

Niagara Wheatfield Central School District

Niagara Power Coalition and Native American Revenues

FEBRUARY 2020



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Niagara Wheatfield Central School District

Audit Objective

Determine whether District officials properly managed and accounted for Niagara Power Coalition and Native American revenues.

Key Findings

- District officials did not properly account for Niagara Power Coalition revenues; \$4.2 million was maintained in the debt service fund although the funds had not been designated to pay debt.
- District officials improperly restricted funds in a debt reserve.
- District officials maintained a capital reserve that was not properly approved.

Key Recommendations

- Account for Niagara Power Coalition revenues in a special revenue fund.
- Investigate the source of funds in the debt reserve and, if appropriate, transfer these funds to a special revenue fund.
- Consult with legal counsel on the appropriate action regarding the future use of the capital reserve.

District officials generally agreed with our findings and recommendations and indicated that they have initiated, or planned to initiate, corrective action.

Background

The Niagara Wheatfield Central School District (District) serves the Towns of Niagara, Wheatfield, Lewiston and Cambria in Niagara County (County). The District is governed by an elected seven-member Board of Education (Board). The Board is responsible for the management and control of financial and educational affairs.

The Superintendent of Schools is responsible, along with other administrative staff, for managing day-to-day operations under the Board's direction. The District's Business Administrator oversees the business office and maintains financial records, and is the District's representative on the Niagara Power Coalition and Host Community Standing Committee.

Quick Facts

2018-19 Appropriations	\$73.5 million
2018-19 Enrollment	3,500
2017-18 Native American Revenues	\$5.8 million
2017-18 Niagara Power Coalition Revenue	\$960,000

Audit Period

July 1, 2015 – September 18, 2019

Niagara Power Coalition and Native American Revenues

The District started receiving Niagara Power Coalition (Coalition) revenues in 2007 when the District became a member of the Coalition. The Coalition is a local alliance that was formed to provide a network of communication among local municipalities and school districts in dealing with the New York State Power Authority (NYPA) and the relicensing of its Niagara Power Project in the County that took place in 2005. The Coalition is composed of seven members: three school districts and four municipalities. Members of the Coalition are eligible to receive revenue from the Coalition's Greenway contract totaling \$3 million annually and revenue from the Coalition's Host Community contract totaling \$5 million annually, both of which are allocated¹ among the seven members until the contracts expire in 2057.

The District also receives Native American revenues from the New York State Education Department (NYSED). The District is responsible for operating the Tuscarora Indian Elementary School (School), located on the Tuscarora Indian Reservation (Reservation). The School is a part of the District and was established to provide elementary education for grades K-6 for Native American students living on the Reservation. The costs incurred to operate the School are fully funded by NYSED and various forms of State aid. The District also receives tuition revenue from NYSED to provide education, training, textbooks and supplies for Native American students in grades K-12 who are residents of the Reservation and attend another school in the District. These revenues are based on the NYSED tuition rate for the school year, as well as tuition for special education students who attend BOCES (Board of Cooperative Educational Services) or alternate schools for services.

How Should District Officials Properly Manage and Account For Niagara Power Coalition and Native American Revenues?

To provide assurance that Coalition and Native American revenues are properly managed, District officials should be complying with the applicable contracts.

Niagara Power Coalition Revenues – According to the Coalition's Greenway contract, Greenway projects must promote revitalization of the Niagara River Greenway in the County, and all projects must be approved by the Coalition before funds are used. The revenues must only be used for an approved project up to the dollar amount approved by the Coalition. The Coalition Host Community contract states that Host Community revenues must be used for capital projects and infrastructure that benefit the general public and promote economic development, public health and safety. The use of Host Community revenues does not need to be approved by the Coalition.

¹ The District is allocated 12 percent.

In addition, District officials should ensure revenues are accounted for in the appropriate fund to help ensure transparency. A debt service fund is used to account for the accumulation of resources that are restricted, committed or assigned for the payment of principal and interest on long-term debt. A special revenue fund is used to account for and report those revenues that are restricted or committed to expenditures for specified purposes.

Native American Revenues – According to the NYSED’s contracts with the District for School operations and for tuition for Native American students in other District schools, District officials are required to bill NYSED and submit supporting documentation for payment three times during the school year by dates specified in the contracts. (See “Officials Did Not Follow Contracts for Native American Revenues,” below.) Once supporting documentation is received, NYSED is required to pay 25 percent of the estimated total amount due by September 30; 50 percent of estimated total by January 31; and the remaining 25 percent of the estimated total by June 30. After this the State will determine the actual total and any over or underpayment will be refunded or paid, respectively.

The District’s contract with NYSED for School operations expired at the end of 2016-17; during our fieldwork the District was in negotiations with NYSED for a new contract. The District’s contract with NYSED for non-School tuition expires at the end of 2021-22.

Officials Did Not Properly Account for Niagara Power Coalition Revenues

The District is using Coalition revenues in accordance with the Greenway and Host Community contracts. However, District officials are incorrectly accounting for these revenues in the debt service fund.

In 2011, the Coalition approved the District’s request to use \$6.1 million in Greenway revenues for a capital project. District officials had permanently financed this project with debt,² and planned to use a portion of the Greenway money each year toward debt payments. District officials provided us with a schedule of the amount they planned to use each year from 2013-14 through 2027-28, when the bond matures. From 2016-17 through 2018-19, \$1.2 million was allocated toward debt payments.

The District accounts for and reports all Coalition revenues in the debt service fund. As of June 30, 2019, this fund reported \$4.2 million in Host Community revenues and related interest and \$1.9 million in Greenway revenues and related interest. However, the \$4.2 million of Host Community revenues should not be reported in the debt service fund because the Board currently does not have any

² See our prior audit report, *Niagara Wheatfield Central School District: Financial Condition* (no. 2014M-364), issued in April 2015.

Host Community revenues allocated toward debt. (District officials told us they anticipate allocating a portion towards a capital project in 2020-21.) While the \$1.9 million in Greenway revenues appears to be assigned to pay debt payments, we were unable to find formal Board approval.³

District officials told us that the revenues have been accounted for in the debt service fund since the District became a part of the Coalition in 2007, because the revenues could be used to pay off debt. They also told us they consulted with the District's previous external auditors, who did not have an issue with recording the funds in the debt service fund.

However, because these funds have not been assigned to pay debt, Coalition revenues should be accounted for in a special revenue fund until revenues are allocated for debt payments. Reporting for Coalition revenues in the debt service fund is not transparent to taxpayers because it gives the appearance that these funds have been allocated toward debt and are not available for other purposes, such as reducing the amount of financing needed for a capital project.

Officials Did Not Follow Contracts for Native American Revenues

District officials billed NYSED on an annual basis for School and tuition revenues, even though the contracts called for billing partial amounts three times per year. Each year the District submits separate vouchers (one for the School and one for non-School tuition) including a list of students covered under the contracts and detailed revenue and expenditure reports. The District must submit these vouchers to NYSED before receiving payment. The District typically submitted the School and tuition vouchers in October or November of the following school year.

To determine who qualifies for School and tuition revenues, Reservation officials review a list of students each year and confirm students on the list are Native American and reside on the Reservation. In previous school years, Reservation officials sent this list to NYSED and the District would submit its voucher using a student list District officials had prepared from student files. Starting in 2017-18, Reservation officials sent the list of students directly to the District at the request of NYSED.

We reviewed NYSED's payments for operating the School and determined that as of July 31, 2019, NYSED owed the District \$3.8 million for operating the School in 2017-18, based on the voucher submitted. For 2018-19 District officials did not submit a voucher as of the end of our fieldwork, but we estimate the District is due \$4.2 million, for a total of \$8 million due as of June 30, 2019.

³ We were provided minutes from the Coalition approving the use of Greenway revenues for the capital project. The brochure mailed to District residents prior to the referendum stated that Greenway revenues would reduce the cost of the project. However, the bond resolution approved by the Board did not include Greenway revenues as a funding source.

The District has received tuition payments for 2015-16 through 2017-18, averaging \$2 million per year. According to NYSED’s documentation that District officials provided to us, the District is owed \$218,000 for an underpayment of the 2016-17 tuition payment. However, we found no indication in the NYSED documentation that the District received the underpayment. As of the end of our fieldwork, the underpayment was still outstanding. District officials provided us with the voucher they submitted for January 31 of the 2018-19 school year for 50 percent of the estimated total due, and the final voucher they submitted in August 2019 (totaling \$1.7 million), but as of the end of our fieldwork, the District had not received any payments.

District officials told us that NYSED officials instructed them to submit billing vouchers and supporting documentation once a year, as the District would only receive payment from NYSED once a year. Officials did not have any documentation of this; however, we contacted NYSED officials who told us it was a practice of the past administration and was changed in 2018-19 for the 2019-20 school year.

Had District officials followed dates outlined in contracts – which called for the District to submit vouchers three times a year – they may have received payments sooner and also may have been eligible for late payments if payments were not timely. Because a new contract for the School’s operations has not been established,⁴ the District has not received revenues for operating the School since 2016-17. As a result, the District fund that accounts for the School’s operations had an operating deficit of approximately \$3.7 million for 2018-19. A total of \$8 million was due from this fund to the general fund as of the end of 2018-19.

Because the District has not received the revenues from NYSED, District officials told us they may have to issue short-term debt for the 2019-20 school year to address possible cash flow problems and to operate the School. With the exception of 2018-19 vouchers, District officials did not submit billing and supporting documentation for tuition revenue until year end, as instructed by NYSED. As a result, the District’s reimbursement from NYSED lagged behind by over a year and the 2018-19 tuition revenues were still outstanding as of the end of our fieldwork.

When Can Money Be Restricted in a Debt Reserve or Capital Reserve?

According to General Municipal Law⁵ (GML) a debt reserve is required to restrict the use of the proceeds of the cash sale of a capital improvement which generally

⁴ District officials said they were told by NYSED that the renewal of the School contract, which expired in 2016-17, is in the approval process.

⁵ General Municipal Law 6-I

are used to retire the outstanding obligations issued to finance such improvement. In addition, according to New York State Local Finance Law,⁶ if a school district has residual bond proceeds and/or interest earned on bond proceeds, that money must be retained in a special account, and may be used only to pay debt service on the related obligations or for capital expenditures associated with the project for which the debt was issued. This would be accounted for in the debt service fund.

According to Education Law⁷ a capital reserve requires voter approval⁸ in order for a school district to establish the reserve.

Officials Improperly Restricted Funds in a Debt Reserve

Since before the 2013-14 school year, the District accounted for and reported a debt reserve in the debt service fund. As of June 30, 2019, the debt reserve had a reported balance of \$507,000. District officials told us the funds are from the initial payment of Coalition revenues. Without a valid legal requirement to restrict these funds, District officials do not have the statutory authority to set aside these funds in this reserve. Therefore, these funds should be properly accounted for with the remaining Coalition revenues.

Officials Maintained a Capital Reserve That Was Not Properly Approved

Since before the 2013-14 school year, the District accounted for and reported a capital reserve in the capital projects fund. As of June 30, 2019, the capital reserve had a reported balance of \$506,000. Although District officials are uncertain of the origin of these funds, they believe the funds are School revenues that were set aside by the previous administration for a future capital project. However, there is no record of the voters approving the establishment of a capital reserve. Because the District reported these funds over multiple years as a capital reserve, it is possible they would be considered de facto reserve funds⁹ for the purposes specified and not be available for other purposes.

6 Local Finance Law 165

7 Education Law 3651

8 With the exception of city school districts having a population of 125,000 or more

9 A de facto reserve is one for which the courts have held that a persistent course of conduct in treating and characterizing funds as a reserve fund is sufficient to prevent the District from claiming any different status for them. In this situation, the Board should take steps to ratify its de facto reserve fund.

What Do We Recommend?

District officials should:

1. Discontinue the practice of accounting for revenues that are not designated to pay debt in the debt service fund.
2. Account for Coalition revenues that are not designated to pay debt in a special revenue fund.
3. Follow the billing schedule outlined in contracts for Native American revenues and continue to work with NYSED to resolve any payment discrepancies.
4. Investigate the source of funds in the debt reserve and, if appropriate, transfer the funds to a special revenue fund.
5. Investigate the source of funds in the capital reserve and consult with legal counsel on the appropriate course of action regarding the future use of the reserve.

Appendix A: Response From District Officials

Niagara Wheatfield Central School District
Administrative Offices
5700 West Street
Sanborn, NY 14132

February 10, 2020

Office of the State Comptroller
Division of Local Government & School Accountability
PSU – CAP Submission
110 State Street, 12th Floor
Albany, NY 12236

NIAGARA WHEATFIELD
Central School District

To Whom it May Concern:

On January 22, 2020, a meeting was held with representatives from the New York State Comptroller's Office, Superintendent of Schools and the Assistant Superintendent of Finance and Management. This letter fulfills the District's responsibility to the Office of the New York State Comptroller to respond to the findings of this audit and also serves as the corrective action plan.

The District would like to extend its appreciation to the audit staff for their input and feedback regarding our current processes.

The audit did not find any instances of fraud or misappropriation of funds during the period which was audited.

The District generally agrees with the audit findings, but would like to recognize the following:

1. The current administration and accounting staff maintained the Host Community funds that are received from the NYS Power Authority in the debt service fund following what had been done since inception. These funds can be used only for capital improvements or to pay existing debt. The understanding was that there was some discussion between the prior administration and the NYS Comptroller when the relationship between the school district and the NYS Power Authority began and these monies were to be placed in the debt service fund. The money is currently being used to offset the local share of recent capital projects. We have no issue housing these dollars in a different fund as per the NYS Comptroller recommendation.
2. Sometime prior to 2008, under separate administration, there was money deposited into the District's debt service fund. It is believed to be remaining funds from an initial NYS Power Authority deposit as those were the only monies deposited that were not allocated for a specific debt. This issue was brought to the attention of the NYS Comptroller auditors by the District during this audit to come up with a recommendation for a solution. The District has no issue moving these funds to another revenue account.
3. Sometime prior to 2008, under separate administration, there was money deposited into the capital reserve fund. After researching, the District was unable to determine why there existed a balance in the capital reserve fund. Again, this issue was brought to the attention of the NYS Comptroller auditors by the District during the audit to come up with a recommendation for a solution to move the funds to a proper account. As per the NYS Comptroller's office recommendation, we will contact our legal counsel to come up with an appropriate action on how best to address these funds.

The District's responses and corrective action plan are as follows:

Recommendation #1 – Account for Niagara Power Coalition revenues in a special revenue fund.

The audit recommendation will be followed and the Niagara Power Coalition revenues will be moved to a special revenue fund by the end of the current fiscal year.

Recommendation #2 – Investigate the source of funds in the debt reserve and, if appropriate, transfer these funds to a special revenue fund.

As this was brought to the attention of the Comptroller’s auditors, we agree that the funds should be transferred out of the debt reserve fund. As of this date, we have not been able to locate the source of the funds, but feel strongly that they are leftover unused funds from the initial NYS Power Authority payment. After consultation with our auditors, we will be moving these dollars to a special revenue fund in line with the other Power Authority monies by the end of the current fiscal year.

Recommendation #3 – Consult with Legal counsel on the appropriate action regarding the future use of the capital reserve.

As this was brought to the attention of the Comptroller’s auditors, we agree that there should be action taken on these dollars. We are currently awaiting a response from our attorneys on how to best handle this.

In addition to the findings, the NYS Comptroller audit indicated that the District did not follow contracts for Native American revenues. The NYS Contract for Native American revenues states that the District should be submitting for revenues on a quarterly basis. The District was submitting only once annually, per the direction of NYS indicating that it was unnecessary because the District would not be paid quarterly, rather the District would be paid only once annually. This was so noted in the audit report. It should also be noted that in March 2019 the District began providing invoices to NYS at their request and again in August 2019. No payment was received from NYS until October 2019.

NYS IS NOT WORKING IN GOOD FAITH

Niagara Wheatfield Central School District contracts with NYS to provide educational services to the Tuscarora Nation Indian School. **Our last contract with NYS for these services expired on June 30, 2017.** The District works in conjunction with the Tuscarora Nation bound by a strong desire from both entities to provide quality education to the Tuscarora Nation students. Both the Nation and the District have worked diligently to assure that services continue to be provided, without NYS funding. We will soon be entering a 4th year without a contract from NYS and without any funding. This lack of good faith from NYS has impacted our District’s cash flow which, in turn, has also impacted our District’s Fiscal Stress Level as monitored by the NYS Comptroller’s Office. The District has provided a number of responses to requests for the contract information with no movement on a contract from NYS. NYS is pushing the Niagara Wheatfield Central School District into a financial crisis in that we are owed over \$7.9mm to date, not including the current fiscal year. It should also be noted that we are closely reaching a point where we will again need to borrow to make our payroll.

Respectfully,

Mr. Steven Sabo, School Board President

Mr. Daniel Ljiljanich, Superintendent of Schools

Allison Davis, Assistant Superintendent of Finance and Management

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed District officials and employees to gain an understanding of the policies and procedures for Coalition and Native American revenues. We visited the Coalition website to confirm the District's Greenway project approval. We also interviewed NYSED Native American Unit officials to gain an understanding of Native American revenues.
- We reviewed the contracts between the District and NYSED for Native American revenues to determine the dates the District should be receiving payments and when the District should be submitting documentation to support payments. We also reviewed the contracts to determine whether the District was entitled to late payments and whether the contracts are current.
- We reviewed Coalition contracts to assess whether the District was receiving the correct amount of revenue and whether the District was using revenues in accordance with the contracts.
- We reviewed general ledger, revenue, budget-to-actual and cash flow reports, bank statements and payment wire transfers to review balances in accounts.
- We reviewed payments received during our audit period for both Coalition and Native American revenues to assess whether the District received the correct amount of revenue. We reviewed supporting documents provided by NYSED to District officials to support payments made by NYSED for tuition payments.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a(3)(c) of New York State Education

Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The CAP should be posted on the District's website for public review.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

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

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

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

www.osc.state.ny.us/localgov/planbudget/index.htm

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

www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf

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

www.osc.state.ny.us/localgov/finreporting/index.htm

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

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

www.osc.state.ny.us/localgov/index.htm

Local Government and School Accountability Help Line: (866) 321-8503

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