



Charter Schools Institute
The State University of **New York**

Guide to Facilities Reporting

*For Charter Schools Authorized by the
State University of New York Board of Trustees*

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INTRODUCTION

This guidance describes a charter school education corporation's obligations regarding facility reporting by applicable charter agreement provision(s), applicable laws and regulations, discussion, and responsible tasks. This guidance outlines the new reporting requirements in Epicenter for establishing new facilities, changing facilities, or expanding into new facilities, and revised charter agreement provisions being used for new and renewal charters. Please note this guidance replaces all prior facility memos and guidance. If you have any questions regarding the information provided in this guidance, please contact the legal department of the SUNY Charter Schools Institute (the "Institute") at 518-445-4250 or charters@suny.edu.

1. *Applicable Charter Agreement Provisions*

The following images show the applicable provisions from the Model Charter Agreement:

- Section 3.14, *Facilities; Location*.

3.14 Facilities; Locations. The building(s) in which any school is to be located shall be known as its school facility (the “**School Facility**”).

(a) Prior to May 15 of the year that any school intends to provide instruction for the first time, the Education Corporation shall have:

(i) entered into a lease, purchase agreement or other such agreement for such School Facility that has been reviewed by counsel to the Education Corporation. The Education Corporation shall provide to the Trustees a letter from counsel attesting to such review prior to the May 15 deadline. The lease, purchase agreement or other such agreement shall provide the Education Corporation with all rights and permissions as are necessary to operate the school in the School Facility according to the plan for the school set forth in the Terms of Operation (the “**Facility Agreement**”);

(ii) provided to the Trustees for review and approval a copy of the Facility Agreement, and a detailed schedule setting forth the steps necessary to make the School Facility ready for commencement of instruction, together with the dates upon which such steps will be completed (the “**Facility Completion Schedule**”). The Facility Completion Schedule shall indicate the permits and licenses required to be obtained prior to the Education Corporation being legally able to operate the school in the School Facility (including, but not limited to, a certificate of occupancy or equivalent) (collectively the “**Permits**”) with the dates on which each such Permit shall be obtained, a detailed construction / renovation timeline (if applicable), which describes the work to be completed and the dates when such work will be completed, and an updated and detailed budget for all costs associated with preparing the School Facility for occupancy; and,

(iii) provided to the Trustees for review updated annual budgets (A) for the school for the remainder of the period of the Education Corporation has authority to operate the school, and (B) for the Education Corporation for the remainder of the Provisional Charter term, each reflecting the costs of the Facility Agreement in the form set forth in section 5.5 herein, provided, however, that unless the Trustees specifically request such budgets, same shall be due on the schedule required by section 5.5.

(b) In the event the Education Corporation does not have a Facility Agreement in place by May 15 of the calendar year in which a school intends to first provide instruction at a School Facility, the school may not commence instruction until the start of the school year succeeding such scheduled start date, subject, however, to having (i) entered into a Facility Agreement, (ii) provided to the Trustees such agreement, attorney review, as well as the Facility

Completion Schedule by May 15 of such succeeding year, and (iii) the subsequent approval of the Trustees. Notwithstanding the immediately foregoing sentence, the Trustees may waive the restrictions contained therein upon good cause shown and extend the date upon which the Facility Agreement and Facility Completion Schedule would be otherwise due. A failure to obtain the permission of the Trustees as specified above shall cause any Facility Agreement entered into without such permission to be voidable at the discretion of the Trustees.

(c) In the event that the Trustees find, through their review of the Facility Completion Schedule, the Facility Agreement or any other inquiry or investigation, that it is unlikely that a School Facility will be completed and that all Permits will be obtained in time for the opening of the School Facility on the scheduled opening date, the Trustees may require the Education Corporation to delay the school's commencement of instruction until the next academic year or such other date as the Trustees may designate. In the event that the Trustees require such delay, they shall provide their reasons in writing to the Education Corporation by July 15 of the year in which the school is then scheduled to provide instruction so long as the Education Corporation has complied with the requirements of this section.

(d) Pursuant to Education Law § 2851(2)(j), and notwithstanding any contrary provision of this section, in the event that the Terms of Operation do not identify a School Facility for a particular school, the Education Corporation shall notify the Trustees and the Regents within ten (10) business days of such School Facility having been identified.

(e) The Education Corporation shall take such actions as are necessary to ensure that the Facility Agreement and Permits for each School Facility are valid and in force at all times that the Education Corporation has authority to operate in such School Facility. Approvals of renewals or extensions of Facility Agreements shall follow the procedures set forth in this section or section 3.15, as applicable, provided that the Education Corporation need not provide a letter from counsel if the Facilities Agreement would be renewed on the same terms as the original.

- Section 3.15, *Changes in Location and/or Expansion Plans*.

3.15 Changes in Location and/or Expansion Plans. The Education Corporation may change the physical location of a School Facility or obtain additional buildings for a School Facility within the same school district (in the case of the New York City School District, the borough) or obtain additional space in a building the school already occupies provided that the Education Corporation satisfies the provisions of the Act including, but not limited to, Education Law § 2853(1)(b-1) and provided further that:

(a) the Education Corporation notifies the Trustees of the proposed change in location or addition of facilities for the school, in the case of an August or September opening, prior to May 15 of the calendar year in which the school intends to provide instruction in the new or additional facility, or, in the case of any other opening, one hundred and twenty (120) days prior to the proposed commencement of instruction in the new or additional facility, and provides the Trustees with (i) a Facility Completion Schedule, (ii) an unexecuted Facility Agreement or a statement setting forth the material terms of the lease or purchase agreement, (iii) a letter from legal counsel for the Education Corporation indicating that such counsel has reviewed such terms, and (iv) updated annual budgets (A) for the school for the remainder of the period the Education Corporation may operate the school, and (B) for the Education Corporation for the remainder of the Provisional Charter term, each reflecting the costs of the Facility Agreement in the form set forth in section 5.5; and provided further that

(b) the Trustees do not issue a denial to the Education Corporation within sixty (60) days of its receipt of such notification. The Trustees may issue a denial only for good cause. A failure to provide the Trustees with the notice period and/or Facility Completion Schedule for the school required by subsection 3.15(a), together with all material terms regarding the lease or purchase of the proposed School Facility, within the time frames set forth therein shall constitute good cause. Notwithstanding the foregoing, the Trustees may shorten or otherwise waive the one hundred and twenty (120) day notice or other requirement for good cause shown. A failure to obtain the permission of the Trustees as specified above shall cause any Facility Agreement entered into without such permission to be voidable at the discretion of the Trustees.

- Section 5.7, *Insurance*.

5.7 **Insurance**. The Education Corporation shall, at its own expense, purchase and maintain the insurance coverage for liability, property loss, and the personal injury of students for the Education Corporation and for each school or site as is described in the Terms of Operation together with any other additional insurance that the Education Corporation deems necessary. Such insurance policies shall continue in effect. In the case of additional schools, the applicable insurance must be in effect prior to employees or students being present in a School Facility. The Education Corporation shall provide the Trustees with certificates of insurance or other satisfactory proof evidencing coverage including, but not limited to, renewal policies within five (5) days of the commencement of each such policy, or additions, riders or amendments thereto covering additional schools. All such insurance policies shall contain a provision requiring notice to the Trustees, at least thirty (30) days in advance, of any material change, nonrenewal or termination. Notwithstanding any provision to the contrary, the Education Corporation shall take all steps necessary to comply with any additional regulations promulgated by the Commissioner and State Superintendent of Insurance to implement Education Law § 2851(2)(o).

2. *Applicable Laws and Regulations*

- New York Education Law § 409
- New York Education Law § 2851(2)(j)
- New York Education Law § 2853(1)(b-1), (3), (4)(c)

- 8 N.Y.C.R.R. Part 155

3. *Important Dates*

- April 15, 2019: Facility Reporting Questionnaire due to the Institute
- May 15, 2019: Facility Reporting Documents due to the Institute
- July 1, 2019: Annual Budget due to the Institute
- July 15, 2019: Institute approval of facilities due to Education Corporations¹

¹ For education corporations commencing instruction for the first time in 2019, if the Institute determines the facility is unlikely to be completed in time, the Institute may require the education corporation to delay opening until the next academic year and will provide the education corporation its determination in writing by July 15, if the education corporation has properly submitted all information on time. For existing education corporations seeking new or additional facilities, failure to provide all documents by May 15 could result in the Institute denying the request for good cause. Failure to obtain the Institute's approval may result in the voiding of any facility agreement.

4. Discussion – Reporting Requirements

Facility Reporting Questionnaire – Due April 15, 2019

- All education corporations must complete the Facility Reporting Questionnaire and submit to the Institute via Epicenter by April 15, 2019. Completion of the questionnaire will enable Institute staff to set personalized tasks for each school and/or site regarding the documents required for facility reporting. Epicenter reporting will be done at the site level.

Facility Reporting Documents – Due May 15, 2019

For Schools with No Facility Changes Planned

- If a school is not making any facility changes for the 2018-19 school year, the education corporation need only submit a copy of the current certificate of liability insurance covering each site via Epicenter. Institute staff will create the task for completion by May 15, 2019. Please note that many certificates of liability insurance run July 1 – July 1. If this is the case, please indicate via Epicenter, and Institute staff will set a task for an updated certificate to be completed when the current certificate expires.

For Schools with Changes in Facility

- The remainder of this guidance applies to new **and** existing schools that will add, change, or expand into new facilities. The lists below represent a quick checklist for school facility requirements, which depend upon when and how the school was chartered, its location, and whether it is in public or private space.
- Schools must provide facilities information to the Institute by May 15, 2019. All documents will be submitted through Epicenter.
- Please note that education corporations approved via the Request for Proposal (RFP) process pursuant to Education Law § 2852(9-a) have additional, more stringent requirements regarding charter school facilities, which are marked below by an asterisk (*).²
- Regardless of when the charter was issued, all schools proposed to be located in New York City Department of Education (“NYCDOE”) co-located space that intend to spend more than \$5,000 in renovations will have to follow additional requirements as described below per Education Law § 2853(3)(d).

² Education corporations formed outside of the RFP process that subsequently were granted the authority to operate one or more additional schools through the RFP process may continue to follow the pre-RFP law for facilities. Similarly, pre-RFP education corporations that have merged with RFP education corporations, where the pre-RFP corporation is the surviving entity, would follow the pre-RFP law for facilities.

Quick Checklist Requirements

Schools Chartered Prior to August 2010 in Private Space in NYC, or Chartered Outside the RFP Process (regardless of date)

1. Copy of Facility Agreement (which includes a lease, sublease, purchase & sale agreement, mortgage agreement, or bond financing agreement);
2. Letter from the education corporation's independent attorney stating the Facility Agreement has been reviewed;
3. Certificate of liability insurance; and
4. Facility Completion Schedule:
 - a. Construction/renovation timeline;
 - b. Permits/Certificate of Occupancy (C of O) indicating "School Use"; and,
 - c. Facility project(s) budget.

Schools Chartered Prior to August 2010 in Private Space Outside of NYC (non-RFP)

1. Copy of Facility Agreement;
2. Letter from the education corporation's independent attorney stating the Facility Agreement has been reviewed;
3. Certificate of liability insurance; and,
4. Facility Completion Schedule:
 - a. Timeline;
 - b. Permits/C of O; and,
 - c. Facility project(s) budget.

Schools Chartered Through the RFP Process in Private Space in NYC

1. Copy of Facility Agreement;
2. Letter from the education corporation's independent attorney stating the Facility Agreement has been reviewed;
3. Certificate of liability insurance; and,
4. Facility Completion Schedule:
 - a. Timeline;
 - b. Permits/C of O; and,
 - c. Facility project(s) budget.

Schools Chartered Through the RFP Process in Private Space outside of NYC

1. Copy of Facility Agreement;
2. Letter from the educational corporation's independent attorney stating the Facility Agreement has been reviewed;
3. Certificate of liability insurance; and,
4. Facility Completion Schedule:
 - a. Timeline;
 - b. Permits; C of O from New York State Education Department ("NYSED"); and,
 - c. Facility project(s) budget.

All Schools in Public Space in NYC

1. Copy of the Building Usage Plan (“BUP”);
2. Copy of the Educational Impact Statement (“EIS”);
3. Letter from NYC Schools Chancellor authorizing improvements of over \$5,000;
4. Certificate of liability insurance; and
5. Facility Completion Schedule:
 - a. Timeline; and,
 - b. Updated facility project(s) budget.

Detailed Requirements

Pursuant to Charter Agreement sections 3.14 (New Facilities) and 3.15 (Change in Location), if the school site is opening for the first time, or is moving or expanding a facility, the education corporation must review the information below and provide the Institute with related documentation for each such facility **prior to May 15, 2019**.

Based on the information provided to the Institute from the Facility Reporting Questionnaire, the Institute will create the tasks in Epicenter for each school site. The education corporation must complete each applicable item below based on the checklists above:

Facility Agreement

- For schools in private space, provide a copy of the executed lease, purchase agreement, mortgage, or other contract to occupy an identified facility suitable for school use. If only an unexecuted copy is available, please submit the unexecuted copy for review and the Institute will set an additional task to submit the executed copy at a later date. **(Please note that the education corporation’s commitment to such lease or other agreement must be contingent upon the Institute’s approval of the facility pursuant to sections 3.14-15 of the Charter Agreement.** This contingency should be explicitly communicated to the landlord or other party to the real estate transaction.)
- For schools in NYCDOE space, provide copies of the final EIS and BUP, and, if one exists, a Memorandum of Understanding (“MOU”).
- Provide to the Institute a copy of a letter from the education corporation’s independent attorney stating he or she has reviewed the Facility Agreement, and the terms appear to be reasonable.³ In cases where an education corporation contracts with an Educational Service Provider (as defined in the Charter Agreement), a community based organization, or “friends of” or other organization where there is board overlap with the education corporation, and any of the foregoing entities is leasing or otherwise providing the facility, an independent attorney is one who solely represents the education corporation.

³ This is not necessary for those moving into NYCDOE space *unless* an MOU will be used.

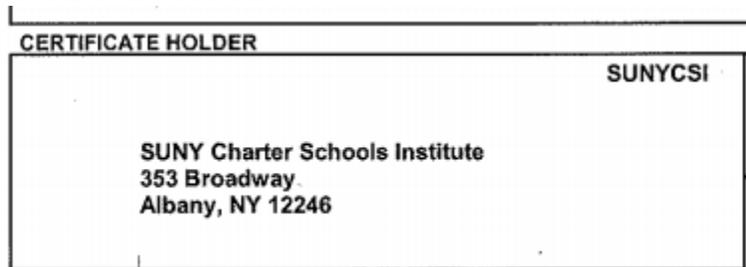
- In cases where the Facility Agreement represents a “related party transaction” under New York Not-For-Profit Corporation Law § 715 and/or fits within the definition of Transactions with Affiliates in section 2.5 of the Charter Agreement, the provisions of the law and Charter Agreement must be followed, and the Institute needs the education corporation to send a fair market analysis of the Facility Agreement payments showing the education corporation will be paying fair market value or less under the Facility Agreement. In such cases, the education corporation should contact the Institute directly.

NYCDOE Schools Chancellor’s Letter

- For schools to be sited in NYCDOE space that intend to spend more than \$5,000 on renovations, provide the letter from the NYC Schools Chancellor stating the education corporation may make more than \$5,000 in capital improvements to the NYCDOE space and that the NYCDOE will match the amount of the improvements for each non-charter school in the building.

Certificate of Liability Insurance

- Provide to the Institute a copy of the certificate of liability insurance for each site. Some education corporations may have one certificate that covers all sites for all schools, while others may have separate certificates for each site. **Regardless of the structure, all certificates of liability must include a provision requiring notice to the Institute** (See image below). Please note that the Institute moved in 2017 so certificates must include the Institute’s new address.



Note that Epicenter will request a certificate for each site even if it is the same certificate as applies to another site.

Facility Completion Schedule

- Provide to the Institute the Facility Completion Schedule described in section 3.14 of the Charter Agreement, which consists of the following:
 - a. Timeline. A detailed timeline of the steps necessary to make the school ready for commencement of instruction including the dates upon which such steps will be completed. This includes the steps necessary to obtain an approved C of O for school use, and things like renovations, installation of wiring, computing infrastructure, etc.

- b. Certificate of Occupancy. While the education corporation does not need to provide all permits, it must, at a minimum provide a temporary or final C of O for the school to legally operate in a proposed facility. The temporary or final certificate of occupancy for school use is a minimum requirement for students to be in the school and a statutory requirement per Education Law § 2851(2)(j). **The Institute will not allow any school to commence instruction without a valid C of O.**
- i. For schools with charters obtained through the RFP process that will be located in NYC, the school must meet the NYC Building Code and obtain a C of O indicating “School Use.” (Please note that certificates of occupancy that indicate “adult trade school” or “daycare” are not acceptable uses.) Schools must also comply with the NYSED’s health, safety and sanitary requirements applicable to district school facilities (which may be found at 8 NYCRR Part 155 and Education Law § 409). Note that we are unaware of any published NYSED guidance on this issue to date, but understand that meeting NYC School Construction Authority or NYC Building Code specifications will satisfy this requirement.
 - ii. For schools with charters obtained through the RFP process that will be located outside of NYC, the school must obtain the C of O directly from NYSED and meet all the requirements of Education Law § 409 (including all Americans with Disabilities Act new construction requirements) of a district school. This process can take an extended period of time (more than six months) so plan accordingly. The NYSED C of O is usually in addition to a local C of O.
- c. Facility Budget. A detailed facility budget for preparing the facility for instruction. The budget should identify the source of funds to be used and include an estimate of all costs to be incurred to prepare the facility. Such costs may include construction or renovation contracts, purchase of equipment, furniture and fixtures, expenses for signage, cleaning after renovation, etc. Please note that program costs such as instructional materials, textbooks, and recruitment do not need to be accounted for in the facility budget, as they do not relate to the preparation of the facility. Each facility project is unique; therefore schools should create a facility budget that identifies specific line item categories that fit the project costs.

5. Other Important Information

The Institute recommends any school seeking to co-locate in a NYCDOE facility review the NYC Charter Center publication found at: <http://www.nyccharterschools.org/sites/default/files/resources/NYC-CS-Facility.pdf>.

The Institute recommends any school seeking a facility in private space outside of NYC to contact the Facilities Planning Office at NYSED (<http://www.p12.nysed.gov/facplan/>) as early as possible to obtain the necessary steps for receiving a C of O, as this process takes many months.

The 2019-20 annual budget for each school is due July 1, 2019. The annual budget template can be found at: <http://www.newyorkcharters.org/fiscal/>. The annual budget approved by the education corporation board of trustees should include any revised projected facility costs for the 2019-20 fiscal year including update lease/mortgage/bond payments. The facility cost projections from the above facility budget should also be reflected in the annual school budget to accurately reflect all costs for the upcoming fiscal year.

If a school is planning a new or additional facility outside of an August or September opening, the education corporation must submit the required documents to the Institute 120 days prior to the opening for review and approval. Included with such plans should be how parents will be notified and contingencies in the event the facility is not ready when the move is anticipated.