



Massachusetts Department of Elementary and Secondary Education

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CHAPTER 43 OF THE ACTS OF 2012: AN ACT RELATIVE TO IMPROVING ACCOUNTABILITY AND OVERSIGHT OF EDUCATION COLLABORATIVES

A comprehensive amendment to Chapter 40, Section 4E was enacted on March 2, 2012 as Chapter 43 of the Acts of 2012. The new law outlines requirements that must be met by educational collaboratives, member school committees and charter school boards and the Department of Elementary and Secondary Education (Department). Many of the new requirements, such as establishing a collaborative web site and appointing a collaborative business manager, become effective on May 31. Other requirements relative to reporting and collaborative amendments have later timelines. Additional information on the requirements and deadlines will be developed and included on the new collaborative web site at <http://finance1.doe.mass.edu/collab/>.

The following Guidance is designed to address the responsibilities and requirements of collaborative boards, member school committees and charter school boards and appointed representatives that must be in place to meet the May 31 timeline.

A. Collaborative Board of Directors: Composition

A-1. The collaborative board of directors must meet six times annually – when must this schedule be in place?

Each collaborative board must have a meeting schedule that includes at least six meeting dates for school year 2012-2013. The meeting schedule for the school year must be posted on the collaborative's web site and individual meetings must be posted in accordance with the Open Meeting Law.

A-2. Who can be appointed by a member school committee or a charter school board as its representative to the collaborative board?

Each school committee may only appoint a member of the school committee or the superintendent of schools. A charter school board must appoint a member of its own body. Prior to the enactment of Chapter 43, the collaborative law, C.L. c.40, s. 4E, contained a provision that allowed a member of a collaborative board to designate another person to serve in his or her place. This provision has been eliminated from the collaborative law.

A-3. When must these appointments be made?

All board appointments must be made prior to the first scheduled meeting in school year 2012-2013.

A-4. Our collaborative board currently includes directors of special education and other program directors, what should we do?

The collaborative director as well as the individual collaborative board members should begin discussions with the member school committees and charter school boards to ensure that all appointments are consistent with the law by the start of the 2012-2013 school year.

A-5. How often must a school committee or charter school board make an appointment to the collaborative board?

Each school committee and charter school board must appoint a representative to the collaborative board on an *annual* basis. We advise each collaborative to establish a schedule to ensure that the school committee and charter school board representatives are appointed or renewed prior to the first scheduled meeting of the Collaborative Board for each new school year.

A-6. When will the Department appoint a voting representative to each collaborative board as required by the new law?

The Commissioner of Elementary and Secondary Education will be making appointments before the next school year.

B. Other Collaborative Responsibilities:

B-1. Are advisory committees appointed by collaborative boards subject to the provisions of the Open Meeting Law?

Yes, meetings of advisory committees appointed by the collaborative board are subject to the Open Meeting Law.

B-2. Will the collaborative be required to amend its agreement?

Yes, the law requires all collaboratives to amend their agreements to conform to the new requirements by March 4, 2013. Collaboratives may use the model agreement that ESE is required to develop by September of 2012. *Additional information on this requirement will be forthcoming.*

B-3. We are in the process of amending our collaborative agreement. May the amendment be approved before the model agreement is developed?

The current process and criteria for approving collaborative amendments will no longer be in effect after May 31, 2012. The collaborative board and member school committees and charter school boards must be aware that any amendments approved after May 31 of 2012 must comply with all of the provisions of Chapter 43 of the Acts of 2012.

B-4. Must the collaborative maintain a web site?

Yes, the Collaborative must maintain a web site that includes at a minimum the following:

- The collaborative agreement and all amendments
- Posting of board meetings and minutes of each meeting
- Annual audits and Annual Reports

C. Appointed Representative to the Board: Roles and Responsibilities

C-1. What is the role and responsibility of the Collaborative Board member?

Each collaborative board member must be familiar with all collaborative programs, services and policies and understand his/her fiduciary responsibilities as a member of a public body, serving public school students with public funds. Each member must complete training provided by ESE on the roles and responsibilities of serving on a public board and the responsibilities specific to serving on a Collaborative Board. The training will include information regarding the following:

- Open Meeting Law
- Public Records Law
- Conflict of Interest Law
- Special Education Law
- Budgetary process
- Fiduciary and management oversight responsibilities of Board members.

C-2. When will the training be offered?

The specific components of the training and the standards for certification and completion will be further developed in regulations to be promulgated by the Board of Elementary and Secondary Education in the fall of 2012. The training schedule will be available by January of 2013. *Additional information on this requirement will be forthcoming*

C-3. May the appointed representative of the school committee or charter school board receive compensation for his/her service as a collaborative board member?

No additional salary or stipend may be provided to the school committee or charter board appointee for his/her service as a collaborative board member.

C-4. If the collaborative has a related for- profit or non- profit organization, may an individual appointed by his/her school committee or charter school board to serve on the collaborative board also serve as a member of a board of directors or as an officer or employee of a related for-profit or non-profit organization?

No the law is clear that collaborative board members may not serve in any capacity within a related for-profit or non-profit organization, defined as an organization “established under the laws of the commonwealth or any other state: (i) that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or more education collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an education collaborative and which engages in business transactions or business arrangements, including pledges or assignments of collateral and loan guarantees or other contracts of suretyship, with the education collaborative.”

C-5. What responsibility does the collaborative board member have to its appointing authority?

The appointed member is responsible for keeping his/her school committee or charter school board informed of the activities of the collaborative. At a minimum, the appointed member must submit and present information and updates to its full school committee or charter school board at an open meeting on a quarterly basis.

D. Member School Committees and Charter School Boards

D-1. What is the role of the member school committees and charter school boards?

At a minimum, member school committees and charter school boards are responsible for:

- Approving the collaborative agreement, including any amendments and maintaining copies in its official files
- Appointing a representative to the collaborative board
- Discussing the quarterly reports submitted by its representative on the collaborative board at a public meeting.
- Accepting and reviewing at a public meeting, the collaborative audits and annual reports required to be submitted to each member on or before January 1 each year

E. Collaborative Staffing and Programs

E-1. May the executive director of a collaborative serve on a non-profit or for-profit board?

No, the executive director of a collaborative may not serve as a board member, officer or employee of any related for-profit or non-profit organization.

E-2. Who may serve as treasurer of the collaborative?

The collaborative board may appoint any person who meets its specific local requirements for the position. The law prohibits collaborative board members, or any employee, of the collaborative, including the business manager, from serving concurrently as collaborative treasurer, but does allow a treasurer of a member municipality or regional school district to serve as collaborative treasurer. The treasurer must give bond annually in a form approved by the

Department of Revenue (DOR) and in an amount not less than the amount established by the DOR as shall be fixed by the Collaborative Board.

E-3. Must the collaborative board also appoint/hire a business manager?

The Board must appoint/hire a business manager or an employee with responsibilities similar to those of a town accountant. The person so appointed/hired shall be subject to section 52 of chapter 41 and may not hold the office of the treasurer.

E-4. The collaborative does not currently have a business manager; must we hire a new person?

Two fiscal positions are required in each collaborative to ensure there is a segregation of duties. Segregation of duties is attained when no one person can control a complete transaction through the accounting system. (e.g. the person preparing checks is not the same person that reconciles the checking account.) Each collaborative must review its current structure and implement the means to demonstrate visible segregation of duties between the “treasurer” and the “business manager” or the person with responsibilities similar to those of a town accountant. The segregation should be clarified through internal controls, checks and balances, organizational charts and job descriptions.

E-5. Must staff employed by the collaborative be certified or licensed?

A collaborative board is a public employer and may employ personnel to carry out the purposes and functions of the collaborative. No person may be employed as a teacher, guidance counselor, school psychologist, adjustment counselor, social worker, library media specialist, principal, supervisor, director, administrator of special education, assistant superintendent or superintendent unless the person has been granted a certificate by the commissioner under section 38G of chapter 71 or an approval under regulations promulgated under Chapter 74. The board may prescribe additional qualifications, as needed.

E-6. May a collaborative provide services to individuals over the age of 22?

The law prohibits collaboratives from providing services to individuals over the age of 22. However, any collaborative (or its related for-profit or non-profit organization) that was providing services to individuals over the age of 22 prior to March 2, 2012 (the effective date of the new law) may continue to provide these services. A related for-profit or non-profit organization that was providing services to individuals over the age of 22 prior to March 2, 2012, may transfer the provision of such services to the collaborative and the collaborative may continue to provide such services.

E-7. Must a collaborative board hire a licensed or certified nurse?

Yes. The collaborative board must hire one or more registered nurses who are licensed or

certified as a school nurse under Chapter 71, s. 38G. However, any registered nurse employed by a collaborative as a school nurse on or before February 1, 2012 may continue to be employed as a school nurse even if they are not certified or licensed.

F. **Financial & Reporting Responsibilities:** *The Department will issue regulations in the fall of 2012 which will address reporting and financial issues in greater detail.*

F-1. May the collaborative board borrow money or enter into long or short term loan agreements or mortgages?

Yes, but the collaborative board should ensure that the reason for the borrowing, loan or mortgage is cost-effective, in the best interest of the collaborative and consistent with the collaborative purpose and standard lending practices.

F-2. May the collaborative board apply for real estate mortgages?

Yes, but the collaborative board must notify each member school committee and charter board within 30 calendar days of applying for such mortgage.

F-3. May the collaborative board enter into contracts for the purchase of supplies, materials and services and for the purchase or leasing of land, buildings and equipment?

Yes, the collaborative board should make note that such contracts are subject to the requirements of Chapter 30B.

F-4. What type of financial accounting system must be maintained by the collaborative?

Each collaborative board must adopt and maintain a financial accounting system in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board that at a minimum must include:

- Books of original entry
- General and subsidiary ledgers
- Related accounting records
- Payroll and expenditure warrants
- Written contracts, staff logs, appointment books
- Evidence of teaching credentials or approval by programs, teaching schedules
- Canceled checks and paid invoices, as appropriate.

F-5. Must the collaborative board prepare annual financial statements?

Yes, the collaborative board must prepare financial statements that at a minimum must include:

- Statement of net assets
- Statement of revenues, expenditures and changes in net assets

- Transactions between the collaborative and any *related* for-profit or non-profit organization
- Transactions or contracts related to the purchase, sale, rental or lease of real property
- The names, duties and total compensation of the 5 most highly compensated employees
- The amounts expended on administration and overhead
- Any accounts held by the collaborative that may be spent at the discretion of another person or entity
- The amounts expended on services for individuals age 22 and older

F-6. Must the financial statements be audited?

Yes, starting in FY12, each collaborative board must cause an independent audit to be made on an annual basis of its financial statements consistent with generally accepted governmental auditing standards. The audit must be discussed and voted by the collaborative board at an open meeting. The audit and any related management letters must be submitted on or before January 1 for the previous fiscal year to the Department, the State Auditor and each member school committee and charter school board. The audit for FY12 must be submitted on or before January 1, 2013.

In addition, the Department, the State Auditor or DOR may review or audit any part of a collaborative's records to ascertain whether the student, personnel and financial data reported by a collaborative are accurate, to ensure that the collaborative is complying with the applicable laws and regulations and to determine whether the collaborative is maintaining effective controls over revenues, expenditures, assets and liabilities.

F-7. How should a collaborative ensure that it is complying with these accounting standards and auditing requirements for FY12 when the standards were established in the last quarter of FY12?

Each collaborative should consult with its auditor, treasurer and business manager to discuss the information that must be included in the FY12 audit and financial statements. Since the audit must be received and accepted by the collaborative board, sufficient time should be included to allow discussion at collaborative board meetings in order to meet the January deadline. *The Department will issue regulations in the fall of 2012 that will address the components of this report in greater detail.*

F-8. Are there other reporting requirements for collaboratives?

Yes, the collaborative board must submit an Annual Report to the Department and each member school committee and charter school board by each January 1 for the previous fiscal year. The first report is due January 1, 2013 and must contain at a minimum:

- Information on the programs and services provided by the collaborative
- Discussion of the cost-effectiveness of such programs and services

- Progress made toward achieving the objectives and purposes set forth in the collaborative agreement

The Department will issue regulations in the fall of 2012 that will address the components of this report in greater detail.

Collaboratives will continue to file educational personnel (EPIMS) data to the Department.

A collaborative that provides social service programs as defined in G.L. c 7, s. 22N must adhere to the uniform system of financial accounting, allocation, reporting and auditing requirements of Operational Service Division (OSD).

Additional information will be forthcoming in the coming months and will be posted on the Department's website at <http://finance1.doe.mass.edu/collab/>.

Questions may be directed to:

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