

LEGAL REQUIREMENTS AND LEGISLATIVE GUIDANCE – September 27, 2018**1. Intent of Act 46.**

“On or before July 1, 2019, the State shall provide educational opportunities through sustainable governance structures designed to meet the goals set forth in Sec. 2 of this act pursuant to one of the models described in this section.”¹

[note: “one of the models” means either a “preferred education governance structure” or an “alternative structure”]

2. Purpose of Statewide Plan.

“[To] provide educational opportunities through sustainable governance structures designed to meet the [five educational and fiscal goals of Act 46] pursuant to one of the models described in Sec. 5.”²

[note: “one of the models” means either a “preferred education governance structure” or an “alternative structure”]

3. Goals. In order “to move the State toward sustainable models of education governance[, the] legislation [was] designed 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.”³

4. “Preferred structure.” The Legislature identified the “preferred” model of governance as a unified union school district:

- responsible for the PK-12 education of its resident students (whether by operating all grades; operating PK-6 or PK-8 and tuitioning the remaining grades; or tuitioning all grades) *and*
- large enough to function effectively as a supervisory district (*i.e.*, a single-district supervisory union).⁴

LEGAL REQUIREMENTS AND LEGISLATIVE GUIDANCE – September 27, 2018**5. The “preferred structure” is not always “possible” or the “best” model.**

“[The preferred structure] may not be possible or the best model to achieve Vermont’s education goals in all regions of the State.”⁵

6. A multi-district SU “may meet” the identified educational and fiscal goals ...

“In such situations [*i.e.*, where a preferred structure “may not be possible or the best model to achieve the goals” per #5 above], a supervisory union composed of multiple member districts, each with its separate school board, may meet the State’s goals ... ”⁶

“**particularly if**” it has certain listed characteristics:⁷

- (1) The districts “consider themselves to be collectively responsible” for all students in the SU
- (2) The SU:
 - (A) “complies with” § 261a
 - (B) “maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of resources among the member districts”
 - “which may include a common personnel system”
 - (C) “with the goal of increasing the ratio of students to full-time equivalent staff”
- (3) The SU has “the smallest number of member school districts practicable, achieved wherever possible by the merger of districts with similar operating and tuitioning patterns”
- (4) The SU has “the smallest number of member school districts practicable after consideration of greatly differing levels of indebtedness among the member districts”
- (5) The districts’ combined ADM is 900 or more.

7. The Legislature required the Secretary to merge districts “to the extent necessary to promote the purpose” of providing “educational opportunities through sustainable governance structures designed to meet” the five educational and fiscal goals of Act 46 ...

“[The] Secretary shall ... develop [and] publish ... a proposed plan that, to the extent necessary to promote the purpose stated at the beginning of this subsection (a), would move districts into the more sustainable, preferred model of governance set forth in Sec. 5(b) of this act (Education District).”⁸

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Except where it is not “possible” or “practicable” to create a preferred district that:

- **adheres to protections for tuition-paying districts/operating district**
OR
- **otherwise meets all aspects of Sec 5(b).**⁹ (*i.e.*, a “preferred structure”)

“If [it is not possible or practicable to create a preferred structure], then the proposal may also include alternative governance structures as necessary, such as a supervisory union with member districts or a unified union school district with a smaller average daily membership; provided, however, that any proposed alternative governance structure shall be designed to:

- (A) ensure adherence to the protections of Sec. 4 of this act; and
- (B) promote the purpose stated at the beginning of this subsection (a).”¹⁰

8. The Legislature requires the SBE to “publish ... its order merging and realigning districts ... where necessary,” which must adhere to the provisions governing the Secretary’s proposal.

The SBE “shall approve the [Secretary’s] proposal either in its original form or in an amended form that adheres to the provisions of subsection (a) of this section, and shall publish on the Agency’s website its order merging and realigning districts and supervisory unions where necessary.”¹¹

9. The Legislature restricts the SBE’s authority to include multi-district SUs in its plan.

“[The] State Board shall approve the creation, expansion, or continuation of a supervisory union only if the Board concludes that this alternative structure:

- (1) is the best means of meeting the [five Act 46 Goals of opportunity, equity, and efficiency] in a particular region; and
- (2) ensures transparency and accountability for the member districts and the public at large.”¹²

10. Geographic Isolation.

Act 46 mentions “geographic isolation” in connection with the SBE’s review of voluntary mergers under 16 VSA § 706c¹³ and small school support grants.

It does not require the SBE to consider it when developing the statewide plan.

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Act 49 included debt among the considerations in what it identified as “Alternative Structure Guidance” (see paragraph 4 under item #6 above).

12. Voting history.

Act 46 as enacted in 2015 exempted three types of districts from potential merger under the statewide plan. Act 49 (2017) added a fourth.¹⁴

Neither act exempts districts that have voted against a proposed merger or directs the State Board to consider voting history as a factor when deciding whether to merge districts under the statewide plan.

13. Duties of districts that did not voluntarily merge.

Act 46 required the board of each school district in the State that will not be in a newly unified structure by July 1, 2019 to submit a “Section 9 Proposal” by December 26, 2017¹⁵ in which the school board:

- (1) Self-evaluation: “The board shall evaluate its current ability to meet or exceed each of the goals set forth in Sec. 2 of this act.”
- (2) Regional meetings: “The board shall meet with the boards of one or more other districts, including those representing districts that have similar patterns of school operation and tuition payment, to discuss ways to promote improvement throughout the region in connection with the goals set forth in Sec. 2 of this act.”

“The districts do not need to be contiguous and do not need to be within the same supervisory union.”

- (3) “Sec. 9 Proposal”:

(A) proposes to retain its current governance structure, to work with other districts to form a different governance structure, or to enter into another model of joint activity;

(B) demonstrates, through reference to enrollment projections, student-to-staff ratios, the comprehensive data collected pursuant to 16 V.S.A. § 165, and otherwise, how the proposal in subdivision (A) of this subdivision (3) supports the district’s or districts’ ability to meet or exceed each of the goals set forth in Sec. 2 of this act; and

(C) identifies detailed actions it proposes to take to continue to improve its performance in connection with each of the goals set forth in Sec. 2 of this act.

¹ Act 46 (2015), Sec. 5(a).

The full text of Sec. 5, as amended by Act 49 (2017), Sec. 7 (amendments in blue type), states:

Sec. 5. PREFERRED EDUCATION GOVERNANCE STRUCTURE; ALTERNATIVE STRUCTURE GUIDELINES

(a) On or before July 1, 2019, the State shall provide educational opportunities through sustainable governance structures designed to meet the goals set forth in Sec. 2 of this act pursuant to one of the models described in this section.

(b) Preferred structure: prekindergarten–grade 12 supervisory district (Education District). The preferred education governance structure in Vermont is a school district that:

- (1) is responsible for the education of all resident prekindergarten through grade 12 students;
- (2) is its own supervisory district;
- (3) has a minimum average daily membership of 900; and
- (4) is organized and operates according to one of the four most common governance structures:

(A) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 12;

(B) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 8 and pays tuition for all resident students in grade 9 through grade 12;

(C) a district that operates a school or schools for all resident students in prekindergarten or kindergarten through grade 6 and pays tuition for all resident students in grade 7 through grade 12; or

(D) a district that operates no schools and pays tuition for all resident students in prekindergarten through grade 12.

(c) Alternative structure: supervisory union with member districts. An Education District as envisioned in subsection (b) of this section may not be possible or the best model to achieve Vermont's education goals in all regions of the State. In such situations, a supervisory union composed of multiple member districts, each with its separate school board, may meet the State's goals, particularly if:

(1) the member districts consider themselves to be collectively responsible for the education of all prekindergarten through grade 12 students residing in the supervisory union;

(2) the supervisory union operates in a manner that complies with its obligations under 16 V.S.A. § 261a and that maximizes efficiencies through economies of scale and the flexible management, transfer, and sharing of nonfinancial resources among the member districts, which may include a common personnel system, with the goal of increasing the ratio of students to full-time equivalent staff;

(3) the supervisory union has the smallest number of member school districts practicable, achieved wherever possible by the merger of districts with similar operating and tuitioning patterns; and

(4) the supervisory union has the smallest number of member school districts practicable after consideration of greatly differing levels of indebtedness among the member districts; and

~~(4)~~(5) the combined average daily membership of all member districts is not less than ~~1,100~~ 900.

² Act 46, Sec. 10(a).

³ Act 46, Sec. 2.

⁴ Act 46, Sec. 5(b) – see fn 1.

⁵ Act 46, Sec. 5(c) – see fn 1.

⁶ Act 46, Sec. 5(c) – see fn 1.

⁷ Act 46, Sec. 5(c) – see fn 1.

⁸ Act 46, Sec. 10(a)(2).

The full text of Sec. 10, as amended by Act 49 (2017), Sec. 8 (amendments in blue type), states:

Sec. 10. TRANSITION TO SUSTAINABLE GOVERNANCE STRUCTURES; PROPOSAL; FINAL PLAN

(a) Secretary of Education's proposal. In order to provide educational opportunities through sustainable governance structures designed to meet the goals set forth in Sec. 2 of this act pursuant to one of the models described in Sec. 5, the Secretary shall:

(1) Review the governance structures of the school districts and supervisory unions of the State as they will exist, or are anticipated to exist, on July 1, 2019. This review shall include consideration of any proposals submitted by districts or groups of districts pursuant to Sec. 9 of this act and conversations with those and other districts.

(2) On or before June 1, 2018, shall develop, publish on the Agency of Education’s website, and present to the State Board of Education a proposed plan that, to the extent necessary to promote the purpose stated at the beginning of this subsection (a), would move districts into the more sustainable, preferred model of governance set forth in Sec. 5(b) of this act (Education District). If it is not possible or practicable to develop a proposal that realigns some districts, where necessary, into an Education District in a manner that adheres to the protections of Sec. 4 of this act (protection for tuition-paying and operating districts) or that otherwise meets all aspects of Sec. 5(b), then the proposal may also include alternative governance structures as necessary, such as a supervisory union with member districts or a unified union school district with a smaller average daily membership; provided, however, that any proposed alternative governance structure shall be designed to:

(A) ensure adherence to the protections of Sec. 4 of this act; and

(B) promote the purpose stated at the beginning of this subsection (a).

(b) State Board’s plan. On or before November 30, 2018, the State Board shall review and analyze the Secretary’s proposal under the provisions in subsection (a) of this section, may take testimony or ask for additional information from districts and supervisory unions, shall approve the proposal either in its original form or in an amended form that adheres to the provisions of subsection (a) of this section, and shall publish on the Agency’s website its order merging and realigning districts and supervisory unions where necessary.

(c) Process. On and after October 1, 2017, the Secretary and State Board shall consider any proposals submitted by districts or groups of districts under Sec. 9 of this act. Districts that submit such a proposal shall have the opportunity to add to or otherwise amend their proposal in connection with the Secretary’s consideration of the proposal and conversations with the district or districts under subsection (a) of this section, and in connection with testimony presented to the State Board under subsection (b) of this section. The State Board may, in its discretion, approve an alternative governance proposal at any time before November 30, 2018.

(d) *[Default Articles of Agreement.]* The statewide plan required by subsection (b) of this section shall include default Articles of Agreement to be used by all new unified union school districts created under the plan unless and until new or amended articles are approved.

(1) After the State Board of Education issues the statewide plan ..., districts subject to merger shall have 90 days to form a committee with members appointed in the same manner and number as required for a study committee under 16 V.S.A. chapter 11, and which shall draft Articles of Agreement for the new district. During this period the committee shall hold at least one public hearing to consider and take comments on the draft Articles of Agreement.

(2) If the committee’s articles are not approved within the 90 day period, then the provisions in the State Board’s default articles of Agreement included in the statewide plan shall apply to the new district.

(3) *[requirement for Vermont School Boards Association and Vermont Superintendents Association to propose legislation regarding default articles and 16 VSA § 706n]*

(e) Applicability. This section shall not apply to:

(1) an interstate school district;

(2) a regional career technical center school district formed under 16 V.S.A. chapter 37, subchapter 5A;

or

(3) a district that, between June 30, 2013 and July 2, 2019, began to operate as a unified union school district and:

(A) voluntarily merged into the preferred education governance structure, an Education District, as set forth Sec. 5(b) of this act; or

(B) is a regional education district or any other district eligible to receive incentives pursuant to 2010 Acts and Resolves No. 153, as amended by 2012 Acts and Resolves No. 156; or

(4) a supervisory district with a minimum average daily membership of 900.

(f) *[award of \$10,000 supplemental Transitional Facilitation Grant if recently merged district adds district(s) “either on its own initiative or at the request of the State Board”].*

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⁹ Act 46, Sec. 10(a)(2) – see fn 8.

¹⁰ Act 46, Sec. 10(a)(2) – see fn 8.

¹¹ Act 46, Sec. 10(b).

¹² Act 46, Sec. 8(b).

The full text of Sec. 8 states:

Sec. 8. EVALUATION BY THE STATE BOARD OF EDUCATION

(a) School districts. When evaluating a proposal to create a union school district pursuant to 16 V.S.A. chapter 11, including a proposal submitted pursuant to the provisions of Secs. 6 or 7 of this act, 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; and

(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).

(A) At the request of the State Board, the Secretary of Education shall work with the potentially isolated district and other districts in the region to move toward a sustainable governance structure that is designed to meet the goals set forth in Sec. 2 of this act.

(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.

(b) Supervisory unions. The State Board shall approve the creation, expansion, or continuation of a supervisory union only if the Board concludes that this alternative structure:

(1) is the best means of meeting the goals set forth in Sec. 2 of this act in a particular region; and

(2) ensures transparency and accountability for the member districts and the public at large, including transparency and accountability in relation to the supervisory union budget, which may include a process by which the electorate votes directly whether to approve the proposed supervisory union budget.

¹³ Act 46, Sec. 8(b) – see fn 12.

¹⁴ Act 46, Sec. 10(e) – see fn 8.

¹⁵ Sec. 9. SELF-EVALUATION, MEETINGS, AND PROPOSAL

(a) On or before November 30, 2017, the board of each school district in the State that has a governance structure different from the preferred structure identified in Sec. 5(b) of this act (Education District), or that does not expect to become or will not become an Education District on or before July 1, 2019, shall perform each of the following actions.

(1) Self-evaluation. The board shall evaluate its current ability to meet or exceed each of the goals set forth in Sec. 2 of this act.

(2) Meetings.

(A) The board shall meet with the boards of one or more other districts, including those representing districts that have similar patterns of school operation and tuition payment, to discuss ways to promote improvement throughout the region in connection with the goals set forth in Sec. 2 of this act.

(B) The districts do not need to be contiguous and do not need to be within the same supervisory union.

(3) Proposal. The board of the district, solely on behalf of its own district or jointly with the boards of other districts, shall submit a proposal to the Secretary of Education and the State Board of Education in which the district:

(A) proposes to retain its current governance structure, to work with other districts to form a different governance structure, or to enter into another model of joint activity;

(B) demonstrates, through reference to enrollment projections, student-to-staff ratios, the comprehensive data collected pursuant to 16 V.S.A. § 165, and otherwise, how the proposal in subdivision (A) of this subdivision (3) supports the district's or districts' ability to meet or exceed each of the goals set forth in Sec. 2 of this act; and

(C) identifies detailed actions it proposes to take to continue to improve its performance in connection with each of the goals set forth in Sec. 2 of this act.