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November 8, 2012

Ms. Carolyn Newberry Schwartz
Executive Director
Collaboration for Early Childhood
Oak Park Village Hall
123 Madison Street, Room 209
Oak Park, IL 60302

Re: Early Childhood Education Funding by Illinois Home Rule Units and School Districts Through Intergovernmental Agreement

Dear Ms. Schwartz:

You have asked for our opinion on the question of whether Illinois school districts, whether elementary or high school, are legally authorized to spend public funds pursuant to an intergovernmental agreement with a home rule municipality for the provision of early childhood education programs and services ultimately through a nonprofit entity, which may be the Collaboration for Early Childhood (the "**Collaboration**"). It is our understanding that the home rule Village of Oak Park, Cook County, Illinois (the "**Village**"), the Oak Park and River Forest High School District 200 (the "**High School District**"), the Oak Park Elementary School District 97 (the "**Elementary School District**", and collectively with the High School District and the Elementary School District, the "**Governmental Parties**") may desire to enter into an agreement for the provision and funding of a comprehensive, integrated system of early childhood education services (the "**Agreement**"). The contemplated services include: periodic developmental, hearing and vision screening of all children, from birth to age five; professional development to increase the skills of early childhood education teachers, caregivers and home providers, with a focus on those programs serving at-risk families; parent information and support for all families, with intensive home visiting services offered to at-risk families with preschool-aged children and children with disabilities; coordination of recruitment, staff and program development, and assessment of all publicly funded preschool programs; and data collection to track service usage, identified shortages and underused services and assess program impact.

It is our opinion that Illinois school districts, whether elementary or high school, may fund early childhood education broadly, and, specifically, that the Elementary School District and the High School District are both authorized to fund the early childhood education programs

described above pursuant to an intergovernmental agreement with the Village. Our analysis is below.

Certain General Local Government and School District Powers

Illinois recognizes different scopes of power between "home rule" units and other local governmental units. Home rule units, recognized under Article 7, Section 6 of the Illinois Constitution of 1970 (the "**Constitution**"), may exercise broad powers pertaining to its government and affairs on par with the State. Article 7, Section 6 provides, in relevant part, that "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." *See Johnson v. Halloran*, 194 Ill.2d 493, 496-497 (2000) ("In Illinois, sovereign power is not restricted to the state government. It may also be exercised by home rule units….Home rule units possess the same powers as the state government, except where such powers are limited by the General Assembly.") *See also O.L. Krughoff v. City of Naperville*, 41 Ill.App. 3d 334, 338 (1976) (upholding an ordinance requiring a contribution of land or money to the local schools as a condition of approval for a developer's subdivision plan as a valid exercise of a city's home rule powers, stating that "it is a matter of common knowledge and experience that a municipality is vitally interested in provisions for convenient and adequate educational facilities for the members of its community, irrespective of the [home rule unit's] lack of control over the day-to-day operations of [the school].")

Non-home rule units, including all school districts, are authorized to exercise a narrower scope of powers. As Article 7, Section 8 of the Constitution provides, "[t]ownships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law."

In short, the Village may exercise any power that it is not *prohibited* from exercising, while the High School District and Elementary School District may exercise only those powers that are *granted* by State law. *See, e.g., Rajterowski v. City of Sycamore*, 405 Ill.App.3d 1086, 1113 (2010).

Intergovernmental Agreements

Article 7, Section 10 of the Constitution provides, specifically, that local governments and school districts may enter into intergovernmental agreements with one another to exercise certain powers, as follows:

> Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share

> services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or by ordinance. Participating units of local government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental agreements.

Section 3 of the Intergovernmental Cooperation Act, 5 ILCS 220 (the "**ICA**") provides, in relevant part:

> Any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment and except where specifically and expressly prohibited by law."

Section 5 of the ICA provides, further, in relevant part:

> Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform.

Under Article 7, Section 10 of the Constitution and the ICA, therefore, a school district may enter into an intergovernmental agreement to contract with other units of government, including another school district and a village. The Illinois Constitution refers only to "school districts" in its enumeration of powers and in no place distinguishes between elementary, high school or any other form of school district. Thus, the Elementary School District and the High School District are both authorized to contract through intergovernmental agreement with the Village to exercise any power that the school districts are each authorized to exercise outside of an intergovernmental agreement.

In addition to the power of each of the Governmental Parties to contract with one another, all three of the Governmental Parties are authorized by law to contract with another lawful entity, including a not for profit corporation organized pursuant to the General Not For Profit Corporation Act of 1986, 805 ILCS 105, such as the Collaboration, to provide a program or service. As described above, Article 7, Section 10 of the Constitution provides, in relevant part:

> Units of local government and school districts may contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or by ordinance.

The above language is sandwiched in Article 7, Section 10 between the grant of power to local governments and school districts to enter into intergovernmental agreements and the grant of power to local governments and school districts to use their revenues (i.e., public monies) to pay costs related to intergovernmental agreements, as discussed further below. In other words, all three of the Governmental Parties are authorized to contract with one another, and, within the *same* constitutional "intergovernmental" grant of power to contract with one another and to use public funds for costs associated with such intergovernmental arrangements, to contract with an entity such as the Collaboration to provide a lawful program or service.

The home rule distinction between the Village and the school districts will still apply, meaning that a school district, unlike the Village, must be specifically authorized by State law to exercise or contract to exercise its powers, and may not use an intergovernmental agreement as a tool to *gain* a new power. *Rajterowski*, 405 Ill.App.3d at 1119 ("non-home-rule entities may not, by entering into intergovernmental agreements, circumvent statutory requirements or limitations"; citing and agreeing with 2005 Ill Att'y Gen. Op. No. 05-010). Thus, early childhood education must serve a valid public purpose and the High School District and the Elementary School District must both be authorized to spend funds on early childhood education in order to enter into an agreement with the Village to fund early childhood educational programs and services which may be offered through the Collaboration. As discussed below, Illinois law, indeed, recognizes early childhood education programs and the expenditure of funds by any school district, whether elementary or high school, for such programs as serving a valid public purpose.

Constitutional and Statutory Powers of School Districts

Constitutional Public Purpose Requirement for Use of Public Funds

The Constitution requires that all public funds be used only for public purposes. Art. 8, Sec. 1 Ill. Const. 1970. The educational development of all students serves a public purpose. First, Article 10, Section 1 of the Constitution provides that "[a] fundamental goal of the People of the State is the *educational development of all persons* to the limits of their capacities." (Emphasis added.) Section 2-3.25 of the Illinois School Code, 105 ILCS 5 (the "**School Code**"), provides, further, that "[t]he General Assembly finds and declares…that the educational development of every school student serves the public purposes of the State." Section 2-3.25 focuses on non-public schools, with the intention of supporting the public purpose served through a private education. Private elementary and secondary schools, as addressed in Section 2-3.25 of the School Code, are not at issue in this Memorandum, but the public purpose sentiment of Article 10, Section 1 of the Constitution is not specifically iterated in the general

sections of the School Code, and the language provided in Section 2-3.25 supports the General Assembly's position that educational development for all students serves a public purpose.

Neither the Constitution nor the School Code distinguish between elementary, high school or any other types of school districts as governmental units to achieve the State goal of education for all people. *See also Rajterowski*, 405 Ill.App.3d at 1116 (in holding that a home rule unit could exercise a function to serve educational purposes, stating that "[b]ecause a home rule unit may exercise concurrently with the State any power of a home rule unit, in the absence of any specific legislative limitation on home rule units' powers, or the State's exclusive exercise of power, over schools, we cannot conclude that…the [home rule] City exceeded its authority by circumventing the School Code.")

Similarly, when the General Assembly enacted the School Finance Authority Act for school finance reform in Chicago, the General Assembly emphasized in the statute the public purpose met generally by education. *See Chicago School Finance Authority v. City Council of City of Chicago*, 104 Ill.2d 437, 442 (1984) (quoting 105 ILCS 5/34A-102(b), that "[t]he intention of the General Assembly, in enacting this legislation, is to establish procedures, provide powers and impose restrictions to assure the financial and educational integrity of the public schools…consistent with the requirements for satisfying the public policy and purpose herein set forth.")

The use of tax increment revenues, including those captured from school districts, has also been upheld as constitutional in various contexts when the use to which those revenues are put satisfies the public purpose requirement. The court in *People ex rel. the City of Canton v. Crouch* determined that not only does education, generally, serve a public purpose, but that the use of school funds for a program that serves a public purpose and is operated pursuant to an intergovernmental agreement meets the Illinois public purpose requirement. 79 Ill.2d 356 (1980). At issue in *Crouch* was the collection and use of tax increment revenues, specifically whether the portion of the Real Property Tax Increment Allocation Redevelopment Act, 65 ILCS 5 (the "**TIF Act**"), which permits revenues collected by various taxing districts, including school districts, to be paid over to the municipal treasurer for the purpose of paying the costs and servicing debt arising out a redevelopment plan serves a valid public purpose and is constitutional. For purposes of this opinion, it is helpful to call attention to the findings the court made with respect to the permitted use of school district revenues. The court held that the collection and use of tax increment revenues, including those collected from school districts, for the purpose of paying costs of a public redevelopment project, satisfied the Constitutional public purpose requirement, and that the project could be realized through an intergovernmental agreement with the parties from whom tax increment revenues were being collected, including the school district. *Id.* at 369.

The *Crouch* court called attention to a court case out of Kentucky in which "the Supreme Court of Kentucky declared [its] Tax Increment Revenue Act invalid for the reason that it

violated the constitutional prohibition whereby tax revenues levied for the purpose of education 'shall be appropriated to the common schools, and to no other purpose.' Ky. Const. Sec. 184. The fact that *our constitution [in contrast] provides for no such limitation on education revenues, and in fact encourages intergovernmental cooperation*, compels us to reach the conclusion that the [Kentucky] decision…has no application in this case." *Id*. at 367-368 (citing *Miller v. Covington Development Authority*, 539 S.W.2d 1 (Ky. 1976)) (emphasis added). The *Crouch* court further cited statements of the drafters of the Constitution that school districts were clearly intended to be authorized to participate in intergovernmental agreements and fund programs though such intergovernmental agreements, and that there were "already examples in some municipalities where school districts and, for example, park districts cooperate in the utilization of land space, recreational facilities indeed, enter into cooperative ventures in terms of summer programs….Indeed, we would hope that school districts could cooperate like any other unit of government with any unit of government *where that cooperation would be mutually beneficial to the units involved and to their people*." *Id*. at 366 (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3422) (emphasis added).

Consistent with the *Crouch* analysis, the School Code broadly authorizes all school districts to provide educational programs which serve the *primary public purpose* of school districts to implement and ensure the constitutional goal of the educational development of all people in the State. Repeated throughout the School Code are references to the broad public purpose served by education at all levels, which the General Assembly and Illinois courts have continuingly upheld for various types of public projects. The statute and court decisions consistently emphasize the Constitutional premise that comprehensive educational development, along with the funding of educational development at all levels, is, indeed, a goal of the People, in other words the *public*, with no distinction drawn between high school districts, elementary school districts or any other type of public school district.

Authority of School Districts to Fund Early Childhood Education

The Governmental Parties are proposing to jointly fund early childhood education programs. Illinois school districts, whether elementary or high school, are authorized to participate in and fund early childhood education programs. The authority for the Elementary School District and the High School District to enter into an intergovernmental agreement with the Village for the purpose of providing such programs is clearly authorized under the ICA and *Crouch*, as discussed above, as long as the school districts have authority, individually, to participate in and fund such programs. In response to any concern that this latter prong might not be met under Illinois law, that concern is simply not warranted. All school districts are included within the Constitutional goal of providing educational development for all people. The Elementary School District and the High School District are "public schools" under the School Code, which, in Section 1-3 defines "common schools", "free schools" and "public schools" to be "used interchangeably to apply to *any school operated by authority of this Act*." (Emphasis added).

The references to the broad public purpose achieved by educational programs are found throughout the School Code to apply to any and all Illinois school districts. Notably, the School Code authorizes a State-funded grant program to provide funds for *all* school districts to provide broad early childhood education programs to "achieve the goal of "Preschool for All Children" under Section 2-3.71, and authorizes a State-administered grant program to provide funding for a range of early childhood and parental education programs under Section 2-3.71a. Section 10-22.38 of the School Code adds the authority for any school district to "[e]stablish and maintain, *or to cooperate with other educational, governmental, social and volunteer agencies* in the establishment and carrying out of programs designed to identify and ameliorate mental, emotional, physical and social cultural disabilities in preschool age children below the age of 3 that would prevent such children from taking advantage of regular school programs." (Emphasis added.) These provisions further support the State's goal of improving and furthering the "educational development of all persons to the limits of their capacities." Art. 10, Sec. 1 Ill. Const. 1970.

All Illinois school districts are also expressly authorized to establish and run programs for students with children of their own and for school personnel. Section 10-22.18c of the School Code provides, in relevant part:

> Local school districts, in cooperation with the State Board of Education, a model program for the provision of day care services in a school. The program shall be administered by the local school district and shall be funded from monies available from private and public sources. Student parents shall not be charged a fee for the day care services; school personnel may also utilize the services, but shall be charged a fee….As part of the program, the school shall offer a course in child behavior in which students shall receive course credits for helping to care for the children in the program while learning parenting skills.

A primary benefit of this latter type of program is certainly intended to be realized by teenage parents who, through this type of program will be better equipped to finish high school and achieve success in their lives, however the statute authorizes the provision of services to people beyond the teenage student population.

Moreover, *all* Illinois school districts are expressly authorized by Section 10-22.18a of the School Code, through their boards, to establish child care centers for pre-kindergarten children, for the purpose of providing them, in relevant part:

> (1) *social and educational guidance and developmental aids supplemental to parental care and training designed to assist them in attaining their greatest potential during their school years and adult life* and (2) care and services, in addition to the services specified in (1), required because of the absence from

> home for all or part of the day of their parents or other persons in charge of their care as a result of employment or other reason.
>
> 105 ILCS 5/10-22.18a. (Emphasis added).

Section 10-22.18a provides further, with respect to such centers, that the school board "shall pay the necessary expenses *out of school funds for the district*," and "may permit *any other State or local governmental agency or private agency providing care for children to purchase care and training* in the Centers for children under their charge." 105 ILCS 5/10-22.18a. (Emphasis added.) This section clearly authorizes the provision and funding of early childhood education programs by *any* school district, and authorizes partnerships with private agencies for the provision of such services. Thus, this section provides the necessary authority for both the Elementary School District and the High School District to fund early childhood education programs, and authorizes both school districts to engage with a private agency that provides care for children, such as the Collaboration, to provide such programs.

Section 10-20 of the School Code authorizes the boards of both school districts to "exercise all other powers not inconsistent with [the School Code] that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board." 105 ILCS 5/10-20. Section 10-22.31a provides, further, in relevant part, that any school board may "enter into joint agreements with other school boards or public institutions of higher education to establish any type of educational program which any district may establish individually, to provide the needed educational facilities and to employ a director and other professional workers for such program." In other words, the boards of the Elementary School District and the High School District are authorized, not only by the ICA but by the School Code, to agree with one another to establish and provide early childhood education programs, which may also be housed on site at either district.

Pursuant to the school district powers discussed above, the broad grant of powers for school operation and development under Section 10-20, and the authority under the ICA, an intergovernmental agreement provides the vessel through which both school districts are authorized to collaborate with the home rule Village to determine what such early childhood education programs may entail, how specific expenditures will be allocated, where programs will be housed and the roles of each party in ensuring the provision of such early childhood education programs.

The General Assembly has recognized that Illinois school districts, whether elementary or high school, have an interest in the constitutional goal of educational development of students at all levels *and* a direct interest in early childhood care. By authorizing a range of early childhood programs for all school districts the General Assembly recognizes and supports the importance of early childhood programs for breaking the cycle of educational failures and promoting the success of young parents as well as the children in these programs, regardless of

what level of public school supports such programs. These programs serve general public educational purposes and may be funded with public school district funds.

Conclusion

The Governmental Parties are proposing to enter into an agreement to support and fund early childhood programs, which may ultimately be provided by the Collaboration, pursuant to the authority of governmental units to contract with each other and with corporations under Article 7, Section 10 of the Constitution, pursuant to the ICA and consistent with such recognized authority by Illinois courts. The Village may enter into the Agreement to fund early childhood education as it, as a home rule unit, may exercise any power pertaining to its government and affairs that it is not *prohibited* from exercising. The Elementary School District and High School District, in contrast, may exercise only those powers that are *granted* by State law. Both districts, as Illinois school districts, are so authorized to enter into the Agreement and fund early childhood education. All of the Governmental Parties are constitutionally authorized to contract with an entity such as the Collaboration to provide such early childhood educational programs and services.

Both the Elementary School District and the High School District may enter into the proposed Agreement and fund early childhood education programs pursuant to the Constitutional goal to serve the Illinois public through the *educational development of all persons*, and in accordance with the recognition by the General Assembly and Illinois courts that education serves a valid public purpose and that all school districts are authorized to provide and fund public programs otherwise authorized by law. Courts have recognized that school district funds, generally, may be used for programs that serve public purposes. Courts and the framers of the Constitution have also recognized the authority of all school districts, with no distinction between elementary, high school or other types of school districts, to enter into intergovernmental agreements for such purposes.

Finally, the General Assembly clearly recognizes and supports the importance of early childhood programs for breaking the cycle of educational failures and promoting the success of young parents as well as the children in these programs, regardless of what level of public school supports such programs, through the statutory authority of all school districts to establish child care centers and early childhood education programs. The School Code authorizes the provision and funding of early childhood education programs by *any* school district, including the Elementary School District and the High School District, and authorizes both school districts to engage with a private agency that provides early childhood services, such as the Collaboration, to provide such programs. The ICA then provides the vessel through which both school districts are authorized to collaborate with the home rule Village to determine what such early childhood education programs may entail, how specific expenditures will be allocated, and the roles of the each party in ensuring the provision of such early childhood education programs.

As long as the programs proposed in the Agreement aim to serve the State's general educational purposes and intend to benefit the educational development of all people of the State, the Agreement serves to further valid public purposes and may be entered into by the Governmental Parties to provide and fund early childhood education, which may ultimately be provided by the Collaboration.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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