

AGENCY OF EDUCATION
Barre, Vermont

TEAM: Legal Division

ACTION ITEM: State Board of Education Response to the Request made by the Vermont NEA to Adopt Administrative Rules for Act 46 of 2015.

RECOMMENDED ACTION: That the State Board of Education should not adopt administrative rules for Act 46 of 2015, for the reasons set forth in the letter of the Chair, to Vermont NEA, dated September 23, 2015.

STATUTORY AUTHORITY: 3 V.S.A. § 806

BACKGROUND INFORMATION: The Vermont NEA, by Jeff Fannon, Esq., has made a request to the SBE to open rulemaking related to the implementation of Act 46 of 2015. This request was received on September 17, 2015. See attached. Under statute, the SBE must respond to this request within thirty (30) days.

On September 23, 2015, State Board Chair Morse sent a preliminary response to Jeff Fanon, Vermont NEA General Counsel, as follows:

Dear Jeff,

Thank you for your letter requesting that the State Board of Education initiate administrative rulemaking with regard to the implementation of Act 46 of 2015.

I appreciate your insights. While I cannot speak for the full board, my intention at this point, in the accelerated merger phase of Act 46 (Year 1), is to allow the process playing out across our state to keep moving forward.

Essentially, an accelerated merger is a union school district formation. The union school district formation laws in Chapter 11 of Title 16 are very prescriptive and have been “on the books” since 1967. Since that time, there have been forty-nine (49) union school districts formed, and we have never had administrative rules promulgated, nor have administrative rules been needed to support the steps set out at T. 16 Ch. 11 of the Vermont Statutes. The process seems to work well.

In fact, the Legislature did not have to address (in Act 46) “how to form” a preferred model (as defined at Section 5) because of the existing union formation laws. Since we have longstanding precedent and guiding statutes on the particulars associated with the formation of a union school district, I do not see the need, at this time, for the initiation of administrative rulemaking, regarding Act 46 implementation.

Study committees are being explored and formed at a healthy pace. I am told the AOE is aware of at least 45 local conversations underway. Any effort to guide those processes through administrative rulemaking (which usually takes anywhere from 6-8 months) would impede this progress. I will share your letter with the other members of the Board and we will plan to formally take up your organization's request at the October 2015 SBE meeting.*

*[A copy of Chair Morse's letter to VT NEA, c/o Jeff Fannon, Esq. is attached.]

POLICY IMPLICATIONS: The accelerated merger phase of Act 46 of 2015 will continue to move forward, without being placed on hold, for the typical period of 6-8 months for the adoption of administrative rules.

COST IMPLICATIONS (i.e., Monetary Resources; Staff Resources): N/A

STAFF AVAILABLE: Gregory Glennon, General Counsel



Vermont-NEA

10 Wheelock Street
Montpelier, Vermont 05602-3737
(802) 223-6375 FAX (802) 223-1253

September 15, 2015

Stephan Morse, Chair
Vermont State Board of Education
P.O. Box 218
Newfane, VT 05345

RECEIVED

SEP 17 2015

LEGAL UNIT
AGENCY OF EDUCATION

RE: Act 46 – Request for the Adoption of Rules

Dear Mr. Morse:

I am writing, pursuant to 3 VSA § 806 and to the State Board of Education's ("SBE") general rule-making authority found at 16 V.S.A. § 164(7), to request the SBE adopt rules with respect to the implementation of 2015's Act 46. The law is complex, far-reaching, and vastly important in its effects on a substantial majority of Vermont communities. Vermont-NEA wants the law to succeed and we believe, therefore, that transparent rules that have been vetted by the public will lead to the successful implementation of the law.

It has become apparent to us the Agency of Education/SBE is developing or should develop guidelines for communities to follow as those communities struggle with the Act's implementation. Those guidelines are important. Since any AOE/SBE pronouncement about the law will be generally applicable to all Vermont communities, it is subject to the APA rulemaking process. *See Parker v. Gorczyk*, 173 Vt. 477, 479 (2001) ("holding that the Department of Correction's furlough policy was invalid, *inter alia*, "because the policy is generally applicable to all prisoners convicted of violent felonies it is a rule and is thus subject to the rulemaking procedures of the APA.").

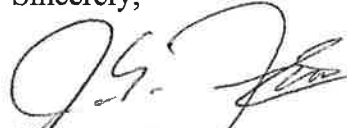
Members of those communities directly affected by Act 46 and others deserve the opportunity to be heard and to comment on proposed standards, ICAR should be convened to determine if the approach to be taken by AOE and SBE is fully consistent with other state regulations, and LCAR ought to be provided the opportunity to assess the consistency of that approach with legislative intent.

We look forward to participating actively with you as you develop State standards and rules for the many important decisions facing Vermont communities under Act 46.

Mr. Stephan Morse
September 15, 2015
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If you would like to discuss this request and, perhaps, the areas within Act 46 which ought to be the subject of rulemaking, we would be pleased to speak with you about it. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Fannon", written over a horizontal line.

James "Jeff" Fannon
General Counsel

cc: Martha Allen, President, Vermont-NEA
Joel Cook, Executive Director, Vermont-NEA
David Sharpe, Chair, House Education Committee
Ann Cummings, Chair, Senate Education Committee
Rebecca Holcombe, Secretary of Education
Gregory Glennon, Esq., General Counsel AOE
Patsy French, LCAR Chair
Michael Clasen, ICAR Chair



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State Board of Education

September 23, 2015

James Fannon, General Counsel
Vermont-NEA
10 Wheelock Street
Montpelier, Vermont 05602

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James Fannon
September 23, 2015
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If you or someone from Vermont-NEA wishes to appear before the SBE at the October Board meeting, please notify Perry Thompson at the Agency.

Best wishes,



Stephan Morse
Chair

cc: Martha Allen, President, Vermont-NEA
Joel Cook, Executive Director, Vermont-NEA
Rep. David Sharpe
Sen. Ann Cummings
Sec. Rebecca Holcombe, AOE
Greg Glennon, General Counsel, AOE
Patsy French, LCAR Chair
Michael Clasen, ICAR Chair

