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Memorandum

TO: A. Pender Makin, Commissioner
Maine Department of Education

FROM: Sarah Forster, Assistant Attorney General

DATE: January 2, 2020

SUBJECT: School Boards

Senator Millett and Representative Kornfield sent you a letter on April 9, 2019 requesting that “the Department, in consultation with the Attorney General’s Office, develop guidance and provide direction to school boards on current state law and the responsiveness of school boards to the public.” I understand that this request comes from a concern about training materials developed by the Maine School Boards Association and the law firm of DrummondWoodsum and specifically how they address school boards’ “responsibilities for, and responsiveness to, their respective communities.” After reviewing materials from DrummondWoodsum, I am not sure that any additional guidance or direction from you is needed.

The Maine Constitution affords control over education to the Maine Legislature. School boards are creatures of statute, with their duties and responsibilities described therein. The nexus of the concern about school boards’ “responsibilities for, and responsiveness to, their respective communities” appears to be the statement, contained in a decision of Maine’s Law Court that

. . . the [school] committee acts as a public board. It in no sense represents the town. Its members are chosen by the voters of the town, but after election, they are public officers deriving their authority from the law and responsible to the state for the good faith and rectitude of their acts.

Shaw v. Small, 124 Me. 36, 41 (1924). *Shaw*’s instruction that a school board is responsible for faithfully applying the law, as opposed to considering the fairness of the law to their municipality¹ remains good law, and is not limited, as some have suggested, to its facts or to its

¹ In *Shaw*, the issue was the right of an orphan to attend school in the town where his guardian resided. The school committee denied him access to school because, among other things, they felt that too many wards of the state were being placed in their town, which was an “unequal burden that the town should not be obligated to bear.” The Law

time. As explained by Attorney Donald Kopp in a 2006 article, unlike a representative body that is charged with legislative functions, a school board is an executive body with the collective responsibility of executing the laws enacted by the Legislature and governing the school administrative unit over which they are responsible. Thus, once elected, members of a school board function not as a representative of the town or ward that elected them, in the way that a member of the Legislature acts as a representative of his or her district, but as a member of an executive body that oversees a system of public education. The training materials provided to school boards appear to be consistent with that view: they prepare school board members to govern school administrative units in accordance with the governing law.

With respect to a related issue, public participation at school board meetings, the recent enactment of Chapter 293, An Act to Encourage Public Participation in School Board Meetings, puts to rest any concerns about the requirement that school boards receive public comment at their meetings. I have reviewed the model policy drafted by MSMA and believe that it fully complies with the public comment requirement.

SAF/pc

Court, in ordering the student be admitted to school, held that the school committee was obligated to follow the law with respect to residency, not their views about the fairness of the law to their town.