

transparency and accountability, and value in education for all parents, students, and taxpayers across the state.

2. For Plaintiffs Elmore-Morristown Unified Union School District, Stowe School District, and Lamoille South Supervisory Union, (“EMUU-Stowe”), however, the Act 46 process failed to meet these lofty goals. The process by which the Vermont State Board of Education (“The State Board”) purportedly evaluated their joint proposal for an “alternative governance structure” was opaque, arbitrary, and, capricious, and the outcome of the process, if affirmed, would be counterproductive to the goals of Act 46.

3. After spending countless hours engaging with their communities, studying their student populations, talking with parents, analyzing data, reviewing guidances and regulations from the State Board and the Agency of Education, and considering the goals of Act 46, EMUU-Stowe submitted an alternative governance structure proposal, in accordance with Section 9 of Act 46, to the Secretary of Education.

4. As required by Act 46, the EMUU-Stowe proposal set out in great detail why its current school governance structure was the “best means” for EMUU-Stowe to meet and exceed the goals of the law. The proposal also explained why a forced merger into the “preferred structure” for school governance under Act 46 was neither “necessary” nor in the best interests of EMUU-Stowe’s students. As the proposal explained:

Our self-study concluded that a governance unification of the districts of EMUU and Stowe without re-structuring provided no additional educational or fiscal opportunities for meeting the goals of Act 46, and unifying our districts with the intent of restructuring schools that already are among the best in the state posed significant drawbacks with no evidence of potential benefits.

5. The Secretary of Education agreed with EMUU-Stowe. On June 1, 2018, the Secretary released its Proposed Statewide Plan, which granted approval to EMUU-Stowe's alternative governance structure.

6. Over four months later, on October 29, 2018, the State Board provisionally voted to reverse the Secretary's decision and force EMUU-Stowe to merge. A review of the minutes and recording of this meeting shows that several board members misunderstood key details of EMUU-Stowe's proposal. Indeed, it appears some board members had not even read EMUU-Stowe's alternative governance proposal.

7. Thereafter, the State Board twice voted to reconsider its provisional vote. Both times, the vote was evenly split 4-4, with the chair casting the tie-breaking vote in favor of forced merger.

8. On November 30, 2018, the State Board issued its final report. The State Board confirmed its October 29, 2018 provisional vote ordering EMUU-Stowe to merge. However, the State Board did not explain the standards it used to reach this decision. Nor did it explain why the forced merger of EMUU-Stowe was "necessary" or the "best means" to achieve the goals of Act 46.

9. Several members of the State Board expressed frustration and exasperation with how the Act 46 process had unfolded, in particular the evaluative process for alternative governance structure proposals. As Board Member John Carroll explained at the November 28, 2018 meeting of the State Board which finalized the report:

I think that my concern is that – that – is that unintentionally there has crept into our work a kind of dismissive quality about districts that are proposing alternate structures. I can't document that to you. I probably could if I had to. You'll have to think about it for yourselves and decide is that so, is it true for me. . . .

I'm not trying to kill the plan. I'm not trying to starve it or anything like that. There's enough in it that makes me, at least, uncomfortable about how we went about thinking about it and execute – and implementing it that as a matter of conscience I'm uncomfortable with and – and can't sign up for. I think we could improve on it. I think we could improve our process.

10. In this lawsuit, Plaintiffs do not challenge the General Assembly's authority to reform school governance structures in Vermont. Nor do Plaintiffs challenge the power of the State Board to assist the General Assembly in creating more sustainable and efficient school governance structures. To the contrary, Plaintiffs accept that the General Assembly and the State Board can play essential roles in reforming school governance structures and improving access to quality education for all Vermont students.

11. Rather, Plaintiffs object to the particular processes used by the State Board and the General Assembly to reach the decision to dissolve EMUU and Stowe School District. The State Board acted arbitrarily and capriciously by reaching its purportedly final decision without reference to any articulable standards.

12. In addition, the State Board ignored the plain statutory requirements of Act 46, as amended by Act 49, by failing to make findings as to whether the forced merger of EMUU-Stowe was "necessary" or the "best means" of meeting or exceeding the goals of Act 46, and by imposing more stringent requirements than those of Act 46.

13. Finally, the State Board's purportedly final decision to dissolve two school districts and a supervisory union cannot be final until the State Board's decision is directly adopted and authorized by the General Assembly. The General Assembly unconstitutionally delegated its authority to dissolve municipal corporations to the State Board, thereby violating the separation-of-powers principle enshrined in Chapter II, Section 5 of the Vermont Constitution.

14. Act 46 addresses difficult policy decisions of the utmost importance to the local communities that they impact. Of course, when dealing with such fraught issues, it will be impossible to reach a result that pleases everyone. Regardless of the end result, however, the process followed must be fair and comport with the guarantees and structures of the Vermont Constitution. Because the State Board's process failed to meet these basic guarantees, this Court must declare the State Board's decision and order unconstitutional.

JURISDICTION & VENUE

15. This Court has jurisdiction pursuant to 4 V.S.A. § 31(2). Plaintiffs seek remedies pursuant to 12 V.S.A. §§ 4711-4725 as well as Vt. R. Civ. P. 75. Venue is proper in this Court under 12 V.S.A. § 402(a) because the defendant is an agency of the State of Vermont.

PARTIES

16. Plaintiff Elmore-Morristown Unified Union School District ("EMUU") is a unified union school district that serves students in pre-kindergarten through grade 12 and operates the Elmore School, the Morristown Elementary School, Peoples Academy Middle Level, and Peoples Academy. EMUU was formed in the spring of 2016, formalizing decades of strong partnerships in support of public education between the communities of Elmore and Morristown.

17. Plaintiff Stowe School District ("Stowe") is a school district that serves students in pre-kindergarten through grade 12 and operates the Stowe Elementary School, Stowe Middle School, and Stowe High School.

18. Plaintiff Lamoille South Supervisory Union ("LSSU") is a supervisory union that provides efficient and high quality leadership, administrative and direct education services for

the students, educators, schools and school boards of Elmore-Morristown Unified Union and Stowe School Districts.

19. Defendant Vermont State Board of Education (“The State Board”) is an agency of the State of Vermont with supervision over the Department of Education. Its members are appointed by the Governor with the advice and consent of the Senate. The State Board is tasked with administering Act 46 in accordance with its terms.

LEGISLATIVE AND REGULATORY BACKGROUND ON ACT 46

20. On June 2, 2015, then-Governor Peter Shumlin signed Act 46 into law. Section 2 of Act 46, which identifies the goals of Act 46, declares that “[b]y enacting this legislation, the General Assembly intends to move the State toward sustainable models of education governance.”

21. According to Section 2, Act 46 was “designed to support local decisions and actions” that would achieve the Act’s five goals of (1) providing equity in the quality and variety of educational opportunities statewide, (2) leading students to achieve or exceed the state’s education quality standards, (3) maximizing operational efficiencies, (4) promoting transparency and accountability, and (5) delivering all these goals at a cost that parents, voters, and taxpayers value.

22. To meet these goals, Act 46 set forth two sustainable models for education governance: the preferred structure and the alternative structure.

23. Section 5(b) defines the preferred structure as a prekindergarten to grade 12 supervisory district that has a minimum average daily membership of 900 and “is organized and operates according to one of the four most common governance structures.”

24. Section 5(c) defines the alternative structure as a supervisory union with member districts. Section 5(c) then explains the role of and need for alternative structures in Act 46:

An Education District as envisioned in subsection (b) of this section [the “preferred structure”] 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, may¹ meet the State’s goals (emphasis added).

Section 5(c) then lists four conditions that will “particularly” show that an alternative structure may meet the goals of Act 46: (1) collective responsibility for all students, (2) maximized efficiency across the districts, (3) the smallest number of member school districts practicable in the supervisory union, and (4) a combined average daily membership of not less than 1,100.

25. Section 8 of Act 46 explains the process by which the State Board is to evaluate proposals. Section 8(b) allows the State Board to approve the continuation of an alternative structure if the State Board concludes that the 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

(emphasis added).

26. Section 9 of Act 46 sets forth the intensive process by which school districts may submit proposals for alternative structures. In its Section 9 proposal, a district must “demonstrate[], through reference to enrollment projections, student-to-staff ratios” and other comprehensive data “how the proposal . . . supports the district’s or districts’ ability to meet or exceed each of the goals set forth in Sec. 2 of this act.” In addition, a district must identify in its

¹ Act 49 amended Act 46 to change this word to “may” from “can.”

proposal “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.”

27. Section 10 of Act 46 outlines the steps the Secretary of Education and the State Board will take to review proposed governance structures. Section 10(a)(2) explains how the Secretary of Education will create a provisional plan that both merges districts into preferred structures and grants approval to eligible alternative structures. For alternative structures, Section 10(a)(2) states:

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 . . . meets all aspects of Sec. 5(b), then the proposal may also include alternative governance structures as necessary . . . provided, however, that any proposed alternative governance structure shall be designed to . . . promote the purpose stated at the beginning of this subsection (a) [the Section 2 goals]. (emphasis added).

28. In 2017, the Legislature enacted Act 49, which made certain changes to Act 46. Importantly, Act 49 amended Section 8 of Act 46 to add a provision that states: “The State Board may adopt rules designed to assist districts in submitting alternative structure proposals, but shall not by rule or otherwise impose more stringent requirements than those in this act.” (emphasis added).

29. After Act 46 was enacted, the Agency of Education and the State Board promulgated rules and guidances on the process for pursuing alternative structures. These rules and guidances are wildly inconsistent with one another. At times, they appear to impose conditions far and above what is required by Act 46, in violation of Section 8(c) of Act 46, as amended by Act 49.

30. The Agency of Education issued a guidance on August 1, 2016 titled “Summary: Unmerged Districts and Alternative Governance Structures,” which explained that the preferred structure “may not be possible or the best model to achieve Vermont’s education goals in all

regions of the State” and that “Act 46 recognizes the need in some regions to create or continue sustainable ‘alternative structures.’” According to the guidance:

Alternative governance structures are a necessary element in the overall Act 46 framework, because Act 46 does **not**:

- 1) require that all school districts merge into larger governance units;
- 2) establish any required minimum average daily membership (ADM) for all school districts (emphasis in original)

31. Three days earlier, however, on July 26, 2016, the State Board issued a guidance titled “Guidance: Proposals by One or More Non-Merging Districts for an ‘Alternative Structure’ Under Act 46 (2015).” This guidance purported to set the process by which districts could submit proposals for alternative structures. But, the guidance made plain the State Board’s hostility towards alternative governance structures, declaring that “[a]n ‘alternative structure’ is an exception to the creation of a preferred, unified system.” (emphasis in original). The State Board justified its hostile position towards alternative governance structures by invoking Section 10(a) of Act 46 and emphasizing certain conditional words in the Section:

“*If it is not possible or practicable*” to merge some districts, where necessary, into the preferred unified structure . . .

a. “*then* the proposal *may also include* alternative governance structures *as necessary*”

b. provided that any proposed alternative governance structure shall be “*designed*” to . . . “promote” the Goals. (emphasis in original)

32. On June 26, 2017, the Agency of Education promulgated formal rules on proposals for alternative governance structures.

33. Rule 3450 addresses the data and documents needed to support an alternative governance structure proposal. Rule 3450.3 states that an alternative governance structure proposal “should demonstrate on what basis the State Board would be able to ‘conclude[] that

this alternative structure ... is the best means of meeting the [Goals] in a particular region' as the Board is required to do pursuant to Sec. 8(b).” (emphasis added) (brackets in original).

34. On January 24, 2018, then-Secretary of Education Rebecca Holcombe submitted a Report on Act 46 to the House Committees on Education, Appropriations, and Ways and Means and to the Senate Committees on Education, Appropriations, and Finance. In her report, the Secretary described the next steps for completing the Act 46 process:

During 2018, the Secretary of Education will develop a proposal and the State Board will issue a final statewide design that redraws [supervisory union] boundaries and realigns unmerged districts into more sustainable models of governance that meet State goals – to the extent the changes are *necessary, possible, and practicable* for the region. (emphasis in original).

When explaining the final statewide plan that would be issued by the State Board, the Secretary repeated that “[g]overnance changes to [supervisory unions] and districts” would be “ordered to the extent necessary, possible, and practicable.”

EMUU-STOWE’S ALTERNATIVE GOVERNANCE STRUCTURE PROPOSAL

35. On November 30, 2017, EMUU-Stowe submitted its joint proposal for an alternative governance structure. Under the proposal, EMUU and Stowe would continue as side-by-side prekindergarten through grade 12 operating districts assigned to the supervisory union of LSSU.

36. The proposal explained why the alternative governance structure it proposed would be the “best means” of meeting or exceeding the goals of Act 46 and why merger was therefore not “necessary.” According to the proposal, EMUU-Stowe’s self-study process provided conclusive evidence that:

1. The current supervisory union structure is leading students across LSSU to achieve or exceed the State’s educational quality standards as measured by a range of state and local performance assessments and post-graduation studies.

2. Both EMUU and Stowe are operationally lean districts delivering a quality educational program in an operationally efficient manner. LSSU has already wrung out of its operations, particularly in the union of Elmore and Morristown, efficiencies that benefit students and taxpayers.

3. Creating a single, unified budget assessed across the grand lists of Elmore, Morristown, and Stowe would result in no discernable increase in educational opportunity or equality (educational or financial), nor result in marked savings for taxpayers.

4. Changes in the operating structure of LSSU create unnecessary burdens on the capacity of our central office team to effectively complete the successful implementation of the already approved merger between Elmore and Morristown.

37. The proposal also explained why the “preferred structure” would not be the “best means” of meeting or exceeding the goals of Act 46 for EMUU-Stowe. The proposal explained:

Our self-study concluded that a governance unification of the districts of EMUU and Stowe without re-structuring provided no additional educational or fiscal opportunities for meeting the goals of Act 46, and unifying our districts with the intent of restructuring schools that already are among the best in the state posed significant drawbacks with no evidence of potential benefits.

38. The proposal pointed to additional ways that the “preferred structure” would fail to advance the goals of Act 46, and could in fact impede achievement of those goals. The proposal noted the lack of “evidence that the wholesale re-organization of two high-performing K-12 districts would lead to greater educational opportunity or improved student performance,” “[t]he very real impact on a significant portion of our student body of longer bus rides” given the size of LSSU, “[t]he perceived loss of community identification with and support for their schools,” and the “[e]vidence of an unequal shifting of future tax burdens among the communities of Elmore, Morristown, and Stowe—even when the merger was incentivized.”

39. As required by Act 46, EMUU-Stowe explained the lengthy process of self-evaluation and self-reflection they had undertaken to reach the conclusion that their alternative governance structure was the “best means” of achieving the goals of Act 46.

40. Beginning in 2009, the districts of Elmore, Morristown, and Stowe began voluntarily studying the future of their governance structures. This collaborative process of self-study went through multiple phases of strategic assessment:

Phase 1: 2009 Governance Study Part 1

Phase 2: 2010 Governance Study Part 2

Phase 3: 2011-2013 Regional Education District Study

Phase 4: 2013-2016 Elmore-Morristown Unification Study

Phase 5: 2015 Act 46 Accelerated Incentive Financial Study

Phase 6: 2016-2017 EMUU-Stowe Alternative Structures Self-Study

41. In the 2009 Governance Study Part 1, EMUU-Stowe jointly contracted with Raymond Proulx, Ed.D., for an analysis of demographic and economic factors that could inform local deliberations on future school governance and operational structures for the region. Dr. Proulx's initial report warned that the districts, particularly Elmore, could face fiscal challenges without a change to the status quo.

42. In the 2010 Governance Study Part 2, EMUU-Stowe formed the Optional Educational Structures Committee and charged it with investigating whether the three school districts within LSSU should alter their governance and operational structures and, if so, what alternatives should be pursued. Dr. Proulx facilitated the committee's work.

43. The Optional Educational Structures Committee recommended two scenarios be explored: 1) merging the three towns into one consolidated middle school and one consolidated high school, or 2) maintaining a middle and high school in Morristown and a middle and high school in Stowe.

44. In the 2011-2013 Regional Education District Study, EMUU-Stowe undertook a formal process pursuant to 16 V.S.A. § 706b to examine whether EMUU-Stowe should form a Regional Education District. After careful study, EMUU-Stowe decided that "[g]iven the history of success of the current systems, the history of strong community support for the current

systems, and the uncertain future context of public education in Vermont . . . it is not advisable to form a Regional Education District at this time.”

45. In 2013 and 2014, Elmore faced growing fiscal challenges and thereby sought ways to lower tax rates for its community. At this time, Elmore and Morrystown began the laborious process of forming a unified union school district and thereby undertook the 2013-2016 Elmore-Morrystown Unification Study. This study ultimately led to merger of Elmore and Morrystown, a merger which was approved by the State Board, and the creation of EMUU in the spring of 2016.

46. The formation of EMUU resulted in significant tax reductions for Elmore, at a rate of 31.5 cents. These savings were achieved purely through operational efficiencies, without any Act 46 incentives.

47. During the 2013-2016 Elmore-Morrystown Unification Study, the Vermont Legislature passed Act 46. As a result, the unification study was briefly paused while all three member districts cooperated to review the potential financial implications of the accelerated incentives Act 46 offered. Upon careful review, all three districts concluded that accelerated merger was not in the best interests of the districts, and the Elmore and Morrystown school boards asked the Stowe School District board to wait on any Act 46 proposals until after EMUU was formed.

48. In 2016 and 2017, EMUU-Stowe undertook a joint self-study to assess the ability of its current governance structures to meet or exceed the goals of Act 46.

49. EMUU-Stowe’s self-study looked to the five key goals of Act 46 as “the central focus of our work, findings, and recommendations.” Based on the findings and evidence presented in its self-study, EMUU-Stowe believed it had “demonstrate[d] a clear basis for the

State Board to conclude that maintaining LSSU in its current form as an alternative structure is the best means of improving the educational opportunities for the students in our region and meeting the goals of Act 46.”

50. Addressing Act 46’s first and second goals of equity, quality, and variety of educational opportunity, the self-study demonstrated the quality of performance students in EMUU-Stowe had already achieved and the specific steps EMUU-Stowe planned to take to continue to enrich students’ educational experiences across LSSU.

51. The self-study highlighted test scores under the New England Common Assessment Program (“NECAP”) and the Smarter Balanced Assessment Consortium (“SBAC”), which showed that “on average students in all schools of Elmore-Morristown and Stowe perform as well or better than Vermont students.”

52. Despite the already high performance of students within EMUU-Stowe, the self-study identified several priority items to further improve the quality of education.

53. For example, a review of student data across LSSU showed that EMUU students were receiving limited foreign language exposure at the elementary and middle school levels. Meanwhile, the data also showed that, despite its smaller population of students in the Free and Reduced Lunch Program, Stowe had a more significant and persistent achievement gap than EMUU.

54. Using their existing governance structures, EMUU and Stowe were able to address both of these concerns. The Stowe School District board worked with the EMUU board to extend the robust foreign language program in Stowe schools throughout all the schools in LSSU. In turn, the EMUU board collaborated with the Stowe School District board to assist it

with addressing the achievement gap in Stowe, which ultimately led to the hiring of a literacy interventionist in the elementary school and a literacy coach at the secondary level.

55. Addressing Act 46's third goal of maximizing operational efficiencies, the self-study found "no evidence to suggest that unification, in and of itself, would lead to greater operational savings" because "[t]hat work has already been accomplished" through the LSSU's efficient operating structure and the merger of Elmore and Morristown.

56. The self-study evaluated the current spending levels at EMUU and Stowe and found that "both districts deliver education at a spending level less than the state average, making our supervisory union a low-cost educational leader in Vermont." The unification of Elmore and Morristown into EMUU "represented a significant step forward in strengthening the educational programs offered [to] our students and realized additional savings in operations [in] the new unified district."

57. The self-study did note that both EMUU and Stowe faced potential new debts in the near future and that both EMUU and Stowe would be forming capital committees to address findings from facilities audits across the supervisory union performed in 2015. In its November 12, 2018 supplemental filing with the State Board, EMUU-Stowe explained how that process unfolded after the self-study was submitted:

Earlier this year, both EMUU and SSD developed community-led capital project study committees. SSD's plan calls for \$25 million to address immediate needs, and EMUU's plan requires up to \$14 million. The improvement's debt will largely fall on the shoulders of Morristown and Elmore. Instead of EMUU communities being collectively responsible for \$14 million, they will be on the hook for approximately \$24 million. To shoulder that debt, a homestead tax increase will likely exceed 13% in those communities.

(emphasis added).

58. The self-study found there would be no measurable operational efficiencies realized from merging governance structures. According to the self-study, “whatever savings/efficiencies might accrue through unification would be at the margins without community support to consolidate our existing middle and high schools.” Because the communities of EMUU-Stowe strongly support the continued existence of their middle and high schools, there would be little chance for increased efficiencies through merger.

59. Finally, the self-study concluded by addressing Act 46’s fourth and fifth goals of transparency, accountability, and value to the community. The self-study described how the nine-year process of self-evaluation had placed LSSU in a unique position:

We are not the same Supervisory Union we once were. The work we have done has opened new lines of communication, mutual understanding, cooperation, planning, and support. As our communities elected leaders, we have done all of this work together and found new ways to govern and share our expertise and resources while at the same time maintaining the requisite autonomy needed to represent and respond to the unique matrix of educational need and aspiration that defines each of the communities we serve. There is a certain appeal to streamlining governance structures, but the complexity of responding to the particular needs of individual communities in a manner that our parents, community members, and taxpayers value, sometimes demands more nuanced responses. . . .

We recognize that there may come a time when the demographic or financial pictures change, demanding additional reconsideration of governance and operational structures. The realities we face are fluid and evolving. That is why our LSSU Action Plan is designed to ensure a systemic commitment to board and district cooperation in serve to the needs of all our children.

THE SECRETARY’S CONSIDERATION OF THE EMUU-STOWE PROPOSAL

60. On June 1, 2018, the Secretary of Education released the Proposed Statewide Plan, which granted approval to EMUU-Stowe’s alternative governance structure proposal.

61. Under the terms of Act 46, as well as the requirements of Rule 3450.3, the Secretary had to address three questions when considering EMUU-Stowe’s alternative

governance structure: 1) Was merger “possible?” 2) Was merger “practicable?” 3) Was merger “necessary,” meaning was merger the “best means” of meeting or exceeding the goals of Act 46, or was the alternative governance structure the “best means” of meeting or exceeding these goals?

62. The Secretary began by making explicit findings on these first two questions: “Not only is merger of the EMUU and Stowe Districts ‘possible’ and ‘practicable’ in this instance, but the unified district would also be of a size sufficient to support the functions of an SU, thereby creating what the Legislature has determined to be a ‘preferred structure.’”

63. The Secretary described some of the hypothetical benefits of merger, but then turned to the “unique and difficult” circumstances surrounding the “creation of the EMUU District itself.”

64. The Secretary recounted the process by which Elmore and Morristown had merged and how, because of the timing of their merger, EMUU was ineligible for the tax rate reductions offered under Act 46. The Secretary noted that “the EMUU Board is still engaged in the work necessary to help its communities work and think of themselves as a single entity. The process is a slow one, and the details of merging two autonomous structures into a single unit is time-consuming and complex.”

65. After this review of the Elmore and Morristown merger process, the Secretary addressed the final question of what structure would be the “best means” of meeting or exceeding the goals of Act 46:

Although this is a difficult decision, and although the State Board will not have the ability to require the districts to merge after November 30 of this year, the Secretary believes that this entirely unique situation presents evidence sufficient to override the presumption that a unified district that is its own single-district SU is the structure most likely to meet or exceed the educational and fiscal goals of Act 46 in a sustainable manner.

66. The Secretary’s recommendation closed with a somewhat odd reference back to the practicability of merger:

Accordingly, because the Secretary believes that it is not practicable to require merger at this time because it would not advance the goals of Act 46, the Secretary does not propose that the State Board merge the Elmore-Morristown Unified Union School District and the Stowe School District in the statewide plan. (emphasis added).

Despite this odd phrasing, this final finding is explicit that, in the Secretary’s view, the “preferred structure” was not the “best means” of advancing the goals of Act 46 for the students of EMUU-Stowe.

THE STATE BOARD’S CONSIDERATION OF THE EMUU-STOWE PROPOSAL

67. On July 11, 2018, the State Board circulated a memorandum to superintendents and school board chairs with the subject “School districts that Submitted Section 9 Proposals; Regional Meetings.”

68. The memorandum requested that elected representatives from districts that had submitted alternative governance structure proposals provide written responses to a series of questions. The first question lays out the three questions the State Board was tasked with addressing when considering alternative governance structure proposals:

1. If you do not agree with the Secretary’s recommendations regarding your district(s) as set out in the proposed statewide plan:
 - a. Why is the Secretary’s proposal not “possible” per Act 46, Section 10?
 - b. Why is the Secretary’s proposal not “practicable” per Act 46, Section 10?
 - c. Why is the proposal you presented the “best” way to meet the Act 46 goals per Act 46, Sections 8(b) and 10?

69. On July 13, 2018, Tracy Wrend, Superintendent of Schools for LSSU, submitted a letter affirming the Secretary’s recommendation and providing some additional data on continued collaborative projects between EMUU and Stowe.

70. On July 18, 2018, Stephanie Craig, chair of the EMUU board and Cara Zimmerman, chair of the Stowe board, made a presentation to the State Board in support of the Secretary's recommendation on its alternative governance structure proposal.

71. At its October 29, 2018 meeting, the State Board evaluated the Secretary's recommendation regarding EMUU-Stowe's proposal.

72. Board Chair Huling began discussion of the Secretary's recommendation, noting that the Secretary had recommended that EMUU-Stowe not be merged "because it would not advance the goals of Act 46."

73. Immediately, the State Board expressed hostility towards the Secretary's recommendation on EMUU-Stowe. In fact, Board Member O'Keefe noted that this particular recommendation had "received a lot of criticism" from communities that were being merged, who believed that EMUU-Stowe was being "given a pass."

74. A motion was made to approve the Secretary's recommendation as to the EMUU-Stowe proposal, which failed unanimously, and further discussion of the recommendation was moved to later in the meeting.

75. The State Board's subsequent discussion of the Secretary's recommendation on EMUU-Stowe demonstrated serious misunderstandings of both the details of the EMUU-Stowe proposal and the binding requirements on the State Board for approving an alternative governance structure. Chair Huling stated that the State Board should reject the proposal because "other districts with the same structures" were being forced to merge and "the Board's decision should show consistency." She further represented, incorrectly, that the merger activity at Elmore and Morristown "took place in 2015 and was for 19 students."

76. In fact, the EMUU merger occurred in 2016 and impacted a total of 126 Elmore students. Today, the merger process is still ongoing, including building avenues for school choice to select classes at the Elmore School, Vermont's only remaining one-room schoolhouse, phasing out "grandparented" tuition students, and building community support for the newly merged district.

77. Later in the meeting, Chair Huling asked for a motion on the Elmore-Stowe proposal. After reviewing the Secretary's recommendation once more, Chair Huling stated that "it appears the Board is in agreement with the Secretary's analysis that a merger is possible and practicable and that the 2015 merger of Elmore and Morrystown is not a barrier."

78. Board Member O'Keefe then moved to provisionally not approve of the Secretary's recommendation for EMUU-Stowe. The motion recited the following reasons for the State Board's action: "The merger is in fact practicable because the obstacles or concerns described by the Secretary and by the affected communities are not significant impediments to a merger; merger would achieve the goals of Act 46, as amended; and for the reasons articulated by the Board in its discussions." Chair Huling asked that it be put on the record that the State Board agreed with the section of the Secretary's recommendation that merger was possible and practicable.

79. Again, the State Board's discussions show that it harbored fundamental misunderstandings of basic concepts in EMUU-Stowe's proposal. For example, Board Member Peltz asked that it be put on the record that Stowe did not create a 706b study committee "nor submit a Section 9 proposal." While it appears the record was corrected to reflect that Stowe had in fact submitted a Section 9 proposal jointly with EMUU, such statements indicate that members of the State Board may not have even read EMUU-Stowe's proposal.

80. Board Member O’Keefe then provided a lengthy explanation of his reasons for forcing EMUU-Stowe to merge, which relied almost entirely on incorrect student data:

You know, I don’t see a compelling case why the two shouldn’t be merged. You know, you’re also looking at the numbers and I know there is the magic 900 number that we didn’t come up with but, you know, both of the school districts, even with the merger of Elmore, are significantly below the 900 [number]. One is 200 below and one is about 150 below so—I’m showing here the EMUU is about 776 and Stowe is about 704. So, you know, based on that alone—and again it’s not my job to interpret the 900 number and how they came up with 900, or 800, or 1,000—but it seems kind of like a no-brainer to merge these two.

(emphasis added).

81. Board Member O’Keefe appears to have relied on a mistake in the Secretary’s calculation of Average Daily Membership (“ADM”) for EMUU-Stowe. When properly calculated, the ADM for EMUU is 898.85, a mere 1.15 students below the 900 threshold, and the ADM for Stowe is 761.

82. These ADM numbers were prominently featured in EMUU-Stowe’s alternative governance structure proposal. The “Fast Facts” page located towards the beginning of EMUU-Stowe’s proposal provided the correct ADM numbers of 898.85 and 761 for EMUU and Stowe respectively. This mistake further demonstrates that members of the State Board may not have reviewed EMUU-Stowe’s proposal carefully, if at all.

83. The motion to not approve the Secretary’s recommendation for EMUU-Stowe passed, with Board Member Olsen voting nay.

84. At its October 29, 2018 meeting, the State Board never made findings as to whether the EMUU-Stowe merger was “necessary” or the “best means” of meeting or exceeding the goals of Act 46. Nor did it make a finding as to whether the alternative governance structure proposed by EMUU-Stowe was the “best means” of meeting or exceeding the goals of Act 46.

85. In response to the State Board’s October 29 provisional vote to reverse the Secretary’s recommendation and force EMUU-Stowe to merge, representative of EMUU-Stowe submitted letters to the State Board.

86. On November 12, 2018, Stephanie Craig, chair of the EMUU board, and Cara Zimmerman, chair of the Stowe board, submitted a joint letter asking the State Board to reconsider its provisional vote and to accept the Secretary’s recommendation that EMUU-Stowe’s current structure “is the best means for meeting the goals of Act 46 for the towns in our region.”

87. The letter highlighted some of the State Board’s misperceptions on the EMUU-Stowe proposal, including the mistaken ADM number relied on by Board Member O’Keefe, the misunderstanding of the sequence of events that led to the formation of EMUU, as well as the number of students affected by the Elmore-Morristown merger.

88. On November 13, 2018, the legislators that represent Elmore, Morristown, and Stowe also submitted a letter requesting the State Board reconsider its provisional vote.

89. In particular, the letter emphasized the State Board’s failure to articulate or apply the proper standard for evaluating alternative governance structure proposals under Act 46:

In reviewing the State Board meeting and minutes, we are not confident that the Board fully understood the AGS proposal, the reasons behind it, and the precise details of how it is the “Best Means” for meeting the goals of Act 46. While the merger might be possible and practicable under the law—the provision on which the State Board seemed to focus—a merger is simply not the “Best Means” for meeting the goals of Act 46 in our region.

90. On November 15, 2018, the State Board held another meeting to finalize the state plan. David Bickford, member of the EMUU board, and Jim Brochhausen, member of the Stowe board, both gave ten-minute presentations to the State Board as to why it should vote to reconsider its provisional recommendation of merger. During their presentation, Board Member

Carroll explained why he had voted against the EMUU-Stowe proposal at the October 29, 2018 meeting:

My vote was based largely upon my reading of the Secretary's assessment and explanation of her recommendation. I called it rather weak tea I have to admit that at that time I had not actually sat down and read this 137-page document (gesturing to the EMUU-Stowe proposal), but, just to show you what a nerd I am, I [now] have

91. Later in the meeting, Board Member Beck asked that the State Board revisit the EMUU-Stowe proposal, because it appeared to her "that they are doing well, and that at this time a merger is not appropriate." Board Member Olson agreed, explaining that he now understood EMUU-Stowe's ADM count to be not far from 900 and now "believed that merger activity could promote distraction from programming." He also expressed concern that, based on proposed capital expenditures, Morristown could end up bearing a heavier load of debt under a merger—*at odds with the equity goal of Act 46.*

92. Board Member Carroll formally moved for reconsideration of the State Board's October 29 provisional vote to merge EMUU and Stowe, and Board Member Beck seconded the motion. Board Member Carroll explained that "the Secretary's reasons for accepting the AGS was based on a hope, but with more careful analysis, there is compelling evidence that the AGS is highly responsive to the objectives of the Act." In Board Member Carroll's view, whether a proposal was responsive to the goals of Act 46 was "the only measure that really counts."

93. Chair Huling called for a vote on the motion to reconsider. The vote tied 4-4, with Board Members Carroll, Olsen, Perrin, and Beck voting for reconsideration, and Board Members O'Keefe, Peltz, Mathis, and Weinberger voting against reconsideration. Chair Huling broke the tie vote by voting against reconsideration.

94. At its November 15, 2018 meeting, the State Board never made findings as to whether the EMUU-Stowe merger was “necessary” or the “best means” of meeting or exceeding the goals of Act 46. Nor did it make a finding as to whether the alternative governance structure proposed by EMUU-Stowe was the “best means” of meeting or exceeding the goals of Act 46.

95. On November 28, 2018, the State Board held a meeting to finalize its provisional decisions and orders. After reviewing the draft version of the report, several Board members expressed frustration and exasperation with the State Board’s deliberative process, particularly when it came to alternative governance structure proposals.

96. Board Member Carroll expressed his belief that the State Board had “unintentionally taken a dismissive attitude” towards alternative governance structure proposals:

I think that my concern is that – that – is that unintentionally there has crept into our work a kind of dismissive quality about districts that are proposing alternate structures. I can’t document that to you. I probably could if I had to. You’ll have to think about it for yourselves and decide is that so, is it true for me. . . .

97. Board Member Carroll explained that his frustration was not necessarily with the results in the State Board’s plan, but rather with the process used to reach those results:

I’m not trying to kill the plan. I’m not trying to starve it or anything like that. There’s enough in it that makes me, at least, uncomfortable about how we went about thinking about it and execute – and implementing it that as a matter of conscience I’m uncomfortable with and – and can’t sign up for. I think we could improve on it. I think we could improve our process.

98. Board Member Matthis also believed that the State Board’s process for evaluating alternative governance structures had been fundamentally flawed. He explained that the Secretary had created a “rebuttable assumption” that the “preferred structure” should be adopted for all school districts:

Now, what’s a rebuttable assumption? The Secretary presumes that a certain model is best, but this must be proven if it’s rebutted. In other words, if you raise the challenge, it must be answered, and we, as the appeal body, really have to be

the ones who look at that and say this is correct or this is not correct. And so we have to have some burden of proof, and what's happened here in this process—and it's our fault to some degree—is that we've never asked for the burden of proof

Board Member Matthis concluded that the State Board had failed to consider alternative governance proposals “fairly and openly” and that the State Board had “not done right about this. And if we teach anything to the children, which we've talked about, it should be about doing things right.”

99. Later in the meeting, Board Member Olsen moved to amend the final report's decision on EMUU-Stowe to affirm the Secretary's recommendation against merger. Board Member Carroll seconded the motion. Board Member Olsen explained that:

[T]he Morristown and Stowe districts made a compelling case to remain distinct districts, have sufficient scale, have demonstrated that they are meeting the goals of the law and that their current structure allows them to meet those goals, of all the feedback received across the state this one was found to be the most compelling, they had a very clear Section 9 proposal, and that Morristown is almost at 900 and at a scale to be an SU, and concern about the capital needs of the districts and these putting them in an adversarial relationship.

100. Board Member Beck agreed that EMUU-Stowe's testimony had been “compelling” and that the districts were “meeting the goals of Act 46.”

101. Board Member Weinberger disagreed with Board Member Olsen's description of the feedback received on the State Board's provisional vote for EMUU-Stowe:

I felt like this was one of the places where we received more e-mail than usual praising the decision that we made . . . we hear where people are unhappy with the decision, [and] this was one where I feel like we did have several voices saying thank you for your courage in that vote.

102. Responding to Board Member Weinberger's comment, as well as similar comments from other board members, Board Member Olsen stated how in their discussions:

I hear the word “Stowe” a lot, but . . . I'm less concerned with Stowe and I'm more concerned with Morristown and – and Elmore . . . I really think that they are

going to be—they're really going to be challenged in this—this merger situation . . . [On] the Morristown-Elmore side, there's already been one tax increase and that they'd be looking at yet another tax increase, so there seems to be something a little sort of perverse about that . . . I worry that this shift in the structure is going to create a financial imbalance that going to throw—you know, there isn't a wound, but if there were, we'd be throwing salt in it, and I'm really worried about folks in those two communities, specifically Morristown and Elmore.

103. Board Member Olsen's comments highlight the State Board's view that Stowe was simply seeking a "pass" from being forced to merge. Such a perspective fundamentally mischaracterizes the collaborative nature of the EMUU-Stowe proposal and dismisses the impact that governance structure change would have on the students and communities of Elmore and Morristown, whose student body makes up 62% of LSSU.

104. After some further discussions, Chair Huling called for a vote. The vote again split 4-4, with Board Members Beck, Carroll, Olsen, and O'Keefe voting to amend the report to affirm the Secretary's recommendation and Board Members Matthis, Peltz, Perrin, and Weinberger voted against the amendment. Chair Huling again broke the tie and voted against the amendment, thereby forcing EMUU and Stowe to merge.

105. At its November 28, 2018 meeting, the State Board never made findings as to whether the EMUU-Stowe merger was "necessary" or the "best means" of meeting or exceeding the goals of Act 46. Nor did it make a finding as to whether the alternative governance structure proposed by EMUU-Stowe was the "best means" of meeting or exceeding the goals of Act 46.

106. On November 30, 2018, the State Board released its Final Report of Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10.

107. At the opening of its report, the State Board described its struggle to adopt articulable standards for evaluating alternative governance structure proposals:

Once the Board concluded listening to local reactions to the [Secretary's proposed] plan at its July, August, and September meetings, the Board began to process the testimony of the previous three months and explored potential development of defining principles. While it was relatively straightforward to decide that it was "possible" to merge a district in the sense of *legally* "possible," it was sometimes tougher for the Board to determine when a merger was "practicable." The Board wrestled with whether and how to give weight in the final phase of Act 46 to local opposition votes cast at various stages of the process and how to properly consider Act 49's guidance that a "supervisory union has the smallest number of member school districts practicable after consideration of greatly differing levels of indebtedness among the member districts."

108. Because of this division on the State Board regarding the standards that should apply to alternative governance structures, the State Board stated that "[i]n the end, the Board opted to focus on the text of Act 46, as amended, and did not adopt any additional guiding principles, concluding that the Legislature authorized the State Board to make judgments based on the goals and guidance of the Acts." (emphasis added). In this way, the State Board abdicated its charged authority to interpret the law, providing no construction or definition for key terms like "practicable," "necessary," or "best means" when used in Act 46.

109. The report reviews the Secretary's recommendation on the EMUU-Stowe proposal and affirms the State Board's provisional votes to reverse the Secretary and force EMUU and Stowe to merge. The report states that the State Board "agrees with the Proposed Plan's analysis that the merger of EMUU and Stowe is both possible and practicable, but we disagree with the Plan's conclusion against merger."

110. The report provided the following reasons for the State Board's decision:

At the time of merger the Elmore School District operated only one school, which provided for the education of approximately 20 students in grades 1-3. The Secretary's conclusion and proposal are not consistent with proposals the Plan makes in connection with other, similarly-structured districts. Creation of a unified union school district in Elmore, Morristown, and Stowe is in fact practicable because the obstacles and concerns described by the Secretary and by the affected communities are not significant impediments to a merger; merger would achieve the goals of Act 46, as amended. In addition, creation of a unified

union school district in this instance leads to its designation as a supervisory district, the Legislature's "preferred structure."

The report then incorporates by reference the reasons given at the October 29 and November 15 and 28 meetings.

111. In its final report, the State Board never made findings as to whether the EMUU-Stowe merger was "necessary" or the "best means" of meeting or exceeding the goals of Act 46. Nor did it make a finding as to whether the alternative governance structure proposed by EMUU-Stowe was the "best means" of meeting or exceeding the goals of Act 46.

COUNT I

Violation of Article 4 of the Vermont Constitution and the Fourteenth Amendment of the U.S. Constitution: Arbitrary and Capricious Process

112. EMUU-Stowe hereby restates the allegations set forth above in Paragraph 1 through 111 as though fully set forth herein.

113. The process by which the State Board considered EMUU-Stowe's proposal for an alternative governance structure was arbitrary and capricious in violation of the procedural due process protections of Article 4 of the Vermont Constitution and the Fourteenth Amendment to the U.S. Constitution.

114. The State Board failed to articulate the standard it used to evaluate the proposal and instead engaged in ad-hoc decisionmaking, thereby denying EMUU-Stowe due process of law.

115. In reaching its decision, the State Board relied on incorrect data and fundamentally misunderstood key details of EMUU-Stowe's proposal. Indeed, before its October 29, 2018 provisional vote, which was subsequently affirmed and incorporated into the final report, it appears several State Board members had not reviewed EMUU-Stowe's proposal.

The State Board's reliance on incorrect data and facts in reaching its decision denied EMUU-Stowe due process of law.

COUNT II

Violation of Article 4 of the Vermont Constitution and the Fourteenth Amendment of the U.S. Constitution: Failure to Make Findings Required by Act 46 and Rule 3450.

116. EMUU-Stowe hereby restates the allegations set forth above in Paragraph 1 through 115 as though fully set forth herein.

117. The State Board violated EMUU-Stowe's procedural due process rights under Article 4 of the Vermont Constitution and the Fourteenth Amendment to the U.S. Constitution, as well as the terms of Act 46, by failing to make findings as to whether the forced merger of EMUU and Stowe was "necessary" or the "best means" of meeting or exceeding the goals of Act 46, or whether the alternative governance structure was the "best means" of meeting or exceeding the goals of Act 46.

118. Vermont courts have been clear that an agency must make adequate findings in order to ensure that the discretion it has been granted by a statute has been exercised in a manner that does not violate the procedural due process protections of Article 4 and the Fourteenth Amendment. *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 20, 203 Vt. 274, 286, 155 A.3d 1207, 1216 (2016).

119. By failing to make findings as to whether the forced merger of EMUU and Stowe was "necessary" or the "best means" of meeting or exceeding the goals of Act 46, the State Board ignored the requirements of the text of Act 46, as well as its own binding regulations, and violated EMUU-Stowe's procedural due process rights.

COUNT III

Violation of Article 4 of the Vermont Constitution, the Fourteenth Amendment of the U.S. Constitution, and Act 46 and Act 49: Imposing More Stringent Requirements than Act 46

and Act 49

120. EMUU-Stowe hereby restates the allegations set forth above in Paragraph 1 through 119 as though fully set forth herein.

121. By focusing solely on whether merger was “possible” and “practicable,” and ignoring whether merger was “necessary” or the “best means” of meeting or exceeding the goals of Act 46, the State Board imposed more stringent requirements on alternative governance proposals than those of Act 46.

122. Act 49 specifically prohibited the State Board from imposing more stringent requirements on alternative governance structure proposals “by rule or otherwise.”

123. In disregarding the plain text of Act 46 and Act 49, the State Board exceeded its authority under the law. *See Martin v. State, Agency of Transp. Dep't of Motor Vehicles*, 2003 VT 14, ¶ 15, 175 Vt. 80, 87, 819 A.2d 742, 749 (2003).

124. By imposing more stringent requirements than those of Act 46 and Act 49, the State Board violated EMUU-Stowe’s procedural due process rights.

COUNT IV

Violation of Chapter II, Section 5 of the Vermont Constitution: Unconstitutional

Delegation of Purely Legislative Powers

125. EMUU-Stowe hereby restates the allegations set forth above in Paragraph 1 through 124 as though fully set forth herein.

126. The State Board's order dissolving EMUU and Stowe violates the separation-of-powers principle enshrined in Chapter II, Section 5 of the Vermont Constitution because only the Legislature has the power to dissolve school districts.

127. In *In re Municipal Charters*, the Vermont Supreme Court considered a law that delegated the Legislature's power to grant approval to city and village charters to an executive agency. 86 Vt. 562, 86 A. 307, 308 (1913). The court found the law was unconstitutional because it delegated purely legislative powers to the executive branch: As the court explained:

[T]he power exercised by the Legislature is the people's power, delegated to it by the people in the Constitution of the State, which expressly commits to the Legislature the power to "constitute towns, boroughs, cities, and counties." This power is essentially a trust, and requires the exercise of judgment and discretion in its execution, and no authority is given to delegate it.

Id. (quoting Vt. Constitution, Chapter II, Section 6) (emphasis added).

128. *In re Municipal Charters* remains good law in Vermont. On the Secretary of State's website, there is an article titled "Why do municipal charter proposals go to the General Assembly?"². The article discusses *In re Municipal Charters* to explain why an executive agency cannot ratify municipal charters.

129. Just like towns and cities, a school district is a municipal corporation under Vermont law. 24 V.S.A. § 1751(1)

130. The Senate appears to have recognized that Act 46's delegation of authority posed constitutional problems. In its revisions to Act 46, the Senate proposed an amendment whereby the State Board would adopt its plan and then the Legislature itself would review and finalize the plan:

² <https://www.sec.state.vt.us/archives-records/state-archives/government-history/continuing-issues/villages-and-cities/municipal-charter-proposals.aspx>

(c) General Assembly. Upon review of the State Board's proposed plan and receipt of testimony from the public and interest parties, it is the intent of the General Assembly in 2015 that the 2019-2020 General Assembly shall enact the proposed plan either in its original form or in an amended form
Senate Proposal of Amendment H. 361, Sec. 24(c).

131. Because the Legislature unconstitutionally delegated its authority to dissolve school districts to the State Board, an executive branch agency, this Court must declare the purportedly final order dissolving EMUU and Stowe unconstitutional unless and until it is ratified by the Legislature.

PRAYER FOR RELIEF

Wherefore, EMUU-Stowe requests that the Court issue a declaration that the State Board violated Article 4 of the Vermont Constitution and the Fourteenth Amendment of the U.S. Constitution, issue a stay preventing the State Board from enforcing its order, including any deadlines for action associated with its order, costs of suit, and such other relief as the Court deems just and equitable.

Dated in Burlington, Vermont this 13th day of December, 2018.

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MEMORANDUM OF LAW

EMUU-Stowe seeks relief from this Court in order to prevent all efforts by the State Board to enforce its November 30, 2018 order dissolving EMUU and Stowe School District. The following relevant facts are taken from the accompanying Complaint for Declaratory Relief and Affidavit by Tracy Wrend, Superintendent of Lamoille South Supervisory Union.

Relevant Facts

1. Plaintiff Elmore-Morristown Unified Union School District (“EMUU”) is a unified union school district that serves students in pre-kindergarten through grade 12 and operates the Elmore School, the Morristown Elementary School, Peoples Academy Middle Level, and Peoples Academy.
2. Plaintiff Stowe School District (“Stowe”) is a school district that serves students in pre-kindergarten through grade 12 and operates the Stowe Elementary School, Stowe Middle School, and Stowe High School.
3. Plaintiff Lamoille South Supervisory Union (“LSSU”) is a supervisory union that provides efficient and high quality leadership, administrative and direct education services for the students, educators, schools and school boards of Elmore-Morristown Unified Union and Stowe School Districts.
4. On November 30, 2018, the State Board released its Final Report of Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10. In its final report, the State Board affirmed its earlier provisional votes from October 29, November 15, and November 28, 2018, reversed the Secretary of Education’s recommendation, and forced EMUU and Stowe to merge.

5. In a section titled “Next Steps” in the report, the State Board stated it “looks forward to working with the Legislature” and that noted that “the ultimate authority to determine the school district merger outcomes belongs to the General Assembly.”

6. The State Board’s order put in place several pressing deadlines to begin the merger process for EMUU-Stowe.

7. Without a stay, EMUU and Stowe would cease to exist as of June 30, 2019.

8. Without a stay, EMUU and Stowe would begin to lose authority incrementally.

On January 14, 2019, an organizational meeting would be held where the transition board will be sworn. Soon thereafter, likely in March 2019, there would be an election for a board for the new Lamoille South Unified Union School District.

9. Without a stay, EMUU and Stowe would face significant costs to transition into a new fiscal entity, including setting up new financial systems, holding multiple meetings of the electorate, likely with Australian Ballot votes, closing all old accounts and fiscal entities and creating new accounts and entities for the new governance structure, and legal services for developing new policies and for developing new Articles of Agreement.

10. EMUU and Stowe would not be eligible to receive any transition facilitation grants to assist in this process.

11. Without a stay, the State Board’s order would continue to disrupt the timeline for EMUU and Stowe to approve budgets and engage in other normal operations in anticipation of the coming school year. The order affects EMUU and Stowe’s ability to offer individual contracts to teachers and employment commitments to other staff members, which creates fear and anxiety for staff, as well as motivation and opportunity for them to seek employment elsewhere.

12. Without a stay, Elmore and Morrystown would expect a tax rate increase due solely to merger because Stowe's Education Spending per equalized pupil is higher than EMUU's.

13. The Agency of Education is already set up and able to assist EMUU and Stowe in their current governance structure. Other districts already work with EMUU and Stowe in their current governance structure.

14. In EMUU-Stowe's self-study, it identified no benefits for students in a merged district. EMUU-Stowe continues to believe that its current governance structure provides the best means for its communities and schools to meet or exceed the goals of Act 46.

Legal Analysis

Rule 75(c) does not spell out the standards for granting a stay. However, Vermont courts have typically applied the traditional standards for granting stays and injunctions, meaning that a movant must show (1) a likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) that the stay will not substantially harm other parties; and (4) that the stay will serve the best interests of the public. *Gilbert v. Gilbert*, 163 Vt. 549, 560, 664 A.2d 239, 245 (1995). Given the above relevant facts, EMUU-Stowe is entitled to stay on an expedited basis.

1. Likelihood of Success on the Merits

EMUU-Stowe is likely to succeed on the merits of its claims. As alleged in the attached complaint, the State Board failed to articulate the standard it used to evaluate EMUU-Stowe's alternative governance structure proposal, engaged in ad-hoc decision making, and relied on incorrect data and fundamental misunderstandings of the proposal, thereby violating EMUU-Stowe's procedural due process rights. *See In re Miserocchi*, 170 Vt. 320, 325, 749 A.2d 607,

611 (2000) (“[A] decision arrived at without reference to any standards or principles is arbitrary and capricious [S]uch ad hoc decision-making denies the applicant due process of law.”).

In addition, the State Board violated EMUU-Stowe’s procedural due process rights, and violated the terms of Act 46, by failing to make findings as to whether the forced merger of EMUU and Stowe was “necessary” or the “best means” of meeting or exceeding the goals of Act 46, or whether the alternative governance structure was the “best means” of meeting or exceeding the goals of Act 46. See *In re MVP Ins. Co.*, 2016 VT 111, ¶ 20, 203 Vt. 274, 286, 155 A.3d 1207, 1216 (2016).

The State Board imposed more stringent requirements on alternative governance structure proposals than those of Act 46, thereby exceeding its authority under Act 46 and Act 49 and violating EMUU-Stowe’s procedural due process rights. By focusing solely on whether merger was “possible” and “practicable,” and ignoring whether merger was “necessary” or the “best means” of meeting or exceeding the goals of Act 46, the State Board disregarded the plain text of Act 46 and Act 49. See *Martin v. State, Agency of Transp. Dep’t of Motor Vehicles*, 2003 VT 14, ¶ 15, 175 Vt. 80, 87, 819 A.2d 742, 749 (2003) (“It is axiomatic that an administrative agency’s power . . . may extend only as far as its legislative grant of authority If an agency operates outside the bounds . . . authorized by the enabling legislation, this Court will intervene.”) (internal quotation marks omitted).

Finally, the Board’s order dissolving the school districts of EMUU and Stowe cannot be enforced because the Legislature unconstitutionally delegated its authority to dissolve school districts to the State Board, an executive branch agency. See *In re Municipal Charters*, 86 Vt. 562, 86 A. 307, 308 (1913). “The Legislature cannot delegate functions that are ‘purely and strictly legislative.’” *Massachusetts Mun. Wholesale Elec. Co. v. State*, 161 Vt. 346, 358, 639

A.2d 995, 1003 (1994) (quoting *Village of Waterbury v. Melendy*, 109 Vt. 441, 453, 199 A. 236, 242 (1938)). Unless and until the Board's order is ratified by the Legislature, the Board cannot enforce its order dissolving the school districts of EMUU and Stowe.

2. Threat of Irreparable Harm to EMUU-Stowe

The potential harm facing EMUU-Stowe is severe and irreversible. As of June 30, 2019, the districts of EMUU and Stowe will cease to exist. More immediately, EMUU-Stowe faces impending deadlines from the State Board to effect the forced merger. There is already an organizational meeting scheduled for January 14, 2019. Unless a stay is issued, the transition board will be sworn at this meeting. Soon thereafter, likely in March 2019, the communities of Elmore, Morristown, and Stowe would need to convene an election of a board for the new Lamoille South Unified Union School District.

There are immediate and significant costs to merger confronting EMUU-Stowe. As Superintendent Wrend explains in her affidavit, these costs include setting up new financial systems, holding multiple elections, closing and reopening accounts, and obtaining legal services to assist with the new governance structure and the new Articles of Agreement. Because EMUU-Stowe believed it would not be forced to merge, it did not budget for these costs. Nor can EMUU-Stowe receive transition facilitation grants, as these grants are not available for forced mergers.

Unless stayed, the State Board's decision will continue to disrupt EMUU-Stowe's ability to approve budgets and undertake other normal operations in anticipation of the coming school year. The Board's order affects EMUU and Stowe's ability to offer individual contracts to teachers and employment commitments to other staff members, which creates fear and anxiety for staff, as well as motivation and opportunity for them to seek employment elsewhere.

Finally, Because Stowe's Education Spending per equalized pupil is higher than EMUU's, Elmore and Morristown can expect a tax rate increase due solely to merger.

3. Potential Harm to Other Parties

The potential harm to other parties in this case is minimal. The State Board anticipated that there would be further action in both the legislative and judicial arena evaluating and potentially delaying its decision. In its Final Report, the State Board stated it "looks forward to working with the Legislature" and that noted that "the ultimate authority to determine the school district merger outcomes belongs to the General Assembly."

EMUU-Stowe merely seeks to maintain the status quo as the Court considers its claims. The Agency of Education, as well as other school districts, already work with EMUU-Stowe in its current governance structure. A stay for EMUU-Stowe would not affect other school districts, their merger process, or their operations.

4. Public Interest

The public interest strongly weighs in favor of maintaining the status quo and allowing EMUU-Stowe to operate in its current governance structure. If the Board's order is stayed, the administration of EMUU-Stowe could return its focus to its planned work on student instruction and student outcomes, unencumbered by the significant disruption that forced merger poses. EMUU-Stowe has identified no benefits to students in a merged district and continues to believe that its current governance structure provides the best means for its communities and schools to meet or exceed the goals of Act 46.

CONCLUSION

For the foregoing reasons, EMUU-Stowe requests that the Court GRANT its motion and issue a stay preventing any efforts by the State Board to enforce its November 30, 2018 Final Report and Order dissolving EMUU and Stowe School District, including any efforts to enforce deadlines included in articles of agreement issued with the final report, and such other relief as the Court deems just and equitable.

Dated in Burlington, Vermont this 13th day of December, 2018.

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4. A true and correct copy of Act 49 (2017) is attached as Exhibit B. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT049/ACT049%20As%20Enacted.pdf>

5. A true and correct copy of an Agency of Education guidance titled “Summary: Unmerged Districts and Alternative Governance Structures” dated August 1, 2016 is attached as Exhibit C. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-governance-summary-unmerged-districts.pdf>

6. A true and correct copy of a State Board of Education guidance titled “Guidance: Proposals by One or More Non-Merging Districts for an ‘Alternative Structure’ Under Act 46 (2015)” dated July 29, 2016 is attached as Exhibit D. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-governance-guidance-alternative-structures.pdf>

7. A true and correct copy of Series 3400 – Proposals for Alternative Structures Under Act 46, which was promulgated by the Agency of Education, is attached as Exhibit E. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-rules-series-3400.pdf>

8. A true and correct copy of the Secretary of Education’s January 2018 Report on Act 46 and Act 153 submitted to the House Committees on Education, Appropriations, and Ways and Means and to the Senate Committees on Education, Appropriations, and Finance is attached

as Exhibit F. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://legislature.vermont.gov/assets/Legislative-Reports/edu-legislative-report-act46-act153-merger-activity-2018.pdf>

9. A true and correct copy of EMUU-Stowe's Proposal for an Alternative Governance Structure is attached as Exhibit G. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-EMUU-Stowe-Alternative-Structure-Proposal.pdf>

10. A true and correct copy of the Proposed Statewide Plan for School District Governance issued on June 1, 2018 by the Secretary of Education is attached as Exhibit H. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at https://education.vermont.gov/sites/aoe/files/documents/edu-secretary-proposal-act46-sec-10_0.pdf

11. A true and correct copy of a State Board Memorandum dated July 11, 2018 with the subject "School districts that Submitted Section 9 Proposals; Regional Meetings" is attached as Exhibit I. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-memo-school-districts-submitted-section9-proposals-update-july11.pdf>

12. A true and correct copy of a letter to the State Board from Tracy Wrend from July 13, 2018 is attached as Exhibit J. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-item-m-07_18_18.pdf

13. A true and correct copy of the Draft Minutes of the State Board's October 29, 2018 meeting is attached as Exhibit K. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-final-draft-minutes-10_29_18.pdf

14. A true and correct copy of a November 12, 2018 letter from Stephanie Craig, Chair of the EMUU school board and Cara Zimmerman, Chair of the Stowe school board, to the State Board is attached as Exhibit L. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://www.morrisville.org/blog/a-message-from-superintendent-wrend-regarding-act-46.php> by clicking the link at the end of the sentence that reads "The full letter sent to the VSBE can be found here."

15. A true and correct of a November 13, 2018 letter from the legislators that represent Elmore, Morristown, and Stowe that was sent to the State Board is attached as Exhibit M. This document is a public record of the State of Vermont that was accessed on December 11, 2018.

16. A true and correct copy of the Draft Minutes of the State Board's November 15, 2018 meeting is attached as Exhibit N. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-final-draft-minutes-11-15-18.pdf>

17. A true and correct copy of the Draft Minutes of the State Board's November 28, 2018 meeting is attached as Exhibit O. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at https://education.vermont.gov/sites/aoe/files/documents/edu-state-board-final%20draft%20minutes-11_28_18.pdf

18. A true and correct copy of the State Board's Final Report of Decisions and Order on State School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10, dated November 28, 2018 and released November 30, 2018, is attached as Exhibit P. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://education.vermont.gov/sites/aoe/files/documents/sbe-act46-final-report-order-statewide-school-district-merger-decisions.pdf>

19. A true and correct copy of an article from the Vermont Secretary of State's website titled "Why do municipal charter proposals go to the General Assembly?" is attached as Exhibit Q. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://www.sec.state.vt.us/archives-records/state-archives/government-history/continuing-issues/villages-and-cities/municipal-charter-proposals.aspx>

20. A true and correct copy of the Senate Proposal of Amendment to H. 361 (Act 46) is attached as Exhibit R. This document is a public record of the State of Vermont that was accessed on December 11, 2018. It is also accessible online at <https://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/H-0361/H-0361%20Senate%20Proposal%20of%20Amendment%20Official.pdf>

21. A true and correct copy of transcribed excerpts from the State Board's November 28, 2018 meeting is attached as Exhibit S. This document was prepared by Court Reporters Associates for EMUU-Stowe.

22. When recounting the events of the State Board's meetings, Plaintiffs' complaint references both the minutes of the meetings and quotes statements from Board Members at the meetings. Video recordings of the meetings are available on YouTube at the Vermont Agency of

Education YouTube channel, which is available at <https://www.youtube.com/channel/UCNC90clCZzSdBz1-njX50hg>. These video recordings were accessed on December 11, 2018.

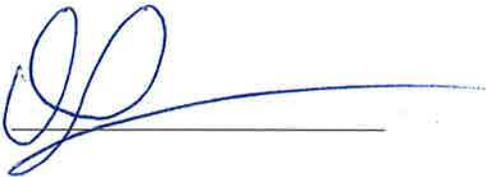
The videos are available at the following links:

October 29, 2018 State Board Meeting: https://www.youtube.com/watch?v=BBFk_GvcOYA&t=0s&list=PLaXzAQwtzpj73XVGfJsjuUGbcYe0td0a&index=3

November 15, 2018 State Board Meeting: https://www.youtube.com/watch?v=Sga_KmBv72I&t=0s&list=PLaXzAQwtzpj73XVGfJsjuUGbcYe0td0a&index=2

November 28, 2018 State Board Meeting: <https://www.youtube.com/watch?v=gIxr1dF9pCI>

December 13, 2018



STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this 13th day of December 20 18, Robert B. Luce personally appeared, known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by him, is true.



Before me, Julia J. Meade

Notary Public

18825082.2

Soon thereafter, likely in March 2019, there would be an election of a board for the new Lamoille South Unified Union School District.

5. There would be significant costs to transition to a new fiscal entity for which we did not budget and for which we would not be eligible to receive grant funds.

6. These costs include setting up new financial systems, holding multiple meetings of the electorate, likely with Australian Ballot votes, closing all old accounts and fiscal entities and creating new accounts and entities for the new governance structure, and legal services for developing new policies and for developing new Articles of Agreement.

7. Since Act 153, transition facilitation grants of \$150,000 have been awarded to assist with these costs. However, these grants are not available for forced mergers.

8. There would be a significant "opportunity cost" in requiring the administration to focus on governance changes, instead of allowing it to focus on its planned work on student instruction and student outcomes.

9. The State Board's decision has and would continue to disrupt our timeline for budget approval and normal operation in anticipation of the coming school year. This in turn would affect our ability to offer individual contracts to teachers and employment commitments to other staff members, creating fear and anxiety for staff, and creating motivation and opportunity for them to seek employment elsewhere.

10. In addition, because Stowe's Education Spending per equalized pupil is higher than EMUU's, Elmore and Morristown would expect a tax rate increase due solely to merging.

11. The Agency of Education is already set up to assist us in our current governance structure. Other districts already work with us in our current governance structure.

12. In our self-study, we identified no benefits for students in a merged district. We continue to believe that our current governance structure provides the best means for our communities and schools to meet or exceed the goals of Act 46.

December 13, 2018

Tracy Wrend

STATE OF VERMONT
LAMOILLE COUNTY, SS.

At Stowe, Vermont this 13th day of Dec., 2018, Tracy Wrend personally appeared, known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by her, is true.

Before me, Risa Cross Exp 2/10/19
Notary Public

18R25461.3