When the Maine School Reorganization Law was first passed in 2007, there were penalties for failure to reorganize and there was no mechanism to allow withdrawal from an RSU. The law was characterized by some as imposing a “shotgun marriage with no divorce.” As a result of subsequent political reactions, the Legislature has now removed the penalties for not forming an RSU and, in an effort to be fair to communities that reorganized under the threat of penalties, the Legislature has established a new procedure for withdrawal from an RSU.

Under the School Reorganization Law there were two types of RSUs: 1) those RSUs that were formed pursuant to a Reorganization Plan approved by local referendum votes; and 2) those SADs that did not reorganize but were converted from SADs to RSUs by operation of law as of July 1, 2009. The withdrawal procedure is the same for both groups, with one exception. In both cases, the withdrawal procedure requires a petition signed by 10% of the voters in the last gubernatorial election, an initial vote to form a withdrawal committee, negotiation of a withdrawal agreement, and a referendum vote on that agreement. The only difference between the two types of RSUs concerns the voting requirements in order for the withdrawal to be finally approved. In an RSU that was formed by a Reorganization Plan, only a majority vote of the withdrawing municipality is required, but the number of voters at the election must be at least 50% of the number of voters at the last gubernatorial election. In an RSU created by operation of law, the withdrawal agreement must be approved by a 2/3rds vote of the withdrawing municipality but there is no minimum threshold on the number of voters who must participate in the election in order for the withdrawal referendum to be effective. After July 1, 2015, the 2/3rds requirement becomes applicable to both types of RSUs and the minimum threshold on the number of voters at the election is eliminated.

**The withdrawal procedure**

The statutory withdrawal process established under 20-A M.R.S §1466 is a multi-step process that generally takes eight months to a year to complete. The major steps, time requirements and withdrawal agreement issues are summarized below:

1. **Petitioners File Withdrawal Petition.** A petition to withdraw that meets the requirements of section 1466 is filed with the municipality. At least ten percent of the voters that voted in the last gubernatorial election must sign the petition.

2. **Municipal Officers Order Election on Whether to File a Withdrawal Petition and Approve Expenditures/Borrowing by Withdrawal Committee; Call for Public Hearing.** The municipal officers then call for a referendum vote on the petition. The question on the ballot is a single question asking three things: (a) whether to file the withdrawal petition with the RSU Board and the Commissioner of Education; (b) whether the withdrawal committee may expend a specified sum; and, if applicable, (c) whether the municipality may borrow a specified sum for those expenses. The form of this single question is set forth in the statute. The municipal
officers also call and provide notice of a public hearing to be held for the referendum. In towns, orders calling a town meeting referendum must be filed at least 45 days before the election date.

3. Municipal Officers Hold Public Hearing. The municipal officers must hold the public hearing on the withdrawal petition. Public hearing notices must be posted for at least 7 days in advance of the hearing, and the public hearing must be held at least 10 days before the referendum.

4. Municipal Referendum Election. The withdrawing municipality then votes on the referendum question. The election must be held at least 45 days following the filing of the order calling the election and at least 10 days following the public hearing.

5. Clerk Gives Written Notice of Vote. After the vote, the town clerk immediately notifies the RSU secretary and Commissioner of the results of voting on the withdrawal petition, including, if the question has been approved, a statement by the municipal officers stating to the best of their knowledge the reasons why the municipality seeks to withdraw from the RSU.

6. Withdrawal Committee Organizes. The Commissioner then directs the municipal officers to select three representatives to a withdrawal committee (one member from the municipal officers; one from the general public; and one from "the group filing the petition."). The RSU Board members from the town proposing to withdraw select the final withdrawal committee member from among their number. The RSU Board chair must call the first meeting of the withdrawal committee to be held within 30 days of the referendum election and must preside over the election of the chair of the withdrawal committee.

7. Withdrawal Committee Negotiates a Withdrawal Agreement with the RSU Board. Within 90 days of its first meeting, the withdrawal committee and the RSU Board must negotiate a withdrawal agreement with the RSU board. Although the statute provides that the Withdrawal Committee has the responsibility to prepare the agreement, the Department of Education and the Commissioner have interpreted the statute to require that any withdrawal agreement must be approved by both the Withdrawal Committee and the RSU board. The 90 day period for preparing a withdrawal plan is typically extended by the Commissioner pursuant to statutory authority.

The key terms of a Withdrawal Agreement include the following:

- The withdrawal agreement must provide for continuing education and services for students in the withdrawing town and may provide similar continuity for students in the remaining RSU as well. With respect to a withdrawing town that does not include local schools serving all of grades K-12, DOE takes the position that the withdrawing municipality must have in place a ten year tuition contract for all of its students and that it may not rely upon other school units to accept tuition students in the absence of a contract.
- During the first year following withdrawal, the agreement must permit students of the withdrawing municipality to attend "the school they would have attended if the petitioning municipality had not withdrawn."
- It must provide for a division of real estate, equipment, and other assets.
- It must provide for a division of responsibility for debts, lease purchase agreements and other contractual commitments, including contracts with administrators and central office employees that extend beyond the date of withdrawal.
- It must provide for a division of responsibility for unpaid summer salaries and accounts payable prior to any division of remaining cash balances.
- It must provide for transportation and administration services of the new unit.
- It must provide for a division of responsibility for the contract of the superintendent.
- It must provide for the continuation and assignment of collective bargaining agreements and for the continuation of representational rights.
• It must provide for the continuation of continuing contract rights.
• In addition to the transition to the new unit’s governance and administration, the withdrawal agreement should cover the budget development of the new unit, as well as the RSU’s budget development without participation of the withdrawing community.

8. Commissioner Review of the Withdrawal Agreement. After the withdrawal committee and the RSU Board approve the withdrawal agreement, the withdrawal committee submits the proposed agreement to the Commissioner, who has a 30 day review period. The Commissioner must assess whether the agreement will provide for appropriate educational services to students in the withdrawing municipality and provide for an orderly transition to a new school unit. The Department has interpreted this language to require that adequate provision be made for the education of students from the withdrawing municipality for at least 10 years. After review, the Commissioner either gives conditional approval or recommends changes to the agreement. If changes are recommended, they must be made by the withdrawal committee within the time period specified by the Commissioner.

There is an unresolved issue concerning what happens if the RSU and the Withdrawal Committee are simply not able to agree on the terms of a withdrawal agreement. To date, the Commissioner has declined to play a role as an arbitrator or mediator where the parties have not been able to reach an agreement. The statute is completely silent on this issue.

9. Joint Public Hearing on Withdrawal Agreement. If the Commissioner approves the withdrawal agreement, the RSU Board calls a joint public hearing for the RSU and the municipality. The time and place of the hearing is determined by the Commissioner, and the hearing must be posted for 10 days and be held at least 20 days after the Commissioner has notified the RSU Board and the municipal officers of the Commissioner’s conditional approval of the withdrawal agreement. The purpose of the hearing is to “discuss the merits” of the withdrawal agreement.

10. Commissioner Sets Date of Election to Approve Withdrawal Agreement. Following the public hearing, the withdrawal committee forwards a final agreement back to the Commissioner. The Commissioner then schedules the date and time for the town to vote on approving the withdrawal agreement.
• Only the withdrawing municipality votes on the withdrawal agreement, not the RSU.
• In an RSU that was reformulated from an SAD by operation of law, a 2/3 vote is required, but there is no minimum number of voters that must participate in the election in order for the vote to be effective. In an RSU formed by a Reorganization Plan, however, only a majority vote is required, but the number voting at the election must equal or exceed 50% of the number of voters in the last gubernatorial election in that municipality.²
• After July 1, 2015, a 2/3 vote is required for both reformulated RSUs and reorganized RSUs, and there will be no required minimum number of voters at the election.
• The Commissioner must give written notice to the municipality at least 35 days prior to the date set for the election. Presumably, then, the normal 45 day filing requirement for a town referendum does not apply.

11. Effective Date of Operation. If approved at the referendum, the withdrawal becomes effective on July 1 at the beginning of a school unit’s fiscal year, as provided in the Plan of Withdrawal.

Issues not fully addressed by the legislation

Although 20-A M.R.S. §1461(3)(A) contains a list of issues that must be addressed by a withdrawal plan, that list is far from comprehensive. Among the issues not fully dealt with in the statute that may require detailed attention in developing a withdrawal agreement are the following:

1. Continuity of Educational Programs. Although the statute requires that students from the withdrawing municipality be permitted to attend the RSU school they would have attended if the municipality had not withdrawn for one year following withdrawal, the parties may want to permit students in RSU schools to
continue to attend those schools for a longer period. If that is the case, the agreement will have to specify which students are eligible, how state subsidy and/or tuition payments for those students will be addressed, and how transportation will be provided.

2. **Special education and 504 students.** If special education and 504 students will be attending school in a school unit other than the one in which they reside, the agreement must contain detailed provisions governing administration and decision making in the IEP and 504 meetings and providing for the allocation of state subsidy and payment of special education and 504 costs.

3. **Regional programs.** If the RSU operates or participates in regional programs for special education, applied technology or other purposes, the withdrawal agreement should address the impact on the students participating in those programs and any potential impact on the receipt of state subsidy and payment arrangements for students attending those programs.

4. **Summer salaries.** The agreement must include provisions to ensure that summer salaries for teachers from the withdrawing community do not become the responsibility of the other towns in the RSU following the date of withdrawal. If summer salaries are budgeted in the year in which they are actually paid, rather than the year in which they are earned, this issue requires special attention to make sure that the withdrawing community remains responsible for its share of the teacher summer salaries.

5. **Shared employees.** If the RSU has employees whose time is divided between the withdrawing community and the rest of the RSU, the agreement must assign those employees either to the withdrawing community or the RSU for purposes of collective bargaining and continuing contract rights. In some cases, the assignment of these shared employees to one SAU may be coupled with an agreement for those employees to continue to provide services to the other SAU on a contractual basis.

6. **School closing.** If the withdrawing municipality intends to close a school in conjunction with its withdrawal from the RSU, the required school closing procedures and votes must be handled by the RSU separately from the withdrawal process but may require special consideration in the withdrawal agreement. If the withdrawal is intended to be contingent on a favorable school closing vote, or vice versa, the withdrawal agreement will have to include provisions reflecting that intent.

7. **Bonds, notes and other financial obligations.** The statute requires that the withdrawal agreement make provision for existing bonds, notes and other financial obligations. The agreement must also deal with financial obligations incurred by the RSU between the date of approval of the withdrawal agreement and the date that the withdrawal becomes effective. If the RSU has issued or plans to issue Qualified School Construction Bonds (QSCBs) the agreement will have to include detailed provisions governing the application and receipt of future debt service subsidy payments from the IRS.

8. **Participation in budget adoption and referendum votes.** The agreement should include provisions that prevent the withdrawing town from participating in the RSU’s budget adoption procedures for the fiscal year following the withdrawal, and any RSU referendum votes following the date that the Town has voted to withdraw, but before the effective date of withdrawal. The agreement should also include provisions allowing the withdrawing town to elect a school committee, hire a superintendent, adopt a school budget for the year following withdrawal, and to conduct referendum votes for school construction and renovation projects to be undertaken following the date of withdrawal, without the participation of the other municipalities in the RSU.

9. **Contracted services following withdrawal.** In some situations, the withdrawing community and the RSU may wish to contract for ongoing services following withdrawal such as transportation, special education, food service, administration or other services.

10. **Reimbursement for excess capital and debt service expenditures.** In some situations, the parties may agree to allow the withdrawal to go through without any accounting or reimbursement for prior capital or debt service expenditures made by the RSU in the withdrawing municipality. In other situations, however, the RSU board may feel that the RSU has made substantial capital improvements or expenditures on behalf of the withdrawing municipality that must be reimbursed by the municipality in connection with withdrawal. In such
situations, the withdrawal agreement must contain explicit provisions describing the amounts and terms of such reimbursements by the withdrawing municipality to the RSU and/or vice versa.

11. **Multiple withdrawals.** Another situation that can complicate the process of drafting withdrawal agreements is where there are several municipalities that seek to withdraw from an RSU at the same time, especially where the withdrawing municipalities plan to join together following the withdrawal to form a new RSU or AOS. In those situations, it may be necessary to coordinate the withdrawal negotiations with the different municipal withdrawal committees in order to make sure that the terms of the various withdrawal agreements are consistent with each other.

12. **Dispute resolution.** Although not required by statute, most of the withdrawal agreements that have been approved to date have included procedures for dispute resolution through informal negotiations, followed by mediation, followed by arbitration if the dispute cannot be resolved at an earlier stage.

**Withdrawal from an AOS**

20-A M.R.S. §1461-B(6) provides that the withdrawal of a member entity from an AOS is governed by the provisions of the reorganization plan and inter-local agreement that formed the AOS. A review of the AOS reorganization plans and inter-local agreements reveals that the withdrawal provisions fall into two general groups. In eleven of the seventeen AOSs that have been formed to date under the School Reorganization Law, a member entity may withdraw from an AOS simply by approving the withdrawal at a referendum vote of the withdrawing entity adopted at least 60 days before the beginning of the fiscal year for which the withdrawal is to become effective. This 60 day referendum procedure applies in AOS 43, 47, 48, 62, 66, 77, 90, 95, 96, 98 and 99. In these cases, there is no requirement that the Commissioner approve a plan of withdrawal and there is no requirement that the withdrawal be approved by the AOS board. In the absence of a withdrawal agreement, it would appear that any employees, property and funds of the AOS would remain with the AOS following withdrawal.

Most of the other AOS reorganization plans require the prior approval of a withdrawal by the Commissioner and the approval of the voters of the withdrawing unit at a referendum. Because of the variations among the withdrawal and termination procedures for different AOSs, we urge school units to read the withdrawal plan very carefully.

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**Endnotes**

1. A common concern is conflicts of interest on the part of RSU Board members from the withdrawing town. In our view, the RSU Board member from the withdrawing town that serves on the withdrawal committee has a conflict of interest and may not participate or vote as an RSU Board member on the withdrawal agreement for that town, but the other Board members from the withdrawing town do not have a conflict of interest.

2. In the case of an RSU formed pursuant to a Reorganization Plan, the required minimum number of voters may have serious planning consequences. It may be a couple of years until the next statewide general election at which a sufficient number of voters to meet the 50% requirement can be assured.