

WINDHAM SCHOOL BOARD PRIVILEGED AND CONFIDENTIAL

Regardless of whether or not Administrators, or board members disclosed information that was confidential, either under the Right to Know Law, or attorney-client privilege, the School Board has ratified the disclosure(s) by affirmatively voting 4-0 to disclose the information.

The Board met with counsel on April 7 and received board training on April 14 from outside counsel. From those meetings, the board has learned that not all attorney-client communication is privileged and confidential, even if marked as such. In opinion of the school districts counsel the letters in question were covered by the attorney client privilege, however it was deemed by counsel that the release was a minor mistake.

However, generally speaking it is best practice to treat all attorney-client communication as potentially privileged and confidential, and then to seek the permission of the full Board to release the information prior to divulging the communication to the public.

In the normal course of business, it is not uncommon for administrators and boards to release attorney-client communications to the public, so that the public has a full understanding of the issues confronting the Board. In certain cases, however, it may be important and perhaps required to keep communications with counsel private, for example, when it relates to student matters, personnel matters or other issues that could adversely affect the District's position either in contract negotiations or in litigation against the District.

While there may be occasions when the release of privileged and confidential attorney-client communication is helpful to voters and helpful to the School Board, the fact is that the authority to release privileged and confidential attorney-client communication belongs to the full School Board when it is convened in accordance with the Right-to-Know Law and to the duly-authorized administrative officials. A single board member acting alone has no authority or right to bind the board or the district.

While the attorney-client privilege regarding privileged and confidential communication can and often is waived, the decision to do so must be made by a duly authorized administrator or the whole Board.

Going forward before releasing attorney-client communications, all board members will take steps to receive permission from the full board or authorized administrators before releasing communication that might be considered privileged and confidential. While not all communication with counsel must remain confidential, in the future a single board member will not release information that could be considered privileged and confidential without consultation with the full board or authorized administrators.

The board believes that this understanding and commitment going forward is sufficient to resolve questions about the release of communication from counsel.