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Agency of Education

April 8, 2021

Lawrence G. Slason, Esq.
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RE: Westminster's request to withdraw from the WNUESD

Dear Mr. Slason,

I am in receipt of your letter dated April 2, 2021 sent on behalf of the Town of Westminster to John Carroll, Chair of the Vermont State Board of Education regarding withdrawal from the Windham Northeast Union Elementary School District ("WNUESD").

Among the attachments to the letter are minutes from the March 10, 2021 meeting of the Westminster Selectboard. Item 7(D) reflects action taken by the Selectboard to appoint an "interim five--person board for the Westminster School District."

The Legislature has provided little guidance regarding the process leading to the State Board's declaration approving withdrawal from a union school district. In addition, it has not provided any guidance regarding the process for transitioning from membership in an operational union elementary school district to the assumption of responsibilities as an operational town school district on a date specified in the State Board's declaration.

Nevertheless, it is clear that the Westminster Selectboard has no legal authority: (i) to act on behalf of either the WNUESD voters who reside in Westminster or the dormant town school district, or (ii) to appoint members to an interim board of a town school district, regardless of whether that district is dormant, as here, or has been reconstituted.

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"). A school district is governed by its own elected board and its activities are funded by its own, voter-approved budget. In fact, the Legislature has placed a clear "firewall" between a school district's funds and the funds of municipalities other than the school district. 16 V.S.A. § 4029(a) and (b).

As you know, Vermont is a “Dillon’s Rule State” and, as such, municipalities have only those powers and rights granted to them by the State. The Legislature has authorized selectboards to perform certain specified duties on behalf of school districts. For example, the Legislature directs selectboards to perform the “functions [of] warning meetings and conducting elections” in *unified* union school districts (i.e., multi-town districts responsible for prekindergarten-grade 12). 16 V.S.A. § 722(d).

Nothing in statute, however, authorizes a town or its selectboard to make decisions for or take actions on behalf of a school district during the process leading to the State Board’s declaration of withdrawal or while the withdrawing district transitions to the day on which it assumes sole responsibility for its resident students.

In addition, for any town school district in which every board seat is vacant, 16 V.S.A. § 424(c) states:

If there are no town school board members in office, the Secretary of State shall call a special election to fill any vacancies and for that interim shall appoint and authorize the town school district clerk or other qualified person to draw orders for payment of continuing obligations and necessary expenses until a majority of the vacancies is filled.

Therefore, the Agency is advising the State Board that the action taken by the Westminster Selectboard to appoint an “interim five-person board for the Westminster School District” has no basis in law and is of no effect. Accordingly, the “interim board” and its individual members have no authority to warn a vote to elect the members to sit on the board of the town school district once it is reconstituted by the State Board’s declaration. In addition, only the elected school board will have authority to develop a proposed budget for the town school district and to present that budget to the voters of the town school district for approval.

Once the State Board issues its declaration approving and establishing an effective date for the withdrawal of Westminster, the Secretary of State will warn a special meeting to elect school board members pursuant to 16 V.S.A. § 424(c).

As a separate, related matter, there is little statutory guidance regarding the process leading to the State Board’s declaration. Particularly absent is authorization for any person or entity to represent the withdrawing member in financial negotiations with the union school district or in withdrawal proceedings before the State Board where, as here, the union school district does not have active town school districts.

As explained above, the Westminster Selectboard – as an entity – does not have authority to act on behalf of either the WNUESD voters who reside in Westminster or the dormant town school district in financial negotiations that will bind the school district or in proceedings before the State Board.



In general, potential conflicts of interest would also prevent union school district board members from acting in this capacity. In the only recent withdrawal/dissolution proceeding, the State Board permitted the chair and the vice chair of the union school district's board to speak on behalf of the withdrawing members. In that proceeding, however, the only two members of a union district each voted to withdraw from – and thus to dissolve – the union school district. In other situations, this arrangement might create a conflict of interest because members elected to a union school board owe a duty to the union school district and not to the potentially withdrawing member.

Absent any guidance from the Legislature in this matter, the State Board will likely ask for one or more of the residents of Westminster who have led the withdrawal activity to speak on behalf of withdrawal and answer the Board's questions. The State Board also will likely provide an opportunity for any other Westminster resident to testify if the resident wishes to add information that will assist the State Board to determine if, post-withdrawal, Westminster students "will attend a school that is in compliance with" State Board rules.

Sincerely,



Emily Simmons
General Counsel
Vermont Agency of Education

