



EDUCATION LAW & GOVERNANCE UPDATE

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GOVERNANCE UPDATE

Adding New Board Members: The Steps You Are Required to Take and The Risks of Getting it Wrong

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One fact of life for all New York charter schools is the periodic need to add new board members. Sometimes charters have to fill board seats created by trustees stepping down; other times a school opts to expand the board by adding additional seats. Either way, each of the New York authorizers has a process by which new board members are approved.

GETTING APPROVED

1. The processes used by the respective authorizers are similar, but not identical. In all cases, charter boards are required to seek approval of those individuals to whom the board wants to offer a board seat. Boards of trustees should take the following steps: Identify a viable trustee candidate (meaning one without a conflict of interest preventing board service or any other restrictions that may be in the board's bylaws).
2. Vote in favor of offering that person a seat, generating a written resolution.
3. Obtain a copy of the your authorizer's trustee nomination form and any related forms (the State Education Department ("SED") and SUNY also require a financial disclosure form):

4. Have the candidate fill out, sign and submit the nomination form and a copy of the resolution, along with any related forms and additional materials required (see authorizer links, above). It may be more efficient to have the school collect the signed form from the board candidate and submit it on the candidate's behalf.
5. The authorizer may reach out the candidate with questions, and those should be answered. Wait for approval. SUNY and the SED allow themselves 45 days to process the paperwork; for the NYC Department of Education that period is 90 days.
6. The authorizer will approve or deny the candidate's request in writing or, where the process extends past the 45 or 90 day window, the candidate will be automatically considered approved.
7. The new board member can be seated; they can be included in quorum and voting counts.

Important Upcoming Dates for NY Charter Schools:

State Education Department RFP for New Applications:

<http://www.p12.nysed.gov/psc/startcharter.html>

Related Deadlines:

2012 Round One Submission Deadlines:

Full Applications: February 27, 2012.

Note: Letters of Intent were due on January 17, 2012.

2012 Round Two Submission Deadlines:

Letters of Intent: June 25, 2012
Full Applications: July 18, 2012

SUNY Charter Schools Institute RFP for Spring Round of Applications:

<http://www.newyorkcharters.org/openAppKit.htm>

Related Deadlines:

Completed Spring Proposals: February 28, 2012.

Note: Letters of Intent and Evidence of Active Community Outreach for the Spring 2012 application cycle were due on January 18, 2012.

Charter Schools Lobby Day in Albany: February 7, 2012

2012 National Charter Schools Conference

<http://www.publiccharters.org/conference/2012/home.aspx>

June 19-22, Minneapolis Convention Center, MN

DANGERS OF NOT FOLLOWING PROPER PROCESS

There are a number of bad consequences that can happen to New York charter schools if they fail to follow proper process for adding new board members. For example, if a school simply votes to give a candidate a board seat and that person begins taking part in board meetings as if he or she is already a trustee, several things will likely flow from that: The new "trustee" will be counted when determining if there is a quorum, and will vote on matters before the board. Should an authorizer (or SED, in its joint oversight role) learn of this situation and find fault with it, or should another trustee who is unhappy with the results of a board vote seek to challenge that determination, there is likely to be some chaos. In any instances in which a non-approved "trustee" was needed in order to have the majority of trustees necessary for a quorum, it could be argued that no official meeting actually took place, and any votes taken at the meeting could be nullified. Even where the non-approved "trustee" was not needed for a quorum count, any votes taken at the meeting that passed by a single vote could be nullified as well. The repercussions of this may be substantial, depending on the extent to which the school took action on a determination that was subsequently nullified.

Failing to follow proper the process could also lead to disciplinary action from the authorizer, including but not limited to, a refusal to approve the candidate for a board seat.

Cohen Schneider LLP would be happy to assist you with governance issues such as these. Please feel free to contact Paul O'Neill at poneill@cohenschneider.com or any of our other attorneys.