

GUIDANCE:

Proposals for Mergers under Act 46 (2015), Act 153 (2010), and Act 156 (2012)

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 Structure”).² Act 46 recognizes, however, that a Preferred Structure 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

Act 46 created or incorporated three phases⁴ of incentives for communities that voluntarily merge into the most common governance models pursuant to the decades-old process established in 16 V.S.A. ch. 11. Districts may also choose to form a unified union school district pursuant to 16 V.S.A. 11 that is not eligible for incentives and protections.

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 (the “Statewide Plan”). Districts that do not pursue or do not expect to achieve voluntary merger by July 1, 2019 are required to evaluate their ability to meet or exceed the Goals independently and to talk with other districts about ways to improve regionally. These districts must also present proposals to the State Board of Education by November 30, 2017 for consideration in connection with creation of the Statewide Plan.

This guidance document is intended to provide more detail about information that will assist the State Board to evaluate merger proposals under Phases 2 and 3 and to develop the Statewide Plan.

The following guidance is grounded in the requirements and guidance provided in Act 46, Act 153 (2010), Act 156 (2012), and in statute. It reflects the State Board’s discussion, analysis, and recommendations from its 2016 annual retreat about how to implement the laws as written.

II. Guidelines

A. Deadlines for Voluntary Mergers

In order to receive incentives and protections as a RED or as a RED Variation under Phase 2 of the voluntary merger process, the proposal must be approved before July 1, 2017 by

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

² Act 46, Sec. 5(b)

³ Act 46, Sec. 5(c)

⁴ Accelerated Mergers (Phase 1); REDs and RED variations (Phase 2); and later, Conventional Mergers (Phase 3)

the voters of each district identified as “necessary” to the proposal and must be fully operational by July 1, 2019.⁵

In order to receive incentives and protections as a later, “Conventional” merger, the proposal must be fully operational by July 1, 2019.⁶

Two or more districts may also choose to form a unified union school district pursuant to 16 V.S.A. 11 that is not eligible for incentives and protections and that is fully operational on or before July 1, 2019.

B. The Statewide Plan

1. Secretary’s Proposed Statewide Education Plan⁷

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. 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.*, a Preferred Structure or an Alternative Structure
- b. 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”
- c. Exception:
 - i. “If it is not possible or practicable” to merge “some districts, where necessary, into” the Preferred Structure while also:
 - 1) “adher[ing] to” the protections for tuition-paying and operating districts; or
 - 2) “otherwise” meeting all aspects of a Preferred Structure identified in Sec. 5(b)

⁵ Act 153, Secs. 2 & 3, *as amended by* Act 156, Sec. 1 *and by* Act 46, Sec. 16 (“RED” Mergers); Act 156, Sec. 15 (“Side-by-Side” Mergers); Act 156, Sec. 16 (“Layered” Mergers); Act 156, Sec. 17; *as amended by* Act 56 (2013), Sec. 3 (Modified Unified Union School District – “MUUSD” – Mergers); and Act 153, Sec. 4, *as amended by* Act 156, Sec. 13 *and by* Act 46, Secs. 15 & 17 (incentives and protections for REDs and RED Variations)

⁶ Act 46, Sec. 7

⁷ Act 46, Sec. 10(a); *emphasis added*

- 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

2. State Board’s Final Statewide Education Plan⁸

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. The 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. Evaluation by State Board of Education – Goals and Geographic Isolation

Title 16⁹ requires the following when the State Board reviews any proposal to create a union school district, regardless of whether the new district would be eligible for incentives and protections under Phases 1, 2, or 3:

After providing notice to the study committee and after giving the committee an opportunity to be heard, the State Board shall consider the report and the Secretary’s recommendations, and *decide whether the formation of such union school district will be in the **best interests of the State, the students, and the school districts** proposed to be members of the union.* The State Board may request that the Secretary and the study committee make further investigation and may consider any other information deemed by it to be pertinent. If, after due consideration and any further meetings it deems necessary, the State Board finds that the formation of the proposed union school district *is in the **best interests of***

⁸ Act 46, Sec. 10(b); *emphasis added*

⁹ 16 V.S.A. § 706c(b); *emphasis added*

the State, the students, and the school districts, it shall approve the report submitted by the committee, together with any amendments, as a final report of the study committee

When determining whether a proposal is in the *best interests of the State, the students, and the school districts* for purposes of Act 46, the State Board views the proposal through the lens of the Goals, as required by Act 46, Sec. 8(a)(1):¹⁰

(a) School districts. When evaluating a proposal to create a union school district pursuant to 16 V.S.A. chapter 11 ... the State Board of Education shall:

(1) consider whether the *proposal is designed to create a sustainable governance structure that can meet the goals* set forth in Sec. 2 of this act

In addition, Sec. 8(a)(2)¹¹ requires the State Board to:

(2) *be mindful of any other district in the region that may become geographically isolated*, including the potential isolation of a district with *low fiscal capacity or with a high percentage of students from economically deprived backgrounds* as identified in 16 V.S.A. § 4010(d).

D. The State Board is authorized to deny a merger proposal due to potential geographic isolation.¹²

Act 46, Sec. 8(a)(2)(B) states:

(B) *The State Board is authorized to deny approval to a proposal that would geographically isolate a district that would not be an appropriate member of another sustainable governance structure in the region.*

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

Because it must consider whether a proposal to create a union school district is in the “best interests of the State,”¹³ the State Board always considers the impact that a merger proposal will have on neighboring districts not included in the proposal.

Act 46 emphasizes the importance of this consideration — both in the Sec. 8(a)(2) requirement regarding “geographic isolation” and in the explicit authority in Sec. 8(a)(2)(B) to deny approval to a merger proposal (both quoted above in items C and D).

¹⁰ Act 46, Sec. 8(a)(1); *emphasis added*

¹¹ Act 46, Sec. 8(a)(2); *emphasis added*

¹² Act 46, Sec. 8(a)(2)(B); *emphasis added*

¹³ 16 V.S.A. § 706c(b)

In addition, as the more SU-centric perspective of Phase 1 voluntary mergers ends, the State Board’s focus is becoming increasingly expansive – both regionally and statewide.

F. The burden is on the study committee to demonstrate due diligence and to provide sufficient, thoughtful evidence in support of its proposal, regardless of whether the merged district would be eligible for incentives and protections.

G. The term “**neighboring districts,**” as used in this guidance document, does not necessarily mean contiguous school districts or districts that are currently in the same supervisory union, but should be identified based on a common-sense view of the region.

Similarly, the term “**region**” is not defined by current supervisory union boundaries, but should be identified based on a common-sense view of districts in and outside the current supervisory union.

H. Proposals to Merge – Including the Potential Impact on Neighboring Districts

The items listed below includes some of the issues the State Board will consider when evaluating a proposal to merge, particularly if:

- The study committee proposes merger into something other than a Preferred Structure; and/or
- An un-merged neighboring district, that is not included in the proposal, has the same operating/tuitioning structure as the district to be created by the proposed merger

Study committees are strongly encouraged to address the following items, and to provide supporting data, in their proposals — particularly if the proposed merger fits within either of the two categories above.

1. Baseline Data for Each School District Named as a “Necessary” or “Advisable” District in the Proposal (a “Proposing District”) – e.g.:

- Operating / tuitioning structure
- ADM
 - current / historic / trends
- Enrollment data:
 - current / historic / trends
- Equalized pupils:
 - current / historic / trends
- Phantom Pupils
 - current / historic / trends
- Students eligible for Free or Reduced-Price Lunch (“FRL”)
 - current / historic / trends
- Students receiving or eligible for special education services (“SpEd”)
 - current / historic / trends

- Student receiving or eligible for section 504 accommodations (“504”)
 - current / historic / trends
- Student for whom English is not the primary language (“ELL”)
 - current / historic / trends
- For each grade operated by a Proposing District, the number of students / grades in which students are enrolled in another school pursuant to, *e.g.*, 16 V.S.A. § 822a (public high school choice), § 821(c) (geographic considerations for an elementary student); or § 822(c)(1)(B) (unique educational needs)
 - current / historic / trends
 - Demographics of students enrolled in district-operated grade versus students enrolled in a different school (including FRL; ELL; SpEd; and 504)
- For each grade not operated by a Proposing District, the current and historic data regarding schools to which the Proposing District pays tuition, including:
 - The grades for which tuition is paid
 - The school(s) to which tuition is paid
 - For each identified school:
 - Enrollment, by grade
 - Demographics (including FRL; ELL; SpEd; and 504), by grade

NOTE: If providing information would violate the Federal Educational Rights and Privacy Act (“FERPA”) or other federal or Vermont law, then (a) explain the reason that the information is not provided and (b) provide the demographic information for the total number or percentage of students enrolled in public schools and in approved independent schools – broken down by elementary and secondary grades, if applicable. In some cases, districts may need to employ multi-year aggregates to present data.

- For each grade not operated by a Proposing District, the current and historic data regarding the school or schools that the Proposing District designates pursuant to 16 V.S.A. § 827
- High school completion, for all students in the district and disaggregated by demographics (including FRL; ELL; SpEd; and 504)
 - current / historic / trends
 - linked back to elementary districts of origin if and where possible

2. Student Assessments

Assessments by grade-level, for all students in the District and for students disaggregated by demographics (including FRL; ELL; SpEd; and 504) — current and historic data, linking back to elementary districts of origin if and where possible, including:

- ELA / reading in 3rd – 9th grade
- Mathematics in 3rd – 9th grade
- Science in three grades
- English proficiency among students who are ELL
- Career and college readiness in 12th grade

3. Educational Opportunities

For example:

- If elementary schools are operated:
 - Subjects offered
 - Number of 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
 - Breadth and depth of offerings, including access to student services
- Non-traditional learning experience, currently and in the most recent 5 years
- Completion by 12th grade students in the district of at least one non-traditional learning experience
- Types of non-traditional learning experiences available
- High school completion, for all students in the district and disaggregated by demographics (including FRL; ELL; SpEd; and 504)
- Prevalence of PLPs
- Extended learning opportunities

4. Educators / Administrators / Staff

For each Proposing District:

- Percentage of students in schools where educators are licensed
- Current and historic data on teacher turnover, including
 - Number of new teachers in each school in each year for the most recent 3 years
- Current and historic data on administrator turnover
 - Number of new principals in each school in the most recent 3 years
 - Number of new superintendents in the most recent 3 years
- Professional development opportunities
- Teacher evaluations
- Ratios (for each grade in each school operated by each Proposing District; both at the district-level and at the supervisory union-level):
 - 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
 - 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
 - Student-to-adult — where “adult” is defined as all paid personnel employed by a school district or supervisory union

5. Spending / Tax Rates

For each Proposing District:

- Total education spending, currently and most recent 5 years
- Education spending per equalized pupils, currently and most recent 5 years
- Education spending per equalized pupils – excluding “phantom pupils,” currently and most recent 5 years
- Small school grants received, currently and most recent 5 years
- Education spending per equalized pupils – excluding small school grants, currently and most recent 5 years

6. Description of the Region

- Current and historic relationship among the Proposing Districts
- Distances and quality of roads between the Proposed Districts and between schools
 - Transportation concerns, especially those related to current low equity of opportunities and/or concern about future diminishment of equity
- Identity of each neighboring district that is NOT a Proposing District (“NPD”) – particularly if the NPD has the same operating / tuitioning structure as proposed by the Proposing Districts
- Regional relationships between the Proposing District(s) and the NPD(s)

7. Neighboring Districts that are Not Proposing Districts (NPDs)

- Conversations between the Proposing District(s) and the NPD(s) – with whom, how many, etc.
- *[If applicable]* Reasons that there were no discussions or were limited discussions with NPD(s)
- The barriers to including the NPD(s) as a Proposing District
 - Especially if the NPD(s) have the same operating / tuitioning structure as proposed by the Proposing Districts
- Potential geographic isolation of a district in the region, including the potential isolation of a district with low fiscal capacity or with a high percentage of students from economically deprived backgrounds

8. Other

- To the extent that the data provided in this item H reveals inequities and/or disparities among districts or among demographic subgroups, the ways in which the Proposing Districts will work together to improve the inequities and/or disparities
- Ways in which the Proposing Districts expect to maximize efficiencies through economies of scale and the flexible management, transfer, and sharing of nonfinancial resources in the proposed, merged 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 Structure 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 Structure and creation of the statewide plan in general.