



October 25, 2021

Travis Thompson, Chair
and all Members of the Joint Board
SAU 16 Joint Board
30 Linden Street
Exeter, NH 03833

Re: Report of the Department of Education and the Office of the Attorney General's Review of Issues Concerning SAU 16

Dear Board Members,

In June 2021, the Attorney General's Office ("AGO") and the Department of Education ("DOE") received emails raising concerns about School Administration Unit 16 ("SAU 16"). The emails raised some similar and some unique issues. Based on the issues raised, the AGO and DOE announced that they would review the concerns¹. In June, Commissioner Edelblut publicly announced that the review was occurring and asked individuals with concerns to provide information to the AGO and DOE.

The AGO and DOE focused on six specific issues for review:

1. The procedure used at the Prom for marking and tracking unvaccinated attendees;
2. The situation involving a student wearing a Thin Blue Line flag and being required to remove it by a teacher;
3. A transgender individual who spoke with a Health class and whether parents were allowed an opportunity to have their children "opt out" of the discussion;
4. Alleged conflicts of interest involving School Board members;
5. Concerns that documents were released to *Granite Grok* alleging a previous teacher sexually assaulted a student and allegations that SAU 16 did not correctly report this incident; and
6. Concerns regarding RSA 91-A right-to-know issues.

¹ The AGO's Civil Rights Unit reviews matters involving potential discrimination. DOE and the State Board of Education have oversight authority over certain matters involving school districts.

Information for the review was gathered through emails, telephone calls, and a meeting with SAU 16's Superintendent and legal counsel.

This review includes only issues within the scope of the AGO and DOE. Neither agency has authority over fiscal issues of school districts, right-to-know law compliance², Family Educational Rights and Privacy Act ("FERPA") violations, or the day-to-day functioning of a school district. The determinations made as a result of this review do not preclude further potential personnel employment actions by SAU 16 or civil actions by individuals.

Issue 1 – The procedure used at the Prom for marking and tracking unvaccinated individuals

At the 2021 Prom, students were asked to identify whether they had been vaccinated for COVID-19. The school indicated that this procedure was used for the purpose of contact tracing in case a COVID-19 exposure or outbreak occurred as a result of the Prom. Information regarding vaccination status was recorded in a spreadsheet and a process was then used for marking students' hands. For a student who was unvaccinated, their hand was marked with a number. For a student who was vaccinated, their hand was marked with an "X." Ultimately, it was reported that many students did not have their hands marked at all. At different points during the Prom, students were asked to raise their hands so it could be noted who was near each other during the night. Concerns were raised by parents and in the press after the Prom.

After the Prom, SAU 16 implemented its own process audit, which was limited to a factual investigation of what occurred prior to and at the Prom. We reviewed the results of the process audit and spoke with SAU 16 Superintendent, Dr. David Ryan. Prior to the Prom, Dr. Ryan issued an email informing SAU administrators, staff, and teachers that they were not to ask students for information regarding their vaccination status. Despite this communication, the Senior Class Advisor worked with students to create the above-described procedure for contact tracing at the Prom. The stated intent of this contact tracing procedure was to allow as many students as possible to attend graduation if the Prom resulted in COVID exposures.

SAU 16 publicly stated, after its audit report was issued, that there was not enough oversight and supervision of the Prom process, resulting in an inappropriate contact tracing procedure. The concerns about the procedure were that it caused possible FERPA violations, resulted in the disclosure of student personal health information, and embarrassed some students. The Principal and several other administrators were aware of the contact tracing procedure before and during the night of the Prom, but did not intervene even though they knew of the instructions from the SAU 16 Superintendent.

² While there are limited circumstances in which the AGO might pursue criminal violations of RSA 91-A by public officials, such circumstances are not present here.

Additionally, a picture of a list of students' names and personal information, including vaccination status, was publicly released. Allegations were raised that this list remained out on a table all night after the Prom occurred. Surveillance camera tapes were reviewed during the SAU 16 audit process and did not show any table, chairs, or list in the check-in area after the Prom ended. It appears that a photograph was taken of the list while students checked-in for the Prom, and that may have been the source of such disclosure. SAU 16 stated that it did not release the photograph of the list and does not know the source of the release. Because private information was released, SAU 16 is alerting all students and parents.

SAU 16 stated that it is responding to the Prom issues through personnel actions and notices to students and parents of the possible FERPA violation. SAU 16 stated that it has built in more oversight for all future special events, including the Prom. The AGO does not find any violation of New Hampshire law regarding discrimination due to this issue. However, both the AGO and DOE are deeply concerned regarding the public marking of students' hands and the lack of protection for students' vaccination information. Additionally, since the Prom, House Bill 220 was enacted by the State and must be considered in future events. The fact that supervising SAU 16 staff did not stop the contact tracing procedure, despite having acknowledged receiving the email from the Superintendent informing all staff that they were not to ask students about their vaccine status, is a very disturbing failure to protect students.

Issue 2 – The situation involving a student wearing a Thin Blue Line flag and being required to remove it by a teacher

June was identified as "Pride Month" in the Cooperative Middle School ("CMS"). Students were allowed to wear different flags to show causes that they supported. There was little communication from the Principal regarding this event, resulting in many teachers, staff, and students not being aware it was occurring. Two students wore flags into a science class. One student wore a United States Flag and the other wore a Thin Blue Line flag. The teacher does not allow loose clothing in the science room as a safety precaution where students may be using Bunsen burners or chemicals. The teacher considered the flags to be similar to loose clothing. The teacher reported that he was not aware that students were allowed to wear flags that day. The teacher first asked the student wearing the United States Flag to remove it. That student agreed to do so and removed his flag. The teacher then asked the student wearing the Thin Blue Line flag to remove it and that student refused to do so. Because the student refused to remove the flag, the teacher instructed the student to go to the Principal's Office. At the Principal's Office, the student still refused to remove his flag and asked to go home. He was allowed to go home with no further repercussions for his decision to continue to wear his flag.

Dr. Ryan represented that the teacher stated that he did not know what the Thin Blue Line flag stood for and that he did not know why the two students were wearing flags. The teacher reported that he spoke with the student's mother on the day of the event and he denied telling her that the flag offended him. The teacher offered to meet with the student and his parents to discuss the incident, but such a meeting has not occurred.

SAU 16 stated that it is responding to this issue through personnel action, training, and better communication of special events. The AGO does not find any violation of New Hampshire law regarding discrimination due to this issue.

Issue 3 – A transgender individual who spoke with a Health class and whether parents were allowed an opportunity to have their children “opt out” of the discussion

The transgender individual involved in this concern was a Senior at the high school. Dr. Ryan reported that the health teacher involved in this event stated that this individual was saying goodbye to the teacher prior to graduation. In response to follow up questions from the AGO and DOE, Dr. Ryan reported that the teacher stated that the individual spoke with the teacher, while class was ongoing, but did not speak to the class about gender issues. Given that this interaction was not directed to the class, there was no requirement, under RSA 186:11, IX(c), to provide a notice to parents.

The AGO does not find any violation of New Hampshire law regarding discrimination due to this issue. And, DOE does not find any violation under RSA 186:11, IX(c).

Issue 4 – Alleged conflicts of interest involving School Board members

Concerns were raised regarding possible conflicts of interest for School Board members with outside community involvement. One example involves a School Board member who is the Executive Director of the YMCA which operated a program for students when school was not in-person during COVID. This same School Board member voted for decisions to keep students in remote learning status.

SAU 16 has a conflict of interest policy for School Board members. Under that policy:

In the event a Board member is employed by a corporation or business or has a secondary interest in a corporation or business which furnishes goods or services to the school district, the Board member shall declare his or her interest and refrain from debating, discussing, or voting upon the question of contracting with the company.

Neither the AGO nor the DOE has oversight authority over conflict of interest issues relating to school districts³. Based on the concerns raised about a possible conflict regarding the Executive Director of the YMCA and other possible conflicts, the School Board and SAU 16 may want to consider a broader definition of conflict, similar to that found in RSA 21-G:19, et. seq.

³ While conflict of interest issues involving public officials may sometimes also involve criminal allegations that would be reviewed and/or investigated by the AGO’s Public Integrity Unit, that is not the case here.

Issue 5 – Concerns that documents were released to the media alleging a previous teacher sexually assaulted a student and allegations that SAU 16 did not correctly report this incident

Commissioner Edelblut confirmed that Dr. Ryan reported the alleged assault to both the Stratham Police Department and DOE correctly. The necessary information was provided to both DOE and the Stratham Police Department as soon as it was available to SAU 16.

The release of information to the media occurred as a result of a right-to-know request to the Stratham Police Department, not SAU 16. DOE released certain information from SAU 16 to the Stratham Police Department as part of the initial investigation. This information from DOE included the identities of the victim and the alleged perpetrator and should have been redacted by the Stratham Police Department prior to releasing it to the media. *See* Attorney General's Memorandum on New Hampshire's Right-To-Know Law, March 2015, at Section V, subsection F, pp. 24-29, and subsection H, pp. 30-31.

Issue 6 – Concerns regarding RSA 91-A right-to-know law issues

Several of the individuals who raised concerns regarding SAU 16's compliance with RSA 91-A stated:

1. They believed that the SAU 16 Joint Board discussed public matters outside of the public meetings based on the fact that the Board members came into the public meetings and voted on complex issues with no public deliberation;
2. When two people sent the same right-to-know request to SAU 16, they received different responses and different documents;
3. When individuals sent right-to-know requests to SAU 16, after they themselves previously submitted comments or letters that were responsive to their requests, they did not receive copies of their own letters or comments in SAU 16's responses;
4. Individual School Board members have personal email addresses and people do not believe that those School Board members' emails are being searched for documents that would be responsive to right-to-know requests; and
5. That the SAU 16 School Boards go into non-public session too often and for reasons not provided for in RSA 91-A.

Neither the AGO nor DOE have direct oversight or enforcement authority for RSA 91-A. However, RSA 91-A has its own provisions for enforcement under RSA 91-A:7, :8, :9. Under RSA 91-A:7, any person who believes that a government entity has violated RSA 91-A may petition the court for injunctive relief. Under RSA 91-A:8, if a government entity violates RSA 91-A, it will be liable for petitioner's reasonable attorneys' fees and costs if the lawsuit was necessary to achieve compliance with the law; a court order can be issued invalidating any action

Travis Thompson, Chair
SAU 16 Joint Board
October 25, 2021
Page 6 of 6

taken by the government entity at a meeting held in violation of RSA 91-A; a government official who violates RSA 91-A in bad faith can be held personally responsible, have a civil penalty issued between \$250 and \$2,000, and be required to reimburse the government entity for its costs and fees; and a court may enjoin future violations of RSA 91-A and require appropriate remedial training. Finally, under RSA 91-A:9, a person who knowingly destroys information to prevent disclosure in response to a right-to-know request, can be found guilty of a misdemeanor.

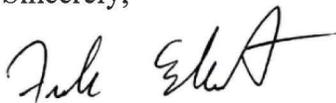
While the allegations regarding non-compliance with RSA 91-A are concerning, there is no action for the AGO or DOE to take at this time. Individuals who believe RSA 91-A violations have occurred have the option of filing petitions in the Superior Court.

Conclusion

We encourage SAU 16 officials and School Board members to review this letter and to take steps to address the issues discussed in this letter along with other concerns that have been raised in a manner that is responsive to parent and community constituents.

Please provide a copy of this letter to all members of the Joint Board.

Sincerely,



Frank Edelblut
Commissioner



John M. Formella
Attorney General

cc: Dr. David Ryan, Superintendent of SAU 16
The Honorable Janet Stevens, Executive Councilor, District 3
Chief Anthony King, Stratham Police Department