

July 29, 2020

Via Email

Maria Libby, Superintendent  
MSAD 28  
7 Lions Lane  
Camden, Maine 04843

RE: MSAD 28 fiscal year 2020-2021 cost sharing

Dear Maria,

You have requested that we advise the MSAD 28 School Board as to the correct cost sharing methodology between Camden and Rockport for purposes of the towns' assessments of MSAD 28's school taxes for fiscal year 2020-2021. As discussed in some detail below, in our opinion MSAD 28 should apportion the amount MSAD 28 is required to raise as its share of the EPS State/Local allocation between Camden and Rockport as is provided on MSAD 28's Form ED 279, dated January 30, 2020 (the "ED 279") (copy attached). This allocation is currently the same as the towns' respective pupil count percentages calculated on that form. It is also our opinion that MSAD 28 should apportion the additional local funds tax revenue between the two towns using the towns' property valuation percentages, and applying for that purpose the "property fiscal capacity" valuations shown on the ED 279.

By way of background, MSAD 28 was organized in 1964 as a school administrative district comprising of Camden and Rockport. Following town referendum votes,<sup>1</sup> on November 20, 1964, the State Board of Education issued MSAD 28 a Certificate of Organization to become operational on November 30, 1964 as a school administrative district.

In 1994, and following a statutory school board reapportionment process to comply with "one person-one vote" requirements, the State Board issued MSAD 28 a new certificate of organization.

Effective July 1, 2009, pursuant to a non-codified statute enacted in 2007, the Legislature "reformulated" into regional school units those school administrative districts, that had not participated in the statutory process to form regional school units through merger and adoption of reorganization plans. As a result, in 2009 the State Board issued MSAD 28 a new Certificate of Organization. The revised certificate of organization includes text stating:

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<sup>1</sup> We have reviewed the Camden warrant for the November 16, 1964 referendum. Pursuant to separate warrant articles, the Town voted on formation of a school administrative district with Rockport, on the composition and voting method for the district school board, on the assumption of existing debt, and on the election of school board members.

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The member municipalities of Regional School Unit No. 28 are required to share costs and issue their warrants for the assessments authorized at the annual budget meeting for the required local contribution based on 20-A M.R.S.A. Chapter 606-B and for additional local share, if any, based on:

- State valuation.
- The number of resident pupils in each town.
- Alternate plan – \_\_\_ based on State valuation and \_\_\_ based on number of pupils.
- Specify \_\_\_\_\_

Following MSAD 28's July 14, 2020 referendum approving the 2020-2021 school budget, it is our understanding that the recently-hired MSAD 28 business manager, using the business office's Excel spreadsheets to determine apportionment of taxes, noticed some minor discrepancies between the spreadsheet results and results based on his own mathematical calculations.<sup>2</sup> The business manager called this minor discrepancy to your attention. As you and he began to work on resolving the correct apportionment, you deciding to research the source documentation for MSAD 28's cost sharing apportionment. On or about July 17, your research disclosed (and we confirmed) that in 2009 the State Board of Education had issued MSAD 28 a Certificate of Organization, containing a reference to "State valuation." You realized that this reference appeared to be at odds with the business office Excel spreadsheets, which use pupil counts to apportion cost sharing.<sup>3</sup>

You have asked that we advise as to the proper cost sharing method in light of this discrepancy.

Accordingly, we have reviewed applicable records from your office, the Department of Education and the State Board of Education, and we have researched applicable laws. The remainder of this letter presents our advice. Part 1 addresses the apportionment between Camden and Rockport of the MSAD 28's share of the EPS State/Local allocation. Part 2 addresses the apportionment of additional local funds.

**1. MSAD 28's share of the EPS State/Local allocation: the apportionment between Camden and Rockport is based on state statute; for fiscal year 2020-2021, the state funding formula yields a result that is the same as their percentages of MSAD 28's pupil count.**

- a. Our review of records produced shows no record that MSAD 28 has selected a particular cost sharing formula.

We have reviewed the applicable records surrounding the organization of MSAD 28 made available to us from these sources. The November 1964 vote in Camden (and

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<sup>2</sup> The minor discrepancies on the Excel spreadsheets may reflect different truncation or rounding methods, or some as yet unidentified factor.

<sup>3</sup> It is our understanding that your office's further research shows that for many years, MSAD 28 has apportioned cost shares based upon Camden's and Rockport's pupil count percentages. This is based on your review of the district's records and conversations with former business managers and a former superintendent. The 1994 Certificate of Organization also uses "State Valuation." The 1964 Certificate is silent on the cost sharing method.

so, we assume in Rockport) forming MSAD 28 did not include a vote on cost sharing, and the 1964 Certificate of Organization is silent on cost sharing.

As discussed in greater detail below, beginning in 1967, amendments to the general laws have permitted existing school administrative districts to amend their cost sharing formulas to adopt alternatives to cost sharing based upon valuation. These amendments have required the member towns to approve the change by local votes, required the school administrative district to file the approved change with the State Board of Education, and required the State Board of Education to issue a new Certificate of Organization containing the amended cost sharing method. We have reviewed the records produced. We have not seen any records of voting upon such a cost sharing amendment in MSAD 28, and the Certificate of Organization states that “State valuation” is the cost sharing method.

We have also researched whether MSAD 28 might have adopted a pupil count-based method of cost sharing by enactment of a private and special law. In 1965, pursuant to chapter 41 of the Private and Special Laws of 1965, “An Act to Reconstitute School Administrative District No. 28,” the Legislature ratified the 1964 organization of MSAD 28, the election of its initial board, and the adoption of its initial budgets. In particular, this private law “ratified the proceedings taken in the town meetings.” However, as noted previously, the local votes did not include a warrant article specifying a cost sharing method. From this legislation forward to the present date, we find no private law relevant to cost sharing in MSAD 28.

b. Apportionment between Camden and Rockport of MSAD 28’s share of the EPS State/Local allocation is governed by state statute.

Absent a contrary private and special law adopted prior to January 1, 2004,<sup>4</sup> the statutory apportionment between member municipalities of a district’s share of the EPS State/ Local Allocation may be summarized as follows:

- The commissioner determines a district’s “total cost of education.” This may also be referred to as the EPS State/Local allocation. The “total cost of education” represents the costs that qualify for subsidy purposes, and do not include other local costs of education, supported by additional local funds.
- The commissioner determines a member municipality’s “total cost of education” based on the district’s total cost of education multiplied by the percentage that the municipality’s most recent calendar year average pupil count is to the district’s most recent average calendar year pupil count.

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<sup>4</sup> The provisions of the general statutes, discussed below, that result in the apportionment between Camden and Rockport of MSAD 28’s share of the EPS State/Local allocation, “do not apply to municipalities that are members of a school administrative district or a community school district whose cost sharing formula was established pursuant to private and special law prior to January 1, 2004.” 20-A M.R.S.A. §15688(4).

- The commissioner then determines the amount derived by multiplying the municipality's property fiscal capacity, a measure derived from adjusted state valuations,<sup>5</sup> times a statewide "full-value education mill rate."
  - The municipality's contribution to the municipality's total cost of education is the lesser of the above two numbers (meaning, in effect, the second number is a cap in the first number).
  - If the lesser of the above two numbers is the second one, the state contributes the difference between the two numbers as subsidy to the district.
  - If the lesser of the above two numbers is the first one, the district qualifies to receive a minimum receiver adjustment, which lowers the municipal contribution. *See* 20-A M.R.S.A. §15688 (determining municipal member total cost of education; municipal contribution to its total cost of education; district contribution to district total cost of education; and state contribution to district total cost of education); *and* §15689(1)(minimum state allocation adjustment).
- c. Apportionment between Camden and Rockport of MSAD 28's share of the EPS State/Local allocation is reflected in form ED 279 prepared by the Department of Education.

For each school administrative unit, and based upon these subsidy laws, the Department of Education prepares a spreadsheet called the ED 279. The apportionment between Camden and Rockport of MSAD 28's share of the EPS State/Local allocation is shown on MSAD 28's annual ED 279 printout. MSAD 28's 2020-2021 printout accompanies this letter.

Section 4(A) of MSAD 28's ED 279 shows the apportionment pursuant to 20-A M.R.S.A. §15688(2) and §15688(3-A)(1). MSAD 28's total cost of education is apportioned between Camden and Rockport in proportion to their percentages of MSAD 28's resident pupils. Each town is thus assigned a municipal "total cost of education" by means of this pupil count percentage allocation.

Section 4(B) of the ED 279 then shows each town's property fiscal capacity multiplied by the statewide mill rate "expectation," or cap, pursuant to 20-A M.R.S.A. §15688(3-A)(B)(2). For both Camden and Rockport, the mill expectation when multiplied by the town's fiscal capacity results in an amount greater than the town's total cost of education under ED 279, section 4(A) based on pupil count percentage.

Section 4(C) of the ED 279 implements the comparison of each town's municipal total cost of education based on its pupil count percentage in section 4(A) and that

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<sup>5</sup> "Property fiscal capacity" is a measure of state valuation that the Legislature adjusts from time to time. Currently, it is the average of the state certified valuations for the 3 most recent years prior to the most recently certified valuation, or the certified valuation for the most recent year, whichever is less. 20-A M.R.S.A. §15672(23)(E). The property fiscal capacity amounts for each municipality and the whole district appear on the ED 279 at section 4(B). The municipal property fiscal capacity percentages do not appear on the ED 279 and must be derived mathematically.

town's mill rate expectation multiplied by its fiscal capacity in section 4(B). Section 4(C) selects the lower of the two numbers for each town. For both Camden and Rockport, the lower number is the town's municipal total cost of education based on its pupil count percentage (the number in 4(A)). This demonstrates that both towns have adequate fiscal capacity to pay their apportionments. Consequently, Section 4(C) shows zero for each town as a state subsidy contribution to MSAD 28.<sup>6</sup>

Section 5(A) of the ED 279 provides, where applicable, the minimum receiver adjustment. MSAD 28 receives this adjustment. "Section F" of the ED 279, immediately following section 5(C), allocates the minimum receiver adjustment. In MSAD 28's case, at least for fiscal year 2020-21, the allocation is made proportionately to the towns' municipal (pupil count) allocations. This can be seen on the ED 279 by comparing the "Adjusted Percentage" for each town under Section F with the "Percentage of Total Pupils" in Section 4(A). The percentages in Section F for Camden and Rockport are not changed by the allocation of the minimum receiver adjustment in section 5(A).

It would be an oversimplification to summarize all this by stating that the EPS State/Local allocation is shared by Camden and Rockport "based on" their pupil count percentages. This is the result of the formula currently, and this has been the result in recent years, but only because each town has had adequate fiscal capacity to afford its municipal total cost of education, and because the allocation of the minimum receiver adjustment is made pro rata. In any year, should the mill rate necessary for Camden or Rockport to pay its municipal total allocation exceed the statewide mill rate cap, the state contribution of subsidy would change the local contribution of one or both towns, which in turn would change their percentages of MSAD 28's contribution to the total cost of education. In any case, however, even in a year in which Camden or Rockport could not afford its municipal total cost of education, resulting in a deviation between percentages of pupils and the percentages of contribution to MSAD 28's total cost of education, that deviation would be reflected on the ED 279 for that year.<sup>7</sup>

In conclusion, for fiscal year 2020-2021, it is our opinion that MSAD 28 should use the "Adjusted Local Contribution Amounts" and the "Adjusted Percentages," as shown in Section F of its ED 279, to apportion its share of the EPS State/Local allocation between Camden and Rockport. Currently, these percentages are the same as the pupil count percentages in section 4(A). Administrators should not assume this will always be the case, and should be careful to continue to use the Section F "Adjusted Local Contribution" amounts and resulting Section F "Adjusted Percentages."

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<sup>6</sup> Notably, in many towns, the lower number is the mill rate expectation multiplied by the town's fiscal capacity, and ED 279 Section 4(C) would select that number. Consequently, and in contrast to Camden and Rockport, Section 4(C) in those cases would show a contribution of state subsidy equal to the difference between the numbers for the town in Sections 4(A) and in 4(B).

<sup>7</sup> In addition, one must be mindful that state statutes governing this formula may be changed at any time, and might also cause the cost sharing between Camden and Rockport to deviate from pupil count percentages.

2. **MSAD 28 additional local funds: the apportionment between Camden and Rockport is based on state statute; as a school administrative district that did not reorganize into a regional school unit, MSAD 28 is subject to a statutory property valuation method known as “property fiscal capacity.”**

The records produced do not show that MSAD 28 adopted a particular cost sharing formula or that it amended its cost sharing method. Accordingly, the relevant statutes require MSAD 28 to apportion the additional local funds between the two towns using a statutory property valuation method known as “property fiscal capacity.”

- a. In 1964, when MSAD 28 was organized, the general laws recognized only valuation for cost sharing.

As discussed previously, the records produced do not show that Camden and Rockport ever adopted a particular cost sharing formula. In 1964, when MSAD 28 was organized, the cost sharing statute for school administrative districts provided for them to assess member municipalities following budget approval “in proportion to the total sum required each year as that municipality’s state valuation bears to the total state valuation of all the participating municipalities.” 20 M.R.S.A. §305 (1965).

- b. No record has been located of MSAD 28 amending its cost sharing formula to pupil count.

In 1967, the Legislature amended section 305 to first permit school administrative districts to amend their cost sharing formulas. A change in cost sharing could be initiated either by agreement among the school board and the member municipality selectboards/councils, or via a voter petition process. Either process required submission for local voter approval. The 1967 amendment provided for two alternate methods of cost sharing, “Method A” and “Method B,” each containing both a valuation component and a pupil count component. If approved by district voters, the 1967 amendment required that “the state board shall issue an amended Certificate of Organization showing the new method of costs for the district.” 20 M.R.S.A. §305 *as amended* by P.L. 1967 ch. 483 §3.

Since 1967, the Legislature on numerous occasions has amended section 305 of Title 20, as well as its recodified successor, section 1301 of Title 20-A. Currently, and as discussed below, the alternative cost sharing methods are no longer limited to “Method A” and “Method B” as described in the 1967 amendment. *See infra*.

At any time, however, had MSAD 28 amended its cost sharing pursuant to the general laws, these laws provided for this to have been approved by local voters and then submitted to the State Board for approval and issuance of a revised Certificate of

Organization stating the amended method of cost sharing. No such MSAD 28 record reflecting a cost sharing amendment has emerged.<sup>8</sup>

- c. The Legislature has enacted different statutory cost sharing method for regional school units; this method only applies to regional school units formed by merger and not to “reformulated” school administrative districts such as MSAD 28.

Effective July 1, 2009, pursuant to non-codified legislation enacted as part of the biennial budget bill, the Legislature declared that school administrative districts that had not reorganized by merger into larger regional school units, would nonetheless be deemed to be regional school units, though still entitled to use their school administrative district names. *See* Public Law 2007 Chapter 240 Part XXXX, Section 36, subsection 12, *as amended by* Public Law 2007 Chapter 668 Section 48 (referring to these conversions as “reformulation” of school administrative districts into regional school units).

Thus, as of July 1, 2009, Maine law recognized two types of regional school units, those formed by merger with reorganization plans, and those reformulated from school administrative districts into regional school units by operation of law, without merger and with no reorganization plan.

For a regional school unit that did form by merger, unless exempted by a provision in the reorganization plan’s cost sharing formula,<sup>9</sup> the “default” statutory formula for additional local funds cost sharing is based upon the same percentages resulting from the EPS share calculations described in Part 1 of this memorandum. This default statutory formula reads as follows (emphasis added):<sup>10</sup>

**Apportionment of costs for regional school unit.** A regional school unit may raise money, in addition to the local contribution pursuant to section 15690, subsection 1, for establishing and maintaining public schools, erecting buildings and providing equipment for educational purposes. The additional costs of operating a regional school unit must be shared among all municipalities within the regional school unit by the same local share percentages for each municipality resulting from the determination of the local contribution under section 15688. 20-A M.R.S.A. §1481-A(1).

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<sup>8</sup> As we have also noted previously, there is no private and special law amending the MSAD 28 cost sharing formula.

<sup>9</sup> *See* 20-A M.R.S.A. §1481-A(3) (exception for regional school unit with different cost sharing method in reorganization plan). This exception does not apply to MSAD 28.

<sup>10</sup> Section 1481-A also includes an exception for a cost sharing formula “in existence on June 7, 2007 that was adopted pursuant to Public Law 2005, chapter 2.” *See* 20-A M.R.S.A. §1481-A(2). This reference is to the cost sharing formulas of MSAD 6 and MSAD 44. Section 1481-A also includes an exception for a cost sharing formula “pursuant to a private and special law.” *Id.* Neither exception applies to MSAD 28.

This regional school unit statutory “default” cost sharing formula, however, does not apply to the reformulated school administrative districts. As to these, including MSAD 28, section 1481-A(2-A) provides:

**Reformulated school administrative district cost-sharing.** For those school administrative districts recreated as regional school units pursuant to Public Law 2007, chapter 240, Part XXXX, section 36, subsection 12 as amended by chapter 668, methods of cost-sharing and amendments of the cost-sharing formula must be in accordance with section 1301. 20-A M.R.S.A. §1481-A(2-A).

- d. MSAD 28’s cost sharing method for additional local funds is the statutory valuation method using property fiscal capacity percentages, not pupil count percentages.

Section 1301 provides that the default cost sharing method for the additional local funds of a school administrative district is a valuation method. Although other methods, including pupil count, are now available, the statute requires that these alternate methods have been approved by the state board of education and the voters, as follows (emphasis added):

The costs of operating a school administrative district must be shared among all municipalities within the district in one of the following ways.

A. Under a property valuation method, municipalities in a district shall share costs in the same proportion as each municipality's fiscal capacity as defined in section 15672, subsection 23 is to the district's fiscal capacity.

B. Under an alternate plan approved by the state board and by a vote of the legislative bodies of the school administrative units forming the district and based on:

- (1) The number of resident pupils in each town;
- (2) The fiscal capacity of each member municipality as defined in section 15672, subsection 23;
- (3) Any combination of subparagraphs (1) and (2); or
- (4) Any other factor or combination of factors that may, but need not, include subparagraphs (1) and (2). 20-A M.R.S.A. §1301(1)(A) and (1)(B).

In summary, although MSAD 28 is considered a regional school unit, it is a “reformulated school administrative district,” and so its cost sharing method for additional local funds is the one that applies under section 1301.<sup>11</sup> As discussed above, in the absence of a cost sharing amendment or a private and special law specifying otherwise, section 1301’s “default” cost sharing methodology is based upon property valuation percentages using property fiscal capacity. No such private law has been enacted that addresses cost sharing in MSAD 28, and no record has been produced of a cost sharing amendment implemented by the voters. To the contrary, the records produced indicate that state valuation is the cost sharing method. Accordingly, based

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<sup>11</sup> For regional school units formed by merger with reorganization plans, the “default” cost sharing method for additional local funds is provided in section 1481-A(1), which in MSAD 28’s case would result in cost sharing for fiscal year 2020-2021 equivalent to pupil count percentages. See part 1 of this Memorandum. In point of fact, many of the reorganization plans of regional school units formed by merger do provide for something other than the statutory default method of section 1481-A(1).



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upon the relevant law and records that have been produced, in our opinion MSAD 28 should apportion its additional local funds between Camden and Rockport using the valuation method known as “property fiscal capacity” provided by section 1301(1) of Title 20-A.

For the above reasons, and based upon and subject to the foregoing, it is our advice that (i) with respect to apportioning MSAD 28’s share of the EPS State/Local allocation, MSAD 28 should use the local share amounts and percentages that are provided on the Form ED 279, which currently reflect pupil count percentages; and (ii) with respect to apportioning additional local funds, MSAD 28 should use the percentages that each town’s property fiscal capacity is to MSAD 28’s property fiscal capacity, applying for that purpose the property fiscal capacity figures on the 2020-2021 ED 279 at section 4(B).

I trust that this is responsive to your inquiry. Please do not hesitate to call if I may be of any further assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "E. William Stockmeyer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

E. William Stockmeyer