

MEMORANDUM

TO: State Board of Education
FROM: Donna Russo-Savage, Staff Attorney
SUBJECT: Withdrawal from a Unified Union School District that is an SD; Lincoln
DATE: April 15, 2022

Pursuant to 16 V.S.A. § 724(c), the clerk of the Mount Abraham Unified School District (“MAUSD”), a unified union school district (“UUSD”), notified Secretary French that the MAUSD voters residing in Lincoln voted to withdraw from the district and that the MAUSD voters residing in each of the other towns within the district voted to approve Lincoln’s request to withdraw. No petitions for reconsideration were filed and the votes are now final.

The request to withdraw has been placed on your April 2022 agenda for initial consideration. This matter is more complex than the Halifax-Readsboro dissolution or the Westminster withdrawal. It is both factually and legally similar to Ripton’s withdrawal from the Addison Central School District.

Chair Olsen asked us to remind you of the considerations before you. This memo combines information previously provided in connection with earlier withdrawal actions.

A. Current and Future Structure of the MAUSD and a Reconstituted Lincoln School District

The MAUSD is organized to provide for the PreK – Grade 12 education of students residing in Bristol, Lincoln, Monkton, New Haven, and Starksboro. The district currently fulfills this obligation by operating an elementary school in each of the five towns and a middle/high school located in Bristol. The MAUSD serves as its own single-district supervisory union (a “supervisory district” or “SD”).

If Lincoln withdraws from the MAUSD, unless and until its voters decide otherwise, the new Lincoln School District will operate a school for its elementary students and will pay tuition for all other grades.

As described in more detail below, if the State Board approves the request to withdraw, then the Board will also need to (i) determine whether the MAUSD should remain a UUSD and (ii) identify the manner in which SU services will be provided to the newly-reconstituted Lincoln School District.

B. Withdrawal Process in General and State Board’s Statutory Obligations

The current statute¹ governing withdrawal from a UUSD provides little guidance and creates certain “chicken-and-egg” situations. What follows is our best understanding of the State Board’s role and the ways in which its actions can facilitate the process.

1. Designated Persons Representing the Interests of the Withdrawing Voters

The Legislature has not granted authority to any person or entity to represent the interests of the Withdrawing Voters² in proceedings before the State Board where, as in Lincoln, there is no active town school district or elected town school board.

Nevertheless, it is clear that a town’s selectboard has no legal authority to act on behalf of the Withdrawing Voters or a not-yet-created town school district.³ In addition, potential conflicts of interest would likely prevent a union school district’s board members from acting in this capacity because members elected to a union district board owe a duty to the union school district and not to the Withdrawing Member.

Absent guidance from the Legislature in this matter, and following the precedent set in the Ripton and Westminster matters, the Chair asked for a small number of the self-selected Lincoln residents who have led the withdrawal activity in their community to assume the primary role of representing the interests of the Withdrawing Voters in proceedings before the State Board (“Designated Representatives”).

2. Statutory Criterion Upon Which to Base a Declaration Approving Withdrawal

The Legislature requires the State Board to declare Lincoln’s membership in the MAUSD to be at an end:

if the State Board finds that the students in [Lincoln] will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs.⁴

What follows are our thoughts regarding the meaning of this legislative charge.

a. “if the State Board finds”

The statute requires approval of a withdrawal request “if the State Board finds” that a specific situation exists. The plain reading of this phrase leads to at least three conclusions.

¹ 16 V.S.A. § 724.

² A union school district’s voters who have voted to withdraw from the district are referred to in this memo as the “Withdrawing Voters” or “Withdrawing Member.”

³ A town school district is a municipality and, as such, is a distinct legal entity from the town in which it is located. See, e.g., 16 V.S.A. § 126 (the term “municipality” “shall include a city, town, town school district, incorporated school or fire district or incorporated village, and all other governmental incorporated units”) and 16 V.S.A. § 4029(a) and (b) (creating a “firewall” between the funds of a school district and the town or towns in which it is located).

⁴ 16 V.S.A. § 724(c). Unless another statute is explicitly cited, all other quoted language in this memo is found in § 724(c).

First, the statute vests in the State Board sole authority for making an independent finding. Approval is required if the State Board makes the finding. Nowhere in the withdrawal statute or elsewhere in law does the Legislature state or imply that a group of voters' desire to withdraw, and the other voters' ratification of the withdrawal, take precedence over the State Board's independent determination.

Second, the finding must be an affirmative determination. That is, in order to approve withdrawal, the State Board must affirmatively find that the criterion is met, rather than find that it is not met. This second conclusion provides further support for the first. If the Legislature intended to give precedence to the Withdrawing Voters' desire to withdraw, then the sentence could have been written to state that the withdrawal request is approved unless the State Board finds that the criterion is not met.

Third, it is not sufficient that the Withdrawing Voters believe the specific criterion will be met in the future. Rather, it is the State Board's responsibility to make its own independent and affirmative finding.

b. Source of Evidence

The withdrawal statute directs the State Board to make its finding "[a]t a meeting held" after the UUSD clerk provides notification of the affirmative votes.

This language can be read to imply that Designated Representatives will be permitted to provide testimony and other evidence to the State Board. However, in contrast to the statute concerning State Board consideration of a merger proposal,⁵ the withdrawal statutes do not require the State Board to offer such an opportunity or to take any such testimony into consideration.

Furthermore, the statute neither directs the State Board to conduct or request independent research nor prohibits it from doing so.

Absent any statutory guidance regarding the source of the evidence upon which the State Board must make its independent, affirmative finding, we believe that, although the State Board might choose to rely solely upon the representations of the Designated Representatives, nothing in statute requires the Board to limit its considerations in this manner. That is, in addition to the information the Designated Representatives provide, the State Board may request and rely upon any information it deems pertinent to its finding.

Finally, the State Board may make judgements about the credibility or reliability of the information provided by the Designated Representatives.

⁵ 16 V.S.A. § 706c(b) (After "providing notice to the [merger] study committee and after giving the committee an opportunity to be heard, the State Board shall consider the [study committee's] report and the Secretary's recommendations and decide whether the formation of such union school district will be in the best interests of the State, the students, and the school districts proposed to be members of the union").

c. “will attend a school that is in compliance”

The sole criterion upon which the State Board is required or permitted to make its finding is whether the students in the potentially withdrawing member “will attend a school that is in compliance with the [State Board’s] rules”

During consideration of an earlier withdrawal request, a question arose regarding use of the word “is” as it relates to the timing of compliance. Linguistically, it is possible to read the language to mean (i) the students “will [in the future] attend a school that [at that future time] is in compliance” and also to read it to mean (ii) the students “will [in the future] attend a school that [currently] is in compliance.”

The language was originally drafted in the 1960s when many small local high schools closed in connection with the creation of larger union high schools. There was concern at that time that there might not be schools with available capacity to enroll the students of a withdrawing member, especially if the initial withdrawal led to the dissolution of the union high school. As a result, it is likely the Legislature intended the sentence to have the first meaning.

In addition, although it is possible to read the phrase in either of the two ways set out above, we believe that the first interpretation is more likely. The statute directs the State Board to make a finding about the schools the students will attend in the future. Although current compliance might well be an indication of future compliance, it would be of somewhat limited value for the State Board to determine that the school is now in compliance but not to consider whether it is or is not likely that it will also be compliance at the time when the reconstituted district’s students will be enrolled.

d. “the rules ... pertaining to educational programs”

The sole criterion upon which the State Board is required or permitted to make its finding is whether the students in the potentially withdrawing member will attend a school that is in compliance with “the rules adopted by the State Board pertaining to educational programs.”

All public schools are statutorily required to meet education quality standards, which include standards:

regarding conditions, practices and resources of schools [that] address those aspects of the following that are most closely associated with improving student performance:

- (A) school leadership, staffing, and support services;
- (B) instructional practices and curriculum leadership, content, and coordination;
- (C) educational materials and school facilities;
- (D) access to current technology.⁶

Note that the statute does not ask the State Board to determine if the students of the new district will attend a school operated by the new district that is in compliance with State Board rules, but rather to determine if the students “will attend a school that is in compliance” – that is, any school.

⁶ 16 V.S.A. § 165(a)(3).

As a result, the question may become: If the Lincoln Elementary School closes because of the practical, financial, or other pressures placed upon it, will the elementary students be able to attend a school that is in compliance with State Board rules? To answer this question, you may want to determine whether there are other elementary schools within a reasonable driving distance in which parents could enroll their students and to which a reconstituted Lincoln School District would pay tuition.

To help you make a determination under this criterion, the Chair asked the Designated Representatives to provide you with an overview of their preliminary plans for how a newly created district will move towards ensuring, on the proposed operational date, that that the students will attend a school that is in compliance with Board rules regarding educational quality standards, including information regarding, e.g., (i) the plan for staffing any school it will operate, including the plan for the transition of collectively bargained employment contracts or the negotiation of new individual contracts, as appropriate; (ii) a proposal for the manner in which supervisory union services will be provided, including special education, transportation (if any), and business services; and (iii) the proposed elements of financial transition, including resolution of assets and debts.

The Designated Representatives' written response to this request was included in the Board materials for the April 2022 meeting, and the representatives have been invited to testify and respond to Board questions at that meeting.

3. Additional State Board Decisions & the Process After Approving Withdrawal

If the State Board finds that the sole statutory criterion underlying withdrawal has been met and issues a declaration approving withdrawal from the UUSD, then the Board must also identify the date on which withdrawal is effective, which also will be the date on which the reconstituted town school district becomes solely responsible for providing for the education of its resident students. The statute governing withdrawal from a UUSD directs the State Board to declare the withdrawal to be effective and the new town school district to be operational:

as of *July 1* immediately following [the Board's declaration affirming withdrawal] *or* as soon thereafter as the *obligations* of the withdrawing district have been paid to, or an agreement made with, the union school district in an amount *satisfactory to the electorate of each of the other towns and cities within* the unified union school district.⁷

As a separate but related matter, a reconstituted town school district cannot assume sole responsibility for the education of its resident students until certain statutory obligations are met, such as the preparation of a town school budget by an elected school board and approval of that budget by the voters.

Notably absent from the current withdrawal statute is authorization for any person or entity to represent the Withdrawing Member in financial negotiations with the union school district where, as in the matter before you, there is no active town school district to do so. In addition, the Legislature has not provided any process or timeline to guide the Withdrawing Member as it engages in those financial negotiations or transitions from membership in an operational

⁷ 16 V.S.A. § 724(c)(emphasis added).

union school district to the assumption of responsibilities as an operational town school district on a date specified in the State Board’s declaration.

At a minimum, there is a need for:

1. An entity with the legal authority to negotiate the financial terms of withdrawal on behalf of the town school district, which terms must be both:
 - a. Confirmed by a vote of the electorate residing in each of the non-withdrawing towns within MAUSD as being “satisfactory to the electorate”; and
 - b. Legally binding on the town school district, once it is reconstituted by the State Board.
2. An elected school board that can prepare a proposed budget for the town school district’s first year of operations and otherwise prepare for the town school district to assume sole responsibility for the education of all resident students, including recruiting and contracting with the district’s future employees; and
3. A voter-approved budget for the town school district to be in place on the date the district assumes sole responsibility for its resident students.

As mentioned above, absent explicit legislative language, neither a town’s selectboard nor the elected members of the union school district’s board would have legal authority to represent the Withdrawing Voters or a proposed new town school district in these matters.

In recent proceedings, the State Board issued a declaration approving the withdrawal request and reconstituting a town school district. The declaration also stated that in the period between the declaration’s issuance and the date the new town district assumed sole responsibility for the education of resident students, the voters of the new district could elect a school board for the purpose of transitioning to full operations. After the Board issued the declaration, the election of board members proceeded pursuant to 16 V.S.A. § 424(c), which directs the Secretary of State to warn a special meeting of a district when all board seats are vacant.

Until the Legislature amends the withdrawal statutes to provide a more detailed process, the Agency suggests that the State Board similarly provide a period of time between its withdrawal declaration and the effective date of the town school district’s assumption of educational responsibilities during which (i) the Secretary of State can warn a special meeting of the town school district at which the new district’s voters will elect school board members and (ii) the elected school board can negotiate the statutorily required financial terms of withdrawal (to be approved by the voters of the other towns) and take other steps necessary to transition the district to assumption of its full responsibilities.

Only one district can be responsible for the current education of resident students in any particular grade. The union school district would therefore remain solely responsible for the education of the students residing in the Withdrawing Member until the date the State Board identifies as the operational date for the new town school district.

4. Remaining Members of a Union School District

If the State Board approves the request to withdraw from the union school district, then the Board:

shall give notice to the remaining towns and cities in the [UUSD] of its meeting and give the relevant representatives an opportunity to be heard. It shall then determine whether

it is in the best interests of the State, the students, and the school districts remaining in the [UUSD] that the [UUSD] continue to exist.

After making the determination required by statute, the State Board must either (1) affirm continuation of the union school district or (2) dissolve the union school district and declare the remaining towns within it to be reconstituted as individual town school districts.⁸

5. Supervisory Union Services

If the State Board approves the request to withdraw from the union school district, then the Board will also need to identify the manner in which supervisory union (“SU”) services will be provided to the new town school district. The Board has longstanding independent authority to review and re-define supervisory union boundaries “in such manner as to afford increased efficiency or greater convenience and economy and to facilitate prekindergarten through grade 12 curriculum planning and coordination as changed conditions may seem to require.”⁹

To satisfy the need for SU services, the State Board could:

1. Create a new multi-member SU with the UUSD and the newly created town school district as its sole member districts; or
2. Allow the UUSD to remain a single-district SU (an “SD”) and either:
 - a. Assign the town school district to a different SU; or
 - b. Designate the town school district as its own SD; or
3. Take some other action to adjust the supervisory union boundaries in the region pursuant to 16 V.S.A. § 261.

The State Board may wish to invite comments and proposals concerning this consideration.

6. Filing of Declarations with the Secretary of State, the Town Clerks, and the Elected Clerks of the Union School Districts

The Agency’s legal staff would be happy to draft declarations for your use.

⁸ The timing of dissolution / reconstitution is the same as for the Withdrawing Member: either the next July 1 or when financial matters are resolved.

⁹ 16 V.S.A. § 261a(a).