

The Massachusetts Story

by

Joan E. Schuman

Introduction:

On Wednesday morning, June 22, 2011, Boston Globe readers woke up to a headline on the front page of the Metro section of the Globe¹ that read: “Special ed director said to siphon \$10million”. The next day, June 23rd, the same section of the Globe led off with “Auditor looking at Merrimack case” and from that day forward through August, 2011, the Globe and Lowell Sun continued to run such stories. The stories came out of a report issued on June 20, 2011² by the Commonwealth’s Office of the Inspector General regarding the Merrimack Education Center, Inc., its related organization, the Merrimack Special Education Collaborative, and its Executive Director.

The timing could not have been worse. A special commission on school district collaboration and regionalization which had been established by the legislature in the FY 11 budget had been holding hearings throughout the year and those hearings were going very favorably for educational collaboratives. Their report was expected to be released before the end of the fiscal year. Prior to the establishment of the special commission, the Governor had established an ad hoc task force to look at cost savings in K-12 school districts in 2008 and for the first time since their establishment by statute in 1974, collaboratives were beginning to be viewed as part of the solution to rising education expenditures and greater use of them for cooperative purchasing, special education services,

¹ Boston Globe. June 22 and June 23, 2011.

² Letter from Gregory W. Sullivan, Inspector General, to Mr. Laurence Aiello, dated June 20, 2011

transportation, grant funding and professional development was the recommendation of the task force.³ The expectation for most collaborative directors was that the commission's recommendations would expand on the recommendations made earlier by the cost savings work group and lead to legislation favorable to educational collaboratives.

Instead of issuing their report in June, 2011, before the end of the fiscal year, the special commission released its recommendations in August 2011, after the Merrimac story had appeared in newspapers across the state.⁴ Instead of recommending legislation that would require greater use and support of educational collaboratives by the state's education agencies, the commission recommended changes in the law that would require greater regulation, reporting, and accountability for educational collaboratives, including the directive to the Department of Elementary and Secondary Education to create regulations that would, for the first time, regulate the activities of educational collaboratives.⁵

Background:

Chapter 40, section 4E, of the Massachusetts General Laws, the statute that allows for the creation of an educational service agency in Massachusetts was created and passed in 1974, primarily as a response to the passage of Chapter 766 of the acts of 1972, the MA special education law that became the model and precursor of P.L.94-142 and IDEA. At the same time, Massachusetts was closing many of its mental health institutions and releasing the residents back into the community. As a result of the passage of Ch. 766, school districts were expected to provide educational programming for the children and youth returning to their communities. Chapter 40 section 4E allowed two or more school committees to join together to form an educational collaborative that

³ Recommendations of K-12 Savings Work Group, October 2, 2008

⁴ Special Commission on School District Collaboration and Regionalization: Report to the Legislature, August 2011

⁵ ibid. page 34.

would be governed by the school committees who would collaborate to offer programs and services that would strengthen or complement their school programs. Faced with educating children and youth who had been institutionalized most of their lives, school districts across the Commonwealth raced to form these new entities which they charged with developing programs for students who, for the most part, had severe cognitive delays.

Chapter 40, section 4E⁶ is a very loosely constructed statute, giving cities and towns the authority to establish educational collaboratives through a written agreement that “shall set forth the purposes of the program or service, the financial terms and conditions of membership of the educational collaborative, the method of termination of the educational collaborative agreement and of the withdrawal of member school committees, the procedure for admitting new members and for amending the collaborative agreement, the powers and duties of the board of directors.... The agreement shall be subject to the approval of the member school committees and the commissioner of education.”⁷ The last phrase is the only reference to the state’s education or regulatory agencies. There is no requirement for reporting to the state, providing annual reports, or conducting audits of a collaborative’s finances. Over the years, the statute was amended to allow collaboratives to borrow money, purchase property, and join the public pension systems since collaboratives were deemed to be public employers. Further amendments required teachers, administrators of special education programs, and specialists to be licensed by the appropriate licensing authorities, but that was the only reference to regulatory oversight of collaborative programs, activities, finances, and governance.

⁶ M.G.L. Chapter 40: Section 4E Educational Collaboratives

⁷ ibid.

This was soon to change.

The Story:

No sooner had the legislature returned from its summer break when draft bills began to surface in the fall of 2011. Demands for restrictions on the programs, services, and activities collaboratives could offer; heavier audit and reporting requirements, defining governance structures, oversight by the department of elementary and secondary education were called for; limiting the number of educational collaboratives was suggested; putting caps on salaries and limiting the amount of money that could be carried over from year to year was a theme heard in all of the proposed legislation. The inspector general, the state auditor, the state treasurer (who oversees the state's pension systems), and the Department of Elementary and Secondary Education all made similar calls to tighten up the oversight of educational collaboratives. It was clear from the outset that these bills were on a fast track to passage as several legislators from the affected communities joined in demanding harsh measures that would control the environment in which educational collaboratives operate. Pressure was put on the legislature to take stringent and immediate action to create controls, oversight, and reports by educational collaboratives. There were also attempts to curtail program activities, client reach, and end the entrepreneurial flexibility under which ESAs thrive.

Fortunately, the Special Commission's Co-Chairs, Representative Alice Peisch and Senator Sonia Chang-Diaz, were also the co-chairs of the legislature's Joint Committee on Education. Both knew first-hand the support collaboratives have from their member school systems, superintendents and school committees, and, having personally experienced the positive aspects of collaboratives, were

able to stave off the anger of their peers and calls for dismantling the system of collaboratives in Massachusetts.

Flexibility and entrepreneurialism are the hallmarks of educational services agencies across the country. Those that are most successful have the ability to create programs and services for their states, catchment areas, or member districts. Reporting requirements are reasonable and do not impede the ESA's ability to be entrepreneurial. The demands of the marketplace, e.g., need for the service or program, usually determine the success of the ESA.

The Special Commission on School District Collaboration and Regionalization⁸ had heard positive testimony during its hearings the previous year that touted not only the good work done by collaboratives throughout the state but the potential supports that collaboratives could supply for the state's K-12 educational system in the future. While their report recommended legislation that would tighten up oversight of collaboratives, it also recommended greater use of collaboratives by districts and the state in carrying out its mandates.

The legislation, Chapter 43, An Act Relative to Improving Accountability and Oversight of Educational Collaboratives, which Representative Peisch and Senator Chang-Diaz wrote and shepherded through the legislature was passed on February 23, 2012 and signed into law on March 2, 2012. Not all of the issues were resolved through the legislation: many were to be further defined through regulations promulgated by the Board of Elementary and Secondary

⁸ Special Commission on School District Collaboration and Regionalization. Report to the legislature. August, 2011.

Education (approved by the Board on January 29, 2013), and some were referred to a special commission⁹ that would study the role of educational collaboratives.

“The goal of the Commission is to address the future role and structure of educational collaboratives in Massachusetts. Its charges are to examine and make recommendations on the following topics:¹⁰

1. Whether a statewide network of education collaboratives shall be established to implement new programs and provide technical assistance in partnership with the Department of Elementary and Secondary Education;
2. Whether educational collaboratives are appropriate settings for providing programs and services to developmentally disabled adults over the age of 22...;
3. How to maximize the efficiency and capacity of existing education collaboratives;
4. The appropriate role and relationship, if any, between education collaboratives and related for-profit and non-profit organizations;
5. Appropriate compensation levels and authority of collaborative management employees;
6. The merits of merging or consolidating existing education collaboratives, including the effect on collective bargaining agreements, staff, operational systems, debt obligations, regional school districts and transportation costs...

⁹ Section 5 of Chapter 43 of the Acts of 2012.

¹⁰ Ibid.

7. The provision of non-education related services by education collaboratives to other government entities and the appropriateness and effect of those provisions on the core mission and purpose of the collaborative.”¹¹

The commission, chaired by Representative Peisch and Senator Change-Diaz, is expected to report out its findings and recommendations for any further legislation before the end of the fiscal year and current legislative session. It is expected that the two legislators will file legislation before this session ends that will be influenced by the recommendations from the special commission.

Meanwhile, educational collaboratives in Massachusetts are adjusting to life under regulation¹².

With the law and regulations in effect, audits and annual reports have been submitted to the Department of Elementary and Secondary education and reviewed. New collaborative Articles of Agreement have been submitted for approval by the commissioner, and a fiscal audit cycle has been established to ensure each collaborative’s compliance with the new legislation and regulations.

As part of the commission’s charge, the statewide organization of educational collaboratives in Massachusetts (MOEC) has submitted to the special commission and the commissioner of

¹¹ Commission on Education Collaboratives Objectives and Strategic Plan, 2012, p.4.

¹² 603 CMR 50.00 Adopted by the Board of Elementary and Secondary Education: January 29, 2013

elementary and secondary education, a proposed design¹³ of a regional network of collaboratives that would retain the current number of educational collaboratives in the state. Regardless of the special commission's recommendations, implementation of this network should improve the efficiency of collaboratives across the state. In addition, the network will help build the capacity of smaller collaboratives that should ensure better responses to initiatives from the state and greater support and service to school districts throughout the Commonwealth.

Postscript

On May 1st, 2013, the commission released draft recommendations.¹⁴

- 1.) Encourage, incentivize, and raise awareness of voluntary consolidation and amend state law to allow education collaboratives to consolidate without dissolution

- 2.) Divide the state into six regions and assign every school district in the state to an affiliation with at least one education collaborative in its region

- 3.) Establish a formal link between the Department of Elementary & Secondary Education (ESE) and education collaboratives to assist with the implementation of state initiatives

¹³ Massachusetts Organization of Educational Collaboratives. [The Next Generation of Educational Collaboratives: A Design for the Future](#).2012.

¹⁴ Commission on Education Collaboratives. Draft Recommendations of the Collaborative Commission – May, 2013

- 4.) Require education collaboratives to enter into a memoranda of understanding with DSACs, Readiness Centers, and Workforce Investment Boards (Consolidation)
- 5.) .Encourage and incentivize collaboratives to establish new models of virtual education and alternative education
- 6.) Centralize resources for collaboration
- 7.) Increase incentives and funding sources for collaboratives, including incentives through the Massachusetts School Building Authority (MSBA)
- 8.) Allow current collaboratives that provide adult services beyond age 22 to be grandfathered in and require any collaborative that wishes to expand into the area of adult services to receive approval from the Department of Developmental Services (DDS)

The draft recommendations conclude with the following: “In addition to the recommendations listed above, it appears implicit that in each of the six regions there needs to be a mechanism for identifying a lead collaborative. It is possible that a particular collaborative could take the lead on a particular state initiative, but it is still imperative that a lead collaborative in each region is identified.”¹⁵

¹⁵ Ibid.

It remains to be seen how many of these recommendations will find their way into legislation and if said legislation will pass in this legislative session... Regardless of what the legislature eventually does, the 26 educational collaboratives will continue to work toward forming six regional entities that will cover all school districts in the state. And we will continue to encourage the Department of Elementary and Secondary to work toward a partnership with collaboratives across the state so that every school district in the state will have access to the cost effective quality programs and services that collaboratives offer.

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Author

Joan Schuman, Ed.D., is Executive Director of the Collaborative for Educational Services in Northampton, MA. She may be reached by phone at 413-586-4900, and by email at schuman@collaborative.org.