

AGENCY OF EDUCATION
Barre, Vermont

TEAM: Legal (School Governance)

ITEM: Will the State Board of Education approve the request of the **SOUTHWEST VERMONT SUPERVISORY UNION (SVSU)** Board (i) to rescind the State Board's 2013 waiver of requirements for SVSU Board composition and restore the default requirements of 16 V.S.A. § 266; and (ii) to endorse the SVSU Board's proposal to seat board representatives from the Arlington and Sandgate School Districts in November 2019?

SECRETARY'S RECOMMENDED ACTION:

That the State Board of Education approve the SVSU Board's request that:

(i) the State Board rescind its 2013 waiver of requirements for SVSU Board composition and that the provisions of 16 V.S.A. § 266 apply to membership on the SVSU Board beginning on July 1, 2019; and

(ii) the State Board endorse the appointment of representatives from the Arlington and Sandgate School Districts to the SVSU Board in November 2019 so that the SVSU Board can begin to operate "on November 15, 2019, [as] an expanded board serving what will be the new SVSU constituency."

STATUTORY AUTHORITY: 16 V.S.A. §§ 261(a) and (d), 266

OVERVIEW: In its Final Report of Decisions and Order dated November 28, 2018, the State Board merged four of the six school districts currently in the SVSU to form the Southwest Vermont Union Elementary School District (the UESD). The UESD will be fully operational on July 1, 2019.

Also in November 2018, the State Board adjusted the boundaries of the SVSU and required the Arlington School District and the Sandgate School District, the sole member districts of the Battenkill Valley Supervisory Union (BVSU), to become members of the SVSU pursuant to 16 V.S.A. § 261(a). The State Board established July 1, 2021 as the day on which the enlarged SVSU will be fully operational. In the interim, the State Board authorized the boards of both BVSU districts to appoint members to the SVSU Board to assist with the transition.¹

The SVSU Board now requests the State Board to take action regarding (i) the number of members that each district will appoint to the SVSU Board and (ii) the day on which the Arlington and Sandgate School Districts will appoint members to the SVSU Board to assist with transition to an enlarged SU.

¹ See minutes from November 15, 2018 State Board meeting for details.

DISCUSSION AND POLICY IMPLICATIONS:

I. MEMBERSHIP ON SVSU BOARD: Unlike membership on the board of a school district, there is no constitutional requirement of proportionality for membership on an SU board.

16 V.S.A. § 266 directs the board of a school district to appoint three of its members to an SU board if the district operates one or more schools. The board of a school district that pays tuition for all of its students appoints one of its members to its SU board.

The State Board is authorized to waive the default requirements of 16 V.S.A. § 266 on the request of an SU board if the “waiver will result in efficient and effective operations of the supervisory union; will not result in any disproportionate representation; and is otherwise in the public interest.” 16 V.S.A. § 261(d)

On February 19, 2013, the State Board of Education granted the SVSU Board’s request to waive the default number of appointees as set out in 16 V.S.A. § 266. Pursuant to the 2013 waiver, the current composition of the SVSU Board is as follows:

- Bennington School District, Inc. – 2 members, plus 1 alternate
- Mount Anthony Union School District – 2 members, plus 1 alternate
- North Bennington School District, Inc. (tuitioning) – 1 member
- Pownal School District – 2 members, plus 1 alternate
- Shaftsbury School District – 2 members, plus 1 alternate
- Woodford School District – 2 members, plus 1 alternate

In support of its requested waiver in 2013, the SVSU Board stated: “The reduction of members and the allowance of a single elected alternate would assure consistent two-member representation of all member districts.” In addition, the SVSU Board “believe[d] a change in the number of SVSU Board members [would] enable a more efficient and effective operation of the supervisory union by ensuring a consistent presence of a quorum without the need for repetitive telephone calls to ensure such a quorum.”

The waiver that the State Board granted in 2013 applied explicitly to the named districts, the districts that were members of the SVSU on that date. The § 266 default provisions will apply to any newly-created or newly-added district in the SU. As a result, when the UESD becomes operational and the Arlington and Sandgate Districts appoint members to the SVSU Board, membership on the SVSU Board will be as follows:

- Mount Anthony Union School District – 2 members, plus 1 alternate
- North Bennington School District, Inc. (tuitioning) – 1 member
- Southwest VT UESD (Bennington, Pownal, Shaftsbury, and Woodford) – 3

- Arlington School District – 3
- Sandgate School District (tuitioning) – 1

The SVSU Board requests that the State Board rescind the 2013 waiver and that the provisions of 16 V.S.A. § 266 apply to membership on the SVSU Board beginning on July 1, 2019. The BVSU Board supports the request. If the State Board approves the request, then the sole change will be that the Mount Anthony Union Middle-High School District will appoint 3 members to the SU Board (rather than 2, plus an alternate).

Mount Anthony Union Middle-High School District – 3
North Bennington ID (tuitioning) – 1
Southwest VT UESD (Bennington, Pownal, Shaftsbury, and Woodford) – 3

Arlington School District – 3
Sandgate School District (tuitioning) – 1

Although the Constitution does not require strict proportionality for membership on an SU board, adherence to the 2013 waiver for two districts (Mount Anthony Union and North Bennington) and to § 266 for the remaining three districts results in what seems to be the “disproportionate representation” that § 261(d) seeks to avoid

Accordingly, it is advisable for the State Board to rescind its 2013 waiver of the statutorily required SU board composition for the SVSU and restore the default board membership set forth in 16 V.S.A. § 266 beginning on July 1, 2019.

II. SANDGATE AND ARLINGTON APPOINTMENTS TO SVSU BOARD

On November 15, 2018, the Board’s final approved motion delayed the operational date of the enlarged SVSU from July 1, 2020, as originally proposed, to July 1, 2021. The motion was not similarly amended to postpone the date on which the districts in the BVSU could appoint members to the SVSU Board for transitional purposes.

The SVSU is currently responsible for assisting the UESD to transition to full operations on July 1, 2019. In addition, the business managers and other central office staff from the two SUs have already begun to work on transitional issues. The boards of the two SUs have agreed that efficiency is best served if the BVSU districts do not appoint members to the SVSU until November 2019.

The Secretary believes that formal postponement by the State Board is not strictly necessary because the original State Board-approved date was not a deadline. Rather, the State Board empowered the BVSU districts to appoint members to the SVSU Board assist with the transition “on or after November 15, 2018.” Therefore, the districts could choose to exercise that appointment authority, e.g., on November 15, 2018 or January 1, 2019 or November 15, 2019. Nevertheless, the Secretary anticipates that State Board action now will help ensure that the Arlington, Sandgate, and SVSU boards will fulfill their current intention to operate “on November 15, 2019, [as] an expanded board serving what will be the new SVSU constituency.”

Accordingly, it is advisable for the State Board to endorse the appointment of Arlington and Sandgate representatives to the SVSU Board in November 2019.

STAFF AVAILABLE: Donna Russo-Savage, Staff Attorney