



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

DATE: October 18, 2019
TO: Nikolai P. Vitti, Superintendent, Detroit Public Schools Community District
FROM: Rachael Eubanks, Chair, Financial Review Commission *RE*
SUBJECT: Waiver of Financial Review Commission Oversight

I received your letter dated October 14, 2019 requesting a Waiver of Financial Review Commission oversight. The Financial Review Commission (FRC) is a statutorily created body that consists of multiple commissioners that each have their own vote. Even as chairperson, I do not have the unilateral authority to grant your request. Therefore, I am forwarding your request to the commissioners of the FRC for their review and consideration.

This section details the statutory requirements that the Detroit Public Schools Community District (DPSCD) and School District for the City of Detroit (DPS) must meet to be granted a waiver. The Financial Review Commission Act (Act) mandates the FRC provide oversight to a qualified city or qualified school district. DPSCD and DPS are qualified school districts per MCL 141.1633 (h) and (i).

According to MCL 141.1638(2):

(2) The commission shall grant a waiver under this section for its qualified school district if it certifies that all the following conditions are met:

(a) The commission certifies that a "... qualified school district has adopted and adhered to deficit-free budgets for 3 consecutive years that comply with generally accepted accounting principles and are in accordance with the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a."¹

(b) The state treasurer and the "... qualified school district's chief financial officer, ... certify that both of the following are met:

(i) All municipal securities or debt obligations sold by or for the benefit of that ... qualified school district in the general public market during the immediately preceding fiscal year and current fiscal year satisfied the capital and other financial requirements of the ... qualified school district during that period.

(ii) There is a substantial likelihood that municipal securities or debt obligations can be sold by

¹ Per legal counsel, 1) The budget adopted was deficit-free. 2) The budget adopted complied with GAAP. 3) The budget adopted complied with the UBAA (secs. 14 to 20a apply to school districts and the UBAA has specific criteria with regard to deficits and defines the term "Deficit"). 4) The budget adhered to was deficit-free, meaning any deficit arising in the fiscal year was addressed and the final audited financial statements indicate the district closed the year deficit-free. 5) The budget adhered to GAAP throughout the fiscal year as demonstrated by audited financial statements. 6) The budget adhered to the UBAA throughout the fiscal year and at closing, including among others, applicable requirements for mid-year adjustments or deficit resolution.

the ... qualified school district in the general public market during the remainder of the current fiscal year and the immediately succeeding fiscal year in amounts sufficient to substantially satisfy all of the capital and other financial requirements of the ... qualified school district during those periods in accordance with the ... qualified school district's financial plan, as applicable.”

d) The “... qualified school district has demonstrated to the commission's satisfaction that the ... qualified school district has sufficient ability to borrow in the municipal securities market or qualified school district.”

(f) The state treasurer certifies that the “... qualified school district is in compliance with the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.”

(g) The commission certifies that the “... qualified school district is in substantial compliance with this act.”

(h) “... for a qualified school district, the qualified school district has fully satisfied all of its current obligations to the system created under the public-school employee’s retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1437.”

(i) The “... qualified school district has implemented a program in which all contracts awarded by the ... qualified school district are posted on the ... qualified school district's public website within 30 days of the contract award, including the identity of the parties to the contract, the dollar amount of the contract, and a brief description of the goods or services provided by the contract.”

The FRC recently went through the process of granting a waiver request from the city of Detroit. In response to your request, as Chair, I am recommending a similar process take place for Detroit Public Schools Community District (DPSCD) and School District for the City of Detroit (DPS). The process that took place for the city of Detroit included the following:

The city of Detroit submitted their request with documentation and gave a presentation to the finance subcommittee demonstrating how the city was in compliance with all statutory requirements. For example, the city provided, among other documents audited financial results to demonstrate deficit-free budgets for three consecutive years;

The FRC staff and finance subcommittee members reviewed the documentation, met with the city for clarity on any outstanding issues and provided an analysis and recommendation to the FRC regarding the waiver request;

I am also recommending that both DPSCD and DPS prepare separate presentations and provide separate documentation as to their compliance with all the statutory requirements necessary for a waiver, since both are separate entities, and both may or may not qualify for consideration. The October 14th letter and the above recommendations will be forwarded to the FRC for their consideration. As always, I look forward to working with you and your staff to assist in this process. Please feel free to contact me if you should have questions or require additional information.

Cc: Financial Review Commission



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DATE: October 14, 2019

TO: Rachael Eubanks, State Treasurer

FROM: Nikolai P. Vitti, Ed.D., Superintendent *(NV)*

CC: Financial Review Commission Board

RE: Waiver of Financial Review Commission Oversight

On December 1, 2018, the State Treasurer confirmed with Detroit Public Schools Community District ("DPSCD") the requirements to request a waiver of active Financial Review Commission ("FRC") oversight. As of October 2019, DPSCD is on track to complete those requirements and request a waiver:

Outlined below are each of the statutory requirements and the status of both DPS and DPSCD's compliance with such requirements.

1. Adoption of, and adherence to, deficit-free budgets for three (3) consecutive years (MCL 141.1638(a)).

DPSCD

DPSCD is on track to complete Requirement No. 1. The District's annual audit is in process and it will be completed by October 31, 2019 per state statute. An audit summary will be shared with the FRC at the November 25, 2019, meeting. We are confident that findings will show a third consecutive year of deficit-free budgets.

DPS

DPS also satisfies Requirement No. 1. DPS is a pass-through entity whose purpose is to collect taxes and pay legacy debt. Therefore, based on its function it does not have a budget and does satisfy this requirement.

2. All municipal securities or debt obligations sold by the qualified school district in the general public satisfied the capital and other financial requirements of the qualified school district during that period (MCL 141.1638(b)(i)).

DPSCD

Requirement No. 2 does not apply to DPSCD because it has not sold municipal securities or debt obligations in the general public for FY17, FY18 and FY19.

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DPS

DPS satisfies Requirement No. 2. All of DPS' existing bonds (that were previously sold in the general public) satisfy the continued pay-off of DPS' debt for FY17, FY18 and FY19.

- 3. There is a substantial likelihood that municipal securities or debt obligations can be sold by the qualified school district during the remainder of the current fiscal year and the immediately succeeding fiscal year in amounts sufficient to substantially satisfy all of the capital and other financial requirements (MCL 141.1638(b)(ii)).**

DPSCD

In the state of Michigan, school facility funding is primarily funded through capital debt. The state does not provide additional funding for facility related issues. The District conducted a facilities assessment in 2018 that showed that DPSCD has \$500 million in capital needs. This information was presented to the FRC and then to State Treasurer Nick Khouri. In Mr. Khouri's memorandum from December 1, 2018, he referenced that the District was on track to exit FRC oversight despite the capital needs costs. The state knowingly established DPSCD without the immediate financial and clear legal status to fully address its facility challenges. Other Michigan districts face similar facility challenges that DPSCD faces without clear financial pathways to remedy those challenges. We should not be treated differently than other school districts.

As of July 1, 2019, the District has allocated approximately \$30 million for urgent capital needs. Further, we have approximately \$70 million currently available in unrestricted general fund surplus that will be allocated for additional capital needs. DPSCD is considering seeking voter approval to address capital needs through a capital millage or sinking fund, in the future.

DPS

The legislation creating DPSCD acknowledges and assumes that DPS would be unable to meet this requirement following creation of DPSCD; thus, the District believes this factor is inapplicable.

- 4. The qualified school district has demonstrated to the commission's satisfaction that the qualified school district has sufficient ability to borrow in the municipal securities market (MCL 141.1638(d)).**

DPSCD

DPSCD believes Requirement No.4 is satisfied. Although DPSCD has not elected to exercise these options, DPSCD could submit a capital debt millage or sinking fund to the voters for approval. As the FRC is aware, DPSCD requires clarity as it relates to bonding authority and for its debt to be secured through the state's School Board Qualifications and Loan Program.

DPS

DPS refinanced outstanding School Bond Qualification and Loan Program balance in 2017. DPS is on track to refinance 2010B bonds and outstanding School Bond Qualification and Loan Program balance by January 2020.

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Finally, the School Board is scheduled to vote on resolution to put the 18 operating mill renewal on the August 2020 ballot in December 2019. The 18 operating mill renewal will stay on the following 5 election ballots if it is not approved in August.

5. **The qualified school district did not violate the plan for adjustment in the immediately preceding fiscal year, as applicable, and is not in violation in the current fiscal year (MCL 141.1638(e)).**

DPSCD & DPS

Requirement No. 5 does not apply to DPSCD or DPS because it did not go through a bankruptcy and there is no applicable plan of adjustment.

6. **The state treasurer certifies that the qualified school district is in compliance with the uniform budgeting and accounting act (MCL 141.1638(f)).**

DPSCD & DPS

DPSCD and DPS have complied with the Uniform Budgeting and Accounting Act ("UBAA") for FY17 and FY18. DPSCD and DPS are currently in compliance with UBAA for FY19 and expect to continue such compliance through the close of FY19.

7. **The commission certifies that the qualified school district is in substantial compliance with this act (MCL 141.1638(g)).**

DPSCD & DPS

Requirement No. 7 is (or can be) met. DPSCD and DPS have complied with the Act for FY 17, FY18 and FY19.

8. **The qualified school district has fully satisfied all of its current obligations to the system created under the public school employees retirement act of 1979 (MCL 141.1638(2)(h)).**

DPSCD & DPS

Requirement No. 8 is satisfied. DPSCD is current on all payments to MSPERS. In addition, DPS has timely paid all current obligations to MSPERS. The final outstanding balance to MSPERS is scheduled to be fully repaid in 2027.


9. **The qualified school district has implemented a program in which all contracts awarded by the qualified school district are posted on the qualified school district's public website within 30 days of the contract award, including the identity of the parties to the contract, the dollar amount of the contract, and a brief description of the goods or services provided by the contract (MCL 141.1638(i)).**

DPSCD & DPS

Requirement No. 9 is satisfied. DPSCD contracts are publicly available on the website and DPS no longer enters into contracts.

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It is our understanding from the December 2018 memo from the State Treasurer, that the FRC shall grant a waiver under MCL 141.1638(2) because the District has met the above conditions. If there is disagreement regarding our analysis, then please share that in writing. School district leadership, including the duly-elected School Board, and the citizens of Detroit are eager to exit.



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DPSCD does not discriminate based on race, color, national origin, sex, disability and/or religion
Contact Compliance for more information at (313) 240-4377 or detroitk12.org/admin/compliance.