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May 29th, 2018

Krista Huling
Chair, Vermont State Board of Education
219 North Main Street, Suite 402
Barre, VT 05641

Dear Ms. Huling,

School districts that have not merged pursuant to Act 46, such as Orleans Central Supervisory Union or North Country Supervisory Union, have devoted enormous time in considering which path forward would best serve our students and our taxpayers while meeting the goals of the law. The overwhelming conclusion of voters and boards was that they could better meet the goals of the law with an application for an alternative governance structure. The students in these districts are among the most disadvantaged in Vermont. In Lowell, 82.4 percent of the students are on free and reduced lunches. In Coventry, it's 77.8 percent, and in Charleston, 75.9 percent. The student-teacher relationships permitted by these small schools and the cohesion these schools provide to our communities were, likewise, critical factors in the decision-making process.

In these same school districts, students travel greater distances over more challenging roads. More of these students bring all of the consequences of poverty with them to the classroom every day. Teachers in our school districts are paid less than in many merged districts and less than in more densely populated districts. These districts are both low-spending and high-poverty. The evidence also shows that it is more difficult for these small, rural districts to retain the highly qualified teachers we so badly need.

As the State Board of Education considers new "metrics" by which to allocate small schools grants to those school districts that have opted not to merge pursuant to Act 46 we urge you to consider those metrics vis-a-vis schools that have merged and through the lens of *Brigham*.[1] Small schools grants have now been assured to districts that have merged, though now labeled "merger support grants." And the grants have been assured notwithstanding that those districts received substantial reductions in their tax rates and

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1 *Brigham v. State*, 166 Vt. 246, 692 A.2d 384 (1997).

other financial benefits. In effect, some of our poorest districts will now be paying to subsidize wealthier districts.

In *Brigham,* the Supreme Court concluded: "Children who live in property-poor districts and children who live in property-rich districts should be afforded a substantially equal opportunity to have access to similar educational revenues."

There can be little doubt as to the impact of these small schools grants on educational opportunity. In Charleston the grant of approximately $100,000 is the equivalent of two teachers' salaries. At Lakeview Union elementary school $77,000 is similarly critical to the educational opportunities at the school. In a small school like Lakeview two teachers make a world of difference.

The State bears a heavy burden and must provide what amounts to clear and convincing evidence to justify disparate treatment in the distribution of revenues on the basis of merging or not merging. As the Court again pointed out in *Brigham:*

"Whether we apply the 'strict scrutiny' test urged by plaintiffs, the 'rational basis' standard advocated by the State, or some intermediate level of review, the conclusion remains the same; in Vermont the right to education is so integral to our constitutional form of government, and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification." (emphasis added).

The *Brigham* Court underscored the fundamental importance of equal educational opportunity in Vermont by quoting Governor Samuel Crafts, a founder of Craftsbury and what is still one of Vermont's finest schools, Craftsbury Academy (in 1829):

"Our youth can be considered in no other light, than as children of the state, having a common interest in the preservation of, and in the benefits to be derived from, our free institutions--and possessing also, whether rich or poor, equal claims upon our patriotism, our liberty and our justice. It is, therefore, our paramount duty to place the means for obtaining instruction and information, equally within the reach of all."[2]

The *Brigham* Court made it abundantly clear that disparate distribution of revenues that would lead to substantially unequal educational opportunity would require a "compelling" governmental interest:

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2 Inaugural Address of Governor Samuel Crafts, 1828 Journal of the General Assembly of the State of Vermont, 12; Samuel Crafts was a founder of Craftsbury. Samuel Crafts was also President of Vermont's Constitutional Convention in 1829 and was later U.S. Senator from Vermont.

"Where a statutory scheme affects fundamental constitutional rights or involves suspect classifications, both federal and state decisions have recognized that proper equal protection analysis necessitates a more searching scrutiny; the state must demonstrate that any discrimination occasioned by the law serves a compelling governmental interest, and is narrowly tailored to serve that objective."

The findings of the State's own study, commissioned after the implementation of Act 60 are contrary to any such justification. Among those findings were:

*Parallel national studies found that small schools have a mediating effect on socioeconomic factors that typically relate to poorer student achievement.

*Seventy four percent of the principals from small schools report that most of their students (80-100%) were adequately prepared to make the transition to middle or high school compared with only 58 percent of principals from larger schools.

*In general small schools have more parents or other community members assisting with such jobs as food service, art, music, and library services. Only 31 percent of small schools reported no job related volunteerism compared to 41 percent of larger schools.

*In many cases the small school is the only place [for the community] to come together.

Finally, this study concluded: "Small schools in Vermont cost more to operate than larger schools but they are worth the investment because of the value they add to student learning and community cohesion."[3]

In *Brigham*, the Court was careful not to try to tell the Legislature how much to spend on education. But the Court made it clear that however much the Legislature commits to public education, all children have to have substantially equal access to those resources and that the "distribution of a resource as precious as educational opportunity may not have as its determining force the mere fortuity of a child's residence." It would appear to contradict Brigham to continue to provide small school grants to children who reside in merged districts while denying similar resources to children in towns that have concluded, after careful deliberation, that consolidation is not in the best interest of their communities. The Vermont Constitution obligates us to assure substantially equal educational opportunity to children in small schools whether they have chosen to merge or not. There is no justification for doing otherwise.

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3 Report of the Vermont Commissioner of Education, Small Schools Study, pursuant to Section 93 of Act 60, January, 1998. See generally Mara Casey Tieken, *Why Rural Schools Matter*, University of North Carolina Press, 2014, p. 57 and 186-188.

Together with the many other Vermonters who have provided testimony about our concerns for the future of our small schools, I appreciate your efforts on our students' behalf, and remain confident that your commitment to equal educational opportunity for every student will continue unabated.

Sincerely,

David F. Kelley