

UNFUNDED AND UNDERFUNDED STATE AND FEDERAL EDUCATION MANDATES

STATE EDUCATION MANDATES – Partially or Unfunded Requirements

School districts continue to bear the cost of implementation and compliance with various statutes, regulations, initiatives, grants, and directives, many of which distract from the primary function of educating children in schools and classrooms. These often controversial “unfunded mandates” become especially onerous during challenging economic times when services to children fall victim to the mandates for compliance with ordered tasks, rules, and directives from the state or federal governments.

The cause and effect of these growing local burdens and links to their funding support are a frustrating source of conflict to state / local harmony and cooperative efforts.

The Massachusetts Association of School Business Officers (MASBO) and The EDCO Collaborative have both reported on this issue and the points made are incorporated in this document. The MA Association of School Superintendents and MASC have also revised our own lists as new mandates are imposed.

Thirty-four years ago, “Proposition 2 ½” restricted unfunded mandates and set forth requirements for state funding. However, a series of court decisions and subsequent recrafting of education funding under the MA Education Reform Act of 1993 has allowed state government to continue to impose requirements on districts without, in the opinion of many local educators, sufficient funding to cover all costs.

In 2011, State Auditor Suzanne Bump began a thorough review of state and federal mandates. MASC commends and encourages the Auditor’s work in this area.

An initial finding related to transportation services for mobile and transient students under the McKinney Vento Act The finding identified these services as an unfunded mandate. The initial estimate of costs to local districts was \$12 million in Fiscal Year 2012 and that amount grew to \$14 million by 2014. However, to date the Legislature has not fully funded this identified unfunded mandate. In FY14, this line item was underfunded by approximately 50%.

In 2013, the Auditor identified another unfunded mandate regarding services to students who have been suspended or expelled from school. Beginning June 1, 2014, schools are responsible for ensuring that students excluded from school are able to continue making academic progress during the period of exclusion. This requires staff to be trained to follow the mandates and new regulations. It also requires changes to policies and additional reporting and paperwork.

General Overview of the General Regulatory Requirements with Cost Implications

The largest legislated program to fund public education, known commonly as the Chapter 70 funding system, does not cover in full the cost of mandates inherent in the law and regulations. The system remains essentially as it was at the start of the Education Reform program in 1993. The reimbursement formula has been modified somewhat and annual funding has increased significantly, but school districts have for many years had to budget for expenses that outstrip both the rate of inflation and the state’s ability to grow state aid to education faster than the cost-of-living for schools.

In addition to funding shortages, some of the mandates that districts must address are:

- Time and Learning standards that required some districts to expand time spent on classroom instruction.

- Curriculum frameworks that have been established in seven areas, requiring new and expanded areas of educational activity.
- Implementing, adhering to, or complying with any one of the 15 assessment, accountability and accreditation systems that were created by Education Reform or imposed by the Department of Elementary and Secondary Education or the US Department of Education, including the District Accountability System, which resulted from the state waiver of No Child Left Behind¹. Superintendents have estimated that the growth of compliance mandates has expanded ten-fold. One estimate is that every educator in a public school spends as much as 160 hours per year on pure compliance requirements that are not classroom instruction or preparation for teaching.
- The Department of Elementary and Secondary Education has produced a list of 106 reporting requirements (the “checklist”) that are required of superintendents each year.
- Federal regulatory compliance is an added burden as districts fulfill obligations to the Elementary and Secondary Education Act, Race to the Top initiatives and the Individuals with Disabilities Education Act.
- New Educator Regulations that prescribe a revamped process for evaluation of superintendents, other administrators and teachers will require an estimated 10 additional hours per week for principals. It also requires considerably greater time and energy of school committees and superintendents and department heads than in the past. The highly prescriptive language and recommended standards as well as the need to renegotiate collective bargaining agreements to accommodate the new requirements for teachers and others will have severe cost implications, including the financial implications of professional educator time and legal services.
- Race to the Top requirements were fulfilled in some districts by temporary implementation funds that will expire at the end of Fiscal Year 2014, leaving local school systems with the aftermath in the form of new curriculum mandates for the Common Core, the educator evaluation system, and the final stages of the achievement gap legislation of 2010. This includes the establishment of the new district accountability system and the priority to close the achievement gap as a contingency for receiving a waiver from the No Child Left Behind method of adequate yearly process calculations to determine

¹ These systems include

1. District Accountability System, which requires all students to be “college and career ready” by 2017. Each year, more and more districts fail to make the necessary, arbitrarily defined, progress toward this goal and receive negative labeling from DESE.
 2. MELE-O (MA English Language Assessment- Oral), and
 3. MEPA (Massachusetts English Proficiency Assessment).
 4. MCAS General Testing in Math, Language Arts and Science at several grades and on several topics.
 5. Audits from the successor entity to the Education Management Audit Council whose functions have been moved to the Department of Elementary and Secondary Education.
 6. DESE Assessment/Accountability Implementation (as revised by the 2010 legislation and as established originally in regulations rushed to approval two weeks before the 2006 election).
- Coordinated Program Reviews which include seven audits:
7. Special Education Program Audits to measure compliance with the Massachusetts special education statutes (“Chapter 766”) and the federal Individuals with Disabilities Education Act (IDEA) provisions.
 8. Civil Right Audit
 9. English Language Learners Audit;
 10. Safe and Drug Free Schools Communities Act;
 11. Nutrition and Food Services;
 12. Title I Program Review (General and NCLB).
 13. Chapter 74 Vocational Program Audits
14. Accreditation (an 18 month process) by the New England Association of Schools and Colleges
 15. National Assessment of Educational Progress (NAEP).

proficiency. Because we will still have the nation's highest proficiency standard, pressure on districts will increase. Districts that did not receive Race to the Top funds are required to comply with the same mandates and adherence to new legislation.

- The potential change to the PARCC assessment system will require many districts to increase investments in technology with no clear path to how those investments will be funded.

Massachusetts superintendents, School committee members and school business officers have compiled a partial list of mandates that are listed below:

Regular Education

Provide free and equal (and appropriate) education to all students from kindergarten through grade 12. We believe that Chapter 70 is underfunded by about \$2.1 billion that would be required to provide necessary and mandated services.

Special Education

Districts must provide education to special education students from age three to age twenty-two. This must be done in the least restrictive environment.

The cost of providing assessments, evaluations, and specialized instructional services exceeds the funding provided by federal and state sources. In addition, non-instructional services within the review and appeal processes such as arbitration, mediation, and hearings result in extraordinary costs to the district. The personnel, administrative, and technology costs inherent in the delivery of appropriate services are exorbitant. Individual Education Plans dictate where a student must go to school, requiring outplacements and special education transportation.

Special Education Transportation

Currently, about \$165 million in mandated but unreimbursed transportation costs are incurred by school districts for students in special education programs.

"504 Services" For Physically Disabled Students

School districts are required to provide students with disabilities with accommodations that will assist in their learning according to federal law. This may include any disability that is not covered by special education. Teachers must accommodate all needs written into a student's "504 plan." State and local options are constrained.

Transportation to School for the General Student Population

Districts are required to provide transportation to all students in grades K through 6 who live two miles or more from the school. Regional districts received transportation reimbursement for about 70% of these costs in FY14, even though 100% was originally promised as an incentive for districts to regionalize. In addition, municipal school district aid was eliminated during lean budget years and has not been restored.

Education Evaluation

Recently promulgated regulations require the implementation of a new educator evaluation system for teachers, administrators and superintendents. The regulations require renegotiation of collective bargaining agreements for unionized educators and a much longer evaluation process for principals, nonunion department heads, and central office administrators, including superintendents. Preliminary estimates are that building administrators may need

to commit up to ten additional hours per week to fulfill the requirements of the new regulations, while the superintendent and central office staff will need more time to fulfill their obligations. In addition, there will be the requisite professional training and development to educate the affected professionals about new standards and evaluation processes.

McKinney-Vento and Costs Associated with Homeless and Transient Students

This component of the federal Elementary and Secondary Education Act requires that schools accept any homeless student who wishes to attend the public school. In addition, McKinney-Vento requires the school district to transport any homeless students living in their district to the district of their last permanent address. .

Services to English Language Learners

Specially trained teachers must provide services to students who are “English Language Learners (ELLs).” In fact, all educators who serve these students and the administrators who supervise them must complete special professional development training as a regulatory requirement. The forty-five hours of training must be completed by SY 15-16. There are educational materials and testing costs associated with the ELL services that are provided.

- All communications that need to be sent to the homes of all students (not just ELL) whose parents do not speak English as their first language must be translated into their native languages. The number of languages spoken, and in need of translation, is growing.
- ELL training is required even when only one (1) student in the district is an ELL student.
- Districts are required to provide Sheltered English Immersion services for students whose first language is not English. Districts are responsible for developing procedural manuals, forms, parent outreach, interpreters, and translation of documents. Districts are also required to provide Sheltered English Immersion training in Categories 1, 2, 3, and 4 for all staff who work with English Language Learners. All levels and types of services as provided for English-speaking students must be provided for ELL students in their primary language. Every student whose first language is not English is required to be assessed, to determine language proficiency upon registration and admission to the public school; stages of language acquisition need to be determined in order to identify the level of services required for each student. Students must also be supported by staff members in order for them to participate in Massachusetts English Language Acquisition – Oral (MELA-O) and Massachusetts English Proficiency Assessment (MEPA) in reading and writing as well as the MCAS assessments.

Home Schooling

The district must monitor and document all home-schooled students. This includes identifying families and reviewing detailed home schooling plans for compliance with state guidelines. Though school districts are required to provide this oversight there are not funding or reporting requirements to or from the state.

MCAS Testing

MCAS testing is required annually in grades 3 through 10. Students must pass the grade 10 testing in math and English in order to graduate from high school. Districts have targets for student growth which require that all students be “college and career ready” by 2017. Districts need to provide extra help and extra time on task for students who are not on track to meet this goal. District must continually upgrade the curriculum to keep up with the testing.

- Districts must provide special tutoring for students who do not perform well in the testing and must track and contact non-graduates if they fail MCAS. This requires guidance time and mailings.
- The costs for instructional time and funds associated with the preparation for, documentation for, administration of, and reporting about the multiple assessments in grades 3-10 are difficult to quantify.

Curriculum

Common Core Standards: Districts must revise and create new curricula to conform to the new Common Core Standards which have been adopted by the state. This work must be done after school and during the summer. Instruction hours must provide at minimum 990 hours of instructional time at the secondary level and 900 hours at the primary level.

Individual Student Success Plans: Districts are required to deploy administrative, teaching, secretarial, guidance, and technology staff and resources (including but not limited to intervention programs in ELA and Math) to ensure that students receive additional support services that address individual student needs as a result of statewide assessment mandates (MCAS). Instructional support and resources such as texts, workbooks, and online instruction are examples of areas that require increases in expenditures.

Curriculum Requirements: The Massachusetts Curriculum Frameworks require that districts provide additional instructional staff (e.g. health teachers and guidance staff) to ensure that all curriculum areas are addressed. The periodic review and alignment of every curriculum area requires substantial investment in time (including committee review, curriculum development, printing and dissemination of curricula) and resources (texts, consumable items, and online access).

Residency Issues

Residency becomes an issue when a residential special education institution is located in a Massachusetts community. Students admitted to that institution sometimes attract the family, or a guardian member of the family, to relocate to the community for purposes of being closer to the resident student. This includes out of state as well as in-state residency shifts and families with multiple residents. Such shifts determine assignment of costs to the host resident community.

While there is local control on the admission to kindergarten there is a great deal of differentiation of starting age. Under school choice students may enter into a district at an earlier age than the district in which they reside. This potentially draws students, and the funding that follows the students, out of the district with the later starting age.

Vocational Education

School districts are required to allow students to attend out-of-district vocational schools when programs are not offered in the regional district to which the local district belongs. Unlike the Charter School Reimbursement, there is no apparent reimbursement for vocational placement, though the vocational student, like the charter student, is counted in the Foundation Budget of the sending district. In addition, school districts are required to transport these secondary students to the schools of their choice. There is only partial (up to 50%) reimbursement for vocational education transportation.

School Choice

This program requires all school districts to admit students from other districts in the state unless the host school district takes action to restrict or prohibit accepting non-resident students from other Massachusetts school districts.

- Admitted choice students' siblings are thereafter entitled to enrollment in the school also, even when there is little or no space for new local students to enroll. Districts losing students to choice have no control over the students who choose to leave and are charged for the cost of those students as assessments on the Cherry sheet.
- With declining enrollments and constraints on local funds, it is expected that this "free-market-choice" of school districts will expand causing a drain on resources from more vulnerable school districts. This will have an effect on the capacity to address issues for low-income school districts often having the neediest students.

Charter Schools

School districts have no control over students who wish to attend charter schools rather than the local district. Local residents have no say in how these schools operate or how their tax dollars are used unless they happen to be selected by the charter school to serve on its board of trustees. In other words, charter schools operate outside the reach of city, town, and regional government.

- Many persuasive arguments have been made to demonstrate such counter-intuitive outcomes as lower numbers of special education students enrolled, the virtual absence of limited English proficient students, and the ability of charters to transfer students out of their school back to the public school district.
- We believe that the current charter school funding formula is unreasonable because it draws away from a city or town (or region) chapter 70 allocation

Staffing

Professional Development: With the enactment of Education Reform, all teachers and other professional staff must be re-certified every five years. The district must provide professional development required for re-certification, with no cost to the individual employee.

Highly Qualified Staff: This requirement is a mandate that ensures employment of and reporting on highly qualified staff members and requires a substantial investment of time and money at all school levels. In many cases, there is insufficient guidance for districts that enables administrators to assist teachers and professional staff to meet the requirements established by DESE. (For example, appropriate licensure and completion of a designated number of courses is required for teaching assignments for which licensure may not exist at this time.)

Foster Care & State Wards

Districts are required to educate students who have been placed by the state in foster care and state ward settings. If a student has special needs, the town is responsible for that student's education, even if the student is enrolled in a day or residential school that is not in town.

SIMS & EPIMS

The state requires that each district have software in place that will allow districts to report data on all students and staff in a format that is compatible with the state databases. This process has been very time-consuming and costly to districts for training and updates.

With EPIMS, the labor and technology costs of providing the information to DESE are significant. Many hours are required to collect and verify information, upload it to DESE, and continually review to ensure accuracy. Administrative costs are incurred to complete the Teacher Quality Improvement Plan (TQIP) and update information. In addition, significant time is consumed by communicating with teachers and administrators to ensure validity of reporting.

With respect to SIMS, it must be recognized the reporting requirements consume significant secretarial hours and require extensive technology fund investment in terms of hardware (administrative computers) and reporting systems (student software programs). There are multiple reports required during the course of the school year.

Reporting & Auditing

The school district must provide timely reports to the state throughout the year. There is a financial end-of-year report that takes a great deal of time to prepare. An outside auditing firm must audit this report each year.

Student Activity Accounts: In a town it is required that these funds be kept in accounts under control of the Town Treasurer. The funds are deposited in an agency fund. Each school has a checkbook that allows the school to keep a small amount of cash to pay bills as needed. The checking accounts are reimbursed through a system that requires them to complete a form for reimbursement and attach the documentation. This is sent to the Business Office for verification and then sent to the Treasurer's Office. These accounts must have a minimum of an internal audit yearly and an audit from an outside firm every three years. The town auditors perform a yearly audit on these accounts. Although this allows for more accountability, it adds a great deal of time to the workload of existing staff to monitor and process the transactions.

Unexpended Education Funds

Massachusetts local school districts are required, unlike as in many other states, to return, at the termination of each fiscal year, unexpended/unencumbered funds to the municipality's general fund. This requirement is counter to stimulating incentives for school districts to find creative ways to generate savings throughout the fiscal year. Municipalities often conclude that funds, which are returned at the end of the fiscal year, is misinterpreted as evidence that the school district did not really need said funds. School districts are not permitted to establish rainy day funds.

Technology

Each year, the district must have a technology plan. An annual report must be sent to the state indicating how the district is using technology to teach, how much is being spent and what the district plans to spend in the future. There are technology benchmarks that must be met by students at each grade and all students must meet state-defined technology proficiency by the end of grade 8. The development of technology plans (incorporating professional, administrative, and community personnel), the recommended student to technology (computer) ratio, and the ratio of technology personnel recommended for districts, directly affect school budget development.

The potential change to the PARCC assessment system will require many districts to increase investments in technology with no clear path to how those investments will be funded.

The Educator Evaluation System Imposed upon All Districts by DESE Regulation

Starting with the Race to the Top Districts, but continuing as an imposed mandate upon all districts in 2013-14, a new educator evaluation system must be implemented. This is a highly prescriptive and detailed system requiring considerable commitment of time to conceive, implement, and utilize. There are mandated hours of training for evaluatees and more extensive training required for evaluators. It is estimated that at least ten hours a week of a principal's time must be devoted to implementing the new evaluation system. In addition, there is language that must be collectively bargained.

Educational Services to Students Who Are Suspended or Expelled from School

Legislation requires that, beginning June 1, 2014, district which suspend or expel students from school must ensure that those students are able to make continued educational progress during the time they are excluded. This has already been declared an unfunded mandate by State Auditor Suzanne Bump.

Districts will be required to make policy changes and train staff to comply with the new mandates. New education service plans may include tutoring, alternative placements, distance learning and providing educational services outside of regular school hours.

Bullying Prevention

Recent legislation to address issues of bullying requires schools to have a Bullying Prevention and Intervention Plan. The plan must outline policies and procedures aimed at preventing bullying, cyber bullying and retaliation. In addition, schools must have a curriculum on bullying prevention, must provide ongoing professional development, must provide written notices of the plan to staff, to parents and, in age appropriate language, to students.

Administrative Mandates with Cost Implications

In addition to the 15 systems identified above, other mandates with cost implications include:

- Criminal records checks for all staff having unsupervised contact with students and other school employees.
- Emergency evacuation plans add training time, signs, posters and other means of alerting.
- Title I Requirements for costs associated with delivery of services and the reporting and documentation requirements often exceed funding.
- Crisis Prevention Intervention (CPI) training – requires that the district provide training for instructors who then instruct a majority of staff members in techniques to de-escalate student crises. Associated costs are incurred to hire substitutes for classes whose teachers are required to participate in training.
- Pre-school requirements – Districts must ensure that they provide integrated (ratio of regular and special education) settings for all students in accordance with the regulations of Early Education and Care. The requirements for assessment, evaluation, and provision of services are costly.
- Implementation of anti-bullying law and regulations, including the development of implementation policies and action plans.
- Implementation of new head injury and concussion regulations.
- Implementation of school nutrition regulations and requirements.

Building Maintenance

Districts have a requirement to spend a minimum amount to maintain buildings and are required to pay “union scale” otherwise know as “*prevailing wage*,” on projects for repairs and maintenance when done by an outside contractor. This mandate results in higher costs for many skilled trade services.

The following is a list of annual inspections and tests required by the state for maintenance of buildings:

- boiler inspections;
- air tank inspections;
- fire alarm tests;
- fire suppression tests (kitchens);
- fire extinguisher tests;
- elevator & chair lift inspections;
- under-ground tank inspections/replacements,
- drainage back-flow controls,
- stage rigging inspections;
- Integrated Pest Management Plans (use of pesticides) including community notifications;
- fire sprinkler tests; and
- Asbestos inspections.