



Charter Schools Institute
The State University of New York

2023-24

APPLICATION TO MERGE TWO OR MORE NOT-FOR- PROFIT CHARTER SCHOOL EDUCATION CORPORATIONS

FOR CHARTER SCHOOLS AUTHORIZED BY
THE STATE UNIVERSITY OF NEW YORK BOARD OF TRUSTEES

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MERGER

The following Application and guidance discuss the documents and procedures necessary to prepare for the approval of a merger of not-for-profit charter school education corporations (“education corporations”) and guide operations after merger has become effective. Two or more existing 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 by allowing common governance, oversight, financial accounting systems, shared educational programming and resources, and improved student access and choice.

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”) and the New York City Schools Chancellor (the “NYCDOE”). A SUNY authorized education corporation may be the one surviving corporation or may be one of the corporations that merges into another authorizer’s education corporation, a constituent corporation. The authorizer of the surviving corporation will be the authorizer of all schools under the surviving corporation upon the effective date of the merger.

All SUNY authorized education corporations involved in a proposed merger submit the Application to the SUNY Charter Schools Institute (the “Institute”). When a non-SUNY education corporation merges with a SUNY education corporation, a revision request must also be submitted to the other authorizer under its protocols. While all mergers must be submitted to the Board of Regents for final approval and issuance of revised corporate paperwork, an all-SUNY 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 have to affirmatively vote on the merger **before** the SUNY Trustees will consider the merger.

Maintain School-Level Accountability

For accountability purposes, schools within a merged education corporation are held accountable in the same manner as any SUNY authorized school. Academic, operational and financial performance will continue to be reported at the school level, with a primary focus on the academic success of each school’s students. In addition, certain new network or education corporation level fiscal and capacity monitoring will be required to help ensure all schools in the multi-school education corporation are supported. SUNY will ensure all corporate requirements and logistics are handled appropriately and within applicable statutes and no school is permitted to merge solely to evade the consequences of student performance accountability.

The Institute recommends consulting legal counsel to assist in drafting the appropriate corporate and other documents for merger and ensure the proper board procedures are followed.

Please read the following sections to clearly understand the benefits of merger and how future operations will work to inform the components of the Application.

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

2. Education Law § 2852(5-b).

BENEFITS TO MERGER

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

- **Common governance.** A sole board of trustees would govern two or more schools. Paperwork, multiple meetings, notices, and compliance burdens lessen when one board can make decisions across a number of schools.
- **Common oversight and handling of finances.** The resources of the education corporations can be pooled and directed to appropriately assist the finances of all schools under the education corporations. A common education corporation budget can be developed each year with schedules for each school allowing the education corporation to direct and share resources among schools. A single education corporation with more employees and students has increased buying power in purchasing employee benefits, insurance, technology, educational materials, services and commodities, and may be better positioned for financing facilities. Smaller and newer schools are not restricted by their enrollment to access resources for programs, financial and other oversight, start-up, expansion, etc. In addition, the 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 to report the operating surplus or deficit by school. This is a key cost savings over having an audit for each education corporation, especially when the financial policies, reporting systems, and internal controls are 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 ability to share programs and staff between schools, which may be the most significant educational advantage of merger. This ability to deliver a program at scale can allow an education corporation to create more offerings to its student population. Students with disabilities or English language learners can be drawn from different schools into classes at one site and enjoy expanded settings and resources. 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. Schools may also be able to hire staff and extended services providers to assist students with disabilities rather than rely on district provided personnel.
- **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 “network” or under common management through a charter management organization (“CMO”) or shared services team. Charter school students receive a returning student statutory preference under the New York Charter Schools Act of 1998 (as amended, 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 its schools so long as there are seats. The result is greater access and choice.

- **Enrollment pattern flexibility.** Middle and high schools require greater resources than many single feeder (i.e., one elementary school feeds into one middle school feeds into one high school) charter schools can afford. Merger allows separate schools to legally combine allowing multiple elementary and middle schools to feed a middle or high school program. The ability to offer middle and high school options under a single education corporation results in greater access and choice.

DRAWBACKS OF MERGER

The combined finances that result from merger may take away surpluses from fiscally high performing schools in order to support schools in need of fiscal support. 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. In the extreme, individual schools (education corporations) can no longer declare bankruptcy once merged because the entire education corporation would need to seek such creditor protection. Larger balance sheets and fiscal operations also give rise to the need for stronger internal controls and fiscal oversight.

FUTURE OPERATIONS

ACCOUNTABILITY

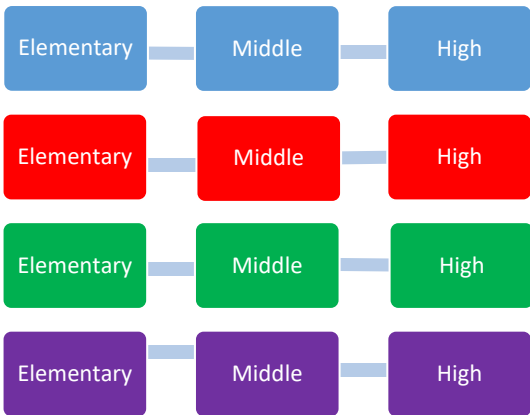
Per the Act and SUNY policy, student performance accountability resides at the charter school level, not at the education corporation level. The merger will not change the accountability requirements of any individual SUNY authorized school the education corporation has the authority to operate. Each 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. Merger does not lengthen or shorten the charter term of any individual school.

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. The timing of renewal decisions will, however, coincide with the existing charter expiration date as set by the prior authorizer. 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, even if they have been previously renewed by their current authorizer.

Education corporations may therefore 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

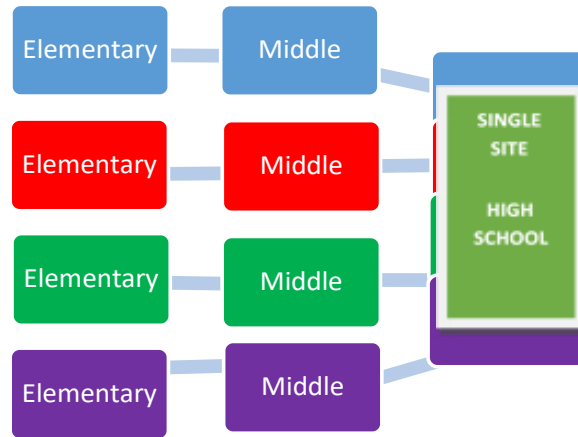
Four stand-alone education corporations may each operate a school serving grades Kindergarten -12th grade. Each school may operate an elementary, middle and high school at its own sites typically with three physical sites. Each school has an accountability plan for its Kindergarten – 12th grades. Upon renewal, each school is accountable for its own Kindergarten – 12th grades. Upon merger, the four schools may continue to operate separately and be accountable separately. The chart below shows schools with straight accountability pathways.³



3. Colors represent an individual school. Therefore, each color represents an individual Accountability Plan for which the individual school will be held accountable at renewal.

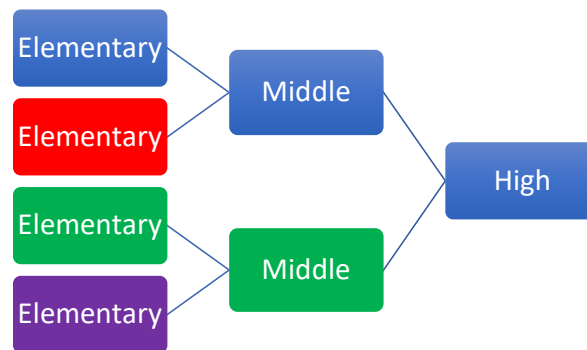
2. Straight Pathways with Combined Sites

Four stand-alone education corporations may each operate schools with Kindergarten – 12th grade. 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 facilities but all schools' students attending the same high school program). Each school still has a separate accountability plan for its Kindergarten – 12th grade. In other words, the high school program would have four separate accountability plans tied to it. Upon renewal, each school is accountable for its own Kindergarten – 12th grade as measured by individual student performance. The chart below shows straight pathways with combined sites.



3. Feeder Pathways

Four stand-alone education corporations may each operate schools serving Kindergarten – 12th grade. 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 Kindergarten – 12th grade while another is accountable for Kindergarten – 8th grade while the remaining two schools are only accountable for an elementary school each.⁴



4. Note that a new charter is not required for the combined middle or high schools.

FISCAL RESPONSIBILITY OF MERGED EDUCATION CORPORATIONS

Close Out Financial Statements

Upon merger each education corporation is required to provide the Institute a close out financial statement showing the final balances on the effective end date of each constituent corporation and the related opening balances on the effective date for the surviving corporation (usually June 30th). 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 are sufficient documentation.

Initial Statement Process

The Initial Statement process is an accountant review process required by the SUNY Charter Agreement⁵ wherein 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 prior to opening. 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; and,
- substantially similar financial controls have been instituted by the education corporation for the constituent school(s) 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. Constituent education corporation schools acquired through merger are not subject to the initial statement process as the Institute would have reviewed their finances prior to merger and the SUNY authorized surviving corporation's financial policies and procedures will be in place.

Quarterly Interim Reports

All financial statements the surviving 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 surviving education corporation shall prepare and submit to the Institute within 45 days of the end of each quarter of its the 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 its website to include, but not be limited to, the aggregated statements for the surviving education corporation as determined by the Institute. In addition, the surviving education corporation must submit a separate statement of income and expenses for each school included under the merged entity.

Audits

For the fiscal year immediately preceding the merger, each education corporation participating in the merger shall provide its audit to the Institute in accordance with the Institute's [guidance](#), in addition to the Close Out Financial Statements, above. For the next fiscal year and thereafter, the surviving education corporation shall retain an independent certified public accountant or certified public accounting firm licensed in New York to perform an audit of the merged education corporation's annual financial statements. The independent audit of the surviving 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 education corporation. The audited financial statements must be submitted to the Institute by November 1 of each year and is considered part of the (prior) Annual Report.⁶ In addition, and pursuant to the same timetable, the surviving 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 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 by which each corrective step must be completed. All documents required to be submitted shall be submitted electronically in accordance with the Institute's Audit Guide.

On an annual basis the surviving 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 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 identify the reason. A benefit of a merged education corporation is the flexibility of having the education corporation or one school pay expenses of another school 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 using 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. The education corporation must submit a completed Excel spreadsheet template for each individual school's statement of income and expenses.

Annual Budgets

The education corporation shall prepare and provide to the SUNY Trustees a copy of its annual budgets and cash flow projections for (i) the surviving education corporation as a whole, and (ii) each school by no later than June 30 of the immediately preceding fiscal year.⁷ All annual budgets and cash flow projections shall be submitted as prescribed by the [Annual Budget and Quarterly Guidance](#).

6. The Annual Report is due the prior August 1. The audit must be posted on the school's website and included with the next year's annual report per Education Law § 2857(2).

7. Charter Agreement § 5.5.

Dissolution of Funds

Per Charter Agreement § 8.9, the surviving education corporation must create a dissolution reserve fund 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; and,
- 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 above requirements become effective upon the merger of operating schools, which may reduce the overall amount of dissolution reserve funds for all schools..

SCHOOL OPERATIONS

While there is only one education corporation post merger, 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 surviving education corporation will bill districts for all schools it operates under the surviving education corporation’s EIN. Just as before the merger, each school must provide projected disaggregated enrollment and billing disaggregated by 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.

FUTURE AGREEMENTS

Please note that once the merger takes effect, there is only one education corporation and, therefore, one legal entity. The constituent corporations cease to exist and the surviving education corporation stands in the shoes of the constituent corporations for purposes of leases, contracts, financing agreements, etc. For this reason, each education corporation considering merger should review such legal arrangements to determine the impact of merger, if any, and secure any needed permissions to merge. The surviving education corporation is the only legal entity that may enter into legal agreements. The surviving corporation has one EIN and one federal and state tax exemption. Please note this distinction when applying for or entering into agreements on behalf of any school the education corporation has the authority to operate.

REPLICATION

SUNY’s Request for Proposals (“RFP”) presents a pathway for an existing education corporation (whether merged or not) to operate a new school or 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]. . .”⁸ A formal application for a charter through the RFP process is the pathway an education corporation or applicant would follow. Please refer to the most current SUNY RFP for further discussion as to these options.

PROCESSING OF A MERGER

Merging of Two or More SUNY Authorized Education Corporations

If the proposed merger involves SUNY authorized education corporations only, upon submission of the Merger Application, the Institute will check the application for completeness and then review and determine whether it will recommend the merger to the SUNY Trustees or require additional information. A merger application is a material revision of the charter of each education corporation; therefore, the Institute will provide notice to the public and all school districts within which schools of each education corporation are located.

The Institute conducts a legal, fiscal, and academic performance review of the constituent corporations, which may include site visits and board interviews. As part of the fiscal review, the Institute will also review either an updated business plan or the business plan elements related to the merger, as applicable, and may engage outside consultants to assist with the review. If approved, the Institute provides a new charter agreement (designated “amended and restated”) executed by the SUNY Trustees and the current board chair of the surviving corporation. The charter agreement will provide the surviving corporation the authority to operate all constituent corporation schools. The authority to operate each individual school, with the expiration date, 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 well as the Terms of Operation of each school the education corporation may operate as modified by the Merger Application. 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 Response 13. This is an opportunity for the merged education corporation to choose to standardize certain terms, which 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. For compliance, SUNY uses only one monitoring plan for all the schools of the surviving corporation.

Merger of a Non-SUNY Authorized Education Corporation with a SUNY Authorized Education Corporation

The Institute will ask non-SUNY authorized schools to provide additional information as outlined in the Merger Application. As previously stated, the Institute will generally not recommend for merger any school that is facing non-renewal or charter revocation, nor will it recommend a merger that would cause a SUNY authorized school to not be fiscally viable.

When one or more of the education corporations seeking to merge is authorized by a charter authorizer other than SUNY, then the education corporations not authorized by SUNY must submit a merger revision application to the other authorizer(s) in accordance with its procedures. The non-SUNY merger revision

must be approved by both the non-SUNY authorizer and (if the authorizer is not the Board of Regents) by the Board of Regents **before** the Institute will forward a positive recommendation to the SUNY Trustees. If the SUNY Trustees approves the merger, the Institute will process and submit to the Board of Regents an amended and restated charter agreement and accompanying documentation for the proposed merger charter revision(s). 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 other authorizers for timelines and content necessary for the approval of a merger revision. Questions regarding such mergers and timing can be directed to the Institute.

MERGER TIMELINE

Phase	Description		Approximate Timeline
Letter of Intent to Merge	The Institute requests the education corporations seeking to merge submit a Letter of Intent by November 30 th to the attention of the Institute's Associate Counsel.		November
Submission of Application for Merger	An Application to Merge is due to the Institute. The deadline for receipt of all application materials is 5 p.m. on December 15 th .		December
Notice and Opportunity for Comment	Pursuant to the Act, the Institute notifies the school district of location of each school under merger consideration about receipt of the application, when the SUNY Trustees may act on it, and the district's obligation to hold a public hearing. Within 30 days of the above notice, the school district of location holds a hearing to solicit comments from the community. The failure of a school district to hold a hearing will not prevent the SUNY Trustees from acting on a merger.		December-February
Application Review	The Institute reviews the application as well as historical data, evaluations, business plan information, and records for each school under merger consideration.		November-March
Application Revision	The Institute may ask for amendments to parts of the application, some of which may be required by statute as the Institute incorporates parts of the application into the charter if the merger is granted.		November-March
Visit/Interview	The Institute may interview the boards and school leadership from each education corporation. The Institute may also visit any school under merger consideration.		January-March
	Merger of SUNY Authorized Education Corporation ONLY	Merger of a SUNY Authorized Education Corporation with a Non-SUNY Authorized Education Corporation	
Action of the SUNY Charter Schools Committee	January- March	The SUNY Charter Schools Committee will not act upon a merger with a Non-SUNY Authorized Education Corporation until the Board of Regents have formally approved the merger.	
Submission to Board of Regents	March 31 st	TBD	
Action of the Board of Regents	Within 90 days of the submission by the Institute.	Within 90 days of the submission by the Institute.	
Effective Date of Merger	The merger documents normally state that the merger will become effective on July 1 st or, if approval comes after July 1 st , the first of the next fiscal quarter. For accounting, enrollment, per pupil billing, and other corporate purposes, many corporations wish to have a July 1 st start date to coincide with the fiscal year as well as school year. This timeline was created to best allow for a July 1 st merger effective date.		

FORMATTING AND SUBMITTING APPLICATIONS

Intent to Apply Form

The applicant education corporation(s) must contact the Institute by email at Charter.Legal@suny.edu at least one week prior to submitting the Intent to Apply form to request information about how to submit a form. Please include the legal name of each education corporation, point of contact name, and email address. Applicants must upload Intent to Apply forms to Epicenter (see below for additional information).

Submitting and Formatting Materials to the Institute

The Applicant(s) must submit all materials as digital files to the Institute by the deadlines noted in Merger Application Timeline (see page 12). It is not necessary to submit a paper copy of the merger application.

Applicants must upload digital files to Epicenter, the online system the Institute uses for document management. The Institute will provide each applicant with Epicenter log in credentials for this purpose. Note that this is the only system applicants may use to submit proposals including the Intent to Apply Form. Applicants must use the electronic file conventions listed on the next page. NOTE: For requests containing templates provided on the Institute's website, such as the budget template, applicants must use the most current version available on the website. The Institute will not accept submissions using outdated templates.

ELECTRONIC FILE CONVENTIONS

Merger Submission Checklist			
	Letter of Intent	Letter of Intent	MS Word®, Adobe Acrobat® or MS Excel®
Application			
	Response 1	Rationale for Merger	MS Word®, Adobe Acrobat® or MS Excel®
	Response 2	Plan of Merger	MS Word®, Adobe Acrobat® or MS Excel®
	Response 4	Public and Education Corporation Trustee Notices	MS Word®, Adobe Acrobat® or MS Excel®
	Response 5	Corporate Resolutions and Verification	MS Word®, Adobe Acrobat® or MS Excel®
	Response 6	Student Enrollment Tables	Link
	Response 7	Admissions Policy	MS Word®, Adobe Acrobat® or MS Excel®
	Response 8	Five-Year Budget	Link
	Response 9	Financial Information of CMO (if applicable)	MS Word®, Adobe Acrobat® or MS Excel®
	Response 10	Financial Information of “Friends Of” Organization (if applicable)	MS Word®, Adobe Acrobat® or MS Excel®
	Response 11	Statistical Overview	Link
	Response 12	Business Plan Elements	MS Word®, Adobe Acrobat® or MS Excel®
	Response 13	Revisions (if applicable)	MS Word®, Adobe Acrobat® or MS Excel®
	Response 14	Restructuring Elements (if applicable)	MS Word®, Adobe Acrobat® or MS Excel®
	Response 15	Non-SUNY Authorized Education Corporations (if applicable)	MS Word®, Adobe Acrobat® or MS Excel®

APPLICATION FOR MERGER

Once the education corporations seeking to merge have completed the appropriate steps (outlined below), the education corporations must submit the Application to the Institute for review. If one or more of the corporations are not authorized by SUNY, those corporations must submit applications to SUNY and the applicable authorizer(s).

1. Rationale For Merger

Please submit a rationale as to why the education corporations seek to merge. The rationale must include:

- how students and the community will benefit;
- the reason(s) why merger is sought; and,
- the due diligence (e.g., fiscal, organizational, academic, etc.) performed by each education corporation prior to approving the merger.

2. Plan For Merger (Also Referred to as a “Merger Agreement”)

Please submit a Plan of Merger.⁹ 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 surviving 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 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;¹⁰
- 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;¹¹
- the name and address of the surviving corporation.¹² The surviving 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, e.g., “Sunshine Charter Schools” or “Sunshine Charter School Academies;”

9. N.Y. Not-For-Profit Corporation Law § 908.

10. This information is in each corporation’s provisional charter (certificate of incorporation) issued by the Board of Regents.

11. 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.

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

- 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 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 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.¹³

3. 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. 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.¹⁴ 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;”
- 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 affected 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

13. 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.

14. 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).

has been authorized, as to each Constituent Corporation, pursuant to Education Law Subdivision 2853(1)(b-1), as amended to date, and the name of the surviving corporation will be 'XYZ Charter Schools.'"

4. Public And Education Corporation Trustee Notice

Please submit evidence the constituent and surviving corporations provided the appropriate notice to their trustees and the public.¹⁵ 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 notice must conform to the by-laws and Education Law § 226(3). 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.¹⁶

5. Corporate Resolution and Verification

Please provide evidence of the constituent and surviving 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 believes Education Law § 223 is modified by the Act when applied 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 with this requirement. Resolutions from each corporation must clearly evidence approval and delegate a single trustee or officer from each corporation the responsibility to execute the Plan of Merger and accompanying documents. In addition, each constituent and the surviving corporation must provide verification of the approval of the Plan of Merger. Verification must be executed by each corporation's current chairperson and secretary.

6. 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.

7. Admissions Policy

Please provide an updated admissions policy providing how admissions will work across the schools. This should include if there will be common at-risk preferences, feeder patterns, and choice/transfer options across the schools.

8. Five-Year Budget

Please provide a five-year budget for the merged education corporation showing the combined charters in 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.

¹⁵. N-PCL § 909.

¹⁶. N.Y. Public Officers Law § 104

9. Financial Information of 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 with assumptions; and,
- Fiscal soundness narrative describing the fiscal plan of the merged entity to include a discussion of the CMO, “Friend Of” organizations, 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.

10. 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; and,
- Five-year budget projections for the “Friends Of” organization with projections for revenues and expenses with assumptions.

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.

11. Statistical Overview

Applicants associated with one or more currently operating public or private school(s) should complete the Statistical Overview for each school under the merger.

12. Business Plan Elements¹⁷

Growth Plan:

- Describe the merged education corporation’s five-year growth plan for developing currently authorized and new schools in New York.
- 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):
 - o Currently authorized schools (please include both schools which are currently operating and schools which are authorized, but not yet open);
 - o Future schools (please include information for proposed new school(s) and for schools planned for merger in the next five years):
 - Grades served and enrollment;
 - Planned opening year; and,
 - Planned location(s); and,
 - o Provide a rationale for the proposed five-year growth plan, if applicable.

17. PLEASE NOTE: If the surviving education corporation or affiliated charter management organization has submitted a Business Plan to SUNY 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.

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.

- o Identify the surviving education corporation's leadership team and describe each member's specific role and responsibilities.
- o 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.
- o Describe the systems and structures that the organization has 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 licensed intellectual property.
- o 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 it is successfully delivering these services.

13. Revisions

Merger is an opportune time to align procedures, programming, and policies across schools. While the surviving education corporation will have terms of operation that will apply across the organization and all the schools it has the authority to operate i.e. by-laws, code of ethics, financial policies, personnel policies, etc., the education corporation may indicate other policies, programs, and procedures it would like as a term of operation to apply across all schools.

THESE MAY INCLUDE:

- | | |
|-----------------------|-------------------------------|
| • Mission | • Student Schedule |
| • Key Design Elements | • Teacher Evaluation |
| • Admissions Policy | • Professional Development |
| • School Culture | • School Leadership Structure |
| • Discipline Policy | • Facilities |
| • Educational Program | • Transportation |
| • Calendar | • Food Services |
| | • Health Services |

Education corporations should clearly indicate and provide any such materials at the time of the merger submission.

14. Restructuring Elements, If Applicable

If merger results in any constituent corporation being restructured or revised to align with the surviving corporation's program, including where the constituent corporations do not share a common CMO or shared services team, please provide the following:

Transition Plan:

- Please provide a summary of how the schools will transition to a common program. Please indicate what work has already been completed by the constituent corporations. Within your response please indicate how the following areas of school structure will be dealt with:
 - o Curriculum and Educational Program
 - o Staffing. Please describe any changes in the staffing structure.
 - o Professional Development. Please include the onboarding of staff to new programs, policies, and structures.
 - o School Culture. Please include the onboarding of staff and students.

Communication Plan:

- Please provide a summary of how changes have been and will be communicated to families, students, staff, and other stakeholders ensuring any transition for students is provided for in the least disruptive manner.

Communication Plan:

- Provide a detailed action plan outlining the steps the founding group will undertake to ensure a successful startup. In a well-organized chart, the action plan should include:
 - o All projected key steps in the transition period including, but not limited to: hiring personnel; setting up organizational, legal and financial structures; securing funding; and, selecting or developing critical aspects of the school's academic program including the curriculum;
 - o The start date and projected completion date of each task; and,
 - o The person(s) responsible for each task.

15. Non-SUNY Authorized Education Corporation(s), If Applicable

If one of the entities seeking merger is not authorized by SUNY, then the application must include the following:

- A copy of the current charter agreement with applicable exhibits.
- A copy of the original provisional charter.
- A copy of the audited financial statements for the last two years.
- A copy of all notices of concern, violations, corrective action plans, etc. issued in the current charter term by the current authorizer with their current status.
- A copy of the most recent renewal report issued by the current authorizer.
- A copy of the most recent mid-charter term evaluation visit report conducted by the current authorizer.
- A copy of the most recent report of progress toward meeting accountability and program goals submitted to the current authorizer.
- A copy of the most recent three years of interim assessment results by grade level and subgroup (economically disadvantaged, students with disabilities, and English Language Learners).
- A list of the current board(s) of trustees including all officers.
- A resume/biographical statement for each board member.
- A current organizational chart with the names and positions of the current leadership team for each education corporation not authorized by SUNY.



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