

Summary of Public Comments Concerning Proposed 603 CMR 50.00: Educational Collaborative Regulations

January 29, 2013

Unless otherwise indicated, “regulations” refer to these proposed regulations, 603 CMR 50.00, as released for public comment on September 25, 2012. Sections with **red lettering** indicate comments received after the initial revisions to the proposed regulations during the month of December. References to “the statute” are to M.G.L. Ch. 40, § 4E. Positive comments and technical changes are not included in this summary.

Abbreviations:

MOEC: Massachusetts Organization of Educational Collaborative
 CES: Collaborative for Education Services
 OIG: Office of Inspector General
 MAAPS: Massachusetts Association of 766 Approved Private Schools
 MASC: Massachusetts Association of School Committees

50.02: Definitions		
Contributor	Summary of Comments	ESE Response and Recommendation
OIG	Educational Collaborative: Add the word phrase, “special education collaborative,” after “education collaborative,” and before “educational collaborative.”	There is no reference to “special education collaborative” in the statute or the regulations. Accordingly, no change is recommended.
MOEC	Member District: After, “A charter school board or school committee of a city, town or regional school district that has voted to join an educational collaborative” add “and who has been accepted by an appropriate vote as a member by the collaborative board and its members.”	The Department will add the following language to the definition, “...and has been accepted by appropriate votes of the collaborative board of directors, member school committees and charter school boards, and approved by the Board.”
50.03 Department Approval		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.03 (3) New Collaborative Agreements	
Triton Regional School Committee	After the word “Board”, insert, “after satisfying itself that the agreement meets the approval criteria, and” before “upon recommendation of the Commissioner.”	The regulations state: “The Board shall approve or disapprove a collaborative agreement or any amendment to such agreement, upon a recommendation by the Commissioner as to whether the collaborative agreement or amendment meets the standards

		in M.G.L. c. 40, § 4E, and 603 CMR 50.00.” 603 CMR 50.03(6)(b). Accordingly, no change is recommended.
OIG	After the word, “operate” add “or expend funds...” before “until the collaborative agreement...”	The regulations state: “[n]o new educational collaborative may operate until the collaborative agreement is approved...” Since expending funds is a form of operations, the suggested language is redundant. Further, to emphasize a prohibition on only one aspect of operations is confusing. Accordingly, no change is recommended.
50.03(5)(b) Department’s Review of a Collaborative Agreement or Amendment		
MOEC	New section 50.03(5)(b)(4), after financial terms add, “including whether or not to include a surcharge for non-members.”	The Department will add to, what is now 50.03(5)(b)(6): “the financial terms for member districts and non-member districts, including any non-member surcharge or fee;”
OIG	(4) after “the conditions of membership of the collaborative” replace “;” with “,” and add “including whether member districts will be assessed fees and whether such fees will be offset by tuition discounts or other member benefits;”	The Department will add to 50.03(5)(b)(5)(c): “whether member districts will be assessed membership dues.” The remaining language is unnecessary. To require the collaborative agreement to articulate “offsets” and “discounts” would require amendments to the agreement each time they are changed; this is unduly burdensome. “Offsets” and “discounts” should be addressed annually through the budget process, if applicable.
MOEC	New section 50.03 (5)(b)(6), after “annual budget, tuition rates...” replace “administrative dues and fees” with “membership dues and fees for service.”	The Department will add the suggested language where appropriate throughout the regulations. Accordingly, 50.03(5)(b)(7) will state: “ the detailed procedure for the preparation and adoption of an annual budget, tuition rates, membership dues and fees-for-service.” See also, similar changes in 50.03(5)(b)(8) and (9); 50.07 (5)(a) and (c); (6)(b) and (7)(b).

OIG	Add, “(6) a requirement that the Collaborative Board of Directors annually approve by majority vote the dollar amount of current fiscal year funds designated as surplus funds and approve the transfer of these funds to any reserve, revolving or other fund and to affirm that these fund balances are in compliance with thresholds contained in applicable law and regulations.”	The Department will add the following language to 50.07(9): “The collaborative board of directors shall annually approve by majority vote the dollar amount of current fiscal year funds designated as surplus.” There is no authority for collaboratives to hold other reserve, or revolving funds; therefore, the Department will not include language related to other reserves or fund balances in those reserves.
OIG	Add, “(7) a requirement that the collaborative board vote annually to retain the surplus funds for the collaborative’s use or return the monies to the member districts;”	The Department will add the following language to what is now 50.03(5)(b)(11): “The collaborative agreement shall address how and under what conditions surplus funds may be returned to member districts or credited to support collaborative programs and services offered to member districts and how such funds will be allocated to such member district(s) upon the withdrawal of a member district(s) or the termination of the collaborative;” and add the following language to 50.07(9): “The board of directors shall vote annually to retain the surplus funds for the collaborative’s use or return all, or some portion of the funds, to the member districts.”
OIG	Remove, “the detailed procedure for the preparation and adoption of an annual budget;”	The law requires that the collaborative agreement outline “the detailed procedure for the preparation and adoption of the annual budget”. No change is recommended.
OIG	Add, “(9) the process for creating and funding new programs, including whether new programs will be funded from surplus funds, special assessments or tuition;”	To require the collaborative agreement to articulate how new programs will be funded is unduly burdensome. The collaborative board is responsible for creating and approving the budget annually, as is described in 50.07(5); this would include funding of new programs.

		Accordingly, no change is recommended.
OIG	After the words “operate and manage the collaborative” add “, including a clear statement that each director has a fiduciary duty to his appointing district whether the director be a school committee member, a school superintendent or a trustee of a charter school”	The Department will add the following language in 50.04(2)(a) and (b) addressing responsibilities of appointed representatives. “(a)Each appointed representative has a fiduciary responsibility to discharge his or her duties with care, skill, prudence and diligence for the benefit of the representative’s member district and the students served by the educational collaborative. (b)If the interests of the educational collaborative conflict with the interests of the member district, the appointed representative shall have a duty to inform the member district about the conflict at the next regularly scheduled open meeting of the member district.” In addition, fiduciary responsibilities will be covered in the collaborative board member training.
	50.03(5)(b) Department’s Review of a Collaborative Agreement or Amendment	
MOEC	After “not to exceed 25%”, insert “unless otherwise authorized by the Commissioner in writing.”	This comment is directly related to the comments concerning the 25% surplus; the surplus is addressed below under 50.07(9).
Alice Hanlon Peisch, State Representative	To ensure that each collaborative establishes a clear process for returning any surplus revenue that exceeds the limit to its member districts it was suggested that such a process be clearly defined in each collaborative’s agreement by including the following: “how and under what conditions surplus funds may be used and credited to support programs and services offered to member districts and how such funds will be allocated to such member district(s) upon the withdrawal of a member district or the termination of the collaborative.”	The Department will add to section 50.03 (5)(b)(11): “how and under what conditions surplus funds may be returned to member districts or credited to support collaborative programs and services offered to member districts and how such funds will be allocated to such member district(s) upon the withdrawal of a member district(s) or the termination of the collaborative.”
Alice Hanlon Peisch,	Concern was expressed about proposed section	The Department will remove the language in

State Representative	50.03(5)(b)(13)(c), which states that the collaborative agreement must specify “the methodology for allocating votes of member districts.” It was noted that the law stipulates that “each member of the board of directors shall be entitled to a vote.” It was recommended that the Department remove this provision or clarify that the “methodology for allocating votes” must comply with the statutory requirement of one vote per member district.	former section 50.03(5)(b)(13)(c).
50.03 (6)(a)(2) Required Documentation for Board Approval		
MOEC CES: ○ Leonard Lubinsky ○ Catherine Englehardt ○ Richard Cairn	Some contributors suggested that the requirement to submit school committee minutes be deleted and replaced with an alternative requirement that the Chairperson of each member school committee certify in writing as to the date and action taken at the meeting at which the collaborative agreement was adopted by member school committee. Concern was expressed that requiring minutes would create undue delay.	The Department agrees that this requirement could delay the process of collaborative agreement approval unnecessarily and has confidence in the integrity of each member district’s chairperson to certify to the date the member district approved the collaborative agreement. Accordingly, 50.03(6)(a)(1) will be changed to: “a notification and signature from the chair of each member district certifying as to the date the member district approved the collaborative agreement;” and former 50.03(6)(a)(2) will be removed.
MASC	This contributor endorses the requirement that minutes of the meeting at which the collaborative agreement or amendment is approved be provided to the Department. Concerning delay, this contributor noted that most committees meet at least every two weeks while some scheduled regular monthly meetings, and that the slight delay is worthwhile to ensure the integrity of the process.	As discussed above, the Department has confidence in the integrity of each member district’s chairperson. Accordingly, 50.03 (6)(a)(1) will be changed, and the language in former section 50.03 (6)(a)(2) will be removed.
50.03 Department Approval		
Contributor	Summary of Comments	ESE Response and Recommendation
50.04 (1) Responsibilities of Member Districts		
MOEC	Concern was expressed that sections 50.04(1)(b) and (c) attempts to govern school districts, instead of collaboratives. It was noted that existing special education law and the law under Section 504 are both	To reflect the Department policy to encourage districts to cooperate with collaboratives, 50.04(1)(b) and (c) will be changed to: “(b) Each member district shall, to the extent

	clear that an LEA may utilize alternative programs to meet its obligation to provide FAPE to a student, and that there is no similar provision in the regulations for approved private schools.	possible, provide appropriate space to support collaborative programs in the least restrictive environment to ensure compliance with all civil rights and special education laws and regulations. (c) Each member district shall comply with the provisions of the collaborative agreement.”
MOEC	New section 50.04(1)(b), concern was expressed about the use of the word “encouraged” in the final draft. It was recommended that the following language be used instead: “Each district shall, to the extent possible, provide appropriate space to support collaborative programs in the least restrictive environment to ensure compliance with all applicable laws and regulations.”	See comment immediately above.
	50.04 (2) Responsibilities of Appointed Representatives	
Triton Regional School Committee	Concern was expressed that quarterly reports to school committees required in 50.04(2)(a) are too frequent and may not be necessary due to few anticipated changes.	Quarterly reports at an open meeting are required by statute. Accordingly, no change is recommended, although this statement is now sub section (c).
OIG	Add to 50.04(2)(a) before the numbered list, “Such disclosure must be made at an open meeting of the representative’s governing body, such as a school committee or charter school board.”	The suggested language is beyond the scope of the statute, M.G.L. Ch. 40, § 4E, which specifically requires that appointed representatives provide information and updates on the activities of the collaborative on a quarterly basis to their school committees and charter school boards at an open meeting. Further, the required process for additional information that must be shared with member districts is addressed elsewhere in the regulations. (e.g. filing audit reports, approving amendments, budgets, capital plans etc) Accordingly, no change is recommended.
OIG	Insert as “(b) Each appointed representative shall have a	The Department will include a new section

	<p>fiduciary duty to his member district. If the interests of the collaborative conflicts [sic] with the interests of his member district, he shall have a duty to inform his member district about the conflict at the next regularly scheduled open meeting of his school committee or charter school board.”</p>	<p>50.12(2): “<u>State Ethics Law</u>: Collaborative board members and employees shall be public employees subject to M.G.L. c. 268A.” In addition, as noted above, the Department will add language in 50.04(2)(a) and (b) addressing the fiduciary responsibilities of appointed representatives. Finally, fiduciary responsibilities will be covered in the collaborative board member training.</p>
OIG	<p>Insert as “(e) Any appointed representative who has more than a 5 percent financial interest in any entity that does business with the educational collaborative shall have a duty to disclose that interest in writing and at an open meeting to both the collaborative board and to his school committee or charter school board. If payments to the entity (in which the appointed representative has the interest) exceeds [sic] \$5,000 in a fiscal year, the collaborative board shall hold a roll-call vote to approve any payments that, individually or in aggregate, exceed \$5,000. The appointed representative shall not vote on any aspect of the arrangement or participate in any discussions on the matter.”</p>	<p>As noted above, the Department will include a new section 50.12(2). The State Ethics Commission has jurisdiction over the conflict of interest and financial disclosure laws, and is responsible for enforcement matters. The Department will defer to the jurisdiction of that office regarding matters of ethical conflicts.</p>
OIG	<p>Insert: “(f) The appointed representative shall personally attend board meetings and shall not be authorized to delegate his powers or send a representative in his place as a voting member.”</p>	<p>The Department will add as 50.04(2)(f): “The appointed representative shall not delegate his/her powers or send a representative in his/her place as a voting member.” Remaining suggested language may cause confusion about the Open Meeting Law’s remote participation provisions, and will not be included.</p>
	<p>50.04(3)(b) Responsibilities of the Collaborative Board of Directors</p>	
OIG	<p>Add “5. Contact information for key educational collaborative staff members.”</p>	<p>The Department will add the suggested language as 50.04(3)(b)(5).</p>
	<p>50.04(3)(d) Responsibilities of the Collaborative Board of Directors</p>	

OIG	Remove the word “effectiveness” from (d)(2) after the word “cost.”	The law requires that the collaborative board determine the cost-effectiveness of programs and services offered by the collaborative. The collaborative board, likewise, must determine the cost of collaborative programs annually during the budget process as outlined in 50.07 (5). Accordingly, no change is recommended.
OIG	Add, “3. ensuring that the tuition for the collaborative’s programs is based on the actual cost of educating the students in the collaborative’s programs;”	The Department will add language that the tuition rates and fees must be based on the combined cost of providing collaborative programs and services. See 50.07(5)(d).
Alice Hanlon Peisch, State Representative	Concern was expressed that including language about the actual cost of educating students in particular programs could have unintended consequences that might tie the hands of collaboratives financially, and that the language may not be necessary, given that the law and proposed regulations contain substantial measures for ensuring accountability, transparency and oversight of the financial operations and transactions of collaboratives, including that every collaborative adopt a comprehensive accounting system and have detailed financial records that must be audited on an annual basis. Hope was expressed that new accounting requirements coupled with transparency measures will effectively disclose whether the tuition charged by a collaborative reflects the actual cost of educating the students served.	The Department has similar concerns about limiting collaboratives, and agrees that the statute and regulations contain substantial measures to ensure accountability, oversight and transparency in the financial operations of collaboratives. Accordingly 50.07(5)(d) reflects these positions.
OIG	Add, “4. ensuring that administrative and other overhead costs are reasonable and fully disclosed to the Department;”	The financial accounting system must contain administrative and overhead costs (among other things), per proposed 50.07(1). The audit report submitted to the Department must include the amounts expended on administrative and overhead. See 50.08(2). Accordingly, no change is recommended.
OIG	Add, “setting tuitions on an annual basis. Such tuitions shall remain in effect for a full school year;”	These regulations require that the collaborative board approve the budget, which includes tuition rates, and that the

		collaborative board also approve any amendments in tuition rates. <i>See: 50.07(5) through 50.07(7).</i> Requiring tuition rates to be in effect for a full school year is unnecessary. Accordingly, no change is recommended.
OIG	Add “7. voting to approve all major expenditures and contracts, including all transactions involving real estate, borrowing and purchases, sale or disposition of large assets.” (Following the paragraph that begins “ensuring that any borrowing, loan or mortgage...”)	Section 50.04(3)(d)(4)(7) has been added to indicate that the collaborative board of directors is responsible for “approving all expenditures, including contracts, borrowing, and the purchase and sale of real estate; and”
MOEC	New section 50.04(3)(d)(4), remove the words, “voting to...”	The Department will remove the language. Accordingly, 50.04(3)(d)(4) will state: “approving all expenditures, including contracts, borrowing, and the purchase and sale of real estate; and”
OIG	Add a new “(e) Each member of the collaborative board of directors shall certify annually that 1. the tuition for the collaborative’s programs is based on the actual cost of educating the students in the collaborative’s programs; 2. administrative and other overhead costs are reasonable and fully disclosed to the Department; and 3. the collaborative’s cumulative surplus is not more than 25 percent of the prior fiscal year’s budget.”	As discussed above, the statute and regulations contain extensive processes to ensure transparency, accountability and oversight, and procedures that foster checks and balances to prevent inflation of the cost of tuitions, and to address overhead and administrative costs and surplus. Further, the areas in which certifications are suggested are addressed through the financial reporting in the audit and annual report. Accordingly, no change is recommended.
OIG	As a last subsection to 50.04(3) insert: “2. to compensate the school district for the use of its space;”	The Department’s longstanding policy has been to encourage districts to provide space in their school buildings to support collaborative programs. The Department will include the following language as 50.04(1)(b): “Each member district shall, to the extent possible, provide appropriate space to support collaborative programs in the least restrictive

		environment to ensure compliance with civil rights and special education laws and regulations.” The Department will also add as 50.04(3)(e)(3): regarding memoranda of agreement with host districts: “to identify any other terms and conditions for the use of space.”
	50.04(4) Appointee of Commissioner	
OIG	Add “(c) The Commissioner’s appointee shall certify annually that the tuition for the collaborative’s programs is based on the actual cost of educating the students in the collaborative’s programs; (d) The Commissioner’s appointee shall certify annually that the collaborative’s cumulative surplus is no more than 25 percent of the prior fiscal year’s budget.”	See above with respect to similar comment related to <i>Responsibilities of the Collaborative Board of Directors</i> .
Nancy Levin	Comments were made concerning the contributor’s hope that the appointee of the Commissioner will address concerns about accountability, lack of input from stakeholders, appearance of conflict of interest concerning rate-setting, competition between collaboratives and in-district and cross-district programs, and posting of sub-committee meetings.	No response is necessary.
50.05: Training		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.05 (2) Training Content	
OIG	After “budgetary process” add: “procurement, fraud prevention and awareness”	The Department will add the requested language.
	50.05 (3)(a) Frequency of Training	
MOEC	It was noted that this regulation is silent as to whom certificates of completed training shall be submitted.	The Department will clarify that certificates shall be submitted to the Department.
	50.05 (3)(b) Frequency of Training	
MOEC	Though the contributor states that it understands the intent of this section, concern was expressed about the penalty for failure to complete training. The idea of	This section has been revised to remove the penalty on a member district for failure of its appointed representative to complete training.

	potentially placing the collaborative or member district on probation for failure of an individual to complete training is drastic and unwarranted. The contributor suggests that the penalty should rest with the individual, not the collaborative or the member district.	The language now reads that the collaborative may be placed on probation for failure of an appointed representative to complete training. The Department believes that the training of collaborative board members is essential and that the board should be responsible for ensuring that its members attend the training. In addition, the collaborative agreement may contain language that imposes consequences on board members that fail to attend required training.
50.06: Collaborative Employees		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.06 (1) Executive Director; 50.06(2) Business Manager; 50.06(3) Treasurer	
OIG	It was recommended that the following language be added “(e) shall have a duty to disclose a financial interest of more than 5 percent in any entity that does business with the educational collaborative. The [executive director] [sic] shall disclose that interest in writing and at an open meeting of the collaborative board. If payments to the entity (in which the [executive director] has an interest) exceeds \$5,000 in a fiscal year, the collaborative board shall hold a roll-call vote to approve any payments that, individually or in aggregate, exceed \$5,000. The executive director shall not participate in any discussion of the matter.” It was also recommended that similar language be added to the end of paragraph (2), concerning the business manager, as paragraph (2)(c) and at the end of paragraph 50.06(3), concerning the treasurer, as 50.06(3)(c).	As noted above, the Department will include a new section 50.12(2), to clarify that all collaborative employees are subject to M.G.L. c. 268A. The State Ethics Commission has jurisdiction over the conflict of interest and financial disclosure laws, and is responsible for enforcement matters. The Department will defer to the jurisdiction of that office regarding matters of ethical conflicts.
	50.06 (2) Business Manager	
MOEC	Concerns were expressed about requiring the board, rather than the executive director, to evaluate the business manager.	The Department will change the language to what is now 50.06(4), concerning the business manager, to read: “Each collaborative board of directors shall ensure an annual evaluation

		of...”
OIG	Add at the end of the paragraph “The Business Manager: (a) shall not serve on the collaborative board of directors; and (b) shall not serve as a board member, officer, or employee of any related for-profit or non-profit organization...”	The Department will add the following language to 50.06(2)(c): “No employee of the collaborative may serve on the board of directors of the educational collaborative or ...” and new section 50.12(4) “ <u>Related Organizations:</u> * * * (b) The executive director, treasurer, and business manager shall not serve as a board member, officer, or employee of any related for-profit or non-profit organization. (c) No employee of an educational collaborative shall be employed at any related for-profit or non-profit organization.”
	50.06 (3) Treasurer	
OIG	Add at the end of the paragraph “The Treasurer: (a) shall not serve on the collaborative board of directors; and (b) shall not serve as a board member, officer, or employee of any related for-profit or non-profit organization...”	See row immediately above.
	50.06 (4) School Nurses	
Jessica Solodar	Concern was raised about nurse coverage at all program locations, with a request to include the following language: “nurses and the facilities to perform their duties need to be placed at <i>all</i> program locations of the collaborative.”	The suggested language is beyond the scope of the statute, which leaves the level of staffing for nurses per location up to the educational collaborative. Specifically, the statute states that: “The board of the directors of an education collaborative shall appoint 1 or more registered nurses...and shall provide such school nurse with all proper facilities for the performance of the school nurse’s duties. The education collaborative shall consider and meet the staffing level required to address the specific health care needs of the students enrolled in the education collaborative.” Accordingly, no change is recommended.
	50.06 – add 50.06(6)	

OIG	Add, after (5) Public Employer... “(6) Disclosure of Interest: Any employee making an annual salary of \$75,000 or more who has more than a 5 percent financial interest in any entity that does business with the educational collaborative shall have a duty to disclose that interest in writing and at an open meeting to the collaborative board. If payments to the entity (in which the employee has an interest) exceeds [sic] \$5,000 in a fiscal year, the collaborative board shall hold a roll-call vote to approve any payments that, individually or in aggregate, exceed \$5,000. The employee shall not participate in any discussion of the matter.”	As noted above, the Department will include a new section 50.12(2), to clarify that all collaborative employees are subject to M.G.L. c. 268A. The State Ethics Commission has jurisdiction over the conflict of interest and financial disclosure laws, and is responsible for enforcement matters. The Department will defer to the jurisdiction of that office regarding matters of ethical conflicts.
	50.06 – Add 50.06(7)	
OIG	Add, “(7) State Ethics Law. Collaborative board members and employees shall be public employees subject to M.G.L. c. 268A.”	The Department will add section 50.12(2), stating: “ <u>State Ethics Law</u> : Collaborative board members and employees shall be public employees subject to M.G.L. c 268A...”
50.07: Finance		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.07 (1) Financial Accounting System	
OIG	Add the “603 CMR 10.03(3)(a)” citation after “governmental accounting standards board...”	Including this citation would require that educational collaboratives comply with selected sections of the School Finance Regulations. Section 507 (1) details the components required of a collaborative’s financial accounting system. A reference to only one section of the School Finance Regulations is confusing and would result in significant costs to collaboratives and changes in practice, without having made the reference subject to public comment. Accordingly, no change is recommended.
OIG	Add, “(f) Deposits into all other surplus, reserve, and/or revolving accounts, and”	There is no authority for collaboratives to hold reserve or revolving accounts. Accordingly, no change is recommended.

OIG	Add "(g) Allocation of revenues and expenses to individual collaborative programs."	Since the financial accounting system must be based on principles prescribed by the government accounting standards board, the suggested language is redundant. Accordingly, no change is recommended.
50.07 (2) Collaborative Fund		
OIG	Add to end of paragraph, "All deposits and disbursements shall be included in the financial accounting systems described in 603 CMR 50.07 (1)."	Since the financial accounting system must be based on principles prescribed by the government accounting standards board, the suggested language is redundant. Accordingly, no change is recommended.
50.07 (4) Creating the Annual Budget		
OIG	Add new (c)... "The proposed budget shall identify all revenue and expenditures, including, but not limited to"	This section has been changed to read "The proposed budget shall contain all planned financial activity.
OIG	Remove the words "Expenditures from" and then remove "that by law may be expended by the collaborative board of directors without further appropriation, shall not be included in the budget but shall be provided to the collaborative board of directors along with the budget."	The Department has made significant changes to section 50.07, including that: "The proposed budget shall contain all planned financial activity." 50.07(5)(a).
MASC	Recommends "adding the following to the end of (d): The educational collaborative shall hold a public hearing on its proposed annual budget less than seven days after a publication of a notice thereof in a newspaper having general circulation in the district. Prior to such public hearing, said collaborative shall make available to the public at least one copy of said proposed budget for a time period of not less than forty-eight hours at the office of the executive director. Also, a notice shall be sent to each member of the collaborative at the time of the placement of the newspaper notice." This requirement currently applies to all school committees and promotes transparency and accountability.	The Department will add as section 50.07(5)(e): "The proposed budget shall be discussed at a public meeting of the collaborative board of directors. Public notice shall be given to member districts." The Department will also add language to section 50.07(6)(a): "At a collaborative board meeting at least ten working days following the board meeting at which the collaborative budget was first proposed..."
CES: ○ Erin Beaudet ○ Patricia Bell	Contributors had concerns about the definition of budget being based only on general fund revenues, with grants, gifts, and contracts summarized for approval by the	The Department will clarify that the proposed budget in 50.07(5)(a) "shall contain all planned financial activity" and will add:

<ul style="list-style-type: none"> ○ Richard Cairn ○ Betty Jane Bourdon ○ Peter Cross ○ Michael Ciesla ○ Catherine Englehardt ○ Barbara Finlayson ○ Dr. Judith C. Houle ○ Leonard Lubinsky ○ Rachel Porter ○ Joan Schuman <p>MOEC</p>	<p>board along with the budget. The concerns are twofold: (1) Concern was expressed that the definition led to a lack of budget transparency. (2) The definition of budget would limit the 25 percent cumulative surplus to general fund revenues, which would be problematic for one collaborative in particular, CES. All of the contributors who commented about this section are connected to that collaborative. CES is unique in that only 24 percent of its total revenue is from local monies; 76 percent is from state and federal grants and contracts. The regulations, which limit the amount of local funds that can be carried forward to 25 percent of the collaborative’s budget under this definition, would restrict the amount of money that CES could retain as a fund balance each year since local funding only comprises 24 percent of their total budget.</p>	<p>“...Expenditures from grant funds, trust funds, and other funds not designated as general funds that by law may be expended by the collaborative board of directors without further appropriation, shall be segregated in the budget. For more information, please see comments and response concerning section 50.07(8) concerning surplus.</p>
50.07 (5)(d) Approving the Collaborative Budget		
<p>MOEC</p> <p>Maureen Gaughan</p>	<p>Concern was expressed about the proposed April 30 deadline by which the collaborative budget should be prepared and adopted. It was suggested that each collaborative board of directors outlines a timeline in the collaborative agreement, in order to better reflect the needs of the collaborative and the districts they serve.</p>	<p>The Department will remove “...but not later than April 30 of the preceding year”, and add the following to Section 50.03(5)(b): “(7) the detailed procedure for the preparation and adoption of an annual budget, tuition rates, membership dues and fees-for- service;” and (8) a timeline and process for amending the budget, tuition rates, membership dues and fees-for-service.”</p>
<p>MOEC</p>	<p>New section 50.07 (5)(d) add the word “combined” after “Tuition rates and fees shall be based on the...”</p>	<p>The Department will add this clarification.</p>
<p>MOEC</p>	<p>New section 50.07 (7) after “tuition rates” include “non-member surcharges and membership dues and fees for service...”</p>	<p>50.07(7)(b) now states: “Any amendment to the budget that results in an increase in the tuition rates, membership dues or fees-for-service shall also be provided to the member districts in accordance with a timeframe and process outlined in the collaborative agreement.” Increases in non-member surcharges need not be submitted to member districts.</p>

50.07 (8) Limitation on Surplus Funds		
OIG	Add the word “cumulative” after “such” and before “surplus.”	The Department will add this clarification in current section 50.07(9).
CES: <ul style="list-style-type: none"> ○ Erin Beaudet ○ Patricia Bell ○ Rich Cairn ○ Michael Ciesla ○ Peter Cross ○ Catherine Englehardt ○ Barbara Finlayson ○ Dr. Judith C. Houle ○ Leonard Lubinsky ○ Rachel Porter ○ Joan Schuman ○ Betty Jane Bourdon 	Comments from CES can be summarized as follows: <ul style="list-style-type: none"> • This collaborative has been urged to build a fund balance that covers three months of expenditures, including obligations under grants and contracts, and those related to local tuition rates and fees. Contributors from this collaborative argue that if the surplus calculation is only based on the general funds, it will not have prudent reserve, strong debt/equity ratios, the ability to develop new programs/services, and/or take on large state contracts. • It was suggested that any surplus cap should be determined by the governing body of that collaborative and part of the collaborative agreement. 	The Board has no authority to promulgate regulations that permit the carryover of private grant funds, gifts, or contract funds; these would be subject to the terms of the grant, gift, or contract. The statute requires the Board to “promulgate regulations which prescribe (1) requirements and standards for the amount of cumulative surplus revenue that may be held by an education collaborative at the end of a fiscal year.” Further, Section 50.12(1) permits collaboratives to apply for waivers of any provisions of 50.00. Accordingly, no change is recommended.
Alice Hanlon Peisch, State Representative	The contributor recommends allowing certain exceptions for collaboratives that receive substantial revenue from state or federal grants or contracts. “For example, the regulations could provide that if 50% or more of a collaborative’s budget comes from grants or contracts, then the collaborative may carry forward a fund balance that exceeds the 25% limit or it may include such grants or contracts in the calculation of the cumulative surplus revenue...”	The Board has no authority to promulgate regulations that permit the carryover of private grant funds, gifts, or contract funds; these would be subject to the terms of the grant, gift, or contract. Further, Section 50.12(1) permits collaboratives to apply for waivers of any provisions of 50.00. Accordingly, no change is recommended.
MOEC	New section (9), delete “current” after “of” and before “fiscal”.	The Department agrees that clarification is needed. Accordingly, the word “current” will be removed and 50.07(9) will include the following: “The collaborative board of directors shall annually approve by majority vote the dollar amount designated as cumulative surplus.”

MOEC	New section (10), the contributor expressed the following: “We concur with language you will propose that grants the collaborative board the opportunity upon approval of the board members to modify its capital plan.”	No response is necessary. However, note that new section 50.07(10)(d) states that: “In the event that the purpose for which the capital reserve was created requires modification, the collaborative board of directors shall revise its capital plan and provide notice to all member districts. If the member district does not vote to disapprove the revised capital plan within a 45 day period, that member shall be deemed to have approved the revised capital plan. Two-thirds (2/3) approval of the member districts is required to revise the capital plan.”
50.08: Reporting		
Contributor	Summary of Comments	ESE Response and Recommendation
50.08 (1) Annual Report		
Tony Pierantozzi	Concern was raised about the lack of specificity regarding the submission of both the annual report and audit. It was suggested that “it would be clearer (and better) if the responsibility for these two reports is with an individual, such as the Executive Director...”	The Department respectfully disagrees that this clarification is necessary. These duties are the responsibility of the collaborative board of directors. However, note that the board of directors may authorize the executive director to submit the audit and the annual report to all appropriate recipients.
OIG	Insert “(d) A certification that the tuition for the collaborative’s programs is based on the actual cost of education the students in the collaborative’s programs; (e) A certification that administrative and other overhead costs are reasonable and have been fully disclosed to the Department; (f) A certification that the collaborative’s cumulative surplus is no more than 25 percent of the prior fiscal year’s budget.”	The Department will add language about tuition rates and fees-for-service being based on the combined cost of providing collaborative programs and services. See 50.07(5)(d). As discussed above, the statute and regulations contain extensive processes to ensure transparency, accountability and oversight, and procedures that foster checks and balances to prevent inflation of the cost of tuitions, and to address overhead and administrative costs and surplus. Further, collaborative board members are responsible for ensuring that programs and services are cost-effective. Finally, the surplus is subject

		to a vote of the board directors. Accordingly, no further change is recommended.
OIG	Add a new “(2) <u>Acceptance of the Annual Report</u> : Prior to sending the Annual Report to the chair of each of its member districts and the Commissioner, and making the Annual Report available on its website, the collaborative board of directors shall be required to vote in open session to accept the annual report and certify that based on the board members [sic] knowledge it does not contain any untrue statement of material fact or omit a material fact.”	The Department will clarify that the board of directors must approve the annual report before it is submitted. The following language will be added to 50.08(1): “Upon approval by the collaborative board of directors and no later than January 1 of each year, the annual report for the preceding fiscal year shall be submitted to the chair of each member district and the Commissioner. The collaborative shall make the annual report available on its website.” The Department will develop annual report guidelines that will require certification by the chair of the board of directors.
	50.08 (2) Audit Report:	
OIG	Add the word “financial” after “independent” and before “audit”.	The Department disagrees that this language is necessary. Accordingly, no change is recommended.
Tony Pierantozzi	Concern was raised about the annual report being due on the same date as the audit. The suggestion was made to require the audit before the annual report.	The statute requires that both the annual report and audit report be submitted “on or before January 1 for the previous fiscal year...” Nothing precludes collaboratives from submitting them earlier. The Department respectfully disagrees that this language is necessary.
OIG	Add the phrase, “generally accepted government auditing standards and additional” after “accordance with” and before “guidelines”.	The Department agrees and will add the suggested language.
OIG	Add a new, “(f) Amounts of any surplus, reserve, revolving and/or trust funds, and”; change subparagraph (e) to subparagraph (g).	There is no authority for collaboratives to hold reserve or revolving funds. Accordingly, no change is recommended.
OIG	Add a new “(4) <u>Acceptance of the Audit Report</u> . Prior to sending the Audit Report to the chair of each of its	The Department will clarify that the board of directors must discuss and approve the audit

	member districts and the Commissioner, and making the Audit Report available on its website, the collaborative board of directors shall be required to vote in open session to accept the annual report and certify that based on the board members knowledge it does not contain any untrue statement of material fact or omit a material fact.”	report at a public meeting of the board before it is submitted, to the Commissioner, the State Auditor and the chair of each member. Accordingly, no further change is recommended.
	50.08 (3) Reporting to Other Agencies	
MAAPS	It was recommended that Section 50.08(3) require all collaboratives, without exception, to file the UFR each year. It was opined that this would “do a great deal to restore the confidence of the legislature and public in the management of collaboratives.” The following specific language was proposed: “50.08(3) Reporting to Other Agencies: All educational collaboratives shall adhere to the uniform system of financial accounting, allocation, reporting and auditing requirements of the Operational Service Division (OSD).”	The statute contains comprehensive oversight of collaboratives, including the filing of annual audits, financial statements, and annual reports. The financial accounting system and audit must be based on principles prescribed by the government accounting standards board and governmental audit standards. Requiring all collaboratives to file the UFR is unnecessary, and beyond the scope of the statute. Accordingly, no change is recommended.
50.09: Department Review of Educational Collaboratives		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.09 (1) Six-Year Review Cycle	
OIG	Add, “The review shall determine the cost-effectiveness of the collaborative’s programs” after “... financial systems and controls.” and before “The review shall determine compliance...”	The statute requires extensive accountability and oversight of collaboratives. The suggested language is beyond the scope of the statute, and shifts responsibility for determining cost-effectiveness from the collaborative board to the Department. As stated above, “a primary purpose of [collaborative] programs and services shall be to complement the educational programs of member school committees and charter schools in a cost-effective manner....” and collaboratives must submit an annual report that includes “discussion of the cost-effectiveness of such programs and services.” M.G.L. Ch. 40, § 4E (1)(b) and (e). The

		regulatory language clarifies that these duties are the responsibility of the collaborative board. Accordingly, no change is recommended.
50.10: Probationary Status and 50.11: Termination, Suspension, and Revocation		
Contributor	Summary of Comments	ESE Response and Recommendation
MOEC	Concerns were expressed about the lack of due process in 50.10 Probationary Status and 50.11 Termination, Suspension, and Revocation. Concerns included, but were not limited to, that there is a no requirement that the Commissioner obtain information and input from collaboratives before placing them on probationary status, that one complaint could lead to probationary status, and that if school districts are directed to withhold funds, collaboratives may be required to provide services to students and pay employees. Concerns were also expressed about collective bargaining agreements and stay put rights.	New Section 50.10(2)(d) states in part: “Upon receiving a notice of intent to suspend or revoke approval of an educational collaborative agreement, the collaborative shall have all rights of review required by M.G.L. c. 30A, § 13, and 801 CMR 1.00. All requests for hearings, where hearings are provided by said statute, shall be in writing, addressed to the Board, and must be received within 15 days of receipt by the collaborative board of directors of the notice of intent to revoke or suspend approval.” In light of the other concerns expressed, the Department will revise new section 50.10(2)(e) as follows: “A collaborative that has received a notice of intent to revoke approval of its agreement shall immediately begin planning for termination of the collaborative by providing notice to member districts and non-member districts.”[Emphasis added.]No further changes are recommended.
50.12 General Provisions		
Contributor	Summary of Comments	ESE Response and Recommendation
	50.12 (1) Waivers	
OIG	Add, “...for a single school year and” after “granted only” and before “to the extent...”	The Department respectfully disagrees that this language is necessary. Accordingly, no change is recommended.
MOEC	New section 50.12 (2) add, “...as a municipal employee” after “subject to M.G.L. c. 268A...”	Such determinations are within the purview of the State Ethics Commission. Accordingly, no change is recommended.

Appendix: Public Comment Contributors

1. Collaborative for Education Services (CES)
 - a. Erin Beaudet, Conway Grammar School Committee, board member of CES
 - b. Patricia Bell, Director of Pupil Personnel Services, Mohawk Trail Regional School District, on behalf of CES
 - c. Betty Jane Bourdon, Certified Public Accountant, conducted audits for CES
 - d. Richard Cairn, Director of Emerging America, CES
 - e. Michael Ciesla, Chief Financial Officer, CES
 - f. Peter Cross, Ralph C. Mahar Regional School Committee, and board member of CES
 - g. Catherine Englehardt, Chair, Hatfield School Committee, board member of CES, Executive Committee of CES board
 - h. Barbara Finlayson, Early Childhood Director, CES
 - i. Dr. Judith C. Houle, Superintendent of Schools, Belchertown Public Schools, Chair of the Finance Subcommittee, CES
 - j. Leonard Lubinsky, Co-Director, Licensure Programs, CES
 - k. Rachel Porter, DSAC Professional Development Coordinator, Central, Pioneer Valley and Berkshire DSAC regions; stationery says DSAC c/o CES
 - l. Dr. Joan Schuman, Executive Director, CES
2. Christopher Farmer, Superintendent of Schools, on behalf of the Triton Regional School Committee
3. Nancy Levin, speech/language pathologist from North Shore Education Consortium, current president of AFT-MA Local 4293, former Beverly School Committee member
4. Dr. Maureen E. Gaughan, Executive Director, Pilgrim Area Collaborative
5. Stephen J. Finnegan, Esq., on behalf of client, Massachusetts Association of School Committees (MASC)
6. James V. Major, Executive Director, on behalf of Massachusetts Association of 766 Approved Private Schools (MAAPS)
7. Alice Hanlon Peisch, State Representative – 14th Norfolk District, Co-Chair of the Education Committee
8. Tony Pierantozzi, Superintendent of Schools, Somerville Public School District
9. Jessica Solodar, parent
10. Stephen J. Theall, Executive Director, on behalf of Massachusetts Organization of Educational Collaborative (MOEC)
11. Office of Inspector General of the Commonwealth of Massachusetts (OIG)