

## OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs  
From: Hillary Risler, Esq., Legislative Analyst  
Date: April 12, 2021  
Subj: [LD 816, “An Act To Improve Communication between School Boards and Educators by Requiring Notice of Discussion of Labor Matters” \(Rafferty\)](#)

---

### SUMMARY

This bill requires that any meeting between a school board and representatives of public employees that is requested by representatives of the employees must occur at a regularly scheduled school board meeting and that public notice must be given at least 10 days prior to the school board meeting. The bill also provides that negotiations between a school board and representatives of public employees regarding personnel matters may not be open to the public and must be held in executive session. This is an exception to current law, which allows negotiations between the representatives of a public employer and public employees to be open to the public if both parties agree to conduct negotiations in open sessions.

At the public hearing, the sponsor proposed an amendment, which would replace the original bill. The amendment provides that school boards shall regularly communicate with school employees in the school district and members of the public in their jurisdiction, and that a school board shall annually review the performance of the superintendent.

### TESTIMONY

- **Proponents**
  - The bill seeks to break down any silos that may exist between school board members and educators
  - The bill is not trying to circumvent any chain of command, but to improve communication between school board members and educators - in many cases school board members are discouraged from engaging and communicating with educators and educators are discouraged from honest dialogue with school board members

- **Opponents**
  - Support for the provision around annual review of the superintendent – this is already standard practice
  - It is against best practice and policy for school boards to regularly communicate with employees because it undermines the roles of the superintendent and elected board members and that communication can blur the line between the policy-making role of the board member and the administrative role of the superintendent
  
- **Neither For Nor Against:** None

#### **BACKGROUND INFORMATION:**

- 129<sup>th</sup> Legislature, [LD 63, An Act To Improve Responsiveness of Elected School Boards to the Public](#)
  - Committee vote: ONTP with a letter/OTP
  - Final disposition: ONTP
  
- 129<sup>th</sup> Legislature, [LD 721, An Act To Encourage Public Participation in School Board Meetings](#)
  - Committee vote: OTP-A/ONTP;
  - Final disposition: P.L. 2019, ch. 293: [20-A MRSA § 1001, sub-§20](#) is enacted to read:
    - **20. School board meeting public comment period.** A school board shall provide the opportunity for the public to comment on school and education matters at a school board meeting. Nothing in this subsection restricts the school board from establishing reasonable standards for the public comment period, including time limits and conduct standards. For purposes of this subsection, "school board meeting" means a full meeting of the school board and does not include meetings of subcommittees.
  
- *Shaw v. Small*, 124 Me. 36 (1924) and the role and accountability of school boards
  - Memo from Assistant Attorney General Sarah Forster to Commissioner Makin dated January 2, 2020, Subject: School Boards

**Title 20-A: EDUCATION**  
**Part 1: GENERAL PROVISIONS**  
**Chapter 1: GENERAL PROVISIONS**

**§ 1. Definitions**

**28. School board.** "School board" means the governing body with statutory powers and duties for a school administrative unit.

**§2. Policy on public education**

The state policy on public education is as follows.

**1. State responsibility for public education.** In accordance with the Constitution of Maine, Article VIII, the Legislature shall enact the laws that are necessary to assure that all school administrative units make suitable provisions for the support and maintenance of the public schools. It is the intent of the Legislature that every person within the age limitations prescribed by state statutes shall be provided an opportunity to receive the benefits of a free public education.

**2. Local control of public education.** It is the intent of the Legislature that the control and management of the public schools shall be vested in the legislative and governing bodies of local school administrative units, as long as those units are in compliance with appropriate state statutes.

**ISSUES FOR CONSIDERATION:**

- Clarification on the intent and interpretation of the proposed amendment language
  - **1-B. Communication with school employees and the public.** They shall regularly communicate with school employees in their district and members of the public in their jurisdiction.
    - Vagueness: what constitutes “regular communication”? Who are “members of the public in their jurisdiction”?
    - This language requires the school board to regularly communicate to employees, but does not address the concern raised regarding school employees communicating to school board members

- **4. Selection and supervision of superintendent.** They shall select a superintendent in accordance with section 1051 to carry out the duties specified in section 1055 and they shall annually review the performance of the superintendent
  - An annual review of the performance of the superintendent is not currently required by statute and may be a potential state mandate.

**COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:**

- More information about retaliation against educators for speaking to school boards?
  - Please see MEA's testimony from 129<sup>th</sup> Legislature, LD 721  
<http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=126525>

**PRELIMINARY FISCAL IMPACT STATEMENT:**

- Not yet determined

**OFFICE OF THE  
ATTORNEY GENERAL**

6 State House Station  
Augusta, ME 04333-0006  
Phone: 626-8800

FAX: 287-3145  
email:  
[sarah.forster@maine.gov](mailto:sarah.forster@maine.gov)

---

## *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 municipality<sup>1</sup> remains good law, and is not limited, as some have suggested, to its facts or to its

---

<sup>1</sup> 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.