

CIVIC FEDERATION OF CHICAGO

CHICAGO PUBLIC SCHOOLS TASK FORCE

**IS CHAPTER 9 THE BEST RESOLUTION MECHANISM
FOR CHICAGO PUBLIC SCHOOLS OR ARE THERE OTHER ALTERNATIVES?**

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March 31, 2016

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I. WHY SCHOOL DISTRICTS HAVE WISELY CHOSEN NOT TO FILE CHAPTER 9 BANKRUPTCY

A. Experience has shown Chapter 9 has rarely been used by School Districts for good reasons:

1. **Chapter 9 is Rarely Used.** Only 666 Chapter 9 filings since 1937 (322 since 1954, 297 since 1980). An average of 8.5 filings per year since 1937. Generally, most have been small special tax districts and utilities that rarely need to issue public debt. There are over 80,000 municipal entities that could be authorized to file. Corporate Chapter 11 reorganizations have numbered over 10,000 a year for virtually every year since 1985.
2. **Only Four School Districts in the Last 60 Years Have Filed Chapter 9 and Half of Those Dismissed the Case for Other Resolutions.** No school districts have filed for Chapter 9 in the last 20 years. Since 1954, only four school districts for elementary and/or high school have filed Chapter 9 namely:
 - a. San Jose School District, California (case dismissed without a Plan of Debt Adjustment (“*Plan*”) filed July 1, 1983, case dismissed May 8, 1984);
 - b. Copper River School District, Alaska (filed 1986, confirmed Plan 1988);
 - c. Richmond Unified School District (case filed in 1991 and dismissed in 1991 without a Plan); and
 - d. Chilhowee R-IV School District Missouri (case filed in 1992 and confirmed Plan June 16, 1993).
3. **The Problems of School Districts are More Technical and Complex Than a Debt Adjustment.** School district problems can be financial, operational or academic. Chapter 9 is merely debt adjustment with a stigma on future access to and cost of borrowing which school districts need to make capital improvements.
4. **The Experience of San Jose School District 1983 - Chapter 9 Had No Benefit Once Teachers Agreed to Affordable Contract.** San Jose School District in 1983, after losing a labor arbitration with teachers, filed Chapter 9, paid its bond debt throughout and used Chapter 9 to renegotiate an unaffordable arbitration award into an affordable settlement with teachers and then promptly dismissed the Chapter 9. There was no benefit to it in being in Chapter 9.
5. **The Experience of Richmond School District - Chapter 9 Created More Issues than it Solved and There are Better Solutions.** The Richmond School District filed for bankruptcy and threatened to close schools. Chapter 9 debt adjustment process gave no power to the bankruptcy court to deal with

operational or educational issues. Parents filed lawsuits to prevent the closing of any school resulting in the dismissal of the bankruptcy and a \$29 million loan from the state. Richmond School District has changed its name to West Contra Costa School District and has paid off its debt while benefitting from a supervised turnaround.

6. **Copper River and Chilhowee Were Too Small and Rural to be Good Examples.** Copper River School District had only 511 students, 8 schools (6 schools at the time of filing), 37 full time teachers with a students to teacher ratio of 14 to 1. The school district covers 25,000 square miles including Wrangell - St. Elias National Park. Copper River School District filed to reject the teachers union contract due to an inability to pay salaries. In the Plan of Debt Adjustment, the salaries of teachers were frozen and significantly reduced. Chilhowee has 164 students with 2 schools, 20 full time teachers and an 8 to 2 students to teacher ratio. The Chapter 9 filing was caused by a judgment of \$200,000 in favor of five former teachers against the school district. The school district had an annual budget of \$650,000 in 1992. The school board had been assessing the highest levy that could be levied prior to the judgment, and the bankruptcy court ruled it was a good faith filing by an insolvent school district with little ability to pay or increase the levy for the school district. These rural school districts are no comparison to larger urban school districts and their problems.

7. **No School District of Size in the Last 60 Years Has Used Chapter 9 to Successfully Address Its School District Problems.** For any school district of size, bankruptcy has been viewed as the third rail of solutions, too simplistic a financial adjustment and not suited to address the multi-year oversight experience of school reform, especially as to operational and academic issues. This has been the experience of the multi-year local or state oversight in such school districts as: Philadelphia schools and its School Reform Commission since 2001, Los Angeles Unified School Districts and efforts for reform over the last two decades and issues of local control, the efforts of the Cleveland schools to reform schools, including 2012 legislation, Missouri legislation as used by St. Louis or Kansas City schools and use of three oversight districts in New Jersey, the use of Emergency Manager for the Detroit District Schools in 2009 and Michigan Heights and Highland Park schools with an Emergency Manager in 2012, nine school districts in California that required emergency loans from the state including Richmond since 1990, or the use of financial oversight panels in Illinois where only North Chicago and East St. Louis required greater oversight, but in all cases no Chapter 9 municipal bankruptcy.

B. **Chapter 9 municipal bankruptcy of the School District would threaten financial recovery of the community by raising concern about the education level of the workforce.**

1. **Education is One of the Pillars of Economic Development.** Recovery is created by increasing economic activity such as business in the community which creates new good jobs. If the work force is appropriately educated to fill those jobs, businesses will expand and be attracted. Chapter 9 sends the wrong message.
2. **Stigma of Chapter 9 Could Prevent New Business Development and Creation of New Jobs for School District Graduates.** The financial distress of Chapter 9 translates into not being a place that business wants to expand or new business wants to move into.
3. **Chapter 9 Could Reduce the Tax Base and Threaten the Needed Funding Source for Schools.** Anything that impedes economic development and threatens raising taxes beyond the reasonable ability to pay and drains the full funding of essential services in the community may contribute to the increased likelihood that taxpayers will move out (like in Detroit, Bridgeport, Connecticut and elsewhere) reducing the tax base and funding source for schools.
4. **Chapter 9 Could be a Distraction to Efforts for School District Reform.** Chapter 9 is time consuming, expensive, and uncertain, which can have a negative effect on the school district's ability to address operational and academic issues as well as financial problems. It has been said Chapter 9 and the controversies that it can involve are all-consuming and prevent the administration from being able to address operational or academic concerns.
5. **In Chapter 9, the Bankruptcy Court Has Limited Jurisdiction.** Unlike Chapter 11, where the bankruptcy court has to approve any action taken by the debtor out of the ordinary course of business such as new financings, settlements with creditors, any significant change in business operations, creating or modifying product models and sale or transfer of assets including fixed assets and intellectual property rights, *inter alia*, in a Chapter 9, the bankruptcy court's jurisdiction is limited to debt adjustment and the court cannot, without consent of the debtor, interfere with the municipality's (school district's) property, revenue, exercise of governmental powers or affairs. (Section 904 of the Bankruptcy Code). Further, the municipality and the bankruptcy court cannot impair or limit the state control of a municipality (school district), by state legislation or otherwise, in the exercise of governmental power including as to expenditures. (Section 904 of the Bankruptcy Code). Accordingly, the bankruptcy court would not have jurisdiction over operations or academics, important factors in any recovery plan for a school district. Accordingly, Chapter 9 cannot deal with a school district's problem in a holistic manner.

C. **Chapter 9 of a School District is a Cloud on the Community that Prevents Progress**

1. **The Chapter 9 Cloud Prevents Development of Plans for the Future for Those Who Reside There and Those Who Are Interested in Moving There.**

The cloud of Chapter 9 leaves local businesses and residents concerned about staying. Not only the tax base for financial support of the schools but the future plans for business expansion by employers or development of new neighborhoods for graduates are delayed, threatened or impeded during and after a Chapter 9.

2. **The Filing of Chapter 9 Leads to Loss of Good Teachers, Employees and Students.**

The cloud of Chapter 9 may cause the best teachers and employees to seek employment elsewhere before the situation gets worse. Those with skill and ability are the most likely to find new employment elsewhere. Likewise, those students whose parents can will look for a better, more stable educational provider most likely in another community.

3. **Businesses and Individuals Looking for a New Home Will Look Elsewhere.**

No one looking to relocate will want to move into an ongoing and uncertain Chapter 9 bankruptcy of a school district. One of the major factors in the decision to locate in an area is the quality of the schools for both employers and employees.

D. **Traditionally, School Districts, Which are of Vital Importance to Local Government are Refinanced and Restructured under Local or State Supervision**

1. **The Most Tried and Effective Means of Addressing School District Financial, Operational and Academic Issues are Outside of Bankruptcy on the Local Level.**

Chapter 9 is the wrong tool for the delicate job of correcting the troubles of a school district. Chapter 9 lacks the ability to bring new liquidity or tax revenues to the school district and the limitations on the bankruptcy judge's jurisdiction prevents the court from dealing with operational and academic issues. Virtually all successful school district rehabilitations have been outside of Chapter 9 and have been, in essence, locally produced with support from the state.

2. **The Ability to Replace Administrators or the School Board and to Adjust Budgets, Operations, Personnel and Academic Programs and Standards Locally is More Effective than the Bankruptcy Court's Ability to Adjust Debt.**

A school district is not only a financial matter but more importantly an operational and academic one so that the power to change the administrators, board members, to institute best practices and eliminate waste and ineffectiveness, and to institute successful or needed curricula may have more beneficial effect than rearranging the pieces of debt. The ability of oversight on the local basis to approve or modify budgets, expenditures, hiring and firing practices, curriculum, operations and standards is a proven method of addressing a failing school problem. Chapter 9 can involve, by the limitations on jurisdiction of the court, none of these necessary actions.

3. **School Districts Require the Ability to Borrow Funds at a Low Cost for Needed Capital Improvements and Interim Financing of Operations that Chapter 9 Adversely Affects or Limits.** Generally, school districts must borrow funds from the capital markets to fund uneven tax collections and capital improvements necessary to maintain quality education. Chapter 9 is a financial stigma which can increase future borrowing cost by at least 1% to 3% annually. Any benefit economically of Chapter 9 is more than overcome by the increased cost of borrowing for large urban school districts. Assuming refinancing or borrowing \$10 billion to be repaid in 20 years with a bullet maturity, a 2% per year additional interest cost means \$200 million more in interest cost a year or a net present value of approximately \$2.5 billion over 20 years at a 5% discount rate. That cost could make all the difference to a financially troubled school district.

II. STATE MONITORING, OVERSIGHT, INTERVENTION, REFINANCING AND, IF NECESSARY, DISSOLUTION OF FINANCIALLY DISTRESSED SCHOOL DISTRICT

- A. **Oversight and Refinancing as an Alternative to Chapter 9 Municipal Bankruptcy.** Generally, each state provides for a variety of monitoring, oversight, intervention, refinancing and, if necessary, take-over or dissolution of a distressed school district as an alternative to Chapter 9 and as the preferred and intended means of rehabilitating and assisting a school district. While each state may by its statutes and regulation fashion its own formula to address distress, there are some common themes.
- B. **Most States Provide for Periodic Monitoring of Financial, Operational and Academic Performance of a School District.**
- C. **The Evolving Intensity of School District Oversight.** Based on the results of monitoring, some states establish a watch list or group for further oversight on the local, county or state level with review of budgets and operations with outside advisors or assistance from local or state agencies. If the situation is not corrected, the oversight and review becomes more intense, with the use of loans, grants and refinancing to address liquidity issues, and with the ability to prohibit non-salary expenditures, cancel purchase orders, require interim or additional financial reports or development of a recovery plan often with the assistance of external or state consultants or advisors, all subject to school board and superintendent approval. If those efforts are not successful, then a more hands on approach of the state replacing the superintendent or even replacing the school board, or consolidating or dissolving the school district, may be considered.

D. **For the Most Part, States Have a Solid Track Record of Success Dealing with Troubled School Districts, Many Times Building on the Interactive and Collaborative Review and Oversight Process They Have Developed.**

1. **California Approach.** California has a multi-tiered process¹ of (a) proactive monitoring of periodic reports and fiscal operation policy, (b) support of technical advisors on local and state level, (c) financial management from oversight to assumption of financial management and control over the local school board with the possibility of financing additional funds as needed, and (d) state administrative control, where the school board is advisory, with the state assuming leadership of the school duties with a state appointed administrator and the ability to make emergency loans from the state general fund. All of this is aimed at avoiding bankruptcy and replacing ineffective management.
2. **Ohio Approach.** Ohio passed legislation in 2007 and 2015 (Ohio Revised Code § 3302.10) that reflects increased intervention efforts of states over school districts in distress. In 2007, Ohio established an academic distress commission to be triggered when the academic performance of the school district is low. There is normally a direct correlation between financial, operational and academic distress. The academic distress commission, once estimating poor academic performance, assists the school district. The five-member commission has three members appointed by the state superintendent and two by the president of the local school board, with the chair designated by the state superintendent. The commission must adopt a recovery plan and has some additional managerial power such as reassigning or appointing school administrators, terminating contracts, developing a budget, but these are permissive powers, not mandatory. The commission exists to assist the school district in developing a recovery plan. The local elected president and school board remain in place so there is potential tension between the board and the commission. The 2015 legislation gave the commission more power by allowing the commission to appoint the district's Chief Executive Officer ("*CEO*") with this CEO having full managerial power and control. It reduced the local school board appointments to the commission to one from two. Further, the commission will be responsible for expanding higher quality schools with additional funds being available from the state.
3. **Illinois Approach.** In Illinois, the approach is more *ad hoc* and local in nature through the Illinois State Board of Education (105 Ill. Comp. stat. 5/1B-1 et seq.). Annual financial information is required with evaluation of the categories of risk. The lowest category is Financial Watch. Distressed school districts are given technical assistance to determine whether a deficit reduction plan is necessary. If the district does not follow its plan or is still at risk, then the state may seek a financial oversight panel (FOP). While the school board remains in operation, the FOP may approve or veto all financial decisions. The FOP can petition the state for emergency grants and loans if needed. If the FOP is not successful, the state

¹ Cal. Educ. Code § 1240 et seq. and § 42131 et seq.

can take stronger action such as consolidating or dissolving the school district or a more direct role in the management of the school district with a school financial authority or independent authority, which would include financial, operational and academic oversight.

4. **Conclusion.** Accordingly, while states may vary in approach, there is almost universal recognition that schools are so important and of such a sensitive nature that state and local monitoring oversight, refinancing and recovery assistance has generally proven to be the effective means of resolution especially compared to the virtually never used Chapter 9 alternative.

E. **The Chicago Public School Finance Authority**

1. **Creation of SFA.** In the wake of the Chicago Public School's ("CPS") 1979 financial crisis, the State of Illinois created the Chicago School Finance Authority ("SFA"). The SFA was directed to exercise financial control over and furnish financial assistance to the Chicago Board of Education. The goal stated in 105 ILCS 5/34-102 was to provide a secured financial basis for the continued operation of Chicago's public schools. In the thirty years of its existence, the SFA issued over \$1.1 billion in bonds and \$1.4 billion in refunding and defeasance transactions.
2. **Governance and Responsibility of SFA.** The SFA, with a board of five directors appointed by the Governor of Illinois and the Mayor of Chicago, had the power to issue bonds for CPS expenses and then levy a separate property tax for the debt service. The principal responsibility for the education policies of the public schools remained with the Chicago Board of Education.
3. **Financial Oversight of SFA and Transfer of Control.** In addition to its bond and tax levy authority, the SFA was also charged with approving the budgets, financial plans and contracts submitted to the Board of Education. The bulk of this review took place during the 1980s and 1990s. In 1993, the Illinois General Assembly expanded the SFA's financial review duties to include an independent management assessment and audit in response to growing budget deficits. Once control of the Chicago public school system was transferred to the Mayor of Chicago in 1995, the actions of the SFA primarily involved administration and oversight of its outstanding bonds.
4. **Transition from SFA.** Illinois statutes state that the SFA will dissolve one year after all of the financial obligations incurred by SFA have been fully paid, discharged or otherwise provided for. SFA discharged its remaining debt on June 1, 2009. Upon dissolution, all the assets and property of the SFA were transferred to the Chicago Board of Education (105 ILCS 5/34A-604). The statute also required liability insurance for the board members to be maintained for an additional two years past the date of dissolution (105 ILCS 5/34A-602). The SFA levied its final property tax in tax year 2007, payable in 2008.

III. WHAT IS THE BEST MECHANISM FOR ADDRESSING THE FINANCIAL DISTRESS OF CHICAGO PUBLIC SCHOOLS - CHAPTER 9 - MUNICIPAL BANKRUPTCY, ANOTHER CHICAGO SCHOOL FINANCE AUTHORITY OR A VERSION OF THE LOCAL GOVERNMENT PROTECTION AUTHORITY?

A. As Noted Above Chapter 9 for School Districts is Rare for Good Reasons.

1. **No Interim Financing.** The bankruptcy court is limited in its jurisdiction. It has no ability to provide additional needed interim financing and loans and grants. DIP financing requires assured source of repayment and generally school districts in financial difficulties have picked all the low hanging fruit and have used their tax authority up to its legal or practical tax limit. What is needed is state legislation for increased debt and tax limits and providing new vehicles for interim financing to keep the school operating and fund the restructuring and recovery.
2. **A Bankruptcy Court Has No Control Over Operations, Academics or the Basic Causes of the Systemic Problems of a School District.** Chapter 9 is a process of debt adjustment and not a solution to systemic problems. Generally, unaffordable debt is a symptom of financial distress and not the root cause. Bankruptcy courts, given the limitation of jurisdiction under the Federal Bankruptcy Code, have no power over the revenue, property or governmental powers or affairs of the school district, namely operation, purchasing, personnel, academics, planning or supervision and implementation of decisions. Accordingly, Chapter 9 is ineffective in addressing operational, hiring, firing, contractual, structural, logistical and educational problems. However, the reductions of debt provided by Chapter 9 give the school district more time or runway to develop a recovery plan.

B. The Chicago School Finance Authority Was Successful Over Thirty Years Ago But Circumstances Have Changed.

1. **In 1979 the Problems Were Financial and Not Necessarily Operational or Academics.** In 1979, there was an accounting and financial crisis that required financial oversight and supervision as well as refinancing and financial support to keep the schools operating. There was not the level of teacher, operational and academic issues that are identified today.
2. **The Powers of the School Finance Authority Limited.**
 - (a) **SFA's Purpose Financial.** The SFA Statute was created for "sound financial structure", "effective access to the private market to borrow short and long term funds" and "to promote financial integrity" for the continued operation of the schools. Questions of teachers hiring, retention, compensation and benefits, operational issues on number, type,

location of schools, academic issues of structure, supervision and coordination of schools and future employment were not central to the legislation or problems of over thirty years ago. In fact, the SFA's purpose was to provide financial supervision, oversight and discipline for the CPS.

- (b) SFA Had No Authority Over Operations or Academics. There was no authorization over non-financial operations or academics. The limited focus was on approval of financial plans and budgets to ensure a balanced budget, financial credibility in the financial markets, best practices in financial affairs and financial management and continued ability to borrow needed funds through issuing bonds and levying taxes for continued operations. The Chicago Board of Education continued to have day-to-day operational control and decision-making of the schools subject to the financial oversight.
- (c) SFA's Authority to Levy Taxes and Issue Bonds with a Statutory Lien. Interestingly, the bonds issued by SFA had a statutory lien on the pledged revenues that were levied by the SFA to ensure payment of the dedicated revenues to the debt holders. This was intended to address any credit concerns of the financial marketplace. The debt issued by SFA was not the debt of the state, city or board.

C. The Civic Federation's "Local Government Protection Authority" Offers a Holistic Approach to Address Systemic Causes of Financial Distress and Development of a Feasible and Sustainable Recovery Plan

- 1. LGPA. The Local Government Protection Authority ("LGPA") provides a forum for a holistic approach to address systemic financial and operational distress in which the local government (school district), taxpayers, elected officials, the public, employees and creditors (including vendors and public debt) can address issues relating to essential governmental services (education), to financial difficulties regarding costs, judgments, liabilities and post-employment benefits and payment structures and to ensuring essential services and needed infrastructure are funded at an acceptable level along with transparency to the public as to the affordability and sustainability of these services, costs and benefits as an alternative to Chapter 9.
- 2. Creation of Authority and Process.
 - (a) Creation of Financial and Operation Oversight for CPS ("Authority"). LGPA legislation would establish an oversight authority for the CPS consisting of at least three trustees who would (a) provide financial and operational oversight of finances and operations including budgets, contracting, hiring and firing, performance of its educational mission to encourage financial and operational transparency and best practices and

(b) assist CPS to develop a holistic, integrated and consensual (if possible) recovery plan that would resolve the systemic problems, be sustainable and affordable, assure financial and operational efficiency, provide needed improvements in educational services and infrastructure and resolve all issues of outstanding debt obligations.

(b) Phases of Oversight Process.

- (i) **Phase One:** Initiation and investigation and determination of sustainable and affordable educational services, needed infrastructure and debt (“*Sustainability Determination*”).
- (ii) **Phase Two:** Development of recovery plans for CPS consistent with the Sustainability Determination that sets forth the recovery plan demonstrating the efficient and effective providing of educational programs and operational services at a level deemed acceptable that would provide educated students, who would be capable of being employed in needed and available jobs, as well as education curriculum matched to such job needs to encourage increase in business activity, further creation of jobs (through the job multiplier) and increase in GDP and tax revenue so that assurances can be given to creditors as to the recovery and increasing tax base for payment of the debt owed to the lenders.
- (iii) **Phase Three:** Presentation of recovery plan after creditors’ opportunity to comment, negotiate and raise objection to recovery plan proposals. If, through the Authority’s oversight and mediation, the desired agreement on a recovery plan cannot be reached by CPS and the creditors, then the less preferred quasi-judicial determination and hearing stage would proceed, similar to Chapter 9. There would be creditor voting by affected class and the approval of the recovery plan by the Authority with any modifications or changes the Authority believes necessary to be consistent with the Sustainability Determination. The goal of the recovery plan and this process is a permanent resolution of the systemic financial and operational issues of CPS in order to avoid the recurrence of the systemic problems of the past and to provide a fresh start.

(c) Authority Operations. The Authority shall consist of at least three trustees and a professional staff with experience in education, finance, government, accounting and governmental and financial restructuring sufficient to fulfill its mission. The Authority shall initially have an oversight and technical assistance function which, if not successful, would progress into a quasi-judicial function as final arbiter of open issues. The Authority shall be funded by its ability to levy taxes to fund debt financing

and the Authority's operations. It shall be completely independent of state, city, CPS or any interested party.

(d) The Process.

1. Initiation. Petition by CPS or significant creditors (as defined in the legislation) that a governmental function emergency exists and one of the Trigger Events set forth in the legislation has occurred, such as CPS has defaulted on a designated percentage of debt, cannot pay its debts as they will mature and will default within 6 months, or there is a serious irreparable harm to the welfare of city and its residence due to the failure to perform by CPS. (See LGPA draft legislation triggers). The Authority can request a response from CPS if initiated by designated percentage of creditors. Within a short period of time, the Authority will decide if a governmental function emergency or government financial distress exists and if so the Authority will take jurisdiction. If the Authority takes jurisdiction, then it will immediately issue an order to:
 - (i) Stay all litigation involving the government or actions to obtain a preference by one creditor over others.
 - (ii) Schedule discussions, discovery, negotiations or mediation as the Authority deems necessary to first determine what debt and expenses of educational services are sustainable and affordable. The Sustainability Determination to be made first and then the recovery plan including debt adjustment determination.
 - (iii) Specify dates for hearing on sustainability and, if necessary, the process of voting on the proposed recovery plan and dates for hearing on objections to recovery plan.
 - (iv) Set dates when the Authority will make its determination of sustainability and ruling on recovery plan with any Authority-imposed modifications to the recovery plan.
2. Authority Management of the Process. The Authority is to manage the collection of information necessary to the determination of sustainability of a recovery plan and supervise and facilitate negotiation, mediation and resolution of issues and development of a recovery plan. The process will start more like a financial oversight authority assisting and facilitating negotiations and resolutions of issues in a recovery plan. (Requires approval of: 13 week rolling budget, interim and long-term operational plans,

expenditures and capital improvements as well as fostering mediation and resolution of issues). If agreement is not reached, the oversight turns to a quasi-judicial determination of issues binding on all parties with the power of the Authority to enforce its decisions on all parties in (state or federal, if possible) courts. The Authority consists of at least three trustees who would be designated as:

- (i) The Chair who would preside over hearings and be the ultimate determination of designated matters and the recovery plan;
- (ii) The Trustee for Mediation who would be in charge of supervising and establishing the procedures and rules for mediation and appoint special master or the mediators to preside over mediation and settlements to be recommended to the Authority and parties in interest; and
- (iii) The Trustee for Sustainability Determination who would be in charge of the Sustainability Determination process and the work of the professional staff of the Authority as well as disclosure of all necessary discovery and collection of information from the government and creditors necessary for the Sustainability Determination and the recovery plan.

The Authority is a blend of the benefits of a Financial Oversight Authority (such as Act 47 in Pa., Financial Control Board in N.Y. and Emergency Manager in MI) and Chapter 9 with expanded powers and no appeal. This strong medicine if agreement is not reached is intended to encourage early agreement to avoid a harsher judicial result.

3. **The Authority Shall Have the Power to:**

- (a) Subpoena or request information required to fulfill its mission from the sovereign or creditors.
- (b) Engage any professionals necessary to fulfill its mission.
- (c) Mediate and determine, if necessary, issues related to budget and appropriation, appropriate levels of governmental services, costs, taxes, pension funding and benefits to ensure sustainability during the process and ability of CPS to pay its adjusted debts and provide essential services to its citizens.

- (d) Encourage and approve settlements between CPS and creditor groups or individual creditors.
- (e) Recommend or approve interim financing and continued financing with, if necessary, super priority protection to ensure liquidity and funding during the process at the lowest borrowing cost possible. The Authority would be authorized to levy taxes dedicated to pay debt service and the costs of the Authority's operations. The Authority may act as a conduit issuer of the debt. If necessary, the Authority would be the final arbiter in negotiating and obtaining necessary funding.
- (f) Recommend cuts in CPS spending and tax increases as necessary for continued operation of the CPS.
- (g) Recommend mediation by CPS and any creditor or creditor group and require attendance and participation of affected creditors.
- (h) Require update on mediation discussion with creditors and CPS, progress reports and status of recovery plan and resolution with creditors.
- (i) Recommend the approval or disapproval of contracts, expenditures, loan creation or elimination of certain positions or operations.
- (j) Recommend staffing levels in relation to determination of sustainability and adjustment to staffing, hiring and compensation.
- (k) Recommend or require sale or other transfer of any asset, right or claim of CPS including privatization and lease.
- (l) Power under state law to enforce rulings and determination of the Authority in court including the power to authorize the filing of Chapter 9 to implement the approved recovery plan as a prepackaged or pre-negotiated Chapter 9 plan of debt adjustment with determination by the Authority that the requirements under the Bankruptcy Code to confirm the recovery plan as a plan of debt adjustment have, in its opinion, been met.
- (m) Monitor compliance with the recovery plan to prevent financial distress from reoccurring.

- (n) Take any other action necessary for the fulfillment of its mission.
4. **Authority to Encourage CPS and its Creditors to Resolve Matters Before Having to Issue a Ruling Binding on all Parties.** CPS and creditors are encouraged to use the process to quickly and effectively resolve their issues, develop a sustainable and affordable recovery plan that stimulates growth and development of business, provides for essential governmental services and the best return to creditors consistent with the Sustainability Determination. Only if CPS fails to act in good faith or fails to reach agreement on a recovery plan shall the Authority rule and be the final word binding on all without the right to appeal.
5. **Recovery Plan.** The recovery plan shall provide for:
- (a) Consistent with the Sustainability Determination, the continued operation of CPS at level of enhanced educational services to all that is acceptable and desired.
 - (b) Payment of the adjusted debt.
 - (c) Any necessary modification, rejection, termination, renegotiation or replacement of contracts including educational programs and public workers pensions paid for by CPS.
 - (d) Justification of any reduction in services or adjustment of debt, the reinvestment in the educational services and matching student education with needed skills and courses to obtain jobs.
 - (e) Any other matters that the Authority or the circumstances may require to allow CPS to alleviate the financial emergency and accept the recovery plan.
6. **Final Approval and Continuing Oversight.** The Authority may require as a condition of its approval continued oversight of operation, budgeting, tax collection or any other matters as a post approval of the recovery plan. This continued oversight may be by a board or overseer selected by the Authority or by periodic reports to the Authority.

7. **Sovereign Immunity for Authority.** Authority and its trustees, employees, agents and professionals shall all have global sovereign immunity from any claim or damage suffered.
8. **Enforcement and Implementation of the Recovery Plan as Approved by the Authority.** If the recovery plan is approved by the Authority but not all interested parties or creditors have consented to it, the Authority may authorize CPS to file a Chapter 9 proceeding with the recovery plan as approved being a pre-packaged or pre-negotiated plan and with consenting creditors bound to voting for that plan and with the limitation that only the recovery plan as approved can be proposed as a plan of debt adjustment.

IV. CONCLUSIONS

- A. **Chapter 9 Municipal Bankruptcy is not a Practical Resolution.** Chapter 9 is rarely used for school districts, with only 4 school districts filing for Chapter 9 in the last sixty years and none in the last twenty years, with two being dismissed without a Plan of Adjustment being filed. Chapter 9 provides no new source of funds, no supervision, oversight or jurisdiction over revenues, operations, academics or exercise of CPS power or use of CPS property. Chapter 9 has always been a last resort. Chapter 9 lacks a holistic approach to address CPS's financial, operational and academic issues.
- B. **The Resurrection of the School of Finance Authority Would Only Deal with Financial Issues.** The SFA was designed to deal with financial supervision and oversight and not operational issues or academics. Accordingly, the resort to SFA is not sufficient to fully address all the issues of CPS. While the 1979 crisis was financial, the current crisis is multifaceted, including financial, operational and academic issues that need to be addressed.
- C. **The Use of a Version of LGPA May Well Assist CPS in Addressing its Problems in a Holistic Mechanism.** The use of an Oversight Authority under LGPA would allow financial, operational and academic issues to be addressed simultaneously and effectively. The Authority would promote transparency in budgets and financial information, encourage resolution of creditor issues by negotiation and mediation, determine what is sustainable and affordable and what is not, help promote best practices and educational programs, foster the development of courses and programs focused on the educational skills needed for jobs in the market place so students can obtain their desired jobs. If consensual resolution on issues and a recovery plan cannot be reached, then the Authority as a quasi-judicial entity would make binding decisions as to open issues and whether the recovery plan should be approved. The Authority's decision would be enforceable in court and, if consent to the recovery plan is not possible, the approved recovery plan will become a prepackaged or pre-negotiated Chapter 9 plan of adjustment to be confirmed by the bankruptcy court and thereby binding on all.