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**Confidential Attorney-Client Communication**

Peter Burrows, Superintendent  
Addison Central School District  
49 Charles Avenue  
Middlebury, VT 05753

Dear Peter,

This letter is in response to a request for legal guidance regarding how the Addison Central School District Board (hereafter “the ACSD Board”) should respond to a petition it has received pursuant to 17 V.S.A. §2642(a)(3). The petition requests that the ACSD Board include an article in its annual school district meeting warning, which would amend Article Fourteen of the District’s Articles of Agreement.

This petition presents the following question:

1. Is the ACSD Board required to include the petitioned article, which would amend Article Fourteen of the ACSD Articles of Agreement, in its annual school district meeting warning?

**Answer**

We cannot predict how Vermont courts will rule on any legal challenge with certainty. However, based upon our review of the law and the facts, it is our legal opinion that the ACSD Board is not legally required to warn the school closure article.

**Facts**

In March 2016, the voters of Bridport, Cornwall, Middlebury, Ripton, Salisbury, Shoreham, and Weybridge (hereafter, “the member towns”) approved the creation of the Addison Central School District. The school boards of the member towns followed the statutory process for establishing a union school district found in Chapter 11 of Title 16. Pursuant to these provisions of law, in order to become a unified union district, the majority of the voters in each of the proposed member towns had to vote in favor of the merger.

16 V.S.A. §706b directs a study committee comprised of representatives from the member towns to develop a final report that addresses specific issues regarding how the

proposed union district will be structured and governed. These provisions of the final report are commonly referred to as the district's Articles of Agreement.

16 V.S.A. §706f dictates the contents of the warning for the vote to establish a unified union school district. In Article I of the warning, districts are obligated to specify the grades that will be operated by the district, how the board of directors will be configured, how assumption of debts and property will occur, and a statement indicating where voters may be able to read the report of the study committee, the provisions of which "shall govern the union district."

Once a merger is approved by the voters, amendments to the Articles of Agreement are governed by 16 V.S.A. §706n. The relevant language is as follows (underline added):

- 16 V.S.A. §706n(a): "A specific condition or agreement set forth as a distinct subsection under Article I of the warning required by 706f of this chapter and adopted by the member districts at the vote held to establish the union school district...may be amended only at a special or annual union district meeting...The vote on each proposed amendment shall be by Australian ballot...Although the results shall be reported to the public by member [town], an amendment is effective if approved by a majority of the electorate of the union district voting at the meeting."
- 16 V.S.A. §706n(c): "Any provision of the final report that was included in the warning required pursuant to section 706f of this chapter for the vote to form the union by reference to or incorporation of the entire report but that was not set forth as a distinct subsection under Article I of the warning may be amended by a simple majority vote of the union board of school directors"

The warning to establish the ACSD is attached. Article I does not make any specific reference to Article Fourteen of the ACSD Articles of Agreement.

The current language of Article Fourteen provides that it is within the authority of the ACSD Board to close a school if at least ten members of the Board approve of the closure. The petitioned amendment to Article Fourteen submitted to the ACSD Board proposes to limit the authority of the ACSD Board to close a school by requiring "a majority of the registered voters at a duly warned special meeting of the town in which the school is located vote to close the school" (See Attached Petition).

### Legal Analysis

Vermont law requires a school board to include in its warning "any article or articles requested by petition signed by at least five percent of the voters of the municipality" so long as the petition meets certain requirements (17 V.S.A. §2642(a)(3)). However, Vermont courts have long held that a board has discretion to refuse to include a petitioned article in a town-meeting vote if the subject matter of the article concerns a matter outside of the voters' authority (*Skiff v. South Burlington School District*, 201 A.3d 969 at 973, 2018).

In the *Skiff* case, the Vermont Supreme Court reviewed decades of case law governing the statutory duty of a board to warn items, and concluded that petitioned items of business must be within the authority of voters to decide at a district meeting (*Id.* at 975). The Court states, “The right of individuals to directly vote on and decide issues is limited in this representative form of government. If school officials are acting within the powers designated to them by the Legislature, they have discretion to act as they deem best... The recourse for voters is not through petition, but election” (*Id.* at 978).

The Vermont Legislature has provided broad authority to school boards to govern school districts, including the authority to “determine the educational policies of the district”, “have possession, care, control and management of the property of the school district”, “relocate or discontinue use” of a school building, or take “any action that is required for the sound administration of the school district” (*See* 16 V.S.A. §§563(1), (2), (3), & (7)).

The electorate’s authority is confined to the election of district officers, including school board members, the approval of the budget, including salaries for board members, the sale or lease of school buildings, and the authority to borrow (*See* 16 V.S.A. §§562(2)-(10)). (*See also Skiff* at 976: “The powers of the electorate are delineated by statute, and include discrete items, including voting for annual salaries for school board members and authorizing the amount to be expended... In contrast, the school board has broader, more general powers.”)

As 16 V.S.A. §562(7) makes clear, the electorate’s authority with respect to the use of school buildings is limited to authorizing the school board to “enter into leases of real property for more than three years, to purchase buildings or sites for school purposes, to locate and erect schoolhouses, and to sell, or otherwise dispose of, schoolhouses or sites.” Pursuant to 16 V.S.A. §§821-822, the electorate also has the authority to determine the grades to be operated by the district.

In contrast, 16 V.S.A. §563(3) states that the school board “shall have possession, care, control, and management of the property of the school district, subject to the authority vested in the electorate” (i.e., the authority to sell or purchase buildings). Further, the school board “may relocate or discontinue use of a school-house or facility, subject to the provisions of sections 821 and 822 of this title” (16 V.S.A. §563(7)). Taken together, these provisions of Vermont statute suggest that unless the board is planning to sell a school building, or is proposing that a school district no longer operate a school for certain grades, the school board has broad authority to determine how to use the buildings within the district.

16 V.S.A. §706n provides more specific clarity on the authority of the school board and the authority of the electorate with respect to amending Articles of Agreement. Once the voters have approved the creation of a union school district, their authority to amend the Articles of Agreement applies to those articles listed as a distinct subsection under Article I of the warning (16 V.S.A. §706n(a)). The union school district board, in addition to its powers and duties granted by the legislature in 16 V.S.A. §§706q & 563, has the authority to amend any provision of the Articles of Agreement that was not set forth as a distinct subsection under Article I (16 V.S.A. §706n(c)). It is not clear whether voters have the authority to amend articles that were

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not listed under Article I of the warning; however, it is unlikely that the electorate would have the authority to amend articles that are outside of the specific authority granted to it under Vermont law.

Therefore, when considering the broad statutory authority granted school boards under Vermont law, and the specific authority granted to the ACSD Board pursuant to Article Fourteen of the Articles of Agreement, it is likely that a court would find that the electorate does not have the authority to direct the Board on matters related to school closure.

### Conclusion

Pursuant to *Skiff* and decades of Vermont case law on the authority of voters to compel inclusion of a petitioned article, the ACSD Board would not be compelled to warn the article proposing to amend Article Fourteen, because the school board has the authority to decide how the buildings within their district will be used and managed (16 V.S.A. §§563(1)-(7)). Article Fourteen was not listed as a distinct subsection under Article I of the warning to establish the ACSD, and is therefore within the authority of the ACSD Board to amend. Therefore, the ACSD Board is not obligated to warn the school closure article (16 V.S.A. §706n(c)).

If you have any questions or concerns, or if I can be of any further assistance in this matter, please do not hesitate to contact me.

Very truly yours,

McNEIL, LEDDY & SHEAHAN, P.C.



Christopher B. Leopold