HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT

Mission: Educate our children to become knowledgeable, healthy responsible and productive adults.

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2010 MAR 24 P 2:04

HAMILTON•WENHAM REGIONAL SCHOOL DISTRICT ESTABLISHED 1959

MARINEL D. McGRATH, Ed.D.
Superintendent of Schools

ADMINISTRATIVE OFFICES
5 SCHOOL STREET, HAMILTON, MA 01984
TEL: (978) 468-5310 FAX: (978) 468-7889
Email: mcgrathm@hwschools.net

March 23, 2010

Mr. David Carey
Chairperson
Hamilton Board of Selectmen
Hamilton Town Hall
Bay Road
Hamilton, MA 01982

Dear Mr. Carey,

I am writing to inform you that the Hamilton Wenham Regional School Committee is in receipt of a citizen's proposal to amend the Hamilton Wenham Regional School District Agreement (hereafter known as the "Agreement"). As specified in the Agreement, I enclose a copy of the proposed amendment with the notice of certification. This letter of notice is sent to the Hamilton Board of Selectmen so it may include the proposed amendment in the warrant for the next annual town meeting to be held on Saturday, May 8, 2010 at the Hamilton-Wenham Regional High School, at 775 Bay Road in Hamilton, MA..

Sincerely,

Lauren S. Prior
Secretary
HW Regional School District Committee

Enclosures: Request for amendment of the Regional School District Agreement Between the Towns of Hamilton and Wenham

March 18, 2010 - Town Clerk Certification to Request for Amendment of the Regional School District Agreement between the Towns of Hamilton and Wenham

The District does not discriminate in its programs, activities or employment practices based on race, color, national origin, religion, gender, sexual orientation, age or disability.

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HAMILTON

Request for Amendment of the Regional School District Agreement
Between the Towns of Hamilton and Wenham

Reference is hereby made to the Regional School District Agreement, most recently amended and restated by "AMENDMENT TO AGREEMENT BETWEEN THE TOWNS OF HAMILTON AND WENHAM WITH RESPECT TO THE ESTABLISHMENT OF A REGIONAL SCHOOL DISTRICT RESTATING THE PROVISIONS OF SAID AGREEMENT" as adopted by the Hamilton-Wenham Regional School District Committee on April 27, 2000 (and as further adopted by the Town of Hamilton on May 15, 2000 and by the Town of Wenham on May 6, 2000) (hereinafter the "Agreement")

The undersigned, being residents and at least ten (10%) percent of the duly registered voters in the Town of Hamilton, request that: (1) the Town Clerk, pursuant to the provisions of the Agreement, and in particular the provisions of **SECTION VI: AMENDMENTS**, present this request for an Amendment to the Agreement to the Secretary of the School Committee; (2) that the Secretary of the School Committee mail or deliver notice in writing to the Board of Selectmen of each of the member towns (as the same is defined in the Agreement) that a proposal to amend the Agreement has been made, enclosing a copy of this proposed Amendment with such notice; and (3) that the Board of Selectmen of each member town include in the warrant for the next annual or special town meeting called for this purpose, an article stating the proposed amendment or the substance thereof.

By submission of this proposal, the undersigned also request that the Board of Selectmen in each of the member towns, and as residents and duly registered voters in the Town of Hamilton, place this request as an Article at the next annual Town Meeting.

Proposed Amendment:

The undersigned hereby request that the provisions of **SECTION IV: APPORTIONMENT AND PAYMENT OF COSTS** be modified and amended by adding to subsection (A) thereof, the following additional paragraph, to be numbered (4):

(4) Operational Audit

An Operational Audit shall be conducted, within six (6) months after the approval of the amendment to the Agreement by the member towns and within every five (5) years, thereafter, by an independent, outside audit firm, to be chosen collectively by the Board of Selectmen of the member towns, to conduct a complete and full Audit of the school facilities, the school budget, the proposed Capital Costs, Special Operating Costs and the Operating Costs, the personnel, and any and all other operational aspects of the Regional Schools; with a complete copy of the Operational Audit to be filed with the Board of Selectmen of each of the member towns and to be made available to the citizens of each of the member towns, at their request, within sixty (60) days of the completion of the Operational Audit. The Superintendent of Schools or the School Committee shall, within sixty (60) days of receipt of the Operational Audit, adopt and implement the recommendations made therein or, in the event that it shall not be practical to adopt and implement the recommendations within that time frame, report to the Board of Selectmen, at an advertised Public Hearing, the plan for adoption and implementation of each recommendation with a time limit relating thereto.

The undersigned further request that the provisions of **SECTION IV: APPORTIONMENT AND PAYMENT OF COSTS** be modified and amended by changing (3) of subsection (A) thereof, to read as follows:

(3) Operating Costs

Operating costs shall consist of all costs of the District other than capital costs and special operating costs, and shall include the costs and expenses of the Operational Audit.

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The undersigned hereby certify that they are registered voters of the Town of **HAMILTON**:

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HAMILTON, MA
2010 MAR -8 A 10: 25

Town Clerk Certification to:
Request for Amendment of the Regional School District Agreement
Between the Towns of Hamilton and Wenham

The undersigned, being the Town Clerk of the Town of Hamilton, hereby certifies that I have reviewed the voting records of the Town of Hamilton, and that there are a minimum of ten (10%) of the duly registered voters of the Town who have signed the above **Request for Amendment of the Regional School District Agreement.**

Dated: March 19, 2010 Jane M. Ketsow
Town Clerk

The Town of Hamilton has 5,709 registered voters and I have certified 643 signatures on this petition - Request for Amendment of the Regional School District Agreement.

EDWARDS ANGELL PALMER & DODGE LLP

111 Huntington Avenue Boston, MA 02199 617.239.0100 *fax* 617.227.4420 eapdlaw.com

Matthew O. Page
617.239.0897
fax 888.325.9094
mpage@eapdlaw.com

March 12, 2010

Dr. Marinel D. McGrath, Ed.D.
Superintendent of Schools
Hamilton-Wenham Regional School District
5 School Street
Wenham, Massachusetts 01984

Re: Proposed Operational Audit Amendment

Dear Dr. McGrath:

You have asked us to review a proposed amendment to the Hamilton-Wenham Regional School District Agreement ("the Agreement") and to identify any areas of concern with regard to its adoption. The proposed amendment seeks to require "a complete and full audit of the school facilities, the school budget, the proposed capital costs, special operating costs and the operating costs, the personnel, and any and all other operational aspects of the regional schools" (the "Operational Audit") within six months and then every five years thereafter. The first Operational Audit would be performed by the member towns, and subsequent Operational Audits by an independent auditor chosen by the Boards of Selectmen of the member towns. The results of the Operational Audits would be filed with the Boards of Selectmen and made available to the public. The Superintendent or the school committee would be required either to adopt and implement the recommendations made in the Operational Audit report within sixty days or to report to the Boards of Selectmen of the member towns their plan for the adoption and implementation of each recommendation. The proposed amendment would also define the district's "Operating Costs" to include the costs and expenses of the Operational Audit and all costs other than capital costs and special operating costs. We have reviewed the regional school district agreement amendment process, how the proposed amendment fits into the existing legal framework governing the operation of public schools in Massachusetts, and whether the proposed amendment would duplicate existing efforts.

<u>How may regional school district agreements amended?</u>

Regional school district agreements such as the Agreement contain procedures for their amendment. M.G.L.A. 71 § 14B(g). However, once any proposed amendment has been accepted in accordance with the specified procedure, it must be submitted to the state Commissioner of Elementary and Secondary Education for approval. The Commissioner will approve or disapprove amendments based on review and recommendation by the Department of Elementary and Secondary Education that the amended agreement meets the standards in 603 C.M.R. 41.00 and applicable law. The Commissioner's decision is final. 603 MA ADC 41.03.

How do the requirements of the proposed amendment fit within the existing legal framework for the operation of regional school districts?

"The powers, duties and liabilities of a regional school district shall be vested in and exercised by a regional district school committee." M.G.L.A. 71 § 16A. The proposed amendment's requirement that the school committee or superintendent adopt and implement the recommendations of the independent auditor is contrary to the statutorily defined powers and duties of the school committee to set the budget and establish goals and policies, and of the school committee, superintendent, and principals to make employment decisions.

First, the regional school committee could not be required to adopt and implement Operational Audit recommendations to the extent that they change the budget. The regional school committee, not the member municipalities, "shall review and approve budgets for public education in the district." M.G.L.A. 71 § 37; *see* M.G.L.A. 71 § 16(m); 603 C.M.R. 41.05. The member municipalities have the authority to approve or disprove the overall appropriation, but in acting on appropriations for educational costs, the appropriating body must vote on the total amount of the appropriations requested and may not allocate appropriations among accounts or place any restriction on such appropriations. M.G.L.A. 71 § 34. The division of responsibility in this matter is explicit: "the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation." Id. Before sending its budget to the member towns for adoption by their respective town meetings, the regional district school committee must first approve its budget by a two-thirds vote of all its members. M.G.L.A. 71 § 16B. The proposed amendment would require the school committee to abrogate its responsibility for budget oversight by eliminating the opportunity to vote against any Operational Audit recommendations affecting the budget.

Next, neither the school committee nor the superintendent could be required to adopt and implement Operational Audit recommendations that make employment decisions. The school committee has the duty to select and terminate the superintendent. M.G.L.A. 71 § 37. The school committee also sets the superintendent's compensation. M.G.L.A. 71 § 59. The superintendent, in turn, must appoint principals for each public school within the district and set their compensation. M.G.L.A. 71 § 59B. Principals are responsible, subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides, and other personnel assigned to the school, and for terminating all such personnel, subject to review and prior approval by the superintendent. M.G.L.A. 71 § 59B.

Finally, neither the school committee nor the superintendent could be required to adopt Operational Audit recommendations that set educational goals or policies. The school committee has the authority to "establish educational goals and policies for the schools in the

district." M.G.L.A. 71 § 37. The superintendent is bound to manage the school system in a fashion consistent with the policy determinations of the school committee. M.G.L.A. 71 § 59. Once the superintendent has hired principals, those principals are the educational administrators and managers of their schools and have a duty to supervise the operation and management of their schools and school property. It is also the responsibility of the principal, in consultation with professional staff of the building, to promote participatory decision making among all professional staff for the purpose of developing educational policy. M.G.L.A. 71 § 59B. Principals' broad authority at the school level is subject to the supervision and direction of the superintendent.

Are there aspects of the proposed amendment that duplicate existing efforts?

The proposed Operational Audit may involve some duplication of effort because school committees are already required to provide annual financial audits. To the extent that the Operational Audit would require examination of financial records it would be merely re-stating an already existing duty of the regional school committee. Regional school committees are required to "solicit proposals and contract with an independent certified public accountant to perform an annual financial audit and make management recommendations, and ... receive the audit report in public session," and provide a copy within ten days to the state and the board of selectmen of the member municipalities. M.G.L.A. 71 § 16A; *see* M.G.L.A. 71 § 16(k); 603 C.M.R. 10.10.

Sincerely,

Matthew O. Page
Associate
cc: Paul D. Weaver, Esq.
Donna Marie Brewer, Esq.