



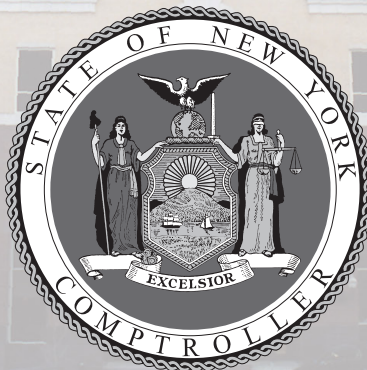
# Erie 1 Board of Cooperative Educational Services Special Aid Fund

## Report of Examination

Period Covered:

July 1, 2013 – February 29, 2016

2016M-188



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**

November 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 Erie 1 BOCES, entitled Special Aid Fund. 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 Erie 1 Board of Cooperative Educational Services (BOCES) is a public entity serving 19 component school districts. BOCES is governed by a seven-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 serves dual roles. The District Superintendent 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 the State as a representative for the New York State Commissioner of Education. The Executive Director of Finance and Information Systems is responsible for the oversight of all functions of BOCES' business office and financial affairs.

BOCES' 2014-15 fiscal year general fund budget totaled \$140 million and was funded primarily by charges to its school districts for services and State and federal aid. BOCES provides more than 1,400 educational and administrative programs to its 19 component and other participating school districts and employs approximately 2,500 staff members. BOCES provides a catalog of services from which school districts can select programs for the subsequent fiscal year and budget accordingly.

The special aid fund is a special revenue fund that is used to account for and report programs supported in whole or in part by specific revenue sources, such as federal or State grants or user fees. For the 2014-15 fiscal year, BOCES reported expenditures totaling \$19.3 million in the special aid fund.

## Objective

The objective of our audit was to evaluate the financial activity in BOCES' special aid fund. Our audit addressed the following related question:

- Are BOCES officials properly managing the accumulated fund balance in the special aid fund?

## Scope and Methodology

We examined BOCES' special aid fund financial activity for the period July 1, 2013 through February 29, 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 B 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 generally agreed with our recommendations and indicated they plan to initiate corrective action.

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.

## Special Aid Fund

For programs accounted for in the special aid fund, BOCES officials should ensure that fees charged to program participants are commensurate with program costs. BOCES are required to refund a proportionate allocation of any surplus resulting from these programs to the participating school districts. Furthermore, BOCES also should formally establish fees for services that reasonably relate to the cost of providing those services.

As of June 30, 2015, BOCES accumulated \$5.6 million of surplus funds in its special aid fund, primarily due to recurring operating surpluses realized in its special education summer school and adult education<sup>1</sup> programs. However, BOCES officials did not provide timely refunds of the accumulated funds generated from the summer school program to participating school districts. BOCES also accumulated and retained operating surpluses from adult education programs in 2013-14 (\$1.2 million) and 2014-15 (\$1.4 million). BOCES officials did not provide us with any evidence to indicate that the established fees for the adult education services were reasonable or related to the cost of providing these services.

Summer School Program – BOCES accounts for its special education summer school program in the special aid fund. BOCES officials told us that the program is accounted for in the special aid fund because the school districts that participate in the program pay their portion through their special aid funds using grant money. As of June 30, 2015, this program had an outstanding surplus of \$3.4 million. Portions of the surplus dated back to the 2004-05 fiscal year (Figure 1):

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<sup>1</sup> Also known as Career and Technical Programs for Adults

Figure 1: Summer School Program Surplus	
Fiscal Year	Surplus
2004-05	\$234,615
2005-06	\$219,924
2006-07	\$202,282
2007-08	\$248,476
2008-09	\$415,799
2009-10	\$280,667
2010-11	\$415,057
2011-12	\$324,067
2012-13	\$323,824
2013-14	\$320,194
2014-15	\$424,269
<b>Total</b>	<b>\$3,409,174</b>

BOCES officials indicated that BOCES had retained the surplus, instead of returning it to the component and participating school districts, on the advice of their external auditor because, prior to the 2004-05 fiscal year, the program had experienced operating deficits. More recently, the external auditor advised them to begin returning surplus from the summer school program to the school districts.

After we brought this matter to their attention, BOCES officials formalized their plan to return the remaining \$3.4 million in funds and any future surpluses. In June 2012, BOCES returned \$750,773 to the school districts, which represented surpluses accumulated during the 1994-95 through 2000-01 fiscal years. In June 2014, BOCES returned \$618,813 for surpluses accumulated during the 2000-01 through 2004-05 fiscal years. In February 2016, BOCES returned \$1.6 million of the accumulated surplus (2004-05 through 2009-10), leaving a balance of \$1.8 million due to the school districts.

BOCES officials provided us with a copy of the plan, which indicated that BOCES would return any accumulated surplus to the districts within one year.

Adult Education Program – BOCES accounts for 16 full-time and 48 part-time adult education programs in its special aid fund. These programs are tuition based and funded by student payments, financial aid or payments from sponsoring agencies, such as the New York State Department of Labor or local community colleges.

According to the New York State Education Department's (NYSED) BOCES Administrative Handbook 5 (handbook), self-sustaining, tuition-based adult and continuing education programs are permitted pursuant to an intermunicipal cooperation agreement (IMA) with one or more school districts for the joint performance of this function.<sup>2</sup> The handbook states that the IMAs must contain provisions related to allocating program revenues and the financing of program operating expenses. The agreements should contain provisions for at least an annual settlement of BOCES surpluses and deficits. Signed IMAs between BOCES and the component districts should be on file.

Although the handbook does not set forth a methodology for calculating tuition rates, it is a general principle of law that a municipal fee for a service must be reasonably related to the cost of providing the service. Further, a fee imposed for the purpose of generating revenue to offset the cost of general governmental services constitutes a tax and may not be imposed without express statutory authority.<sup>3</sup> Therefore, we believe tuition charged for these programs should be reasonably related to the costs of operating these programs. Tuition should not be charged at such rates to offset the cost of general governmental services of BOCES or the school districts.

We reviewed special aid fund financial activity and found that 22 of the 23 adult education programs that were active during the 2013-14 and 2014-15 fiscal years realized an operating surplus. In 2013-14, these surpluses averaged \$60,000 per program and totaled \$1.2 million. In 2014-15, they averaged \$63,000 per program and totaled \$1.4 million. BOCES officials told us they intended to use the surplus to fund new programs or necessary capital expenditures related to adult education programs. For example, BOCES officials stated that \$400,000 of the surplus was used in 2013-14 to fund a lease deposit for a facility where adult education classes are held.

BOCES officials told us they did not enter into IMAs with BOCES' component districts for the operation of BOCES' adult education programs. Therefore, it is unclear how BOCES officials should treat the surplus funds generated from the adult education programs. BOCES officials retained the surplus funds because they were unaware of any statute or other guidance requiring them to distribute the surplus funds to any other entity.

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<sup>2</sup> For purposes of this audit, we have assumed that BOCES has statutory authority to provide the adult education program and to charge tuition, fees or both for participation in that program.

<sup>3</sup> For example, refer to Office of the State Comptroller Opinion No. 2005-8.



BOCES officials also told us they did not have any formal calculations or program budgets for determining adult education tuition amounts. However, they said they considered a number of factors when determining tuition, including rent, overhead, administrative salaries, telephone services, heat and supplies, and that their many years of experience enables them to reasonably estimate required tuition amounts.

While we understand that marginal operational efficiencies may generate a small profit in certain programs, the significant dollar value of the extra revenues generated from the tuition charged is excessive.

## **Recommendations**

BOCES officials should:

1. Return surplus funds from the summer school program to component and participating school districts on a timely basis.
2. Enter into IMAs with component districts for self-sustaining adult education programs and ensure the IMAs indicate the manner in which BOCES will settle surpluses and deficits on at least an annual basis.
3. Settle program surpluses and deficits in accordance with guidance provided in the IMAs.
4. Formally document the calculation of tuition and program budgets for adult education programs.
5. Contact NYSED for guidance regarding the proper disposition of surplus funds generated from adult education programs and for establishing appropriate tuition rates.

## **APPENDIX A**

### **RESPONSE FROM BOCES OFFICIALS**

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

October 24, 2016

██████████  
295 Main Street, Suite 1032  
Buffalo, NY 14203

Dear ██████████:

In response to the draft report audit done on Erie 1 BOCES (E1B) Special Aid Fund, I first want to commend you and your staff for the professional manner in which the audit was performed. ██████████ ██████████ the lead auditor, was pleasant and professional at all times. My staff and I never felt inconvenienced or uncomfortable about providing the information requested of us and it was a pleasure to work with her. We felt she was trying to make the organization better by assisting us in finding better and more efficient financial processes.

In regard to the findings for the summer school fund, Erie 1 BOCES, after discussion with both the lead auditor from the comptroller and our external auditors, has returned all but the most current year surplus funds to the districts. The surpluses in the programs were used to cover deficits in previous years, which are now minimal due to better budgeting practices and as noted in the audit have been operating surpluses for the last couple years.

The adult education program findings are something that E1B will be reaching out to the New York State Education Department to discuss. The issues E1B have are not entirely due to the findings of the audit report, but with guidance documents written in the 1970's that currently have very little relevance when pertaining to what the handbooks define as "Continuing Education Programs". "Continuing Education Programs" whose geographic territory are adjacent to or include a large urban setting and numerous manufacturing and industrial companies should now be more appropriately termed as "Workforce Development Programs". These programs are self-sustaining, tuition-based programs, as mentioned in the audit, but that is where the similarity stops. E1B provides job training and skills for approximately 2,500 adults in the Buffalo region each year. These include adult students who were looking for jobs or needed to refine their skills, and included employees from companies such as Aurulas Buffalo, Dupont, General Motors, General Mills and Goodyear/Dunlop, where the training was specifically designed to meet these company's needs for having a highly skilled workforce.

The administration has asked the State Education Department in the past for clarification because we do not believe it would be appropriate to return funds that come from adult learners and companies to any organization or persons (including school districts) that have not contributed to the support of such programs. One of our difficulties in returning such funds as surplus to districts is that in the CoSers or general fund we are required to return money on a prorated share to the participants of the CoSer. In these programs, the districts do not have a share; therefore an equitable way to determine and distribute the funds would have to be found. The administration has asked independent auditors for clarification on how special aid funds for such programs should be operated and we have not received a

October 24, 2016



Page 2

clear answer, because these programs operate more like enterprise funds, not special aid funds. One option that we may discuss with the State Education Department may be to start up an enterprise fund for our workforce programs. This would require authorization for a BOCES to operate such funds.

The administration is not sure that intermunicipal agreements are the correct mechanism to notify or inform school districts on how to operate the programs and handle surpluses and deficits. That would then have the presumption that the districts should be financially responsible for programs that they are not involved in. At a time when money is tight and districts are trying to target their funds toward improving K-12 instruction, we are concerned about causing more fiscal stress when programs run deficits. To ensure better transparency, E1B would like to work with the New York State Education Department and our auditors to find a more appropriate mechanism or approach to inform our districts of how these programs are operated and how any surpluses and deficits are handled on an annual basis.

The Board and Administration believes that transparency is important and that a better developed long-range plan to manage any surpluses and deficits would be beneficial as mentioned, including the recommendation in the audit of having a more formal process for getting our tuitions.

E1B is committed to providing Western New York districts and communities with needed services in the most cost effective and efficient way possible, and will work with the State Education Department and comptroller's office to determine what that approach may look like.

Sincerely,

*Jfm Fregelotte*  
Executive Director of  
Administration and Operations

JF/mw

## **APPENDIX B**

### **AUDIT METHODOLOGY AND STANDARDS**

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

- We interviewed BOCES officials to gain an understanding of the programs that they account for in the special aid fund and the manner in which they calculate tuition for adult education programs.
- We reviewed NYSED's BOCES handbooks to determine how adult education programs should be supported and surplus is to be disposed of.
- We reviewed the special aid fund financial reports and focused our review on the balance sheets, revenues and expenditures recorded for special education summer school and adult education programs.
- We reviewed adult education program files to analyze the source of funds and other information on each program.

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 C

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