

# State Aid

## & FINANCIAL PLANNING SERVICE



# Fund Balance and Reserves

**December 2024**



10 Empire State Boulevard  
Castleton, New York 12033  
518.477.2635 TEL  
518.477.4284 FAX

<http://sap.questar.org>

**Prepared by:**

Kathy Beardsley  
Rose Fiddemon-Clarke  
Mike Los  
Sarah Morrison  
John Tamburello

## **COPYRIGHT NOTIFICATION**

**Copyright © 2024 Rensselaer, Columbia, and Greene Counties Board of Cooperative Educational Services (Questar III). All rights reserved. Unauthorized use or reproduction is strictly prohibited. Violators will be prosecuted to the maximum extent allowable under the law.**

## Table of Contents

<a href="#">OVERVIEW .....</a>	<a href="#">1</a>
<a href="#">FUND BALANCE CLASSIFICATIONS .....</a>	<a href="#">2-3</a>
<a href="#">NONSPENDABLE FUND BALANCES .....</a>	<a href="#">4-7</a>
• <a href="#">Sample Nonspendable Fund Balance Journal Entries.....</a>	<a href="#">8-9</a>
<a href="#">RESTRICTED FUND BALANCES.....</a>	<a href="#">10-12</a>
• <a href="#">Workers' Compensation Reserve .....</a>	<a href="#">13</a>
• <a href="#">Unemployment Insurance Reserve.....</a>	<a href="#">14</a>
• <a href="#">Retirement Contributions Reserve.....</a>	<a href="#">15-16</a>
• <a href="#">Reserve for Property Loss .....</a>	<a href="#">17</a>
• <a href="#">Reserve for Liability Claims .....</a>	<a href="#">18</a>
• <a href="#">Insurance Reserve.....</a>	<a href="#">19-20</a>
• <a href="#">Reserve for Tax Certiorari.....</a>	<a href="#">21-22</a>
• <a href="#">Reserve for Taxes Raised Outside of Tax Limit.....</a>	<a href="#">23</a>
• <a href="#">Reserve for Employee Benefits and Accrued Liabilities.....</a>	<a href="#">24-25</a>
• <a href="#">Capital Reserve .....</a>	<a href="#">26-27</a>
• <a href="#">Reserve for Repairs.....</a>	<a href="#">28-29</a>
• <a href="#">Mandatory Reserve for Debt.....</a>	<a href="#">30-31</a>
• <a href="#">Additional Reserves.....</a>	<a href="#">32-33</a>
○ <a href="#">Nuclear Facility Tax Stabilization Reserve Fund .....</a>	<a href="#">32</a>
○ <a href="#">Career Education Instructional Equipment Reserve Fund .....</a>	<a href="#">33</a>
• <a href="#">Sample Restricted Fund Balance Journal Entries.....</a>	<a href="#">34-37</a>
• <a href="#">Sample Journal Entries for the Establishment and Use of a Capital Reserve.....</a>	<a href="#">38-43</a>
<a href="#">COMMITTED FUND BALANCES.....</a>	<a href="#">44</a>
<a href="#">ASSIGNED FUND BALANCES.....</a>	<a href="#">45</a>
• <a href="#">Sample Assigned Fund Balance Journal Entries .....</a>	<a href="#">46-48</a>
<a href="#">UNASSIGNED FUND BALANCES.....</a>	<a href="#">49-51</a>
<a href="#">OFFICE OF THE STATE COMPTROLLER'S FOCUS ON FUND BALANCE AND RESERVES .....</a>	<a href="#">52-56</a>
<a href="#">REPORTING BUDGETED USE OF FUND BALANCE ON ST-3 .....</a>	<a href="#">57-59</a>

**Table of Contents *(continued)***

---

[PROPERTY TAX REPORT CARD – FUND BALANCE REPORTING ..... 60-63](#)

[FUND BALANCE REPORTING ON THE ST-3 ..... 64-73](#)

[REFERENCES ..... 74-109](#)

- [• Select Commissioner’s Decisions ..... 74-106](#)
- [• Sample Fund Balance Policy ..... 107-110](#)

[OTHER HELPFUL LINKS.....111](#)

## OVERVIEW

---

The Governmental Accounting Standards Board (GASB) released GASB Statement #54, *Fund Balance Reporting and Governmental Fund Type Definitions* in February 2009. This accounting standard established, effective for financial statements ending on or after June 30, 2011, five classifications of fund balance: nonspendable, restricted, committed, assigned and unassigned. The purpose of GASB #54 was to indicate the level of constraints placed upon how resources can be spent and identify the sources of those constraints.

Article 3 of the General Municipal Law (GML) requires local school districts to file an annual financial report with the Office of the State Comptroller (OSC). This reporting is accomplished by school districts by filing the ST-3. The classifications of fund balance serve to inform readers of the financial statements of the extent to which the school district is bound to honor constraints on the specific purposes for which resources in a fund can be spent.

## FUND BALANCE CLASSIFICATIONS

---

Nonspendable – consists of assets that are inherently nonspendable in the current period either because of their form or because they must be maintained intact, including prepaid items, inventories, long-term portions of loans receivable, financial assets held for resale, and principal of endowments.

Restricted – consists of amounts that are subject to externally enforceable legal purpose restrictions imposed by creditors, grantors, contributors, or laws and regulations of other governments; or through constitutional provisions or enabling legislation.

Committed – consists of amounts that are subject to a purpose constraint imposed by a formal action of the school district's highest level of decision-making authority before the end of the fiscal year, and that require the same level of formal action to remove the constraint. (OSC guidance states that in most cases, NYS local governments and school districts will not have any committed funds to report).

Assigned – consists of amounts that are subject to a purpose constraint that represents an intended use established by the school district's highest level of decision-making authority, or by their designated body or official. The purpose of the assignment must be narrower than the purpose of the general fund, and in funds other than the general fund, the assigned fund balance represents the residual amount of fund balance.

Unassigned – represents the residual classification for the school district's general fund and could report a surplus or deficit. In funds other than the general fund, the unassigned classification should be used only to report a deficit balance resulting from overspending for specific purposes for which amounts had been restricted, committed, or assigned.

*The Office of State Comptroller has provided the following guidance on Fund Balance Classification in New York State: <sup>1</sup>*

Various State statutes allow most local governments to establish reserve funds for various purposes, e.g., capital, repair, debt, workers' compensation. These statutes regulate the establishment, funding and use of these reserves, but generally do not require local governments to establish or fund them. Because the State regulates the establishment, funding and use of these reserves, generally, reserves will be classified as restricted fund balance on financial statement balance sheets. Reserve funds that authorize transfers to other reserve funds as stated in the controlling statute (which may require board action and/or voter approval) will still always be classified as restricted, because even though the purpose for the restriction may change, the level of constraint on spending does not.

## FUND BALANCE CLASSIFICATIONS *(continued)*

---

Reserves that allow for transfers back to the originating operating fund should be classified as assigned fund balance, but **only after** an action or determination has been made by the governing board that the reserve is no longer needed for the purpose for which the reserve fund was established, and **only** for the portion that is returnable to the operating fund.

Governments are not required to report all five classifications of fund balance. OSC believes that in most cases, local governments in New York will not have committed fund balance to report. If the governing body has not delegated the authority to assign amounts to be used for specific purposes to another body or official, in most instances, OSC believes that formal actions by governing boards (resolutions, ordinances, and local laws) constitute a similar level of constraint of resources, and these formal actions will result in an assignment of resources.

<sup>1</sup> From the April 2011 Office of the State Comptroller's Accounting Release, *"Fund Balance Reporting and Governmental Fund Type Definitions"*.

# NONSPENDABLE FUND BALANCES

---

**Nonspendable:**

*Definition: consists of assets that are inherently nonspendable in the current period either because of their form or because they must be maintained intact, including prepaid items, inventories, long-term portions of loans receivable, financial assets held for resale, and principal of endowments.*

**Prepaid Items/Expenditures** – For amounts that are recorded in the 480-Prepaid Expenditures account code, there should be an equal amount of fund balance that is classified as Nonspendable Fund Balance.

For example:

The District pays their July 2025 health insurance premium of \$500,000 during the month of June 2025. Instead of expensing a 13 <sup>th</sup> month of health insurance in the 2024-25 school year, the disbursement is recorded as:			
		<i>Debit</i>	<i>Credit</i>
<i>A480-Prepaid Expenditures</i>		<i>\$500,000</i>	
	<i>A200-Cash</i>		<i>\$500,000</i>

As of the end of June 2025, the A480-Prepaid Expenditure account code will be recorded in the ST-3 as an asset and a corresponding portion of Fund Balance will be shown as Nonspendable Fund Balance. This classification of fund balance demonstrates that this asset is not easily convertible to a form that could be used to pay current liabilities.



**NONSPENDABLE FUND BALANCES (continued)**

On the ST-3, this would be reported as:

<b>ASSETS</b>		
Prepaid Expenditures	A480 32	500,000

<b>FUND BALANCE (GENERAL FUND)</b>		
Nonspendable		
Not in Spendable Form	A806 80	500,000
Must Remain Intact	A807 81	
Total Nonspendable Fund Balance	AT080 82	500,000

**Long-Term Receivables** – For amounts that are included as receivables, but which are not considered short-term, the related fund balance is also classified under the Nonspendable category.

For example:

In the General Fund, a Due from the Food Service Fund for \$50,000 should have the related fund balance amount of \$50,000 shown in A806-Not in Spendable Form if the Food Service Fund has a deficit and does not currently have the ability to satisfy the outstanding receivable Due to the General Fund.

**Note:** Edit checks have been added to the ST-3 review process to ask if any portion of the Due from Other Funds is non-current. If you respond in the affirmative, then the portion that is deemed non-current should have a corresponding amount reported in the A806-Not in Spendable Form.

# NONSPENDABLE FUND BALANCES (continued)

**Reserve for Inventory** – For amounts that are recorded in C445-Inventory of Materials and Supplies, C446-Surplus Food Inventory and C446-Purchased Food Inventory, there should be an equal amount of fund balance that is classified as Nonspendable Fund Balance.

For example:

On June 30, 2025, the Food Service Fund took an inventory, and the ending balances were \$5,000 in Materials and Supplies, \$7,000 in Surplus Food and \$10,000 in Purchased Food. As of the end of June 2025, the Inventory will be recorded in the ST-3 as an asset using C445 and C446 as follows:

## Other Assets

Inventory of Materials and Supplies (Optional)	C445	8	5,000
Surplus Food Inventory	C446	9	7,000
Purchased Food Inventory	C446	10	10,000

A corresponding portion of Fund Balance will be shown as Nonspendable Fund Balance (C806-Not in Spendable Form). This classification of fund balance demonstrates that this type of asset is not easily convertible to a form that could be used to pay current liabilities.

## Nonspendable

Not in Spendable Form	C806	42	22,000
-----------------------	------	----	--------

# NONSPENDABLE FUND BALANCES (continued)

**Permanent Fund** – The Permanent Fund accounts for funds that are being held in trust for a specific purpose(s) for the benefit of the district. Funds held in trust will either have a restriction that their principal can or cannot be spent. For those trusts that the principal cannot be spent, the related fund balance is also classified under the Nonspendable category.

For example:

The District has a Permanent Fund which accounts for \$250,000 of funds that were donated to the district with the stipulation that the principal be held in trust and the interest earned be spent to maintain the athletic fields of the district. The Restricted Cash will be recorded in the ST-3 as an asset in PN230-Cash, Special Reserves and a corresponding portion of Fund Balance will be shown as Nonspendable Fund Balance (PN807-Must Remain Intact). This classification of fund balance demonstrates that this asset cannot be converted to a form that could be used to pay current liabilities.

Restricted Cash			
Cash, Special Reserves	PN230	4	250,000

## FUND BALANCE (PERMANENT FUND)

Nonspendable			
Must Remain Intact	PN807	24	250,000

*Other Considerations regarding Nonspendable Classification of Fund Balance* – For some districts, the nonspendable classification of fund balance may not be accounted for within the general ledger of the General Fund during the year, but instead may only be reported at year end on the ST-3 and annual financial statements. This should be considered when projecting unassigned fund balance during the year as it will be reduced at year end by those portions of fund balance that need to be reported as Nonspendable Fund Balance.

## Sample Nonspendable Fund Balance Journal Entries

---

### Accounting Journal Entry Examples for Nonspendable Fund Balance:

#1: To record the Nonspendable portion of fund balance when the district has a Prepaid Expenditure of \$15,000 as of the end of the year:			
		<i>Debit</i>	<i>Credit</i>
<i>A917-Unassigned Fund Balance</i>		<i>\$15,000</i>	
	<i>A806-Nonspendable – Not in Spendable Form</i>		<i>\$15,000</i>

#1a: To record the Nonspendable portion of fund balance when the district has a Long-Term Receivable of \$50,000 as of the end of the year:			
		<i>Debit</i>	<i>Credit</i>
<i>A917-Unassigned Fund Balance</i>		<i>\$50,000</i>	
	<i>A806-Nonspendable – Not in Spendable Form</i>		<i>\$50,000</i>

#2: To record the Nonspendable portion of fund balance when the district has \$10,000 in C445-Inventory of Materials and Supplies and \$25,000 in C446-Food Inventory at year end:			
		<i>Debit</i>	<i>Credit</i>
<i>C915-Assigned Unappropriated Fund Balance</i>		<i>\$35,000</i>	
	<i>C806-Nonspendable – Not in Spendable Form</i>		<i>\$35,000</i>

## Sample Nonspendable Fund Balance Journal Entries (*continued*)

#2a: To record the Nonspendable portion of fund balance when the district, using the consumption method, has \$100,000 in A445-Inventory at year end:

		<i>Debit</i>	<i>Credit</i>
<i>A917-Unassigned Fund Balance</i>		<i>\$100,000</i>	
	<i>A806-Nonspendable – Not in Spendable Form</i>		<i>\$100,000</i>

#3: During the year, the Permanent Fund was established with an endowment of \$200,000 which earned \$2,000 interest during the year. The donor required that the principal remain intact and only the interest could be spent on the specified purpose. During the year, no expenditures occurred. To close the revenues of the Permanent Fund (PN) at year end:

	<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>PN980-Revenue Control</i>		<i>\$202,000</i>	
	<i>PN2705-Gifts and Donations</i>	<i>\$200,000</i>	
	<i>PN2401-Interest and Earnings</i>	<i>\$2,000</i>	
	<i>PN807-Nonspendable – Must Remain Intact</i>		<i>\$200,000</i>
	<i>PN915-Assigned Unappropriated Fund Balance</i>		<i>\$2,000</i>

## RESTRICTED FUND BALANCES

---

*Definition: includes amounts with constraints placed on the use of resources either externally imposed by creditors, grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation.*

Most of the reserves that school districts are eligible to establish are classified by the Office of the State Comptroller following the guidance of GASB 54 as Restricted Fund Balance. These include:

<b>Name of Fund Balance Reserve:</b>	<b>Account(s):</b>
Workers' Compensation Reserve	A814
Unemployment Insurance Reserve	A815
Local Retirement System Contributions Reserve	A827
Reserve for Teachers Retirement Contributions *	A828
Reserve for Property Loss	A861
Reserve for Liability Claims	A862
Insurance Reserve	A863
Reserve for Tax Certiorari	A864
Reserve for Taxes Raised Outside of Tax Limit	A874
Reserve for Employee Benefits and Accrued Liabilities	A867
Capital Reserve	A878
Reserve for Repairs	A882
Reserve for Debt	A884, V884
Nuclear Facility Tax Stabilization Reserve Fund	A899
Career Education Instructional Equipment Reserve Fund	A899

\*Authorized effective April 2019 – This is a sub fund of A827; thus, a district needs to have an A827 reserve established before it can establish a A828 reserve.

### General Accounting Guidelines for Restricted Fund Balances:

#### Cash:

- Reserve funds are not required to be kept in separate bank accounts.
- Cash should be recorded in A/V230-Cash, Special Reserves or A/V231-Cash in Time Deposits, Special Reserves at a minimum on the ST-3 and in the year-end financial statements.
- Separate accounting records must be maintained for each reserve fund.
- If reserve fund cash is commingled with other moneys for investment purposes, each fund must receive its prorated share of any interest earned on the total investment.

## **RESTRICTED FUND BALANCES (*continued*)**

---

### Accounting Records:

Each reserve should have accounting records to support:

- The date and amount of each sum paid into the reserve
- Interest earned by the reserve
- Capital gains or losses resulting from the sale of investments of the fund
- The amount and date of each withdrawal from the reserve
- The total assets of the reserve, showing cash balance and a schedule of investments, if applicable.

### Annual Reporting:

A detailed report on the operation and condition of each reserve fund should be submitted to the governing board each year.

### **Other Fund Balance Changes Required by GASB 54:**

OSC's Accounting Release on GASB 54 provides the following additional guidance:

Note Disclosures – the following information related to reporting fund balances should be disclosed in the notes to the financial statements:

- The government's highest level of decision-making authority and the formal action required to establish a commitment of fund balance (if applicable), and the processes through which commitments are imposed.
- If designated, the body or official authorized to assign amounts to a specific purpose, the policy that established that authorization, and the processes through which assignments are imposed.
- The order in which amounts are deemed to have been spent. Local government accounting policies should determine whether restricted, committed, assigned, or unassigned amounts are considered to have been spent first when resources that are available from multiple constraint levels are spent; the default policy is that resources are first spent from the highest constraint level available.
- Significant encumbrances by major funds and non-major funds in the aggregate, with required disclosure about other significant commitments.

## RESTRICTED FUND BALANCES (*continued*)

---

- If fund balance classifications are displayed in the aggregate on the face of the financial statements (items do not have to be presented for each specific purpose of Nonspendable, restriction, commitment, or assignment), amounts for the two Nonspendable classifications (not in spendable form and legally required to remain intact) and specific purposes for the other fund balance classifications must be disclosed in the notes.
- Encumbrances – accounting for encumbrances will continue, but only significant encumbrances should be disclosed in the notes in conjunction with disclosures of other significant commitments. If resources have already been restricted or committed for encumbrances, the encumbered amounts will be included with restricted or committed resources. If resources have not already been restricted or committed, amounts encumbered should be considered assigned for the purpose of the expected expenditure, because the outstanding purchase orders are evidence of the government's intent to spend the resources. Encumbered amounts for specific purposes for which resources have been restricted, committed, or assigned should not be displayed separately within those classifications.
- A minimum fund balance policy, if formally adopted.

A sample fund balance policy is included in the Reference section of this Guidebook.

### Change effective with the 2017-18 school year:

The Education Law was expanded to include Section 3653 which requires:

*“Reserves funded by resolution. In addition to any other requirements, no monies shall be paid or transferred into any reserve fund, established pursuant to this chapter or any other chapter of law, for the purpose of increasing the funding of such reserve fund, unless expressly authorized by a resolution of the board of education or trustee of a school district.”*

A description of the purpose of each of the reserves listed on Page 10, who may create them, how they are established, where the source of funds comes from and other special provisions about each is outlined in this section. Following this information are sample journal entries to record transactions related to reserves.



## **Workers' Compensation Reserve – A814**

---

Authorized by: General Municipal Law Section 6-j

### **Purpose:**

To pay for compensation and benefits, medical, hospital, or other expenses authorized by Article 2 of the Workers' Compensation Law and to pay the expenses of administering a self-insurance program.

### **Who May Establish:**

All school districts that are self-insured for workers' compensation.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

Budgetary appropriations are how funds are accessed.

### **Source of Funds:**

The reserve is funded by budgetary appropriations and other sums as may be legally appropriated.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Use of Unexpended Balances:**

If at the end of any fiscal year, moneys in the fund exceed the amounts required to be paid for compensation, benefits, and expenses, plus any additional amount required to pay all pending claims, the Board of Education, within 60 days of the close of the fiscal year, may elect to transfer all or part of the excess amount to certain other reserves funds, or may apply all or part of the excess to the budget appropriation of the next succeeding fiscal year. If the district ceases to be a self-insurer, moneys remaining in the fund may be transferred to certain other reserve funds, but only to the extent moneys in the fund exceed an amount sufficient to pay all authorized expenditures, both accrued and contingent.

## Unemployment Insurance Reserve – A815

---

Authorized by: General Municipal Law Section 6-m

### **Purpose:**

To reimburse the State Unemployment Insurance Fund for payments made to claimants where the municipality has elected to use the “benefit reimbursement” method.

### **Who May Establish:**

All school districts and BOCES that have elected to become liable for payments in lieu of contributions under Article 18 of the Labor Law.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations. Expenditures may only be made as required by law to pay into the Unemployment Insurance Fund an amount equivalent to the amount of benefits paid to claimants and charged to the account of school district or BOCES in accordance with Labor Law Section 518(1) (e).

### **Source of Funds:**

The reserve is funded by budgetary appropriations, from certain other reserves funds, subject to permissive referendum; other funds that may be legally appropriated.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Use of Unexpended Balances:**

If at the end of any fiscal year, the moneys in the fund exceed amounts required to be paid into the Unemployment Insurance Fund as noted above, plus any additional amounts required to pay all pending claims, the Board, within 60 days of the close of the fiscal year, may elect to transfer all or part of the excess amounts to certain other reserve funds, or apply all or a part of the excess to the budget appropriation of the next succeeding fiscal year. If the district or BOCES terminated its election to become liable for payments in lieu of contributions (converts to the “tax contribution” basis), moneys remaining in the fund may be transferred to certain other reserve funds, to the extent moneys in the fund exceed amounts sufficient to pay all pending claims.

## **Retirement Contributions Reserve – A827 (ERS) and A828 (TRS)**

---

Authorized by: General Municipal Law Section 6-r, as amended by Chapter 59, Laws of 2019

### **Purpose:**

Since 2004, the reserve was for the payment of retirement contributions which was defined as all or a portion of the amount payable, for school districts and BOCES, to the New York State and Local Employees' Retirement System pursuant to Section 17 of the Retirement and Social Security Law. The law was amended in 2019 to authorize a sub-fund within the Retirement Contribution Reserve Fund to finance retirement contributions to the NYS Teachers Retirement System and/or offset all or some of the amount deducted from the moneys apportioned to the district from the state under Education Law §521 (e.g., collection of employer contributions to TRS).

### **Who May Establish:**

All school districts (except a school district in a city with a population of 125,000 or more) and BOCES that are "participating employers" as defined in Retirement and Social Security Law Section 2(20).

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education. There must be an established Retirement Contributions Reserve Fund before a sub-fund for TRS contributions can be established by a resolution of the Board of Education as the sub-fund must exist "within" the Retirement Contributions Reserve.

### **How Reserve is Used:**

By budgetary appropriations to finance retirement contributions and/or to offset all or a portion of the amount deducted from the moneys apportioned to the participating employer from the state for the support of common schools pursuant to §521 of the Education Law.

### **Source of Funds:**

The reserve is funded by: (a) budgetary appropriations or taxes raised for the reserve, (b) revenues that are not required by law to be paid into any other fund or account, (c) amounts from reserve funds established pursuant to General Municipal Law Sections 6-c, 6-d, 6-e, 6-f, or 6-g or pursuant to Education Law Section 3651 subject to public hearing requirements, (d) other funds that may be legally appropriated.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## **Retirement Contributions Reserve – A827 (ERS) and A828 (TRS)** **(continued)**

---

### **Limitation on Contributions to the TRS Sub-Fund:**

The amount of moneys contributed annually to the TRS sub-fund cannot exceed 2% of the total compensation or salaries of all teachers employed by the district who are members of TRS paid during the immediately preceding fiscal year. Nor can the balance of the sub-fund exceed 10% of the total compensation or salaries of all teachers employed by the district who are members of TRS paid during the immediately preceding fiscal year.

### **Use of Unexpended Balances:**

The Board may authorize the transfer of a portion of the money in the retirement contribution reserve to a reserve fund established pursuant to Sections 6-c, 6-d, 6-e, 6-f or 6-g of the General Municipal Law or a reserve fund established pursuant to Section 3651 of the Education Law. Such a transfer is subject to a public hearing. In addition, by resolution, the Board may authorize the transfers of monies from the Retirement Contribution Reserve for ERS to or from the sub-fund for TRS. If the Board determines that the retirement contribution reserve is no longer needed, the Board may terminate the fund by resolution. The resolution must transfer any moneys remaining in the retirement contribution reserve to one or more reserve funds established pursuant to Sections 6-c, 6-d, 6-e, 6-f, or 6-g of the General Municipal Law or one or more reserve funds established pursuant to Section 3651 of Education Law.

### **Special Provisions:**

Within 60 days of the end of the fiscal year, the Chief Financial Officer shall report to the Board on the status of the reserve.

The ERS (A827) and TRS (A828) portions of the Retirement Contribution Reserve should be accounted for separately. Accounting records should be maintained that account for contributions, interest earnings and eligible expenditures by each sub-fund of the Reserve.

## **Reserve for Property Loss – A861**

---

Authorized by: Education Law Section 1709 [8-c] (school districts), 1950[4] [cc] (BOCES).

### **Purpose:**

For the payment of self-insured property loss claims.

### **Who May Establish:**

Most school districts and BOCES.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations to fund purposes that the original reserve was established for unless approved by the voters, except that such board may authorize use of such funds other than amounts allocated for unsettled claims or suits including expenses in connection therewith to pay premiums for insurance policies purchased to insure subsequent losses in areas previously self-insured, in the event of dissolution of the self-insurance plan.

### **Source of Funds:**

From budgetary appropriations.

### **Special Provisions:**

**For School Districts:** The total amount of reserve cannot exceed three per centum, exclusive of any planned balance presently authorized, of the annual budget of the district. In the event that 3%, exclusive of any planned balance presently authorized, of the annual budget of the district would result in less than \$15,000, the total reserve funds may be for an amount not to exceed \$15,000.

**For BOCES:** The total amount of reserve cannot exceed three per centum, exclusive of any planned balance presently authorized, of the annual budget of the BOCES.

**For School Districts and BOCES:** The reserve cannot be reduced below total amounts estimated to be necessary to cover incurred but unsettled claims or suits, including related expenses, other than by payment of losses for which such amounts were established.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## Reserve for Liability Claims – A862

---

Authorized by: Education Law Section 1709 [8-c] (school districts), 1950[4] [cc] (BOCES).

### **Purpose:**

For the payment of self-insured liability claims.

### **Who May Establish:**

Most school districts and BOCES.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations to fund purposes that the original reserve was established for unless approved by the voters, except that such board may authorize use of such funds other than amounts allocated for unsettled claims or suits including expenses in connection therewith to pay premiums for insurance policies purchased to insure subsequent losses in areas previously self-insured, in the event of dissolution of the self-insurance plan.

### **Source of Funds:**

From budgetary appropriations.

### **Special Provisions:**

**For School Districts:** The total amount of reserve cannot exceed three per centum, exclusive of any planned balance presently authorized, of the annual budget of the district. In the event that 3%, exclusive of any planned balance presently authorized, of the annual budget of the district would result in less than \$15,000, the total reserve funds may be for an amount not to exceed \$15,000.

**For BOCES:** The total amount of reserve cannot exceed three per centum, exclusive of any planned balance presently authorized, of the annual budget of the BOCES.

**For School Districts and BOCES:** The reserve cannot be reduced below total amounts estimated to be necessary to cover incurred but unsettled claims or suits, including related expenses, other than by payment of losses for which such amounts were established.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## **Insurance Reserve – A863**

---

Authorized by: General Municipal Law Section 6-n

### **Purpose:**

To fund certain uninsured losses, claims, actions, or judgments for which the local government is authorized or required to purchase or maintain insurance, with a number of exceptions. An insurance reserve fund may also be used to pay for expert or professional services in connection with the investigation, adjustment, or settlement of claims, actions, or judgments.

An insurance reserve may be not used to pay for uninsured losses, claims, actions, or judgments for which the following types of insurance are authorized: life insurance, annuities, accident and health insurance, workers' compensation and employers' liability insurance, fidelity and surety insurance, credit insurance, title insurance, residual value insurance, mortgage guarantee insurance or to make payments in lieu of unemployment insurance contributions under Article 18 of the Labor Law. In addition, an insurance reserve may not pay for any loss, claim, action, or judgment for which it has established a reserve fund under any other provision of law.

### **Who May Establish:**

School districts (except a school district in a city of 125,000 or more) and BOCES.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations.

### **Source of Funds:**

By budgetary appropriations, amounts from any other fund authorized by the General Municipal Law subject to permissive referendum, such other funds as may be legally appropriated.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## **Insurance Reserve – A863 (*continued*)**

---

### **Special Provisions:**

The amount paid into this reserve fund during any fiscal year is limited to the greater of \$33,000 or 5 percent of the total annual budget for that year. This is no limit on the cash balance.

Moneys in the fund may be used to fund the payment of actions or claims that have been compromised or settled with judicial approval, except where the amount of the settlement or compromise does not exceed \$25,000.

Separate accounting records must be maintained for each kind of risk in the Insurance Reserve Fund.

Within 60 days of the end of the fiscal year, the Chief Financial Officer shall report to the Board on the status of the reserve.

### **Use of Unexpended Balances:**

If funds are no longer needed, the money remaining in the fund may be transferred to another reserve fund authorized by the General Municipal Law or a reserve fund established under Education Law Section 3651, but only to the extent that the moneys in the fund exceed a sum sufficient to pay all liabilities incurred or accrued against the funds, as certified to the Board by the fiscal and legal officers of the district prior to the discontinuance of the fund.



## **Reserve for Tax Certiorari – A864**

---

Authorized by: Education Law Section 3651(1-a)

### **Purpose:**

To pay judgments and claims in tax certiorari proceedings in accordance with Article 7 of the Real Property Tax Law.

### **Who May Establish:**

School districts only.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations.

### **Source of Funds:**

By budgetary appropriations.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Special Provisions:**

The total amount in the reserve may not exceed the amount that might reasonably be deemed necessary to meet anticipated tax certiorari judgments and claims.

If a school district is located wholly or partly within the Adirondack Park and has State lands subject to taxation assessed at more than 30 percent of aggregate taxable assessed valuation in the district, the establishment of this reserve is subject to consent of the State Comptroller, on the recommendation of the Commissioner of Education.

The school authorities must annually render a detailed report of the operation and condition of each reserve fund under Section 3651, with a copy of the report provided to the Commissioner of Education.

## **Reserve for Tax Certiorari – A864 (*continued*)**

---

### **Use of Unexpended Balances:**

Funds that are not expended for the payment of judgments or claims arising out of tax certiorari proceedings for the tax roll in the year the moneys are deposited to the fund and/or that will not be “reasonably required to pay any such judgments or claim”, must be returned to the general fund on or before the first day of the fourth fiscal year following the deposit of such moneys to the reserve fund. If the proceeding or claim has been finally determined or otherwise terminated or disposed of after the exhaustion of all appeals, then moneys are deemed no longer reasonably required and should be returned to the general fund.

### **Other Considerations:**

This reserve is for potential losses from tax certiorari proceedings. In certain areas of the State, the potential loss is not retained by the school district and therefore it may be unnecessary to establish a Reserve for Tax Certiorari Claims for these districts. Here are some examples:

#### **Nassau County Guaranty:**

In 1938, Nassau County requested authority from the State of New York for the County to have county-wide property assessment jurisdiction for the entire County. Later, in 1948, the State Legislature decreed that Nassau County would be held responsible for costs and penalties resulting from its errors in assessment.

#### **Suffolk County Tax Act:**

Includes a requirement that “any final order in a proceeding under Article 7 of the Real Property Tax Law which orders or directs the correction of striking of an assessment appearing on that portion of a town assessment roll applicable to a school district, shall be binding on such town.” Thus, the responsibility for the loss of any tax revenue stays with the town, not the school district.

## **Reserve for Taxes Raised Outside of Tax Limit – A874**

---

Authorized by: Education Law Section 3651 (1-b)

### **Purpose:**

To offset the uncollected real property taxes due and owing to such a district in instances where the city or county is not required, pursuant to Real Property Tax Law Section 1332, to pay the amount of unpaid taxes to the treasurer of the school district.

### **Who May Establish:**

Only small city school districts.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **Source of Funds:**

By budgetary appropriations.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Special Provisions:**

The amount of funds in the reserve is limited to certain limitations set forth in Section 3651 (1-b).

The school authorities must annually render a detailed report on the operation and condition of each reserve fund under Section 3651, with a copy of the report provided to the Commissioner of Education.

### **Use of Unexpended Balances:**

May be liquidated if voters determine the original purpose for which the fund was established is no longer needed. Proceeds must be first applied to pay off any outstanding bonded indebtedness, with the remaining balance, if any, applied to reduce the annual tax levy subject to certain limitations set in the law.

## Reserve for Employee Benefits and Accrued Liabilities – A867

---

Authorized by: General Municipal Law Section 6-p

### **Purpose:**

To pay for any accrued “employee benefit” due an employee on termination of the employee’s service.

“Employee benefit” is defined in GML Section 6-p as “cash payment of the monetary value of accrued and accumulated but unused and unpaid sick leave, personal leave, holiday leave, vacation time, time allowances granted in lieu of overtime compensation and any other forms of payment for accrued but unliquidated time earned by municipal employees and payable to municipal employees upon termination of service, whether by retirement or otherwise....”

Lump sum payments upon separation from service that are calculated in a manner unrelated to accrued, unliquidated leave time credits are not payable from the employee benefits and accrued liabilities reserve per 2006 Op St Comp No. 2006-8, at 19.

<https://www.osc.state.ny.us/legal-opinions/opinion-2006-8>

The reserve may not be used to fund the cost of health insurance for retirees per 2004 Ops St Comp No. 2004-8, at 23.

<https://www.osc.state.ny.us/legal-opinions/opinion-2004-8>

Expenditures may be made from an employee benefit accrued liability reserve fund for the payment of all or part of the cost, including interest, of:

- (a) The cash payment of the monetary value of accumulated or accrued and unused sick time, holiday leave, vacation leave, time allowance granted in lieu of overtime compensation and other forms of payment for accrued leave time and benefits due to an employee upon termination of employment and separation from service “as required by ordinance, local law, collective bargaining agreement or Section 6 of the Civil Service Law”.
- (b) The reasonable costs of the administration of the reserve fund
- (c) Expert or professional services rendered in connection with the investigation, adjustment or settlement of claims, actions or judgments relating to claims for accrued employee benefits.

### **Who May Establish:**

School districts (except a school district in a city of 125,000 or more) and BOCES.

## **Reserve for Employee Benefits and Accrued Liabilities – A867 (*continued*)**

---

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education.

### **How Reserve is Used:**

By budgetary appropriations.

### **Source of Funds:**

By budgetary appropriations, amounts from certain other reserve funds subject to permissive referendum, other funds as may be legally appropriated.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Special Provisions:**

No expenditures shall be made from an employee benefit and accrued liability reserve fund for any employee benefit for which a reserve fund has already been established under any other provision of law.

### **Use of Unexpended Balances:**

If funds are no longer needed, the money remaining in the fund may be transferred to any other reserve fund authorized by General Municipal Law or a reserve fund established under Education Law Section 3651, but only to the extent that the moneys in the fund exceed a sum sufficient to pay all liabilities incurred or accrued against the employee benefit and accrued liabilities fund, as certified to the Board by the fiscal and legal officers of the district prior to the discontinuance of the fund.

*\*\*Please note that GASB 101 “Compensated Absences” is effective starting with the year beginning July 1, 2024 and may have an effect on this reserve.*

## Capital Reserve – A878

---

Authorized by: Education Law Section 3651(1)

### **Purpose:**

To pay the cost of any object or purpose for which bonds may be issued by, or for the objects or purposes of, a school district pursuant to the Local Finance Law.

### **Who May Establish:**

School districts only.

### **How Reserve is Established:**

The reserve may be created by with approval by a majority of qualified voters, except in city school districts in a city having a population of 125,000 or more where the Board of Education can establish the reserve.

The notice for the voter approval must state:

- That a proposition to establish a reserve fund will be submitted
- The purpose of the fund
- The ultimate amount of the reserve
- The probable term of the reserve
- The source from which the funds will be obtained.

The proposition must specify:

- The purpose of the fund
- The ultimate amount of the reserve
- The probable term of the reserve
- The source from which the funds will be obtained.

### **How Reserve is Used:**

By voter authorization, except for school districts in a city having a population of 125,000 or more (then budgetary appropriations). Expenditures must be for specific purpose specified in the proposition.

### **Source of Funds:**

Generally, an annual amount necessary to meet the requirements of the proposition under Section 3651 (1); also, the voters may from time-to-time direct district authorities to pay moneys derived from any other source into a Section 3651 (1) reserve. Again, voter approval is not required for a school district in a city with population of 125,000 or more.

## **Capital Reserve – A878 (*continued*)**

---

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Special Provisions:**

If a school district is located wholly or partly within the Adirondack Park and has State lands subject to taxation assessed at more than 30 percent of aggregate taxable assessed valuation in the district, the establishment of this reserve is subject to consent of the State Comptroller, on the recommendation of the Commissioner of Education.

The school authorities must annually render a detailed report on the operation and condition of each reserve fund under Section 3651, with a copy of the report provided to the Commissioner of Education.

### **Use of Unexpended Balances:**

All or any part of the reserve established pursuant to Education Law Section 3651 (1) may be transferred to another reserve fund established pursuant to that section with voter approval. Also, when voters determine the original purpose of the reserve fund is no longer desirable, the reserve fund may be liquidated by applying the balance first to any outstanding debt and then, subject to certain limitations, to the annual tax levy. Voter approval is not required on transfers from or liquidation of reserve funds in a school district in a city having a population of 125,000 or more.

## **Reserve for Repairs – A882**

---

Authorized by: General Municipal Law Section 6-d

### **Purpose:**

To pay for certain repairs to capital improvements or equipment. The type of repairs must not recur annually or at shorter intervals.

### **Who May Establish:**

School districts.

### **How Reserve is Established:**

The reserve may be created by resolution of the Board of Education. However, an appropriation to a repair reserve fund is not an ordinary contingent expense and therefore, voter approval is required to fund a repair reserve.

### **How Reserve is Used:**

A resolution appropriating money from a repair reserve fund is subject to a public hearing and at least five days must elapse between the publication of the notice of hearing and the date specified for the hearing.

In an emergency, moneys in a repair reserve may be expended without giving notice and without holding a public hearing. To make such an emergency expenditure, the Board of Education must pass a resolution approved by at least a two-thirds vote. In addition, at least one-half of the expenditures must be repaid in the next fiscal year and the balance repaid by the end of the fiscal year after that.

### **Source of Funds:**

By budgetary appropriations, reserves that are not required by law to be paid into any other fund or account (e.g., transfers from unexpended balances of existing appropriations, surplus moneys).

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.



## **Reserve for Repairs – A882 (*continued*)**

---

### **Use of Unexpended Balances:**

All or any part of a repair reserve fund may generally be transferred to a capital reserve fund, or a reserve fund established under Education Law Section 3651. Subject to a public hearing with 15 days' notice, unexpended balances may also be transferred to a Retirement Contribution Reserve Fund, established pursuant to GML Section 6-r.

## **Mandatory Reserve for Debt – A884, V884**

---

Authorized by: General Municipal Law Section 6-l

### **Purpose:**

To generally restrict the use of (1) the proceeds of the cash sale of a capital improvement and (2) state and federal aid received for a capital improvement, generally to the retirement of outstanding obligations issued to finance such improvement.

### **Who Must Establish:**

School districts upon the cash sale of a capital improvement, financed by obligations that remain outstanding at the time of sale. Also, must be established when school districts have outstanding indebtedness incurred to finance a capital improvement and federal and State aid is received for this improvement, to the extent the aid is not applied directly to the payment of a part of the cost of improvement or to retire indebtedness issued in anticipation of such aid (i.e., revenue anticipation notes).

### **How Reserve is Established:**

Creation of the reserve is mandatory as outlined above.

### **How Reserve is Used:**

By budgetary appropriations. Funds may only be used to retire the obligations issued to finance the capital improvement sold or for which State or federal aid is received or other obligations of at least equal weighted average life.

### **Source of Funds:**

Proceeds from the cash sale of a capital improvement that was financed by obligations that remain outstanding at the time of the sale; State and federal aid received for a capital improvement financed by obligations that are outstanding at the time the aid is received.

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## **Mandatory Reserve for Debt – A884, V884 (*continued*)**

---

### **Special Provisions:**

Annually the chief fiscal officer at the termination of each fiscal year shall render a detailed report of the operation and condition of each of such funds to the governing board.

The members of the Board of Education shall be guilty of a misdemeanor if they authorize a withdrawal from or expend any money withdrawn from any such mandatory reserve fund for any purpose other than as provided by GML Section 6-I.

### **Use of Unexpended Balances:**

If the aggregate amount exceeds the principal of the outstanding indebtedness due, or to become due, any excess may be used for any lawful district purpose. Also, if there are any remaining unexpended moneys in the fund when all the outstanding obligations have been retired, the excess may be used for any lawful district purpose.

## **Additional Reserves: Nuclear Facility Tax Stabilization Reserve Fund**

---

### **Purpose and Use:**

According to Chapter 202 of the Laws of 2001, school districts in which a nuclear-powered electric generating facility is located may establish a Nuclear Facility Tax Stabilization Reserve Fund. The fund is available to lessen or prevent any projected increase in the amount of the real property tax levy needed to finance the general fund portion of the school district budget for the next succeeding school year, as disclosed in the school budget presented to district's voters for approval. It is funded with budgetary appropriations subject to limitations set forth in law.

## **Additional Reserves: Career Education Instructional Equipment Reserve Fund**

---

Authorized by: Education Law Section 1950 [4] [ee]

### **Purpose:**

To finance all or part of the cost of the replacement and purchase of advanced technology equipment used in instructional programs conducted by boards of cooperative educational services (BOCES).

### **Who May Establish:**

BOCES only.

### **How Reserve is Established:**

Created by resolution of the BOCES governing board and approved by the boards of education of a majority of the school districts participating in the instructional programs of the BOCES.

### **Source of Funds:**

Proceeds from the sale of career education instructional equipment use in the instructional programs of the BOCES and, subject to limitation imposed by regulations of the Commissioner of Education, by including depreciation expenses for the career education instructional equipment used in providing instructional services on a cooperative basis in computation of the cost of such services pursuant to Education Law Section 1950 (4) (d), concerning “aidable shared services.”

### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

### **Special Provisions:**

The amount of the reserve is subject to certain limitations set forth by the Commissioner of Education. (8 NYCRR Section 170.3 (k) (5).)

### **Use of Unexpended Balances:**

In the event this reserve is liquidated, the moneys must be allocated to the school districts participating in the instructional programs of the BOCES in proportion to the value of the contribution to the fund.

## Sample Restricted Fund Balance Journal Entries

#1: To establish or increase a reserve using fund balance during the year or at year end, for example to establish a Workers' Compensation Reserve of \$100,000 as authorized by the Board of Education:

		<i>Debit</i>	<i>Credit</i>
<i>A917-Unassigned Fund Balance</i>		<i>\$100,000</i>	
	<i>A814-Workers' Compensation Reserve</i>		<i>\$100,000</i>

#2: At the same time as #1, a collateral entry should be made to reclassify cash assets as Reserved for Workers' Compensation:

		<i>Debit</i>	<i>Credit</i>
<i>A230-Cash, Special Reserves</i>		<i>\$100,000</i>	
	<i>A200-Cash</i>		<i>\$100,000</i>

#3: To budget for an increase to a reserve fund, for example to increase the Reserve for Employee Benefits and Accrued Liabilities (EBAL) by \$75,000:

	<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A510-Estimated Revenues</i>		<i>\$75,000</i>	
	<i>A1001-Real Property Taxes- Reserve for EBAL</i>	<i>\$75,000</i>	
	<i>A962-Budgetary Provision of Other Uses</i>		<i>\$75,000</i>
	<i>A867- Reserve of EBAL</i>	<i>\$75,000</i>	

## Sample Restricted Fund Balance Journal Entries (*continued*)

#4a: To close the budgeted increase to a reserve fund (#3) to the reserve:					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
A980-Revenue Control				\$75,000	
		A1001-Real Property Taxes- Reserve for EBAL	\$75,000		
	A867-Reserve for Employee Benefits and Accrued Liabilities				\$75,000

#4b: If the district's accounting software closes all revenue and expenditure accounts against A917-Unassigned Fund Balance then at the same time a collateral entry would be made to reclassify fund balance:					
				<i>Debit</i>	<i>Credit</i>
A917-Unassigned Fund Balance				\$75,000	
	A867-Reserve for Employee Benefits and Accrued Liabilities				\$75,000

#5: To budget for the use of a reserve fund, for example to appropriate the use of \$25,000 from the Unemployment Reserve:					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
A511-Appropriated Reserves – Unemployment Reserve				\$25,000	
	A960-Appropriations				\$25,000
		A9050.8- Unemployment Insurance	\$25,000		

## Sample Restricted Fund Balance Journal Entries (*continued*)

#6: To record interest earned on reserve deposits, for example, the portion of interest earned in a shared bank account for the Reserve for Retirement Contributions was \$500:

		<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
	A230-Cash, Special Reserves		\$500	
	A980-Revenue Control			\$500
	A2401-Interest and Earnings	\$500		

#6a: If the district's accounting software closes all revenue and expenditure accounts against A917-Unassigned Fund Balance then at the same time a collateral entry would be made to reclassify fund balance:

		<i>Debit</i>	<i>Credit</i>
	A917-Unassigned Fund Balance	\$500	
	A827-Reserve for Retirement Contributions		\$500

#7: To record authorized payments from a reserve, for example \$35,000 of actual workers' compensation claims were expended during the year (budget included funding of up to \$50,000 from the Workers' Compensation Reserve):

		<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
	A522-Expenditure Control		\$35,000	
	A9040.8-Workers Compensation	\$35,000		
	A230-Cash, Special Reserves			\$35,000



## Sample Restricted Fund Balance Journal Entries (*continued*)

---

#7a: If the district's accounting software closes all revenue and expenditure accounts against A917-Unassigned Fund Balance then at the same time a collateral entry would be made to reclassify fund balance:

		<i>Debit</i>	<i>Credit</i>
A814-Workers' Compensation Reserve		\$35,000	
	A917-Unassigned Fund Balance		\$35,000

#8: The Board of Education determines that the \$28,000 remaining in the Tax Certiorari Reserve are deemed unneeded and can be returned to the unassigned fund balance:

		<i>Debit</i>	<i>Credit</i>
A864-Tax Certiorari Reserve		\$28,000	
	A917-Unassigned Fund Balance		\$28,000
A200-Cash		\$28,000	
	A230-Cash, Special Reserves		\$28,000

## Sample Journal Entries for the Establishment and Use of a Capital Reserve

Example:

- Assume that the voters approved a Capital Reserve in May 2024 for renovations to the Elementary School for up to \$5,000,000 over the next 10 years.
- In May 2025, the Board approved funding of \$3,000,000 from Unassigned Fund Balance.
- In the 2025-26 budget, the district included an Interfund Transfer to Capital for \$2,000,000 for renovations for the Elementary School funded from the Capital Reserve.
- The Transfer to Capital was made on September 1, 2025.
- During 2025-26, \$1,000 in interest was earned on the Capital Reserve bank account in the General Fund.
- During 2025-26, \$400,000 of the Interfund Transfer was spent in the Capital Fund.
- In the 2026-27 budget, the district budgeted to levy additional taxes to fund an additional \$1,000,000 for the Capital Reserve.

#1: May 2025 – To establish a reserve using \$3,000,000 of unassigned fund balance as authorized by the Board of Education:			
		<i>Debit</i>	<i>Credit</i>
A917-Unassigned Fund Balance		\$3,000,000	
	A878-Capital Reserve		\$3,000,000
A230-Cash, Special Reserves		\$3,000,000	
	A200-Cash		\$3,000,000

#2: July 1, 2025 – To record budget for Interfund Transfer to Capital for \$2,000,000 for renovations for the Elementary School funded from the Capital Reserve: (part of the opening budget entry)			
	<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
A511-Appropriated Reserves – Capital Reserve		\$2,000,000	
	A960-Appropriations		\$2,000,000
	A9950.9-Transfer to Capital Funds	\$2,000,000	

## Sample Journal Entries for the Establishment and Use of a Capital Reserve (continued)

#3: September 1, 2025 – To record expenditures for Interfund Transfer to Capital for \$2,000,000 for renovations for the Elementary School funded from the Capital Reserve:					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A522-Expenditure Control</i>				<i>\$2,000,000</i>	
		<i>A9950.9-Transfer to Capital Funds</i>	<i>\$2,000,000</i>		
	<i>A230-Cash, Special Reserves</i>				<i>\$2,000,000</i>
<i>H200-Cash, Special Reserves</i>				<i>\$2,000,000</i>	
	<i>H980-Revenue Control</i>				<i>\$2,000,000</i>
		<i>HR5031-Interfund Transfer from General</i>	<i>\$2,000,000</i>		

#4: June 30, 2026 – To record \$1,000 in interest earned in 2025-26 on the Capital Reserve bank account:					
				<i>Debit</i>	<i>Credit</i>
<i>A230-Cash, Special Reserves</i>				\$1,000	
		<i>A980-Revenue Control</i>			\$1,000
		<i>A2401-Interest and Earnings</i>	\$1,000		

## Sample Journal Entries for the Establishment and Use of a Capital Reserve (continued)

#5: June 30, 2026 – To record \$400,000 spent in the Capital Project Fund during the year and close balance to the Capital Reserve at year end:				
		<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
		<i>H522-Expenditure Control</i>	<i>\$400,000</i>	
		<i>H1620.293-General Construction</i>	<i>\$400,000</i>	
		<i>H230-Cash, Special Reserves</i>		<i>\$400,000</i>
		<i>H980-Revenue Control</i>	<i>\$2,000,000</i>	
		<i>H522-Expenditure Control</i>		<i>\$400,000</i>
		<i>H878-Capital Reserve</i>		<i>\$1,600,000</i>

#6: June 30, 2026 – If the district's accounting software closes all revenue and expenditure accounts against A917-Unassigned Fund Balance then at the same time as AJEs #3 & #4, a collateral entry would be made to reclassify fund balance for the net activity during the year (\$2,000,000 Transfer to Capital less \$1,000 in interest earnings):			
		<i>Debit</i>	<i>Credit</i>
		<i>A878-Capital Reserve</i>	<i>\$1,999,000</i>
		<i>A917-Unassigned Fund Balance</i>	<i>\$1,999,000</i>

## Sample Journal Entries for the Establishment and Use of a Capital Reserve (continued)

---

#7: July 1, 2026 – To budget for an increase to the Capital Reserve by \$1,000,000 from taxes during the 2026-27 school year:					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A510-Estimated Revenues</i>				<i>\$1,000,000</i>	
		<i>A1001-Real Property Taxes-Capital Reserve</i>	<i>\$1,000,000</i>		
	<i>A962-Budgetary Provision of Other Uses</i>				<i>\$1,000,000</i>
		<i>A878-Capital Reserve</i>	<i>\$1,000,000</i>		

## Sample Journal Entries for the Establishment and Use of a Capital Reserve (continued)

In the ST-3, the Restricted Fund Balances should have corresponding amounts of Restricted Cash and/or Restricted Investments.

Example:

Restricted			
Workers' Compensation Reserve	A814	83	100,000
Unemployment Insurance Reserve	A815	84	
Reserve for State and Local Retirement Contributions	A827	85	
Reserve for Teacher's Retirement System Contributions	A828	86	
Reserve for Property Loss	A861	87	
Reserve for Liability Claims	A862	88	
Insurance Reserve	A863	89	
Reserve for Tax Certiorari	A864	90	1,000,000
Reserve for Taxes Raised Outside Tax Limit (Cities Over 125,000)	A874	91	
Reserve for Employee Benefits and Accrued Liabilities	A867	92	
Capital Reserve	A878	93	
Reserve for Repairs	A882	94	
Reserve for Debt	A884	95	50,000
Other Restricted Fund Balance	A899	96	
Total Restricted Fund Balance	AT092	97	1,150,000

## Sample Journal Entries for the Establishment and Use of a Capital Reserve (continued)

---

### Restricted Cash

Cash from Obligations	A220	5	<input type="text"/>
Cash for Tax Anticipation Notes	A221	6	<input type="text"/>
Cash for Revenue Anticipation Notes	A222	7	<input type="text"/>
Cash with Fiscal Agent	A223	8	<input type="text"/>
Cash from Deficiency Notes	A225	9	<input type="text"/>
Cash, Special Reserves	A230	10	<input type="text" value="250,000"/>
Cash in Time Deposits, Special Reserves	A231	11	<input type="text" value="900,000"/>
Total Restricted Cash	AT023	12	<input type="text" value="1,150,000"/>

## COMMITTED FUND BALANCES

---

*Definition: Includes amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the school district's highest level of decision-making authority, i.e., the Board of Education.*

The Office of the State Comptroller has advised that they believe that in most cases, local governments in New York State will not have committed fund balances to report. If the governing body has not delegated the authority to assign amounts to be used for specific purposes to another body or official, in most instances, OSC believes that formal actions by governing boards (resolutions for school districts) constitute a similar level of constraint of resources, and these formal actions will result in an assignment of resources.



## ASSIGNED FUND BALANCES

---

*Definition: Includes amounts that are constrained by the school district's intent to be used for specific purposes as established by the Board of Education or by their designated official(s). The purpose of the assignment must be narrower than the purpose of the general fund, and in funds other than the general fund, assigned fund balance represents the residual amount of fund balance.*

Portions of fund balance that are classified as Assigned include:

### **Assigned Appropriated Fund Balance – A914**

*Appropriated Fund Balance* – The Board of Education may approve balancing the following year's budget with the planned use of currently available fund balance. This planned use is classified as an assignment of fund balance.

### **Assigned Unappropriated Fund Balance – A915**

*Reserve for Encumbrances* – The Purchasing Agent for the district has been designated the authority to issue purchase orders on behalf of the district and these purchase orders are an assignment of fund balance. (If any purchase orders are issued that will be funded from a reserve, they would be included in Restricted Fund Balance.)

**Note (\*)**: Account code A821-Reserve for Encumbrances is used for accounting during the year, but it is no longer used for reporting purposes at year end. A915-Assigned Unappropriated Fund Balance is used for reporting purposes for encumbrances that are funded from non-restricted fund balance resources.

*Reserve for Insurance Recoveries* – (included in A915 for reporting purposes)

Authorized by: Education Law Section 1718 (2)

This account is used at the end of the fiscal year to account for unexpended proceeds of insurance recoveries. The funds will be held pending action by the Board of Education on their disposition.

## Sample Assigned Fund Balance Journal Entries

### Accounting Journal Entries for Assigned Fund Balance

#1: To record the issuance of two purchase orders; one for \$1,000 and one for \$2,000 for business office supplies: (Establishes an encumbrance)					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A521-Encumbrances</i>				<i>\$3,000</i>	
		<i>A1310.45- Business Administration – Materials and Supplies</i>	<i>\$3,000</i>		
	<i>A821-Reserve for Encumbrances</i>				<i>\$3,000</i>

#2: To liquidate the encumbrance when the first purchase order for business office supplies is filled. The actual cost of the goods was \$950, although the purchase order had been for \$1,000: (Release the \$1,000 encumbrance and recognize the \$950 liability)					
			<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A821-Reserve for Encumbrances</i>				<i>\$1,000</i>	
	<i>A521-Encumbrances</i>				<i>\$1,000</i>
		<i>A1310.45 Business Administration – Materials and Supplies</i>	<i>\$1,000</i>		
<i>A522-Expenditures Control</i>				<i>\$950</i>	
		<i>A1310.45- Business Administration – Materials and Supplies</i>	<i>\$950</i>		
	<i>A600-Accounts Payable</i>				<i>\$950</i>

## Sample Assigned Fund Balance Journal Entries (*continued*)

#3: To record the closing of open encumbrances at the end of the year and to reclassify the Reserve for Encumbrances for year-end reporting purposes: (See Note (\*) on Page 45.)

		<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
		<i>A821-Reserve for Encumbrances</i>		\$2,000
		<i>A521-Encumbrances</i>		\$2,000
		<i>A1310.45-Business Administration – Materials and Supplies</i>	\$2,000	
		<i>A917-Unassigned Fund Balance</i>		\$2,000
		<i>A915-Assigned Unappropriated Fund Balance</i>		\$2,000

#4: In June, the district received an insurance recovery for a damaged school bus of \$100,000. The Board of Education plans to act on the purchase of a replacement bus in the following year and approves the establishment of a Reserve for Insurance Recoveries at year end. The revenue would be closed as follows:

		<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
		<i>A980-Revenue Control</i>		\$100,000
		<i>A2680-Insurance Recoveries – Transportation Related</i>	\$100,000	
		<i>A915-Reserve for Insurance Recoveries</i>		\$100,000

## Sample Assigned Fund Balance Journal Entries (*continued*)

---

#4a: If the district's accounting software closes all revenue and expenditure accounts against A917-Unassigned Fund Balance then at the same time a collateral entry would be made to reclassify fund balance:

		<i>Debit</i>	<i>Credit</i>
<i>A917-Unassigned Fund Balance</i>		<i>\$100,000</i>	
	<i>A915-Reserve for Insurance Recoveries</i>		<i>\$100,000</i>

#5: In the following year, the Board approves purchasing a new school bus with the funds held in the Reserve for Insurance Recoveries. The appropriations and use of reserve would be recorded as follows:

	<i>Sub Account</i>	<i>Debit</i>	<i>Credit</i>
<i>A511-Appropriated Reserve – Reserve for Insurance Recoveries</i>		<i>\$100,000</i>	
	<i>A960-Appropriations</i>		<i>\$100,000</i>
	<i>A5510.210-Transportation – Bus Purchase</i>	<i>\$100,000</i>	

## UNASSIGNED FUND BALANCES

---

Definition: Represents the residual classification for the general fund and could report a surplus or deficit. In funds other than the general fund, the unassigned classification should be used only to report a deficit balance resulting from overspending for specific purposes for which amounts had been restricted, committed, or assigned.

Portions of fund balance that are classified as Unassigned include:

### **Reserve for Tax Reduction – A916**

Authorized by: Education Law Section 1604 (36) and 1709 (37)

#### **Purpose:**

To retain the proceeds from the sale of school district real property that are not needed to pay any debts, and gradually use such proceeds to reduce real property taxes over a period not to exceed ten years.

#### **Who May Establish:**

School districts.

#### **How Reserve is Established:**

By resolution of the Board of Education.

#### **How Reserve is Used:**

By budgetary appropriations to reduce real property tax levy.

#### **Source of Funds:**

Proceeds from the sale of school district real property that does not have outstanding debt obligations.

#### **Interest Earnings:**

Interest earnings on the moneys deposited for this reserve shall accrue to and become part of the reserve.

## UNASSIGNED FUND BALANCES (*continued*)

---

**Unassigned Fund Balance – A917** – the remaining portion of fund balance not classified as the Reserve for Tax Reduction.

### *Statutory Fund Balance Limitations*

Real Property Tax Law §1318 limits the amount of unexpended surplus funds a school district can retain to no more than 4 percent of the next year's budgetary appropriations. Funds properly retained under other sections of law (i.e., reserve funds established pursuant to Education Law or GML) are excluded from the 4 percent limitation. In the context of previous fund balance reporting, an unexpended surplus was interpreted to be synonymous with unappropriated unreserved fund balance. Under Statement 54 fund balance classifications, the 4 percent limitation would be interpreted to be applied to unrestricted fund balance (i.e., the total of the committed, assigned, and unassigned classifications), minus appropriated fund balance, amounts reserved for insurance recovery, amounts reserved for tax reduction, and encumbrances included in committed and assigned fund balance.

## UNASSIGNED FUND BALANCES (*continued*)

For example: Assume a district has encumbrances of \$120,000 (none to be funded from a restricted fund balance), unassigned fund balance of \$2,000,000, a Reserve for Insurance Recovery of \$50,000, a Reserve for Tax Reduction of \$200,000 and \$750,000 appropriated for next year's budget. Next year's budget is \$51,000,000 and the 4% limit is \$2,040,000.

This would be reported on the ST-3 on Exhibit A-General Fund Balance Sheet as follows:

Committed			
Committed Fund Balance	A913	98	<input type="text" value="0"/>
Total Committed Fund Balance	AT093	99	<input type="text" value="0"/>
Assigned			
Assigned Appropriated Fund Balance	A914	100	<input type="text" value="750,000"/>
Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Committed and Restricted Fund Balance)	A915	101	<input type="text" value="170,000"/>
Total Assigned Fund Balance	AT094	102	<input type="text" value="920,000"/>
Unassigned			
Reserve for Tax Reduction	A916	103	<input type="text" value="200,000"/>
Unassigned Fund Balance	A917	104	<input type="text" value="2,000,000"/>
Total Unassigned Fund Balance	AT096	105	<input type="text" value="2,200,000"/>
<hr/>			
TOTAL FUND BALANCE	AT095	106	<input type="text" value="3,120,000"/>

Note: Line 101 – A915 includes \$120,000 for Reserve for Encumbrances and \$50,000 for the Reserve for Insurance Recovery.

## OFFICE OF THE STATE COMPTROLLER’S FOCUS ON FUND BALANCE AND RESERVES

The Office of the State Comptroller (OSC) has focused a sizable portion of their audits around the amount of fund balance subject to the 4% limit imposed by Real Property Tax Law Section 1318, the effect on fund balance from the differences between budgeted revenues and expenditures and actual results and the use of reserves.

The amount subject to the 4% limit is calculated as follows:

Section 1318 of Real Property Tax Law Limit Calculation		
2024-25 (contingent/voter-approved) expenditure budget		\$51,000,000
Maximum allowed (4% of the 2024-25 budget)		\$ 2,040,000
General Fund-Fund Balance Subject to Section 1318 of the Real Property Tax Law:		
Unrestricted fund balance:		
Committed fund balance	\$	0
Assigned fund balance		920,000
Unassigned fund balance		2,200,000
Total Unrestricted Fund Balance		\$ 3,120,000
Less:		
Appropriated fund balance		750,000
Insurance recovery reserve		50,000
Tax reduction reserve		200,000
Encumbrances (included in committed and assigned fund balance)		120,000
Total adjustments		1,120,000
General Fund-Fund Balance Subject to Section 1318 of Real Property Tax Law:		\$ 2,000,000
Actual Percentage		3.92 %



## OFFICE OF THE STATE COMPTROLLER'S FOCUS ON FUND BALANCE AND RESERVES (*continued*)

---

One concern of the OSC auditors has been the amount classified as Appropriated Fund Balance in school districts as it is a deduction from the above calculation. Their concerns have generally been directed at whether the amount noted as Appropriated Fund Balance is reasonable based on the actual amount of fund balance that was needed to balance the year's revenues minus expenditures. While it is important to limit the use of fund balance on a regular basis, budgeting significant amounts of fund balance to balance the following year's budget and then not needing it on a regular basis (e.g., actual revenues exceed expenditures thus fund balance will be increased instead of used) should be carefully monitored. Perhaps the appropriations budget could be reduced and/or the revenue budget could be increased to limit the amount needed to be classified as Appropriated Fund Balance to balance the budget and address OSC's concerns in this area.

The OSC auditors have also spent a considerable amount of time auditing compliance with fund balance reserves and have concerns about how many of the reserves have been established, their lack of activity and the balances outstanding at year end.

To provide guidance on allowable fund balance reserves, OSC has issued the *Local Government Management Guide – Reserve Funds*. This can be assessed at:

<https://osc.state.ny.us/localgov/pubs/lgmng/reservefunds.pdf>

It is important to be aware that while some reserves do not have a specific maximum, some do and for the remaining reserves, it is considered a best practice to have a fund balance reserve policy on what the district's approach to managing its reserves is.

## OFFICE OF THE STATE COMPTROLLER'S FOCUS ON FUND BALANCE AND RESERVES (*continued*)

---

### Recommendations for Maximums/Reasonableness Checks for Certain Fund Balance Reserves:

Workers' Compensation Reserve	Reserve is for self-funded workers' compensation claims. District should have a liability recorded in the Non-Current Governmental Liabilities (part of Judgments and Claims Payable - W686) account for pending/potential claims. Reserve balance should be reasonable compared to this recorded liability.
Unemployment Insurance Reserve	Reserve is for self-funded unemployment claims. District should evaluate reserve in relationship to the volume of claims experience they have had over the previous 1-10 years. OSC frequently divides the average annual payments against the outstanding balance to determine how many years' worth of potential claims is funded by the reserve. High number of years funded should be evaluated for reasonableness. It is recommended that the fund balance policy address reasonableness of this reserve.
Reserve for Retirement Contributions (ERS portion of the Reserve only; TRS portion had established limits)	The ERS portion of the Reserve is for the stabilization of the amount of contributions funded each year for the New York State Employees Retirement System. OSC frequently divides the average annual payments against the outstanding balance to determine how many years' worth of annual payments is funded by this portion of the reserve. This portion of the reserve does not have a limit on its balance, but it is recommended that the district's fund balance policy address reasonableness of the balance of this portion of the reserve and when it will be used, e.g., when ERS rate increases by more than X% over the previous year, the increase over Y% will be funded from the reserve.

## OFFICE OF THE STATE COMPTROLLER'S FOCUS ON FUND BALANCE AND RESERVES (*continued*)

Reserve for Property Loss	Reserve is for the self-insured portion of the risk against property loss. If the district has insurance policies with low deductibles for this type of risk, the Reserve balance should be reasonable compared to the potential loss. The maximum it may be is 3% of the budget if there are significant pending claims.
Reserve for Liability Claims	Reserve is for the self-insured portion of the risk against liability claims. If the district has insurance policies with low deductibles for this type of risk, the Reserve balance should be reasonable compared to the potential loss. The maximum it may be is 3% of the budget if there are significant pending claims.
Insurance Reserve	Reserve is for potential uninsured losses to the district. Reserve balance should be reasonable compared to potential losses.
Reserve for Tax Certiorari	The district should have a liability recorded in the Non-Current Governmental Liabilities (part of Judgements and Claims Payable – W686) for potential tax certiorari settlement losses. The reserve should be reasonable compared to the recorded liability and potential legal fees to settle such matters. See “Consideration” on page 23, as well.
Reserve for Employee Benefits and Accrued Liabilities	The district should have a liability recorded in the Non-Current Governmental Liabilities (Compensated Absences - W687) account for pending/potential claims for the value of sick, vacation and personal time in accordance with GASB 101 and retirement incentives in accordance with GASB 47. The liabilities recorded in W687 would also include the potential cost of applicable related fringe benefit costs, e.g., social security and ERS/TRS. The reserve is limited to the amount recorded in W687 for the GASB 101 liabilities without the related fringes. Nor can the reserve fund the retirement incentives not related to benefits earned during employment.

## OFFICE OF THE STATE COMPTROLLER'S FOCUS ON FUND BALANCE AND RESERVES (*continued*)

---

Capital Reserve	When established, the Capital Reserve is approved for a maximum amount that can be put into the reserve over its life. The limit does not allow withdrawals to be replenished without being counted against the original maximum approved. In addition, the Reserve has a life span approved in the original referendum that must be monitored.
Mandatory Reserve Fund	The Mandatory Reserve Fund is generally generated from unused bond proceeds from a related bond issuance. The reserve is restricted to be used to fund the cost of related debt service from which the reserve was established. It is important to track the individual payments into the reserve to ensure that the funds are appropriated and spent by the time the related debt service schedule is satisfied.

## REPORTING BUDGETED USE OF FUND BALANCE ON ST-3

Examples of Reporting the Budgeted Use of Fund Balance in the ST-3 on Statement A1-General Fund Summary Statement of Budget, Revenues and Variance and Statement A2-Summary Statement of Budget and Expenditures:

Sample Statement A1-General Fund Summary Statement of Budget, Revenues and Variance

Total Original Budget		57	20,000,000	A
Total Estimated Revenues - Modified Budget	A510	58	20,100,000	B
Total Actual Revenues	AT5999	59	20,318,000	
Total Variance		60	218,000	
Appropriated Reserves - Modified Budget	A511	61	400,000	C
Appropriated Fund Balance - Modified Budget	A599	62	510,452	D
Obligations Authorized - Modified Budget	A530	63	0	
<b>TOTAL ESTIMATED REVENUES - MODIFIED BUDGET, APPROPRIATED RESERVES, APPROPRIATED FUND BALANCE, AND OBLIGATIONS AUTHORIZED*</b>		64	21,010,452	a

\* The total on this statement must agree with the total on Statement A2, page 8, line 47.

## REPORTING BUDGETED USE OF FUND BALANCE ON ST-3 (continued)

### Sample Statement A2-General Fund Summary Statement of Budget and Expenditures

Total Appropriations - Original Budget		41	19,900,000	E
Total Appropriations - Modified Budget	A960	42	20,410,452	F
Total Actual Expenditures	AT9999.0	43	20,258,000	
Total Encumbrances		44	28,745	4
Total Variances (+/-)		45	123,707	
Budgetary Provision for Other Purposes	A962	46	600,000	G
<b>TOTAL APPROPRIATIONS-MODIFIED BUDGET AND BUDGETARY PROVISION FOR OTHER PURPOSES*</b>		47	21,010,452	b
* The total on this statement must agree with the total on Statement A1, page 6, line 64.				

For example: The original appropriations budget was \$19,900,000 and the district made a proposition to raise taxes an additional \$600,000 to fund a Capital Reserve. The funding sources for the budget were \$20,000,000 from revenues and \$500,000 from Assigned Appropriated Fund Balance. During the year, the district had the additional transactions as well:

1. Carried over \$10,452 in encumbrances from the previous year.
2. The Board of Education approved the use of \$400,000 from the Reserve for Tax Certiorari to fund a tax certiorari action settlement.
3. The district received a grant-in-aid of \$100,000 (Bullet aid) and the Board approved spending it to purchase new technology.
4. Encumbrances at the end of the year were \$28,745.

## REPORTING BUDGETED USE OF FUND BALANCE ON ST-3 (continued)

This activity would be recorded in the general ledger and reported on the ST-3 as follows:

	Original Budget	Action #1- Carry over prior year encumbrances	Action #2- BOE approved use of Reserve for Tax Certiorari	Action #3 – The BOE accepts Bullet Aid and Its Use	Modified Budget
A510-Estimated Revenues	20,000,000 (A)			100,000	20,100,000 (B)
A511-Appropriated Reserves			400,000		400,000 (C)
A599-Appropriated Fund Balance	500,000	10,452			510,452 (D)
Total Sources	<u>20,500,000</u>	<u>10,452</u>	<u>400,000</u>	<u>100,000</u>	<u>21,010,452</u> (a)
A960-Appropriations	19,900,000 (E)	10,452	400,000	100,000	20,410,452 (F)
A962-Budgetary Appropriations for Other Purposes	600,000				600,000 (G)
Total Uses	<u>20,500,000</u>	<u>10,452</u>	<u>400,000</u>	<u>100,000</u>	<u>21,010,452</u> (b)

Line 64 – Total Estimated Revenues – Modified Budget, Appropriated Reserves, Appropriated Fund Balance, and Obligations Authorized (a) must equal Line 47- Total Appropriations – Modified Budget and Budgetary Provision for Other Purposes (b).

Line 44 – Total Encumbrances (4.) should be the balance of encumbrances that are outstanding at year end.

## PROPERTY TAX REPORT CARD – FUND BALANCE REPORTING

---

The Property Tax Report Card includes a section that reports actual and projected fund balances for the General Fund. The format of the report is as follows:

	Actual 2024-25 (D)	Estimated 2025-26 (E)
Adjusted Restricted Fund Balance	3,229,946	3,215,744
Assigned Appropriated Fund Balance	780,000	780,000
Adjusted Unrestricted Fund Balance	2,449,946	2,434,744
Adjusted Unrestricted Fund Balance as a Percent of the Total Budget	4.11%	4.00%

The instructions for the Report Card are as follows:

### FUND BALANCES:

For the 2025-26 Property Tax Report Card, report actual 2024-25 balances based upon the June 30, 2024 ending fund balance and estimated June 30, 2025 balances for the proposed 2025-26 budget year, as approved by the Board of Education.

**Actual fund balances** reported for 2024-25 are determined as follows:

Adjusted Restricted Fund Balance: Final June 30, 2024 amount, as reduced or increased, if applicable, after the adoption by the Board of Education of the estimated balance on the 2024-25 Property Tax Report Card.

Assigned Appropriated Fund Balance: The actual amount listed on the tax warrant (August 2024).

Adjusted Unrestricted Fund Balance: The final amount retained as of June 30, 2024.



## PROPERTY TAX REPORT CARD – FUND BALANCE REPORTING (*continued*)

**Estimated fund balances** reported for 2025-26 are as of the time of School Budget and Property Tax Report Card preparation:

Adjusted Restricted Fund Balance: The estimated June 30, 2025, final balance, which will be the 2024-25 school year beginning balance.

Assigned Appropriated Fund Balance: the amount estimated for subsequent school years' taxes.

Adjusted Unrestricted Fund Balance: The estimated final amount to be retained as of June 30, 2025. This is the fund balance amount that is limited by law to no more than 4% of the estimated total 2025-26 budget; however, during the year it may be used to increase reserves or be appropriated for unanticipated ordinary contingent expenses.

### Notes:

The amounts reported as "Actual 2024-25 balances" should agree with the audited financial statements from June 30, 2024. For example, the following is the General Fund's fund balance as reported under GASB 54 for a district:

FUND BALANCES		
Nonspendable:		
Not in Spendable Form		14,605
Restricted for:		
Workers' Compensation		310,594
Unemployment		41,333
Retirement Contributions		2,196,375
Tax Certiorari		250,987
Employee Benefits Accrued Liability		1,406,598
Debt		1,202,023
Assigned:		
Assigned Appropriated		685,772
Assigned Unappropriated		213,509
Unassigned:		
Unassigned		3,886,868
Total Fund Balances		10,208,664

## PROPERTY TAX REPORT CARD – FUND BALANCE REPORTING (*continued*)

---

These amounts should be reported on the Property Tax Report Card as:

Nonspendable	Part of Adjusted Restricted Fund Balance
Workers' Compensation	Part of Adjusted Restricted Fund Balance
Unemployment	Part of Adjusted Restricted Fund Balance
Retirement Contributions	Part of Adjusted Restricted Fund Balance
Tax Certiorari	Part of Adjusted Restricted Fund Balance
Employee Benefits Accrued Liability	Part of Adjusted Restricted Fund Balance
Debt	Part of Adjusted Restricted Fund Balance
Assigned Appropriated (to balance next year's budget as included on the tax warrant)	Part of Assigned Appropriated Fund Balance
Assigned Unappropriated (Encumbrances carried over)	Part of Adjusted Restricted Fund Balance
Unassigned	Part of Adjusted Unrestricted Fund Balance

The amounts to be reported for the "Estimated 2025-26 Balances" should include any planned changes to fund balance classifications that will occur before June 30, 2025.

## PROPERTY TAX REPORT CARD – FUND BALANCE REPORTING (*continued*)

Effective with the Spring 2018 Property Tax Report Card, Education Law Section 1608 and 1716 were revised to require as part of the property tax report card “a schedule of reserve funds, setting forth the name of each reserve fund, a description of its purpose, the balance as of the close of the third quarter of the current school district fiscal year and a brief statement explaining any plans for the use of each such reserve fund for the ensuing fiscal year...”

A sample of this section, follows:

Schedule of Reserve Funds					
Reserve Type	Reserve Name	Reserve Description *	3/31/24 Actual Balance	6/30/24 Estimated Ending Balance	Intended Use of the Reserve in the 2024-25 School Year
Capital		To pay the cost of any object or purpose for which bonds may be issued.			
Repair		To pay the cost of repairs to capital improvements or equipment.			
Workers' Compensation		To pay for Workers Compensation and benefits.			
Unemployment Insurance		To pay the cost of reimbursement to the State Unemployment Insurance Fund.			


The Property Tax Report Card should include the specific name of any reserves that the district has, the actual balance of each reserve as of March 31<sup>st</sup> (including any additions or uses up to that point as well as any interest earned as of March 31<sup>st</sup>), the estimated June 30<sup>th</sup> balance (including any further additions/uses planned through June 30<sup>th</sup> and estimated interest) and the intended use of each reserve for the following year. The intended use would include a dollar amount and a purpose if the district is planning on using all/portion of the reserve or include a comment such as “None at this time” or something similar if there is no planned use for the upcoming year. The Property Tax Report Card is submitted through SAMS after being certified by the Superintendent.

## FUND BALANCE REPORTING ON THE ST-3

### General Fund:

2023-24  
School Year  
(Prior)

2024-25  
School Year  
(Actual)

FUND BALANCE (GENERAL FUND)					
Nonspendable					
Not in Spendable Form	A806	80			
Must Remain Intact	A807	81			
Total Nonspendable Fund Balance	AT080	82	0	0	
Restricted					
Workers' Compensation Reserve	A814	83	260,020	260,644	
Unemployment Insurance Reserve	A815	84	517,724	518,966	
Reserve for State and Local Retirement System Contributions	A827	85	1,083,173	1,553,503	
Reserve for Teacher's Retirement System Contributions	A828	86	307,435		
Reserve for Property Loss	A861	87			
Reserve for Liability Claims	A862	88			
Insurance Reserve	A863	89	463,027	464,138	
Reserve for Tax Certiorari	A864	90			
Reserve for Taxes Raised Outside Tax Limit (Cities Over 125,000)	A874	91			
Reserve for Employee Benefits and Accrued Liabilities	A867	92	346,221	347,052	
Capital Reserve	A878	93	1,000,000	1,243,795	
Reserve for Repairs	A882	94			
Reserve for Debt	A884	95			
Other Restricted Fund Balance (Specify)					
	A899	96			
Total Restricted Fund Balance	AT092	97	3,977,600	4,388,098	
Committed					
Committed Fund Balance	A913	98		0	
Total Committed Fund Balance	AT093	99	0	0	
Assigned					
Assigned Appropriated Fund Balance	A914	100	850,000	800,000	
Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Committed and Restricted Fund Balance - <a href="#">click here for help</a> )	A915	101	107,384	243,888	
Total Assigned Fund Balance	AT094	102	957,384	1,043,888	
Unassigned					
Reserve for Tax Reduction	A916	103			
Unassigned Fund Balance	A917	104	1,804,118	2,779,127	
Total Unassigned Fund Balance	AT096	105	1,804,118	2,779,127	
TOTAL FUND BALANCE	AT095	106	6,739,102	8,211,113	

## FUND BALANCE REPORTING ON THE ST-3 (continued)

				2023-24	2024-25	2025-26
				School Year (Prior)	School Year (Actual)	School year (Projected)
Calculation for Real Property Tax Law Section 1318:						
Unexpended Surplus*						
Committed + Assigned Unappropriated + Unassigned Fund Balance	AT0991	108		1,911,502	3,023,015	
Encumbrances Included in Committed and Assigned Fund Balance	AT0992	109		107,384	243,888	
Reserve for Insurance Recovery	AT0993	110				
Total Unexpended Surplus Funds (Line 108 - 109 - 110)*	AT0994	111		1,804,118	2,779,127	
Voter Approved May Budget (not including Separate Propositions)		112		25,988,979	26,159,094	
Total Unexpended Surplus Funds divided by Voter Approved May Budget (not including Separate Propositions) (line 111/112) - Percentage		113		6.9419	10.6239	
Total Unexpended Surplus Funds in excess of 4% limit		114		764,559	1,732,763	
Miscellaneous Additional Information:						
Assigned Appropriated Fund Balance from Line 100	A914	115		850,000	800,000	750,000
Total Unexpended Surplus Funds PLUS Assigned Appropriated Fund Balance (A914 + AT0994)		116		2,654,118	3,579,127	2,829,127

### Notes:

- See OSC Accounting Release at: <http://www.osc.state.ny.us/localgov/pubs/releases/gasb54.pdf> for additional guidance.
- Lines 108 – 116 on the ST-3 are completed to calculate the portion of fund balance that is subject to the 4% limit pursuant to Real Property Tax Law Section 1318.
- \*Per Office of the New York State Comptroller's "Fund Balance Reporting and Governmental Fund Type Definitions", updated April 2011 (originally issued November 2010), the portion of [General Fund] fund balance subject to §1318 of the Real Property Tax Law is: unrestricted fund balance (i.e., the total of the committed, assigned and unassigned classifications), minus appropriated fund balance, amounts reserved for insurance recovery, amounts reserved for tax reduction, and encumbrances included in committed and assigned fund balance.
- If assets are classified as Prepaid Expenditures, Inventory, and/or Long-Term Receivables then there should be a corresponding amount of fund balance classified as Nonspendable.
- Encumbrances that are funded from Unassigned Fund Balance should be reported in A915. Encumbrances that are funded from a Restricted or Committed Fund Balance are reported as Restricted or Committed, respectively.
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.

### Effective with June 30, 2019, ST-3:

1. SED has revised the presentation of fund balance as noted above. Caution should be taken to ensure that the amount reported for encumbrances on Line 101 is also reported on Line 109. Line 109 is part of the calculation for compliance with the 4% limit and is not pre-populated.
2. Lines 115 & 116 – Had a third column added to include the projected amounts for the following year.

## FUND BALANCE REPORTING ON THE ST-3 (continued)

### Special Aid Fund:

FUND BALANCE (SPECIAL AID FUND)				
Nonspendable				
	Special Aid Fund - Nonspendable - Not in Spendable Form	F806	40	<input type="text"/>
Restricted				
	Other Restricted Fund Balance	F899	41	<input type="text"/>
	Total Restricted Fund Balance	FT092	42	<input type="text"/>
Assigned				
	Assigned Appropriated Fund Balance	F914	43	<input type="text"/>
	Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Restricted Fund Balance)	F915	44	<input type="text"/>
	Total Assigned Fund Balance	FT094	45	<input type="text"/>
Unassigned				
	Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	F917	46	<input type="text"/>
	Total Unassigned Fund Balance	FT096	47	<input type="text"/>
	TOTAL FUND BALANCE	FT095	48	<input type="text"/>

#### Notes:

- For all Special Revenue Funds, e.g. Special Aid, Food Service Fund, Public Library and Miscellaneous Special Revenue Fund, there can be no positive amount of fund balance reported as Unassigned. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in a Special Revenue Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Encumbrances are generally included in F915 – Assigned Unappropriated (rare to have Restricted Fund Balance in the Special Aid Fund).
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.



## FUND BALANCE REPORTING ON THE ST-3 (continued)

### Food Service Fund:

<b>FUND BALANCE(SCHOOL LUNCH)</b>				
Nonspendable				
Not in Spendable Form	C806	42		
Total Nonspendable Fund Balance	CT080	43		
Restricted				
Other Restricted Fund Balance	C899	44		
Total Restricted Fund Balance	CT092	45		
Assigned				
Assigned Appropriated Fund Balance	C914	46		
Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Restricted Fund Balance)	C915	47		
Total Assigned Fund Balance	CT094	48		
Unassigned				
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	C917	49		
Total Unassigned Fund Balance	CT096	50		
TOTAL FUND BALANCE	CT095	51		

#### Notes:

- For all Special Revenue Funds there can be no positive amount of fund balance reported as Unassigned. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in a Special Revenue Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Encumbrances are generally included in C915 – Assigned Unappropriated (rare to have Restricted Fund Balance in the Special Aid Fund).
- If assets are classified as Inventory, then there should be a corresponding amount of fund balance classified as Nonspendable.
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.

## FUND BALANCE REPORTING ON THE ST-3 (*continued*)

### Public Library Fund:

FUND BALANCE (PUBLIC LIBRARY)				
Restricted				
Other Restricted Fund Balance	L899	41		
Total Restricted Fund Balance	LT092	42		
Assigned				
Assigned Appropriated Fund Balance	L914	43		
Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Restricted Fund Balance)	L915	44		
Total Assigned Fund Balance	LT094	45		
Unassigned				
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	L917	46		
Total Unassigned Fund Balance	LT096	47		
TOTAL FUND BALANCE	LT095	48		

#### Notes:

- For all Special Revenue Funds there can be no positive amount of fund balance reported as Unassigned. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in a Special Revenue Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Encumbrances that are funded from Unassigned Fund Balance should be reported in L915. Encumbrances that are funded from a Restricted Fund Balance are reported as Restricted.
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.



## FUND BALANCE REPORTING ON THE ST-3 (continued)

### Miscellaneous Special Revenue Fund:

FUND BALANCE (MISCELLANEOUS REVENUE FUND)				
Restricted				
Other Restricted Fund Balance	CM899	41		
Total Restricted Fund Balance	CMT092	42		
Committed				
Committed Fund Balance	CM913	43		
Total Committed Fund Balance	CMT093	44		
Assigned				
Assigned Appropriated Fund Balance	CM914	45		
Assigned Unappropriated Fund Balance (Includes Encumbrances which are NOT reported in Restricted Fund Balance)	CM915	46		
Total Assigned Fund Balance	CMT094	47		
Unassigned				
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	CM917	48		
Total Unassigned Fund Balance	CMT096	49		
TOTAL FUND BALANCE	CMT095	50		

#### Notes:

- For all Special Revenue Funds there can be no positive amount of fund balance reported as Unassigned. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in a Special Revenue Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Encumbrances that are funded from Unassigned Fund Balance should be reported in CM915. Encumbrances that are funded from a Committed or Restricted Fund Balance are reported as Committed or Restricted, respectively.
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.

## FUND BALANCE REPORTING ON THE ST-3 (*continued*)

### Debt Service Fund:

FUND BALANCE (DEBT SERVICE FUND)				
Restricted				
Reserve For Debt	V884	29		
Total Restricted Fund Balance	VT092	30		
Assigned				
Assigned Appropriated Fund Balance	V914	31		
Assigned Unappropriated Fund Balance (Includes				
Encumbrances which are NOT reported in Restricted Fund	V915	32		
Balance)				
Total Assigned Fund Balance	VT094	33		
Unassigned				
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	V917	34		
Total Unassigned Fund Balance	VT096	35		
TOTAL FUND BALANCE	VT095	36		

#### Notes:

- There can be no positive amount of fund balance reported as Unassigned in the Debt Service Fund. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in the Debt Service Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.

## FUND BALANCE REPORTING ON THE ST-3 (continued)

### Capital Projects Fund:

FUND BALANCE (CAPITAL FUNDS)			
Restricted			
Capital Reserve	H878	29	<input type="text"/>
Other Restricted Fund Balance (Specify)	H899	30	<input type="text"/>
<input type="text"/>			
Total Restricted Fund Balance	HT092	31	<input type="text"/>
Assigned			
Assigned Unappropriated Fund Balance (Includes			
Encumbrances which are NOT reported in Restricted Fund	H915	32	<input type="text"/>
Balance)			
Total Assigned Fund Balance	HT094	33	<input type="text"/>
Unassigned			
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	H917	34	<input type="text"/>
Total Unassigned Fund Balance	HT096	35	<input type="text"/>
TOTAL FUND BALANCE	HT095	36	<input type="text"/>

#### Notes:

- There can be no positive amount of fund balance reported as Unassigned in the Capital Projects Fund. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in the Capital Projects Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.
- Encumbrances that are funded from Unassigned Fund Balance should be reported in H915. Encumbrances that are funded from a Restricted Fund Balance are reported as Restricted.
- Funding that came from the General Fund Capital Reserve that was not spent by the end of the school year should be accounted for in H878 – Restricted – Capital Reserve.

## FUND BALANCE REPORTING ON THE ST-3 (continued)

### Permanent Fund:

<b>FUND BALANCE (PERMANENT FUND)</b>				
Nonspendable				
Must Remain Intact	PN807	24		
Total Nonspendable Fund Balance	PNT080	25		
Restricted				
Other Restricted Fund Balance	PN899	26		
Total Restricted Fund Balance	PNT092	27		
Assigned				
Assigned Appropriated Fund Balance	PN914	28		
Assigned Unappropriated Fund Balance (Includes				
Encumbrances which are NOT reported in Restricted Fund	PN915	29		
Balance)				
Total Assigned Fund Balance	PNT094	30		
Unassigned				
Unassigned Fund Balance (ENTRY MUST BE NEGATIVE OR 0)	PN917	31		
Total Unassigned Fund Balance	PNT096	32		
TOTAL FUND BALANCE	PNT095	33		

#### Notes:

- If the trust provisions do not allow the principal to be expended, the equity should be classified as Nonspendable – Must Remain Intact - PN 807.
- There can be no positive amount of fund balance reported as Unassigned in the Permanent Fund. Any positive amount of fund balance is considered to be at least classified as Assigned Fund Balance as the restrictions on the funding which caused it to be accounted for in the Permanent Fund is at least an assignment of its use to be for the purpose of the fund. (Funds cannot be used for General Fund operations.)
- Nonspendable and Restricted Fund Balance amounts should have a corresponding amount of Restricted Cash/Investments reported.
- Encumbrances that are funded from Unassigned Fund Balance should be reported in PN915. Encumbrances that are funded from a Restricted Fund Balance are reported as Restricted.

## FUND BALANCE REPORTING ON THE ST-3 (*continued*)

---

### Custodial Fund:

NET ASSETS			
Restricted for Other Purposes	TC923	50	
Unrestricted (Deficit)	TC924	51	
TOTAL NET ASSETS	TCT095	52	

#### Notes:

- The Custodial Fund is accounted for on an accrual basis of accounting and therefore the term Net Assets is used for equity. All other funds are accounted for on a modified accrual basis of accounting.
- Restricted Net Assets amounts should have a corresponding amount of Restricted Cash/Investments reported.

### Private Purpose Trust Fund:

NET ASSETS			
Restricted for Other Purposes	TE923	23	
Unrestricted (Deficit)	TE924	24	
TOTAL NET ASSETS	TET095	25	

#### Notes:

- The Private Purpose Trust Fund is accounted for on an accrual basis of accounting and therefore the term Net Assets is used for equity. All other funds are accounted for on a modified accrual basis of accounting.
- Restricted Net Assets amounts should have a corresponding amount of Restricted Cash/Investments reported.

## Select Commissioner's Decisions

---

### Decision No. 14,560

Appeal of THOMAS KACKMEISTER from action of the Board of Education of the Greece Central School District and its Superintendent and Assistant Superintendent of Finance, and Christa Construction, SWBR, LeChase Construction, The Pike Company, LeCesse Construction Co., HS Industrial Equipment, LVI, Billitier Electric Inc., Cable-Wiedemer Inc., Finger Lakes Piping, Inc., Sear Brown Project Delivery, Faulks Plumbing Heating and Air Conditioning, Quinlan Communications Group, Connor and Haas, Inc., AAC Contracting, Inc., F-E-S Associates, Battle Associates, Robert F. Hyland and Sons, O'Grady McCormick Mechanical Contractors, Monroe Piping and Sheet Metal Inc., Massa and the Town of Greece, regarding reserve funds and capital construction projects.

Decision No. 14,560

(April 13, 2001)

Wayne A. Vander Byl, Esq., attorney for respondents Board of Education, Superintendent and Assistant Superintendent

MILLS, Commissioner. -- Petitioner challenges a number of fiscal and contractual actions taken by the Board of Education of the Greece Central School District ("respondent board"), its Superintendent and its Assistant Superintendent for Finance and Support Services (collectively referred to as the "district respondents"). The appeal is sustained in part.

Petitioner, a resident and taxpayer, contends, interalia, that the district respondents are: improperly using a single proposition to authorize a series of annual expenditures from "3651 reserve funds rather than obtaining specific authorization from district voters for such expenditures each fiscal year; improperly levying taxes for appropriations to replenish reserve funds in excess of the ultimate limits established for those funds; and improperly including authorizations to expend those appropriations from the reserve funds during the same fiscal year as the funds are authorized to be transferred into the reserve funds. Petitioner further challenges the legality of a contract to appoint Christa Construction as the general manager of a school renovation project, on the grounds of a possible conflict of interest, and challenges the legality of the extension of a lease of property to a developer without a further public vote. Petitioner's requests for interim relief were denied on June 20, 2000.

To the extent that petitioner purports to challenge certain reserve fund propositions from 1999 or previous years, and seeks reformation or annulment of such past propositions, his claims must be dismissed as untimely. Section 275.16 of the Regulations of the Commissioner of Education requires that an appeal be instituted within 30 days from the making of the decision, or the performance of the act complained of. However, to the extent that such prior propositions have an effect upon current board actions or propositions regarding reserve funds, I will address petitioner's claims.



## Select Commissioner's Decisions (*continued*)

---

Most of petitioner's complaints arise out of respondent board's proposed funding and use in fiscal year 2000-01 of various reserve funds established by respondent board pursuant to Education Law "3651 (the record does not indicate that this appeal involves any reserve funds established pursuant to Article 2 of the General Municipal Law). The purpose of a "3651 reserve fund is to permit a school district to set aside a sum of money for a future expenditure, rather than fund the expenditure through the current year's budget or through issuing bonds at the time of the expenditure. The reserve fund is established by a majority vote of the district's electorate to approve a proposition that sets forth the purpose of the reserve fund, the ultimate amount thereof, its probable term, and the source from which the money would be obtained to fund the account (Education Law "3651[1]). An amount should be paid into the reserve fund sufficient to meet the requirements of the proposition, and the voters may direct that additional funds derived from other sources may be paid into the fund (*id.*). The "ultimate amount" of the reserve fund, as the term is used in Education Law "3651(1), constitutes the total amount of money that may be paid into the reserve fund over the entire term of the fund.

One reserve fund specifically challenged by petitioner is the Building Capital Reserve Fund ("BCRF"). The BCRF was established in 1978 with an approved ultimate limit of \$1.25 million. The voters approved an increase in the ultimate limit in 1987 to \$3.55 million. This limitation thus established that a maximum of \$3.55 million could be paid into the reserve fund over the entire life of the fund, irrespective of the balance of the fund at any given time or expenditures from the fund.

The record reveals, however, that respondent board has deposited much more than this ultimate amount into the BCRF over the life of the fund. For example, in April 1982 the voters approved transfers into the fund totaling more than \$2.3 million, although the ultimate limit of the fund at that time was \$1.25 million. The record also establishes that the voters approved a proposition in May 1999 to "increase the annual budgetary appropriation for such fund by the sum of \$490,000" beginning 1999-2000 and extending over subsequent fiscal years. An accounting provided by respondents indicates that more than \$16 million has been transferred into the BCRF since it was established, in violation of the ultimate limit established by the voters in 1987.

Petitioner also challenges the lack of a current established probable term for the BCRF when the terms of the fund were amended in the May 1999 proposition. When established in 1978, respondent board advised voters that the BCRF had a probable term of 10 years. However, the fund is now more than 22 years old. The voters in May 1999 approved a proposition calling for an additional \$490,000 appropriation for the BCRF for 1999-2000 and an unspecified number of subsequent fiscal years. The record is devoid of any indication that the voters have been asked to approve, or have in fact approved, an amendment of the original stated probable term of ten years, nor did the May 1999 proposition purport to establish any amended time limitation for the reserve fund or the additional appropriations to fund the BCRF.

## Select Commissioner's Decisions (*continued*)

---

At the time of the fund's creation in 1978, respondent board properly established a probable term of 10 years in compliance with Education Law "3651[1]. Respondent board also included language in the 1978 proposition, however, that "such fund shall continue in existence for its stated purpose until liquidated ... or until its funds are exhausted." Such generalized, indefinite language is inappropriate when establishing a reserve fund, and does not comply with the mandates of the Education Law. The life of a reserve fund is limited to the specific probable term established in the proposition creating the fund, or by some subsequent amendment that takes effect during that term. Although accumulated moneys in the fund may be expended after the expiration of the probable term until the fund is depleted, no funds may be transferred to a "3651 reserve fund nor can the terms of the reserve fund be amended after the expiration of the probable term. In sum, once the established probable term has expired, the reserve fund is essentially defunct except as a vehicle to hold the accumulated funds. No more funds may be added, no amendment can be made to the terms of the fund, and it simply must be spent down by appropriate propositions to expend the accumulated funds.

Additionally, district voters approved propositions authorizing annual maximum expenditures from the BCRF in lump sum figures - \$200,000 per year (1978), \$1 million per year (1982 and 1987) and \$2 million per year (1999 and 2000). None of the propositions described in the record before me provided the voters with a "specific purpose" for the expenditure as required by Education Law "3651(3). In addition, the accounting provided by respondent board reveals that more than \$22 million has been expended from the BCRF since its inception. Further, the propositions provided to me in the record purport to authorize such general annual expenditures for a period beyond the current fiscal year.

After a careful review of the record and the contentions of the parties, it is apparent that the district respondents are operating an improper "rolling reserve fund," replenishing the funds in the BCRF as they are expended without regard to the ultimate amount or probable term approved by district voters at the time the fund was originally established or through subsequent amendment.

A "3651 reserve fund can be analogized to a long-term savings account for a specific future objective, for which the voters have approved a set maximum amount of money that can be transferred into this savings account by the district over the established life of the fund. In contrast, the district respondents have been treating the BCRF in the same manner as a checking account, putting funds in and expending those funds annually without regard to the ultimate limit established by the voters. Once the total transfers to the BCRF since 1978 exceeded \$3.55 million, the excess transfers were not authorized by Education Law 3651 and constituted an improper use of district funds.



## Select Commissioner's Decisions (*continued*)

---

The district respondents are also continuing to transfer money into the reserve fund that has essentially expired because it reached its probable term. The voters established a 10-year probable term for the BCRF in 1978. There was no amendment of this probable term prior to 1988, so the fund expired as of 1988. Once a reserve fund has reached the end of its probable term, no additional money may be transferred into the fund (regardless of whether the fund achieved its ultimate limit) nor may there be any amendment of the terms of the reserve fund. The school district is only authorized to continue to expend the money from the reserve fund in accordance with proper voter authorizations.

It is also clear that the district respondents are not obtaining proper voter approval for expenditures from the BCRF in compliance with Education Law "3651(3), because they are not providing voters with the specific purpose of such expenditures and are not obtaining annual approval from the voters for expenditures in a particular fiscal year. Such reserve funds are to be created for specific purpose(s), which must be disclosed to the voters at the time they approve the establishment of the fund, not for miscellaneous and sundry projects that may arise over time.

Similarly, the expenditures from reserve funds should be for the specific purpose(s) for which the fund was established, and the proposition to approve the expenditure should explicitly state the purpose of the proposed expenditure (Education Law "3651[3]). Although the stated purpose(s) of a reserve fund may be somewhat broad, the spending authorization should be specific and give the voters adequate notice of the particular intended use of the funds. A proposition authorizing the funding of a reserve fund or an expenditure from a reserve fund is limited to the fiscal year for which the voters approved the proposition and may not contain language purporting to continue such authorization indefinitely into future fiscal years (accord, Opn. State Comptr. 83-223 [it is improper to use a single proposition to authorize a series of annual expenditures of a certain amount from a reserve fund]). As the Comptroller noted in Opinion 83-223, the statutory requirement of "specific purpose" mandates that each and every expenditure must be authorized separately by the voters, so that the voters can evaluate the expenditure in light of circumstances existing at the time each expenditure is to be made. The Comptroller found "no evidence that the statute was meant to permit a standing authorization of a recurring annual expenditure" (id.).

## Select Commissioner's Decisions (*continued*)

---

Petitioner challenges the funding of, and expenditures from, other reserve funds in this appeal. A Bus Purchase Reserve Fund was established in January 1977, with a probable term of 10 years and a stated ultimate limit of \$2.5 million. The 1977 proposition contained language, similar to the proposition establishing the BCRF, which purported to extend the probable term indefinitely. The accounting provided by respondent board indicates that the Bus Purchase Reserve Fund is still being funded more than 13 years after its probable term expired. The accounting also reveals that, although the reserve fund was fully funded in the amount of \$2.5 million the very first year, respondent board has nevertheless continued to transfer funds into the reserve fund in excess of \$15 million.

The district's third "3651 reserve fund is a School District Equipment Fund. This fund was established in May 1999, with an ultimate amount of \$1 million and a probable term of 10 years. The accounting provided by respondent board indicates that, irrespective of the stated ultimate limit, \$1.45 million was transferred into the fund in 1999-2000. No funds were transferred into the fund for the 2000-01 school year.

The district respondents are admonished to comply with Education Law "3651 in the operation of all of the district's reserve funds established pursuant to that section. No funds may be transferred to a reserve fund over the entire life of the fund in excess of the stated ultimate limit of the fund. A reserve fund should be established for specific purpose(s) and for a specific probable term in keeping with the stated purpose(s). Expenditures from a reserve fund must be for such specific purpose(s), and the specific purpose of the expenditure must be set forth in the proposition seeking authorization from the voters for the expenditure. No transfers may be made to a reserve fund after its probable term has expired, regardless of whether it has been fully funded to its ultimate limit.

Petitioner also challenges the district respondents' presentation of propositions to district voters that purport to transfer money into reserve funds and to spend that reserved money in the same fiscal year. This is an inappropriate use of a "3651 reserve fund. As noted above, a reserve fund is intended as a mechanism to reserve and accumulate funds over time for a future project, not as a vehicle to finance a current project or current needs. There is no sense whatsoever in depositing money received from current tax levies into a reserve fund, and then conveying the money via an interfund transfer to the district's capital fund to expend the money during the same fiscal year. If there is money from current tax levies available for such current needs, the money should simply be deposited directly into the capital fund for expenditure.

## Select Commissioner's Decisions (*continued*)

---

Petitioner additionally challenges a contract with Christa Construction ("Christa") for pre-referendum and construction management services, in connection with a construction bond proposition, because of a possible conflict of interest. The contract with Christa was procured through a request for proposals ("RFP") process, in connection with a bond proposition to be presented to voters in June 2000 to construct an addition to a district school.

Petitioner notes his "concern" that there are various interrelationships between school district personnel and the corporation, e.g., two pieces of property are owned jointly by a Christa employee and an assistant superintendent who was the facilitator of the RFP process that selected Christa; one Christa employee was a previous superintendent of the school district; and the vice president of Christa is a former school district employee. However, none of petitioner's allegations of potential conflict fall within the specific definitions of conflict of interest as set forth in Article 18 of the General Municipal Law ("GML"), ""800 etseq., or identifies a violation of the prohibitions contained in GML "805-a. In an appeal to the Commissioner, petitioner bears the burden of establishing all the facts upon which he seeks relief (8 NYCRR "275.10; Appeal of Alexander, 39 Ed Dept Rep 265, Decision No. 14,232; Appeal of Trombley, 39 id. 115, Decision No. 14,189) and demonstrating a clear legal right to the relief requested (Appeal of Alexander, supra; Appeal of Logan, 38 id. 694, Decision No. 14,120). Petitioner has failed to establish that there was any taint to the contract award to Christa as a result of the cited interrelationships, and thus is not entitled to the relief of invalidating the contract. The record indicates that respondent board gave careful consideration to various proposals and used its judgment to procure the services of the contractor that best fit the requirements of the RFP.

Petitioner also argues that the district respondents improperly used an RFP process rather than an open bid process to procure these services. The district respondents argue that, because this contract was for professional services, use of an RFP process pursuant to GML "104-b was appropriate rather than use of a competitive bid process under GML "103. Although I do not have a copy of the RFP or the contract before me, and I am thus not conversant with the particular duties required of Christa under the contract, petitioner has not rebutted the contention that the contract calls for professional services. Professional services contracts involving specialized skills, expertise and the exercise of judgment and discretion are outside the scope of competitive bidding (Schulz v. Cobleskill-Richmondville Central School District, 197 AD2d 247 [3d Dept 1994]; Appeal of Shrivah, et al., 36 Ed Dept Rep 396, Decision No. 13,760, judgment granted dismissing petition to review, Supreme Ct., Albany Co. (Lamont, J.), December 18, 1997). Use of the RFP process was appropriate under these circumstances.

## Select Commissioner's Decisions (*continued*)

---

In a related challenge, petitioner contends that district Policy 6700 is vague and deficient, and that the district respondents should be ordered to rewrite the policy to "specify exactly what 'specialized consultant services' are." In the instant appeal, petitioner does not establish that there is any vagueness or dispute as to whether the services provided by Christa under the contract constitute "specialized consultant services," and thus fails to sustain his burden to show that he is entitled to any relief with respect to this particular contract. I will not address the language of this policy in the abstract, without a particular application of the policy before me for consideration. The Commissioner does not issue advisory opinions in appeals brought pursuant to Education Law "310 (Appeal of Instone-Noonan, 39 Ed Dept Rep 413, Decision No. 14,275; Appeal of Weiss, 39 id. 69, Decision No. 14,176).

Petitioner next challenges the validity of a lease between the school district and David Christa for a parcel of land owned by the district. District voters authorized a 30-year lease on May 16, 1990, and the lease permitted construction of a building on the property. Petitioner contends that the limit of a lease under Education Law "403-a is 10 years, and that the lease expired as of May 2000 because there has been no subsequent proposition approved by the voters to extend the lease. Petitioner's interpretation of "403-a, however, is inaccurate. Subsection (5) of "403-a provides that a lease may be for a period in excess of 10 years if approved by the voters. The proposition approved by the voters on May 19, 1990 clearly advised voters that the lease was for a period of 30 years, in compliance with "403-a (5). Because the lease is still valid, I need not address petitioner's additional contention that the school district should use the building constructed by David Christa on the leased premises rather than ask the voters to approve the construction of an addition to an existing school facility.

Petitioner additionally appears to challenge a lease-purchase provision in the lease agreement but fails to establish that there is any present intention by the parties for David Christa to purchase the leased property. Petitioner further challenges the rental rate in the lease, but this rate was set in 1990 when the lease was executed. A challenge to the provisions of the lease is therefore untimely at this point (8 NYCRR "275.16).

Petitioner also complains that David Christa has apparently paid no property tax on the building constructed on the leased property over the last 10 years. Petitioner asks that I direct the district respondents to refrain from dealing with the Christa Corporation unless and until it pays all taxes, especially school taxes. However, the Commissioner has no authority to enforce the Real Property Tax Law ("RPTL") against private parties. Petitioner must address these concerns with the appropriate authorities in compliance with the RPTL.

## Select Commissioner's Decisions (*continued*)

---

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the district respondents cease any future transfers, that have not already been approved by the voters, to reserve funds created under Education Law "3651 in excess of the stated ultimate limits over the entire life of the reserve funds or after the expiration of the stated probable term of such reserve funds; and that any propositions to expend money from "3651 reserve funds must be limited to the current fiscal year and must state with specificity the purpose for each such expenditure.

IT IS FURTHER ORDERED that the district respondents cease their practice of seeking voter approval authorizing transfers into reserve funds and authorizing the expenditure of those funds during the same fiscal year.

## Select Commissioner's Decisions (*continued*)

---

### Decision No. 15,219

Appeal of KEN UY and ARTHUR NORDEN from action of the Board of Education of the Sullivan West Central School District regarding a capital reserve fund.

Decision No. 15,219

(May 12, 2005)

Shaw & Perelson, LLP, attorneys for respondent, David Shaw, Esq., of counsel

MILLS, Commissioner. --Petitioners challenge certain actions of the Board of Education of the Sullivan West Central School District ("respondent") relating to a capital reserve fund. The appeal must be sustained in part.

Although the record is somewhat unclear, it appears that at respondent's May 16, 2000 annual election, district voters authorized respondent to establish a capital reserve fund with an ultimate amount of \$3,000,000 "for the purpose of paying part of the costs of the new High School construction and reconstruction of other District buildings." In addition, at a June 22, 2000 special district meeting, district voters approved the following proposition:

RESOLVED, that the Board of Education of Sullivan West Central School District at Callicoon-Jeffersonville-Youngsville-Narrowsburg, Sullivan and Delaware Counties, New York, is hereby authorized to purchase real property at a maximum estimated cost of \$40,000 and construct and reconstruct school buildings, including site improvement, original furnishings, equipment, machinery, apparatus and other improvements and costs incidental thereto, at a maximum estimated cost of \$49,898,453; and for such construction and reconstruction to expend up to \$3,000,000 (plus accrued interest) from the "District-wide Construction and Reconstruction Reserve Fund"; and that the sum of \$49,938,453, being the aggregate of the aforesaid costs, or so much thereof as may be necessary after taking into account the expenditure of Reserve Fund moneys, shall be raised by the levy of a tax upon the taxable property of said School District and collected in annual installments as provided by Section 416 of the Education Law; and, in anticipation of such tax, obligations of said School District shall be issued.

Respondent apparently expended the funds in its capital reserve fund during the 2001-2002 school year. This appeal ensued.

Petitioners essentially claim that respondent improperly expended monies from its capital reserve fund without voter authorization. Petitioners also maintain that at its December 4, 2003 meeting, respondent improperly accepted an inaccurate revised financial statement for the year ending June 30, 2002. Petitioners request, among other things, that I order respondent to rescind its acceptance of the revised financial statement, restore the capital reserve fund and comply with Education Law §3651 in the future.

## Select Commissioner's Decisions (*continued*)

---

Respondent objects to petitioners' reply and alleges that petitioners have failed to name as necessary parties certain unnamed State Education Department ("Department") officials who advised respondent on certain capital expenditures, reporting and State Aid issues. Respondent admits that it expended \$1,037,477.28 from the Capital Reserve fund during the 2001-2002 school year, thereby depleting it, and asserts that district voters authorized this action by their approval of the June 22, 2000 proposition. Further, respondent explains that it properly accepted the revised financial statement to correct an earlier accounting error concerning the capital reserve expenditure.

Initially, I will address respondent's procedural objections. The purpose of a reply is to respond to new material or affirmative defenses set forth in an answer (8 NYCRR §275.3 and 275.14). A reply is not meant to buttress allegations in the petition or to belatedly add assertions that should have been in the petition (Appeal of General, 43 Ed Dept Rep 146, Decision No. 14,948). Therefore, while I have reviewed petitioners' reply, I have not considered those portions containing new allegations or exhibits that are not responsive to new material or affirmative defenses set forth in the answer.

A party whose rights would be adversely affected by a determination of an appeal in favor of petitioners is a necessary party and must be joined as such (Appeal of Hoffman, 43 Ed Dept Rep 160, Decision No. 14,953; Appeals of Branch, et al., 41 *id.* 334, Decision No. 14,704). Although respondent received advice from Department staff concerning the reserve fund, it is respondent's actions that petitioners challenge. Moreover, respondent fails to demonstrate how these unnamed State officials would be adversely affected by a determination in petitioners' favor. Additionally, Education Law §310 does not authorize an appeal to the Commissioner from actions taken by staff of the State Education Department (Appeal of Karpen, 40 Ed Dept Rep 199, Decision No. 14,460; Appeal of Molloy College, 33 *id.* 361, Decision No. 13,078; Matter of the Bd. of Educ. of the City School Dist. of the City of Rome, 23 *id.* 382, Decision No. 11,253, affds sub nom. Bd. of Educ. of the City School Dist. of the City of Rome v. Ambach, 118 AD2d 932). Under these circumstances, I find no merit to respondent's claim that petitioners have failed to name necessary parties.

The purpose of a §3651 reserve fund is to permit a school district to set aside a sum of money for a future expenditure, rather than fund the expenditure through the current year's budget or through issuing bonds at the time of the expenditure. The reserve fund must be created for specific purpose(s), which must be disclosed to the voters at the time they approve the establishment of the fund. As I stated in Appeal of Kackmeister (40 Ed Dept Rep 577, Decision No. 14,560):



## Select Commissioner's Decisions (*continued*)

---

[T]he expenditures from reserve funds should be for the specific purpose(s) for which the fund was established, and the proposition to approve the expenditure should explicitly state the purpose of the proposed expenditure (Education Law §3651[3]). Although the stated purpose(s) of a reserve fund may be somewhat broad, the spending authorization should be specific and give the voters adequate notice of the particular intended use of the funds. A proposition authorizing the funding of a reserve fund or an expenditure from a reserve fund is limited to the fiscal year for which the voters approved the proposition and may not contain language purporting to continue such authorization indefinitely into future fiscal years (accord, Opn. State Comptr. 83-223 [it is improper to use a single proposition to authorize a series of annual expenditures of a certain amount from a reserve fund]). As the Comptroller noted in Opinion 83-223, the statutory requirement of "specific purpose" mandates that each and every expenditure must be authorized separately by the voters, so that the voters can evaluate the expenditure in light of circumstances existing at the time each expenditure is to be made.

Based on the foregoing, I find that the June 23, 2000 referendum was insufficient to authorize respondent's expenditure from its capital reserve fund. First, the proposition fails to specifically identify the purpose for which the funds are sought (see Appeal of Kackmeister, supra). Further, the proposition improperly requests authorization to spend "up to" the ultimate amount of the reserve fund, rather than specifying a dollar figure. Such an open-ended request is improper. Respondent's failure to specify the amount and proposed use of the funds deprived the voters of their ability to properly evaluate respondent's request.

In addition, because voter authorization must be obtained during the same school year in which the board proposes to expend the funds, the June 22, 2000 proposition was insufficient to authorize the expenditure of reserve funds during the 2001-2002 school year (Appeal of Kackmeister, supra). Moreover, the record reflects that respondent did not have \$3 million in reserve on June 22, 2000. Accordingly, respondent improperly sought approval to spend more than was actually available in the reserve fund.

I find no merit, however, to petitioners' claim that the revised financial statement is inaccurate. In an appeal to the Commissioner, petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which she seeks relief (8 NYCRR §275.10; Appeal of M.F. and J.F., 43 Ed Dept Rep 174, Decision No. 14,960; Appeal of Kessler, 43 id. 170, Decision No. 14,958). I find that petitioners have failed to meet this burden.



## Select Commissioner's Decisions (*continued*)

---

Finally, I remind respondent that a reserve fund is intended as a mechanism to reserve and accumulate funds over time for a future project, not as a vehicle to finance a current project or current needs. There is no sense whatsoever in depositing money received from current tax levies into a reserve fund, and then conveying the money via an interfund transfer to the district's capital fund to expend the money during the same fiscal year. If there is money from current tax levies available for such current needs, the money should simply be deposited directly into the capital fund for expenditure (Appeal of Kackmeister, *supra*).

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that respondent henceforth fully comply with the reserve fund requirements of Education Law §3651.

## Select Commissioner's Decisions (*continued*)

---

### Decision No. 14,904

Appeal of DIONE GOLDIN from action of the Board of Education of the Wappingers Central School District; Wayne Gersen, Superintendent of Schools, and Richard Powell, Deputy Superintendent and Chief Financial Officer, regarding reserve funds.

Decision No. 14,904

(July 22, 2003)

Raymond G. Kuntz, Esq., attorney for respondents, Thomas Scapoli, Esq., of counsel

MILL, Commissioner. --Petitioner challenges certain actions taken by respondents with respect to a school bus reserve fund and a tax certiorari reserve fund. The appeal must be dismissed.

In 1985 district voters approved the establishment, effective July 1, 1985, of a capital reserve fund known as the School Bus Replacement Fund ("SBRF"). Petitioner alleges that the proposition submitted to the voters was faulty and improper because it failed to state an ultimate amount for the reserve fund as required by Education Law §3651(1). Petitioner further alleges that, long after the expiration of the probable term of the SBRF, respondent board still regularly seeks voter approval to "continue and enhance" the fund without providing for a new probable term or ultimate amount.

On May 18, 1994, district voters approved a proposition providing for the continuation of the SBRF and the deposit of additional monies in such fund, to wit: (1) \$400,000 annually from the General Fund, by vote of the board of education, in each of three consecutive years commencing with the 1994-95 school year, with each installment to be paid through a tax levy; and (2) an unspecified amount of State aid monies granted to the district pursuant to the purchase of equipment made out of the SBRF. Petitioner alleges that this proposition, although it might have extended the probable term of the SBRF to June 30, 1997, was defective in that it failed to declare or expand the ultimate amount of the fund created in 1985.

## Select Commissioner's Decisions (*continued*)

---

On May 19, 1998, district voters approved a proposition: (1) authorizing the district to purchase school buses at a maximum estimated cost of \$901,000, such sum to be raised by a tax levy and collected in annual installments as provided by Education Law §416, and to issue obligations in anticipation of such tax; and (2) providing that the SBRF be augmented through the deposit of State aid monies to be received by the district for the purchase. Petitioner alleges that the wording of the proposition made it "impossible" for the voters to readily comprehend what they were being asked to approve, and that the sequence of statements in the proposition was deceptive and misleading. Petitioner further alleges that the entire \$901,000 was bonded for five years and that this was an unauthorized and illegal departure from the proposition approved by the voters. In addition, petitioner alleges that although the proposition provided for the augmentation of the SBRF through the deposit of State aid monies, the SBRF was "already defunct, either as of June 30, 1995, or as of June 30, 1997" (if the probable term is determined to have been legally extended by the May 1994 proposition). Petitioner also alleges that the proposition was defective because it did not revise the ultimate amount of the fund, which in any event, as alleged above, had never been previously stated.

In May 1999, district voters approved a proposition which continued the SBRF and authorized the deposit of additional monies into the fund as follows: (1) \$970,000 in the 1999-2000 school year; (2) \$500,000 in the 2000-2001 school year; and (3) \$500,000 in the 2001-2002 school year, with each installment to be paid through a tax levy and placed into the SBRF from the General Fund by a vote of the board of education; and (4) State aid monies granted to the district pursuant to the purchase of equipment made out of such fund during each of the above school years. Petitioner alleges that the proposition improperly extended the defunct SBRF, and again did not adjust the ultimate amount or probable term of the SBRF.

On April 1, 2002, respondent board adopted a resolution to submit the following proposition at its annual meeting to be held on May 21, 2002:

Shall the Board of Education be authorized to purchase 10 twenty passenger minibuses at an estimated cost of \$36,100.00 per bus, 9 sixty-six passenger buses at an estimated cost of \$67,100.00 per bus, 1 twelve passenger bus which also accommodates three wheelchairs at an estimated cost of \$75,500.00, and 2 seven passenger minivans at an estimated cost of \$18,400 per van, and to pay for such purchases by expending \$677,200 from the School Bus Replacement Fund and by raising an additional \$400,000 from the levy of a tax upon the real property in the school district, for a total amount of one million seventy-seven thousand two hundred dollars (\$1,077,200.00); and shall the board be further authorized to continue to augment the School Bus Replacement Fund, by depositing state aid monies tied to said expenditures, received in the next school year?

## Select Commissioner's Decisions (*continued*)

---

Petitioner alleges that this proposition, if approved, would further improperly extend the defunct SBRF for another year, without adjusting, or otherwise providing for, an ultimate amount, or without stating a probable term.

At a public meeting and budget hearing held on April 22, 2002, respondent board refused to grant petitioner's request to remove the resolution from the May 21, 2002 ballot. Petitioner commenced this appeal on April 24, 2002.

Thereafter, on April 29, 2002, respondent board adopted a revised resolution to be presented to the voters at the May 21, 2002 annual meeting, which read as follows:

Shall the Board of Education be authorized to purchase 10 twenty passenger minibuses at an estimated cost of \$36,100.00 per bus, 9 sixty-six passenger buses at an estimated cost of \$67,100.00 per bus, 1 twelve passenger bus which also accommodates three wheelchairs at an estimated cost of \$75,500.00, and 2 seven passenger minivans at an estimated cost of \$18,400.00 per van, for a total amount of one million seventy-seven thousand two hundred dollars (\$1,077,200.00); and to pay for such purchases by raising \$400,000.00 from the levy of a tax upon the real property in the school district and expending \$677,200.00 from the School Bus Replacement Fund and thereafter terminating such fund.

On May 13, 2002, I denied petitioner's request for interim relief to prevent the above proposition concerning the school bus reserve fund from being placed on the ballot for the May 21, 2002 annual meeting.

In this appeal, petitioner alleges that respondents improperly created, continued, and enhanced the SBRF in violation of Education Law §3651. Petitioner also alleges that respondent board has routinely and regularly withdrawn monies from the SBRF without voter approval in violation of §3651 and has failed to maintain required records. Petitioner further alleges that respondents have willfully mismanaged and improperly manipulated the district's "Tax Certiorari Reserve Fund" (TCRF) and failed to account for deposits, expenditures, and current balances.

Respondents maintain that petitioner's claims regarding actions prior to the 2001-2002 school year are untimely. Respondents further contend that petitioner's claims regarding the SBRF are moot and that petitioner has failed to establish any improprieties concerning the TCRF.

Initially, I must address certain procedural issues related to the submission of documents in this appeal.

## Select Commissioner's Decisions (*continued*)

---

By letter dated April 29, 2002, petitioner requested permission to submit an additional exhibit. The exhibit is a copy of a two-sided flier that petitioner alleges improperly advocates in favor of passage of the district's budget at the May 21, 2002 election. Since this exhibit relates to a new factual allegation that is unrelated to the issues presented in this appeal, I deny petitioner's request and decline to accept such exhibit.

In her April 29 letter, petitioner also asked that two additional requests for relief be added to her petition. Specifically, petitioner requested that the school district be required to return all monies remaining in the SBRF to State taxpayers and that the Commissioner establish a procedure to review and monitor the capital reserve funds of all school districts in the State, to assure strict compliance with §3651. Although I will permit the two additional requests, in view of my determination, as discussed below, I decline to grant such requests.

By letter dated June 12, 2002, petitioner requested that three additional exhibits be accepted, namely, a job description of respondent Powell; the memorandum of the district's business manager, dated April 5, 2002, relating to a "tentative revenue analysis" of the 2002-2003 district budget; and a May 14, 2002 copy of an e-mail transmission from Board member Joseph Inconato. Petitioner claims that such information was obtained, in part, through a Freedom of Information Law ("FOIL") request or is otherwise newly available evidence. In the absence of any demonstrated prejudice to respondents, I accept these exhibits under §276.5 of the Commissioner's regulations.

By facsimile transmission dated June 24, 2002, petitioner requested permission to submit certain correspondence relating to petitioner's FOIL requests for certain documents relating to the issues presented in this appeal. However, petitioner has failed to provide an affidavit of service of her application upon either respondents or their attorney and thus her application must be denied (see 8 NYCRR §276.5).

Finally, by letter dated June 29, 2002, petitioner requested permission to submit 23 bank statements entitled "Capital Fund Bus Purchases" for four fiscal years 1996-1997 through 2000-2001; and a "Schedule G3-Capital Funds", dated June 1999. Since such documentation relates to the issues presented in this appeal, and in view of petitioner's uncontested claim that these documents were requested by petitioner under FOIL and were only made available to petitioner on June 27, 2002, I have accepted them for consideration in this appeal.

## Select Commissioner's Decisions (*continued*)

---

Respondents object to petitioner's submission of a "Reply Memorandum of Law" offered in response to respondents' Memorandum of Law, which was submitted with the affidavit of respondent superintendent in opposition to petitioner's request for a stay. In the absence of any demonstrated prejudice to either party, I have accepted both memoranda. However, as respondents correctly assert, a memorandum of law does not constitute proof or evidence of any facts stated therein (See Appeal of Laskas-Gillespie and Warshaw, 40 Ed Dept Rep 568, Decision No. 14,559).

Petitioner objects to respondents' answer because of an allegedly defective verification. Specifically, petitioner alleges that the answer is signed by an unqualified person. Where an appeal is brought from the action of a board of education of a school district, the answer shall be verified by "any person who is familiar with the facts underlying the appeal" (8 NYCRR §275.5). Respondents' answer is verified by the district's business manager, who states in an affidavit that she is familiar with the facts and circumstances giving rise to the petition. Upon the record before me, I find that the business manager is appropriately qualified to verify the answer.

The only other alleged defect in the answer's verification involves a discrepancy in the dates of notarization and the notaries public who witnessed such verification. Petitioner has provided, as an exhibit to her reply, a copy of the verification that was attached to the copy of the answer served upon her. The verification is dated May 14, 2002 and sworn to on May 13, 2002 before a notary public. However, the verification of the answer filed with my Office of Counsel is sworn to before a different notary public and the printed date of May 13, 2002 has been written over in ink to indicate the verification was sworn to before the notary on May 14, 2002. Although the verification in the answer served upon petitioner should be consistent with the filed copy, there is nothing in the record to indicate that the notary public who witnessed the verification provided to petitioner is unqualified. Furthermore, there is nothing in the record to support petitioner's contention that the answer served upon petitioner is not otherwise identical to the answer filed with Counsel's Office. A defect in the verification of the copy of a pleading served upon a party is insufficient to bar filing of the pleading, provided that the original pleading submitted to the Department for filing includes a proper verification (Application of Eisenkraft, 38 Ed Dept Rep 553, Decision No. 14,092). Accordingly, respondents' answer has been accepted for filing and has been considered in my determination of this appeal.

## Select Commissioner's Decisions (*continued*)

---

I must also address petitioner's reply. The purpose of a reply is to respond to new material or affirmative defenses set forth in the answer (8 NYCRR §§275.3 and 275.14). A reply is not meant to buttress allegations in the petition or to belatedly add assertions that should have been in the petition (Appeal of Hollister, 39 Ed Dept Rep 109, Decision No. 14,188). Much of petitioner's reply consists of new allegations or materials that should have been included in her petition. While I have reviewed petitioner's submissions, I will not consider those portions of the reply containing new allegations or exhibits which are not responsive to new material or affirmative defenses set forth in the answer.

I now turn to respondents' procedural defenses. Respondents contend that the appeal should be dismissed as moot, since respondent board's April 29, 2002 resolution provided that the SBRF would terminate upon the expenditure of funds. The Commissioner of Education will only consider matters in actual controversy and will not render a decision on a state of facts which no longer exists, or which subsequent events have laid to rest (Appeal of Bitteker, 39 Ed Dept Rep 608, Decision No. 14,326). Respondents indicate in their answer that the SBRF will terminate when its funds are expended in the 2002-2003 school year, and petitioner merely speculates, and has otherwise failed to establish, that the SBRF will continue to exist. Pursuant to §276.5 of the Commissioner's regulations, I have accepted respondents' submission of a July 7, 2003 letter from the general counsel to respondent board and a June 26, 2003 certification from the district clerk indicating that the board unanimously passed a resolution on June 23, 2003 authorizing the termination of the SBRF and the transfer of the remaining funds in the amount of \$8,238.48 plus accrued interest to the debt service fund for the purpose of paying any outstanding bonded indebtedness. I have also accepted petitioner's response to respondents' submission, in which petitioner merely reiterates her previous allegations that the voters never authorized expenditures from the SBRF. Since petitioner has failed to establish that the SBRF will not terminate pursuant to the June 23, 2003 resolution, I find that petitioner's claims concerning the SBRF must be dismissed as moot. However, the April 29, 2002 proposition does not resolve the issues raised by petitioner regarding the tax certiorari reserve fund ("TCRF") and I decline to dismiss the appeal as moot with respect to such claims.

## Select Commissioner's Decisions (*continued*)

---

Respondents also contend that the appeal should be dismissed as untimely. An appeal to the Commissioner must be instituted within 30 days from the making of the decision or the performance of the act complained of unless excused for good cause shown (8 NYCRR §275.16). To the extent petitioner challenges the aforementioned SBRF propositions approved in 1985, 1994, 1998 and 1999, her appeal must be dismissed as untimely and, consequently, her allegations with respect to the establishment of the SBRF, and the continuations, deposits and withdrawals made from such fund pursuant to such propositions must be dismissed. Furthermore, although petitioner's appeal is timely with respect to the proposition submitted at the May 21, 2002 annual meeting, it is unnecessary for me to determine the validity of that proposition since, as discussed above, petitioner's appeal with respect to the SBRF must be dismissed as moot.

With respect to the TCRF, respondents have failed to provide specific dates concerning when the fund was established and when funds were deposited or withdrawn. Therefore, I decline to dismiss petitioner's claims with respect to the TCRF on timeliness grounds.

Although I am constrained to dismiss petitioner's claims regarding the SBRF as moot and untimely, in view of the particular circumstances presented I must comment on that fund. The purpose of a §3651 reserve fund is to permit a school district to set aside a sum of money for a future expenditure, rather than fund the expenditure through the current year's budget or through issuing bonds at the time of the expenditure (Appeal of Kackmeister, 40 Ed Dept Rep 577, Decision No. 14,560). The reserve fund is established by a majority vote of the district's electorate to approve a proposition that sets forth the purpose of the reserve fund, the ultimate amount thereof, its probable term, and the source from which the money would be obtained to fund the account (Education Law §3651[1]). An amount should be paid into the reserve fund sufficient to meet the requirements of the proposition, and the voters may direct that additional funds derived from other sources may be paid into the fund (Id.). The "ultimate amount" of the reserve fund, as the term is used in Education Law §3651(1), constitutes the total amount of money that may be paid into the reserve fund over the entire term of the fund (Appeal of Kackmeister, *supra*).



## Select Commissioner's Decisions (*continued*)

---

The proposition approved on May 29, 1985 which established the SBRF, effective July 1, 1985, was defective in that it failed to specify an ultimate amount as required by Education Law §3651(1). The proposition provided that the fund:

. . . shall be initiated with an amount of \$777,000.00 through a levy of tax upon the taxable property of the District for the 1985-86 school year and, thereafter, an annual amount of up to \$196,250.00 shall be added to such fund through a levy of tax upon the taxable property of the District in each succeeding school year commencing with the 1986-87 school year and running through the 1994-95 school year; such fund shall also be augmented through the deposit therein of state aid monies which are granted to the District pursuant to purchases of equipment made out of such fund; provided further that the respective sums of \$777,000.00 and, thereafter, up to \$196,250.00 annually shall be placed into the "School Bus Replacement Fund" from the General Fund by vote of the Board of Education, the purpose of such fund being the purchase and replacement of vehicles for transportation of District students, including principal, interest, preliminary and incidental costs thereof . . .

Even if the initial amount of \$777,000.00 is added to the annual amount limit of \$196,250 for each school year from 1986-97 through 1994-95, it is not possible to arrive at an ultimate amount because the 1985 proposition also provides for an additional augmentation to the fund through the deposit of State aid monies in an unspecified amount to be granted to the district pursuant to the purchase of equipment out of such fund. Since the amount of these State aid monies is not specified, it is impossible to fix an ultimate amount of the fund at the time the 1985 proposition was presented to the voters, and the proposition is therefore defective pursuant to Education Law §3651(1). I also note that the 1994 and 1999 propositions similarly provided for further augmentation of the SBRF through the deposit of unspecified State aid monies granted to the district for purchases made out of the SBRF, and that the 1998 proposition provides for an additional augmentation of the SBRF through the deposit of State aid monies received by the district for purchases made from funds obtained from a tax levy, an entirely separate source. These actions establish that the SBRF had no ultimate amount, and that the fund was periodically increased at respondent board's discretion from such sources as were available at the time.

## Select Commissioner's Decisions (*continued*)

---

In addition, the SBRF became defunct once its probable term expired. The SBRF, as created in 1985, provided for a ten-year probable term ending at the close of the 1994-95 school year. The 1994 proposition continued this probable term to the close of the 1996-97 school year. The 1998 proposition did not contain any language purporting to continue the SBRF, even though it augmented the fund through the deposit of State aid as indicated above. Although the 1999 proposition purported to continue the fund through the 2001-02 school year, the probable term of the SBRF had already expired on June 30, 1997, pursuant to the 1994 resolution. Once a reserve fund has reached the end of its probable term, no additional monies may be transferred into the fund nor may the terms of the fund be amended (*Appeal of Kackmeister, supra*). After the expiration of the probable term, any accumulated monies may be expended, with proper voter authorizations, until the fund is depleted (*Id.*).

Since the probable term of the SBRF had expired, respondents could not deposit any additional funds into the SBRF or amend its terms but could only expend the accumulated monies in the fund (*Appeal of Kackmeister, supra*). The proposition presented to the voters at the May 21, 2002 annual meeting did not seek to deposit additional funds into the SBRF or to amend its terms, but instead provided for the expenditure of \$677,200.00 from the fund and the termination of such fund thereafter. As indicated above, respondent board passed a resolution on June 23, 2003 terminating the SBRF and transferring the remaining funds to the debt service fund for the purpose of paying any outstanding bonded indebtedness. Accordingly, even if I had reached the merits, there would have been no basis for me to void the May 2002 proposition. Nevertheless, I remind respondents that they must comply with Education Law §3651 in the operation of all the district's reserve funds established pursuant to that section.

## Select Commissioner's Decisions (*continued*)

---

Petitioner alleges that respondents have improperly used monies from the TCRF. Specifically, petitioner alleges that respondents have retained monies in the TCRF beyond the time period allowed by Education Law §3651.

Education Law §3651(1-a) provides:

" . . . any school district may establish a reserve fund for the payment of judgments and claims in tax certiorari proceedings in accordance with article seven of the real property tax law, without approval by the qualified voters of the district, provided, however, that the total of the monies held in such reserve fund shall not exceed the amount which might reasonably be deemed necessary to meet anticipated judgments and claims arising out of such tax certiorari proceedings. Any monies deposited to such reserve fund which are not expended for the payment of judgments or claims arising out of such tax certiorari proceedings for the tax roll in the year such monies are deposited to the said fund and/or which will not reasonably be required to pay any such judgment or claim shall be returned to the general fund on or before the first day of the fourth fiscal year following the deposit of such monies to said reserve fund.

The burden is on the petitioner to allege and prove facts upon which relief may be granted, not on respondents to rebut conclusory allegations (Appeal of Wilson, 41 Ed Dept Rep 196, Decision No. 14,663; Appeal of Eckert, 40 id. 433, Decision No. 14,520; Appeal of Crowley, et al., 39 id. 665, Decision No. 14,345). Furthermore, an appeal to the Commissioner under Education Law §310 is appellate in nature and does not provide for investigations (Appeal of Van Zile and Crowell, 37 Ed Dept Rep 213, Decision No. 13,846; Appeal of Distefano, 36 id. 217, Decision No. 13,705).

It appears from the record that at the time petitioner commenced her appeal there was a \$505,000 balance in the TCRF. However, from this fund balance, petitioner has failed to identify the specific deposits to the TCRF for the respective tax roll years such deposits were made so that a determination may be made as to whether such funds are being held beyond "the first day of the fourth fiscal year following the deposit of such monies" to the TCRF, or as to whether such funds are not otherwise "reasonably . . . necessary to meet anticipated judgments and claims arising out of such tax certiorari proceedings" pursuant to Education Law §3651(1-a). Petitioner contends that she was unable to obtain the necessary information because respondents have failed to adequately respond to her FOIL requests for a complete accounting of the TCRF. However, the appropriate forum for resolving a claim under FOIL is the Supreme Court of the State of New York (Appeal of Rowe, 41 Ed Dept Rep. 189, Decision No. 14,660; Appeal of Christe, 39 id. 685, Decision No. 14,349; Appeal of Breud, et al., 38 id. 748, Decision No. 14,133), and there is no indication that petitioner has availed herself of this judicial remedy. Since the burden of proof is on petitioner, her failure to obtain and submit appropriate documentation to establish her claims regarding alleged irregularities in respondents' administration of the TCRF requires that I dismiss such claims.

## Select Commissioner's Decisions (*continued*)

---

Nevertheless, although petitioner's claims regarding the TCRF must be dismissed, I am concerned over certain statements made by the district's business manager in her affidavit submitted with respondents' answer. In her affidavit, the business manager stated: "The District maintains a balance of approximately \$500,000 in its Tax Certiorari Reserve Fund to pay judgments in connection with these claims. The amount in the Reserve Fund currently represents less than 1.5% of the District's potential exposure on the pending tax certiorari claims. We adjust the amount in the Reserve Fund depending upon the number and magnitude of the proceedings which we expect to pay in a given year. [emphasis added]." These statements suggest that the funds deposited in the TCRF may be considered by the district to be fungible and available to provide tax certiorari refunds for proceedings commenced in years other than the specific year such monies were deposited. Pursuant to Education Law §3651(1-a), monies deposited in a tax certiorari reserve fund must be used for tax certiorari proceedings for the tax roll in the specific year such monies are deposited. Any monies not so expended and/or which will not reasonably be required to pay such judgment or claim for such specific year, must be returned to the general fund on or before the first day of the fourth fiscal year following the deposit of such monies to the reserve fund. Although petitioner's claims have been dismissed for her failure to carry her burden of proof, I remind respondents that the monies deposited in the district's TCRF must be segregated and used for tax certiorari proceedings for the tax roll in the specific year such monies were deposited in the TCRF, and that any unused monies must be returned within the timeframes and otherwise in accordance with Education Law §3651(1-a).

I have examined petitioner's remaining allegations and find them to be without merit.

THE APPEAL IS DISMISSED.

## Select Commissioner's Decisions (*continued*)

---

### Decision No. 15,366

Appeal of WILLIAM H. GOLDEN from action of the Board of Education of the Oxford Academy and Central School District regarding reserve funds.

Decision No. 15,366

(February 23, 2006)

Bond, Schoeneck & King, PLLC, attorneys for respondent, Jodi Lynn Butler, Esq., of counsel

MILLS, Commissioner. --Petitioner appeals the decision of the Board of Education of the Oxford Academy and Central School District ("respondent") to expend funds from its capital reserve fund ("reserve fund") to purchase real property and, allegedly, to expend monies in excess of the amount in the reserve fund.

In 1990, district voters approved a reserve fund pursuant to Education Law §3651 in the amount of \$200,000 for "repair, construction and reconstruction of certain capital improvements and equipment." The fund had a 10-year term and was to be funded by money authorized by district voters and state aid received on capital improvements.

In 2000, voters extended the term of the reserve fund until 2019 and approved an increase in its amount to \$700,000 to be funded by state aid and unexpended fund balances, as determined by respondent. The voters simultaneously approved the expenditure of up to \$20,400,000, with \$527,000 coming from the reserve fund, for certain construction projects.

On February 15, 2005, voters approved a proposition to reestablish the maximum amount of the reserve fund at \$700,000. Voters also approved the purchase of vacant land for development as athletic fields and other improvements and renovations to district facilities to be paid for from the reserve fund in an amount not to exceed \$250,000. This appeal ensued. Petitioner's request for interim relief was denied on March 30, 2005.

Petitioner contends that the reserve fund purposes as approved by the voters do not permit the purchase of real property. Petitioner further contends that the balance in the reserve fund is \$173,000 (\$700,000 less the dedicated \$527,000), which is insufficient to cover the cost of the purchase of the real property and the other construction and renovation projects approved by the voters for up to \$250,000. Petitioner requests that I prevent respondent from purchasing real property and from expending funds allegedly in excess of the balance of the reserve fund.

## Select Commissioner's Decisions (*continued*)

---

Respondent asserts that the appeal is moot. Although it contends that the purposes of the reserve fund are broad enough to encompass the purchase of real property, respondent asserts by affidavit of its superintendent that it no longer intends to use money from the reserve fund to purchase real property. Respondent represents, under oath, that its proposed 2005-2006 budget includes an interfund transfer from the general fund to its capital fund to cover the cost of the purchase and associated improvements.

Respondent also commits that it will only spend \$173,000 from the reserve fund for the remaining projects. It promises to transfer the remaining balance of \$424,779, comprised of interest earnings and transfers, to the general fund. Respondent states that it intends to seek voter approval to establish a new reserve fund, and to transfer these monies to that fund.

Petitioner, in his reply, objects to the transfer of the \$424,779, asserting that respondent is liquidating the reserve fund and, therefore, that money must first be applied against outstanding bond indebtedness. Petitioner also objects to the interfund transfer to pay for the purchase of real property and related improvements without voter approval.

The allegations in the petition are dismissed as moot. The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts which no longer exist, or which subsequent events have laid to rest (Appeal of B.K. and R.K., 44 Ed Dept Rep 195, Decision No. 15,146; Appeal of V.L., 44 *id.* 160, Decision No. 15,132; Appeal of Garvin, 44 *id.* 30, Decision No. 15,087). Respondent has agreed not to purchase the real property from the reserve fund and to only expend \$173,000 on the approved renovation projects. Respondent has, in effect, granted the relief requested by petitioner in the petition. Therefore, no further meaningful relief can be granted.

The issues raised by petitioner in his reply must also be dismissed. In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief (8 NYCRR §275.10; Appeal of Patton, et al., 42 *id.* 226, Decision No. 14,832; Appeal of Pope, 40 *id.* 473, Decision No. 14,530).

Respondent denies that it is liquidating the reserve fund and states that the additional balance accumulated because of past practices that utilized the reserve fund as a rolling reserve fund. However, as a result of my decision in Appeal of Kackmeister, 40 Ed Dept Rep 577, Decision No. 14,560, respondent now acknowledges that it should have obtained voter approval to replenish the reserve fund before such deposits were made. To correct this, respondent intends to return the \$424,779 to its original source -- the unappropriated fund balance -- and then provide voters with the opportunity to approve the establishment of a new capital reserve fund and to transfer that money into the new reserve fund. Respondent states that if the voters do not authorize the creation of that reserve fund, the \$424,779 will be used to pay down bond indebtedness. In addition, respondent maintains that the interfund transfer for the purchase of real property is contingent on voter approval.

## Select Commissioner's Decisions (*continued*)

---

It appears that respondent is addressing the issues raised by petitioner and is working to correct any errors that may have occurred in the past regarding the use of its reserve funds. Petitioner has failed to establish that any further relief is warranted.

THE APPEAL IS DISMISSED.

## Select Commissioner's Decisions (*continued*)

---

### Decision No. 16,224

Appeal of FREDERICK THURNHERR, STEPHEN WELK, and LAWRENCE KRZEMINSKI from actions of the Board of Education of the Holland Central School District regarding surplus funds.

Decision No. 16,224

(April 5, 2011)

Hodgson Russ LLP, attorneys for respondent, David A. Farmelo, Esq., of counsel

STEINER, Commissioner. --Petitioners, members of the Board of Education of the Holland Central School District ("respondent" or "board"), challenge the actions of the board in retaining unreserved funds in excess of four percent of its 2009-2010 operating budget. The appeal must be sustained in part.

On May 18, 2010, district voters approved the 2010-2011 budget. At a meeting on August 23, 2010, the board approved two measures by votes of four to three, with petitioners casting the three dissenting votes. Specifically, the board approved the 2010-2011 tax warrant and the transfer of \$521,000 from the General Fund to the Unappropriated Fund Balance. Petitioners assert that the board improperly transferred and retained the \$521,000 in surplus funds from the 2009-2010 school year in violation of Real Property Tax Law ("RPTL") §1318(1) and contend that these funds should have been applied to reduce the 2010-2011 tax levy. They seek assessment of a proper tax levy for 2010-2011. Petitioners' request for interim relief was denied on September 8, 2010.

Respondent contends that petitioners failed to establish the facts upon which they seek relief and that the appeal must be dismissed as moot.

I must first address several procedural issues. I note that petitioners submit a "reply" to respondent's papers responding to their request for interim relief. The Commissioner's regulations do not provide for such a pleading; therefore, I did not consider it. Petitioners also submit two exhibits with their memorandum of law: minutes of the August 23, 2010, board meeting and an affidavit. A memorandum of law should consist of arguments of law (8 NYCRR §276.4). It may not be used to add belated assertions or exhibits that are not part of the pleadings (Appeal of Bruning and Coburn-Bruning, 48 Ed Dept Rep 84, Decision No. 15,799; Appeal of Wright, 47 *id.* 202, Decision No. 15,668). Petitioners contend that the minutes only became available at the time the memorandum was served but make no such contention regarding the affidavit. Therefore, I have not considered the affidavit in this appeal.



## Select Commissioner's Decisions (*continued*)

---

An appeal may only be maintained on behalf of a class where the class is so numerous that joinder of all members is impracticable and where all questions of fact and law are common to all members of the class (8 NYCRR §275.2; Appeal of Pollicino, et al., 48 Ed Dept Rep 279, Decision No. 15,858; Appeal of Strade, et al., 48 id. 73, Decision No. 15,797). A petitioner must set forth the number of individuals he or she seeks to represent and must show that all questions of law and fact would be common to all members of the class (Appeal of Pollicino, et al., 48 Ed Dept Rep 279, Decision No. 15,858; Appeal of Strade, et al., 48 id. 73, Decision No. 15,797). Petitioners' pleadings are devoid of any allegations addressing those criteria. Therefore, to the extent petitioners seek to bring this appeal on behalf of "residents of the Holland School District," their request for class status is denied.

The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts which no longer exist, or which subsequent events have laid to rest (Appeal of a Student with a Disability, 48 Ed Dept Rep 532, Decision No. 15,940; Appeal of M.M., 48 id. 527, Decision No. 15,937; Appeal of Embro, 48 id. 204, Decision No. 15,836). To the extent petitioners seek a revision of the tax levy for 2010, such relief is not available. According to respondent, the 2010 tax warrant for the tax levy was transmitted on August 24, 2010, to the counties that collect the taxes on behalf of the school district, and the bills had been printed on September 2, 2010. This appeal was commenced on August 30, 2010, and by the time all the necessary papers were filed in this appeal, the taxes had been levied and the tax bills printed. There is no mechanism for returning a pro rata share of funds to the taxpayers once the tax levy has been made (Appeal of Muench, 44 Ed Dept Rep 398, Decision No. 15,210; Appeal of Liberatore, 42 id. 321, Decision No. 14,869). However, "[i]t is settled doctrine that an appeal will, nevertheless, be entertained where, as here, the controversy is of a character which is likely to recur not only with respect to the [same] parties ... but with respect to others as well" (East Meadow Community Concerts Ass'n v. Bd. of Educ., Union Free School Dist. No. 3, County of Nassau, 18 NY2d 129, 135; (Appeal of Muench, 45 Ed Dept Rep 508, Decision No. 15,397). Accordingly, I decline to dismiss this appeal as moot because, in view of respondent's statutory interpretation, the matter is likely to be repeated and also raises important legal issues that affect all districts and taxpayers statewide.

## Select Commissioner's Decisions (*continued*)

---

Turning to the merits, under RPTL §1318(1), at the conclusion of each fiscal year, a board of education must apply any unexpended surplus funds to reduce its tax levy for the upcoming school year. Surplus funds are defined as "any operating funds in excess of four percent of the current school year budget, and shall not include funds properly retained under other sections of law" (RPTL §1318(1)).<sup>[1]</sup> Accordingly, the Commissioner has repeatedly held that, at the end of each school year, all unexpended operating funds in excess of the statutorily permitted percent of the amount of the budget for the upcoming school year must be applied to reduce the tax levy (Appeal of Uy and Norden, 44 Ed Dept Rep 368, Decision No. 15,201; Appeals of Gorman, 43 *id.* 32, Decision No. 14,906).

Respondent's superintendent avers that the district's auditors did not inform him until mid-August 2010 that the fund balance surplus would exceed \$500,000 over the four percent limit. Thereafter, based on the auditors' advice, he proposed three options for the board to address this issue, taking into account that the amount of State aid payable to the district had not been finally determined at that time. He recommended that the board underestimate the anticipated revenue from State aid at an amount less than that contained in the Governor's budget and apply the excess surplus to increase the appropriated fund balance revenue. Alternatively, he suggested that the board could maintain the State aid amount but retain the excess surplus funds of \$521,000 or lower the projected 2010-2011 tax levy.

Respondent admits that it adopted the second option, namely, to adopt the tax warrant as previously approved by the voters and to transfer the excess surplus into the unappropriated fund balance, thereby retaining \$521,000 in unappropriated, unreserved funds in excess of the four percent limit permitted under RPTL §1318(1) and did not apply this \$521,000 surplus to reduce the tax levy. Respondent's president avers that he believes the board's action was taken in good faith over its concern that it would not receive its projected revenue from State aid and sales tax, and to avoid potential mid-year reductions in programs or personnel.<sup>[2]</sup> Respondent contends that the effect of retaining the surplus was consistent with the requirements of RPTL §1318(1) because it essentially applied the unappropriated fund balance to the revenues for the 2010-2011 fiscal year, placing the district and the taxpayers in the same position as if the money had been applied to the tax levy.

However, while RPTL §1318(1) permits a board of education to retain additional unexpended operating funds when authorized to do so "under other sections of law," it does not authorize a board to retain such funds by informally deciding to hold them for future expenses (Appeals of Gorman, 43 Ed Dept Rep 32, Decision No. 14,906; Appeal of Schadtler, Jr., 40 *id.* 60, Decision No. 14,421). As noted above, RPTL §1318(1) requires that, at the end of each school year, all unexpended operating funds in excess of four percent of the amount of the budget for the upcoming school year must be applied to reduce the tax levy (Appeal of Uy and Norden, 44 Ed Dept Rep 368, Decision No. 15,201; Appeals of Gorman, 43 *id.* 32, Decision No. 14,906).

## Select Commissioner's Decisions (*continued*)

---

In this instance, although the 2010-2011 Education Labor and Family Assistance ("ELFA") Budget, Chapter 53 of the Laws of 2010, was enacted in July 2010, the accompanying Article VII bill, S.6607-B/A.9707-C had been vetoed. As a consequence, projections of the exact amount of State aid payable to each school district could not be published immediately following enactment of the budget, as is normally the case. It was not until August 24, 2010, the day after respondent had approved the tax warrant on August 23, 2010, that respondent was provided access to updated data on the amount of its 2010-2011 State aid. Respondent's uncertainty about the exact amount of its 2010-2011 State aid is understandable under these circumstances, but respondent was obligated to rely upon the best estimate of State aid available at the time of the levy and to justify any deviation from that amount. Its determination must be rational, reasonable, and consistent with law (Appeal of Muench, 45 Ed Dept Rep 508, Decision No. 15,397; Appeals of Gorman, 43 id. 32, Decision No. 14,906).

Respondent has not attempted to justify its retention of funds based upon a rational and reasonable projection of State aid due to the district. Respondent was not free to make a unilateral determination that more than four percent of its current year budget should be retained as an unreserved fund balance based upon its fears that a future reduction in its State aid might occur. Whether a school district should be permitted to retain more than four percent in these circumstances is for the State Legislature to decide. I am thus constrained to find that respondent improperly retained the excess surplus funds. I therefore direct respondent to apply any unexpended, unreserved surplus funds that exist at the end of the 2010-2011 school year to the reduction of the school tax levy for 2011-2012 school year as required by RPTL §1318. I further direct respondent to abide by the requirements of RPTL §1318 hereafter (see Appeal of Uy and Norden, 44 Ed Dept Rep 368, Decision No. 15,201; Appeals of Gorman, 43 id. 32, Decision No. 14,906; Appeal of Astafan, 36 id. 463, Decision No. 13,776).

## Select Commissioner's Decisions (*continued*)

---

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that respondent henceforth fully comply with Real Property Tax Law §1318 in strict compliance with the statutory requirements.

IT IS FURTHER ORDERED that respondent apply any unexpended, unreserved surplus funds that remain at the end of the 2010-2011 school year to the reduction of the tax levy for the 2011-2012 school year.

[1] In 2007, the definition of surplus funds was amended to mean “in excess of three percent” for the 2007-2008 school year, and “in excess of four percent for the 2008-2009 school year and thereafter (L.2007, ch.238). Prior to 2007, surplus funds meant those in excess of two percent.

[2] Respondent asserts that it received notification of its State Aid allocation on August 24, 2010, the day after the board meeting.

# Commissioner's Decision



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
ALBANY, NEW YORK  
12236

EDWARD V. REGAN  
STATE COMPTROLLER

Opns St Comp, No. 83-223

MUNICIPAL FUNDS - Capital Reserve Funds (single referendum to authorize annual expenditures from)

EDUCATION LAW, §3651(3): A single proposition submitted under this section may not provide for a series of annual expenditures, each of a certain amount; for the purchase of several school buses each year. Separate propositions must be submitted for each individual expenditure.

This is in reply to your letter asking whether, in one year, a proposition may be submitted to the voters of a school district authorizing the expenditure of a certain amount from a reserve fund in each of a given number of years for the purchase of school buses each year.

Education Law, §3651 authorizes, subject to voter approval requirements, the establishment of reserve funds in school districts for financing, in whole or in part, the cost of any object or purpose for which bonds may be issued by, or for the objects or purposes of, the school district pursuant to the Local Finance Law. Subdivision 3 of section 3651 provides as follows:

"An expenditure shall be made from a reserve fund only by authorization of the voters and for the specific purpose specified in the proposition."

It is our opinion that a proposition submitted under this provision may not provide for an annual expenditure of a certain amount from the reserve fund. Subdivision 3 speaks of "(a)n expenditure" being made by voter authorization for "the specific purpose specified in the proposition." We believe it was intended by this language that each and every expenditure be authorized separately by the voters. We find no evidence that the statute was meant to permit a standing authorization of a recurring annual expenditure (cf. Town Law, §179(1)(d); Education Law, §259(1)). In our opinion, section 3651(3) is designed to allow the voters to express their desires in light of circumstances existing at the time each expenditure is to be made. A proposition providing for recurring annual expenditures would force voters to make decisions on future expenditures based on current conditions, something obviously not intended by the statute.

November 15, 1983

Simeo J. Gallo, Esq.  
Schalmont Central School District

This opinion represents the views of the Office of the State Comptroller at the time it was rendered. The opinion may no longer represent those views if, among other things, there have been subsequent court cases or statutory amendments that bear on the issues discussed in the opinion.

## Sample Fund Balance Policy in Accordance with GASB Statement No. 54

---

ABC SCHOOL DISTRICT

Policy #XXXX

**Purpose:** This policy is adopted by the Board of Education in order to address the implications of Governmental Accounting Standards Board (“GASB”) Statement No. 54, *Fund Balance Reporting and Governmental Fund Definitions*. The policy is created in consideration of unanticipated events that could adversely affect the financial condition of the District and jeopardize the continuation of necessary public services. This policy will ensure that the District maintains adequate fund balances and reserves in order to:

- a. Provide sufficient cash flow for daily financial needs,
- b. Secure and maintain investment grade bond ratings,
- c. Offset significant economic downturns or revenue shortfalls, and
- d. Provide funds for unforeseen expenditures related to emergencies.

This policy and the procedures promulgated under it supersede all previous regulations regarding the District’s fund balance and reserve policies.

**Fund type definitions.** The following definitions will be used in reporting activity in governmental funds across the District. The District may or may not report all fund types in any given reporting period, based on actual circumstances and activity.

The *general fund* is used to account for all financial resources not accounted for and reported in another fund.

*Special revenue funds* are used to account and report the proceeds of special revenue sources that are restricted or committed to expenditures for specific purposes other than debt service or capital projects.

*Capital project funds* are used to account for all financial resources restricted, committed, or assigned to expenditure for the acquisition or construction of capital assets.

*Debt service funds* are used to account for resources for all financial resources restricted, committed, or assigned to expenditure for debt principal and interest.

*Permanent funds* are used to account for resources restricted to the extent that only earnings, and not principal, may be used for purposes that support the District’s purposes.

*Private purpose trust funds* are used to account for trust arrangements in which principal and income benefits annual third-party awards and scholarships for students.

**Fund balance reporting in governmental funds.** Fund balance will be reported in governmental funds under the following categories using the definitions provided by GASB Statement No. 54:

## Sample Fund Balance Policy in Accordance with GASB Statement No. 54 (continued)

---

### Nonspendable fund balance

*Definition* – includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained intact.

*Classification* – Nonspendable amounts will be determined before all other classifications and consist of the following items (as applicable in any given fiscal year):

- *The District will maintain a fund balance equal to the value of inventory balances and prepaid items (to the extent that such balances are not offset with liabilities and actually result in fund balance)*
- *The District will maintain a fund balance equal to the corpus (principal) of any permanent funds that are legally or contractually required to be maintained intact*

### Restricted fund balance

*Definition* – includes amounts that can be spent only for the specific purposes stipulated by the constitution, external resource providers, or through enabling legislation.

### Committed fund balance

*Definition* – includes amounts that can be used only for the specific purposes determined by a formal action of the Board of Education.

*Authority to Commit* – Commitments will only be used for specific purposes pursuant to a formal action of the Board of Education. A majority vote is required to approve a commitment or to remove a commitment.

### Assigned fund balance

*Definition* – includes amounts intended to be used by the District for specific purposes but do not meet the criteria to be classified as restricted or committed. In governmental funds other than the general fund, assigned fund balance represents the remaining amount that is not restricted or committed.

*Authority to Assign* – The Board of Education delegates to the Assistant Superintendent for Business, or his/her designee, the authority to assign amounts to be used for encumbrances. The Board of Education will annually determine the amount of fund balance appropriated for the ensuing year's budget. Such assignments cannot exceed the available (spendable, unrestricted, uncommitted) fund balance in any particular fund.



## Sample Fund Balance Policy in Accordance with GASB Statement No. 54 (continued)

---

### Unassigned fund balance

*Definition* – includes the residual classification for the District's general fund and includes all spendable amounts not contained in the other classifications. In other funds, the unassigned classification should be used to report a deficit balance from overspending for specific purposes for which amounts had been restricted, committed, or assigned.

*Operational guidelines.* The following guidelines address the classification and use of fund balance in governmental funds:

Classifying fund balance amounts – Fund balance classifications depict the nature of the net resources that are reported in a governmental fund. An individual governmental fund may include Nonspendable resources and amounts that are restricted, committed, or assigned, or any combination of those classifications. The general fund may also include an unassigned amount.

Encumbrance reporting - Encumbering amounts for specific purposes for which resources have already been restricted, committed or assigned should not result in separate display of encumbered amounts. Encumbered amounts for specific purposes for which amounts have not been previously restricted, committed or assigned, will be classified as committed or assigned, as appropriate, based on the definitions and criteria set forth in GASB Statement No. 54.

Prioritization of fund balance use – When an expenditure is incurred for purposes for which both restricted and unrestricted (committed, assigned, or unassigned) amounts are available, it shall be the policy of the District for the Assistant Superintendent for Business or his/her designee to determine the order of the expenditure of funds, on an annual basis.

Minimum unassigned fund balance – The District will strive to maintain a minimum unassigned fund balance in its general fund ranging from two percent to four percent (or the maximum level authorized by NYS,) of the subsequent year's budgeted expenditures. This minimum fund balance is to protect against cash flow shortfalls related to timing of projected revenue receipts and to maintain a strong bond rating.

*Replenishing deficiencies* – when fund balance falls below the minimum two percent range, the District will replenish shortages/deficiencies using the budget strategies and timeframes described below.



## Sample Fund Balance Policy in Accordance with GASB Statement No. 54 (continued)

---

The following budgetary strategies shall be utilized by the District to replenish funding deficiencies:

- The District will reduce recurring expenditures to eliminate any structural deficit or,
- The District will increase revenues or pursue other funding sources, or,
- Some combination of the two options above

The District shall strive to replenish deficiencies within the following time periods:

- For a deficiency resulting in a minimum fund balance between 0.1 percent and 1 percent, the District shall strive to replenish such amount over a period not to exceed five years.
- For a deficiency resulting in a minimum fund balance between 1 and 2 percent, the District shall strive to replenish such amount over a period not to exceed three years.

*Implementation and review.* Upon adoption of this policy, the Board of Education authorizes the Business Office to establish any standards and procedures which may be necessary for its implementation. The Business Office shall review this policy at least annually and make any recommendations for changes to the Board of Education, if necessary.

## OTHER HELPFUL LINKS:

---

GASB #54 Fund Balance Reporting and Governmental Fund Type Definitions:

<https://gasb.org/page/PageContent?pageld=/standards-guidance/pronouncements/summary--statement-no-54.html&isStaticPage=true>

OSC Accounting Release on GASB #54:

<http://www.osc.state.ny.us/localgov/pubs/releases/gasb54.pdf>

OSC's Local Government Management Guide – Reserve Funds:

<https://osc.state.ny.us/localgov/pubs/lgmng/reservefunds.pdf>

OSC's Accounting and Reporting Manual for School Districts:

[https://osc.state.ny.us/localgov/pubs/arm\\_schools.pdf](https://osc.state.ny.us/localgov/pubs/arm_schools.pdf)