



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 EDUCATIONAL COLLABORATIVES

OCTOBER 5, 2012 REMINDER OF NEW REQUIREMENTS

M.G. L. c. 40, § 4E, "An Act Relative to Improving Accountability and Oversight of Education Collaboratives," was enacted on March 2, 2012. The amended statute requires that the Board of Elementary and Secondary Education (BESE) promulgate regulations in order to carry out the purpose of the law. Proposed regulations were presented to the BESE at their September 25, 2012 meeting, where they were reviewed and approved to go out to solicit public comment. A copy of the proposed regulations and instructions about public comment are available on the Department's web site at <http://www.doe.mass.edu/lawsregs>. The deadline for submission of public comment is **November 7, 2012**. The BESE is expected to vote on the proposed regulations at its regular monthly meeting scheduled for **November 27, 2012**.

This memorandum shall serve to remind educational collaboratives, local school committees and charter school boards of trustees of the essential requirements that they must fulfill. Please find the key provisions of the law below. The entire law can be found at: <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section4E>.

Membership of Collaborative Board of Directors

- Membership of collaborative boards of directors is based on annual appointments from each member school committee or charter school board of trustees.
- Collaborative board members must be either superintendents or school committee members; the new law eliminated the provision that allowed a designee to serve in place of a superintendent or school committee member.
- The Commissioner of Elementary and Secondary Education (commissioner) is authorized to appoint one voting member to each collaborative board in the Commonwealth. Appointments will be forthcoming.

Duties of Collaborative Board of Directors

- The law clearly indicates that collaborative boards of directors must have fiduciary and management oversight of the collaborative.
- The law requires each collaborative board of directors to conduct a minimum of six board meetings annually.
- The law prohibits collaborative board members from receiving a salary or stipend for their service as board members.

- Collaborative boards must meet in compliance with the Open Meeting Law. The Attorney General's Office has designated educational collaboratives as state public bodies for the purposes of the Open Meeting Law.
- Each collaborative board of directors is required to annually prepare financial statements, including: (1) a statement of net assets; (2) a statement of revenues, expenditures and changes in net assets; and (3) such supplemental statements and schedules as may be required by regulation.

Duties of Individual Collaborative Board Members

- Not only must the collaborative board of directors have greater fiduciary and management oversight of the educational collaborative, board members must be trained in these areas. Collaborative board members must also be trained in the open meeting law, public records law, conflict of interest law, special education law, and the budgetary process. The new law mandates training in all of these areas for current and newly appointed collaborative board members within 60 days of appointment.
- The law requires independence of the collaborative board members from any position at a non-profit or for-profit entity that conducts business with or is affiliated with the collaborative.

Additional Requirements for Collaborative Agreements

- All existing educational collaboratives must revise their agreements and submit them to member school committees, member charter school boards of trustees, and the BESE by **March 4, 2013**.
- Revised collaborative agreements must now contain additional details, including the following: “(1) the mission, purpose and focus of the collaborative; (2) the program or service to be offered by the collaborative; (3) the financial terms and conditions of membership of the education collaborative, including a limit on the amount of cumulative surplus revenue that may be held by the collaborative at the end of a fiscal year; (4) the detailed procedure for the preparation and adoption of an annual budget. (5) the method of termination of the education collaborative and of the withdrawal of member school committees and charter school boards; (6) the procedure for admitting new members and for amending the collaborative agreement; (7) the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative; and (8) any other matter not incompatible with law which the member school committees and charter school boards consider advisable.”
- No agreement or amendment to an agreement shall take effect until the BESE and the member school committees and charter school boards have approved it.
- The Department will publish a Model Agreement and a process for submitting agreements and amendments to the Department for approval following the implementation of the regulations. However, educational collaboratives are advised to begin working immediately to ensure that their agreements comply with the above.

Joint Responsibilities of the Collaborative Board of Directors and Collaborative Administration

- All educational collaboratives must adopt and maintain a “financial accounting system, in accordance with generally accepted accounting principles as prescribed by the governmental

accounting standards board and any supplemental requirements prescribed jointly by the commissioner of elementary and secondary education and the commissioner of revenue, in consultation with the state auditor.”

- Educational collaboratives may enter into contracts for purchase of supplies, materials and services and for purchase or leasing of land, buildings and equipment, subject to M.G. L. c. 30B.
- Educational collaboratives may borrow money, enter into long- or short-term agreements or mortgages and receive grants to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, however, that the collaborative board of directors has determined that any borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member cities or towns and charter schools. In addition, the borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation of the educational collaborative and shall be consistent with standard lending practices.
- Educational collaborative boards of directors must notify each member school committee or charter school board *within 30 calendar days* of applying for real estate mortgages.
- The new law dictates that the primary purpose of educational collaborative programs and services shall be to complement the educational programs of member school committees and charter schools in a cost-effective manner.
- The law requires all educational collaboratives to obtain annual independent audits of their financial statements and to submit these annual audits to each member school committee and charter school board, the Office of the State Auditor and to the Department by January 1 of each year. The audits must include:
 - the names, duties and compensation of the five most highly compensated employees;
 - transactions between collaborative and related for-profit or non-profit organization;
 - amounts expended for services to individuals over 22 years of age;
 - amounts expended on administration and overhead;
 - any accounts held by the collaborative that may be spent at the discretion of another person or entity; and
 - transactions related to purchase, sale, rental or lease of real property.

The audits for fiscal year 2012 are due to the Department by **January 1, 2013**. Audits must be submitted to the Department in both Word and PDF formats. Note that in future years, audits may include additional information as required by regulation.

- An annual report is now required and must include the audited financial statements as well as “information on programs and services provided by the educational collaborative, including a discussion of the cost-effectiveness of such programs and services and progress made towards achieving the objectives and purposes set forth in the collaborative agreement.” Each collaborative must submit an annual report to each member school committee and charter school board and the Department by January 1 of each year. The annual report for fiscal year 2012 is

due to the Department by **January 1, 2013.** Future year submissions will be submitted in a format provided by the Department.

- All educational collaboratives must establish and maintain websites that post, at a minimum: (1) a list of members of the collaborative board of directors; (2) copies of the minutes of open meetings held by the collaborative board of directors, which shall be posted within 30 days after the board has approved such minutes; (3) a copy of the written agreement and any subsequent amendments to the agreement; and (4) a copy of the annual report.

Educational Collaborative Staffing

- Each educational collaborative must hire a treasurer. 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. The treasurer of the educational collaborative board of directors may make appropriate investments of the money of the collaborative consistent with M.G. L. c. 44, § 55B.
- A second fiscal position is required in each collaborative for the purposes of checks and balances. In addition to the treasurer, the collaborative board must appoint/hire a business manager or an employee with responsibilities similar to those of a town accountant. The person so appointed/hired may not hold the office of treasurer and shall be subject to M.G. L. c. 41, § 52.
- The law clarifies the licensure (certification) requirements for educators employed by an educational collaborative.
- The law includes an explicit prohibition that “[N]o employee of an education collaborative shall be employed at any related for-profit or non-profit organization.”
- Each educational collaborative must now hire one or more registered nurses, who must be certified as a school nurse under M.G.L. c. 71, § 38G. Each collaborative is further required to provide the school nurse with all proper facilities for the performance of the school nurse's duties.
- There are new requirements for the executive director/officer of educational collaboratives, who “shall serve under the general direction of the board and who shall be responsible for the care and supervision of the education collaborative.” The law clearly states that an “executive officer shall not serve as a board member, officer or employee of any related for-profit or non-profit organization.”

Department and BESE Authority

- The law authorizes the commissioner to place an educational collaborative on probation to allow the implementation of a remedial plan, based on circumstances at the collaborative that impede its viability or demonstrates deficiencies in programmatic quality or significant malfeasance; and if the plan is unsuccessful, authorizes the commissioner to direct school districts and charter school

boards to withhold payments of public funds to the collaborative and, in consultation with the secretary of administration and finance, to withhold public funds from the collaborative until the deficiencies are addressed.

- The law also authorizes the BESE to suspend or revoke a collaborative's operating agreement for cause, upon recommendation of the commissioner.

The draft regulations provide additional supplemental and clarifying information. In addition, we are developing a number of technical assistance documents and procedures to assist in implementing the new law. If you have questions about any of these requirements, please contact:

Office of School Governance

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