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## DUTIES AND RESPONSIBILITIES OF APPOINTED REPRESENTATIVES AND COLLABORATIVE BOARDS OF DIRECTORS

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Massachusetts General Law Chapter 40, § 4E permits two or more school committees and/or charter school boards of trustees to enter into a written collaborative agreement to provide shared programs and services that complement the educational programs of member school committees and charter school boards in a cost-effective manner. The association created by this agreement is known as an education collaborative (collaborative), and the school committees and charter school boards who enter into the agreement are referred to as member districts.

Each member district school committee must appoint either a school committee member or the superintendent of schools and each charter school board of trustees must appoint a board member to serve on the collaborative board of directors (board or collaborative board). These representatives on the collaborative boards are known as board members or appointed representatives.

This guidance is divided into two parts: (1) the individual duties and responsibilities of appointed representatives and (2) the collective duties and responsibilities of collaborative boards of directors as detailed in [M.G.L. c. 40, § 4E](#) and [603 CMR 50.00](#)<sup>1</sup>.

### Part 1: Duties and Responsibilities of Appointed Representatives

Appointed representatives (board members) are the individuals appointed annually by each member district's school committee or charter school board to serve on the collaborative board of directors. Board members have duties and responsibilities to the collaborative as well as to their appointing member districts under the collaborative law and regulations. Among them is the expectation that board members will actively participate in the governance of the collaborative. To that end, regulations require that board members:

- ❖ be active and engaged voting members of the collaborative board;
- ❖ attend scheduled meetings; and
- ❖ fulfill all duties as may be required by the collaborative board, regulations (603 CMR 50.00), and the collaborative agreement.

Board members are entitled to a vote on board matters and shall not send anyone in their place to vote. Board members have fiduciary responsibilities and must discharge their duties with care, skill, prudence and diligence, for the benefit of their member districts and the students served by the collaborative. If the interests of the collaborative pose a conflict with the interests of the appointing member district, the board

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<sup>1</sup> Appointed representatives are encouraged to review the law and regulations for further information about their duties and responsibilities and consult with legal counsel to address any questions about these or other responsibilities under state and federal laws.

member must inform the appointing member district about the conflict at the next regularly scheduled open meeting of the member district's school committee.

**Member districts are ultimately responsible for the programs and services offered by a collaborative and for financial obligations or liabilities of the collaborative.** Individual board members help member districts meet this responsibility. Accordingly, the collaborative law and regulations require that board members provide the following information to their member districts at an open school committee meeting:

- ❖ quarterly information and updates on collaborative activities, including, but not limited to, the programs and services provided by the collaborative and any regional collaborative efforts;
- ❖ a report on significant changes in programs, services, budgets, and property as they arise;
- ❖ a copy of the collaborative agreement and any amendments;
- ❖ a copy of the annual budget and tuition rate;
- ❖ a copy of the annual report and financial audit;
- ❖ a notification of applications for real estate mortgages;
- ❖ a copy of any capital plan approved by the collaborative board; and
- ❖ any additional information as may be requested by a vote of member district.

Board members are public employees subject to [M.G.L. c. 268A](#) Conduct of Public Officials and Employees and must complete the collaborative board member training provided or approved by the Department of Elementary and Secondary Education (Department) within 60 days of initial appointment and every six years thereafter as required by law. Failure of a board member to complete the mandated training in the time frame set forth in the collaborative regulations may result in the imposition of conditions on a collaborative or the collaborative being placed on probationary status in accordance with 603 CMR 50.10.<sup>2,3,4</sup>

The collaborative law and regulations also include certain limitations to the duties and responsibilities applicable to board members and their activities, including the following:

- ❖ Board members may not receive an additional salary or stipend for service as board members.
- ❖ Board members may not serve as executive director, treasurer, or business manager (or a person with responsibilities similar to those of a town accountant), or as an employee of the collaborative.
- ❖ Board members may not serve on the board of directors or as an officer or employee of a related for-profit or non-profit organization.<sup>5</sup>
- ❖ Board members may not in any way delegate their duties and responsibilities.

Board members should carefully review their collaborative agreements to determine if additional conditions of membership apply.

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<sup>2</sup> Board members should be aware that both the Board of Elementary and Secondary Education (BESE) or the Commissioner of Elementary and Secondary Education (Commissioner) may impose conditions on an education collaborative for the circumstances identified in 603 CMR 50.10.

<sup>3</sup> In addition, the Commissioner has the authority to place a collaborative on probationary status, if in the Commissioner's judgement the imposition of a condition alone would be insufficient to correct the circumstances identified. The Commissioner may also impose probationary status upon receipt of information which, in the opinion of the Commissioner, demonstrates significant malfeasance, financial or otherwise, by any board member (or by any employee of the educational collaborative) (M.G.L. c. 40, § 4E(l) and 603 CMR 50.10(2)).

<sup>4</sup> The Board of Elementary and Secondary Education (BESE) has the authority to suspend or revoke approval of an educational collaborative agreement for cause, in a number of different circumstances. These circumstances include, but are not limited to, criminal convictions on the part of any administrator or board member (M.G.L. c. 40, § 4E (l) and 603 CMR 50.10(3)).

<sup>5</sup> Related for-profit or non-profit organization is defined in the collaborative law as one "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." M.G.L. c. 40, § 4E(a).

## Part 2: Duties and Responsibilities of the Collaborative Boards of Directors

The individual board members appointed by the collaborative's member districts, comprise the collaborative board. The collaborative board is responsible for the governance and management of the collaborative. The collaborative law and regulations outline the collective responsibilities of the collaborative board of directors:

### Governance and Staffing

- ❖ The board must hold at least six board meetings annually and must comply with the [Open Meeting Law](#).
- ❖ The board must elect a chairperson from its membership and provide for such other officers as it may determine are necessary, and
- ❖ The board may establish advisory committees as desired.

The board must hire or appoint:

- ❖ An executive director to oversee collaborative programs, and to supervise the collaborative, who shall serve under the general direction of the board;
- ❖ A business manager (or an employee with responsibilities similar to those of a town accountant);
- ❖ A bonded<sup>6</sup> treasurer, who may be the treasurer of a member district, to manage all receipts and disbursements through the Collaborative Fund (Fund) and perform other duties as required by the board and authorized by M.G.L. c. 40, §4E and 603 CMR 50.00; and
- ❖ One or more registered nurse(s) as a school nurse.<sup>7</sup>

The board is a public employer and may employ (other) personnel in order to fulfill the collaborative's mission, subject to the certification and approval standards in the collaborative law and board policy.<sup>8</sup>

The board must ensure that:

- ❖ there is segregation of duties between the executive director, treasurer, and business manager;
- ❖ no board member serves in the position of executive director, treasurer, or business manager;
- ❖ no employee of the collaborative serves on the collaborative board; and
- ❖ no employee shall be eligible to serve concurrently in the positions of treasurer and business manager (or a person with responsibilities similar to those of a town accountant).

The board must evaluate the performance of the executive director and the treasurer annually and ensure that the business manager is also evaluated annually.

The board must provide appointed nurse(s) with all proper facilities for the performance of the school nurse's duties. Collaboratives with programs housed in an operating public school may enter into an agreement with the host school district whereby the school nurse of the host school or district provides school nursing services to the students served by the collaborative.

The board must establish policies to support the operation of the collaborative. In addition to other requirements of law, these policies must, at a minimum, include policies relative to personnel, students, finance and internal controls, and health and nursing. The board must periodically review the effectiveness of such policies to ensure currency and appropriateness.

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<sup>6</sup> The collaborative board must fix the amount for the bond that the treasurer shall annually give for the faithful performance of duties as collaborative treasurer, in a form approved by the Department of Revenue (DOR) and in a sum not less than the amount established by the DOR.

<sup>7</sup> The board must ensure that each nurse is licensed as a school nurse under 603 CMR 7.00. (An exception to this licensure requirement applies to any nurse employed as a school nurse by the collaborative on or before February 1, 2012.)

<sup>8</sup> The collaborative board must apply for any desired hardship waiver of the collaborative regulations (603 CMR 50.06(7)), under which the Commissioner of Elementary and Secondary Education may exempt a collaborative board for any one school year from the requirement to employ certified or approved personnel.

The board must establish a process to provide all public information required by law and regulation, to member districts, students, parents/guardians, and Board of Elementary and Secondary Education.

The board must establish and maintain an internet website that shall include, at a minimum:

- ❖ a list of the current board members;
- ❖ copies of the approved minutes of all open meetings;
- ❖ a copy of the most recently approved collaborative agreement;
- ❖ copies of the annual reports and annual independent audits required by 603 CMR 50.08; and
- ❖ contact information for key education collaborative staff members.

A board that seeks to operate a collaborative program within a public school building is required to develop and approve a memorandum of agreement that includes the terms and conditions for the use of space with the host district, in order to maximize integration opportunities for students placed in or served by the collaborative programs, and coordinate services, including basic health care services, to students placed in or served by the collaborative programs.

### **Collaborative Finances**

The board must establish and manage an Education Collaborative Fund (Fund). All monies paid by member and non-member districts; all grants or gifts from the federal government, state government, charitable foundations, private corporations; and all funds from any other source must be paid to the board and deposited into the Fund. The treasurer of the collaborative, subject to the direction of the board, shall receive and disburse all money belonging to the collaborative without further appropriation.

### **Budget Planning**

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 responsibility to monitor the budget throughout the year.

Additionally, the board must ensure that the treasurer certifies and transmits the budget with the tuition rates, membership dues, fees-for-service, and surcharges as applicable, for the upcoming fiscal year to each member district in a timeframe specified in the collaborative agreement.

The board may borrow money or enter into short or long-term agreements or mortgages. However, when borrowing is for the approved acquisition or improvement of real property, the board shall:

- ❖ provide notice to each member district within 30 calendar days of applying for real estate mortgages; and
- ❖ discuss its intent to apply for a real estate mortgage at a public meeting of the board prior to the meeting of the board at which the final vote is taken.

The board must comply with the [Uniform Procurement Act, M.G.L. c. 30B](#). The board may, consistent with this law, enter into contracts for the purchase of supplies, materials, and services, and for the

purchase or leasing of land, buildings, and equipment, so long as the board considers such purchases and leases as necessary.

The board may apply, through an appropriate vote, for state, federal, corporate, or foundation grants, and may enter into contracts to obtain the funds needed to carry out the purposes for which the collaborative was established.

The board must ensure that the collaborative adopts and maintains 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 and the Commissioner of Revenue, in consultation with the State Auditor.

### 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.

The board must approve all amendments and line item transfers to the budget.

- ❖ Any budget amendment that proposes moving funds from an unrestricted category to a restricted category (OPEB, capital reserve) must be proposed and approved through the budget process.
- ❖ The Department strongly suggests that the collaborative submit the budget amendment, in writing, to the chairs of the member districts at least 48 hours in advance of a final vote by the collaborative board.
- ❖ Any budget amendment that results in an increase in the tuition rates, membership dues, fees-for service or surcharge increases shall be provided to the member districts in accordance with a timeframe and process outlined in the collaborative agreement.

### Determination of Cumulative Surplus

In August 2021, the Department revised its cumulative surplus guidance for collaborative boards of directors, regarding the determination and allowable uses of surplus funds. The statute and regulations outline and define the fiscal terms and conditions for education collaboratives, including the limit on the amount of cumulative surplus revenue that may be held by the collaborative at the end of a fiscal year. For more detailed information please refer to the [Guidance on Education Collaboratives' Use of Surplus Funds](#).

### **Reporting Requirements**

The board must ensure that the collaborative adheres to reporting requirements in the collaborative law and regulations, including, but not limited to the following:

- ❖ The annual report and annual independent audit report must be approved by the board;
- ❖ The annual report and annual independent audit report must be submitted to appropriate state agencies by January 1 of each year; and
- ❖ The annual report and annual independent audit report must be posted on the collaborative's website.

The board must ensure that the collaborative complies with all reporting requirements of the Department, such as Education Personnel Information Management Services (EPIMS), Student Course Schedules (SCS), etc.

The board must ensure adherence to requirements of other agencies with which the collaborative does business, including those imposed by the Massachusetts Executive Office of Administration and Finance's Operational Services Division (OSD) upon collaboratives offering social services.

### **Programmatic and Fiscal Reviews**

The board must participate in any programmatic and/or fiscal reviews scheduled by the Department. The Department shall review the programs and services provided by each educational collaborative at least once every six years. The programmatic review shall focus on compliance with special education and other programmatic and civil rights requirements. The fiscal review shall determine the status of financial systems and controls, compliance with the written collaborative agreement, and compliance with the requirements of M.G.L. c. 40, § 4E, and 603 CMR 50.00. As a result of any finding, the board and/or the member districts may be required to develop a corrective action plan that may result in remedial action, or suspension, or revocation of the collaborative agreement as noted in 603 CMR 50.10.

### **Related Responsibilities**

The board must cooperate fully in implementing any directives or requirements of law, regulation, and the Department if the BESE suspends or revokes the approval of the collaborative, or if the Commissioner places the collaborative on probationary status as noted in 603 CMR 50.10.

The board must follow applicable procedures outlined in the collaborative agreement, law, and regulations if the collaborative terminates operations or dissolves as noted in 604 CMR 50.11.

The board must submit to the Commissioner any requests for waiver of the applicability of one or more provisions of 603 CMR 50.00, consistent with 603 CMR 50.12(1).

As indicated in 603 CMR 50.04(3)(d), the collaborative board shall be responsible for:

- ❖ ensuring adherence to the collaborative agreement and compliance with all applicable state and federal laws and regulations;
- ❖ approving all collaborative expenditures, including contracts, borrowing, and the purchase and sale of real estate;
- ❖ ensuring progress toward achieving the purposes set forth in the agreement;
- ❖ determining the cost-effectiveness of programs and services offered by the collaborative;
- ❖ considering regional needs and opportunities; and
- ❖ ensuring that any borrowing, loan, or mortgage is cost-effective, necessary to carry out the purposes for which the collaborative is established, in the best interest of the collaborative and its member districts, and consistent with standard lending practices and the terms of the collaborative agreement.

The collaborative law and regulations also require that collaborative agreements contain powers and duties of the collaborative board. Boards and board members should consult their own collaborative agreements and be familiar with these provisions.

For further information and resources, please visit the Department's [Education Collaborative website](#) and/or contact the [EducationCollaborativeTeam@mass.gov](mailto:EducationCollaborativeTeam@mass.gov).