

AGENCY OF EDUCATION  
Barre, Vermont

**TEAM:** Legal; School Governance

**ITEM:** Will the State Board of Education approve the request of the **SOUTHWEST VERMONT SUPERVISORY UNION (SVSU)** to waive default requirements for composition of the SVSU Board pursuant to 16 V.S.A. § 261(d)?

**SECRETARY'S RECOMMENDED ACTION:**

- 1. That the State Board of Education postpone action on the SVSU Board's request for a waiver directing the board of the Arlington School District to appoint two members, rather than three, to represent its interests on the SVSU Board; and**
- 2. That the State Board of Education deny the SVSU Board's request for a waiver to permit the Arlington and Sandgate School Districts to appoint alternate members to the SU Board; and further that the State Board reconsider at one of its 2019 meetings its prior decision to grant such a waiver to the SVSU member districts in 2013.**

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

**OVERVIEW:** Unlike membership on the board of a school district, there is no constitutional requirement of proportionality for membership on a supervisory union (SU) board.

16 V.S.A. § 266 directs the board of each school district to "elect from such board three members who shall represent and act for it" at SU meetings, "[b]ut the school board of any district that employs no teacher shall have only one vote." The State Board is authorized, however, to waive the § 266 default requirements regarding SU Board composition at the request of the supervisory union 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)

On February 19, 2013, the State Board of Education granted the request of the SVSU Board to waive the default number of appointees set out in 16 V.S.A. § 266 . As a result, the current composition of the SVSU Board consists of members appointed by the board of each school district as follows:

Bennington	2 members; 1 alternate
Mount Anthony Union	2 members; 1 alternate
North Bennington (nonoperating)	1 member; 1 alternate
Pownal	2 members; 1 alternate
Shaftsbury	2 members; 1 alternate
Woodford	2 members; 1 alternate

In support of its requested waiver in 2013, the SVSU Board stated: “The reduction of members and the allowance of a single elected alternate would assure consistent two-member representation of **all** member districts.” In addition, the SVSU Board “believe[d] a change in the number of SVSU Board members [would] enable a more efficient and effective operation of the supervisory union by ensuring a consistent presence of a quorum without the need for repetitive telephone calls to ensure such a quorum.”

On November 15, 2018, the State Board adjusted the boundaries of the SVSU and required the Arlington School District and the Sandgate School District to become members of the SVSU. The State Board established July 1, 2021 as the day on which the enlarged SVSU will be fully operational. In the interim, the State Board authorized the boards of both districts to appoint members to the SVSU Board to assist with the transition as follows:

Arlington	3 members
Sandgate (nonoperating)	1 member

By letter dated November 30, 2018, the current SVSU Board requests the State Board to grant a waiver from the default number of appointees in connection with the two new member districts of the SU in order to be consistent with the alternative membership previously approved by the State Board:

Arlington	2 members; 1 alternate
Sandgate (nonoperating)	1 member; 1 alternate

In addition to the SVSU’s 2013 reasoning quoted above, the current request for a waiver states “that granting the Arlington School District three (3) members on the SVSU Board would be disproportional to the representation of other SVSU member districts.” Although SU Board membership is not subject to the same constitutional requirements of proportionality, it can at least be said that the arrangement might appear to be unfair.

The SVSU’s request to waive the provisions of 16 V.S.A. § 266 can be divided into two component parts: (1) that the State Board require the board of the Arlington School District to appoint two voting members to the SVSU Board rather than three as required by § 266 and (2) that the State Board approve the appointment of alternate SVSU Board members by the Arlington and Sandgate School Districts.

### **1. Appointment by the Arlington School Board of two of its members to the SVSU Board.**

In connection with the request to reduce the number of Arlington School District appointees from three to two, the Secretary can identify at least two reasons that the State Board should delay making a decision until its January 2019 meeting at the earliest.

- First, it is unclear whether the Arlington School District approves of the SVSU Board’s requested waiver. The State Board will not prejudice any of the affected districts by delaying its decision until it can determine the Arlington School District’s opinion regarding this request. The State Board’s November 15, 2018 order authorized the board of the Arlington School District to appoint three of its members to sit on the SVSU Board. The order is clear, however, that these appointees presently will be members of the board

solely to assist with transition to full operations of the enlarged SU. Given that full operations are not required until July 1, 2021, there is sufficient time for the State Board to request the board of the Arlington School District to respond to the SVSU Board's request.

- Second, the State Board's Final Report and Order issued on November 30, 2018 requires the four town elementary school districts that operate schools to form a new union elementary school district, to be operational on July 1, 2019. It is unclear whether the SVSU Board has considered whether to request another § 266 waiver in connection with that new union elementary district.

The Secretary recommends that the State Board delay its decision on this waiver request and provide an opportunity for the representatives of all interested school districts to testify at an upcoming meeting. This will allow the State Board to discuss issues surrounding SVSU Board membership in a holistic manner.

## **II. Appointment of alternate members to the SVSU Board.**

16 V.S.A. § 266 clearly directs each school district board that operates a school to "elect from such board three members who shall represent and act for it" at SU meetings. Neither § 266 nor any other provision in Title 16 contemplates the appointment of alternates to SU boards. The State Board has authority to grant a waiver to "supervisory union board structure [or] board composition" if it determines 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)

Given the breadth of the authority granted, it is not unreasonable to assume that a § 261(d) waiver might address alternate members. Nevertheless, the Secretary recommends that the Board refuse to grant the SVSU's request because the use of alternates does not support the continuity of thoughtful, measured deliberation. In addition, as part of a subsequent, more comprehensive review of membership on the SVSU Board, the Secretary recommends that the State Board reconsider the waiver it granted in 2013.

**STAFF AVAILABLE:** Donna Russo-Savage, Staff Attorney