



Charter Schools Institute
The State University of New York

Guide to Merging Education Corporations

***For Charter School Education Corporations Authorized by the
State University of New York Board of Trustees***

November 13, 2020

SUNY Charter Schools Institute
H. Carl McCall SUNY Bldg
353 Broadway
Albany, New York 12246
(518) 445-4250
www.newyorkcharters.org

INTRODUCTION

Amendments to the New York Charter Schools Act of 1998 (as amended, the “Act”) in 2010, permit charter school education corporations to operate more than one charter school. Two or more existing not-for-profit education corporations may elect to merge into one education corporation with the authority to operate multiple charter schools pursuant to New York Education Law §§ 2852(7) and 2853(1)(b-1), and Article 9 of the New York Not-For Profit Corporation Law.¹ Merger can benefit the schools involved by allowing common governance, common oversight, common financial accounting, shared educational programming and resources, and improved student access to the schools operated by the education corporations. The following Guidance discusses the documents and procedures necessary to prepare for merger of education corporations, the documents required, and guidance for operations after merger has become effective.

Education corporations authorized by the State University of New York Board of Trustees (the “SUNY Trustees”) may merge with other SUNY authorized education corporations or education corporations authorized by the New York State Board of Regents (the “Board of Regents”), the New York City Schools Chancellor (the “NYCDOE”), or any school district (e.g., Buffalo City School District). A SUNY authorized education corporation may be the one remaining (successor) corporation or may be one of the corporations that merges into another authorizer’s education corporation (a constituent corporation).

All SUNY authorized education corporations involved in a proposed merger should submit revision materials to the SUNY Charter Schools Institute (the “Institute”). When a non-SUNY education corporation would merge with a SUNY education corporation, a revision request must also be submitted to the other authorizer. Ultimately, all mergers must be submitted to the Board of Regents for final approval. In the case of an all-SUNY merger, the merger may be approved by operation of law² even if the Board of Regents’ disapproves. When a SUNY and a non-SUNY education corporation propose to merge, the Board of Regents will either have to affirmatively vote on the merger or permit the merger to be approved by operation of law after 90 days; otherwise the merger will not be approved.³ Education corporations must make a request for merger directly to the authorizer(s). There is no requirement to seek permission from the New York State Attorney General. This Guidance is largely written from the perspective of a SUNY authorized school being the surviving corporation.

The Institute recommends consulting legal counsel to assist in drafting the appropriate documents for merger and to ensure the proper procedures are followed. A request for merger, complete with all supporting documents, should be submitted approximately six months prior to the

¹ Portions applicable to education corporations per Education Law § 216-a.

² Education Law § 2852(5-b).

³ See Education Law § 2852(5-a). In the case of a Board of Regents school, the Board of Regents must affirmatively approve. In the case of a NYCDOE school, the Board of Regents may approve or 90 days can pass and the merger can be approved by operation of law.

proposed date the schools wish the merger to become effective.⁴ For financial audit purposes, the most common and recommended effective date for merger is July 1st.

A. Applicable Laws and Regulations

- New York Education Law §§ 2852(7), 2853(1)(b-1)
- New York Not-for-Profit Corporation Law §§ 901-904
- Charter Agreement §§ 5.1, 8.9

I. BENEFITS TO MERGER

Once a merger is complete the schools under the one education corporation may enjoy the following benefits:

- Common governance. A sole board of trustees can govern two or more schools eliminating the need to have multiple education corporations formed with the same board members. Paperwork, multiple meetings, and compliance burdens are reduced when one board can make decisions across a number of schools.
- Common oversight and handling of finances. The resources of the several education corporations can be pooled and directed to appropriately oversee the finances of all the schools under the education corporations. A common education corporation budget can be developed each year with schedules for each school that would allow the education corporation to direct and share resources amongst schools in a way that was previously difficult or impossible. The single education corporation with more employees also has increased buying power in purchasing employee benefits, insurance, technology, educational materials, services and commodities, and may be better positioned for financing charter school facilities. Smaller and newer schools are not restricted by their enrollment to access resources for programs, financial oversight, etc. because of reduced income. In addition, the sole education corporation can have one outside audit performed on the financial statements of the education corporation with supplemental audited financial schedules for each chartered school. This is a key cost savings over having an audit for each separate charter school, especially when the financial policies, reporting systems, and internal controls may have been intentionally designed to be the same. The single education corporation will have only one EIN (employer identification number), one federal and one state tax exemption letter/certificate, and file one Form 990 each year with the Internal Revenue Service.
- Shared educational programming and resources. Merger allows several schools the

⁴ This time frame is a recommendation only based on the following. Pursuant to the Act, the school district(s) in which each charter school is located must hold a public hearing to solicit comments from the community. The school district(s) must then be given an opportunity to comment on the proposed merger to the charter authorizer(s) for consideration. Education Law § 2857. In addition, the Act grants the Board of Regents 90 days to respond to the proposed merger. See Education Law §§ 2852(5-a), (5-b).

ability to share programs and staff between schools, which may be the most significant educational advantage of merger. Students with disabilities or English language learners can now be drawn from different schools into classes at one site and receive the appropriate setting, resources, and instructors. Merged education corporations can locate a specific special class in any one of the school sites and serve at-risk students from across all of its schools. This ability to program at scale can allow an education corporation to create more offerings to its student population. Similarly, teachers who previously may have taught part-time at more than one school, or were shared by contract between schools, can be hired full time by the education corporation and be deployed as needed.

- Improved student access. As students must be admitted to a charter school through a lottery, access to charter schools has always been limited even for schools in the same “networks” or under common management through a charter management organization. Charter schools students receive a returning student statutory preference under the Act that allows them to return each year, but does not allow any admissions preference for another charter school. Merger allows schools within an education corporation to share returning student and sibling preferences across schools. For example, a sibling preference for an all-boys school may be used by a female sibling to gain admission to an all-girls school within the same education corporation. In addition, an education corporation operating multiple schools can accept students into any one of their schools so long as there are seats without the parents having to apply to multiple schools, or can have parents rank top choices. The result is greater access to charter school education.
- Enrollment pattern flexibility. Middle and high schools require greater resources than many single feeder charter schools can afford. Merger allows separate schools to legally combine to feed multiple elementary and middle schools into middle and high schools due to the returning student preference allowed across schools under the education corporation. The ability to offer middle and high school programs, including parent choice programs for larger networks, provides parents choice options.
- Drawbacks of Merger. Mergers remove the protections of corporate limited liability for tort and contract actions. An uncovered liability at one school can affect the operations at another school in the merged education corporation. Individual schools (education corporations) can no longer declare bankruptcy once merged as well—the entire education corporation would need to seek such creditor protection.

II. TIMING OF EFFECTIVE DATE AND LETTER OF INTENT FOR MERGER

While there is no specific timeline under the law for submitting documents in order to merge education corporations, the Institute strongly suggests the following timeline. The merger documents normally state that the merger will become effective on July 1st or, if approval comes after July 1st, the first of the next fiscal quarter. For accounting, enrollment, per pupil billing, and other

corporate purposes, many corporations wish to have a July 1st start date to coincide with the fiscal year as well as school year. This timeline was created to best allow for a July 1st merger effective date.

November 30 th	Letter of Intent for Merger Due
December 31 st	Plan of Merger Due
January	Review of Submission Documents by Institute
February – March	Plan of Merger voted on by SUNY Trustees
March 31 st	Documents submitted to New York State Education Department (“NYSED”) for Action by Board of Regents
July 1 st	Effective date of Merged Education Corporation/start of fiscal year

III. LETTER OF INTENT

To allow the Institute to appropriately plan for and allocate resources for merger review, the Institute requests the education corporations seeking to merge submit a Letter of Intent by November 30th to the attention of the Institute’s Associate Counsel. The Letter of Intent should include the following:

- name of each education corporation to merge;
- authorizer of each education corporation;
- charter management and/or partner organization(s) (if applicable);
- name and contact information for the person handling the submission of the merger documents for each education corporation; and,
- name of counsel for each education corporation, if counsel is not submitting documents.

IV. REQUEST FOR MERGER

Once the education corporations seeking to merge have completed the appropriate steps (outlined below), the education corporations must submit the request for merger to the Institute for review. Appendix A provides a checklist for items to be submitted that will evidence the appropriate process for merger adoption. In the case where only one corporation is SUNY authorized, that corporation submits to SUNY and the other corporation(s) submit to the other authorizer(s). (See section V, below).

a. Rationale for Merger

Please submit a rationale as to why the education corporations seek to merge. The rationale, in addition to stating the reason(s) why merger is sought, should include an explanation regarding

how students from the affected schools will benefit from the proposed merger. For example, the schools can create more self-contained classrooms for students with disabilities.

b. Plan of Merger (also referred to as a “Merger Agreement”)

Please submit a Plan of Merger. A Plan of Merger is a written, legal document that expressly lays out the agreement of the education corporations to merge into one education corporation, known as the successor, surviving, resulting or merged education corporation. The Plan of Merger includes the process to be undertaken during the merger proceedings including the right of an education corporation to back out of the agreement prior to its official approval as well as the terms under which the resulting education corporation will exist and operate.

A Plan of Merger must be executed by an authorized representative from each education corporation (known as a “constituent corporation”) that is a party to the merger. The education corporations must decide which one education corporation will survive the merger. The resultant education corporation is referred to as the “surviving corporation” in the N.Y. Not-For-Profit Corporation Law (“N-PCL”). The constituent corporations will cease corporate existence on the effective date of the merger while the surviving corporation continues.

The Plan of Merger must provide the following:

- the name of each constituent corporation with the name under which the constituent corporation was originally formed, if different;⁵
- the date that each constituent corporation received its provisional charter from the Board of Regents;
- a statement that each school was chartered pursuant to the N.Y. Charter Schools Act of 1998, as amended, Chapter 4 of the Laws of 1998;⁶
- the name and address of the surviving corporation.⁷ The successor corporation name may be the same or different from any of the constituent corporations’ names or school names but must still include the words “charter” and “school.” Commonly, the surviving corporation’s name indicates it has the authority to operate multiple schools, i.e., “Sunshine Charter Schools” or “Sunshine Charter School Academies;”
- the terms and conditions of the proposed merger including the manner and basis of converting membership or any other interest in each constituent corporation into membership or interest in the surviving corporation. Usually, there are no corporate members, or each school has the same corporate member. If any of the schools to

⁵ This information is available on each corporation’s provisional charter (certificate of incorporation) issued by the Board of Regents. Please see Appendix B for a sample provisional charter.

⁶ The N-PCL requires a statement be made when a merging corporation was formed under “special law.” N-PCL § 904(a)(4). Charter schools are authorized, and their revision permitted, under the special authority of the Act, Education Law, Art. 56. As such, the language must be included.

⁷ The address is for corporate purposes. It is not necessary to include the address of each school.

- merge are membership corporations, the membership including their number, classification, and voting rights should be described in the Plan of Merger;
- the number of trustees of the surviving corporation as well as the time of the annual election. This will typically be indicated in the by-laws of the surviving corporation, which may be pre-existing or the by-laws of a constituent corporation or newly adopted as part of the merger. The Plan of Merger must indicate or provide the applicable by-laws;
 - the proposed trustees of the surviving corporation;
 - a requirement that all property, assets, and liabilities of each education corporation vest in and transfer to the surviving corporation;
 - an effective date that coincides with the beginning of a fiscal quarter or the fiscal year;
 - a statement identifying any proposed amendments or changes to the provisional charter of the surviving corporation to be affected by the merger. At minimum, this will include the authority for the surviving corporation to operate multiple charter schools as will be set forth in the amended and restated charter agreement drafted by the Institute; and,
 - an abandonment clause to allow any constituent corporation to abandon the merger prior to the approval or consent of the Certificate of Merger by the Board of Regents or Commissioner of Education.⁸

c. The Certificate of Merger

Please submit a Certificate of Merger. A Certificate of Merger is the legal instrument under which the terms of the merger are formalized and deemed in effect.⁹ The Certificate of Merger must include the following information (some of which is similar to that included in the Plan of Merger):

- the name of each constituent corporation, with the name under which the constituent corporation was originally formed, if different, along with the name of the surviving corporation;
- the date each constituent corporation received its provisional charter from the Board of Regents;
- the effective date of the merger which may not be sooner than the approval by the Board of Regents or by operation of law.¹⁰ This date is typically the beginning of a new fiscal year or at least a fiscal quarter. The language of this portion of the certificate might read as follows: “The merger shall be effective at 12:01 A.M. Eastern Standard Time on July 1, 20__ or the first day of the next fiscal quarter;”

⁸ Education Law § 216-a(10) modifies N-PCL § 906 requiring the consent of the Commissioner of Education prior to filing the certificate with the Secretary of State.

⁹ Similar to a charter agreement, which formalizes the by-laws, code of ethics, and other provisions of operation of a charter school, but only executed by the corporations.

¹⁰ Pursuant to Education Law § 2852(5-a), if the Board of Regents does not respond within 90 days after submission by SUNY, the merger will be deemed to have been approved. However, if the Board of Regents returns the Plan of Merger to SUNY, the timeframe will shift. See Education Law § 2852(5-b).

- a statement that each education corporation was chartered pursuant to the N.Y. Charter Schools Act of 1998, as amended, Chapter 4 of the Laws of 1998;
- a description of the membership and holders of any certificates evidencing capital contributions or subventions for each constituent corporation must be given including their number, classification, and voting rights; and,
- a statement of any amendments or changes in the certificate of incorporation of the surviving corporation to be effected by the merger. This would automatically include a statement that amends the legal authority of the surviving education corporation to operate more than one school (or teach the same grades at more than one site) under the Act. The language of this portion of the certificate might read as follows: “The Merger has been authorized, as to each Constituent Corporation, pursuant to Education Law Subdivision 2853(1)(b-1), as amended to date.”

d. Public and Education Corporation Trustee Notice

Please submit evidence the constituent corporations provided the appropriate notice to their trustees and the public. The constituent corporations must provide notice of the meeting to every trustee and member of the constituent corporations, regardless of whether that trustee or member is entitled to vote. The notice to trustees must include a copy of the proposed plan of merger or an outline of the material features of the plan. The trustee/member notice must conform to the by-laws and Education Law § 226(3) (mailed not less than five nor more than 10 days prior to the meeting to the usual address of each trustee). In addition, notice of the meetings must be provided to the public in accordance with the notice provision for all public meetings in the N.Y. Open Meeting Law.¹¹

e. Corporate Resolution and Verification

Please provide evidence of the constituent corporations’ board approval. Per N-PCL § 903, the Plan of Merger must be approved by the board of each corporation at an open meeting with quorum present called separately and specifically for the purpose of seeking merger approval. While SUNY does not believe Education Law § 223 is strictly applicable to charter school mergers, the Board of Regents requires a three-quarters (3/4) vote of the trustees present at each board meeting; and SUNY has agreed to this requirement. Resolutions from each constituent corporation must clearly evidence approval and delegate a single trustee or officer from each constituent corporation the responsibility to execute the Plan of Merger and accompanying documents. In addition, each constituent corporation must provide verification of the approval of the Plan of Merger. Verification must be executed by each constituent corporation’s current chairperson and secretary.

f. Student Enrollment Tables

Please provide a five year, student enrollment table for the surviving education corporation including the enrollment of all schools the surviving education corporation will have the authority to operate as well as a five year, student enrollment table for each individual school. The individual enrollment tables should be consistent with the overall education corporation’s enrollment table. A

¹¹ N.Y. Public Officers Law § 104.

student enrollment table template may be found at <http://www.newyorkcharters.org/merger-replication-policy/>.

g. Financial Outlook of Proposed Merged Education Corporation

Please provide a five-year budget for the merged education corporation showing the combined charters rolled up into one overall budget. In addition, provide a five year budget for each of the charters under the merged education corporation. The total of the individual charter budgets should align with the merged education corporation budget. The five-year budget template is available here: <https://www.newyorkcharters.org/fiscal/>.

h. Financial Information of Charter Management Organization (“CMO”) (if applicable)

If the proposed merged education corporation will partner with a CMO please provide the following:

- The Audited Financial Statements of the CMO for at least the past two years;
- Five year budget projections for the CMO including staffing tab and projections for revenues and expenses including assumptions; and,
- Fiscal soundness narrative describing the fiscal plan of the merged entity to include a discussion of the CMO and any related entities involved.

The Institute can provide templates upon request and design them to fit the specific needs of the merger request, contact the Institute for further details and templates.

i. Financial Information of “Friends Of Organization(s),” if applicable.

If the proposed merged education corporation or its CMO would be a party to an agreement with a “Friends Of” organization please provide the following:

- Audited Financial Statements of the ‘Friends Of’ organization if they are not included within the education corporation audit for at least the past two years;
- Five year budget projections for the ‘Friends Of’ including projections for revenues and expenses including assumptions;
- Five year budget projections for each charter within the education corporation and a combined (merged) proposed entity; and.
- Fiscal soundness narrative describing the fiscal plan of the merged entity to include a discussion of the ‘Friends Of’ organization(s) and any related entities involved.

The Institute can provide templates upon request and design them to fit the specific needs of the merger request, contact the Institute for further details and templates

i. Revisions

Merger is an opportune time to align procedures, programming, and policies across schools. The education corporation will have terms of operation that will apply across the schools it has the

authority to operate. Through merger there will be one set of by-laws and one code of ethics. The education corporation may indicate other policies it would like as a term of operation to apply across all schools. For instance, the schools may operate under the same admissions or discipline policies. Some education corporations may find this convenient as there will not be multiple policies to keep track of and update. Education corporations also commonly update Financial Policy and Procedures Manuals to make them uniform across all schools and detail the effects of merger on the financial reporting systems, and authorization and approval structures. Education corporations should indicate and provide any such materials at the time of the merger submission.

j. Business Plan Elements

PLEASE NOTE: If the successor education corporation or affiliated charter management organization has submitted a Business Plan in the last three years with a new school replication application, then you may submit an updated version of that Business Plan contemplating the merger, all constituent education corporations, and their schools.

a. Growth Plan:

- i. Describe the education corporation's five-year growth plan for developing currently authorized and new schools in New York.
- ii. Provide a table or spreadsheet that includes the following information for each of the next five years (for all existing and projected schools in the organization's portfolio within New York):
 1. Currently authorized schools (please include both schools which are currently operating and schools which are authorized, but not yet open);
 2. Future schools (please include information for the proposed new school(s) and for schools planned for the next five years):
 - a. Grades served and enrollment;
 - b. Planned opening year; and,
 - c. Planned Location.
- iii. Provide a rationale for the proposed five-year growth plan, if applicable.

b. Organizational Capacity: This section assesses the current and future capacity of the surviving education corporation's leadership team and governance board to oversee multiple schools.

- i. Identify the surviving education corporation's leadership team and describe each member's specific role and responsibilities.
- ii. If the organization does not partner with a CMO, then describe which centralized services the organization would offer, how costs would be allocated to the various schools, and how the schools will pay for those services. Include any proposed staffing of centralized services that would serve the schools.
- iii. Describe the systems and structures that the organization has in place to support the effective operation of its schools including academic support, student data, technology, recruitment and human relations,

- financial, back office, real estate, and any planned subcontracting or use of key licensed intellectual property.
- iv. Describe the performance metrics used by the organization and its board to monitor the effectiveness of centralized support services. Describe how the organization will know whether or not it is successfully delivering these services.

III. PROCESSING OF MERGER

Once the education corporations submit the request(s) for merger, the Institute will check the requests for completeness and make a determination as to whether it will recommend the merger to the SUNY Trustees or require additional information. A request for merger is a material revision; therefore, the Institute will provide notice to the public and all school districts within which schools of the proposed merger are located.

The Institute conducts a legal, fiscal and academic performance review of the constituent corporations when a SUNY authorized school would be the surviving corporation, which may include site visits. The Institute will ask non-SUNY schools to provide student academic performance, disciplinary, and enrollment and retention targets information as well as fiscal information. Based on SUNY's Replication Policies,¹² the Institute will not recommend for merger any school that is facing non-renewal. A merger which would cause a SUNY school to not be fiscally viable will also not be recommended by the Institute. The Institute will forward positive recommendations to the SUNY Trustees' Charter Schools Committee, which shall vote on the matter. If the Charter Schools Committee approves the merger, the Institute will process and submit to the Board of Regents.

The Institute provides a new charter agreement (designated "amended and restated") executed by the Institute and the current board chair of the surviving corporation. The Institute will draft a charter agreement providing the surviving corporation with the authority to operate all constituent schools. The authority to operate each individual school, with the dates through which the authority runs, will be stated in Schedule 1 of the charter agreement. The new charter agreement will include the complete Terms of Operation for the surviving education corporation as a whole, as well as the Terms of Operation of each school the education corporation may operate. Corporate / governance related terms may be included in the corporate Terms of Operation, such as organization charts, overall enrollment, and fiscal policies. The merged entity can choose what other terms will apply to all schools and what terms may still differ. The education corporations can provide this information with the submission as an amendment. (See above). For instance, one merged education corporation may provide a sole admissions policy, while another may provide a different admissions policy for each constituent school. This is an opportunity for the education corporation

¹² *A Policy Framework for Charter School Replication* available at: www.newyorkcharters.org/wp-content/uploads/SUNY-Replication-Policy.pdf.

to choose to standardize certain terms, and that should be made clear to SUNY upon submission of the merger documents.

The Institute may provide other amendments to the existing charter agreement of the surviving education corporation such as additional assurances and terms for the education corporation as a whole or for individual schools (as appropriate), special education assurances for each school in the education corporation (typically found in a single document), and any other amendments as required by the authorizer. For compliance, SUNY uses only one monitoring plan for all the schools of the surviving corporation.

V. DIFFERENT AUTHORIZERS

If one or more of the education corporations seeking to merge is authorized by a charter authorizer other than SUNY, then a merger revision application must be submitted to the other authorizer as well. Basically, the same information would be provided, but less information is needed by the outgoing authorizer. The non-SUNY merger revision must be approved by both the authorizer and (if the authorizer is not the Board of Regents) by the Board of Regents. Such revisions cannot be approved by operation of law under SUNY's authority in the Act, but in the case of a non-Regents education corporation, can be approved by operation of law if the Board of Regents does not act on the merger after 90 days. Please contact the authorizer for timelines and content necessary for the approval of a merger revision. Questions regarding such mergers can be directed to the Institute.

VI. FUTURE OPERATIONS

a. Accountability

Per SUNY policy, accountability resides at the school level, not at the education corporation level. The merger will not change the accountability requirements of any individual SUNY authorized school the education corporation has the authority to operate. Each school will continue with its current accountability plan in terms of content and timing. An education corporation can only be granted the authority to operate each school for up to five years. Therefore, each school must still apply for renewal under its accountability plan on the same schedule.

Any Board of Regents or NYCDOE-authorized school that merges with a SUNY-authorized charter school will be required to adopt SUNY's accountability plan as a part of the merger.¹³ The timing of renewal decisions will, however, still take place on the prior authorizer's schedule. As schools that merge into SUNY authorized schools are new to SUNY oversight, such schools will be treated as schools coming to renewal for the first time under the SUNY Renewal Policies,¹⁴ even if

¹³ For more information about SUNY accountability plans see www.newyorkcharters.org/category/operational-resources/accountability/.

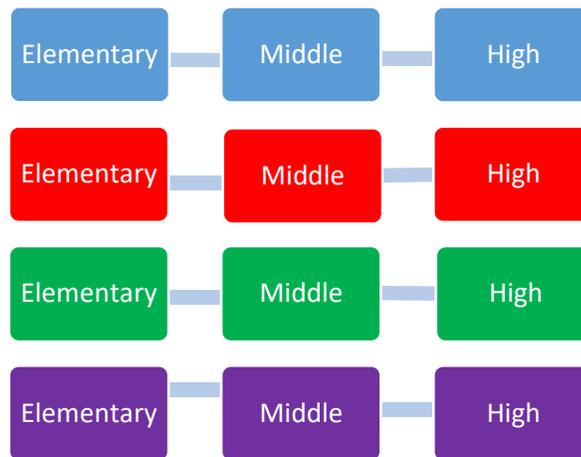
¹⁴ *Policies for the Renewal of Not-for-Profit Charter School Education Corporations and Charter Schools Authorized by the Board of Trustees of the State University of New York*, available at: www.newyorkcharters.org/wp-content/uploads/SUNY-Renewal-Policies.pdf.

they have been previously renewed. This means they will be eligible for a short-term or a full-term renewal.

That said, education corporations may wish to rethink accountability pathways upon merger. An accountability pathway is the enrollment growth and grades the individual school is responsible for upon renewal. Typically, there are three types of accountability pathways: (1) Straight Pathways with Separate Sites; (2) Straight Pathways with Combined Sites; and, (3) Feeder Pathways.

1. Straight Pathways with Separate Sites

Four stand-alone education corporations may each operate a school serving grades K-12. Each school may operate an elementary, middle and high school at its own sites giving each school three physical sites. Each school has an accountability plan for its K-12 grades. Upon renewal, each school is accountable for its own K-12 grades. Upon merger, the four schools may continue to operate separately and be accountable separately. The chart below shows schools with straight accountability pathways.¹⁵

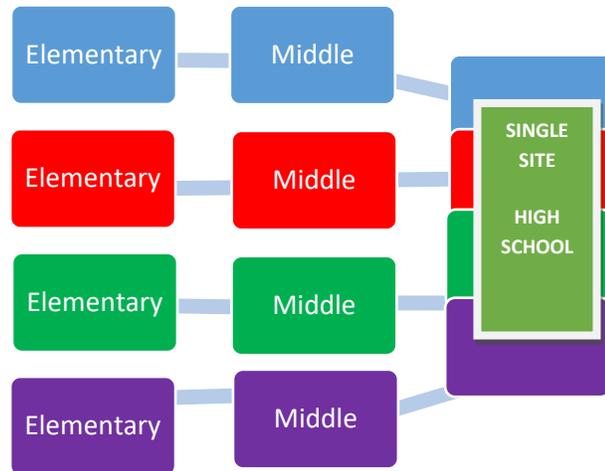


2. Straight Pathways with Combined Sites

Four stand-alone education corporations may each operate schools with grades K-12. Each school may operate its own elementary and middle school site, but due to cost, share its high school site and operate the high school as one site by contract. (Please note that this is not co-location of the high school students but all schools' students attending the same high school program). Each school still has a separate accountability plan for its K-12 grades. In other words, the high school

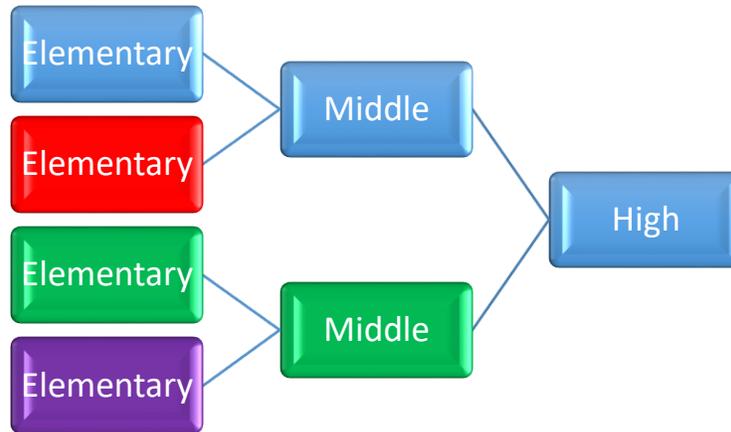
¹⁵ Colors represent an individual school. Therefore, each color represents an individual Accountability Plan for which the individual school will be renewed.

program would have four separate accountability plans tied to it. Upon renewal, each school is accountability for its own K-12 grades as measured by individual student performance. Upon merger, the four schools may continue this arrangement without the need for a contract (or change it to have one school “own” the high school for purposes of accountability (see below)). The chart below shows straight pathways with combined sites.



3. Feeder Pathways

Four stand-alone education corporations may each operate schools serving grades K-12. Once merged, the surviving corporation may wish to combine schools and feed into larger programs. Upon merger, the education corporation may operate a number of elementary schools that feed a lesser number of middle schools that feed one (or a lesser number of) high school(s). Instead of any one site having multiple accountability plans attached to it, each school can take responsibility for different sets of students at different sites. The chart below shows feeder pathways with separate sites. One school may be accountable for a set of grades K-12 while another is accountable for a set of grades K-8 while the remaining two schools are only accountable for an elementary school each. Note that a new charter is not required for the combined middle or high schools.



b. Fiscal Responsibility of Merged Education Corporation

1. Close Out Financial Statements

After the merger, each education corporation is required to provide to the Institute a close out financial statement showing the final balances on the close out date of each constituent corporation and the related opening balances on the effective date for the surviving corporation. The combined totals of the individual education corporation close out balances must equal the opening balances on the effective date of the surviving corporation. Auditor prepared work papers containing the close out balances and related surviving corporation opening balances is sufficient documentation to provide to the Institute.

2. Initial Statement Process

The Initial Statement process is an accountant review process where the education corporation engages outside professionals to review internal controls and fiscal policies and procedures. Each newly chartered school generally meets the Initial Statement requirements in the charter agreement.¹⁶ Education corporations with the authority to operate multiple schools that have already undertaken the Initial Statement process do not have to repeat the process for each new school, per § 5.1(f) of the Charter Agreement, so long as the education corporation provides an assurance to the Institute as follows.

- The education corporation's board must specifically delegate authority to its Treasurer, or an employee or agent of the education corporation (as documented in a resolution or minutes of a board meeting) to provide an assurance to the Institute regarding managerial and financial controls.

¹⁶ Charter Agreement § 5.1, available at: www.newyorkcharters.org/model-charter-agreement/.

- The assurance must certify to SUNY that substantially similar financial controls have been instituted by the education corporation for the new school in accordance with § 5.1(f) of the Charter Agreement.

If the education corporation cannot or does not provide such a certification, then the education corporation will have to undergo the Initial Statement process for each new school.

3. *Quarterly Interim Reports*

All financial statements that the merged education corporation is required to prepare shall be in accordance with generally accepted accounting principles (GAAP) then in effect for not-for-profit corporations. During each year of operation, the merged education corporation shall prepare and submit to the Institute within forty-five (45) days of the end of each quarter of its fiscal year an unaudited statement of income and expenses for that preceding quarter in such form and electronic format as prescribed and disseminated by the Institute and currently available through the website of the Institute to include, but not be limited to, the aggregated statements for the merged education corporation as determined by the Institute. In addition, the merged education corporation must submit a separate statement of income and expenses for each school included under the merged entity.

4. *Audits*

The merged education corporation shall retain an independent certified public accountant or certified public accounting firm licensed in New York to perform annually an audit of the merged education corporation's annual financial statements. The independent audit of the merged education corporation's financial statements must be performed in accordance with generally accepted auditing standards (GAAS) and Government Auditing Standards (GAS) issued by the Comptroller General of the United States, as well as any additional requirements and guidelines provided by the Institute to include certain information, schedules and testing related to each school operated by the merged education corporation. The audited financial statements must be submitted to the Institute by November 1 of each year. In addition, and pursuant to the same timetable, the merged education corporation must require its independent certified public accountant to issue a report on compliance with laws, regulations, contracts and grants and internal controls over financial reporting, based on its audit of the financial statements. The merged education corporation must submit this report to the Institute together with a corrective plan addressing any weakness or problems identified in the planning and performance of the audit. The corrective plan must address each suggestion for consideration of management contained in the compliance report and include a timetable that identifies the date by which each corrective step will have been completed. All documents required to be submitted shall be submitted electronically in accordance with guidance published on the website of the Institute.

On an annual basis the merged education corporation must submit one audit report containing a combined balance sheet and combined statement of income and expenses. The audit report must include a separate statement of income and expenses for each school within the merged education corporation; the purpose is to show individual school's operating income or loss for each year. In addition, the audit report must include in the notes to the financial statements detail

regarding any payment of monies from the education corporation to any school in excess of the income from that school, and detail the reason. A benefit of a merged education corporation is the flexibility of having the education corporation or one school pay expenses of another but those transactions need to be identified in the notes to the financial statements. The Institute requires that audit reports be submitted in .pdf format and excel templates for the merged education corporation balance sheets and statement of income and expenses. The Institute uploads the excel spreadsheets into the SUNY Fiscal Dashboard for financial analysis.¹⁷ Each school within the merged education corporation will need to submit a completed excel spreadsheet template for each individual school's statement of income and expenses only.

5. *Annual Budgets*

The merged education corporation shall prepare and provide to the SUNY Trustees a copy of its annual budgets and cash flow projections for (i) the merged education corporation as a whole, and (ii) each school, each fiscal year by no later than June 30 of the immediately preceding fiscal year. All annual budgets and cash flow projections shall be in such form and electronic format as prescribed and disseminated by the SUNY Trustees, which will be available on the website of the Institute.

For a new school within the merged education corporation that is entering its first year of instruction, the annual budget shall be provided by August 1 of such year in the event that the budget or projection differs in any material respect from that set forth in the Terms of Operation for that school in the Charter Agreement.

6. *Dissolution Funds*

Per Charter Agreement § 8.9, the merged education corporation must create a dissolution reserve fund or account for purposes of school closure and/or dissolution of the education corporation in an amount to be determined as follows:

- seventy-five thousand dollars (\$75,000) per school for each of the first two (2) schools operated by the education corporation to be funded, at a minimum, by reserving twenty-five thousand dollars (\$25,000) per year during the first three (3) years of operation of each school;
- twenty-five thousand dollars (\$25,000) per school for each additional school operated by the education corporation to be reserved in the first year of operation of each school up to a maximum of three hundred and fifty thousand dollars (\$350,000).

The amended and restated charter agreement will clearly detail this requirement.

¹⁷ Institute Fiscal Resources are available at: www.newyorkcharters.org/category/operational-resources/fiscal-operations/.

c. School Operations

While there is only one education corporation postmerger, each school the education corporation has the authority to operate will still have its own Basic Educational Data System (“BEDS”) number with the New York State Department of Education.

The merged education corporation will bill districts for all schools it operates under the surviving education corporation’s EIN. Just as before the merger, each school’s projected enrollment and billing must be provided un-aggregated to the district. In New York City, billing may still be under each individual school name but the vendor EIN number would be that of the merged education corporation.

d. Future Agreements

Please note that once the merger takes effect, there is only one education corporation. Therefore, there is only one legal entity. The constituent corporations cease to exist. After the merger, the surviving corporation is the only legal entity that may enter into legal agreements. The surviving corporation has only one EIN. There is only one corporation with federal and state tax exemption. Please note this distinction when applying for or entering into agreements on behalf of any school the education corporation is granted authority to operate.

e. Replication

SUNY’s Request for Proposals (RFP) presents a pathway for an existing education corporation (whether merged or not) to operate a new school and for a new education corporation to be formed that would operate more than one school. The Act states that an “education corporation operating a charter school shall be authorized to operate more than one school . . . provided that a charter must be issued for each such additional school . . . in accordance with the requirement for issuance of a charter pursuant to [Article 56]. . . .”¹⁸ This would be completed through a formal application for a charter through the RFP process or the previous application process in the Act.

Please refer to the most current SUNY RFP for further discussion as to these options.

¹⁸ Educ. Law § 2853(1)(b-1).

APPENDIX A
Merger Checklist

In the event of a merger of two or more existing education corporations, the following documents will be produced by the merging education corporations with the exception of the Charter Agreement, which is drafted by the Institute and supplemented by the successor education corporation revisions:

Merger Submission Checklist			
<input type="checkbox"/>	Letter of Intent	Letter of Intent	The letter of intent should include the names of each education corporation to merge, the authorizer of each education corporation, the charter management organization and/or partner organization(s) (if applicable), and the name and contact information for the person handling the submission of the merger documents.
<input type="checkbox"/>	Rationale	Rationale	A statement regarding why the education corporations have decided to merge.
<input type="checkbox"/>	Plan of Merger (Merger Agreement)	Standard Term	Name of each constituent corporation.
<input type="checkbox"/>		Standard Term	Original name of any constituent corporation that has been modified since the charter was approved.
<input type="checkbox"/>		Standard Term	Date of each constituent corporation received its provisional charter from the Board of Regents.
<input type="checkbox"/>		Standard Term	A statement that each school was chartered pursuant to the N.Y. Charter Schools Act of 1998, as amended, Chapter 4 of the Laws of 1998.
<input type="checkbox"/>		Standard Term	Terms and conditions of the merger. This must include the manner and basis of converting membership or any other interest in each constituent corporation into

			membership or interest in the successor corporation (it is very likely there will be no members).
<input type="checkbox"/>		Name	Name of Surviving Corporation.
<input type="checkbox"/>		Corporate Address	Place where the resultant education corporation will be principally located.
<input type="checkbox"/>		Number of Trustees	Number of trustees.
<input type="checkbox"/>		Time of Election of Trustees	Time of the annual election of directors for the surviving corporation.
<input type="checkbox"/>		New Trustees	Identifies the trustees of the resultant corporation that will serve such roles until the first annual election.
<input type="checkbox"/>		Transfer of Assets and Liabilities	Requires all property, assets, and liabilities of the constituent corporations that will be vested in and transferred to the successor corporation.
<input type="checkbox"/>		Membership	Describes, if any of the schools to merge are membership corporations, the membership including their number, classification, and voting rights, if any.
<input type="checkbox"/>		Revisions	Provides a statement of any amendments or changes to the provisional charter of the successor corporation to be effected by the merger. N-PCL § 902(a)(1). At minimum, this will include the authority for the successor corporation to operate multiple charter schools. This same information may be included in the charter revision request and SUNY's proposed charter revision for each school.
<input type="checkbox"/>		Escape Provision	Provides an abandonment clause, such that any constituent corporation may abandon the merger until the merger/consolidation is approved by the Board of Regents or by operation of law.

<input type="checkbox"/>	Certificate of Merger	Name	The name of each constituent corporation, and if the name of any of them has been changed, the name under which it was formed, and the name of the successor corporation.
<input type="checkbox"/>		Members and Financial Holders	A description of the membership and holders of any certificates evidencing capital contributions or subventions including their number, classification, and voting rights, if any, as to each constituent corporation.
<input type="checkbox"/>		Amendment Statement	A statement of any amendments or changes in the certificate of incorporation of the successor corporation to be effected by such merger.
<input type="checkbox"/>		Date of Merger	The effective date of the merger, which shall be no sooner than the approval by the Board of Regents (90 days after submission by SUNY) or by operation of law pursuant to N.Y. Education Law § 2852(5-a) or (5-b), as appropriate. This date is typically the beginning of a new fiscal year or at least a fiscal quarter. SUNY has standard language in case we roll over a fiscal year start.
<input type="checkbox"/>		Incorporation Dates	The date when each constituent corporation was initially awarded a provisional charter by the Board of Regents, and a statement that such provisional charter was issued pursuant to the N.Y. Charter Schools Act of 1998, as amended, Chapter 4 of the Laws of 1998.
<input type="checkbox"/>		Authorization Statement	A statement that the merger was authorized, as to each constituent corporation, pursuant to Education Law § 2853(1)(b-1), as amended by Section 14 of Chapter 101 of the Laws of 2010.

<input type="checkbox"/>	Public Notices	Public Notices	That the public meeting where the merger agreement was approved, was separately and specifically called for the purpose of approving such agreement. Education Law § 223.
<input type="checkbox"/>	Ed Corp Trustee Notice	Ed. Corp. Trustee Notice	That the notice of the meeting was given to every trustee or member, whether or not entitled to vote or able to attend, and that the notice included a copy of the proposed merger agreement. N-PCL § 903(a)(1).
<input type="checkbox"/>	Corporate Resolutions	Corporate Resolutions	That the merger agreement was approved by $\frac{3}{4}$ of the total number of trustees of each constituent corporation at an open meeting with a quorum present, <i>and</i> that a single trustee from each constituent corporation was delegated the responsibility to sign said agreement.
<input type="checkbox"/>	Verification	Verification	That the approval of the merger agreement was <u>verified</u> by <u>each</u> constituent corporation's current chairperson and clerk (corporate Secretary). Education Law § 223.
<input type="checkbox"/>	Student Enrollment Charts	Enrollment	Please submit an overall enrollment chart for the education corporation and individual enrollment charts for each school the education corporation will have the authority to operate.
<input type="checkbox"/>	Budget	Budget	Please submit a five-year budget template for the merged education corporation using the Institute's budget template. In addition, provide a separate budget for each charter within the merged education corporation. The total of the individual budgets should roll up and align with the merged education corporation budget.
<input type="checkbox"/>	Statistical Overview	Statistics	Please complete the Statistical Overview form for each school. See Appendix C.

<input type="checkbox"/>	Revisions	Revisions	If applicable, submit any revisions the education corporation may wish to make at this time to consolidate and/or align programming and policies at the schools.
--------------------------	-----------	-----------	--

APPENDIX B

SAMPLE PROVISIONAL CHARTER



[REDACTED] Charter School

PROVISIONAL CHARTER

This Instrument Witnesseth That, pursuant to subdivision 5-a of section 2852 of the Education Law, the Board of Regents, for and on behalf of the Education Department of the State of New York, on October 15, 2014

Issued,

1. A provisional charter valid for a term of five years in accordance with §2851 (2)(p) of the Education Law is issued incorporating [REDACTED] and their successors as an education corporation under the corporate name of [REDACTED] Charter School, located in the City of [REDACTED]
2. The purpose for which such corporation is formed is to operate a charter school pursuant to Article 56 of the Education Law and in accordance with the charter agreement between [REDACTED] Charter School and the Board of Trustees of the State of New York, dated July 17, 2014 and any subsequent authorized revisions or amendments thereto.
3. The names and post office addresses of the first trustees are as follows:

- [REDACTED]

4. The board shall have power to adopt bylaws not inconsistent with the provisions of Article 56 of the Education Law.
5. The corporation hereby created shall be a nonstock corporation organized and operated exclusively for educational purposes as defined in section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), and no part of its earnings or net income shall inure to the benefit of any individual; and no officer, member, or employee of the corporation shall receive or be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services.
6. Notwithstanding any other provision of these articles the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).
7. No substantial part of the activities of the corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Internal Revenue Code section 501(h) as amended, or the corresponding provision of any future United States Internal Revenue Law, during any fiscal year or years in which the corporation has chosen to utilize the benefits authorized by the statutory provision), and the corporation shall not participate in nor intervene (including the publishing or distribution of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office.
8. Upon dissolution of the corporation, the board of trustees shall, after paying or making provision for the payment of all the liabilities of the corporation, dispose of the remaining assets of the corporation to the school district of residence or a charter school located within the school district in which the charter school is located, provided that such charter school shall be exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).
9. The principal office of the corporation shall be located at [REDACTED] Charter School, [REDACTED].
10. The Commissioner of Education is designated as the representative of the corporation upon whom process in any action or proceeding against it may be served.
11. Such provisional charter may be extended upon application for a term of up to five years in accordance with the provisions of Article 56 of the Education Law.



Issued, October 15, 2014, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 819.

Meryl H. Lick

Chancellor

John B. Bagg

President of the University and
Commissioner of Education

[REDACTED] Charter School

This Instrument Witnesseth That, pursuant to subdivision 5-b of section 2852 of the Education Law, the Board of Regents, for and on behalf of the Education Department of the State of New York, on October 15, 2014

Issued,

A charter valid for a term of five years in accordance with §2851(2)(p) of the Education Law is issued to the [REDACTED] Charter School pursuant to Article 56 of the Education Law and in accordance with the attached charter agreement dated July 17, 2014 between [REDACTED] [REDACTED] on behalf of [REDACTED] Charter School and Board of Trustees of the State University of New York.



Issued, October 15, 2014, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 819.

Meryl A. Liche
Chancellor

John B. Bore
President of the University and
Commissioner of Education

APPENDIX C

STATISTICAL OVERVIEW OF PAST THREE YEARS

Requested Data	2017-18	2018-19	2019-20
Enrollment¹⁹			
Total Enrollment			
Number of Students with Disabilities			
Number of English Language Learners			
Number of Economically Disadvantaged Students			
Retention²⁰			
Total Number of Students Eligible to Return from Previous Year ²¹			
Total Number of Eligible Students Who Returned from Previous Year			
Number of Students with Disabilities Eligible to Return from Previous Year ²²			
Number of Students with Disabilities Who Returned from Previous Year			
Number of English Language Learners Eligible to Return from Previous Year ²³			
Number of English Language Learners Who Returned from Previous Year			
Number of Economically Disadvantaged Students Eligible to Return from Previous Year			
Number of Economically Disadvantaged Students Who Returned from Previous Year			
Average Daily Attendance Rate			
Number of In-School Suspensions (Occurrences)			
Number of Out of School Suspensions (Occurrences)			
Number of Expulsions			
Total Number of Classroom Teachers			
Number of Uncertified Classroom Teachers			
Number of Classroom Teachers Returning from Previous Year			
Number of Other Professional Staff			
Number of Paraprofessionals			
Name(s) of Instructional Leader(s)			

¹⁹ All enrollment data should reflect *BEDS day information*.

²⁰ All retention data should reflect students enrolled in school on previous BEDS day who remained in the school the following BEDS day.

²¹ An eligible student is one who has not completed the school's terminal grade, aged out of the program or been expelled.

²² All students who received mandated services at some point of enrollment in the school should be included in this count even if no longer receiving services.

²³ Any student identified as an English language learner at any point of enrollment in the school should be included in this count regardless of current English language proficiency status.