



# Massachusetts Department of Elementary and Secondary Education

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## Duties and Responsibilities of Individual Collaborative Board Members and Collaborative Boards

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

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

This Guidance is intended to provide an overview of the duties and responsibilities of the collaborative board **and** the individual board members serving on the board, as detailed in M.G.L. c. 40, § 4E (the collaborative [law](#)) and 603 CMR 50.00 ([implementing regulations](#)). Officials serving on collaborative boards are encouraged to review this law and regulations for further information about their duties and responsibilities, and consult with legal counsel with any questions about these or other responsibilities under state and federal laws. The Guidance is divided into two parts: Duties and Responsibilities of Individual Collaborative Board Members and Duties and Responsibilities of the Collaborative Board of Directors.

### Duties and Responsibilities of Individual Collaborative Board Members

Collaborative board members (board members) have **duties and responsibilities** to the collaborative as well as to their appointing member districts under the collaborative law and regulations. These responsibilities and duties include:

- Board members **must** actively **participate** in the governance of the collaborative. Regulations require that board members:
  - be active and engaged voting members of the collaborative board;
  - attend scheduled meetings; and
  - fulfill all duties as may be required by the collaborative board, 603 CMR 50.00 and the collaborative agreement.
- Board members are public employees subject to [M.G.L. c. 268A](#) (entitled “Conduct of Public Officials and Employees,” and including the “Conflict of Interest Law”). Board members **must ensure** that they complete the training required by this law.
- Board members have fiduciary responsibilities to discharge their duties with care, skill, prudence and diligence for the benefit of their member districts and the students served by the collaborative. If the

interests of the collaborative conflict with the interests of the appointing member district, the board member must inform the appointing member district about the conflict at the next regularly scheduled open meeting of the member district.

- Board members are entitled to a vote on the board, and shall not send anyone in their place to vote.
- Member districts are ultimately responsible for the programs and services offered by a collaborative and for financial obligations or liabilities of the collaborative. Accordingly, law and regulations require that board members must provide the following information to their member districts at an open meeting:
  - quarterly information and updates on collaborative activities, including, but not limited to, the programs and services provided by the collaborative;
  - a report on significant changes in programs, services, budgets, and property (as they arise);
  - a copy of the collaborative agreement and any amendments;
  - a copy of the annual budget and tuition rate;
  - a copy of the annual report and financial audit;
  - notification of applications for real estate mortgages;
  - a copy of any capital plan approved by the collaborative board; and
  - any additional information as may be requested by a vote of member district.
- Board members are required to complete collaborative board member training provided or approved by the Department of Elementary and Secondary Education (the Department) within 60 days of initial appointment and every six years thereafter.
  - Failure of a board member to complete the mandated training in the time frame set forth in the collaborative regulations may result in the collaborative being placed on probationary status in accordance with 603 CMR 50.10; and
  - A board member may meet one or more of the training requirements through an alternative means by providing a description of the training in which they participated and a certification of completion. The Department shall determine whether such training satisfies the collaborative board member training requirement.
- Board members should be aware that the Commissioner of Elementary and Secondary Education (Commissioner) has the authority to place a collaborative on probationary status in a number of circumstances, including circumstances related to a board member's actions. Specifically, the Commissioner may impose probationary status upon receipt of information which, in the opinion of the Commissioner, demonstrates significant malfeasance, financial or otherwise, by any board member (or by any employee of the educational collaborative). See M.G.L. c. 40, § 4E(I) and 603 CMR 50.10(1).
- The Board of Elementary and Secondary Education (BESE) has the authority to suspend or revoke approval of an educational collaborative agreement for cause, in a number of different circumstances. These circumstances include, but are not limited to, criminal convictions on the part of any administrator or board member. See M.G.L. c. 40, § 4E (I) and 603 CMR 50.10(2).

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

- Board members may not receive an additional salary or stipend for their service as board members.
- Board members may not serve as executive director, treasurer, or business manager (or a person with responsibilities similar to those of a town accountant), or as an employee of the collaborative.

- Board members may not serve on the board of directors or as an officer or employee of a related for-profit or non-profit organization.<sup>1</sup>
- Board members may not in any way delegate their powers and duties.

The collaborative law and regulations also require collaborative agreements to include conditions of membership. These conditions of membership may include other duties and responsibilities applicable to board members, as well as **consequences** for failure of board members to fulfill responsibilities set forth in law, regulation, and the collaborative agreement. For example, some agreements require that a board member (and, therefore, a member district) can lose the right to vote due to failure of the board member to attend a certain number of collaborative board meetings or failure to complete the required board member training. Board members should carefully review their collaborative agreements in order to determine whether any specific conditions of membership apply to them and/or their actions.

### **Duties and Responsibilities of the Collaborative Board of Directors**

The individual board members, appointed by the collaborative’s member districts, comprise the collaborative board. The collaborative law and regulations require that the board be responsible for the governance and management of the collaborative. Among the specific responsibilities of the board, outlined in the collaborative law and regulations, are the following:

- The board must hold at least six board meetings annually, and must comply with the [Open Meeting Law](#).
- The board must elect a chairperson from its membership and provide for such other officers as it may determine are necessary. The Board may establish advisory committees as desired.
- The board must hire or appoint:
  - An executive director to oversee collaborative programs, and to supervise the collaborative, who shall serve under the general direction of the board;
  - A business manager (or an employee with responsibilities similar to those of a town accountant);
  - A bonded<sup>2</sup> treasurer, who may be the treasurer of a member district, to manage all receipts and disbursements through the Collaborative Fund (Fund) and perform other duties as are required by the board and authorized by M.G.L. c. 40, §4E and 603 CMR 50.00; and
  - One or more registered nurse(s) as a school nurse.<sup>3</sup>
- The board is also responsible for all hiring, and, conversely, all firing. These duties may not be delegated to any staff person (including the executive director).
- The board is a public employer and may employ (other) personnel in order to fulfill the collaborative’s mission, subject to the certification and approval standards in the collaborative law.<sup>4</sup>
- The board must ensure:
  - that there is segregation of duties between the executive director, treasurer and business manager;
  - that no board member serves in the position of executive director, treasurer, or business manager;

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<sup>1</sup> Related for-profit or non-profit organization is defined in the collaborative law as one “established under the laws of the commonwealth or any other state: (i) that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or more education collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an education collaborative and which engages in business transactions or business arrangements, including pledges or assignments of collateral and loan guarantees or other contracts of suretyship, with the education collaborative.” M.G.L. c. 40, § 4E(a).

<sup>2</sup> The collaborative board must fix the amount for the bond that the treasurer shall annually give for the faithful performance of duties as collaborative treasurer, in a form approved by the Department of Revenue (DOR) and in a sum not less than the amount established by the DOR.

<sup>3</sup> The board must ensure that each nurse is licensed as a school nurse under 603 CMR 7.00. (An exception to this licensure requirement applies to any nurse employed as a school nurse by the collaborative on or before February 1, 2012.)

<sup>4</sup> The collaborative board must apply for any desired hardship waiver of the collaborative regulations (603 CMR 50.06(7)), under which the Commissioner of Elementary and Secondary Education may exempt a collaborative board for any one school year from the requirement to employ certified or approved personnel.

- o that no employee of the collaborative serves on the collaborative board; and
- o that no employee shall be eligible to serve concurrently in the positions of treasurer, or business manager (or a person with responsibilities similar to those of a town accountant).
- The board must annually evaluate the performance of the executive director and the treasurer, and must ensure that the business manager is evaluated annually (but need not complete this evaluation).
- The board must provide appointed nurse(s) with all proper facilities for the performance of the school nurse's duties. (Note that collaboratives with programs housed in an operating public school may enter into an agreement with the host school district whereby the school nurse of the host school or district provides school nursing services to the students served by the collaborative.)
- The board must establish policies to support the operation of the educational collaborative. In addition to other requirements of law, these policies must, at a minimum, include policies relative to personnel, students, finance and internal controls, and health and nursing. The board must also review the effectiveness of such policies periodically to ensure currency and appropriateness.
- The board must establish a process to provide to member districts, students, parents/guardians, the Board of Elementary and Secondary Education (BESE), and the public all information required by law and regulation.
- The board must establish and maintain an internet website that shall include, at a minimum:
  - o a list of the board members;
  - o copies of the minutes of open meetings;
  - o a copy of the collaborative agreement and any amendments;
  - o a copy of the annual report and independent audit required by 603 CMR 50.08; and
  - o contact information for key educational collaborative staff members.

This particular duty may be delegated to the executive director.

- A board that operates a collaborative program within a public school building is required to develop and approve a memorandum of agreement with the host district:
  - o to maximize integration opportunities for students placed in or served by the collaborative programs;
  - o to coordinate services, including basic health care services, to students placed in or served by the collaborative programs; and
  - o to identify any terms and conditions for the use of space.
- The board must establish and manage an Education Collaborative Fund (Fund). All monies paid by member and non-member districts, all grants or gifts from the federal government, state government, charitable foundations, private corporations, and all funds from any other source must be paid to the board and deposited in the Fund. The treasurer of the collaborative, subject to the direction of the board, shall receive and disburse all money belonging to the collaborative without further appropriation.
- The board may borrow money or enter into short- or long-term agreements or mortgages. However, when the borrowing or short- or long- term agreements or mortgages are for the approved acquisition or improvement of real property, the following requirements apply:
  - o the board shall provide notice to each member district within 30 calendar days of applying for real estate mortgages; and
  - o the board shall discuss its intent to apply for a real estate mortgage at a public meeting of the board prior to the meeting of the board at which the final vote is taken.
- The board must comply with the [Uniform Procurement Act, M.G.L. c. 30B](#). The board may, consistent with this law, enter into contracts for the purchase of supplies, materials and services, and for the purchase or

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

- The board may apply, through an appropriate vote, for state, federal, corporate, or foundation grants.
- The board may enter into contracts to obtain the funds needed to carry out the purpose for which the collaborative was established.
- The board must ensure that the collaborative adopts and maintains a financial accounting system.
- The board must annually propose and approve a budget for the upcoming fiscal year.
  - The board must follow the process outlined in the collaborative agreement for the development and approval of the budget (as well as the tuition rates, membership dues and fees-for-service);
  - The budget must contain all planned financial activity;
  - The budget must delineate the tuition rates, membership dues and fees-for-service to be paid by the member districts and non-member districts;
  - The tuition rates and fees-for-service must be based on the combined cost of providing collaborative programs and services;
  - The general fund budget must segregate all operating expenditures, capital expenditures, debt service payments and deposits to capital reserve;
  - Expenditures from grant funds, trust funds and other funds not designated as general funds that by law may be expended by the board without further appropriation must be segregated in the budget;
  - The budget shall be classified into line items as the board determines are necessary;
  - The proposed budget must be discussed at a public meeting of the board;
  - Public notice of this meeting must be given to member districts; and
  - The board must approve the budget at a second public meeting, held at least ten working days following the board meeting at which the budget was first proposed.
- The board must ensure that the treasurer certifies and transmits the budget and the tuition rates, membership dues, and fees-for-service for the upcoming fiscal year to each member district in a timeframe specified in the collaborative agreement.
- The board must approve all amendments and line item transfers to the budget.
  - The chairs of each member district must receive written notice of any proposal to increase the collaborative budget at least 48 hours in advance of the board meeting at which the proposal will be entertained.
  - Any budget amendment that proposes moving funds from an unrestricted category to a restricted category (OPEB, capital reserve) must be submitted in writing to the chairs of the member districts at least 48 hours in advance of a final vote by the collaborative board. (Such a transfer would result in funds not being considered in that year's cumulative surplus determination.)
  - Any budget amendment that results in an increase in the tuition rates, membership dues or fees-for-service shall be provided to the member districts in accordance with a timeframe and process outlined in the collaborative agreement.
  - The board must provide the member districts with any budget amendment that results in an increase in the tuition rates, membership dues or fees-for-service, in accordance with a timeframe and process outlined in the collaborative agreement.
- The board may create a capital reserve fund to support costs associated with the acquisition, maintenance, and improvement of fixed assets, including real property. Before doing so, however, the board must create a capital plan. Further:

- o The establishment of a capital reserve fund must be approved by two-thirds of the member districts, and the request for approval must state the reason for the reserve fund and a limit on the balance that may be held in the reserve fund;
- o Deposits into the capital reserve fund must be proposed and approved by the board through the budget process;
- o Monies in a capital reserve fund can be used only for the project or purpose for which the reserve was established; and
- o In the event that the purpose for which the capital reserve fund was created requires modification, the board must revise its capital plan and provide notice to all member districts. The member districts then have a 45 day period to vote to approve or disapprove the modification(s). If a member district does not vote to disapprove the revised capital plan within a 45 day period, that member shall be deemed to have approved the revised capital plan. Two-thirds approval of the member districts is required to revise the capital plan.
- The board must ensure that the collaborative adheres to reporting requirements in the collaborative law and regulations. Note that:
  - o The annual report and annual independent audit report must be approved by the board;
  - o The annual report and annual independent audit report must be submitted to appropriate state agencies by January 1 of each year; and
  - o The annual report and annual independent audit report must be posted on the collaborative's website.
- The board must ensure that the collaborative complies with additional reporting requirements of the Department, such as EPIMS, SCS, etc.
- The board must ensure adherence to requirements of other agencies with which the collaborative does business, including, for example, those imposed by the Massachusetts Executive Office of Administration and Finance's Operational Services Division (OSD) upon collaboratives offering social services.
- The board must vote annually to approve the dollar amount designated as cumulative surplus (following board approval of the annual independent audit report).
  - o The board must return to the member districts any cumulative surplus funds in excess of the agreement's defined limit (by regulation, no more than 25% of the previous year's general fund expenditures);
  - o The board must vote annually to either (1) retain the remaining cumulative surplus (that is, the surplus within the limit) for the collaborative's use, or (2) return all or some portion of the funds to the member districts; and
  - o Should the board vote to return surplus funds to the member districts, the board must follow the terms of the collaborative agreement concerning how and under what conditions such surplus funds may be returned to member districts or credited to support programs and services offered to member districts.
- The board must participate in any programmatic or fiscal reviews scheduled by the Department. The Department shall review the programs and services provided by each educational collaborative at least once every six years. This review shall focus on compliance with special education and other programmatic requirements, civil rights requirements, and financial systems and controls. The review shall determine compliance with the written collaborative agreement, with the requirements of M.G.L. c. 40, § 4E, and 603 CMR 50.00. As a result of any finding, the board and/or the member districts may be required to develop a corrective action plan that may result in remedial action or suspension or revocation of the collaborative agreement as noted in 603 CMR 50.10.

- The board must cooperate fully in implementing any directives or requirements of law, regulation and the Department if the BESE suspends or revokes the approval of the collaborative, or if the Commissioner places the collaborative on probationary status. See 603 CMR 50.10.
- The board must follow applicable procedures outlined in the collaborative agreement, law and regulations if the collaborative terminates operations or dissolves. See 604 CMR 50.11.
- The board must submit to the Commissioner any requests for waiver of the applicability of one or more provisions of 603 CMR 50.00, consistent with 603 CMR 50.12(1).
- Additional duties of the board include:
  - o ensuring adherence to the collaborative agreement and compliance with all applicable state and federal laws and regulations;
  - o approving all collaborative expenditures, including contracts, borrowing, and the purchase and sale of real estate;
  - o ensuring progress toward achieving the purposes set forth in the agreement;
  - o determining the cost-effectiveness of programs and services offered by the collaborative; and
  - o ensuring that any borrowing, loan, or mortgage is:
    - cost-effective;
    - necessary to carry out the purposes for which the collaborative is established;
    - in the best interest of the collaborative and its member districts; and
    - consistent with standard lending practices and the terms of the collaborative agreement.

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

For further information, please consult the following resources and/or contact the Office of Regional Governance at 781-338-6526 or at [collaboratives@doe.mass.edu](mailto:collaboratives@doe.mass.edu):

[Massachusetts Education Collaboratives Website](#)

[Authorizing Law: Education Collaboratives](#)

[Regulations: Educational Collaboratives](#)