

The Legal Issues of Regionalization

Consolidating school districts involves confronting several legal issues. Here is a rundown of what's involved

By Michael F. Kaelber, Esq.

It was on April 3, 2007 that Gov. Jon Corzine signed into law the measure commonly referred to as A-4. This legislation implemented the Uniform Shared Services and Consolidation Act, established user-friendly budgets, created the position of executive county superintendent of Schools (ECS) and established the authority and requirements of the ECS office. Each ECS is required, no later than three years following A-4's enactment, to recommend to the commissioner a school district consolidation plan to eliminate all districts, other than county-based districts (such as vocational-technical and special services districts) and kindergarten (or preschool) through grade 12 districts in the county, through the establishment or enlargement of regional school districts.

Under the law, after commissioner approval of the ECS regionalization plan, each board of education covered by the plan will submit the ECS regionalization proposal to the voters for approval. For the ECS regionalization plan to be adopted, the voters in each affected community must approve the plan.

In regulations specially adopted Dec. 18, 2008, the commissioner clarified that the executive county superintendent plan, due March 15, 2010, would seek to consolidate all local school districts within the county, other than county-based districts and existing all-purpose regional school districts (pre-K or K-12), into one or more all purpose regional school districts. It's important to note that with this clarifying regulation, the scope of the regionalization net has been broadened. Small K-12 school districts, which were not part of the legislative A-4 enactment, are now being considered for regionalization as part of the ECS plan.

The ECS plan will primarily focus on existing sending-receiving relationships and the consolidation of limited purpose regional school districts (such as K-8, 7-12 or 9-12 districts) with their respective constituent school districts. If the creation of an all-purpose regional school district is not feasible or is not the most cost-effective option, the consolidation or sharing of administrative or management services will be considered.

While the ECS plan is not due until March 2010, with the resulting potential regionalization elections not occurring until September 2010, regionalization discussions have spread like wildfire around the state. Executive county superintendents, with the March 2010 plan deadline looming, have been meeting with local districts, encouraging them to investigate voluntary regionalization efforts. Discussions have ensued, questions have been raised, and clarifications sought.

The prospect of regionalization brings up several legal issues with which board members should be familiar when considering school district consolidation.

What is a regional school district?

A regional school district is a school district organized to provide public education services for multiple municipalities. It can be an "all-purpose" regional school district, serving all of the educational purposes of the municipalities (pre-K or K-12) or it can be a "limited purpose" regional school district, providing specific educational services, most commonly grades 9-12 or 7-12. A separate board of education, made up of representatives of each of the constituent municipalities, governs the regional school district. To the extent that educational services are no longer provided by each of the local constituent school districts, governance by those boards is eliminated.

How is a regional school district formed?

The classic voluntary regionalization process, the process that remains in place until the ECS proposals go to voters report in September 2010, is set forth in statute. Curiously, while administrative code sets forth the process for deregionalization in specific detail, no such code for voluntary regionalization exists. Instead, the process is set forth in a series of Department of Education memoranda, the most recent being issued in November 1998. The current process works like this:

- Informal meeting. The first step is an informal fact-finding meeting with the interested school districts and the ECS. The purpose of the meeting is to identify issues and review the regionalization process. This meeting is usually attended by the officers and central office administrators of each interested board of education.
- A second fact-finding meeting. The ECS will review the feasibility study process, identify the financial responsibilities of the interested districts in conducting the study and will request a resolution from each board to proceed. Classic voluntary regionalization is a fragile process. Should a district decide not to participate at any point in the process, the process ceases.
- Formal feasibility study. Usually done by an educational consultant, the feasibility study consists of an analysis of the constituent districts, including enrollment data and projections, educational plan, racial composition, fiscal information, facilities, effects on existing schools, legal considerations, public awareness/input and a transitional budget. The cost for the study is shared among the interested school districts. While no funding for feasibility studies is directly available for school districts, SHARE grants are available to municipalities through the Department of Community Affairs.
- Advisory Committee formed. The advisory committee consists of two board members, the chief school administrator and board attorney from each interested school district and community representatives appointed by each board of education. The advisory committee selects a chairperson, develops a plan of action to implement the feasibility study, reviews and critiques the study as it develops, and develops and implements a plan to report the content and progress of the feasibility study to the respective boards of education and constituents.
- Formal feasibility study to the executive county superintendent for review. Based on the results of the feasibility study, each board takes final action to approve the regionalization plan through the adoption of a formal board resolution, which is submitted, along with the feasibility study to the ECS.
- If the executive county superintendent agrees with the plan, the ECS submits a request for approval through the Division of Field Services to the Commissioner of Education. The Departmental Review Committee (Commissioner, State Board Member, State Treasurer, Director of Division of Local Government Services) decides whether the plan is feasible or not. If the plan is deemed not to be feasible, the ECS notifies all the affected school districts. If the Department Review Committee finds the plan to be feasible, the final report, with recommendations, is forwarded to the Commissioner.

If the Commissioner approves the plan, a special election is held, between April 15 and December 1. Given the statutory limitations on special election dates, the regionalization election will be held on the last Tuesday in September. If the voters in each potential constituent district approve the plan, the executive county superintendent will set the date for the formation of the new regional school district; usually July 1 of the following year. The ECS appoints the number of qualified board members for each constituent school district, creating the first regional board of education. The first elected regional board members will be chosen at the next annual school election following the special election which created the regional school district.

How does the executive county superintendent plan differ from the voluntary regionalization process?

While voters have the final say, the March 2010 plans developed by the ESC and approved by the Commissioner, could involve school districts even if the district has no interest in the proposal. While there has been much discussion among executive county superintendents and local school districts to get agreement and buy-in, ultimately the ECS plan is the plan.

The regulations provide for the establishment of a School District Regionalization and Consolidation of Services Advisory Committee in each county for the purpose of providing advice and consultation to the ECS. Every school district in the county has representation on the Committee, which meets monthly. At least quarterly, county representatives of the Leadership in Educational Excellence (LEE) group will be invited to attend and participate in the Advisory Committee meetings. The LEE Group consists of representatives of the various New Jersey education associations, including the NJSBA.

The ECS, in consultation with the Advisory Committee will study the consolidation of school districts within the county, other than county-based school districts and existing all-purpose regional school districts, into one or more all-purpose regional school districts. The study will focus on consolidating existing sending-receiving relationships and limited purpose regional district and their constituent districts into enlarged all-purpose regional school districts. Small K-12 school districts will be considered for regionalization as well.

The March 2010 ECS plan will, not unlike the feasibility studies in the classic voluntary regionalization process, address the following: the structure of the new board of education; an analysis of staffing, the collective bargaining agreements and salary guides; an analysis of each constituent district's educational program and guidance for the regional district program; transportation cost-efficiencies; finance, technology, food services and facilities efficiencies; an analysis of socio-economic and demographic information; a comparison of state aid and property tax impact; a comprehensive financial analysis including current and projected spending, local wealth and debt limits and debt burden; aggregated income, household income and current and projected borrowing margin.

Once the ECS plan is approved by the commissioner, it follows the same path to the voters as would a classic voluntary regionalization plan.

How is the apportionment of seats on the regional board determined?

If there are nine or less constituent districts, each constituent district will have at least one board member, with the remaining members being apportioned by the executive county superintendent, according to the number of residents in each community. The number of residents in each community is established by the federal census. If there are more than nine constituent districts, the number of board members is equal to the number of constituent districts plus one, with voting rights being apportioned by the ECS according to the number of residents, through a representative ratio and equal proportions process. This apportionment results in a weighted voting process whereby board members may have fractionalized votes, depending on their community's population; e.g. 1.2 votes, .75 votes, etc. This fractionalized voting process, in regional districts with more than nine constituent districts, is the result of 1970s litigation involving the North Hunterdon Regional school district and its then-15 member board of education. The New Jersey Supreme Court found that the existing structure violated the federal "one person, one vote" voting rights rule. The Legislature's response was a change to the existing voting structure.

While similar litigation occurred in 1998 in a regional school district with eight constituent districts, resulting in a court approved settlement, which included fractionalized voting; there has been no similar legislative response for school districts with nine or fewer constituents. Whether a community will maintain majority political control of a regional school district can often be a factor in a community deciding whether to proceed with regionalization. This can be especially true when districts in an existing sending-receiving relationship are considering regionalization. The receiving district, which holds a majority of seats on the board of education, may be reluctant to give up its existing political control.

Does the seat apportionment among districts on the regional board ever change?

Yes. With the official promulgation of the next federal census, seat apportionment can change, if the resident population has changed significantly. In the 2002 school election, 16 regional school districts saw seat apportionment changes because of changes in resident population identified in the 2000 census. When seat apportionment changes are necessary, existing board members continue in office for their elected/appointed terms with increased representation taking effect at the next annual school election.

How are costs apportioned in a regional school district?

It depends. In the formation of a regional school district, the plan, which is placed before the voters for approval, may apportion costs among constituent districts in three basic ways:

- Equalized valuation, otherwise known as property values;
- Pupil enrollment
- Any combination of equalized valuation and pupil enrollment.

With the 1975 passage of Chapter 212, the "Thorough & Efficient" law, all existing regional school districts apportioned costs on an equalized valuation or property value basis. Legislative amendments in the 1990s created the pupil enrollment and combination options. In 1993, the Liberty and Independence school districts in Warren County combined to form the Great Meadows Regional (K-8) school district, the only school district in New Jersey to apportion costs 100 percent by pupil counts. The Somerset Hills Regional (K-12) district, comprised of Bernardsville, Far Hills, Peapack and Gladstone, apportions costs on a 95 percent equalized valuation, 5 percent pupil enrollment basis.

How costs are apportioned in a regional school district can often be a factor in a community deciding whether to proceed with regionalization. Whenever a regional school district plan is developed and the cost apportionment deck is shuffled, winners and losers result. In most circumstances, the winners will vote yes and the losers will vote no, precluding regionalization. The challenge for school districts, which want to proceed with a regionalized structure and for the state to implement its regionalization initiative, will be to find a way to offset this financial disincentive.

Can cost apportionment in a regional school district be changed?

Yes. Regional school district cost apportionments can be modified by approval by the voters in each constituent municipality upon the occurrence of one of the following: ten years have elapsed since the last voter approval; 10 percent change in equalized valuation; 10 percent change in pupil enrollment counts; enlargement of the regional school district; the regional district was formed before 1993 and never changed its apportionment. Great Meadows Regional submitted a proposal for a 50/50 split between equalized valuation and pupil enrollment to the voters in 2007. Liberty, which would have benefited financially from the change, approved the proposal. Independence, which would have been financially disadvantaged by the proposal, rejected the proposal. The 100 percent pupil enrollment apportionment has remained in place.

Can the ECS recommend avenues other than regionalization?

Yes. Should an all-purpose regional school district not be the most cost-effective option, the ECS may recommend to the commissioner as an alternative, the required consolidation of administrative services where it would be economically advantageous and there would be no negative impact on the education program. The ECS will focus on opportunities for consolidation of administrative services in the following types of school districts; 1,000 students or less; five school buildings or less; two contiguous districts in the same county with less than 2,500 students; sending-receiving relationships with less than 5,000 students; limited purpose regional districts and their constituent districts with less than 5,000 students; and districts where administrative costs are in excess of 125 percent of the county median.

Can the commissioner mandate regionalization?

Although mandatory regionalization is not part of the state's current plan, the commissioner does have such powers under other laws. In 1971 the commissioner of education mandated regionalization between the school districts of Morristown and Morris Township, creating the Morris School District, in fulfillment of New Jersey's educational and desegregation policies in the public schools. The commissioner's authority for mandating the formation of the regionalized Morris School District was established by New Jersey Supreme Court. While it has been suggested on several occasions during the subsequent 38 years that the commissioner once again invoke that authority, the commissioner has chosen not to exert her political will in this area.

The commissioner's authority to mandate regionalization received a boost with the enactment of the School Funding Reform Act of 2008 on January 13, 2008. As part of the new school funding law, the Legislature established broad powers for the commissioner. Codified at N.J.S.A. 18A:7F-60, the Legislature established that:

"The Commissioner shall be authorized to take any affirmative action as is necessary to ensure the effective and efficient expenditure of funds by school districts."

What is likely to happen over the next 18 months?

It would appear that for the immediate future, the executive county superintendents will continue to encourage school districts to explore regionalization. Given the impediments of cost allocation with winners and losers, the political power of seat apportionment on the regional board of education and New Jersey's long standing tradition of home rule, the prospect of voluntary regionalization on a large scale is unlikely. It is significant that there have been only four regional school districts formed in New Jersey in the past thirty years (Bordentown Regional, School District of the Chathams, Great Meadows and Somerset Hills).

Come March 15, 2010, the ECSs will submit their regionalization plans, with resulting regionalization elections in September 2010. Unless the State comes up with a way to eliminate the losing aspect of cost apportionment, it is unlikely that many of the regional school district proposals will be approved. What then? Will the commissioner mandate regionalization over the express will of the voters? While legal, that would require the expenditure of a lot of political capital by the governor and commissioner and would appear to be unlikely. The more likely developments will be in the area of consolidating or sharing administrative and management services, balancing cost savings with the staffing levels necessary to get the job done.

Buckle your seat belts and stay tuned. It should be an interesting, if bumpy, ride.

Michael F. Kaelber, Esq., is director of NJSBA's Legal and Policy Services Department. He can be reached at mkaelber@njsba.org.

[Back to top](#)