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MEMORANDUM

TO: Union School Districts Created by Merger Order
SUBJECT: Guidance Following the Court's Denial of a Preliminary Injunction
DATE: March 8, 2019

On Monday, March 4 the Franklin Superior Court issued a decision in the multidistrict lawsuit challenging the State Board's Final Report of Decisions and Order dated November 28, 2018. The decision from the court denied the plaintiffs' request for a preliminary injunction of the relevant school district mergers ordered by the State Board.

The court's decision means that the unification process will go forward while the court makes a final decision on the legal case brought by the Athens, et al. plaintiffs. The transition to full operations for all new union districts created by the State Board will proceed lawfully in accordance with the State Board's Articles of Agreement for each of these new union school districts. Because this guidance focuses on the critical steps leading to full operations, it does not explicitly address the existing union districts that the State Board enlarged or conditionally enlarged. Similarly, because separate lawsuits are pending for the Lamoille South Unified Union School District and the Huntington School District, those merger processes will not be specifically addressed by this guidance.

Timing Considerations

At this time, there are enough days remaining for each newly formed union school district to take all steps legally required to become operational on July 1, 2019. It is important that the community is well informed about the importance of electing an initial board for the union district, so the budget can be warned by that body for a vote prior to June 30, 2019.

Although the General Assembly is considering whether to extend the date of operation for newly formed union school districts by one year to July 1, 2020, the Agency of Education strongly recommends that districts proceed in good faith under current law unless and until an amendment to current law is passed through both chambers of the General Assembly or the Court issues a ruling that would invalidate a provision of the State Board's order. Barring a change in the law, which at this time is speculative, a district's or group of districts' failure to use the time remaining between now and June 30, 2019 will result in serious consequences to students and staff.

Although the vast majority of school districts present a budget to voters at the annual district meeting each year, the law allows this question to be considered at a special meeting of the electorate warned for the purpose of considering the district's budget. 16 V.S.A. § 428.

For a school district that presents its budget to the voters using Australian ballot, municipal elections law provides an avenue if the budget does not initially pass. 17 V.S.A. § 2680 and 16 V.S.A. § 711e. The school board is directed to prepare a revised budget and warn a public informational meeting on the budget and the vote. The public information meeting occurs with a minimum of five days public notice. The vote on the revised budget occurs with a minimum of seven days following the public notice.

Implications if No Unified Budget Adopted as of June 30

A school district cannot operate in the absence of a voter-approved budget, regardless of whether it operates schools or pays tuition for its students. Vermont law provides for what occurs in a school district that, as of June 30 in any year, does not have voter approval of a budget for the new fiscal year. 16 V.S.A. § 566. The district is permitted to borrow up to 87% of its most recently approved budget.

Newly formed union school districts will not have a most recently approved budget as they are entirely new entities. Unless § 566 is amended, the new union school districts becoming operational on July 1, 2019 must obtain voter approval of a budget on or before June 30, or the district will be without funds to support operations until a budget is approved by the voters.

The agency is actively working with the General Assembly to remedy the uncertainty that would be created for new districts under § 566 in current law. H.39 as passed by the House of Representatives provides that a newly formed district may borrow up to 87% of the aggregate of the forming districts' most recently approved budgets. The Senate has signaled support for language providing at least the same level of protection. We are confident the General Assembly will act quickly to provide much needed clarity on § 566.

If the budget for a newly formed union school district is not approved by voters as of July 1, 2019, however, current law does not provide a method by which the district may meet its financial obligations, unless and until a budget is approved. Accordingly, school officials and community members in newly formed union districts should be aware of the importance of acting in a timely manner to avoid disruption of services to students in the district.

Transitional Boards and Organizational Meetings

By law, the transitional board members may be sworn into office by any individual who has authority to administer oaths in the jurisdiction. According to long standing statute, public officials, such as the transitional board members, need not be sworn in at or following an organizational or other public meeting. Union school districts created in the State Board's Final Order are legal entities as of the date of that order. All but one of the new union districts has convened its organizational meeting. The transitional board members of the legal entities that have convened the organizational meeting may exercise the authority granted to them by law and by the articles of agreement for the union district, regardless of whether the district has completed the warned items of business.

Under the Default Articles, the transitional board has several enumerated duties, the first of which is to warn a special meeting for the election of the initial board of the district. 17 V.S.A. § 2680 requires that elections in a new district are conducted from the floor, rather than by Australian ballot, until the use of Australian ballot is approved by the voters. If the

organizational meeting of a union district is again adjourned by motion prior to completing the meeting's warned business, the voters will lose the opportunity to decide whether to use Australian ballot, and the transitional board may determine it is most prudent to move forward with an election from the floor for the initial board.

Next Steps for Newly Formed Union School Districts

Last month, several organizational meetings for new union school districts were continued or adjourned before completing the warned business of the meeting. As a result, there is limited flexibility in the timing of the two key meetings of the electorate. Additionally, the agency remains concerned that some voters in affected communities may seek to further delay the transitional process by once again proposing motions to adjourn organizational meetings before completing the warned business of the meeting.

In five new union districts, the organizational meetings were adjourned until a date certain. Those districts are; Orleans Central UESD, Oxbow UUSD, Orleans Southwest UESD, Windham Southeast UUSD, and Franklin Northwest UUSD. Because the motion included a date certain, Roberts Rules and elections law allow the meeting to be continued on the chosen date without a new warning and warning period.

In two of the newly formed union districts, the voters approved a motion to adjourn that did not contain a date certain. For these two districts, the Enosburg-Richford Unified Union School District and the Washington Central Unified Union School District, the Secretary has provided a new warning to the district, following the process required in the Articles of Agreement, Art. 8. A third district, the Windham Northeast Union Elementary School District, did not warn an organizational meeting for mid-February. The Secretary has issued a warning for its organizational meeting according to the process in Article 8. See the possible timelines provided below for details about these organizational meetings.

As demonstrated below, there is time in each district to complete all legal steps necessary for the union district to adopt a budget and assume operations on July 1, 2019. If voters do not take the opportunity at organizational meetings to conduct the business of the district, the transitional board may need to take independent steps to prepare the district for full operations including warning the election of the initial board and preparing and warning a budget for the first year of operations. Both of these steps are authorized by the Default Articles of Agreement, Art. 9(C).

If the transitional board or initial board of a newly unified school district is unable or unwilling to follow the law, the Agency will take every action legally available to bring the district into compliance to ensure students are provided access to substantially equal educational opportunities. 16 V.S.A. § 165.

Possible Timelines for Organizational Meetings, Elections and Budget Votes:

Based on the dates for upcoming organizational meetings that will either continue the original meeting on a date certain, or meetings that required a new warning, the agency offers the following potential timelines for informational purposes:

Orleans Central Union Elementary School District – Continued to March 15, 2019

- If petitions are due no later than Monday, March 18, election of initial board members can occur on Tuesday, April 23, 2019.
- Following an April 24 warning, the budget could be presented to voters on Monday, May 27, 2019.

Oxbow Unified Union School District – Continued to March 25, 2019

- If petitions are due no later than Monday, April 1, the election of initial board members can occur on Tuesday, May 7, 2019.
- Following a May 8 warning, the budget could be presented to voters on Monday, June 10, 2019.

Orleans Southwest Union Elementary School District – Continued to March 15, 2019

- If petitions are due no later than Monday, March 18, election of initial board members can occur on Tuesday, April 23, 2019.
- Following an April 24 warning, the budget could be presented to voters on Monday, May 27, 2019.

Windham Southeast Unified Union School District – Continued to April 2

- If petitions are due no later than Monday, April 8 the election of initial board members can occur on Tuesday, May 14, 2019.
- Following a May 15 warning, the budget could be presented to voters Monday, June 17, 2019.

Franklin Northwest Unified Union School District – Continued to March 21, 2019

- If petitions are due no later than Monday, March 25, election of initial board members can occur on Tuesday, April 30, 2019.
- Following a May 1 warning, the budget could be presented to voters on Tuesday, June 4, 2019.

Washington Central Unified Union School District – Meeting warned for April 8, 2019

- If petitions are due no later than Monday, April 15, the election of initial board members can occur on Tuesday, May 21, 2019.
- Following a May 22 warning, the budget could be presented to voters as soon as Friday, June 21, 2019.

Enosburg-Richford Unified Union School District – Meeting warned for April 9, 2019

- If petitions are due no later than Monday, April 15, the election of initial board members can occur on Tuesday, May 21, 2019.

- Following a May 22 warning, the budget could be presented to voters as soon as Friday, June 21, 2019.

Windham Northeast Union Elementary School District – Meeting warned for April 10, 2019

- If petitions are due no later than Monday, April 15, the election of initial board members can occur on Tuesday, May 21, 2019.
- Following a May 22 warning, the budget could be presented to voters as soon as Friday, June 21, 2019.