

AGENCY OF EDUCATION

Barre, Vermont

TEAM: Legal

ITEM: Will the State Board of Education:

(1) Approve the Barnard School Board's proposal to request voter authorization to apply for admission to the Windsor Central Modified Unified Union School District pursuant to 16 V.S.A. § 721(a), effective July 1, 2020; and

(2) Confirm that if the Barnard School District votes in the affirmative and, subsequently, the Windsor Central Modified Unified Union School District votes to approve Barnard's admission, then the modified unified union school district will be a unified union school district?

**SECRETARY'S RECOMMENDED ACTION:**

**1. That the State Board of Education approve the Barnard School Board's proposal to request voter authorization to apply for admission to the Windsor Central Modified Unified Union School District pursuant to 16 V.S.A. § 721(a), effective July 1, 2020.**

**2. That the State Board of Education confirm that if the Barnard School District votes in the affirmative and, subsequently, the Windsor Central Modified Unified Union School District votes to approve Barnard's admission, then the modified unified union school district will be a unified union school district.**

**STATUTORY AUTHORITY:** 16 V.S.A. § 721; 2012 Acts and Resolves No. 156, Sec. 17, as amended by 2013 Acts and Resolves No. 56, Sec. 3 ("Act 156"); 2015 Acts and Resolves No. 46, Sec. 8-10, as amended in part by 2017 Acts and Resolves No. 49, Sec. 8 ("Act 46")

**BACKGROUND INFORMATION:**

Since early 2017, the State Board of Education has considered governance-related issues concerning the districts within the Windsor Central Supervisory Union. It has reviewed hundreds of pages of documents and heard testimony on multiple occasions from the districts' school board members, parents, taxpayers, and administrators.

In March 2017, voters in the districts of Bridgewater, Killington, Plymouth, Pomfret, Reading, and Woodstock approved formation of a unified union school district ("UUSD"). Because the Barnard School District ("BSD") voters did not vote in the affirmative, the provisions of Act 156 were activated, resulting in formation of the Windsor Central Modified Unified Union School District ("MUUSD") and in the continuation of the BSD.

The MUUSD assumed responsibility for the PreK-12 education of students residing in the towns of Bridgewater, Killington, Plymouth, Pomfret, Reading, and Woodstock and for the grade 7-12

education of students residing in Barnard. The BSD remained a town school district organized to provide for the PreK-6 education of its resident students.<sup>1</sup>

The Windsor Central Supervisory Union (“SU”) currently provides educational and administrative services to three districts: the MUUSD, the BSD, and the Pittsfield School District. The MUUSD and the BSD provide for the education of their students by operating schools. The Pittsfield School District pays tuition for its students in all grades, PreK-12.

In December 2017, pursuant to Act 46, Section 9, the BSD submitted its proposal to remain a single-town elementary school district within the Windsor Central SU. The BSD’s submission under Section 9 discussed many elements of the district’s current operations and plans for the future, as well as several interrelated concerns associated with merger.<sup>2</sup>

After considering information provided by the BSD and the Secretary’s Proposed Statewide Plan, the State Board issued its Final Report of Decisions and Order dated November 28, 2018 pursuant to Act 46, Secs. 8(b) and 10 (“Report and Order”).<sup>3</sup> The Report and Order conditionally required the BSD to merge into the MUUSD if, on or before July 1, 2019, the MUUSD voters approved full admission of the BSD for all grades, PreK-12.

As stated in the BSD’s proposal currently before the State Board, the MUUSD Board:

voted unanimously *not* to hold a citizen vote regarding an involuntary annexation of the Barnard School District via Act 46, and further, to only merge with Barnard if the Barnard electorate voted affirmatively on a voluntary merger plan first. The [MUUSD and BSD] Boards agreed to attempt to address Barnard’s concerns about the previous Act 46 merger plan, and to negotiate a set of merger terms that might support a positive merger vote in Barnard.

Specifically, the BSD Board sought increased protections from school closure and grade reconfiguration. It also requested additional assurance that the BSD’s two-year, full-day prekindergarten program would remain in the building and “that early education would be prioritized by the merged district.” The BSD’s proposal states:

The WCMUUSD has responded to these concerns to the degree that we believe a fair merger ballot can now be offered to the Barnard voters. The WCMUUSD Board has passed policies

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<sup>1</sup> The MUUSD’s Articles of Agreement and some other documents refer to the BSD as the Non Member Elementary District (“NMED”) of the MUUSD.

<sup>2</sup> There is an electronic link to the complete Sec. 9 proposal and the study committee’s merger proposal on page one of the BSD’s § 721 proposal to the State Board dated November 6, 2019. In addition, for an overview of the BSD’s Section 9 proposal, see the Acting Secretary of Education’s [Proposed Statewide Plan](#) issued on June 1, 2018 pursuant to Act 46, Sec. 10 (beginning on page 63), as well as [Appendix F](#) (pp. 35-41) and [Appendix G](#) (pp. 46-47) to the proposed statewide plan.

<sup>3</sup> See the Report and order at this [link](#).

around closure and restructuring that speak to these concerns, and the policies are echoed in the proposed [amendments to the MUUSD’s Articles of Agreement]. Furthermore, beginning in FY20, the WCMUUSD increased PreK offerings in the unified district so that currently all schools have a public two-year PreK offering. The WCMUUSD’s recent commitment to a comprehensive model of early education removed our concern about downsizing our program. Ultimately, we sought to improve the terms of a possible merger and believe we have done so. We appreciate that the WCMUUSD Board supported a democratic process towards merger, and we are offering Barnard voters what we believe is a choice of two reasonable alternatives: merging governance with Windsor Central unified schools or remaining a single district.

The BSD Board is now before the State Board of Education to begin the process by which Barnard might become a full PreK-12 member of the MUUSD. Full membership would transform the MUUSD into a UUSD.

#### **THE BARNARD SCHOOL BOARD’S PROPOSAL UNDER 16 V.S.A. § 721:**

Vermont statutes provide a mechanism by which a school district can be incorporated into an existing union school district.<sup>4</sup> In very general terms, the process is as follows:

1. The BSD Board conducts a “preliminary study” of the potential benefits and disadvantages of joining the MUUSD for all grades and, if it wishes to proceed, presents it to the State Board for consideration.
2. The State Board considers the BSD Board’s proposal and then votes whether to approve it.
3. The BSD voters vote whether to ask the MUUSD to admit the BSD as a full member – *i.e.*, that the MUUSD would assume responsibility for the PreK-6 education of students living in Barnard. The BSD clerk certifies the results of the vote and sends it to the MUUSD clerk and the Secretary of Education.
4. Within two years of a positive BSD vote, the MUUSD voters can vote whether to assume responsibility for the PreK-6 education of students living in Barnard. § 721(a) does not require the MUUSD to warn this vote. The MUUSD clerk certifies the results of a vote and sends it to the Secretary of Education.
5. If both votes are in the affirmative, then the Secretary of Education designates Barnard as a member of the MUUSD for all grades, PreK-12, and certifies this to the Secretary of State.
6. The Secretary of State records the certification and files it with the UUSD and BSD clerks.

The BSD Board’s participation in the original merger study committee, its preparation and advocacy of its “Section 9 proposal,” and its continued conversations with the MUUSD resulting in submission of the instant proposal satisfy the § 721 requirement that a “preliminary

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<sup>4</sup> [16 V.S.A. § 721.](#)

study by a district school board” must precede its request for State Board approval. The BSD Board’s § 721 proposal requests the State Board to fulfill the next step of the process (#2 above) by considering and approving the merger of the BSD into the MUUSD.

The BSD Board conditions its § 721(a) proposal upon a willingness of the MUUSD voters to amend the original, voter-approved Articles of Agreement in two primary instances, based upon policies recently adopted by the MUUSD’s Board – Article 13 (Provisions for Closure of a School) and Article 15 (Restructuring of Elementary School Configurations). Specifically, the BSD proposes that in FY 2023 and after, the superintendent could recommend closure of a school building if the “campus fails to meet optimum targets” for “educational, fiscal, and enrollment conditions” based on a “three consecutive year average.” If the Board agrees with the recommendation by a three-quarter vote, then closure would occur only if the voters of the affected town approve closure by 60%. If per-pupil costs at the campus exceed certain thresholds, then the final decision would instead rest with the voters of the entire unified district, also by 60%.

The BSD separately proposes amendments ensuring that grade reconfigurations among the multiple elementary school buildings are based upon a 60% vote of the Board and that changes “either be based on 1) sustainability criteria or 2) on educational aims and/or initiatives” ensuring that any changes in the latter category are “made equitably for all affected students.”

#### **DISCUSSION and RECOMMENDATION:**

The Vermont Legislature has determined that a unified union school district, particularly if it is large enough to be its own supervisory union, is the structure most likely to meet or exceed the State’s educational and fiscal goals in a sustainable manner. *See, e.g.,* Act 46 at Sec. 5.

If the BSD Board’s § 721(a) proposal is approved at each step in the process, then the MUUSD would automatically become a UUSD responsible for the PreK-12 education of students residing in seven of the eight towns in the SU.<sup>5</sup> The existence of the eighth town – served by the Pittsfield School District – means that the UUSD could not become a supervisory district, even if the State Board determined that the UUSD was large enough to support the functions of a single-district SU.<sup>6</sup>

Even if the UUSD does not become a supervisory district, however, creation of a UUSD by merging the BSD into the MUUSD has the potential to provide benefits not only to Barnard students and taxpayers, but to the students and taxpayers of the entire region. As explained in the Secretary’s Proposed Statewide Plan:

But for the existence of the [BSD], there would be no need for the complex accounting mechanisms necessary to support an interrelated PreK-12/7-12 [MUUSD] and a PreK-6 district. If the

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<sup>5</sup> See, e.g., [16 V.S.A. § 722](#) at subsection (b).

<sup>6</sup> Despite language at the end of the second paragraph of Article 11 that might seem to imply otherwise, the SU would not dissolve unless and until the State Board affirmatively voted to designate the UUSD to be its own supervisory district pursuant to 16 V.S.A. § 261(c).

State Board redraws SU boundaries so that the Pittsfield District is no longer a member of the SU, then a fully unified Windsor Central UUSD could, potentially, be its own single-district SU (although it would be a small one). If the State Board made that change, then there would be no need for the separate SU structure or for SU assessments that the voters have no direct ability to approve or reject. In addition, the school located in Barnard could become one in which other students in the region enroll through intradistrict elementary school choice or with which other schools could more easily share point-in-time programming. The ability to access Barnard's staff, unique programming, and other resources would be simplified, and the unified district's workforce might become even more stable by converting part-time staff to full-time employees. Thus, the addition of Barnard as a full PreK-12 member of the unified district has the potential to benefit the students and taxpayers in the other member towns of the district.

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Larger governance structures have been shown to provide the flexibility needed to mitigate annual budget and tax increases, moderate tax rate fluctuations caused by changes in ADM, and allow small or struggling schools to stay open and good programs to remain intact or be expanded.<sup>7</sup>

## **EDUCATIONAL IMPLICATIONS:**

The BSD Board states that it does

not see a significant increase in educational opportunities with merger as much of our curriculum and programming is already aligned with the WCMUUSD. Nor do we see a significant increase in equity with merger as our opportunities and outcomes are quite similar to other WCMUUSD campuses. However, merger may facilitate increased student support and intervention where grant-supported programs are managed and funded at the merged district level. To the extent that educational and staffing resources can be more readily shared from a central administration, we may see both administrative efficiencies and increased access to some centralized support systems and contracts... .

In addition, the BSD Board anticipates that access to intra-district choice could provide educational benefits “for Barnard families that seek to send their children to a different

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<sup>7</sup> Acting Secretary of Education's [Proposed Statewide Plan](#) at 68-69.

campus, and for Windsor Central families that seek to attend Barnard Academy. This may become more important to some Pomfret families if the Prosper Valley campus does not re-open as a full K-6 school campus.”<sup>8</sup>

**FISCAL IMPLICATIONS:** Most of the latent financial consequences of merger arose from creation of the MUUSD. The potential fiscal impact of creating the UUSD by adding the very small Barnard elementary system into the substantially larger MUUSD is likely to be relatively small. This is particularly the case as the separate SU structure would continue to exist unless and until the State Board chose to designate the UUSD created under § 721 as its own supervisory district – which could occur only if the State Board moved the Pittsfield School District into a different SU or if Pittsfield became a member of the UUSD.

Nevertheless, there are several actual and potential fiscal consequences arising from merging the BSD into the MUUSD pursuant to § 721.

First, the MUUSD was eligible for tax rate reductions under Act 156 beginning in the 2018-2019 academic year (FY 2019). Although Barnard taxpayers are members of the MUUSD for grades 7-12, they do not receive tax rate reductions in connection with those grades.<sup>9</sup> If the BSD merges into the MUUSD effective July 1, 2020, however, then the taxpayers residing in Barnard will receive tax rate reductions for all grades, PreK-12, in FY 2021 (\$0.04) and FY 2022 (\$0.02).

Second, the BSD was eligible for a small school support grant in FY 2019 pursuant to the provisions of 16 V.S.A. § 4015. Unlike the grants received by districts that voluntarily merged to create a unified union school district under one of the programs established by the Legislature in 2010-2015, the BSD’s small school grant will not automatically transform into a merger support grant. Although 16 V.S.A. § 4015 can be read to permit the UUSD to apply annually for a small school grant based on the eligibility of a school building located in Barnard, the 2019 Legislature enacted a provision that would prohibit such an application under the scenario at issue here.<sup>10</sup>

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<sup>8</sup> The MUUSD is not currently using the Prosper Valley School building to educate students due to the recent detection of mold.

<sup>9</sup> In 2017, the Legislature prohibited NMEDs from receiving the tax rate benefits of voluntary mergers, reasoning that but for the existence of the NMED the MUUSD would be a UUSD and the need for a separate SU structure would in most cases disappear. 2017 Acts and Resolves No. 49, Sec. 22.

<sup>10</sup> 2019 Acts and Resolves No. 72, Sec. E.507 provides in part:

(c) A union school district that receives a merger support grant pursuant to 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46, each as amended, shall not be eligible also to receive a small schools grant under [16 V.S.A. § 4015]; provided, however, that if a union school district that received a merger support grant is enlarged to include a district that received a small school grant in fiscal year 2019 (the “new member”) and the operational date of the union district as enlarged by the new member is July 1, 2019, then the union school district may apply for a small school grant pursuant

Third, as the BSD Board's letter to the State Board indicates, to "the extent that educational and staffing resources can be more readily shared from a central administration, [the BSD] may see both administrative efficiencies and increased access to some centralized support systems and contracts, such as in the areas of Buildings and Grounds."

Fourth, merger of the BSD into the MUUSD might minimize tax rate fluctuations for residents of Barnard. The BSD Board concludes:

the primary benefit of merging is financial stability. Based on the past two years of WCMUUSD school budgets and tax rates, we do not anticipate tax savings. And although Barnard's per pupil spending has historically been in line or better than our neighboring towns, a small school's budget is consistently subject to pressures that can be difficult to address without sacrificing programming. Being a part of a larger merged budget would allow Barnard to respond to volatile costs such as Special Education spikes without significant negative impact.

Finally, although the proposed changes to Articles 13 and 15 may make it more difficult to close a school building or reconfigure grades among two or more buildings – either of which might have financial consequences to the UUSD, the proposals are incorporating evidence-based policies already adopted by the MUUSD Board.

*Accordingly, the Secretary recommends that the State Board approve the BSD Board's proposal to request voter authorization to apply for the Barnard School District's admission to the Windsor Central Modified Unified Union School District pursuant to 16 V.S.A. § 721(a), effective July 1, 2020.*

**STAFF AVAILABLE:**

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to the provisions of 16 V.S.A. § 4015 in connection with any school located within the new member.