



## New York State Education Department

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

**November 2021**

The Regents of The University of the State of New York  
Charter School Office  
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Albany, New York 12234  
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## Application for the Merger/Consolidation of Multiple Education Corporations

### PLEASE NOTE:

1. This guidance document is primarily for education corporations that seek to have the surviving education corporation authorized by the Board of Regents. In the event that the surviving education corporation is authorized by a charter entity other than the Board of Regents, the education corporation will notify the NYSED Charter School Office (CSO) no later than December 1 prior to the year in which the merger goes into effect. An electronic copy of the merger application submitted to the other charter authorizer must also be submitted to the CSO at [CharterSchools@nysed.gov](mailto:CharterSchools@nysed.gov) on or before the December 1 deadline.
2. A consolidation occurs when two or more existing corporations [for ex. (A) and (B)] are combined into a newly created corporation (C) which begins its corporate existence, and the corporate existence of each constituent corporation (A) and (B) terminates. A merger occurs when two or more existing corporations [for ex. (A) and (B)] combine, with the corporate existence of one of the constituent corporations [for ex. (A)] continuing as the surviving corporation, and the corporate existence of (B) terminates.
3. Any charter school not authorized by the Regents merging with a Regents authorized charter school, where the surviving education corporation will be authorized by the Regents, will be required to adopt the Oversight Plan for Board of Regents-Authorized schools (including the Charter School Performance Framework) as a part of the merger (<http://www.nysed.gov/charter-schools/oversight-plan-board-regents-authorized-charter-schools>).<sup>1</sup>
4. All submissions of materials, as well as any questions, should be directed to the liaison for the school authorized by the Board of Regents.
5. An answer must be provided for *each* numbered application prompt.
6. If the applicant is proposing a cross-authorizer merger, any pending revision requests (excluding the merger) must be resolved prior to the acceptance of the merger application by the Board of Regents.
7. In addition to the documents and information requested herein, if the applicant is proposing a cross-authorizer merger, the authorizing entity must provide documentation confirming approval of the proposed merger into an education corporation authorized by the Board of Regents before the application will be considered.

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<sup>1</sup> Link last checked on 11/1/2021.

8. Additional and/or clarifying documentation and assurances may be requested prior to the acceptance of the merger application. The Department may also schedule a school visit to assess the academic, organizational and fiscal soundness of schools proposing to merge into an education corporation authorized by the Board of Regents.
9. The narrative portion of the application should not exceed twenty-five (25) total pages, and shall not exceed the page limitations set forth in the heading for *each Part* of the application. The font shall be Calibri or Times New Roman 12-point font. Do not condense the space between letters or the space between sentences and/or paragraphs.

### **Application Overview**

Amendments to the New York Charter Schools Act of 1998 (as amended) in 2010, permit charter school education corporations to operate more than one charter school. Education Law §223 provides that the Board of Regents may consolidate or merge any two or more corporations chartered by the Board of Regents or incorporated under a special act of the Legislature or under a general law for purposes for which a charter may be granted by the Board of Regents. Schools authorized by the Board of Regents may merge with other Board of Regents authorized schools or schools authorized by the SUNY Trustees, the New York City Schools Chancellor or any school district (e.g., Buffalo City School District). All such mergers are considered material charter revisions and thus must be submitted to the CSO no later than December 1 prior to the year in which the merger goes into effect. When a non-Board of Regents authorized school merges with a Board of Regents authorized school, a revision request must also be submitted to the other authorizer(s).

Many provisions of Article 9 of the Not-For-Profit Corporation Law, dealing with merger and consolidation of corporations, are made applicable to education corporations by the provisions of Education Law §216-a. Under that Article, merger or consolidation may be effected by the filing of a certificate with the Department of State. However, where one or both of the constituent corporations, or the proposed consolidated corporation, is an education corporation, no certificate of merger or consolidation may be filed except with the consent of the Board of Regents.

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

The objective of the Merger Application is to provide the CSO with details that support the applicants' rationale for merging. The application also provides information about the schools

and explains how the proposed merger will impact school configurations, governance, community, finance, academic policies, programming, and staff.

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

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

**Merger Timeline\***

Mergers usually become effective on July 1<sup>st</sup> of the year after the submission of the merger application. For accounting and other corporate purposes many corporations wish to have a July 1<sup>st</sup> start date to coincide with the fiscal year as well as school year. Therefore, this timeline was created to best allow for a July 1<sup>st</sup> merger effective date.

|                    |  |
|--------------------|--|
| December 1         | Merger Application Due to the CSO                                    |
| January – February | Public Hearing Takes Place in the District(s) of Location            |
| February-April     | NYSED Recommendation is Presented to the Board of Regents for Action |
| July 1             | Effective date of Merged Education Corporation/start of fiscal year  |

\*All dates are approximate and subject to change.

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

1. Provide a brief summary of proposed education corporation configuration and governance.
2. Address the rationale for merging by addressing each of the following guiding questions through narrative:
  - a. How will merging benefit students?
  - b. How will merging benefit the community and/or stakeholders?
  - c. How will merging improve the Board of Trustees' capacity to govern its schools?
  - d. How will merging improve schools' operations and finances?
  - e. What additional benefits are anticipated as the result of a merger?

3. Provide a list of all proposed charter revisions included in the merger application. Please note: Any revisions not specifically mentioned and approved by the Board of Regents' approval of the merger may not be implemented by the surviving education corporation.
4. Indicate any anticipated challenges resulting from the merger, and how those challenges will be addressed.

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

1. List the Authorizing Entity for each education corporation to be merged (i.e, NYC Department of Education, SUNY Charter schools Institute, or Board of Regents), and the proposed authorizing entity after the merger by completing Table 1, below
2. If the applicant is proposing to merge *into* an education corporation authorized by the Board of Regents and away from an education corporation authorized by another authorizing entity, provide:
  - a. A formal letter from the current authorizer approving of the proposed merger
  - b. A complete copy of the merger proposal and any attachments sent to the current authorizer
  - c. The current enrollment, discipline, and complaint policy for each school, and a copy of the proposed enrollment, discipline and complaint policy for each school after the merger
  - d. The most recent monitoring reports for each school from the current authorizer
  - e. If applicable, the most recent Corrective Action or Probation letter provided to the school by its current authorizer together with documentation of successful completion of all listed concerns
3. If the merged education corporation is to be renamed, state the new name. If the schools operated by the merged education corporation are to be renamed, state the new names.
4. Provide an original and two copies of a Merger Petition, duly executed and acknowledged before a notary public, the original and two copies of an agreement of consolidation or an agreement of merger, the original and two copies of certificates of approval of the agreement of consolidation or agreement of merger by not less than three-fourths of the whole number of trustees of each constituent corporation and, if desired, a plan of merger or plan of consolidation pursuant to NPCL §902. The Plan must detail the transfer of all assets and liabilities of each education corporation being merged or consolidated and must specify that no liabilities are avoided, and no assets are removed by merging or consolidating existing education corporations. The Plan

must also specify the date(s) each school/education corporation held a public meeting of its board specifically for the purpose of voting on the merger agreement. The originals of these documents must be sent by mail to the following address:

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

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

5. Include the following tables as part of the merger application:

**Table 1: Current and Projected Authorizers**

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

| Current School Name | School Name Post-Merger | Current School Education Corporation Name | Education Corporation Name Post-Merger | Current Charter Term Expiration Date | Current Year in Charter Term | Current School Authorizer (NYC DOE, SUNY CSI, or NYSED) | School's Intended Authorizer Post-Merger | School Leader Name, Email Address, and Phone number |
|---------------------|-------------------------|---|--|--------------------------------------|------------------------------|---|--|---|
| <i>School 1</i>     |                         |   |  |                                      |                              |   |  |   |
| <i>School 2</i>     |                         |   |  |                                      |                              |   |  |   |
| <i>School 3</i>     |                         |   |  |                                      |                              |   |  |   |

**Table 2: Current School Configurations**

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

| School Name     | Current CSD | Current Grades Offered | Maximum Approved Grades | Current Enrollment | Maximum Approved Enrollment | Proposed Changes Post-Merger |
|-----------------|-------------|------------------------|-------------------------|--------------------|-----------------------------|------------------------------|
| <i>School 1</i> |             |                        |                         |                    |                             |                              |
| <i>School 2</i> |             |                        |                         |                    |                             |                              |
| <i>School 3</i> |             |                        |                         |                    |                             |                              |

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

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

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

| School Name     | Name, Email Address and Phone Number of Current Board Members | Name of Board Members that Voted to Approve Proposed Merger | Name of Board Members Post-Merger | Position of Board Members Post-Merger (e.g., Chair, Treasurer, Member) |
|-----------------|---|---|-----------------------------------|--|
| <i>School 1</i> |   |   |                                   |  |
| <i>School 2</i> |   |   |                                   |  |
| <i>School 3</i> |   |   |                                   |  |

1. Provide the following Board of Trustees materials for the proposed merged education corporation:
  - a. Board roster, including positions, terms, and personal contact information (e.g., John Smith, Secretary, Third Term (2021 to 2024), [JSmith@email.com](mailto:JSmith@email.com), (c) (555) 555-1762; (w) (555) 555-4741)
  - b. By-laws
  - c. Code of Ethics
  - d. Meeting calendar
2. Describe any additional anticipated impact on school governance post-merger.
3. Provide evidence of resultant board capacity to oversee merged schools.

4. For each proposed board member of the surviving or consolidated corporation, which board member was not previously approved by SED. Attach all documents set forth in the most recent guidance, located at <http://www.nysed.gov/charter-schools/bor-authorized-charter-school-policies-procedures-resources>.
5. Provide meeting minutes from each affected board indicating an affirmative vote for the Education Corporations to merge under the oversight of a resultant board.
6. Submit proposed revised charter management agreements (for charter schools with a CMO, EMO, ESP, or other entity that provides comprehensive management services).
7. Describe any changes anticipated to management agreement (if applicable), including:
  - a. Changes to fees
  - b. Changes to services provided
  - c. Contract consolidation
8. Provide a current organizational chart for each school, and an organizational chart for the proposed merged education corporation, which shows the organizational relationship between each school and the proposed merged education corporation.
9. Provide an original signed charter agreement for each school not currently authorized by the Board of Regents.<sup>2</sup>

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

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

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<sup>2</sup> Please contact Counsel for the NYSED Charter School Office to obtain the Charter Agreement. If the merger is approved by the Board of Regents the Charter Agreement will be signed by the Chancellor, and the school will receive a fully executed copy as soon as possible thereafter.



**Table 4: School Community Measures**

Use the table below to report the following metrics.

|   |  |
|---|--|
| Maximum Authorized Enrollment   |  |
| Enrollment on BEDS Day of the current academic year                             |  |
| Average Daily Attendance to date  |  |
| Number of In-School Suspensions (Occurrences) – General Education Students*     |  |
| Number of Out of School Suspensions (Occurrences) – General Education Students* |  |
| Number of Expulsions– General Education Students*                               |  |
| Number of In-School Suspensions (Occurrences) – Special Education Students*     |  |
| Number of Out of School Suspensions (Occurrences) – Special Education Students* |  |
| Number of Expulsions– Special Education Students*                               |  |

\*In the academic year prior to the current academic year.

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

1. Provide a five-year budget projection for each school using the [NYSED budget template](#).<sup>3</sup>
2. For each school, identify the impact of charter merger on:
  - a. Accounting software
  - b. Administrative functions (front office and back office)
  - c. Policy and Procedure Manual
  - d. Food, transportation and health services
  - e. Purchasing and contracting
  - f. Insurance
  - g. Dissolution procedures<sup>4</sup>
  - h. Financial audits, including single audits

<sup>3</sup> Refer to Appendix E in the [Charter Revision Guidance](#).

<sup>4</sup> The response to this prompt must include the following statement: "In case of dissolution, the dissolved school will transfer its assets in accordance with Education Law §2851(2)(t)."

3. If applicable, provide a corrective action plan addressing any annual financial audit finding(s) from the past two years from any entity (i.e. the independent audit, the NYS Comptroller, or the NYC Comptroller).
4. Provide a copy of the most recent management letter received from each school by its independent auditor (if any), along with documentation of steps taken to resolve each deficiency raised in the letter.
5. Provide a copy of the most recent audit of the school by the Office of the New York State Comptroller or New York City Comptroller (if any), along with documentation of steps taken to resolve each concern raised in the report.

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

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

1. Enrollment policies.
2. Transfer of students between schools.
3. The ability of schools under each charter to meet or exceed the enrollment and retention targets established by NYSED.
4. Academic programming.
5. Student academic performance.
6. Provision of academic program to at risk students (including provision of services to students with disabilities (“SWDs”) and English Language Learners (“ELLs”)).
7. Any additional anticipated impact on students post-merger.

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

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

1. The hiring/termination processes.
2. Collective bargaining agreement considerations, if applicable.
3. Utilization of staff across schools.

4. Any additional anticipated impact on staff post-merger.

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

Provide the following information for each school:

1. ESSA Accountability Designation (e.g., [insert new designation]<sup>5</sup>, etc.).
2. For the previous academic year, the aggregate proficiency on 3-8 ELA and math assessments, and an analysis of how the school compares to state proficiency levels (if the school does not serve grades 3-8 write “N/A”).
3. The aggregate proficiency on 3-8 ELA and math assessments, differentiated by subgroup (English Language Learners, Students with Disabilities, and Economically Disadvantaged), and an analysis of how the school’s subgroups compare to state subgroup proficiency levels (if the school does not serve grades 3-8 write “N/A”).
4. Annual Regents testing outcomes for every tested subject and an analysis of how the school compares to state Regents testing outcomes for every tested subject.
5. Cohort Regents testing outcomes for ELA, mathematics, science, Global History and US History and an analysis of how the school compares to state Regents testing outcomes for every tested subject.
6. High School graduation rate, and an analysis of how the school’s rate compares to statewide four year cohort graduation rate.

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

1. For each school, provide the total number of classroom teachers, the total number of uncertified classroom teachers (including STEM teachers), the total number of uncertified STEM teachers, and the number of teachers returning from the previous academic year. If the school exceeds the number of uncertified teachers specified in Education Law §2854, please explain how the school plans to become in compliance, and the timeline for same.
2. For each school, provide the percentages of SWDs, ELLs, and ED students enrolled at the school and an analysis of how the school’s population compares to the percentages of each subgroup in the district of location.

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<sup>5</sup> Include the schools’ ESEA Accountability Designation (e.g., Focus, Priority) if an accountability designation under ESSA has not yet been provided for the schools.

## **Education Corporations Merging to another Charter Entity**

If the surviving education corporation will be authorized by a charter entity other than the Board of Regents, the general Merger Guidelines listed above do not apply and:

1. Notification of the intent to merge must be provided to the CSO via email at [CharterSchools@nysed.gov](mailto:CharterSchools@nysed.gov) no later than December 1 prior to the year in which the merger goes into effect.
2. A merger revision application must be submitted to the other charter entity as per their merger policies and procedures. This merger application must also be submitted concurrently to the CSO via email at [CharterSchools@nysed.gov](mailto:CharterSchools@nysed.gov). Please contact the charter entity for timelines and content necessary for the approval of a merger revision.
3. All mergers must be approved by both the authorizer and (if the authorizer is not the Board of Regents) by the Board of Regents.
4. The CSO reserves the right to request additional information as required to present the item for action to the Board of Regents.