 ***Massachusetts Department of***

 ***Elementary and Secondary Education***

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**Guidance On Education Collaboratives’ Use of Surplus Funds**

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[Massachusetts General Law c. 40, § 4E](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40/Section4E) permits two or more school committees and or charter school boards of trustees to enter into a written collaborative agreement (agreement) to provide shared programs and services, as long as the primary purpose of these shared programs and services is to complement the educational programs of member school committees and charter school boards in a cost-effective manner. Each agreement outlines board determined policies and procedures and includes the declaration of a limit to the total amount of surplus funds that can be carried forward in subsequent budget cycles. [The Education Collaborative Regulations, 603 CMR 50.00](https://www.doe.mass.edu/lawsregs/603cmr50.html?section=all) (regulations), initially developed and adopted by the Massachusetts Board of Elementary and Secondary Education in 2013 and revised in 2020 reflect statutory changes and clarify uniform rules and procedures governing the establishment and operation of educational collaboratives. Additionally, the regulations outline the 25 percent limitation on the amount of surplus funds an education collaborative may carry forward to be used in subsequent budget cycles.[[1]](#footnote-2)

This document provides guidance to the collaborative board of directors (board), regarding the determination and allowable uses of surplus funds in the collaborative budget.

**Determination of Surplus**

Unexpended **general** **funds** remaining in the collaborative’s budget at the end of a fiscal year constitute the fiscal year’s surplus.

For the purposes of determining surplus, general funds are defined as those funds that:

* a collaborative receives from school districts for tuitions, surcharges, dues, fees-for-service, and any related accrued interest on these funds; and
* indirect costs, allowed under certain grant awards that are not restricted to a specific purpose under the conditions of the funding, but may be used by the collaborative to support general collaborative programs and activities.

Unexpended funds from these sources, and any other unexpended and unrestricted funds must be included in the surplus determination.

For the purpose of determining surplus, the following balances are not considered to be general funds and are not included in the determination of surplus at the end of a fiscal year:

* Grant funds, irrevocable trust funds, capital reserve and other funds that contain specific requirements.
* Funds prepaid to the collaborative by a school district for the next year’s tuition or services for students, as is permitted by M.G.L. c. 40, § 4E, are considered encumbered for the upcoming school year for a specific purpose and are not included in the determination of the collaborative’s surplus.

All other funds to support the general purpose of the collaborative, and not restricted to a specific purpose by condition, are considered general funds. **Unexpended general funds remaining in the collaborative’s budget at the end of a fiscal year constitute the fiscal year’s surplus.** Collaboratives must determine this annual surplus, prior to determining cumulative surplus.

**Determination of Cumulative Surplus**

As defined by regulation, cumulative surplus is derived by adding prior years’ surplus funds to the current year surplus funds.

As required by statute and regulation, each board shall annually discuss and vote to accept the collaborative’s annual independent audit (audit) and any supplementary materials. Upon presentation and acceptance of the audit the fiscal year surplus is added to any retained prior years’ surplus to create the cumulative surplus. Following board approval of the annual independent audit report and designation of the cumulative surplus, the collaborative must submit the audit to the Department of Elementary and Secondary Education and other appropriate state agencies by January 1 of each year.

Once the audit is accepted, the collaborative board must consult the collaborative agreement for how and under what conditions cumulative surplus funds may be:

* used to support the approved budget;
* returned to member districts; or
* credited to support collaborative programs and services offered to member districts.

If the agreement contains a board-imposed limitation to the amount of cumulative surplus that is less than 25 percent, the board may vote to retain cumulative surplus funds within the stated agreement limit for general use in budget planning by the collaborative.

**Collaborative Budgets**

Each collaborative board must annually propose and approve a budget for the upcoming fiscal year. Proposed budgets must be discussed at a public meeting of the collaborative board, with written advanced notice provided to member districts. At least ten working days after the budget is first proposed to the board, the board must hold a meeting and approve, by at least a majority vote, the collaborative budget for the upcoming fiscal year. Among other requirements, the board must follow the process outlined in the collaborative agreement for the development and approval of the budget (as well as the tuition rates, surcharges, membership dues and fees-for-service). The collaborative budget should reflect all planned financial activity, and certain expenditures and revenues must be segregated in the collaborative budget. Board members have a fiduciary responsibly to monitor the budget throughout the year.

**Use of Cumulative Surplus in Budget Planning**

As outlined in 603 CMR 50.07(9), at the close of the fiscal year, unexpended general funds may be carried forward and used in subsequent budget cycles up to the amount equal to or less than 25 percent of the audited fiscal year’s general fund expenditures. The board, in accordance with the collaborative agreement and all relevant laws, may use these funds to:

* support any budgeted item, including creating a new program or service;
* enhance an existing program or service;
* support an unexpected expense;
* stabilize tuitions;
* support a contingency line-item;
* refund member districts; and/or
* support deposits into to a reserved or irrevocable trust.

All expenditures in a collaborative budget must have sufficient revenues to support the expenditures. If the collaborative board votes to use cumulative surplus to support planned expenditures in the approved budget or in a budget amendment, these surplus funds should be identified as a revenue source in the budget and included in the budget information provided to the member districts.

Deposits to an approved capital reserve fund or deposits to an irrevocable trust fund for retiree benefits are considered to be expenditure(s) in the fiscal year in which the deposit(s) are made.

The collaborative board may transfer surplus funds to a contingency line-item in a fiscal year’s budget for a reserve for extraordinary and unanticipated expenditures, however:

* + unexpended amounts in a contingency line-item will revert to surplus at the end of the fiscal year;
	+ funds in a contingency line-item may only be used if the collaborative board approves a line-item transfer to move funds to another line-item established for a planned expenditure or deposit, i.e., expenditures may not be made directly from a contingency line item;
	+ once funds are moved through a line-item transfer from a contingency line-item to a line-item that is restricted/reserved for a specific purpose (e.g., capital reserve, irrevocable trust, OPEB), they must remain in the restricted line-item as these funds cannot be reintroduced into the annual operating budget or revert to surplus.

**Budget Amendments**

The board may elect, through a formal budget amendment, to amend its current year’s budget to reflect the use of cumulative surplus as a revenue source or to support subsequent budget cycles. The budget amendment must be approved by the collaborative board in accordance with the provisions of law, regulations, and the collaborative agreement. Increases or decreases to the budget, line-item changes or changes in the tuition or fee structure all constitute budget amendments and must be discussed and approved at an open meeting of the collaborative board.

Collaborative boards considering a budget amendment to use surplus or any other general funds to increase their budget to support a deposit to an OPEB trust, capital reserve or an irrevocable trust fund for retiree benefits, should be aware that once these funds are earmarked for such a deposit, they cannot be reintroduced into the annual operating budget or revert to surplus.

**Cumulative Surplus Funds in Excess of the Regulatory Limit**

Cumulative surplus funds in excess of the agreement limit or 25 percent of the audited year’s general fund expenditures, must be returned or credited to member districts consistent 603 CMR 50.07(9) and with the process outlined in the collaborative agreement and in the following ways:

1. **Credited** to member districts for tuition, services, etc. These credits must be used by the end of the fiscal year in which the vote is taken.
2. **Deposited** to an irrevocable trust and/or reserve fund. These deposits must be allocated by board vote to an approved capital reserve fund and/or to an irrevocable trust for retiree benefits. Once allocated, such funds are no longer available to the collaborative for any other purpose. Deposits must be made within 30 days after the vote of the collaborative board.
3. **Returned** to the school districts/towns. The collaborative board must follow the process as outlined in the collaborative agreement for returning surplus funds to member districts. The return of funds must be made within 30 days after the vote of the collaborative board.

Collaborative boards must use the cumulative surplus worksheet on page 5 of this guidance to assist with the determination of the collaborative’s annual cumulative surplus. Additionally, this worksheet articulates the permissible uses of cumulative surplus in excess of the 25 percent limitation.

# Waiver Requests:

Upon written request from a collaborative or member district, the commissioner may waive the applicability of provisions of 603 CMR 50.00. Written requests for waivers relative to surplus determinations should be submitted to the [educationcollaborativeteam@mass.gov](https://massgov-my.sharepoint.com/personal/leee_delorenzo_mass_gov/Documents/Document%20Review%202021/educationcollaborativeteam%40mass.gov).



1. **50.07(9) Limitation on Surplus Funds:** At the close of the fiscal year, unexpended general funds may be carried forward and used in subsequent budget cycles. These unexpended general funds are determined to be the current surplus. Cumulative surplus is derived by adding prior year surplus funds to the current year surplus funds. The collaborative agreement shall include a limit on the amount of cumulative surplus funds that may be maintained by the collaborative. The collaborative board of directors shall annually approve by majority vote the dollar amount designated as cumulative surplus. The board of directors shall vote annually to retain the cumulative surplus funds for the collaborative's use or return all, or some portion, of the funds to the member districts. The collaborative agreement shall address how and under what conditions such surplus funds may be returned to member districts or 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 determination of surplus funds shall not include funds deposited in a capital reserve as provided for in 603 CMR 50.07(10), funds deposited in trust in accordance with M.G.L. c. 32B, § 20, or funds prepaid to the collaborative for tuition or services in accordance with M.G.L. c. 40, § 4E**. In no event shall such cumulative surplus funds exceed 25 percent of the previous fiscal year's general fund expenditures.** [Emphasis added] [↑](#footnote-ref-2)