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**MEMO Re: Potential Closure of Lincoln Community School**

To: MAUSD Board  
From: Ron Shems and Nicholas Low, Attorneys for the Town of Lincoln  
Date: January 13, 2021

We have been retained by the Town of Lincoln to analyze whether the MAUSD may “repurpose” the Lincoln Community School without approval of Lincoln’s voters. The short answer is that the repurposing plan must be put to Lincoln’s voters because it would “close” the Lincoln Community School as that term was contemplated by the drafters of the Articles, and as it was understood by the communities that approved the Articles. Article 14 provides that a school may only be closed by a vote of the electorate of the town in which the school is located.

Lincoln understands that the MAUSD Board may consider amending Article 16 to facilitate its repurposing plan. However, the voters’ understanding of the meaning of “close” when forming the MAUSD was set by the existing Article 16 – a school is closed when it no longer provides elementary school education. Amending Article 16 to allow closure under the guise of repurposing risks a breach of the voters’ mandate. Rather than circumventing the voters, the Town

of Lincoln strongly urges MAUSD to make any case for repurposing or closing the Lincoln Community School to Lincoln's voters.<sup>1</sup>

**I. Issue**

Whether the MAUSD Board can “repurpose” the Lincoln Community School, as proposed by the MAUSD Superintendent on December 7, 2020, without a vote by Lincoln's electorate.

**II. Background**

Until 2018 the towns of Bristol, Lincoln, Monkton, New Haven, and Starksboro provided for K-12 education through five separate elementary school districts for grades K-6, and one middle and high school district for grades 7-12.<sup>2</sup> The six districts operated as members of the Addison Northeast Supervisory Union (ANESU).

On September 1, 2016, an Act 46 Study Committee made up of members of the ANESU districts issued a report recommending the districts merge into a Regional Education District (“RED”), or a single supervisory district. The Study Committee Report included proposed Articles of Agreement setting out the governance structure of the new supervisory district.

The Study Committee understood that residents of the ANESU had concerns about local elementary schools being closed as a consequence of merger. To address this, they included a provision in the Articles prohibiting any such closure in the initial four years of operation, and thereafter allowing closure only by vote of the electorate in the town where the elementary school is located. *See Study Committee Report*, September 1, 2016, at 65 (explaining that the Committee

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<sup>1</sup> While the plan also likely also requires votes by the residents of Starksboro and New Haven, we have not fully analyzed that question. Instead, this memorandum is limited to the issue of whether Lincoln voters must approve the plan.

<sup>2</sup> Bristol Elementary School District, Lincoln Community School District, Monkton Central School District, Beeman Elementary School District (New Haven), Robinson Elementary School District (Starksboro), and Mt. Abraham Union Middle and High School District.

drafted the Articles “to address concerns about local control,” including by “revis[ing] Article 14 to require town voter support before a school can be closed”). To make this voting provision clear to the voters, the Study Committee expressly voted to include it in the warning for the electorate to vote on the merger question. See MAUSD Article 10 and merger vote warning notices. The Act 46 Study Committee also explained in an FAQ sheet dated August 19, 2016 that under Article 14 no school will close without a vote, and that the Board of the new unified district would not have the power to change this Article without a vote by the electorate. <https://sites.google.com/a/anesu.org/anesu/home/act-46-unification-study/faqs>.

Voters of each ANESU member elementary district voted in favor of the merger proposal on November 8, 2016, and the districts were merged into the Mount Abraham Unified School District (“MAUSD”) on July 1, 2018. The merger left the existing educational infrastructure untouched: the five existing elementary schools continued to provide K-6 education for residents of each town, and the existing middle/high school continued to provide for grade 7-12 education.

Although merger was in part proposed as a way to reduce school governance costs, the newly-formed MAUSD Board and Superintendent began to explore other cost reduction measures.

The MAUSD Superintendent presented findings and conclusions of these efforts at a special Board meeting on December 7, 2020. Several cost-saving options considered by the MAUSD Board and Superintendent involved closing one or more of the district’s elementary schools. However, the Superintendent noted that community members expressed opposition to school closure. The plan then shifted to repurposing schools which does not require a vote of the electorate.

Notably, the Articles of Agreement, and accompanying report, do not mention “repurposing,” “reconfiguring,” or “restructuring” schools.

Under the proposed “repurposing,” two of the five existing elementary schools would provide for K-5 education for all five towns. A third elementary school would be converted to a central office and site of pre-K education. The two remaining elementary schools, in Lincoln and Starksboro, “would become innovation sites where the programming that would be co-created would take place. Ideally, in addition to providing innovative programming for students, one or both of these sites would provide job-embedded experiences for classroom teachers to take back and infuse into their classrooms.” Grade six education would shift from the elementary schools to the middle / high school.

The Superintendent explained that the “innovative programming” in Starksboro and Lincoln would be “available to all students, [and] may provide an experiential, project or performance based, hands-on experience. This program could focus on the environment, performing arts, humanities, STEM or wherever the co-creation process takes us. It could include tapping into our rich community resources to provide a deep community connection as we work together to provide relevant, lasting, learning opportunities for our students.”

The Superintendent’s slide presentation, at slide 25, notes that repurposing can feel like closing to some residents, and can have a similar impact on a town as closing would. The MAUSD administration even uses “repurposing” synonymously with (or as code for) “closing.” In fact, where the Board and Superintendent have used the term “repurposing” with voters, they have used the term “closing” in their own private deliberations. *See* “School Reconfiguration Recommendation Data” spreadsheet at tabs 14 and 16 (produced by MAUSD in response to a public record request for financial information reviewed by the Board in relation to the December 7, 2020 proposal) (providing data on “Total Anticipated Savings from **Closing** 3 Elem. Schools in MAUSD”) (emphasis added).

### **III. Legal Analysis**

#### **a. The Articles of Agreement require a vote of the Lincoln electorate prior to executing the repurposing plan.**

MAUSD is governed according to the Articles of Agreement. The Articles have the effect of administrative regulations. Like other administrative regulations, the Articles are interpreted by the rules of statutory construction. *Slocum v. Dep't of Soc. Welfare*, 154 Vt. 474, 478 (1990). Under those rules, the Articles are first read according to their plain language and in *pari materia*, *i.e.* each Article is read in context of the other Articles, with the primary object being to ascertain and effect the intent of the drafters. *State v. Harty*, 147 Vt. 400, 402 (1986).

#### **i. The plain language of Articles 14 and 16 require a vote to approve the repurposing plan**

The closure of any MAUSD elementary school is governed by Article 14 of the Articles of Agreement, as follows:

#### **Article Fourteen: Provision for Closure of a School**

The New SD Board shall not close any school conveyed to the New SD by a Forming Elementary District within the first four (4) years of operation of the New SD.

After four (4) years of operation, the New SD may close a school conveyed to the New SD by a Forming Elementary District upon affirmative votes of the New SD Board of Directors and the voters, voting by Australian ballot, of the Member Town in which the school is located.

An elementary school is commonly understood as a school that provides for the early years of K-12 education. This is also what residents and voters of the MAUSD have understood “elementary” education to mean – the MAUSD elementary schools have provided grades K-6 education before and after merger.

This plain-language understanding is supported by statute. Vermont’s education statutes define “elementary education” as “a program of public school education adapted to the needs of students in prekindergarten, kindergarten, and the first six grades.” 16 V.S.A. § 11(3). Elsewhere, Title 16 defines an elementary school as a school “in which elementary education for . . . students in kindergarten through grade six is provided.” 16 V.S.A. § 821(a).

If an elementary school provides for the early years of K-12 education, then a facility that ceases providing for such is no longer an elementary school—it is effectively “closed.”

The idea that an elementary school closes when it ceases to provide K-6 education is internally consistent with the MAUSD Articles of Agreement. MAUSD Article 16 states:

**Article Sixteen: School Attendance**

The New SD Board shall support and continue the elementary education of students at the school located in the town where they reside, unless such school is closed as provided above. . . .

The plain reading of this article is that K-6 education must be provided for students at the elementary school located in their town of residence, unless that school is closed. This Article reinforces the understanding that an elementary school is closed when it no longer provides the “elementary education of the students at the school located in the town where they reside.” If a town’s elementary school ceases to provide K-6 education for that town’s students—even if it continues to be used for other MAUSD purposes—that school is “closed” for the purposes of the Articles of Agreement. In short, Article 16 defines “closure.”

**ii. The context in which the Articles were produced reinforces the conclusion that the repurposing plan must be approved by a vote**

If the plain language of a statute is not clear, the law construes the statute by looking at the intent of legislators directly involved in drafting as well as the entire legislature that voted to

approve the legislation. Similarly, to the extent that the Articles are ambiguous the law looks to the intent of the Study Committee in drafting the Articles, as well as the intent of the entire electorate in approving the Articles.

The Study Committee expressed its intent by repeatedly underlining and highlighting the fact that removing all grades from a town's elementary school could only be done pursuant to a vote by that town. The Committee made this point to the voters in the FAQ information materials, in the Study Committee Report, in the merger vote warning, and in the Articles themselves. The Study Committee Report specifically points out that the Article 14 voting provision was added to address voter concerns about the loss of local control over their schools. The FAQ further reassured residents that the Board could not subsequently take this power away: while the Board could amend certain articles, Article 14 could only be amended by the electorate.

The voters and residents of MAUSD member towns relied on all of this information when they approved the merger. They gave that approval only with the understanding that they would have a controlling vote before elementary students could be moved out of their elementary schools.

It is also worth noting that this all happened in the context of Act 46. Because that Act had raised concerns statewide about the loss of local control over schools, the legislature included the following provision in the law:

Sec. 3. SCHOOL CLOSURE; SMALL SCHOOLS; INTENT

(a) School closure; intent. It is not the State’s intent to close schools and nothing in this act shall be construed to require, encourage, or contemplate the closure of schools in Vermont.

(b) Small schools; intent. As stated in subsection 1(i) of this act, it is not the State’s intent to close its small schools, but rather to ensure that those schools have the opportunity to enjoy the expanded educational opportunities and economies of scale that are available to schools within larger, more flexible governance models.

The State Board of Education issued Draft Default Articles of Agreement pursuant to Act 46. Like MAUSD Article 14, Default Article 4 reassures continued local control by conditioning school closure on a local vote. The Default Articles further explain that “[m]oving all grades to another school or schools would be considered ‘closure’ and so would be subject to these protections [i.e. a vote of the electorate] even if the building were used for another school-related purpose.” Draft Default Articles, p. 24.

The Board and Superintendent here appear to understand this concept. At the December 7, 2020 meeting, the Superintendent effectively conceded that the “repurposing” would have the feel and effect of closure. Meanwhile, while the Superintendent framed the December 7, 2020 proposal as “repurposing,” the Board’s own internal documents refer to the same scenario as “closing.”

**b. Amending Article 16 does not alter the meaning of “closure” in Article 14**

While Article 14 requires a vote prior to closing an elementary school, the understanding of what is meant by “closure” is reinforced by the first sentence of Article 16. (“The New SD Board shall support and continue the elementary education of students at the school located in the town where they reside, unless such school is closed as provided” in Article 14).



The MAUSD Board is reportedly considering amending Article 16 to create a less restrictive definition of closure. The intent would be to create more flexibility that would allow the Board to discontinue elementary education at one or more schools without technically “closing” the school, thereby avoiding a vote by the electorate of the town in which that school is located.

This would be a fruitless exercise.

As set out above, the Articles must be understood according to their plain language and in context of the other Articles, with the primary object being to ascertain and effect the intent of the drafters. *State v. Harty*, 147 Vt. 400, 402 (1986).

The intent of the drafters is clear when Articles 14 and 16 are read together: the Board may “[dis]continue the elementary education of students at the school located in the town where they reside” under Article 16 *only if* the school is closed via a vote of the electorate of that Town under Article 14. This is how the Articles were written, this is how they were circulated to the electorate prior to merger, and this is how they were adopted by that electorate.

Altering Article 16 *after the fact* does not have the effect of retroactively redefining the meaning of “closure” in Article 14. See *Ins. Co. of State of Pennsylvania v. Johnson*, 2009 VT 92, ¶ 12, 186 Vt. 435 (cautioning against interpreting legislative provisions according to subsequently-enacted legislative measures). This is particularly true where, as here, the express purpose of the subsequent change is to alter the original meaning of the regulatory provisions *and* allow jargon, *i.e.* “repurposing” to overcome plain language and the electorate’s plain-English understanding.

Attempting to alter the meaning of Article 14 by amending Article 16 would also violate the way the Articles were written and approved. The Study Committee intentionally conditioned any change to Article 14 on a vote of the electorate. The Committee underlined this restriction

when presenting the Articles to voters to assuage concerns about loss of local control. Voters approved the merger with this understanding. Just as Article 14 cannot be changed without a vote, the *meaning* of Article 14, as informed by Article 16, likewise cannot be changed unless approved by the voters. In short, Article 14 must be read within the context in which it was written, which means it must be read in harmony with *original* Article 16. Amending Article 16 will not alter the meaning of Article 14 or the meaning of school closure.