

Addendum
BUUSD Board Meeting
May 8, 2024



Michael Boutin <mboutin@buusd.org>

Fwd: Invitation: BUUSD Special Board Meeting @ Mon May 13, 2024 6pm - 8pm (EDT) (Nancy Leclerc)

1 message

Nancy Leclerc <nleclerc@buusd.org>

Fri, May 3, 2024 at 11:00 AM

To: Michael Boutin <mboutin@buusd.org>, Chris Hennessey <chennbsu@buusd.org>, Alice Farrell <afarrell@buusd.org>, Terry Reil <treil@buusd.org>, Giuliano Cecchinelli <gcecchinelli@buusd.org>, Catherine Whalen <cwhalen@buusd.org>, Garrett Grant <ggrant@buusd.org>, Sonya Spaulding <sspaulding@buusd.org>, Emily Reynolds <ereynolds@buusd.org>

Michael,

I am bringing to your attention that you have scheduled a meeting without obtaining formal approval from the board. Your actions raise concerns for me regarding governance integrity by not following established procedures and transparency within BUUSD.

Michael, It has been brought to your attention several times that you are making decisions independently and it seems there is a need to clarify roles and responsibilities.

Nancy Leclerc

----- Forwarded message -----

From: **Chris Hennessey** <chennbsu@buusd.org>

Date: Wed, May 1, 2024 at 3:19 PM

Subject: Invitation: BUUSD Special Board Meeting @ Mon May 13, 2024 6pm - 8pm (EDT) (Nancy Leclerc)

To: Nancy Leclerc <nleclerc@buusd.org>, Alice Farrell <afarrell@buusd.org>, Catherine Whalen <cwhalen@buusd.org>, Giuliano Cecchinelli <gcecchinelli@buusd.org>, Garrett Grant <ggrant@buusd.org>, Sonya Spaulding <sspaulding@buusd.org>, Terry Reil <treil@buusd.org>, Emily Reynolds <ereynolds@buusd.org>, Michael Boutin <mboutin@buusd.org>, Leigh Descoteaux <ldescbsu@buusd.org>

Join with Google Meet

Meeting link

meet.google.com/vxi-arvi-mgb

Join by phone

(US) [+1 929-777-4801](tel:+19297774801)

PIN: 769689006

[More phone numbers](#)

When

Monday May 13, 2024 · 6pm – 8pm (Eastern Time - New York)

Location

In-person: Spaulding High School Library, [155 Ayers St](#), Barre
[View map](#)

Guests

Chris Hennessey - organizer

Alice Farrell

Nancy Leclerc

Catherine Whalen

Giuliano Cecchinelli

Garrett Grant

Sonya Spaulding

Terry Reil

Emily Reynolds

Michael Boutin

Leigh Descoteaux

[View all guest info](#)

Reply for nleclerc@buusd.org

Yes

No

Maybe

More options

**BARRE UNIFIED UNION SCHOOL DISTRICT #097
POLICY**

CODE: A20

1ST READING: 03/23/2023

2ND READING: 05/10/2023

ADOPTED: 05/10/2023

Board Meetings, Agenda Preparation & Distribution

Policy

All Barre Unified Union School District Board meetings will be held in compliance with Vermont's open meeting laws, 1 V.S.A. §§310 et seq.

Regular Meeting Schedule

Regular meetings of the board will be held at the Spaulding High School Library, on the second and fourth Wednesday of the month, beginning at 6:00 p.m. The meeting schedule will be published and made available by the superintendent to any person on request.

Special and emergency meetings will be called by the chair on his or her own initiative or when requested by a majority of the board and shall be warned appropriately. Only items on the agenda may be acted upon at these meetings.

Conduct of Board Meetings

Meetings will be conducted in accordance with Robert's Rules of Order, Newly Revised. One or more members of the board may attend and participate in a regular, special or emergency meeting by electronic or other means so long as the requirements of 1 V.S.A. §312(a)(2) are met.

Executive Sessions

Executive sessions of the board will be convened only for the purposes stated in 1 V.S.A. §313. The minutes of any meeting where an executive session takes place will reflect the specific statutory reason for convening the executive session. Board members will not make public the confidential issues discussed during an executive session.

Agenda Preparation

The superintendent will prepare proposed agendas for all meetings of the board after consultation with the board officers. Items of business may be suggested by any board member, staff member, student, or resident of the district. The inclusion of items on proposed agendas will be at the discretion of the board chair and superintendent. An item may only be added or removed from a meeting agenda as the first order of business at the meeting. Other adjustments to an agenda may be made at any time during the meeting.

Agenda Distribution

The proposed agenda, together with supporting materials, will be distributed to board members by the superintendent three days prior to regular meetings and as soon as practicable before special and emergency meetings. At least 48 hours prior to a regular meeting and 24 hours prior to a special meeting, the superintendent shall ensure that the agenda is posted in the municipal clerk's office and [two other designated physical locations in the municipality]. In addition, proposed meeting agendas will be made available to any interested person upon specific request.

According to the A20 that was unanimously approved on May 10, 2023 the board chair can on their own initiative call a special or emergency meeting. The agenda must be distributed **AT LEAST** 24 hours prior.

**BARRE UNIFIED UNION SCHOOL DISTRICT
REGULAR BOARD MEETING**

Spaulding High School Library and Via Video Conference – Google Meet
May 10, 2023 - 6:00 p.m.

MINUTES

BOARD MEMBERS PRESENT:

Giuliano Cecchinelli, II (BC) – Chair
Chris Parker (BT) – Vice Chair – joined at 7:27 p.m.
Paul Malone (BT) - Clerk
Michael Boutin (BC)
Nancy Leclerc (At-Large)
Ben Moore (BC)
Terry Reil (BT)
Sonya Spaulding (BC)

BOARD MEMBERS ABSENT:

Emily Reynolds (BT)

ADMINISTRATORS PRESENT:

Chris Hennessey, Superintendent
Jamie Evans, Facilities Director
Carol Marold, Director of Human Resources

GUESTS PRESENT:

Dave Delcore – Times Argus	Michael Gilbar	Sarah Helman	Josh Howard	Prudence Krasofski
Patrick Leene	Karen Moran	Brody Priddy	Megan Spaulding	Michael Titus
Jan Trepanier	Pierre Trepanier	Rachel Van Vliet		

1. Call to Order

The Chair, Mr. Cecchinelli, called the Wednesday, May 10, 2023, Regular meeting to order at 6:00 p.m., which was held at the Spaulding High School Library and via video conference.

2. Pledge and Mindfulness Moment

The Board recited the Pledge of Allegiance. The Board held a Mindfulness Moment.

3. Additions and/or Deletions to the Agenda

Add 6.7 BCEMS Roof Project
Add 6.8 First Reading Teaching About Controversial and Sensitive Issues Policy (D40)
Add 7.7 Salary Metric

On a motion by Mr. Reil, seconded by Mrs. Spaulding, the Board unanimously voted to approve the Agenda as amended. Ms. Parker was not present for the vote.

4. Public Comment for Items Not on the Agenda

4.1 Public Comment

Community members voiced disappointment in the time/effort/money that the District utilized to promote the most recent budget, noting that much less promotion was given to the first budget. Additional community input included a request for the District to ‘put its money where its mouth is’ and that the Board should hold the District accountable to put the money where it was requested (after school program, music, middle school sports, marked improvement in student test scores, etc.). Concern was voiced that as teacher negotiations are still underway, the voter approved budget will not be nearly enough and will negatively impact students and programs.

4.2 Student Voice

None.

5. Consent Agenda

5.1 Approval of Minutes – March 9, 2023 Reorganizational Meeting

On a motion by Mr. Boutin, seconded by Mr. Malone, the Board unanimously voted to approve the Minutes of the March 9, 2023 Reorganizational Meeting. Ms. Parker was not present for the vote.

5.2 Approval of Minutes – March 23, 2023 Regular Meeting

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve as amended, the Minutes of the March 23, 2023 Regular Meeting. Ms. Parker was not present for the vote.

5.3 Approval of Minutes – March 30, 2023 Special Meeting

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve the Minutes of the March 30, 2023 Special Meeting. Ms. Parker was not present for the vote.

5.4 Approval of Minutes – April 12, 2023 Board Retreat

Mr. Cecchinelli advised that he took notes for this meeting, but is looking for Board Members to provide additional information relating to motions. Once information is received, draft minutes will be updated and minutes will be presented for approval at a future meeting.

6. Current Business

6.1 New Hires

The resumes and BUUSD Notification of Employment Status Forms for James Norby (BTMES 4th Grade Math/Science), Monika Norby (BTMES Elementary Special Educator), Andrew Jaromin (BTMES 5th Grade), Casey Grimes (BTMES 3rd – 5th PE), Alexandra Jackson (BTMES 6th grade), Harley Reyome (BCEMS Middle School Special Educator), Jennifer Kelley BTMES (School Nurse), Alek Fleury (SHS English), Ryan Fiske (SHS Science), Melissa Greenwood (BCEMS Assistant Principal), Laurie Smith (BCEMS SPED Case Manager), Hope Sornborger (SHS Math Teacher), Savannah Covey (BCEMS School Nurse), Austin Scatena (SHS Lifeskills Special Educator), Brandi Dewey (SEA English Teacher), Twila Chafai (SHS Science Teacher), Briannon Jarrell (BTMES 7th Grade Social Studies), Gavin Koehler (SHS Math Teacher), Eric Ray (BTMES Music Teacher), and Krystal Doney (BTMES Elementary Special Educator) were distributed.

Mr. Hennessey provided an overview of the candidates, and answered questions from the Board.

Brief discussion was held and it was agreed to hold additional discussion of one candidate (Melissa Greenwood) in Executive Session.

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve the hiring of the slate of candidates, with the exception of Melissa Greenwood. Approved candidates; James Norby, Monika Norby, Andrew Jaromin, Casey Grimes, Alexandra Jackson, Harley Reyome, Jennifer Kelley, Alek Fleury, Ryan Fiske, Laurie Smith, Hope Sornborger, Savannah Covey, Austin Scatena, Brandi Dewey, Twila Chafai, Briannon Jarrell, Gavin Koehler, Eric Ray, and Krystal Doney. Ms. Parker was not present for the vote.

Mr. Boutin moved to approve the hiring of Melissa Greenwood. Mr. Malone seconded the motion.

Discussion was held regarding changes to Administrator roles at the schools. Brief discussion was held regarding the Board's responsibility for performing its due diligence when reviewing/approving candidates proposed for hire, and which administrative positions the Board usually interviews. After discussion, it was agreed to discuss the candidate for BCEMS Assistant Principal in Executive Session.

Mr. Boutin withdrew the motion.

6.2 Warrant Approvals (03/30/23, 04/05/23, 04/13/23, 04/20/20, 04/27/23, and 05/04/23)

Accounts Payable Warrants for the listed dates were distributed.

On a motion by Mrs. Spaulding, seconded by Mrs. Leclerc, the Board unanimously voted to approve the Accounts Payable Warrants for 03/30/23, 04/05/23, 04/13/23, 04/20/20, 04/27/23, and 05/04/23. Ms. Parker was not present for the vote.

6.3 First Reading Personnel Recruitment, Selection, Appointment, and Background Checks Policy (B20) / Procedure for Review (B20-P)

A copy of the policy was distributed. A copy of the procedure was distributed.

Mr. Hennessey advised regarding the policy, and the Committee's recommendation to include the 'optional' section at the bottom of the policy. It was also noted that sections of the policy have been removed from the policy and put in a newly created procedure document (B20-P).

Mr. Boutin moved that the Board approve the First Reading of the Personnel Recruitment, Selection, Appointment, and Background Checks Policy (B20), without the optional section, which says The BUUSD will ensure that employees receive training in non-discrimination, bias, and anti-racism as part of the BUUSD onboarding process.

Mr. Malone seconded the motion.

Discussion ensued, including acknowledgement that the Policy Committee spent a significant amount of time on this policy, confirmation that the Board does not need to approve the procedure, Mr. Boutin's concern regarding the 'anti-racism' clause, possible assumptions that may be being made relating to training, availability of training materials (for viewing by the Board), and the definition of 'reasonable effort' (relating to recruitment of employees).

On a motion by Mr. Boutin, seconded by Mr. Malone, the Board voted 4 to 2 to approve the First Reading of the Personnel Recruitment, Selection, Appointment, and Background Checks Policy (B20), without the optional section, which says The BUUSD will ensure that employees receive training in non-discrimination, bias, and anti-racism as part of the BUUSD onboarding process.

Mr. Boutin, Mrs. Leclerc, Mr. Malone, and Mr. Reil voted for the motion.

Mr. Moore and Mrs. Spaulding voted against the motion.

Ms. Parker was not present for the vote.

6.4 FY24 School Calendar

A copy of the Regional Calendar for BUUSD 2023 – 2024) (dated 04/07/23 Final Draft), was distributed.

Mr. Hennessey provided a brief overview, advising that all efforts are made to see that the calendar is coordinated throughout the region. Mr. Reil suggested that the calendar be 'plotted' against the current Board/Committee meeting schedule, in an effort to improve planning and limit circumstances when the Board or Committees do not meet for a significant length of time.

6.5 Resignation Letters Discussion

Lengthy discussion was held, including discussion of; the current practice (resignation letters are not presented to the Board), the past practice (resignation letters were submitted to the Board), privacy concerns, exit surveys, a suggestion that employees be provided with an option to submit their letters to the Board, possible assumptions that are being made regarding resignation letters, the option given to employees to share their exit interviews with the Board, that 'patterns' or 'consistently reported areas of concern' will be shared with the Board, the possibility of seeking an opinion from legal counsel, and the 'blind' / aggregated exit interview data that was presented to the Board last year.

6.6 Procedures Discussion

A copy of the BUUSD Policy Manual Index (dated 05/02/23) was distributed.

Brief discussion was held and the Board was advised regarding the 'live' document included in the packet (that identifies which policies have procedures).

6.7 BCEMS Roof Project

A document titled BCEMS Roof Project, Summer '23, was distributed.

Mr. Evans provided an overview of the bid document included in the packet, including the process used to solicit bids, and the options included in the bid 'break down'. Mr. Evans provided an overview of the work that would be performed in the different sections (options) included in the bid packet, and advised that the low bidder was DAYCO, INC, a contractor the District has worked successfully with in the past. Mr. Evans queried the Board regarding whether to contract for the 'base bid' work only, or to authorize additional work. Currently \$350,000 of Capital Improvement funds has been 'reserved' for BCEMS roof work (per voters). The cost is currently \$388,500 for roof work that was postponed from the summer of 2022 (due to unavailability of materials). The Board held discussion regarding the various options for work to be performed in the summer of 2023 and how work could/would be performed/financed in the future, as well as the benefit of including all roofing work in the 5-Year Plan. Mr. Evans advised that 'hard numbers' cannot be added to the 5-Year Plan until bids are received. Mr. Evans believes that roofing costs will continue to increase in future years. Mr. Evans would like to complete as much roofing work as possible every year. In response to a query, Mr. Evans advised that if the Board wants to proceed with work on the additional sections, the work could all be completed this summer. Summer School is being held at BTMES this year. In response to a query, Mr. Evans advised that the Business Manager will need to be consulted regarding the funding source for the additional \$38,500 (the amount of the bid that exceeds the amount of voter approved funding). Additional discussion was held regarding the balance of the Capital Improvement Fund, and other possible projects that may need to be funded from the Capital Improvement Fund or by other methods (including loans) including but not limited to; legally required Storm Water Run-off mitigation, ventilation, and parking lots.

On a motion by Mr. Reil, seconded by Mrs. Leclerc, the Board unanimously voted to enter into a contract with DAYCO, INC. for \$388,500 of roofing at BCEMS.

6.8 First Reading Teaching About Controversial and Sensitive Issues Policy (D40)

A copy of the policy was distributed.

Mr. Hennessey and Ms. Parker provided an overview of the policy as discussed at the Policy Committee meeting. It was noted that the words "master agreement" be changed to "Collective Bargaining Agreement".

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve as amended, the First Reading of the Teaching About Controversial and Sensitive Issues Policy (D40).

7. Old Business

7.1 Second and Final Reading Board Meetings, Agenda Preparation and Distribution Policy (A20)

Copies of policies referenced under Agenda Items 7.1 through 7.6 were distributed.

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve the Second and Final Reading of the Board Meetings, Agenda Preparation and Distribution Policy (A20), and agreed to adopt said policy.

7.2 Second and Final Reading Student Athletics, Clubs, and Activities Policy (C22)

Brief discussion was held regarding Mr. Boutin's concern that there be parental notification for all clubs and activities, not just those that require parental permission.

Mr. Malone called the question. There was no second.

Mr. Cecchinelli confirmed that no Board Members wished to contribute further to the discussion.

On a motion by Mrs. Spaulding, seconded by Mr. Moore, the Board voted 5 to 2 to approve the Second and Final Reading of the Student Athletics, Clubs, and Activities Policy (C22), and agreed to adopt said policy.

Mrs. Leclerc, Mr. Malone, Mr. Moore, Ms. Parker, and Mrs. Spaulding voted for the motion.

Mr. Boutin and Mr. Reil voted against the motion.

7.3 Rescind Student Clubs and Activities Policy (C23) and Interscholastic Sports Policy (C24)

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to rescind the Student Clubs and Activities Policy (C23) and the Interscholastic Sports Policy (C24)

7.4 Second and Final Reading English Learners Policy (C4)

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board voted 6 to 1 to approve the Second and Final Reading of the English Learners Policy (C4), and agreed to adopt said policy.

Mr. Boutin, Mrs. Leclerc, Mr. Malone, Mr. Moore, Ms. Parker, and Mrs. Spaulding voted for the motion.

Mr. Reil voted against the motion.

7.5 Second and Final Reading Selection of Instructional Materials Policy (D23)

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to approve the Second and Final Reading of the Selection of Instructional Materials Policy (D23), and agreed to adopt said policy.

7.6 Rescind Selection of Instructional Materials Policy (D32)

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to rescind the Selection of Instructional Materials Policy (D32).

The Board recessed at 8:04 p.m. and reconvened at 8:10 p.m.

7.7 Salary Metric

Lengthy discussion was held, including; historical information pertaining to the creation of a salary metric, attempts to rectify disparities in salaries, issues and unfairness caused by hiring of new individuals at a higher rate than long-time employees, the financial impact of rectifying salary disparities, hourly employees, non-contracted salaried employees (positions not requiring a license), the issue that the Board has not been voting to approve the salary metric and has not voted to approve contracts that have been signed by the Chair without Board approval. Mr. Malone reiterated that the reason he asked for this agenda item is not to discuss the actual salary amounts on the metric, but rather to bring to the Board and Superintendent's attention that the salary metric needs to be approved by the Board and thus far, has not been approved. Mr. Malone advised that the Superintendent should be making salary recommendations, but then the Board is responsible for voting to approve salary amounts so that the Superintendent and Board Chair have the authority to legally sign contracts. Mr. Malone believes the statute is quite clear that contracts (including salary) need to be approved by the Board. Mr. Hennessey believes there was a conflict in how statute was being interpreted. Mr. Malone advised regarding the previous Superintendent's practice to present proposed salaries in Executive Session, and then have those salaries voted on in open session. It was noted that new administrative positions have also required Board approval. Mr. Cecchinelli plans to add the Salary Metric to a future agenda for action.

8. Other Business/Round Table

Mrs. Leclerc had requested a summary of the French Classes' trip to Canada. Mr. Hennessey advised that this would be included in the May SHS Board Report. Mrs. Leclerc voiced concern that teachers have been naming specific Board Members and advising students that those Board Members do not support teachers. Mrs. Leclerc clarified that she supports teachers 100% and feels it's wrong for

students to be told otherwise based on her recommendations during budget development. Mrs. Leclerc voiced concern that some of the board and committee agenda packets have been disorganized and/or missing information.

Mr. Reil advised that he believes going seven weeks between board meetings is too long, and that if there is going to be a long delay between board meetings, perhaps the Board should consider changing the approval time for new candidates from 2 days, to a week.

The Superintendent and Board Members thanked the community for their support in passing the budget.

Mrs. Spaulding expressed gratitude to teachers and staff.

Mr. Moore suggested that the Board discuss restructuring committee meetings.

Mr. Hennessey thanked the Board for supporting teachers and staff during this 'Teacher Appreciation Week'. Mr. Hennessey advised regarding past and future Teacher Appreciation Breakfasts.

9. Future Agenda Items

May Agenda:

- Salary Metric
- Special Education Rule Changes (Parking Lot Item D)

Add to Parking Lot:

- 'Action Memos' (summary of the agenda item and the motion staff wants).
- Explanation from AOE on the Cost Per-Pupil Formula
- Curriculum Committee Discussion
- VSBA and/or Legal Counsel Presentation and Question/Answer Session (Re: Open Meeting Law, Roles/Responsibilities, Code of Ethics, and Committees)

Remove From Parking Lot:

B. Hiring Committee for BCEMS Principal Position

10. Next Meeting Date

Wednesday, May 24, 2023 at 6:00 p.m. in the Spaulding High School Library and via Video Conference (Google Meet).

Wednesday, June 14, 2023 at 6:00 p.m. in the Spaulding High School Library and via Video Conference (Google Meet).

11. Executive Session as Needed

11.1 Administrator Contracts

11.2 Personnel Matter

Items proposed for discussion in Executive Session include Administrator Contracts and a Personnel Matter.

On a motion by Mr. Malone, seconded by Mrs. Spaulding, the Board unanimously agreed to find that premature general public knowledge of the items proposed for discussion, specifically Administrator Contracts, would clearly place the Barre Unified Union School District at a substantial disadvantage should the discussion be public.

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to enter into Executive Session, with Mr. Hennessey and Mrs. Marold in attendance, at 8:52 p.m. under the provisions of 1 VSA section 313 to discuss the items proposed for discussion.

The remaining information was provided by the Board Clerk.

On a motion by Mr. Boutin, seconded by Mrs. Spaulding the Board unanimously voted to exit Executive Session at 9:43 p.m.

On a motion by Mr. Boutin, seconded by Mrs. Spaulding the Board unanimously voted to hire Melissa Greenwood for the position of Assistant Principal at BCEMS

12. Adjournment

On a motion by Mr. Boutin, seconded by Mrs. Spaulding, the Board unanimously voted to adjourn at 9:45 p.m.

Respectfully submitted,
Andrea Poulin

A GUIDE TO OPEN MEETINGS

Revised January 2019

Published By:

Vermont Secretary of State
128 State Street
Montpelier, VT 05633



A Message from the Secretary

January 2019



Living in Vermont, we expect openness in government. Any day the legislature is in session we can sit down in either chamber, or in the various committee rooms, and see laws being made. Any day we can walk into the county courthouse and attend any hearing or trial. We can watch the arguments being given before the Vermont Supreme Court. We can attend hearings and meetings of the local zoning board, and those of any other public body, and we can expect to see meeting notices in the newspaper or on public bulletin boards. We can review and copy public documents in state and local offices.

One important foundation of openness in Vermont is our “Right to Know” laws, including those related to open meetings and public records. Together they are the most important public laws we have, because they allow us direct access to the decisions that affect us. A full understanding of these laws makes everyone a better citizen and makes for a more responsive and accountable government. **This guide is an introduction to the open meeting law.**

You can read the open meeting law for yourself – it is found in every town clerk’s office, in Title 1 of the Vermont Statutes Annotated. Title 1 is the first volume of a set of green law books that includes all the statutory laws of the state. Look for sections 310 through 314, and make sure you check the pocket part in the back to see if there is newer law to review for each section.

You can also read the open meeting law online at the Vermont State Legislature’s website:
<http://legislature.vermont.gov/statutes/chapter/01/005>.

Every few years, the Legislature may make a few more changes to the law. Be sure to also take a look at Acts No. 95 and 166 of 2018, which contain the latest amendments:

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT095/ACT095%20As%20Enacted.pdf>;

<https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT166/ACT166%20As%20Enacted.pdf>.

We hope this publication will be of use to all Vermonters, both those we trust to serve on our state and local boards and those who wish to stay informed and participate in the decisions being made. Please let me know if there are ways we can improve future editions.

A handwritten signature in black ink that reads "James C. Condos".

James C. Condos
Vermont Secretary of State

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Why do we have an open meeting law?

Vermont's open meeting law requires all meetings of public bodies to be open to the public at all times, unless a specific exception applies. 1 V.S.A. § 312(a)(1). The purpose of the law is to promote transparency, accountability, and better decision-making in government.

In general, the law requires public bodies to:

- Provide advance public notice of meetings, including meeting agendas.
- Discuss all business and take all actions in open meeting, unless an exception in statute applies.
- Allow members of the public to attend and participate in meetings.
- Take meeting minutes and make them available to the public.

To whom does the open meeting law apply?

The open meeting law applies to “public bodies” of the state and its municipalities. “Public body” includes any state or municipal board, council, or commission, as well as any committee or subcommittee of these bodies. 1 V.S.A. § 310(4). This means the open meeting law governs the meetings of local selectboards and school boards, planning commissions and development review boards, boards of civil authority and of abatement, auditors and listers, municipal public library trustees, cemetery and recreation commissions, and various other groups referenced in state statute or by a town's charter. It also applies to the meetings of any committee or subcommittee that is created or empowered by a public body to do its work, no matter its size.

Although the law generally applies to all state and municipal public bodies, it does not apply to individual officials. There is no public right to sit in a public official's office and watch him or her conduct town business, or to oversee the work assignments of staff or other personnel. 1 V.S.A. § 312(g).

The open meeting law does not generally apply to nonprofit corporations, although a particular nonprofit may be required to comply with the law through language found elsewhere in statute, in its corporate governance documents, or in agreements with funding sources. For example, a nonprofit's articles of incorporation could designate it as an instrumentality or authority of the state (potentially bringing it within the definition of a “public body” in 1 V.S.A. § 310(4)), or a grant or contract could require open meeting law compliance as a condition of funding. Otherwise, you might look to a nonprofit's articles of incorporation or bylaws for guidance on its meeting procedures and participation requirements.

When does the open meeting law apply?

A board or other public body must comply with the open meeting law any time a “quorum” holds a “meeting,” that is, gathers to discuss its business or to take action. 1 V.S.A. § 310(3)(A).

“Business of the public body” is defined as “the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.” 1 V.S.A. § 310(1).

A quorum is a majority of the members of a public body. Quorum is calculated by counting the number of total positions on a board or committee, regardless of any vacancies or recusals. For a three-member board, the quorum is two; for a five-member board, the quorum is three.

A meeting is a gathering of a quorum of a public body for the purpose of discussing the body’s business or taking action. 1 V.S.A. § 310(3)(A). A “meeting” under the open meeting law can occur regardless of the members’ physical location; there are no exceptions for phone conversations, work sessions, or retreats. This means that if a majority of a board find themselves together at a social function, they must take care not to discuss the business of the board.

A “meeting” may also come together over a period of time. If a discussion about town business occurs over the course of a few days or a week (for example, via a string of emails or Facebook posts), it may well amount to a “meeting” that triggers the open meeting law’s requirements. See page ten for more information on electronic communication and social media.

Exceptions

For the purposes of the open meeting law, “meeting” does not include the following:

- Any communication between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that no other business of the public body is discussed or conducted. 1 V.S.A. § 310(3)(B).
- Occasions when a quorum of a public body attends social gatherings, conventions, training programs, press conferences, media events, or otherwise gathers, provided that the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time. 1 V.S.A. § 310(3)(C).
- A gathering of a quorum of a public body at a duly warned meeting of another public body, provided that the attending public body does not take action on its business. 1 V.S.A. § 310(3)(D).
- Site inspections for tax assessments or abatements. 1 V.S.A. § 312(g).
- Routine, day-to-day administrative matters that do not require action by the public body, so long as no money is appropriated, spent, or encumbered. 1 V.S.A. § 312(g).
- As decided by the Vermont Supreme Court, bilateral collective bargaining negotiations between a school board negotiating committee and a labor union. *Negotiations Committee of Caledonia Central Supervisory Union v. Caledonia Central Education Association*, 2018 VT 18.

Serial communications

The open meeting law does not explicitly address serial communications, also known as “serial meetings,” “walking quorums,” or “daisy-chain communications.” We generally recommend that board members avoid engaging in successive, interrelated private conversations about the board’s business that, taken together, involve a quorum. Because the law seems to allow for “gathering” over time, these types of communications can be risky, especially if used to develop consensus. Even with the best of intentions, their use outside a duly warned meeting may obscure the board’s decision-making process and thus interfere with the public’s ability to participate and to hold government officials accountable.

Of course, we understand that individual board members and administrators need to work between meetings and to educate themselves on matters under their jurisdiction. Whether a particular set of communications amounts to inappropriate circumvention of the open meeting law’s requirements is, in the end, a question of fact best posed to the public body’s own attorney, or the courts.

How does a board provide notice of its meetings?

The open meeting law recognizes three types of meetings: regular, special, and emergency. Depending on the type of meeting, a board or other public body may need to provide advance notice by “publicly announcing” the meeting, by posting public notices, or both. Public bodies also usually need to create an agenda in advance of each meeting and make it available to the public. 1 V.S.A. § 312(d)(1), (2). See below for more information on agenda requirements.

Regular meetings

A public body schedules regular meetings by adopting a resolution setting the time and place of the meetings. This information must be made available to the public on request. 1 V.S.A. § 312(c)(1). When a board meets regularly on, for example, the first Tuesday of every month, the law does not require additional public announcement or posting of these meetings so long as the time and place has been clearly designated by resolution or other determining authority (statute, charter, regulation, ordinance, or bylaw). Public bodies must, however, create and make available meeting agendas for regular meetings. 1 V.S.A. § 312(d)(1), (2).

Special meetings

A special meeting occurs when a board meets at a time or place outside of its regular meeting schedule. At least 24 hours before each special meeting, a public body must publicly announce it by giving notice of the meeting’s time, place, and purpose to a newspaper or radio station serving the area, as well as to any person who has requested in writing to be notified of special meetings. 1 V.S.A. §§ 310(5), 312(c)(2), (5). Municipal public bodies must also post a notice of each

special meeting in or near the town office and in at least two other designated public places in the municipality. All public bodies must give oral or written notice to each member (unless a member has waived this notice). 1 V.S.A. § 312(c)(2). In addition, agendas must be created and made available for special meetings. 1 V.S.A. § 312(d)(1), (2).

Emergency meetings

An emergency meeting may be held in the event of a true emergency, that is, “only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention.” Emergency meetings do not require public announcement, posting of notices, or 24-hour notice to members, so long as some public notice is given as soon as possible before the meeting. 1 V.S.A. § 312(c)(3). Note that an emergency meeting should not be used if the public body is able to comply with the 24-hour notice requirements for special meetings. There is no agenda requirement for emergency meetings.

Notice when adjourning or continuing a meeting

When a meeting is to be continued to a new time or place, a public body should announce the new time and place before adjournment. Otherwise, the subsequent meeting is considered a new meeting that must be duly-warned as above. 1 V.S.A. § 312(c)(4).

What are the requirements for meeting agendas?

At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda must be posted to a website that the public body maintains or designates, if one exists. In addition, and within the same timeframes, a municipal public body must post the agenda in or near the municipal office and in at least two other designated public places in the municipality. A meeting agenda must be made available to a person prior to the meeting upon specific request. 1 V.S.A. § 312(d)(1), (2). Note that there is no agenda requirement for emergency meetings.

The open meeting law does not define “agenda” or specify the information an agenda must contain, except to require that the agenda designate a physical location where a member of the public can attend and participate in a meeting if a quorum or more members of a public body are attending remotely. 1 V.S.A. § 312(a)(2)(D). In keeping with the law’s intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting.

If a public body wishes to add or delete an item from an agenda after it has been posted, it may only do so as the first act of business at the meeting. 1 V.S.A. § 312(d)(3)(A). We recommend that last-minute agenda items, especially those requiring board action, be added at a meeting only in an emergency. In other situations, a better practice is to handle items that were not included on

the posted agenda at the next regular meeting or, if necessary, to call a special meeting so that the public gets notice of the item and has an opportunity to attend and participate. Other adjustments to the agenda, such as reordering agenda items, may be made at any time during a meeting. 1 V.S.A. § 312(d)(3)(B).

What are the requirements for minutes?

Public bodies must take minutes of their meetings. Minutes are the permanent record of the formal actions of the public body and play an important role in recording the history of the public body's business.

The open meeting law requires that minutes “give a true indication of the business of the meeting,” covering all topics that arise. At minimum, minutes must include: the names of all members of the public body who are present at the meeting; the names of all other active participants; all motions, proposals, and resolutions made, and their dispositions; and the results of all votes, with a record of individual votes if roll call is taken. 1 V.S.A. § 312(b)(1).

Minutes are public records and must be made available for public inspection and copying after five calendar days from the date of the meeting. If a public body maintains or designates a website, minutes must also be posted to that website no later than five calendar days after the meeting. Except for draft minutes replaced with updated minutes, posted minutes must not be removed from the website sooner than one year from the date of the meeting for which they were taken. 1 V.S.A. § 312(b)(2).

When can a board meet privately?

The open meeting law does not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements; clerical work; work assignments of staff or other personnel; or routine, day-to-day administrative matters that do not require action by the public body, so long as no money is appropriated, spent, or encumbered. 1 V.S.A. § 312(g).

In addition, public bodies may meet privately in deliberative session or executive session under certain limited circumstances. 1 V.S.A. §§ 312(e), (f); 313.

Deliberative session

A public body may meet without notice or public attendance when it deliberates on its written decision as part of a quasi-judicial proceeding. A quasi-judicial proceeding is a case in which the legal rights of a party are adjudicated, conducted so that all parties may present evidence and cross-examine witnesses and resulting in an appealable written decision. 1 V.S.A. § 310(6). In this instance, although the hearing itself is open to the public, the deliberations that follow may be held in private, and the written decision that is issued need not be adopted at an open meeting

if it is to be a public record. 1 V.S.A. § 312(e), (f). A deliberative session is not an open meeting and need not be warned.

Executive session

A public body may also enter into executive session, which is a closed portion of a public meeting. To enter executive session, a motion must be made in open session that indicates its reason for doing so, preferably naming the specific provision of Title 1, Section 313 that gives authority. For a municipal body, the motion must get a majority vote of those present to pass. For a state body, a two-thirds affirmative vote is required. 1 V.S.A. § 313(a).

The only permissible reasons for entering executive session are set forth in 1 V.S.A. § 313. One category of permissible reasons requires the public body to make a specific finding that “premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage.” This finding must be made before considering one of the following permissible topics in executive session:

- Contracts. 1 V.S.A. § 313(a)(1)(A).
- Labor relations agreements with employees. 1 V.S.A. § 313(a)(1)(B).
- Arbitration or mediation. 1 V.S.A. § 313(a)(1)(C).
- Grievances, other than tax grievances. 1 V.S.A. § 313(a)(1)(D).
- Pending or probable civil litigation or prosecution, to which the public body is or may be a party. 1 V.S.A. § 313(a)(1)(E).
- Confidential attorney-client communications made for the purpose of providing professional legal services. 1 V.S.A. § 313(a)(1)(F).

Other topics a public body may consider in executive session are:

- The negotiating or securing of real estate purchase or lease options. 1 V.S.A. § 313(a)(2).
- The appointment, employment, or evaluation of a public officer or employee, provided that a public body must make the final hiring or appointment decision, and explain its reasons for the decision, in open meeting. 1 V.S.A. § 313(a)(3).
- A disciplinary or dismissal action against a public officer or employee, although this does not impair the right of the officer or employee to a public hearing if formal charges are brought. 1 V.S.A. § 313(a)(4).
- A clear and imminent peril to the public safety. 1 V.S.A. § 313(a)(5).
- Exempt records under Vermont’s public records act, provided that this exemption does not by itself permit discussion in executive session of the general subject to which the exempt record pertains. 1 V.S.A. § 313(a)(6).
- Student academic records, suspension, or discipline. 1 V.S.A. § 313(a)(7).
- Testimony from a person in a Parole Board parole proceeding, if public disclosure of the person’s identity could result in physical or other harm to him or her. 1 V.S.A. § 313(a)(8).

- Information relating to a pharmaceutical rebate or to supplemental rebate programs that is protected from disclosure either by federal law or by Medicaid terms and conditions, 1 V.S.A. § 313(a)(9).
- Security or emergency response measures, if disclosure could jeopardize public safety. 1 V.S.A. § 313(a)(10).

A board may choose to invite into executive session any of the following: legal counsel; staff; clerical assistants; and persons who are subjects of the discussion or whose information is needed. 1 V.S.A. § 313(b).

Once in executive session, no formal action may be taken except for actions related to securing a real estate purchase option. 1 V.S.A. § 313(a). (This differs from a deliberative session, in which decisions may be made so long as a written decision is issued that is a public record.) In all other instances, appropriate topics may be discussed in executive session, but ultimate action must be taken by motion and vote in open session.

Abusing the law of executive session is offensive to the purpose of open meetings. Boards should close their meetings rarely, and then only for legitimate purposes. Some boards go beyond the requirements of the open meeting law and do everything in public (except when acting in a quasi-judicial capacity, where constitutional due process may require private deliberations). The risks involved in letting everyone know your business are not small. Nonetheless, there is no penalty for extra openness and a high return on the investment if the public understands you have nothing to hide.

Do board members need to be physically present for meetings?

Not necessarily. As long as certain requirements are met, one or more members of a public body may fully participate in discussing the body's business and may vote at a regular, special, or emergency meeting by electronic or other means without being physically present at the designated meeting location. 1 V.S.A. § 312(a)(2).

If a quorum or more of members will be participating in a meeting electronically, the meeting agenda must designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the body, or at least one staff member or other designee, must be physically present at this location. 1 V.S.A. § 312(a)(2).

Any member who participates in a meeting remotely must be able to hear and be heard throughout the meeting. 1 V.S.A. § 312(a)(2). This means that participation by speakerphone or Skype, for example, can be appropriate, while participation by email is not. Each member who participates remotely must identify himself or herself when the meeting is convened. Any vote that is not unanimous must be taken by roll call. 1 V.S.A. § 312(a)(2).

Does the open meeting law permit board members to communicate with each other electronically or through use of social media?

Under certain circumstances. The open meeting law clearly authorizes members of a public body to attend and participate in a duly-warned meeting through electronic means, so long as each member can hear and be heard by those persons attending at the designated physical location. 1 V.S.A. § 312(a)(2). The law also specifically permits use of group email or other electronic communication to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting. 1 V.S.A. § 310(3)(B). (Note that email correspondence, and other electronic communication that results in written or recorded information, is subject to Vermont's Public Records Act, and so must generally be made available to the public for inspection and copying upon request. See 1 V.S.A. §§ 315–320.)

Beyond these provisions, the open meeting law does not explicitly address appropriate use of electronic communications and social media by members of public bodies. Indeed, most of the open meeting statutes were drafted before the dominance of social media and the frequency of electronic communication in the various forms we see today. Here are some of our thoughts on using these tools in light of the open meeting law's language, its purpose, and the court cases interpreting it. We also strongly recommend that public bodies consult their own legal counsel for advice.

Group emails

Group emails do not necessarily violate the open meeting law, but it is best to proceed with caution. It is permissible to use group email to schedule a meeting, to create an agenda, or to distribute information for discussion at a meeting. 1 V.S.A. § 310(3)(B). It is also permissible to use group email as part of quasi-judicial deliberations, after a public hearing and as part of producing a written decision. 1 V.S.A. § 312(e), (f). Otherwise, group emails should not be used by a quorum of a public body to discuss the body's business. If a quorum of board members are part of the group email, and any dialogue occurs addressing business matters, this discussion is a "meeting" under 1 V.S.A. § 310(3)(A) and the open meeting law's notice and public participation requirements are triggered. Essentially, a business discussion, and therefore a "meeting," can occur as soon as you hit "reply all."

Collective editing of online documents

We recommend that a quorum of a public body should not participate in collectively editing a document outside of a duly-warned public meeting, unless the body is in deliberative session as part of a quasi-judicial proceeding. Collective editing, even if performed by members individually and over time, may well fall within the bounds of a "meeting" under 1 V.S.A. § 310(3)(A) when an exchange of ideas and opinions occurs outside of the public view. This is so even if the work in progress is made public, as the open meeting law requires more in terms of

advance public notice and public participation. See 1 V.S.A. § 312. We cannot assume, for example, that all members of the public will have the skills or means to access a tool such as Google Docs or be able offer their opinions on the views exchanged. In our view, an acceptable alternative is to instead name a point person who collects and compiles each member's comments for later discussion at a duly-warned meeting.

Social media groups

Participation in a Facebook group, Front Porch Forum, or other online group by a quorum of members of a public body raises open meeting law concerns any time the body's business is discussed. This is especially so if membership in the group is "closed" (e.g. only town residents may join), although participation in an entirely "open" group may also be problematic. This could be the case even if most — or even all — of the members of the public body remain passive and do not post about, or respond to posts about, the body's business.

In general, if a quorum of a public body gathers to discuss the body's business, a "meeting" is being held under 1 V.S.A. § 310(3)(A) and the open meeting law's notice and public participation requirements are triggered. To be counted towards a quorum, and to participate in a meeting via electronic means under the open meeting law, an individual member must be able to hear and be heard, but need not necessarily speak. See 1 V.S.A. § 312(a)(2). So, if a quorum of board members have joined a Facebook group, and if a majority of total board members post an exchange of ideas or opinions concerning the board's business, an open meeting law violation may well have occurred. Even if just one board member posts, the passive, non-posting membership of a quorum in an online group where members of the public are discussing the board's business could be considered a "meeting" under a very strict reading of the law.

There are certainly accessibility and transparency benefits to being available to the public via social media sites. Members of public bodies, in remaining mindful of the public's right to know and participate, must nonetheless avoid "gathering to discuss business" at a time and place that has not been announced in advance or is not accessible to all.

Text messaging

We generally recommend that members of a public body refrain from texting each other during an open meeting. Texting between members who are present is not explicitly prohibited by the open meeting law, but we think these types of "shadow conversations" can create an appearance of impropriety, and in some situations might serve to keep information and discussions that inform officials' decision-making from the members of the public attending the meeting. (The same can be said for low-tech versions of texting, like passing notes.) Texts to and from members who are not physically present at the meeting create additional concerns because of the law's requirements for participation in meetings through electronic means. For example, a member who attends a meeting without being physically present must be able to hear and be

heard throughout the meeting. 1 V.S.A. § 312(a)(2)(C). Even if the remote member does not intend to “attend” the meeting for purposes of quorum and voting, we think this type of communication could under some circumstances—where the body’s business is discussed—raise questions about whether an open meeting law violation has occurred.

Texting while inside executive session is also problematic. Attendance in executive session is limited to board members and, in the board’s discretion, staff, clerical assistants, legal counsel, and persons who are subjects of the discussion or whose information is needed. 1 V.S.A. § 313(b). So, conversations by text about the business of the executive session with individuals who are not on this list is inappropriate. Although not explicitly prohibited by the law, members of public bodies should also consider that texting or otherwise conversing with board members absent from the open portion of the meeting (when the motion to enter executive session was made) may, under some circumstances, work to generate public mistrust.

What rights do members of the public have?

Individual members of the public have the right to obtain meeting agendas in advance, to be notified directly of upcoming special meetings, and to view or copy meeting minutes. Agendas of regular or special meetings must be made available to any person prior to the meeting upon request. 1 V.S.A. § 312(d). In addition, anyone can request in writing that a public body notify him or her of the body’s special meetings. The request applies to the calendar year in which it is made, except that requests made in December apply also to the following year. 1 V.S.A. § 312(c)(5). Meeting minutes must (either in draft or final form) be made available for inspection or copying no more than five calendar days from the date of any meeting. 1 V.S.A. § 312(b)(2).

Members of the public have the right to attend public meetings. 1 V.S.A. § 312(a)(1). Meetings of public bodies are subject to the public accommodation requirements detailed in Vermont’s anti-discrimination statutes. 1 V.S.A. § 312(a)(1); see also 9 V.S.A. chapter 139. We understand the open meeting law to permit members of the public to record or film public meetings, so long as this is not done in a manner that disrupts the meeting. If a board decides to meet in private in executive session, members of the public have the right to know its reason for doing so. 1 V.S.A. § 313(a).

Members of the public also have the right to participate in public meetings. Specifically, public bodies must give members of the public a reasonable opportunity to express their opinions on matters being considered by the body at an open meeting. 1 V.S.A. § 312(h). Many boards allow public comment at the start of the meeting, while others place it as the final agenda item. Some boards allow public comment whenever anyone present has something to add to the discussion. We believe it is a best practice to allow the public to comments on each item as the board proceeds through the agenda. The public comment period, however, is not a free-for-all; the board chair may establish reasonable rules to maintain order, and reasonable limitations on the amount of time for each speaker are not unusual or improper.

Members of the public have the right to enforce the open meeting law themselves by filing suit in court. 1 V.S.A. § 314. See below for details on filing a complaint with a public body and the court.

What happens if a public body violates the open meeting law?

The following persons can be found guilty of a misdemeanor and fined up to \$500:

- A person who is a member of a public body and who knowingly and intentionally violates the provisions of the open meeting law.
- A person who, on behalf or at the behest of a member of a public body, knowingly and intentionally violates the provisions of the open meeting law.
- A person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting. 1 V.S.A. § 314(a).

In addition, the Attorney General and any person aggrieved by a violation of the open meeting law has the right to file suit in court, asking for injunctive relief (requiring the board to stop a specified act or behavior) or a declaratory judgment (a binding determination of the parties' rights). Under some circumstances, the court may also hold a public body responsible for the other party's attorney's fees and litigation costs. 1 V.S.A. § 314(b)(1), (d).

How does a member of the public enforce the open meeting law?

If you think that an open meeting law violation has occurred, the first step is to submit a written notice to the public body, alleging a specific violation and requesting a specific cure. Upon receipt of this written notice, the public body must respond publicly within 10 calendar days, either by acknowledging the violation and stating its intent to cure it or by stating its determination that no violation occurred and so no cure is necessary. Failure to publicly respond is treated as a denial of the violation. 1 V.S.A. § 314(b)(1)–(3).

If the public body acknowledges a violation of the open meeting law, it must cure the violation within 14 calendar days. First, the public body must either ratify, or declare as void, any action that was taken at or resulted from: 1) a meeting that was improperly noticed under 1 V.S.A. § 312(c) (public announcement and posting of regular, special, and emergency meetings); 2) a meeting that a person or the public was wrongfully excluded from attending; or 3) an executive session, or a portion of an executive session, that was not authorized by 1 V.S.A. § 313(a)(1)–(10). Second, the public body must adopt specific measures that actually prevent future violations. 1 V.S.A. § 314(b)(4).

If the public body denies the violation or fails to cure an acknowledged violation in a timely manner, you can file suit against the public body in the Civil Division of the Superior Court in the county where the alleged violation took place. The suit must be brought within one year after

the meeting at which the violation occurred or to which the violation relates. The court will then decide whether a violation occurred, whether a declaratory judgment or injunctive relief is appropriate, and whether circumstances require the public body to pay attorney's fees and litigation costs. 1 V.S.A. § 314(c), (d).

Where can I go to ask a question?

Here at the Secretary of State's Office, it is our pleasure to help towns and citizens engage in respectful, open conversations around the sometimes difficult business of dealing with local government matters. Even though emotions may run high and opinions are deeply held, we are all neighbors and Vermonters, in the end.

We are happy to assist anyone who calls by pointing out the relevant portions of the law and by providing these publications as guidance. Please feel free to call us with your questions. However, understand that we cannot give legal advice and always recommend you consult your own attorney. If you hold a position in municipal government, you may contact the Vermont League of Cities and Towns' Municipal Assistance Center at (802) 229-9111 or info@vlct.org.

Contact the Secretary of State's Office

Jenny Prosser
General Counsel & Director of Municipal Assistance
(802) 828-1027
jenny.prosser@sec.state.vt.us

Chris Winters
Deputy Secretary of State
(802) 828-2124
chris.winters@sec.state.vt.us





Michael Boutin <mboutin@buusd.org>

Legal Opinion

36 messages

Michael Boutin <mboutin@buusd.org>

Thu, Mar 28, 2024 at 1:53 PM

To: PLynn@lynnlawvt.com

Cc: Chris Hennessey <chennbsu@buusd.org>, Lisa Perreault <lperrbsu@buusd.org>

Pietro,

Please see attend screenshot with the motion requesting legal review of the action memo. Please make sure it is legal and please send an invoice for the time spent in researching this and send it to me, Chris, and Lisa. Thank you.

2 attachments

W. Malone sends a motion to Barre legal counsel review the legality of the action memo, recorded by W. Roll, Board voted 3 to 2 for motion to seek legal counsel.
Mr. Boutin, Mr. Parker, Mr. Roll, Mr. Watson, and Mr. Trickett voted for the motion.
Mrs. Piquet, Mr. Reynolds and Mrs. Spaulding voted against the motion.
7:23:10 PM Update

Screenshot_20240328_134551_Samsung Notes.jpg
50K**BUUSD Action Item Briefing Memo Board- Template.pdf**
19K

Pietro Lynn <PLynn@lynnlawvt.com>

Fri, Mar 29, 2024 at 8:32 AM

To: Michael Boutin <mboutin@buusd.org>

Cc: Chris Hennessey <chennbsu@buusd.org>, Lisa Perrault <lperrbsu@buusd.org>

Michael,

Thank you for sending this. Could you give me a bit more context? What is the document supposed to do? When is it used? Are there some concerns?

Glad to help. Just want to make sure I do it right.

Pietro

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>

Fri, Mar 29, 2024 at 8:56 AM

To: Pietro Lynn <PLynn@lynnlawvt.com>

Cc: Chris Hennessey <chennbsu@buusd.org>, Lisa Perrault <lperrbsu@buusd.org>

Pietro,

The context is the board voted to require memos to put things on the agenda. 3 members voted no and then asked for a legal opinion. It is designed to give information and suggest an outcome. I hope that helps.

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>

Fri, Mar 29, 2024 at 9:10 AM

To: Pietro Lynn <PLynn@lynnlawvt.com>

Cc: Chris Hennessey <chennbsu@buusd.org>, Lisa Perrault <lperrbsu@buusd.org>

If possible in your legal opinion to include some statute or court case or whatever you can do.

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: BUUSD Board <buusd-board@buusd.org>

Sun, Mar 31, 2024 at 8:13 PM

Please see email below requesting clarification on the action memo.

I have not received an opinion as of yet.

[Quoted text hidden]

2 attachments

Ms. Mathew made a motion to have legal counsel review the legality of the action memo, recorded by Mr. Reil. Board voted 5-0 to allow the motion to seek legal counsel.
Mr. Boutin, Mr. Parker, Mr. Reil, Mr. Watson, and Mr. Trachsel voted for the motion.
Mrs. Ferguson, Mr. Reynolds and Mr. Spaulding voted against the motion.
7:2 to 1:17 update

Screenshot_20240328_134551_Samsung Notes.jpg
50K

 **BUUSD Action Item Briefing Memo Board- Template.pdf**
19K

Terry Reil <treil@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 9:36 AM

You were at the meeting in which this discussion was had. I am disappointed that you have missed the point I was trying to make and the answers I sought. If you did not recall this discussion, you should have watched the meeting recording to refresh your memory.

Attached below is a clarifying email of the questions I wanted asked of legal counsel sent to the previous board chair on February 15th.

I am very interested in your required board chair training. I am in hopes that in that training you will learn the proper role of a board chair.

Please submit my clarifying questions to counsel along with yours.

Attachment:

Terry Reil <treil@buusd.org>

Thu, Feb 15, 1:02 PM

to Giuliano

If you haven't reached out to PL yet, I would like to make sure you're asking the questions I wanted answered, which are:

Is there any statutory requirement or allowance for such a document or process?

Can a duly elected Board member be denied adding items to an agenda for not utilizing this form?

Since this form and process is clearly not included anywhere in the OML or in Roberts Rules, which we are statutorily required to abide by, does it deem this form and/or process suggested or recommended only?

Thank you,

Terry Reil

BUUSD Board Member for Barre Town

treil@buusd.org

Thank you,

Terry Reil

BUUSD Board Member for Barre Town

treil@buusd.org

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[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 10:27 AM

To: Pietro Lynn <PLynn@lynnlawvt.com>, Chris Hennessey <chennbsu@buusd.org>, Lisa Perreault <lperrbsu@buusd.org>

Terry wanted to provide addition context, please see below. Thank you.

[Quoted text hidden]

--

Michael Boutin
BUUSD School Board Director
5 Hillside Ave
Barre, VT 05641
802-272-2858
[Facebook.com/boutinforbarre](https://www.facebook.com/boutinforbarre)

CONFIDENTIAL COMMUNICATION

The information contained in this communication, including any attachments, maybe confidential, constitutes privileged communication, and is intended only for the use of the addressee. This message may not be forwarded without prior consent from the sender. The information in this e-mail may also be protected by the rights afforded under Family Educational Rights and Privacy Act (FERPA) and school district policies. Any unauthorized use, forwarding, distribution, disclosure, printing or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please return the e-mail and delete any copies of this message immediately. Any inadvertent disclosure of this communication shall not compromise the confidential nature of the communication.

Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 10:31 AM

To: Terry Reil <treil@buusd.org>

I have forwarded your clarification to Pietro. Thank you.

[Quoted text hidden]

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>

Mon, Apr 1, 2024 at 10:36 AM

To: Michael Boutin <mboutin@buusd.org>

Michael, In reviewing what you sent to Legal Counsel on your action memo form you did not request what was requested. Let the board know if you need clarification as it was made clear in the recorded meetings and should be reflected in the minutes.

VSA . T16 (568) You introduced your action memo form using the school branding logo and your failed to follow statue. It needs to be legally vetted and until it has been properly approved and meets the VSA rules it needs to be removed from the form.

Nancy

On Sun, Mar 31, 2024 at 8:13 PM Michael Boutin <mboutin@buusd.org> wrote:

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 11:01 AM

I failed to mention please include BUUSD policy F2 on school branding.

Nancy

[Quoted text hidden]

Sonya Spaulding <sspaulding@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>
Cc: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 11:10 AM

Nancy,

As I have asked before, I would appreciate not being blind carbon copied on these emails. If you want to have a full board discussion regarding the blind carbon copy or the clarification regarding the legal opinion, you should create an action memo and we can add it to the agenda and discuss in open meeting.

Please note, I have not blind carbon copied anyone on this email. It is a request between 2 board members and is copying the board chair.

Sonya

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Sonya Spaulding <sspaulding@buusd.org>
Cc: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 11:40 AM

Sonya, I am confused as you have stated previously , you are not replying to BCC, and here you are still replying.

By not including all board members in pertinent communications, we inadvertently compromise the transparency and openness to have an effectively functioning board.

It is imperative that you follow the communication guidelines to uphold transparency and maintain integrity of our board. Just to explain further for your understanding, the guidelines exist to ensure all voices are heard, all relevant information is shared and all decisions are made with the best intentions for our community. This is how we demonstrate our commitment to accountability, fairness and effective governance.

Nancy

[Quoted text hidden]

Sonya Spaulding <sspaulding@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>
Cc: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 11:47 AM

Transparency is having a conversation during an open meeting, not asking questions in emails and blind carbon copying all board members.

There are very specific examples of when email is supposed to be used. I find it ironic that you are citing statute and yet, you continue to break rules around open meeting.

Please stop blind carbon copying me. I do not need to be included in conversations or discussions or questions you are having with the board chair.

Thank you for respecting my request.

Sonya

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Sonya Spaulding <:sspaulding@buusd.org>
Cc: Michael Boutin <mboutin@buusd.org>

Mon, Apr 1, 2024 at 11:55 AM

And you are a VSBA representative!

Nancy
[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Fri, Apr 5, 2024 at 11:29 AM

Gentle reminder the board has not received requested legal opinion regarding action memo form nor the unapproved use of the BUUSD branding on the action memo form.

Respectfully,
Nancy

On Sun, Mar 31, 2024 at 8:13 PM Michael Boutin <mboutin@buusd.org> wrote:
[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Tue, Apr 9, 2024 at 6:49 AM

Please provide the information requested.

Nancy
[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>

Tue, Apr 9, 2024 at 8:06 AM

Nancy, he has not provided one yet.
[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Tue, Apr 9, 2024 at 8:42 AM

Please provide a date of when the board can expect.

Nancy
[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Pietro Lynn <PLynn@lynnlawvt.com>

Tue, Apr 9, 2024 at 10:57 AM

Pietro,

Can you provide an eta on the action memo legal opinion? Also, please send the invoice for the conflict of interest legal opinion and once this on is rendered that invoice as well. Thank you.

-Michael

----- Forwarded message -----
From: **Nancy Leclerc** <nleclerc@buusd.org>

Date: Tue, Apr 9, 2024, 8:42 AM
Subject: Re: Legal Opinion
To: Michael Boutin <mboutin@buusd.org>

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>

Tue, Apr 9, 2024 at 10:59 AM

Nancy,

I assume it is in their queue. I asked for an eta.

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Tue, Apr 9, 2024 at 11:37 AM

I would like to clarify the board will need legal direction on your use of BUUSD branding on your form.

I can formally request at Wednesday meeting.

Thank you,

Nancy

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>

Tue, Apr 9, 2024 at 12:03 PM

Nancy,

Are you going to ask for a legal opinion about whether or not the board can approve the use of a form with the BUUSD branding? Or that a form can have the branding? Or are you saying that the motion to use action memos needed to have an additional approval to use the logo? The memo was provided as a template when it was approved. Do you want another vote on the usage of the forms? Because we can do that.

-Michael

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Tue, Apr 9, 2024 at 12:32 PM

Let's discuss at meeting.

What is the actual question regarding your form you presented to legal council?

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Wed, Apr 10, 2024 at 11:22 AM

Michael, please provide your communication regarding the action memo form with legal counsel surrounding the legal requirement. In addition, a separate issue to be addressed is the use of the BUUSD branding logo on a non BUUSD form.

I hope you can provide this information at tonight's meeting as it was requested back in February and we are now in April. I can at tonight's meeting address the use of BUUSD branding logo and the need to address it legally.

Another option, is you can ask to have this request assigned to the board member who requested it in February and they address it with legal counsel to get direction and clarification.

Once they have received the information requested it can be shared with the board.

Respectfully,
Nancy Leclerc
BUUSD Board of Directors

[Quoted text hidden]

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Thu, Apr 11, 2024 at 8:18 AM

Michael, in thinking about the amount of time that has gone by waiting for legal council response on your actions memo form is concerning.

Have you contacted Pietro Lynn to know when he will have the information?

I hope you are staying on top of this to get the information as voted on.

I can also reach out to outside legal council.

Thank you.

Nancy

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Pietro Lynn <PLynn@lynnlawvt.com>

Thu, Apr 11, 2024 at 10:18 AM

Pietro,

Can you provide an eta on the request regarding the action memo our school board approved for usage.

----- Forwarded message -----

From: **Nancy Leclerc** <nleclerc@buusd.org>

Date: Thu, Apr 11, 2024, 8:18 AM

Subject: Re: Legal Opinion

To: Michael Boutin <mboutin@buusd.org>

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>

Thu, Apr 11, 2024 at 12:49 PM

Nancy,

I have asked for an eta. I am sure that Pietro is working on this. I do want to mention that I sent the request less than two weeks ago. Although I understand for you it is a priority, he maybe triaging things and this does not rise to the level as others. I am confident that he will render a decision and advise that the board has the right to require action memos. As stated last night, technically the board decides what the agenda will be and if an item is to be added it needs approval of the board. I also want to note, with the time you have spent fighting the action memo you could have made one to reconsider them and put forth other items that make a difference for the district.

I will not be asking Pietro about whether or not we can use the BUUSD logo on a document that the board approved. You can certainly create an action memo for this and I will add it to the agenda.

Regarding the "outside council", the BUUSD is not paying for it. So you can reach out to that person if you like. It appears to me that you feel that mentioning that you are consulting an "outside council" has some marketable impact. It makes me feel like you feel the need to do that to make me pay more attention to what you are saying. That is not the case. If I didnt value your comments I wouldn't reply to your emails or I wouldn't engage at the meetings.

-Michael

[Quoted text hidden]

Sean M. Toohey <stoohey@lynnlawvt.com>
To: Michael Boutin <mboutin@buusd.org>

Thu, Apr 11, 2024 at 2:26 PM

Michael,

Pietro asked me to assist with this. Is there a good time to discuss?

Sean

Sean M. Toohey, Esq.

Partner

76 St. Paul Street

Suite 400

Burlington, VT 05401

802-860-1500 ext 190

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copies of the transmission.

From: Pietro Lynn <PLynn@lynnlawvt.com>
Sent: Thursday, April 11, 2024 10:41 AM
To: Sean M. Toohey <stoohey@lynnlawvt.com>
Subject: Fwd: Legal Opinion

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From: Michael Boutin <mboutin@buusd.org>
Sent: Thursday, March 28, 2024 1:53:38 PM
To: Pietro Lynn <PLynn@lynnlawvt.com>
Cc: Chris Hennessey <chennbsu@buusd.org>; Lisa Perrault <lperrbsu@buusd.org>
Subject: Legal Opinion

Pietro,

[Quoted text hidden]

2 attachments

Ms. Mahon reads a motion to have legal counsel review the legality of the action motion, recorded by Ms. Bell. Board voted 3 to 2 for the motion to seek legal counsel.
Ms. Boutin, Ms. Parker, Ms. Bell, Ms. Mahon, and Mrs. Trachsel voted for the motion.
Mrs. Fingers, Ms. Reynolds and Mrs. Spaulding voted against the motion.
7:2:40 11/17 Update

Screenshot_20240328_134551_Samsung Notes.jpg
50K



BUUSD Action Item Briefing Memo Board- Template.pdf
19K

Michael Boutin <mboutin@buusd.org>
To: "Sean M. Toohey" <stoohey@lynnlawvt.com>

Thu, Apr 11, 2024 at 2:31 PM

If you are available now that would be great. Otherwise maybe after 4pm sometime?

[Quoted text hidden]

[Quoted text hidden]

Sean M. Toohey <stoohey@lynnlawvt.com>
To: Michael Boutin <mboutin@buusd.org>

Thu, Apr 11, 2024 at 2:33 PM

Now is fine – please call me at 802-860-1500. Thanks,

Sean

[Quoted text hidden]

[Quoted text hidden]

[//Facebook.com/boutinforbarre](https://Facebook.com/boutinforbarre)

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>
To: "Sean M. Toohey" <stoohey@lynnlawvt.com>

Thu, Apr 11, 2024 at 3:49 PM

Sean,

The link is below. I think if you start at 23 minutes you should be find. That is where the conversation starts. Any questions asked I ask you to advise on. Feel free to mention who asked it in your opinion. Thank you.

https://youtu.be/VSbSUGy165E?si=Z3KodoiD_Fwr0y08

[Quoted text hidden]


176K

Nancy Leclerc <nleclerc@buusd.org>
To: Michael Boutin <mboutin@buusd.org>

Sun, Apr 14, 2024 at 1:09 PM

Michael, I am not engaging in conflict with you, but as a board member, I am expressing my concerns regarding your tone and implications in your email. As a board member and your role as a board chair, it's important to prioritize compliance with legal protocols and perform due diligence in upholding standards. Adhering to legal requirements is not a choice, it is required as your governance role to be able to run and manage an effective and efficient board operations. If there are issues with you in fulfilling this role, I ask you to let us know.

My decision to seek information from external counsel was to have a thorough understanding and compliance to our policies, statute and responsibilities as a board member. It's disturbing to have observed and have discussed this claim in advance with you, of your reluctance to not want to address our policies and statute for the best interest of our board. Denying a board member's request for legal access would have allowed complete, appropriate and proper guidance on a conflict of interest claim, was disappointing and irresponsible as a board chair and requires attention.

The unauthorized and improper use of the BUUSD branding logo without proper permission and especially by you as the board chair, is concerning. This is not only confusing for board members and our stakeholders, it could have legal repercussions. Until a legally confirmed action memo form is in place and complete transparency in addressing questions and responses with legal counsel on the action memo form, the issue of branding logo needs to be addressed. I am left questioning why you are reluctant to do so?

I want to clarify my consulting outside legal counsel was not in any way to sway you or imply marketability, it was to enable the board to allow for informed decisions, understanding and follow regulatory requirements for an effective functioning board and due diligence.

I want to assure you my commitment to addressing issues, and I am fully prepared to seek assistance from outside counsel to ensure we proceed and operate with competence.

Nancy
BUUSD Board Member
[Quoted text hidden]

Sean M. Toohey <stoohey@lynnlawvt.com>
To: Michael Boutin <mboutin@buusd.org>

Mon, Apr 15, 2024 at 11:27 AM

Micheal,

You have asked for an opinion about the BUUSD Board adopting the use of the attached Action Item Briefing Memo template to submit proposed items for the agenda of Board meetings. My understanding is that there is concern about whether such memos are permitted under Open Meeting Law or Robert's Rules of Order. There is also a related concern about the use of the BUUSD branding logo on a non BUUSD form.

Concerning the Action Item Briefing Memo template, there is nothing specifically in Open Meeting Law or Robert's Rules of Order that prohibits the use of a form to submit proposed agenda items. OML only requires the creation and sharing/posting of the agenda prior to the meeting. Cases interpreting OML address the importance of an agenda giving the public fair notice of what will be considered by the Board at the meeting. RRO similarly requires the use of an agenda, but does not speak to the process of creating the agenda.

The Vermont League of Cities and Towns has provided the following guidance for Selectboard meeting agenda creation:

Preparation. In most towns, one person (usually the board chair, the board assistant, town manager or the town clerk) will take on the responsibility for drafting the selectboard meeting agenda. While an informal approach works in most cases, problems may arise when there is a dispute regarding the content of the agenda and no one is sure who has the final authority to determine the agenda's content. The best way to avoid this conflict is for the selectboard to specify, as part of its adopted rules of procedure, who will craft the agenda, how the content will be determined and who will have final say over the content.

Traditionally, superintendents and school board chairs create agendas based on input from board members and staff. There is no requirement that information be presented in a particular form, but there is also no prohibition on adopting a process, such as the use of a form, to propose agenda items for a future agenda. It appears that the use of the form would aid the public in understanding what is being considered by the Board at the meeting. Accordingly, my opinion is that the Board can vote to adopt the use of the Action Item Briefing Memo template for proposed agenda items.

With regard to the branding issue, if the Board adopts the use of the Action Item Briefing Memo template, my opinion is that it is a BUUSD form, so there is no concern about using the BUUSD branding logo.

Please let me know if you have any questions. Thanks,

[Quoted text hidden]



BUUSD Action Item Briefing Memo Board- Template.pdf
19K

Michael Boutin <mboutin@buusd.org>
To: Nancy Leclerc <nleclerc@buusd.org>

Wed, Apr 17, 2024 at 4:27 PM

Nancy,

I will get this and the correspondence in an addendum. But figured you would want it sooner.

----- Forwarded message -----

From: **Sean M. Toohey** <stoohey@lynnlawvt.com>
Date: Mon, Apr 15, 2024, 11:27 AM
Subject: RE: FW: Legal Opinion
To: Michael Boutin <mboutin@buusd.org>

[Quoted text hidden]

**BUUSD Action Item Briefing Memo Board- Template.pdf**

19K

Nancy Leclerc <nleclerc@buusd.org>

Thu, Apr 18, 2024 at 10:24 AM

To: Michael Boutin <mboutin@buusd.org>, "Sean M. Toohey" <stoohey@lynnlawvt.com>

Michael,

I have read the response provided by our legal counsel, Mr Toohey, regarding your action memo form. However, it seems that the response does not directly address the original question posed regarding the authority of a duly elected board member to add items to an agenda without utilizing this form.

"The specific question is whether a " Board member can be denied the ability to add items to the agenda solely for not using this form".

While Mr Tooheys response touches upon potential benefits of using the form it does not offer legal guidance on the matter at hand. The functionality or lack of was not the question asked, as the focus should be around legal guidance regarding a board members authority rather than the benefits or functionality of the form itself.

It seems to me your form you are trying to incorporate in the process is up to the board in evaluating the usefulness.

Respectfully,
Nancy

[Quoted text hidden]

Michael Boutin <mboutin@buusd.org>

Thu, Apr 18, 2024 at 10:55 AM

To: Nancy Leclerc <nleclerc@buusd.org>

Cc: "Sean M. Toohey" <stoohey@lynnlawvt.com>

Sean,

Thank you for your response. At this time I do not believe any additional action is needed. If further clarification is needed we as a board will vote on it. Thank you.

-Michael

[Quoted text hidden]