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Legal Alert: Involving Youth on Your Board

Effective nonprofits consider the entire communities they serve when determining organizational leadership. Engaging youth as Board directors can help a nonprofit organization establish both relevance and healthy relationships with the population and communities they serve and, in many cases, can play a role in furthering the nonprofit organization's mission. This Legal Alert will highlight some of the legal and practical considerations a nonprofit organization should take into account when determining whether to elect a young person to its Board.

Youth Directors under the NPCL

New York is one of the few states with specific laws on engaging youth in board membership. The New York Not-for-Profit Corporation Law (the NPCL) allows a nonprofit organization to have youth directors on its Board. However, nonprofits wishing to do so must first fall into certain categories. They must either be a "nonprofit organized for educational purposes primarily for the benefit of minors" or a "nonprofit organized for recreational or youth development and delinquency prevention purposes primarily for the benefit of minors."¹

A nonprofit organization organized for educational purposes primarily for the benefit of minors may include *one* director who is sixteen years or older on its Board. A nonprofit organization organized for recreational or youth development and delinquency prevention purposes primarily for the benefit of minors may have more than one youth director, so long as the total number of youth directors does not exceed one-half of the total number of directors required for a quorum.

Authorization

A nonprofit organization seeking to have youth serve on its Board of Directors should include an explicit provision in its bylaws allowing for the election of young people to the Board. A newly-incorporating organization that intends to have youth directors should also include this in its certificate of incorporation. If the organization is a recreational or youth development organization, it must also explicitly state in its certificate of incorporation that the number of such directors will not exceed that prescribed by the statute.

A nonprofit organization that is creating a new policy to include youth should make sure that its Board has adequately considered and made a determination that including youth directors is in the best interest of the corporation. The Board should also be sure to agree on how many youth directors should be on the Board.

Legal Rights

Like any Board member, a youth Board member has certain legal rights as a director of a nonprofit

¹ The NPCL also specifically allows certain Girl Scout, Camp Fire Girls, and Aspira entities to have one director who is at least sixteen years old.

organization. Youth directors have the right to vote on matters brought before the Board, of course, and they also have the right to access corporate records and communicate with management. However, since youth directors are minors, certain rights may be limited. For example, a youth director should not be given the authority sign anything on behalf of the organization, as a contract that is signed by a minor will likely not be held valid or enforceable. For this reason, nonprofit Boards should avoid electing youth directors to Board positions with the authority to enter into contracts.

Fiduciary Duties

Board members of any nonprofit corporation must carry out their duties of loyalty, care, and obedience when they take action or make decisions on behalf of the corporation. Youth directors should be held to the same standards, but note that these duties may not be *legally* enforceable against a youth Board member as a result of their status as a minor.

D&O Insurance

Many organizations have directors and officers (D&O) liability insurance, but these policies may not necessarily cover youth directors. Often, D&O policies do not specify a minimum age for coverage, but a nonprofit organization with youth Board members (or considering youth Board members) should check its insurance policy and speak with its insurance carrier to confirm coverage.

Other considerations

Having youth directors may require a nonprofit organization to provide additional support to ensure that the youth directors are able to carry out their responsibilities most effectively. For example, nonprofits should offer an orientation and ongoing training specifically for youth directors. Nonprofits with youth directors also need to consider time demands unique to youth, such as school responsibilities or afterschool activities.

A nonprofit organization with youth directors may also need to adopt or review relevant policies or practices to ensure effective representation by its youth directors, e.g., conflict of interest policy or reimbursement practices.

Alternatives for Involving Youth in a Nonprofit Organization

A nonprofit organization looking to add a youth perspective need not limit itself to a youth directorship. Some alternatives to board membership include:

- ❖ Creating a committee of the corporation composed of youth advisors
- ❖ Allowing youth to join an existing committee of the corporation
- ❖ Inviting youth to attend and observe Board meetings or other Board events
- ❖ Establishing a mentor program where youth can be matched with a Board member or other mentor in a leadership position at the organization
- ❖ Creating other opportunities for youth to learn from and work with your organization's leadership

This alert is meant to provide general information only, not legal advice. If you have additional questions about this legal alert, please contact Ciarra Chavarria at (212) 219-1800 ext. 228 or visit our website at www.lawyersalliance.org for further information.

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