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Operation of Schools and Tuition Payment

1. Does Act 46 restrict or eliminate my school district's ability to educate its students ...

a. ... by paying tuition for some or all grades?

No. Act 46 does not modify, amend, or repeal *any* existing statute regarding a district's ability to educate its students by paying tuition for some or all grades.

b. ... by operating a school for some or all grades?

No. Act 46 does not modify, amend, or repeal *any* existing statute regarding a district's ability to educate its students by operating a school for some or all grades.

2. Under Act 46, who decides whether a school district will educate its students by operating a school or by paying tuition?

Only the voters of a district can decide whether the district will operate a school or pay tuition for some or all grades.

Act 46 does nothing to modify, amend, or repeal any existing statute regarding the decision to operate a school or pay tuition.

3. Under Act 46, if a district does not choose to merge with another district, do the local voters need to do anything if they want to continue to educate their students ...

a. ... by paying tuition for some or all grades?

No. If a district that pays tuition for some or all grades does not choose to merge, then it will continue to pay tuition for those grades. Current statute, which is unchanged by Act 46, requires action by the voters of this district only if the voters want to change their current practice.

b. ... by operating a school for some or all grades?

No. If a district that operates a school for some or all grades does not choose to merge, then it will continue to operate a school for those grades. Current statute, which is unchanged by Act 46, requires action by the voters of this district only if the voters want to change their current practice.

4. Is there anything in Act 46 that requires a district that ...

a. ... pays tuition for some or all grades to merge with a district that operates a school for some or all of those grades?

No. Nothing in Act 46 requires a tuitioning district to merge with an operating district.

b. ... operates a school to merge with a district that pays tuition for some or all grades for some or all of those grades?

No. Nothing in Act 46 requires an operating district to merge with a tuitioning district.

5. My district pays tuition for students in grades ____ through _____. If the voters of my district decide to merge with another district that operates a public school for some or all of the grades for which we pay tuition, then ...

a. ... can the newly merged district require students who live in the other merging district to attend the district-operated school, but pay tuition for all of the students in the same grade who live in my town?

No. A school district, no matter how many districts have merged to form it, is a single municipality, with one governing body, one budget, one group of voters, and one homestead tax rate.

As a practical matter, it would be difficult for a district to provide different educational opportunities to district students in the same grade based upon their residence.

Nothing in current law (statute, Act 46, or otherwise) authorizes such an arrangement. For detailed legal analysis and citations, see the Agency's 10-page October 19, 2015 [Memo to State Board of Education](#).

But see the answer to question #6 below regarding *grandfathering* students whose tuition is being paid in the year prior to merger.

Also note that under current law, (1) a student residing in an operating district may enroll in a public school operated by another district (16 V.S.A. § 822a - Public High School Choice) and (2) the school board of a district that operates a high school has the discretion, on a case-by-case basis, to pay tuition to a public or approved independent school on behalf of an individual high school student at the student's request (16 V.S.A. § 822(c)).

b. ... can the newly merged district simultaneously (1) operate a school and (2) pay tuition for every student in one or more of the grades operated who wishes to attend a different school – as long as the district offers the same option to all students in the grade?

No. Nothing in current law (statute, Act 46, or otherwise) authorizes such an arrangement.

6. [Grandfathering] My district pays tuition for students in grades ____ through _____. If the voters of my district decide to merge with another district that operates a school for some or all of the grades for which we pay tuition, and if the voters of my district also agree that the newly merged district will not pay tuition for some or all of those grades, then ...

... can the newly merged district continue to pay the tuition for those specific students for whom my district paid tuition in the year prior to the merger?

Yes. The articles of agreement voted upon by each of the potentially merging districts can include a provision that would “grandfather” each student for whom the tuition-paying district is paying tuition at the time of merger.

For example, if prior to merger your district pays tuition for all 9th through 12th grade students, then the articles of agreement could agree that the newly merged district will pay tuition through 12th grade for the specific students who were in 9th, 10th, or 11th grade in the year prior to merger and for whom your district paid tuition in that year.

7. My district pays tuition for students in grades ____ through _____. If the voters of my district decide to merge with another district that operates a public school for some or all of the grades for which we pay tuition, then does Act 46 require us to give up the ability to pay tuition for those grades?

- Nothing in Act 46 requires a district to stop paying tuition on behalf of resident students – or to stop operating a school for any grade or grades. Only the voters of a district can make that decision.
- *If*, however, the local voters of a tuition-paying district voluntarily choose to merge with a district that operates a school for one or more of the same grades, then the new district must either operate a grade or to pay tuition for that grade, but not do both for the same grade. (See question #5 above) The grades operated or tuitioned will be included in the Articles of Agreement that the local voters of each merging district will either approve or disapprove.
- As a result, *if* a tuition-paying district *voluntarily chooses* to merge with a district that operates the same grade or grades, then *one or both* of the districts will need to change the manner in which students in that grade or grades are educated.
 - It is as likely that the voters of the operating district would agree to cease operation of one or more grades in the newly merged district as it is that the voters in the tuitioning district might agree to have all students in one or more grades educated in the district-operated school.
- The merger study committee (made up of representatives from the potentially merging districts per 16 V.S.A. ch. 11) develops Articles of Agreement for the proposed merged district. 16 V.S.A. § 706b(b)(3) requires

the Articles to identify the grades the proposed merged district will operate (if any) and the grades for which it will pay tuition (if any).

- The merger will occur, and the Articles of Agreement will become effective, only if a majority of the voters in each of the districts identified as “necessary” to the merger votes in favor of the merger / Articles. See 16 V.S.A. § 706g.
- Only the voters of an existing district can decide whether to agree to change the manner in which the students in one or more grades are educated.

8. Can the members of my school board (or its chair) require our district to ...

- a. ... stop paying tuition for one or more grades?**
- b. ... stop operating a school for one or more grades?**
- c. ... merge with a district that operates grades for which my district pays tuition?**
- d. ... merge with a district that pays tuition for students in grades for which my district operates a school?**

No. Only the local voters can make these decisions. See the answers to questions above for more detail.

9. My district pays tuition for students in grades ____ through _____. Is my district eligible to participate in the accelerated merger process?

Yes – it is possible for your district to participate in the accelerated merger process if the newly merged district (1) complies with guidance given in the questions above (particularly #5a, #5b, and #7) and (2) meets the criteria set forth in Act 46, Sec. 6, including the goals in Sec. 2.

10. The accelerated merger process doesn’t make sense in my SU because some of the districts in our SU operate schools for some or all grades and other districts pay tuition for some or all of those same grades. Can our SU / or my district be reimbursed for study costs and/or receive incentives and transitional assistance through some other process?

Yes – it is possible for your district to be reimbursed for study costs or receive incentives and transitional assistance, or both, even if it does not participate in the accelerated merger process.

Act 46 creates a multi-year process that provides *three phases of incentives* for communities that voluntarily merge into the most common governance models, including a supervisory union with multiple merged member districts. *It is possible for a district that chooses to pay tuition for some or all grades to participate in any one of the three phases of merger without being forced to stop paying tuition for the students in one or more grades.* The three phases are:

Phase 1 – Accelerated Mergers: Phase 1 provides incentives to a new district that is formed by the merger of all districts within a single supervisory union and that meets certain additional criteria, including becoming operational as a supervisory district by July 1, 2017. (Act 46, Sec. 6)

Phase 2 – REDs and RED Variations: Phase 2 incorporates the processes and incentives for REDS (Act 153 of 2010) and its three variations, including a “Side-by-Side Merger” (Act 156 of 2012). Consequently, Phase 2 provides incentives for governance changes into a supervisory union with multiple merged member districts – an “alternative structure” as envisioned in Act 46 (Sec. 5(c)). Incentives in Phase 2 are nearly identical to those in Phase 1.

Phase 3 – Later “Conventional” Mergers: Phase 3 provides incentives to a new district formed by the merger of two or more districts that meets certain additional criteria, including being operational as a supervisory district by July 1, 2109. (Act 46, Sec. 7)

Neither Phase 2 nor 3 requires that the merging districts originally belong to the same SU or that they be contiguous.

See the links under the “Grants” heading on the webpage for Governance / Guidance for more information about reimbursement of study committee costs.

Note: This document is provided for guidance only and does not have the force of law. See the underlying statutes and/or Acts for more detail.