



State Board of Education
November 17, 2015
Item E

STATE OF VERMONT
GENERAL ASSEMBLY
STATE HOUSE

October 29, 2015

The Honorable Stephen Morse, Chair, State Board of Education
The Honorable Rebecca Holcombe, Secretary Agency of Education
219 North Main Street, Suite 402
Barre, Vermont 05641

Dear Chairman Morse and Secretary Holcombe:

We are writing regarding Act 46, and the confusion that has been created surrounding its implementation and what ramifications many Vermont districts might face if they move forward on consolidation.

Specifically, the ruling recently issued by the State Board of Education that those communities that currently enjoy school choice must abandon that choice if they merge with districts under the accelerated merger plans that operate public schools is unacceptable, and is in conflict with the legislative intent of Act 46.

In fact, it was made clear to us prior to the passage of Act 46 that while the goal of the law was the consolidation of districts, the intention of the law was to ensure that school choice would be protected in the 90-plus communities that currently enjoy it – even if they took advantage of the merger incentives.

“Sec 4 (a) Tuition payment; protection. All governance transitions contemplated pursuant to this act shall preserve the ability of a district that, as of the effective date of this section, provides for the education of all resident students in one or more grades by paying tuition on the students’ behalf, to continue to provide education by paying tuition on behalf of all students in the grade or grades if it chooses to do so and shall not require the district to limit the options available to students if it ceases to exist as a discrete entity and realigns into a supervisory district or union school district.”

The aforementioned ruling, however, has put this protection into question, and as a result, has caused a great deal of frustration and confusion among these Vermont communities – many of which are exploring merging.

As legislators who care deeply about protecting the existing school choice, we are calling on the State Board of Education to reverse the recently released decision, and to clarify that all communities that currently enjoy school choice may maintain that school choice regardless of their merger decisions. Further, we are calling on this reversal to be done and made public by Friday, November 13, 2015 so that the communities can continue their community discussions and merger exploration.

Thank you in advance for your serious consideration, and we look forward to hearing favorably from you very soon.

Sincerely,

Rep. Job Tate
Rep. Vicky Strong
Rep. Bob Bancroft
Rep. Gary Viens
Rep. Michael Marcotte
Rep. Marty Feltus
Rep. Brian Savage
Rep. Mary Morrissey
Rep. Carolyn Branagan
Rep. Butch Shaw
Rep. Paul Lefebvre
Sen. Peg Flory
Sen. Dustin Degree
Sen. Brian Collamore



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State Board of Education

October 31, 2015

Representative Job Tate
111 Birchwood Drive
Mendon, Vermont 05701

Dear Representative Tate:

This will serve as an acknowledgement of the letter you and other members of the House of Representatives forwarded to the State Board of Education on October 29, 2015.

First, I want to point out to you that the September Board resolution was simply a legal interpretation of Section 4 of Act 46 with existing statutes, specifically 16 VSA 822. The Board did not intend to take a policy position on the question of offering both choice and operating a school in the same district for the same grade level. Acting on legal advice, we simply did not see the possibility of offering both alternatives within the same district.

However, the State Board of Education would certainly be willing to hear your point of view. The Board meets next on November 17. I would offer to schedule an agenda item and allow you to present your point of view. Please let me know if you wish to attend our Board meeting.

Please let me know in advance who will be attending on November 17.

Sincerely,

Stephan Morse
Chair, Vermont State Board of Education

Cc Governor Peter Shumlin
Sen. Ann Cummings, Chair, Senate Education Committee
Rep. David Sharpe, Chair, House Education Committee



From: Holcombe, Rebecca
Sent: Friday, October 30, 2015 10:56 PM
To: Job Tate; stephan.morse@sover.net
Cc: Russo-Savage, Donna
Subject: RE: your query

Dear Representative Tate:

Thank you so much for reaching out.

I appreciate your concern. I have not had a chance to confer with Stephan Morse, so the thoughts below are mine, and do not represent the response of the State Board. However, in the interim, I wanted to offer some information that may be helpful to you and your colleagues.

Act 46 creates a multi-year process that provides *three phases of incentives* for communities that voluntarily merge into the most common governance models, including a supervisory union with multiple merged member districts. *It is possible for a district that chooses to pay tuition for some or all grades to participate in any one of the three phases of merger without being forced to “abandon that choice.”* The three phases are:

Phase 1 – Accelerated Mergers: Phase 1 provides incentives to a new district that is formed by the merger of all districts within a single supervisory union and that meets certain additional criteria, including becoming operational as a supervisory district by July 1, 2017. (Act 46, Sec. 6)

Phase 2 – REDs and RED Variations: Phase 2 incorporates the processes and incentives for REDS (Act 153 of 2010) and its three variations, including a “Side-by-Side Merger” (Act 156 of 2012). Consequently, Phase 2 provides incentives for governance changes into a supervisory union with multiple, merged, member districts – an “alternative structure” as envisioned in Act 46 (Sec. 5(c)). Incentives in Phase 2 are nearly identical to those in Phase 1.

Phase 3 – Later “Conventional” Mergers: Phase 3 provides incentives to a new district formed by the merger of two or more districts that meets certain additional criteria, including being operational as a supervisory district by July 1, 2109. (Act 46, Sec. 7)

Neither Phase 2 nor 3 requires that merging districts originally belong to the same SU or that they be contiguous.

Under any of the three phases, if the voters of a tuitioning district decide to merge with an operating district, then the voters of each existing district must decide whether the new district will operate a grade or pay tuition for that grade. As a result, one or both of the merging districts will need to change the manner in which students in the grade or grades are educated.

Act 46 privileges a local district’s choice about whether to pay tuition or operate. Only the district—and not the State Board—can decide whether to operate or pay tuition. The one exception is when a school is persistently

terrible. In that case, the State Board has the authority to close the school and force a district to tuition its students to other schools.

With respect to any changes driven by a vote of the electorate, it just as likely that the voters of the operating district would agree to cease operation of one or more grades in the newly merged district as it is that the voters of the tuitioning district might agree to have all students in one or more grades educated in the district-operated school.

Many tuitioning districts are moving productively towards forming partnerships that enable them to receive incentives under one of the three phases and that preserve the voters' desire to continue to pay tuition for their students in some or all grades.

Your letter seems to reflect a misunderstanding about what the State Board's September 15 resolution actually stated. The resolution did nothing to change existing law found in statute, Act 46, or elsewhere. In addition, it did not "rule" that a district that chooses to pay tuition for its students "must abandon that choice" if they pursue an accelerated merger with a district that operates a school. Rather, the Board's resolution stated its understanding, with which the Agency concurs, that:

- Act 46 does not modify, amend, or repeal existing law regarding the local voters' decision to operate a school or pay tuition.
- Nothing in statute, Act 46, or elsewhere authorizes a district to simultaneously operate a school and pay tuition for the same grades or permits the State Board to approve a § 706b study committee report that proposes to do so.

Here is a link to the memo I sent on the Board's behalf to explain their resolution:

[Memo from Secretary Holcombe Regarding Clarification of the State Board of Education's Action Regarding School Mergers, "School Choice," and Act 46 of 2015](#)

Some people have pointed to Act 46, Section 4 as evidence of authority for simultaneous operation and tuition-payment for all students. Section 4 cannot be read in isolation from the rest of Act 46 or from other laws, including 16 V.S.A. §§ 822 and 822a (statewide public high school choice). In fact, Section 4 was enacted as part of and in relation to – and it explicitly refers to – the larger multi-year Act 46 process that provides incentives for three phases of voluntary governance changes that explicitly cannot treat resident students in the same grade differently (*see, e.g.*, Act 46, Sec. 6(a)(6) – structures eligible for enhanced incentives). Section 4 states that, *in connection with the governance changes contemplated by Act 46*:

- The State cannot compel a district that currently pays tuition to stop doing so.
- The State cannot compel a district that currently operates a school to begin to pay tuition.
- Only the voters of a school district can decide whether to stop paying tuition or to stop operating a school.

Read in its entirety, Act 46 envisions the merger of "like with like" unless the local voters decide to change the method by which they educate their students.

I do not see anything in the resolution of the State Board that takes away a community's local right to decide whether it wants to operate a school or tuition its students. That is a local decision.

I do appreciate your care for the interests of the districts you represent. The Act is challenging to districts, but we are also impressed by the number of that have responded quickly with highly productive merger conversations. These systems include many towns that tuition.

We do realize that in some regions, it will be difficult for some districts to find partners with similar structures with whom they can merge. The law contemplates that, by allowing for alternative education structures. In some regions, these districts will be operating districts. In others, they will be tuition districts. Again, Vermont is a very complex state, with 14 different governance systems and 9 different district structures. Because of that diversity, we expect some districts to not merge.

We have been impressed by the quality of some of the local conversations, and at this point, are counting on local leadership to lead to some good solutions for our districts.

Sincerely,

Rebecca Holcombe

Rebecca Holcombe, Secretary of Education
Vermont Agency of Education
219 North Main Street, Suite 402
Barre, VT 05641
(802) 479-1060
Rebecca.Holcombe@vermont.gov

From: Job Tate [JTate@leg.state.vt.us]
Sent: Thursday, October 29, 2015 4:55 PM
To: Holcombe, Rebecca; stephan.morse@sover.net
Subject:

Good evening to you both!

I'm sure you're absolutely inundated with everything Act 46 but on behalf of a group of legislators I wanted to send you the attached letter. I know there is growing debate about the law, underlying statute and possible "fixes" going forward - and I also know you both have your hands full with this important work. This isn't meant to heap more on your plate but just to remind you of what many legislators intended with this law and to request your help with that intent going forward.

Your service to Vermont and the education of her children is so incredibly appreciated.

Enjoy this beautiful day.

Very Respectfully-
Job

Rep. Job Tate
Bridgewater, Chittenden, Killington, Mendon
802-558-5153