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**THE ORGANIZATION of the NEW HAMPSHIRE SCHOOL SYSTEM
DISSOLUTION OR EVOLUTION?**

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INTRODUCTION

Usually one statistic can't say it all, but this statistic just about says it all. In 1919, the first year the state was divided into supervisory unions (after 1979, known as school administrative units), there were 67 unions, each with a superintendent hired by the state. That number actually dropped to 48 in 1937, and remained constant throughout the 20th century (42 in 1973, 56 in 1986). Then something happened. There are now 98 school administrative units (SAUs) with more on the way, each with its own superintendent hired by the local board.

The doubling of SAUs is not the cause of the state school system coming unglued, but it is the most dramatic symptom. These materials seek to identify the major dissociative trends in New Hampshire education over the last decade from a legal perspective. Not being educators, we have not opined as to whether the increasing disorganization of the regional supervisory system established in the 1900's is a good or bad thing for New Hampshire's students. However, these changes have marked legal consequences which are the foci of our discussion.

HISTORY

At the first recorded meeting of the Town of Rumford (now Concord) in 1732, the first act of the voters, after paying the minister and setting a price for the bounty on wolves, was "That the Select Men be impowred to provide a School so far as the Money voted shall go." As

important as the Claremont I and II decisions were to fixing an adequate education as a state constitutional right, education has been at the center of New Hampshire life from the start, and a principal duty of local government.

Out of the common schools of the eighteenth century came the formation of separate school districts. By 1858, there were 2362 districts in 228 towns. Most were single teacher, one room school houses.

Gradually, the need for more advanced learning to meet the demands of New Hampshire's new factories led to the formation of regional grammar schools, and, eventually, by the end of the nineteenth century, to the emergence of high schools.

In 1895, the Town School Act, by declaring that each town was a single school district, dropped the number of districts to 275. The later 1919 act created the State Board of Education and the Office of the Commissioner of Education.

The Age of Regionalization began fifty years later with the Report of the Interim Commission on Education created by Governor Wesley Powell and the General Court in 1961. This Commission drafted the state's first master plan for building the present-day regional high schools among smaller town districts across the state. The new regional high schools now graduate more than half the state's seniors each year, using the COOP and AREA school organization plans described in 1961.

Since much confusion reigns as to the various terms used in the language of regionalization, a glossary follows:

A. Authorized Regional Enrollment Area (AREA) - RSA 195-A

AREA schools are created by an agreement between sending school district(s) and a receiving district. The receiving district board maintains and operates the AREA schools, and such AREA schools are located within the receiving district. RSA 195-A:4. An AREA school is deemed the assigned school for all students residing in the AREA region. RSA 195-A:4.

A sending district in an AREA may be a school district, a special school district, or a cooperative school district. RSA 195-A:1, I&IV.

Tuition is set by agreement between the sending district and receiving district(s). RSA 195-A:3. By statute, AREAs must have a minimum length of ten years. Many AREAs have no stated end date. The sending districts do not have representation on the AREA Board.

B. Cooperative School Districts (COOPs) - RSA 195

A cooperative school district is a school district “composed of two or more school districts of the state associated together under the provisions of this chapter and may include either the elementary schools, the secondary schools, or both.” RSA 195:1, I. Unlike AREA schools, COOPs are separate political subdivisions with the same powers and duties as other school districts in the state. RSA 195:5. The cooperative school board is comprised of an odd number of no more than 15 representatives from each of the towns making up the cooperative

school district, usually elected at large, for terms not to exceed three years. RSA 195:19-a & RSA 195:18, III (b).

There is no tuition, because the COOP is a single school district. There are no sending or receiving districts. Operating costs and capital expenses are apportioned between the participating districts according to a formula set out in articles of agreement. RSA 195:18. The apportionment formula, usually a mix of equalized value and average daily memberships, can be changed at the annual school district meeting. RSA 195:22.

Cooperative districts are designed to be permanent. Therefore, the process for withdrawal in the statute is difficult, as it takes a vote of the entire cooperative meeting.

C. Joint Maintenance Agreements (JMAs) - RSA 194:21

JMA schools are schools maintained and operated by one, two, or more adjoining school districts. RSA 194:21. The “component” school districts enter into an agreement, which governs the terms of operation of a jointly maintained school. RSA 194:21.

Tuition is set by agreement between the participating school districts.

The joint boards of the component school districts have the authority to contract, hire, collective bargaining, and incur debt by the issuance of bonds or notes in the name of the JMA. RSA 195:21, III.

D. Long-Term Contracts - RSA 194:21-A

Long-term contracts, often confused with JMAs, are by far the most popular arrangements in the state. School districts not maintaining middle or high schools typically enter into long-term tuition contracts with larger receiving districts to accept some or all of the districts' students. The relationship between the sending and receiving districts, including the tuition, is governed by the terms of the contract, which is limited to a term of 20 years.

The sending districts typically do not have representation on the school board of the receiving district. However, the parties can agree to representation for the sending districts.

E. Tuition Agreements - RSA 194:22

Any school district can enter into a contract with another school district, private or public academy, high school, or other "literary institution" for the education of its high school students. The sending district has no representation at the school with which it contracts.

Tuition is set by contract.

F. Individual Tuition Contracts - RSA 174:27

Any school district not maintaining a high school is responsible for the cost of tuition, except transportation costs, of any pupil who resides in the school district.

The pupil's resident school district is responsible for paying the tuition costs to the approved high school or public academy where the pupil attends. RSA 194:27.

The cost of tuition is the current per-pupil operating expenses of the receiving district for its high school, as estimated by the State Board of Education for the preceding year or another amount agreed to by the districts.

G. School Administrative Unit (SAU) – RSA 194-C

SAUs are legally organized corporations charged with the supervision of school districts. Every school district is required to belong to an SAU, and each SAU is obligated to provide superintendent services to its school districts. RSA 194:C:1 – C:3. School districts are not required to have a superintendent, as long as the responsibilities of the superintendent's office, as set out in RSA 194-C:4, are performed by other administrative personnel. RSA 194-C:5.

The SAU is governed by a separate board made up of representatives from the several boards participating in the SAU, and the SAU board chooses its own chairperson, secretary, and treasurer. The board in a single district SAU is the same as the school district board, often with a different chair. The SAU Board meets between April 1 and June 1 of each year. SAUs oversee the organization of the central office, including the hiring, pay, and removal of the superintendent, assistant superintendent, business administrator, director of student services, and other SAU administrators and staff. RSA 194-C:4 & RSA 194-C:5.

SAUs have the power to sue and be sued, to hold and dispose of real estate, however, SAUs cannot procure land to construct or purchase buildings, borrow money to purchase real estate, or mortgage real estate. RSA 194-C:1, II.

H. School Districts

Each town in the state constitutes a single school district until and unless a cooperative district is formed. RSA 194:1. School districts are legally organized municipal corporations with the right to be sued and sue, to purchase, hold and sell real estate for the use or schools, and to make necessary contracts. RSA 194:2. School districts enjoy a number of broad powers, as provided in RSA 194:3. In every district there is a governing body, the board, and a legislative body, the annual meeting. RSA 21:47, 48.

I. School Board

School districts are governed by a school board made up of members elected at the annual school district meeting. RSA 671:4, and RSA 195:5.

HISTORY PART II

It is safe to say that the regionalization of New Hampshire schools, particularly its high schools, reached its pinnacle in the decade following the 1963 COOP legislation liberalizing the types of apportionment formulas and creating the Authorized Regional Enrollment Area (AREA) system. Using the post-Sputnik national science frenzy as its catalyst, the Department of Education actively brokered the marriages of the COOPs and AREAs, often joining together very disparate communities. Paul Kliminster, playing the role of “Marrying Sam,” spent countless hours convincing the New Londons and Sunapees to take the Bradfords and Warners.

The new AREAs, originally conceived as pre-COOPs, combined Exeter with Stratham, Dunbarton with Goffstown and Hill with Franklin.

In 1961, there were only eight cooperative districts in existence, and no AREAs. By 1989, there were 31 COOPs and 21 AREAs. The new regional Vocational Technical Centers also provided more centralized opportunities to students in small towns. As special education came of age in the 1970's, consortiums of districts were formed to pool specialists and create in-district programs for children with varied disabilities. Informal arrangements between districts became the basis for written long-term contracts, such as between Bow and Concord or Manchester and Candia.

All was not roses, however. From the start, the historic animosities between neighboring towns and the frictions caused by grossly unequal tax bases simmered and boiled over periodically. The districts in the Monadnock COOP began fighting almost immediately. *Town of Gilsum v. Monadnock Reg'l Sch. Dist.*, 105 N.H. 361 (1964); *Town of Fitzwilliam v. Monadnock Reg'l Sch. Dist.*, 105 N.H. 487 (1964). Bradford and Warner took Newbury and New London to court over the gross distortions in ability to pay caused by the increasingly golden shoreline of Sunapee Lake. *In re Kearsarge Regional School District*, 138 N.H. 213 (1994).

Throughout these battles, the state stood squarely behind the new regional schools, and resisted repeated attempts to loosen the grip of state law that made it next to impossible to dissolve, or even leave, the COOPs or AREAs once created.

The State Board also opposed the breakups of SAUs. Some, such as Farmington, were forced to obtain special legislation to form a separate SAU.

However, by the end of the Twentieth Century, in the words of Yeats,

Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,

In 1986, the General Court passed a comprehensive rewrite of the statutes, creating the Department of Education, the Office of the Commissioner, and the duties of the State Board. However, among the statute's provisions was a repeal of the state's practice of hiring (and paying) superintendents for the 56 SAUs. Resentment over the perceived favoring of districts within SAUs by superintendents and staff was an almost immediate consequence. Budget wars within SAU boards led to characterization of districts as "cheap" or "spendthrift." Inevitably, the life expectancy of superintendents and administrators, in general, began to drop.

The true upheaval came in 1996, with the passage of RSA 194-C, the SAU statute. In keeping with the total rewrite of laws governing SAUs, a new chapter was created, RSA 194-C, and the vestiges of the 1919 law were repealed. Central was a provision removing the State Board's veto power over a district's decision to withdraw. While the statute called for a withdrawal study and plan, followed by State Board review, in the final analysis, a district could now withdraw over the opposition of both the other districts in the SAU and the State Board.

Anyone present during State Board meetings over the last decade has heard repeated State Board laments that the withdrawal of this or that district is contrary to the public interest, will leave students behind, and cause needless duplication of resources – all to no avail. The map of SAUs in 1986, compared to the same map in 2013, says it all. (See appendix.)

Equally significant as a reflection of the legislature’s philosophical basis for RSA 194-C, was the provision in RSA 194-C:5, II, which stated that while each SAU was to provide basic superintendent services:

School district shall not be required to have a superintendent and may assign these services to one or more administrative personnel working full or part-time; or such services may be independently contracted.

And, thus, it came to pass that what was once the cornerstone of the state’s new school system in 1919, the office of the superintendent became, in 1996, optional.

Though the practical significance of RSA 194-C:5, II has been limited, the message it sent to districts was clear – superintendents are an expensive luxury, like a fancy car. Buy used, and trade in often. In New Hampshire, this has occurred against a backdrop of unprecedented demands of No Child testing and school accountability on the one hand, and profound curriculum changes resulting from acceptance of a national common core of learning and new competency standards in local schools, on the other. Never have superintendents been both so clearly needed and so devalued.

New Hampshire is experiencing what the authors believe is the natural consequence of the expanding and dissolving SAU system. The absence of long-term superintendents has led to increasingly dysfunctional local school boards. Superintendents have historically functioned as a governor, tempering and calming the natural fractiousness of laymen volunteers who run for the school board. Without the strong hand of a professional educator laid on the shoulder of contentious board members, many boards across the state have run amuck, spending much of their time insulting administrators and each other. Much of this dismal circus has been televised, or YouTubed, and has become a major source of local entertainment. It should come as no surprise that many intelligent, public-spirited citizens are avoiding this theater of the absurd, and choosing to serve on the library board or the conservation commission instead. The state's unending budget crises resulting from a chronic lack of revenue seems to have sapped the energy necessary for the executive to even address this problem, to say nothing of leading the state out of this swamp. As we see it, there is quicksand up and ahead and no one to guide the state away.

EVOLUTION

So what, you ask? Is technology changing the face of education at such a rate that it is of little significance that antiquated nineteenth century systems are being replaced?

An argument for celebrating the erosion of the large regional high school system is the emergence of alternatives to high school classroom learning. Classes by virtual learning over the internet are sprouting up around the state, as budget cutbacks eat into those classic domains of

education, *e.g.* art, music, and foreign languages. The numbers (69 enrolled at Virtual Learning Academy as of October 1, 2012) reveal a movement in its infancy, but not growing logarithmically. Time and test scores will tell how effective virtual courses are as a substitute for face-to-face, teacher/student interactions.

Extended Learning Opportunities (ELOs) are another means of providing credit for “courses” taken in the “real life” arena through jobs, internships, or volunteer activities. This, the pet cause of State School Board Member, Fred Bramante, has also been gaining in popularity, and now supplies an important supplement to the Vocational Technical Centers and stay-in-school initiatives.

The gradual emergence of charter schools is beginning to provide a real option to large brick secondary schools. The enrollment numbers are small (1,740 students in charter schools, or $>.01\%$, of the 187,963 total students statewide as of October 1, 2012), and the growth is neither logarithmic nor even geometric, but it appears here to stay. Given the collapse of the parochial school system, there is little question that the few schools established in this state create some needed variety in high school choices.

Finally, New Hampshire parents have home-schooled children since the eighteenth century. Two working parents appears to have created a ceiling on this otherwise viable alternative. In sum, the alternatives totaled up leave a substantial gap between the numbers of students being educated in the new age and those that a fragmenting system may leave behind.

CONCLUSION

The COOPs are still basically intact, as are the AREAs. To be sure, the long-term contracts between districts are straining under the weight of districts competing for bodies, as the state's population shrinks and ages. In 1998, the General Court liberalized the AREA statute to allow receiving districts to withdraw. RSA 195:14. The legislature has been studying liberalizing the COOP laws. Mason, Sullivan, and Surry have recently separated from their COOPs. The Conway AREA was dissolved (replaced with long-term contracts), Dunbarton has left its AREA, and a dozen more have the question under consideration. But, all in all, the regional high school system is still intact. For how long? What will replace it? Clearly, there will be no new cooperatives formed and few, if any, new AREAs.

Apart from the profound educational consequences of disorganization on the selection of teaching staff and administrators, the practical problems and legal battles are growing in numbers and intensity. Here are some examples:

- The Cost of the Break Up:
 - Withdrawal from a COOP, AREA, and/or SAU is complicated, time consuming and expensive.
 - Long-term contracts are costly and difficult to negotiate.
 - Long-term contracts are an even greater challenge to enforce as there are no efficient, timely, and cost effective dispute resolution procedures.

- Long-term contracts are being violated and/or ignored. Meanwhile, the thirst for students is leading some districts to rationalize turning on historical partners and entering bidding wars for students from districts flying solo.
- Board (dys)Function:
 - School and SAU boards' ability to function is directly related to the stability of the local school district infrastructure.
 - The increase in the number of boards and the number of superintendents and central office administrators contributes to dysfunction as board members become increasingly involved in the day-to-day decision-making.
 - Board members acting outside of their role as a member of the governing body jeopardize the school district and themselves.
- Superintendent's Function:
 - Superintendents and the SAU office perform hundreds of functions in a school district on a daily basis (over 600 by some counts), most if not all of them required by state or federal law or regulation. A fractured SAU system which lacks the resources to perform all of these tasks efficiently creates potential risks for students, staff, and the school districts as a whole.
 - For example, who conducts timely background checks of employees, coaches, and volunteers; will the bidding processes be followed; will large contracts be

reviewed by counsel; who will ensure that audits are performed and corrective measures taken; what about the roll-out of new evaluation procedures and new testing?

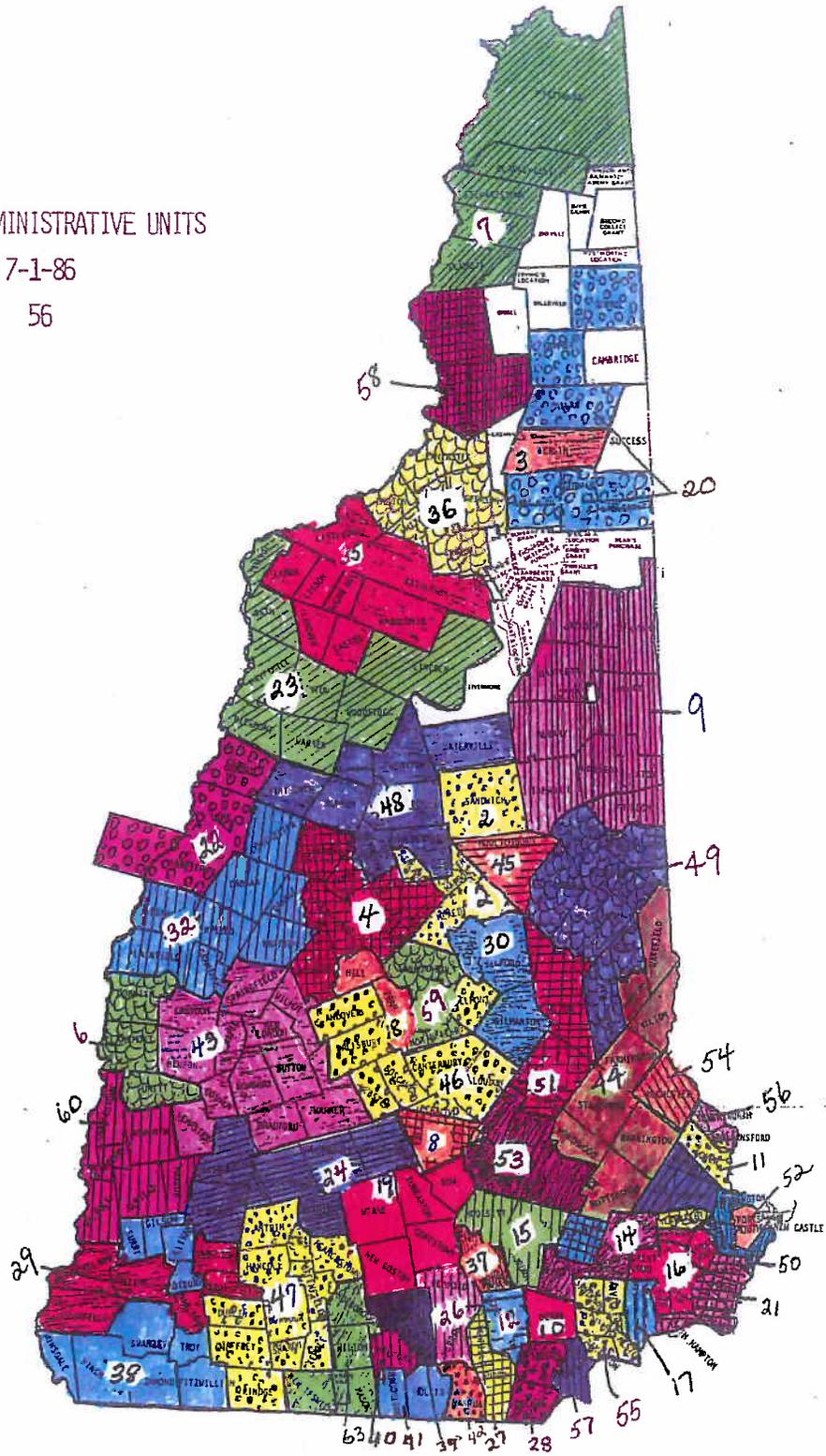
- Board members are being sued by employees, parents, students, and each other for defamation, harassment, privacy violations, and other causes as a result of dysfunction, inexperience, and lack of respect for the superintendent's office.
- The Right to Know law is being used as a cudgel rather than a lamp.
- A poisonous climate makes hiring and retaining good superintendents difficult, which increases the use of short-term and interim superintendents.
- Health and Safety:
 - More SAUs and school districts mean more administrative offices and school buildings requiring maintenance, repairs, improvements, oversight, and insurance.
 - Difficulty overseeing and addressing common building issues: sick buildings, fire, school security and SROs, storms and weather emergencies, diseases and false rumors of the above.
 - Unknown and unascertained issues relating to the standards of evaluating and supervising students and employee interaction, particularly with virtual and extended learning opportunities.

Should not the state agency, Board, and Commissioner, created to steer the New Hampshire ship of education through the Scylla of limited local monies and the Charybdis of curriculum demands, be empowered to assist the sputtering state school system, thereby helping it to restart its engines to make it through the shoals of disintegration? A failure to do so means full-time employment for education lawyers.

SCHOOL ADMINISTRATIVE UNITS

7-1-86

56



State of New Hampshire School Administrative Units



July 1, 2013

