

GUIDANCE:

Proposals by One or More Non-Merging Districts for an “Alternative Structure” Under Act 46 (2015)

July 29, 2016

I. Background

Act 46 of 2015 identifies five specific statewide education goals (the “Goals”) underlying the legislation’s governance provisions.¹ According to Act 46, the Goals are best met by a school district that is responsible for the education of its PK-12 students, is a supervisory district (*i.e.*, a single-district SU), has an ADM of at least 900, and is organized in one of the four most common structures (a “preferred, unified system”).² However, Act 46 recognizes that a preferred, unified system may not be “possible or the best model” to achieve the Goals in all regions of the State and, in these situations, an SU with multiple, member districts (an “alternative structure”) “can” meet the Goals, particularly if the SU manifests specific characteristics.³

Throughout Act 46, the law identifies an “alternative structure” as an *exception* to a preferred, unified system, which is the default.⁴

By November 30, 2017, the board(s) of a district (or group of districts) that will not be in a preferred, unified system by July 1, 2019 (a “non-merging district”) is required to perform three tasks: (1) to conduct a self-evaluation of the district’s current ability to meet or exceed each of the Goals; (2) to meet with the boards of other districts in and outside the SU to discuss ways to promote improvement relative to the Goals throughout the region; and (3) to submit proposals individually or jointly to merge or work together in some way – *i.e.*, proposals to be in an “alternative structure.”⁵

Act 46 requires the State Board of Education to develop and issue a mandatory statewide education governance plan by November 30, 2018 that, to the extent necessary to meet the Goals and to the extent “possible and practicable,” merges non-merging districts and clusters them into more unified systems when necessary. Development of the statewide plan includes “*consideration*” of proposals to be in an “alternative structure” that are submitted on or before November 30, 2017 by one or more non-merging districts.⁶

Act 46 created or incorporated three incentivized phases of merger, all of which rely on well-established processes that have been in statute for decades⁷ and all of which must meet additional, explicit criteria in Act 46, Act 153 (2010), and Act 156 (2012). Although Act 46 recognizes the possibility of “alternative structures” and includes some related requirements and guidance, the

¹ Act 46, Sec. 2; See also *Appendix A* to this Guidance

² Sec. 5(b)

³ Sec. 5(c)

⁴ See, e.g., Secs. 5(c), 8(b), and 10(a)

⁵ Sec. 9

⁶ Secs. 8 and 10 (emphasis added)

⁷ 16 VSA chapter 11 (§§ 701-724)

process by which a non-merging district or group of districts will propose an “alternative structure” lacks the specificity available for voluntary mergers. As a result, the State Board approved a motion at its June 21, 2016 meeting to “develop and adopt rules regarding the criteria and processes” for “consideration” of proposals for an “alternative structure” in the context of the final statewide education governance plan. As part of the same motion, the State Board approved the potential adoption of related guidelines for use by districts during the months-long rulemaking process.⁸

The future rules and this guidance document regarding “alternative structures” are intended both to assist districts to understand the proposal *process* and also to provide more detail regarding the *information* that a school board would need to present to support consideration of a proposal for an “alternative structure” in the context of the final statewide plan.

The following guidelines are grounded in the requirements and guidance provided in Act 46 and elsewhere in law, and reflect the State Board’s discussion, analysis, and recommendations made during its 2016 annual retreat.

II. Guidelines – Proposal by Non-Merging District(s) for an Alternative Structure

A. *At its simplest, the definition of an “alternative structure” is an SU “composed of multiple member districts, each with its separate school board.”*⁹

B. *If a school district is not going to be in a preferred, unified system by July 1, 2019, then the board of that school district is required to complete three tasks before November 30, 2017.*¹⁰

1. The board shall evaluate its current ability to meet or exceed each of the Goals
2. The board shall meet with the boards of one or more other districts to discuss ways to promote improvement throughout the region in connection with the Goals
3. The board - solely on behalf of its own district or jointly with the boards of other districts - shall submit a proposal to the Secretary of Education and the State Board of Education that:
 - a. Proposes to:
 - i. Retain its current governance structure; or
 - ii. Work with other districts to form a different governance structure; or
 - iii. Enter into another model of joint activity;
 - b. Demonstrates, “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
 - c. Identifies detailed actions the district proposes to take to continue to improve its performance in connection with each of the Goals.

⁸ The State Board intends to adopt related draft guidelines for study committees proposing a Phase 2 or Phase 3 incentivized merger at a time when the State Board’s review necessarily has acquired a more regional and statewide focus. The Board anticipates that it will review, and potentially approve, those guidelines at its August meeting.

⁹ Sec. 5(c); See also Footnote 8 above.

¹⁰ See generally Sec. 9; See also subsection “J. Timing” below

Non-merging districts that submit a proposal jointly do not need to be contiguous and do not need to be members of the same SU at the time they submit the proposal.

The long-standing statutory process for creation of union school districts requires formal establishment of a study committee, which consists of members of the participating school boards and may include additional appointees from the community. In contrast, Act 46 directs a district's school board to perform the three tasks listed above, although some or all of the information-gathering and analysis may have occurred during the initial work of a study committee.

C. Act 46 contemplates that a non-merging district's or group of districts' proposal for an "alternative structure" is considered only in connection with the development of the statewide governance plan.¹¹

When preparing the *preliminary* proposed statewide plan for presentation to the State Board, the Secretary's analysis must include (1) "*consideration*" of the proposals submitted by a non-merging district or group of districts for an "alternative structure" and (2) "*conversations*" with those and other districts.¹²

Act 46 requires the State Board to "review and analyze the Secretary's proposal" under the same standards required for the Secretary's proposal. The Act authorizes, but does not require, the Board to take testimony or ask for additional information from districts and supervisory unions. The State Board then "publish[es] ... its order merging and realigning districts and supervisory unions where necessary" either by approving the Secretary's proposal in its original form *or* in an amended form under the same standards required for the Secretary's proposal.¹³

Act 46, which created the concept of proposals for "alternative structures," does not include any other *process* by which a district or group of districts presents a proposal for an "alternative structure" or by which the proposal is reviewed.¹⁴

D. Nothing in Vermont law requires the Board to incorporate a non-merging district's proposal into the final statewide plan. Similarly, nothing requires that an alternative structure included within the final statewide plan is the same as a proposal presented by a non-merging district or group of districts.

[See subsection "C" above]

E. An "alternative structure" is an exception to the creation of a preferred, unified system (a supervisory district with an ADM of at least 900).

1. A preferred, unified system "may not be possible or the best model to achieve [the Goals] in all regions of the State. In these situations, [an "alternative structure"] can meet the [Goals], particularly if" the SU manifests specific, identified qualities.¹⁵

¹¹ See generally Secs. 8-10; See also subsection "*J. Timing*" below and *Appendix B* to this Guidance

¹² Sec. 10(a)(1) (emphasis added)

¹³ Sec. 10(b)

¹⁴ **Note:** This guidance document addresses a proposal for an "alternative structure" under Act 46, which can be distinguished from a request for an adjustment of SU boundaries pursuant to 16 V.S.A. § 261 and which is addressed briefly in subsection "*K. Adjustment of SU Boundaries*" below

¹⁵ Sec. 5(c)

2. The Secretary of Education is required to present to the State Board a proposed statewide education governance plan “that ... would move districts into the more sustainable, preferred model of governance” to the extent necessary to promote provision of educational opportunities designed to meet the Goals.

“If it is not possible or practicable” to merge some districts, where necessary, into the preferred, unified structure while also adhering to the protections for tuition-paying and operating districts; or otherwise meeting all aspects of the preferred, unified system:

- a. *“then the proposal may also include alternative governance structures as necessary”*
- b. *“provided that any proposed alternative governance structure shall be designed” to:*
 - i. “ensure adherence” to protections for tuition-paying and operating districts; and
 - ii. “promote” the Goals. ¹⁶

3. Act 46 also provides:

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 ... ¹⁷

F. When considered globally, points A-E above cumulatively suggest that a proposal by a non-merging district or group of districts for an “alternative proposal” – particularly if the proposal is to maintain the current structure of an existing SU – should be the final option, after all other opportunities for merger and collaboration have been considered and determined not to be possible or the best option for meeting the Goals in the region.

The State Board expects that all districts will conduct a robust evaluation of options before coming to the Board with *any* proposal – regardless of whether it is a merger proposal under 16 V.S.A. chapter 11 or is a proposal by a non-merging district or group of districts for an “alternative structure.”

G. When considered globally, points A-F above cumulatively suggest that the burden is on the non-merging district(s) to demonstrate due diligence and to provide sufficient, thoughtful evidence in support of a proposal to form an alternative structure.

If a non-merging district or group of districts proposes an “alternative structure” that it wishes considered in connection with the statewide education governance plan, then the State Board expects the district(s) to demonstrate the same due diligence and provide evidence of the same high level of analysis in support of the proposal for an “alternative structure” as do study committees that propose merger.

¹⁶ Sec. 10(a) (emphasis added)

¹⁷ Sec. 8(b)

H. A proposal is evaluated not just on its own merits, but also on the impact it may have on neighbors not included in the proposal.

As the more SU-centric perspective of Phase 1 voluntary mergers ends, the State Board's focus is becoming increasingly expansive – on both the regional and statewide levels.

I. Proposal by Non-Merging District(s) for an “Alternative Structure” – EXAMPLES OF REQUIRED ELEMENTS

In addition to this guidance document, the State Board has tasked the Agency of Education with writing rules that define how districts will do their due diligence and what data a district will need to provide to support a proposal for an “alternative structure.” These related rules regarding “alternative structures” will provide more detail than the guidance in this document, including indicators and potential sources of data. The State Board has requested that the Agency present the draft rules for review at the Board's August 2016 meeting.

1. Current, baseline data for each school district included in proposal (the “included district(s)”) – *e.g.*:
 - Operating / tuitioning structure
 - ADM
 - current / historic / trends
 - Enrollment data:
 - current / historic / trends
 - Socioeconomic / demographic data (FRL; ELL; and Special Ed/504)
 - current / historic / trends
2. Current ability of each included district independently to meet or exceed each of the Goals – *e.g.*:
 - Comprehensive data collected pursuant to 16 V.S.A. § 165 (EQS data)
 - Graduation rates
 - current / historic / trends
 - overall and disaggregated by subgroup (including FRL; ELL; and Special Ed/504)
 - Test scores (SBAC and FAEP)
 - current / historic / trends
 - overall and disaggregated by subgroup (including FRL; ELL; and Special Ed/504)
 - If elementary schools are operated:
 - subjects offered
 - # hours per week for each category for each grade (*e.g.*, math, science, foreign languages, art, music, physical education, etc.)
 - If secondary schools are operated:
 - subjects offered – and breadth and depth of offerings
 - Examples of shared programmatic and other nonfinancial resources with other districts
 - Examples of flexible management with other districts
 - Examples of economies of scale and efficiencies with other districts – *e.g.*: shared human services; common payroll system; joint contract for custodial services; etc.
 - Data on turnover of teachers and administrators

- Ratios (for each grade and each school operated by the district; both at the district-level and at the SU-level):
 - Student-to-teacher
 - Student-to-adult
 - Student-to-administrator
3. Conversations with districts in the region about improving the regional ability to meet or exceed each of the Goals (BOTH among included districts AND with districts not included in the proposal) – *e.g.*:
- What was done to explore options
 - With whom
 - When and for how long
 - Did discussions occur in open, warned meetings
 - Was the community involved
 - Were students involved
 - Minutes of proceedings
 - Reasons that there were no discussions (or were limited discussions) with a neighboring district
4. Description of districts in the region (BOTH the included districts AND districts not included in the proposal) – *e.g.*:
- What are the neighboring districts (“neighboring” does not necessarily mean contiguous, but should be based on a common-sense view of the region)
 - Operating / tuitioning structure of each (to extent not included in answers to #1 above)
 - Current and historic relationship among the districts, if any
 - Current and historic enrollment patterns – *e.g.*:
 - Students (inside and outside the included district(s)) enrolling in a school in a neighboring district
 - Tuition payment (by grade; current and historic)
 - Regional high school choice
 - If students are tuitioned, then:
 - In what schools do they enroll (by grade; current and historic)
 - Demographics (FRL; ELL; and Special Ed/504) of students from district enrolled in each school
 - If too small to report, then demographics of students from district enrolled in public schools and students enrolled in independent schools – categorized either by grade or by elementary/secondary
 - (provide data to extent it is available for districts not included in proposal)
 - Demographics (FRL; ELL; and Special Ed/504) of neighboring districts not included
 - Distances and quality of roads between schools
 - Transportation concerns
 - Especially related to current low equity of opportunities and/or concern about future diminishment of equity

5. The State Board of Education understands that an SU with “the smallest number of member school districts practicable” means that neighboring districts will merge into (i) unified union school districts of like governance structures, (ii) a union elementary school district, or (iii) a union high school district to the full extent current governance structures will permit.

If two or more included districts share the same operating/tuitioning structure (for some or all grades) but propose to remain as separate districts in an “alternative structure,” then the proposal must explain:

- What are the barriers to merger
- What evidence is there that the proposal is “the best means of meeting” each of the Goals in the region

6. Regarding neighboring districts not included in the proposal:

- For each district, what were the barriers to including the district in the proposal
- If one or more neighboring districts outside the proposal have the same operating / tuitioning structure as district(s) included in the proposal, then proposals must address:
 - What were the barriers to merger
 - What evidence is there that the proposal is “the best means of meeting” each of the Goals in the region

7. Act 46 instructs the State Board to “be mindful” of actions that would result in the geographic isolation of districts, “including the potential isolation of a district with low fiscal capacity or with a high percentage of students from economically deprived backgrounds.”¹⁸ Although this provision arises in the context of merger proposals, the State Board believes that the underlying policy concerns apply equally to proposals for “alternative structures” and creation of the statewide plan in general.

- Does the proposal result in the geographic isolation of any district(s) included in the proposal?
- Does the proposal result in the geographic isolation of any district(s) not included in the proposal?

8. In what ways will the included district(s) work with each other and other neighboring districts to promote improvement throughout the region in connection with each of the Goals – *e.g.*:

- One reason that a single-district SU with an ADM of more than 900 is the preferred system is that the school board is responsible for all students within the district. To the extent that the data provided in #2 reveals inequities and/or disparities among districts or among demographic subgroups, then how will the included districts work together to improve the inequities and/or disparities?
- In what ways do the included districts demonstrate that they consider themselves to be collectively responsible for the education of all prekindergarten through grade 12 students residing in the supervisory union?
- In what ways will the SU of which the included district(s) will be members operate in a manner that maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of nonfinancial resources among the member districts?
- What evidence is there that the included district(s) is/are striving for increased scale?

¹⁸ Sec. 8(a)

- What evidence is there that the proposal ensures transparency and accountability: ¹⁹
 - For the included district(s) and for any other member districts of the SU of which the included district(s) will be members?
 - For the public at large?

Including ensuring transparency and accountability in relation to the supervisory union budget

9. What detailed actions does the proposal state the included district(s) will take in order to *continue to improve* performance in connection with each of the Goals? ²⁰
10. If the proposal includes a request for SU 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? ²¹
11. *In what ways does the proposal demonstrate that a preferred, unified system “may not be possible or the best model to achieve” the Goals in the region* ²² (i.e., that “it is not possible or practicable” to merge some or all of the included district(s), where necessary, into a preferred, unified structure while also adhering to the protections for tuition-paying and operating districts; or otherwise meeting all aspects of the preferred, unified system ²³)?
12. *In what ways does the proposal demonstrate that it “is the best means of meeting the [Goals] in [that] particular region?”* ²⁴

J. Timing: Proposal by a Non-Merging District or Districts for an “Alternative Structure”

1. When can non-merging district(s) submit a proposal for an “alternative structure”?

At any time on or before November 30, 2017.

2. When will the proposal be reviewed and considered?

Vermont law contemplates that a non-merging district’s or group of districts’ proposal for an “alternative structure” will be considered only in connection with the development of the statewide governance plan. Act 46 requires the Secretary of Education to include “consideration” of the proposal and conversations with those and other districts when s/he develops the proposed statewide plan on or before June 1, 2018. Act 46 then requires the State Board of Education to “review and analyze” the Secretary’s proposal and permits the Board to take testimony or ask for additional information from districts and supervisory unions.

For more details, see the guidance above (particularly in subsections “C” through “F”) and the outline in Appendix B to this Guidance.

K. Adjustment of SU Boundaries Pursuant to 16 VSA § 261(b)

1. When can district(s) submit a request to adjust SU boundaries?

At any time after meeting the requirements in 16 VSA § 261(b) for a vote of the electorate.

¹⁹ Sec. 8(b)(2)

²⁰ Sec. 9(a)(3)(C)

²¹ 16 VSA § 261(a)

²² Sec. 5(c)

²³ Sec. 10(a)

²⁴ Sec. 8(b)

2. When will the request be reviewed, considered, and acted upon?

Shortly after the State Board receives the request, the Board will review the request, will hear testimony, and may ask for additional information.

The State Board may choose to take action at that time, especially if adjustment of SU boundaries will “assist the requesting districts to realign their governance structures into a unified union school district” per 16 V.S.A. § 261(b)(2).

Alternatively, the State Board may choose to delay action until a later date, especially if the Board is concerned that adjustment of the SU boundaries may preclude future action in the region or geographically isolate a district.

Appendix A

The Goals

Act 46 declares that the “State shall provide educational opportunities through *sustainable governance structures*” by July 1, 2019. [Sec. 5(a); *emphasis added*] In Act 46, all actions intended to “move the State toward sustainable models of education governance” are explicitly predicated upon the Goals. It has been through the lens of the Goals that the State Board has determined whether a merger proposal is in the “best interest of the State, the students, and the school districts” pursuant to 16 V.S.A. § 706c(b) -- and it is in reference to the Goals that a non-merging district must create and the State Board will consider proposals for “alternative structures” in connection with developing the statewide education plan.

As set forth in Act 46, the Goals are:

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.

In addition, Act 46 instructs the State Board to “be mindful” of actions that would result in the geographic isolation of districts, “including the potential isolation of a district with low fiscal capacity or with a high percentage of students from economically deprived backgrounds.” [Sec. 8(a)(2)] Act 46 authorizes the State Board to deny approval to a merger proposal “that would geographically isolate a district that would not be an appropriate member of another sustainable governance structure in the region.” [Id.] Although this provision arises in the context of merger proposals, the underlying policy concerns apply equally to proposals for “alternative structures” and creation of the statewide plan in general.

Appendix B

Preparing and Issuing the Statewide Education Governance Plan

Act 46 incorporated and expanded upon existing State incentive programs (Act 153 (2010) and Act 156 (2012)) designed to encourage the locally-designed creation of preferred, unified systems. Recognizing that nine years of incentivized merger programs might not result in “sustainable governance structures” in all regions of the State by July 1, 2019, Act 46 requires the creation and issuance of a mandatory statewide education governance plan by November 30, 2018 through a two-step process.

1. Secretary’s proposed plan [all quotes in “1” are from Sec. 10(a); emphasis added]

By June 1, 2018, the Secretary of Education is required to propose a statewide education governance plan:

“that ... *would move districts into the more sustainable, preferred model of governance*”

“to the extent necessary to promote the purpose [quoted below]”

a. Exception:

- i. “If it is not possible or practicable” to merge “some districts, where necessary, into” the preferred, unified structure while also:
 - 1) “adher[ing] to” the protections for tuition-paying and operating districts; or
 - 2) “otherwise” meeting all aspects of a preferred, unified system identified in Sec. 5(b)
- ii. “then the proposal may also include alternative governance structures as necessary” such as:
 - 1) “a supervisory union with member districts”
 - 2) “a unified union school district with a smaller average daily membership”
- iii. “provided that any proposed alternative governance structure shall be designed” to:
 - 1) “ensure adherence to protections for tuition-paying and operating districts
 - 2) “promote” the Goals

b. Purpose:

- i. To “provide educational opportunities through sustainable governance structures designed to meet the [Goals] pursuant to one of the models described in Sec. 5” – *i.e.*, either the preferred, unified system or an “alternative structure”

c. Process:

- i. “Review” of the “governance structures ... as they will exist, or are anticipated to exist, on July 1, 2019”
- ii. “Consideration” of:
 - 1) proposals submitted by a non-merging district or group of districts for an “alternative structure”
 - 2) “conversations with those and other districts”

2. State Board’s final statewide education plan [all quotes in “2” are from Secs. 8(b) or 10(b); emphasis added]

By November 30, 2018, the State Board of Education is required to “publish ... its order merging and realigning districts and supervisory unions where necessary.”

a. Final Plan:

- i. State Board shall approve the Secretary’s proposal either:
 - 1) in its original form; or
 - 2) in an amended form that “adheres” to the provisions required for the Secretary’s proposal (see above)

b. Process: The State Board

- i. Shall “review and analyze the Secretary’s proposal”
 - 1) Under the same provisions required for the Secretary’s proposal (see above)

- ii. May take testimony or ask for additional information from districts and supervisory unions
- c. Additional Considerations for Approval of an “Alternative Structure”:
“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, including transparency and accountability in relation to the supervisory union budget, which may include a process by which the electorate votes directly whether to approve the proposed supervisory union budget.”