

Sullivan County Board of Cooperative Educational Services

Separation Payments

JANUARY 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Sullivan County Board of Cooperative Educational Services

Audit Objective

Determine whether Sullivan County Board of Cooperative Educational Services (BOCES) officials made appropriate and accurate employee separation payments.

Key Findings

BOCES officials did not always make appropriate and accurate employee separation payments.

Officials did not adhere to contract terms for separation payments or obtain Board of Education (Board) approval to waive certain employment terms. As a result, seven of the 21 separation payments we reviewed that total \$66,169 were inappropriate or inaccurate.

Key Recommendations

- Ensure all contract provisions are followed and all requirements are met before approving separation payments.
- Ensure all inputs including final salaries that drive the separation payment calculation spreadsheet are accurate.

BOCES officials agreed with our recommendations and indicated they will take corrective action.

Background

BOCES is governed by a nine-member Board, with a member elected by the board of each component school district and an at-large member.

The Board is responsible for the general management and oversight of financial and educational affairs.

The District Superintendent is the chief executive officer responsible, along with other administrative staff for the day-to-day operations.

The Executive Director of Finance and Operations (Executive Director) supervises all functions of the business office, which is responsible for the calculation and processing of employee separation payments.

Quick Facts

Separation Payments for the Audit Period

	For Audit Period	Tested
Number	38	21
Total	\$265,625	\$224,535

Audit Period

July 1, 2018 – June 30, 2021

Separation Payments

Separation payments are an employment benefit generally granted in negotiated collective bargaining agreements (CBAs) or individual employment contracts and can represent significant expenditures.

How Should Officials Ensure Separation Payments Are Appropriate and Accurate?

Officials should establish procedures to ensure separation payments are based on applicable board-approved notification requests and the applicable CBA or employment contract terms.

All proposed separation payment requests should be independently reviewed and approved before payments are made to ensure the calculation data is correct, eligibility requirements are met and the payment is accurately calculated. Adequate documentation, such as accrued leave balance reports and employment contracts, should be retained to support the payment calculations.

In some instances, a board may have the authority to modify certain requirements of a CBA or employment contract. In such instances, officials should demonstrate that it is in the entity's best interest to waive these requirements. When officials waive CBA or individual employment contract terms and eligibility requirements during the separation payment process, they should have clear board-approved documentation that documents the reasons for the waiver.

Officials Did Not Always Adhere to Contract Terms for Separation Payments

During the audit period, BOCES officials disbursed separation payments totaling \$265,625 to 38 employees who left BOCES employment. These payments were based on six CBAs and one individual's employment contract that stipulated the terms and benefits, including provisions related to separation payments.

The CBAs and individual contract allowed for the payment of unused accrued sick and vacation leave when employees left BOCES employment. One CBA included a provision that allowed eligible employees to receive a retirement incentive. Each CBA or individual contract contained differing eligibility requirements, such as notification deadlines, age and length of service. Once all the requirements were met, the separation payment calculation was determined by the employee's final salary and unused leave balances.

After the payroll clerk received communication from the Human Resources (HR) Department of an employee's intent to leave employment, she entered the employee's data from the accounting software reports (including final salary and unused leave balances) into a spreadsheet. The spreadsheet information

was used to calculate the separation payment based on the stipulated CBA or employee contract requirements and limits.

The payroll clerk attached each section of the corresponding CBA or employee contract to the spreadsheet and forwarded this documentation to either the Executive Director or HR Director for approval and then to the Deputy Superintendent for approval before payments were processed. The Board acknowledged the employees retiring or resigning with an approving resolution documented in its meeting minutes. However, we found no indication that the Board was given the supporting documentation to review for the payments that were the result of contract deviations.

We reviewed \$224,535 in separation payments made to 21 of the 38 individuals who left BOCES employment during our audit period to determine whether the payments were appropriate and accurate. Although the payments to 14 individuals totaling \$158,366 were appropriate, seven individuals were paid separation payments totaling \$66,169 that were inappropriate or inaccurate.

Of the seven payments in question, we found six individuals were paid separation payments totaling \$62,123, who did not meet the notification deadlines stipulated in their CBA or contract. For example, we found that the CBA for one individual, who received an early retirement incentive of \$13,000, specified that a retirement notification be submitted to the Clerk of the Board (clerk) by January 1, 2019 (the planned retirement year) but was not received until May 22, 2019.

In addition, this individual received the maximum amount of \$9,500 for unused accrued sick leave. However, the CBA required the employee to file a retirement notification for this payout by January 15 of the calendar year before retirement (if the individual intended to retire at the end of the school year). This employee's retirement notification was filed with the Superintendent approximately one month before the actual retirement date of June 27, 2019.

The HR Director told us that BOCES administration waived the CBA notification requirements for this total separation payment of \$22,500 because it was in the best interest of BOCES. However, the HR Director was unable to locate the supporting documentation for this waiver. Additionally, we spoke with three Board members and they were unable to provide any documentation that the Board was made aware of these deviations, or able to recall discussing the deviations from the CBA.

Although the payroll clerk's spreadsheets were generally correct, we found one employee's final salary was inaccurate and resulted in an overpayment of \$4,046 because a prior school year stipend (2018-19) was included in the final salary in the year of retirement (July 12, 2019). Officials told us the stipend was included because the employee was still in a lead role and training the new Board-appointed clerk. However, the Board minutes clearly documented the approval

... [S]ix individuals were paid separation payments totaling \$62,123, who did not meet the notification deadlines stipulated in their CBA or contract.

of the newly appointed clerk without a stipend. BOCES officials were unable to provide any proof of Board approval for this stipend and the Board members we spoke with could not recall whether they had approved the stipend.

Absent a provision in the CBAs or individual contracts, BOCES officials should not unilaterally deviate from negotiated contractual language. Further, officials did not demonstrate that it was in BOCES's best interest to waive CBA notification requirements or that the Board was involved in the approval of waivers. When BOCES provides benefits that are not supported by contract terms, it undermines the transparency of financial operations and increases the risk that employees were paid benefits to which they were not entitled, or the Board did not intend to provide.

What Do We Recommend?

The Board should:

1. Ensure that all contract provisions are followed, and requirements are met before approving separation payments.
2. Consult with legal counsel on the most appropriate method to address the inaccurate overpayment to the former employee.

BOCES officials should:

3. Ensure that the payroll clerk's spreadsheet calculations are accurate.
4. Consult with legal counsel to ensure the proper process is followed when considering deviating from CBAs or employment contracts.

Appendix A: Response From BOCES Officials



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January 13, 2022

Ann C. Singer, Chief Examiner
Binghamton Regional Office
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Dear Ms. Singer,

Thank you for giving the Sullivan County BOCES an opportunity to respond to the Draft Report of Examination by the Office of the State Comptroller regarding BOCES Separation Payments for the period July 1, 2018 – June 30, 2021. The BOCES wishes to commend the auditors for their professional demeanor and thank them for the information they provided in the report.

We appreciate the feedback regarding enhanced documentation to substantiate business decisions to waive resignation/retirement notification timelines when it is in the best interest of the organization. The BOCES takes its fiduciary responsibilities very seriously and appreciates the recommendations for adding an additional step to its current procedures for calculating separation payments that documents approval for warranted exceptions. We feel this would have been particularly helpful in the instance where the employee's last day was on a weekend as well as when Sullivan BOCES like other districts throughout the state worked with colleagues to ensure a smooth transition to a new position in a component school district when the BOCES was able to backfill the position earlier. We would like to note that these exceptions were business decisions that lead to savings in health insurance premiums and other benefits as well as breakage on contractual salaries.

The BOCES understands the finding that the former employee was over paid by \$4,046 because the board, through oversight, did not reappoint and reauthorize the clerk stipend in the amount of \$7,850 for the 2019-2020 school year, although the former employee continued to exercise such duties in a transitional capacity. The BOCES has consulted with its legal counsel and will be taking corrective action to resolve this appointment oversight. The employee worked for the BOCES for over twenty-five (25) years and served as the district clerk for the last sixteen (16) years. The individual supported the organization during a critical transition and while not acting on the stipend was an oversight, the employee provided critical training and support to prepare the new district clerk as well as assisted in preparing for the annual reorganization board meeting. It is the opinion of the BOCES that New York State labor law requires that an employer compensate an individual for work they perform. On the recommendation of counsel, the Sullivan County BOCES Board of Education will take board action to retroactively appoint the employee to the position of "Deputy District Clerk" effective July 1, 2019 for the

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purposes of training the new district clerk on all of the duties of the position including the annual reorganization meeting with a stipend for this position totaling \$7,850. The BOCES apologizes for the oversight in regards to acting on this position in July of 2019 and appreciates the auditors bringing this to our attention.

Overall, the BOCES is in agreement with OSC in regards to enhancing its backup documentation to explain and support the decisions that were made in reference to employment end dates, which we agree are directly connected to separation payment calculations. However, in each of these instances the BOCES benefited from the decision to release the employee when it did. Health insurance premiums and other benefits expenses were saved, the organization incurred breakage on contractual salaries and the employee did not earn additional benefit time accruals.

Sullivan County BOCES is committed to ensuring that it operates in compliance with all rules and regulations including employment contract language. Both the BOCES business office and human resources staff take their positions and their responsibilities very seriously and we will be updating our checklists and spreadsheets based on the auditors feedback to ensure that any decisions that deviate from contract language are fully documented and when contractual modifications require it, Board of Education approval will also be sought.

Sullivan County BOCES has always and will continue to perform its duties and responsibilities with the utmost integrity over all aspects of fiscal and human resources management. Safeguarding the assets of the component districts served by the BOCES has always been a top priority for everyone. We are grateful for this opportunity to work with the State Comptrollers auditors in the review of our procedures and processes. We appreciated the courteous attitude and the unobtrusive presence of the OSC audit team which enabled the BOCES to continue its operations without disruption throughout the time the auditors were present. On behalf of the Board of Education and Administration, we extend our thanks to the State Comptrollers office and acknowledge their thorough review of the BOCES Employee Separation Payments processes.

Sincerely,

Robert M. Dufour, Ed.D
District Superintendent &
Chief Executive Officer

Appendix B: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed BOCES officials to gain an understanding of the internal controls and procedures for approving and processing separation payments. We also obtained CBAs and individual contracts executed by BOCES officials and the Board to gain an understanding of the provisions and requirements for each category of employee.
- We reviewed payroll lists for the beginning and end of each school year in the audit period to determine which employees may have left employment. We reviewed our list with the payroll clerk to gain an understanding of who received separation payments and who did not and why. We identified 38 individuals who left employment and received separation payments.
- Using our professional judgment, we selected a sample and reviewed retirement/resignation request notification letters of 21 of the 38 individuals who left BOCES employment within our audit period. We compared the date of the letter to the separation date to verify whether notification deadlines were met.
- Using our professional judgment, we selected a sample of 16 employee calendars from the accounting software for employees who officials considered retired during our audit period. We reviewed the calendars, which included the documented accrued leave balances and examined employees' leave request forms and compared them to the calendars for accuracy. We reviewed employees' personnel files for length of employment and compared them to the CBAs and contracts to determine whether the carryover of leave was possible and corresponded to the amount of time employed.
- Using our professional judgment, we selected a sample of 21 employees (16 previously selected retirees and five other individuals) who left BOCES employment during our audit period. We reviewed annual salary notifications and compared them to the payroll clerk's spreadsheet to verify the accuracy of the separation payments. We selected the five other individuals based on those with the highest separation payments.
- We reviewed employees' personnel files to verify the employee's birthdate and hire date used in the payroll clerk's spreadsheet when age and longevity requirements determined the eligibility for a separation payment.
- We determined whether the separation payment calculations for 21 employees were correct in accordance with the CBAs or employment contracts and determined whether the separation payments were appropriate.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.

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.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must 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 CAP should be posted to BOCES' website for public review.

Appendix C: Resources and Services

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www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

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www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

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