Sheehey FURLONG & BEHM P.C. | Attorneys at Law

Owen J. McClain
omcclain@sheeheyvt.com

VIA EMAIL
May 17, 2022

Vermont State Board of Education
Chair Oliver Olsen
oliver.olsen@vermont.gov

Re: State Board of Education Approval of Lincoln Withdrawal Under 16 V.S.A. § 724(c).

Dear Chairman Olsen and Members of the State Board of Education:

This letter is submitted on behalf of both the Town of Lincoln and Save Community Schools, the so-called "self-selected representatives of Lincoln's withdrawal"[1] (the "SCS Group") from the Mount Abraham Unified School District ("MAUSD"). Our letter is in response to correspondence we received from Chair Olsen, dated Friday, May 13, 2022. Chair Olsen indicated therein that he would make time for Lincoln to be heard at the State Board of Education's ("SBE") May 18, 2022 meeting. We will attend the May 18th SBE meeting and look forward to further discussion of this matter.

As an initial matter, we appreciate Chair Olsen's May 13 correspondence very much and are grateful to have his perspective on the issues set forth in a transparent manner that we hope will enable the SBE and the SCS Group to navigate an orderly withdrawal consistent with Vermont law. Chair Olsen's correspondence:

(1) Identified information he believes is relevant to the SBE's findings under 16 V.S.A. § 724(c);
(2) Set forth his understanding of the consequences of either (a) proceeding under the current statute now or (b) proceeding under statutory amendments contained in Section 6 of H.727; and
(3) Explained why he believes it is more pragmatic to proceed under the new statutory language because Lincoln gets the "best of both worlds."[2]

This letter is organized in three sections responsive to each of these points:

[1] This is how the SBE and Chair Olsen have referred to the SCS Group, which includes Paul Forlenza, Jim Warncok, Jeanne Albert, Erin Warnock, and other Lincoln residents with a variety of professional expertise and educational backgrounds.
[2] Correspondence of Chair Olsen (dated May 13, 2022).

Additional Section 724(c) Information

Chair Olsen identifies additional information he believes the SBE must review in order to make a determination under 16 V.S.A. § 724(c). This includes information about (1) "available capacity in nearby schools for those grades that Lincoln would not be operating," and (2) additional information about Lincoln's compliance with Education Quality Standard (EQS) Rule 2113 and how special education services will be delivered.[3]

The SCS Group has previously submitted adequate information that demonstrates that all students will have an EQS compliant school to attend, including those students in grades K-6. Although Lincoln plans to operate a K-6 school in Lincoln, it has confirmed with nearby schools that all students in grades K-12 will have a school to attend regardless of whether Lincoln operates a school of its own for K-6.[4] This was confirmed in testimony at the SBE's April 20, 2022 meeting.[5] Please see the attached **Exhibit 1** for written confirmation as well. As set forth in our letter dated May 11, 2022, this information satisfies the standard under 16 V.S.A. § 724(c) and requires the SBE to approve Lincoln's withdrawal under Section 724(c).

No other information is required in order for the SBE to make the appropriate finding under Section 724(c). Accordingly, we do not believe additional information about EQS compliance is necessary for a determination under Section 724(c)—especially when the detail about such compliance will depend upon the SBE's assignment of Lincoln's new school district to a Supervisory District ("SU") consistent with the requirements of 16 V.S.A. § 261. Notwithstanding the fact that we do not believe this additional information is required, we are committed to working with the SBE in the most collaborative manner. As such, we are providing the following information in response to Chair Olsen's questions about compliance with EQS Rule 2113 even though it is not necessary for the SBE to exercise its narrow statutory mandate under Section 724(c).

In particular, **Exhibit 2** of this letter provides a statement from our clients that we believe is responsive to Chair Olsen's request about EQS Rule 2113.

The Consequences of Newly Passed Legislation

The second portion of Chair Olsen's May 13, 2022 correspondence sets forth his perspective about the potential risks and benefits of either (a) proceeding with a so-called "expedited review" of Lincoln's withdrawal under the current statute, or (b) proceeding under Section 6 of H.727, which purports to amend the withdrawal process for Lincoln and appears to apply solely to Lincoln. In particular, Chair Olsen correctly explains that, "Under the new law,

---

[3] *Id.*

[4] Recording of Vermont State Board of Education April 20, 2022 Meeting at 59:00, available at: https://www.youtube.com/watch?v=yqcQdo5gUm8.

[5] *Id.*

the State Board has absolutely no discretion and is compelled to grant withdrawal."[6] Accordingly, if Lincoln proceeds with withdrawal under Section 6 of H.727, Chair Olsen notes that "Lincoln gets the best of both worlds" because it can press ahead regardless of the SBE's decision and also has the "unique opportunity" to take an off ramp before the district becomes operational if it "looks like things won't work out."[7]

We appreciate Chair Olsen's assessment of these two options and believe it reflects a thoughtful analysis of the potential consequences. Chair Olsen clearly appreciates the Vermont Legislature's intent to put the final decision about Lincoln's withdrawal in the hands of Lincoln voters, and we agree with his assessment that the SBE "has absolutely no discretion and is compelled to grant withdrawal." In passing H.727, the Vermont Legislature has removed all discretion of the SBE—whether the withdrawal is evaluated under the old statute or the new.

To be clear, our clients are requesting that the SBE approve Lincoln's withdrawal request. We are not asking for an "expedited review" of Lincoln's withdrawal regardless of the outcome. If the SBE concludes that there is insufficient information to make the necessary findings under 16 V.S.A. § 724(c) or there is any other obstacle to the SBE's approval of the withdrawal, we respectfully request that the SBE (1) identify all such information and/or obstacles to its approval, (2) explain the basis for requiring any additional information under the existing Section 724(c) standard or any other purported obstacle to approval, and (3) provide Lincoln with an opportunity to respond with additional information as appropriate.

Additionally, we believe it is clear that if the SBE ever had the authority to deny Lincoln's withdrawal in the face of clear evidence that Lincoln students will have a place to attend school, that authority has been limited by the Legislature under H.727. Thus, it would be imprudent to act quickly on Lincoln's withdrawal in any manner that would prejudice Lincoln's withdrawal effort. This includes denying the withdrawal on an expedited basis to avoid H.727, as well as approving the withdrawal now with conditions that are inconsistent with Section 724(c) or more onerous than the requirements contemplated under H.727.

The Best Path Forward

Chair Olsen posits the following question based on the fact that Section 6 of H.727 provides an opportunity for Lincoln voters to undue the withdrawal and return to the MAUSD based on the entirely advisory advice of the SBE: "The pragmatist in me wonders why Lincoln wouldn't want to have the flexibility built into H727. And more importantly, what is to be gained from rushing into a high risk situation, and then leaving the voters without the opportunity to reset if things don't pan out?"[8] We believe this question is indeed a thoughtful and

6 Correspondence of Chair Olsen (dated May 13, 2022).
7 *Id.*
8 *Id.*

pragmatic question and offer the following response and proposal for the SBE's consideration on May 18, 2022.

There is both a legal basis and pragmatic value in approving the withdrawal now rather than waiting until September 1, 2022 under H.727. As set forth in our May 11, 2022 correspondence, the SBE is compelled by current statute to approve Lincoln's withdrawal because it is Lincoln's right to pursue withdrawal under the law that existed when this process began. Moreover, as a practical matter, the declaration of Lincoln's withdrawal comes with the legal authority to elect a school board, finalize the exit agreement with MAUSD, and begin preparing to operate a school in Lincoln. In our assessment, prompt approval of Lincoln's withdrawal is not only required by current law—it is also necessary at this time in order to accomplish the work that lies ahead in the coming months. Delay of Lincoln's withdrawal will prejudice Lincoln's successful withdrawal. As such, prompt approval is compelled by both pragmatism and the law.

At the same time, the SCS Group has no objection to the process contemplated by Section 6 of H.727 and would stipulate to complying with that general process provided the SBE grants our withdrawal effective immediately and allows Lincoln to elect a school board with legal authority to finalize Lincoln's exit agreement and other necessary steps to becoming fully operational. Accordingly, we have attached as **Exhibit 3**, a proposed SBE order approving Lincoln's withdrawal, which, in addition to the conditions that Lincoln elect a school board and negotiate an exit agreement with MAUSD, provides for the following condition:

> Lincoln shall submit a report substantially similar to the report contemplated by Sec. 6(c) of H.727 on or before the third Wednesday of July 2022. The State Board shall issue a determination of preparedness as soon as possible after receipt of the report, but not later than September 1, 2022, and shall take any other action necessary for Lincoln's successful withdrawal as contemplated by Sec. 6(d) of H.727. If the State Board determines preparedness is unlikely and issues a written advisory statement detailing the factors underlying its conclusion, then Lincoln may vote on whether to abandon its withdrawal effort in accordance with the terms of Sec. 6(f)(3)(B). If the new school district requests the State Board to take action following Lincoln's vote, the State Board shall take action as contemplated by Section 6(f)(4), including reversing and voiding earlier declarations approving Lincoln's withdrawal and declaring the MAUSD to be solely responsible for the education of the students residing in Lincoln.

To be clear, we do not believe such a condition is required under 16 V.S.A. § 724(c). Additionally, at this point in time, the SBE may not take any action that would prejudice Lincoln's efforts to withdrawal—either under the existing law or Lincoln's rights contemplated under Sec. 6 of H.727. In Chair Olsen's spirit of pragmatism and compromise, however, we welcome both the SBE's informed consideration of whether Lincoln is prepared to withdraw as contemplated by H.727, and would welcome a process that provides a broader set of all Lincoln voters the opportunity to vote on whether to proceed with withdrawal or not.

Conclusion

For the reasons set forth herein, we respectfully request that the SBE approve Lincoln's withdrawal at the May 18, 2022 SBE meeting as set forth in the proposed order attached as Exhibit 3. We look forward to participating in the SBE's May 18, 2022 meeting.

Please do not hesitate to contact me with any questions.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.

Owen J. McClain

Owen J. McClain

cc via email:

Ron Shems
Counsel for Lincoln Select Board
Ron@TarrantGillies.com

Paul Forlenza
Lincoln Select Board
pforlenza@lincolnvermont.org

Donna Russo Savage
Staff Attorney
Donna.RussoSavage@vermont.gov

BROWN, Patrick
P.O. Box 5608
Burlington, VT 05402
Patrick.Brown@partner.vermont.gov

GLEASON, Kim
47 Sydney Drive
Essex, VT 05452
Kimberly.G.Gleason@vermont.gov

KOLBE, Tammy
P.O. Box 143
Warren, VT 05674
Tammy.Kolbe@vermont.gov

JEPSON, Lyle
49 Kingsley Avenue
Rutland, VT 05701
Lyle.Jepson@vermont.gov

LOVETT, Tom
3041 Lower Waterford Road
Waterford, VT 05819
Tom.Lovett@vermont.gov

LUCCI, Gabrielle
154 Norton Avenue
Poultney, VT 05764
Gabrielle.Lucci@partner.vermont.gov

O'FARRELL, Jenna
46 Green Street
St. Johnsbury, VT 05819
Jennifer.Ofarrell@vermont.gov

OLSEN, Oliver (Chair)
1320 Middletown Road
South Londonderry, VT 05148
Oliver.Olsen@vermont.gov

PEÑA, Angelita
1107 Hardscrabble Rd
Bristol, VT 05443
Angelita.Pena@vermont.gov

SAMUELSON, Jennifer Deck (Vice Chair)
P.O. Box 1091
Manchester Center, VT 05255
Jennifer.Samuelson@vermont.gov

FRENCH, Dr. Daniel M.
Secretary, Agency of Education
1 National Life Drive, Davis 5
Montpelier, VT 05620
Daniel.French@vermont.gov