



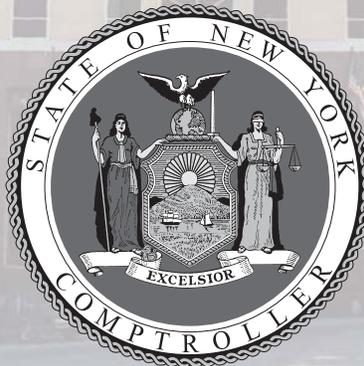
# Rockland Board of Cooperative Educational Services Administrator Compensation, Financial Management and Purchasing

Report of Examination

Period Covered:

July 1, 2013 – June 30, 2015

2017M-60



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

December 2017

Dear Board of Cooperative Educational Services (BOCES) Officials:

A top priority of the Office of the State Comptroller is to help BOCES officials manage BOCES resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support BOCES operations. The Comptroller oversees the fiscal affairs of BOCES statewide, as well as BOCES' compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving BOCES operations and Board of Education governance. Audits also can identify strategies to reduce BOCES costs and to strengthen controls intended to safeguard BOCES assets.

Following is a report of our audit of the Rockland BOCES, entitled Administrator Compensation, Financial Management and Purchasing. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for BOCES officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*



## State of New York Office of the State Comptroller

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# EXECUTIVE SUMMARY

The Rockland Board of Cooperative Educational Services (BOCES) is a public entity serving eight component school districts. BOCES is governed by a nine-member Board of Education (Board) elected by the boards of the component districts. The Board is responsible for the general management and control of BOCES' financial and educational affairs. The District Superintendent is BOCES' chief executive officer and is responsible, along with other administrative staff, for BOCES' day-to-day management and for regional educational planning and coordination. In addition to serving as BOCES' chief executive officer, the District Superintendent also serves as a representative for the New York State Commissioner of Education.

Combined, the component districts educate approximately 41,000 students in Rockland County. BOCES delivers more than 124 educational and administrative services and employs approximately 900 staff members. BOCES has no taxing authority and derives all of its financial support from its component and participating districts, as well as State and federal aid. The general fund 2015-16 budget totaled approximately \$103.7 million.

### **Scope and Objective**

The objective of our audit was to review BOCES' administrative compensation, purchasing and financial management practices for the period July 1, 2013 through June 30, 2015. We expanded our testing for administrative compensation, cooperative bidding and financial management to the period July 1, 2011 through June 30, 2016. Our audit addressed the following related questions:

- Did BOCES accurately pay employees' salaries, wages and employee benefits?
- Did officials ensure purchases were made and paid for in accordance with established policies and procedures?
- Did the Board effectively monitor BOCES' financial operations?

### **Audit Results**

In April 2015 the Board created a new position of Chief Operating Officer (COO)/Deputy Superintendent and on July 1, 2015 appointed the former District Superintendent, whose salary and benefits were \$143,656, to this position. At that time, the Deputy Superintendent position was vacant. Rather than hire a new Deputy Superintendent, the Board decided to combine the Deputy Superintendent's duties with those of the newly created position of COO/Deputy Superintendent, indicating it would achieve

cost savings by doing so. The \$305,677 salary and benefits for this new position were \$71,063 more than the former Deputy Superintendent's salary and benefits of \$234,614. The Board hired a new District Superintendent in June 2016 and paid her a salary and benefits of \$141,085. By creating the COO/Deputy Superintendent position and then hiring a new District Superintendent, BOCES incurred total additional costs of approximately \$69,000.<sup>1</sup> This negates the Board's initial claim it would achieve costs savings by creating the new position and combining it with the Deputy Superintendent position. Further, upon her resignation, BOCES paid the former Superintendent 30 days of unused vacation totaling \$14,223, although she did not leave BOCES employment. We also found questionable benefits provided to the COO/Deputy Superintendent.

Since our last audit in 2010,<sup>2</sup> BOCES has not implemented corrective action and has continued to retain \$5.2 million in an other post employment benefit (OPEB) accrual reserve that is not authorized by law, and a workers' compensation reserve for which there is a lack of clear statutory authority. Additionally, BOCES has inappropriately retained \$2.2 million in reserves set aside for expenditures it consistently funds through annual operating costs. Further, in fiscal years 2014-15 and 2015-16, the Board allocated surpluses of \$7.2 million to the capital fund without adequate transparency to the public and its component districts. As a result, BOCES has more than \$14.6 million in restricted funds that should have been returned to component districts.

BOCES' collection of billed receivables also needs to be improved. The Board has not adopted a written policy that addresses procedures for billing and collection. As a result, some districts took four months to settle invoices. As of June 30, 2016, BOCES is due over \$3.7 million in receivables that are over 30 days past due.

The Board and Superintendent incurred \$70,290 in travel-related costs in fiscal years 2013-14 and 2014-15 which are questionable as to whether they were for a legitimate and necessary purpose. These costs were incurred with a lack of transparency and may have been inconsistent with BOCES policies. BOCES officials also did not adequately oversee and monitor a consultant who was hired to assist with a cooperative bid. As a result, BOCES missed an opportunity to save component districts as much as \$492,817.

### **Comments of BOCES Officials**

The results of our audit and recommendations have been discussed with BOCES officials and their comments, which appear in Appendix A, have been considered in preparing this report. BOCES officials disagreed with certain findings in our report. Appendix B includes our comments on certain issues in BOCES' response.

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<sup>1</sup> This amount = (COO/Deputy Superintendent's new salary and benefits+ the new District Superintendent's salary and benefits) - (former Superintendent's original salary and benefits + the former Deputy Superintendent's salary and benefits).

<sup>2</sup> 2010MS-4: *Boards of Cooperative Educational Services: Transparency and Appropriateness of Reserve Funds*, July 2010, Rockland BOCES letter report #S9-9-68 was included as a part of this Statewide audit report.

# Introduction

## Background

The Rockland Board of Cooperative Educational Services (BOCES) is a public entity serving eight component school districts. BOCES is governed by a nine-member Board of Education (Board) elected by the boards of the component districts. The Board is responsible for the general management and control of BOCES' financial and educational affairs. The District Superintendent is BOCES' chief executive officer and is responsible, along with other administrative staff, for BOCES day-to-day management and for regional educational planning and coordination. The District Superintendent also serves as a representative for the New York State Commissioner of Education.

The District Superintendent, Business Director and Human Resource Director are responsible for managing daily financial operations and overseeing business office staff including the purchasing agent, payroll clerks, employee compensation and the Treasurer. The Human Resource Director is responsible for ensuring all payroll related payments are in accordance with an individual's employment contract and are properly authorized by the Board. The purchasing agent is responsible for preparing and receiving bids and overseeing contractors hired to assist with bidding. The Treasurer is responsible for maintaining the financial records and ensuring compliance with the laws, and rules and regulations set forth by the New York State Education Department.

Combined, the component districts educate approximately 41,000 students in Rockland County. BOCES delivers more than 124 educational and administrative services and employs approximately 900 staff members. BOCES has no taxing authority and derives all of its financial support from its component and participating districts, as well as State and federal aid. Budgeted expenditures for 2015-16 totaled approximately \$103.7 million.

## Objective

The objective of our audit was to review BOCES' administrative compensation, purchasing and financial management practices. Our audit addressed the following related questions:

- Did BOCES accurately pay employees' salaries, wages and employee benefits?
- Did officials ensure purchases were made and paid for in accordance with law and established policies and procedures?

- Did the Board effectively monitor BOCES' financial operations?

**Scope and  
Methodology**

We examined BOCES' purchasing, payroll and financial management for the period July 1, 2013 through June 30, 2015. We expanded our testing for administrative compensation, cooperative bidding and financial management for the period July 1, 2011 through June 30, 2016.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

**Comments of BOCES  
Officials and Corrective  
Action**

The results of our audit and recommendations have been discussed with BOCES officials, and their comments, which appear in Appendix A, have been considered in preparing this report. BOCES officials disagreed with certain findings in our report. Appendix B includes our comments on certain issues in BOCES' response.

The Board has the responsibility to initiate corrective action. Pursuant to Section 35 of General Municipal Law and Section 170.12 of the Regulations of the Commissioner of Education, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, with a copy forwarded to the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the Board Clerk's office.

## Administrator Compensation

The Board is responsible for establishing administrators' salaries and benefits in formal agreements or resolutions that address each position's pay rate or salary, work hours and fringe benefits. Any changes to salaries and benefits must be Board authorized and such authorizations must be documented. These controls help ensure that employees are only paid for the benefits to which they are entitled. Board and BOCES officials are responsible for managing BOCES operations as economically as possible. Because administrative costs comprise a significant portion of BOCES budgets, they need to be analyzed to ensure they meet the educational needs of BOCES and component districts.

In April 2015 the Board created a new position of Chief Operating Officer (COO)/Deputy Superintendent and on July 1, 2015 appointed the former District Superintendent, whose salary and benefits were \$143,656, to this position. At that time, the Deputy Superintendent position was vacant. Rather than hire a new Deputy Superintendent, the Board decided to combine the Deputy Superintendent's duties with those of the newly created position of COO/Deputy Superintendent, indicating it would achieve cost savings by doing so. The \$305,677 salary and benefits for this new position were \$71,063 more than the former Deputy Superintendent's salary and benefits of \$234,614. The Board hired a new District Superintendent in June 2016 and paid her a salary and benefits of \$141,085. By creating the COO/Deputy Superintendent position and then hiring a new District Superintendent, BOCES incurred total additional costs of approximately \$69,000.<sup>3</sup> This negates the Board's initial claim it would achieve costs savings by creating the new position and combining it with the Deputy Superintendent position. Further, upon her resignation, BOCES paid the former Superintendent 30 days of unused vacation totaling \$14,223, although she did not leave BOCES employment. We also found questionable benefits provided to the COO/Deputy Superintendent.

### **District Superintendent and Chief Operating Officer**

The District Superintendent serves as BOCES' chief executive officer. According to the New York State Education Department's website, the District Superintendent serves in a consultative capacity for all school districts in BOCES' geographic area and as a liaison between districts and the State Education Department. As liaison, the District Superintendent facilitates communications between districts and the

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<sup>3</sup> This amount = (COO/Deputy Superintendent's new salary and benefits+ the new District Superintendent's salary and benefits) - (former Superintendent's original salary and benefits + the former Deputy Superintendent's salary and benefits).

State Education Department, and assists with clarifying and resolving various issues.

New York State Education Law caps a BOCES district superintendent's salary at 98 percent of the Commissioner of Education's salary for the State 2003-04 fiscal year. The current salary cap is \$166,762. BOCES component district residents pay \$123,263 of this salary as part of the administrative services budget.<sup>4</sup> The remaining salary amount constitutes a State salary of \$43,499 (which is not part of the administrative services budget). The related benefits for the position are estimated at \$58,352 and include health, dental, life, disability and unemployment insurance, workers' compensation, retirement system contributions, use of a BOCES owned vehicle and professional memberships.

The Board created the position of COO/Deputy Superintendent in April 2015. The District Superintendent, whose salary and benefits were \$143,656, submitted a letter of resignation effective June 30, 2015. Effective July 1, 2015, one day later, the former District Superintendent was appointed to the position of COO/Deputy Superintendent. The Board approved a new employment contract for the COO/Deputy Superintendent position with a salary of \$205,000, \$38,000 greater than the statutory salary cap for the District Superintendent position. The Board also authorized additional fringe benefits totaling \$100,677 as part of the new contract that included, but were not limited to:

- An increase in paid vacation days from 17 to 27 days; 10 of those days could be "cashed out" each year.
- An increase in sick days from eight to 44. Upon retirement, BOCES will pay for up to 50 unused days.
- Whole life insurance premium of \$15,000.
- BOCES contribution of \$10,000 each year to a tax deferred annuity, selected by the COO/Deputy Superintendent.
- Disability and long term care insurance of \$6,500.

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<sup>4</sup> The administrative budget is allocated to component districts based on a Resident Weighted Average Daily Attendance (RWADA) calculation. Indirect cost revenues, miscellaneous revenues and administrative charges imposed on non-components reduce the allocation to the component districts. Expenses relating to retiree benefits are mandated to be accounted for within the administrative budget. These expenses include retiree health insurance and Medicare reimbursement.

At the time the Board created the COO/Deputy Superintendent position, the Deputy Superintendent position was vacant due to retirement. Rather than hire a new Deputy Superintendent, the Board decided to combine the Deputy Superintendent's duties with those of the newly created position of COO/Deputy Superintendent. This newly created position's compensation was \$71,063 greater than the former Deputy Superintendent's salary and benefits of \$234,614. Board members told us they created the position to compensate the former District Superintendent commensurate with school district superintendents in the area, in an amount greater than the cap on BOCES district superintendents' salary. Additionally, the Board President told us the new position was created upon the former Deputy Superintendent's retirement and in an effort for BOCES to provide for a more "cost effective" organizational structure and save component district residents money. However, the opposite occurred. Conversely, costs increased and there is no cost savings to BOCES component districts' residents.

Upon the Superintendent's resignation, the Acting NYS Commissioner of Education directed the District Superintendent of another BOCES to act as the Interim District Superintendent for the 2015-16 school year to perform the duties specified in Education Law. The Interim Superintendent did not attend any of the BOCES Board meetings.<sup>5</sup> Instead, the Board authorized the COO/Deputy Superintendent to act and sign on behalf of the Interim Superintendent for all operational issues.<sup>6</sup>

Moreover, in June 2016, BOCES promoted the Assistant Superintendent for Educational Services to the position of District Superintendent. The new Superintendent's salary and benefits are \$141,085. By creating the new COO/Deputy Superintendent position and hiring the new District Superintendent, BOCES incurred additional costs of approximately \$69,000. This effectively negates the "cost savings" expected and does not meet the goals stated by the Board President of providing a more "cost effective" organizational structure which would save money for component districts.

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<sup>5</sup> The Interim Superintendent attended one meeting in June 2015. This was in the period prior to the District Superintendent leaving the position.

<sup>6</sup> The Acting Commissioner's letter appointing the Interim District Superintendent cautioned that, while the COO may assist the Interim Superintendent in the performance of certain statutory duties, "any documents or forms required by the State Education Department must be signed by the Interim District Superintendent" and that the COO may not fulfill the duties of the Chief Executive Officer of BOCES. (Letter from the Acting Commissioner of Education to the Board President, June 5, 2015).

## Life Insurance

In April 2009, the Board approved the former Superintendent's employment contract for a three-year term, which was subsequently extended through June 2015. The related benefits for the position include health, dental, term life, disability and unemployment insurance, as well as workers' compensation, retirement system contributions, use of a BOCES car and professional memberships.

In January 2014, the Board approved an amendment to the former Superintendent's employment contract to modify term life insurance benefits. This amendment clarified a maximum amount for both the premium and value of the term life insurance policy that the former Superintendent is entitled to.

We reviewed the policy associated with a \$15,000 payment to an insurance company and found that the payment was for the premium of a universal life insurance policy procured in May 2014, during the period the COO/Deputy was District Superintendent. Universal life insurance is a type of whole life insurance, in which the policy contains a cash value component that accumulates based on premiums paid and interest earned. The terms stipulated as part of the former Superintendent's employment contract, and per the January 2014 amendment, permitted BOCES to obtain a term insurance policy with a maximum value of three times the amount of the Superintendent's annual salary, or approximately \$500,000.

The policy that was actually purchased was valued at \$1,081,425, exceeding the terms permitted as part of the former Superintendent's employment contract by more than \$580,000. It also was nearly 6.5 times the former Superintendent's annual salary. Further, inclusion of the additional benefit would have increased the former Superintendent's salary above the Education Law salary cap in place because premiums for life insurance policies having a cash value are required to be included in the Superintendent's total salary for cap purposes. We have referred this matter to the State Education Department.

The Executive Director of Business told us that the January 2014 amendment to the former Superintendent's employment contract contained a clerical error and mistakenly referenced "Term Insurance" instead of "Universal Whole Life Insurance." However, the amendment in question was signed by both the Board President and the former Superintendent, which indicates both reviewed and were aware of the terms they had agreed to. Furthermore, we reviewed numerous documents associated with the policy, which also were signed by the former Superintendent which clearly identified the value and type of insurance being provided. To address this discrepancy, the Executive Director of Business provided us with

a new amendment dated December 9, 2015, whereby the Board approved an amendment to the COO/Deputy's contract to provide for universal life insurance of \$1,081,425 and retroactively approve the purchase of this policy for the period the COO/Deputy Superintendent was District Superintendent.

In addition, on January 27, 2016, the COO/Deputy Superintendent appeared before the Board to request amending both her own employment contract, along with those serving as "central office employees," specific to the contract provisions of life insurance benefits. The number of central office employees was not specified in the Board minutes. The COO/Deputy Superintendent recommended replacing term insurance with \$100,000 whole life insurance policies with BOCES paying up to 100 percent<sup>7</sup> of the cost. Upon retirement from BOCES, the proposal allowed for employees to continue or either "cash in" the policy and retain the proceeds. The Board approved these changes and authorized the Board President to amend each of the individual employment agreements on the Board's behalf.

The amendment to the COO/Deputy Superintendent's contract allowing for this new benefit was dated May 2016. The amendment also included longevity salary increments<sup>8</sup> and additional paid leave<sup>9</sup> benefits, effectively increasing the total compensation. We found no evidence of approval or discussion for those additional benefits in the Board minutes. The Executive Director of Business told us that BOCES is now providing the COO/Deputy Superintendent with two separate whole life insurance policies.

As a result of the Board's decisions, component school district residents are now responsible for the COO/Deputy Superintendent's annual premiums for both policies totaling approximately \$16,530. We project these policies will cost approximately \$393,660 in premiums based on the COO/Deputy Superintendent's expected life span.

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<sup>7</sup> BOCES will pay 100 percent while employed, with the insurance provided on a cost-sharing basis based on the number of years with BOCES after retirement.

<sup>8</sup> Effective at the beginning of the tenth year of employment with BOCES, the COO/Deputy Superintendent will receive a longevity increment of \$3,000. Effective at the beginning of the sixteenth year of employment with BOCES, the COO/Deputy Superintendent will receive an additional longevity increment of \$7,000. Effective at the beginning of the twenty-seventh year of employment with BOCES, the COO/Deputy Superintendent will receive an additional longevity increment of \$9,000.

<sup>9</sup> The COO/Deputy Superintendent will be off from work for three days during winter recess in December and for two days during the spring recess. All days off for both recess periods will be determined by the District Superintendent or COO/Deputy Superintendent.

## Leave Accruals and Separation Payments

Leave accruals represent time off that employees have earned. Employees may be entitled to receive all or a portion of their earned but unused leave time when they retire or otherwise separate from service. Individual employment contracts generally address the accumulation and use of leave time and establish each employee's entitlement to leave benefits. BOCES officials should monitor leave payments to ensure they are accurate, authorized and in the proper amount.

We reviewed 17 individual employment contracts and leave accrual records for the highest compensated administrators for fiscal years 2013-14 through 2015-16 to determine whether leave earned was appropriate. We also reviewed earning records for these same individuals to determine whether any leave accrual payouts were made and whether they were allowed per the contract.

During our audit period, BOCES paid the former Superintendent and current COO/Deputy Superintendent an additional \$33,137 for unused leave accruals (Figure 1).

Title	Date	Leave Type Cash Out	Amount
District Superintendent	2/28/2014	Unused Vacation Days	\$3,424
	11/20/2014	Unused Vacation Days	\$3,474
	4/24/2015	Unused Vacation Days	\$3,474
	7/14/2015	Separation Payment	\$14,223
Chief Operating Officer / Deputy Superintendent	12/24/2015	Unused Vacation Days	\$8,542
<b>Total</b>			<b>\$33,137</b>

On April 8, 2015, the former Superintendent submitted a letter of resignation to the Board, effective June 30, 2015, and subsequently began a new position of COO/Deputy Superintendent effective July 1, 2015, one day later. On July 15, 2015, as a result of this resignation, the former Superintendent was paid for 30 days of unused vacation totaling \$14,223. 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.

On December 24, 2015, the COO/Deputy Superintendent received a payment for 10 days of unused leave totaling \$8,542. While the COO/Deputy Superintendent's employment contract allows for payment of up to 10 days of unused vacation leave, the contract stipulates that

this payment will occur at the end of the school year, which would be after June 30, 2016. Board minutes do not reflect approval for any of these payments. We interviewed four Board members to determine whether they knew about these payments. One Board member could not recall approving these payments. The others indicated they remembered discussion on some of these payments, but none could provide evidence that the Board approved them.

### **Disability Insurance**

The former Superintendent's contract provided her with a disability insurance policy in an amount not to exceed \$5,000 annually. The former Superintendent paid the insurance company and BOCES reimbursed the former Superintendent after she provided a copy of the check she wrote and the invoice.

In October 2014 and October 2015, BOCES reimbursed the former Superintendent a total of \$7,296 for premiums on the disability insurance after she provided the documentation supporting the amount she paid. In November 2014 and November 2015, the insurance company paid dividends on the policy totaling \$1,416 to the former Superintendent. The former Superintendent did not remit this amount to BOCES. As a result, the former Superintendent received \$1,416 which could have been paid to BOCES to offset some of the policy premium costs.

### **Recommendations**

The Board and BOCES officials should:

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.
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.
3. Ensure payments for leave accruals are made in accordance with the terms of employment agreements.
4. Consult with BOCES counsel and seek to recover any overpayments, payments not allowed by contract or payments not approved by the Board.

## Financial Management

The Board is responsible for managing BOCES' financial affairs. To accomplish this, the Board must ensure that management adheres to requirements regarding the apportionment of surpluses back to its component and participating districts. BOCES can legally set aside in proper reserve funds portions of fund balance to finance future costs for a variety of specified purposes. The Board is responsible for developing policies and procedures to ensure that reserve funds comply with applicable laws, regulations and good management practices concerning reserve fund establishment and allocation of funds. The Board should transparently fund reserve funds or capital projects by including a specific appropriation for the intended purpose in the annual budget. At year-end, BOCES should return to its component districts any remaining funds it does not need to fund operations. Further, officials should develop policies to have reasonable assurance that resources are safeguarded and properly accounted for and that payments for billed receivables are received within a specified period.

BOCES has not implemented corrective action to address our last audit in 2010,<sup>10</sup> and has continued to retain \$5.2 million in an other post-employment benefit (OPEB) accrual reserve that is not authorized by law, and a workers' compensation reserve for which there is a lack of clear statutory authority. Additionally, BOCES has retained \$2.2 million in reserve funds set aside for expenditures it consistently funds through annual operating costs. Further, during fiscal years 2014-15 and 2015-16, the Board allocated \$7.2 million in surpluses to the capital fund without adequate transparency to the public and its component districts. As a result, BOCES has more than \$14.6 million in restricted funds that should have been returned to the component and participating districts.

BOCES' collection of billed receivables also needs to be improved. The Board has not adopted a written policy that addresses the procedures for billing and collection. As a result, some districts took four months to settle invoices. As of June 30, 2016, BOCES is due more than \$3.7 million in receivables that are over 30 days past due.

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<sup>10</sup> 2010MS-4: *Boards of Cooperative Educational Services: Transparency and Appropriateness of Reserve Funds*, July 2010, Rockland BOCES letter report #S9-9-68 included as a part of this Statewide audit report.

## Retention of Surplus Funds

New York State Education Law requires BOCES to apportion surpluses to each of its component and participating districts every fiscal year. While BOCES may retain surplus funds for proper reserve funds, statutes and good management practices require BOCES to obtain Board approval of allocations made to various reserve funds. Such allocations may be appropriated annually in the budget or made from operating surpluses available at the end of the fiscal year. In contrast, when BOCES is planning a surplus for the purpose of acquisition or construction of new BOCES facilities, the cost would be included in the capital budget as a transfer to the capital fund.

BOCES began classroom renovations and the construction of a therapeutic pool at the Jessie Kaplan School on November 13, 2013 at a total project cost of \$8,657,120. To finance the project's cost, BOCES transferred year-end operating surpluses to the capital fund totaling \$2,510,460 in 2014-15 and \$4,692,442 in 2015-16.

The Executive Director of Business told us that the surpluses were attributed to increased enrollment by which BOCES created "cost savings efficiencies" through the use of exemptions granted by NYSED allowing for BOCES to exceed the student-to-teacher ratio requirements while also incurring no additional expenses. However, instead of returning the generated surpluses to the component districts, BOCES used them to finance the capital project. As a result, the Board did not remit surplus funds totaling more than \$7.2 million to its component districts in fiscal years 2014-15 and 2015-16 (Figure 2).

**Figure 2: Transfer to Capital: Fiscal Impact to Component Districts**

Component District	Fiscal Year 2014-15		Fiscal Year 2015-16		Total Withheld From Districts
	Surplus Retained and Transfer to Capital	Money Withheld From Districts	Surplus Retained and Transfer to Capital	Money Withheld from Districts	
East Ramapo	\$2,510,460	\$476,995	\$4,692,443	\$913,235	\$1,390,230
Clarkstown		\$546,541		\$1,026,604	\$1,573,145
Nanuet		\$152,873		\$272,692	\$425,565
Haverstraw-Stony Point		\$483,159		\$915,186	\$1,398,345
Ramapo		\$291,093		\$537,255	\$828,348
Pearl River		\$167,062		\$302,172	\$469,233
Nyack		\$183,634		\$346,609	\$530,243
South Orangetown		\$209,103		\$378,690	\$587,793
<b>Totals</b>				<b>\$2,510,460</b>	

Further, in January 2017, subsequent to our audit period, the Board adopted a resolution to establish a capital reserve fund as of June 30, 2016 in an amount not to exceed \$5,000,000. However, as of June 30, 2016, the balance that was listed as reserved was \$7,202,903. Moreover, we are not aware of statutory authority for a BOCES to establish a reserve fund for future general capital improvements.

BOCES did not clearly identify the amounts it retained from end-of-year surpluses, but instead factored them into the expenditure amounts presented to the districts. Without adequately informing the districts of the allocations made from operating surpluses, BOCES management is not transparently reporting BOCES' results of operations to the districts involved.

## Reserve Funds

Reserve fund balances should represent reasonably accurate estimates of anticipated costs that are based on an actual calculated liability, historical spending and/or information from external sources. Reserve fund balances also must comply with statutory limitations regarding their purpose. In addition, the Board should periodically assess the reasonableness of the amounts accumulated in reserves.

During fiscal years 2013-14 through 2015-16, BOCES had total reserve funds ranging from \$7.5 million to \$10.2 million (Figure 3). BOCES maintained an OPEB accrual totaling \$4.0 million and four reserves in the general fund totaling \$3.5 million as of June 30, 2016. BOCES does not have the legal authority to establish a reserve fund or trust to accumulate funds for OPEB, and does not have clear statutory authority to establish a workers' compensation reserve.

**Figure 3: Reserve Funds**

	2013-14	2014-15	2015-16
Other Post-Employment Benefit Accrual	\$6,861,241	\$5,433,494	\$4,011,076
Workers' Compensation Reserve	\$1,095,620	\$1,305,647	\$1,270,598
Unemployment Insurance Reserve	\$499,999	\$500,000	\$500,003
Property Loss Reserve	\$697,247	\$697,492	\$698,617
Property Casualty Insurance Reserve	\$1,046,741	\$1,047,109	\$1,048,799
<b>Total</b>	<b>\$10,200,848</b>	<b>\$8,983,742</b>	<b>\$7,529,093</b>

OPEB – Other post-employment benefits are employee benefits other than pensions – primarily health care benefits – that employees receive after their employment ends. While BOCES officials have not purported to establish a reserve fund for this purpose, officials have improperly accounted for other post-employment health insurance costs that will be paid in future years as a current liability. Although a liability for post-employment health insurance costs must be disclosed

in the financial statements, there is no statutory authority to establish a reserve fund or trust to accumulate moneys for this purpose.

Therefore, the entire \$4.0 million being improperly restricted for this purpose should have been subject to refunds to the component and participant districts. This was recommended in our previous audit in 2010 when the balance at fiscal year ending June 30, 2009 was \$14,670,719. Since our previous audit, only one district opted for an immediate refund. The other seven remaining component districts opted to have their money refunded in the form of a credit against the administrative budget of approximately \$1.4 million total per year combined. As a result, BOCES will improperly retain the money until its depletion in fiscal year 2018-19.

Workers' Compensation Reserve – Currently, there is no clear statutory authority for a BOCES to create a workers' compensation reserve fund. Moreover, even for those local government entities having clear authority to establish this type of reserve fund, action by the governing board is required. BOCES established a workers' compensation reserve without a Board resolution to pay for BOCES' share of the cost of a cooperative workers' compensation program. During our audit period, BOCES officials allocated \$2.4 million to this reserve fund without clearly identifying these allocations as reserve funding. BOCES expenditures totaled approximately \$2.6 million during our audit period. At the conclusion of our audit fieldwork, the balance in this reserve was \$1,270,552, which was relatively unchanged from the prior year.

Unemployment Insurance Reserve – GML authorizes this type of reserve fund for reimbursing New York State for unemployment benefits paid to claimants. BOCES' unemployment costs average approximately \$100,000 per year. The balance in this reserve as of June 30, 2016 was approximately \$500,000, or five times the average annual expenditures. While withdrawals from this reserve were made from 2013-14 through 2015-16 totaling approximately \$315,000, during the same time frame transfers were made into the reserve totaling approximately \$315,000, more than enough to replenish costs recorded. We question the reasonableness of the reserve, given that unemployment insurance claims were budgeted for and paid from revenues derived from component districts without using any money from the reserve.

Property and Casualty Insurance Reserve – This reserve was established in June 1988 by Board resolution. While the resolution establishing this reserve does not define its purpose, BOCES officials indicated that it was created per GML for payments of actions or judgments not covered by insurance or other reserve funds. As of

June 30, 2016, the balance in this reserve was \$1,048,799. Since July 2013, the reserve has been allocated interest but has been unused.

Property Loss Reserve – The property loss reserve was properly established in June 1999 by a Board resolution which stated the source of funds shall be amounts that may be legally provided by budgetary appropriation. The resolution also established that the purpose of the reserve was for property losses. As of June 30, 2016, the balance in this reserve was \$698,617. During the three-year period July 1, 2013 through June 30, 2016, the property loss reserve balance has increased by \$1,590 due only to interest earned; the reserve has not been used or otherwise funded.

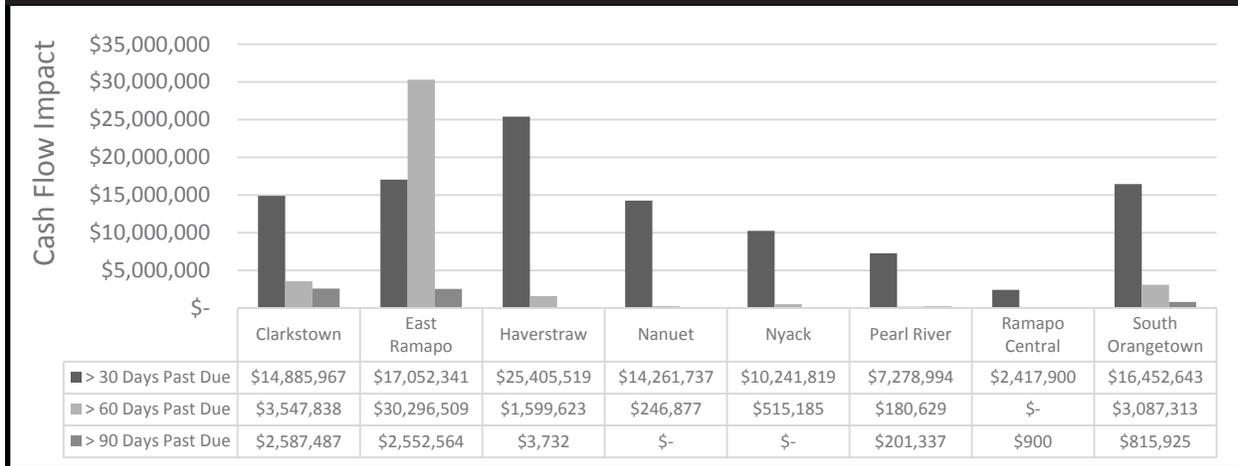
BOCES officials do not have a written policy or plan for the use of reserve funds, including how and when disbursements should be made or optimal or targeted funding levels and why these levels are justified. In addition, by improperly maintaining an OPEB accrual, and in light of the lack of clear statutory authority for a workers' compensation reserve fund, BOCES officials have restricted funds that should have been allocated as surplus funds and returned to component and participating districts.

## **Billed Receivables**

BOCES provides services to school districts and bills each district monthly. Since this is BOCES' primary revenue source, it is essential that it has an efficient collection process. The Board should adopt written policies that specifically address the procedures for billing and collection when amounts remain uncollected after the payment period. Bills should clearly state a due date on their face. Once the due date has passed, BOCES should take the appropriate steps set forth in its policy to collect payment in a timely manner.

We reviewed the billed receivables from July 1, 2013 through June 30, 2016 and examined all 998 invoices totaling approximately \$263.2 million to determine the timeliness of collection. As outlined in Figure 4, 324 invoices (32 percent) totaling \$108 million were paid after 30 days; 79 invoices (8 percent) totaling \$39.5 million were paid more than 60 days late and 20 invoices (2 percent) totaling \$6.2 million were paid more than 90 days late. As of June 30, 2016, BOCES is due more than \$3.7 million in receivables that are over 30 days past due.

**Figure 4: Collection of Billed Receivables**



BOCES officials told us that they were unaware whether the collection period was specifically stated on the bills or the districts’ service contracts. Further, they told us that they do not have a formal policy to deal with delinquent payments. However, they are in regular communication with these districts in an effort to settle the overdue amount.

While some component districts have worked with BOCES to make more timely payments so that BOCES will continue to provide services, BOCES has not taken steps to effectively monitor to ensure that all users do so. Without a formal policy that stipulates what actions BOCES officials should take when districts do not pay for BOCES services in a timely manner, other component districts effectively extend “interest-free loans” for the period that the invoices remain unpaid.

**Recommendations**

The Board and BOCES officials should:

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

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

## Purchasing

A good system of internal controls over purchasing includes policies and procedures to help ensure that an organization is using its resources effectively and complying with applicable laws and regulations. BOCES officials are responsible for designing internal controls that ensure the prudent and economical use of BOCES moneys when procuring goods and services and incurring travel/conference related expenses. Further, officials should institute proper oversight over bidding to ensure that requirements are followed.

BOCES spent \$70,290 on conference and travel-related expenses for Board members and administrators in fiscal years 2013-14 and 2014-15. We question whether these expenses were for legitimate and necessary purposes because they were incurred with a lack of transparency and were inconsistent with BOCES policies and applicable laws. BOCES officials also did not adequately oversee and monitor a consultant hired to assist with the cooperative bid for electricity. This lack of oversight resulted in a missed opportunity to save component district residents as much as \$492,817.

### Travel and Conferences

General Municipal Law (GML) allows BOCES to pay for actual and necessary expenses for travel, meals, lodging and registration fees incurred by authorized BOCES officials or employees attending conferences or conventions. As a rule, travel under this provision of law must be for a convention, conference or school conducted for the betterment of BOCES. For conference expenses to be considered “actual and necessary,” they must have been actually made, incurred out of necessity and the amount of the expenditure no greater than reasonably necessary. The Board should ensure travel-related expenditures are legitimate BOCES costs by monitoring them for compliance with BOCES’ travel and conference policy and employment contract provisions. These policies should give clear and specific guidelines with respect to attendance and reasonable amounts of associated costs for conferences. This will minimize the risk of excessive expenditures of public funds and provide transparency to the public.

The Board adopted a policy in July 2014 that requires attendance at conferences/workshops be approved by Board resolution. Board members must also notify the District Clerk in writing prior to attending conferences and provide a report to the Board at the following monthly meeting. The Superintendent’s employment contract requires the Superintendent to notify the Board President in writing before attending conferences that exceed one school day. Furthermore,

GML requires authorization by Board resolution, adopted prior to attending and entered into the minutes, unless the Board delegates the power to authorize conference attendance to any executive officer or administrative board.

The monthly Board minutes included conference request listings that contained the name of the individual, event date, description and the cost. Each month, the Board would approve the conference request list and note it in the minutes. Although the Board approved conferences for the Superintendent at its annual reorganization meeting, neither the Board's nor the Superintendent's travel were noted in the minutes. Further, we found no evidence that the Superintendent provided the required notification. As such, we reviewed the reimbursement forms and credit card charges for July 1, 2013 through June 30, 2015 and identified 17 conferences with 54 attendees whose costs totaled \$70,290 and were attended by BOCES administrators and Board members. Of the 54 attendees, Board approval for only three attendees was noted in the minutes. The remaining 51 attendees' approvals were not documented in the minutes. The trips were to locations such as San Antonio, Texas; Napa Valley, California; New Orleans, Louisiana; San Diego, California and Nashville, Tennessee. The Superintendent attended each of these trips, and four Board members each attended two trips (New Orleans, Louisiana and Nashville, Tennessee). Expenditures included \$33,204 for hotel rooms, \$21,577 for registration fees, \$8,850 for air fare and \$4,057 for meal allowances.

The District Clerk told us that the Superintendent was not required to complete conference request forms as other employees because most conferences were also attended by Board members. For conferences that were attended without Board members, the Board President was aware; however, the Board did not keep documentation. The District Clerk stated that, beginning with the 2016-17 school year, BOCES has implemented new protocols requiring both the District Superintendent and Chief Operating Officer to obtain written Board approval prior to attending any conferences exceeding one school day.

The Board's and Superintendent's lack of transparency and failure to comply with Board policies and applicable laws raises questions as to whether the \$70,290 in travel-related costs were for a legitimate and necessary purpose.

### **Competitive and Cooperative Bidding**

GML generally requires competitive bidding for purchase contracts and contracts for public work that exceed \$20,000 and \$35,000, respectively. Bids should be kept sealed until the designated time for opening. Sealed envelopes containing the bids should be time stamped to indicate the date, time and place of receipt. Additionally,

GML permits school districts and other “municipal corporations” and “districts” to jointly purchase goods and services by cooperatively preparing specifications, advertising for and opening bids and awarding contracts. Generally, in a cooperative bid, one of the parties acts as lead participant and coordinates the specification writing and receipt of the bids, and provides the place for opening the bids.

GML also requires each political subdivision to adopt procurement policies and procedures for procurements which are not required by law to be competitively bid. GML generally requires that alternative proposals or quotations be obtained by use of written requests for proposals (RFPs), written quotations, verbal quotations or any other method that furthers the purposes of the law. The procurement policy may set forth circumstances when, or types of procurements for which the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision. The primary purpose for obtaining bids, or when bidding is not required by law, competitive quotes and proposals, is to encourage competition in the procurement of supplies, equipment and services that will be paid for with public funds. The use of competition provides residents with assurance that goods and services are procured in the most prudent and economical manner and at the lowest possible price, and that the procurement is not influenced by favoritism, extravagance, fraud and corruption.

Cooperative Bidding – Internal controls over procurement should be designed to ensure that cost considerations are evaluated and statutory requirements are followed to ensure fair and open competition, and cost- effectiveness in the purchasing process.

During our audit period, BOCES administered five cooperative bids for the purposes of procuring an energy supply company, for which only two contracts were awarded. BOCES indicated that, due to the complexity of the industry, it hired an external consultant to prepare the bid specifications on behalf of BOCES and 22 school districts located in Orange and Rockland Counties. Although local officials may engage consultants to assist and advise them in connection with the bidding process, local officials must exercise their own judgment in making discretionary decisions in connection with the bidding process. Accordingly, it is important for BOCES to oversee and monitor the consultant’s activities to help ensure decisions are appropriately made.

The bid specifications were prepared with a deadline to respond by June 25, 2013 and were for a 24-month contract term of June 2014 through June 2016. The specifications requested pricing in the form of an “all-hours fixed price (\$/kWh).” The specifications also stated that the “evaluation of bids will be based on the lowest total cost to

the” BOCES or school district. At the time of the bid advertisement, a change in one of the cost components, “capacity,” was announced, but not yet approved or implemented. The change related to the creation of new “capacity zone” that would cover the Rockland service area. The consultant informed us that it was anticipated that this proposed change could have a cost impact on prospective bidders. In a response to a question from one of the prospective bidders, the consultant indicated that the bids that “passed through<sup>11</sup>” charges for the capacity change would be considered, but “preference” would be given to bids that did not pass through those charges.<sup>12</sup> It is not clear whether this response concerning consideration of bids providing for pass through was disseminated to all prospective bidders.

Eight vendors submitted bids for consideration. Seven of the bids submitted contained the fixed rate with no pass through of capacity charges, as required by the original bid specifications, while one bid contained a variable rate which would pass through any increases. The contract was awarded to the vendor which passed through capacity zone change costs.<sup>13</sup> We reviewed the invoices submitted to BOCES for payment for the contract term and found that BOCES could have saved the districts at least \$21,427 each, or approximately \$492,817 in total, if it had contracted with one of the suppliers who did not pass through the increased cost.

The consultant informed us that he selected the vendor with the pass through charges because he estimated the possible range of the new capacity zone charges. Based on his analysis, it would provide a lower cost to the districts.

BOCES should have exercised greater oversight and more closely monitored the consultant for the cooperative bids.

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<sup>11</sup> “Pass through” is the act, action or process of offsetting increased costs by raising prices.

<sup>12</sup> The bid specifications stated that questions regarding the request for bids must be submitted in writing to the consultant and that responses would be sent to all bidders. It is not clear whether this response concerning consideration of bids providing for “pass through” was disseminated to all prospective bidders.

<sup>13</sup> We are not, as part of the scope of this audit, commenting on the legality of the length of the terms of any contracts, or the legality of the bidding process, including whether the methodology for the contract award was consistent with the original bid specifications or whether the original specifications were properly amended to change the contract award methodology. We note, however, that it is a general principle of law that an award of a contract pursuant to bidding requirements may not be made based on criteria not set forth in the bid specifications. If specifications do not adequately reflect pertinent cost considerations, the municipality may reject all bids, recast the specifications and re-advertise for bids (see e.g. Matter of AAA Carting v Town of Southeast, 17 NY3d 136; see also Matter of Acme Bus v Orange County, 28 NY3d 417).

## **Recommendations**

The Board and BOCES officials should:

9. Ensure that all travel by the Board and the District Superintendent is transparently and appropriately approved in accordance with GML and BOCES policies.
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.
11. Develop a comprehensive purchasing policy that sets forth procedures to be followed for competitive bidding, including cooperative bids.

## **APPENDIX A**

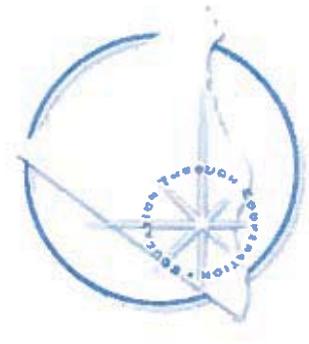
### **RESPONSE FROM BOCES OFFICIALS**

The BOCES officials' response to this audit can be found on the following pages.

BOCES officials included several attachments as a part of their response. We did not include these attachments in the final report, as BOCES officials' response included sufficient information to support their assertions.

# ROCKLANDBOCES

BOARD OF COOPERATIVE EDUCATIONAL SERVICES



**CHARLENE JORDAN, ED.D**  
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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 [REDACTED] 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, [REDACTED] 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 [REDACTED] 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 [REDACTED]. 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.

See  
Note 1  
Page 37

*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.

See  
Note 2  
Page 37

*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.

See  
Note 3  
Page 37

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.

See  
Note 4  
Page 37

*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.

See  
Note 5  
Page 37

*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

See  
Note 6  
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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***

See  
Note 7  
Page 38

*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.**

## APPENDIX B

### OSC COMMENTS ON BOCES' RESPONSE

#### Note 1

The component districts realized an overall increase in administrative costs as a result of creating the new COO/Deputy Superintendent position. Our calculation was based on information Board members provided to us outlining the approach taken to achieve cost savings. Our analysis compared the total salary and benefits paid to the COO/Deputy Superintendent and the new District Superintendent to the original salary and benefits paid to the former District Superintendent and Deputy Superintendent. The analysis provided by BOCES officials upon the audit's completion includes costs of other positions as well as potential costs not directly associated with creating the new position. Our analysis was based on actual salary and benefits.

#### Note 2

With respect to whether premiums for a universal life insurance policy for the BOCES District Superintendent are included toward the salary cap in this instance, BOCES is relying, in part, on a 1998 reference document of the New York State Department of Education (SED). Since we are referring this finding to SED, which has statutory functions relative to compliance with the salary cap for district superintendents BOCES should confirm with SED the conclusion reached in the response as to inclusion of the premiums toward the salary cap.

#### Note 3

The employment contract between BOCES and the District Superintendent stipulated that payment for unused vacation leave was to be payable upon separation from service with BOCES.

#### Note 4

Our report questioned the transparency of BOCES financial statements, as we identified more than \$7.2 million of surplus funds not returned to component districts. Instead, these funds were transferred to a capital reserve fund. As noted in the report, we are not aware of statutory authority for a BOCES to establish a reserve fund for general future capital improvements.

#### Note 5

BOCES officials should be mindful of the fiscal impact to its component districts' operating budgets that can result from reserving excess funds. As also noted in the Comptroller's *Local Government Management Guide on Reserve Funds*,<sup>14</sup> reserve funds are mechanisms for accumulating cash for future allowable purposes and should not be merely a "parking lot" for excess cash. As of June 30, 2016, BOCES has reserved more than \$7.5 million,<sup>15</sup> of which \$4 million was allocated to other

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<sup>14</sup> <http://www.osc.state.ny.us/localgov/pubs/lmgm/reservefunds.pdf>

<sup>15</sup> In addition to the \$7.2 million discussed in Note 4. Figure 3 in the report details the amounts included in the additional reserves.

post-employment benefits (OPEB) and \$1.2 million was reserved for workers' compensation costs. However, as noted in the report, BOCES does not have statutory authority to establish a reserve fund or trust to accumulate funds for OPEB, and does not have clear statutory authority to establish a workers' compensation reserve. Therefore, those funds should be returned to its component districts.

#### Note 6

The list of steps taken to collect past due amounts provided to us by BOCES officials pertained only to their efforts to collect past due amounts from one of their seven component districts. As of June 30, 2016, BOCES was owed more than \$3.7 million from three additional component districts.

#### Note 7

We reviewed the invoices submitted to BOCES for payment for the contract term and compared the amount BOCES paid to the amount it would have paid had it selected one of the other vendors. We found that BOCES could have saved \$21,427. If each of the 23 school districts achieved the same savings, the amount saved would have been \$492,817 in total.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objectives and obtain valid evidence, we performed the following procedures:

- From July 1, 2013 through June 30, 2016, 44 employees received an individual employment contract. To test whether controls over the individual employment contracts were appropriately designed and operating effectively, we selected a judgmental sample of 17 employment contracts. We selected these employees because each contract had different terms and conditions and, therefore, provided a more comprehensive selection. From that selection:
  - o We compared contractual insurance benefits (health, dental, life, etc.) from the individual contracts to BOCES' employment benefit enrollment listing, health insurance buyout listing and employee earnings report, to assess whether the insurance benefits received agreed with employment contracts.
  - o We compared each type of leave and corresponding days stipulated within the individual employment contracts. We then compared the contract days to the leave records (employee attendance summary report) to assess whether the leave amounts and types agreed with the contract provisions.
  - o For employees that received a 'leave buy-back' and/or separation payment, we compared the employment contract terms to the amounts received to determine whether the payment was made in accordance with contract terms.
  - o We compared each individual employment contract date to the Board meeting minutes to determine whether Board approval was recorded. We also compared the contractual pay rate for each employee to the employee's individual earnings report to determine whether the amounts agreed.
- We reviewed BOCES' financial records to determine whether all surplus funds had been returned. We then calculated the financial impact for each of BOCES' component districts that resulted from BOCES transferring surplus funds to the capital fund by multiplying the resident weighted average daily attendance (RWADA) percentage assigned to each component district by the total amount transferred to the capital fund.
- We examined BOCES' reserve funds to determine whether they were properly established and whether their associated balances were reasonable. We compared the year end reserve totals against the average yearly expenditures from BOCES accounting records for the same period.
- We tested 100 percent of the billed receivables. We calculated the "days outstanding" by subtracting the days between the date of the billed receivable and the date payment was received. We were then able to summarize the number of billed receivables paid between 30-60 days, 60-90 days and more than 90 days.

- We tested 100 percent of the conferences identified using the credit card statements and travel reimbursement forms. We then traced and compared each conference date to the Board meeting minutes to determine whether a record of approval was noted.
- From July 1, 2013 through June 30, 2015, BOCES administered a total of five cooperative bids. To test whether bids were properly advertised, received and opened in accordance with the GML, we tested 100 percent of the cooperative bid population due to their low volume. This test was performed by (1) reviewing the date each bid was published in the newspaper and comparing the dates each bid was stamped "received" by BOCES (2) reviewing dates written on bids and comparing them to the ad publish date; (3) reviewing the dates the bids were opened and comparing those dates to determine whether: (a) the bids were received on time, (b) the bids were opened before the bid deadline, and (c) the cooperative bid requirements of bid openings were met.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## APPENDIX D

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