

BRIEF HISTORY OF EDUCATIONAL COLLABORATIVES

Educational collaboratives have operated in MA for over forty years. In the early 1970's, the term "collaborative" was used to describe a variety of different mechanisms through which local school systems supplemented or strengthened their regular school program by joining together to conduct educational programs, to share resources and/or to provide services for the participating districts. The primary mechanisms under which these collaboratives" operated were Chapter 40, Section 4E and Chapter 71B. Collaboratives formed under these statutes operated joint programs through a "fiscal agent" structure where one of the member school districts became the lead agency that hired all staff, housed the program(s), collected tuition or fees and managed the financing. With the passage of Chapter 766, the Special Education law, in 1972, collaborative programs expanded as school districts recognized their value in serving low incident special education students. With this expansion came more responsibility for the districts acting as fiscal agents for the collaborative to manage the financing and hire teachers for the collaborative who then retained tenure in the lead district.

Board Policy: In 1974, the Board of Education initiated and sponsored a legislative proposal to clarify the governance and fiscal structure of collaboratives. Chapter 797 of the Acts of 1974 amended Chapter 40, Section 4E of the General Laws to allow for the formation of a collaborative board comprised of a school committee member or designee from each member district. The law required the board to establish a separate trust fund managed by the collaborative board and to appoint a treasurer. The written agreement which formed the basis of the collaborative required the approval of all of the participating school committees as well as the Commissioner of Education. At that time there were over 60 educational collaboratives operating in Massachusetts under three different sections of law. Although Chapter 71B continued to allow for the formation of a collaborative under a fiscal agent structure, a Board of Education Policy in 1977 required that all educational collaboratives revise their agreements to provide for a separate trust fund and separate governing board as required by Chapter 40, Section 4E. All collaboratives were required to submit a revised agreement by July 1, 1979 for the Commissioner of Education's approval.

While collaboratives operated under one school district, acting as the fiscal agent, there were no questions relative to the powers and responsibilities of the school committee or the rights or benefits of the employees hired by the school committee. When a separate collaborative board was established with the power to hire staff and to collect and control funding, many questions began to arise regarding the eligibility of collaborative employees to employee benefits as well as the power of the collaborative board to rent or lease property, to borrow funds and to access grant funds . Employees hired by the collaborative board were not entitled to tenure or retirement and collective bargaining rights. The Board in 1977 advised collaboratives to inform teachers that by moving on to a collaborative payroll they surrendered the benefits they formerly enjoyed as employees of a school committee.

Because of the ambiguity and uncertainty of what laws did and did not apply to a collaborative board, some collaboratives explored the creation of a non-profit entity where there was a clear understanding of the entity's rights and powers. The Board Policy in 1977 offered:

While it is clear that the collaborative law was not drafted with the intent that collaboratives incorporate, nothing precludes collaborative board members, acting in their capacities as "persons" within the meaning of G.L. c. 180, s. 3 from creating a corporation for an educational purpose. However, we believe that it is impracticable to synthesize the requirements of the collaborative law and G.L. c. 180. Therefore, if incorporation is sought, we recommend that the purposes of the corporate entity be defined with an eye toward either 1) serving a function not performed by the coexisting collaborative, or 2) absorbing the prior functions of the collaborative and effecting termination of the collaborative agreement.

Since 1977, various laws have been enacted and advisories issued to clarify questions relative to the powers, duties and responsibilities of educational collaboratives. These laws and opinions related primarily to personnel benefits and requirements, such as certification of teachers, collectively bargaining, unemployment compensation, tenure, retirement rights and indemnification while some advisories were issued to clarify that collaboratives could lease property and borrow funds on a short term basis.

In 1988 in response to the enactment of the School Improvement Act of 1988 and Chapter 631 of the Acts of 1985, An Act Relative to the Authority of Educational Collaboratives, the Board of Education issued its second *Policy on Educational Collaboratives*. This Policy reaffirmed the importance of educational collaborative in providing cost effective services to member districts and emphasized the role of the school committees in establishing, managing and monitoring educational collaboratives. The Policy also provided an expanded monitoring role for the Department. Collaboratives were required to submit student, program and staff information as well as to submit an independent audit of all grant funds and an internal financial statement and program report to the Department every three years. A staff member in each regional education center continued to coordinate collaborative activities and a department designee was appointed to serve on each collaborative board. There were 35 approved educational collaboratives in 1988.

Budget constraints in the late 1980's and early 1990's forced the closing of the regional education centers, and plans to develop a collaborative reporting model and to update the Board policy were halted. As a result of staffing reductions, Department staff was no longer able to participate in collaborative board meetings. Department oversight was generally limited to approval of amendments to collaborative agreements.

Transportation Pilot: In 2005, the Legislature appropriated funds to the Department for a pilot program relating to the transportation of students to private special education schools. Traditionally this transportation was provided by each sending school district, but under the pilot program, several collaboratives were selected to coordinate and provide transportation in their service area. The pilot program demonstrated substantial

savings to school districts, and this model has since been adopted by additional collaboratives

State Auditor Reports: In 2008, the State Auditor's office began to audit Educational Collaboratives. In addition to the findings specific to the first collaborative to be audited, the State Auditor asserted that ESE had not established policies and procedures to effectively monitor the activities of educational collaboratives and had not updated the Board Policy on Educational Collaboratives since 1988. It further stated that ESE does not have effective monitoring, financial reporting, and auditing systems for education collaboratives; does not ensure that a representative from ESE attends and/or participates in each collaborative's board meetings in an advisory capacity as required by state law, and has not adequately addressed issues regarding the applicability of various state laws and regulations that apply to public schools to collaboratives.

In response to the State Auditor's findings, Commissioner Chester agreed that the Board Policy on Educational Collaborative should be updated and assigned the Office of School Governance with the task of coordinating an update to the 1988 Board Policy and serving as liaison to the 30 educational collaboratives and the state wide organization called MOEC. The Massachusetts Organization of Educational Collaboratives (MOEC), a statewide group representing most of the collaborative boards, established a working group to assist in the review of the Board policy. The working group has been meeting on a regular basis to discuss policy, financial and legislative issues as well as to share information and best practices on current operations.

There have been several significant accomplishments since this issue was first brought to our attention by the State Auditor in 2010. All education collaboratives are now included routinely in the Department's six-year cycle of coordinated program reviews, which cover all school districts and charter schools and focus on compliance with special education and civil rights requirements and on financial systems and controls. In FY10, a pilot program was initiated to collect educational personnel (EPIMS) data from education collaboratives. In FY 11, all education collaboratives submitted an EPIMS report and this reporting instrument has now been incorporated in the Department's routine data collection requirements. In FY11, the Department collected independent fiscal audits from education collaboratives and these audits will continue to be collected in subsequent years under the new law. A web site has been established to provide pertinent information to educational collaboratives and interested parties.

Legislative Commission: In 2010, Section 72 of Chapter 188 established a special legislative commission to examine efficient and effective strategies to implement school district collaboration and regionalization. The final report of this Special Commission, issued in August 2011, reaffirmed the value of education collaboratives but also emphasized the need to improve accountability through specific recommendations for legislative and policy change.

Chapter 43 of the Acts of 2012: In 2012, a comprehensive amendment to the statute authorizing education collaboratives (Mass. General Laws Chapter 40, Section 4E) was

enacted as Chapter 43. This new legislation, called *An Act Relative to Improving Accountability and Oversight of Education Collaboratives*, provides for sweeping changes in the operation and accountability of education collaboratives. The new law strengthens state oversight, financial accountability, and governance for education collaboratives. It addresses serious problems and gaps that were identified by the Office of the State Auditor and the Inspector General. It also establishes a special commission to examine and make recommendations on the future role for education collaboratives in the Commonwealth.

An action plan is currently being developed to meet the timelines and requirements of this new law. An *ESE/MOEC* sub committee continues to discuss issues requiring clarification and direction, including pupil, financial and program accountability standards and reporting and applicability of certain state laws to collaboratives. ESE staff continues to provide assistance and support to educational collaboratives. There currently exists 30 educational collaboratives servicing 278 of the 325 school districts in Massachusetts