
MIRICK O'CONNELL

A T T O R N E Y S A T L A W

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September 25, 2017

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

VIA EMAIL AND FIRST-CLASS MAIL

Kevin Matthews, Chair
Lincoln-Sudbury Regional School Committee
390 Lincoln Road
Sudbury, MA 01776

Re: Superintendency Union

Dear Chair Matthews:

I am writing in response to your request for advice regarding the potential formation of a superintendency union between Lincoln-Sudbury (LS) School Committee and the Sudbury Public School (SPS) Committee.

As you are aware, school districts in Massachusetts have varying structures. There are municipal pre-Kindergarten to Grade 12 districts, regional pre-Kindergarten to Grade 12 districts and Grade 9 to 12 (or other grade configuration) regional districts that draw from municipal pre-Kindergarten to Grade 8 (or other grade configuration) districts. Regardless of the structure, each school committee must employ a superintendent. G.L. c. 71, § 59.

School committees may agree to share a superintendent. G.L. c. 71, § 16(I)(regional school districts); G.L. c. 71, §§ 61-64 (municipal school districts). General Laws Chapter 71, section 16, which defines the powers and duties of regional school districts, provides:

(I) To employ a superintendent of schools **who may also be a superintendent of one or more of the town comprising said district** and to establish an employment contract for a period of time to provide for the salary, fringe benefits, and other conditions of employment...and said superintendent shall have all the powers and duties imposed upon school superintendents by law.

(Emphasis added.)

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Although informally referred to as a superintendency union, true superintendency unions are created under a separate provision of the law, G.L. c. 71, §§ 61-64, that applies to unions created between two or more town districts, rather than between a town district and a regional school district. This distinction is important for two reasons. First, under sections 61 through 64, there are specific provisions regarding superintendency unions, including DESE's consent to dissolve a superintendency union. Second, sections 61 through 64 have been interpreted to allow superintendency unions to also share central office functions such as financial operations, facilities management, human resources, student services and curriculum development.

On the positive side, the lack of a consent requirement to dissolve a shared-superintendency arrangement under Section 16(l) allows the parties to exit such an arrangement on their own terms, if necessary. On the negative side, cost containment, along with academic alignment, tends to be one of the most significant reasons for considering a superintendency union or shared superintendency arrangement. This savings is not necessarily obtained from a shared superintendent alone, but rather from the consolidation of all central office functions.

I should note that the absence of authority confirming the ability of a town district and a regional district to share central office functions does not mean it is unlawful. Rather, it is an unsettled point of law. In conferring with DESE on this point informally, they acknowledged that they are aware of such central office consolidations, have not sought to interfere with such arrangements, and have no formal position as to the legality of such consolidations between a regional district and a town district. A challenge, however, could be brought by a citizen group alleging that an agreement to share services is not supported by law.

Procedurally, because the authority to appoint a superintendent lies with the school committee of a given school district, the decision whether to employ the same superintendent under a shared superintendency arrangement lies exclusively with the LS and SPS school committees. If the School Committee decides to pursue a share superintendency arrangement, I recommend that it accomplish this by entering into an agreement with SPS that delineates expectations for the superintendent with respect to serving both districts and how the superintendent's compensation will be charged to each district among other provisions. The School Committee would likely also have to renegotiate Superintendent Wong's employment agreement to recognize the additional responsibilities.

Although LS and SPS could consolidate other central office functions as other town and regional districts have done, it is possible that such an arrangement would be viewed as requiring the approval of the Sudbury Board of Selectmen pursuant to G.L. c. 40, § 4A. As stated above, consolidations of other administrative functions occur between and among other regional districts and one or more municipal districts within the region do exist. Such arrangements have not been challenged as being beyond the scope of Section 16(l) in the courts or by DESE. To protect against this challenge and assuming LS and SPS want to consolidate other central office functions, they could enter into an intermunicipal agreement (IMA). IMAs are subject to

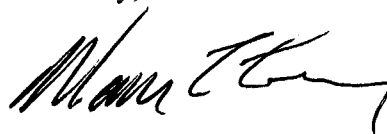
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approval by the BOS pursuant to Section 4A. Such agreements must address the relative liabilities of the parties, ensure financial safeguards and accounting for all parties and may address the potential termination/withdrawal from the IMA. Although subject to the BOS's initial approval, the Town and LS could agree that the termination/withdrawal by Sudbury would be by a vote of the SPS School Committee only. Note that IMAs have a maximum term of 25 years.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc L. Terry". The signature is fluid and cursive, with the first name "Marc" being more prominent and the last name "Terry" following in a similar style.

Marc L. Terry

MLT/