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**The State Board of Education's Final Statewide Plan
Act 46 (2015)
Modified Unified Union School Districts and their Non-Member Elementary Districts**

There are currently five Modified Unified Union School Districts ("MUUSDs") formed pursuant to Act 156 (2012). Each MUUSD is a PK-12 district for each town that voted to merge and is a 7-12 (or 5-12 or 6-12) district for the town that did not approve merger. In other words, the MUUSD is responsible for the grades for which the no-voting district was a member of the original union high school district. After the merger, the no-voting district is an independent, town district for whatever grades it previously operated. Colloquially, the no-voting district is referred to as the "non-member elementary district" or "NMED" for those elementary grades. So, for example, the Mount Mansfield MUUSD is a PK-12 district for Bolton, Jericho, Richmond, and Underhill, and is a 5-12 district for Huntington. The Huntington District, the NMED, is responsible for PK-4, as it was before the MUUSD was created.

In at least three of the five current MUUSDs, a separate SU structure is necessary solely because the NMED exists and is the only non-unified district in the SU.

Act 46, Sec. 10(b) requires the State Board to publish "its order merging and realigning districts and supervisory unions where necessary." It does not require that the Legislature, school boards, or the electorate of any affected district vote to ratify the "order."

An NMED (e.g., the Huntington PK-4 district) is not exempt from SBE-required merger because there is no reason to expect it to be a PK-12 member of a unified district on July 1, 2019. In contrast, a MUUSD is exempt from further merger under the State Board's final statewide plan because it was eligible to receive tax rate reductions and other transitional assistance under one of the three voluntary phases created by the Legislature.

Therefore, if the State Board believes that the NMED should merge with the MUUSD, then it can require the NMED to do so (because the NMED is not exempt from merger under the statewide plan) but only if the MUUSD is willing to accept the NMED as a member (because the MUUSD is exempt).

It is not specified in law whether it is the voters of the MUUSD or the board of the MUUSD that must vote whether to accept the NMED. This lack of certainty is discussed at pages 61-62 of the Secretary's proposed statewide plan: <http://education.vermont.gov/content/secretarys-proposed-plan-under-act-46-sec-10> . Although the Agency has not issued a legal opinion regarding this question, the Secretary's proposal indicates that:

- (1) In all cases the MUUSDs should check with their legal counsel; and
- (2) The safest option is to present the question to the MUUSD voters.

If the MUUSD electorate votes, then those voters that reside in the NMED would vote as well because they are members of the MUUSD for the upper grades. There are important distinctions between the votes of the residents of the NMED in this context and their earlier vote(s) on the merger proposal:

- If the State Board requires the NMED to merge, then the vote whether to accept the NMED would occur pursuant to 16 V.S.A. § 721 because it involves accepting a new member (e.g., the Huntington PK-4 District) into an existing union school district (e.g., the Mount Mansfield MUUSD).
- Therefore, the vote in this instance would be one-half of the § 721 process: Does the existing union school district accept the new member?
- A State Board requirement that the NMED must merge if the MUUSD accepts it would replace the other part of the § 721 process.
- We find no legal support for the proposition that the NMED has an additional right, independently, to vote whether to join the MUUSD pursuant to the other part of the § 721 process or any other law.

Under 16 V.S.A. § 721, the decision is reached by the total of all votes of the MUUSD electorate regardless of the town of residence. In other words, unlike creation of a new union school district under 16 V.S.A. § 706g, the NMED voters would not have a “veto” when they vote whether the MUUSD will accept the NMED in response to the State Board’s final statewide plan.

In addition, it would only be the MUUSD that will warn the vote for all of its voters, rather than both the MUUSD and the NMED warning it.

Finally, even though the State Board intends to issue the final statewide plan before the November 30 deadline, the time within which any new district must transition to full operations is very tight. It becomes even more so in the case of MUUSDs that must warn a vote whether to accept the NMED. Although each MUUSD will need to consult its legal counsel, it may be possible that the MUUSD vote could be warned as a conditional question in advance of the statewide plan’s issuance (e.g. “If the State Board’s final statewide plan requires the NMED to merge with the MUUSD, then do you – the voters of the MUUSD – accept the NMED as a full PK-12 member of the union district per 16 V.S.A. § 721?”). We note that there are two election days between now and the November 30 deadline for the State Board’s statewide plan – August 15 and November 6. Either of these dates could serve as the opportunity to warn a conditional question.