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March 8, 2018

Heidi Spear
PO Box 759
Waitsfield, VT 05673

Re: Open Meeting Law Complaint

Dear Ms. Spear:

Thank you for your correspondence regarding Vermont's Open Meeting law and the Harwood Unified Union School District Board of Directors ("Board"). As you know from our previous correspondence to you, the Attorney General's Office ("AGO") investigates complaints of violations of Vermont's Open Meeting law for purposes of filing an enforcement action in court. The AGO will review an open meeting complaint against a public body once the complainant has notified the public body of the complaint in writing and the public body has been given an opportunity to respond, as required by Vermont's Open Meeting law.

You originally complained to Attorney General Donovan by letter received January 26, 2018. By letter dated February 2, 2018, we asked you to confirm that you had: (a) provided written notice to the Board of the alleged violations listed in your January letter to the AGO; (b) requested a specific remedy from the Board; and (c) received any response from the Board. We asked you to provide us with a copy of such notice(s), and any response(s). By email dated February 16, 2018, you provided additional correspondence to the AGO, including a Board response to your most recent Open Meeting law concerns. You submitted additional information to the AGO via email dated February 21, 2018.

We understand you served as a member of the Board until mid-September of 2017. Various correspondence you have provided shows that you have repeatedly notified the Board of your concerns regarding conduct of the Board, as well as concerns under the Open Meeting law. The correspondence you have provided to the Board dates back to June 2017.

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In addition to reviewing the above information, I spoke with Superintendent Bridget Nease regarding your allegations and reviewed various documents related to the Board's meetings available online at: <https://www.wwsu.org/board-executive-committee>.

I will address your concerns raised to the AGO in two parts below.

Executive Session held in May 2017

You have expressed concern regarding an allegedly improper executive session held in May 2017, and you have provided correspondence showing an Open Meeting complaint to the Board from the Vice Chair from September 2017, as well as a separate complaint to the Board from The Valley Reporter from October 2017, regarding the same executive session. You served as a Board member at the time of the allegedly improper executive session and were present at the meeting and executive session at issue. It appears that no members of the Board voted to discontinue the executive session at issue at the time.

The Board has taken up various complaints related to the May 24 executive session at different times, including with the following discussion.

Excerpt from Amended and Approved Minutes from Board Meeting 10/11/17

Discussion: The executive session involved discussion of employee concerns that also involved a discussion of Board dynamics. It would have disadvantaged the employees if the discussion had been public. The Board is not in agreement about whether the discussion resulted in an unintentional violation of Open Meeting law. With the exception of one Board member, Board members are not hearing from their town members that there are concerns about the May executive session. Several Board members expressed frustration that this issue keeps coming up and taking Board time. Jill Ellis discussed her belief that an unintentional violation of Open Meeting law took place. She expressed understanding for how it happened, given the nature of the executive session discussion. She asked the Board to take a moment to step back and think carefully about what happened. Board expressed shared desire to resolve the issue and move forward productively with a focus on supporting students.

Caitlin Hollister made a motion that as Board members, when we have an issue to raise with fellow Board members we do so in person and in an open Board meeting. Maureen McCracken seconded. Motion passed unanimously. No abstentions.

Michelle Baker reported a request from the Valley Reporter for a copy of Brigid Nease's contract with regard to her ability to consult with attorneys. Board affirmed their understanding that Brigid Nease and Michelle Baker may need to consult with attorneys in the course of fulfilling their job responsibilities and do not need the express permission of the Board to do so.

Board discussed timing of training on executive session and function and decided it should wait till after the open Fayston seat is filled, so all Board members can participate in the training. Training will go on agenda after November. Agreed to invite VSBA again to do the training.

No binding action appears to have occurred following the allegedly improper executive session. (And, as noted above, no Board members moved to come out of executive session at the time.) My understanding is that the Board has undergone training from legal counsel regarding Open Meeting law and executive sessions since this incident, and that the Board has agreed to arrange for a following up training on Open Meeting law issues with the General Counsel for the Vermont School Boards Association. That training is presently scheduled for April 25, 2018.

In light of the above, at this time, there is insufficient evidence of an on-going issue related to this portion of your complaint that warrants the filing of an enforcement action by the AGO.

Additional Concerns

Your correspondence also shows that you have at least twice (in June and August of 2017) requested the following remedies from the Board while you served as a Board member: (a) a Board-only meeting led by a professional facilitator; (b) an executive session with the facilitator to discuss a personnel matter; (c) a 360-degree review of the superintendent.

The alleged Open Meeting law violation contained in your June and August 2017 letters appears to be the executive session from May 2017, addressed above.

In addition to the May 2017 executive session addressed above, we understand from your recent correspondence to the AGO that you have two additional Open Meeting law complaints. First, you are concerned with the Board's publishing of an inadequate public agenda for its September 13, 2017 meeting/retreat, and you are concerned that the Board did not adequately warn "discussion of district vision, goals and a board annual action plan." Second, you feel the Board took unwarned action with respect to its approval to reinstate an administrator (assistant principal) position in April 2017. We further understand that you voted against the

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reinstatement of the assistant principal at the meeting in which it was addressed. You appear to have raised these subsequent issues with the Board in February 2018 following your correspondence to the AGO, and the Board responded that it had determined that no violations occurred and that no cure is necessary.

I will first address the alleged discrepancy with respect to "public" and "private" Board agendas for the September 13, 2017 meeting. The posted agenda for September 13, 2017, includes as the third item "Facilitated Discussion." When posted online, that third agenda item serves as a hyperlink to the second, more detailed document you provided to the AGO regarding the meeting. I understand the Board has heard your concern that, when posted in a paper format, a hyperlink may not be obvious to a reader, and the Board will revisit this in future agendas that involve a hyperlink.

Regarding your concern related to the reinstatement of the assistant principal position, I understand the Superintendent's recommended reinstatement of this position was publicly available in materials related to the April 12, 2017 Board meeting. In addition, the hiring and approval process related to the assistant principal position appears to have complied with applicable notice requirements.

Following review of the information you provided, as well as the Board minutes and other information, there is insufficient evidence to warrant the AGO's filing of an enforcement action in the Civil Division of the Superior Court. In particular, there is insufficient evidence that the Board took binding action with respect to matters not presented for public input or review.

We understand the above conclusions may not be satisfactory to you. We also understand from your correspondence that you have consulted with counsel and that you are aware of your right to directly file an enforcement action under Vermont's Open Meeting law. To the extent it is helpful to you, please see information that is available in the Secretary of State's guide to Vermont Open Meeting law at:
<https://www.sec.state.vt.us/media/786069/oml-rev-sept-2016.pdf> (see "How does a member of the public enforce the open meetings law?")

We hope the above information is helpful to you.

Sincerely,



Sarah London
Assistant Attorney General