

The Maine View

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Saving Our Small Schools Is Privatization an Option?

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Maine's small schools are in danger. Though legislators deliberating Governor Baldacci's school system consolidation proposal could have found other ways to generate administrative savings within and among Maine schools, they instead voted to force existing school units to join large regional school districts. The boards of these large new Regional School Units, which by law will take possession of all the public schools in their districts, will no doubt one day decide that it is too costly to keep open the many small schools under their administration. With the state giving school construction funding preference to those districts that consolidate schools, and with the legislature's ongoing failure to provide meaningful property tax relief, the pressure will mount to replace small community schools with large regional ones, much as was done fifty years ago under the *Sinclair Act*, when hundreds of schools across the state were closed in the name of consolidation.

Under pressure from small school supporters, state legislators were careful to include language in the new law that makes it difficult to close a school once the Regional School Units are in place. The community in which a school is located could vote to keep a school open despite a vote of the Regional School Unit board to close it, but that community is then required to pay whatever extra expenses are incurred by doing so, as calculated by the commissioner of education. The closure question put to voters of the town, in fact, must include an estimate of the "additional costs of keeping the school open."^[1] It is only a matter of time, therefore, before pressure to close small community schools begins to build, brought on by increasing local costs and the lure of state money to build much larger new consolidated schools many miles away.

Either way, Maine's small communities will have little choice in the matter. Regional School Units are to be governed by new school boards whose composition is determined by population. Small towns currently running their own schools will soon find themselves minority voters, if they have any representation at all, on the much larger boards which will govern the schools they used to call their own. Decisions about how their school is run will no longer be theirs to make.

As bleak as all of this may seem to those with beloved community schools whose future may be in doubt, a reading of existing state law suggests another alternative, which is to turn over their local public school to a private non-profit to operate as an independent school to which area students would be tuitioned. In effect, this approach saves the existing public school through privatization, through the creation of a community-led private school to which all students are welcome.

Options for Existing School Administrative Units

Join a Regional School Unit

- Replace local school boards with regional ones whose representation is determined by population.
- Give up ownership and management local schools to the larger regional school board.
- Face additional costs if the regional board votes to close your school.

Refuse to Comply with the Law

- Lose 50 percent of state "minimum subsidy" payment to district and pay a higher local share for overall spending.
- Lose 50 percent state funding for "system administration" costs.
- Receive "less favorable" consideration for school construction funding.

"Privatize" Existing Public School

- Engage the community in creating a community-run independent private school for local students that operates in the former school building and to which all students are tuitioned at no cost.
- Preserve local community control over local schools and enjoy a element of freedom from state and federal bureaucratic meddling.

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Background on Maine's New Law

The state's new "reorganization" law mandates that all existing school systems become part of larger Regional School Units (RSUs), each with its own board. Once in power, these RSUs will then assume control of all existing public schools under their jurisdiction and take over both ownership and management of them. The local school districts are then dissolved.

School units in place today are left little choice in this process. Unless they can convince the commissioner of education to grant them some kind of exemption, the days of local control over local schools are over. Existing districts which, by vote of the citizenry, refuse to comply with this mandate will be punished with a series of financial penalties, and though some districts receive little state funding and thus are punished minimally, for most districts defiance will be very costly.[2]

That scenario will play out unless the community does not have a public school at the time that the new regional district comes to power, which is the intent of the privatization process. If a school unit is one of the many in Maine that tuitions its students to nearby public or private schools in lieu of operating its own school, as more than 50 communities across the state do today, joining the new RSU will be of little consequence. The new law explicitly protects school choice options under the Town Tuitioning system for those districts that currently enjoy it, even after the new RSU comes to power.

The goal of the privatization process outlined here, therefore, is to transform existing public schools, which will ultimately be turned over to the RSUs, into private schools that will not. Under this option, a community would close its public school and lease the school building to a community-created private school, which would provide education services to the community's children. In this way, the community keeps its school and maintains local community control over it. Given the other options towns have under the new consolidation law, going private may be the only means available to save a local school.

Step 1—Developing Community Consensus

As one might imagine, privatizing a public school is a complicated process that will require a great deal of deliberation and discussion on the part of community members and ultimately the vote of the community itself. It is imperative that local leaders who set out to pursue this course have strong community support for doing so. Private schools, it must be remembered, are private. While they must operate according to state law, they will no longer be governed by elected leaders but by a private board of directors. Leaving behind a long tradition of town-run schools in favor of creating a private school is not a step to be taken lightly.

Therefore, the first step in this process is to undertake a thorough analysis of what such a task will entail and what it will mean to a community. A sensible approach might be to contract with a consultant or legal advisor who could be called

upon to both outline the process in detail and shepherd the project through to completion. A survey of community sentiment might also be a prudent step, and perhaps more than once as the process continues.

Once a thorough planning and vetting process has been completed, and the decision has been made by the community to move ahead with privatization, the next step is to transform the existing public school into a private one.

Step 2—Creating a New, Independent School

It would be far easier for all involved if a school unit could simply wave a wand and privatize its school, but it is far more complicated than that. The law requires that before a public school is closed, the school system must explain, to the satisfaction of the commissioner of education, what is to become of the students it currently educates. In effect, then, a community looking to convert its school from public to private must create the private school first, get it approved by the state, then contract to have area students tuitioned to it. Once all that is done, the public school can be formally closed and, ideally, the school building turned over to the new private school for its use.

The first task, then, is to create a private school that will meet with state approval. Chapter 117 of Title 20-A is the state statute that governs the approval of private schools. It requires, in short, that schools either gain the private accreditation of the New England Association of Schools and Colleges, or that they meet requirements outlined in state statute. These basic requirements concern such issues such as health and safety, recordkeeping, teacher certification, student attendance, required curriculum, and so forth. Schools that receive public tuition dollars are further required to meet certain reporting and audit requirements and be non-sectarian.[3]

Rules adopted by the Department of Education for the approval of private schools lay out procedures and timelines for the process, which can begin months before the school is planning to open. The bulk of the data requested by the Department must be sent to them at least three months prior to operation, and by that point must include details such as instructional programs, a list of teachers to be employed and their credentials, and documents regarding health and safety from officials such as fire marshals.

As one might imagine, this could be the trickiest part of the process, in that the new school must substantially exist, at least in terms of administration, staff, and programming, before the public school is closed. This raises a few questions. Will the state give approval to a school that in reality exists only on paper until the existing public school is closed? What is to become of the existing public school teachers and staff and their contracts? How binding can any agreements regarding employment and facility use be if there is some question as to whether the school will even be approved by the state?

Case Study on Privatizing Public Schools The School at Winhall, Vermont

Nearly a decade ago, Vermont enacted a new school funding formula, known as Act 60, that had the effect of redirecting school funding from higher valuation towns to those with lower property valuations. For towns such as Winhall, which lies nestled in the hilly ski country of southern Vermont, this meant a dramatic drop in state aid to local schools, and an accompanying increase in local taxes. Struggling to figure out a way to manage a school budget with rising costs and declining enrollment, and dismissing options such as consolidation with neighboring schools, the citizens of Winhall hit on the novel idea of closing their local public school and reopening it as a private school.

As retold in *How to Privatize a Public School in Vermont: A Layman's Guide*, by Vermonters for Better Education, the story of Winhall's closure of its public school and its replacement by a community-run private school may be a model for Maine towns who face the closure of a local school as a consequence of consolidation.

The plan developed by the Winhall School Board was a relatively simple one. In the spring of 1998, voters approved a measure empowering the School Board to close the school "if and when it is confident that the independent school will be able to open for the 1998-99 school year." Through the summer, the School Board and community leaders set about establishing a new private school in the old public school building, which by then had been leased to them by the town. The community formed a foundation to provide additional financial support to get the school off the ground in anticipation of per-pupil tuition payments to arrive that fall. By the end of the summer, the community's new private school had won interim approval from the state to receive tuition payments and was ready to welcome students when school began again that fall.[4]

What has become of the school in Winhall? A newspaper article from this past spring reports that today, after nearly 10 years in operation, "the school has a total of 57 students, nearly double the number enrolled in 1998, and its per-pupil costs... including special education and transportation costs, are less than they were 10 years ago." The school's principal has concluded that "opportunity and flexibility are much greater than in public schools," and credited the school's independence with its ability to provide "extensive foreign language and arts offerings" that would be otherwise unavailable in so small a school.[5]

The success of Winhall's privatization of its school has become a model for other districts in Vermont. The same 2007 article that describes Winhall today reported that another Vermont town, Woodbury, may follow Winhall's lead. That town approved a resolution at its last town meeting to "explore shutting down the public elementary school and reopening a privatized, independent school in its place." [6]

Clearly, this part of the process needs to be very carefully navigated, and by people who understand school and labor law well. The fact is, though, that approved private schools exist all over the state, that they are approved before a single student appears at their door, and that the process, though cumbersome, does work. It should be kept in mind that the option also exists to have the school accredited by the New England Association of Schools and Colleges, upon receipt of which the state must grant basic approval.

In fact, another option to consider would be to work in cooperation with an existing private school, one already accredited, in order to create a kind of "satellite" campus. Maine has dozens of prestigious private schools that accept publicly tuitioned students and thus already work extensively with public officials to meet the educational needs of their communities. Cooperation with such an institution could simplify this process significantly, and may be worthy of investigation.

Step 3-Closing the existing public school

Section 4102 of Title 20-A, Chapter 202 outlines the process by which an existing school can be closed. In short, it requires

that either the school is being replaced by another, has been condemned for "health and safety" reasons, or that "the building has been deemed to be unnecessary or unprofitable to maintain" which would be the grounds on which the school is closed under this process. The school is no longer needed, the community would argue, because the town intends to tuition students to the new independent school.[7]

Section 4102 requires that the "governing body" of the school system file a report with the commissioner explaining why the school is being closed, but does not appear to give the commissioner power to veto such an action, so long as the school system can describe the manner in which "the continuation of the educational programs for the affected students will be provided." [8] Assuming an approved independent school has been created by this point to which students can be tuitioned, that would be the school unit's response to the commissioner. Closing a school that is part of an SAD or CSD is more complicated, and may require a town to withdraw from such a district first, as described in Section 1405 of Title 20-A.[9]

Step 4-Leasing the school building to the new school

Under Section 4103 of Title 20-A, district school boards retain control of the school building subsequent to its closure and are permitted to lease a school building for its “fair rental value.” Since one of the options outlined in statute for the use of the lease payments is “to meet the educational expenses” which the school board approves, the lease payments from the new private school to which the school building is leased, it would appear, could simply be returned to the school in the form of tuition payments. Other potential uses for lease payments include maintenance and renovations on the building.[10]

Step 5– School Begins as usual

Ideally, when students arrive for school at the end of the summer, they will notice little change. The school to which they’ve always gone will still be there. It will be governed and funded differently than before, though students barely notice these things. Hopefully, teachers and staff have remained on with whom the children are familiar, programs of study that have shown success are still in use, and the school’s new freedom will allow it to try creative approaches to teaching and learning never used before.

Conclusion

Though closing a school and having a town no longer operate its own educational facilities may seem like an extreme step, it is one that may have been made necessary by the passage of the new Regional School Unit law, which gives communities little choice but to join much larger districts or suffer stiff penalties. The Maine Heritage Policy Center put forward a proposal in January of this year that would have generated school administrative savings without creating larger, less accountable school districts, but that idea was dismissed.

Luckily, models for preserving small community-centered schools are all around us in the form of Maine’s many independent schools, some of which have been a part of the fabric of Maine’s educational system for more than a century. Converting a public school into a private school such as these is extraordinarily complicated, and should be undertaken with great care and with far more legal and political guidance than this report presents. Still, though it is an option fraught with challenge, it may also be the opportunity to build a bold new kind of school for Maine and new future for Maine’s children.

Sources

[1] Part XXXX, Chapter 240, PL2007.

[2] Ibid.

[3] MSRA Title 20-A, Chapter 117.

[4] *How to Privatize a Public School in Vermont: A Layman's Guide*, Vermonters for Better Education, 2000.

[5] Hirschfeld, Peter, *Public school studies option of going private*, The Barre Montpelier Times Argus, April 1, 2007.

[6] Ibid.

[7] MSRA Title 20-A, Chapter 202 .

[8] Ibid.

[9] MSRA Title 20-A, Chapter 103.

[10] MSRA Title 20-A, Chapter 202.

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