE" or "Board"), although I made it clear in our monthly meetings and at the beginning of the January 23<sup>rd</sup> meeting that the purpose of the meeting was to allow members of the EQS and 2200 committees to come together and discuss themes that were raised during public comment that pertained to both sets of rules. I also made it clear to both Board members and members of the public that there was no expectation that Board members who were not sitting on either committee would attend the meeting and, indeed, with one exception, Board members who are not sitting on either committee opted out of the meeting. Further, and consistent with the agenda and our practice in all committee meetings, our January 23<sup>rd</sup> meeting was a working session during which no formal action was taken.

I am not sure what you mean when you write that the meeting was not made available to the public. Prior to the meeting, the meeting was duly warned and both the agenda and Attorney Buxton's document entitled "Common Sections of Rule Series 2000 and Rule Series 2200" were posted. After the meeting, the draft minutes were timely posted. All of these materials are now located under the Board's "Past Meetings and Materials" and are available to you or any other members of the public who wish to review them. The meeting was properly warned and the minutes are statutorily compliant. As Attorney Buxton's document shows, and contrary to what was reported to you, there was not a redaction of the EQS. Rather, Attorney Buxton's document (a) only pertained to a few sections of the EQS and 2200 rules that are clearly noted in her document; (b) was prepared as a starting point for resolving public comments received that are applicable to both EQS and 2200; (c) was offered as a point of consideration and discussion by the EQS and 2200 committees as a follow-up to the combined committees' meeting on January 4<sup>th</sup>; and (d) is not adopted by the Board.

I also do not understand your reference to "two individuals" working alone. Attorney Buxton has been advising the Board as it updates both EQS and 2200 in accordance with Act 1 (2019), and she has been following up on Board members' requests, as the case may be, for more information, for research, or for proposed language. Attorney Buxton answers to the whole Board and not to any one, two, or three of us. In fact, no member, including myself, had reviewed Attorney Buxton's document before she posted it with the agenda packet for our January 23<sup>rd</sup> meeting. It was a completely transparent presentation of her work product following the combined committees' meeting on January 4<sup>th</sup>, where she walked through many matters for joint consideration, using her memo entitled "Common Concepts for Deliberation: Rule Series 2000 and 2200" as a guide. As you might notice from the January 4<sup>th</sup> memo's prompting questions for the group, Attorney Buxton led a conversation about whether the Board wanted to explore various options for addressing comments and themes related to both sets of rules. These included: striving to use common language section headings and organizational style to better compare common components of the rules (e.g. records retention, compliance with the law, professional resources, instructional strategies, etc.); how to address calls for the Agency of Education ("AOE") to address complaints related to both types of schools; requiring a statewide annual survey of parents and guardians using a format developed by AOE to gather user-level information about performance of schools; making value

statements, directives, or recommended approaches contained in the definition of words more operational by moving them into other parts of the rule; whether the Board wants to accept comment that it direct specific curriculum content and, relatedly, make clear who is responsible for developing curriculum; and using the same discrimination language/sections in both sets of rules and being clear about what is required and what is aspirational, etc. Members discussed these topics and voiced preferences on *what* would be addressed or *how* issues might be addressed and further consented to receiving some options from Attorney Buxton (see third bullet of introductory section). Attorney Buxton used the perspectives and opinions shared at the combined committees' meeting on January 4<sup>th</sup> to begin work on addressing (or not addressing, as the case was in some situations) the topics of common applicability at the meeting on January 23<sup>rd</sup>.

Turning to your question about process, I thought it would be helpful to provide a little more information about Vermont's Administrative Procedure Act so that you have some context for where the Board is in its rulemaking process and where we will go from here.

Vermont's APA is a lengthy process that involves many "checkpoints" along the way. Once initiated, for example, there are four separate filings of proposed updates to a rule series, each with specific timelines and deadlines, that help ensure that the final promulgated rules have met a high standard of review – extending *beyond* that of stakeholders and the public. Each step causes the Board to pause and evaluate the rules before moving to the next step. You may not be aware that the APA only sets a *minimum* threshold for state agencies to solicit and receive feedback (e.g. "public comment"). It is not only usual, but also good public policy, for an agency to take note of any consideration (policy, legal, operational, etc.) related to the rules as they make their way through the process. For example, the General Assembly commissioned a report last year on harassment and discrimination in schools. As you know, that report was only submitted earlier this week. Board members may now wish to review the report to determine whether they should consider changes to the proposed rules in light of the report's recommendations. This is an example of a "policy" consideration that is not submitted as a public comment but that would be entirely appropriate for the Board to consider before voting to approve final proposed revisions of the rules.

In addition, before the rules go before the legislative committee on administrative rules (LCAR), it is important that the Board takes the time to review the legislative record, our work, and other information in the public domain to ensure that the rules we send to LCAR are consistent with statutory intent, compliant with the law, and do not exceed our rulemaking authority. We are in that process now. Going forward, both the EQS and 2200 committees will continue to process public comment until this work is complete. At the same time, both committees will jointly consider responses and changes to sections that will apply to both sets of rules. Each committee will be presented with working drafts that include revisions to its respective rule series and will continue to revise as necessary until its work is complete. Once a committee has finished its work, it will submit its recommendations to the full Board for action. I anticipate that both committees will wrap up their work this spring.

With regard to your question about the recording of working group sessions, the Board, as you may know, is only required to record public comment hearings with regard to rulemaking. Although it has not been the practice of the Board to record working committee sessions where action is not to be taken, we do record meetings of the full Board where Board members take formal action on various agenda items. The public is, of course, welcome to attend all of our meetings. We hold them virtually, and at different times, to promote public participation and observation. That said, please know that I understand your request and will take it into consideration. I plan to review our current practices with the full Board at our next meeting. In the meantime, it may be useful to review testimony currently being taken by the Senate as it considers changes to Vermont's Open Meeting Law. There you see how the many duties and interests of public bodies and the general public come together, not always aligned, into a careful balance of doing what is right, just, and fair for all involved. In my view, for a volunteer Board that is so oriented to listening to and reflecting public voice and that exists without staff or meaningful resources (\$70k annual budget), the Board is balancing these interests very well. We are not a political body; rather, our job is to do what the General Assembly has requested of us to the best of our ability. I assure you that each one of us cares deeply about our work and is committed to bringing our rulemaking activities to a successful conclusion.

I appreciate your continued interest in the Board's activities and thank you again for reaching out.

Kind regards,

Jennifer

Jennifer Deck Samuelson

Chair, Vermont State Board of Education

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**From:** Elizabeth Burrows <[EBurrows@leg.state.vt.us](mailto:EBurrows@leg.state.vt.us)>

**Sent:** Tuesday, January 30, 2024 5:08 PM

**To:** Diop, Mohamed <[Mohamed.Diop@vermont.gov](mailto:Mohamed.Diop@vermont.gov)>; Fearon, Grey <[Grey.Fearon@partner.vermont.gov](mailto:Grey.Fearon@partner.vermont.gov)>; Gleason, Kimberly G <[Kimberly.G.Gleason@vermont.gov](mailto:Kimberly.G.Gleason@vermont.gov)>; Kolbe, Tammy <[Tammy.Kolbe@vermont.gov](mailto:Tammy.Kolbe@vermont.gov)>; Jepson, Lyle <[Lyle.Jepson@vermont.gov](mailto:Lyle.Jepson@vermont.gov)>; Lovett, Tom <[Tom.Lovett@vermont.gov](mailto:Tom.Lovett@vermont.gov)>; O'Farrell, Jennifer <[Jennifer.OFarrell@vermont.gov](mailto:Jennifer.OFarrell@vermont.gov)>; Samuelson, Jennifer <[Jennifer.Samuelson@vermont.gov](mailto:Jennifer.Samuelson@vermont.gov)>; Werner, Richard <[Richard.Werner@vermont.gov](mailto:Richard.Werner@vermont.gov)>; Wilburn, Aaliyah <[Aaliyah.Wilburn@partner.vermont.gov](mailto:Aaliyah.Wilburn@partner.vermont.gov)>; Bouchey, Heather <[Heather.Bouchey@vermont.gov](mailto:Heather.Bouchey@vermont.gov)>; CopelandHanzas, Sarah <[Sarah.CopelandHanzas@vermont.gov](mailto:Sarah.CopelandHanzas@vermont.gov)>; Hibbert, S. Lauren <[Lauren.Hibbert@vermont.gov](mailto:Lauren.Hibbert@vermont.gov)>

**Cc:** Gaidys, Maureen <[Maureen.Gaidys@vermont.gov](mailto:Maureen.Gaidys@vermont.gov)>; Trevor Squirrel

<[TSquirrel@leg.state.vt.us](mailto:TSquirrel@leg.state.vt.us)>; Mark MacDonald <[MMacDonald@leg.state.vt.us](mailto:MMacDonald@leg.state.vt.us)>; Christopher Bray <[cbray@leg.state.vt.us](mailto:cbray@leg.state.vt.us)>; Virginia Lyons <[VLyons@leg.state.vt.us](mailto:VLyons@leg.state.vt.us)>; dweeks <[dweeks@leg.state.vt.us](mailto:dweeks@leg.state.vt.us)>; Seth Bongartz <[SBongartz@leg.state.vt.us](mailto:SBongartz@leg.state.vt.us)>; Carol Ode <[COde@leg.state.vt.us](mailto:COde@leg.state.vt.us)>; Tammy Kolbe <[Tammy.Kolbe@uvm.edu](mailto:Tammy.Kolbe@uvm.edu)>

**Subject:** January 23, 2023 meeting

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STATE OF VERMONT

General Assembly

Members of the State Board of Education:

We are writing as a group of legislators who are extremely concerned about the content of the January 23, 2024 State Board of Education meeting not being made available to the public. The agenda for the meeting was billed as a “special meeting” that optionally precluded recording. The agenda also indicated that the discussion would be identical to the previous meetings discussing public comment related to the 2000/2200 rules series, but it has been reported that it included a full redaction of the Education Quality Standards associated with Act 1 of 2019.

Now that those redactions have been made public, the lack of process transparency is of grave concern. Specifically disturbing is the fact that there was no public discussion of even whether to make changes, let alone whether changes should be undertaken by a process of two individuals working alone, in the absence of consultation with any of the statutorily indicated Working Group members.

Legislators are accountable for the initiatives we vote into existence, and many of us hold acute interest in how those initiatives are implemented, what needs may arise to refine statutory language, and ultimately whether these initiatives are successfully filling the need that they were created to fill. Not having access to review crucial meetings prevents us from being able to analyze the progress of legislation we put into place.

Legislators are also accountable to our voters. When we are asked about the status of a bill or initiative, it is incumbent upon us to follow through and find the answers. Not having access to full understanding of the processes makes it impossible to give an accurate answer when we are asked to follow up.

We therefore respectfully request that all meetings be recorded, and that all components, including recordings and all documentation, be posted somewhere with an intent towards full and easy public access. Not one step of this process should take place without public knowledge, and we ask that you be more vigilant about inclusion and transparency.

Sincerely,

Rep. Angela Arsenault

Rep. Melanie Carpenter

Rep. Kevin Christie

Rep. Elizabeth Burrows

Rep. Edye Graning

Rep. Rebecca Holcombe

Rep. Laura Sibia