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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
 TITLE 8. EDUCATION DEPARTMENT
 CHAPTER II. REGULATIONS OF THE COMMISSIONER
 SUBCHAPTER L. FINANCE

PART 170. FINANCIAL ACCOUNTING IN SCHOOL DISTRICTS

Current through July 31, 2012

* Section **170.12**. * School district financial accountability.

(a) Training for school district and board of cooperative educational services (BOCES) board members. Except as provided in paragraph (3) of this subdivision, every trustee or voting member of a board of education of a school district or a BOCES, elected or appointed for a term beginning on or after July 1, 2005, shall, within the first year of his or her term, complete a minimum of six hours of training from a provider approved pursuant to paragraph (1) of this subdivision, on the financial oversight, accountability, and fiduciary responsibilities of a board member. For purposes of this subdivision board member shall mean a trustee, a member of a board of education, or a member of a BOCES. The required training may be provided in one session or in partial increments.

(1) Approved providers and curriculum.

(i) Eligibility. Training may be provided by the State Education Department, the Office of the State Comptroller, or other provider that has been approved by the Commissioner of Education pursuant to this paragraph.

(ii) Application. A provider seeking the commissioner's approval to offer training shall submit an application to the New York State Education Department in a format and pursuant to a timeframe as prescribed by the commissioner. The application shall state the objective(s) of the training and include the resumes of any trainers.

(iii) Approval.

(a) In approving a training provider, the Commissioner of Education shall consider the applicant's understanding of the educational environment; understanding of the roles of trustees, boards of education and BOCES; and the experience of the applicant in delivering such training.

(b) The training curriculum shall be approved by the commissioner in consultation with the State Comptroller and shall address, at a minimum, the provisions and context of Education Law, section 2102-a requiring such training; roles and responsibilities of board members including internal auditors and the audit committee; overview of internal controls and risk assessment; internal and external audits; revenue sources and the budget process; monitoring financial condition and maintaining school district fiscal health; and preventing fraud, waste and abuse of district resources.

(2) Certificate of completion.

(i) An approved provider shall give each participant who successfully completes all or part of the required six hours of training specified in this subdivision a certificate of completion showing:

(a) the name of the participant;

(b) the name of the provider of the training;

(c) the date and location of the training;

(d) the content and number of hours of such training; and

(e) a statement that the training qualifies as all or part of the required six hours of training for board members.

(ii) Each trustee or board member shall demonstrate compliance with the training requirement prescribed in this subdivision by filing with the district clerk a copy of his or her certificate(s) of completion.

(3) Applicability.

(i) Upon demonstration of compliance with the training requirements of this subdivision, no trustee or board member shall be required to repeat such training.

(ii) Nothing in this subdivision shall be deemed to require a member of a central high school district board or a member of a BOCES to complete the required training if such member has already completed such requirement as a member of a board of a component school district.

(iii) The provisions of this subdivision shall not apply to the City School District of the City of New York, provided that the chancellor of such school district shall annually certify to the commissioner that the district has a training program that meets or exceeds the requirements of this subdivision.

(iv) A trustee or member of a board of education or BOCES shall be deemed to have met the training requirement of this subdivision if such person can provide sufficient documentation to establish that such person has completed, on or after July 1, 2004 and prior to February 28, 2006, a training program substantially equivalent to an approved curriculum by an approved provider. Any such request and the supporting documentation shall be sent to the State Education Department for approval.

(b) Internal audit function. Except as provided in paragraphs (3) and (4) of this subdivision, each school district and board of cooperative educational services (BOCES) shall establish, not later than July 1, 2006, an internal audit function to be in operation no later than December 31, 2006.

(1) Such function shall include, at a minimum:

(i) development of a risk assessment of district operations, including but not limited to, a review of financial policies, procedures and practices;

(ii) an annual review and update of such risk assessment;

(iii) annual testing and evaluation of one or more areas of the district's internal controls, taking into account risk, control weaknesses, size, and complexity of operations;

(iv) preparation of reports, at least annually or more frequently as the trustees or board may direct, which analyze significant risk assessment findings, recommend changes for strengthening controls and reducing identified risks, and specify timeframes for implementation of such recommendations.

(2) Conduct of internal audit function.

(i) Personnel or entities conducting internal audits, reviews, or risk assessments shall, for purposes of this section, be referred to as the internal auditor and shall:

(a) follow generally accepted auditing standards;

(b) be independent of district or BOCES business operations; and

(c) have the requisite knowledge and skills to complete the work.

(ii) A district or BOCES may use its employee(s), inter-municipal cooperative agreements, shared services to the extent authorized by Education Law section 1950, or independent contractor(s) to fulfill the internal audit function, provided that personnel or entities performing the function meet professional auditing standards for independence between the auditor and the district and comply with the applicable provisions of this subdivision.

(iii) The results of the work of the internal audit function shall be reported directly to the board.

(iv) A school district or BOCES with an internal audit function that meets or exceeds the requirements of this subdivision shall not be required to replace or modify its existing internal audit function.

(3) Exemption.

(i) The following school districts shall be exempt from the requirements of this subdivision:

(a) districts employing fewer than eight teachers;

(b) districts with actual general fund expenditures totaling less than \$5 million in the previous school year; or

(c) districts with actual enrollment of less than 300 students in the previous school year.

(ii) Any school district claiming such exemption shall annually certify to the commissioner that such school district meets the requirements set forth in subparagraph (i) of this paragraph.

(4) Nothing in this subdivision shall be construed as requiring a school district in any city with a population of 125,000 or more to replace or modify an existing internal audit function where such function already exists by special or local law, so long as the superintendent of the district annually certifies to the commissioner that the existing internal audit function meets or exceeds the requirements of Education Law, section 2116-b.

(c) Office of claims auditor. The trustees, board of education of a school district or BOCES may establish the office of claims auditor and appoint a claims auditor who shall hold his or her position subject to the pleasure of such trustees or board.

(1) Qualifications.

(i) The individual appointed as the claims auditor shall have the necessary knowledge and skills to effectively audit the claims. The claims auditor shall have experience with purchasing, bidding and claims, and shall be bonded as the trustees or board shall require pursuant to section 170.2(d) of this Part.

(ii) A claims auditor shall not be required to be a resident of the school district or BOCES supervisory district.

(iii) No person shall be eligible for appointment to the office of claims auditor who shall also be:

(a) a trustee of the school district or member of the board of education or BOCES;

(b) the clerk or treasurer of the school district, board of education or BOCES;

(c) the superintendent of schools or other official of the school district or BOCES responsible for business management;

(d) the person designated as purchasing agent for the school district or BOCES;

(e) clerical or professional personnel directly involved in accounting and purchasing functions of the

school district or BOCES or under the direct supervision of the superintendent of schools or district superintendent;

(f) the individual or entity responsible for the internal audit function pursuant to subdivision (b) of this section;

(g) the independent auditor responsible for the annual external audit of the financial statements; or

(h) a close or immediate family member of an employee, officer, or contractor providing services to the district. For purposes of this subparagraph, a close family member shall be defined as a parent, sibling or nondependent child, and an immediate family member shall be defined as a spouse, spouse equivalent, or dependent (whether or not related).

(2) Duties.

(i) If the trustees, board of education or BOCES appoints a claims auditor to audit and approve each claim, the claims auditor shall report directly to the trustees or board on the result of the audits of claims, and shall report, as determined by the trustees or board of education, to the clerk of the school district or board of education or to the superintendent of schools, for administrative matters such as workspace, time and attendance.

(ii) The claims auditor shall certify that each claim listed on the warrant was audited and payment was authorized.

(3) Delegation. The trustees, board of education or BOCES may delegate the auditing of claims to an individual through the use of:

(i) a school district or BOCES employee who is not prohibited from being the claims auditor;

(ii) an inter-municipal cooperative agreement;

(iii) shared services to the extent authorized by Education Law, section 1950; or

(iv) independent contractors, provided that the individual or organization serving as independent contractor meets the standards for independence between the auditor and the district as set forth in this subparagraph. For purposes of this subparagraph, an individual or organization shall be considered independent if such individual or organization:

(a) has no other responsibilities related to the business operations of the school district or BOCES, as applicable;

(b) has no interest in any other contracts with, and does not provide any goods or services to, the school district or BOCES; and

(c) is not a close or an immediate family member of anyone who has responsibilities related to business operations of the school district or BOCES, or has an interest in any other contracts with the school district or BOCES. For purposes of this subparagraph, a close family member shall be defined as a parent, sibling or nondependent child, and an immediate family member shall be defined as a spouse, spouse equivalent, or dependent (whether or not related).

(d) Audit committees.

(1) Establishment.

(i) Except as provided in paragraph (3) of this subdivision, every school district and board of cooperative educational services (BOCES) shall establish by a resolution of the trustees or board an audit committee pursuant to Education Law, section 2116-c and the requirements of this subdivision. The audit committee shall consist of at least three members, who shall serve without compensation, but who shall be reimbursed for any actual and necessary expenditures incurred in relation to attendance at meetings.

(ii) The audit committee shall be established no later than January 1, 2006 as either:

(a) a committee of the trustees or board members;

(b) as a committee of the whole; or

(c) an advisory committee, which may include or be composed entirely of persons other than trustees or members of the board if, in the opinion of the trustees or board, such membership is advisable to provide accounting and auditing experience. Persons other than trustees or board members who serve on an advisory committee shall be independent and shall not:

(1) be employed by the district;

(2) be an individual who within the last two years provided or currently provides services or goods or services to the district;

(3) be the owner of or have a direct and material interest in a company providing goods or services to the district; or

(4) be a close or immediate family member of an employee, officer, or contractor providing services to the district. For purposes of this subparagraph, a close family member shall be defined as a parent, sibling or nondependent child, and an immediate family member shall be defined as a spouse, spouse equivalent, or dependent (whether or not related).

(iii) The members of the audit committee should collectively possess knowledge in accounting, auditing, financial reporting, and school district finances.

(iv) A member of an audit committee shall not be required to be a resident of the school district or BOCES supervisory district.

(2) Duties and responsibilities. The role of an audit committee shall be advisory and any recommendations it provides to the trustees or board pursuant to this paragraph shall not substitute for any required review and acceptance by the trustees or board.

(i) It shall be the responsibility of an audit committee to:

(a) provide recommendations regarding the appointment of the external auditor for the district;

- (b) meet with the external auditor prior to commencement of the auditor;
 - (c) review and discuss with the external auditor any risk assessment of the district's fiscal operations developed as part of the auditor's responsibilities under governmental auditing standards for a financial statement audit and Federal single audit standards if applicable;
 - (d) receive and review the draft annual audit report and accompanying draft management letter and, working directly with the external auditor, assist the trustees or board in interpreting such documents;
 - (e) make a recommendation to the trustees or board on accepting the annual audit report;
 - (f) review every corrective action plan developed by a district as required under Education Law, section 2116-a and assist the trustees or board in the implementation of such plan; and
 - (g) assist in the oversight of the internal audit function required by Education Law, section 2116-b, including, but not limited to, providing recommendations regarding the appointment of the internal auditor for the district, the review of significant findings and recommendations of the internal auditor, monitoring of the district's implementation of such recommendations, and participate in the evaluation of the performance of the internal audit function.
- (ii) The audit committee shall develop, and submit to the trustees or board for approval, a formal, written charter which shall include, but not be limited to, provisions regarding the committee's purpose, mission, duties, responsibilities and membership requirements, consistent with the provisions of this subdivision.
- (iii) The audit committee shall hold regularly-scheduled meetings and report to the board on the activities of the audit committee on an as needed basis, but not less than annually. The report shall address or include, at a minimum:
- (a) the activities of the audit committee;
 - (b) a summary of the minutes of the meetings;
 - (c) significant findings brought to the attention of the audit committee;
 - (d) any indications of suspected fraud, waste, or abuse;
 - (e) significant internal control findings; and
 - (f) activities of the internal audit function.
- (iv) The audit committee may conduct an executive session pertaining to any matter set forth in section 105 of the Public Officers Law or in clauses (i)(b) through (d) of this paragraph. Any trustee or member of the board of education who is not a member of such audit committee may be allowed to attend an executive session of an audit committee meeting if authorized by a resolution of the trustees or board of education.
- (3) The provisions of this subdivision shall not apply:
- (i) to a school district employing fewer than eight teachers; or
 - (ii) to the city school district of the City of New York, provided that the chancellor of such school district shall annually certify to the commissioner that such district has a process for review by an audit committee of the district's annual audit that meets or exceeds the requirements of this subdivision.
- (e) Annual audit.
- (1) Each school district, except those employing fewer than eight teachers, and each BOCES shall obtain, in a form prescribed by the commissioner, an annual audit of its records by an independent certified public accountant or an independent public accountant in accordance with the provisions of Education Law, section 2116-a(3) and the provisions of this subdivision. The board of education of the city school district of the City of New York and community districts of such city school district shall obtain an annual audit by the Comptroller of the City of New York, or by an independent certified public accountant in accordance with the provisions of Education Law, section 2116- a(3) and the provisions of this subdivision. For school districts required to prepare a contract for excellence pursuant to Education Law section 211-d, the annual audit for the school year during which such contract was in effect shall also include a certification by the accountant or, where applicable, the Comptroller of the City of New York, in a form prescribed by the commissioner, that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.
- (2) The independent accountant shall present the report of the annual audit to the trustees or board and provide a copy of the audit to each trustee or board member. The trustees or board shall adopt a resolution accepting the audit report and shall file a copy of the resolution with the commissioner. A school district or BOCES shall file with the commissioner its audit report for a specific school year by October 15th of the following school year; provided that the city school districts of the cities of Buffalo, Rochester, Syracuse and Yonkers, and the city school district of the City of New York and community districts of such city school district, shall file their audit reports with the commissioner by January 1st of such following school year.
- (3) Request for proposal process. On or after July 1, 2005, all school districts, except the city school district of the City of New York, and each BOCES shall utilize a competitive request for proposal process when contracting for its annual audit. In addition, on or after July 1, 2005, and applicable to all school districts and BOCES, no audit engagement shall be for a term longer than five consecutive years, provided that nothing in this subdivision shall preclude a school district or BOCES, in its discretion, from permitting an independent certified public accountant or an independent public accountant engaged under an existing contract for such services to submit a proposal for such services in response to a request for competitive proposals, or be awarded a contract to provide such services under a request for proposal process. School district or BOCES procurement policies and procedures adopted pursuant to General Municipal Law, section 104-b shall be amended, if necessary, to be consistent with this requirement.

(4) Corrective action plan.

(i) Within 90 days of receipt of such report or management letter, each school district superintendent and BOCES district superintendent shall prepare a corrective action plan, approved by the board, in response to any findings contained in:

- (a) the annual external audit report or management letter;
- (b) a final audit report issued by the district's internal auditor;
- (c) a final audit report issued by the State Comptroller;
- (d) a final audit report issued by the State Education Department; or
- (e) a final audit report issued by the United States or an office, agency or department thereof.

(ii) The corrective action plan shall include expected date(s) of implementation, where appropriate. A school district or BOCES shall, to the extent practicable, begin implementation of its corrective action plan no later than the end of the next fiscal year.

(iii) Each school district and BOCES shall file its corrective action plan with the State Education Department.

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