



Erie 2-Chautauqua- Cattaraugus Board of Cooperative Educational Services

Adult Education Program and Professional Services

Report of Examination

Period Covered:

July 1, 2014 – March 16, 2016

2016M-206



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

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 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services, entitled Adult Education Program and Professional Services. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

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

Respectfully submitted,

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



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Erie 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services (BOCES) is a public entity serving 27 component school districts. 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 BOCES' financial and educational affairs.

BOCES operates an adult education program that provided approximately 40 classes and training opportunities to approximately 570 adult students in 2014-15. The BOCES' 2015-16 fiscal year budget of approximately \$78 million is funded primarily by charges to school districts for services and State and federal aid.

Scope and Objective

The objective of our audit was to review BOCES' financial records and management practices related to the adult education program and the procurement of professional services for the period July 1, 2014 through March 16, 2016. Our audit addressed the following related questions:

- Did BOCES properly retain and use surpluses generated by the adult education program?
- Did BOCES procure professional services in the most economical way and in the best interests of its component districts?

Audit Results

We found that BOCES did not enter into intermunicipal cooperation agreements with its component districts for the operation of its adult education programs. The program experienced an operating deficit in 2013-14, totaling \$66,762, and an operating surplus in 2014-15, totaling \$145,539. We project that the program will experience an operating deficit in 2015-16 of approximately \$210,000. However, fund balance has remained at more than \$2.5 million for the three years in our audit period. The portion of the special aid fund attributable to adult education had a fund balance of more than \$2.7 million as of June 30, 2015, which was likely attributable to prior years' financial activity.

BOCES officials have established a comprehensive purchasing policy and procedures that provide thresholds for purchases that must be competitively bid and when proposals or quotes should be obtained for purchases under the threshold for competitive bid. However, officials did not always comply with the purchasing policy and procedures when procuring professional services and insurance. We reviewed the procurement of 18 professional service contracts¹ totaling approximately \$706,000

¹ See Appendix B for detail on the sampling methodology used.

during the audit period. District officials did not seek competition for eight professional services and insurance totaling approximately \$419,000.

Comments of BOCES Officials

The results of our audit and recommendations have been discussed with BOCES officials, and their comments, which appear in Appendix A, have been considered in preparing this report. BOCES officials generally agreed with our recommendations and indicated that they plan to initiate corrective action.

Introduction

Background

The Erie 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services (BOCES) is a public entity serving 27 component school districts. 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 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 the day-to-day management of BOCES 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.

BOCES operates an adult education program that provided approximately 40 classes and training opportunities to approximately 570 adult students in 2014-15. The adult education program is overseen by the Director of Adult Education, who is responsible for developing the budget and tuition rates. Revenue from adult education programs totaled approximately \$3.4 million in 2014-15.

BOCES employs a Director of Finance who is responsible, along with other business office staff, for the management of BOCES' financial records and for obtaining goods and services at a reasonable cost. BOCES' purchasing policy provides guidelines for how professional services are to be procured.

Combined, the component districts educate approximately 36,500 students in Erie, Cattaraugus and Chautauqua counties. BOCES delivers more than 400 educational and administrative services to its component and participating school districts and employs approximately 830 staff members. The BOCES' 2015-16 fiscal year budget of approximately \$78 million is funded primarily by charges to school districts for services and State and federal aid.

Objective

The objective of our audit was to review BOCES' financial records and management practices related to the adult education program and the procurement of professional services. Our audit addressed the following related questions:

- Did BOCES properly retain and use surpluses generated by the adult education program?

- Did BOCES procure professional services in the most economical way and in the best interests of its component districts?

Scope and Methodology

We examined BOCES' financial records for the period July 1, 2014 through March 16, 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 is included in Appendix B of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of BOCES Officials and Corrective Action

The results of our audit and recommendations have been discussed with BOCES officials, and their comments, which appear in Appendix A, have been considered in preparing this report. BOCES officials generally agreed with our recommendations and indicated that 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 BOCES' Clerk's office.

Adult Education Program

BOCES accounts for adult education programs in the 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 (NYSED) BOCES Administrative Handbook 5 (handbook),² 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.³ 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.⁴ 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 found that BOCES did not enter into IMAs with its component districts for the operation of its adult education programs. We reviewed the financial records for the adult education program and found that the program experienced an operating deficit in 2013-14 totaling \$66,762 and an operating surplus in 2014-15 totaling \$145,539. We project that the program will experience an operating deficit in 2015-16 of approximately \$210,000. However, fund balance has remained at more than \$2.5 million for the three years in our audit period. The portion of the special aid fund attributable to adult education had a

² BOCES Administrative Handbook 1: *General Guidelines and Procedures for a CoSer Preparation* and BOCES Administrative Handbook 5: *Operating Procedures and Policies*. For more information refer to <http://www.p12.nysed.gov/mgtserv/boces/handbooks>.

³ For purposes of this audit, we have assumed that BOCES has statutory authority to provide the adult education program and to charge tuition and fees for participation in that program.

⁴ For example, refer to Office of the State Comptroller Opinion No. 2005-8.

fund balance of more than \$2.7 million as of June 30, 2015, which was likely attributable to prior years' financial activity.

The Director of Finance stated that BOCES has never entered into IMAs with component districts for adult education services, and he was not aware of any requirement to do so. In addition, he stated that fund balance was maintained in order to provide for any adjustments that may occur with the programs during the year, as well as to be used as start-up cash if a new program is initiated.

Further, BOCES officials could 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. While budget projections were provided, and the Director of Adult Education stated that tuition was based on program costs, no documentation was provided that showed how the tuition rates were developed.

We reviewed the tuition rates charged by BOCES to determine if the rates were reasonable when compared with the costs of operating each of the adult education programs.⁵ We found that recent tuition rates appear to be reasonable; tuition rate revenues, on average, exceeded individual program costs for 2013-14 and 2014-15 and we project that, on average, individual program costs will slightly exceed tuition rate revenues for 2015-16. Therefore, the more than \$2.7 million of accumulated surplus funds were most likely attributable to activity in prior fiscal years.

BOCES may operate adult education programs if the programs are self-sustaining.⁶ Because BOCES had no IMAs with school districts or other entities for the adult education programs, it is unclear how BOCES officials should treat the surplus funds generated from the adult education programs in prior years. However, BOCES officials should document how tuition rates are determined and periodically evaluate tuition rates to ensure revenues generated from the tuition are not excessive.

Recommendations

The Board and BOCES officials should:

1. Enter into IMAs with component districts for self-sustaining programs and ensure the IMAs indicate the manner in which BOCES will settle surpluses and deficits on at least an annual basis.

⁵ The analysis does not include certain administrative overhead costs that BOCES did not allocate to each program.

⁶ See BOCES Administrative Handbook 5: *Operating Procedures and Policies*.

2. Settle program surpluses or deficits in accordance with guidance provided in the IMAs.
3. Document the calculations used to develop tuition rates for adult education programs and periodically evaluate tuition rates for reasonableness.
4. Contact NYSED for guidance regarding the proper disposition of surplus funds generated from adult education programs and for establishing appropriate tuition rates.

Professional Services

General Municipal Law (GML) requires every BOCES to adopt written policies and procedures for the procurement of goods and services, such as professional services⁷ and insurance, which are not subject to competitive bidding requirements.

The appropriate use of a competitive process, such as a written request for proposals (RFP) and written or verbal quotes, can help ensure that BOCES procures professional services upon the most favorable terms and in the best interest of BOCES and its component districts. In general, policies and procedures should establish guidelines for the use of RFPs and quotes governed by an established dollar threshold.

BOCES officials have established a comprehensive purchasing policy and procedures that provide thresholds for purchases that must be competitively bid and when proposals or quotes should be obtained for purchases under the threshold for competitive bid. The policy requires that officials obtain proposals for all professional services that cost an annual aggregate of \$5,000 or more and at least three written quotes when purchasing insurance.

BOCES officials did not always comply with the purchasing policy and procedures when procuring professional services and insurance. We reviewed the procurement of 18 professional service contracts⁸ totaling approximately \$706,000 during the audit period. District officials did not seek competition for eight professional services and insurance totaling approximately \$419,000 which included the following:

- BOCES did not issue an RFP for legal services totaling \$24,453 in 2014-15. As of the end of our fieldwork, BOCES had not issued RFPs for legal services totaling \$17,768, architectural services totaling \$76,734, and financial advisory services totaling \$20,658 for 2015-16. BOCES officials indicated that these vendors are familiar with the ways in which BOCES operates, and they decided to retain the current vendors rather than request proposals for new vendors.

⁷ Professional services generally include services rendered by attorneys and engineers and certain other services requiring specialized or technical skills, expertise or knowledge; the exercise of professional judgment; or a high degree of creativity.

⁸ See Appendix B for detail on the sampling methodology used.

- BOCES did not review written quotes for insurance services for 2015-16 totaling nearly \$243,000 as of the end of our fieldwork. BOCES officials stated that they rely on their insurance broker to obtain quotes for these services. While the broker was able to provide a letter explaining their procedures for issuing RFPs for insurance services and the firms that provided quotes, these quotes were not provided directly to BOCES for review; BOCES relies on the broker to select the lowest quote. Without reviewing the quotes received or requesting quotes from more than one broker, the Board has limited assurance that it is receiving appropriate insurance coverage at the lowest cost.
- RFPs were not issued for an employee assistance program totaling \$25,148 and two professional development service programs totaling \$11,891. BOCES officials stated that, while formal RFPs were not used, officials performed informal research to determine that the lowest or most prudent cost was received. However, because this research was not documented, the Board cannot be assured that it is receiving the lowest or most prudent cost for these services.

When procurements are made without seeking competition, the Board does not have assurance that services were procured in the most economical way and in the best interests of BOCES and its component districts.

Recommendations

The Board and BOCES officials should:

5. Monitor the procurement of professional services to ensure compliance with its adopted policies and all applicable laws and regulations.
6. Ensure that appropriate purchasing documentation, such as quotes and proposals, is reviewed and retained.
7. Review the purchasing policy as it relates to professional services and update it to specifically address the frequency of issuing RFPs for the various professional services used by BOCES.

APPENDIX A

RESPONSE FROM BOCES OFFICIALS

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



Office of the District Superintendent

November 2, 2016

State of New York
Office of the State Comptroller
Division of Local Government and School Accountability
Attn: Jeff Mazula
295 Main Street
Room 1032
Buffalo, NY 14203

Dear Mr. Mazula:

Erie 2-Chautauqua-Cattaraugus BOCES is in receipt of the Office of the State Comptroller's draft audit report for the period covering July 1, 2014 – March 16, 2016.

The BOCES appreciates the work of your audit team and the related comments regarding procurement of Professional Services and the Adult Education Program at E2CCB. The BOCES strives to ensure public funds are expended in a fiscally responsible and cost effective manner.

We have developed a Corrective Action Plan to assure procurement of Professional Services are in alignment with Board of Education policy.

We believe the steps we have identified related to the Adult Education Program will further ensure that the use of resources is effective, that there is appropriate and documented planning related to the needs of the programs, and that there is enhanced communication related to the financial position of the division.

Thank you for your review of our business practices and your recommendations for improvement.

Sincerely,

David O'Rourke, Ph.D.
District Superintendent/Chief Executive Officer

Enclosure

c [REDACTED]
BOCES Board of Education
J. O'Connor
D. O'Connor
P. Ciminelli

Erie 2-Chautauqua-Cattaraugus BOCES

Corrective Action Plan

Professional Services

Although Professional Services are not subject to competitive bidding requirements under general municipal law, Erie 2-Chautauqua-Cattaraugus BOCES will implement the following course of action to further ensure competition and the prudent and economical use of public money:

- 1.) Review the Board of Education policy related to contracting for Professional Services.
- 2.) Update the policy if necessary.
- 3.) Obtain Board of Education approval for the revised policy.
- 4.) Prepare a plan for solicitation of the affected services.
- 5.) Ensure the parties affected understand their responsibilities.
- 6.) Develop Administrative Guidelines to provide further clarification regarding competition in the solicitation of Professional Services.
- 7.) Perform periodic review to ensure compliance.

The BOCES will promote competition in the acquisition of professional services, which will minimally include advertising anticipated professional service opportunities via the official newspapers as designated by the Board of Education in the agenda of the annual reorganization meeting.

Adult Education

It is recognized that the Adult Education monies are segregated from revenues received from school districts participating in services. Erie 2-Chautauqua-Cattaraugus BOCES will take the following steps related to the Adult Education fund balance:

- 1.) To ensure greater transparency, the BOCES will report the fund balance to our component school districts on an annual basis.
- 2.) Although the OSC report acknowledges that our programs are currently operating with reasonable budget estimates, we will conduct a thorough and comprehensive analysis of the programs that generate Adult Education fund balance. The BOCES will pursue additional guidance if necessary.
- 3.) The BOCES will perform periodic review to ensure compliance and effectiveness.

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

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

Adult Education Program:

- We reviewed BOCES' policies and procedures, as well as interviewed BOCES officials to gain an understanding over the process for billing, collecting and recording adult education tuition, maintaining adult education financial records and retaining and using any surpluses.
- We reviewed trial balances, revenue status and budget status reports for adult education program sub-ledgers to analyze fund balance and results of operations.
- We reviewed actual total expenditures for each of the adult education programs and enrollment in each program to assess whether rates were reasonable and to determine if the programs were self-sustaining.

Professional Services:

- We reviewed BOCES' written purchasing policy and Business Office procedures and interviewed BOCES officials and key staff to gain an understanding of the current purchasing practices.
- We selected a risk-based judgmental sample of 18 professional service providers from the population of all vendor transactions, in all funds, between July 1, 2014 and March 16, 2016, based on our professional judgment and to encompass a variety of dollar amounts.
- We examined vendor records to assess whether BOCES issued RFPs and obtained quotes in accordance with its purchasing policy and if quotes included adequate documentation. We also reviewed invoices for each vendor to determine if payments were made in accordance with agreed-upon rates and for goods and services rendered.

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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