

State Board of Education
Approved Rules

3400 Proposals for Alternative Structures Under Act 46 (2015) – Effective June 26, 2017

3410 Definitions For all State Board of Education rules relating to Alternative Structures, the term:

3410.1 “Act 46” means 2015 Acts and Resolves No. 46. **“Act 153”** means 2010 Acts and Resolves No. 153, as amended. **“Act 156”** means 2012 Acts and Resolves No 156, as amended. **“Act 49”** means 2017 Acts and Resolves No. 49 (H.513).

3410.2 “Alternative Structure” is defined by Act 46, Sec. 5(c) as a supervisory union “composed of multiple member districts, each with its separate school board.” Act 46, Sec. 10(a)(a)(2) contemplates that an Alternative Structure could be different from a Preferred Structure in some other way, “such as ... a unified union school district with [an] average daily membership” of less than 900 (which would probably be a member district of a larger supervisory union due to its small size).

3410.3 “ADM” has the same meaning as set forth for “average daily membership” in 16 VSA § 4001(1).

3410.4 “Goals” means the five statewide education goals identified in Sec. 2 of Act 46 that are the foundation of the legislation’s governance provisions:

“to encourage and support local decisions and actions that:

- (1) provide substantial equity in the quality and variety of educational opportunities statewide;
- (2) lead students to achieve or exceed the State’s Education Quality Standards, adopted as rules by the State Board of Education at the direction of the General Assembly;
- (3) maximize operational efficiencies through increased flexibility to manage, share, and transfer resources, with a goal of increasing the district-level ratio of students to full-time equivalent staff;
- (4) promote transparency and accountability; and
- (5) are delivered at a cost that parents, voters, and taxpayers value.”

3410.5 “Preferred Structure” as defined in Act 46, Sec. 5(b) means a school district that is responsible for the education of its resident students in prekindergarten through grade 12, is its own supervisory district (*i.e.*, a single-district supervisory union) (**“SD”**), has an ADM of at least 900 students, and is organized and operates according to one of the four most common structures as follows:

“(A) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 12;

- (B) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 8 and pays tuition for all resident students in grade 9 through grade 12;
- (C) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 6 and pays tuition for all resident students in grade 7 through grade 12; or
- (D) a district that operates no schools and pays tuition for all resident students in prekindergarten through grade 12.”

3410.6 “Region” is not defined by current supervisory union boundaries, but nevertheless should be identified based on a common-sense view of districts in and outside the current supervisory union. *Act 46, Sec. 9(a)(2) (Remaining Districts must “meet with the boards of one or more other districts ... to discuss ways to promote improvement throughout the region The districts do not need to be contiguous and do not need to be within the same supervisory union.”)*

3410.7 “Remaining District(s)” means a school district (or group of districts) that is subject to Act 46, Sec. 9 because it will not be in a Preferred Structure (*i.e.*, operating as its own SD with an ADM of at least 900) by July 1, 2019.

3410.8 “Statewide Plan” means the statewide education governance plan that Act 46 requires the Secretary of Education to develop and issue as a proposal and the State Board of Education to issue in final, mandatory form pursuant to Secs. 8-10, and all incorporated sections.

3410.9 “Unified Union School District” or “UUSD” has the same meaning as in 16 V.S.A. § 722: a union school district that “provides for the education of resident prekindergarten–grade 12 students” by operating a school or schools for all grades, operating some grades and paying tuition for others, or paying tuition for all grades.

3420 Statement of Purpose

Act 46 recognizes the possibility of Alternative Structures and incorporates into its overall design the ability for districts to create a new Alternative Structure through voluntary merger under Act 153 or Act 156. Act 46 also includes some requirements and guidance for Alternative Structure proposals submitted under Sec. 9 by districts that will not be merging. This guidance, however, lacks the specificity available for voluntary mergers, which are governed by a decades-old statutory process and by additional, explicit criteria in Act 46, Act 153, and Act 156, and Act 49.

These rules are intended to provide (1) a process by which school districts can propose to be in an Alternative Structure when the proposal does not include voluntary merger and (2) details about some of the supporting information that a district should consider when self-evaluating for purposes of presenting a proposal to merge or a proposal under Act 46, Sec. 9 and that the State Board considers when reviewing mergers proposals and will be considering when reviewing proposals under Sec. 9 and creating the Statewide Plan.

3421 Statutory Authority

16 V.S.A. § 164; Act 46 of 2015; 16 V.S.A. § 261

3422 Scope of Rules

3422.1 Unified Union School District Exempt from Statewide Plan Pursuant to Act 46, Sec. 10(c)(3), a *Unified* Union School District created under Acts 153, 156, or 46 is exempt from the Statewide Plan.

3422.1.1 If that UUSD is a member district of a multi-district supervisory union, then:

- (1) it is subject to Act 46, Sec. 9 because it is not a Preferred Structure; and
- (2) it has complied with Act 46, Sec. 9 by submitting its proposal to the State Board pursuant to 16 V.S.A. § 706c and shall not be subject to the provisions of these rules.

3422.2 Modified Unified Union School District A *Modified* UUSD created under Act 156 is a *Unified* Union School District for those towns that approved the proposal.

3422.2.1 A *Modified* UUSD is a member of a multi-district supervisory union and is within the scope of Rules 3422.1 and 3422.1.1.

3422.2.2 An elementary school district that is a member of the Modified UUSD for fewer than all grades PK-12 is not a member of a *Unified* Union School District, is not exempt from the Statewide Plan, and is subject to the provisions of these rules.

3430 Proposals for UUSDs & Proposals for Alternative Structures under Act 46, Sec. 9

3430.1 Act 46 identifies the five Goals as the foundation of voluntary mergers, proposals made under Sec. 9, and the Statewide Plan.

3430.2 Act 46, Sec. 5(c) recognizes that what the Legislature identified as the Preferred Structure may not be “possible or the best model” to achieve the Goals throughout the State.

3430.2.1 In these situations, Act 46, Sec. 5(c) states that an Alternative Structure can meet the Goals, “particularly if” the supervisory union manifests specific characteristics, including having “the smallest number of member school districts practicable.”

3430.2.2 A supervisory union with “the smallest number of member school districts practicable” means that, to the full extent current governance structures permit, districts merge into (i) a UUSD, (ii) a union elementary school district, or (iii) a union high school district.

3430.3 A proposal to merge voluntarily into a UUSD or Modified UUSD under Acts 153, 156, or 46 is developed, submitted, and considered under the process set forth in 16 V.S.A. chapter 11.

3430.4 Act 46, Sec. 9(a)(1)-(3), as amended by Act 49, requires the school board of each Remaining District to develop and submit a proposal, individually or jointly with other districts, to be in an Alternative Structure. Each board must submit the proposal by the earlier of January 31, 2018 or six months after these rules become effective.

3430.4.1 Act 46, Sec. 8 and 10 indicate that the proposal is considered in connection with development of the Statewide Plan.

3430.5 Regardless of whether it submits a proposal to merge under 16 V.S.A. chapter 11 or a proposal under Act 46, Sec. 9, each district conducts a rigorous self-examination of its current ability to meet or exceed the Act 46 Goals and each considers the opportunities that can arise from regional cooperation. *See, e.g., 16 V.S.A. SS 706b and 706c(b); Act 46, Secs. 6, 7, and 9; Act 153; Act 156*

3440 Proposing an Alternative Structure under Act 46, Sec. 9

3440.1 By the earlier of January 31, 2018 or six months after these rules become effective, Act 46, Sec. 9(a)(1)-(3) requires that the school board of each Remaining District shall:

- (1) “evaluate its current ability to meet or exceed each of the” Goals;
- (2) “meet with the boards of one or more other districts ... to discuss ways to promote improvement throughout the region in connection with the” Goals; and
- (3) Submit, individually or jointly with boards of other districts, “a proposal to the Secretary of Education and the State Board [that] proposes to retain its current governance structure, to work with other districts to form a different governance structure, or to enter into another model of joint activity.”

3440.1.1 Act 46, Sec. 9(a)(2)(B) states that the “districts do not need to be contiguous and do not need to be within the same supervisory union.”

3440.1.2 Act 46, Sec. 9(a)(3) states that each proposal shall:

- (1) “demonstrate[] through reference to enrollment projections, student-to-staff ratios, the comprehensive data collected pursuant to 16 V.S.A. § 165, and otherwise, how the proposal ... supports the district’s or districts’ ability to meet or exceed each of the” Goals; and

(2) “identif[y] detailed actions it proposes to take to continue to improve its performance in connection with each of the” Goals.

3440.1.3 Act 46, Sec. 9 requires a Remaining District’s school board to perform these three tasks, but some or all of the information-gathering and analysis may be conducted by a study committee that is formed pursuant to 16 V.S.A. chapter 11 to consider creation of a union school district under that chapter.

3440.2 School board(s) shall submit the proposal, together with all supporting data and documentation, by first class mail addressed to the Secretary of Education.

3440.2.1 The school board(s) may also electronically submit a copy of all materials to the Secretary’s e-mail address.

3440.3 Before June 1, 2018, pursuant to Act 46, Sec. 10(a)(1), the Secretary shall:

(1) “consider[.]” each proposal submitted under Sec. 9 in connection with his or her development of the proposed Statewide Plan;

(2) have “conversations” with the districts that submitted a proposal under Sec. 9 and other districts; and

(3) accept additional data and analysis offered by a district in response to the Secretary’s questions or stated concerns.

3440.3.1 The “conversations” shall be conducted in a manner to be determined by the Secretary.

3440.4 On or before June 1, 2018, Act 46, Sec. 10(a)(2) requires the Secretary to publish on the Agency’s website and present to the State Board a proposed Statewide Plan.

3440.5 Between June 1, 2018 and November 30, 2018, pursuant to Act 46, Sec. 10(b), the State Board:

(1) Shall “review and analyze” the Secretary’s proposed Statewide Plan; and

(2) May take testimony and/or request additional information from districts and supervisory unions as the Board determines to be appropriate or necessary.

3440.6 On or before November 30, 2018, pursuant to Act 46, Sec. 10(b), the State Board of Education shall “publish ... its order merging and realigning districts and supervisory unions where necessary” either:

(1) by approving the Secretary’s proposed Statewide Plan in its original form; or

(2) by approving the Secretary’s proposed Statewide Plan in an amended form *under the same standards* required for the Secretary’s proposal.

3440.7 The purpose of the Statewide Plan is to “provide educational opportunities through sustainable governance structures designed to meet the” Goals. *Act 46, Sec. 10(a).*

3440.8 The Statewide Plan:

- (1) Shall include changes to the extent necessary to meet the Goals.
- (2) Shall include changes to the extent “possible and practicable” in the Region.
- (3) Shall not include a change that would require a district to alter its current operating or tuitioning structure.
- (4) Shall not change the governance structure of:
 - (A) An Interstate School District.
 - (B) A Regional Career Technical Center School District.
 - (C) A school district that, between June 30, 2013 and July 2, 2019, began (or will begin) to operate as a unified union school district; and also either:
 - (i) voluntarily merged into a Preferred Structure; or
 - (ii) is a Regional Education District (RED) or other district eligible to receive RED incentives and protections pursuant to Act 153 and Act 156.

Act 46, Secs.8 and 10

3440.8.1 “If it is not possible or practicable [for the Statewide Plan to merge Remaining Districts, where necessary, into a Preferred Structure] in a manner that adheres to the ... protection for tuition-paying and operating districts[] or that otherwise meets all aspects of Sec. 5(b), then the [Plan] may also include alternative governance structures as necessary, such as a supervisory union with member districts or a unified union school district with a smaller average daily membership.”

(A) Under this circumstance, the Statewide Plan may include an Alternative Structure “provided that” the Alternative Structure is designed:

- (i) To “ensure adherence” to protections for operating and tuition-paying districts. Only a district, by a vote of its electorate, can decide whether to operate a school or pay tuition for its students, and at which grade(s).
- (ii) To “promote” the Goals.

3440.9 Act 46, Sec. 8(b) states that the:

“State Board shall approve the *creation, expansion, or continuation* of a supervisory union *only if* the Board concludes that this alternative structure:

(1) is the *best* means of meeting the [Goals] in a particular region; and

(2) ensures transparency and accountability for the member districts and the public at large”

3440.10 When developing the proposed and final Statewide Plan, the Secretary and State Board may incorporate a proposal submitted under Act 46, Sec. 9 in its entirety; may incorporate the proposal in an amended form; or may decline to incorporate any aspect of the proposal. *Act 46, Secs. 8 – 10*

3440.11 The State Board evaluates every type of education governance proposal not only on its own merits, but also on the impact it may have on the students, the districts, the Region, and the State. *See, e.g., 16 V.S.A. § 706c(b); Act 46, Secs. 8 – 10*

3440.12 Act 46 instructs the State Board to “be mindful” of actions that would result in the geographic isolation of a district from other districts of like structure, “including the potential isolation of a district with low fiscal capacity or with a high percentage of students from economically deprived backgrounds.” *Act 46, Sec. 8*

3450 Data and Documentation Supporting Proposal

3450.1 A proposal under Act 46, Sec. 9 shall demonstrate the district’s or districts’ due diligence and provide sufficient, thoughtful data and documentation in support of the proposal.

3450.2 A proposal under Act 46, Sec. 9 shall include a comparison of options considered, including consideration of a Preferred Structure.

3450.3 A proposal under Act 46, Sec. 9 should demonstrate on what basis the State Board would be able to “conclude[] that this alternative structure ... is the *best* means of meeting the [Goals] in a particular region” as the Board is required to do pursuant to Sec. 8(b).

3450.4 A decision not to explore or propose options other than an Alternative Structure under Act 46, Sec. 9 cannot be justified solely because a district’s small size means that data is not publicly available.

The following, non-exclusive list of information, which is the foundation of a study committee’s proposal to create a UUSD, is fundamental to a district’s self-evaluation, conversations with other districts, and proposal under Act 46, Sec. 9:

FERPA NOTE: If demographic or other information cannot be made public without violating the Federal Educational Rights and Privacy Act (“FERPA”) or other federal or Vermont law, then data can be referenced in another manner – e.g., by multi-year aggregates.

3450.5 Current, baseline information for the Remaining District(s) making the proposal (for the current fiscal year, for the most recent 3-5 years, and trends) including:

- (1) Operating / tuitioning structure
- (2) ADM by grade
- (3) Enrollment by grade in each school operated by the district
- (4) Equalized pupils
- (5) “Phantom Pupils”
- (6) Students eligible for Free or Reduced-Price Lunch (“FRL”)
- (7) Students receiving or eligible for special education services (“SpEd”)
- (8) Students receiving or eligible for section 504 accommodations (“504”)
- (9) Students for whom English is not the primary language (“ELL”)
- (10) For each grade operated by the district, current and 5-year historic enrollment of students in any school operated by another district, including:
 - (A) Students enrolled in a school operated by another district pursuant to 16 V.S.A. § 822a (statewide public high school choice), including:
 - (i) the schools in which they are enrolled
 - (ii) Demographics (FRL; ELL; SpEd; 504) of students enrolled in each school – either the number of students or percent in relation to percentage enrolled in school operated by the district making the proposal
 - (B) Students for whom the district pays tuition pursuant to:

(i) 16 V.S.A. § 821(c) (elementary student; geographic considerations)

(ii) 16 V.S.A. § 822(c)(1)(B) (secondary student; unique educational needs; independent school)

(C) Any others (explain)

(11) For each grade not operated by the district making the proposal, current and 5-year historic data regarding schools to which the district pays tuition, including:

(A) The grades for which tuition is paid

(B) The school(s) to which tuition is paid

(C) For each identified school to which tuition is paid:

(i) The number of the district's students who are enrolled, by grade

(ii) Demographics (FRL; ELL; SpEd; 504) of the district's students in the school, by grade

(12) For each grade not operated by the district, current and 5-year historic data regarding schools to which the district designates pursuant to 16 V.S.A. § 827, including the information outlined in Paragraph (11) above

(13) Statistical data regarding the community (*e.g.*, range of home values; range of incomes; income sensitivity usage; etc.)

3450.6 If there is more than one district making the proposal:

(1) Current and historic relationship between or among the districts

(2) Distances and quality of roads between the districts and between schools, if any

(A) Transportation concerns, especially those related to current low equity of opportunities and/or concern about future diminishment of equity

3450.7 If there is more than one district making the proposal, conversations among them on and after July 1, 2015 regarding improving the ability to meet or exceed each of the Goals throughout the Region and exploring ways to work together, including:

(1) Number and length of open, warned meetings

(2) Opportunities for community engagement

(3) Opportunities for student involvement

(4) Published minutes of proceedings

3450.8 Evidence of the current ability of each district making the proposal to independently meet or exceed the Goals concerning educational quality, opportunity, and equity as required in Act 46, Sec. 9 and Sec. 2.

#1 "substantial equity in the quality and variety of educational opportunities"

AND

#2 "leading students to achieve or exceed the State's Education Quality Standards"

Including:

(1) Student assessments, by grade-level, for all students in the district and for students disaggregated by demographics (including FRL; ELL; SpEd; and 504) — current and 5-year (or 2- to 3-year for SBAC) historic data including:

(A) ELA/reading in 3rd – 9th grade

(B) Mathematics in 3rd – 9th grade

(C) Science in three grades

(D) Any local assessments used

(2) If elementary schools are operated, then for at least the previous 3 years:

(A) Subjects offered

(B) Number of hours per week for each category for each grade (*e.g.*, math, science, foreign languages, art, music, physical education, etc.)

(3) If secondary schools are operated, then for at least the previous 3 years:

(A) Subjects offered

(B) Breadth and depth of offerings (*e.g.*, levels of math instruction; foreign languages; fine arts; AP courses; etc.)

(4) For each grade for which tuition is paid, evidence of each student's access to options, including whether the sending district or the receiving school provides transportation as needed, particularly for students living in poverty and students with disabilities – including the cost of providing transportation

(5) For a school operated by the district, students accessing non-traditional learning experiences, currently and in the most recent 3 years, including:

(A) Completion by 12th grade students in the district of at least one non-traditional learning experience (*e.g.*, work-based learning; dual enrollment)

(B) Types of non-traditional learning experiences available

(C) Access to support services, including extended learning opportunities for students who need them (*e.g.*, after-school and summer programs)

(6) Evidence of career and college preparation and readiness, currently and in the most recent 3 years, including:

(A) Participation by 11th and 12th grade students in Career Technical Education programs (“CTE”) (regardless of whether an operating or tuitioning district)

(B) Work-based learning accessed by CTE students (regardless of whether an operating or tuitioning district)

(C) Dual enrollment participation (an operating district and, if known, a tuitioning district)

(D) Early college participation (regardless of whether an operating or tuitioning district)

(7) Secondary school completion, for all students in the district and disaggregated by demographics (including FRL; ELL; SpEd; and 504) and linked to the elementary school of residence (*e.g.*, school in which the student was enrolled immediately prior to secondary school or school in which enrolled for majority of elementary grades)

(8) Current and historic data on teacher turnover, including the number of new teachers in each school in each year for the most recent 3 years

(9) Current and historic data on administrator turnover, including:

(A) Number of new principals in each school during the most recent 3 years

(B) Number of new superintendents during the most recent 3 years

(10) Professional development opportunities available

3450.9 Evidence of the current ability of each district making the proposal to independently meet or exceed the Goals concerning efficiency and fiscal accountability as required in Act 46, Sec. 9 and Sec. 2:

#3 “maximize operational efficiencies through increased flexibility to manage, share, and transfer resources, with a goal of increasing the district-level ratio of students to

full-time equivalent staff" in districts with fewer students per teacher / administrator / adult than is suggested in the EQS

AND

#4 "promote transparency and accountability"

AND

#5 provide educational opportunities "at a cost that parents, voters, and taxpayers value"

Including:

- (1) Shared programmatic and other nonfinancial resources with other districts in the Region
- (2) Flexible management arrangements with other districts in the Region
- (3) Economies of scale and efficiencies with other districts in the Region – *e.g.*: shared human services; common payroll system; joint contract for custodial services; etc.
- (4) Ratios (for each grade in each school operated by each district making the proposal; both at the district-level and at the supervisory union-level):
 - (A) Student-to-teacher — where "teacher" is defined as any person licensed to be employable as a teacher who is employed as a teacher and is providing direct instruction to students in one or more elementary or secondary grades
 - (B) Student-to-administrator — where "administrator" is defined as any person employed as a superintendent, assistant superintendent, principal, assistant principal, special education director, essential early education director, or Title I coordinator
 - (C) Student-to-adult — where "adult" is defined as all paid personnel employed by a school district or supervisory union
- (5) Total education spending, currently and most recent 3-5 years
- (6) Education spending per equalized pupils, currently and most recent 3-5 years
- (7) Education spending per equalized pupils – *excluding* "phantom pupils," currently and most recent 3-5 years
- (8) Small school grants received, currently and most recent 3-5 years

(9) Education spending per equalized pupils – *excluding* small school grants received, currently and most recent 3-5 years

(10) For a district that operates grades and pays tuition for others, the increase in education spending per equalized pupil for operation and for tuition-payment

(11) Trends in special education costs in the district and on an SU-wide basis and any efficiencies achieved in SU/Regional approach

3450.10 Description of Region, including

(1) Identity of each district that the district making the proposal considers to be in its Region that is NOT part of the proposal (“NPD”)

(2) Regional relationships and transportation between the district(s) making the proposal and the identified NPD(s):

(A) Current and historic relationship among the districts

(B) Distances and quality of roads between the districts and between schools, if any

(i) Transportation concerns, especially those related to current low equity of opportunities and/or concern about future diminishment of equity

(3) Conversations between the district(s) making the proposal and the identified NPD(s)

(A) *[If applicable]* Reasons that there were no discussions or were limited discussions with the NPD(s)

(4) For each NPD identified, the barriers to including the NPD in the proposal

(5) If one or more of the identified NPDs have the same operating / tuitioning structure as one or more districts making the proposal:

(A) The barriers to merging the like districts

(B) The empirical evidence that would enable the State Board to reach a conclusion that remaining as separate districts is the “*best* means of meeting” each of the Goals in the Region as it is required to do by Act 46, Sec. 8(b)

3450.11 Supervisory union with “smallest number of member districts practicable”

(1) If two or more districts making the proposal share the same operating / tuitioning structure for some or all grades, then explain why the districts remain as separate districts under the proposal, including:

(A) The barriers to merger

(B) The empirical evidence that would enable the State Board to reach a conclusion that remaining as separate districts is the “*best* means of meeting” each of the Goals in the Region as it is required to do by Act 46, Sec. 8(b)

3450.12 Geographic isolation of a district from district(s) with the same operating / tuitioning structure, including the potential isolation of a district with low fiscal capacity or with a high percentage of students from economically deprived backgrounds

(1) Isolation or potential isolation of a district making the proposal

(2) Isolation or potential isolation of a district in the Region that is not included in the proposal

3450.13 Ways in which the district(s) making the proposal will work with each other and/or with other districts in the Region to promote improvement in the district and throughout the Region in connection with each of the Goals as envisioned by Act 46, Sec. 9(a)(2) including:

(1) To the extent that the data provided in this Rule 3450 reveals inequities and/or disparities among districts or among demographic subgroups, the ways in which the district(s) making the proposal will work to improve the inequities and/or disparities

(2) Ways in which the district(s) making the proposal and other districts in the Region demonstrate that they consider themselves to be collectively responsible for the education of all prekindergarten through grade 12 students residing in the supervisory union

(3) Ways in which the supervisory union operates in a manner that maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of nonfinancial resources among the member districts

3450.14 Evidence that the district(s) making the proposal is/are striving for increased scale

3450.15 Evidence that the proposal ensures transparency and accountability

(1) For the district(s) making the proposal and for any other member districts of the supervisory union

(2) For the public at large

3450.16 Actions the district(s) making the proposal will take in order to continue to improve performance in connection with *each* of the Goals as required by Act 46, Sec. 9(a)(3)(C)

3450.17 If the proposal *includes a request for supervisory union assignment or reassignment*, in what ways will the assignment or reassignment afford increased efficiency or greater convenience and economy and facilitate prekindergarten through grade 12 curriculum planning and coordination?

3450.18 Any other data or analysis that the district(s) wishes to include

3460 Expiration of Rules

Unless otherwise amended by statute or rule, this Rule 3400 series regarding proposals for Alternative Structures under Act 46 (2015) shall expire and be of no force and effect two years after the day on which the Statewide Plan becomes operational.