

AGENCY OF EDUCATION
Barre, Vermont

TEAM: School Governance Team

ITEM: Will the State Board of Education find the withdrawal of the **VERNON SCHOOL DISTRICT** from the **BRATTLEBORO UNION HIGH SCHOOL DISTRICT (BUHSD)** pursuant to Act 49 (2017), Sec. 5:

1. finds that Grade 7-12 students residing in Vernon will attend schools that comply with State Board Rules and therefore approves Vernon's withdrawal from the BUHSD and declares its membership terminated; and
2. finds that it is in the best interest of the State, the students, and the remaining BUHSD member districts that the BUHSD continues to exist?

RECOMMENDED ACTION:

1. That the State Board of Education:

- a. finds that the students residing in Vernon will attend schools that comply with State Board rules "pertaining to educational programs;" and
- b. approves Vernon's withdrawal from the BUHSD pursuant to Act 49 (2017), Sec. 5, and by such action declares that Vernon's membership in the BUHSD is terminated, which for purposes of meeting FY 2018 obligations shall be effective as of July 1, 2018.

2. That the State Board of Education finds that it is "in the best interests of the State, the students, and the districts remaining in the union high school district for the

STATUTORY AUTHORITY: Act 49 of 2017, Sec. 5

BACKGROUND INFORMATION:

The Windham Southeast Supervisory Union (WSESU) consists of six school districts located in five towns. Five of the districts are town elementary districts, each of which is a member of the sixth district, the Brattleboro Union High School District.

For many years, Vernon's membership in the union school district has been unique – not only among members of the BUHSD, but among union school district members anywhere in the State. Pursuant to a 1954 opinion of the Vermont Attorney General and a 2006 Legislative enactment, Vernon – and only Vernon – was permitted both to belong to a union high school district and also

to use the budget of its elementary school district to pay tuition for any Vernon student who did not wish to attend the union high school.¹

In November 2015, the member districts of the WSESU formed a § 706 study committee to consider the advisability of forming a unified union school district. It became apparent to the members that creation of a UUSD would necessarily result in the elimination of Vernon’s unique position. In addition, the only way to ensure Vernon’s ability to pay tuition would be by withdrawal from the BUHSD,² which would transform Vernon into a PK-12 town district that operated a school through Grade 6 and paid tuition for students in Grades 7-12.

Long-established statutory law permits withdrawal by a member of a union school district pursuant to a three-step process: (1) voters in the potentially withdrawing member vote to withdraw; (2) voters in each of the other members independently (no commingling) vote whether to approve withdrawal; and (3) the State Board terminates the membership after determining that “the students in the withdrawing member will attend a school that is in compliance with the rules adopted by the Board pertaining to educational programs.” 16 VSA § 721a.

Vernon’s attempt to withdraw from the BUHSD under § 721a proved unsuccessful in 2016 when the Dummerston electorate failed to approve withdrawal in step (2) above. Vernon sought relief from the 2017 Legislature, which enacted the narrowly-crafted Act 49, Sec. 5 in response.

Specifically, Sec. 5 eliminates step (2) of § 721a in connection with Vernon’s attempt to withdraw and permits unilateral withdrawal by Vernon from the BUHSD, provided that the “withdrawal process is completed on or before July 1, 2019.”³ See Act 49, Secs. 5, 6(a), and 48(a).

Pursuant to the provisions of Act 49, Sec. 5:

- On July 18, 2017, the electorate of Vernon voted whether to approve withdrawal from the BUHSD (Attachment A)
- On July 21, 2017, the Vernon Town Clerk certified the results of the vote as follows: Yes – 238; No – 47; Spoiled – 1 (Attachment B, page 2)
- On August 3, 2017, the Secretary of State certified receipt of the Town Clerk’s certification and gave notice to the Secretary of Education (Attachment B, page 1) and to the clerks of each of the other member districts
- On August 14, 2017 and August 21, 2017 respectively, the boards of the Vernon School District and the BUHSD approved the Withdrawal Agreement between the two districts (Attachment C)

¹ This unique arrangement raises a number of practical and legal issues, including a question of constitutionality. This document does not address those issues because they will be eliminated by Vernon’s withdrawal from the BUHSD.

² Withdrawal would also have the effect of simplifying the governance structure of the BUHSD in a way that enables its remaining member districts more easily to envision creation of a UUSD, also on the State Board’s September 2017 agenda

³ Both the 2006 and the 2017 exemptions do not identify Vernon or the BUHSD by name, but both are drafted in a narrow manner that restricts application solely to Vernon and the BUHSD.

Also pursuant to Act 49, Sec. 5, the Secretary of Education has assessed:

- whether “the students in the withdrawing school district would attend a school that complies with the rules adopted by the State Board pertaining to educational programs”
- whether “it is in the best interests of the State, the students, and the districts remaining in the union high school district for the union school district to continue to exist.”

Although Vernon has been operating under an exception that permitted it both to be a member of a union school and to pay tuition for students in the same grades, it has nevertheless been governed by statutory Vermont law and State Board rules regarding the institutions to which it can pay tuition and the amount that can be paid. Those laws will continue to govern tuition payment if the State Board terminates Vernon’s membership in the BUHSD. In FY 2017, Vernon’s ADM for Grades 7-12 was 152.20. Of that number, 109.20 attended the Brattleboro Union Middle/High School, while the Vernon Elementary School District paid tuition for the remaining 42 to attend other public or approved independent schools (less any who attended a Vermont public school under the public high school choice provisions of 16 VSA § 822a). We have seen nothing to suggest that there will no longer be a sufficient number of qualifying schools in which Vernon’s Grade 7-12 students can enroll.

In FY 2017, the total ADM for the BUHSD was 940.90, with Vernon students representing approximately one-eighth of that total. There is no reason to assume that students who reside in Vernon will stop attending the union middle/high school if Vernon becomes a district that pays tuition for all students in Grades 7-12 – nor is there any evidence that the future enrollment of Vernon students in the union middle/high school will decline precipitously. In addition, the boards of both the Vernon School District and the BAHSD approved the Withdrawal Agreement between the two districts.

Accordingly, we recommend that the State Board declare:

1. *that Vernon’s membership in the BUHSD is terminated and file a declaration to that effect with the Secretary of State, the Vernon Town Clerk, and the BUHSD clerk; and*
2. *that it is in the best interest of the State, the students, and the remaining member districts for the BUHSD to continue to exist.*

STAFF AVAILABLE: Donna Russo-Savage, Principal Assistant, School Governance

WARNING
VERNON TOWN SCHOOL DISTRICT
SPECIAL MEETING

JULY 18, 2017

The registered voters and persons eligible to vote within the Vernon Town School District are hereby notified and warned that a Special School District Meeting will be held at the Vernon Town Office (downstairs) on July 18, 2017 at 7:00 a.m. at which time the polls will open, until 7:00 p.m. at which time the polls will close, to vote by Australian ballot upon the following article:

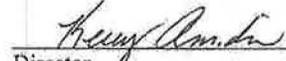
ARTICLE 1: Shall the Vernon Town School District, a member of Brattleboro Union High School District #6, vote to withdraw from the Brattleboro Union High School District pursuant to the provisions of 16 V.S.A. §721a, as amended by Section 5 of S.122, approved by the 2017 Session of the Vermont General Assembly.

Said voters and persons are further notified that voter qualification, registration, absentee voting, and voting procedures shall be in accordance with Chapters 43 and 51 of Title 17 V.S.A.

Dated this 12th day of June, 2017.



Director



Director



Director

Director



Director

Received for record and recorded prior to posting this 13th day of June 2017.



Timothy Arsenault, Vernon Town Clerk

ITEM O

A



B

State of Vermont
Office of the Secretary of State

James C. Condos, Secretary of State
Christopher D. Winters, Deputy of Secretary

Vermont State Archives & Records Administration
1078 US Route 2, Middlesex
Montpelier, VT 05633-7701
(802) 828-3700

Tanya Marshall, State Archivist

I hereby certify that the attached is a true and accurate copy of the Official Return of Votes from the Town of Vernon dated July 21, 2017, certifying withdrawal from the Brattleboro Union High School District as required by §5 of Act 49, 2017.



August 3, 2017

James C. Condos
Secretary of State

July 21, 2017

To Whom it may concern,

The residents of Vernon voted by Australian Ballot on July 18th, 2017, on the following question.

“ Should the Vernon Town School District, a member of Brattleboro Union High School District #6, vote to withdraw from the Brattleboro Union High School District, pursuant to the provisions of 16 VSA subsection 721 a, as amended by section 5 of S.122, approved by the 2017 session of the Vermont General Assembly”

286 ballots were cast out of an 1840 person checklist.

Voting yes- 238

Voting no- 47

One ballot was spoiled.

I certify the official results to be accurate.

A handwritten signature in black ink, appearing to read "Timothy Arsenault", written in a cursive style.

Timothy Arsenault

Vernon Town Clerk

C

Withdrawal Agreement between School Districts of Vernon and Brattleboro Union High School #006

WITHDRAWAL AGREEMENT

THIS AGREEMENT entered into pursuant to 16 VSA 721a and Section 5 of No. 49 of the Acts of 2017 (the "Act") by and between VERNON TOWN SCHOOL DISTRICT ("Vernon") and BRATTLEBORO UNION HIGH SCHOOL DISTRICT NO. 6 ("Brattleboro Union"):

WHEREAS, Vernon is a member of Brattleboro Union, a union high school district qualified under 16 VSA 721a(a) and Section 5(a)(2) of the Act, and whose establishment and existence have been certified in accordance with 17 VSA 706g; and

WHEREAS, Vernon is a school district which meets the qualifications set out in Section 5(a)(1) of the Act; and

WHEREAS, Vernon desires to withdraw from Brattleboro Union as provided in 16 VSA 721a; and

WHEREAS, at a special meeting duly called, noticed and held on July 18, 2017, pursuant to 16 VSA 721a(b) and Section 5(a)(3) of the Act, Vernon Town School District approved the following proposition:

Should the Vernon Town School District, a member of Brattleboro Union High School District #6, vote to withdraw from the Brattleboro Union High School District, pursuant to the provisions of 16 VSA subsection 721a, as amended by section 5 of S.122, approved by the 2017 session of the Vermont General Assembly?

those voting in the affirmative being 238, and those voting in the negative being 47; and

WHEREAS, on July 31, 2017, pursuant to 16 VSA 721a(b) and Section 5(a)(3) of the Act, the Clerk of Vernon Town School District certified the foregoing vote to the Vermont Secretary of State; and

WHEREAS, on July 21, 2017, pursuant to 16 VSA 721a(b) and Section 5(a)(3) of the Act, the Clerk of Vernon Town School District certified the foregoing vote to the Clerks of Brattleboro Union, Brattleboro Town School District, Dummerston Town School District, Guilford Town School District and Putney Town School District and

WHEREAS, it is anticipated that, following compliance with 16 VSA 721a(c) and Section 5(a)(4), 5(b) and 5(c) of the Act, the State Board of Education will approve the withdrawal of Vernon from Brattleboro Union, and will declare the membership of Vernon in Brattleboro Union terminated as of a date no later than July 1, 2019; and

WHEREAS, as provided in 16 VSA 721a(c) and Section 5(c)(5) of the Act, , ratification of Vernon's withdrawal from Brattleboro Union, and approval of such withdrawal by the State Board of Education is conditioned upon an agreement with respect to the satisfaction of Vernon's liability existing under Brattleboro Union's outstanding obligations; and

WHEREAS, the parties desire to memorialize their understanding with respect to the satisfaction of such obligations.

NOW THEREFORE, for good and valuable consideration, payment, receipt and sufficiency of which is hereby mutually acknowledged, and in consideration of the mutual covenants, inducements,

Withdrawal Agreement between School Districts of Vernon and Brattleboro Union High School #006

representations, undertakings and agreements set forth herein, Vernon and Brattleboro Union agree as follows:

- (1) On or before June 30, 2019, as determined by the State Board of Education, Vernon shall relinquish, release and abandon all of its right, title, claim and interest, be it legal, beneficial or equitable, in all tangible and intangible assets, property, claims, entitlements and credits now or hereafter owned or acquired by Brattleboro Union, Brattleboro Town School District, Dummerston Town School District, Guilford Town School District and Putney Town School District.
- (2) As among Vernon and Brattleboro Union, on and after the date established in Section (1), as determined by the State Board of Education, Vernon shall be exonerated, released and discharged from any liability for debt service payments on all Brattleboro Union joint and several general obligations outstanding as of such date.
- (3) The discharge contemplated under Section (2) shall extend to all Brattleboro Union liabilities outstanding as of the date established therein, regardless of their inclusion and classification for the purpose of calculating any debt limit.
- (4) This Agreement shall not affect the calculation of tuition in accordance with 16 VSA 824-826 and 836, and all enactments amendatory and supplemental, and the payment and collection thereof from all school districts whose students, including those of Vernon, are enrolled in Brattleboro Union or its successor.
- (5) This Agreement shall inure to the benefit of and be binding upon the parties hereto and to their respective successors and assigns.
- (6) This Agreement shall not be construed or implemented so as to impair or alter the rights of any person possessing a legal or beneficial interest in any Brattleboro Union obligation.

IN WITNESS WHEREOF, Vernon Town School District has caused this agreement to be signed this 14th day of August 2017 by Michael Hebert, Chair of its Board of School Directors, duly authorized at a meeting thereof held on August 14, 2017, and Brattleboro Union High School District No. 6 has caused this agreement to be signed this 21st day of August 2017 by Ricky Davidson, Chair of its Board of School Directors, duly authorized at a meeting thereof held on August 21, 2017.

VERNON TOWN SCHOOL DISTRICT

By: _____

Chair, Board of School Directors

Attest: _____

District Clerk

BRATTLEBORO UNION HIGH SCHOOL DISTRICT NO. 6

By: _____

Chair, Board of School Directors

Attest: _____

District Clerk