SOUTH WASHINGTON COUNTY SCHOOLS
SCHOOL BOARD
7362 East Point Douglas Rd S.
Cottage Grove, MN 55016

ADMINISTRATIVE REPORT

DATE:	December 16, 2021
TOPIC:	8.3 – Approval of 916 Joint Powers Agreement
PRESENTER:	Dan Pyan – Director of Finance and Operations
REFERENCE TO POLICY/STATUTE:	701 School District Budget

A. **PURPOSE OF REPORT**

a. The original Joint Powers Agreement (JPA) regarding Intermediate District 916 (of which South Washington County Schools is a member) was developed in 1969.
b. The attached resolution is the first amendment to the agreement since 1969.
c. The intent of the amendment is to modernize the agreement and more fully describe what occurs when a member district decided to withdraw from the JPA.
d. This updated JPA resolution will replace the current JPA once it is fully executed by all member districts.
e. A document with the highlights of the updated JPA is attached.

B. **RECOMMENDATION**

a. Administration recommends approval of the resolution enacting the amended and restated Intermediate School District 916 Joint Powers Agreement.

NORTHEAST METRO INTERMEDIATE SCHOOL DISTRICT NO. 916
UPDATED JOINTS POWERS AGREEMENT

The following information is meant to assist member districts of Northeast Metro Intermediate School District No. 916 understand the purpose and meaning of the updates to the joint powers agreement (JPA) and to provide context for a conversation about how best to structure terms in the updated JPA related to the financial obligations for withdrawing members.

Background

The legislature authorized the formation of Northeast Metro Intermediate School District No. 916 in 1969 and Minnesota Statutes Sections 136D.71 to .76 (enabling legislation) relate specifically to this intermediate district. The original JPA forming ISD 916 is also from 1969. JPAs are governed by state law under Minnesota Statutes Section 471.59. There have been no amendments to the ISD 916 JPA since it was originally executed.

A first draft of the First Amended and Restated Agreement for Intermediate School District has been shared with ISD 916's member districts. An updated draft is being provided with this narrative and is the version addressed here. The updated JPA is geared toward modernizing the agreement and better addressing what happens when a member district decides to withdraw from the JPA. This is, in part, a response to the protracted withdrawal dispute between Intermediate School District No. 287 and the Bloomington District (addressed in more detail below), as well as similar issues at other education cooperatives and the relatively recent withdrawal of the St. Francis District from ISD 916. These situations highlighted a need to have a more defined withdrawal plan in place to hopefully head off an issue down the road. Beyond that, the updated JPA includes terms that are more in line with ISD 916's current structure and operations, as set out below.

Highlights from the Updated JPA

- As stated in Paragraph 1, the updated JPA will fully replace the original 1969 JPA once the updated JPA is executed by all member districts.
- Paragraphs 5 identifies the structure for ISD 916's Board, but does not change it from its current form: each member district gets one representative on the Board who must sit on the member district's Board. It does remove some of the language found in original JPA that broke down how Board membership would work if there were five or fewer member districts, which is not an issue now. There are two other things to note about this paragraph:

    - It states that no two officers may be from the same member district. While this is not possible under the stated Board structure, since each member district only has one representative on the ISD 916 Board, this mirrors language found in the enabling legislation. Minn. Stat. § 136D.72, subd. 4.

    - This provision also states that Board members shall report to their member district Boards about ISD 916's activities on a quarterly basis. This language is not found in the original JPA, but is contained in the enabling legislation. Minn. Stat. 136D.72, subd. 1.

- Paragraphs 6 and 7 relate to the authority ISD 916 has to operate much like any other school district consistent with state law. These provisions do not expand the district's current authority. The powers listed here are based primarily on the enabling legislation and Minnesota Statutes Chapter 123B.

- Paragraph 8 builds on the tuition provision found in paragraph 7 of the original JPA, making clear that the Board will set policies governing participation and enrollment in District programs and laying out a few minimum requirements for those policies. Specifically, it sets parameters for non-member enrollment and enrollment after a member withdraws. Students enrolled in ISD 916 before their member district withdraws may remain enrolled, but must pay the non-member district access fee. During the period between the withdrawing member's notice of withdrawal and the effective date of withdrawal, priority for student placement in ISD 916 programs will be given to districts continuing their membership and referrals from the withdrawing member district will be treated like those from non-member districts.

- Paragraph 9 insulates member districts and ISD 916 Board members from liability for ISD 916's debts or obligations. This is consistent with language found in paragraph 8 of the original JPA and in the enabling legislation. Minn. Stat. 136D.74, subd. 1a.

- Paragraph 10 relates to withdrawal of member districts, setting out the terms of withdrawal to ensure a clear and consistent process. This is in contrast to the original JPA which merely provides that withdrawal is allowed by mutual consent of the member district's and ISD 916's Boards (*see* paragraph 9). Paragraph 10 is a work in progress and member districts are invited to weigh in on these terms. More context on state law related to withdrawal, the dispute between ISD 287 and the Bloomington District, and the resulting changes to ISD 287's JPA are addressed below. The current withdrawal terms are meant to set relatively simple calculations for determining a withdrawing member's financial obligations, rather than devising a complex formula for dividing assets and liabilities that may be difficult, time consuming, and/or costly to implement in practice. The following are the highlights of the current withdrawal terms in the updated JPA:

- A member district wishing to withdraw must provide notice by February 1, with withdrawal effective on June 30 of the following fiscal year. Notice of withdrawal must be via a resolution passed by the member district's board.

- The withdrawing member is obligated to pay two different sums upon withdrawal:

    - The first sum is a debt service obligation, which can be paid over the three years following withdrawal, subject to the accrual of interest after one year. This amount is determined by first calculating the per-adjusted pupil unit value of the debt service owed by ISD 916 in the fiscal year following withdrawal. This calculation will use the total APUs of all member districts as projected by MDE for the fiscal year following withdrawal. Applying this calculation for the 2021-2022 fiscal year, the per-APU debt service rate is $54.47 ($5,703,324 total ISD 916 debt service/104,699.2 projected APUs from all member districts). The per-APU debt service rate will then be multiplied by the withdrawing member's projected APUs to determine the withdrawing member's total debt service obligation. This money will go toward ISD 916's actual debt service to mitigate any impacts of the withdrawal on the remaining members.

    - The second sum is a membership equivalence fee, which is essentially what the member would have paid in membership fees for the fiscal year following withdrawal had it remained a member. This amount will be paid as other membership dues are paid and will go toward ISD 916's general operating costs.

- The withdrawing member will not be entitled to receive any ISD 916 assets upon withdrawal or their value and will forfeit any proportionate share of those assets. At the same time, the financial obligations described above are the extent of what the withdrawing district following withdrawal and it will not be on the hook for any other debts or liabilities of ISD 916.

- Paragraph 11 addresses the addition of member districts. This provision is less detailed than it was in paragraph 10 of the original JPA, stripping out some of the information about what the ISD 916 Board should consider when accepting a new member, but it does not restrict what factors the Board may consider. On a whole, the updated JPA does not change the process for adding members. Note that if a district is denied membership, it may appeal to MDE, which can require ISD 916 to grant membership to the district. Minn. Stat. 123A.24, subd. 3.

- Paragraph 12 requires member districts to assure approval of its share of ISD 916's costs through levies as allowed under state law. Though this expectation isn't directly stated in the original JPA, it is certainly required for the continued operations of ISD 916.

- Paragraphs 13 and 14 provide that the updated JPA will be reviewed regularly – formally every five years and at an annual meeting among the parties. This should ensure the everyone understands the content and requirements of the JPA and that there are opportunities to discuss amendments, as needed.

Withdrawal Process under State Law

Minnesota Statutes Sections 123A.24 and 123B.02, subdivision 3, address withdrawal of member districts and the distribution of assets and assignment of liabilities when a member district withdraws from an intermediate school district, though the process is only loosely defined. These statutes include the following parameters:

- A withdrawing member must adopt a resolution and notify the other parties of their intent to withdraw by February 1, with withdrawal becoming effective June 30 of the following fiscal year. Minn. Stat. § 123B.02, subd. 3(c). In other words, the withdrawal becomes effective at the end of the school year after the year in which notice of withdrawal is given, resulting in at least 17 months of lead time.

- A withdrawing member district remains responsible for its share of debts incurred by the intermediate district, though the intermediate district and withdrawing district may agree to the terms and conditions of the distribution of assets and assignment of liabilities. This is done through a Board resolution approved by each. Minn. Stat. § 123A.24, subd. 1(b).

- If the intermediate district and withdrawing district can't reach an agreement, the MDE commissioner will resolve the dispute by determining the withdrawing district's share of assets and liabilities based on its enrollment, financial contribution, usage, and other facts determined appropriate. MDE may involve an administrative law judge to make the necessary determinations, the cost of which will be split equally by the intermediate and withdrawing district. Minn. Stat. § 123A.24, subd. 1(c).

- Any distribution of assets to the withdrawing district must be done in a manner that minimizes financial disruption to the intermediate district. Minn. Stat. § 123A.24, subd. 1(c).

- Insurance pool-related assets are not subject to disbursement by MDE to a withdrawing district. Minn. Stat. § 123A.24, subd. 1(d).

Context from ISD 287

ISD 287 was formed in 1968 and its enabling legislation is found in Minnesota Statutes Sections 136D.21 to .31. In 2011, the Bloomington School District, which was an original member of ISD 287, withdrew from the intermediate district. Neither the JPA nor ISD 287's bylaws addressed the financial implications of withdrawal, which led to a dispute between the Bloomington District and ISD 287 over the distribution of assets and assignment of liabilities. The disagreements related to the value of assets and liabilities of real estate in which the intermediate district had an interest, the amount of pension and other post-employment benefits for which Bloomington was responsible, and Bloomington's proportionate share of ISD 287's assets and liabilities.

The parties attempted to resolve the dispute on their own and with the assistance of a mediator until the end of May of 2012 – almost a year after Bloomington's withdrawal became effective – when they submitted the matter to MDE for resolution. MDE enlisted the aid of an administrative law judge (ALJ) from the Office of Administrative Hearings to resolve the dispute. The ALJ held an evidentiary hearing in 2014 that lasted six days, which waded through dense financial information and witness testimony from experts and a number of employees of the Bloomington district, intermediate district, and other member districts. The ALJ subsequently requested additional briefing and further documentation from the parties. She ultimately issued a 100-page decision in early 2015, finding that Bloomington's proportionate share of ISD 287's assets and liabilities was $525,297.00. The ALJ directed the parties to agree to a payment schedule to minimize the financial disruption to the intermediate district and remaining member districts to pay this amount.

Thereafter, both parties requested reconsideration by the ALJ, which led to further hearings and disputes over additional documentation to be submitted for consideration. The ALJ issued a 104-page amended decision at the end of June 2015 – now four years after Bloomington withdrew – reassessing Bloomington's proportionate share of ISD 287's assets and liabilities to be $90,751.00. She again ordered the parties to agree to a payment schedule to minimize disruption to the intermediate district. While either party could have appealed this ruling to the Minnesota Court of Appeals, neither did so and this became a final decision.

In 2016, ISD 287 revised its JPA, which it calls a Memorandum of Agreement (MOA). On a whole, ISD 287's updated MOA is very similar in terms of content to the updated JPA for ISD 916. Most differences, such as the term length of Board members (four years for ISD 916 versus two years for ISD 287) and details about dissolution of the intermediate district (ISD 916's updated JPA is silent on this issue whereas ISD 287's updated MOA says that two-thirds of member districts must agree to dissolve), are based on different requirements in the relevant enabling legislation.

The main purpose of revising the MOA, of course, was to clarify financial implications of withdrawal following the extended – and no doubt costly – dispute with Bloomington. The updated MOA addresses withdrawal separately for existing member (members who were part of the intermediate district at the time the MOA went into effect) and future members (those who weren't originally part of the updated MOA).

When an existing member withdraws, it will be allocated its proportionate share of the intermediate district's assets and liabilities as of the effective date of withdrawal subject to the following terms:

- ISD 287's long-term assets and liabilities are to be determined through independent appraisals performed by qualified actuaries and appraisers.

- The actuarial firm that issued the intermediate district's most recent 2-year report will determine the actuarial value of its long-term Other Post-Employment Benefits (OPEB) and severance liabilities.

- ISD 287 will have all properties in which it has an ownership interest appraised at least every ten years and, to the extent willing and able, the appraiser who issued the most recent appraisal report will determine the values of the properties ISD 287 owns in fee simple (meaning not leased or other split interests) as of the effective date of withdrawal. If the appraiser from the most recent report isn't able or willing to do the appraisal for the withdrawal, this appraisal will be done by the appraiser or alternative appointed by the ISD 287 Board at its annual organizational meeting.

- The cost of an appraisal or actuarial report done specifically for the withdrawal (because the effective date of the withdrawal does not time out with the regular appraisal or actuarial report completed by the intermediate district) will be split equally by the withdrawing district and ISD 287.

- Real estate that the intermediate district doesn't own in fee simple on the withdrawal date is not to be included in the valuation of assets and liabilities.

- The Actuarial Accrued Liability figure from the actuarial report will be used to value OPEB and severance liabilities.

- Other long-term liabilities to be included in the valuation of the intermediate district are the "due within one year" amount and the first year's interest amounts listed in the Minimum Debt Payments Table shown on its audited financial statements.

- Amounts due from the withdrawing district to the intermediate district or vice versa as of the withdrawal date will be excluded from the assets and liabilities valuation.

- The withdrawing district remains liable for all outstanding invoices at the time of withdrawal.

- Other long-term liabilities not in existence at the time of the MOA that exist at the time of withdrawal will be factored into the withdrawing member's proportionate share with the goal of preventing continuing members from having to pay the withdrawing member's proportionate share of long-term liabilities in addition to their own.

- The values of long-term assets and liabilities and the audited figures for short-term assets, less restricted assets, and short-term liabilities will be used to determine the value of ISD 287's assets and liabilities as of the date of withdrawal.

- The withdrawing member's proportionate share of assets and liabilities will be based on its participation in the intermediate district, calculated based on its share of tuition paid from all sources during the ten years preceding the withdrawal date. If the withdrawing member has not been a member for a full ten years, participation will be based on tuition paid during the entire period the withdrawing member was a member.

- Payment under this scheme due to the intermediate district or the withdrawing district is to be made as soon as possible following withdrawal. Unless the intermediate district and withdrawing district come to a different agreement, all payments must be made within ten years of the withdrawal, with interest applying to any balance outstanding after one year. The interest rate is the prime lending rate in effect at the time interests begins accruing plus two percent.

The level of detail in ISD 287's updated MOA clearly reflects lessons learned from its experience sorting out withdrawal terms with Bloomington. The new scheme identifies what assets and liabilities will be included in the valuation; what information and which professionals will be used to determine those values; who will pay for that work; how the withdrawing district's proportionate share is calculated; and how payment must be made. Identifying all of this on the front end should help alleviate issues when a longstanding member district actually decides to withdraw. At the same time, these terms are somewhat complex. It is likely to take considerable time to determine the withdrawing member's proportionate share of the intermediate district's assets and liabilities, given the need for specific valuations, and completing this process is likely incur at least some expenses for both the intermediate district and withdrawing district to hire an appraiser and/or actuary.

For future members, the calculation ISD 287 has opted to use is simpler. In that case, the withdrawing member must pay the intermediate the sum of $50 multiplied by the total number of adjusted pupil units in the withdrawing member district as of the effective date of withdrawal. Payment is immediately due on the effective date of withdrawal and interest will be applied to any outstanding balance. The interest rate is the prime lending rate on the effective date of withdrawal plus two percent. But if the withdrawing member has been a member for at least six years as of the effective date of withdrawal, these terms do not apply and the withdrawing member will be treated as an existing member and subject to the financial withdrawal terms described above.

ISD 287's updated MOA also specifies that payments made by a withdrawing member to the intermediate district under these provisions are to be used to offset the continuing members' costs.

Next Steps

ISD 916 and its member districts will need to review the proposed draft of the updated JPA, paying particular attention to the withdrawal terms, and incorporate any necessary revisions. With the withdrawal terms, the main goal will be to structure the terms such that when a member withdraws, that withdrawing member will help to offset the increased levy the remaining members would experience as a result of the reallocation of costs across fewer member districts for a set period of time. It will be important that the withdrawal terms are clear as to how they are applied to avoid controversy during the withdrawal process.

The terms for calculating a withdrawing district's financial obligations as currently set forth in the draft updated JPA are meant to be simple, straightforward, and objective so that member districts can reasonably predict the financial implications of withdrawal without extensive appraisals or actuarial valuations. Appraisals and actuarial reports are at least somewhat subjective because there are different approaches to completing these valuations, which could lead to disputes during the withdrawal process. Though these issues could be mitigated, at least to some extent, by identifying who will complete those reports separate from the withdrawal process, as ISD 287 has now done, generating these reports can also be time consuming and expensive. The tradeoff for the simplicity of the methods of determining a withdrawing district's financial obligations as set forth in the draft updated JPA for ISD 916 is that withdrawing members will not take any assets, or equivalent value, with them upon withdrawal. These are issues to be considered as ISD 916 and its member districts review the draft updated JPA.

The final updated JPA will need to be approved and executed by the Boards of all member districts to become effective.