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Agency of Education

September 28, 2018

Krista Huling, Chair  
State Board of Education  
2776 VT Route 108N  
Jeffersonville, VT 05464

Dear Madam Chair,

You have requested a legal opinion from the Agency as to whether a district vote against merger is a barrier to merger under the State Plan.

Act 46 charges the State Board with approving the Secretary's proposal "either in its original form or in an amended form that adheres to the provisions of subsection (a) of this section." Sec. 10(b). Subsection (a) directs the Secretary to propose a plan that will promote "educational opportunities through sustainable governance structures designed to meet the goals [of Act 46]."

The law explicitly provides the State Plan shall not apply to four categories of districts. Those categories are:

- (1) an interstate school district;
- (2) a regional career technical center school district formed under 16 V.S.A. chapter 37, subchapter 5A; or
- (3) a district that, between June 30, 2013 and July 2, 2019, began to operate as a unified union school district and:
  - (A) *voluntarily merged into the preferred education governance structure*, an Education District, as set forth in Sec. 5(b) of this act; or
  - (B) is a regional education district or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156; or
- (4) a supervisory district with a minimum average daily membership of 900.

2015, No. 46, sec. 10(e)<sup>1</sup> (*italics added*).

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<sup>1</sup> This provision was enacted as Section 10(c), but was amended in 2017, No. 49, sec. 8 and re-designated as Section 10(e).



The law does not include in this list of exclusions districts that vote against merger. Accordingly, there is no blanket exclusion that would preclude the State Board from merging a town district due to a negative merger vote.

Moreover, subsequent legislation supports this reading of the law by specifying additional situations in which a vote does preclude merger. In 2017, the General Assembly revisited the question of mergers and provided that a vote of the electorate may result in exemption of the community from merger under the State Plan in two circumstances: (1) when each merged district and the existing district in a “two-by-two-by-one side-by-side structure” receive final approval from their electorates; and (2) when an existing district and the districts proposing to merge into a merged district in a proposed “three-by-one side-by-side structure” obtain the approval of their electorate, respectively, to be an existing district or merge. Act 49, secs. 3, 4.

On the other hand, the law recognizes that the preferred model of governance may not be “possible or the best model to achieve Vermont’s education goals in all regions of the State” and that in some instances a supervisory union composed of multiple districts may meet the State’s goals. Act 46, sec. 5(c)<sup>2</sup>. Thus, the law does not require the State Plan to merge districts in every instance where it is possible.<sup>3</sup> Instead, the law recognizes that the State Plan may include certain proposed alternative structures.

The law enumerates certain factors, which, if present, indicate that an “alternative” structure may meet the State’s goals:

- (1) all the member districts consider themselves to be collectively responsible for the education of all prekindergarten through grade 12 students residing in the supervisory union;
- (2) the supervisory union operates in a manner that complies with its obligations under 261a and that maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of resources among the member district, which may include a common personnel system, with the goal of increasing the ratio of student to full-time equivalent staff;
- (3) the supervisory union has the smallest number of member school districts *practicable*, achieved wherever possible by the merger of districts with similar operating and tuitioning patterns;
- (4) the supervisory union has the smallest number of member school districts *practicable* after consideration of greatly differing levels of indebtedness among the member districts; and
- (5) the combined average daily membership of all member districts is not less than 900.

2015, No. 46, sec. 5<sup>4</sup> (*italics added*).

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<sup>2</sup> As amended by 2017, No. 49, sec. 7.

<sup>3</sup> For example, it is not possible to merge districts that have different operating/tuitioning structures. See Act 46, sec. 4.

<sup>4</sup> As amended by 2017, No. 49, sec. 7.

The issue for the State Board is whether the fact that there was a vote has any bearing on these factors. The fact that there was a vote against merger does not provide any information on the issue of collective responsibility. Similarly, a negative merger vote does not provide information about the supervisory union's operation or the average daily membership of the supervisory union.

A negative merger vote, however, may provide information regarding whether an alternative structure has the smallest number of school districts "practicable." The act does not define the term "practicable." The Board is left to exercise its judgment in determining what set of facts or combination of facts would make it impracticable for a district to merge with another to form a preferred structure of governance that would meet the goals of Act 46.<sup>5</sup>

The Secretary undertook a similar analysis when writing the proposed plan mandated by section 10(a). Of the 47 decision points for the Section 9 proposals that either proposed retaining the current structure or asked to be merged, the Secretary's proposed statewide plan agreed with 32 and disagreed with 15. The Secretary's analysis did not find the fact of a negative merger vote to be determinative on the issue of practicability. Although the Secretary acknowledged that without the commitment of the communities to a larger district potential opportunities might not be realized and unification might be blamed for any difficulties encountered by the new district, the Secretary nevertheless believed that if merged, communities would move forward cooperatively to take advantages of those opportunities.

The State Board, however, could fairly give a different weight to the fact that a negative merger vote occurred - just as the Board can determine the weight of any other factor that provides it information regarding whether a proposed alternative structure has the smallest number of districts practicable. For example, other factors presented over the course of the State Board's regional meetings as barriers to merger and therefore, as an indication that the supervisory union has the smallest number of districts practicable, were differing amounts of debt held by districts, the geography of districts, and differing cultures of districts.

There is no legal support for the argument that the State Board is prohibited from merging a district because it voted against merger. However, the State Board could consider a vote against merger as information about whether the supervisory district could achieve the goals of Act 46 if merged into fewer districts. Those goals are equity, academic quality, efficiency, accountability and taxpayer value. Act 46, Section 2.

It is fair to ask whether school boards of districts that voted against merger would be able to set that negative vote aside to work together to achieve the Act's 46 goals. The Secretary's proposal assumes they could. The State Board has more information on that issue after its three regional meetings and may determine in light of what it heard that merger is not practicable in some parts of the State.

This opinion is not intended to suggest that the Board's consideration is limited to the "practicable" factor, but only to opine on how the issue of a negative merger vote fits within the framework of your analysis. The presence or absence of other factors, including those listed in

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<sup>5</sup> The alternative governance structure factors in enumerated as "Guidelines" in Act 49, sec. 7.

Act 46, sec. 5 (collective responsibility, efficiencies, differing debt levels and student population) may also be considered when determining whether an alternative structure can meet the State's goals. For example, the question of whether a district held the required conversations with its neighbors may provide information on the first factor regarding collective responsibility.<sup>6</sup>

Finally, the issue of whether a negative merger vote is determinative under the State Plan has been framed by merger opponents as an issue of whether the Board will act in a democratic manner or not. Vermont is a representative democracy. Residents elect representatives to the General Assembly, who in turn debate and enact laws. A majority of both houses of the General Assembly voted to enact Act 46. As part of the Executive Branch, the Agency of Education fulfilled its legislatively-mandated duty to propose a plan to "move districts into the more sustainable, preferred model of governance" to the extent necessary "to provide educational opportunities through sustainable governance structures designed to meet the goals" of Act 46.<sup>7</sup> The State Board is now weighing various policy considerations before performing its legislatively-delegated duty to issue a statewide plan "merging and realigning districts and supervisory unions where necessary."<sup>8</sup>

Sincerely,



Molly Bachman  
General Counsel

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<sup>6</sup> Act 46, sec. 9(a)(2).

<sup>7</sup> Act 46, sec. 10(a)(2).

<sup>8</sup> Act 46, sec. 10(b).

## Information on Merger Votes Held by Districts Subject to the Final Statewide Plan

### Overview

Process for a merger vote subject to 16 V.S.A. § 706d

- §706 formation of a study committee
- Consideration by committee and drafting of the study committee report (§706b)
- Consideration of report by individual school district boards (§706c)
- Consideration of report and approval by State Board (§706c)
- Warning in all districts designated as “necessary” in study committee report (§706f)
  - The contents and form of the warning must be uniform across districts participating in the vote (§706f)
- Formalities of the vote itself (§706d)
  - Specified date from the study committee report
  - Vote must be held on the same day in all towns
  - Vote must be held during the same hours in all towns
  - The polls must be open for at least eight hours
  - Early and absentee voting must be offered as required in Title 17 (elections law)

Other types of votes and public questions were used to engage members of the public on questions of merger. The Agency is aware of several of these votes through conversations with districts and/or written proposals but may not be aware of every such process throughout the state between 2015 and today. These other types of votes and public questions, outside the §706 process, are not included here.

<b>Districts</b> <i>(Numbered as in Secretary's Proposed Plan)</i>	<b>District(s) Warned a §706d Vote of the Electorate</b>	<b>Vote Results</b>	<b>Notes</b>
<b>1. Brattleboro Union HSD &amp; its 4 Member Districts</b>	Yes	Merger not approved on November 7, 2017 Yes 375 No 850	
Dummerston	Yes	Merger not approved on November 7, 2017 Yes 91 No 473	
Guilford	Yes	Merger not approved on November 7, 2017 Yes 161 No 262	
Putney	Yes	Merger not approved on November 7, 2017 Yes 171 No 370	
<b>2. Missisquoi Valley Union HSD &amp; its 3 Member Districts</b> (Franklin, Highgate, Swanton)	No		
<b>3. Oxbow Union HSD &amp; its 2 Member Districts</b>	No		
<b>4. Spaulding Union HSD &amp; its 2 Member Districts</b> (Barre City; Barre Town)	Yes	Merger not approved on November 8, 2016 Barre Town Yes 1,611 No 2,108  Merger approved on November 8, 2016 Barre City Yes 2,067 No 694	Unified district not created due to rejection of merger in other district
<b>5. Union 32 HSD &amp; its 5 Member Districts</b> (Berlin; Calais; East Montpelier; Middlesex; Worcester)	No		
<b>6. Barnard Elementary District (PK-6)</b>	Yes	Merger not approved date March 7, 2017 Yes 103 No 155	MUUSD formed
<b>7. Cambridge Elementary District (PK-6)</b>	Yes	Merger not approved on April 12, 2016 Yes 128 No 164	MUUSD formed
<b>8. Huntington Elementary District (PK-4)</b>	Yes	Merger not approved on June 7, 2011 Yes 85 No 365  Merger not approved on November 4, 2014	MUUSD not yet created by law at the time (2011)  With MUUSD option

Districts (Numbered as in Secretary's Proposed Plan)	District(s) Warned a §706d Vote of the Electorate	Vote Results	Notes
		<p>Yes 285 No 521</p> <p>Merger not approved on March 1, 2016 Yes 370 No 413</p> <p>Merger not approved on March 6, 2018 Yes 204 No 306</p>	<p>Vote to join MUUSD as full member</p> <p>Vote to join MUUSD as full member</p>
9. Orwell Elementary District (PK-8)	Yes	Merger not approved on March 7, 2017 Yes 137 No 219	MUUSD formed
10. Windham Elementary District (PK-6)	Yes	Merger not approved on March 7, 2017 Yes 66 No 74	MUUSD formed
11. Bellows Falls Union HSD & its 4 Member Districts	Yes	<p>Merger approved on March 7, 2017:</p> <p>Athens Yes 69 No 14</p> <p>Rockingham Yes 283 No 191 (46 blank/spoiled)</p> <p>Merger not approved on March 7, 2017:</p> <p>Grafton Yes 81 No 156 (12 blank/spoiled)</p> <p>Westminster Yes 155 No 436 (15 blank/spoiled)</p>	No union district created due to rejection of merger in other districts
12. Hazen Union HSD & Lakeview Union ESD & all Member Districts (Greensboro; Hardwick; Stannard; Woodbury)	No		
13. Lake Region Union HSD & its 7 Member Districts (Albany; Barton; Brownington; Glover;	Yes	Merger not approved on June 7, 2016:  Westmore Yes 21 No 32	Second merger vote to be held in all towns on November 6, 2018

Districts (Numbered as in Secretary's Proposed Plan)	District(s) Warned a §706d Vote of the Electorate	Vote Results	Notes
Irasburg; Orleans; Westmore)		Albany Yes 33 No 36  Brownington Yes 22 No 45  Irasburg Yes 27 No 62  Glover Yes 37 No 74  Orleans Yes 31 No 41  Merger approved on June 7, 2016: Barton Yes 56 No 35	Unified district not created on June 7, 2016 due to rejection of merger in other districts
<b>14. Mount Anthony Union HSD &amp; its 5 Member Districts</b>			
Bennington	Yes	Merger approved on November 7, 2017 Yes 965 No 338	No unified district created due to rejection of merger in other districts
Shaftsbury	Yes	Merger approved on November 7, 2017 Yes 322 No 176	No unified district created due to rejection of merger in other districts
Woodford	Yes	Merger not approved on November 7, 2017 Yes 36 No 38	Reconsideration vote resulted in merger not approved, with a 4 vote margin
North Bennington	No		
Pownal	Yes	Merger not approved on November 7, 2017 Yes 210 No 214	No reconsideration vote held
<b>15. North Country Union HSD &amp; its Member Districts</b> (Brighton; Charleston; Derby; Holland; Jay; Lovell; Morgan; Newport City; Newport Town; Troy; Westfield)	No		
<b>16. Pittsfield District</b>	No		
<b>17. Sandgate District</b>	No		



<b>Districts</b> <i>(Numbered as in Secretary's Proposed Plan)</i>	<b>District(s) Warned a §706d Vote of the Electorate</b>	<b>Vote Results</b>	<b>Notes</b>
18. Searsburg District	No		
19. Stratton District	No		
20. Winhall District	No		
21. Blue Mountain UUSD ( <i>Groton; Ryegate; Wells River</i> )	No		
22. Cabot District	Yes	Merger not approved on June 20, 2017 Yes 163 No 356	Merger with Danville and Twinfield rejected
23. Danville District	Yes	Merger not approved on June 20, 2017 Yes 112 No 239	Merger with Cabot and Twinfield rejected
24. Twinfield UUSD ( <i>Marsfield; Plainfield</i> )	Yes	Merger approved on June 20, 2017 Yes 160 No 103	Merger with Cabot and Danville did not take effect due to rejection of merger in other districts
25. Craftsbury District	No		
26. Elmore-Morristown UUSD and Stowe District	No		Elmore-Morristown UUSD approved merger to form the current unified district. Stowe was not a participant in that vote of the electorate.
27. Enosburgh District and Richford District	Yes	Merger not approved on June 7, 2016 Yes 82 No 158  Enosburgh-Richford merger approved on November 28, 2017 Yes 157 No 65	Vote on merger with all FNESU districts  Unified district not created due to rejection of merger in the other district
Richford	Yes	Merger not approved on June 7, 2016 Yes 60 No 207  Enosburgh-Richford merger not approved on November 28, 2017 Yes 99 No 108	Vote on merger with all FNESU districts  No reconsideration vote held.
28. Fairfax District; and Fletcher District; and Georgia District	No		
29. Hartland District and Weathersfield District	No		
30. Montgomery District	Yes	Merger not approved on June 7, 2016 Yes 52	June 7, 2016 -- rejected merger with all FNESU districts

<b>Districts</b> <i>(Numbered as in Secretary's Proposed Plan)</i>	<b>District(s) Warned a §706d Vote of the Electorate</b>	<b>Vote Results</b>	<b>Notes</b>
		No 219 Merger not approved on November 7, 2017 Yes 137 No 151	Nov. 7, 2017 – rejected merger with Bakerfield and Berkshire
<b>31. Sheldon District</b>	No		
<b>32. Stamford District</b>	Yes	Merger not approved on May 31, 2017 Yes 6 No 173	The other districts in the study committee, Halifax and Readsboro formed the Southern Valley UUSD
<b>33. Waits River Valley UUSD (Corinth and Topsham)</b>	No		
<b>34. Arlington District</b>	No		
<b>35. Canaan District</b>	No		
<b>36. Coventry District</b>	No		
<b>37. Sharon District</b>	No		
<b>38. South Hero District</b>	Yes	Merger not approved on November 8, 2016 Yes 380 No 737	November 8, 2016- Grand Isle, North Hero and Isle La Motte formed Champlain Islands UUSD
<b>39. Strafford District</b>	No		
<b>40. Thetford District</b>	No		
<b>41. Vernon District</b>	No		
<b>42. Windsor / West Windsor UUSD</b>	Yes	Merger approved on March 6, 2018 Yes 347 No 163	Windsor/West Windsor UUSD is not exempt from the final statewide plan
<b>43. Wolcott District</b>	No		