

Green Mountain Unified School District Board

Special Meeting Minutes

Thursday, June 13, 2019

Green Mountain Union High School, Library

6:00 p.m.

I. ROLL CALL/CALL TO ORDER:

Board: Fred Marin, Jeff Hance, Joe Fromberger, Deb Brown, Doug McBride, Wayne Wheelock, Rick Alexander, Michael Studin

Staff: Meg Powden, Lauren Fierman, Deb Beaupre

Student Reps:

Public: Shawn Cunningham, Cynthia Prairie

Mr. Fromberger called the meeting to order at 6:00 p.m. He invited the board members to introduce themselves.

II. APPROVE AGENDA:

M. Brown **moved** to approve the agenda. Mr. Marin seconded. The motion carried unanimously.

III. PUBLIC COMMENTS:

Mr. Cunningham noted that he had asked for a copy of the budget and since lost it and asked for another copy, but noted that the legal fees are significantly higher—something like 480% over budget—much of which has been in the last 6 months. He questioned what the breakdown of that expense is—some negotiations and some due to the law suits. Ms. Powden advised that he could question Ms. Hammond about the breakdown. The board asked Ms. Powden what the litigation is that the board is currently going through. She advised that she wouldn't discuss it in open session. The board questioned why they don't know about it. She advised that it was a TRSU matter. Mr. McBride noted that the TRSU gets its funds from this district so this district should know about it. He questioned why this board didn't know about it before. Ms. Powden didn't have an answer for the board at this time. Mr. McBride questioned if the board could schedule an appropriate time to discuss the matter. Mr. Fromberger noted that the TRSU board hasn't been made aware of the litigation to his knowledge yet. He noted that the next agenda will likely include discussion about the litigation. Ms. Powden noted that the discussion will need to be done in executive session. The board also requested to be sure to add that discussion to the next meeting. Mr. Alexander suggested that if any line item is drastically over budget, such as 50%, the board should be aware. Mr. McBride noted that for some larger items, the "over budget" amount to be discussed might be a monetary value, rather than a percentage. Mr. Fromberger noted that that discussion could also be added to the next meeting. Mr. McBride suggested that part of that discussion should also include whether insurance will cover the claim(s) and/or the defense of the claim(s).

Ms. Powden noted that the budget issue would be discussed in open session, while the legal portion should be discussed in executive session. Ms. Prairie noted that she sent a letter and suggested that the legal issues that will be discussed in executive session should be outlined to the board members in order to make a specific finding that the nature of the discussion would put the board or an individual at a substantial disadvantage.

IV. NEW BUSINESS:

A. Open Meeting Law-Correction of Errors

Mr. Fromberger noted that the purpose of this meeting was to correct an error that was made. Mr. Fromberger acknowledged having made the error and offered his apology for having made the error. He felt that the Chester Telegraph had a legitimate grievance and called it to the board's attention which he appreciated. He read aloud a statement which was the district's attorney's opinion about how this matter will be rectified. He acknowledged that the Board made an error by failing to make a proper and specific finding that premature general public knowledge would clearly put the Unified School District at a substantial disadvantage prior to entering into executive session and by failing to properly explain the basis, and the applicable exemptions, under which the Board was to enter into executive session. He explained that the board went into executive session during its meeting on March, 21, 2019 to discuss Negotiations for Non-Bargaining Unit Staff and to discuss a one-time sick day donation from GMUSD employees for a support staff employee pursuant to 1 V.S.A. §313(a)(1)(A), Contracts, and 1 V.S.A. § 313(a)(1)(B), Labor Relations Agreements with Employees.

Mr. Marin **moved** that the board specifically finds that the premature general public knowledge of the topics it discussed during executive session on March 21, 2019 relating to Negotiations for Non-Bargaining Unit Staff and a one-time sick day donation from GMUSD employees for a support staff employee would clearly put the Unified School District and an individual employee at a substantial disadvantage. Ms. Brown seconded. Mr. McBride reiterated his comments made at last night's TRSU meeting explaining that some people may have already heard his argument against this process. He felt that the motions recommended by the district's attorneys, may satisfy the situation, but felt that there is a more direct path that follows the statute directly. He also felt that this path would likely satisfy the Chester Telegraph and would better allow the district to avoid litigation. He noted that the attorney response isn't wrong, but felt there is a better way. He advised that the statute doesn't mention any retroactive motions will cure the problem. He noted that it states that they need to acknowledge the error and then make a separate motion to ratify or void the decisions made. He felt that if the Chester Telegraph follows their threat of litigation, that is money that could be spent on children, but will instead be spent on legal fees. He noted that if they followed what is recommended tonight, they are not actually giving the public the ability to participate in the topic. He also advised that retroactively making a motion with a group of people who are not the same as those who were not at the March 21st meeting. He suggested they should take the path least likely to lead to litigation. He noted that if they are found lacking, they could be forced to pay the legal fees of the claimant. He also noted that the TRSU is giving this advice, but the money being spent will be this district's money. He felt that they should follow the law religiously and the cure in the statute doesn't follow the law religiously. He felt they got in this problem in the first place by not following the law religiously. He noted that he would be recommending a different motion and distributed a copy of it.

Mr. McBride noted that he found another legal expert from the VT League of Cities and Towns, so the board can look at their opinion and not just the district's attorney's opinion. There was discussion about the point of order of a competing motion. Mr. Fromberger questioned how the board will defend ignoring their attorney's opinion and following a different attorney's opinion. He acknowledged that some board members may have some legal expertise, but questioned why the board is not accepting the legal opinion they have been presented with. Ms. Brown questioned if they could ask the people threatening litigation will satisfy their request. Ms. Prairie asked that they have asked that the law be followed and they believe that the proposed plan doesn't follow the law. Ms. Brown questioned if the board does what Mr. McBride suggested if they would void their threat of litigation.

Mr. Marin read the language from VLCT on curing a violation of open meeting law, explaining that an inadvertent violation must be cured within 14 calendar days after the public body acknowledges the inadvertent violation, and it is cured when the public body either ratifies or declares as void, any action taken at or resulting from a meeting that was not noticed in accordance with the Law, and then adopt specific measures to prevent future violations of the law. Mr. Marin noted that the actions that they will be taking will be retroactively clarifying the citations that were inadvertently omitted at an executive session, the discussions of which were legally able to be held in executive session. Then they would take the step of ratifying the decisions made at that meeting. Mr. Studin suggested that the VLCT cure doesn't speak about the cure and admission of guilt. Mr. Studin noted that they need to specifically note that the error was unintentional rather than blatant in the motion.

Mr. Cunningham noted that the March 21 meeting was the first meeting that they were aware of that the board wasn't aware of what they were entering executive session for. He felt that there is a pattern of the board entering executive session for reasons that they were not aware of, thus unintentional, however he felt that they are being led this way from the SU. Mr. McBride noted that the statute is very clear on the cure and doesn't require a legal degree to understand. It is all centered on the board. He advised that while there are about 10 violations, the only one that this board faces is the one.

Mr. Marin re-read his motion aloud. Mr. Fromberger noted that this motion is necessary to get to the correction of the alleged violation which is the next step. The motion failed with Mr. Marin in favor.

Mr. McBride **moved** that in accordance with the Vermont Statutes Section 314(b)(2)(A) the Board hereby acknowledges an inadvertent violation of Vermont executive session laws at a Board meeting held on March 21, 2019, and the board hereby expresses its intent to cure the violation within 14 calendar days of this meeting. He further moved that in accordance with the Vermont Statutes Section 314(b)(4)(A) within 14 calendar days from the date of this meeting, the Board shall meet and:

1. Either ratify, or declare as void, any action taken at or resulting from an executive session or portion thereof not authorized under Vermont Statutes 313(a)(1)-(10); and;
2. In accordance with Vermont Statutes Section 314 (b)(B) adopt specific measures that actually prevent future violations. The board's specific measures *may* include:
 - a. A provision requiring Board Directors to attend training in person or online on compliance with Vermont open meetings and executive sessions (but this is only required for Directors that have not recently attended such training); and
 - b. A provision requiring that a copy of the Vermont Statutes on executive sessions be present at any meeting at which an executive session is held; and
 - c. A provision requiring that all future agenda that warn executive sessions contain more accurate, detailed and specific information regarding the reasons for the executive session.

Ms. Brown seconded. Mr. Studin questioned who is responsible for putting out the proper documentation for citation of the executive session on the agenda. Mr. Fromberger noted that the agenda is decided upon about a week to 10 days before the meeting. He meets with the superintendent and they develop the agenda as they know it. The superintendent provides him with the information needed for the agenda citation for the executive session. He has not been provided in advance of the meeting the purpose and content of the executive session. He noted that he has relied on the SU office to provide the accurate information about the executive session, and he has not been religious in finding out the reason for executive session ahead of the meeting. They need to do a better job of providing information to the board members. There was

discussion about giving a bit more detail on the warning. Ms. Powden noted that she shares the information with the board chair about the general purpose and that they need to make that first motion about making a specific finding. Mr. McBride noted that open meeting law is intended to give the public an idea about what is being discussed without putting someone at a disadvantage. He gave an example about executive session about Contract versus a more detailed notice about Contracts for a Sewer Line which would then let people with an interest in know that they may want to participate in the meeting.

Ms. Brown questioned if Ms. Powden lets the chair know what the content of the executive session will be, if the chair will share that with the board. Mr. Fromberger will discuss with the superintendent how they can frame the motion appropriately to give information, but not put anyone at a disadvantage. Mr. Fromberger will do his best to help this matter. Ms. Prairie gave an example of the Chester Select Board's dissemination of the agenda versus the board packet. The board packet is privileged, but the board members are aware of the content. There was discussion about sending information to board members under the Freedom of Information Act.

Mr. McBride noted that litigations are public documents, therefore the board chair or superintendent should feel free to share that information publicly regarding litigation documents. Mr. Studin recommended meeting with the Chester Select Board since they seem to have the process figured out. Mr. Cunningham noted that this is why the board has 14 days to come up with their decision and measures to prevent future violations. Mr. Fromberger noted that they will likely make their final decisions at the next meeting next week, which will meet the requirements of the statute.

There was a question about whether they adopt this motion if they will avoid litigation. Ms. Prairie noted that they are closer, but just have to take action at the next meeting. The motion carried with no one opposed.

Mr. McBride thanked the Chester Telegraph for bringing this to their attention and having the public hold them to a higher standard makes them a better board. Many of the board members agreed with that sentiment.

Mr. Marin noted that they could take care of the ratification of the decision tonight. There was discussion about there not being a quorum of voters who were there at that meeting. Mr. Fromberger noted that the board is a single unit. The board had made a motion to increase non-bargaining staff by 2.75% and to allow people to donate sick days to a specific individual. He noted that Mr. Marin is suggesting that regardless of the next actions, the board could still ratify the decisions today. Ms. Brown noted that the public didn't have adequate knowledge of the discussion then, nor do they tonight. Ms. Powden noted that the executive session was adequately warned. Mr. McBride noted that this could be the first attempt to have an expanded idea of what the executive session is for. He also felt that the statute indirectly suggests two meetings. The board consensus was to not vote on this tonight, so Mr. Marin didn't make a motion. There was discussion about the ratification could be done next week. Ms. Fierman noted that they can't presume that the board will ratify the decision, therefore the non-bargaining employees will have to wait for the board's decision, even though they have signed contracts, and telling them that there is a possibility that the board will undo their decision. That will likely generate them coming to the meeting. Mr. Studin noted that they are giving the public a better opportunity to see it more transparently. He noted that they are not making any indication that they are considering which decision they will be making.

Mr. Fromberger noted that he would like to invite Sue Ceglowski to come to a board meeting and outline her training that she gave to the TRSU board last week. The board consensus was to invite her to another meeting.

V. BOARD COMMENTS:

Ms. Brown noted her concern with the discussion of meeting places. The meetings are alternating every other meeting by town. They are going to Cavendish twice as much as any other building, and there are 6 Chester board members. She felt that they should be in every building every third month. There was discussion about how the decision was made. There was also discussion about the student reps not being able to go to Cavendish. Ms. Brown **moved** to return to the original schedule of meetings, which is CTES, then GMUHS, then CAES. Mr. Alexander seconded. There was discussion about there being Cavendish students who could represent the school at these meetings. The motion carried with no opposition. Cavendish will be next month, then CAES the following month. Mr. Fromberger will work out the details with Ms. Moeykens.

VI. NEXT MEETING AND AGENDA ITEMS:

The next meeting will be held on Thursday, June 20, 2019 at 6:00 p.m. at CTES.

VII. ADJOURNMENT:

Ms. Brown **moved** to adjourn at 7:01 p.m. Mr. Studin seconded and the motion carried unanimously.

Respectfully Submitted,

Amber Wilson
Board Recording Secretary