

Responses are integrated below.

April 12, 2017

Dear Donna & Catherine,

Enclosed please find the Town of Belvidere and Waterville's questions for the AoE and LNSU regarding amending the MUUSD Articles of Agreement. We hope to discuss the answers with you at the WES informational meeting scheduled for next week.

1. What is the process and applicable municipal state statute governing amending the Articles of Agreement (both MUUSD and electorate amendments)?

16 VSA § 706n governs amendments of a unified district's Articles of Agreement. It is important to review the Warning for the original merger vote to determine whether a specific Article can be changed by a unified school board or can only be changed by a vote of the electorate. If by a vote of the electorate, then a vote requires a majority of the entire new unified district (not separate approval by the voters of each town).

- (a) **A vote of the electorate is required to change a “specific condition or agreement” of the Articles that is included in one of the paragraphs of the Warning for the original merger vote. This can either be condition or agreement that is explicitly stated in the Warning (such as the number of board members and the manner in which they will be elected) or it can be more general reference to a condition.**

A vote of the electorate is also required to amend any amendments made by the electorate.

Note that the statutes require prior approval by the State Board if the amendment would result in a reduction in the number of grades that a unified district operates.

- (b) **The New Unified Board has authority to amend a provision in the Articles only if the provision is incorporated into the Warning solely by the Warning's final paragraph (from the LN Model Warning copied below, it is the paragraph that says: “(d) *Final Report. The provisions of the Final Report approved by the State Board of Education on January 19, 2016, which is on file in the [Your] Town Clerk's office, shall govern the unified union school district.*”)**

Note that nothing prohibits a vote of the electorate here, it is simply that it is something that CAN be amended by the unified board.

In addition, Vermont Statutes require that some decisions can be made only by the electorate, and so the voter-approved Articles of Agreement regarding those topics could only be changed by a vote of the electorate. The most obvious example is that statutes require the voters to decide whether they will educate resident students by operating all

grades, by paying tuition for all grades, or by operating some grades and tuitioning others (16 VSA § 821 and § 822).

2. Please specify which articles (or sentences in some cases) must be amended by the MUUSD, which must be amended by the electorate and which are governed by statute?

You will want to confirm the following with your attorney, who drafted the Warning and who is the proper person to advise you regarding municipal and property issues.

After reading the Model Warning (copied below) from the SU website against the Articles, a general assignment of Articles is probably as follows:

Can Only Be Amended by the Electorate:

- Article 1, Paragraphs 2 and 3 – date of full operations if approved; creation of MUUSD if not all districts approve – but too late to amend either
- Article 2 – district will provide PreK-12 education
- Articles 7 (all) & 8 (sentence #1) – debts and liabilities transferred on July 1, 2017, etc. – BUT this is also central to the statutory manner in which the old districts transition into the new unified union and so this probably cannot be amended, especially since the transfer date is nearing
- Article 9 – membership on board of directors
- Article 13; Paragraph 2 – budget votes by Australian ballot – both Title 16 and Title 17 require that decisions regarding Australian ballot are made by the voters, not the board

Can Be Amended by the Unified Board:

- Article 4 – Final sentence regarding school closure *except* as under statutory heading below
- Article 16 – initial school configuration plan
- Article 17 – school attendance in first three years; changes to school designations
- Article 21 – ability of district to vote later to join the unified district without need for unified district to vote whether to accept

Not Subject to Amendment or No Longer Subject to Amendment:

- Article 1; Paragraph 1 – identification of “necessary” and advisable” districts for initial vote
- Article 4; Sentences 1-3 – no new school buildings are necessary to, or proposed for the formation of the district; unified district will assume ownership and begin operations; no school closings are anticipated or proposed on or before district assumes full operations.
- Article 6 – forming districts recognize the benefits of standardized operations (see also statutory requirements below)
- Article 11; Sentence 1 – date of initial vote
- Article 12; Final Sentence – full operations begin on July 1, 2017
- Article 15 – cost-benefit analysis

Statutory Requirements that Cannot Be Changed:

- Article 3 – 16 VSA chapter 53, subchapter 3 – employee transition
- Article 4 – Act 153 of 2010 – cannot close a school building within the first four years unless approved by the voters of the town in which it is located
- Article 5 – Board will decide transportation pursuant to state and federal law
- Article 6 – 16 VSA § 261a has required an SU-wide curriculum and other standardization since before the enactment of Act 46 (2015)
- Article 10 – 16 VSA § 706b and § 706m – length of initial and subsequent board member terms
- Article 11; Sentences 2-4 – 16 VSA § 706e and § 706f – election of initial school directors
- Article 12 – 16 VSA § 722(c) (e.g.) – board transitions to full operations
- Article 13; Paragraph 1 – unified board presents proposed budget as it is required by law to do
- Article 14 – 16 VSA § 722(b) and (c) (and others) – transition to full operations and existing districts cease to exist

Not Sure – Ask your Attorney:

- Article 8 (all except first sentence) – on the one hand, the Model Warning explicitly references Article 8 (which weighs on the side of limiting amendments to vote of the electorate) – but on the other hand, the Warning only talks about transfer of debt and property, etc. and not use of buildings, sale of buildings, etc which is what is covered in most of Article 8 (except the first sentence)
- Article 19 – NMED voting on board – probably takes vote of electorate to change?
- Article 20 – NMED representation on SU Board – probably SU board asks SBE to address because of 16 VSA § 261?

3. Is there a maximum number of allowed school directors and, if so, what is that number?

16 VSA § 706b(b)(9) states that a unified district's board shall not exceed 18 board members.

4. Can the formula for calculating the number of school directors be revised?

Yes. The voters can amend the Articles of Agreement to assign membership pursuant to a different method – provided that the method satisfies requirements of constitutional proportionality. There are three basic models: The Town-by-Town Model (the one chosen by the LN MUUSD); a Fully At-Large Model; and a “Hybrid” Model (which assigns a certain number of “seats” on the board to each town, and it could even be the same number even though the towns are of different sizes -- but then the candidates for the seats are voted on by the entire electorate). See the link to the table at <http://education.vermont.gov/vermont-schools/school-governance/guidance#membership> for more information.

5. Are two 1/2 votes permitted where a town currently has one vote?

Yes. 16 VSA § 707(c) explicitly authorizes the use of weighted votes. This would, however, require a vote of the electorate of the entire unified district to amend the Articles of Agreement (See answer to #2 above).

6. Given the fact that a modified union was approved can/should the A of A be amended to specifically speak only to a modified union and, in addition, articles 14 and 15 revised/updated accordingly?

No – it's not necessary to amend them. The voter-approved Articles apply to a MUUSD or to a UUSD. See, e.g., the last sentence of Article 1: “The Articles governing the Unified School District shall govern the MUUSD except as specifically provided in Articles 19-21 and Appendix A.”

7. Should article 4 be revised to include Act 154's four year required electorate vote for school closure and can article 4 be amended to indefinitely require a vote of the electorate of a given town prior to school closure?

- **It is not necessary to revise the Articles to include the 4-year closure requirement. It is the law per Acts 153 (2010) and 156 (2012). It applies even if it is not included in the Articles.**
- **The Articles can be amended to require a vote of the town in year 5 and after. As indicated in the response to question #2 above, that issue can be amended by a vote of the board.**

8. Under article 8 are 'earmarked funds' capital reserves created and designated prior to merger for the maintenance of a specific school?

You will need to talk with your attorney about your specific funds and what is or is not included in the Articles as written. This is an area of both municipal and property law and is not within the jurisdiction or the expertise of the Agency.

9. Can article 8 be revised so that towns can retain ownership of school buildings and property and lease said buildings/property to the MUUSD?

Towns don't own the school buildings now. School buildings are owned by the school districts, each of which is a separate legal municipal entity from the town in which it is located.

It is probably too late to rewrite the Articles before the property transfers from the town school districts to the new district on June 30, 2017.

It would be possible at a later time, however, to sell a building to the town and then rent it back from the town.

10. Can the A of A be amended to prohibit local school buildings and property from being used as collateral for construction loans taken out on other MUUSD properties?

This is an issue of municipal law – not an issue regarding the Articles of Agreement. You should ask your attorney if such a proposal is possible legally.

One thought: The new MUUSD is a single legal entity. So the question you ask is similar to what would be asked in, e.g., Montpelier – which is a single district that has three school buildings. Is it possible to prohibit the high school building and middle school building in Montpelier from being used as collateral for construction loans taken out to repair the roof on Montpelier’s elementary school?

11. Question specifically for LNSU:
What strategies and procedures for local participation have been established thus far and what is the status/plan for creating local advisory committees?

[LNSU will answer]

12. Follow up question specifically for AoE:
Can advisory/local committees be granted some sort of authority or rights in the MUUSD decision making process?

They can be granted authority – but they cannot become school boards in all but name. For example, perhaps they could assist with the development of the building-level budget – but it is up to the full board of the entire unified district to actually develop and present the proposed budget for the entire unified district that the voters of the entire unified district will approve or disapprove.

13. If w votes to rescind their previous vote to merge with the muusd, can a request be submitted for the muusd to reconsider the issue of whether to tuition b to wes?

I know of nothing in education statutes that would prohibit citizens from asking a school board to reconsider something they have already considered before.

You will need to ask your attorney whether there is anything in municipal law or otherwise that prevents, e.g., a petition from being made twice within a 12-month period.

These and other questions that arrived on April 19 are addressed in the PowerPoint slides.

From the LNSU website:

Act 46 Sample Warning – Special Meeting

Article I. Shall the [Your] Town School District, which the State Board of Education has found advisable to include in the proposed unified union or modified unified union school district, join with the school districts of the Belvidere, Cambridge, Eden, Hyde Park, Johnson and Waterville, which the State Board of Education has found advisable to include in the proposed unified union or modified unified union school district for the purpose of forming a unified union school district to be named the Lamoille North Unified Union School District or the modified unified union school district to be named the Lamoille North Modified Unified Union School District, as provided in Title 16, Vermont Statutes Annotated, upon the following conditions and agreements: If all of the forming districts vote to approve the merger, the Lamoille North Unified Union School District will commence full educational operations and services on July 1, 2017, under the provisions of Act 46. In the event that the majority of the forming districts vote to approve the merger, but one or two forming districts votes against merger, pursuant to Act 156 (2012), Sec. 17, as amended, a Modified Unified Union School District (MUUSD) will be formed and commence full educational operations and services on July 1, 2017. In this case, the MUUSD shall be named the Lamoille North Modified Unified Union School District.

(a) Grades. The unified union school district will offer pre-kindergarten through grade twelve education to all of the students in the unified union school district.

(b) Board of School Directors. The unified district board of school directors will be closely proportional to the fraction that its population bears in the aggregate population of the unified union school district.

(c) Assumption of debts and ownership of school property. The unified union school district shall assume the indebtedness of member districts and assume all operating deficits and/or surpluses or reserve funds of the member districts; acquire and pay for the school properties of member districts; all as specifically identified and provided for in Articles 7 and 8 in the Final Report.

(d) Final Report. The provisions of the Final Report approved by the State Board of Education on January 19, 2016, which is on file in the [Your] Town Clerk's office, shall govern the unified union school district.