

# 7 lessons from comptroller's audits

By the New York State Association of School Attorneys

School district finances and business practices have come under increasing scrutiny by the Office of the State Comptroller in recent years. It was not always this way. In the early 1980s, the comptroller discontinued regular audits of school districts because they were viewed as redundant. Why use state resources to audit districts when they were having their own audits performed annually?

The answer came in the form of about \$11 million in misappropriated funds in the Roslyn school district on Long Island that outside auditors either failed to discover or ignored. The Legislature quickly passed a new law to strengthen accountability. Among other things, it requires the comptroller to audit every public school district by March 31, 2010. As of Oct. 1, 655 school districts had been audited and 75 audits were still underway.

In the latest accountability legislation, the General Municipal Law was amended to require the comptroller to examine, by the end of the 2011-12 school year, the employee benefit accrued liability reserve funds of public school districts. The Legislature was concerned because several school district audits have

revealed what the comptroller has deemed to be improper use of employee benefit accrued liability reserve funds.

While the March 31 deadline for the comptroller to complete his work is fast approaching, it hardly signals an end to the comptroller's focus on school districts. For example, the comptroller recently wrote to dozens of school districts across the state to advise them that his office would be conducting follow-up audits to review whether those districts had complied with recommendations made in his initial audits. The audit of employee benefit reserve funds further demonstrates that the first round of audits may provide fodder for a second round.

The Board of Regents and the State Education Department have also taken a keen interest in the comptroller's audit findings. A Regents Audit Committee meets monthly to examine each audit and direct department staff to take follow-up action ranging from warning letters to proceedings to remove school board members from office. Publicity stemming from a negative audit has also provoked more than one disgruntled taxpayer to begin an appeal before the commissioner of education under Education Law section 310.

Have any patterns emerged from the audits already performed that can help districts avoid certain pitfalls? The



audits tell us that school boards should ensure that:

1. A competitive bidding process is used for material contracts in excess of \$10,000 and public works contracts in excess of \$20,000. General Municipal Law requires competitive bidding and the selection of the lowest responsible bidder. Failure to do so is one of the most common negative findings cited by the comptroller.
2. The district has established and follows a fair procurement policy for purchases not covered by the competitive bidding requirements, including professional service contracts. The comptroller has been especially critical of districts that have procured materials and/or services without adhering to any RFP process or policy that ensures the "prudent and economical use of public moneys."
3. The district has designed and implemented payroll policies that guide employees in their duties, including ensuring that employee compensation is defined and authorized, and that employees only receive pay and benefits to which they are entitled. The comptroller has noted many instances in which employees are paid benefits to which their contract does not entitle them, often because there is no clearly established rule on what constitutes compensation.
4. All board members take the fiscal oversight, accountability and fiduciary training within one year of election as required by the Education Law. The comptroller has repeatedly cited board members who did not take the required training, and the commissioner has enforced the training requirement by notifying these individuals that they would be removed if they did not remedy their failure to comply with the law.
5. Board members have noprohibited conflicts of interests. The General

Municipal Law and each board's code of ethics prohibits board members from financially benefiting from a contract between the district and a vendor in which the board member has an interest. The comptroller examines whether board members have disclosed any possible conflict of interest and whether the board has steered clear of contracting with vendors in whom a board member has a pecuniary interest.

6. Prospective employees who are required to have fingerprint clearance are cleared before being employed. (Of course, the consequences of inadvertently employing someone with a criminal record who harms a child are much worse than a negative audit finding.)

7. The district has established a claims auditing process and adheres to it strictly. The comptroller continues to cite districts for not ensuring that the claims auditor (if they appoint one) reports directly to the board, that he or she is independent from others on district staff, and for paying claims absent adequate documentation.

Ask your superintendent for a report on whether any of these red flags for the comptroller exist in your district. While your district may have a different system of checks and balances, is it worth risking a critical audit by the comptroller? A critical audit can undermine public confidence and become a time-consuming distraction for your governance team.

*Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Kathy A. Ahearn, a partner in the law firm of Guercio & Guercio, LLP. Ahearn was formerly counsel and deputy commissioner for legal affairs for the State Education Department.*

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