

## **Education Corporation Merger Policy for Chancellor-Authorized Charter Schools** Updated December, 2015

### **Policy Overview**

This document comprises the New York City Department of Education’s (NYCDOE) policy regarding merger procedures for education corporations operating NYCDOE Chancellor-authorized charter schools. All such corporations seeking to “merge” with another education corporation are required to comply with all applicable laws and regulations and this policy.

Section 223 of the New York Education Law and Article 9 of the New York Not-For-Profit Corporation Law (NPCL) allow for the merger of education corporations. The 2010 amendments to the New York Charter Schools Act of 1998 (“New York Charter Schools Act”)<sup>1</sup> allow a single education corporation to operate multiple charter schools. Accordingly, two or more education corporations operating charter schools may merge into one education corporation that will operate the associated charter schools (the successor education corporation). If the successor education corporation chooses to operate the associated charter schools under a single charter authorizer (the successor authorizer), a change in charter authorizer can be accomplished for a particular school, as needed, through a charter revision. Thus, a merger of education corporations can result in a change in charter authorizer for a particular charter school.<sup>2</sup>

The NYCDOE requires the education corporation of a Chancellor-authorized charter school seeking to merge to submit a Letter of Intent (LOI), regardless of which authorizer will be the successor authorizer. Additionally, the NYCDOE requires a Merger Application if the Chancellor is the intended successor authorizer.

If the education corporation of a Chancellor-authorized charter school and the education corporation of a charter school authorized by another charter authorizer merge, the Chancellor or the other charter authorizer may be the successor authorizer of the successor education corporation.

When the Chancellor is the successor authorizer, the performance of each school operated by the successor education corporation will be measured based on such school’s student achievement data in accordance with the Accountability Handbook for NYCDOE Chancellor-Authorized Charter Schools, and not based on an aggregation of data across schools operated by the corporation or a charter management organization (“CMO”).<sup>3</sup>

---

<sup>1</sup> N.Y. Educ. Law §2853(1)(b-1).

<sup>2</sup> A merger occurs when two or more education corporations, each of which operates one or more schools, combine into a single successor corporation that is one of the original education corporations (e.g., Education Corporation A + Education Corporation B = Education Corporation A). The successor education corporation will operate more than one charter school.

<sup>3</sup> A CMO is a separate corporate entity that provides management support to charter schools.

Questions regarding this policy can be directed to the NYCDOE Office of School Design and Charter Partnerships (OSDCP) via email at [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov).

## **Policy in Detail**

The education corporation of a Chancellor-authorized charter school seeking to merge with another education corporation into a single successor education corporation must comply with the following requirements:

### **Step 1: Plan of Merger and Certificate of Merger**

Education corporations seeking to merge must comply with NY Education Law § 223 and the NPCL.<sup>4</sup>

Education corporations seeking to merge must create a draft Plan of Merger that complies with the requirements of NY Education Law § 223 and NPCL § 902. The information that must be set forth in such plan includes but is not limited to:

- The name of each education corporation, the name under which each was formed (if different than the current name), and the name of the successor education corporation;
- The terms and conditions of the proposed merger; and
- A statement of any amendments or changes to the certificate of incorporation of the successor education corporation to be effected by such merger.

The board of each education corporation must approve such draft plan in accordance with the requirements of Education Law § 223 and NPCL § 903.

After approval of the Plan of Merger, the education corporations shall create a draft Certificate of Merger that complies with the requirements of NPCL § 904.

The board of each education corporation must approve such draft certificate in accordance with the requirements of Education Law § 223 and NPCL § 904.

Following the approval of the education corporations' respective boards of trustees, the draft Plan of Merger and draft Certificate of Merger must be submitted to OSDCP with the LOI. The final version of these documents will be developed in collaboration with the successor authorizer. Such final versions must be submitted to OSDCP.

### **Step 2: LOI Submission**

The education corporations of Chancellor-authorized charter schools seeking to merge are required to submit LOIs via email to [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov).

---

<sup>4</sup> If the NY Education Law conflicts with any provision of the NPCL, the NY Education Law will prevail. N.Y. Educ. Law § 216-a(4)(a).

LOIs should be submitted to OSDCP as early as possible in the fall prior to the fiscal year of the proposed merger. This will ensure the timely processing of all required documents to enact the merger by the start of such fiscal year.

A guide to developing the LOI, including required elements, can be found in Appendix A.

### **LOI Submission:**

- An LOI should only be submitted with the draft Plan of Merger and Certificate of Merger prepared as described in Step 1.
- For proposed mergers involving Chancellor-authorized charter schools operated by a CMO, if the merger will result in a change of charter authorizer for any such Chancellor-authorized school, LOIs will only be accepted if the merger involves all of the Chancellor-authorized charter schools operated by that CMO, with the exception of any Chancellor-authorized conversion charter schools operated by that CMO.
- For proposed mergers involving Chancellor-authorized conversion charter schools, LOIs will only be accepted if the Chancellor is the intended successor authorizer.
- For proposed mergers involving charter schools whose charters are set to expire in the current year, LOIs will only be accepted if the charter school's renewal application has been approved by that charter's authorizer and approved or deemed approved by the Board of Regents.
- LOIs will only be accepted for charter schools that have not received, and do not have pending, any authorizer sanctions, including but not limited to notices of concern, deficiency, probation, non-renewal, or charter revocation.
- If the proposed merger involves more than one authorizer, the education corporations should initiate merger proceedings with each authorizer simultaneously as per the policies and practices of each authorizer.

### **Step 3: Review of the LOI**

LOIs will be evaluated based on the following criteria:

- Submission of all applicable information requested in Appendix A;
- Evidence that demonstrates that the proposed merger will result in a benefit to the academic, operational, governance, and financial capacity of the successor education corporation and associated charter schools;
- The standing of the associated charter schools with their authorizer(s), the New York State Education Department, and the United States Department of Education as evidenced by ESEA accountability designations (Priority, Focus, LAP, or Reward schools) and OSDCP communications with the schools' current authorizer(s) (if applicable); and
- Compliance of the education corporations and associated charter schools with applicable laws and regulations.

The Chancellor's decision is final and non-appealable. A rejection of an LOI does not prohibit the submission of an LOI in the future.

### **Merging to Other Authorizers**

If an authorizer other than the Chancellor will be the successor authorizer after the proposed merger, applicant(s) are not required to submit the NYCDOE's Merger Application ("Merger Application").

Such applicant(s) must provide OSDCP with all documents required by the successor authorizer regarding the merger. Such documents shall be provided via email to [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov).

### **Step 4: Merger Application Submission (Only applicable where the NYCDOE Chancellor is the successor authorizer)**

If the Chancellor will be the successor authorizer after the proposed merger, applicant(s) are required to submit one combined Merger Application no later than 60 school days after receipt of LOI approval to [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov). Guidance for drafting the NYCDOE Merger Application can be found in Appendix B.

Merger applications will be evaluated based on the following criteria:

- Submission of all applicable information requested in Appendix B;
- Evidence that demonstrates that the proposed merger will result in a benefit to the academic, operational, governance, and financial capacity of the successor education corporation and associated charter schools;
- The standing of the associated charter schools with their authorizer(s), the New York State Education Department, and the United States Department of Education as evidenced by ESEA accountability designations (Priority, Focus, LAP, or Reward schools) and OSDCP communications with the schools' current authorizer(s) (if applicable); and
- Compliance of the education corporations and associated charter schools with applicable laws and regulations.

### **Step 5: Notification of Merger Application Decision to Board(s) (Only applicable where the NYCDOE Chancellor is the successor authorizer)**

Within 60 school days of receipt of the Merger Application, OSDCP will notify all applicant(s) and relevant authorizers in writing of the Chancellor's decision regarding the approval, or rejection, of the application.

The Chancellor, through OSDCP, may also elect to return the Merger Application to the applicant(s) for clarification or amendment before rendering a final decision. Returned Merger Applications must be resubmitted within the timeframe indicated by OSDCP. Once OSDCP receives the requested clarifications or amendments, OSDCP will expedite the subsequent review

of the Merger Application and will issue a final decision no later than 60 school days from resubmission if no further clarifications or amendments are requested by OSDCP.

The Chancellor's decision is final and non-appealable. A rejection of a Merger Application does not prohibit the submission of a Merger Application in the future.

#### **Step 6: Charter Revision Request**

If a charter school's charter requires revision in connection with a merger, such charter school must seek a charter revision with the successor authorizer in collaboration with the charter school's current authorizer. A charter school submitting a charter revision request to the Chancellor should submit such request to OSDCP.

Guidance on the charter revision process for charter schools that are authorized by the Chancellor can be found on the DOE OSDCP website at

<http://schools.nyc.gov/community/charters/contacts/DOEresources.htm>.

#### **Public Hearing**

Consistent with NY Education Law § 2857(1), OSDCP will conduct a public hearing for a charter revision related to a merger involving a charter school authorized by the Chancellor or that will be authorized by the Chancellor as a result of a merger. The public hearing will be held within 30 school days of the submission of a charter revision request to OSDCP.

#### **Step 7: Final Merger Approval**

After completion of Steps 1 through 6 above, as applicable, the Chancellor will issue a final merger recommendation to the New York State Board of Regents and/or the successor authorizer for the education corporations outlined in the approved LOI and/or Merger Application. All applicable parties will receive the Chancellor's final, non-appealable recommendation in writing. Final approval of the merger will be contingent on the policies of the successor authorizer, compliance with applicable laws and regulations, and approval of the New York State Board of Regents.

#### **Step 8: Merging Financial Documents**

The successor education corporation will be responsible for providing the Internal Revenue Service (IRS) with written notification of the merger, noting the successor authorizer's Employer Identification Number (EIN) going forward, and sharing a copy of this written notification with OSDCP. Upon receipt of such written notification, OSDCP will ensure that the DOE systems are updated to reflect the accurate EIN for payment purposes. This updating of EINs in DOE systems will be effective once the charter entity approves the merger.

## Appendix A

### Charter Merger Letter of Intent (LOI) Guidance for All Chancellor-Authorized Charter Schools

Education corporations operating Chancellor-authorized charter schools must submit an LOI as a first step in the merger process. Approval of the LOI is required before subsequent steps towards merger can take place.

All submission of materials as well as any questions should be directed to [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov).

This LOI guidance identifies the information and documentation that must be submitted by such education corporations as well as the required submission format. OSDCP will review the LOI in order to:

1. Understand the education corporations' rationale for merging and how the proposed merger will impact school configurations, school governance, finance, academic policies and programming, and staff.
2. Decide whether the merger of education corporations can move forward.

Within 30 school days of receipt of the LOI, OSDCP will notify the applicant(s) and relevant authorizers in writing of the Chancellor's decision regarding the approval, or rejection, of the LOI.

The Chancellor, through OSDCP, may also elect to return the LOI to the applicant(s) for clarification or amendment before rendering a final decision. Returned LOIs must be resubmitted within the timeframe indicated by OSDCP. Once OSDCP receives the requested clarifications or amendments, OSDCP will expedite the subsequent review of the LOI and will issue a final decision no later than 30 school days from resubmission if no further clarifications or amendments are requested by OSDCP.

Because each merger presents unique circumstances, OSDCP may ask for additional information and/or documentation in order to complete its review of the LOI. Applicants may include up to three exhibits, not including the Plan of Merger or the Certificate of Merger, that support the information provided in the LOI.

**DIRECTIONS:** Please indicate the rationale for merging with a complete and concise response to each of the following prompts and questions. For items which will be unaffected by a merger, indicate "Not Applicable." Please ensure that your narrative response is *no longer than 2 pages (exclusive of any attachments)* using a *minimum 11 point font size*. Please include completed school configuration tables with your response using the template provided below.

**Part I. Rationale for Merging:**

- How will merging:
  - Affect students?
  - Affect staff?
  - Affect the school community and/or stakeholders?
  - Affect the Board of Trustees' capacity to govern the associated charter schools?
  - Affect the schools' operations and finances?
  
- Describe any benefits not described in response to the above questions that are anticipated as the result of a merger.

**Part II: School Configurations:**

**Table 1: Current and Projected Authorizers**

Please use the table below to describe the current and projected authorizers for each school that will be affected by the merger being addressed in this LOI. Add rows to the table if needed.

Current School Name	Current Year in Charter Term	Current School Authorizer (NYCDOE Chancellor, SUNY, or NYS Board of Regents)	School's Intended Authorizer Post-Merger
<i>School 1</i>			
<i>School 2</i>			
<i>School 3</i>			

**Table 2: Current School Configurations**

Please use the table below to describe the current grade configurations for each school that will be affected by the merger being addressed in this LOI. Add rows to the table if needed.

School Name	DBN	CSD	Grades Offered in 2015-2016 School Year	Grades Offered at Scale	Enrollment at Scale	Intake Grades
<i>School 1</i>						
<i>School 2</i>						
<i>School 3</i>						

**Table 3: Projected School Configurations Post-Merger**

Please use the table below to describe the projected configurations for each school that will be affected by the merger being addressed in this LOI. Add rows to the table if needed.

School Name	DBN	CSD	Grade Offered in 2015-2016 School Year	Grades Offered at Scale	Enrollment at Scale	Intake Grades
<i>School 1</i>						
<i>School 2</i>						
<i>School 3</i>						

**Part III: Attachments**

- Attach the draft Plan of Merger and Certificate of Merger.

## Appendix B

### **Application Guidance for the Merger of Multiple Education Corporations Where the NYCDOE Chancellor is the Successor Authorizer**

A Merger Application can only be submitted after LOI approval. Merger Applications must be submitted no later than 60 days after receipt of LOI approval.

Please submit all materials and direct all questions to [charteroversight@schools.nyc.gov](mailto:charteroversight@schools.nyc.gov).

#### **Application Overview**

This Merger Application identifies the information and documentation that must be submitted by education corporations seeking to execute a merger naming the New York City Department of Education (NYCDOE) Chancellor as the successor charter authorizer. The objective of the Merger Application is to provide the NYCDOE Chancellor details beyond those submitted in the LOI that support the applicants' rationale for merging as well as how the proposed merger will impact the academic, governance, organizational, and financial capacity of the merged education corporations.

As each education corporation merger presents unique circumstances, the Office of School Design and Charter Partnerships (OSDCP), on behalf of the Chancellor, may ask for additional information and/or documentation in order to complete its review of the Merger Application. Applicants may include up to five relevant attachments that support the information given in this application (exclusive of the attachments asked for in Merger Application Parts I—VII below).

**Please address how each item below will be affected by a merger through both narrative and by completing the school configuration tables included below. For items that will be unaffected by a merger, indicate "Not Applicable." Please ensure that your application is no longer than 10 pages (exclusive of any attachments) using a minimum 11 point font size.**

#### **Part I: Governance**

- Describe how merging will affect school governance and operations:
  - Effect on Board of Trustees operations, including revisions proposed for the following items in connection with the merger:
    - Roster
    - By-laws
    - Code of Ethics
    - Meeting Calendar
  - Any additional anticipated impact on school governance post-merger.
- Provide evidence of the capacity of the successor Board of Trustees to oversee merged schools:
  - Members' previous records of meeting attendance

- Evidence of functional Board committees
  - Written examples of committee reports
  - List of members for each committee
- Evidence of compliance with laws and regulations (including but not limited to the New York Open Meetings Law and Article 18 of the General Municipal Law as applicable)
  - Evidence that in the past twelve months meeting notice was made publicly available prior to meeting dates (e.g., newspaper notices, screenshots or links if posted on school's website)
  - Evidence that the Board makes materials to be reviewed during meetings available to the public upon request prior to or at the meetings
- Provide meeting minutes from each affected Board indicating an affirmative vote for the education corporations to merge under the oversight of a successor Board.
  - Submit these minutes as a numbered attachment.

## **Part II: School Community**

- Describe the outreach/engagement the schools (or education corporation) have conducted to solicit school community feedback on the proposed merger.
- Provide evidence of the school parent and community feedback received thus far. If needed, submit this evidence as a numbered attachment.

## **Part III: Finance**

- Provide an updated 5-year budget projection.
- Identify the impact of the proposed merger on:
  - Food, transportation and health services
  - Purchasing and contracting procedures
  - Insurance
  - Dissolution procedures
  - Financial audits
- For charter schools operated by a CMO, describe any changes anticipated to be made to the charter management agreement as a result of the proposed merger, including:
  - Changes to fees
  - Changes to services provided
  - Contract consolidation
  - Submit revised charter management agreements as numbered attachments.

## **Part IV: Academic Policies and Programming**

- Describe how merging will affect:
  - Admission policies
  - Transfer of students between schools

- The ability of the associated charter schools to meet or exceed the enrollment and retention targets established by the New York State Education Department (more information can be found on the NYSED website [here](#))
- Academic opportunity
  - Academic performance
  - Academic programming and services (including provision of services to students with disabilities, English Language Learners and at-risk students)
- Describe any additional anticipated impact on students post-merger.

**Part V: Staff**

- Describe how merging will affect:
  - Hiring/termination processes
  - Collective bargaining agreement considerations
  - Utilization of staff across schools
- Describe any additional anticipated impact on staff post-merger.