

**Before the
NATIONAL LABOR RELATIONS BOARD**

In the Matter of)	
)	
Chicago Mathematics and Science Academy,)	
)	
Employer,)	
)	
and)	Case No. 13-RM-1768
)	
Chicago Alliance of Charter Teachers and)	
Staff, IFT, AFT, AFL-CIO,)	
)	
Union.)	

UNION'S STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW

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UNION'S STATEMENT IN OPPOSITION TO REQUEST FOR REVIEW

INTRODUCTION

The Employer requests review from a Decision and Order of the Regional Director of Region 13 finding that the Employer, a public charter school, is exempt from Board jurisdiction as a political subdivision of the State of Illinois. The Regional Director's Decision is in accordance with Board precedent. The Regional Director carefully examined the facts in this case and correctly found that, based on such facts, the Employer is a political subdivision exempt from coverage under the Act within the meaning of Section 2(2) of the Act. The Employer has failed to set forth any compelling reasons for the Board to grant review in this case. Accordingly, the Request for Review should be denied.

STATEMENT OF FACTS

Employer's Petition

On July 29, 2010, the Chicago Mathematics and Science Academy (CMSA) filed an RM petition with the Board. Tr. 6; Board Ex. 1(a). CMSA filed such petition after the Chicago Alliance of Charter Teachers and Staff, IFT, AFT, AFL-CIO (Union), filed a majority interest representation petition with the Illinois Educational Labor Relations Board (IELRB) seeking to represent a unit of the Employer's employees that includes all full-time and part-time teachers, counselors, and social workers. Tr. 6.

The Illinois Charter Schools Law

The Illinois Charter Schools Law (105 ILCS 5/27A-1, *et seq.*) was enacted in 1996. It provides that:

- “A charter school shall be subject to all federal and State laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, marital status, or need for special education services.” 105 ILCS 5/27A-4.
- “A charter school shall be a public, nonsectarian, nonreligious, non-home based, and non-profit school.” 105 ILCS 5/27A-5(a).
- “The governing body of a charter school shall be subject to the Freedom of Information Act and the Open Meetings Act.” 105 ILCS 5/27A-5(c). The Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*) applies solely to “public bodies” in Illinois, provides that the records maintained by such public bodies are “public records,” and requires public bodies to make their records available to any requesting person for inspection and copying. 5 ILCS 140/3, 4. The Illinois Open Meetings Act (5 ILCS 120/1, *et seq.*) applies only to “public bodies” and requires that meetings of public bodies be open to the public. 5 ILCS 120/1.02, 2.
- “Enrollment in a charter school shall be open to any pupil who resides within the geographic boundaries of the area served by the local school board, provided that the board of education in a city having a population exceeding 500,000 may designate attendance boundaries” for some charter schools if it determines that such attendance boundaries “are needed to relieve overcrowding or to better serve low-income or at-risk students.” 105 ILCS 5/27A-4(d). If there are more eligible applicants for enrollment in a charter school than there are spaces available, successful applicants shall be selected by a lottery. 105 ILCS 5/27A-4(h).
- “A pupil who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the public schools of the school district in which the pupil resides.” 105 ILCS 5/27A-4(h).

- A charter school is prohibited from charging tuition except as provided in the School Code. 105 ILCS 5/27A-5(e). The School Code allows school districts to charge tuition only to non-resident pupils. 105 ILCS 5/10-20.12a.

- “A charter school shall comply with all applicable health and safety requirements applicable to public schools under the laws of the State of Illinois.” 105 ILCS 5/27A-5(d).

- A charter school must comply with the provisions of the School Code providing for criminal history records checks and checks of the Statewide Sex Offender Database of applicants for employment. 105 ILCS 5/27A-5(g)(1).

- A charter school must comply with the provisions of the School Code regarding discipline of students in public schools. (105 ILCS 5/24-24 and 5/34-84A) 105 ILCS 5/27A-5(g)(2).

- A charter school must comply with the provisions of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101, *et seq.*). The Local Governmental and Governmental Employees Tort Immunity Act provides immunity to “local public entities and public employees” from liability arising “from the operation of government.” (745 ILCS 10/1-101.1(a)) 105 ILCS 5/27A-5(g)(3).

- A charter school must comply with the provisions of the Illinois School Student Records Act (105 ILCS 10/1, *et seq.*). The Illinois School Student Records Act regulates student records in public – but not private – schools. 105 ILCS 5/27A-5(g)(6).

- The charter school must comply with the provisions of the School Code requiring public schools to prepare and provide to the public school report cards showing the school’s performance as measured by State and local standards. (105 ILCS 5/10-17a) 105 ILCS 5/27A-5(g)(7).

- A proposed charter school contract between a school district and the governing body of a charter school must be approved by the Illinois State Board of Education (State Board), and the State Board must approve any material revisions to a previously certified charter school contract. 105 ILCS 5/27A-6.

- Instructional employees must be certified in accordance with the School Code or possess alternative qualifications specified in the Charter Schools Law. The Law requires that specified percentages of teachers in Chicago charter schools hold teaching certificates. 105 ILCS 5/27A-10(c).

- For purposes of the School Code provisions regarding State aid to public schools, pupils enrolled in a charter school shall be included in the pupil enrollment of the school district within which the pupil resides and the charter school shall maintain accurate daily attendance records. 105 ILCS 5/27A-11(a).

- A charter school contract is to provide for funding for the charter school that is no less than 75% and no more than 125% of the school district's per capita student tuition multiplied by the number of students residing in the district who are enrolled in the charter school. A charter school is entitled to receive from a school district the proportionate share of state and federal resources generated by students with disabilities or staff serving them at the charter school. 105 ILCS 5/27A-11(b).

- A charter school shall comply with all provisions of the Illinois Educational Labor Relations Act (IELRA). 105 ILCS 5/27A-5(g). The IELRA, 115 ILCS 5/1, *et seq.*, is a comprehensive public sector bargaining statute for educational employees in Illinois. Section 3 of the IELRA protects the right of educational employees to organize, join unions, and engage in

concerted activity. 115 ILCS 5/3. Sections 7 and 8 of the IELRA provide for bargaining unit determinations and certification of representatives by the IELRB. 115 ILCS 5/7, 8. Section 10 of the IELRA requires educational employers to bargain with exclusive representatives of their employees. 115 ILCS 5/10. Sections 14 and 15 of the IELRA set forth unfair labor practices and unfair labor practice procedures. 115 ILCS 5/14, 15.

Other Illinois Statutory Provisions

Illinois Educational Labor Relations Act

The “governing body of a charter school established under Article 27A of the School Code” is included within the definition of a public “educational employer” subject to the jurisdiction of the IELRB under the IELRA. 115 ILCS 5/2(a).

Illinois Pension Code

A charter school is included within the definition of an “employer” for purposes of the provisions of the Illinois Pension Code providing for a Public School Teachers’ Pension and Retirement Fund – Cities Over 500,000 Inhabitants (40 ILCS 5/17-105) and “any educational, administrative, professional, or other staff employed in a charter school operating in compliance with the Charter Schools Law who is certified under the law governing the certification of teachers “is included within the definition of “contributor, member or teacher” under such provisions (40 ILCS 5/17-106).

Illinois School Code

A charter school is included within the definition of a “school district” under provisions of the Illinois School Code defining the regulatory duties of the Illinois State Board of Education. 105 ILCS 5/2-3.25a.

Chicago Mathematics and Science Academy

CMSA was founded in 2003 for the purpose of applying to the Chicago Public Schools (CPS) to open a charter school in Chicago. In accordance with the requirement of the Charter Schools Law that a charter school be organized as a “nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois” (105 ILCS 5/27A-5(a)), CMSA is organized as an Illinois nonprofit corporation. Tr. 12-14; Er. Ex. 1. In accordance with the requirement in its charter agreement with CPS, CMSA has a board of directors consisting of a minimum of five members. Tr. 63-4. CMSA operates a single school, the Chicago Mathematics and Science Academy Charter School, located at 7212 North Clark Street in Chicago. Tr. 37-8, 60. CMSA is able to operate such school because of a charter granted it by CPS. Without such charter, CMSA would not be able to operate the school as a charter school in Illinois. Tr. 60. Although CMSA has had a contractual relationship with Concept Schools, a management organization, since 2008 (Tr. 10, 18-19), CMSA, and not Concept Schools, employs the teachers who work at the school. Tr. 19-20, 25. CMSA currently employs approximately 50 employees, including approximately 35 teachers. Tr. 55.

In 2004, CMSA was granted a charter to operate a charter school in Chicago, and entered into a charter agreement with CPS for a five-year term from July 1, 2004, through June 30, 2009. Er. Ex. 8, pp. 1-2. In September 2009, CMSA submitted a charter school renewal application to CPS. Tr. 47-8; Er. Ex. 9. CPS conducted an evaluation of CMSA, including classroom observations; meetings with teachers, parents and students; meetings with CMSA’s Board of Directors; and public hearings, before approving a renewal of CMSA’s charter. Tr. 45-6, 83-4. CMSA’s current charter agreement with CPS is effective from July 1, 2009, through June 30, 2014. Tr. 46; Er. Ex. 8. CMSA submitted the charter renewal application, and CMSA holds the charter for the school. Tr. 46, 68-9.

The charter agreement provides that CMSA shall operate a school known as “Chicago Mathematics and Science Academy Charter School.” Er. Ex. 8, p. 2. The charter agreement establishes a maximum student enrollment number. Er. Ex. 8, pp. 2-3.

The charter agreement between CPS and CMSA also provides that:

- CPS may establish attendance boundaries for the school and CMSA must adhere to any such attendance boundaries. Er. Ex. 8, p. 3.
- CMSA must conduct a lottery and establish a student waiting list in accordance with detailed specified procedures. Er. Ex. 8, p. 3.
- CMSA may not involuntarily transfer students out of its school. Er. Ex. 8, p. 3. See also Tr. 77-8.
- CMSA must provide services to homeless children at the same level that CPS provides such services. Er. Ex. 8, p. 11.
- CMSA is required to pursue, make reasonable progress toward and document student performance standards in compliance with an Accountability Plan that is made part of the charter agreement and in compliance with the School Code. Er. Ex. 8, pp. 4, 17; p. 31 (Ex. D).

The Accountability Plan provides that CMSA will be evaluated annually on per-pupil performance indicators and financial management/compliance indicators. Er. Ex. 8, Ex. D, p. i. The data generated regarding CMSA’s relative performance under the Accountability Plan is used in charter renewal decisions. Er. Ex. 8, Ex. D, p. iv. The Accountability Plan requires that CMSA make progress and submit reports to document progress toward certain standards established by CPS in order to show adequate performance. Tr. 82. If CMSA does not meet the accountability standards set forth in the Accountability Plan, the State Board of Education could shut the school down.

Tr. 82-3. CMSA could also be put on probation and required to submit a plan showing how it would meet the required standards. Tr. 83. The State Board of Education can decide not to renew or to revoke CMSA's charter if CMSA fails to make reasonable progress toward achievement of pupil performance standards identified in the Accountability Plan. Tr. 92.

The charter agreement between CMSA and CPS provides further that:

- The curriculum must be consistent with CMSA's charter application (which is part of the charter agreement), and CMSA must give CPS notice of any material changes in the curriculum. Er. Ex. 8, p. 4. Details of CMSA's curriculum are set forth in its charter renewal application, as required by CPS's application template. Er. Ex. 9; Tr. 97.
- CMSA must either adopt a student disciplinary code subject to CPS's approval or follow the CPS disciplinary code. Er. Ex. 10, pp. 4-5.
- Students may be expelled from CMSA only pursuant to procedures specified in the charter agreement, and CMSA must provide detailed factual information regarding any expulsions to CPS. Er. Ex. 8, p. 5.
- CMSA shall identify students from non-English-speaking backgrounds through a CPS home language survey and provide bilingual education services or English Language Learner services to which CPS students are entitled. Er. Ex. 8, p. 6.
- CMSA must submit its academic year calendar to CPS. Er. Ex. 8, p. 6.
- In addition to complying with federal and state laws and constitutional provisions as set forth in the Charter Schools Law, CMSA must comply with all federal and state orders and agreements applicable to CPS, including desegregation orders, orders regarding special education,

orders regarding bilingual education, compliance agreements, or other agreements with the United States Department of Education or other Federal or State agencies. Er. Ex. 8, p. 8.

- CMSA must provide CPS with a current list of its employees and with certification or qualification evidence with respect to its teachers. Er. Ex. 8, p. 9.

- CPS shall distribute funds to CMSA quarterly based on per capita tuition payments for students enrolled at CMSA. The payments to CMSA are conditioned on submission by CMSA of required reports pertaining to student names and addresses and all submissions and documentation set forth in the compliance chart compiled by the CPS Office of New Schools. Er. Ex. 8, p. 12.

Documentation which CMSA must submit to CPS pursuant to such CPS compliance chart includes:

1. the school calendar;
2. a list of CMSA's board members;
3. a list of board of directors' meeting dates, times and locations;
4. copies of board meeting minutes;
5. a detailed budget;
6. quarterly statements showing revenues and actual expenses;
7. a financial/fiscal policies handbook;
8. a financial and compliance audit;
9. a list of employees and results of criminal background checks;
10. teacher qualification data;
11. an election to use CPS special education staff or to hire its own staff;
12. a Title I program design;
13. a school occupancy permit;

14. student enrollment and attendance data;
15. lottery information;
16. CMSA's student code of conduct or an election to use CPS's code of conduct;
17. student discipline data; and
18. documentation of student suspensions and expulsions.

Tr. 69-76; Un. Ex. 1, p.1.

The compliance chart also requires that CMSA file with either CPS or the State Board state and federal reports required of Chicago public schools, including:

1. Title I reporting forms;
2. state school report card data, including information on parent participation, truancy, class size, time distribution, financial information, and teacher service record;
3. state testing verification;
4. English Language Learner program information; and
5. parent/guardian transportation reimbursement information.

Un. Ex. 1, p. 2.

CMSA's charter agreement with CPS further provides that:

- CPS distributes to CMSA state aid (Supplemental General State Aid, or SGSA) and federal Title I funds based on submission by CMSA to CPS of eligibility data in connection with such funds. Er. Ex. 8, p. 13.

CMSA Principal Ali Yilmaz testified that of a \$5.6 million budget, all but \$120,000 in private fund raising and grants comes from public funds. Tr. 38-9, 67. Of that, \$4.5 million is per-pupil funding which CMSA receives from CPS. CMSA receives \$7,213 per pupil for the school year, paid

in four installments pursuant to the charter agreement. Tr. 38-9. CMSA receives some additional funds from CPS because it does not use a CPS building. Tr. 67. CMSA also receives state and federal funds from CPS. CMSA receives federal Title I funds, which are paid to schools who have at-risk students who qualify for free and reduced lunch. To receive such funds, CMSA must show that it maintains a program to meet the needs of such students by submitting an application to CPS. Tr. 38-9, 68, 73. CMSA receives federal Title II funds, which are given for teacher professional development purposes. Tr. 38-9, 68. CMSA also receives state general aid and state funds for students who are English Language Learners. Tr. 38-9. CMSA is entitled to receive such federal and state funding only pursuant to the terms of its charter agreement with CPS. Tr. 67.

CMSA's charter agreement with CPS further provides that:

- CPS may make deductions for delinquent employee contributions to the Chicago Teachers Pension Fund from CPS's quarterly payments to CMSA. Er. Ex. 8, p. 14. CMSA teachers, pursuant to the Illinois Pension Code, are participants in the Chicago Teachers Pension Fund and CMSA sends the required nine percent contributions directly to the Fund. Tr. 80-1.

- CMSA must submit to CPS quarterly and annual budgets. Er. Ex. 8, p. 12.

CMSA Principal Ali Yilmaz testified that CMSA submits its annual and quarterly budget to CPS and that CPS has requested clarification of numbers in the budget submitted. Tr. 69-70, 89, 93-4. The budget must be submitted in accordance with a CPS template which requires the inclusion of certain specified information, including revenues and expenditures by category. Tr. 92-3.

CMSA's charter agreement with CPS further provides that:

- CMSA must provide enrollment data and daily student attendance data, Individualized Educational Plan (IEP) data and English Language Learner (ELL) data to CPS by electronic

submission through CPS's IMPACT computer student information system, to which CMSA is given access. Er. Ex. 8, p. 16.

CMSA has access to the CPS IMPACT system, which is an electronic student information system. CMSA is required to enter daily student attendance into the IMPACT system because, according to CMSA Principal Ali Yilmaz, "that's how the district manages the students' attendance." Tr. 64, 66. Yilmaz testified that CMSA is required by its Accountability Plan to meet certain attendance percentages and that such attendance percentages are tracked by CPS based on the information CMSA enters into the IMPACT system. Tr. 65-6. CMSA is also required to enter information regarding any student transfers into the IMPACT system. Tr. 66. The student attendance data in the IMPACT system as of certain cut-off dates forms the basis for CPS's determination of the per-pupil funding amounts due to CMSA. Tr. 66-7. CMSA also accesses and manages student IEP records and English Language Learner records in the IMPACT system. Tr. 64-5.

CMSA's charter agreement also provides that:

- CPS may withhold funds from CMSA in the event of a material violation of the charter agreement. Er. Ex. 8, p. 16.
- CMSA shall administer standardized tests as provided in CPS's policies and shall participate in state assessments required of public schools by the School Code. Er. Ex. 8, p. 17.
- CMSA shall grant reasonable access to CPS to allow CPS to conduct site visits for the purpose of evaluating the operations and performance of the charter school. Er. Ex. 8, p. 18.
- CMSA must provide services and accommodations to students with disabilities in accordance with federal law, CPS's procedural manual on educating children with disabilities in Chicago Public Schools, federal court orders applicable to children with disabilities in Chicago Public

Schools, and all service bulletins issued by CPS. CPS shall reimburse CMSA for the salary and benefits of special education teachers based on CPS's special education staffing formulas and the student's IEP. CMSA may elect to furnish its own special education clinicians to provide student support services or may elect to have CPS furnish special education clinicians to serve CMSA's students with disabilities. Clinicians required by a student's IEP shall be reimbursed at CPS's allocation percentage. CPS shall notify CMSA of the number of special education teachers, paraprofessionals, and clinicians needed in the charter school based on the students enrolled at the charter school as shown by the records entered into the CPS IMPACT system. Any special education teachers, paraprofessionals, and clinicians hired by CMSA must have the proper qualifications, Illinois certificates and/or licenses. CPS shall also provide necessary additional resources, including assistive technologies, required for special education students. Er. Ex. 8, pp. 18-19; Tr. 84-5.

Ali Yilmaz testified that several CPS employees, including a nurse, a speech therapist, and a social worker, come to CMSA to provide services to CMSA students. CPS-employed special education teachers formerly provided services to CMSA students at CMSA, but CMSA now employs its own special education teachers. CPS currently allocates and reimburses CMSA for up to seven special education teachers based on the CMSA students identified as requiring special education services. Tr. 60-3.

The CMSA charter agreement provides further that:

- Any school management contracts entered into by CMSA must have prior approval from CPS and prior certification from the State Board. Er. Ex. 8, p. 19.
- The charter may be revoked upon fourteen days' notice if CMSA fails to comply with the Charter Schools Law; commits a material violation of the charter school agreement, including the

Accountability Plan; fails to meet or make reasonable progress toward achievement of pupil performance standards identified in the agreement or in the Accountability Plan; fails to meet generally accepted standards of fiscal management; or materially violates any provision of law from which CMSA is not exempted. Er. Ex. 8, p. 20. See also Tr. 93, 95.

- Material amendments to the agreement must be approved by the State Board. Such material amendments include the addition of new grades, an increase in enrollment capacity, and a move to a new attendance center. Er. Ex. 8, p. 22.

- CMSA's charter renewal application (Er. Ex. 9), which was approved by CPS, is made part of the charter agreement. Tr. 48-9; Er. Ex. 8, Exhibit A, p. 28. As required by CPS's renewal application template, such renewal application includes detailed information about CMSA's curriculum, student testing, teacher retention, teacher evaluation, instructional strategies, and professional development. Tr. 48-9; Er. Ex. 9.

Regional Director's Decision

The Regional Director found that CMSA is a political subdivision exempt from coverage under the Act within the meaning of Section 2(2) of the Act. Regional Director's Decision and Order at 2.

ARGUMENT

The Regional Director's Decision and Order is in accordance with Board precedent. Under NLRB v. Natural Gas Utility District of Hawkins County, Tennessee, 402 U.S. 600 (1971), an entity is a political subdivision exempt from the Act's coverage under Section 2(2) if it is either: (1) created directly by the state so as to constitute a department or administrative arm of the government; or (2) administered by individuals who are responsible to public officials or to the general electorate. The Regional Director found that CMSA is a political subdivision under both prongs of Hawkins County. In reaching such conclusion, the Regional Director properly analyzed the facts in this case in accordance with applicable Board precedent.

I. The Regional Director correctly found that CMSA is a statutorily created public charter school.

The Regional Director found that CMSA is a statutorily created public charter school exempt from Board jurisdiction under the first prong of Hawkins County. The Regional Director correctly noted that federal rather than state law is controlling in determining whether an entity is a political subdivision but that state law declarations and interpretations may properly be considered. Regional Director's Decision and Order at 8, citing Hawkins County, 402 U.S. at 603 and Research Foundation of the City University of New York, 337 NLRB 965, 968 (2002). The Regional Director noted that in Hawkins County the Supreme Court found that the Board should examine the entity's actual operations and characteristics when determining whether it is an exempt political subdivision. Regional Director's Decision and Order at 10, citing Hawkins County at 604.

The Employer in its Request for Review asserts that the Regional Director incorrectly relied on Regional Director decisions issued by the Regional Directors of Regions 31 and 32. In Los Angeles Leadership Academy, Case 31-RM-1281 (2006), and Education for Change, Case 32-RM-801 (2006), the Regional Directors of NLRB Regions 31 and 32 found entities that hold the charters to operate charter schools pursuant to California's charter school law to be political subdivisions exempt from Board jurisdiction under both prongs of Hawkins County. The Employer asserts that the Regional Director's reliance on such decisions was misplaced because such decisions are not precedential. That such decisions are not precedential, however, did not preclude the Regional Director from finding them persuasive where they involved virtually identical facts to those in this case. Moreover, while the Regional Director found the Region 31 and Region 32 Regional Director's Decisions persuasive, his decision in this case is based on and in accordance with Board precedent. The Regional Director, in finding that CMSA is a political subdivision under the first prong of Hawkins County, relied in part on the Board decisions in Hinds County Human Resource Agency, 331 NLRB No. 186 (2000) and in Jervis Public Library Association, Inc., 262 NLRB No. 145 (1982).

In Hinds County, the Board found that an agency administering low-income assistance programs in Mississippi was exempt from Board jurisdiction under the first prong of Hawkins County. The Board in Hinds County found that "the Board has found the state's characterization of an entity to be an important factor in determining the more specific issue of whether the Employer was created so as to constitute a department or administrative arm of government." Hinds County, 331 NLRB 1404. The Board in that case relied in part on its findings that the state enabling statute evinced an intent that agencies such as the employer in that case be operated under local governmental control. 331 NLRB 1404. The Board in Hinds County also relied on its findings that there was

significant government control over the employer's budget, auditing, and operations; that the employer received virtually all of its funding from the state, county and federal government; that the employer's audit was reviewed by the Hinds County Board of Supervisors and that such board had the power to call the employer in for clarification regarding such audit; that the employer had to report on its progress toward goals; and that the employer's employees were eligible to participate in the state retirement system. 331 NLRB 1404.

In Jervis Public Library, the Board found the employer to be an administrative arm of the state in providing educational services to the public and thus exempt from Board jurisdiction under the first prong of Hawkins County. The Board in reaching such conclusion relied on its findings that the employer was regulated by the state; that the employer was required to submit an annual budget prior to funding approval; and that the employer's employees participated in the state retirement system. 262 NLRB 1386.

Here, the evidence showed that CMSA was created in 2003, seven years following the enactment of the Illinois Charter Schools Law. CMSA is able to operate a Chicago charter school only through its charter agreement with CPS, which agreement was approved by the Illinois State Board of Education. If CPS decided not to renew or to revoke CMSA's charter, CMSA could not operate a charter school in Chicago. Pursuant to the Charter Schools Law, CMSA is a public school subject to federal and state laws and constitutional provisions prohibiting discrimination.

Pursuant to the provisions of both the Charter Schools Law and the IELRA, CMSA is a public educational employer subject to and required to comply with the provisions of the IELRA, a comprehensive state public sector collective bargaining law applicable to educational employers and employees. CMSA is subject to the Illinois Freedom of Information Act and the Illinois Open

Meetings Act, both of which apply to public bodies. CMSA must comply with the Illinois School Student Records Act, which regulates student records in public, but not private, schools. CMSA must comply with the Local Governmental and Governmental Employees Tort Immunity Act, which provides immunity to public entities and public employees from liability arising from the operation of government.

CMSA must enroll all students within the attendance boundaries designated by CPS for its school subject to a lottery and waiting list and cannot charge tuition to students residing within the school district. CMSA must comply with CPS's responsibility to provide a free public education to students regardless of their status as being homeless or requiring special education services. The Charter Schools Law provides that a student who is suspended or expelled from a charter school is deemed to be suspended or expelled from the public schools, and CMSA therefore acts on behalf of CPS when it suspends or expels a student.

Under the Illinois Pension Code, a charter school is included within the definition of employer for purposes of the Chicago Teachers Pension Fund, and CMSA teachers who are certified must participate in such pension fund.

CMSA is almost entirely funded by CPS and by federal and state funds that pass through CPS, and CMSA's budget and financial audit must be submitted to and are subject to scrutiny and questioning by CPS.

The evidence thus established that CMSA is part of the public school system of the State of Illinois. The Regional Director correctly found that while CMSA is a Section 501(c)(3) corporation with its own board of directors, an examination of CMSA's actual operations shows that CMSA and its board of directors are subject to statutory restrictions, regulations, and privileges to which a private

employer would not be subject. The Regional Director correctly found that under applicable Board precedent such facts compel a finding that CMSA was created directly by the State of Illinois so as to constitute a department or administrative arm of the government. The Regional Director thus correctly found that CMSA is a political subdivision within the meaning of the first prong of the Hawkins County test. Regional Director's Decision and Order at 11.

II. The Regional Director correctly found that CMSA is administered by individuals who are responsible to public officials.

The Regional Director found that CMSA is administered by individuals who are responsible to public officials. The Regional Director, relying on Regional Medical Center at Memphis, 343 NLRB No. 48 (2004) and Research Foundation of the City University of New York, 337 NLRB No. 152 (2002), found that, in making a determination under the second prong of Hawkins County, the Board examines factors bearing on an entity's relationship to a state, including whether the individuals who administer the entity are appointed by or subject to removal by public officials; whether the employer is publicly funded; whether the employer's expenditures are subject to any public financial reporting and auditing strictures; whether the employer carries out day-to-day management responsibilities free from or subject to oversight; and whether the employer is governed by public record or open meeting requirements. Regional Director's Decision and Order at 12.

In Regional Medical Center at Memphis, the Board found an entity engaged in operating a hospital and medical clinics to be administered by individuals who were responsible to public officials. In so finding, the Board relied on findings that the employer's annual budget was subject to approval by the county; the employer was required to have a public audit and to file an annual

financial report to the county; the employer was required to make its facility available to all county residents who are in need regardless of their financial status; meetings of the employer's board of directors were subject to the state open meetings act; the number and selection of the employer's board of directors were subject to appointment by the county; and the employer was funded by the county. The employer in that case was found to be administered by individuals who were responsible to public officials even though the employer operated its facility independently on a day-to-day basis. 343 NLRB 346. In Research Foundation of the City University of New York, the Board found a non-profit educational corporation not to be an exempt political subdivision where the employer received no publicly appropriated funds and where the employer submitted financial reports to the state voluntarily but was not statutorily mandated to submit such reports. 337 NLRB 965.

Here, CMSA, under its charter agreement, must maintain and submit student attendance records to CPS on a daily basis, and CMSA's entitlement to receive per-pupil funding from CPS is contingent on its submission of such records. CMSA must follow a curriculum consistent with its charter agreement and cannot make material changes in such curriculum without approval of CPS. CMSA must either follow the CPS student discipline code or a different code approved by CPS. CMSA must identify students requiring services provided to students from non-English-speaking backgrounds in accordance with CPS policy and the School Code. CMSA must submit its school calendar to CPS. CMSA must admit all students within the school district subject to a lottery and waiting list, in accordance with CPS procedures. CMSA must provide services to homeless students to the same extent that such services are provided by CPS. CMSA is prohibited from involuntarily transferring students out of its school. CMSA acts on behalf of CPS when it expels students. CMSA must submit its quarterly budgets and annual financial audit to CPS. CMSA must administer

standardized tests in accordance with CPS policies and the School Code, must grant access to CPS to allow CPS to evaluate its school, and must demonstrate reasonable progress toward achievement of pupil performance standards set forth in the charter agreement and the Accountability Plan.

CMSA's charter may be revoked if it fails to comply with the Charter Schools Law; commits a material violation of the charter school agreement, including the Accountability Plan; fails to meet or make reasonable progress toward achievement of pupil performance standards identified in the agreement or in the Accountability Plan; fails to meet generally accepted standards of fiscal management; or materially violates any provision of law from which CMSA is not exempted. Er. Ex. 8, p. 20.

The Employer asserts that the Regional Director's decision incorrectly analyzed the Board's decision in Charter School Administration Services, Inc., 353 NLRB No. 35 (2008). In Charter School Administration Services, the Board asserted jurisdiction over an employer that was an education management organization (EMO) which operated a Michigan charter school under a contract with an entity holding a charter. The employer in that case, Charter School Administration Services, was a for-profit corporation that provided educational management services to charter schools in several states. It had a school management contract with the entity holding the charter, the Academy of Waterford. The Academy had been granted the charter by Bay Mills Community College.

The Board, in determining that it had jurisdiction over the employer in Charter School Administration Services, directed its inquiry at the operations of the employer, "which itself is not a public charter school" and not at the operations of the entity holding the charter. While the Board found that the individuals who administered the employer in that case were not appointed by or

subject to removal by public officials, the Board, in finding the employer not to be a political subdivision, also relied on its findings that: (1) the employer was not subject to the Michigan Open Meetings Act; (2) the employer was not subject to the Michigan Freedom of Information Act; (3) the employer had no direct reporting requirements to the State; (4) the employer was not required to submit a financial audit to the State; (5) the employer was not required to submit its budget to the State for review; (6) the employer did not directly receive any public funds; and (7) the employer's employees did not enjoy any government immunity.

Here, CMSA is not an EMO or subcontractor of a charter school as was the case in Charter School Administration Services, but rather is itself the charter holder. Moreover, the facts in this case are distinguishable from the facts in Charter School Administration Services in several respects. CMSA holds a charter granted by CPS and approved by the State Board of Education. CMSA, pursuant to the Charter Schools Law, is part of the Illinois public school system. Pursuant to both the Charter Schools Law and the IERLA, CMSA is a public educational employer required to comply with and subject to the IELRA. CMSA, pursuant to the Charter Schools Law, is a public body subject to the Illinois Open Meetings Act and the Illinois Freedom of Information Act. Under its charter agreement, CMSA is required to submit to CPS its board of directors meeting dates, agendas, and minutes. CMSA is required to submit detailed quarterly budgets, showing actual revenue and expenditures, and an annual financial audit to CPS, and CPS has asked for clarification regarding the budgets submitted by CMSA. Virtually all of CMSA's funds are public funds received by CMSA directly from CPS. Most of such funds are per-pupil funds based on student enrollment as entered by CMSA directly into the CPS IMPACT computerized student information record system. Such funds also include other CPS, state and federal funds which are available to Chicago public schools.

CMSA, pursuant to the Charter Schools Law, is subject to the Local Governmental and Governmental Employees Tort Immunity Act, which provides immunity to local public entities and public employees from liability arising from the operation of government. As the Regional Director found, CPS determines not only the amount of funding allocated to CMSA but also whether CMSA's charter will be renewed, put on probation or revoked, and CMSA's reporting requirements to CPS include daily accountability reports, academic progress oversight, and required teacher credentials.

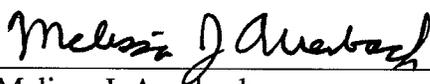
The Regional Director found that, given CPS's oversight of CMSA's budget, CPS's funding to CMSA and CMSA's reporting accountability requirements, CMSA's board of directors, although not appointed by or subject to removal by public officials, are nonetheless accountable to CPS to such an extent that CMSA's governing body is responsible to public officials or the general electorate. Such findings are in accordance with the facts in this case. The Regional Director thus correctly found that CMSA is a political subdivision exempt from Board jurisdiction under the second prong of Hawkins County.

CONCLUSION

For the foregoing reasons, the Regional Director's Decision and Order finding that CMSA is a political subdivision exempt from Board jurisdiction is in accordance with the relevant facts and with Board precedent. The Employer has presented no compelling reasons for the Board to grant review in this matter. The Employer's Request for Review should therefore be denied.

Respectfully submitted,

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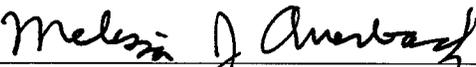
Dated: October 25, 2010

CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that she caused a true and accurate copy of the foregoing **Union's Statement in Opposition to Request for Review** to be served upon the following by electronic mail, on this 25th day of October 2010.

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