

Act 170 Good Faith Participation Standard

Vermont Learning Collaborative, Act 170 Facilitation Team

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This is a working standard. Act 170 requires good faith participation but does not define it. This document reflects the Facilitation Team's current framework and will be revised if the General Assembly establishes a statutory or regulatory definition, or otherwise provides additional clarity or guardrails.

Purpose

Act 170 directs merger committees to consider whether a new governance structure would provide “substantially equal educational opportunities for all children,” help students achieve or exceed the State's Education Quality Standards, and maintain access to career and technical education, alongside operational efficiency, transparency, and accountability. *Sec. 1(b)(4); Sec. 13(b)(4)(D)*

Good faith participation is measured against that purpose. A district participates in good faith when its conduct allows a committee to genuinely investigate those questions, whatever conclusion the committee ultimately reaches. Good faith is a standard about whether the inquiry can happen, not about what it finds.

The General Assembly has also been explicit that local voice and community input must retain an important role in this process. *Sec. 1(b)(2)* Good faith participation and vigorous local advocacy are not in tension. This standard is written to protect both.

Standard

Act 170 requires each school district to participate in good faith in the merger committee process. *Sec. 13(b)(3)* This standard provides a consistent framework for understanding and assessing that participation, applied in service of the purpose described above.

Participation is presumed to be in good faith.

A school district participates in good faith when it participates in the work of its merger committee and does not materially and substantially prevent the committee from carrying out the study required by Act 170. Good faith participation generally includes:

- appointing representation as required;
- maintaining active participation in committee meetings and activities;
- sharing updates with local district board members and community;
- engaging in the committee's consideration of information, questions, options, and proposals;
- providing available district information necessary for the committee's work; and
- participating in decisions and steps necessary for the committee to complete its statutory responsibilities.

Examples include attending meetings, adhering to open meeting law requirements, providing requested information, raising questions or concerns, proposing alternatives, and participating in committee decisions and votes.

Good faith does not require a district, school board, committee representative, or community to support merger or any particular governance outcome. Participants may question information and assumptions, challenge proposals, advocate for their communities, propose alternatives, criticize Act 170 or the merger process, express opposition to merger, and recommend or vote against a proposed configuration.

Civil engagement. Good faith requires civil engagement, not agreement. Participants are expected to direct disagreement, criticism, and advocacy at ideas, proposals, and information rather than at individuals; to refrain from personal attacks, threats, or conduct intended to intimidate other participants, committee members, facilitators, or members of the public; and to extend to others the same opportunity to be heard that they expect for themselves. Strong disagreement, sharp criticism, and firm advocacy are all consistent with civil engagement. Personal attacks and intimidation are not, regardless of the position they are advancing.

Disagreement, criticism, advocacy for a preferred outcome, opposition to merger, a missed meeting, or a procedural dispute does not, by itself, constitute bad faith.

Bad Faith Determination

A determination of bad faith participation, of the kind the Lead Facilitator reports to the Legislature, *Sec. 15* requires a documented pattern of conduct that materially and substantially prevents a district from participating in the process or prevents the merger committee from completing identifiable work required by Act 170 within applicable timeframes.

For purposes of this standard:

- **Pattern:** repeated or continuing conduct, rather than an isolated action or occurrence.
- **Materially and substantially prevents:** conduct that has a significant and demonstrable effect on the committee's ability to complete required work or meet required timelines.
- **Statutory work:** meetings, study, deliberations, decisions, reports, and other responsibilities required of the merger committee under Act 170.

Examples that may support a bad faith determination include repeated refusal to provide necessary and available information following specific requests; repeated failure to respond or participate when doing so prevents required work from being completed; or repeated conduct that significantly disrupts or prevents the committee from conducting its work. No single example, standing alone, establishes bad faith.

Notice and Opportunity to Address

Before a bad faith determination is made:

- The district will receive written notice from the Lead Facilitator identifying the specific concern and any action or information needed to address it.
- The district will be provided an opportunity to respond and address the concern within an identified timeframe.
- If the concern continues, written follow up from the Lead Facilitator will document the original request, the district's response or compliance status, applicable deadlines, and any continuing impact on the committee's required work.

A determination of bad faith will be considered only if the documented conduct continues to materially and substantially prevent the district or committee from completing the required process.

A determination of bad faith will not be based on a district's position regarding merger, its preferred governance outcome, criticism of Act 170 or the merger process, or the views expressed by its representatives or community members.

Any bad faith determination will be based on documented conduct that occurs within the merger committee process.