

Memorandum

To: Senate Education Committee

From: Oliver Olsen, Chair, Vermont State Board of Education

Subject: H727 - School District Withdrawal Policy Considerations

Date: April 14, 2022

As the Senate Education Committee considers H727, it is clear that the withdrawal sections of the bill are a focal point for your deliberations. You have already heard considerable testimony on the withdrawal provisions, and will certainly hear more.

The State Board of Education has been immersed in the issue of school district withdrawals over the past few years, as it is charged with evaluating and approving withdrawals at the end of the process. During this time, the State Board has been presented with three withdrawal requests, and has approved all three (Halifax & Readsboro, Westminster, and Ripton). There were attributes and circumstances that made the consideration of each request unique. The Halifax/Readsboro and Westminster withdrawals were relatively straightforward, with minimal impact on students, staff, and other districts in the region. On the other hand, Ripton's withdrawal presented a number of significant complications that have yet to be fully resolved, even after approval.

There are two other withdrawal actions currently in progress: Stowe and Lincoln. The Stowe withdrawal is relatively uncomplicated, as it would revert to a prior structure that the districts are familiar with, but Lincoln's proposed withdrawal will share many of the same challenges we encountered with Ripton. Stowe's withdrawal effort is currently stalled by a technicality in statute, which prevents the Board from taking action on it.

I thought it would be helpful to take a step back and summarize what the State Board sees as major policy considerations based on our recent experience, along with the implications, with respect to withdrawal actions. Appended to the end of this memo is a high level overview of supervisory district and multi-member supervisory union governance structures, which may help untangle some of the confusion when discussing transitions out of, and into, these various structures.

Issue 1: Process for Initiating, Analyzing, and Planning for Withdrawal

Under current law, the withdrawal process is initiated by 5% of the voters in a town filing a petition to withdraw from the unified district (which could be a supervisory district or a union district that is a member of a supervisory union). The petition initiates a vote in the withdrawing

town. A successful vote triggers a requirement for each of the other member towns in the school district to vote on whether to allow the withdrawing town to leave the district. If the school district voters in each of the remaining towns vote to support the withdrawal, the request is presented to the State Board of Education for review and approval.

There are three problems with the current process. First, under current law, a relatively small number of people in a small town can trigger what can be a time consuming and potentially disruptive withdrawal process. Second, no person or entity is charged with representing the interests of the withdrawing community at any step of this process. The third problem is that there is no requirement for analysis or planning for the proposed withdrawal at any stage of the process. This is analogous to legislating by popular referendum - where a seemingly simple question is put to the voters by petition, but without a formal body to give full consideration of the proposal by analyzing the underlying issues and implications and planning for the consequences, and without the ability to modify the proposal before bringing it to a vote.

Policy Consideration 1a: It is important to strike the right balance between: (a) providing a reasonable path to request consideration of withdrawal and (b) minimizing disruption to the existing system. What is an appropriate threshold percentage for a petition to begin the withdrawal process, and which towns should be included in the petition requirement? Is there a better approach to strike the right balance?

Policy Consideration 1b: What entity should be charged with responsibility for studying and planning for a proposed withdrawal, how should the entity be established, and how should it be governed?

Policy Consideration 1c: What are the appropriate requirements for analysis, study, and planning for withdrawal?

Policy Consideration 1d: Who is responsible for providing the technical and legal expertise needed to support the necessary analysis and planning?

Policy Consideration 1e: Who pays for this activity?

Issue 2: State Oversight: Consideration of Regional and Statewide Implications

Current law requires the State Board of Education to act on withdrawal requests at the very end of the process - i.e. after all communities have voted on the proposal. Critically, as noted previously, there are no requirements for the petitioners to bring forward any analysis or plan for the Board to evaluate.

By their nature, withdrawals not only impact students and staff in the withdrawing town, they also impact educational systems in the region and the entire state. Examples of potential impacts include:

- (a) Increased overhead, complexity, and expense to other communities in the region in instances where supervisory districts (i.e., a single district supervisory union) need to be deconstructed to support the withdrawal of a single community.
- (b) Duplication of business office and special education services in instances where new supervisory unions need to be created - costs that are absorbed by the state's education fund.
- (c) A town leaving a district that operates grades K-12 so that it can operate its own elementary school, while tuitioning high school students reduces the number of students in the remaining high school, undermining the economies of scale required to deliver comprehensive educational programming.
- (d) Weakening of equity of educational opportunities within a region.
- (e) Reduction in the quality and availability of special education services due to fragmentation and increased reliance on fractional staffing of niche resources.

Under current law, nobody is charged with the responsibility for evaluating the broader regional and statewide impacts of withdrawal actions. Given their desired outcome, those petitioning for a town to withdraw will naturally be in an advocacy posture that is inherently biased towards minimizing negative impacts, particularly those that impact other communities. The State Board of Education's purview under current statute is extremely narrow, and singularly focused on finding that the students in the withdrawing town have a place to attend school - it has no authority to evaluate the impact that a proposed withdrawal would have on the education systems in the region or at the state level.

Policy Consideration 2a: Should there be state-level oversight of withdrawal efforts to ensure that there is objective consideration of the impacts of proposed withdrawal activity on educational systems in the region and across the state?

Policy Consideration 2b: If there is to be state-level oversight, what criteria should be used in the evaluation of impacts?

Policy Consideration 2c: At what point in the process should this state-level review take place - at the start of the process, after analysis and planning has been developed, or after all of the votes have been taken?

Policy Consideration 2d: If it appears that negative regional and statewide impacts outweigh the impacts on the withdrawing community, how should this influence any final approval of a withdrawal request?

Policy Consideration 2e: Who should be the final approving authority (if there is to be one) to consider these regional and statewide impacts - the Agency of Education, the State Board of Education, the General Assembly (as in the case of municipal charter changes), or some other entity?

Policy Consideration 2f: Should the final approval (or disapproval) have binding effect or be advisory only?

Issue 3: Deconstruction of Supervisory Districts to Support Withdrawal Actions

Not all withdrawal actions are equal - some are relatively simple and have minimal impacts on students or the community. For example, when a community wishes to withdraw from a union district that is part of multi-district supervisory union, most employment contracts are maintained with the supervisory union, and the new district wishes to assume control of an existing school in its own community, this is a relatively straightforward “lift and shift” transition, with limited impact on other districts. The new school district remains part of the same supervisory union.

Things become much more complicated when a community attempts to withdraw from a supervisory district (i.e., a single district supervisory union). The withdrawal creates a new school district that must either be formed as a supervisory district (with responsibility for employing a superintendent, staffing a business office, providing special education and transportation, etc.) or as a school district to be assigned to a supervisory union. The latter can be accomplished by assigning the new school district to a nearby supervisory union or deconstructing the supervisory district that the withdrawing community vacated, creating a new supervisory union with the old supervisory district and new school district as member school districts. This was at the heart of the issue that the State Board wrestled with during the Ripton withdrawal. The Supervisory District (Addison Central Supervisory District) that Ripton had belonged to did not want to be deconstructed into multiple entities.

Informed by policy expressed by the General Assembly in Act 46, the State Board has taken the position that Supervisory Districts are the preferred structure, and should not be deconstructed against the will of the Supervisory District.

Policy Consideration 3a: Should communities be permitted to withdraw from a supervisory district if they are not large enough to function as a stand-alone supervisory district, the former supervisory district does not support deconstruction into a multi-member supervisory union, and no other supervisory union is willing to accept them as a member?

Policy Consideration 3b: When a community wishes to withdraw from a supervisory district, should there be consideration of deconstructing the supervisory district into a multi-member supervisory union, and if so, who should make the final decision (currently the State Board per decades-old statute), and what criteria should be used?

Policy Consideration 3c: Should the withdrawing community (that is currently part of a supervisory district) be required, as a condition of approval for withdrawal, to secure agreement from the supervisory district that it will acquiesce to deconstruction into a supervisory union with separate boards for the supervisory union and each member school district?

Issue 4: Assignment of School Districts to Existing Supervisory Unions

When a town seeks to withdraw from a union district that is a member of a multi-district supervisory union, there is a presumption that the new school district would remain a member of the existing supervisory union. Relationships are already in place and there would be limited impacts to operations. But in the case of a town withdrawing from a different structure (most likely a PK-12 supervisory district), the need may arise for the newly created district to seek assignment to an unfamiliar supervisory union.

Under current law, the State Board of Education has the legal authority to forcibly assign a school district to a supervisory union. In fact, it did so in an effort to consolidate supervisory unions during the Act 46 process (by eliminating the Battenkill Valley Supervisory Union and assigning the Arlington and Sandgate school districts to the Southwest Vermont Supervisory Union). This was not without controversy and accomplished under considerable protest. It goes without saying that not many organizations are welcome to the idea of being forced to take on new responsibilities against their will.

Policy Consideration 4a: Should a withdrawing community, as a condition of approval for the withdrawal, be required to secure agreement from a nearby supervisory union that it will acquiesce to having the new district assigned to it as a new member?

Policy Consideration 4b: If communities will be permitted to withdraw from districts without an agreed-upon plan for supervisory union assignment, what criteria should the State Board of Education use to forcibly assign the new school district to an existing supervisory union?

Issue 5: Transition of Employees

When a town withdraws from a union district, it becomes its own legal entity. Even if the very same individuals work in the withdrawing town's school building both before and after withdrawal, those individuals are in a contractual relationship with the union district or the supervisory union. Under current law, neither a negotiated collective bargaining agreement nor an individual contract entered into outside the agreement would transfer to the new school district. The new school district must negotiate an individual employment contract with each individual it hires to work in its school building.

In addition, experience has demonstrated that employees of a union district may choose to request reassignment to a different building operated by the union district rather than remain in the building to be operated by the new district, which not only allows them to retain their current seniority, salary, and benefits, but also enables them to continue to work with an administration with which they have a relationship. Even if few or none of the current employees remain in the school building, the new district will have a smoother transition if it can hire all employees pursuant to the terms of an existing contract.

16 V.S.A. §§ 1801-1803 provides a process for transitioning employees and their contracts from merging districts into a newly created union school district. It cannot be read to apply to withdrawal, however.

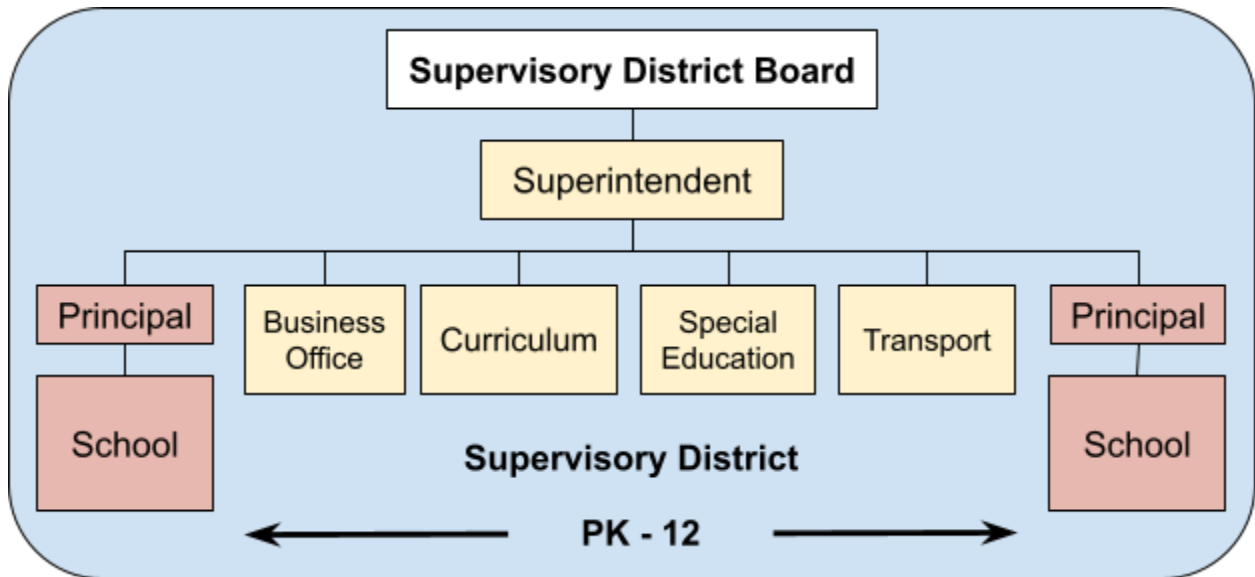
The VT School Boards Association and the VT NEA jointly submitted a proposed new § 1804 for your review that addresses the issue of post-employment employment transition using the same concepts found in the current § 1802.

Appendix

Supervisory District vs. Supervisory Union with Member School Districts

Supervisory District

The following diagram provides a simplified view of the governance structure for a Supervisory District, which is the “Preferred” structure under policy expressed by the General Assembly in Act 46. This is also referred to as a “unified union school district” that is its own supervisory union.



Under this structure, a unified district has responsibility for the education of all students in Pre-K through 12th grade. The electorate - which could comprise voters from a single community, such as Burlington, or multiple towns, such as in a Unified Union School District (UUSD) - elects the board, which has principal responsibility for setting policy for the district and hiring and firing the superintendent. The superintendent is the “captain of the ship” and is responsible for operation of the schools, central business office, special education, transportation, and curriculum.

Supervisory Union with Member School Districts

The diagram below provides a simplified view of a structure where Pre K-12 education in a region is overseen by multiple school boards and a supervisory union. This was referred to as the “Alternative Governance Structure” in Act 46.

Under this structure, there are two or more school districts, each of which is governed by a school board that sends representatives to serve on a separate board that governs the supervisory union. The member school districts can take many forms, including union high school districts and union elementary school districts (covering multiple towns), and single town school districts. The supervisory union employs a superintendent who manages the business office, curriculum development, special education, and transportation. The superintendent manages the principals in the schools that are overseen by the member school district boards.

In this structure there can be any number of combinations of school districts that operate schools and/or tuition students for various grades. For example, a supervisory union could include one school district that oversees a high school serving all students within the supervisory union, and two other districts corresponding to individual towns that each operate their own elementary schools. But another configuration could include a supervisory union with two school districts that each operate their own elementary and high school.

