

**CONFIDENTIAL**

Item J3

May 26, 2021

VIA E-MAIL - [John.Carroll@vermont.gov](mailto:John.Carroll@vermont.gov)

Chairman John Carroll  
Vermont State Board of Education  
P.O. Box 305  
Norwich, VT 05055

**Re: Legal Summary of Vermont State Board of Education Jurisdictional Trigger**

Dear Chairman Carroll:

Emily Simmons , General Counsel for the Vermont Agency of Education ("AOE"), on behalf of AOE, and Gary Karnedy , Counsel for New England Kum Hattin Homes, Inc. ("Kum Hattin") , on behalf of Kum Hattin, jointly and respectfully provide this legal summary regarding the State Board of Education's (the " Board") jurisdictional trigger with regard to the AOE review of Kum Hattin as an approved independent school.

We have not been provided detailed information about what is expected of the AOE and Kum Hattin at the planned special meeting of the Board. However, we are concerned that by scheduling a 2- 1/2 hour special meeting where the Secretary of the Agency of Education (the "Secretary" ) and Kum Hattin Counsel are present to be questioned about the closed investigation, much of which involves confidential investigative information, the Board is acting inconsistently with State Board of Education Rules 2222.7 and 2222.8 (hereinafter "SBE Rules").

Following an investigation under SBE Rule 2222.8, the Secretary determined that he would not recommend revocation or suspension of Kum Hattin ' s status as an approved independent school. As a result , the matter was closed and was not a contested matter that would trigger jurisdiction and a hearing under the SBE Rule 2222.7 or Vermont law.

Pursuant to SBE Rule 2222.7:

Prior to recommending denial, revocation or suspension of approval the [Secretary] shall obtain the written recommendation of the Council of Independent Schools. If after receiving the council's recommendation the [Secretary] determines that denial , revocation or suspension of approval is warranted s/he shall notify the school of the reasons for the proposed action and shall afford the school an opportunity to be heard by the board. Approval of an independent school shall be revoked or suspended by the

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board based on a finding that the school no longer meets the criteria for approval listed in section 2226.

SBE Rules 2222.7 and 2222.8 clearly delineate the investigative role of the AOE, and the quasi-judicial role of the Board in revocation/suspension of approval status proceedings. SBE Rule 2222.7. The Secretary's investigative powers are expressly and exclusively vested in him under SBE Rule 2222.8.<sup>1</sup>

The Board's power under SBE Rule 2222.7 is expressly limited to a quasi-judicial function of holding a hearing<sup>2</sup>, if and only if the Secretary recommends denial, revocation or suspension. Here the Secretary made no such recommendation, so the administrative hearing process that would be afforded to Kum Hattin if the matter were contested is not triggered.<sup>3</sup> Kum Hattin is not seeking a hearing. The Board does not have jurisdiction to commence a hearing process unless the Secretary commences a revocation or suspension proceeding as set forth in SBE Rule 2222.7.

On January 6, 2021, the Secretary appointed a team of four (4) members (the "Review Team") to conduct a review of Kum Hattin's approval status pursuant to his investigative authority under SBE Rule 2222.8.

On May 12, 2021, after a thorough investigation, the Review Team provided the Secretary with its written report (the "Review Team's Report") in which it found that Kum Hattin had "revise[d] its policies and procedures, reduce[d] residential student to staff ratios, add[ed] additional oversight of day-to-day operation through the Assistant Executive Director's position, and increase[d] involvement of the Board of Trustees through the Board Chair's active

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<sup>1</sup>Pursuant to SBE Rule 2222.8, "(r)eports or complaints to the [Secretary] concerning matters related to the approval standards shall be investigated if it appears such action is warranted. The school shall receive notification of the complaint unless contraindicated by the particular facts. A review team of at least two persons shall be appointed by the [Secretary] including a member of the Council of Independent Schools. The team will conduct the investigation after initial inquiries and will inform the school of the results..."

<sup>2</sup>You will recall that at the Board's November 6, 2020 special meeting regarding Secretary French's October 8, 2020 Letter recommending that the Board conduct a review of Kum Hattin's approval status, you correctly noted that "the Board's role in matters such as this is a bit like that of a court. We can't go looking for evidence, and we cannot consider any information brought to us 'outside the courtroom', as it were - that is to say, outside a properly convened hearing." See State Board of Education Minutes (Nov. 2020), <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-special-meeting%20approved-rminutes-11-06-20.pdf>. The Board clearly confirmed what the SBE Rules state: the Secretary had the exclusive authority to investigate complaints relating to approval standards. The Board did not have concurrent investigative authority.

<sup>3</sup>The Vermont's Administrative Procedure Act ("APA") defines a contested case as "a proceeding .... in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." 3 V.S.A. § 801. Here, since the Secretary did not recommend revocation or suspension, there are no legal rights, duties or privileges to be determined by the Board. *Id.* Thus, this is not a referral of a "contested case" under the APA which would trigger a hearing.

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leadership."See AOE Review Team, Vt. Agency of Educ., Report to the Secretary of Education  
Review of New England Kum Hattin Homes (May 2021), Pages 10-11.

On May 14, 2021, the Secretary informed Kum Hattin President of the Board of Trustees Mark  
Bodin via letter that, based on the Review Team's Report, he would not recommend revocation  
or suspension of Kum Hattin's status as an approved independent school and provided him a  
copy of the Review Team's Report. This letter closed the Secretary's investigation. The  
Secretary subsequently provided a courtesy copy of the letter and the Review Team's Report to  
the Board.

After you consider this letter and the jurisdictional issue, we request that, based on the law, the  
Board cancel or not schedule any extended special meeting or other Kum Hattin related meeting.

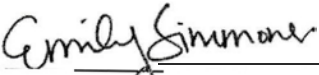
We anticipate that Board members have questions about and general interest in the process and  
outcome of the Review Team's investigation. This is understandable, and neither Kum Hattin nor  
the AOE want to leave the Board without an avenue to have their questions addressed. In the  
interest of sharing information, if the Board would like to receive a general synopsis of the Report  
and now closed investigation from the AOE, we believe such a discussion would be an appropriate  
agenda item for a future, regularly scheduled Board meeting. It is important to distinguish that this  
agenda item as an informational discussion, not a hearing or quasi-judicial matter in which the  
Board has decision-making authority.

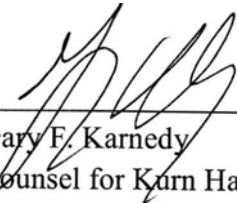
Please feel free to contact us should you or Counsel for the Board have any questions.

Respectfully submitted ,

VERMONT AGENCY OF EDUCATION

NEW ENGLAND KURN HATTIN HOMES,  
INC.

By:   
\_\_\_\_\_  
Emily Simmons  
General Counsel for the  
Vermont Agency of Education

By:   
\_\_\_\_\_  
Gary F. Karnedy  
Counsel for Kurn Hattin Homes

cc: Daniel M. French, Ed.D., Secretary, Vermont Agency of Education  
George Belcher, Counsel for the State Board of Education  
Mark Bodin, President, Kum Hattin's Board of Trustees