



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

SUZANNE M. BUMP, ESQ.
AUDITOR

TEL: 617-727-2075

October 17, 2017

Framingham School Committee
Framingham Public Schools
73 Mount Wayte Avenue, Second Floor
Framingham, MA 01702

RE: The Financial Impacts of Educator Evaluations, G.L. c. 71, § 38, on the Framingham Public Schools

Dear School Committee Members:

On June 27, 2017, the Framingham School Committee petitioned the State Auditor's Division of Local Mandates (DLM) regarding the financial impacts of educator evaluations on the Framingham Public Schools. Specifically, you indicated in your petition that the educator evaluation requirement has put a significant financial burden on the Framingham Public Schools, including the hiring of fourteen new vice principals, the purchase of new software, and two hours of professional development for teachers, at an estimated expense of \$1,181,000. You believe that these requirements impose direct service and cost obligations on the Framingham Public Schools in contravention of the Local Mandate Law, G.L. c. 29, § 27C. Because you were unable to meet with DLM until after the 60 day deadline, DLM requested an extension of the deadline.

In preparation for this determination, DLM staff met with Framingham School Committee Members Michelle Brosnahan and Beverly Hugo and staff from the Framingham Public Schools, including Superintendent Robert Tremblay, Assistant Superintendent Inna London, and Jodi Steverman. We also spoke with Ronald Noble, Manager at the Center for Instructional Support for the Department of Elementary and Secondary Education (DESE), and Robert Ross, General Counsel for the Executive Office for Administration and Finance (ANF), and Bran Shim, Fiscal Policy Analyst for ANF.

After a review of the teacher evaluation statute, G.L. c. 71, § 38 and related regulations, DLM concludes that educator evaluations are not an unfunded state mandate within the meaning of the Local Mandate Law. The Local Mandate Law provides protection against post-1980 laws that imposes more than an incidental local administration expense that are not locally accepted or funded by the Commonwealth. While the Local Mandate Law applies to most laws governing local activity, the Local Mandate Law does not apply to laws governing the terms and conditions of municipal employment, this is governed by Article 115 of the Amendments to the Massachusetts Constitution (Article 115).

Application of the Local Mandate Law to G.L. c. 71, § 38

In general terms, the Local Mandate Law, G.L. c. 29, § 27C, provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or be made conditional to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, a determination of the cost for complying with the unfunded mandate. DLM's deficiency determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate.¹ Alternatively, a community may seek legislative relief. However, the Local Mandate Law does not apply to all laws governing local activity. Laws that notably fall outside the scope of the Local Mandate Law are federal laws and regulations and laws regulating the terms and conditions of municipal employment.²

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*, 416 Mass. 751 (1994). Of particular relevance to this petition, the challenged law must take effect on or after January 1, 1981, it must either be a new law or a change in a law that rises to the level of a new law, and it must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense.³ Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law.⁴

Applying this analysis to the issue raised in your petition, DLM has determined that the educator evaluation provisions of G.L. c. 71, § 38 are not a mandate within the meaning of the Local Mandate Law. Laws and regulations that increase the cost of the terms and conditions of municipal employment are governed by Article 115 of the Amendments to the Massachusetts Constitution, not the Local Mandate Law.

The educator evaluation provisions of G.L. c. 71, § 38, pertain to the terms and conditions of municipal employment, as evidenced by the fact that the evaluations "may be used in decisions to dismiss, demote or remove a teacher or administrator..."⁵ Additionally, the procedures for conducting educator evaluations are subject to the provisions of the collective bargaining agreement under G.L. c. 150E.⁶ Finally, school committees and collective bargaining representatives must mutually agree to the educator performance standards.⁷ Because the procedures for conducting educator evaluations are subject to collective bargaining, which are negotiations between an employer and a group of employees to determine the conditions of employment, DLM finds that educator evaluations relate to the terms and conditions of employment.

¹ See M.G.L. c. 29, § 27C (e).

² *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 697 (1985); *City of Cambridge v. Attorney General*, 410 Mass. 165, 170 (1991).

³ *Worcester*, 416 Mass. at 754-755.

⁴ *Lexington*, 393 Mass. at 698; *Sch. Comm. of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

⁵ G.L. c. 71, § 38.

⁶ G.L. c. 71, § 38.

⁷ *Id.*

Assistant Superintendent Inna London confirmed that the Framingham Public Schools use the educator evaluations as a factor to determine whether an educator should be placed on an improvement plan; the results of an improvement plan may lead to a recommendation for dismissal.⁸ Thus, it is DLM's opinion that the educator evaluation is the kind of law that Article 115 was intended to regulate.

Even if DLM did not believe that educator evaluations were governed by Article 115 of the Amendment to the Massachusetts Constitution, the Local Mandate Law would not apply because G.L. c. 71, § 38 is exempt from the Local Mandate Law. The Supreme Judicial Court held that the Legislature retains authority to expressly override the Local Mandate Law.⁹ The Court based its decision on the fact that the Local Mandate Law is not a constitutional provision and "enjoys a legal status no different from any other statute" and can be overridden.¹⁰ The educator evaluation provisions were revised and expanded upon by the Education Reform Act of 1993. The Education Reform Act states, in pertinent part, that "this act shall apply to all cities, towns, and regional school districts notwithstanding section twenty-seven C of chapter twenty-nine of the General Laws and without regard to any acceptance or appropriation by a city, town, or regional school district or to any appropriation by the general court."¹¹ Since the Education Reform Act of 1993 specifically exempted its provisions from the Local Mandate Law any local cost associated with administering educator evaluations falls outside the scope of the Local Mandate Law.

Article 115 of the Amendments to the Massachusetts Constitution

Similar to the Local Mandate Law, Article 115 restricts the Legislature's authority to regulate the terms and conditions of municipal employment when those changes would impose an additional cost upon two or more municipalities that is not locally adopted or funded by the Commonwealth. Article 115 states that, in relevant part, that

No law imposing additional costs upon two or more cities or towns by the regulation of the compensation, hours, status, conditions or benefits of municipal employment shall be effective in any city or town until such law is accepted by vote or by the appropriation of money for such purposes [. . .], unless such law has been enacted by a two-thirds vote of each house of the general court present and voting thereon, or unless the general court, at the same session in which such law is enacted, has provided for the assumption by the commonwealth of such additional cost.¹²

While the Division of Local Mandates has no statutory authority to determine whether the standards of Article 115 apply to a given law; we researched the legislative history of G.L. c. 71, § 38 as part of our mandate determination. The educator evaluator requirements were originally added by Chapter 188 of the Acts of 1985 which was passed by a two-thirds majority of present members of each house. Revisions were made to G.L. c. 71, § 38 by the Education Reform Act of 1993 which was passed by a two-thirds vote of the present members of each house.

⁸ Unfunded Mandate Meeting Packet, p. 28.

⁹ *Lexington*, 393 Mass. at 698; *Sch. Comm. of Lexington*, 397 Mass. at 595.

¹⁰ *Sch. Comm. of Lexington*, 397 Mass. at 596 (citing *Lexington*, 393 Mass. at 698).

¹¹ St. 1993, c. 71, § 67.

¹² art. 115 of the Amendments to the Massachusetts Constitution.

Funding Provisions of G.L. c. 71, § 38

The Commonwealth has been obligated to reimburse school districts for reasonable expenses associated with educator evaluations since 1985.¹³ Section 38 of Chapter 71 states, in pertinent part, that school districts “shall be reimbursed for the reasonable costs incurred” to comply with the educator evaluation provisions “in accordance with section sixty of chapter fifteen.”¹⁴ Section 60 of Chapter 15 states that the Commissioner for the Executive Office for Administration and Finance shall convene a working committee to establish guidelines for the reimbursement of reasonable costs associated with educator evaluations as well as some other statutory obligations.

In our discussions with Framingham Public Schools, Superintendent Tremblay stated he was not aware of this provision and did not believe that the Framingham Public Schools received any funding. DESE also indicated that it was not aware of any funding for educator evaluations.

General Counsel Ross of Executive Office for Administration and Finance, informed DLM that Framingham received funding to support the professional development for educator evaluations through federal grants and state allocations, including the professional development allocations of Chapter 70.¹⁵ In FY 2017, Framingham received \$344,375 from a Title II federal grant to support professional development for educator evaluations.¹⁶

In FY 2013, the state allocated \$3,500,000 to provide training for evaluators and school teams conducting educator evaluations statewide.¹⁷ Chapter 131 of the Acts of 2012, also encouraged school districts to use federal Title II, A grants to help fund the training for educator evaluations and authorized school districts to use all or some of their Chapter 70 professional development allotment to implement an evaluation training program for teachers and administrators in FY 2013 and FY 2014.¹⁸

¹³ St. 1985, c. 188, § 14, available at <http://archives.lib.state.ma.us/actsResolves/1985/1985acts0188.pdf>.

¹⁴ GL. C. 71, § 38.

¹⁵ E-Mail from Robert Ross, *General Counsel*, Executive Office for Administration and Finance to Timothy Dooling, Deputy Auditor and General Counsel, Office of the State Auditor (Oct. 11, 2017) (on file with the Office of the State Auditor); Dep't. of Elementary and Secondary Education, *Grants and Other Financial Assistance Programs: FY 2017: Title II, Part A: Improving Educator Quality State Grants*, available at <http://www.doe.mass.edu/grants/2017/140/>.

¹⁶ E-Mail from Robert Ross, *General Counsel*; Dep't of Elementary and Secondary Education, *FY 17 Title II, Part A District Allocations*, available at <http://www.doe.mass.edu/grants/2017/140/Allocations.xlsx>.

¹⁷ St. 2012, c. 131, § 5.

¹⁸ St. 2012, c. 131, §§ 5-7.

Nevertheless, it is clear from the plain language of Section 37 of Chapter 71 that the Commonwealth intended to create a system to reimburse school districts for the cost that school districts incurred conducting educator evaluations. Section 38 of Chapter 71 states, “[e]ach school district shall conduct evaluations of teachers and administrators in accordance with the regulations of the board and shall be reimbursed for reasonable costs incurred thereby in accordance with section sixty of chapter fifteen.”¹⁹ In order for the Commonwealth to reimburse school districts for their reasonable expenses related to educator evaluations, the Commonwealth must: (1) determine what constitutes a reasonable expense; and (2) request school districts document the expenses they incurred that fall within the guidelines. ANF informed DLM that it is unaware if any guidelines were created to reimburse school districts for the cost of conducting educator evaluations.²⁰

Despite receiving aid for the professional development for educator evaluations through the Chapter 70 professional development allotment, Chapter 131 of the Acts of 2012, and federal Title II, Part A grants, the Commonwealth has not developed the statutorily required reimbursement system. Moreover, it appears that the Commonwealth has only allocated funds to cover the cost of professional development for educator evaluations, not the reasonable costs associated with *conducting* educator evaluations. Consequently, the Executive Office for Administration and Finance, as well as the Department of Elementary and Secondary Education, should develop guidelines for the reimbursement of reasonable expenses incurred conducting educator evaluations, as required in G.L. c. 71, § 38 and G.L. c. 15, § 60, and make funding recommendations to the Legislature.

Conclusion

It is clear from our discussions that the Framingham Public Schools have implemented a robust educator evaluation system to ensure that their educators are proficient. Educators must conduct a self-assessment and set goals at the beginning of the school year. Depending on the length of employment and whether an educator has professional or non-professional teacher status, Framingham conducts one or two unannounced and one or two formal visits per school year. Additionally, Framingham conducts both a formative and summative evaluation for all educators per school year. Framingham also invested in a software program that manages the evaluation process.

The DESE regulations provide a framework that gives school districts the option to either adopt DESE’s model evaluation system or develop a local system. DESE’s model system is robust and recommends numerous observations throughout the school year.²¹ Nevertheless, these are recommendations and not requirements under the statute and regulations. Framingham has opted to align itself closely with the DESE model system and should be commended for its efforts.

¹⁹ G.L. c. 71, § 38.

²⁰ E-Mail from Robert Ross, *General Counsel*.

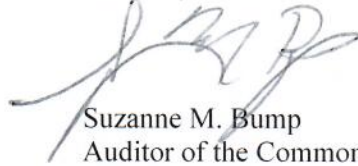
²¹ Dep’t of Elementary and Secondary Education, *The Massachusetts Model System for Educator Evaluations: Part II: School-Level Planning and Implementation Guide* 39 (January 2012 (updated December 2015)), available at <http://www.doe.mass.edu/eval/model/PartII.pdf>.

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However, because educator evaluations are related to the terms and conditions of municipal employment an analysis of whether they impose a cost upon a municipality falls under the provisions of Article 115 of the Amendments to the Massachusetts Constitution and not the Local Mandate Law.

This opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C(e) of Chapter 29. Although we are sympathetic to the fiscal constraints facing all cities and towns, DLM must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. Thank you for bringing this matter to our attention, please do not hesitate to contact DLM with further concerns on this or other matters impacting your district.

Sincerely,



Suzanne M. Bump
Auditor of the Commonwealth

cc: Robert A. Tremblay, Superintendent of Schools, Framingham Public Schools
Ronald Noble, Manager, Dep't of Elementary and Secondary Education
Robert Ross, General Counsel, Executive Office for Administration and Finance
Bran Shim, Fiscal Policy Analyst, Executive Office for Administration and Finance