



SOULE, LESLIE, KIDDER, SAYWARD & LOUGHMAN

P.L.L.C. • ATTORNEYS AT LAW

Peter H. Bronstein
David W. Sayward
Barbara F. Loughman
Michael S. Elwell
Gordon B. Graham
Diane M. Gorrow
Peter C. Phillips

Anthony M. Muir

220 Main Street
Salem, N.H. 03079

Tel: (603) 898-9776
Fax: (603) 898-3418
R/E Fax: (603) 893-7678

www.soulefirm.com

Lewis Soule (1924-1986)
Robert P. Leslie (1932-2017)
Bradley F. Kidder (1939-2000)

22 South Main Street
P.O. Box 908
Wolfeboro, N.H. 03894
Tel: (603) 569-8044
Fax: (603) 569-2137

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Via Fax and US Mail

Brian Boyle, Vice-Chairperson
Timberlane School District School Board
C/o SAU #55
30 Greenough Road
Plaistow, New Hampshire 03865-2762

Re: SAU Weighted Voting

Dear Timberlane Board Members,

This letter is in response to your request, communicated to me by Vice-Chairman Boyle, for our opinion on the issue of weighted voting in SAU 55. Specifically, we have been asked to address two issues. The first is a request for clarification about how the use of weighted voting is invoked in a SAU. The second issue is whether Hampstead students attending Pinkerton Academy are included in the tabulation for determining the weighted votes that may be cast by the Hampstead School District.

To our knowledge, the statutes governing weighted voting have never been interpreted by the courts. Therefore, to interpret RSA 194-C:7, 8 we are left with the language of the statutes and the rules of statutory construction. Under those rules, statutes must be interpreted in the context of the overall statutory scheme and not in isolation. Also, words must be given their ordinary meaning and the whole statute must be reviewed rather than focusing on isolated words or phrases.

Under RSA 194-C:8, weighted votes may be called for only if a majority of the members of one of the Boards making up the SAU Board who are present and voting vote to require weighted voting. The only specific language in the statutes regarding the right to invoke weighted voting states:

“Weighted votes shall only be used upon the demand of a majority of the members of any Board present and voting in the school administrative unit.”

Thus, as long as the SAU Board has a quorum present, a majority of the members present and voting from either Board making up the entire SAU Board is entitled to exercise the authority granted by RSA 194-C:8 to require that weighted voting be applied to any of the votes cast at that particular meeting of the SAU Board.

As you know, once a majority of members present and voting of one of the Boards making up the SAU Board exercises their right to weighted voting, the calculation of the number of weighted votes is based on a combination of the votes the District is entitled to under 194-C:7 and RSA 194-C:8. Specifically, under RSA 194-C:7:

“Every school district maintaining one or more public schools shall be entitled to three votes on the joint board of school administrative unit, plus additional votes as provided in RSA 194-C:8.”

Since both Hampstead and Timberlane maintain schools, the three votes each District is entitled to under RSA 194-C:7 is then combined with the number of votes each District is entitled to after applying the count under RSA 194-C:8.

RSA 194-C:8 allows each District one additional vote for each 16 pupils residing in the District “*and enrolled in schools under the administrative unit.*” A balance of eight or more students, entitles the District to an additional vote while a balance of fewer than eight has no net effect on the District’s vote. The statute also specifies that pupil enrollments used shall be based on “the average daily membership in residence of each District for the school year which ended in the preceding June.” Consequently, the average daily membership in residence as of June 2018 is the basis for counting the number of students in each District for any votes until July 2019.

As RSA 194-C:7 indicates the total number of votes from C:7(3) is combined with the number of votes determined by dividing the average daily membership in residence by 16 pupils and rounding up for 8 or more additional students in residence. That total number of votes is then distributed to the School Board members present from each District based on that members “proportionate share of the total to be cast” by that District.

Your second question relates to whether students from Hampstead who attend Pinkerton Academy are included in the number of pupils used to determine weighted voting under RSA 194-C:8. The phrase “enrolled in schools under the administrative unit” qualifies the number of pupils used to determine the weighted vote. The phrase is not defined by the statute. Unfortunately, there are also no court cases we are aware of that have interpreted the phrase. Therefore, we are left with the plain language of the statute and our best interpretation of the overall statutory scheme to determine its meaning.

As we see it, there are two plausible interpretations of the statute. The first is that the students attending Pinkerton from Hampstead count towards Hampstead's weighted vote because Hampstead has entered a contract with Pinkerton and that contract has been approved by the

State Board of Education. Under RSA 194:22 a tuition contract which has been approved by the State Board of Education makes the school with which it is made a high school "deemed" to be "maintained by the District". The State Board of Education has construed the language of RSA 194:22 to mean that a District that enters a contract with another District or public academy which is approved by the State Board of Education has the ability to assign their students to the school under contract. *See, June 21, 1996, Letter from Elizabeth Toomey concerning Lindsey H. v. Andover School District* (State Board approval is the only means for a school district which does not maintain its own high school to avoid school of choice tuition liability.)

Therefore, one could argue that Pinkerton, as a school deemed to be "maintained by the District" qualifies it as a school "under the administrative unit." Furthermore, Hampstead remains the LEA responsible for assuring that Pinkerton, as a contracted high school, provides special education services to all Hampstead students and continues to be the District of residence responsible for making certain that all Hampstead students receive public education at public expense under RSA 189:1-a.

On the other hand, strictly speaking, Pinkerton is not a school that is under the administrative unit's control. It is an independent entity governed by a Board of Trustees. Its obligations to Hampstead are contractual and the District has no governmental authority over Pinkerton's operations. Hampstead only has contractual rights regarding Pinkerton's operations.

In addition, the weighted voting statutes seem to use "maintaining" schools in its dictionary sense not the sense given to schools under contract pursuant to RSA 194:22 which are only "deemed" to be maintained by the district. In fact the weighted voting statutes do not use the word "deemed" as that word is used in RSA 194:22. Specifically, RSA 194-C:7 states that "Districts *not maintaining* schools shall have one representative on the joint board, who shall be entitled to one vote." In this context, "maintaining" (or "maintains") must be understood in accordance with its common dictionary definition which is to "keep in a state of repair, efficiency, or validity." *Websters Dictionary* (3rd ed. 2002). This definition is consistent with the responsibility the SAU has for those "schools under the administrative unit."

Furthermore, from a quick look at the legislative history online, it appears that until 1991, weighted voting in a SAU was based on the number of full-time teachers employed by each District. Specifically, 189:4, the former weighted voting statute, used to provide "each District employing more than 8 full-time teachers for pay shall be entitled to one additional vote for each 5 teachers or major part thereof regularly employed during the current year in excess of 8." The statute was amended by the adoption House Bill 113 (Chapter 155 of the 1991 legislative session). In the Senate Journal of the committee report on the bill, Senator Disnard, for the Education Committee, acknowledged that as of 1991 the law gave weight to the school district based on the number of teachers it employed but went on to state that an analysis of almost every SAU in the state of a shift to the number of pupils enrolled in schools under the administrative unit "really doesn't change the weighted vote much." While this is not much to go on (additional research at the archives in Concord would need to be reviewed to determine if there is other legislative history that would help to clarify the legislature's intent) Senator Disnard's statement is some evidence of the fact that it was not the intention of the Legislature to substantially increase the number of weighted votes of a District not "directly operating a

school” by switching from the number of employees to the number of pupils enrolled in schools under the SAU.

In summary, either School Board in the SAU is entitled to require weighted voting on any question before the SAU by a simple majority vote of the members of the School Board present and voting on a SAU question. Once weighted voting is required, the three votes due to districts each maintaining a school under RSA 194-C:7 is combined with the number of students in each District based on the average daily membership in residence for the school year which ended in the preceding June divided by 16 (round up for 8 or more additional pupils) to determine the proportionate share of the votes the members of the School Board from each District present and voting may cast. To be counted in the calculation, students must be enrolled in school under the administrative unit. There is no definition of “schools under the administrative unit” and to our knowledge there has been no court case interpreting that language. While there is some legislative history online that has been reviewed, there may be additional legislative history in Concord that could be consulted to help answer the question of the Legislatures’ intent for the changes it made to the statute in 1991 to shift from the number of employees’ of each district to the pupils enrolled in schools be “under the administrative unit” in order to determine weighted voting. To us, however, it appears the switch from tying the number of votes for each District to the teachers to the number of pupils in the schools under the SAU was a legislative attempt to give each member District a proportionate share in deciding the SAUs operation that is equal to the demand placed on the SAU and therefore the students attending Pinkerton should not be counted when determining voting in SAU 55. While the SAU certainly has some responsibility for those students and for overseeing the contract with Pinkerton and while it is clear that Pinkerton is “deemed to be maintained” by the Hampstead under the provisions of RSA 194:22, the responsibility for contracting to send students to Pinkerton places less of a burden on the SAU than the responsibility for the actual operation of schools within the Hampstead and Timberlane Districts. Therefore, even though there is no decided case on the matter and there are alternative interpretations of the statute, it is our opinion that students attending Pinkerton from Hampstead should not be counted in determining Hampstead’s weighted vote.

If you have questions, please call.

Best wishes,



Gordon B. Graham

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