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September 3, 2004

Aldo R. Jackson, Ph.D., Director
Erie County Technical School
8500 Oliver Road
Erie, PA 16509

RE: Educational Assistance Program

Dear Dr. Jackson:

I have reviewed the School's educational assistance program to determine whether payments made to employees under the program may be excluded from an employee's income for federal income tax purposes. Section 127 of the Internal Revenue Code ("Code"), 26 U.S.C. § 127, establishes the mandatory requirements necessary to create an eligible educational assistance program. Initially, the Code provides that educational assistance *in excess* of $5,250 in a calendar year is not excludable as taxable income. Therefore, eligible employees may receive up to $5,250 in educational assistance without being subjected to federal income tax relative to the educational assistance, provided the other eligibility criteria set forth below are satisfied. It appears that, in this case, none of the employees receiving educational assistance exceed this fairly high threshold.

An eligible educational assistance program must be in writing and must establish all requirements for participation in the program (*i.e.*, eligibility, amount and type of benefits provided). An exempt program must establish, in a nondiscriminatory manner, a class of employees eligible to participate in an educational assistance program. Section 127 of the Code expressly permits employers to establish a class of employees covered by a collective bargaining agreement for the purposes of eligibility for an educational assistance program where educational assistance benefits were the product of good faith bargaining between the employer and the employee representative. These criteria clearly are satisfied in this case.

An exempt program must ensure that not more than five percent (5%) of the total amount paid in educational assistance in a calendar year be paid to individuals who are shareholders or owners of the employer. A shareholder or owner is defined as an individual who owns more than five percent (5%) interest in the employer. Obviously, this factor is not applicable in this case.

An exempt program must not provide eligible employees with a choice between educational assistance and receiving other compensation that would be includible in gross income. Clearly, the School's educational assistance program does not do so.

Section 127 of the Code requires that the employer notify employees of the availability and terms of the educational assistance program. Obviously, the School has done this by including the terms of the plan in the collective bargaining agreement.

Based on the foregoing, the School's educational assistance program satisfies the requirements of Section 127 of the Code. Although the regulations provide that an employer may apply to the IRS for a determination that an educational assistance program qualifies under the Code, it is not required to do so. Moreover, the IRS has suspended the requirement that an annual return be filed for qualified educational assistance programs.

Should you have any additional questions or concerns, please feel free to contact me.

Very truly yours,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

BY:______________________________
Timothy M. Sennett

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