

## Paul Giuliani

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**From:** Paul Giuliani  
**Sent:** Wednesday, November 15, 2017 2:37 PM  
**To:** Neil Odell  
**Subject:** Dresden ISD - Reserve Funds

Hi Neil –

The August 19, 1998 Article of Agreement of Rivendell Interstate School District make no explicit reference to the establishment of capital reserve funds. Rivendell ISD, like Dresden ISD, was created under the provisions of the New Hampshire-Vermont Interstate School Compact. The relevant Compact provision states that the “interstate district shall not set up its own capital reserve fund”. Article VI(D) goes on to provide that “a New Hampshire member district may set up a capital reserve fund in accordance with RSA 35, to be turned over to the interstate district in payment of the New Hampshire member district’s share of any anticipated obligations.”

Rivendell ISD, like Dresden ISD, is bound by the prohibition against the creation of a capital reserve fund at the interstate district level.

I went through my Rivendell file from that era to see if the reserve fund issue was considered while the Articles were being negotiated. It’s possible that the subject was discussed at the time, but I have nothing in my file that offers any insight into what relevance the parties attached to the matter of capital reserves.

I also went over the reserve fund analysis contained in my July 13 memo. I’ve come across nothing that would cause me to alter or modify my analysis and conclusions, with one exception. In re-reading Compact Article VI(D), I noticed that the reserve fund prohibition applies explicitly and exclusively to the interstate district’s “own capital reserve fund.” The prohibition limitation on the interstate district itself doesn’t extend to a prohibition against the interstate district being the beneficiary of capital reserve funds which it neither established nor possesses a legally recognizable interest.

Attempting to divine the legislative intent behind Article VI(D) probably is an inconclusive exercise in futility. I’m going to confine my attention to the Compact itself, the Dresden Articles of Agreement, and the laws of the two jurisdictions.

Compact Article X and Article XI provide that the laws of New Hampshire and Vermont will apply to the respective school districts. Each jurisdiction allows its school districts to create true capital reserve funds (as opposed to non-capital operation and maintenance “capital reserve funds” under RSA 35.1-c). The procedures vary between the states, but as a general proposition, electoral approval is required. Once in place, capital reserve funds may be expended only for the purposes for which they were established. 24 VSA 2804; RSA 35.

It seems to me that the simplest and most efficient resolution of the interstate district capital reserve fund issue is for the constituent Vermont and New Hampshire school districts each to establish capital reserve funds dedicated to the repair and replacement of interstate school district property and to fund in part the cost of school building improvements. There is an initial policy consideration that needs to be talked through. Should each district’s capital reserve fund be restricted for expenditure on school buildings located within that district, or should the reserve fund be available to all school buildings within the interstate school district, subject to a funding and expenditure formula? There probably are variations on the theme, but there is a distinction between a “common” capital reserve fund concept and capital reserve funds attached to individual school buildings.

The capital reserve fund relationship among the school districts needs to be spelled out in either an interlocal contract or, preferably, as an amendment to the Articles of Agreement. I would envision the elements of such an amendment to be a commitment on the part of each school district to establish and maintain a capital reserve fund in accordance with the law of the jurisdiction in which the district is located. The amendment would state the purposes for which each district commits to expend its capital reserve fund balances, and a mechanism by which requisitions from the reserve funds are made and approved.

Minimum annual appropriations to each capital reserve fund is a subject that's open for discussion. I know there is a New Hampshire annual appropriation limit of 0.05% of the school district's last debt limit valuation. RSA 35:8. While there is no statutory school district reserve appropriation limit in Vermont law, reserve funds do have an effect on the "education spending" calculation which forms the basis of Vermont state aid. For instance, deposits in a reserve fund have to be expended within five years of receipt in order for the district to avoid being penalized on its "education spending". 24 VSA 2804(b).

I'm not sure of New Hampshire law, but in Vermont the notion of a "continuing appropriation" is not recognized. That is, a proposition approving the automatic annual transfer of fund balances to a capital reserve fund is not enforceable. In Vermont, an appropriation to a reserve fund, including the transfer of the fund balance, has to be approved annually.

An indispensable element of an ongoing capital reserve fund commitment is a capital plan and a capital budget. Due to their inherent evolving nature, the capital plan and the capital budget probably should not be included in the amendment. Reference to them, recognizing that they will be amended periodically, is sufficient.

If the consensus is to proceed along the lines outlined here, I would suggest that this is a good opportunity to apply the \$57,000 currently held by the interstate district to seed the individual capital reserve accounts by means of an equitable sharing formula. This could be built into the common proposition establishing the capital reserve funds.

Anyhow, I hope this is of some help. Please let me know if any clarification is needed.

Regards,

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