

MEMORANDUM

TO: State Board of Education
FROM: Donna Russo-Savage
SUBJECT: Stowe's Petition to Withdraw from the Lamoille South Unified Union School District
DATE: June 30, 2022

Background

In December 2017, the Elmore-Morristown Unified Union School District and the Stowe School District submitted a joint report to the Secretary of Education that evaluated their then-current governance structure and proposed an "alternative governance structure" pursuant to Act 46, Sec. 9 ("Section 9 proposal"). The State Board's November 2018 order issued pursuant to Act 46, Sec. 10 declined to follow the Section 9 proposal and, instead, merged the two districts to create the Lamoille South Unified Union School District ("LSUUSD"). The LSUUSD became fully operational on July 1, 2019.

On May 11, 2021, voters residing in Stowe voted to withdraw from the LSUUSD. Voters residing in both Elmore and Morristown voted on December 7, 2021 to ratify the withdrawal. The votes were warned as proceeding pursuant to the provisions of 16 V.S.A. § 724 then in effect ("Former § 724"), which governed withdrawal from a unified union school district.

Throughout 2021, the Agency opined that, until the Legislature clarified its intent, the plain language of the Former § 724 and the absence of a withdrawal provision in Act 46 would prohibit a member of a State Board-created UUSD from pursuing withdrawal under the Former § 724.

Chair Olsen requested an opinion from the Vermont Attorney General. The Attorney General declined to issue a formal opinion, but in a letter dated February 24, 2022 summarizing and assessing then-current law, Chief Assistant Attorney General London concluded:

This is an area of law under active legislative debate. Following that process, the Board may receive clarity regarding its charge. At this time, based on the information available to date, a court is likely to find that the Board does not have authority to apply the withdrawal process set forth in [the Former § 724] to a unified union school district formed involuntarily pursuant to Acts 46 and 49.

The Governor signed Act 176 (H. 727) into law on June 7, 2022, and it went into effect on that date. Section 2 of Act 176 repealed the Former § 724. Section 3 enacted 16 V.S.A. § 724 (“New § 724”) to replace the Former § 724. Section 5 of Act 176 explicitly addressed the applicability of the Former § 724 to State Board-created unified union school districts.

Act 176, Section 5, and Former § 724

Subsection 5(a) of Act 176 states in part that if certain conditions are met, then:

For purposes of this [Section 5] and notwithstanding any provision of law to the contrary, the provisions of [the Former § 724] are deemed to authorize withdrawal from a unified union school district created by [the State Board’s November 2018 Order].

In addition, if the conditions are met, then a withdrawal petition proceeds pursuant to the Former § 724, although Section 5 includes additional details addressing some of the issues identified as existing in the former statute.

The withdrawal initiated by the May 11, 2021 vote in Stowe meets each of the stated conditions in subsection 5(a). Therefore, Act 176, Section 5 – and, by its terms, the Former § 724 – apply to this matter.

Report and Plan

The Former § 724 did not explicitly require voters to analyze the effects of the proposed withdrawal or to plan to assume sole responsibility for the education of resident students.

Section 5, however, assumes that both the analysis and the planning have occurred and requires the self-selected representatives of Stowe and the board of the LSUUSD to share that information with the State Board prior to the Board’s consideration of the proposed withdrawal.

First, subdivision 5(b)(1) requires them to submit a written “report explaining the ways in which the current plan of the petitioning town and the union district for operation after withdrawal conforms to or differs from the Section 9 proposal.”

Second, subdivision 5(b)(2) requires the self-selected representatives and the LSUUSD board to submit

[a written] plan, including a timeline, identifying the actions the petitioning town and the union district have taken and will take to transition to the proposed structure and to ensure that, as of an identified operational date, the proposed new school district will be prepared to assume sole responsibility for the education of its students in prekindergarten through grade 12 in a manner that will meet educational quality standards as required by 16 V.S.A. § 165, including the actions necessary to transition to the proposed method by which supervisory union services would be provided. At a minimum, the plan and timeline should include the actions identified in subsection (d) of [Section 5].

“[R]equired necessary actions” in subsection 5(d) include “at a minimum”:

- (1) election of initial school board members by the voters of the new school district, ... whose sole responsibility until the new school district’s operational date shall be to prepare for the district to assume sole responsibility for the education of resident students on that date;
- (2) negotiation of the proposed financial terms of withdrawal by the board of the new school district and the board of the union district in order to comply with the requirements of the [Former] § 724(c);
- (3) approval by the voters of each town within the union district of the negotiated proposed financial terms of withdrawal in order to comply with the requirements of the [Former] § 724(c);
- (4) preparation of a proposed budget by the board of the new school district for the fiscal year beginning on the district’s operational date, together with presentation to and approval by the district’s voters prior to that date;
- (5) preparation for the provision of supervisory union services to the new school district and, if applicable, for the transition of the union school district from a supervisory district structure to a supervisory union structure; and
- (6) all other actions necessary to transition from one school district to two districts and, if applicable, to transition from a supervisory district structure to a supervisory union structure, including all actions necessary to address the collectively bargained rights of employees of the current employing entity.¹

State Board Review

The Former § 724 required that:

if the State Board finds that the students in the withdrawing town or city will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs, the State Board shall declare the membership of the withdrawing town or city to be at an end as of July 1 immediately following or as soon thereafter as the obligations of the withdrawing district have been paid to, or an agreement made with, the union school district in an amount satisfactory to the electorate of each of the other towns and cities within the unified union school district.

Act 176, subdivision 5(c)(1) additionally requires the State Board to “consider” the report and plan required by subdivision 5(b)(2) and provide the self-selected representatives and the

¹ Act 176, Sec. 11, creates a new 16 V.S.A. § 1804 governing employee transition to the newly created school district, including the creation or assumption of collectively bargained agreements.

UUSD board “an opportunity to be heard.” Subdivision 5(c)(1) also authorizes the Board to “take testimony from other individuals and entities” if, “in its discretion,” it chooses to do so.

In addition, subdivision 5(c)(2) requires the State Board to:

determine if it is likely or unlikely the proposed new school district, on the proposed operational date, will be prepared to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and also whether it is likely or unlikely that supervisory union services will be available to both the proposed new school district and the union district on the operational date.

If the State Board determines that preparedness is unlikely, then subdivision 5(c)(2) further requires the Board to “issue a written advisory statement detailing the factors underlying its conclusion” and post the advisory statement on its website. Subsection (5)(e) requires the Board to “electronically transmit the advisory statement to the board of the new school district upon its election,” which initiates several required and optional actions by the new school district’s board.

Finally, regardless of whether the State Board determines that preparedness is likely or unlikely, subdivision 5(c)(2) requires the Board to:

(A) approve the withdrawal proposal;

(B) approve any motion necessary for the withdrawal process to proceed pursuant to subsection (d) of [Section. 5], including a motion to create a new school district as of the date of the motion in order to enable the election of members to the board of the proposed new school district, negotiation and voter approval of a withdrawal agreement pursuant to the [Former] § 724(c), and preparation to assume full responsibility for the education of resident students on the operational date;

(C) determine or set a schedule for determining the manner in which supervisory union services will be provided to the proposed new school district and, if appropriate, the union district to be effective on the proposed new school district’s operational date; and

(D) make any other findings or declarations and approve any other motions that are related and necessary to the withdrawal proposal

Draft Motions

When the State Board concludes its consideration of the report and plan and has taken all of the testimony it needs in order to make both (i) a finding of compliance with the school attendance criterion in the Former § 724 and also (ii) a determination of the likelihood of preparedness pursuant to Act 176, Section 5, then the following draft motions might be helpful starting points for Board action.

1. Preparedness

I move that:

Pursuant to subdivision 5(c)(2) of Act 176 of 2022, and upon consideration of both the written report and plan and also the oral testimony of the self-selected representatives of Stowe and the board of the Lamoille South Unified Union School District, the State Board of Education **DETERMINES** that:

- a) It is **likely/unlikely** that the proposed new Stowe School District “will be prepared to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165” on the proposed operational date of July 1, 2023.
- b) It is **likely/unlikely** that “supervisory union services will be available to both the proposed new Stowe School District and the Lamoille South Unified Union School District” on the proposed operational date of July 1, 2023.
- c) **ONLY if preparedness is deemed UNlikely under (a) and/or (b):** Preparedness is unlikely based on the factors to be detailed in a written advisory statement, including _____, _____, and _____. The Board authorizes and directs _____ to write the statement on behalf of the Board and **[to present it to the Board on _____, 2022 for review and approval] OR [to publish it pursuant to subsections 5(c) and (e) of Act 176].**

2. Approve Withdrawal, Create New District, and Take Any Other Necessary Action

I move that:

1. Pursuant to 16 V.S.A. § 724 as it existed when the self-selected representatives of Stowe initiated the withdrawal action (“Former § 724”), the State Board of Education **FINDS** that if it reconstitutes the Stowe School District for prekindergarten through grade 12 effective on July 1, 2023, the students living in Stowe “will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs” in the 2023-2024 academic year, including rules related to education quality standards and to other state and federal laws.
2. Pursuant to the Former § 724 and to subsection (5)(c) of Act 176 of 2022, and upon consideration of both the written report and plan and also the oral testimony of the self-selected representatives of Stowe and the board of the Lamoille South Unified Union School District submitted pursuant to subsection 5(b) of Act 176, the State Board of Education:
 - a) **APPROVES** the request of the Stowe voters to withdraw from the Lamoille South Unified Union School District (“LSUUSD”).
 - b) **DECLARES** that the withdrawal of Stowe from the LSUUSD shall be fully effective on **July 1, 2023**.
 - c) **DECLARES:**
 - I. That the Stowe School District is hereby reconstituted as a prekindergarten through grade 12 school district.

- II. That the Stowe School District shall assume sole responsibility for the education of its resident students in prekindergarten through grade 12 on **July 1, 2023** and that, until such time, the LSUUSD shall continue to be responsible for the education of all students residing in Stowe.
- III. That, between **July 20, 2022** and **July 1, 2023**, the Stowe School District shall exist exclusively for the purpose of taking all steps necessary for the district to assume sole responsibility for the education of Stowe students in a manner that meets education quality standards and all other state and federal laws on July 1, 2023, including:
 - A. **Election of School Board Members.** The Secretary of State calls a special election at which the Stowe School District voters elect school board members pursuant to 16 V.S.A. § 424(c).
 - B. **Negotiation of Financial Agreement.** The Stowe School Board and the LSUUSD Board negotiate and finalize the proposed financial details of withdrawal pursuant to the Former § 724(c).
 - C. **Approval of Financial Agreement.** The voters residing in *each non-withdrawing* town within the LSUUSD vote to approve the negotiated financial arrangements pursuant to the Former § 724(c).
 - D. **Budget for Fiscal Year 2024.** The Stowe School Board prepares a proposed Fiscal Year 2024 budget, for the district’s first year of operations, and the voters of the district approve a budget for that year.
 - E. **Other Transitional Activities.** The Stowe School Board takes all other actions necessary to transition to full operations on July 1, 2023, including any actions pursuant to 16 V.S.A. § 1804 or otherwise that are necessary to address the collectively bargained rights of employees of the LSUUSD, the former employing entity.

3. Continuation of the LSUUSD Following Stowe’s Withdrawal

The Former § 724 required the Board to determine “whether it is in the best interests of the State, the students, and the school districts remaining in the [UUSD] that the [UUSD] continue to exist.” The State Board must then either (1) affirm continuation of the LSUUSD despite Stowe’s withdrawal or (2) dissolve the LSUUSD school district and declare the remaining towns within it (Elmore and Morristown) to be reconstituted as individual town school districts.

If the State Board determines that continuation of the LSUUSD is in the best interests of the State, the students, and the involved school districts, then the following draft motion can be used as a template.

I move that:

Pursuant to 16 V.S.A. § 724(c) as it existed when the self-selected representatives of Stowe initiated the withdrawal action and Act 176, Section 5, of 2022:

- a) The State Board of Education **FINDS** that “it is in the best interests of the State, the students, and the school districts remaining in the unified union school

district that the [Lamoille South Unified Union School District] continue to exist,”
and

- b) The State Board of Education **DECLARES** that “the [Lamoille South Unified Union School District] shall continue to exist despite the withdrawal of [Stowe as a] member.”

Alternatively, the Board may wish to invite the LSUUSD to an upcoming meeting to discuss whether “it is in the best interests of the State, the students, and the school districts remaining in the unified union school district that the [LSUUSD] continue to exist” despite the withdrawal of Stowe.

When the State Board declares either that the LSUUSD will continue with two member towns or that the two former town school districts are reconstituted, the Agency will prepare a certification document for the Chair to execute and file with the Secretary of State, the town clerk of Stowe, and the elected clerk of the LSUUSD as required by the Former § 724.

4. Supervisory Union Services

The State Board must determine the manner in which supervisory union services, including the provision of special education services, will be provided to the newly-created Stowe School District and the LSUUSD (or the reconstituted Elmore and Morristown School Districts).

If the State Board agrees with the joint recommendation of the self-selected representatives of Stowe and the board of the LSUUSD that a multi-district supervisory union should provide supervisory union services to the districts, then the following draft could serve as a template for the motion.

Please note that this would be the first new supervisory union created by the State Board in many years. Although there may be details requiring State Board action, the Agency has not identified any such details and the draft is purposefully simple, with the understanding that the parties can raise any issues needing State Board attention at a later date.

I move:

1. That, pursuant to 16 V.S.A. § 261, the State Board of Education hereby creates a new supervisory union, the Lamoille South Supervisory Union, to be an “administrative, planning, and educational service unit” pursuant to 16 V.S.A. § 11, with the Lamoille South Unified Union School District (Elmore and Morristown) and the Stowe School District as member districts, to be fully operational on **July 1, 2023**;
2. That, between **July 20, 2022** and **July 1, 2023**, the supervisory union and its board members, once legally appointed, shall exist for the purpose of preparing for the date of full operations; and
3. That on **July 1, 2023** the Lamoille South Unified Union School District shall cease to be a supervisory district (i.e., cease to provide its own supervisory union services).

If the State Board disagrees with the joint recommendation of the self-selected representatives of Stowe and the board of the LSUUSD, then the Agency can assist with any necessary motions.