



MN ASSOCIATION OF
CHARTER SCHOOLS

Unleashing education from convention

Monday, March 23, 2015

TO: Charter School Directors, Board Members, and Business Managers

RE: IRS Regulation on Charter School Employees Participating in State/Local Government Retirement Plans – AN UPDATE

In November 2011, the IRS published an advance notice of a proposed regulation regarding when an entity is an agent or instrumentality of a state or local political subdivision for the purposes of its employees being eligible to participate in a government retirement plan.

As you may remember, the proposed definition would have impacted whether charter school employees could be part of state retirement plans – like TRA and PERA. At the time, we asked schools to send comments to the IRS and to Minnesota’s Congressional Delegation about how the proposed rule would have affected charter school employees in Minnesota.

Nationally, the IRS received over 2,000 comments on the charter school issue. In response to the flood of comments, the IRS is considering issuing guidance that would take into account the “**special and unique nature of charters ...**”.

ISSUE 1

The proposed guidance would define the conditions that charter schools would have to meet for their employees to be considered eligible to participate in state government retirement plans.

The guidance outlines **two potential methods** in which state law could meet the conditions. Based on a review of the two methods for meeting the conditions, we feel fairly comfortable that Minnesota should be eligible under one of the two methods.

We have been in contact with TRA and PERA and they are looking at the proposed guidance from their perspective to ensure that TRA and PERA remain eligible plans under the proposed guidance.

The IRS has asked for comments on the proposed guidance, so MACS will be drafting comments to send to the IRS before the deadline in early May. The goal of our comments will be to encourage the IRS to make the conditions as clear as possible, so that there is no question that Minnesota qualifies under the final guidance.

ISSUE 2

The proposed guidance specifically states that those who work in charter schools but are **employed by charter or education management corporations, are not eligible to participate** in state/local government retirement plans. The IRS rationale for the guidance on this issue is related to its definition of what qualifies as a government retirement plan.

The impact of this will be felt much more in other states than Minnesota, given that we have just a few schools that have contracted with charter management companies.

However, the proposed guidance and its implications is something of which Charter School Boards that have contracted with, or are considering contracting with, a charter or education management company need to be aware.

Minnesota laws that govern TRA and PERA already prohibit participation in the state plan by employees who are employed by a third party. **For example:** *substitute teachers employed through a 3rd party, like Teachers on Call, are already ineligible to participate in TRA as they are not employees of a public school.* TRA has indicated it will look at schools with management contracts to ensure that any employees of the management corporation are not participating in the state retirement plans.

In terms of this second issue, MACS plans to indicate in our comments to the IRS that Minnesota already prohibits non-employees of public schools from participating in government retirement plans, and that we support Minnesota's law as we do not want the retirement plans of hundreds, if not several thousand of folks, to be endangered.

If you have any questions, please feel free to contact me at eugene@mncharterschools.org.

Thanks for taking the time to update yourself on this important issue for our employees.

Eugene Piccolo
Executive Director