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## **Post-Merger-Vote Tips: FAQs – Unified Boards and Boards of Merging Districts**

### **Purpose**

These periodic tips will serve as a resource for supervisory union administrators and staff serving districts that are merging as a result of both Act 46 of 2015 and earlier, incorporated legislation.

It is intended as a working document. *We welcome suggestions for additions and corrections* as supervisory unions and newly unified districts transition to full operations.

### **Notice**

Not all of this information will apply to every scenario. For example, a supervisory union that is becoming a supervisory district will perform tasks that are different from one that will maintain or expand its supervisory union structure. There also may be variations based on how quickly the new district will become fully operational after the vote.

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### **Thank you**

Some of the information included in these tips came from business managers, administrators and educators the field. We thank them for their help and guidance. If there is something you would like to see included in the tips, please contact the AOE's Public Information Officer, Haley Dover, at [haley.dover@vermont.gov](mailto:haley.dover@vermont.gov).

## Contents

Purpose.....	1
Notice.....	1
Contact Information.....	1
Thank you .....	1
Unfilled Seats, Write-In Candidates; etc.....	3
1. <i>Merging District’s Board – Expiration of Terms for / Vacancy in</i> .....	3
2. <i>Initial UUSD Board – Write-In Candidates</i> .....	4
3. <i>Initial UUSD Board – Unfilled Seat</i> .....	4
UUSD Boards – Duties .....	5
4. UUSD Board – Assumption of Duties.....	5
5. UUSD Board -- Duties During the Transitional Period .....	5
Merging Districts – Duties and Dissolution.....	6
6. Merging Districts – Annual Meeting Before the UUSD is Fully Operational .....	6
7. Merging Districts – Board Activity After UUSD is Fully Operational .....	6
8. Merging Districts - Dissolution.....	7
Budgets – Merging Districts and First Year of UUSD .....	8
Clerks: District Clerks versus Board Clerks .....	8
Electronic Distribution of Annual Report and Proposed Budget .....	8

# FAQs – Unified Boards and Boards of Merging Districts

For simplicity:

- UUSD = the newly merged unified union school district (or the MUUSD)
- Merging Districts= the town school districts and any union elementary or high school districts that are merging to form the UUSD

## Unfilled Seats, Write-In Candidates; etc.

### 1. *Merging District's Board – Expiration of Terms for / Vacancy in*

Question: The term of one or more board members of a Merging District expires on town meeting day 201~~X~~ – several months prior to the day on which the UUSD is fully operational. The board of the Merging District is legally responsible to be fully able to act during those months (and potentially for several months after). How are those expired board positions filled?

Response: The Merging District's board is legally responsible to be fully able to act until the day on which the UUSD is fully operational (and potentially for several months after).

If the term of one or more board members of Merging District expires on a town meeting day preceding the day on which the UUSD is fully operational – **then board members can and should be elected to fill the vacant seat(s) on the board of the Merging District(s) for a term that would last until the dissolution of the Merging District.**

**You should consult with your attorney or with other experts in municipal law for the precise wording of the Warning.**

Town School District: If no-one runs to fill the expiring terms on the board of a town school district, then 16 V.S.A. § 424(a) directs a town school district *board* to appoint a person to fill a vacancy:

(a) Except as otherwise provided for a school district operating under a charter, within 30 days of the creation of the vacancy, the school board shall, by majority vote of those present and voting, appoint a qualified person to fill a vacancy in the town school board or a vacancy in the position of town school district treasurer in towns in which the town school district treasurer is elected separately from the town treasurer until an election at a special or annual meeting is held. A record thereof shall be made in the office of the town clerk.

(subsection (b) addresses appointments if there are vacancies in a majority of the board seats and subsection (c) address when there are no remaining board members)

Union Elementary/High School District: If the expiring seat is on the board of a union elementary or high school district, however, then 16 V.S.A. § 706**(b)** addresses the way in which vacancies are filled:

(1) If the member represented a member school district, the clerk shall immediately notify the school board of the member district. Within 30 days of the receipt of that notice, the school board shall appoint a person who is otherwise eligible to serve as a director from that district to fill the vacancy until an election at a special or annual district meeting is held.

(2) If the member represented a town that does not have a school board, the clerk shall immediately notify the selectboard of the town. Within 30 days of the receipt of that notice, the selectboard shall appoint a person who is otherwise eligible to serve as a director from that district to fill the vacancy until an election at a special or annual district meeting is held.

(3) If the member was elected at large to represent the entire union district, the union school board shall, within 30 days of the creation of the vacancy, appoint a person who is otherwise eligible to serve as a director to fill the vacancy until an election at a special or annual district meeting is held.

(4) If there are vacancies in a majority of the members of the board of directors at the same time, the remaining director or directors are authorized to draw orders for payment of continuing obligations and necessary expenses until a majority of the vacancies is filled. If there are no directors in office, the Secretary of State shall appoint and authorize the union school district clerk or other qualified person to draw orders for payment of continuing obligations and necessary expenses until a majority of the vacancies is filled.

## **2. Initial UUSD Board – Write-In Candidates**

Pursuant to 17 V.S.A. § 2682a, a write-in candidate is elected only if s/he receives “at least 30 votes or the votes of one percent of the registered voters in the municipality, whichever is less.”

Pursuant to the Secretary of State’s Office: If the board member seat is fully at-large, then the “municipality” is the entire new UUSD. In addition, if the write-in candidate is for a “hybrid at-large position, there is some argument that the 1% could be calculated from solely the ... checklist [of the town to which the seat is allocated] in the same way that the petition signature requirement is only based on the town that the hybrid at-large candidate is a resident of.”

## **3. Initial UUSD Board – Unfilled Seat**

Question: How are individual seats on the initial UUSD Board filled if no one runs for the seat and there are an insufficient number of write-in votes?

Response:

Under the Town-by-Town model of proportionality: See 16 V.S.A. § 706l(b)(2) quoted above in #1. Creation of a UUSD extinguishes all school districts within it, so there is no town school board in a UUSD. Subdivision 706l(b)(2) requires the UUSD board to ask the selectboard to appoint a person to serve on the board until a new member is elected at the UUSD's annual or special meeting.

*{The Legislature has approved a one-year amendment that would permit the new UUSD board to appoint the member, in consultation with the local school board. The one-year limit on the amendment would be imposed with the expectation that interested entities will discuss a permanent resolution of this issue that the Legislature could enact during its 2018 session.}*

Under the Fully-At-Large model: See 16 V.S.A. § 706l(b)(3) quoted above in #1.

Under the "Hybrid" model: An argument could be made that either of these two methods apply to the "Hybrid" model. In light of other responses provided by the Secretary of State (see above), it is likely that the Town-by-Town approach applies to an empty "hybrid" seat.

## **UUSD Boards – Duties**

### **4. UUSD Board – Assumption of Duties**

16 V.S.A. § 706g provides that the new UUSD becomes a full legal entity as soon as the final certified merger votes are recorded with the Secretary of State (generally about 45 days after the merger vote).

The initial UUSD Board members are sworn in and able to begin their duties at the organizational meeting, which occurs about 45 days after the district becomes a legal entity.

Although the Board members may be eager to begin discussing board business as soon as the merger vote is final, there could be serious questions about any decisions or direction they provided before they have been legally constituted at the organizational meeting.

### **5. UUSD Board – Duties During the Transitional Period**

Questions: The Articles provide that the new UUSD will become fully operational several months (or even more than a year) after the merger vote.

- What if anything can/must the UUSD board do during that transitional period?
- What if anything can/must the boards of the Merging Districts do?

Response: 16 V.S.A. § 706g provides that the new UUSD becomes a full legal entity as soon as the final certified merger votes are recorded with the Secretary of State

(generally about 45 days after the merger vote), even if the UUSD won't assume full responsibility for operations until many months later. As a result, there is an interim period in which the new UUSD board and the boards of each Merging District are both in existence and active, although they have different responsibilities.

Each Merging District is responsible for existing operations until the date on which the new UUSD assumes full operational responsibility.

During this interim period, the new UUSD Board performs duties necessary for transitioning to full operations, many of which are set out in statute or in the Articles of Agreement. *See also* the response under "Budgets" below.

## **Merging Districts – Duties and Dissolution**

### **6. Merging Districts – Annual Meeting Before the UUSD is Fully Operational**

A Merging District is responsible for existing operations until the new UUSD assumes full operational responsibility on July 1, 201X.

Question: Does the board of a Merging District hold an annual meeting in March 201X and, if so, what is the purpose of the meeting?

Response: At the Annual Meeting in March of 201X, each merging board would be responsible for providing any report on the prior/current year's activity/data that it has always provided. In addition, it should probably report on the transition to the UUSD. There probably will not be a vote on any issues.

### **7. Merging Districts – Board Activity After UUSD is Fully Operational**

Question: How often should the boards of the Merging Districts continue to meet after the new UUSD is fully operational?

Response: See response to #8 below. It is difficult to imagine instances in which the board of a Merging District will have any business that it needs to conclude after the UUSD has assumed all debts and obligations and is fully responsible for operating the UUSD. There probably would be no need for the board of the Merging District to meet during the months after the UUSD assumes full operations unless a specific issue arises that only the former district can address.

## 8. Merging Districts - Dissolution

Questions: Does the board of a Merging District decide the date on which the Merging District is dissolved? Does the board of a Merging District do anything formally to dissolve the district?

Response: A Merging District is dissolved as a matter of law (the statutes and articles of agreement). No action is required and a motion of the board would not alter the district's existence.

16 V.S.A. § 722(b) states: "On the date the unified union district becomes *operative*, unless another date is specified in the study committee report, it shall supplant all other school districts within its borders, and they shall cease to exist."

The articles of agreement usually reiterate the substance of § 722(c), but permit the Merging Districts to remain in existence for the sole purpose of concluding any outstanding business not given to the UUSD after the UUSD assumes full operations. The articles require that the outstanding business be completed no later than a specified date after the new UUSD assumes full operations.

In addition, 16 V.S.A. § 723 provides:

On the day the establishment of a unified union school district becomes effective [*i.e., when the certification of merger votes is recorded with the Secretary of State*], the district gains title to the assets and assumes the existing contractual obligations and other liabilities of the member school districts within its borders unless otherwise agreed to by the member districts in the approved plan for the formation of the unified union school district; provided, however, the unified union school district shall in all cases assume the contractual obligations of the member districts regarding each existing collective bargaining agreement or other employment contract until the agreement's or contract's expiration. All trust funds held or enjoyed by a preexisting district shall be held and applied as the terms of the trust indicate. If such trust allows, the funds may be applied for the use of the unified union school district. Within five days of the day a unified union school district becomes effective, the treasurer of each preexisting school district shall pay by check to the treasurer of the unified union school district the full amount of the balance standing in his or her school account and transfer to him or her all outstanding notes and contracts in force. All other officers of the preexisting school districts shall transfer to the corresponding officer of the unified union school district all instruments and other documents giving evidence of the assets, liabilities, and contractual status of the district.

## Budgets – Merging Districts and First Year of UUSD

Assume that full operations begin on July 1, 2017 (FY18): The budget that the voters of the Merging District approved on TMD 2016 is for FY17, so the Merging District is fully funded for the time period for which it is responsible for operation of that district.

If the UUSD is assuming full operations on July 1, 2017, then it is the responsibility of the UUSD board to present a budget for FY18 for all operations within the newly merged district – including those concerning students who reside in the Merging District.

Although the Merging District has no responsibility or authority to prepare the final proposed FY18 budget, it is entirely reasonable to assume that Merging District’s board will assist the UUSD board to prepare that portion of the UUSD’s proposed budget that concerns the school(s) located within the boundaries of the Merging District. The two boards can determine in what form that assistance will be most helpful.

### Clerks: District Clerks versus Board Clerks

Questions: At the new UUSD’s organizational meeting, a district clerk was elected. At the Board’s organizational meeting, should they also select a board member as clerk? Are both clerks required? If they’re not required, is it possible to have both? How do their duties differ?

Response:

16 V.S.A. § 706j requires that a union district clerk be elected by the voters at the organizational meeting and at future annual meetings. The duties include: § 706p (warning meetings), § 706q (receiving the annual report), § 706u (receiving voter checklists from member towns’ clerks), and § 706v (taking minutes at union district meetings of the electorate).

16 V.S.A. § 561 requires the board members to elect one of their own members as the clerk of the board. Statutorily required duties include “keep[ing] a permanent record of the proceedings of the school board” (i.e., notetaking).

### Electronic Distribution of Annual Report and Proposed Budget

Pursuant to 16 V.S.A. § 563(10) and (11)(C), the electorate of a school district can *vote* to authorize the school board to *provide notice* of the availability of the annual report and proposed school budget *in lieu of distributing paper copies* of the report and proposed budget. Otherwise, the documents themselves are mailed to the district’s legal voters.

Question: The voters of each of the merged districts authorized those districts to provide notice of the annual report and proposed budget in lieu of distributing copies. Does this prior authorization apply to the UUSD as well?

Response: The UUSD is a new entity and so must obtain independent authorization from its electorate to provide notice rather than distribute copies. The voters can provide this authorization in the articles of agreement or at the UUSD’s organization meeting. If



authorization was not obtained prior to the UUSD's first Annual Meeting, then the UUSD will need to distribute the actual document to the legal voters of the union district. It may want to warn the question for that first Annual Meeting so that, in the future, it can provide notice instead.