126 College Street, Suite 305
Burlington, VT 05401

WELLS & LEOPOLD, PC

ATTORNEYS AT LAW

Christopher B. Leopold
Dennis W. Wells- Retired

tel (802) 864-3755
fax (802) 864-3612

April 1, 2016

Donald S. Van Nostrand, Superintendent
Orleans Central Supervisory Union
130 Kinsey road
Barton, VT 05822

Re: Proposed Orleans Central Unified Union School District Board Membership

Dear Donald,

I am writing regarding the current proposal by the Orleans Central Study Committee on behalf of the member school districts of the Orleans Central Supervisory Union (OCSU) to form a unified union school district. Specifically, you have asked us to review the proposed board membership of the Orleans Central Unified Union School District (hereinafter the "Unified School District") and the requirements of the Equal Protection Clause of the United States Constitution.

Members of the Orleans Central Study Committee formed under 16 VSA §706, have drafted Articles of Agreement for the formation of the Unified School District pursuant to Act 46. Article 8 of the Articles of Agreement establishes the number of board members from each town in the proposed unified union. The proposed board of school directors follows the statutory requirement that each proposed member district in a unified union be afforded at least one representative. Consistent with statute, the proposed board may not exceed 18 members, each member district shall be entitled to at least one representative, and representation shall be proportional to population. 16 VSA 706b(9). The composition of the initial seventeen-member school board is as follows: Albany – two members, Barton – four members, Brownington – two members, Glover – three members, Irasburg – three members, Orleans – two members and Westmore – 1 member. Board composition will be recalculated after each decennial census to ensure that a town's representation on the Board remains proportional to its population.

The Equal Protection Clause of the Fourteenth Amendment requires that each resident be given equal weight in representation. *Reynolds v. Sims*, 377 US 533, 569 (1964). The Supreme Court has held generally that an apportionment plan with a population deviation of less than 10% is a minor deviation. *Brown v. Thomson*, 462 US 835, 842 (1983). Despite stricter adherence to a 10% maximum deviation rule in *congressional* redistricting cases, the Court has shown *more* flexibility in regard to state and local forms of government. The Supreme Court has stated that mathematical exactness is not a requirement to the extent that it acts as a "straitjacket" preventing citizens from "devising mechanisms of local government suitable for local needs and efficient in solving local problems." *Avery v. Midland*, 390 US 474, 485 (1968). While there is significant variation in the population represented per board member for the proposed Unified School District board of school directors, it appears that there is a rational basis for the deviation: preserving the member district boundaries for the election of board members.

The representation plan proposed by the Study Committee preserves the member district boundaries, it is therefore reasonable to conclude that the deviation in population proportionality is permissible. In *Brown v. Thomson*, the Court found a Wyoming reapportionment plan constitutional despite a maximum deviation in population equality of 89%. 462 US 835 (1983). The Court justified this extreme deviation because of the state's historic policy of preserving counties as representative districts. Moreover, the Court in *Brown* acknowledged that if the least populous county, Niobrara County, were to be combined with a neighboring county in a single representative district it would have de minimis impact. *Id.*, at 847. Similarly, if the district of Westmore was combined with a neighboring district into a multi-member district, it would tend to disenfranchise the population of Westmore. Similarly, a system of at-large voting would have the same effect.

Moreover, the districts in the proposed unified school district have significant population differences. Barton (pop. 1992), the most populous district in the SU, has more than five and a half times the population of Westmore (pop. 350). The variation in the population represented per board member results from an attempt to preserve the representative boundaries of the member districts and maintain a board of 18 or fewer members. The huge disparity between the size of the populations of the districts in the unified school district would result in an extremely large legislative body if mathematical exactitude is required. It is poor public policy to require that groups of districts that are choosing to merge, but have highly disparate populations, are forced into a system of weighted or at-large voting to assure strict adherence to the one person, one vote principle.

School board representatives are specifically tied to the management of local affairs. In order to further the State's goal of unifying school districts, conversations need to occur between districts with established relationships. Often this will mean a grouping of districts with a wide variation in population that does not lend itself well to precise mathematics. In an effort to maintain the political subdivision of the member school district representation and continue to allow for progress towards unification, it is reasonable to conclude that mathematical exactness must be set aside. This is consistent with the Court's continued flexibility afforded to municipal government schemes.

Based upon the above, it is our belief that there is a reasonable legal basis to support a conclusion that a court would conclude that the proposed board representation for the Orleans Central Unified Union School District satisfies the requirements of the Equal Protection Clause of the U.S. Constitution.

Please feel free to contact me with any questions.

Sincerely,

Christopher B. Leopold

286-3, 8134