

## TESTIMONY

**Testimony To:** Senate Committee on Education

**Respectfully Submitted by:** Donna Russo-Savage, Principal Assistant, Agency of Education

**Subject:** Recent Merger Legislation and the Proposed Comprehensive Revision of Chapter 11

**Date:** March 24, 2022

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Thank you for inviting me to testify. At your request, what follows is a brief overview of recent legislation leading to the creation of union school districts. In addition, this memorandum explains the significance of enacting comprehensive revisions to Chapter 11 of Title 16 at this time.

### **I. Act 46 (2015) and Related Legislation**

Although the merger activity of the last few years is commonly described as resulting from “Act 46,” the Legislature’s recent efforts to encourage creation of unified union school districts began in 2010 with the passage of Act 153. That Act, and additions and other amendments found in Acts 156 (2012) and 56 (2013), provided tax rate reductions and other transitional assistance to encourage school districts to merge their governance structures into unified union school districts – i.e., multi-town school districts responsible for the education of resident students in prekindergarten through grade 12, whether by operating all grades, tuitioning all grades, or operating some grades and tuitioning the remainder.

Although multiple communities explored the possibility of merger and voters approved the creation of two new union school districts, the response to the earlier merger programs was apparently not at the level the Legislature anticipated. As a result, in 2015 it enacted Act 46, which incorporated and expanded upon the earlier Acts to create a multi-year program intended to move districts into what the Legislature had determined to be the preferred model of education governance.

The expanded program set out in Act 46 included four distinct phases:

- (i) Enhanced financial assistance and incentives to encourage the voluntary creation of new unified union school districts;
- (ii) The requirement that unmerged districts evaluate their current ability to meet or exceed State goals, talk with other school districts, and present a plan demonstrating why maintaining their current governance structure was the best option;
- (iii) The requirement that the Secretary of Education review these “alternative structure” proposals, meet with the proposals’ proponents, and present a state-wide proposal to the State Board of Education outlining the best path forward for unmerged districts; and
- (iv) The requirement that the State Board issue an order merging districts where possible and necessary to meet the stated educational and financial goals of Act 46.

As of July 1, 2019:

- Voters in 161<sup>1</sup> districts residing in 145 towns approved formation of 39<sup>2</sup> new unified union school districts.<sup>3</sup>
- The State Board’s Final Report and Order addressed the 96 unmerged districts that the Legislature did not explicitly exempt from the Board’s consideration as follows:
  - The Order did not change the governance structure of 47 districts.
  - The Order merged 46 districts in 41 towns by:
    - Forming 11 new union school districts (seven responsible for PreK-12 and four responsible for PreK-6 or PreK-8); and
    - Enlarging two existing union school districts.

## **II. The Need for Comprehensive Amendments to Chapter 11**

The Legislature enacted Chapter 11 in the late 1960s to govern the formation and operation of union school districts (USD).<sup>4</sup> Few amendments have been made in the intervening decades.

When the Legislature passed Acts 153, 46, and the related legislation, it relied on Chapter 11 to manage the process of USD formation and to guide a new USD’s day-to-day operations.

Although a USD can be organized to provide for the education of students in PreK-12 (a unified union school district or UUSD), Chapter 11 was drafted with union elementary and union high school districts in mind (UESD / UHSD).

For more than 40 years, communities relied on Chapter 11 almost exclusively for the creation and operation of UHSDs.

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<sup>1</sup> This number does not include at least ten additional “ghost” districts — districts that were or should have been functionally inoperative, but that continued to exist as legal entities (usually without a school board) when a town was a member of both a union elementary school district and a union high school district.

<sup>2</sup> Within three years of its creation in 2013, a 40<sup>th</sup> unified union school district, the Mountain Towns Regional Education District (RED), merged with other districts to form a new unified union school district, the Taconic & Green Regional School District. Creation of the RED resulted in a net reduction of four districts, which are reflected in the reference to 161 districts. Neither the districts nor the towns have been double counted.

<sup>3</sup> Five of the new unified union school districts were modified unified union school districts (MUUSDs) when initially created. In the years since their formation, three of the MUUSDs merged to become fully integrated unified union school districts, reducing the total number to two MUUSDs on July 1, 2020.

<sup>4</sup> A USD is a school district that is responsible for the education of students residing in two or more towns in the grades for which the district is organized. It can be organized for all grades PreK-12 or for some subset of those grades and can operate all grades for which it is organized, pay tuition for all those grades, or operate some of those grades and pay tuition for the remainder.

Prior to 2010:

- Only 20 percent of all school districts in Vermont were USDs of any type.
- Nearly all of these USDs were UHSDs.
- There were only two UUSDs operating all grades, PreK-12.

In 2022, 50 percent of all school districts are USDs, and nearly 84 percent of USDs are UUSDs.<sup>5</sup>

While assisting communities to create and operate new USDs during the last six years, the Agency of Education discovered that the decades-old statutes in Chapter 11 are confusingly drafted, are at times inconsistent, and occasionally address a single subject in a piecemeal manner across multiple, non-adjacent statutes. In addition, the statutes do not address issues that are essential both to the potential creation, and also to the operation, of a USD.

Most significantly, because Chapter 11 was drafted with UHSDs in mind, the statutes sometimes do not make sense in the context of a UUSD, which – unlike a UHSD – has no member school districts.

As a result, nearly half of all school districts in Vermont are struggling not only to adjust to a new operating structure, but also to identify and understand basic elements of operation – not because they are inherently difficult, but because there are no laws that clearly conform to a UUSD’s unique structure.

In 2019 we consulted extensively with the Elections Division of the Secretary of State’s Office, the School Boards and Superintendents Associations, and several private attorneys to draft an entirely new proposed Chapter 11 in bill form to address the identified problems.

- To the extent possible, all proposed changes were technical. Any that might be considered somewhat substantive were based on current practice, common sense, and laws governing other entities.
- We also created a list of potential changes that would require more extensive policy discussions, although most of them probably would not be controversial. We shared the list with the House Committee on Education and will share it with you if it is of interest.

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<sup>5</sup> There are currently 111 school districts in Vermont – 47 UUSDs, 5 UHSDs, 4 UESDs, and 55 town school districts. In addition, there are two interstate school districts and one associated town school district.