

**Financial Audit Advisory Committee
Minutes of Meeting on March 21, 2018**

The Financial Audit Advisory Committee (FAAC) met at 8:30 AM in the Conference Room at 141 Keyes Road, Concord, Massachusetts. Notice of the meeting was duly filed with the Town Clerk, Town of Concord, Massachusetts.

Members present: Michael Lawson, Select Board designee; Wally Johnston, School Committee designee; Thomas Piper, citizen representative; and Wendy Rovelli, Light Board designee.

Members absent: Carol Wilson, citizen representative and Arthur Fulman, citizen representative.

Others present: Ian Rhames, Accounting Officer, CPS/CCRSD; Kerry Lafleur, Finance Director; Mary Barrett, Town Accountant; Mark Howell, Chief Information Officer; and Malysa Simard, Finance Assistant

Chairman Lawson called the meeting to order at 8:32 AM.

Item 1: Approval of minutes, meeting of February 12, 2018

Upon a motion moved and seconded, it was voted to approve the minutes of 2/12/18.

Item 2: Accept CCRSD Audited Financial Statements – FY2017; Accept CMLP Audited Financial Statements – CY2016

Ian Rhames explained relatively minor revisions to the draft FY17 CCRSD Financial Statement that had been previously reviewed by the Committee. A small increase in the OPEB liability shown in the report has resulted in a slight reduction in net position, which he pointed out was not unexpected. Mr. Rhames then reminded the group that, with new standards coming into effect for FY18, the full OPEB liability will be reported and Net position would drop by approximately \$10 million. Wally Johnston underscored that this is a matter of reporting and was fully anticipated.

Upon a motion made by Wally Johnston and seconded by Wendy Rovelli, the CCRSD Financial Statement for FY17 was accepted by unanimous vote of those present.

Mr. Johnston then moved to accept the audited CMLP Financial Statements for CY2016 with a second by Thomas Piper. Ms. Rovelli raised a question with respect to whether beginning and ending amounts shown on page 10 of the draft were appropriately titled as "*unrestricted cash*". After some discussion, the original motion and second were withdrawn and upon a new motion by Ms. Rovelli and seconded by Mr. Piper, the CMLP Audited Financial Statement for CY16 was accepted by unanimous vote of those present with the provision that on page 10, the word "*unrestricted*" will be deleted.

Ms. Rovelli also recalled a question raised at a previous meeting about how the CMLP's rate of return had been calculated. Michael Lawson noted that the topic is referenced in his draft letter to the Select Board, to be taken up under the next agenda item.

Item 3: Review Draft FAAC Letters to Select Board and School Committee

Mr. Lawson first called the Committee's attention to the draft letter to the Select Board concerning the Municipal Light Plant Audit. After summarizing the reporting structure and duties of the Financial Audit Advisory Committee, the draft offers brief comments on the audit process and Management Letter items for the Light Plant and also covers related issues discussed by the Committee, namely clarity concerning calculation for the Plant's rate of return and recommendation that the Light Board develop a formal policy on Unrestricted Fund Balance.

Mr. Lawson asked members whether the draft fully covered concerns that had been raised by the Committee in earlier meetings. Mr. Piper responded that he simply wants to make sure that calculations are appropriate and correctly expressed. Noting correction of minor typos, the draft letter to the Select Board was unanimously approved by vote of the Committee.

Mr. Lawson then moved to the draft letter of the CCRSD School Committee. This draft follows the same basic structure as that to the Select Board, commenting on the auditor's specific recommendations to the District. Under "Additional Items", the draft notes that the School Committee has adopted a written policy on compensation for unused vacation leave, in part due to questions raised by the FAAC.

In the following discussion, Mr. Rhames explained that vacation policy for many school department employees is covered by collective bargaining agreements or individual contracts and the new policy in the employee handbook applies to approximately 200 staff not covered by such agreements. He also pointed out that state laws are quite specific with respect to vacation time and limit flexibility.

Mr. Johnston noted that some issues that have attracted attention from staff who are no longer with the District. In at least one case, special circumstances made it quite difficult for the individual to take vacation that was due to him. While existing contracts won't likely change, the process of requiring prior approval from the School Committee before vacation leave is paid out, will be reinstated.

The Committee then voted unanimously to approve the letter to the CCRSD School Committee. Mr. Lawson requested that the Attorney General's Advisory 99/1, covering restrictions on vacation policies, be attached to the minutes.

Item 4: Risk Assessment/IT Risk Assessment – what are other municipalities doing? ISO Certification? – discussion with Mark Howell, Chief Information Officer

As questions related to IT security had arisen during previous meetings, Mark Howell, the Town's Chief Information Officer, was invited to meet with the Committee.

Mr. Howell began by stressing that information systems are constantly evolving in both hardware and software and although this creates high expectations on the part of users, he and his department need to be deliberate and cautious in their approach to fulfilling those expectations. While IT policies and practice are reactive almost by nature in responding to external changes (positive or negative), he wants to be proactive. First and foremost, this means performing routine maintenance and upgrades, keeping systems current, and making sure that available patches are promptly applied.

Individual Town employees can no longer install software on their office computers without contacting IT and a contracted service scans email traffic for potential external attacks. Passwords must be changed regularly and files containing sensitive information receive extra layers of scrutiny. With multiple servers available in secure locations (police station and light plant), operations can be dynamically redirected from one site to another and progress is being made toward the goal of running fewer applications “In-house”, generally moving to “cloud-based” services.

In response to a question, Mr. Howell answered that the CPS and CCRSD computer systems are really quite independent of the Town. (Mr. Rhames offered to reach out to a member of the School Department’s IT staff should the Committee wish to have more information.”

Discussion moved on to the overlap of computerized files and correspondence with laws and policies related to record retention and public records. There is a formal protocol for destroying/disposing of such records. At least for now, Mr. Howell responded that all email traffic has been automatically archived since 2007. It was noted that, even if email were deleted on the Town side, it could still exist on the recipient/correspondent’s end.

Circling back to the central issues, while much has been accomplished in his seven years on the job, Mr. Howell said that the last comprehensive assessment of the Town’s IT systems was done just before he started in the job and that “it’s about time” for an updated risk assessment.

Item 5: Management’s Discussion & Analysis – who is the intended audience & what knowledge assumptions are being made

Mr. Lawson noted that this topic was added to the agenda at the request of Committee member Thomas Piper, who has raised the question of whether the formal Management’s Discussion and Analysis section in each audited Financial Statement address the questions that a citizen might ask.

Mr. Piper elaborated by asking: What questions does a citizen have? What information would be useful to them? How and where do we communicate the answers? If there is a growing question of trust in the government, especially when coupled with changes in tax law that will limit deduction for local tax, what information should we be providing?

A discussion ensued, centering around the FAAC's rather narrowly defined responsibilities versus the broader and longer range policy perspective traditionally taken on such matters by the Select Board, School Committee, Light Board and Finance Committee. With no definite conclusion, Mr. Lawson suggested that this will be a continuing discussion.

Item 6: Discussion of ways to strengthen Committee Activities

See Item 5, above.

Item 7: Citizen comments

There were no citizen comments.

Item 8: Adjourn

Prior to adjournment, Mr. Lawson noted that he had not yet prepared a draft report to the Select Board, but would do so for distribution to the Committee before its next meeting, planned for April 4th. Approval of the report will likely be the only agenda item.

An additional meeting is planned for May 2nd to discuss audit plans for the coming year end and a potential formal IT risk assessment.

The meeting was adjourned at 10:28AM.

Documents distributed or referred to during this meeting:

- Draft Minutes of February 12, 2018
- CCRSD Audited Financial Statements – FY2017
- CMLP Audited Financial Statements – CY2016
- Draft FAAC Report to the Select Board
- Draft FAAC Report to the Regional School Committee
- Town of Concord, Massachusetts Popular Annual Financial Report FY18
- Advisory 99/1

ADVISORY 99/1

An Advisory from the Attorney General's Fair Labor Division on Vacation Policies

Pursuant to M.G.L. c. 23, s. 1(b), the Attorney General issues the following advisory:

Vacation Payments Are Wages

Employers who choose to provide paid vacation to their employees must treat those payments like any other wages under M.G.L. c. 149 s. 148. See *Massachusetts v. Morash*, 490 U.S. 107 (1989). Like wages, the vacation time promised to an employee is compensation for services which vests as the employee's services are rendered. Upon separation from employment, employees must be compensated by their employers for vacation time earned "under an oral or written agreement." M.G.L. c. 149, s. 148. Withholding vacation payments is the equivalent of withholding wages and, as such, is illegal.

Employers may establish the terms of employment and determine the hourly rate or salary to be paid as well as how many hours the employee is expected to work. Employers may likewise establish the amount of paid vacation the employee will receive and/or a specific time of the year when the employee can take a vacation, depending on the needs or demands of the business. Employers may establish procedures regarding the scheduling of vacations; i.e., whether employees must notify the employers as to their intent to take vacation, when they intend to take it, and how much vacation time they plan to take.

No Forfeiture of Earned Vacation Time

General Laws c. 149, s. 148, provides that no employer shall "by special contract with an employee or by any other means exempt himself" or herself from the statute or from its penalty provision in Section 150. Since the statute provides for the timely payment of all wages earned, an employer may not enter into an agreement with an employee under which the employee forfeits earned wages, including vacation payments. Examples of these agreements are vacation policies that condition the payment of vacation time on continuous employment or that require that employees provide notices to quit. Employees who have performed work and leave or are fired, whether for cause or not, are entitled to pay for all the time worked up to the termination of their employment, including any earned, unused vacation time payments.

Generally, time earned under any vacation policy need be compensated only with the equivalent time off. The exception is where an employee separates from employment or where an employee agrees to receive monetary compensation in lieu of vacation time.

Accrual of Vacation

An employer may cap the amount of vacation time that an employee may accrue or earn. For example, an employer may state that after accruing a total of four weeks of vacation leave, the employee will cease to earn any additional vacation time until the employee uses some of the accumulated vacation time. Thus, the employee would not earn additional vacation time until the employee's total vacation time falls below four weeks. While the employee retains all earned vacation leave, the employer is permitted to cap, prospectively, the amount of vacation time or pay which it must provide to the employee.

An acceptable variation of an accrual cap is the vacation policy known as "use it or lose it." Under this policy, employees must use all of their accumulated vacation time by a certain period of time or lose all or part of it. Some policies allow the employees to "carry over" a certain number of hours of vacation after the expiration of the designated time period. The "use it or lose it" policy effectuates a cap on accrual by limiting the total amount of vacation time that an employee may accrue during the term of their employment. Under such policies, the employer must provide adequate prior notice of the policy to employees and must ensure that employees have a reasonable opportunity to use the accumulated vacation time within the time limits established by the employer. Otherwise, a cap on accrual or a "use it or lose it" policy may result in an illegal forfeiture of earned wages.

Pro-rating Vacation Pay

Employers can protect themselves by adopting clear and unambiguous vacation policies. For example, an employer may provide that employees begin to earn vacation time after a specific probationary period, such as after six months of employment. Another example of an unambiguous policy is one that provides that an employee earns vacation time at a rate of one day at the end of each month.

However, a policy that provides for employees to earn a given amount of vacation "a year," "per year," "on their anniversary date," or "every six months" is not clear because the definitions of the time periods are imprecise and subject to confusion concerning their start and end dates. Where an employer's policy is ambiguous, the actual time earned by the employee will be pro-rated according to the time period in which the employee actually works. For example, if an employee is to receive twelve vacation days "in a year," and the employee voluntarily or involuntarily terminates his or her employment after ten months of employment, the employee would be entitled to ten vacation days or one day per month worked. Discharge prior to one year without pro rata payment constitutes failure to pay wages earned under Section 148.

Annual Leave

Some employers combine sick leave, personal leave, vacation leave, and/or other types of leave into one general category called "annual leave." This combined leave is also called paid time off, earned time, or paid days off. Employers who provide annual leave instead of vacation leave should designate the amount of hours or days of the leave which are considered vacation time. Employers who have previously designated vacation time in this manner, whether orally or in writing, shall produce proof of such designation to rebut a complaint of unpaid wages pursuant to M.G.L. c. 149, s. 148.

All Amendments to Vacation Policies Apply Prospectively

As is the case with any condition of employment affecting wages, employers may amend the terms of their vacation policies at any time. Any such amendment, however, must be prospective in nature.

We urge employers to give employees copies of their written vacation policy in advance and to have each employee acknowledge in writing his or her understanding of the policy.