

ROCKLANDBOCES

BOARD OF COOPERATIVE EDUCATIONAL SERVICES



CHARLENE JORDAN, ED.D
DISTRICT SUPERINTENDENT

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November 2, 2017

Ms. Tenneh Blamah
Chief Examiner
Division of Local Government and School Accountability
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553

Re: Rockland County Board of Cooperative Educational Services
Report of Examination 2017M-060

Dear Ms. Blamah:

By letter dated October 19, 2017 I provided you with a response to the Draft Report of Examination dated September 2017 concerning Rockland BOCES. By e-mail dated October 27, 2017 I contacted Diane Peters to let her know that my letter was not complete because we still needed to meet with our Board. I told her that we would be sending a further response on November 2, 2017. By e-mail dated October 31, 2017, Ms. Peters informed me that she would accept an amended response letter. This letter is that further response.

Introduction

The initial audit period covering 07/01/2013 – 06/30/15 focused on 3 areas: administrative compensation, financial management, and purchasing. In reviewing the draft report, we recognize that the audit process is to help ensure that programs achieve established goals, funds are used efficiently, and that assets are adequately protected. We at Rockland BOCES have always acted in accordance with these expectations and work diligently to ensure that in partnership with local school districts and their communities, the Board of Regents and the Commissioner of Education, we provide quality, cost effective, educationally-focused programs and services that support learners in achieving high standards which we have been doing for almost 60 years.

Over the last few years, we have significantly expanded our services and programs. During this time, we have also experienced various organizational changes, and we consistently reflect on our practices of day to day operations for continuous improvement. The Rockland BOCES Board of Education has continually responded to the needs of our component districts. The leadership of Rockland BOCES has helped change the landscape of educational services in this county. Rockland BOCES remains committed to responding to the needs of our districts, emphasizing cost effective practices in accordance with approved BOCES' practices.

Additionally:

- At the time of the audit, Rockland BOCES was simultaneously addressing and assisting law enforcement officials with their investigation of a former employee. Due to the nature of the investigation with the District Attorney's office, various documents could not be released or discussed with the audit team. While Rockland BOCES was not the subject of the investigation, this caused certain communication challenges with requests from the audit team.
- Rockland BOCES utilizes an internal auditor that provides weekly oversight on our business operations. Recommendations in this area will be addressed in the CAP Plan.
- Rockland BOCES utilizes an external audit team that reviews our business operations on a consistent basis and provides detailed board reports to our Board of Education. Recommendations in this area will also be addressed in the CAP Plan. (All prior reports revealed no material weaknesses and strong internal controls).
- Board policies were updated in 2015/2016 with the New York State School Boards Association (NYSSBA) and we are currently working on regulatory practices for all policies and anticipate the business office practices to be completed in 2017/2018. Our BOCES subscribes to the NYSSBA Policy Service in order to remain current on new developments.
- Rockland BOCES' leadership prides itself on transparency in the budget process, as well as planning for program development, capital projects based on student needs, and component school district requests. In monthly meetings with the district superintendents and school officials, capital projects and program development needs are discussed.

- Historically, minutes have not been taken during the budget presentation at our annual meeting. The presentation was and continues to be done via PowerPoint® and a Q&A session. However, we recognized the need for, and implemented in 2016/2017, a formal process to capture the transparency and support from component superintendents via minutes.
- We recognize, due to growth, certain operational practices that existed in this review process were in transition. For example, board minutes traditionally in paper form were moved to a digital record keeping system named “Board Docs”. This change required us to fine tune the recording and review of minutes and documents. During this audit process, this became evident and Rockland BOCES was able to restructure this initiative for greater accessibility and retrieval of documents. The transition from hard-copy to digital record keeping occurred during the retirement of our prior district clerk.
- Through our ongoing participation in workshops and conferences on a local, state and regional level we have secured over \$6 million in grant funded activities. The Hudson Valley PTech grant was awarded in 2013, we began working with Cognitive Behavior Consultants of Westchester on DBT for the 2012-13 school year, and in April of 2014 we submitted and received the Federal Counseling grant (Project MEND).
- These funds have enhanced best practices, and our BOCES has demonstrated a stabilization of tuitions over the last two years. Of note, the last two budget years allowed us to maintain less than a 2% tuition increase as well as only a 1% increase in administrative costs.
- These successful grant efforts resulted in recognition from the Rockland Economic Development Council, the Office of Mental health, the Lower Hudson Council, the Mid-Hudson Study Council, and the Rockland Business Association. Rockland BOCES is viewed as a leader in the field, with collaborative and transparent practices.
- The lower Hudson Valley, Long Island, Capital Region and beyond are challenged to maintain BOCES leadership positions. Recruitment and retention remain ongoing issues for our leadership team and Board of Education and this is especially evident for the position of the District Superintendent. The Rockland BOCES Board of Education has researched, sought legal advisement, and advocated statewide to address the challenges

of the salary cap in order to ensure a sustainable leadership team, including a District Superintendent with significant roots in Rockland County. The Board recognizes the importance of maintaining an ongoing leadership legacy for our agency.

Record of Achievement

- Under the leadership of Dr. Marsico and the Cabinet, the Student Services Division (Special Education) continues to flourish with best research based practices for students, not only from our component school districts but regionally (35 additional districts), and is known as a regional leader in the education of students with disabilities. We provide quality services to meet educational, physical, behavioral, and mental health challenges and have done this in partnership with multiple universities, extensive community collaborations, and adult service agencies - resulting in the development of each child's potential.
- In the area of the Career and Technical Education, we are a highly competitive service agency. Rockland BOCES works in partnership with schools, employers, and economic development councils, in developing a skilled and knowledgeable work force. Our programs have expanded significantly and training is designed with regard and relevance in preparing students for employment and post-secondary education. Rockland BOCES shops and classrooms are state of the art and meet industry standards.
- Our Professional Development Center trains over 5,000 individuals and is seen as a leader in developing educational professionals and leaders, providing learning opportunities in content, instruction and pedagogical practices, assessment, cultural competency, and leadership development.
- Adult education has expanded in the areas of adult literacy, business and industry, and continuing education. During this audit process Rockland BOCES has entered into an expanded business partnership with Rockland Community College for continuing education and youth employment training opportunities. (WIOA Grant).
- In September 2014, our BOCES received a \$4 million grant to establish Hudson Valley P-TECH - an integrated, six-year STEM (science, technology, engineering and mathematics) program that offers a rigorous academic curriculum, targeted technical training and comprehensive workplace learning in a dynamic, project-based learning

environment. Students graduate with a high school diploma and an associate degree at no cost to their families.

Recommendations and Responses

Administrator Compensation

Recommendation No. 1

Prepare a cost-benefit analysis to determine whether adding the position of Chief Operating Officer/Deputy Superintendent is economical and beneficial for component district residents.

Response No. 1

The decision to add the position of Chief Operating Officer/Deputy Superintendent was the result of a well thought out process from both a fiscal and an organizational point of view. At the recommendation of the Auditors, a cost-benefit analysis was prepared and this analysis indicates that there was a cost savings to the component districts as a result of this transition to the Chief Operating Officer/Deputy Superintendent position. When we consider the vacancies in the budgeted positions of Deputy Superintendent, District Superintendent and Assistant Superintendent for Instructional Services, and the additional responsibilities that were assumed during the periods of transition, the BOCES and, ultimately, the component districts realized an overall savings in both Fiscal Year 2014 and Fiscal Year 2015.

The original analysis prepared prior to the transition was shared with the Rockland BOCES Board of Education, the component school superintendents and with the Rockland County School Boards Association in an effort to explain the rationale, show the anticipated savings, and demonstrate transparency with our educational partners. The Board spent considerable time and numerous meetings working on the creation of the position and reviewing the data related to this transition prior to moving forward with their decision. The Board members consulted independently with their own constituent boards to keep them abreast of the economics and the benefits associated with their proposed decision.

The detailed analysis was presented to representatives from your office at the recent exit conference and in summary, the analysis of the above yields the following cost savings:

- When expanded to include 2017, the actual cost to Rockland BOCES in salaries was a reduction of \$212,514.
- If salary benefits were included, a further savings of \$134,038, for a reduction of \$346,709, given the current District Superintendent receives no benefits.

Recommendation No. 2

Review the insurance policies BOCES currently holds and consult with its counsel and insurance broker to take steps to ensure all insurance policies are necessary and in the best interest of component district residents.

Response No. 2

In my letter of October 19, 2017, I stated that the BOCES' Board attorney would be reviewing various documents including guidance material from the State Education Department as well as information pertaining to the life insurance policy referred to in your report.

I am enclosing a copy of a letter dated October 18, 2017 sent to the BOCES' business official at the request of the BOCES' Board attorney providing the details of the subject policy (Attachment "1"). As noted in the letter, the policy is owned by BOCES which has the full rights of ownership. Dr. Marsico has no rights to any part of the contract. Moreover, upon Dr. Marsico's death, her beneficiary has full rights to the death benefit minus all the premiums paid by BOCES.

In view of the foregoing, our attorney then looked at the applicable guidance document from the State Education Department pertaining to BOCES District Superintendents. A copy of the entire document is enclosed (Attachment "2"). I invite your attention to Item 7 which clearly states that in situations where ownership of a life insurance policy is retained by the BOCES so that its cash value is not available to the District Superintendent, the policy is the functional equivalent of a term insurance policy for salary cap purposes and its premiums are not included in the total cap. Since our BOCES owns the policy, there is no salary cap issue.

Recommendation No. 3

Ensure payments for leave accruals are made in accordance with the terms of employment agreements.

Response No. 3

The Board's attorney has reviewed the payments made to the District Superintendent in the amounts of \$3,424.00, \$3,474.00 and \$3,474.00 for unused vacation days and while they were authorized by her employment agreement and subsequent amendments, the Board's attorney has determined that those payments exceeded the salary cap. A check in the amount of \$10,372.00 has been received by the BOCES Board from Dr. Marsico fully reimbursing BOCES.

Turning next to the separation payment made to Dr. Marsico on July 14, 2015 mentioned on page 12 of your report, the BOCES' Board attorney has reviewed that as well. As your report indicates, the payment made to the former District Superintendent was for 30 days of unused vacation. Concerning that point, you wrote as follows:

“The former Superintendent’s contract permitted payment for 30 days of unused leave upon separation. We question whether it was the agreement’s intent to allow for a payout since she did not leave BOCES service, but merely took a new position.”

Our attorney has reviewed the applicable Civil Service regulation which can be found at 4 NYCRR §30.1 (Attachment “3”). The regulation, which is captioned “Payment for Accruals Upon Separation”, states as follows:

“At the time of separation from State service, an employee, such employee’s estate or beneficiaries, as the case may be, shall be compensated in cash for overtime credits not in excess of 30 days accrued and unused as of the effective date of separation”;

The operative language in the Regulation is **State service**. When Dr. Marsico left the position of District Superintendent, that was her separation from State service. As such, it was the Board’s intention to pay her for the 30 unused days accrued while District Superintendent recognizing that such payment is in full compliance with the aforesaid Regulation.

The final issue raised in your report had to do with the disability insurance policy provided for the former District Superintendent and a dividend that was paid to her on the policy in the amount of \$1,415.00. The BOCES' Board has received a check from the former District Superintendent in the full amount of \$1,415.00 resolving that issue.

Recommendation No. 4

Consult with BOCES counsel and seek to recover any overpayments, payments not allowed by contract or payments not approved by the Board.

Response No. 4

The BOCES' Board has consulted with their attorney regarding this recommendation and, as set forth in Response No. 2 and Response No. 3 above, has determined that the reimbursements made by the former District Superintendent fully resolve any outstanding issues and that no further action on their part is required.

Financial Management

Recommendation No. 5

Ensure that all surplus funds, except those properly restricted in reserve funds in accordance with applicable statutes or budgeted for and approved in the capital budget, are distributed back to the districts each fiscal year.

Response No. 5

Rockland BOCES continues to distribute back to the participating districts all surplus funds that are realized as a result of our ongoing operations, except for those funds that have been restricted in reserve accounts authorized and approved by the Rockland BOCES Board of Education. The accruals that are being maintained have been approved by our external auditors and are reported in our financial statements. The Board remains vigilant towards their management of component school district monies and their responsibility to operate in the best interests of our stakeholders. No material weaknesses in the reporting of the financial results from our operations have been identified in either the external audit reports or the internal audit findings. The BOCES administration and the BOCES Board of Education work together to provide highly transparent financial operations while keeping the school superintendents, school business officials, and stakeholders/community well informed of their fiscal activities.

Recommendation No. 6

Develop a comprehensive written policy or plan for establishing, funding and using reserve funds.

Response No. 6

The Board Policy Committee will review all Board policies and make the appropriate recommendations to our Board for the implementation and/or modification of our policies. We will continue to ensure that the establishment and the transfers to and from the reserves are approved by resolution at the BOCES' Board of Education meetings. Rockland BOCES will continue to be responsible from a fiduciary perspective in its accounting for its reserve funds and liabilities.

Recommendation No.7

Review all reserve funds and determine whether the amounts reserved are necessary and reasonable. To the extent that they are not, transfers should be made, where allowed by law, in compliance with statutory directives.

Response No.7

The elected members of the Board of Education regularly review Rockland BOCES reserves to ensure that they are necessary and reasonable. Each year we discuss funding levels with our component districts which are then reviewed with our external auditor. As stated in the Comptroller's Reserve Fund guide, "planning today and saving incrementally for expected future events can help mitigate the financial impact of minor, non-recurring or unforeseen expenditures on your annual operating budget". With this in mind and to be fiscally responsible, BOCES maintains reserves to guard against potential obligations and unforeseen events. It is not an indication that a reserve is overfunded if its balance has not changed over the course of a year. In addition, the reserves help to smooth out any potential charges to districts due to unforeseen costs. We will review the amounts held in reserves in conjunction with statutory and regulatory requirements. Where appropriate, we will analyze the existing reserve levels to determine what is necessary. Should the analysis indicate that reserve levels need to be adjusted, we will adopt a plan that addresses the accumulation, use and maintenance of reserve funds. We have, in fact, begun the process of dissolving the Workers' Compensation Reserve. We will also continue to work with our external auditors and follow their recommendations regarding the reserves.

Recommendation No.8

Adopt a comprehensive policy that specifically address the procedures for billing and collection when invoices remain uncollected after the payment period.

Response No.8

In your report, you cited a specific example of a district with outstanding invoices beyond the payment period. In response, we provided your office with a chronicled list indicating the series of steps this agency took to resolve this issue. These included correspondence between this office and representatives of the district identified, this office and representatives of NYSED, and this office and elected officials all demonstrating our efforts to receive payment for services provided. Though ultimately the district has improved the timeliness of their payment for services provided, we continue to closely monitor the receivables attributed to this district and work very closely with the business office to avoid the pattern that you have identified. We are in regular communication with all of our districts and we will continue to maintain this close working relationship on behalf of the children and families of Rockland County and beyond. We will work with SED and study the options available to the BOCES when a district's receivables

remain uncollected after a specified payment period and that a clearly stated due date will appear on the face of the billing to each district.

Purchasing Recommendations

Recommendation No. 9

Ensure that all travel by the Board and the District Superintendent is transparently and appropriately approved in accordance with GML and BOCES policies.

Response No.9

While the travel expense cited in the report represents .03% of our budget over the audit period, Rockland BOCES has secured over \$6,000,000 in grants as a result of attendance at conferences in both San Diego and San Antonio. In our efforts to be ever transparent, however, we have already instituted new procedures to clearly identify who has been approved to attend the conference or convention, the purpose of attendance at the conference or convention and how the attendance will provide for the betterment of the BOCES. We will continue to work on ensuring that all travel by both the Board and the District Superintendent is transparent and appropriately approved in accordance with GML and the policies of Rockland BOCES

Recommendation No.10

Oversee and review the competitive bidding process and monitor consultants hired to assist in the solicitation of bids to help ensure the propriety and cost-effectiveness of the procurement process.

Response No.10

We disagree with your findings regarding the energy consultant. Absent any data from your office to show how the calculations were arrived at, we cannot comprehend how you reached your conclusion that a savings of \$492,817 was possible. We would welcome the opportunity of reviewing your working papers so that we can follow your path of analysis.

We have been and will continue to exercise due diligence in collaboration with our component districts and beyond in awarding contracts. We will also continue to abide by General Municipal Law regarding the RFP and bidding process which includes keeping bids sealed until the bid opening, a procedure which we have always followed.

Recommendation No. 11

Develop a comprehensive purchasing policy that sets forth procedures to be followed for competitive bidding, including cooperative bids.

Response No.11

Rockland BOCES has in place a comprehensive purchasing policy. That being said, we will review it as it pertains to the procedures followed for competitive and cooperative bidding. We will ensure that the practices attendant to the policy will be strictly followed and adhered to and thereby ensure fair and open competition and cost-effectiveness.

Conclusion

We will be preparing a corrective action plan that will be presented to the BOCES Board for approval at an upcoming meeting. Once we have done so, we will file it as required.

We will continue to provide outstanding programs and services to our component school districts, their students and families, and will do so in a cost-effective and fiscally prudent manner.

As I noted in my letter of October 19, 2017, we will be preparing a Corrective Action Plan that will be presented to our Board for approval at the appropriate time. Once approved, we will file it with your office as we are required to do.

Sincerely,



Charlene Jordan, Ed.D.
District Superintendent

CJ:es

Enclosures

cc: Rockland BOCES Board of Education

Stephen M. Fromson, Esq.

ATTACHMENT "1"

October 18, 2017

David Gleason
Rockland BOCES
65 Parrot Road
West Nyack, NY 10954

Dear Mr. Gleason,

I am Neal K. Miller and I am an Insurance Representative for Rockland BOCES.

Prudential Life Insurance Company contract V2276859 is owned 100% by Rockland BOCES. It was issued on 06/04/2014 with the insured being Mary J. Marsico. As of 02/23/2017 the said contract has a contract fund value of \$19,059.17 with a death benefit of \$1,081,425.00. This contract is owned by Rockland BOCES with full rights of ownership. Dr. Marsico has no rights to any part of this contract. Dr. Marsico's beneficiary has full rights of the death benefit minus all premiums paid by Rockland BOCES. Dr. Marsico has no rights to the contract's contract value. Dr. Marsico is issued a 1099 from Rockland BOCES for the term equivalent of this program each year which she pays taxes on.

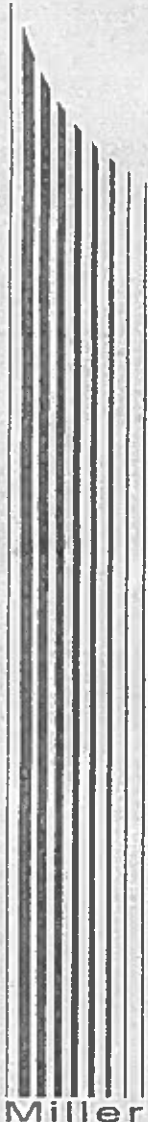
If I can be of any further assistance, please call me at (607) 433-0620.

Sincerely,



Neal K. Miller

NKM/kb



ATTACHMENT "2"

5/18/98

QUESTIONS AND ANSWERS ON CHAPTER 295 OF THE LAWS OF 1993, AS
AMENDED- BOCBS REFORM ACT

F. Compensation of District Superintendents of Schools

1. Q. What limit is imposed by the act on the salary of a district superintendent of schools?

A. The total salary paid to the district superintendent, including the current State salary of \$43,499, may not exceed 98% of that earned by the Commissioner of Education for the 1992-93 State fiscal year (Education Law §1950 [4][a][2]).
2. Q. What is the dollar amount of this salary cap?

A. The Commissioner's 1992-93 salary was \$131,250, which establishes the salary cap at \$128,625.
3. Q. What is meant by the "total salary" of the District Superintendent and the Commissioner?

A. Salary means the amounts paid a public employee for services on a fixed, periodical or annual basis depending on time rather than the amount of services rendered, and does not include other forms of compensation paid on some other basis, such as fringe benefits or traveling expenses (19 NEW YORK JURIS. 2D, Civil Servants and Other Public Officers and Employees, §§ 201, 189-197, pp. 54, 44-51). For purposes of the salary cap, neither the Commissioner's total salary nor the district superintendent's total salary would include the value of fringe benefits, leave accruals or expenses, except that Education Law §1950 (4)(a)(2) has been amended to include certain insurance benefits and payments for transportation and travel expenses in the total salary of the district superintendent for salary cap purposes. The reference to "total" salary indicates that the cap is applicable to the salary payable from any source, whether State or local, and to gross salary rather than net salary.
4. Q. Are payments for annuities or other forms of deferred compensation included in total salary for purposes of the salary cap?

A. Yes. By statute, payments for annuities involve a reduction of gross annual salary and therefore are included in the total salary of the Commissioner and the district superintendent (Education Law §114). Any other deferred compensation also would be included in total salary in

the year in which it is earned.

5. Q. What fringe benefits does the act authorize a BOCES to provide outside of the salary cap?
- A. The BOCES Reform Act is intended to authorize a BOCES to provide district superintendents, as additional compensation, the types of fringe benefits made available to managerial/confidential employees of the State, including leave accruals, health insurance, dental insurance, disability insurance and life insurance, and to exclude such benefits from the salary cap. Since the act repeals Education Law § 2210, which formerly authorized an annual allowance from the State in lieu of all expenses of a district superintendent, the BOCES may reimburse the district superintendent for actual expenses incurred in the performance of his or her duties, including travel expenses. Under a 1997 amendment (§11 of Chapter 436 of the Laws of 1997), any lump sum payments not specifically excluded from total salary by the provisions of Education Law §1950(4)(a)(2) are counted for purposes of the salary cap. Thus, payments for types of benefits not available to managerial/confidential employees of the State will be counted toward the salary cap.
6. Q. If a BOCES provides benefits to the district superintendent such as health insurance, life insurance, disability insurance payments, or reimburses the district superintendent for traveling expenses or other expenses incurred in the performance of his or her duties, are such items included in total salary for purposes of the salary cap?
- A. No, fringe benefits and actual employee business expenses are not included in total salary; except that payments for life insurance policies having a cash value, such as whole life or split dollar policies, constitute cash equivalents and are included in total salary for purposes of the salary cap, and payments for the employee contribution, co-pay or uncovered medical expenses under a health insurance plan are also included in total salary.
7. Q. Are the premiums for a life insurance policy having cash value included in total salary for purposes of the salary cap where the cash value is retained by the BOCES?
- A. No. Where ownership of a life insurance policy is retained by the BOCES so that its cash value is not available to the district superintendent, such policy is the equivalent of a term insurance policy for salary cap purposes and therefore its

premiums are not included in the district superintendent's total salary.

8. Q. Is the entire premium of a whole life policy or other life insurance policy having cash value included in the district superintendent's total salary?

A. Yes. Even though a portion of the premium may be ascribed actuarially to a term life component, Education Law §1950(4)(a)(2) requires any payments to the district superintendent for such life insurance policies be included in total salary.

9. Q. Under what circumstances will payments for health insurance be included in the district superintendent's total salary for purposes of the salary cap?

A. The 1997 amendments (§ 11 of Chapter 436 of the Laws of 1997) provide that payments under a district superintendent's contract for the employee contribution, co-pay or uncovered medical expenses under a health insurance plan are included in total salary. Thus, where a contract provides that the BOCES will pay the full cost of the district superintendent's participation in a BOCES group health plan or a State group health plan, the amount of the employee contribution that other State or BOCES managerial/confidential employees would pay under the health plan would be counted toward the salary cap, as would payments for any co-pay required of other such employees under such plan. If the health insurance plan provided to the district superintendent does not require an employee contribution or a co-pay, the full amount of the premium is excluded from the salary cap, provided that any payments made by the BOCES for medical expenses not covered under the health plan would be considered as salary for the purpose of the salary cap. A payment in lieu of health insurance would be a lump-sum payment included in the salary cap.

10. Q. Do the 1997 amendments requiring inclusion of employee contributions and co-pays for health insurance in total salary apply to dental insurance plans?

A. Yes. The references in Education Law §1950(4)(a)(2) to "health insurance" are intended to apply to both medical and dental insurance.

11. Q. To what extent are payments under a cafeteria (flexible benefits) plan

included in total salary for purposes of the salary cap?

- A. A cafeteria plan under section 125 of the Internal Revenue Code affords groups of employees with choices from a menu of health or other benefits. The extent to which payments under a cafeteria plan will be included in total salary will depend on the specific option or options selected by the district superintendent. Where the option selected is a health plan that includes no employee contribution and no co-pay, the premium attributable to that option would be excluded from total salary. If the option selected is a form of benefit not available to managerial/confidential employees of the State, the payment attributable to that option will be included in the district superintendent's total salary. If the option selected is a cash payment in lieu of health insurance benefits, the amount of such cash payment is a lump sum payment included in total salary for purposes of the salary cap.

12. Q. Under what circumstances will travel expenses be included in total salary for purposes of the salary cap?

- A. The 1997 amendments provide that any payments for travel expenses (i.e., costs of airfare, rail transportation or automobile, hotel rooms, meals) in excess of actual documented expenses incurred in the performance of duties for the BOCES or the State must be included in total salary. Reimbursement for actual business travel expenses incurred continues to be excluded from the cap.

13. Q. What arrangements can a BOCES make to reimburse a district superintendent for the use of an automobile on official business without having such payments included in total salary?

- A. A BOCES is authorized to allow a district superintendent to use a BOCES owned or leased vehicle in lieu of paying mileage for travel expenses, provided that under the 1997 amendments any amount expended by the BOCES for the personal use of such automobile must be included in total salary for purposes of the salary cap, including the costs of gasoline, insurance and routine maintenance. Reimbursement of the BOCES by the district superintendent for personal use of a BOCES vehicle at the I.R.S. rate (currently 31.5 cents a mile) would fulfill this requirement, provided that documentation of personal use mileage is maintained. Alternatively, the BOCES may reimburse the district superintendent at the I.R.S. rate for the use of the district superintendent's personal vehicle on

official business. Any lump sum payment provided by a BOCES for use of an automobile will be included in total salary to the extent it exceeds the actual documented expenses incurred by the district superintendent on official business.

14. Q. Do the 1997 amendments on health insurance and transportation apply to district superintendent contracts entered into prior to its enactment?
- A. No. Section 11 of Chapter 436 of the Laws of 1997 applies to all district superintendent contracts entered into, extended or amended on or after August 20, 1997, the date upon which it became a law, and is not intended to abrogate existing contracts. However, under Chapter 295 of the Laws of 1993, any duplicate reimbursement for the use of an automobile, such as by providing a lump sum for transportation and reimbursing for mileage would be included in total salary to the extent of such duplication.
15. Q. Are expenses incurred by a district superintendent for membership in professional organizations or for attendance at education conferences included in total salary for purposes of the salary cap?
- A. No, provided that such attendance at education conferences is authorized pursuant to §77-b of the General Municipal Law and that membership in professional organizations is required by the BOCES as a condition of employment. In either case, reimbursement is limited to actual and necessary expenditures.
16. Q. What limits does the act impose on the vacation and sick leave accruals of district superintendents?
- A. The act makes it clear that district superintendents, as State employees, may not accumulate vacation and sick leave credits in excess of the vacation and sick leave credits that managerial/confidential employees of the State may accumulate under Civil Service regulations. The act further clarifies that a district superintendent may not be compensated for accrued and unused vacation credits or sick leave, or use such accruals to pay for health insurance in retirement, at a rate in excess of that permitted to managerial/confidential employees of the State.
17. Q. What are the limits on vacation and sick leave accruals and conversion rights for State managerial/confidential (M/C) employees that apply to

district superintendents?

- A.
- No more than 40 vacation days may be accumulated (4 NYCRR § 28-1.2 [e][1]).
 - No more than 200 sick days may be accumulated (4 NYCRR §§ 28-1.3 [b] and 28-2.1 [c]).
 - Payment may be received for up to 30 accrued vacation days upon separation from service (4 NYCRR §30.1).
 - Payment may not be received for accrued sick leave upon retirement, although up to 165 sick days may be used to pay for health insurance in retirement (Civil Service Law §167[4]; 4 NYCRR §§28-1.3 and 28-2.1).
 - In addition, the limits imposed by Part 28 of the Rules of the Civil Service Commission on the rate at which managerial/confidential employees of the State may accumulate vacation leave and sick leave would apply to district superintendents. These rates vary based on such factors as the length of continuous State service, the date of entry into State service and whether the employee participates in the State Income Protection Plan. Under 4 NYCRR § 28-1.2, State M/C employees commencing State service prior to January 1, 1986 earn 13 days vacation leave in the first year, and additional vacation credits thereafter for each year of continuous State service (totaling 20 days in year 7). Under 4 NYCRR § 28-2.1, State M/C employees entering State service on or after January 1, 1986 earn 8 days of sick leave a year. For this purpose, only service as a district superintendent or other employee of the State may be counted. Detailed information on the applicable rates of accumulation of vacation leave and/or sick leave may be obtained from the Office of Human Resources Management.

18. Q. Upon appointment as a district superintendent, does a current BOCES employee retain sick leave and vacation leave accruals earned during prior service with the BOCES?

A. Yes. Under the holding of the Appellate Division in People v. Murphy, 235 A.D.2d 554 , 652 N.Y.S.2d 754 [2d Dept. 1997], a district superintendent continues as an employee of the BOCES as well as the

State. Therefore, the district superintendent would continue to have a contractual right to leave accruals earned during prior BOCES service at the same BOCES.

19. Q. May the BOCES award additional days of sick leave or vacation leave upon initial appointment of a district superintendent who does not have prior BOCES service?
- A. No. A district superintendent may not accumulate leave as a district superintendent at a faster rate than an M/C employee of the State.
20. Q. If a BOCES provides short-term or long-term disability insurance to a district superintendent to supplement the State Income Protection Plan, are the premiums for such disability insurance included in total salary for purposes of the salary cap?
- A. No. Disability insurance is a form of benefit available to State M/C employees, and payments for such benefit are outside of the salary cap.
21. Q. Does the BOCES Reform Act prohibit a BOCES from paying for the cost of the district superintendent's health insurance in retirement?
- A. No. Education Law §1950(4)(a)(2) does not prohibit the direct payment of the full cost of health insurance in retirement. The statute does prohibit the use of sick leave accruals for payment of health insurance in retirement in excess of the 165 day limit on conversion of sick leave by M/C employees of the State.
22. Q. Do the salary cap and the limitations on benefits apply to contracts of district superintendents in existence on July 1, 1993?
- A. The act is not intended to abrogate existing contracts that were lawfully entered prior to the effective date of the act, which is July 1, 1993 for purposes of the salary cap. The effective date provision states that "nothing herein shall impair or reduce the ability of a district superintendent to be compensated pursuant to a contract or agreement entered into prior to the effective date of this act." However, as the Governor indicated in his approval memorandum on the act, the Legislation does not insulate pre-existing contracts from legal challenges nor does it validate contracts that were unlawful and unauthorized under

prior law. The salary cap and benefits limitation are made applicable to all district superintendents of schools appointed after July 1, 1993 and, in addition, to all district superintendent contracts that are entered into or amended or extended after July 1, 1993. Where a nondurational district superintendent's contract was lawfully entered into prior to July 1, 1993 and remains in effect without any modification, the salary cap provision will never apply.

23. Q. If a district superintendent's contract entered into prior to July 1, 1993 provided for the payment by the BOCES of additional sick leave and/or vacation leave accruals and authorizes the payment of cash for such accruals at the time of retirement or separation, are such pre-existing leave accruals automatically forfeited when such contract is subsequently amended or extended or a new contract is entered after July 1, 1993?

A. No. In People v. Murphy, 235 A.D.2d 554, 652 N.Y.S.2d 754 [2d Dept. 1997], the Appellate Division ruled that a district superintendent is an employee of both the State and the BOCES, and that prior to the enactment of the BOCES Reform Act a BOCES had legal authority to provide sick leave and vacation leave to the district superintendent and to agree to convert accumulated leave accruals to cash at the time of retirement, without regard to the statutes and rules governing State employment. In light of this decision, which removes any doubt concerning the legality of pre-1993 BOCES leave accruals, a district superintendent would have a vested contractual right in such pre-existing leave accruals which could not be abrogated. This would include pre-existing leave accruals granted under BOCES policy or practice where the district superintendent did not have a formal written contract. As long as the district superintendent did not subsequently waive the right to such pre-existing accruals in subsequent negotiations with the BOCES, he or she would retain a vested right to convert such accruals to cash under the terms of the former contract, even though a subsequent amendment, extension, or new contract subsequently makes the limitations of the BOCES Reform Act applicable. In this situation, all leave accruals awarded on or after the date of the amendment, extension or entry into a new contract would become subject to the limits on compensation for accrued and unused vacation and sick leave which apply to managerial/confidential employees of the State. All such pre-existing BOCES leave accruals are the fiscal responsibility of the BOCES and do not impose liability on the State.

24. Q. If a pre-July 1993 district superintendent's contract provides for BOCES

vacation and/or sick leave accruals, but does not contain an agreement for conversion to cash at retirement or separation, can a subsequent amendment authorize cash payments at retirement in excess of the State M/C limits?

A. No. The accrued leave credits are retained and may be used by the district superintendent, but without a pre-existing contractual right to convert such accruals into cash, there is no vested right to cash-in such accruals and an amendment of the contract triggers the limitations of the BOCES Reform Act.

25. Q. Where a district superintendent has a vested right to receive cash payment for BOCES leave accruals or deferred compensation under a pre-July 1993 district superintendent's contract, does that necessarily mean that the district superintendent is entitled to retirement credit for such leave accruals or deferred compensation?

A. No, not necessarily. Eligibility for retirement credit is determined by the retirement system, not by the State Education Department. Retirement and Social Security Law §431, which took effect June 17, 1971, prohibits the inclusion of lump sum payments for deferred compensation, sick leave, accumulated vacation leave, termination pay or any additional compensation paid in anticipation of retirement in determining the salary base for the computation of retirement benefits in any retirement or pension plan to which the State or a municipality contributes. In the case of the New York State Teachers' Retirement System, Education Law §501(11)(b) does not permit the inclusion of any lump sum payment for sick leave, vacation leave or other form of termination pay or non-regular compensation in a district superintendent's three year final average salary for purposes of calculating the district superintendent's retirement benefit.

District superintendents who joined the Teachers' Retirement System prior to June 17, 1971, however, may be entitled to have such payments included in a five year final average salary calculation pursuant to Education Law §501(11)(a), provided such payments constitute compensation earned as a teaching professional. Nevertheless, we have been informed by the Teachers' Retirement System that such amounts are includable in the five year calculation only where justified by law and administrative practice and, then, only to the extent reasonable (see, Matter of Weber v. Levitt, 34 N.Y.2d 799, 800 [1974]).

26. Q. What is meant by an extension of a district superintendent's contract?

A. A contract extension generally requires an affirmative agreement by the

parties to extend the duration of the terms of the contract. Prior to the enactment of this act, there was no specific statutory authorization for a BOCES to enter a contract of employment with a district superintendent of schools for a term of years. However, there was no prohibition against a BOCES entering a nondurational employment agreement in which the parties agree on the salary to be paid for more than one year, provided that the district superintendent is subject to removal at any time in accordance with law. Any agreement to set the salary for additional years or to continue the salary for years beyond those stated in the contract would constitute a contract extension and trigger the salary cap.

27. Q. May a pre-July 1993 employment agreement be nondurational?
- A. Yes. An employment agreement that does not specify its duration is terminable at will, and prior to the enactment of BOCES Reform Act, it was lawful for a BOCES to enter into a contract with a district superintendent that had no fixed term. Such a nondurational contract must be subject to the condition that the district superintendent is subject to removal in accordance with Education Law §2212.
28. Q. Where the district superintendent's base contract does not specify a term, and a separate agreement fixing the district superintendent's salary is entered on an annual basis, is the district superintendent's contract a nondurational contract exempt from the BOCES Reform Act?
- A. No. For purposes of Education Law §1950(4)(a), the district superintendent's employment contract consists of all agreements between the BOCES and the district superintendent which relate to the latter's terms and conditions of employment. An annual salary agreement constitutes an amendment to the base agreement and makes the entire contract subject to the requirements of the BOCES Reform Act.
29. Q. If a district superintendent's existing pre-July 1993 contract specifies an annual salary to be paid without reference to any specific year, does not specify any contract term and is not subsequently changed in any way, is that contract subject to the salary cap?
- A. No. Only if the contract is extended or changed, either by direct amendment of the original contract or by entering a separate agreement which changes the terms and conditions of the district superintendent's employment, does the salary cap provision apply.

30. Q. Must a BOCES enter into an employment contract with a district superintendent for a term of years?

A. Yes. For the first time, the act amends Education Law §1950 (4)(a) to require that a district superintendent's contract be for a term not to exceed 3 years. Like the other provisions of the BOCES Reform Act, this requirement applies to district superintendents appointed after July 1, 1993 and to contracts extended, amended or entered into on or after such date.

31. Q. Does the act impose any other limitations on the contract terms that maybe included in a superintendent's contract?

A. Yes. The Act makes it illegal to make the district superintendent's salary, compensation or other benefits contingent upon the terms of any collective bargaining agreement.

32. Q. Does this prohibition against cross-referencing collective bargaining agreements apply to existing pre-July 1993 contracts of district superintendents?

A. No. Like the salary cap, the provision of the act containing this prohibition does not apply to existing contracts that were lawfully entered into prior to the effective date of the act, unless they are amended or extended.

ATTACHMENT "3"

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4 NYCRR § 30.1

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This document reflects those changes received from the NY Bill Drafting Commission through October 20, 2017

New York Codes, Rules, and Regulations TITLE 4. DEPARTMENT OF CIVIL SERVICE CHAPTER 11. ATTENDANCE RULES FOR EMPLOYEES IN NEW YORK STATE DEPARTMENTS AND INSTITUTIONS ARTICLE 2. ATTENDANCE FOR MANAGERIAL/CONFIDENTIAL EMPLOYEES IN NEW YORK STATE DEPARTMENTS AND INSTITUTIONS PART 30. DRAWING OF EARNED CREDITS UPON SEPARATION OR ENTRY INTO ARMED FORCES

§ 30.1 Payment for accruals upon separation

At the time of separation from State service, an employee, such employee's estate or beneficiary, as the case may be, shall be compensated in cash for overtime credits not in excess of 30 days accrued and unused as of the effective date of separation; and further, except where provision is made for the transfer of leave credits, the employee shall be compensated in cash for vacation credits not in excess of 30 days accrued and unused as of the effective date of separation, except that in the case of resignation, the appointing authority may require, as a condition for such payment, that written notice of such resignation be given to the appointing authority at least two weeks prior to the last day of work. No employee who is removed from State service as a result of disciplinary action, or who resigns after charges of incompetency or misconduct have been served, shall be entitled to compensation for vacation credits under the provisions of this Part.

Statutory Authority

Statutory authority:

Civil Service Law, § 6

History

Added 30.1 on 3/30/81.

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