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## MEMORANDUM

TO: Catherine Gallagher  
FROM: Donna Russo-Savage  
SUBJECT: Member Districts of LNSU  
DATE: March 30, 2017

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I have received a number of interrelated questions from you and from LNSU community members (either directly from them or through you). I will try to answer all of them in this memo, which is being sent to the community members as well, so that everyone has access to the same information. The information is organized by topic and does not repeat the specific questions asked.

### **I. Will Belvidere students continue to attend elementary school in Waterville:**

#### **A. If Waterville voters do Not overturn the February 21 vote to join the MUUSD at the reconsideration vote scheduled for April 25 and Waterville becomes a full PK-12 member of the MUUSD:**

Article 17 of the LN MUUSD Articles of Agreement states:

##### **Article 17**

For at least the first three years that the Unified School District is fully operational and providing educational services, students may attend the elementary school in the town of residence. However, with parental consent, the Unified School District School Board may adjust student enrollment based upon individual student circumstances and needs of the Unified School District during this time. After July 1, 2020, the Unified School District School Board will have the authority to adjust school building designations, school attendance and school configurations throughout the Unified School District.

Article 17 ensures that students may attend elementary school in their “town of residence” during at least the first three years of the MUUSD’s operation (school years 17-18, 18-19, and 19-20). After that time, the School Board has the authority (but is not required) to adjust building designations, attendance, and configurations for elementary students in the new district, regardless of their town of residence.

There are many definitions of residence in Vermont statutes. See, for example, the language in the following links: [16 VSA § 1075](#) (schools) and [17 VSA § 2122](#) (voters). It is also possible to use a common sense definition for purposes of Article 17.

There is no elementary school located in the Town of Belvidere. The Belvidere Elementary School District contracts with the Waterville School District for all Belvidere elementary students to attend school in Waterville.

The question then becomes: What school is in a Belvidere student's "town of residence" for purposes of Article 17?

The intent of Article 17 seems to be to provide continuity to all elementary students for at least the first three years of the MUUSD's operation.

Therefore, if Waterville is a full PK-12 member of the MUUSD, it seems reasonable to conclude that the elementary school located in Waterville will be the school that Belvidere students will attend for at least the first three years pursuant to Article 17.

**NOTE: Only the LN MUUSD Board itself can confirm its interpretation of Article 17 and so only the Board can provide the requested letter.**

**B. If Waterville voters DO overturn the February 21 vote on April 25 and the Waterville Elementary School District and the MUUSD are distinct entities:**

As has been discussed in earlier memos and e-mails, Article 17 does not include specific grandfathering language that covers the K-6 Belvidere students. As a result, although the intent of Article 17 seems to be to ensure continuity, there is nothing in Article 17 that requires the MUUSD to pay tuition for Belvidere students.

Absent grandfathering language, the question is whether there is either some other legal requirement or legal authority for the MUUSD to pay tuition to Waterville on behalf of all Belvidere elementary students for at least the first three years.

Act 153 of 2010, Sec. 3(f)(3): This section requires a newly unified district to "grandfather" students if the new district would provide them with "fewer options" than they had prior to merger. This does not seem to apply to the Belvidere/Waterville situation because the Belvidere students will not have "fewer options" – because they didn't previously have more than *one* option (all B students were required to attend WES). On the other hand, it's probably possible to argue that the intent of Sec. 3(f)(3) is to provide continuity – just as Article 17 attempts to do.

16 VSA § 821(c): Without prior authorization of the electorate, the school board of a district that operates an elementary school can grant an individual parent's request to pay tuition to a public elementary school in an "adjacent district" if "in the board's judgment the student's education can be more conveniently furnished there due to geographic considerations." Subsection 821(c) does not require that the board grant the parent's request nor does it require that the desired school be closer to the student than the one operated by the district – just that the student live "near" the public school in the adjacent district and that the request is granted for "geographic considerations." The MUUSD Board has

authority to grant each Belvidere parent's independent request for the student to attend WES. Here again is the statutory language:

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board in a district that operates an elementary school may pay tuition for elementary students who reside near a public elementary school in an adjacent district upon request of the student's parent or guardian, if in the board's judgment the student's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the Secretary, who shall have authority to direct the school board to pay all, some, or none of the student's tuition and whose decision shall be final.

## II. Options for the Cambridge Elementary School District

The voters in Cambridge did not approve the merger proposal at the original vote on April 12, 2016. Subsequently, on TMD 2017, the voters declined to join the MUUSD as a full PK-12 member pursuant to the provisions of Article 21 of the MUUSD's Articles of Agreement.

As of today:

- Cambridge is a member of the LN MUUSD for grades 7-12. The MUUSD, on whose board Cambridge has representation for those grades, is solely responsible for the education of students in grades 7-12 beginning on July 1, 2017.
- The Cambridge Elementary School District (CESD) exists solely to provide for the PK-6 education of resident students either by operating schools for those grades, paying tuition for those grades, or operating some of those grades and paying tuition for the others.

Both the LN MUUSD and the CESD are member districts of LN Supervisory Union. The statutory default is that board of a district that operates a school will appoint three of its members to sit on the SU board. The State Board of Education (SBE) has full authority, however, to change representation on an SU board upon request (note that this applies *solely* to the *appointed* members on the SU board, and *not* to the *elected* members of a school *district* board). By approving the report and proposed articles of agreement on January 19, 2016, which were subsequently presented to the voters, the SBE approved the alternative LNSU Board membership that was set out in Article 20 in the event an MUUSD was created and that will become effective on July 1, 2017 when the MUUSD is fully operational.

By November 30, 2018, the SBE is required to issue a final Statewide Plan that requires the unification of unmerged districts and the redrawing of SU boundaries to the extent either is necessary to create sustainable educational governance structures that are designed to meet the educational and fiscal goals of Act 46. The SBE is prohibited from requiring certain school districts to merge, including any newly unified district that is eligible to receive tax rate reductions and other transitional assistance.

The following is a list of potential options available to the residents of Cambridge as of today. *The order in which they are discussed does not represent advice from or the preference of any State entity or employee.*

**A. Do Nothing:**

If the voters and the Cambridge School Board do not take any action, then the CESD is an independent, elementary school district (PK-6); Cambridge is a member of the LN MUUSD for grades 7-12; and both districts are members of the LNSU.

The LN MUUSD is exempt from required merger under the SBE's final Statewide Plan (see above). The CESD is not exempt. As a result, if the SBE determines that merger of the CESD into the LN MUUSD is "necessary" under the terms listed above, then the SBE can ask the LN MUUSD if it is willing to accept Cambridge as a full PK-12 member of the unified district. If the answer is in the affirmative, then the SBE can require Cambridge to merge, with the following results:

1. Cambridge will be a full PK-12 member of the LN MUUSD
2. The unified district will "supplant" the CESD, and the CESD will "cease to exist" pursuant to 16 VSA § 722(b)
3. If Waterville is also a full PK-12 member, then:
  - a) The LN MUUSD will no longer be a "modified" unified union school district, but rather will be a unified union school district responsible for the PK-12 education of students residing in all member towns (the LN UUSD)
  - b) Unless the SBE believes the boundaries of the current LNSU should be expanded to include other districts in addition to the LN UUSD, then the SU structure and board will go away and the LN UUSD will be its own SU and assume the responsibilities of the SU

**B. Submit a Proposal to remain an independent elementary school district under Act 46, Sec. 9 (referred to colloquially as a proposal to be an "Alternative Structure"):**

If a district is not a PK-12 member of a unified district and does not expect to be one by June 30, 2019, then the board of that district is required to perform three tasks by November 30, 2017 (S.122 currently being considered by the Legislature and, as it is currently written, would extend that deadline in some instances to January 30, 2018):

1. Self-evaluate the district's current ability to meet or exceed the educational and financial goals;
2. Have conversations with other districts about how the ability to meet or exceed the goals could be improved regionally (by contract, e.g.); and

3. Present a proposal as a single district or jointly with other districts to remain an independent elementary school district detailing concrete steps it intends to take to improve in relation to the goals.

It is anticipated that most of the work for #1 and #2 above (self-evaluation and conversation) will have been completed in connection with the study committee's preparation of the merger proposal. The proposal required in #3 above *is the district's opportunity to explain to the SBE* why staying as an independent elementary school district makes the most sense.

The Secretary will review proposals submitted by school boards under Sec. 9, have "conversations" with the districts submitting them and with other districts, and submit a *proposed* statewide plan to the SBE. The SBE will review all of the documentation, take testimony as appropriate, and issue the final Statewide Plan merging and realigning districts as "necessary."

The SBE will either approve the CESD's proposal to remain an independent elementary school district or will merge the CESD into the LN MUUSD as discussed in "A" (Do Nothing) above.

**C. Vote to merge into the LN MUUSD:**

This can occur in two ways:

1. Cambridge voters could reconsider their TMD 2017 vote pursuant to the provisions of 17 VSA § 2661. See: [§ 2661 Reconsideration or Rescission of Vote](#) for details. Pursuant to Article 21 of the LN MUUSD Articles of Agreement, the LN MUUSD will be presumed to have agreed to the addition of Cambridge as a PK-12 member without the need for subsequent approval by voters of the MUUSD as ordinarily required by 16 VSA § 721.
2. If Cambridge voters choose not to reconsider the TMD vote, or if they do reconsider it but the TMD result does not change, then in the future Cambridge could still vote to become a full PK-12 member by following the steps outlined in 16 VSA § 721. In a nutshell:
  - a) The CESD Board conducts a "preliminary study" and proposes that Cambridge join the MUUSD as a full PK-12 member
  - b) The State Board approves the proposal
  - c) The voters of Cambridge approve the proposal
  - d) Within 2 years after "c)," a majority of the voters of the LN MUUSD approve the proposal

#### **D. Withdraw from the LN MUUSD:**

If Cambridge withdraws from the LN MUUSD, then it will be an independent PK-12 school district that:

- operates a school through grade 6
- pays tuition for its students in grades 7-12

**NOTE: Cambridge can merge with a district other than the LN MUUSD (or Waterville for PK-6) only if it first withdraws from the LN MUUSD.**

If Cambridge withdraws from the LN MUUSD and is an independent PK-12 school district, then it would be able to form a study committee and vote to merge, e.g.:

- with one or more other PK-12 districts that also operate schools through grade 6 and tuition 7-12 (e.g., Fletcher)
- with one or more other PK-12 districts that operate and tuition different grades than Cambridge, provided that Cambridge and the other district(s) agree which grades the new district would operate and which it would tuition (e.g., Bakersfield, if the entire new district that spanned both towns either would be K-6 operating/9-12 tuitioning or would be K-8 operating/9-12 tuitioning)

If such a merger is approved by the voters, then the SBE would assign the new district to be a member district in an existing SU (e.g., FWSU, FNESU) or to be a member district in some other, newly formed, larger SU.

#### **Process for Withdrawal from the LN MUUSD (in a nutshell):**

1. Voters in Cambridge vote to withdraw from the LN MUUSD

**NOTE: A vote to withdraw cannot occur within the first year after a new unified district becomes a legal entity. The LN MUUSD became a legal entity in mid-July 2016 when the Secretary of State recorded the certified merger votes and sent them to the town clerks. As a result, a vote in Cambridge to withdraw cannot occur until approximately July 15, 2017 at the earliest. (See, e.g., 16 VSA § 721a(d) and § 724(d))**

2. If the vote in #1 is in favor of withdrawing, then the voters in each of the other towns within the LN MUUSD independently vote whether to approve withdrawal by Cambridge

3. If the vote by each town in #2 is in favor of allowing Cambridge to withdraw, then (a) the LN MUUSD notifies the Secretary of Ed and (b) the State Board approves the withdrawal if it determines that there are schools that the Cambridge students can attend

**NOTE: As written in the current version of S.122 being considered by the Legislature, the unilateral permission to withdraw from a union high school district is explicitly only for Vernon – which has a unique situation that is not shared by Cambridge (or Waterville or Belvidere) or by any other district in the State.**



### III. Options for Waterville

#### A. If Waterville voters do Not overturn the February 21 vote to join the MUUSD at the reconsideration vote scheduled for April 25 and Waterville becomes a full PK-12 member of the MUUSD:

If Waterville's February 21 vote is not overturned, then it is a full PK-12 member of the MUUSD. If the voters subsequently wish to withdraw from the unified district, then they would go through the process outlined under "D" on the previous page.

#### B. If Waterville voters DO overturn the February 21 vote on April 25 and the Waterville Elementary School District and the MUUSD are distinct entities:

If Waterville voters DO overturn the February 21 vote, then the Waterville Elementary School District (WESD) is an independent, elementary school district for PK-6; Waterville is a member of the LN MUUSD for grades 7-12; and both the WESD and the LN MUUSD are members of the LNSU.

At that point, the Waterville voters have the same options as described for Cambridge above in "II" (other than the reconsideration vote describe in "II.C.1" on page 5).

### IV. Side-by-Side Opportunities for Cambridge and Waterville

#### A. Merger of Cambridge and Waterville (no withdrawal from the LN MUUSD)

If Cambridge remains as it is and if the Waterville voters vote on April 25 to overturn their February 21 vote, then:

- Both are members of the LN MUUSD for grades 7-12
- Each is an independent PK-6 Elementary School District

The Cambridge Elementary School District (CESD) and the Waterville Elementary School District (WESD) would be structurally able to form a study committee and vote to create a single PK-6 union elementary school district (C-W UESD).

The newly created C-W UESD could not, however, qualify for tax rate reductions and other transitional assistance as a side-by-side merger (or otherwise) under current law regardless of what newly merged district was on the other "side."

Act 156 (2012) created the possibility of tax rate reductions etc for side-by-side mergers. One of the requirements for eligibility – which is not changed by any of the proposed amendments being considered by the Legislature – is that both sides of a side-by-side need to be organized as PK-12 districts and responsible for the PK-12 students in the newly merged district – either by operating all grades, operating some grades and tuitioning the remaining grades; or tuitioning all grades. The C-W UESD described above would be organized and responsible only for PK-6 and so would not qualify as one side of a side-by-side. It could form – but it would not be eligible for tax rate reductions etc.

**B. Merger of Cambridge and/or Waterville with each other or with other districts in the region as PK-12 districts (after withdrawal from the LN MUUSD)**

If Cambridge or Waterville (or both C and W) successfully withdraw from the LN MUUSD (see “II.D” on page 6), then the withdrawing district would be a PK-12 district (PK-6 operating / 7-12 tuitioning).

As an independent PK-12 district, it would be able to merge with a district other than the LN MUUSD (e.g., Fletcher) and so could potentially be one side of a side-by-side.

**NOTE: The current deadline for side-by-side eligibility requires a positive vote of the electorate by July 1, 2017 – and as explained above, neither Cambridge nor Waterville could ask its voters to vote on withdrawal until sometime after July 15, 2017.**

The current version of S.122 would extend the July 1, 2017 deadline for voter-approval of side-by-side mergers, in some instances, to November 30, 2017 – but even if C or W fell within this exception, it would be difficult, if not impossible, for C / W to vote to withdraw, receive voter approval from all other members of the LN MUUSD to withdraw, obtain the SBE’s ok on the withdrawal, form a study committee, present a merger proposal to the SBE, and have the voters approve the merger proposal before November 30, 2017 – especially since each of the three votes mentioned must be warned 30-40 days in advance and is subject to the 30 day reconsideration period.

**V. Amending Articles of Agreement**

I recently answered a question from a community member in your SU about amending voter-approved articles of agreement. This is the answer that I provided to her:

*In general, if a “condition or agreement” in the Articles of Agreement is specifically discussed or even explicitly referenced in one of the lettered paragraphs of the Warning, then only the voters of the entire new district can vote to approve a change. In contrast, if a topic covered by an Article is referenced purely in a general way (as in paragraph (d) below), then the new MUUSD board itself can vote to change that Article.*

*I found the following sample warning on your supervisory union’s 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.

*The process by which a citizen would start the process to amend an Article (or request that the Board consider amending it) is really a subject of municipal (not education) law. I think that Emily [Simmons of the VSBA] will be best able to help you with the specifics – or will be able to direct you to someone who can.*

*I also wonder if some of [the articles that she wants to amend] could be addressed more simply through MUUSD Board policies?*

## **VI. Membership on a Unified Union School Board (Or on an MUUSD Board)**

I understand that there has been ongoing discussion about membership on the Unified District's board. There are three basic models that courts have determined are constitutional. Although they may appear to be different on an MUUSD board, they are in fact the same three alternatives. Please follow this [link](#) on the Agency's School Governance / Guidance webpage for a table that compares elements of each model.

In connection with "V" above, the membership on the LN MUUSD Board was a "condition or agreement" set out as a specific subparagraph in the model Warning quoted above. As a result, the model of board membership used by the LN MUUSD/UUSD can be changed only if approved by a vote of the electorate of the entire unified district (the statute explicitly directs the vote to be counted separately by town but added together for the result).

## VII. School closure and whether Act 46 supersedes Acts 153/156:

Some people have seen the following response to a Waterville resident's question about school closure and whether Act 46 supersedes Acts 153/156. For those who have not, here was my reply:

*The LN MUUSD was formed under longstanding statutory law in Title 16 and met the criteria in Act 156 (2012), Section 17, that made it eligible for the incentives and protections provided under the RED program of Act 153 (2010). I'm not aware of any provision in Act 46 (2015) that would supersede or undo or change any of that.*

*Act 153 (2010), Act 156 (2012), and Act 46 (2015) each enacted programs under which a newly created unified union school district created under Title 16 could be eligible for transitional incentives and protections.*

*It was Act 153 (2010) – which created the “RED” program – that explicitly stated that a school could not be closed during the first four years unless approved by the voters in the town in which the building is located.*

*Act 156 (2012), Sec. 17 (amended in Act 56 (2013)), created the MUUSD program as a structural variation of the Act 153 RED program. There is no indication that the MUUSD program was intended to differ from the RED program in any other way and it has been generally understood that the other provisions of Act 153 REDs apply generally to MUUSDs. {Note: In order to be eligible for incentives and protections as a MUUSD, Sec. 17 explicitly requires MUUSDs to conform to certain aspects of the Act 153 RED program. The 4-year closure requirement in Act 153 is not one of the criterion explicitly referenced in Act 156 – so it might be possible for someone to argue that the Act 153 closure provisions do not automatically apply to Act 156 MUUSDs. As I mentioned, however, it seems to be generally accepted that the Act 153 RED provisions apply to a MUUSD and that the explicit references to aspects of Act 153 in Act 156 were not intended to be exclusive.}*

*Voter-approved articles of agreement control the way in which a new district will govern itself. Articles can add protections not included elsewhere in law, but they cannot supersede an explicit legal protection or requirement. For example, articles of agreement could not provide that the statewide school funding formula does not apply to the new district or that the district does not need to provide math instruction.*

*The LN MUUSD Articles provide:*

### **Article 4**

*No new school buildings are necessary to, or proposed for the formation of, the Unified School District. The Unified School District School Board will assume ownership from the forming districts and the LUHSD #18 and operate existing schools commencing July 1, 2017. No school closings are anticipated or proposed on (or before) July 1, 2017. An affirmative vote to close a school after July 1, 2017 shall require a 75% majority of the School Board in two consecutive votes with at least one year between votes.*

*Unless you are aware of evidence to the contrary, it seems reasonable to read the yellow-highlighted language in Article 4 as being in addition to – and not a substitute for – the 4-year school closure language in Act 153.*

**VIII. A few things to keep in mind:**

- **Small Schools Grants:** Unless Cambridge / Waterville withdraws from the LN MUUSD and successfully merges with one or more other districts in a manner that entitles the new district to receive tax rate reductions and other transitional assistance, any small schools grant that either C or W currently receives would not be transformed into a perpetual merger support grant. Rather C/W (if it remains as an independent elementary school district) or the LN UUSD/MUUSD (if C/W becomes a full PK-12 member of the UUSD/MUUSD) would need to apply annually for a small school grant under the new criteria enacted by the Legislature in 2015 and that will go into effect on July 1, 2019.
- **Tax Rate Reductions / 3.5% Hold Harmless:** Under current law, although they are *technically* not entitled to tax rate reductions because they did not vote to join the UUSD/MUUSD, in *reality* ...
  - C and W residents will experience the benefit of the tax rate reductions in connection with the grade 7-12 portion of their taxes because they are part of a unified district for those grades and the unified district has a unified budget and a unified (pre CLE) tax rate
    - Similarly, they will experience the benefit of any phantom pupil calculations for the MUUSD
  - If C and/or W join the LN MUUSD under any of the situations described above – including an SBE-required merger – then they will see the benefit of any remaining years of tax rate reductions for their PK-6 taxes as well, for the same reasons as described above – as well as any phantom pupil calculations