

The Role of Nonprofits in New York's Public Education System

On September 8 school doors all across the City flew open as more than one million students poured through for the first day of the new academic year. Meeting the diverse educational needs of these students, ranging from five-year-olds clinging to their parents' legs to rough-and-tumble teenagers from neighborhoods beleaguered by drugs, crime, and poverty, is a challenge that cannot be addressed by politicians and the Department of Education alone. Instead, ensuring that young people in all of New York's neighborhoods have access to high quality educational opportunities requires input from the private sector and nonprofit organizations too.

Lawyers Alliance for New York has helped nonprofits with many legal matters that enable them to play a variety of roles in New York's public education system. Three areas on which

nonprofits often focus include charter schools, small schools, and in-school and after-school programming.

Charter Schools

Creating a network of charter schools is one educational reform idea being implemented by Mayor Bloomberg and Chancellor Klein, as part of *Children First*, a multi-year effort to improve academic achievement across the school system. To establish and run a charter school, however, involves much more than lining desks in rows, hiring teachers, and preparing curricula. In addition to building solid educational foundations, administrators at charter schools must also create legal infrastructures that will facilitate operations. Fortunately, Lawyers Alliance is available to help address these legal matters, which include

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Nonprofits During Election Season

Voter Registration, Get-Out-the-Vote Drives & Other Ways to Be Active Without Fear

Nonprofits play a vital role in encouraging civic participation among New York City's poorest and most disenfranchised voters. Electoral work by nonprofits may include a range of activity, such as:

- educating people on how the electoral system works
- registering eligible persons to vote
- informing people about the location of voting booths and how to vote
- holding candidate forums
- circulating candidate voting histories
- explaining the importance of the right to vote and how each person's vote can make a difference.

Even charitable organizations that are tax-exempt under 501(c)(3) of the Internal Revenue Code can engage in these activities as long as these programs are *nonpartisan* in design and practice.

Lawyers Alliance for New York advises many of the City's nonprofits on how to conduct voter education, registration, and get-out-the-vote (GOTV) drives in a manner that complies with the law. In this election season, we know that many of our clients are active in this area, so we provide basic information and guidance.

Section 501(c)(3) of the Internal Revenue Code strictly prohibits partisan political activity, including partisan electoral activity, by organizations that are classified as exempt under that section. This restriction prohibits 501(c)(3) organizations from participating in any political campaign, whether in support of, or in opposition to, a candidate for public office. It is important to comply with this prohibition because violating it can result in an extreme penalty – revocation of an organization's tax-exempt status. Nonprofits engaged in electoral work must ensure that their programs are nonpartisan in design and

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Nonprofits During Election Season

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implementation and that they do not exhibit a preference for, or opposition to, any particular candidate or political party.

In conducting their work to encourage civic participation, nonprofits frequently use issue-based communications, which pose a unique set of legal challenges. Nonprofits dedicated to a particular mission will be inclined to select issues that reveal the candidates' positions on those important questions that will affect their work. However, if competing candidates' positions are in clear contrast on those issues, the communication may implicitly take on a partisan flavor. Any reference to specific public issues should be carefully crafted to be strictly nonpartisan, and we encourage nonprofit

groups to broaden their communications in order to avoid even the appearance of supporting or opposing political candidates.

Electoral activity by nonprofits is invaluable, but raises complicated issues with many gray areas. Given that the consequences of violating the prohibition on partisan activity can result in revocation of exempt status, we encourage nonprofits to think carefully about how they implement their civic participation work, including the communications that accompany their voter registration and GOTV drives.

We would be happy to discuss your questions about electoral activity by 501(c)(3) organizations. Please contact **Sunita Subramanian**, Staff Attorney, at 212-219-1800, ext. 232 or ssubramanian@lany.org. ■

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Do's and Don'ts

Do's — Voter Registration and GOTV

- ✓ A nonprofit may target particular populations for its electoral work as long as they are selected on a nonpartisan basis. It is fine to target: (1) populations that are traditionally underrepresented in the political system or disenfranchised; or (2) populations that represent the nonprofit's constituency or that reside in the geographic areas the nonprofit serves.
- ✓ A nonprofit can encourage people to register and vote in order to voice their opinions on public policy issues, whatever those opinions may be, as long as the issues are broad in scope or are not clearly identified with a party platform or any one candidate's public positions.

Do's — Other Voter Education

- ✓ A nonprofit can hold a candidate forum as long as the organization invites all of the candidates running for the particular office; asks questions covering a broad range of issues (not just those of interest to the nonprofit); uses a neutral moderator; refrains from commenting on, or rating, candidates' answers; and otherwise conducts the forum in a nonpartisan manner.
- ✓ A nonprofit can circulate summaries of candidates' voting histories or surveys of candidates' positions on particular issues as long as the material (1) covers all of the candidates for office; (2) covers a broad range of subjects (not just those of interest to the nonprofit); and (3) does not grade or comment on the voting records.

Don'ts —

- ✗ A nonprofit cannot support or oppose – explicitly or implicitly – candidates for public office or political parties, and communications that accompany electoral work should be carefully written.
- ✗ A nonprofit should not identify particular candidates or their viewpoints when encouraging people to vote or register to vote.
- ✗ A nonprofit cannot register or aim GOTV activity only at people who are registered to a particular party, and those conducting the program cannot ask about the party affiliation of their audience.
- ✗ Those conducting a voter registration or GOTV program must refrain from sharing their opinion on candidates or parties if asked by the potential registrant.
- ✗ A nonprofit that references public policy issues as a means to encourage civic participation may not select only the issues of interest to the organization and should take care not to use the issues in a partisan way. ■

Nonprofits in New York's Public Education System

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formation and governance documents, facility shared use agreements, management service agreements, and other policies and contracts.

In 2000, for example, Lawyers Alliance staff and volunteer attorneys from **Skadden, Arps, Slate, Meagher & Flom LLP** began to help board members and administrators from the **EXPLORE Charter School** establish a new structure to operate a school and thereby turn their visions of educational opportunity for underserved youth into a reality. By fall 2002, 150 K-3rd graders were working on lessons that would enable them to think critically, independently, and creatively.

Since then legal work has continued, and last year pro bono attorneys at **Orrick, Herrington & Sutcliffe LLP** helped the school develop an employment manual and provided ongoing advice on matters such as workers compensation and disability issues. Together with other nonprofit organizations, Lawyers Alliance will continue to build a better New York by enabling charter schools to fill a niche in the public education system.

New Small Schools

Current education reforms also include replacing overcrowded, underperforming high schools with smaller ones that focus on a particular subject or area of interest. To establish these small schools, the City Department of Education often collaborates with existing nonprofits, which act directly as a sponsor of the school. Other times nonprofits are created to provide funding and other resources to support the development and programs of a particular school. In both cases, participating nonprofits often need help with legal matters related to contracting, nonprofit law, regulatory compliance, and facilities expansion, and Lawyers Alliance is ready to assist them.

Earlier this year, for example, Lawyers Alliance staff and volunteer attorneys from **Duane Morris LLP** created by-laws for the **Eagle Academy Foundation**. The purpose of this group is to support the Eagle Academy in the Bronx, New York's first all-male high school, sponsored by 100 Black Men. The Eagle Academy opened its doors to 100 ninth graders in 2004 and greeted a new freshman and returning sophomore class when school doors opened on September 8, 2005. Small schools strengthen the public education system by offering students unique opportunities. Lawyers Alliance looks forward to continued work with those nonprofits that provide technical, financial, and pedagogical support for small schools.

In-School and After-School Programs

Nonprofits also fill a void by operating supplemental educational programs, which can play an important role in students' development. For example, Lawyers Alliance has worked with **Youth America** to develop a job skills and community service program. More specifically, with the help of volunteer attorneys from **Sonnenschien Nath & Rosenthal LLP**, Youth America enabled students at the Benjamin Banneker High School in Brooklyn to set up a retail store that sells school supplies, school apparel, and sportswear. These attorneys drafted the necessary contract with school officials and negotiated the terms of the partnership with the Department of Education. Supplemental programs empower students to develop to their full cognitive, social, emotional, and physical potentials, and Lawyers Alliance is available to advise the broad array of nonprofits that work in this area.

Thanks in significant part to the collaborative efforts of New York's nonprofit organizations, and their pro bono attorneys, in ten short months shy five-year-olds will be reading boldly from books, and rough-and-tumble teens will move up a grade or clutch their diplomas. ■

Spearheading Lawyers Alliance's Children and Youth Services Initiative is Senior Staff Attorney **Maria Cilenti**. This initiative is designed to provide expanded, quality legal help to nonprofits engaged in childcare, after-school programs, charter and alternative schools, public school improvement, youth development, and other programs to improve the lives of the City's young people.

Ms. Cilenti joined Lawyers Alliance's legal team in July 2005 and brings a wealth of employment and nonprofit law expertise. No stranger to pro bono, Ms. Cilenti was first introduced to Lawyers Alliance as a volunteer when she worked with New York Peer AIDS Education Coalition (NYPAEC) on a review of its personnel policies. Prior to joining Lawyers Alliance, Ms. Cilenti was a partner in the New York office of Duane Morris LLP, where she worked for eight years and also served as the pro bono liaison to public interest law organizations.

Prior to her employment at Duane Morris LLP, Ms. Cilenti was the co-founder of a company that provided comprehensive childcare information services in New York City, an Assistant Attorney General in the Charities Bureau of the New York State Department of Law, and an associate at Shea & Gould. She currently serves as Chair of the Sex and the Law Committee of the Association of the Bar of the City of New York. ■

New Staff Members at Lawyers Alliance



Lawyers Alliance for New York welcomes three new talented and committed staff members. Left to right:

Maria Cilenti is Lawyers Alliance's newest Senior Staff Attorney at ext. 222 (see sidebar on page 3);

Angela Cheng is Program Associate for Client Relations at ext. 278; and

Jessica Boxell is the new Administrative/Pro Bono Assistant at ext. 223.

Lawyers Alliance Staff

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Enrique Ball
Director of Development

Jessica Boxell
Administrative/Pro Bono Assistant

Jolynda Burton
Pro Bono Coordinator

Angela Cheng
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Sunita Subramanian
Staff Attorney

Do You Seek Nonprofit Legal Information?

Lawyers Alliance for New York's **Resource Call Hotline** is a unique telephone service for clients, volunteer attorneys, and members of the public who have questions about nonprofit law. In just one year, Lawyers Alliance responded to more than 600 resource calls. How can we answer so many legal questions promptly and informatively? The answer is simple. We have a dedicated team of attorneys who are experts in the practice of nonprofit law.

Lawyers Alliance officially established the Resource Call Hotline in 1997 as an additional support service for New York City's nonprofit groups. Since then, our attorneys have answered thousands of questions such as: What type of receipt or documentation must a nonprofit give to a donor? What background checks must, or may, an organization conduct

for employees working in its after-school program? Is it true that board members cannot vote by proxy? And does the Sarbanes-Oxley Act apply to nonprofits? In addition, our attorneys refer callers to model documents and other valuable resources. For many nonprofits, important legal questions arise unexpectedly and knowing that Lawyers Alliance is only one phone call away alleviates their concerns and leaves them free to attend to programmatic issues. For pro bono counsel, this service can direct them quickly to relevant information that they may not regularly encounter in their daily legal practice. So, the next time you or your nonprofit organization is pondering a legal question, call us at 212-219-1800 ext. 224, and one of our attorneys will call you back within 48 hours. ■

Continuing Legal Education Event — January 20, 2006

Lawyers Alliance for New York will present *Current Issues in Advising Nonprofits*, a full-day CLE training program for current and prospective pro bono attorneys, counsel to nonprofit organizations, and other interested lawyers. The day begins with *Life Cycle of a Nonprofit Organization*, a plenary session that will provide an overview of the state and federal laws governing New York charities during different phases of their existence. In the first afternoon breakout session participants will choose to attend *Advising Nonprofits on Employment Law Issues* or *Creating Affordable Housing* and in the second afternoon breakout session they will choose between *Community Lending* and *Ethical Issues in Pro Bono Representation*.

For more information or to register, please contact Lawyers Alliance at 212-219-1800 or check the website at www.lany.org. ■

What:

Current Issues in Advising Nonprofits

When:

Friday, January 20, 2006
9:30 a.m. - 4:30 p.m.

Where:

Laura Parsons Pratt Conference Center
281 Park Avenue South
New York, New York

Dispensing Dollars & Sense: Pro Bono Lawyer Helps to Negotiate a New Lease for Community Credit Union

It arrived at Lawyers Alliance for New York in a regular way – manila envelope, stamps and postal markings of the usual sort. Inside, the contents were anything but ordinary. The envelope held a carefully prepared Request for Legal Assistance Form (LAF) from the **Bushwick Cooperative Federal Credit Union** (currently known as the Brooklyn Cooperative Federal Credit Union).

Once the pages of the LAF were released from the envelope and spilled across an attorney's desk at Lawyers Alliance for New York, the compelling story unfolded of a low-income neighborhood in dire need of a credible financial institution and a community development credit union willing to help. Among other things, the application stated: "The mission of the Bushwick Cooperative Federal Credit Union is to deliver affordable financial services to the economically disadvantaged community of Bushwick. The core services include: savings accounts, small-scale loans, and educational opportunities." The application also requested legal assistance in reviewing loan policies and procedures to ensure they were in accordance with the organization's newly established charter. Hooked, the legal director and staff attorneys not only decided that the plans and activities of the Bushwick Cooperative FCU met Lawyers Alliance's mission criteria, but they also determined that this organization had a concrete legal matter that fell within the scope of work done by Lawyers Alliance.

As a result, staff attorneys arranged a screening meeting; Lawyers Alliance and the Bushwick Cooperative FCU signed a retainer agreement; a pro bono attorney volunteered; and the case proceeded through a host of legal channels until the loan policies and procedures were drafted to the satisfaction of both the lawyers and client. That was five years ago, and today Lawyers Alliance staff and volunteer attorneys are still serving the Brooklyn Cooperative FCU.

Most recently, **Marc Hurel**, a pro bono attorney from **DLA Piper Rudnick Gray Cary US LLP**, helped the Brooklyn Cooperative FCU avert a potential real estate emergency by negotiating a long-term lease. Earlier this year the Brooklyn Cooperative FCU sought to move its offices to another suitable location. After identifying a space that seemed perfect, together with Marc Hurel, they spent several months

negotiating a deal. In the final hours, the deal fell through leaving the Brooklyn Cooperative FCU scrambling in its search for a new home.

Fortunately, several weeks later the Brooklyn Cooperative FCU found a possible space at 1474 Myrtle Avenue, and Marc Hurel again was ready to help. However, time was tight because the client was facing 30 days notice to vacate their current offices. Unfazed, Mr. Hurel drafted and sent a lease that was signed promptly by all parties.



On July 30, 2005 another envelope arrived at Lawyers Alliance. This time it was addressed to Senior Staff Attorney **Neil Stevenson** and contained a copy of a thank you letter sent to Marc Hurel in which **Jack Lawson**, Manager and Financial Officer of Brooklyn Cooperative FCU, wrote: "On behalf of our staff, board, and membership, I want to thank you, once again, for your help in securing our new lease at 1474 Myrtle Avenue. As you know, the pressure to vacate our current offices, a small budget, management of existing programs, and, not least, rapidly inflating local real estate market, all conspired to make the search process especially challenging for us. Your unwavering support and guidance through the process was a critical asset. I sincerely believe that we have struck a deal that will benefit credit union members for decades to come." Echoing this sentiment, Mr. Lawson indicated on his *Closing Questionnaire for Clients* (a survey sent to clients by Lawyers Alliance when a case is complete) that Lawyers Alliance's assistance enabled the Brooklyn Cooperative FCU to acquire/lease property. Similarly, it said that the volunteer attorney was professional, prompt, concerned, and smart while the Lawyers Alliance attorney was available and in the loop as needed.

Lawyers Alliance has, therefore, helped to solve legal matters that will enable members of the Brooklyn Cooperative FCU to buzz through a new space contributing to their savings accounts, securing loans, attending educational seminars, and using newly installed ATMs. ■

Become a Volunteer

To join Marc Hurel and the hundreds of other attorneys who serve as pro bono counsel for Lawyers Alliance's clients, you can contact Jolynda Burton, Pro Bono Coordinator, at 212-219-1800 ext. 242.

Become a Client

To join the Brooklyn Cooperative Federal Credit Union and the more than 450 other nonprofit clients and community groups that Lawyers Alliance serves each year, call Angela Cheng, Program Associate for Client Relations, at 212-219-1800 ext. 278. Our legal staff looks forward to discussing with you the compatibility between your organization's mission and that of Lawyers Alliance as well as the nature of the legal assistance that your nonprofit organization requires.

Thursday, November 17, 2005

Save the Date for the 2005 Cornerstone Awards

Each year at the Cornerstone Awards ceremony, Lawyers Alliance for New York recognizes and pays tribute to volunteers whose pro bono service has had a particularly far-reaching impact. Through their efforts, these individuals and firms have helped nonprofits to deliver essential services and improve the quality of life for thousands of New Yorkers.

When: Thursday, November 17, 2005
6:00 p.m. – 8:00 p.m.

Where: Colgate-Palmolive Company
300 Park Avenue
New York, New York

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For more information, please contact Lemont Leige at 212-219-1800 ext. 225.

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