

\*\*\*For publication on State Board of Education Website\*\*\*

### **Response Pursuant to 1 V.S.A § 314(2)(B)**

The State Board of Education received a notice at its February 21, 2017 meeting alleging that the meeting was not legal and that any action taken at the meeting is illegal. The reason given was that the Board's rule states that the Board will "distribute its agenda as close to two weeks prior to the meeting as practical" whereas the agenda for this meeting was distributed "only four days prior to the meeting."

Vermont's open meeting law provides that a meeting agenda should be posted to a website if the public body maintains one "at least 48 hours prior to a regular meeting". 1 V.S.A. § 312(d)(1)(A). The Board's February meeting agenda was posted four days ahead of the meeting in compliance with the law. The 48-hour provision was enacted by the General Assembly in 2014 – long after the adoption of the Board rule - and therefore represents the legislature's more recent directive. 2014, No. 143, sec. 2. Prior the 2014 amendments, section 312 made no provision for posting to a website, requiring only that the agenda "be made available to the news media or concerned persons prior to the meeting upon specific request." The Board rule does not require the agenda to be posted on a website. The only place website posting is addressed is in the current section 312, with which the Board's posting complied.

Moreover, the rule plainly conditions "close to two weeks" on its being "practical." It is not an absolute deadline and no consequences are provided if it cannot practically be accomplished. Work on the agenda began immediately following the Board's January meeting, but as is often the case, additions and changes to the agenda were being made up until shortly before its posting. This is consistent with the Board's rule that provides that members may add items by request. *See* Rule 1223 (members may add items by request.) Also as a practical matter, the Board relies on Agency of Education staff for administrative support so preparation of any agenda must necessarily build in time to physically produce it and receive comments and approval from the Chair. *See* Rule 1223 (agenda shall be prepared upon consultation with the chairman). The Board has determined that it did not violate its rule or section 312(d). Accordingly, no cure is necessary. *See* 1 V.S.A § 314(b)(2).