



## New York State Education Department

### *Guidelines for Submitting an Application for Merger/Consolidation*

**December 2015**

The Regents of The University of the State of New York  
Charter School Office  
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## Application for the Merger/Consolidation of Multiple Education Corporations

### PLEASE NOTE:

1. A consolidation occurs when two or more existing corporations [for ex. (A) and (B)] are combined into a newly created corporation (C) which begins its corporate existence, and the corporate existence of each constituent corporation (A) and (B) terminates. A merger occurs when two or more existing corporations [for ex. (A) and (B)] combine, with the corporate existence of one of the constituent corporations [for ex. (A)] continuing as the surviving corporation, and the corporate existence of (B) terminates.
2. All submissions of materials as well as any questions should be directed to the liaison for the school authorized by the Board of Regents.
3. An answer must be provided for *each* numbered application prompt.
4. If the applicant is proposing a cross-authorizer merger, any pending revision requests (excluding the merger) must be resolved prior to the acceptance of the merger application by the Board of Regents.
5. In addition to the documents and information requested herein, if the applicant is proposing a cross-authorizer merger, the authorizing entity must provide documentation confirming approval of the proposed merger into an education corporation authorized by the Board of Regents before the application will be considered.
6. Additional and/or clarifying documentation and assurances may be requested prior to the acceptance of the merger application. The Department may also schedule a site visit to assess the academic, organizational and fiscal soundness of schools proposing to merge into an education corporation authorized by the Board of Regents.
7. The narrative portion of the application should not exceed twenty five (25) total pages of narrative, and shall not exceed the page limitations set forth in the heading for *each Part* of the application. The font shall be Calibri or Times New Roman 12-point font.
8. All merger requests must be submitted no later than December 15<sup>th</sup> of *the year prior to implementation*.

## **Application Overview**

Education Law §223 provides that the Regents may consolidate or merge any two or more corporations chartered by the Regents or incorporated under a special act of the Legislature or under a general law for purposes for which a charter may be granted by the Regents. In addition, many provisions of Article 9 of the Not-For-Profit Corporation Law, dealing with merger and consolidation of corporations, are made applicable to education corporations by the provisions of Education Law §216-a. Under that Article, merger or consolidation may be effected by the filing of a certificate with the Department of State. However, where one or both of the constituent corporations, or the proposed consolidated corporation, is an education corporation, no certificate of merger or consolidation may be filed except with the consent of the Board of Regents.

Since the Regents may consolidate or merge education corporations by order pursuant to Education Law §223, they do not ordinarily consent to the filing of a certificate under NPCL §904. However, under circumstances in which consolidation or merger pursuant to Education Law §223 is not practical, consent to merge with a not-for-profit corporation may be granted by the Board of Regents.

The objective of the Merger Application is to provide the Charter School Office (CSO) with details that support the applicants' rationale for merging. The application also provides information about the schools and explains how the proposed merger will impact school configurations, school governance, school community, finance, academic policies and programming, and staff.

Because each school merger presents unique circumstances, the CSO may ask for additional information and/or documentation in order to complete its review of the Merger Application.

**Address how each individual school will be affected by a merger by completing the configuration tables included below, providing narrative responses and documentation where prompted.**

**PART I. EXECUTIVE SUMMARY** (narrative not to exceed two (2) pages)

1. Provide a brief summary for proposed education corporation configuration and governance.
2. Address the rationale for merging by addressing each of the following guiding questions through narrative:
  - a. How will merging benefit students?
  - b. How will merging benefit staff?
  - c. How will merging benefit the community and/or stakeholders?
  - d. How will merging improve the Board of Trustees capacity to govern its schools?
  - e. How will merging improve schools' operations and finances?
3. Provide a list of all proposed charter revisions included in the merger application. Please note: Any revisions not specifically mentioned and approved by the Board of Regents may not be implemented by the surviving Education Corporation.
4. Address any additional benefits you anticipate as the result of a merger.
5. Indicate any anticipated challenges as the result of a merger and how those challenges will be addressed.
6. Provide a timeline for the merger.

**PART II: EDUCATION CORPORATION CONFIGURATIONS** (narrative not to exceed four (4) pages)

- a. List the Authorizing Entity for each education corporation to be merged (i.e, NYC Department of Education, SUNY Charter schools Institute, or Board of Regents), and the proposed authorizing entity after the merger.
- b. If the applicant is proposing to merge *into* an education corporation authorized by the Board of Regents and away from an education corporation authorized by another authorizing entity, provide:
  - i. A formal letter from the current authorizer approving of the proposed merger
  - ii. A complete copy of the merger proposal and any attachments sent to the current authorizer
  - iii. The most recent Corrective Action or Probation letter provided to the school by its current authorizer together with documentation of successful completion of all listed concerns
  - iv. An enrollment and discipline policy for each school

- v. Recent monitoring reports for each school
- c. If the merged education corporation is to be renamed, state the new name.
- d. Provide an original and two copies of a Merger Petition, duly executed and acknowledged before a notary public, the original and two copies of an agreement of consolidation or an agreement of merger, the original and two copies of certificates of approval of the agreement of consolidation or agreement of merger by not less than three-fourths of the whole number of trustees of each constituent corporation and, if desired, a plan of merger or plan of consolidation pursuant to NPCL §902. The Plan must detail the transfer of all assets and liabilities of each education corporation being merged or consolidated and must specify that no liabilities are avoided and no assets are removed by merging or consolidating existing education corporations. The Plan must also specify the date(s) each school/education corporation held a public meeting of its board specifically for the purpose of voting on the merger agreement. These documents must be sent by mail to the following address:

NYS Education Department, Office of Counsel  
 89 Washington Avenue, Room 148 EB  
 Albany, New York 12234

An electronic version of all documents sent to the Office of Counsel must also be sent by email to the Charter School Office at: [charterschools@nysed.gov](mailto:charterschools@nysed.gov). The subject line of the email should read: "Proposed Meger for (Name of School)." No fee is required.

**Table 1: Current and Projected Authorizers**

Use the table below to describe the current and projected authorizers for each school that would be affected by the merger being addressed in this application. Add rows to the table if needed.

<b>Current School Name</b>	<b>Current School Education Corporation Name</b>	<b>Current Year in Charter Term</b>	<b>Current School Authorizer (NYC DOE, SUNY CSI, or NYSED)</b>	<b>School's Intended Authorizer Post-Merger</b>
<i>School 1</i>				
<i>School 2</i>				
<i>School 3</i>				

**Table 2: Current School Configurations**

Use the table below to describe the current configurations for each school that would be affected by the merger being addressed in this application. Add rows to the table if needed.

Current School Name	Current Assumed Name / DBN	Current CSD	Current Grades Offered	Maximum Approved Grades	Current Enrollment	Maximum Approved Enrollment
School 1						
School 2						
School 3						

**PART III: GOVERNANCE** (narrative not to exceed three (3) pages)

**Table 3: Proposed Board Configurations Post-Merger**

Use the table below to describe the board configuration post-merger. Add rows to the table if needed.

School Name	Name of Current Board Members	Name of Board Members that Voted to Approve Proposed Merger	Name of Proposed Board Members Post-Merger
School 1			
School 2			
School 3			

1. Describe how merging will affect the following:
  - a. School governance and operations
  - b. Oversight of schools
  
2. Provide the following Board of Trustees materials for the each education corporation to be merged:
  - a. Board roster, including positions and terms
  - b. Board meeting minutes for the last twelve meetings
  - c. By-laws
  - d. Code of Ethics
  - e. Meeting calendar

3. Describe any additional anticipated impact on school governance post-merger.
4. Provide evidence of resultant board capacity to oversee merged schools by detailing:
  - a. Members' previous records of meeting attendance
  - b. Evidence of functional board committees including:
    - i. Written examples of committee reports
    - ii. A list of members for each committee
  - c. Evidence of compliance with applicable laws and regulations (New York Open Meetings Law and General Municipal Law) by detailing:
    - i. Evidence that meeting notice was made publicly available prior to meeting dates (e.g., newspaper notices, screen shots or links if posted on school's website)
    - ii. Evidence that board makes materials to be reviewed during meetings available to the public upon request prior to or at the meetings
5. For each proposed board member of the surviving or consolidated corporation, which board member was not previously approved by SED, attach all documents set forth in 2015 guidance, located at <http://www.p12.nysed.gov/psc/addbotmember.html>.
6. Provide meeting minutes from each affected board indicating an affirmative vote for the Education Corporations to merge under the oversight of a resultant board.
7. Submit proposed revised charter management agreements (for charter schools with CMO, EMO or ESP).
8. Describe any changes anticipated to management agreement (if schools contract with a CMO/EMO), including:
  - a. Changes to fees
  - b. Changes to services provided
  - c. Contract consolidation

**PART IV: SCHOOL COMMUNITY** (narrative not to exceed two (2) pages)

1. Describe the outreach/engagement each school (or education corporation) has conducted up to this point to solicit the school community's feedback on the proposed merger.
2. For each school, provide evidence of the school community feedback received thus far.
3. Provide a current organizational chart for each school.

**PART V: FINANCE (narrative not to exceed three (3) pages)**

1. Provide the school's current budget.
2. Provide an updated 5 year budget projection for each school using the budget template posted on the Annual Report page, which is located at <http://www.p12.nysed.gov/psc/2014-2015AnnualReportPage.html>
3. For each school, identify the impact of charter merger on:
  - a. Accounting software
  - b. Administrative functions (front office and back office)
  - c. Policy and Procedure Manual
  - d. Food, transportation and health services
  - e. Purchasing and contracting
  - f. Insurance
  - g. Dissolution procedures
  - h. Financial audits, including single audits
4. Provide a corrective action plan addressing any annual financial audit finding(s) from the past two years.
5. Provide a copy of the most recent management letter received from each school by its independent auditor (if any), along with documentation of steps taken to resolve each deficiency raised in the letter.
6. Provide a copy of the most recent audit of the school by the Office of the New York State Comptroller (if any), along with documentation of steps taken to resolve each concern raised in the report.

**PART VI: ACADEMIC POLICIES AND PROGRAMMING (narrative not to exceed three (3) pages)**

For each school, describe how merging will affect students in regards to:

1. Enrollment policies
2. Transfer of students between schools, if permitted by the authorizer
3. The ability of schools under each charter to meet or exceed the enrollment and retention targets established by NYSED
4. Academic programming
5. Student academic performance

6. Provision of academic program to at risk students (including provision of services to students with disabilities (“SWDs”) and English Language Learners (“ELLs”))
7. Any additional anticipated impact on students post-merger

**PART VII: STAFF** (narrative not to exceed three (3) pages)

For each school, describe how merging will affect staff in regards to:

1. The hiring/termination processes
2. Collective bargaining agreement considerations, if applicable.
3. Utilization of staff across schools
4. Any additional anticipated impact on staff post-merger

**PART VIII: ACADEMIC PERFORMANCE** (narrative not to exceed three (3) pages)

Provide the following information for each school:

1. ESEA Accountability Designation (e.g., Reward, Focus, Priority, etc.)
2. For the previous academic year, the aggregate proficiency on 3-8 ELA and math assessments, and an analysis of how the school compares to state proficiency levels (if the school does not serve grades 3-8 write “N/A”)
3. The aggregate proficiency on 3-8 ELA and math assessments, differentiated by subgroup, and an analysis of how the school’s subgroups compare to state subgroup proficiency levels (if the school does not serve grades 3-8 write “N/A”)
4. Annual Regents testing outcomes for every tested subject and an analysis of how the school compares to state Regents testing outcomes for every tested subject
5. Cohort Regents testing outcomes for ELA, mathematics, science, Global History and US History and an analysis of how the school compares to state Regents testing outcomes for every tested subject
6. High School graduation rate, and an analysis of how the school’s rate compares to statewide four year cohort graduation accountability rate of 80%

**PART IX: LEGAL COMPLIANCE (narrative not to exceed two (2) pages)**

1. For each school, provide a list of all teachers employed in the current year, including certification area and status. If uncertified, provide documentation establishing that the teacher meets one of the four categories set forth in Education Law §2854(3)(a-1).
2. For each school, provide the percentages of SWDs, ELLs, and ED students enrolled at the school and an analysis of how the school's population compares to the percentages of each subgroup in the district of location.

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