

**COMPLIANCE FOR CHARTER SCHOOLS
AND OTHER EDUCATION CORPORATIONS WITH
THE NEW YORK STATE NONPROFIT REVITALIZATION ACT**

March 2014

The New York State Nonprofit Revitalization Act (the “Act”), which goes into effect on July 1, 2014, amends certain provisions of New York Not-for-Profit Corporation Law (NPCL)¹, Executive Law, Education Law, Religious Corporations Law, and the Estates, Powers and Trusts Law. Many of the changes in the Act reflect policies which have been recognized as best practices in the sector. Despite imposing new obligations, many provisions of the Act are intended to make forming new nonprofits easier, simplify certain nonprofit transactions, and reduce regulatory burdens on smaller nonprofits.

Since certain provisions of the Act applies to charter schools and other education corporations, this Legal Alert is designed to assist nonprofit managers, school leaders, and board members with taking the appropriate steps to come into compliance with the new law.

Newly Forming Organizations

Incorporating Schools and Certain Education-Based Corporations

No school, college, university or entity providing post-secondary education, library, museum, or historical society shall be incorporated under Business Corporation Law, Not-for-Profit Corporation Law, or any other general law without the consent of the Commissioner of Education, or in the case of a college or university, without the written authorization of the New York State Board of Regents.

Education Corporations Considered Charitable Corporations Under NPCL

In cases where an education corporation is subject to the NPCL, an education corporation is considered a “charitable corporation” as defined by the NPCL.

Existing Organizations

Adopt/Review Conflicts of Interest Policy

- All nonprofits are now required to have a Conflicts of Interest Policy for directors, officers and key employees.²
- Review any existing conflicts policy to ensure adherence to statutory requirements including new definitions (such as “independent director”), procedures for disclosing

¹ New York education corporations (including charter schools) are governed by the NPCL to the extent provided under Education Law §216-a.

² Charter schools are also subject to Sections 800-809 of the New York State General Municipal Law, which addresses conflicts of interest of municipal officers and employees.

a conflict, and prohibition against participation by the conflicted individual in board deliberations.

- Conform the conflicts policy to new statutory definitions of “related party transaction” and standard for board review of such transactions, which must be fair, reasonable and in the organization’s best interests. *Note that the New York State Attorney General now has the power to enforce the prohibition against unlawful transactions.*
- Individuals may not participate or vote in committee or board meetings to make compensation decisions that will affect them. The statute also expands the current requirement of “reasonable” compensation.

Adopt/Review Whistleblower Policy

- Nonprofits with more than 20 employees and \$1 million in revenue are required to adopt a whistle blower policy.
- The policy must include procedures for reporting violations, and be distributed to employees, volunteers, officers, and directors.

Board Chair

- No employee of the nonprofit may serve as Board Chair, effective January 1, 2015.

Simplify Board Operations

- Notice of board and member meetings, waiver of notice, and action by unanimous written consent may now be made electronically.
- Board members may participate in meetings by video conference³.
- For organizations whose bylaws provide for a range, rather than a fixed number, of directors, “entire board” is now defined as the number of directors authorized as of the most recent election of directors.

Mergers

Education corporations may enter into mergers in addition to consolidations, creating the option of having a surviving entity rather than having to form a new consolidated entity.

New York State Attorney General Annual Reporting Requirements and Audit Guidelines

Charter schools and other education corporations that are registered or required to be registered as a charity with the New York State Attorney General’s Office⁴ and file annual reports must comply with the following:

³ Charter schools and certain education corporations that conduct public business or perform a governmental function are subject to Open Meetings Law, which requires, among other things, public notice of board meetings, the ability of the public to participate in meetings in person and also meetings held by teleconference, videoconference or any other means, and the availability of meeting minutes to the public.

⁴ The following charter schools and education corporations may be exempt from registration: i) educational institutions that limit solicitations for contributions to its student body, alumni, faculty and trustees, and their families; ii) fraternal, patriotic, social, alumni, law enforcement support organizations and historical societies chartered by the New York State Board of Regents when solicitation of contributions is confined to their membership; iii) Any charitable organization which solicits or receives gross contributions of less than twenty-five thousand dollars during a fiscal year of such organization, provided none of its fund raising is carried on by professional fund raisers or fund raising counsel; iv) an educational institution which files annual financial

- Annual gross revenue threshold triggering filing a mandatory independent audit with the Attorney General's office is raised to \$500,000 (from \$250,000) as of July 1, 2014, and will be raised again, to \$750,000 as of July 1, 2017, and to \$1 million as of July 1, 2021.
- Annual gross revenue threshold triggering filing a review report by an independent CPA with the Attorney General's office is raised to \$250,000 (from \$100,000) as of July 1, 2014. However, the AG may require such organizations to file an audit report after reviewing the report.
- Individuals engaged solely as grant writers must no longer register as "fund raising counsel."
- For nonprofits with annual gross revenues of over \$500,000, the board or an Audit Committee must retain or renew the auditor and review the results with the auditor.
- For nonprofits with annual gross revenue over \$1 million, the board or Audit Committee have additional audit oversight duties including, among other things, holding pre- and post-audit conferences with the auditors.
- These requirements are effective July 1, 2014, except organizations with annual revenues under \$10 million will have until January 1, 2015.

This alert is meant to provide general information only, not legal advice. Please contact Nicole Cuttino at Lawyers Alliance for New York at (212) 219-1800 x 228 or visit our website www.lawyersalliance.org for further information.

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reports with the Regents of the University of the State of New York as required by the Education Law or with an agency having similar jurisdiction in another state or a library which files annual financial reports as required by the state education department; or v) the state parent teachers association and any parent teachers association affiliated with an educational institution that is subject to the jurisdiction of the New York State Education Department.