

AGENCY OF EDUCATION
Barre, Vermont

TEAM: Legal (School Governance)

ITEM: Will the State Board of Education approve the request of the **WINDHAM SOUTHEAST SUPERVISORY UNION (SU)** Board to waive the 16 V.S.A. § 266 default requirements for appointments to the Board pursuant to 16 V.S.A. § 261(d)?

SECRETARY'S RECOMMENDED ACTION:

That, pursuant to 16 V.S.A. § 261(d), the State Board of Education approve the request of the Windham Southeast SU Board to waive the 16 V.S.A. § 266 default requirements for appointments to the Board, and that membership on the SU Board shall be appointed as follows, effective on the day the Windham Southeast School District, a unified union school district (UUSD), becomes fully operational:

- **One member from the UUSD Board who resides in Brattleboro.**
- **One member from the UUSD Board who resides in Dummerston.**
- **One member from the UUSD Board who resides in Guilford.**
- **One member from the UUSD Board who resides in Putney.**
- **One member from the Vernon School District Board.**

STATUTORY AUTHORITY: 16 V.S.A. §§ 261(d), 266

BACKGROUND INFORMATION: In its Final Report of Decisions and Order dated November 28, 2018, the State Board merged five school districts in the Windham Southeast SU – the Brattleboro, Dummerston, Guildford, and Putney School Districts and the Brattleboro Union High School District – to form the Windham Southeast Unified Union School District (the UUSD)¹. The State Board did not merge the sixth district in the SU, the Vernon School District, with any district.

The UUSD comprises four towns and, once operational, will operate multiple school buildings. In fiscal year 2018, the most recent fiscal year for which data are available, the districts that formed the UUSD had a K-12 average daily membership of approximately 1,962 (Brattleboro: 713; Dummerston: 142; Guilford: 131; Putney: 156; and the Brattleboro UHSD: 819).

In contrast, the Vernon School District, which operates one K-6 school building and pays tuition for its students in grades 7-12, had a K-12 average daily membership of 300 in fiscal year 2018.

Unlike membership on the board of a school district, there is no constitutional requirement of proportionality for membership on an SU board.

¹ The Windham Southeast Unified Union School District has formally changed its name to the Windham Southeast School District, but it remains a UUSD.

16 V.S.A. § 266 directs the board of a school district to appoint three of its members to an SU board if the district operates one or more schools. The board of a school district that pays tuition for all of its students appoints one of its members to the SU board.

Pursuant to § 266, the current Windham Southeast SU board has 18 members: three each from the Brattleboro, Dummerston, Guildford, Putney, and Vernon School Districts and three from the Brattleboro Union High School District.

On the day on which the UUSD becomes operational, the Windham Southeast SU will have two member districts – the UUSD and the Vernon School District – rather than its current membership of six districts. Pursuant to § 266, membership on the Windham Southeast SU Board will be reduced from 18 to six individuals: three from the UUSD Board and three from the Vernon School District Board.

The State Board is authorized to waive the default requirements of 16 V.S.A. § 266 on the request of an SU board if the “waiver will result in efficient and effective operations of the supervisory union; will not result in any disproportionate representation; and is otherwise in the public interest.” 16 V.S.A. § 261(d)

The Windham Southeast SU Board requests that the State Board exercise its authority under 16 V.S.A. § 261(d) to waive the default SU composition in favor of an SU Board with five members as follows:

- UUSD – 4 (one each, residing in Brattleboro, Dummerston, Guilford, and Putney)
- Vernon School District – 1

POLICY IMPLICATIONS: Pursuant to 16 V.S.A. § 266, the members on the SU board who represent the interests of the students and voters of the UUSD will be reduced from 15 to three. The Vernon School District’s membership on the SU board will remain constant at three members.

Although the Constitution does not require strict proportionality for membership on an SU board, adherence to the default numbers in this situation seems unfair on its face given both the proportion of students for whom the two districts will be responsible and the number of towns within each district. Strict adherence to the default requirements set forth in 16 V.S.A. § 266 will result in the “disproportionate representation” that § 261(d) seeks to avoid. In addition, the SU board’s understanding of local issues would be enhanced by the appointment of members from each town, which will support “efficient and effective operations of the supervisory union” and be “otherwise in the public interest.”

Accordingly, it is advisable for the State Board to grant a waiver of the statutorily required SU board composition and authorize the Windham Southeast SU to consist of five members: one member appointed from the board of the Vernon School District and four members appointed from the board of the Windham Southeast School District, with one member residing in each of the four towns in the UUSD.

STAFF AVAILABLE: Donna Russo-Savage, Staff Attorney