

To: Westminster School Board and Budget Subcommittee, Westminster Schools

From: Patricia Whalen

Re: Complaint for Failure to comply with Open Meeting Law requirements in violation of 1 V.S.A. §312(h), 312(d), 312(b)(2)

Date: November 4, 2014

1. On October 29, 2014 The Commons, a local newspaper, contained the following headline **"Westminster West School to close in 2015"**.
2. The article quoted School Board member Dan Axtell as saying:

"The three people on the budget subcommittee agreed this wasn't going to work, wouldn't be the best thing educationally for students, so in the draft budget we told our business manager to leave it out. It is not an action of the school board, just a draft budget to present to the board -but the subcommittee is a majority of the board so the budget that's going to be adopted won't have the Westminster West school in it."
3. Furthermore, Mr. Axtell indicated that the Board did not want to have a perennial discussion (such as the one that took place in 2009-2010) but "We are going to make a decision and stick with it" with no further explanation as to why they were not sticking with the previous 2010 decision that had been subject to extensive community review.
4. The newspaper article was the first public notice I was aware that the subject of the closure of the school was once again an issue.
5. An earlier Brattleboro *Reformer* article, published on October 23, 2014, reported Dan Axtell stating that at least three Board members had discussed the issue and were in agreement to close the school although the Board had yet to take any action. This "discussion and agreement" by three members (a majority) of the School Board constitutes an action taking in clear violation of Vermont's Open Meeting law. See 1 V.S.A. § 312 (attached).
6. On October 30, 2014, I attended a community meeting organized in response to the articles. There was confusion over what actually took place as no one had a copy of the minutes from the budget committee meetings or from the last School

Board meeting. Subsequently, in an attempt to understand what had been officially discussed and to see what specific actions took place, I went to the Windham Northeast Supervisory Union (WNESU) website and the Westminster Schools website to look for the notice of meetings, agendas and minutes as required under Vermont's Open Meeting Law, 1 V.S.A. §310 -314.

7. The website maintained by the WNESU has some notices of the School Board meetings, some agendas for the School Board meetings and some minutes. Conspicuously absent are the agendas and minutes for the budget committee meetings.

8. None of the notices on the Westminster Schools' web site refer to discussions to be held or decisions made involving the closure of the Westminster West School.

9. Vermont's Open Meeting Law requires subcommittees to post agendas and minutes similar to regular School Board minutes. In the case of this subcommittee it must be noted it is a subcommittee in name only as it has as its membership a majority of the School Board. Despite it being referenced as a subcommittee with apparently the authority to only make recommendations to the Board as a whole it is making decisions as a Board. As Mr. Axtell carefully explained to the press "... the subcommittee is a majority of the board so that the budget that is going to be adopted won't have the West school in it." This is disturbing as the definition of a meeting is clear under both the old and the new open meeting law. 1 V.S.A§ 310 states a meeting is a gathering of a quorum of the members of a public body for the purposes of discussing the business of the public body or for the purposes of taking action. The three-member budget subcommittee makes up a quorum of the School Board.

10. I found the following notices posted on the website since July 1, 2014:

1. July 22, 2014, agenda for the special School Board meeting.
2. August, 19, 2014, agenda for the School Board meeting.
3. August 19, 2014, minutes for the School Board meeting.
4. September 16, 2014, agenda for School Board meeting.
5. September 16, 2014, minutes of the School Board meeting.
6. October 14, 2014, School Board agenda with a note indicating that the budget committee would meet prior to the School Board meeting but giving no agenda for that meeting.
7. November 4, 2014, notice of budget committee meeting.

11. As I have no idea when any of these notices on the WNESU website were posted it is difficult to know if they were timely filed except for the upcoming notice of the November 4 budget subcommittee meeting. This was available on the website at least as of October 31, 2014, and therefore is timely filed.

12. Significantly there were no agendas or minutes posted for the budget subcommittee. Nor were there minutes posted for the School Board meeting of October 14, 2014.

13. On November 3, 2014, I went to the Westminster Town Hall to see if hard copies of the minutes were posted and available. I was told that the only notice they receive to post is the notice of the meeting of the budget subcommittee. I spoke with assistant town clerk Patty Mark who told me the clerk's office never receives agendas or minutes for the subcommittee. She advised me to call Sally Stark of the WNESU as she distributed the written posts.

14. On November 3, 2014, I spoke with Ms. Stark who also informed me that they do not post budget subcommittee agendas or minutes on the website or in a public viewing space. She did tell me that for budget committee meetings they never use agendas as it is always about the "budget" but they do have minutes of the meetings. School Board minutes are posted after adoption and they never post draft minutes. Budget committee minutes are never posted but are available for inspection at the WNESU office. Ms. Stark told me she had minutes for the last budget committee meeting as well as draft minutes for the last school meeting and she could and did promptly provide them to me electronically. The minutes were stamped "unapproved" and were received by the WNESU on October 19, 2014.

15. A review of the minutes revealed that on October 14, 2014, the budget subcommittee of the Westminster School Board intentionally decided against holding a public hearing on the issue of closing the school and instead decided to simply recommend closing the Westminster West School and announce this decision at the School Board meeting under new business. There are no community members listed as present for this discussion. An informational sheet about the Westminster West School was distributed to committee members but not attached to the minutes.

16. The Westminster School Board minutes of October 14 reflect receiving the budget committee's recommendation. A review of the minutes would appear to indicate that decision is actually not a fiscal decision about saving money or reducing tax dollars but rather one which could be used to provide enhanced

services to the Westminster Center school specifically foreign languages. It is not clear to me what the budget committee sees as its role as these minutes reflect educational policies and goals and not fiscal concerns.

17. For purposes of this complaint I have attached the following:

1. Vermont's Open Meeting Law, 1 V.S.A. §§ 310 – 314;
2. "Westminster West School to Close in Fall 2015" article by Sarah Buckingham published in *The Commons* newspaper;
3. Website page from the WNESU listing "Westminster Agendas and Minutes";
4. "Option to Close Westminster West School being Considered" article by Domenic Poli published in the *Brattleboro Reformer*.

18. Based on the above it is my claim that the Budget Committee of the Westminster School Board and the Westminster School Board have both violated the open meeting law since at least July 1, 2014. Given the lack of hard copy posted agendas and minutes it looks like these violations are widespread and have been going on prior to July 1, 2014. They have failed to file and publically post agendas and minutes as required by law. Specifically all meetings of the Budget Committee have been improperly warned. As a consequence all decisions, recommendations and policy discussions are null and void. Therefore actions and or discussions reflecting recommendations and decisions of the budget committee by the School Board since July 1, 2014 must also be null and void.

19. I request that budget subcommittee meetings with a majority of Board members present be also treated as actual School Board meetings with proper notice and agendas to the public be re-scheduled. Agendas must be posted 48 hours prior to the meeting on the website and in hard copy at two public locations. Agendas must indicate what issues will be discussed at the meeting.

20. I request that the October 14 School Board discussion be vacated, removed from the minutes and scheduled for public hearing after receiving properly warned and debated recommendations from the budget committee.

21. Going forward, I request that the budget subcommittee and School Board issue proper notices, agendas and then timely minutes in response to properly warned meetings. Timely minutes must be posted within 5 days. Minutes can and should be posted unapproved so that the public can review and comment on the minutes prior to or at the next properly warned meeting. Agendas, while simple,

must contain sufficient information as to the subject of the meeting so as not to make the word notice meaningless.

22. Finally, all School Board actions taken in violation of Vermont's Open Meeting law are void. If the School Board wishes to reinstate any action taken in violation of the law, it must do so with full notice and opportunity for public participation.

23. The intent of this complaint is to ensure that my local School Board officials operate with transparency and integrity, and according to the law. The decisions and actions taken affect our community as a whole. The Westminster West School is the heart of our smaller community but open meeting violations affect the entire town. Educational goals, educational resources and costs are matters for the entire community to be involved in. After reading the Commons article it was hard for me to believe these decisions were in good faith. If they were then these violations can be cured by rescheduling all School Board meetings that have violated the requirements including subcommittee meetings with proper public notice. This includes all violations referring to hard copy notices of meetings, agendas, and minutes as well as website violations.


24. Specifically it must be understood the minutes of the October 14, 2014 Budget subcommittee indicate that the decision to close the West School took place in a 27 minute time frame. Mr. Sbardellati and Mr. Gordon did not arrive until 6:30 pm. The meeting ended at 6:57 pm.

25. This must be contrasted with the extensive community review that took place in 2010. With, at most, a 27 minute discussion the School Board has taken specific steps to shut down the voice of our community. Despite the fact that there may be a formal noticed vote by the School Board in the future it is clear members have made up their mind. This defeats participatory democracy. The purpose of public discourse is to hear the voices of your citizens and for public officials to make decisions based on a balancing of reasoned arguments. In the Commons article Mr. Axtell states he understands the importance of this decision. He understands that the decision to close the school will be an unpopular one and one which affects the entire community. He understands that the program is popular and says that no School Board wants to throw out a popular program except, apparently, you do. Good faith is indicated by listening to all the voices and not simply ones you agree with. The School Board must give notice and an opportunity to be heard to all voices including those voices which are "fiercely loyal" to a small school which represents the heart of the Westminster West

community. A community which also sends its children in their older years to the Westminster Center School and participates fully in the school.

26. James Condos has stated in his Guide to Open Meetings (available on the Secretary of State's website): "One important foundation of openness in Vermont is the "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 make everyone a better citizen."

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia Whalen".

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Vermont's Open Meeting Law

1 V.S.A. §§ 310 to 314 states:

§ 310. Definitions

As used in this subchapter:

(1) "Deliberations" means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. "Meeting" shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, 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 such a written correspondence or such an electronic communication written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.

(3) "Public body" means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions, except that "public body" does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy.

(4) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

§ 311. Declaration of public policy; short title

(a) In enacting this subchapter, the legislature finds and declares that public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution.

(b) This subchapter may be known and cited as the Vermont open meeting law.

§ 312. Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

(i) identify himself or herself when the meeting is convened; and

(ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the following additional requirements shall be met:

(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency meeting, the public body shall publicly announce the meeting, and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other designated public places in the municipality.

(ii) The public announcement and posted notice of the meeting shall 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 public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) all members of the public body present;

(B) all other active participants in the meeting;

(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting. Meeting minutes shall be posted no later than five days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public

body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) A person may request in writing that a public body notify the person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same or to the Public Service Board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this State.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the Parole Board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility.

§ 313. Executive sessions

(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. A public body may not hold an executive session except to consider one or more of the following:

(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:

(A) contracts;

(B) labor relations agreements with employees;

(C) arbitration or mediation;

(D) grievances, other than tax grievances;

(E) pending or probable civil litigation or a prosecution, to which the public body is or may be a party;

(F) confidential attorney-client communications made for the purpose of providing professional legal services to the body;

(2) the negotiating or securing of real estate purchase or lease options;

(3) the appointment or employment or evaluation of a public officer or employee, provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;

(4) a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) a clear and imminent peril to the public safety;

(6) records exempt from the access to public records provisions of section 316 of this title; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains;

(7) the academic records or suspension or discipline of students;

(8) testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(10) municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety.

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The Senate and House of Representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution.

§ 314. Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter, a person who knowingly and intentionally violates the provisions of this subchapter on behalf or at the behest of a public body, or a person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b)(1) Prior to instituting an action under subsection (c) of this section, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs under subsection (d) of this section if it cures in fact a violation of this subchapter in accordance with the requirements of this subsection.

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within seven business days by:

(A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or

(B) stating that the public body has determined that no violation has occurred and that no cure is necessary.

(3) Failure of a public body to respond to a written notice of alleged violation within seven business days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(4) Within 14 calendar days after a public body acknowledges a violation under subdivision (2)(A) of this subsection, the public body shall cure the violation at an open meeting by:

(A) either ratifying, or declaring as void, any action taken at or resulting from a meeting in violation of this subchapter; and

(B) adopting specific measures that actually prevent future violations.

(c) Following an acknowledgment or denial of a violation and, if applicable, following expiration of the 14-calendar-day cure period for public bodies acknowledging a violation, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter may bring an action in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. An action may be brought under this section no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation

relates. Except as to cases the Court considers of greater importance, proceedings before the Civil Division of the Superior Court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(d) The Court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the Court finds that:

(1)(A) the public body had a reasonable basis in fact and law for its position; and

(B) the public body acted in good faith. In determining whether a public body acted in good faith, the Court shall consider, among other factors, whether the public body responded to a notice of an alleged violation of this subchapter in a timely manner under subsection (b) of this section; or

(2) the public body cured the violation in accordance with subsection (b) of this section.