

January 16, 2019

## **Act 46**

### **Jim DesMarais, Legislative Counsel**

#### **Definitions**

- Unified union district
  - Responsible for pre-k-12, by either operating, tuitioning or both
  - Formed by the merger of school districts
- Supervisory union
  - An administrative, planning, and educational service unit that consists of two or more member school districts
  - Under Act 46, referred to as an “alternative structure”
- Supervisory district--A single school district that acts as its own supervisory union

#### **School District Consolidation**

##### **1892 Mandatory Consolidation**

- State law passed in 1892 that required consolidation of approximately 2,500 school districts into approximately 300 school districts

### **Pre-Act 46 (voluntary mergers)**

- Act 153 of 2010 created incentives for voluntary mergers into Regional Education Districts (REDs)
- Act 156 of 2012 added incentives for voluntary mergers for Side-by-Side Mergers, Layered Mergers, and Modified Unified Union School Districts

### **Act 46 (2015) (voluntary and forced mergers)**

#### **Goals and Structure**

- Move to sustainable models of governance
- Goals
  - Equity in educational opportunities
  - Increase student achievement
  - Maximize operational efficiencies
  - Promote transparency and accountability
  - Deliver cost at value
- Voluntary mergers—Provided tax and other incentives for voluntary mergers
- Forced mergers—Directs State Board of Education to merge or realign districts and supervisory unions into more sustainable models of governance to the extent necessary to achieve the goals

- School districts cannot be forced to give up tuitioning or operating models
- Not the intent to close small schools

### **Voluntary Mergers**

#### **Accelerated Mergers—Preferred structure**

- Unified union district (pre-k-12)
- Serving more than 900 students
- Supervisory district (no separate supervisory union)
- Eligible for highest level of incentives
- Must be operational by July 1, 2017

#### **Conventional Mergers**

- Substantially the same as above, but must be operational after July 1, 2017 and by July 1, 2019
- Merging districts do not need to be contiguous or within same supervisory union
- Incentives similar to those for preferred structure (tax benefit slightly less)

## **REDS and RED Variations**

- Act 46 incorporated the processes and incentives enacted by:
  - Act 153 for Regional Education Districts (REDS); and
  - Act 156 for Side-by-Side Mergers, Layered Mergers, and Modified Unified Union School Districts
- Further Side-by-Side structures authorized under Act 49 of 2017
- Must be operational by July 1, 2019

## **Alternative Structures**

- Act 46 recognized that the preferred structure may not be possible or the best model to achieve the Act 46 goals in all regions of the State, and that a supervisory union composed of multiple member districts (alternative structure) may meet the goals, particularly if:
  - the member districts are responsible for the education of all students residing in the supervisory union;
  - the supervisory union operates in a manner that maximizes efficiencies;
  - the supervisory union has the smallest number of member school districts practicable, achieved wherever possible by the merger of districts with similar operating and tuitioning patterns and after consideration

- of greatly differing levels of debt among the member districts; and
- the member districts serve more than 900 students.
- Act 46 required a district with an alternative governance structure to complete three tasks:
  - evaluate its current ability to meet or exceed the Act 46 goals;
  - meet with other districts in the area to discuss ways to promote improvement in the goals throughout the region; and
  - submit an alternative governance proposal to the Secretary of Education.

### **Statewide Governance Proposal and Final Plan**

- **Secretary's Proposal**
  - Act 46 required the Secretary of Education to develop a proposal to realign unmerged districts into more sustainable models of governance
  - This proposal was presented to the State Board of Education on June 1, 2018

- **State Board's Final Statewide Plan**

- Act 46 required the State Board to issue a final statewide plan by November 30, 2018. The State Board was given the authority to merge districts and realign supervisory unions in a manner that adheres to the goals of Act 46.
- Act 46 authorized the State Board to approve alternative structures only if the Board concluded that the alternative structure:
  - is the best means of meeting the goals of Act 46; and
  - ensures transparency and accountability for the member districts
- The State Board was prohibited from forcing districts to give up their tuitioning or operating models
- Act 46 exempted from the State Board Plan districts that voluntarily merged under the incentive programs, regional career technical center districts, and interstate school districts

- The State Board issued its plan dated November 28, 2018:
  - merging 42 districts located in 36 towns to form 11 new school districts;
  - enlarging an existing union school district by two new members;
  - merging one elementary school district into an existing district;
  - conditionally requiring four further mergers (subject to approval by the receiving districts); and
  - retaining the current alternative governance structures for 47 districts.
  
- When the State Board's required mergers are added to the voluntary mergers, a total of 206 districts in 185 towns will have formed 50 new districts, for a net reduction of 156 districts

### **Act 46 Litigation**

- On December 13, 2018, the Elmore-Morristown Unified Union School District et al. filed a civil action challenging the State Board of Education's Act 46 plan
- On December 20, 2018, the Athens School District et al. filed a civil action challenging the State Board of Education's Act 46 plan
- On December 20, 2018, the Huntington School District filed a civil action challenging the State Board of Education's Act 46 plan
- Nature of claims:
  - State Board process was arbitrary and capricious in violation of constitutional due process protections
  - State Board exceeded its authority under Act 46
  - Unlawful delegation of authority from General Assembly to State Board in violation of constitutional separation of powers
  - Unconstitutional taking of property
  - Unequal treatment of school districts results in violation of Common Benefits clause of Vermont Constitution and Equal Protection clause of U.S. Constitution

- 1 V.S.A. § 213. Pending suits unaffected. “No act of the General Assembly shall affect a suit begun or pending at the time of its passage...”
- Masons’ Rule Sec. 111. “Any matter waiting adjudication in a court should not be debated or discussed in a legislative body.”