

MEMORANDUM

TO: Chair Carroll and Members, State Board of Education Item M-1
FROM: Donna Russo-Savage, Staff Attorney
SUBJECT: Withdrawal from a Union School District – Ripton; Westminster
DATE: April 15, 2021

Pursuant to 16 V.S.A. § 724(c), the clerk of the Addison Central School District (“ACSD”), a unified union school district (“UUSD”), has notified Secretary French that the ACSD voters residing in Ripton voted to withdraw from the district and that the ACSD voters residing in each of the other towns within the district voted to approve Ripton’s request to withdraw.

In addition, pursuant to 16 V.S.A. § 721a(c), the chair of the Windham Northeast Union Elementary School District (“WNUESD”), a union elementary school district (“UESD”), has notified Secretary French that the WNUESD voters residing in Westminster voted to withdraw from the district and that the WNUESD voters residing in both of the other towns within the district voted to approve Westminster’s request to withdraw.

The Ripton and the Westminster requests to withdraw have been placed on your April 21, 2021 agenda for initial consideration.

Chair Carroll asked us to provide legal and factual background for your deliberations.

Both matters are more complex than the Halifax-Readsboro dissolution that you addressed last September. In addition, although the Ripton and Westminster matters are similar to each other in some ways, they are not identical. As a result, this memo is divided into three major sections. The first section discusses the law and process as it relates to both matters. The second and third sections discuss specific aspects of the two matters independently and include draft language that you may wish to use if you choose to take action at the April meeting.

A. Withdrawal Process in General and State Board’s Statutory Obligations

A union school district’s voters who have voted to withdraw from the district, regardless of whether it is a UUSD or UESD, are referred to in this memo as the “Withdrawing Voters” or the “Withdrawing Member.”

1. Designated Persons Representing the Interests of the Withdrawing Voters

The Legislature has not provided guidance regarding what person or entity is authorized to represent the interests of the Withdrawing Voters in proceedings before the State Board where, as in both matters before you in April, there is no active town school district or elected town school board.

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

Nevertheless, it is clear that a town’s selectboard has no legal authority to act on behalf of either the Withdrawing Voters or the dormant town school district.¹ In addition, potential conflicts of interest would likely prevent union school district board members from acting in this capacity because members elected to a union school board owe a duty to the union school district and not to the potentially withdrawing member.²

Absent guidance from the Legislature in this matter, the Chair asked for a small number of Ripton and Westminster residents who have led the withdrawal activity in their communities to assume the primary role of representing the interests of the residents seeking withdrawal in proceedings before the State Board (“Designated Representatives”).

2. Statutory Criterion Upon Which to Base a Declaration Approving Withdrawal

In order to approve the requests of the Withdrawing Voters in Ripton and in Westminster to withdraw from their respective union school districts, Vermont law requires the State Board to determine that, if a town school district is reconstituted, the students living in those towns “will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs.” 16 V.S.A. §§ 721a(c) and 724(c).

To help you make this determination, the Chair has requested that the Designated Persons provide you with written responses to a series of questions by noon on Wednesday, April 14, and that these individuals be available remotely at your April 21 meeting to answer any additional questions you may have. The Chair has also indicated that there will be an opportunity for other residents to testify who wish to share information that will assist the State Board to determine whether, post-withdrawal, the students “will attend a school that is in compliance with” State Board rules.

3. Additional State Board Decisions & the Process After Approving Withdrawal

If the State Board finds that the sole criterion underlying withdrawal has been met and issues a declaration approving withdrawal from a union school district, then the Board must also identify the date on which withdrawal is effective, which also will be the date on which the reconstituted town school district becomes solely responsible for providing for the education of its resident students. The statute governing withdrawal from a UUSD directs the State Board to declare the withdrawal to be effective and the new town school district to be operational:

¹ A town school district is a municipality and, as such, is a distinct legal entity from the town in which it is located. See, e.g., 16 V.S.A. § 126 (the term “municipality” “shall include a city, town, town school district, incorporated school or fire district or incorporated village, and all other governmental incorporated units”) and 16 V.S.A. § 4029(a) and (b) (creating a “firewall” between the funds of a school district and the town or towns in which it is located).

For a more thorough discussion of this issue, including the inability of the selectboard to appoint members to an interim school board, see the attached letter dated April 8, 2021 from Emily Simmons, General Counsel, to Lawrence Slason, Esq.

² In the only recent withdrawal / dissolution proceeding, the State Board permitted the chair and vice chair of the union school district’s board to speak on behalf of the Withdrawing Members. In that proceeding, however, the voters of the only two members of the UUSD had each voted to withdraw from – and thus to dissolve – the union school district.

as of *July 1* immediately following [the Board’s declaration affirming withdrawal] *or* as soon thereafter as the *obligations* of the withdrawing district have been paid to, or an agreement made with, the union school district in an amount *satisfactory to the electorate of each of the other towns and cities within* the unified union school district.³

The statute governing withdrawal from a UESD includes language that is nearly identical in substance.⁴ The key difference between the two versions of this provision is that withdrawal from a UUSD requires only that the electorate residing in each of the *non*-withdrawing towns approve the financial agreement, but withdrawal from a UESD requires that the electorate of the Withdrawing Member approves of the agreement as well.⁵

As a separate (but related) matter, a reconstituted town school district cannot assume sole responsibility for the education of its resident students until certain statutory obligations are met, such as the preparation of a town school budget by an elected school board and approval of that budget by the voters.

Notably absent from the statutes is authorization for any person or entity to represent the Withdrawing Member in financial negotiations with the union school district where, as in both matters before you, there are no active town school districts within the union school district. In addition, the Legislature has not provided any process or timeline to guide the Withdrawing Member as it engages in those financial negotiations or transitions from membership in an operational union school district to the assumption of responsibilities as an operational town school district on a date specified in the State Board’s declaration.

At a minimum, therefore, there is a need for:

1. An entity with the legal authority to negotiate the financial terms of withdrawal, which terms must be both:
 - a. Confirmed by a vote of the residents as being “satisfactory to the electorate” residing in each of the non-withdrawing towns within a UUSD and residing in each town including the Withdrawing Member within a UESD; and
 - b. Legally binding on the town school district, once it is reconstituted by the State Board;
2. An elected school board that can prepare a proposed budget for the town school district’s first year of operations and otherwise prepare for the town school district to assume sole responsibility for the education of all resident students; and
3. A voter-approved budget for the town school district to be in place on the date the town school district assumes sole responsibility for its resident students.

³ 16 V.S.A. § 724(c)(emphasis added).

⁴ 16 V.S.A. § 721a(c) (“as of *July 1* immediately following [the Board’s declaration affirming withdrawal] *or* as soon thereafter as the *obligations* of the withdrawing member have been paid to, or an agreement made with, the union school district in an amount *satisfactory to the electorate of each member* of the union school district”)(emphasis added).

⁵ Compare the language requiring that the financial agreement must be “satisfactory to the electorate of each of the other towns and cities within” a UUSD to the requirement that the agreement must be “satisfactory to the electorate of each member” of a UESD.

As mentioned above, absent explicit legislative language, neither a town’s selectboard – as an entity – nor the elected members of the union school district’s board would have legal authority to represent the Withdrawing Voters or an inactive or active town school district in these matters.

The State Board’s declaration in the only recent withdrawal proceeding approved the withdrawal and reconstituted the town school districts. The declaration also stated that in the period between its issuance and the date the withdrawing districts assumed sole responsibility for the education of resident students, a school board for each reconstituted town school district was authorized to be elected and to exist solely for the purpose of transitioning to full operations. After the Board issued the declaration, the election of board members proceeded pursuant to 16 V.S.A. § 424(c), which directs the Secretary of State to warn a special meeting for this purpose when all seats are vacant.

Until the Legislature amends the withdrawal statutes to provide a more detailed process, the Agency suggests that the State Board similarly provide a period of time between its withdrawal declaration and the effective date of withdrawal / the town school district’s assumption of educational responsibilities during which (1) the Secretary of State can warn a special meeting of the town school district at which the new district’s voters will select school board members and (2) the elected school board can take steps necessary to transition the district to assumption of its full responsibilities.

Only one district can be responsible for the current education of resident students in any particular grade. The union school district would therefore remain solely responsible for the education of the students residing in the Withdrawing Member until the date the State Board identifies as the operational date for the new town school district.

4. Remaining Members of a Union School District

If the State Board approves the Withdrawing Member’s request to withdraw from the union school district, then the Board:

shall give notice to the remaining towns and cities in the [UUSD] of its meeting and give the relevant representatives an opportunity to be heard. It shall then 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.⁶

The statute governing withdrawal from a UESD is substantively identical.⁷

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.⁸

⁶ 16 V.S.A. § 724(c).

⁷ 16 V.S.A. § 721a(c).

⁸ The timing of dissolution / reconstitution is the same as for the Withdrawing Member: either the next July 1 or when financial matters are resolved.

5. Supervisory Union Boundaries

If the State Board approves the Withdrawing Member's request to withdraw from the union school district, then the Board will also need to identify the supervisory union ("SU") 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."⁹

The State Board may wish to invite comments and proposals concerning a new town school district's assignment.

6. Filing of Declarations with the Secretary of State, the Town Clerks, and the Elected Clerks of the Union School Districts

The Agency's legal staff would be happy to draft declarations for your use.

B. Request of the UUSD Voters Residing in Ripton to Withdraw from the ACSD

The ACSD is organized to provide for the PreK – Grade 12 education of students residing in Bridport, Cornwall, Middlebury, Ripton, Salisbury, Shoreham, and Weybridge. The district fulfills this obligation by operating schools through Grade 6 in each of the seven towns, as well as schools for Grades 7 – 8 and for 9 – 12, which are located in Middlebury. The ACSD serves as its own single-district SU (a "supervisory district" or "SD").

If Ripton withdraws from the ACSD, unless and until its voters decide otherwise, it will operate a school for its elementary students and will pay tuition for all other grades.

1. Ripton's Withdrawal and Reconstitution as a Town School District

The attorneys for the ACSD and the Town of Ripton concur with the Agency's conclusions regarding the absence of an individual or entity with the authority to negotiate the financial details of withdrawal, as well as the need for a period of time between the State Board's declarations and the town school district's assumption of full responsibilities in which an elected town school board can negotiate financial details that are presented to the electorate of the non-withdrawing towns for approval, prepare and warn a proposed budget, and perform any other necessary transitional duties.

At the Chair's request, attached for the Board's consideration is a draft Conditional Declaration that, at Items A and B, addresses the issues discussed in this memorandum and incorporates a proposed transitional process and timeline developed with the two attorneys.

2. Continuation of the ACSD & Determination of SU Boundaries.

If the State Board approves Ripton's request to withdraw, then the Board will also need to (1) determine whether the ACSD should remain a UUSD and (2) identify the SU to which it will assign the newly-reconstituted Ripton School District.

⁹ 16 V.S.A. § 261a(a).

It is our understanding that the non-withdrawing members of the ACSD will testify as to the desire both to remain a UUSD and also to continue to serve as its own SD. If the State Board determines that it is advisable for the ACSD to continue as a UUSD, then it will need to determine whether to:

1. Create a new multi-member SU with ACSD and the Ripton School District as its members; or
2. Allow the ACSD to remain an SD and either:
 - a. Assign the Ripton School District to a different SU; or
 - b. Designate the Ripton School District as its own SD; or
3. Take some other action to adjust the supervisory union boundaries in the region pursuant to 16 V.S.A. § 261.

In light of the complexity of these issues in Ripton and the ACD and the conditional nature of the declaration suggested above, the Chair has indicated to the interested parties that the State Board will discuss, and potentially determine a timeline for, the submission of written responses and discussions with the Board regarding both the continuance of the ACSD and the location of SU boundaries. The attached draft Conditional Declaration, at Items C and D, addresses these two issues and incorporates a proposed transitional process and timeline developed with the two attorneys.

C. Request of the UESD Voters Residing in Westminster to Withdraw from the WNUESD

The WNUESD is organized to provide for the PreK – Grade 8 education of students residing in Athens, Grafton, and Westminster. The district fulfills this obligation by operating schools through Grade 6 in both Grafton and Westminster and paying tuition for its students in prekindergarten and Grades 7 – 8.¹⁰ The WNUESD, the Rockingham School District (PreK – Grade 8), and the Bellows Falls Union High School District (Grades 9 – 12) (“BFUHSD”) are the sole members of the Windham Northeast SU.

If Westminster withdraws from the WNUESD, unless and until its voters decide otherwise, it will operate a school for its elementary students, pay tuition for PreK and Grades 7 – 8, and be a member of the BFUHSD for Grades 9 – 12.

Regardless of whether the State Board determines that it is advisable for the WNUESD to continue without Westminster or, alternatively, that both Athens and Grafton should be reconstituted as independent school districts, the size and relationships of the districts within the Windham Northeast SU make it likely that the State Board will decide either to:

1. Allow the Windham Northeast SU to remain an SU serving all districts within its current geographical boundaries; or
2. Take some other action to adjust the supervisory union boundaries in the region pursuant to 16 V.S.A. § 261.

¹⁰ The State Board established the WNEUSD in its November 2018 Order issued pursuant to Act 46 (2015) and its progeny. The question of whether a member of State Board-created district can withdraw applies only to UUSD because of the “voted to form” language in 16 V.S.A. § 724 and is not at issue in this matter.

Although the Agency cannot predict the actions the State Board might take on April 21 or later regarding Westminster's withdrawal and reconstitution as a town school district, the future of the WNUESD as a two-member UESD, and the location of SU boundaries, it is possible that the State Board will want to entertain motions that look similar to:

1. The attached set of Conditional Declarations submitted in connection with the Ripton / ACSD matter;
2. The declarations issued in the Halifax / Readsboro matter (a version is set out immediately below); or
3. Declarations that are different from or a combination of those in (1) and (2).

If the State Board decides to issue declarations similar to those in Halifax / Readsboro, it could potentially entertain a motion that the State Board of Education:

- A. **Finds** that in the 2022-2023 academic year, the students living in Westminster "will attend a school that is in compliance with the rules adopted by the State Board pertaining to educational programs."
- B. **Approves** the request of the Westminster voters to withdraw from the Windham Northeast Union Elementary School District pursuant to 16 V.S.A. § 721a(c).
- C. **Declares** that the withdrawal of Westminster from the Windham Northeast Union Elementary School District shall be effective as of July 1, 2022.
- D. **Finds** that the Windham Northeast Union Elementary School District *{is/is not}* viable without Westminster.
 1. *{if the State Board finds the UESD is NOT viable}* **Declares** that the Windham Northeast Union Elementary School District shall be dissolved effective July 1, 2022; provided, however, that the UESD shall continue to exist until *{December 31, 2022}* for the sole purpose of completing audits and performing any duties that no other district is legally able to perform.
- E. **Declares** the Westminster School District *{, the Athens School District, and the Grafton School District}* (the "Town School District") to be reconstituted pursuant to 16 V.S.A. § 724(c) as follows:
 1. Between *{the date of the motion}* and July 1, 2022, the Town School District shall exist solely for the purpose of transitioning to full operations. On July 1, 2022, the Town School District shall be fully operational and assume sole responsibility for the education of Prekindergarten through Grade 8 students residing in the district.
- F. **Assigns** the Westminster School District *{, the Athens School District, and the Grafton School District}* to the Windham Northeast Supervisory Union and authorizes the boards of each Town School District reconstituted by this declaration, once elected and sworn in, to appoint members to the Supervisory Union Board pursuant to 16 V.S.A. § 266.
- G. **Please note:** You will need to address whether the new SU board members will become voting members before July 1, 2022 and, depending upon your decision regarding a two-member UESD, whether/if the UESD appointees will cease to be voting members on that date.