



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware School Districts
June 30, 2015

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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. 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(GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 – ¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)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., State Government*
- *18 Del. C. Insurance*
- *Home Rule definition*
- *Mt. Pleasant School District v. Warder (1977)*

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

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 School Districts

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



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At no point does the Delaware Code distinguish school districts as a legally separate entity. Delaware's public school system was established by Article X of the 1897 Constitution of the State of Delaware, with a modification under the School District Reorganization Act of 1968 and the State Board of Education was authorized to reorganize school districts under 14 Del. C. c 10. Therefore, the State Board of Education determines the name and geographical boundaries of the school districts. One purpose of this chapter is to preserve the historic concept of semiautonomous, locally controlled school districts throughout the State (14 Del. C. §1001 (a)). Webster's Dictionary defines semiautonomous as "largely self-governing within a larger political or organizational entity."² Title 14 expressly provides that "the Department [of Education] shall exercise general control and supervision over the public schools of the State" and thereafter provides a non-exclusive list of the powers and duties of the Department of Education (14 Del. C. §121). Ultimately, Title 14 directs the Department of Education to oversee "the maintenance administration and supervision throughout the State of a general and efficient system of free public schools..." (14 Del. C. §122). The Department of Education's involvement is not regulatory because it is not limited by State funding.

AOA is not aware of any case law in which the State suffered from a school district law suit; however, the financial obligations placed on a school district when a lawsuit is filed can have significant impact on state government. For example, Delaware Law includes provisions for State control and interference if a school district cannot meet payroll obligations (29 Del. C. §6519 (e)), or is otherwise in financial distress (14 Del. C. §1802). School districts are also covered under the State's self-insurance policy, which covers any type of risk the State may be exposed to, including, but not limited to: life insurance, health insurance, property insurance, surety insurance, casualty insurance, marine and transportation insurance, and title insurance (18 Del. C. §6502).

While we have identified the following items in our analysis, these items do not substitute the statutory language needed to establish a legally separate status:

1. Delaware Law says that the Department of Justice will not supply legal advice, counsel, services, or representation in proceedings and actions to any school district (29 Del. C. §2515 (a)).
2. The Mount Pleasant School District v. Warder (1977) case also supports that school districts may obtain their own legal counsel and may sue and be sued.
3. School districts even have separate insurance policies, in addition to the State's self-insurance policy, to cover events specific to school districts (e.g. General Liability insurance for volunteers)³.
4. Further review of the Delaware Code also revealed that the State is not liable for a civil action brought against a school board member or school employee (14 Del. C. §1095).

Also, the school district's ability to buy, sell, lease, and mortgage property is subject to the provisions of Delaware Law (14 Del. C. §1022). Although the property may be in the school districts' name, this is not unlike any other State Agency where control, management, and custody of property and equipment shall be subject to the laws of the State. School districts must also follow the rules and regulations of the Department of Education (14 Del. C. §1056 (c)). Further, the Director of the Office of Management and

² <http://www.merriam-webster.com/dictionary/semiautonomous> (Semiautonomous - Definition and More from the Free Merriam-Webster Dictionary)

³ Verified with the insurance coverage office at the Office of Management and Budget and the business manager of the Sussex Technical School District.



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Budget is empowered and directed to exercise control over the expenditures of State funds appropriated to school districts (29 Del. C. §6529).

When a school district determines that it is appropriate to sell property, it must first offer the property to other State agencies through the Office of Management and Budget, in conference with the Department of Education (14 Del. C. §1057(a)). If another State agency is not interested in purchasing the property, the Board of Education will thereafter offer the property to the local government in which the property is located. If the local government does not purchase the property, the School Board is then permitted to offer the property for sale on the open market.

Further consideration was given to the lack of home rule in Delaware that would allow school districts to make a case for being autonomous from the State.

School district employees are also considered State employees under the laws regulating the conduct of officers and employees of the State (29 Del. C. §5804 (11, 12)).

Although the school districts' legal separation from the State may not be clear cut, there is not a compelling argument in favor of establishing school districts as legally separate. Other entities that are clearly established as legally separate have specific language in their corporate charter or authorizing legislation. In light of the information presented above, we took the conservative approach in our analysis.

Code and Definition Excerpts are as follows:

Delaware Constitution. Article X. Education

The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means.

14 Del. C. §1001. Purpose.

(a) The purpose of this subchapter is to continue the statewide process of reorganization of school districts begun under the School District Reorganization Act of 1968; to preserve the historic concept of semiautonomous locally controlled school districts throughout the State; to provide a procedure for the effective and orderly reorganization of certain existing school districts in Delaware; and to provide a framework of a governance system for such reorganized districts.

14 Del. C. §121 General Powers of the Department of Education

(a) The Department shall exercise general control and supervision over the public schools of the State...



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14 Del. C. §122 Rules and regulations.

(a) The Department shall adopt rules and regulations, consistent with the laws of this State, for the maintenance, administration and supervision throughout the State of a general and efficient system of free public schools in accordance with this title, including the rules and regulations specified in subsection (b) of this section. Such rules and regulations, when prescribed and published, shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and shall be binding throughout the State.

29 Del. C. §6519. Expenditures not to exceed appropriations.

(e) Notwithstanding any provisions of law to the contrary, if during the course of a fiscal year, any reorganized local school district is unable to meet its obligation to fund the local share of semimonthly payroll due to either delayed receipt of property tax collectibles or previous expenditure of all available revenues, the Secretary of Finance and Director of the Office of Management and Budget, with the consultation of the Controller General, are authorized to release the unfunded payroll by covering the local liability with general funds. Such a use of general funds shall be contingent upon the reorganized local school district submitting to the Secretary of Finance a letter of agreement, signed by the district superintendent and president of the local board of education, which stipulates that the district will repay the state General Fund in full, including an amount for interest defined as the average rate of return on state investments during the period of the loan. Such repayment shall be made by means of a tax anticipation note or other means available to the district and shall be accomplished prior to releasing the next regular payroll. The provisions of this section shall not apply to obligations other than payroll. The provisions of this section may be utilized only once by each reorganized local school district during the course of any 1 fiscal year and may not be utilized for the June 30th payroll.

14 Del. C. §1802. Financial Recovery Team.

(2) During any period of time when it is determined that a school district or charter school is in financial distress, the Financial Recovery Team shall be empowered to exercise, subject to the approval of the Secretary, control over the expenditure of funds appropriated to a school district or charter school as deemed necessary by the members of the Team. Control shall include, without limiting the foregoing, the right to approve the school district's or charter school's annual budget and any subsequent material amendment thereto, the right to approve district tax rates, the right to request drawdown of state financial assistance if applicable, the right to approve financial reporting to the local board of education or charter school board, the right to approve accounting policies, procedures and reports, the right to require a Financial Responsibility Committee be established by the local school board or charter school comprised of 1 or more members of the said board and/or residents of the district or, in the case of a charter school, parents of students attending the school. The Committee shall examine and report on the financial status of the district or charter school and shall have the right to pre-approve any obligation or contract that would require the expenditure of funds by the school district or charter school. Notwithstanding any provision of either this Code or any applicable



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rule or regulation to the contrary, the authority extended under this section shall apply to the expenditure of all funds received by a school district or charter school.

18 Del. C. §6502. Insurance for the protection of the State and the public; determination of coverage.

There is hereby established the Insurance Coverage Determination Committee, which shall be composed of the Director of the Office of Management and Budget, the State Auditor and the Insurance Commissioner or their designees, during their respective terms of office. The Director of the Office of Management and Budget or his or her designee shall serve as the Chair of the Committee. The Committee shall from time to time determine the method of insuring, the amount of insurance, and the class of coverage covering any type of risk to which the State may be exposed, including, but not limited to: property insurance, as defined in §904 of this title; surety insurance, as defined in §905(a)(1) of this title; casualty insurance, as defined in §906 of this title, marine and transportation and “wet marine” insurance, as defined in §907 of this title; title insurance, as defined in §908 of this title; to be effected and carried by the State or any subdivision thereof, including all school districts, but excluding, however, municipal corporations, counties, and the authorities relating to the crossing of the Delaware River and the Delaware Bay.

29 Del. C. §2515. Exceptions.

(a) The provisions of this chapter relating to the supplying of legal advice, counsel, services and representation in proceedings and actions shall not apply to the University of Delaware, Delaware State University, Delaware Technical and Community College or to any school district or special school district of this State, and these organizations may each employ their own attorney or attorneys, notwithstanding §2507 of this title, except that legal services in connection with all bond issues in which the faith and credit of this State is pledged and all legal services for any school district or special school district bond issue which is for the purpose of providing funds for any project to which moneys or bond issue funds of this State are to be contributed on a matching or percentage basis shall be provided solely by the State Department of Justice and the Attorney General.

Mount Pleasant School District v. Warder (1977)

“...the school district was not required to bring the proceedings through the Attorney General”

“The proposition is generally accepted that ‘the authority of a school district to sue or be sued appears to be unquestioned, even in the absence of an authorizing statute.’”

14 Del. C. §1095. Liability of local school districts for costs in actions against members of board or employees thereof.

Whenever a civil action has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of that person’s duties as a member of a board of education, principal, assistant principal, superintendent, assistant superintendent or professional



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employee, including a teacher, the board of education of that school district shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; provided, however, the board of education shall not be responsible for the payment of punitive damages nor damages attributable to intentional acts or the gross negligence of such person. Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses. The State shall not be liable for such financial obligation incurred by a local school district.

14 Del. C. §1022. Property; legal title.

Any reorganized school district constituted and established under this chapter shall have, subject to the laws of this State, the power to purchase, receive, take, lease or otherwise acquire, own, hold, improve and otherwise use real or personal property, or any interest therein and to sell, convey, lease, exchange, transfer or otherwise dispose of all or any of its property or any interest therein. Legal title to property, real and personal, of a reorganized school district shall be held in the name of the reorganized school district.

14 Del. C. §1056. School property; use, control and management.

(a) As used in this section:

- (1) "School property or school facilities" means buildings and land.
- (2) "School equipment" as used in this section shall be deemed to mean, and to include, but not be limited to: kitchen equipment, projection equipment, office machines, laboratory equipment, industrial arts equipment, art equipment, home economics equipment, playground equipment, pools and scoreboards.

(b) All property, estate, effects, money, funds, claims and state donations vested by law in the public school authorities of any public school district prior to June 3, 1968, for the benefit of the public schools of such district, shall be under the control, management and custody of the school board of such district subject to §1047 of this title. Any real and personal estate granted, conveyed, devised or bequeathed, or which may hereafter be granted, conveyed, devised or bequeathed on or after June 3, 1968, for the use of any public school district, shall be held in trust by the school board for the benefit of the public schools of the respective district. Such grants, bequests or money invested in trust for the use of any public school district shall be exempt from all state, county and local taxes.

(c) The control, management and custody of school property and school equipment in all public school districts shall be subject to the laws of this State, the rules and regulations of the Department of Education and the rules and regulations of the school boards of the respective school districts. Each school board shall adopt a set of rules and regulations governing the use of school property and school equipment within the respective district subject to the provisions hereinafter set forth.



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29 Del. C. §6529. Control of agency expenditures.

The Director of the Office of Management and Budget is hereby empowered and directed to exercise, subject to the approval of the Governor, such control over the monthly and/or quarterly rates of agency expenditures of funds appropriated to such agency as the Director of the Office of Management and Budget may deem necessary to assure the effective and continuous operation of the various agencies during the fiscal year. The authority of the Director of the Office of Management and Budget under this section shall apply to local and special school districts insofar as they administer funds supplied by the State, but not with regard to funds raised locally.

14 Del. C. §1057 Sale or lease of property; disposition of proceeds.

(a) When any real property, title to which is held by a reorganized school district, is no longer needed for school purposes, it may be sold by the school district subject to the following:

- (1) The board of education of the school district shall receive documented recommendations from the superintendent of schools of the district showing why the property is no longer needed for school district purposes;
- (2) The board shall take action to consider such recommendations;
- (3) The board shall release the recommendations for public review and shall announce by 10 days' notice in a news release to print and electronic media covering the district the time and place of a public hearing on the recommendation to dispose of the property in question;
- (4) The board shall conduct the public hearing as announced;
- (5) The board shall within 60 days of said hearing take action to accept, reject or modify the recommendation and proceed according to the terms of the recommendation in its current status. If the recommendation was rejected, no further action is required pending any future recommendation;
- (6) Except for property acquired or constructed with 100% state funds upon affirmative decision to sell a property the board shall retain the services of 1 or more licensed real estate brokers or realtors who are not associated with any member of the board of education of that district and who shall determine a minimum price at which the property is to be offered for sale. In the event the property was acquired or constructed with 100% state funding, then this paragraph shall not apply;
- (7) The property for sale shall be offered to other state agencies at the price determined in paragraph (6) of this subsection. Such offer to other state agencies shall be made through the Director of the Office of Management and Budget who shall in turn confer with the Department of Education. Together, they shall approve a purchase or release the district to proceed with



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another sale within 30 days of the offer by the board of education to the Director of the Office of Management and Budget;

(8) A state agency may negotiate to the extent feasible and practical to assume the state share in such property by transfer of the debt service obligation to the account of that agency without payment of cash for that share of the price set;

(9) If no other agency of state government declares its intent to purchase the property, the Board of Education shall proceed to offer said property to the local government in whose jurisdiction the property is located. Such an offer shall be made to the chief elected official of that local government. If the offer is not accepted within 30 days, the Board may proceed to sell the property on the open market;

(10) A public hearing for the sale of the property on the open market must be advertised at least once a week for 2 consecutive weeks in a newspaper published or circulated in each county of the State. Any proposal to purchase the property shall be delivered to the office of the Executive Secretary of the Board, or to such other place as shall be specified in the advertisement, no later than 5:00 p.m. on the last working day preceding the day fixed for the hearing, and the Board shall not consider any proposal submitted subsequent to that time. The Board shall act upon the proposals no sooner than 7 days and no more than 14 days following the hearing, during which period residents of the district may review the proposals at the office of the district during regular business hours and submit comments on the proposals. The Board shall consider such comments in acting upon the proposals. In its discretion, the Board may reject all proposals or accept a proposal subject to such modifications, except as to price, as the Board determines are appropriate;

(11) A sale on the open market may be conducted by the board and administrative staff of the district or through a licensed realtor or agency who is not associated with the appraiser or any member of the board of education of that district. Any final contract for such sale shall be approved within a period of 60 days by the Director of the Office of Management and Budget, who shall confer with the Department of Education. Approval will not be withheld unless the contract is found by the Director to be unreasonable, in which event the Director shall disapprove the sale and make specific written findings for such disapproval;

(12) When an offer to purchase the property at a price not less than fixed pursuant to paragraph (6) of this subsection is accepted by the board, the Facilities Management of the Office of Management and Budget shall direct that an appraisal be prepared by 2 independent appraisers licensed in Delaware who are from different firms. The amount of this confirmatory appraisal will be the average of the 2 appraisals. Any offer to purchase the property, including offers from state agencies or local governments, at a price not less than that fixed pursuant to paragraph (a)(6) of this section may be accepted by the board provided that the purchase price specified in the offer is either not less than the amount established by the confirmatory appraisal or is amended to increase to the amount established by the confirmatory appraisal;



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(13) The rights of bond holders shall not be jeopardized through such sale. This section shall be construed so as not to impair the rights of any bondholder, and all bonds outstanding shall remain in full force and effect according to the terms thereof;

(14) No sales agreement shall be entered into until it can be demonstrated that the purchaser of the property will use the property for purposes authorized according to the zoning requirements, if any, for the area in which the property is located. If any modification of zoning requirements is necessary, those modifications must be certified to by the appropriate zoning authority prior to the conclusion of the sale;

(15)a. The proceeds of sale of school district property financed, in whole or in part, with the proceeds of bonds issued by the State shall be paid to the State less costs incurred in selling the property after such costs have been met or provision for their payment has been made. The proceeds of sale attributable to the State financing of the property shall be deposited in the School Bond Reversion Account of the State in an amount that bears the same proportion to total net sale proceeds as the State's contribution to meet the cost of the property bears to the total cost of the property.

b. The remaining proceeds shall be deposited in a special fund of the State for the benefit of the selling school district. The money in those special funds shall be invested by and subject to the guidelines established by the Cash Management Policy Board separate and apart from other money invested by the Board. Interest earned, but not profit realized, from the investment of such proceeds shall be paid by the State Treasurer, not less than once nor more than 4 times in each fiscal year of the State, to the school district for which the proceeds are held, for any lawful school purpose, or reinvested pursuant to a written request to the State Treasurer from the school board for such school district. If the school board directs the reinvestment of the interest earnings, they shall become part of the corpus of such special fund.

c. The corpus of the special funds shall, at the direction of the appropriate school board, be applied to retire bonds issued by the school district or to meet the school district's local share of construction required by any school construction bond authorization act, as defined in Chapter 75 of Title 29, as amended.

d. Notwithstanding any other provisions of the above subparagraphs, when it can be documented that all or a part of the property was a gift to a reorganized school district, or its antecedent, the portion of the residual representing the gift shall be assigned to the school district to be used in conformance with paragraphs (a)(15)b. and c. of this section. That portion not identifiable as a gift shall be distributed and deposited in conformance with paragraphs (a)(15)a. and b. of this section.



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Home Rule⁴

Home Rule n. the power of a local city or county to set up its own system of governing and local ordinances without receiving a charter from the state which comes with certain requirements and limitations. The concept has become popular with so-called libertarians, survivalists, and others who would like to divorce local government from as much state regulation as possible. However, few cities and counties have chosen this route. For example, in California, there is one small county (Colusa) out of the 58 which has chosen "home rule." This does not mean they will not take state funds for local improvements.

Home Rule *noun* autonomy, enfranchisement, freedom from domination, freedom from interference, freedom of action, freedom of choice, individualism, noninterference, nonintervention, political independence, self-containment, self-derived power, self-determination, self-direction, self-government, self-legislation, self-reliance, self-subsistence, self-sufficiency, self-support, sovereignty, unlimited sovereignty

29 Del. C. §5804. Definitions.

(11) "State agency" means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

- a. Is limited to a political subdivision of the State or to a portion thereof; or
- b. Extends beyond the boundaries of the State.

(12) A "State employee" means any person:

1. Who receives compensation as an employee of a state agency;
2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or
3. Who is an elected or appointed school board member.

⁴ <http://legal-dictionary.thefreedictionary.com/home+rule>



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