



Orleans /Niagara Board of Cooperative Educational Services Financial Management

Report of Examination

Period Covered:

July 1, 2011 – December 2, 2015

2016M-72



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2016

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 Orleans/Niagara BOCES, entitled Financial Management. 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*

Introduction

Background

The Orleans/Niagara BOCES is a public entity serving 13 component school districts in a two-county area. The BOCES is governed by a 13-member Board of Education (Board) elected by the boards of the component districts. The Board is responsible for the general management and control of the BOCES' financial and educational affairs. The District Superintendent is the BOCES' chief executive officer and serves dual roles. The District Superintendent is responsible, along with other administrative staff, for day-to-day management and regional educational planning and coordination. The District Superintendent also serves the State as a representative for the New York State Commissioner of Education. The District Superintendent and the Director of Business Services are responsible for developing and administering the budget and managing finances.

Combined, the component districts educate approximately 33,000 students in Orleans and Niagara counties. BOCES provides shared services in which component districts participate to enhance their individual educational programs. BOCES has no taxing authority and derives all of its financial support from its component districts, as well as State and federal aid. The general fund's initial budgeted appropriations for the 2015-16 fiscal year totaled approximately \$56 million.

BOCES costs are funded primarily by charges to component districts for BOCES services. Administrative and facilities expenditures for capital projects are charged on a pro-rata basis to the component districts, determined by district enrollment and property value. Program expenditures are funded by component districts, based on their participation in each specific program. Component districts fund these expenditures through the levy of real property taxes. State aid is paid to BOCES and then reimbursed to component districts based on their respective financial support for program services and administrative and facilities (capital projects) expenditures.

Reserves are typically funded from amounts raised through the annual budget process. For transparency, BOCES are required to submit to their component and participating school districts and to the taxpayers their administrative and capital budget projections. BOCES must apportion surpluses and assessments for services, based on participation, to those component and non-component districts that contracted for such programs.

BOCES also apportion surpluses and assessments for administrative expenditures to all component districts, regardless of the level of shared program participation. All apportionments are made annually after the close of fiscal year-end (June 30) for both BOCES and component

districts. The operating surpluses are to be allocated in the same way as the budgeted cost allocation in effect for that year to component and participating school districts.

The Board and BOCES officials did not correct all the deficiencies that were identified in our previous audit (issued in September 2009),¹ which included findings of the BOCES' internal control weaknesses related to funding and use of reserves. If the Board and District officials do not address the weaknesses identified in this report, the BOCES will continue to increase its reserves and set aside funds without adequate disclosure to the public and its component school districts.

Objective

The objective of our audit was to review the BOCES' management of financial activities. Our audit addressed the following related question:

- Does the BOCES properly manage fund balance and reserves in accordance with statutes?

Scope and Methodology

We examined the BOCES' financial management practices over fund balance and reserves for the period July 1, 2011 through December 2, 2015.

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.

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 our findings and recommendations. Appendix B includes our comments on issues raised in the 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 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 should 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.

¹ *Orleans Niagara Board of Cooperative Educational Services – Internal Controls Over Selected Financial Activities (2009M-118)*

Financial Management

The Board is responsible for appropriately managing BOCES' financial affairs. To accomplish this, the Board must adopt realistic budgets that are based on current and available data. BOCES must also adhere to requirements regarding the apportionment of surpluses or deficits back to its component districts and the establishment, funding and use of reserves. BOCES can legally reserve certain funds for specific future uses to help reduce the reliance on operating funds or borrowed money. BOCES can create and use reserves that are allowed by statute.

Because BOCES funds are derived primarily from component and participating school districts, it is essential that BOCES officials clearly inform districts and their taxpayers about the budget process, why any reserves are needed and how such reserves will be funded and used. Such disclosure provides for transparency in finances and accountability to component and participating districts. Further, while there is no statutory limit on the amount BOCES can maintain in most reserves, each reserve should be periodically reviewed and maintained at a level that is reasonable and appropriate to fund the future expenditures or liabilities it was established to pay for, as indicated in a clearly documented plan for the reserve.

We found that the Board and BOCES officials did not properly manage fund balance and reserves in accordance with statute. Similar to findings in our prior audit of the BOCES,² we determined that BOCES officials did not properly estimate certain budget appropriations and used the resulting surpluses totaling approximately \$3 million to fund unbudgeted capital projects.

Furthermore, BOCES officials have improperly restricted more than \$5 million of surplus funds for a purpose not statutorily allowed and had approximately \$2.4 million in reserves that were not used and did not evidence plans for future use. Had certain actions not occurred, the BOCES would have had to return more than \$8 million to its component districts. When the BOCES retains surplus funds, the tax burden is increased for the residents of the component districts.

Budgeting

The budget should be based on estimated needs, historical trends and projections for associated costs. After completion of the BOCES' and component districts' fiscal year (June 30), a reconciliation of budget-to-actual results is performed, typically resulting in a surplus, which

² Ibid.

is statutorily required to be apportioned back to component districts based on their level of participation.

We found that BOCES officials did not properly estimate certain appropriations, which resulted in surplus funds that were not appropriately apportioned back to the component districts. We examined certain budget estimates in the administrative, capital and program budgets for 2014-15 and determined that certain appropriations were overestimated by a total of approximately \$2.1 million. BOCES officials significantly overestimated employee salaries (\$824,000 or 5 percent), retirement contributions (\$615,000 or 14 percent) and health insurance costs (\$710,000 or 11 percent).

The BOCES is a member of a self-funded health consortium which pools together financial resources from member organizations to cover health insurance-related claims. While certain health insurance costs may be unanticipated, employee salaries are driven by contractual agreements and should be reasonably predictable and not overestimated. Additionally, the projections for retirement contributions were provided to BOCES officials with enough time to incorporate into their budget estimates and thus should not be overestimated. For example, in September 2015, the New York State and Local Retirement System (NYSLRS) released the projected employer contribution rates to be used for the 2016-17 budget to BOCES officials approximately seven months before the budget adoption in May 2016. BOCES officials told us that they overestimate certain appropriations to ensure they have sufficient funds to cover their expenditures.

We also found that the BOCES was not transparent with its component districts in its capital improvements budgeting practices. Annually, the capital budget presented to the component districts included appropriations of \$250,000 for capital improvements and maintenance expenditures such as resurfacing and upgrading parking areas, replacing rooftop heating and ventilating units, electrical upgrades and plumbing. While these budgeted appropriations totaled \$1 million, the actual amount transferred was \$4 million or \$3 million more than budgeted amounts. As a result, BOCES officials retained a surplus of \$3 million more than was budgeted and presented to the component districts.

For example, in 2014-15, BOCES officials transferred almost \$1.2 million to the capital projects fund or approximately \$935,000 (375 percent) more than the budgeted appropriation for this transfer. Had BOCES officials transferred the planned \$250,000 which was budgeted in 2014-15, they would have had to apportion \$935,000 more back to the component districts as operating surplus. However,

the Board retroactively approved these unbudgeted transfers at the end of the fiscal year rather than through the tentative budgets, a process which is subject to review by the component districts. Based on the 2015-16 adopted budget, this trend appears to have continued because BOCES officials budgeted similarly to previous years and included a capital budget transfer appropriation of \$250,000.

Fund Balance

BOCES, unlike school districts, are not statutorily authorized to retain fund balance that is not reserved, or assigned for permissible intended use such as encumbrances. Rather than annually apportioning surplus funds back to its component districts as statutorily required, BOCES officials have improperly retained and restricted fund balance in the general fund totaling \$5.2 million as of June 30, 2015. While BOCES officials stated that they restrict money in this manner to pay for future (long-term) other post-employment benefit (OPEB) costs, there is no statutory authority to restrict funds for this purpose.

In August 2011, the Board inappropriately established an “assigned fund” for OPEB costs to be recorded in the general fund. In our prior audit³ we concluded that the BOCES inappropriately held more than \$8 million of these funds in a trust account. As a result, during 2009-10, the Board approved the transfer of \$8.3 million of these improperly restricted funds from the trust account to the general fund. However, the Board did not apportion those surplus funds back to the component districts after the close of the fiscal year. Instead, the Board improperly designated \$6.9 million as assigned fund balance for OPEB costs and then transferred the remaining \$1.4 million to the employee benefit accrued liability reserve (EBALR), which appeared to be reasonably funded (see Reserves).

While BOCES officials inappropriately retained these funds, they properly used these funds to pay current OPEB costs. During our audit period the BOCES appropriated \$1.7 million for OPEB costs. However, the improperly designated assigned fund balance remains an improper restriction of surplus money that should be returned to the component school districts. As such, the remaining \$5.2 million should be apportioned back to the component districts.

Reserves

Money set aside in reserves must be used only in compliance with statutory provisions that determine how reserves are established, funded, expended and discontinued. Funding reserves at greater than reasonable levels contributes to higher charges or less operating surpluses returned to the component districts and consequently, real property tax levies that are higher than necessary.

³ Ibid.

The Board established a reserve policy which indicated the BOCES will establish reserves in accordance with statute, maintain them in a manner to promote an open, transparent and accountable use of public funds and will be subject to a periodic review by the Board. However, this policy was not comprehensive because it did not identify the Board's financial objectives, optimal funding levels, conditions under which the reserve money will be utilized or replenished or require documentation of the Board's review. Further, if BOCES officials intend to continue to pay for expenditures that could have been paid for with reserve funds, we question the purpose of maintaining these reserves.

As of June 30, 2015, the BOCES reported five general fund reserves totaling \$4.6 million. We analyzed these reserves for reasonableness and adherence to statutory requirements and found that the Board properly established all of these reserves and appropriately funded the EBALR and the unemployment insurance reserve with combined balances totaling \$2.2 million. However, we question the reasonableness of the amounts retained and the need for the remaining reserves totaling \$2.4 million (retirement contribution – \$1.3 million, career and technical equipment (CTE) – \$1 million and liability – \$122,000) because they were unused during our audit period or the BOCES could not provide documentation to support the amount of funds restricted in these reserves.

Retirement Contribution Reserve – As authorized by GML, this reserve can only be used to pay retirement contributions to NYSLRS. If the Board determines that the reserve is no longer needed, it may terminate the reserve fund by resolution. The resolution must transfer any money remaining to one or more reserve funds established pursuant to the New York State Education Law (Education Law).

As of June 30, 2015, the retirement contribution reserve totaled \$1.3 million. No money has been expended from this reserve during our audit period. Instead, the Board provided for retirement expenditures through annual budgetary appropriations which averaged approximately \$1 million each year. Therefore, we question the reasonableness of the amount retained in this reserve.

CTE Reserve – Education Law authorizes BOCES to establish a CTE reserve for the replacement and purchase of advanced technology equipment used in instructional programs, which may be funded by proceeds from the sale of career education instructional equipment no longer needed by the BOCES or through a depreciation allowance for equipment used in career and technology instruction. If the Board determines this reserve is no longer needed, the money must be allocated back to the school districts participating in the

instructional programs of the BOCES in proportion to the value of their contributions to the fund.

BOCES officials reported a balance of \$1 million in the CTE reserve as of June 30, 2015 but were unable to provide us with supporting documentation for the sale of CTE equipment or depreciation schedules to support more than \$968,000 retained in this reserve during field work. In our previous audit, we also concluded that BOCES officials did not have supporting documentation and therefore could not demonstrate that they properly funded the majority of the balance in this reserve in compliance with statutory provisions.⁴ However, after our exit conference BOCES officials provided additional documentation which indicated the CTE reserve was overfunded by approximately \$415,000 in the first year it was established (2007-08). The documentation also included schedules, which indicated annual depreciation for CTE equipment of approximately \$135,000.

Further, the BOCES did not use this reserve for replacement and purchase of technology equipment as intended by statute. Instead, BOCES officials purchased such equipment totaling over \$773,000 through annual budget appropriations. As a result, we question the reasonableness of the amount retained in this reserve.

Liability Reserve – Education Law authorizes BOCES to establish and maintain a liability reserve to cover payments for liability claims. Once established, this reserve may not be reduced below the total amounts estimated to be necessary to cover incurred but unsettled claims or lawsuits, including related expenses. Payments may not be made for purposes other than those for which the reserve was established. A board may authorize use of the reserve funds (other than amounts allocated for unsettled claims or suits including related expenses) to pay premiums for insurance policies purchased to insure subsequent losses in areas previously self-insured, in the event of dissolution of the self-insurance plan.

This reserve totaled approximately \$122,000 as of June 30, 2015. No funds from this reserve have been used to pay for any claims or judgment during our audit period and BOCES officials did not have or anticipate having any applicable claims or judgments that might be settled in the near future. As a result, the BOCES does not have any outstanding liability claims that could be paid from this reserve in compliance with statutory requirements. We question the continued need to maintain this reserve.

⁴ Ibid.

Recommendations

The Board and BOCES officials should:

1. Develop appropriation estimates for the annual budget that are reasonable based on available current information and historical data.
2. Ensure that the funding of reserves and capital projects is transparent to component districts and the public by including appropriations for the amounts the Board intends to transfer in the proposed budget.

The Board should:

3. Ensure that all surplus funds, except those properly restricted in reserves in accordance with applicable statutes, are apportioned back to component districts.
4. Amend its reserve fund policy to ensure it identifies the Board's financial objectives, optimal funding levels, conditions under which the reserve money will be used or replenished and the required documentation of the Board's review.
5. Review all reserves and determine if the amounts reserved are necessary and reasonable. To the extent that they are not, transfers should be made, where allowed by law, to other reserves established and maintained in compliance with statutory directives.

APPENDIX A

RESPONSE FROM BOCES OFFICIALS

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

BOCES officials' response letter refers to an attachment that supports the response letter. Because the response letter provides sufficient detail, we did not include the attachment in Appendix A.



Clark J. Godshall, Ed.D
District Superintendent

Keith A. Bond
Board President

June 9, 2016

Mr. Jeffery D. Mazula
Chief Examiner
Office of the State Comptroller
295 Main Street, Room 1032
Buffalo, NY 14203-2510

Dear Mr. Mazula:

The Orleans/Niagara BOCES is in receipt of the draft report of the audit commenced in September 2015 by the Office of the State Comptroller. The Orleans/Niagara BOCES Board of Education reviewed and approved this response on June 8, 2016.

Over the period of your audit review, this BOCES returned over \$11.1 million to the component school districts in excess revenue and completed over \$6.0 million in capital improvements at no additional cost to the local school districts and with no additional impingement upon each of the component school district's tax cap limit(s). Your report seeks to improperly substitute an auditor's opinion for that of the elected Board of Education's informed decision making. We stringently object to your inflammatory boilerplate statements regarding retention of legally established reserves, transparency, lack of corrective action from your 2009 audit, and the lack of legal citations to support your broad brushed commentary toward your themes of malfeasance.

Our responses will highlight critical omissions made by your staff in this review, including:

- failure to review or cite our established long-term planning and expenditure schedules for reserve accounts you deem unnecessary and/or overfunded;
- failure to review or cite our adherence to consistency and legality of capital transfers and maintenance of BOCES reserves with support from our 13 component districts;
- failure to review or cite the signed assurances regarding transparency from all 13 of the component school districts that you declined to include in our 2009 response;
- failure to adhere to GAGAS to obtain sufficient evidence for your opinions;
- failure to communicate with management by ignoring and omitting response documents and not contacting stakeholder groups regarding your transparency allegations;
- exclusion of Board of Education members and citing protocol to only meet with one board member at a time, and attributing comments (in the audit) from management staff that we deny (a repeated false comment from our 2009 audit); and
- your staff's lack of understanding regarding BOCES legal requirements, BOCES capital construction approval constraints (reconstruction vs. new) for voter approval, and funding mechanisms to benefit the taxpayers in our service area without impacting the fiscal status of the component school districts.

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District Superintendent & Orleans Career and Technical Education Center • 4232 Shelby Basin Road, Medina, New York 14103
Niagara Career and Technical Education Center & Niagara Academy • 3181 Saunders Settlement Road, Sanborn, New York 14132
Niagara Conference and Technology Center • 4124 Saunders Settlement Road, Sanborn, New York 14132

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Comptroller's Statement #1: *The Board and BOCES officials did not correct all of the deficiencies that were identified in our previous audit.*

A reading of your 2009 audit and this BOCES's response, dated October 2009, reflects full compliance, except with those items of disagreement that you are now characterizing as having not been addressed, specifically:

- #1 We disagreed then, and now, with your opinion that our budget recommendations were not reasonable, and we have continued to comply with legal obligations mandated by the New York State Education Department, endorsed by our independent auditors and supported by the 13 component school districts.
- #2 Funding of reserve accounts is transparent to component districts, as substantiated by supporting documentation from the component districts which you omitted in 2009 (dated August 28, 2009) and have not attempted to verify with our stakeholders during this current review. We continue to disagree with your opinion.
- #3 Refund of post-employment benefits has been planned, scheduled and is ongoing.
- #4 Reduction of the Unemployment Insurance Reserve by 50% has occurred since 2009.
- #5 Full documentation to support the BOCES Career and Technical Education (CTE) Equipment Reserve, including depreciation and funding sources, was readily available and was not requested by your auditors during the audit.
- #6 Appropriate monitoring procedures regarding purchasing were tested by your auditors and not currently cited, reflecting compliance.

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Comptroller's Statement #2: *We found that BOCES officials did not properly estimate certain appropriations, which resulted in surplus funds that were not appropriately apportioned back to the component districts.*

Your characterization of the BOCES's excess revenues as failure to estimate appropriations is misleading and not correct. The cited \$2.1 million represents a 3.34% surplus that was returned and should be cited as a model for effective BOCES budgeting and consistent with the Education Law.

Since the early 1990's, this BOCES has adhered to the accounting principle of **consistency** by annually returning between \$1.6 to \$2.2 million in annual excess revenues to the component districts, which in turn utilize the funds as revenues in the generation of their local budgets. Your characterization that we have improperly estimated those appropriations does not account for the consistent annual refunds planned for by the components. Specifically, recommended procedures and findings made by your staff, at the least, highlight the lack of understanding of the utility of BOCES, the funding structures in support of the component school districts, and the impact of the Tax Cap Legislation on New York School Districts, and may be prejudicial based upon your staff's comments.

Recommendation #1: *Develop appropriation estimates for the annual budget that are reasonable based on available current information and historical data.*

Our budget appropriations are reasonable and formulated consistent with the Education Law and accounting practices. The BOCES budget is comprised of over 114 separate and distinct budgets with separate revenue and expenditure requirements. Each is developed in accordance with the May 1st service commitments from our component districts. Each budget's expenditures and concurrent revenues are balanced based upon those initial

service requests. BOCES is not allowed to maintain a fund balance; surplus monies have been consistently refunded to the participating school districts at the end of each year. (See Chart A below). The revenues derived from additional service requests and cross-contracts may provide the funds to be allocated to reserves, if needed and with the concurrence of the components.

Chart A: Annual BOCES Refunds During the Past Six (6) Fiscal Year Budgets:

2009/2010 Refund	2,191,013	distributed 12/10/10
2010/2011 Refund	1,823,983	distributed 12/16/11
2011/2012 Refund	1,657,686	distributed 12/14/12
2012/2013 Refund	1,618,534	distributed 12/13/13
2013/2014 Refund	1,924,078	distributed 12/19/14
2014/2015 Refund	2,142,952	distributed 12/11/15

As shown in Chart B below, school districts increase their purchases of services at varying times of the year that are unpredictable and contribute to the ability to fund capital projects at year-end while not impacting the local taxpayer and maximizing state aid returned to the school districts. Surplus to be refunded to the participating districts are not known until year-end due to changes in the school's student enrollments, classifications, staffing and unanticipated service needs. Those increases (and sometimes decreases) in service requests impact both the expenditures and revenues for individual service budgets.

Because it is required that the Annual Budget appropriations and revenues equal in each of the individual 114 service budgets, BOCES is not allowed to plan on or anticipate these increases in service requests. We will continue to use reasonable estimates to maintain balanced budgets. The BOCES remains vigilant towards their fiscal management of component school district monies, maintenance of the facilities to the standards requested by our customers while minimizing the impact to component district taxpayers.

Chart B: Initial vs Ending Budgets during the Audit period:

	2016	2015	2014	2013	2012	2011
Initial Budget	56,275,335	55,393,871	53,288,673	52,266,751	51,412,714	52,018,125
Ending Budget	62,822,302	58,887,967	57,903,547	57,595,231	57,646,400	58,547,513
Increase	6,546,966	3,494,096	4,614,875	5,328,480	6,233,687	6,529,388

Recommendation #2: *Ensure that the funding of reserves and capital projects is transparent to component districts and the public by including appropriations for the amounts the Board intends to transfer in the proposed budget.*

This BOCES has provided information contrary to your opinion and provides additional supporting assertions signed by the 13 component districts' Chief School Officers regarding the transparency of BOCES fiscal operations (Component Statement #1). The BOCES Board of Education has determined that the funding of the reserves is adequate and, in many

cases, has not contributed to them further. This BOCES is legally compliant with all New York State Education Department BOCES budget requirements and public disclosure notifications. Your opinion does not cite law, yet this BOCES has gone well beyond its obligations to inform and continuously update stakeholders.

Over the audit period, the \$250,000 is an initial capital budgeted figure that permits the districts to plan for BOCES capital improvements that have been previously identified in long-term plans over a ten year period (see Appendix #1) and, dependent upon annual revenues, could be funded. The BOCES long-term facilities projects are annually funded based upon available resources, minimizing the impact upon component tax cap(s).

This BOCES uses smaller annual funding of capital improvement projects to maintain the BOCES facilities while maximizing their return of state resources to the components with no additional burden to the taxpayers of our school districts. It should be cited as a model for other BOCES entities and cited as a cost effective methodology. To initially budget for a BOCES capital project has the effect of consuming the available tax cap resources for a district. Since it would be mandated upon the components, a BOCES project could possibly cause layoffs in the component district(s) to meet the BOCES capital expense obligation. There are no legal or accounting prohibitions upon the BOCES' transfers to capital accounts for purpose of annual reconstruction.

Your staff failed to contact our stakeholders to support your opinions and to discuss the comprehensive communications and notifications that clients receive regarding the BOCES' facility maintenance and long term capital improvements with associated funding. No inquiry was made regarding issues of transparency cited by your staff with our component boards of education or local school superintendents, who are our customers. This BOCES remains fully transparent with briefings and updates among component school boards, school superintendents, principals, parents, business leaders, superintendents of buildings and grounds, school business officials, the media and local business leaders/taxpayers that advise the BOCES on facilities needs.

See
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We will continue to ensure that the establishment and transfers to the reserves are approved by resolution at the BOCES' Board of Education meetings. Monthly, the BOCES' board meeting agendas and minutes are provided to each component district. Included with the board agenda is the treasurer's report, which shows the monthly activity for the reserve accounts. Currently, a summary of each board meeting and the official minutes are posted on our Web site.

Similar notifications regarding reserve accounts are provided by the BOCES to the component districts monthly, at BOCES audit committee meetings, in the annual independent audit, and in BOCES's annual reports and promulgations. Again, in only your staff's opinion and without any legal basis, the BOCES reserve funds were deemed over funded. The BOCES has not contributed to those reserves deemed adequate and has a plan to return the post-retirement funds to the districts adhering to a multi-year plan of spend down, to avoid significant swings in our annual costs due to reclassification of funds and avoid problems with State aid recalculation and compliance fund balance issues for the components. That appears to have been ignored by your auditors.

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COMPONENT STATEMENT #1

We the undersigned, the 13 Chief School Officers of the component districts of the Orleans/Niagara BOCES, do assert and confirm that the BOCES administration and BOCES school Board maintain highly transparent financial operations while keeping the stakeholders/community well informed of their fiscal activities including reserve accounts and capital construction.

Specifically:

- Monthly meetings of the Chief School Officers, School Business Officials, Curriculum Directors, and Principals discuss BOCES operations, spending plans, shared services, deficit issues, staffing, financial transfers, capital projects, reserve account status, year-end transfers of surplus into reserves and legal obligations/liabilities of the Orleans/Niagara BOCES.
- All financial reports, minutes, budget summary/modifications, and Treasurer's reports are shared monthly with the component school Boards and available to the public and on-line.
- Visits by the BOCES Central Administrators to the component districts' school Board meetings provide opportunity for component Boards of Education members to be informed of the financial operations of the BOCES.
- As the only school entity in New York State to receive national GFOA and ASBO financial reporting awards, they execute best practices.
- Appropriate legal notices, public presentation of the initial budget, workshops and regular dialogs make the Orleans/Niagara BOCES a model of transparent fiscal operations.
- Your recommendations regarding refunds and advanced funding of BOCES capital projects would cause increased cost to the local school districts and tax payers in our areas and are not in our best interests.

We respectfully disagree with the New York State Comptroller's observations regarding transparency of Orleans/Niagara BOCES fiscal operations, maintenance of reserves for identified liabilities and confirm that we were never consulted to substantiate the opinions cited in the Orleans/Niagara BOCES Comptroller's audit dated October 2009 and May 2016.

Michael Bonnewell
Albion Central SD
Roger Klatt
Barker and Royalton Hartland CSD
Paul Casseri
Lewiston-Porter Central SD
Michael Bradley
Lockport City SD
Jason Smith
Lyndonville Central SD
Jeffery Evoy
Medina Central SD
Michael Baumann
Newfane Central SD
Cynthia Bianco
Niagara Falls Central SD
Daniel Ljiljanich
Niagara-Wheatfield Central SD
Gregory Woytila
North Tonawanda City SD
C. Douglas Whelan
Starpoint Central SD
Michael Wendt
Wilson Central SD

Recommendation #3: *Ensure that all surplus funds, except those properly restricted in reserves in accordance with applicable statutes, are apportioned back to component districts.*

This BOCES has been properly apportioning surplus funds back to the component districts. In 2011, a transfer was recommended into, "Assigned Fund Balance". This action was taken due to the ruling (GASB 45) by the Federal Governmental Accounting Standards Board (GASB) and the recommendations made to the district by its auditor and by the State Comptroller, himself. All recommended that the district begin funding Other Post Employment Benefits (OPEB) – district costs associated with retirees’ medical coverage, life insurance, etc. As Mr. DiNapoli stated:

The State faces \$50 billion in OPEB liabilities, and New York City is looking at \$58 billion in similar obligations," DiNapoli said. "Add that to tens of billions more in OPEB liabilities from local governments around the state, and the numbers are daunting.

"We're facing difficult times, and the impulse may be to push this issue aside. But almost two million working New Yorkers are counting on these benefits. The responsible thing to do is to start preparing for the future in order to protect health care benefits and save tax dollars. If we started this fund today, State government alone could save \$22 billion over the next 30 years.

Thomas DiNapoli. "Funding Mechanism Could Help State & Local Governments Save Billions in Future Years," see <http://www.osc.state.ny.us/press/releases/may08/052008.htm>.

While we understand that funding of this liability is not required under GASB statements, to ignore this future cost is not fiscally prudent.

Since the mid 1990's, the BOCES had incrementally set aside monies for this purpose and segregated them within the trust and agency fund. We believe that this approach demonstrated fiscal responsibility and prudence. We continue to call upon the New York State Legislature to recognize the appropriate funding of the BOCES health insurance future liability and permit accruals toward the costs to avoid these negative audit citations.

See
Note 10
Page 20

In the past, the Comptroller has called for legislative action to provide local governments and schools the authority to create appropriate vehicles to reserve for those quantified future liabilities. We respectfully request that the Comptroller remain vigilant in pursuing a legislative methodology for accruing post-employment benefits. A multi-year return of the funds has been established and is currently underway with the consent of the school districts. Once it became clear that the state government was not going to accomplish this, the BOCES did not set aside any more monies for this purpose.

See
Note 9
Page 20

Chart C Post-employment Benefit (OPEB) Spend Down Schedule

6/30/13	6/30/14	6/30/15	6/30/16	6/30/17	6/30/18
-\$846,445	-\$876,132	-\$931,835	-\$900,000	-\$1,000,000	-\$1,200,000

Recommendation #4: Amend its reserve fund policy to ensure it identifies the Board's financial objectives, optimal funding level, conditions under which the reserve money will be used or replenished and the required documentation of the Board's review.

BOCES are not required by statute or other regulations to have written policies for reserve funds. However, the BOCES' current policies will be reviewed and if deemed necessary by the Board of Education, they may be amended.

Recommendation #5: Review all reserve accounts and determine if the amounts reserved are necessary and reasonable. To the extent they are not, transfers should be made, where allowed by law, to other reserves established and maintained in compliance with statutory directives.

The elected members of the board of education believe that the Orleans/Niagara BOCES reserves are necessary and reasonable and where appropriate have ceased contributions to those deemed adequate. Annually, our independent auditors and component districts have reviewed and discussed the funding levels and found them to be reasonable.

As stated in the Comptroller's Reserve Fund guide, "planning today and saving (and budgeting) 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, the Orleans/Niagara BOCES will continue to be fiduciarily responsible in its budgeting practice and accounting for its reserve funds and liabilities.

Retirement Contribution Reserve- The board of education has not contributed any funding to this reserve since 2010 and has determined that it is adequate. Historically, the volatile rate increases due to low stock market returns would necessitate increased cost upon our component districts. As a legally maintained and annually reviewed reserve, it is available should the need arise to avoid any significant cost increases to our component districts. We disagree with your opinion that it should not be retained.

See
Note 11
Page 20

CTE Reserve- This reserve was established in 2009 by separate votes in each of the component school districts and is legally permitted to be funded up to 2 million dollars. The New York State Education Department promulgated guidelines regarding utilization of depreciation for the Career and Technical Education (CTE) equipment reserve a year after the reserve was established and removed from the control of The Work Force Development Agency. This BOCES has established a separate schedule of depreciation for CTE equipment using the guidelines provided. The depreciation schedule supports the annual increase to the CTE Equipment Reserve. We have documented depreciation and contributions as per New York State Education Department Guidelines. Your auditors received data that fully accounts for every cent that has been contributed.

See
Note 12
Page 20

The auditors failed to note the annual 2-3% decline in Resident Student Attendance Rate for the BOCES service areas that has, over the past 10 years, decreased by 10,000 students from 45,000 to less than 35,000 pupils. This decline will soon impact the available student base attending BOCES and may necessitate use of the CTE reserve account to maintain equipment for the programs, hence the Board of Education, upon annual review, has determined the reserve appropriate and directed auction funds only be added to the reserve, which is well under the legal cap of \$2,000,000. Currently, that reserve has \$1,013,475 and we disagree with your opinion that it should not be retained.

See
Note 12
Page 20

Liability Reserve- Totalling \$122,000 and established per General Municipal Law Section 16-n. The Board of Education has not contributed any funding to this reserve since 1999 and has determined that it is adequate. Historically, the potential for volatile rate increases in the public school insurance market, given the availability of only two vendors offering liability coverage, necessitates this account to potentially avoid increased costs upon our component districts. As a legally maintained and annually reviewed reserve it is available should the need arise and we disagree with your opinion that it should not be retained.

OTHER: Conduct of audit in accordance with GAGAS standards.

You claim adherence to the Generally Accepted Audit Standard, however, we need to comment on some specific omissions with concurrent citations with GAGAS Yellow Book standards:

2.9 (a) obtain sufficient and appropriate evidence to express an opinion- You failed to contact stakeholders and the New York State Education Department to corroborate your opinions regarding transparency and appropriate funding of BOCES' Capital Projects. You omitted the attachment of appendices to our 2009 response and would not allow similar documents to be attached to this response.

4.05 When performing a GAGAS audit, auditors should evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements or other financial data significant to the audit objectives. When planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. You did not make any such inquires nor review our 2009 audit compliance activities.

4.15 (b) Document any departures from the GAGAS requirements and the impact on the audit and on the auditors' conclusions when the audit is not in compliance with applicable GAGAS requirements due to law, regulation, scope limitations, restrictions on access to records, or other issues impacting the audit. As cited above.

(d) Reporting views of responsible officials; No inquires of the District Superintendent or Board Members were made prior to the receipt of the final draft audit. Your inconsistent practice to only meet with a single board member at a time is not supported by your offices in other areas of the State. Your staff directed our board member to file a FOIL request regarding this localized practice.

(e) Reporting confidential or sensitive information-- see comment above for omission of relevant supporting documents and lack of preliminary exit report review to management by excluding a board member. Our request to receive your modified draft exit audit report in order to develop this response was also denied.

We remain available to further discuss your draft findings at your convenience.

Respectfully Submitted,

Keith A. Bond
Board of Education President

Clark J. Godshall, Ed.D
District Superintendent

APPENDIX B

OSC COMMENTS ON BOCES' RESPONSE

Note 1

As stated in our report, we conducted our performance audit in accordance with generally accepted government auditing standards (GAGAS) for performance audits. The GAGAS standards BOCES officials refer to are applicable for attestation engagements and financial statement audits but do not apply to our performance audit.

Note 2

We considered the attachments BOCES officials sent with the response letters to both the prior and current audit as sufficiently addressed in the body of the BOCES' response and therefore did not include the attachment.

Note 3

We discussed OSC's exit conference policy with BOCES officials before, during and subsequent to our exit conference. After discussing the policy, a BOCES Board member requested a copy of the policy and was referred to our website for a Freedom of Information Law request. We are unsure which comments BOCES officials deny that were attributed to management staff. We have documentation of each statement attributed to management staff that was included in the report.

Note 4

Our audit team possesses the collective knowledge and experience necessary to complete the audit and have a thorough understanding of BOCES operations, in accordance with GAGAS. BOCES officials' approach to funding capital projects is not transparent to the residents of the component districts. We continue to encourage the BOCES to properly estimate budgeted appropriations and more transparently fund capital projects.

Note 5

During our audit fieldwork, we requested documentation to support the CTE reserve and none was provided. At the exit conference, BOCES officials indicated they had supporting documentation for this reserve and subsequently provided it to us eight days after the exit conference. We added these facts to the body of our report.

Note 6

GAGAS standards for performance audits require that we assess whether recommendations in previous audits were addressed that directly relate to the current audit objective. Because our current audit was limited to financial management, we did not include BOCES officials' purchasing procedures within our audit scope. More information on such standards and the methodology we used in performing this audit are included in Appendix C of this report.

Note 7

BOCES officials did not properly estimate certain appropriations, which resulted in the component districts paying more to the BOCES than required. This resulted in an annual surplus, which the BOCES used partially to fund capital projects in amounts greater than previously presented to component districts in the tentative budget. BOCES officials' approach to funding capital projects in this manner is not transparent to the residents of the component districts.

Note 8

We considered a number of factors when analyzing the reasonableness of reserve funding levels including the balances in relation to the liabilities or annual expenditures. We did not suggest that those levels contravened any statutory maximum amounts and, in fact, expressly acknowledged that there is no statutory limit on the amount BOCES can maintain in most reserves. As stated in our report, each reserve should be maintained at a reasonable and appropriate but not excessive level.

Note 9

During our audit fieldwork, we requested but were not presented with a plan to return retained reserve funds to the districts and such a plan was not documented in the BOCES' records we examined (i.e., Board minutes). At our exit conference, BOCES officials indicated their plan to return these funds to the districts was not a Board-approved plan and therefore would not be found in the Board minutes.

Note 10

We recognize the financial burden facing government entities as it relates to other post-employment benefits and our office has proposed legislation to the State Legislature to address this issue (http://osc.state.ny.us/legislation/2015-16/oscb_opeb_201516.htm). However, currently there is no statutory authority to establish a trust to fund this liability in accordance with GASB requirements. GASB (Statement 75) states that, to be considered funded in accordance with GASB, the employer must transfer assets to a "qualifying trust or equivalent arrangement" in which OPEB assets are held in trust for the exclusive benefit of plan members and their beneficiaries in accordance with the terms of the OPEB plan. BOCES in New York State currently do not have the legal authority to establish a trust or equivalent arrangement to accumulate such funds. Therefore, the amounts retained in the general fund should be returned to the component districts.

Note 11

While we questioned the reasonableness of the amounts retained in the retirement contribution reserve in our report, we did not recommend this reserve be discontinued. Rather, we recommend reducing it to a reasonable level.

Note 12

We questioned the reasonableness of the amounts retained in the CTE reserve in our report because the documentation BOCES officials provided indicated this reserve was overfunded. In addition, officials purchased CTE equipment through annual budget appropriations. We did not recommend this reserve be discontinued or suggest the funding level exceeded legal limits.

Note 13

We questioned maintaining the liability reserve because BOCES officials have not used any funds from this reserve and have no pending liabilities or claims for which this reserve could be used.

Note 14

In accordance with GAGAS performance auditing standards, we evaluated whether BOCES officials took appropriate corrective action and as stated in our audit report, BOCES officials did not do so. Of the Yellow Book standards BOCES officials cited the first (2.9a) applies to attestation engagements and the rest are all from chapter 4 which applies to financial audits. As clearly stated in our report, this is a performance audit and we followed GAO standards applicable for performance audits.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

- We interviewed BOCES officials to obtain an understanding of the financial management practices.
- We reviewed Board minutes and any relevant documents, relating to Board approval to establish, fund and its subsequent review of reserves, capital project funding and general budgeting.
- We reviewed reserves maintained by the BOCES to ensure they were properly established, funded and used in accordance with statute.
- We scanned through the BOCES' budgets for 2011-12 through 2014-15 and compared to actual results of operations to identify unusual or unbudgeted year-end transfers.
- We reviewed the BOCES' results of operations for 2011-12 through 2014-15 to assess whether there was an annual surplus and if so, if it was properly apportioned back to the component and participating districts.

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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