

State Board of Education - Special Meeting

Draft Meeting Minutes

Meeting Place: Virtual Teams Meeting/Video/Teleconference

Call in #: 1-802-552-8456, Conference ID: 225 952 630#

Date: November 6, 2020

Present:

State Board Members (Board/SBE): John Carroll, Chair; Jenna O'Farrell, Vice Chair (arrived at 10:00 a.m.); Peter Peltz, William Mathis, Kim Gleason, Sabina Brochu, Oliver Olsen, Jennifer Samuelson, and Angelita Peña.

Agency of Education (AOE): Maureen Gaidys; Suzanne Sprague.

Others: George Belcher, Board Counsel

Item A: Call to Order/Roll Call/Introductions/Amendments to Agenda

Chair Carroll called the meeting to order at 9:05 a.m. The State Board members introduced themselves. Chair Carroll explained the limits of 'executive session' — that its purposes are limited to briefings and discussion and that no votes or decisions may be taken in executive session.

Item B: Receive Legal Opinion and advice from Board Counsel regarding a recommendation made by the Secretary of Education date 8 October 2020 (Executive Session)

Samuelson made the following motion: "I move that the State Board of Education finds that premature general public knowledge would clearly place the public body and/or party to a future proceeding concerning this matter at a substantial disadvantage and that the Board enters executive session for the purpose of receiving legal advice from Counsel regarding the Secretary's letter dated October 8, 2020." Gleason seconded the motion. There was no discussion. The roll call vote was yea by Brochu, Gleason, Olsen, Peltz, Samuelson and Carroll. Mathis abstained. The motion carried.

The State Board of Education entered executive session at 9:12 a.m.

The State Board of Education left executive session at 10:54 a.m.

Olsen made a motion that the State Board adopt the following resolution: "Whereas: On October 8, 2020, Vermont Secretary of Education Daniel French submitted a

recommendation that the State Board of Education (SBE) conduct a review of New England Kurn Hattin Homes for Children's (Kurn Hattin) Status as a Vermont Approved Independent School;

Whereas: between October 8, 2020 and October 21, 2020, attorneys representing Kurn Hattin and a number of former Kurn Hattin students submitted letters to the SBE in connection with the Secretary's October 8th recommendation;

Whereas: at a meeting of the SBE on October 21, 2020, the SBE was advised that legal counsel for the Agency of Education could not provide the SBE with legal advice in connection with the review recommended by the Secretary;

Whereas: at the October 21, 2020 meeting, the SBE considered the Secretary's recommendation and voted to table the matter to a future special meeting, so that the SBE would have an opportunity to secure independent legal counsel to advise the board;

Whereas: on October 22, 2020, a member of the SBE contacted the Secretary of Education and raised a specific concern that the Secretary's recommendation was not in conformance with the processes outlined in SBE Rule 2222.7 and 2222.8;

Whereas: the SBE has since secured independent legal counsel, which has reviewed relevant statute law and rules, and advised the board of its role and responsibilities in connection with independent school approvals;

Whereas: after conferring with independent legal counsel, the SBE has concluded that it has no legal authority to conduct the type of review recommended by the Secretary, and that it is the duty of the Secretary to initiate investigations of approved independent schools; and

Therefore, be it resolved that: the SBE cannot accept the Secretary's October 8, 2020 recommendation; and

Be it further resolved that: the SBE encourages the Secretary to use his authority under SBE Rule 2222.7 and 2222.8 to initiate an investigation of any approved independent school if and when he has reasonable grounds to believe that an investigation is warranted, based on criteria established under state law and relevant rules; dated November 6, 2020.

Peltz seconded the motion. There was no discussion. The vote was unanimous to adopt the resolution as presented.

Chair Carroll stated that as the resolution passed by the Board just now makes very clear, the Secretary of Education has failed to comply with the requirements of statute and rule, thus leaving the State Board kind of high-and-dry. It's been two months now since questions about Kurn Hattin Homes first arose. The Secretary's inaction leaves these questions unaddressed and unanswered. In fairness to all parties – not least to Kurn Hattin itself – these questions deserve prompt attention and resolution.

To be clear, the State Board cannot, by law, go off on its own and investigate reports about what might be going on at a Vermont school – whether it be a public school or an independent school. The Board’s authorities are limited by statute, rule, and legal convention -- and properly so.

In the event there are troubling reports about an independent school, it is the Secretary of Education’s duty to investigate and bring evidence to the State Board. Then, it is the Board’s duty to conduct a hearing – a quasi-judicial proceeding in which the Board examines the evidence presented by the Secretary of Education. At the hearing, the Board must give the school an opportunity to respond. After hearing the evidence, the Board, by law, must make findings of fact. Then the Board may, if warranted by the facts, issue orders that revoke or suspend a school’s status as “an approved independent school”.

So 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. In fact, we can’t do a darned thing until the Agency of Education mobilizes itself to investigate reports it has received, brings to the Board its recommendation, and presents the Board with evidence that bears upon the school’s status as an ‘approved independent school’. Then, and only then, can the State Board convene a hearing on the matter and take action.

All of which bears upon the last item in our agenda today – namely the “public to be heard” section of our agenda. In the interests of making ourselves available to the people of Vermont, we always provide a public comment period at our meetings. However, because of the Board’s unique role as a quasi-judicial body, we must ask that members of the public *not* make comment to the Board on any matter that might come before the Board in its quasi-judicial capacity.

Chair Carroll understands that this restriction might be frustrating for some members of the public who may wish to speak. But keep in mind that you are welcome – even encouraged – to bring any concerns you may have about *any* school -- whether it be a public school or an independent school – to the attention of the Secretary of Education.

Item C: Other Business

None

Item D: Public to be Heard

None

Adjourn:

Olsen moved to adjourn. Samuelson seconded. The meeting adjourned at 11:05 a.m.

Minutes prepared by Suzanne Sprague.