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Internal Revenue Service
Ogden, UT 84201-0023

**Re: Jefferson Academy
9955 Yarrow Street
Broomfield, Colorado 80021
TIN: 84-1269322
Exemption from Form 990 Filing Requirement**

Dear IRS:

This firm represents Jefferson Academy (the "Charter School"), and I am writing to you regarding the Charter School's exemption from the Form 990 filing requirement. My Form 2848 is enclosed.

1. Affiliates of Governmental Units are Exempt from Filing Form 990.

Generally, tax-exempt organizations are required to file annual information returns. 26 U.S.C. § 6033(a)(1). However, Section 6033(a)(2)(B) of the Code gives the Secretary of the Treasury discretionary authority to relieve any organization from the information return filing requirement where he determines that such filing is not necessary to the efficient administration of the internal revenue laws. See also, 26 C.F.R. § 6033-2(g)(1).

Revenue Procedure 95-48 sets forth two classes of organizations that are not required to file annual information returns on Form 990. Rev. Proc. 95-48, 1995-2 C.B. 418, Section 1. These two classes are (1) governmental units and (2) affiliates of governmental units. *Id.*

2. The Charter School is an Affiliate of a Governmental Unit.

Under Revenue Procedure 95-48, an organization is treated as an "affiliate of a governmental unit" if, *inter alia*, (1) it is an instrumentality of a state or a political subdivision thereof for employment tax purposes, or (2) it meets the criteria of

Section 4.02(b) of the Revenue Procedure. As set forth in detail below, the Charter School meets the definition of “affiliate of a governmental unit.”

First, the Charter School is an instrumentality of a political subdivision of the State of Colorado for purposes of employment tax. The charter received its charter from, and operates under the auspices of, Jefferson County School District R-1, County of Jefferson, State of Colorado (the “School District”). The School District is unquestionably a “political subdivision” of the State of Colorado, as that term is defined in 26 C.F.R. § 1.103-1(b).

Under Colorado law the Charter School is considered a public school within the school district that grants its charter. C.R.S. § 22-30.5-104(2).¹ Accordingly, the Charter School’s employees are considered Colorado public employees and are exempt from Social Security withholding. 26 U.S.C. §§ 3321(b)(7) and 3306(c)(7). The Charter School’s employees participate in the Colorado Public Employees Retirement Association. C.R.S. § 22-30.5-111(3). In addition, the School District incorporates the Charter School’s operations into its own financial statements. For these reasons the Charter School is considered an “affiliate of a governmental unit” for purposes of the exemption from the Form 990 filing requirement.

In addition, however, the Charter School meets the criteria for exemption specified in section 4.03(b) of Revenue Procedure 95-48. Those criteria are summarized as follows:

1. The organization is either operated, supervised or controlled by a governmental unit; or
2. The organization possesses two or more of the “affiliate factors” listed in section 4.03 of the Revenue Procedure.

The Charter School meets the first criterion because under Colorado law it is supervised by a governmental unit, namely the School District. The Colorado Charter Schools Act provides that Colorado charter schools “shall be accountable to the school district’s local board of education for purposes of ensuring compliance with applicable laws and charter provisions . . .” C.R.S. § 22-30.5-104(2). If the Charter School breaches its charter contract or operates in violation of law the School District has specific authority to revoke its charter. C.R.S. § 22-30.5-110(3).

The Charter School also independently meets the second criterion because it possesses two or more of the “affiliate factors” listed in section 4.03 of the Revenue Procedure. Specifically, the Charter School possesses the following affiliate factors:

1. The Charter School was created by a governmental unit. 4.03(a). The Charter School was created by the issuance of a charter from the School District.

¹ Note that the Act specifically states that a charter school’s decision to incorporate as a nonprofit corporation does not in any way affect its status as a public school. C.R.S. § 22-30.5-104(4).

2. The Charter School receives its support principally from governmental appropriations. 4.03(b). The Charter School's sole activity is the operation of a Colorado public school pursuant to the Colorado Charter Schools Act and its contract with the School District. It receives over 90% of its operating funds from the School District.

3. The Charter School is financially accountable to a governmental unit. 4.03(c). The Charter Schools Act requires Colorado Charter Schools to, at a minimum, provide an annual audit of their financial and administrative operations. C.R.S. § 22-30.5-106(1)(g).

4. If the Charter School were to be dissolved its assets would be distributed to a governmental unit. 4.03(d). Jefferson Academy's articles of incorporation provide that upon dissolution its assets shall be distributed to the School District.

Clearly, therefore, the Charter School is an "affiliate of a governmental unit" as that term is defined in Revenue Procedure 95-48, and as such it is exempt from the requirement of filing Form 990.

Moreover, the Internal Revenue Service has ruled that charter schools are public entities in analogous situations. In Private Letter Ruling 95-16049, the Service determined that a charter school is an agency or instrumentality of the state while its charter is outstanding for purposes of certain pension definitions in the Code, and in Private Letter Ruling 97-41013 the Service ruled that a charter school is an "instrumentality" of the state within the meaning of Section 141(b)(6) of the Code.

Finally, with respect to Colorado charter schools in particular, the United States District Court for the District of Colorado has held as follows:

I hold that under the [Colorado Charter Schools Act], a charter school is an agency, instrumentality, and political subdivision of the School District. There being no dispute that the School District is a public entity as contemplated by the [Colorado Governmental Immunity Act], I hold further that [the charter school in question] is also a public entity pursuant to the CGIA.

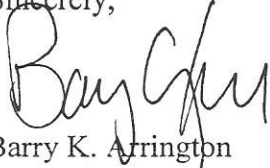
King v. United States, 52 F.Supp.2d 1056 (D.Colo. 1999).

3. Conclusion.

The Charter School is an affiliate of a governmental unit. Accordingly, pursuant to Revenue Procedure 95-48 it is not required to file annual information returns on Form 990.

Please do not hesitate to call if you have any questions or wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry K. Arrington". The signature is written in a cursive style with a large initial "B".

Barry K. Arrington