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December 2, 2025

Matt Foster
Superintendent of Schools
Caledonia Central Supervisory Union
PO Box 216
Danville, VT 05828

Re: School Closure Article

Dear Mr. Foster:

This letter is in response to your request for legal guidance regarding the legal authority of the voters to compel or direct a school board to close the high school in a town school district under the provisions of 16 V.S.A. §822(a).

Answer

We cannot predict how Vermont courts will rule on any legal challenge with certainty. However, based upon our review of the law and the facts, it is our legal opinion that Article 1, as warned, for the Special Meeting of the Danville School District on December 6, exceeds the authority of the electorate under Vermont law regarding closing an existing high school.

Facts

It is our understanding that the Danville School Board (the "School Board" or "Board") received a voter petition this past September that petitioned the Board to warn a special meeting of the school district to consider the following article:

> Shall the voters of the Danville School District authorize and direct the school board to close the existing high school by ceasing to operate grades 9 through 12 at the Danville School as of June 30, 2026, and thereafter provide for the education of students in those grades by paying tuition to a public or approved independent school as authorized by 16 V.S.A.§822?

The petition satisfied the requirements for the number of qualified voter petitioners under 17 V.S.A.§2642(a)(3). Our understanding is that the School Board considered the petition and was counseled that it was legally required to warn the article as presented in the petition. The School Board subsequently warned the special meeting of the School District on December 6th and included the petitioned article on the warning.

Legal Analysis

Vermont law requires a school board to include in its warning "any article or articles requested by petition signed by at least five percent of the voters of the municipality" so long as the petition meets certain requirements. 17 V.S.A. §2642(a)(3). However, Vermont courts have long held that a board has discretion to refuse to include a petitioned article in a town-meeting vote if the subject matter of the article concerns a matter outside of the voters' authority. *Skiff v. S. Burlington Sch. Dist.*, 208 Vt. 564, 569–70 (2018).

In the *Skiff* case, the Vermont Supreme Court reviewed decades of case law governing the statutory duty of a board to warn items and concluded that petitioned items of business must be within the authority of voters to decide at a district meeting. *Id.* at 573. The Court states, "The right of individuals to directly vote on and decide issues is limited in this representative form of government. If school officials are acting within the powers designated to them by the Legislature, they have discretion to act as they deem best…[t]he recourse for voters is not through petition, but election." *Id.* at 577.

The Vermont Legislature has provided broad authority to school boards to govern school districts, including the authority to "determine the educational policies of the district," "have possession, care, control and management of the property of the school district," "relocate or discontinue use" of a school building," or take "any action that is required for the sound administration of the school district." *See* 16 V.S.A. §§563(1), (2), (3), & (7).

The electorate's authority generally is confined to the election of district officers, including school board members, the approval of the budget, including salaries for board members, the sale or lease of school buildings, and the authority to borrow. *See* 16 V.S.A. §§562(2)–(10); *see also Skiff* at 574 ("The powers of the electorate are delineated by statute, and include discrete items, including voting for annual salaries for school board members and authorizing the amount to be expended…In contrast, the school board has broader, more general powers.").

Article I on the Warning for the Special Meeting (hereinafter "Article I" references 16 V.S.A.§822, the statutory obligation to maintain public high school or pay tuition. The basic construct of §822 is to require that school districts "shall maintain one or more approved high schools" unless the electorate has authorized the Board to close a school *and* to provide high school education to its students by paying tuition. *See* 16 V.S.A.§822(a) (emphasis added). Further, the statute delineates limited circumstances in which the school district may both

maintain a high school and furnish high school education to a student by paying tuition. *See* 16 V.S.A. §822(c)(1)(A)–(D).

In the present case, the petitioners, through Article I, have sought to both *authorize and direct* the School Board to close an existing high school. The article, as petitioned and warned, cites 16 V.S.A. §822 as authority for these actions. The applicable portion of the statute reads as follows:

> (a) Each school district shall maintain one or more approved high schools in which high school education is provided for its resident students unless:
>
> (1) the electorate authorizes the school board to close an existing high school and to provide for the high school education of its students by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the parents or guardians of the student, within or outside the State; or
> (2) the school district is organized to provide only elementary education for its students.

16 V.S.A.§822(a).

The basic construct of §822 is to require that school districts "shall maintain one or more approved high schools" except in specific circumstances identified in the several subsections of the statute. *Id.* On its very face, the Article is not consistent with the clear language of the statute. Instead, Article I attempts to authorize and *direct* the closure of the high school. The express language of the statute speaks of a dual authorization for the school board to both close a high school *and* to provide for the high school education of the school district students by paying tuition to several named secondary institutions. The statute is completely void of any verb or language that commands, orders, compels, instructs, requires or "*directs*" a school board to close a school. Instead, the statute extends to the Board the legal authorization to close a school *coupled* with the broad general authorization to provide a high school education to its students by paying tuition to other high schools. This general authorization stands in contrast to the limited authority the statute confers upon a school board as outlined in §822(c)(1) or (2).

A basic tenant of statutory construction is to give weight to the plain meaning of the language statute. When §822(a)–(c) is read as a whole, the Legislative intent seems clear, to require a school board to have voter authorization before unilaterally closing a high school and paying tuition for its students to attend another high school. The statute serves as a specific limitation on the broad plenary powers the Legislature has conferred upon school boards for the operation, management, and policies of school districts. *See Buttolph v. Osborn*, 119 Vt. 116 (1956). Here, the plain language and meaning of the statute is clear, the voters may authorize the closure of a high and the subsequent payment of tuition for its students, but the electorate may

not direct, compel, or otherwise require a school board to close the high school. The decision to act upon that authorization by the electorate rests with the school board.

As was noted in *Buttolph,* "[h]ad the Legislature intended what the petitioners claim, the statute would not read as it does." 119 Vt. 116 at 121. In this case, had the Legislature intended that the electorate had the authority to direct, compel, or require closure of a high school under §822, it would have used very different language. The petitioned Article I, although warned by the School Board, cannot exceed the statutory authority of the electorate under §822 and direct the school board to close a high school.

In light of the impending Special Meeting on December 6, there are two remedies available to the School Board. The Special Meeting will be a traditional town meeting with an anticipated floor vote on Article 1. The School Board may propose amending Article 1 to comply with the electorate's statutory authority. The following amendment is offered for the School Board's consideration:

> Shall the voters of the Danville School District authorize ~~and direct~~ the school board to close the existing high school for ~~by ceasing to operate~~ grades 9 through 12 ~~at the Danville School as of June 30, 2026,~~ and ~~thereafter~~ **to** provide for ~~the education of students in those grades by paying tuition to a public or approved independent school as~~ **the high school education of its students in grades 9 through 12 by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the parents or guardians of the student, within or outside the State, as** authorized by 16 V.S.A.§822?

The amendment would result in Article 1 reading as follows:

> Shall the voters of the Danville School District authorize the school board to close the existing high school for grades 9 through 12 and to provide for the high school education of its students in grades 9 through 12 by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the parents or guardians of the student, within or outside the State, as authorized by 16 V.S.A. §822?

Recognizing that Vermont law, 16 V.S.A. §11(a)(4) defines high school as grades 7-12, we have retained that specification in the amendment.

Alternately, if the Board elects not to propose an amendment or an amendment to the Article is rejected by the voters at the Special Meeting, the School Board may consider the

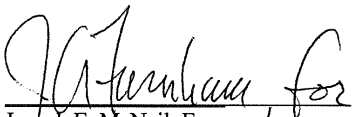
original Article in two parts: first as an authorization to close the high and to provide for the education of those students by paying tuition as outlined in §822(a); and then the Board may consider that portion of Article 1 directing the School Board to "cease operating grades 9 through 12 as of June 30, 2026" as *ultra vires*, that is, the electorate acting beyond the legal power or authority that the Legislature granted to it in §822(a).

Conclusion

It is our legal +analysis that the electorate does not have the authority under the provisions of 16 V.S.A. §822(a) to "direct," compel, or otherwise require the School Board to close or "cease" operating a high school as proposed in Article 1. The language of the statute is clear; the electorate has the power to "authorize" but not compel. The School Board may accept and implement the authorization under §822(a) or it may choose to provide for a high school education for its students by continuing to maintain a high school.

If you have any questions or concerns, or if we can be of any further assistance in this matter, please do not hesitate to contact us.

Very truly yours,
McNEIL, LEDDY & SHEAHAN, P.C.

By: 

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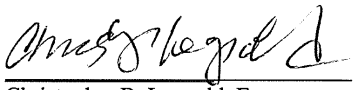
By: 

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