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## MEMORANDUM

TO: Chair, State Board of Education  
CC: Members, State Board of Education  
FROM: Donna Russo-Savage, Principal Assistant to the Secretary, School Governance  
SUBJECT: Overview - Issues Regarding School Operation and Tuition Payment  
DATE: 10/19/2015

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As you requested, what follows is a brief outline that (1) describes the State Board of Education's action at its September 15, 2015 meeting in connection with Act 46, Sec. 4, and (2) explains how that action relates to and is distinguished from other current public discussions concerning school operation and tuition payment.

### A. Two issues are being confused

1. Can a school district simultaneously operate a school and offer tuition vouchers to all resident students in one or more of the grades operated? ("**Concurrent Operation / Tuition Payment**")
2. Can a multi-town school district require that students from one member town attend a district-operated school, but offer tuition vouchers to students in the same grade who live in a different member town? ("**Different Opportunities Based on Residence**")

#### **Issue #1: Concurrent Operation / Tuition Payment**

- Act 46 does not modify, amend, or repeal § 822, § 822a, or any other statute regarding the local voters' decision to operate a school or pay tuition
- Current statutory law does not authorize Concurrent Operation / Tuition Payment (*see, e.g.,* 16 V.S.A. §§ 822, 822a)
- Act 46 does not authorize Concurrent Operation / Tuition Payment
- Act 46 does not authorize or compel the State Board to approve study committee reports that propose Concurrent Operation / Tuition Payment
- The State Board's September 15, 2015 resolution acknowledges that the Board has not been granted authority (in statute, by Act 46, or otherwise) to approve study committee reports that propose Concurrent Operation / Tuition Payment
- *See also* the Secretary's September 29, 2015 clarification memo

## Issue #2: Different Opportunities Based on Residence

- Current statutes do not authorize Different Opportunities Based on Residence
- The Vermont Supreme Court would likely find that providing Different Opportunities Based on Residence violates the Common Benefits Clause of the Vermont Constitution as interpreted by the *Brigham* Court and later cases
- Act 46 does not authorize Different Opportunities Based on Residence
- The first stated goal of Act 46 is to “encourage and support local decisions and actions that ... provide substantial equity in the quality and variety of educational opportunities...” (see Sec. 2; see also “B. Act 46, Sec. 4” below)
- Representative David Sharpe, Chair of the House Committee on Education, has publicly stated on multiple occasions that the Legislature did not intend Act 46 to authorize Different Opportunities Based on Residence because it received legal advice that such a system would likely be unconstitutional
- Neither the State Board’s September 15, 2015 resolution nor the Secretary’s September 29, 2015 clarification memo addresses this issue directly

### B. Act 46, Sec. 4

- Section 4 cannot be read in isolation from the rest of Act 46 or from other laws
- Section 4 does not modify, amend, or repeal existing statutes or create new statutes
- Section 4 was enacted as part of and in relation to – and it explicitly refers to – a larger multi-year process in Act 46 that:
  - Provides incentives for three phases of voluntary governance changes that explicitly cannot treat resident students in the same grade differently (see, e.g., Act 46, Sec. 6(a)(6) – structures eligible for enhanced incentives)
  - Requires a final mandatory plan that explicitly cannot treat resident students in the same grade differently (see Act 46, Sec. 10(b), which requires the final plan to adhere to subsection (a); subsection (a) requires new structures to meet Act 46’s stated goals per one of the models in Sec. 5; see also Sec. 10(a)(2))
- Section 4 states that, *in connection with the governance changes contemplated by Act 46*:
  - The State cannot compel a district that currently pays tuition to stop doing so
  - The State cannot compel a district that currently operates a school to begin to pay tuition
  - Only the voters of a school district can decide whether to stop paying tuition or to stop operating a school
- *Nothing in Act 46 requires merger of an operating district with a tuitioning district during the voluntary phases or permits the State to require such a merger*
- *Read in its entirety, Act 46 envisions the merger of “like with like” unless the local voters decide to change the method by which they educate their students*