

Blind Brook-Rye Union Free School District

Capital Project Change Orders

2023M-35 | August 2023

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Report Highlights

Blind Brook-Rye Union Free School District

Audit Objective

Determine whether the Blind Brook-Rye Union Free School District's (District) Board of Education (Board) and District officials ensured that the required approvals were obtained for capital project (Project) change orders.

Key Findings

The Board and District officials did not ensure that all Project change orders were submitted as required to the New York State Education Department (SED) for approval. As a result, officials created a risk that SED could reduce the District's building aid reimbursement for all unapproved work. For the 151 change orders reviewed totaling about \$3.8 million:

- 122 (81 percent) totaling approximately \$2.7 million were not submitted to SED, as required, for the Commissioner of Education's (Commissioner) approval.
- Six change orders totaling \$155,173 were approved by the Commissioner for \$74,002. The Assistant Superintendent for Finance and Facilities (Assistant Superintendent) was not aware that they were approved and had no explanation for the difference in the amount received.

Key Recommendations

- Ensure all change orders are properly approved.
- Actively monitor change orders to ensure the District submits change orders for approval from the Commissioner.

District officials agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The District is located in Westchester County and is governed by the elected five-member Board, which is responsible for the general management and control of operations. The Superintendent of Schools (Superintendent) is appointed by the Board and is the chief executive officer responsible for the District's day-to-day management, under the Board's direction.

In September 2018, the District started the Project to improve various District buildings and make site improvements. The Assistant Superintendent is responsible for overseeing the Project.

The Board is responsible for reviewing and approving all Project change orders and the Superintendent is responsible for signing change orders prior to submission to SED for the Commissioner's approval.

Quick Facts

Total Amount Bonded for the Project	\$50.7 million
Total Number of Change Orders	262
Total Amount of Change Orders	\$5.7 million

Audit Period

June 15, 2019 – September 12, 2022

Capital Project Change Orders

Capital construction projects are generally long-term projects that require large sums of money to develop and improve various school district facilities. A school district board is ultimately responsible for the oversight and management of a district's capital projects.

According to SED guidance¹ with respect to building aid and change orders, change orders are used to officially make changes to a signed contract for capital construction. A change order may also be required to accommodate an unforeseen job condition, to add or delete certain portions of work, or otherwise change a condition or the amount of the contract.

In December 2015, the Board approved the District's 2016 Five-Year Capital Facilities Plan that identified the District's essential capital improvement and health and safety needs. In 2017, the District held a bond referendum to finance, through taxes and building aid (reimbursements) from SED,² the Project. SED approved the Project plan specifications for work to begin on September 27, 2018.

How Should School District Officials Ensure Capital Project Change Orders Receive Proper Approvals?

Before approving change orders, a school district board (board) and school district officials (officials) should review all capital construction project change orders to verify their appropriateness and the availability of funds to cover the additional cost. Additionally, the change orders must be submitted to and approved by the SED Commissioner. Once approved, they become a part of the project's official plans and specifications and must be filed with the approved plans and specifications. The board and officials should monitor progress and implement necessary changes to ensure the project is completed in a cost-effective manner.

In addition, change orders should not expand the scope of work or represent a basic departure from the work already included in the contract and should be properly approved by the board, the architect and the contractor and comply with SED requirements.

All Change Orders Did Not Receive Proper Approvals

The Assistant Superintendent told us that there were design errors and omissions with the plan specifications such as a \$180,000 change order for providing structural reinforcement for windows which was omitted from the drawings.

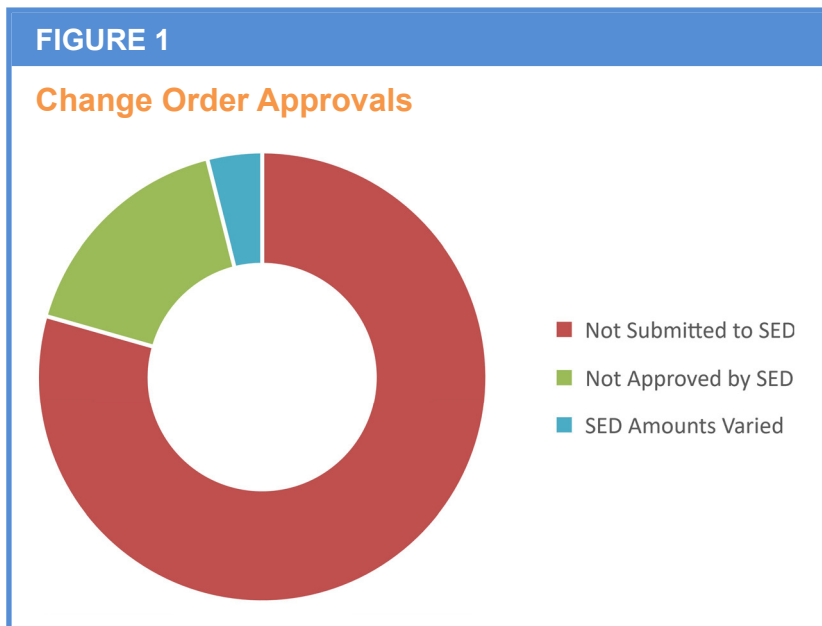
...[T]he change orders must be submitted to and approved by the SED Commissioner.

1 SED guidance can be found at www.p12.nysed.gov/facplan/articles/D01_change_orders.html

2 The percentage reimbursed by SED varies by district, by year of issuance and by project.

These changes increased material costs and resulted in the general contractor issuing change orders totaling more than \$5 million. This, along with delays in getting materials due to COVID-19, extended the life of the Project. As a result of the costs associated with these change orders, the Project was over budget by approximately \$6 million and the District was forced to hold a second referendum in which voters approved the additional money needed to complete the Project.

Between June 15, 2019 and September 12, 2022, the District executed 262 change orders totaling approximately \$5.7 million or 13 percent more than the original Project cost. We reviewed 151 change orders, and found 139 change orders totaling approximately \$3.9 million had additional costs, eight change orders totaling \$128,624 were for credits and four change orders had no additional costs or credits. In addition, six change orders, totaling \$458,451, were reviewed by the Board but were not approved. As a result, no work pertaining to these change orders was performed. Furthermore, each of the 145 change orders had issues with the submission, approval and/or reconciliation process (see Figure 1), as follows:



- 122 change orders (84 percent) totaling approximately \$2.7 million had all the required approvals from the Board, architect and general contractor but were not submitted to SED for the Commissioner’s approval.
- 17 change orders (12 percent) totaling \$437,498 submitted by the District to SED for approval between November 2020 and August 2022 were not approved by SED.

-
- Work was completed on six change orders (4 percent) totaling \$155,173. However, these change orders were approved by the Commissioner for an amount that varied from the amount in the District’s records and District officials were not aware of the variances.

While both the Superintendent and the Assistant Superintendent said they were not aware that the architect was not submitting most change orders to SED for the Commissioner’s approval, the Superintendents should have ensured the architect was doing so. The Assistant Superintendent also informed us that in September 2021, the Board retained the services of a second architect to assist with the remainder of the Project, including submitting the outstanding change orders to SED for the Commissioner’s approval. However, the Assistant Superintendent could not provide a date of when the unsubmitted change orders would be sent to SED and she could not explain or provide information on why SED did not approve the 17 change orders submitted for approval between November 2020 and August 2022.

Additionally, the Assistant Superintendent was not aware of the six change orders totaling \$155,173 that were approved by the Commissioner for \$74,002 and had no explanation as to why there would be a difference. In October 2021, the District reinstated the Facilities Committee and divided it into three subcommittees of Construction, Finance and Bond and Communications/Community Relations to help prevent the reoccurrence of the issues identified and to provide better monitoring of the Project.

Change orders can significantly impact the cost of capital projects to taxpayers. When capital projects change order process is not carefully monitored by District officials the risk of budget overrun increases. Additionally, the risk of the District paying for work done on change orders that were not approved or change orders approved for a different amount by the Commissioner could increase the cost to taxpayers without their knowledge. Also, when change orders are not approved by the Commissioner, the amount of building aid the District receives will be less than they are entitled to.

Change orders can significantly impact the cost of capital projects to taxpayers.

What Do We Recommend?

The Board and District officials should:

1. Actively monitor change orders to ensure the District submits change orders and receives approval from the Commissioner.

District officials should:

2. Reconcile change orders submitted to SED for approval to change orders approved by SED and investigate any differences.

Appendix A: Response From District Officials



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Colin Byrne, DPS
SUPERINTENDENT OF SCHOOLS

Laurie Baum
ASSISTANT SUPERINTENDENT OF FINANCE & FACILITIES

July 24, 2023

Office of the State Comptroller
Dara Disko-McCagg, Chief of Municipal Audits
Newburgh Regional Office
33 Airport Center Drive, Suite 102
New Windsor, New York 12553

**Re: Report of Examination 2023M-35 Regarding Change Orders
District's Response to Preliminary Draft Findings and Recommendations**

Dear Chief Disko-McCagg:

The Blind Brook-Rye Union Free School District ("District") is in receipt of the Office of the State Comptroller's ("OSC") draft Report of Examination 2023M-35 ("Report") regarding capital project change orders, and respectfully responds to OSC's preliminary draft findings and recommendations as follows.

On behalf of the Board of Education and the administration of the Blind Brook-Rye UFSD, I thank the examiners from OSC for their professional conduct during the examination. The District is appreciative of the audit process and the resulting feedback that can provide us with opportunities to improve and strengthen our practices and operations. A Corrective Action Plan will be provided at a later date.

OSC Preliminary Draft Findings

The OSC found that the Board of Education ("Board") and District officials did not ensure the required New York State Education Department ("NYSED") approvals were obtained for all capital project change orders. As a result, OSC found there is a risk that NYSED could reduce the District's building aid reimbursement for unapproved work.

District's Response to OSC's Preliminary Draft Findings

As explained to the examiners during their audit, there were design errors and omissions contained in plan specifications requiring numerous change orders. These included a change order for providing structural reinforcement for windows which was omitted from the drawings. Change orders were also

required to address design errors and omissions regarding the availability of a natural gas connection for the cafetorium included as part of the project. The District is pursuing legal remedies regarding the large number of change orders on this project and to recover the additional costs of the construction which were the result of various breaches of contract.

Pursuant to a contract and under Regulation 155.2 of the Commissioner of Education, the District designated an architect of record to properly supervise the project. The architect of record was obligated to sign off on change orders and comply with the process for submission and obtaining approval of change orders with NYSED. For the majority of the project in question, the District believed its architect was properly submitting such change orders to NYSED for Commissioner approval. When it was determined the architect was not doing so, the District took action to address this deficiency.

The District has replaced the original architect to assist with the remainder of the project, including submitting of all outstanding change orders to NYSED for Commissioner approval. We are continuing to investigate (i) when unsubmitted change orders were or will be submitted to NYSED for approval, (ii) the reasons why seventeen (17) change orders were not approved by the Commissioner and (iii) the reasons why six (6) change orders totaling \$155,173 were approved by the Commissioner only for \$74,002. In that regard, we appreciate the auditors acknowledging that six change orders totaling \$458,451 which were reviewed and rejected by the Board and no work was performed on these change orders.

Finally, the Board of Education believes it is important to point out that the Superintendent and Assistant Superintendent who were interviewed as part of this audit were not in their positions during the majority of the timeframe in question.

OSC Recommendations

Based upon its preliminary findings, the OSC made the following recommendations in connection with change order approvals:

The Board and District Officials should:

1. Actively monitor change orders to ensure the District submits change orders and receives approval from the Commissioner.
2. Reconcile change orders submitted to NYSED for approval to change orders approved by the NYSED and investigate any differences.

District's Response to OSC's Recommendations

The District concurs with the OSC's recommendations and is taking steps necessary to ensure that all change orders are submitted to and approved by the Commissioner of Education.

The District will also reconcile any change orders that were submitted to NYSED for approval with change orders that are approved and will investigate any differences.

In October 2021, the District proactively reinstated a Facilities Committee and divided it into three (3) subcommittees of Construction, Finance and Bond, and Communications/Community Relations to

help prevent recurrence of this issue and to provide better monitoring of construction projects in the District.

The Board and District officials remain committed to providing quality and safe facilities for our students in a cost effective and timely manner, and to comply with all applicable law and NYSED regulations.

In closing, the District thanks OSC for its diligence and professionalism. We appreciate OSC's attention to these matters and the recommendations made as a result thereof.

We trust the foregoing is responsive to OSC's preliminary draft findings and recommendations.

Very truly yours,

Dr. Colin Byrne
Superintendent of Schools
Blind Brook-Rye Union Free School District

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, we performed the following audit procedures:

- We reviewed Board minutes and District policies and procedures to determine if the Board adopted policies to ensure written procedures are established to guide District employees and officials when they receive capital project change orders, including ensuring that all change orders:
 - Are reviewed for appropriateness.
 - Receive all required approvals prior to the start of work.
- We selected 151 change orders totaling approximately \$3.8 million for further testing. We obtained a Change Order Details report from the Assistant Superintendent for the period July 15, 2019 through September 13, 2022. We removed four change orders listed on this report that were set aside by the Board for later consideration (therefore, not reviewed/approved by the Board) and also removed one voided change order. We further obtained from the SED website a Change Order Status report for the District for the same time period. This report showed all of the District's SED-approved change orders. We compared the two reports and eliminated all change orders that matched leaving us with a sample of 151 change orders.
- We inquired with District officials for supporting documentation for change orders listed as submitted to SED that were not listed on the SED Change Order Status report. For change orders listed on the District's Change Order Details report as not submitted to SED, we also inquired with District officials as to why they were not submitted for approval. For change orders that were approved by SED for a different amount than District records, we requested documentation and an explanation from the Assistant Superintendent as to why the SED-approved amounts were different. We also asked the Assistant Superintendent whether the work was done for the change orders that were not approved by SED.

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

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 2116-1(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 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. We encourage the Board to make the CAP available for public review on the District's website.

Appendix C: Resources and Services

Regional Office Directory

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

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

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Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

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

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

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Contact

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