**To:** Boards of Education of Canaan, Cornwall, Kent, North Canaan, Salisbury, Sharon and Regional School District No. 1 (referred to collectively herein as “Boards”)

**From:** Frederick L. Dorsey, Counsel for Town of Canaan-Falls Village

**Re:** Proposed Joint Employment Agreement for Superintendent of Schools

**Date:** March 26, 2015

 The Town of Canaan-Falls Village (“Canaan”) has asked me to review a draft of the proposed joint agreement for the employment of (“Agreement”) a Superintendent of Schools (“Superintendent”) presented by the Board of Education for Regional School District No. 1 (“Region 1”) and suggest to the Boards, based on my discussions with Canaan officials and my legal analysis of the Agreement, modifications that would enhance the acceptability and legality of the Agreement. These modifications are addressed for your consideration in the attached revised Agreement (“Revision”). My review of the Agreement identified legal and practical issues which the Revision is intended to correct. While the suggestions contained in the Revision are certainly open to discussion, it is my opinion that the Agreement, as presented, is not totally legally defensible and, therefore, must be modified to some extent. The purpose of this Memorandum is to express, in general terms, the reasons that I found the Agreement should be modified.

 First, the statutory authority for the Agreement derives from Section 10-157a of the Connecticut General. Statutes (“Statute”). The Statute requires that the following provisions be addressed in any joint employment agreement under the statute:

1. Term of the Superintendent’s office;
2. Proportionate share and limits of authorized expenditures for the Superintendent’s salary and other necessary expenses;
3. Evaluation of the Superintendent;
4. Duties of any committee established to administer the joint agreement;
5. Membership of the committee established to administer the joint agreement;
6. Voting requirements for actions of the committee established to administer the joint agreement; and
7. Provisions for termination of the joint agreement.

While some of the modifications I have proposed are intended to more closely align the Agreement with the Statute, there can be no argument that the Agreement does not in any way address the issue of termination of the Agreement; something distinct from withdrawal from the Agreement, with withdrawal rights being specifically provided in the Statute. As such, some additional provisions must be provided to ensure that all seven (7) of the required provisions of the Statute are addressed.

Second, the Statute provides that certain activities of the Agreement may be administered by a committee. The parties currently have an established committee, the ABC Committee, which has other duties within the overall region. It seems efficient that the ABC Committee be identified within any joint employment agreement as having duties with regard to the employment and evaluation of the Superintendent, but that, for the purposes of the Agreement, the ABC Committee’s duty should be specifically delineated.

Third, for the purposes of this Agreement, I feel it is important to indicate that the ABC Committee is an advisory group, with only administrative not legislative authority, because such additional authority would be in violation of both Connecticut statutes and the United States Constitution.

Fourth, there are several “super majority” votes indicated within the Agreement, which are designated as two thirds votes. Given the makeup of the general region, *i.e*., seven entities, a two thirds vote would result in a fractional number that could be interpreted as either a simple majority, 4 of 7, or a super majority, 5 of 7, and leaves open the question of whether it is a majority of the Boards or a majority of the representatives of the Boards present and voting at the meeting. By designating a specific number of the Boards, the Revision intends to eliminate this uncertainty.

Fifth, I can see no reason to distinguish the expenses for the Superintendent’s contract from any other expenditure that is shared by the Boards in the region. In fact, there is a legal argument that the variance from the proportional attendance in the schools of the districts could run afoul of constitutional limitations identified by the United States Supreme Court. As such, it would appear to be more appropriate to maintain the traditional proportionate funding of this expense.

Finally, there are a few general considerations that are reflected in the Revision. These considerations are: 1. there should be consistent reference to activities of the total seven (7) boards in the region, as opposed to the six (6) local boards; 2. there are some inconsistencies in the Agreement regarding language concerning who selects the Superintendent and the specific procedures for renewal and termination of the Superintendent; 3. there should be a consolidation of subject matters to eliminate having to search the document for provisions that relate to the same topic; and, 4. there should be an administrative provision for the payment of salary and health insurance benefits to the Superintendent, given that there are seven (7) different entities providing such benefits.

It is my opinion that these issues are addressed in the Revision and, with minor modifications, the Revision can result in a mutually agreeable process for the joint employment of a Superintendent.