

# MEMORANDUM

TO: Chair Carroll and Members, State Board of Education  
FROM: Donna Russo-Savage, Staff Attorney  
SUBJECT: Withdrawal from a Union School District – Ripton  
DATE: April 29, 2021

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You met with representatives from Ripton on April 21 to discuss the voters' request to withdraw from the Addison Central School District ("ACSD").<sup>1</sup> After hearing the representatives' testimony and their responses to your questions, you postponed further consideration of Ripton's potential withdrawal and reconstitution as a town school district until your meeting on May 19.

## I. Scope of Authority and Considerations

To prepare for continued discussion of the issues raised during the April meeting, you requested that we provide additional thoughts concerning the scope of your authority in connection with withdrawal requests. In addition, you asked for guidance that would assist the Ripton representatives to provide you the information you will need as you consider the request for withdrawal.

As we have stated before, the statute governing withdrawal from a unified union school district – like the much older statute on which it is based concerning withdrawal from a union elementary or high school district<sup>2</sup> – provides little helpful information to guide the withdrawal process.

At issue here is the meaning of the one phrase on which the Legislature directs you to base your decision to approve or reject a request for withdrawal. Specifically, the Legislature requires the State Board to declare Ripton's membership in the ACSD to be at an end:

if the State Board finds that the students in [Ripton] will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs.<sup>3</sup>

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<sup>1</sup> 16 V.S.A. § 724.

<sup>2</sup> 16 V.S.A. § 721a.

<sup>3</sup> 16 V.S.A. § 724(c). Unless another statute is explicitly cited, all other quoted language in this memo is found in § 724(c).

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## Contact Information:

If you have questions about this document or would like additional information, then please contact: Donna Russo-Savage, Legal Division, at [Donna.RussoSavage@vermont.gov](mailto:Donna.RussoSavage@vermont.gov)

What follows are our thoughts regarding the possible, and what we consider to be the best, interpretations of the pertinent language.

**A. “if the State Board finds”**

The statute requires approval of a withdrawal request “if the State Board finds” that a specific situation exists. The plain reading of this language leads to at least three conclusions:

First, the statute vests in the State Board sole authority for making an independent finding. Approval is required if the State Board makes the finding. Nowhere in the withdrawal statute or elsewhere does the Legislature state or imply that the potentially withdrawing member’s desire to withdraw, and the other members’ ratification of the withdrawal, take precedence over the State Board’s independent determination.

Second, the finding must be an affirmative determination. That is, in order to approve withdrawal, the State Board must affirmatively find that the criterion is met, rather than find that it is not met. This second conclusion provides further support for the first. If the Legislature intended to give weight to the withdrawing member’s desire to withdraw, then the sentence could have been written to state that the withdrawal request is approved unless the State Board finds that the criterion is not met.

Third, and relatedly, it is not sufficient that the potentially withdrawing member believes the specific criterion will be met in the future. Rather, it is the State Board’s responsibility to make its own independent and affirmative finding.

**B. Source of Evidence**

The withdrawal statute directs the State Board to make its finding “[a]t a meeting held” after the members provide notification of the affirmative votes.

Although this language can be read to imply that a potentially withdrawing member will be permitted to provide testimony and other evidence to the State Board, the statute does not require the State Board to provide such an opportunity or to take that evidence into consideration. For example, compare the withdrawal-related language to the requirement that, after “providing notice to the [merger] study committee and after giving the committee an opportunity to be heard, the State Board shall consider the [study committee’s] 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.”<sup>4</sup>

Furthermore, the statute neither directs the State Board to conduct (or request) independent research nor prohibits it from doing so.

Absent any statutory guidance regarding the source of the evidence upon which the State Board must make its independent, affirmative finding, we conclude that, although the State Board might choose to rely solely upon the representations of a potentially withdrawing member, nothing in statute requires the Board to limit its considerations in this manner. That is, in addition to the information the potentially withdrawing member provides, the State Board may request and rely upon any information it deems pertinent to its finding. Further, the State

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<sup>4</sup> 16 V.S.A. § 706c(b).

Board may make judgements about the credibility or reliability of the information provided by the potentially withdrawing member.

**C. “will attend a school that is in compliance”**

The sole criterion upon which the State Board is required or permitted to make its finding is whether the students in the potentially withdrawing member “will attend a school that is in compliance with the [State Board’s] rules ....”

At your April meeting, a question arose regarding use of the word “is” as it relates to the timing of compliance. Linguistically, it is possible to read the language to mean (i) the students “will [in the future] attend a school that [at that time] is in compliance” and also to read it to mean (ii) the students “will [in the future] attend a school that [currently] is in compliance.”

The language was originally drafted in the 1960s when many small local high schools closed in connection with the creation of larger union high schools. There was concern at that time that there might not be schools with available capacity to enroll the students of a withdrawing member, especially if the initial withdrawal led to the dissolution of the union high school. As a result, it is likely the Legislature intended the sentence to have the first meaning.

In addition, although it is possible to read the phrase in either of the two ways set out above, we believe that the first interpretation is more likely. The statute directs the State Board to make a finding about the schools the students will attend in the future. Although current compliance might well be an indication of future compliance, it would be of somewhat limited value for the State Board to determine that the school is now in compliance but not to consider whether it is or is not likely that it will also be compliance at the time when the reconstituted district’s students will be enrolled.

**D. “the rules ... pertaining to educational programs”**

The sole criterion upon which the State Board is required or permitted to make its finding is whether the students in the potentially withdrawing member will attend a school that is in compliance with “the rules adopted by the State Board pertaining to educational programs.”

All public schools are statutorily required to meet education quality standards, which include standards:

... regarding conditions, practices and resources of schools [that] address those aspects of the following that are most closely associated with improving student performance:

- (A) school leadership, staffing, and support services;
- (B) instructional practices and curriculum leadership, content, and coordination;
- (C) educational materials and school facilities;
- (D) access to current technology.

State Board members heard testimony at the April meeting that the teachers working at the Ripton Elementary School are experienced educators and that most or all have expressed an

intent to remain employed within the ACSD system.<sup>5</sup> Questions then arose whether a newly reconstituted Ripton School District would have the capacity to hire and train all new teachers capable of providing a program that is in compliance with State Board rules in the first years of operation.

While there may be legitimate concern about a reconstituted Ripton School District's ability to continue to educate students in the Ripton Elementary School, that is not the full scope of the question before you. The statute does not ask you to determine if the students of the new district will attend a school operated by the new district that is in compliance with State Board rules, but rather to determine if the students "will attend a school that is in compliance" – that is, any school.

As a result, the question becomes: If the Ripton Elementary School closes because of the practical, financial, or other pressures placed upon it, will the elementary students be able to attend a school that is in compliance with State Board rules? To answer this question, you may want to determine whether there are other elementary schools within a reasonable driving distance in which parents would enroll their students and to which a reconstituted Ripton School District would pay tuition.

Another question arose at your April meeting that may not bear as directly on your considerations in this matter, but that underscores the need to determine if there are other elementary schools in the region in which Ripton students could enroll. At that meeting, Board members questioned the reconstituted Ripton School District's long-term financial capacity to operate an elementary school that meets State Board standards once the district begins to pay tuition for its secondary students. A district with this configuration has limited ability to control the cost of secondary tuition, especially if additional secondary-age students move to the community to take advantage of publicly funded tuition. If increased secondary tuitioning costs cause education tax rates to rise, then a district's only options are to raise taxes or to cut spending at the elementary school.<sup>6</sup> If a reconstituted Ripton School District faces this dilemma, there could be immediate implications for the elementary school's ability to meet education quality standards. One outcome we have observed in districts facing a nearly identical dilemma is that the district chooses to close its elementary school.

## **II. Potential Next Steps**

### ***A. Conditional Approval of Withdrawal and Reconstitution***

As mentioned in the memo we sent in advance of your April meeting, the attorneys for the Town of Ripton and the Addison Central School District (ACSD) concur with the Agency's conclusions regarding the need both for an entity with the authority to negotiate the financial

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<sup>5</sup> A reconstituted Ripton School District will pay tuition to the school or schools that enroll its resident secondary students. Because there are many public and independent secondary schools in the region, one of which Ripton secondary students currently attend, it seems likely that you can make a positive finding as to secondary education. This memo, therefore, focuses on the elementary grades.

<sup>6</sup> This is not the same structure as Ripton experienced prior to merger. Before becoming a member of the ACSD, Ripton was its own elementary school district and a member of a union high school district. Under that governance structure, Ripton residents had the ability to build, adjust, and vote on one budget for the elementary school and another for the high school.

details of withdrawal and also for a period of time between the State Board’s declarations and a town school district’s assumption of full responsibilities during which an elected town school board could perform necessary transitional duties.

If at its May meeting the State Board approves Ripton’s request to withdraw, then a July 1, 2022 effective date will be possible only if the parties are able to move forward quickly.

To assist you with this possible scenario, what follows is a draft motion that would conditionally approve the withdrawal and declare the town school district to be reconstituted. The draft motion incorporates the original proposed transitional process and timeline that the Agency developed with the two attorneys.

### **DRAFT Motion Conditionally Approving Withdrawal and Reconstitution**

I move that the State Board of Education:

1. **FINDS** that if it reconstitutes the Ripton School District for prekindergarten through grade 12 effective on July 1, 2022, the students living in Ripton “will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs” in the 2022-2023 academic year;
2. **APPROVES** the request of the Ripton voters to withdraw from the Addison Central School District pursuant to 16 V.S.A. § 724(c);
3. **DECLARES** that the withdrawal of Ripton from the Addison Central School District shall be effective as of **July 1, 2022**; and
4. **DECLARES**:
  - a) That the Ripton School District is reconstituted as a prekindergarten through grade 12 school district;
  - b) That the Ripton School District shall assume sole responsibility for the education of its resident students in prekindergarten through grade 12 on **July 1, 2022** and that, until such time, the Addison Central School District/Supervisory District shall continue to be responsible for the education of all students residing in Ripton;
  - c) Between **April 21, 2021** and **July 1, 2022**, the Ripton School District shall exist solely for the purpose of meeting each of the conditions outlined below and transitioning to full operations; and
  - d) The Ripton School District shall not be entitled to administrative or other services from the Addison Central Supervisory District until such time as the State Board makes a determination of supervisory union boundaries.

**PROVIDED**, however, that the approval, the declarations, and the effective dates of July 1, 2022 in this motion are **CONDITIONED** on completion of each of the following on or before **September 8, 2021** in a manner satisfactory to the State Board:

- i. **Election of School Board Members.** The Secretary of State calls a special election at which the Ripton School District voters elect school board members pursuant to 16 V.S.A. § 424(c).
- ii. **Negotiation of Financial Agreement.** The Ripton School Board and the Addison Central School Board negotiate and finalize the proposed

financial details of withdrawal pursuant to 16 V.S.A. § 724(c), which proposal is presented to the voters residing in the *non*-withdrawing towns of the Addison Central School District for approval.

- iii. **Approval of Financial Agreement.** The voters residing in *each non*-withdrawing town within the Addison Central School District vote to approve the negotiated financial arrangements pursuant to 16 V.S.A. § 724(c).
- iv. **Written Report to State Board of Education.** The Ripton School Board notifies the State Board in writing no later than **September 8, 2021** of the results of the activity in subdivisions (ii) and (iii) above.
- v. **Attendance at State Board of Education Meeting.** Members or representatives of the Ripton School Board and the Addison Central School Board appear before the State Board at its regularly-scheduled meeting on **September 15, 2021** to answer questions regarding the activity in subdivisions (ii) and (iii) above, recognizing that the results of the subdivision (iii) vote may not be final.

### **B. Remaining Members of the Union School District**

If the State Board approves Ripton’s request to withdraw, then the governing statute requires 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.

After making the determination required by statute, the State Board must either (1) affirm continuation of the union school district or (2) dissolve the union school district and declare the remaining towns within it to be reconstituted as individual town school districts.<sup>7</sup>

### **C. Supervisory Union Boundaries**

If the State Board approves Ripton’s request to withdraw, then the Board will also need to identify the supervisory union to which it will assign the new town school district.

The Board has independent authority to review and re-define supervisory union boundaries “in such manner as to afford increased efficiency or greater convenience and economy and to facilitate prekindergarten through grade 12 curriculum planning and coordination as changed conditions may seem to require.”<sup>8</sup>

If the State Board approves Ripton’s withdrawal / reconstitution and confirms the Addison Central School District’s current governing structure, then the Board may wish to consider a motion similar to the following:

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<sup>7</sup> The timing of dissolution / reconstitution is the same as for the withdrawing member: either the next July 1 or when financial matters are resolved.

<sup>8</sup> 16 V.S.A. § 261a(a).

## **DRAFT Motion Regarding Supervisory Union Boundaries**

I move that the State Board of Education direct the Chair to:

1. **NOTIFY** all interested parties of the State Board's intent "to review on its own initiative" supervisory boundaries in connection with the assignment of the Ripton School District to a supervisory union pursuant to 16 V.S.A. § 261(a); and
2. **INVITE** the Ripton School Board to discuss potential future supervisory union boundaries with the Addison Central School Board and the board of one or more neighboring supervisory unions as appropriate and to develop a proposal to present to the State Board regarding the supervisory union to which the Ripton School District should be assigned.
  - a) Members or representatives of the Ripton School Board may appear before the State Board at its regularly scheduled meeting on **September 15, 2021** to make proposals and answer questions regarding assignment of the Ripton School District.
  - b) Members or representatives of the Addison Central School Board and the board of one or more other supervisory unions may appear before the State Board at its regularly scheduled meeting on **September 15, 2021** to present written or oral testimony, or both, regarding potential supervisory union boundaries.