

# CAPITAL REGION BOCES

## Frequently Asked Question's about: The BOCES Annual Meeting-Administrative Budget Vote - Board Election & Membership

### Important Dates:

**Annual Meeting - April 1, 2009**  
**Administrative Budget Vote - April 20, 2009**  
**BOCES Board Member Election - April 20, 2009**  
(3 terms are expiring on June 30, 2009)

### **BOCES Board Membership**

- 5:5. How many members are on a BOCES board?
- 5:6. Can two residents of the same component district sit on a BOCES board at the same time?
- 5:7. How long is the term of office of a BOCES board member?
- 5:8. What are the qualifications for serving as a BOCES board member?
- 5:9. How are BOCES board members nominated for office?
- 5:10. Are there any restrictions on BOCES board nominations?
- 5:11. Does the BOCES have a responsibility to encourage nominations?
- 5:12. How are the members of a BOCES board elected?
- 5:13. What happens in the event of a tie vote?
- 5:14. What happens if the school board of a component district is unable to obtain a quorum on the day designated for the election or fails to adopt a board resolution voting on the candidates?
- 5:15. What happens if all of the component school districts fail to vote, so that no candidate receives a plurality?
- 5:16. What is the procedure to fill a vacancy on the BOCES board?

#### **5:5. How many members are on a BOCES board?**

A BOCES board may consist of between 5 and 15 members. The number of BOCES board members may be increased or decreased within that range by the commissioner of education (§ 1950(1), (2-b)).

*Capital Region BOCES has a 10 member board; 3 seats are expiring on June 30, 2009*

#### **5:6. Can two residents of the same component district sit on a BOCES board at the same time?**

The law prohibits the election of more than one candidate residing in a particular component school district, unless the number of seats on the BOCES board exceeds the number of component school districts or an unrepresented district declines to make a nomination, provided that a person nominated by a special act school district, a central high school district or any component thereof shall be deemed a resident of the district that nominated him or her (§ 1950 (2-a)(c)). This restriction applies, no matter which district initially nominated the person.

### **5:7. How long is the term of office of a BOCES board member?**

BOCES board members are elected to three-year terms. BOCES board members' terms commence on the first day of July following their election (§ 1950(2-b); see also 5:12 and 5:16).

### **5:8. What are the qualifications for serving as a BOCES board member?**

A BOCES board candidate must reside within the boundaries of a component school district (§ 1950(9-a)). Any candidate nominated by a special act school district, a central high school district, or any component thereof, shall be considered a resident of the district that nominated that person (§ 1950(2-a)(b)).

A candidate need not be a member of a component district school board. However, no employee of a component district is eligible for BOCES board membership (§ 1950(9)), and a BOCES board member cannot accept employment in a component district. On the other hand, a BOCES employee may serve on a component school board (Appeal of Reynolds, 42 Educ. Dep't Rep. 278 (2003); Application of a BOCES, 38 Educ. Dep't Rep. 224 (1998); Matter of Todd, 19 Educ. Dep't Rep. 277 (1979)). The commissioner of education encourages BOCES employees serving on component boards to recuse themselves from voting on issues that present a conflict (Appeal of Reynolds). Also, in an informal opinion, the Attorney General has held that the position of district attorney is incompatible with membership on a BOCES board (Opn. Att'y Gen. (Inf.) 2000-13).

Lastly, no more than one candidate per component district may be elected to serve, unless the number of BOCES seats exceeds the number of component districts or an unrepresented district declines to make a nomination (§ 1950(2-a)(c); see 5:6).

### **5:9. How are BOCES board members nominated for office?**

Members of a BOCES board are nominated by resolution of one or more of the school boards of its component districts. The resolution must be provided to the clerk of the BOCES board at least 30 days prior to the date of the election, as designated by the BOCES president (§ 1950(2-a)(b)).

### **5:10. Are there any restrictions on BOCES board nominations?**

Yes. The clerk of the BOCES board must reject any nomination from a component school district that has another resident serving on the BOCES board unless that member's term will expire at the end of the current year, or the number of BOCES board seats exceeds the number of component school districts, or an unrepresented district declines to make a nomination (§ 1950(2-a)(b)). The clerk must also reject a nominee who is not a resident of any component school district of the BOCES (§ 1950(9-a)), or a nominee employed by a component district within the supervisory district (§ 1950(9); Application of a BOCES, 38 Educ. Dep't Rep. 224 (1998); see also Appeal of Reynolds, 42 Educ. Dep't Rep. 278 (2003)).

Any person or board member nominated by a special act school district, a central high school district, or any component thereof, will be deemed a resident only of the district that nominated that person (§ 1950(2-a)(b); see also Appeal of Stris, 40 Educ. Dep't Rep. 495 (2001)).

There are no limitations on the number of nominations an individual component district may make (see "Questions and Answers on the BOCES Reform Act," State Education Department, October 1993).

### **Legal Opinion:**

Question # 1: May a component board nominate someone who resides within the supervisory district boundaries of a BOCES but who is not a resident of the component making the nomination?

Answer #1: Yes. And as you noted, so long as the component board making the nomination does not already have a resident of that component sitting on the BOCES board.

Question #2: May a component district nominate more than one candidate for election to the BOCES board, if the nominating board is otherwise eligible to submit a nomination?

Answer #2: Yes. There is no statutory limitation on the number of nominations an individual component board may make.

**5:11. Does the BOCES have a responsibility to encourage nominations?**

Yes, it is the duty of the BOCES to encourage the nomination of persons residing in districts not currently represented on the BOCES board (§ 1950(2-a)(b)).

**5:12. How are the members of a BOCES board elected?**

BOCES board members are elected by their component member boards. By February 1 of each year, the BOCES board president must set the date of election in each component district. It is the same day designated for the vote on the tentative administrative budget, between April 16th and 30th. All component school boards meet on that same date, except for central high school boards, which must hold their meetings the next business day (§ 1950(2-a)(b), (4)(b)(5)).

The BOCES clerk then must mail an election ballot to each component district at least 14 days prior to the election. On the date designated for the election, each component board is entitled to cast one vote per vacancy, but no more than one vote per candidate. BOCES board members are elected by resolution of the component boards on the ballot prepared by the BOCES clerk (§ 1950(2-a)(c)).

Each component district must mail or deliver its completed ballot to the BOCES clerk no later than one business day after the election (§ 1950(2-a)(c)). There must be a quorum of board members voting in each component district to have a valid ballot (see "Questions and Answers on the BOCES Reform Act," State Education Department, October 1993).

The candidates receiving the plurality of votes cast are elected with the candidate receiving the highest vote total elected to the position with the longest term, and the candidate with the second highest vote total elected to the position with the next longest term, and so on. If the length of term of all positions to be filled is equal, candidates are elected in order of the greatest number of votes received until all vacancies are filled (§ 1950(2-a)(c)).

**5:13. What happens in the event of a tie vote?**

In the event of a tie vote, the BOCES board president must call a run-off election within 20 days of the initial vote, with only the candidates who received an equal number of votes deemed nominated. If the run-off election results in a tie vote, the winning candidate is determined by drawing lots (§ 1950(2-a)(d)).

**5:14. What happens if the school board of a component district is unable to obtain a quorum on the day designated for the election or fails to adopt a board resolution voting on the candidates?**

If a component district fails to obtain a quorum on that date, the district's ballot is void. The candidates receiving a plurality of the votes actually cast on the day of election are elected (see "Questions and Answers on the BOCES Reform Act," State Education Department, October 1993).

**5:15. What happens if all of the component school districts fail to vote, so that no candidate receives a plurality?**

The BOCES board position(s) will remain open until there is an election that fills the vacancy. However, each component board has a duty to elect BOCES board members, and a willful neglect of this duty may constitute grounds for removal of the school board (see "Questions and Answers on the BOCES Reform Act," State Education Department, October 1993).

**5:16. What is the procedure to fill a vacancy on the BOCES board?**

If the vacancy occurs before January 1 or between the last five days before the nomination deadline (see 5:9, 5:13) and the last day of the school year, a special election must be held on a date designated by the BOCES board president no later than 45 days after the date the vacancy occurred (§ 1950(2-a)(f)). If the vacancy occurs on or after January 1 and before the fifth day preceding the date for submitting nominations, the BOCES may appoint someone to fill the position until the next annual election (§ 1950(2-a)(f)).

When two or more BOCES have been merged or reorganized, elections may not be held to fill vacancies on the new board until a sufficient number of board member terms have expired so that the board has between five and 15 members (§ 1950(7)).

## **BOCES Annual Meeting**

**5:35. When is the BOCES annual meeting held?**

**5:36. What is the purpose of the BOCES annual meeting?**

**5:37. What notice must be given of the BOCES annual meeting?**

**5:35. When is the BOCES annual meeting held?**

The BOCES annual meeting must be held between April 1 and April 15 on a date and at a place and hour designated by the BOCES board president (§ 1950(4)(o)).

*Capital Region BOCES Annual Meeting is scheduled for April 1, 2009.*

**5:36. What is the purpose of the BOCES annual meeting?**

The purpose of the BOCES annual meeting is to present the tentative administrative, capital, and program budgets of the BOCES to school board members of component school districts prior to the vote on the tentative administrative budget, and to conduct other BOCES-wide business (§ 1950(4)(o); see "Questions and Answers on the BOCES Reform Act," State Education Department, October 1993).

**5:37. What notice must be given of the BOCES annual meeting?**

Notice of the time, date, and place of the annual meeting must be given to each of the members of the board and the clerk of each of the component districts by mail at least 14 days prior to the meeting (§ 1950(4)(o)). The BOCES must also publish the notice at least once each week within the two weeks preceding the annual meeting, the first publication to be at least 14 days before the meeting in newspapers having general circulation within the BOCES (§1950(4)(b)(4)).

In addition to the date, time, and place of the meeting, the notice also must contain the following:

- A statement that the tentative BOCES budgets will be presented to the component school board members at the meeting (§ 1950(4)(b)(4)).
- A summary of the tentative BOCES capital and program budgets in a form prescribed by the commissioner (§ 1950(4)(b)(4)).

- A summary of the tentative BOCES administrative budget in a form prescribed by the commissioner that includes the salary and benefits payable to supervisory and administrative staff of the BOCES and the total compensation payable to the district (BOCES) superintendent of schools (§ 1950(4)(b)(4)).
- When and where the tentative budgets will be available to the public for inspection ((§ 1950(4)(b)(4)).

## **Adoption of the BOCES Budget**

5:38. How is the BOCES budget funded?

5:39. Must a BOCES make available copies of its tentative administrative, program, and capital budgets?

5:40. What is included in the BOCES program and capital budgets?

5:41. What is included in the administrative budget?

5:42. Is there a deadline by which a BOCES board must adopt its final budget?

5:43. What is the process for adopting the BOCES program and capital budgets?

5:44. What is the process for adopting the BOCES administrative budget?

5:45. What happens if the tentative administrative budget is not approved by the component districts?

5:46. Are there any limitations on a BOCES contingency administrative budget?

5:47. Are BOCES subject to financial audits?

### **5:38. How is the BOCES budget funded?**

A BOCES budget is comprised of separate budgets for administrative, program, and capital costs. After state aid and federal aid are subtracted from the cost of operating a BOCES, all component districts must share in its administrative and capital costs. Each component district's share of these costs is determined either by resident weighted average daily attendance (RWADA), real property valuation, or resident public school district enrollment as defined in the Education Law. Only one method can be applied in any year, unless otherwise provided by law (§ 1950(4)(b)(7)).

In addition, each component district pays tuition or a service fee for programs in which its students participate. Generally, districts not participating in BOCES services are not required to pay for costs associated with those services, such as salaries for employees, equipment, supplies or student transportation. However, the BOCES board may allocate the cost of such services to component school districts in accordance with terms agreed upon between the BOCES board and three-quarters of the component school districts participating in the service (§§ 1950(4)(d)(4), 1951(1)).

A component district's contribution to BOCES expenditures is derived from state aid and its local tax levy.

### **5:39. Must a BOCES make available copies of its tentative administrative, program, and capital budgets?**

Yes. The BOCES must provide copies of the tentative administrative, capital, and program budgets and attachments to the school boards of each component school district at least 10 days prior to the annual meeting. In addition, the BOCES must comply with any reasonable request for additional information made prior to the annual meeting.

Each component school board must make these budgets available to the residents of their respective school district, upon request (§ 1950(4)(b)(2) and (3); see also 5:40–41).

#### **5:40. What is included in the BOCES program and capital budgets?**

As a general rule, the program budget includes costs for those BOCES shared services that have been requested by and contracted for by the component districts (§§ 1950(4)(b), 1951(1)). These costs must be based on local and statewide uniform unit costs calculated as set forth in the Education Law.

The capital budget includes, for instance, facility acquisition and construction costs; debt expenditures associated with repayment of indebtedness incurred for the acquisition of facilities and capital projects; and operation and maintenance costs such as rent, custodial salaries and benefits, and supplies and utilities. It also includes expenditures associated with the payment of court judgments and orders from administrative bodies and officers, and certain costs relating to employee retirement (§ 1950(4)(b)).

#### **5:41. What is included in the administrative budget?**

By law, the administrative budget must at least include office and central administrative expenses, traveling expenses, salaries and benefits of supervisors and administrative personnel necessary to carry out the central administrative duties of the supervisory district, any and all expenditures associated with the BOCES board, the office of the district superintendent, general administration, central support services, planning, and all other administrative activities.

The BOCES board also must attach to the administrative budget a detailed statement of the total compensation to be paid to the district (BOCES) superintendent of schools, delineating the salary, annualized cost of benefits, and any in-kind or other form of remuneration to be paid, plus a list of items of expense eligible for reimbursement on expense accounts in the ensuing school year and a statement of the amount of expenses paid to the district superintendent in the prior year for purposes of carrying out his or her official duties. The commissioner's regulations further specify the content of each of the tentative budgets and the circumstances under which salaries and benefits of BOCES administrators will be budgeted under program or administration (§ 1950(4)(b)(1); 8 NYCRR § 170.3).

In addition, each BOCES must prepare and append to the proposed administrative budget a report card that includes measures of academic performance of the BOCES educational services, fiscal performance of the supervisory district, and other measures that support the achievement of the Regents standards, as prescribed by the commissioner of education. The measures for each BOCES will be compared to the statewide averages for all BOCES. The BOCES report card must be distributed publicly as required by law (§ 1950(4)(kk); 8 NYCRR § 100.2(cc)). Beginning with the 2002–03 school year, the BOCES report card must include a summary of the BOCES annual violent or disruptive incident report in a format containing such information as the commissioner shall prescribe (8 NYCRR § 100.2 (cc)(4), (gg)).

#### **5:42. Is there a deadline by which a BOCES board must adopt its final budget?**

Yes. The BOCES board must adopt its final program, capital, and administrative budgets no later than May 15 (§ 1950(4)(b)(7)).

#### **5:43. What is the process for adopting the BOCES program and capital budgets?**

The BOCES tentative program, capital, and administrative budgets must be provided to the component districts 10 days prior to the annual meeting (§ 1950(4)(b)(2); see 5:39–40). Component districts review the tentative program, capital, and administrative budgets at the annual meeting held between April 1 and April 15, on a date, place, and time designated by the BOCES president (§ 1950(4)(o); see 5:35–36).

The component districts do not vote on the program and capital budgets. They only vote on the administrative budget (see 5:44–45).

The BOCES board adopts the final BOCES program and capital budgets, along with the administrative budget approved by the component districts, no later than May 15 (§ 1950(4)(b))

(7)). Once adopted by the BOCES board, the administrative and capital budgets became a charge against all the component school districts within the BOCES supervisory district (§ 1950(4)(b)(7)).

#### **5:44. What is the process for adopting the BOCES administrative budget?**

A tentative administrative budget must be provided to the component districts 10 days prior to the annual meeting (§ 1950(4)(b)(2); see 5:39, 5:41). Component districts review the administrative budget at the annual meeting held between April 1 and April 15 (§ 1950(4)(o); see 5:35–36). Thereafter, on the same day, between April 16 and 30, designated by the BOCES president for the election of the BOCES board, each component school board must conduct a public meeting, which may be a regular or special board meeting, to adopt a resolution to either approve or disapprove the BOCES tentative administrative budget (§ 1950(2-a)(b)). The BOCES board president must designate this date no later than February 1 of each year (§ 1950(2-a)(b), (4)(b), (5); see also 5:12). In the case of a central high school district, this vote will take place on the day following the designated date (§ 1950(4)(b)(5)). This resolution approving or disapproving the administrative budget must be transmitted to the BOCES no later than one business day following the vote (§ 1950(4)(b)(7)).

Approval of the tentative administrative budget requires the approval of a majority of the component school boards actually voting (§ 1950(4)(b)(5)).

*Component Boards vote on Board Election and Administrative Budget on April 20, 2009.*

#### **5:45. What happens if the tentative administrative budget is not approved by the component districts?**

If the majority of the total number of component school districts actually voting do not approve the tentative administrative budget, or if there is a tie vote (half the districts approve, half disapprove), the BOCES must prepare and adopt a contingency administrative budget (§ 1950(4)(b)(5)).

#### **5:46. Are there any limitations on a BOCES contingency administrative budget?**

Yes. In a contingency budget for BOCES the amount of the administrative budget may not exceed the amount in the prior year's budget, except for expenditures incurred in the supplemental retirement allowances, including health insurance benefits for retirees (§ 1950(4)(b)(5)).

#### **5:47. Are BOCES subject to financial audits?**

Yes. There are two types of audits that are to be conducted in BOCES districts:

- State audits. The commissioner of education shall conduct periodic fiscal audits of the BOCES and, to the extent sufficient resources are provided to SED, shall assure that each BOCES is audited at least once every three years (§ 305 (25)). In addition, the state comptroller has the authority to examine the financial affairs of a BOCES (Gen. Mun. Law §§ 30, 33–34).
- Independent audits. The commissioner's regulations require that BOCES obtain an annual audit, in a form prescribed by the commissioner of education, of all funds by a certified public accountant or public accountant. The auditor's final report must be adopted by resolution of the BOCES board and a copy must be filed with the commissioner of education by October 1 of each year (NYCRR § 170.3(a)).

#### Sources:

NYS School Law-30<sup>th</sup> edition

Education Law 1950, 1951

Capital Region BOCES Board Minutes

1/17/08

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