



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware Technical & Community College
June 30, 2015

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Part of Primary Government

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. The Office of Auditor of Accounts (AOA) performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *14 Del. C., Education*
- *29 Del. C. c. 69 (State Procurement Law)*

1. *The PCU is not legally separate. (¶ 15)¹*
2. *The PG holds the PCU's corporate powers. (¶ 15)*

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

Application to Delaware Technical & Community College

The Delaware Technical and Community College is not organized as a separate legal entity. The Board of Trustees has the ability to sue and be sued (14 Del. C. §9105 (d)(4)); however, it is not

¹ Paragraph references are from GASB 14, as amended by GASB 61.



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without recourse to State government because Delaware Technical and Community College is established as a State agency (14 Del. C. §9102). In addition, the Board of Trustees has the power to acquire, own, lease, use, and operate property (14 Del. C. §9105 (d)(12)). Although the property may be in the college's name, this is not unlike any other State Agency with the ability to contract who has control, management and custody of property. Further, Delaware law does not establish Delaware Technical and Community College as a corporate entity.

Code Excerpts are as follows:

14 Del. C. §9102. Board of Trustees - Creation.

There shall be a Board of Trustees of the Delaware Technical and Community College which shall be a state agency.

14 Del. C. §9105. Powers and Duties of Board.

(d) For the effectuation of the purposes of this chapter the Board, in addition to such other powers expressly granted to it by this chapter, shall have the following powers:

- (1) To select such officers, except the chair, as it may deem desirable, from among its own membership;
- (2) To adopt or change the name of the institutions established by it;
- (3) To adopt and use a seal;
- (4) To sue and be sued;
- (5) To determine the educational program of the institutions;
- (6) To appoint members of the administrative and teaching staffs of the institutions and to fix their compensation and terms of employment;
- (7) To appoint or employ such other officers of the institutions, agents and employees as may be required to carry out this chapter and to fix and determine their qualifications, duties, compensation, terms of office or employment and all other terms and conditions of employment;
- (8) To fix schedules of tuition rates and fees for educational services at the institutions;
- (9) To grant diplomas, certificates or degrees;
- (10) To enter into contracts;



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- (11) To accept from any government or governmental agency, or from any other public or private body, or from any other source, grants or contributions of money or property (conditional or otherwise) which the Board may use for or in aid of any of its purposes;
- (12) To acquire (by gift, purchase, condemnation or otherwise), own, lease, use and operate property, whether real, personal or mixed, or any interest therein, which is necessary or desirable for educational purposes;
- (13) To determine that any property owned by the College is no longer necessary for educational purposes and to dispose of the same in such manner and upon such terms and conditions as shall be established by it;
- (14) To make and promulgate such rules and regulations, not inconsistent with this chapter, that are necessary and proper for the administration and operation of the institutions and for the conduct of the business of the Board;
- (15) To exercise all other powers not inconsistent with this chapter, which may be reasonably necessary or incidental to the establishment, maintenance and operation of higher learning institutions;
- (16) To employ such persons as deemed desirable.

29 Del. C. §6902 (1) – Definitions (for procurement purposes only)

"Agency" shall include Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this subsection shall be deemed to exempt any entity that is otherwise required to comply with §6960 of this title.



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