


Bylaws and Conflict of Interest Policies for Charter Schools


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Overview of Presentation


BYLAWS

- Bylaws Basics
- Bylaws - Specific Provisions
- Amending the Bylaws
- Open Meetings Law

CONFLICT OF INTEREST POLICY

- Basics/Overview
- General Municipal Law


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Bylaws Basics

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Bylaws - Basics

- Set of agreed-upon rules and procedures for the internal operations of a not-for-profit corporation
- Prescribe the decision-making processes of the Board of Trustees (the Board) and, for membership organizations, the members
- Clear rules and procedures in the bylaws make it easier for organizations and their Boards to function smoothly and efficiently, and focus on the organization's charitable mission, because they help Boards to:
 - make binding decisions,
 - turn those decisions into action, and
 - resolve internal disputes when they arise

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Bylaws – Governing Law

- In New York, the New York Not for Profit Corporation Law (NPCL) provides the legal framework for bylaws:
 - establishes minimum standards to which the bylaws must conform
 - offers Boards discretion and flexibility to establish procedures that suit the organization's needs
- New York's Nonprofit Revitalization Act (NPRA), which took effect on July 1, 2014, amended the NPCL in significant ways
- Charter schools must also comply with the New York Education Law and the Open Meetings Law, and the General Municipal Law


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 **Bylaws – What do they cover?**

- Structure of organization (membership or non-membership)
- Number of trustees
- Length of trustee’s term of office/elections
- Quorum/action requirements
- Establishment of Executive and other committees
- Maintenance of minutes of board meetings and committee meetings
- Removal of trustees
- Procedures/notice requirements for meetings of board and members
- Officers and trustees indemnification: D&O Insurance – Not-for-profits are not required to, but are authorized to, purchase directors and officers insurance in order to cover their indemnification obligations

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 **Bylaws - Best Practices**

- Should provide clear direction and accurately reflect the practices of the organization
- Need to have flexibility
- Secretary or someone comparable **MUST** be in charge of tracking trustee terms and other deadlines
- Keep document readily accessible so that Board and staff can regularly refer to it
- Several charitable watchdog and other not-for-profit advisory groups have developed “best practices” that go beyond the requirements of the law, including Independent Sector and Better Business Bureau

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 **Specific Provisions**

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Board Composition

- There must be between five and twenty-five trustees. NYEL §226.
- Qualifications of trustee: Must be 18, may not be an employee of the school
- NPRA clarified definition of "entire Board"
- Length of trustee's term:
 - May not exceed five years, but no statutory limit on re-election. NPCL §703(b)
 - Terms may be staggered by dividing the trustees into classes. NPCL §704
 - Exception for *ex officio* board members, who don't need to be re-elected as long as they hold the relevant office
- Generally no more than 40% of the Board can be affiliated with any other organization without a waiver from authorizer
- Authorizers must approve trustees

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Sample Provision: Board Size


- **Number.** The number of Trustees constituting the entire Board shall be not less than five and not more than twenty-five. Subject to such minimum, the number of Trustees may be increased or decreased from time to time, by resolution of the Board, but such action by the Board shall require a vote of a majority of the entire Board and no decrease shall shorten the term of any incumbent Trustee. In the case of a vacancy, if the Board determines to decrease of the number of Trustees, such decrease must be approved by an affirmative vote of at least two-thirds (2/3) of the entire Board. The "entire Board" shall consist of the number of Trustees that were elected or appointed as of the most recently held election of Trustees.

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Sample Provision: Staggered Board Terms (Optional)

- **Classification of Trustees.** At the first annual meeting at which the election of Trustees is in the regular order of business, the Trustees shall be divided into three equal as possible classes with [number] Trustees in the first class, [number] Trustees in the second class, and [number] Trustees in the third class. The term of office of the first class shall expire at the first annual meeting of the Corporation following the annual meeting at which Trustees are first designated into classes. The term of office of the second class shall expire at the following annual meeting and the third class at the third annual meeting after the annual meeting at which Trustees are first designated into classes. At each annual meeting after Trustees are first designated into classes, Trustees shall be elected for a term of three years to replace those whose terms shall expire.


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Board Voting

- Board acts as a body
- Board action generally requires vote of majority of trustees present, unless otherwise indicated in charter, bylaws or relevant law
- Quorum is a majority of the entire board of trustees. NYEL §226
- Videoconference participation is permissible
- Proxy voting is not permitted


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Supermajority Voting

- A supermajority quorum requirement must be adopted by 2/3 of the trustees (or of the voting members or, in a non-membership corporation). No maximum on number of trustees needed for a quorum or for voting
- To help ensure the Board knows and follows supermajority requirements, organizations frequently list them in the bylaws
- Examples: to amend bylaws, to reduce the number of trustees, to remove a trustee for cause

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Delegation

- Bylaws should contain what decisions over which the board, as a general matter, intends to retain authority and those it intends to delegate
- “The Board may delegate the management of the activities of the Corporation to others, so long as the affairs of the Corporation are managed, and its powers are exercised, under the Board's ultimate jurisdiction.”

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Board Committees

- NPRA allows two types of committees:
 1. Committees of the Board (can bind the Board)
 2. Committees of the Corporation (advisory)
- Only Board can create a committee of the Board. Must have 3 or more trustees (or 5 in the case of the Executive Committee), and no non-trustees. Authority can be in bylaws or Board resolution
- NPRA removed prior distinction between standing and special committees
- Bylaws can outline some of the duties; details can be in a charter

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Board Committees

- Committees of the Board may have full Board authority, except that they cannot:
 - Submit to members any action requiring members' approval
 - Fill vacancies in Board or Board committee
 - Fix compensation of trustees for serving on board or committee
 - Amend or repeal or adopt new bylaws
 - Amend or repeal resolution of board which by its terms may not be so amendable or repealable
 - Elect or remove officers and trustees
 - Approve a merger or dissolution plan
 - Adopt a resolution recommending member action regarding certain major transactions
 - Amend charter

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Executive Committee

- An executive committee of a charter school must have five members
- Executive committee may meet more often or in between board meetings
- Appointment of executive committee members requires majority of entire Board


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 **Audit Committee**


- Audit committee has three members
- Usually set forth in the bylaws
- Charter schools subject to different requirements than other nonprofits
- Must have an annual independent audit
- Scope of audit must be comparable to other public schools
- Only independent trustees may participate on an audit committee

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 **Audit Committee**

- Additional Board duties of a corporation with over \$1 million in revenue during the prior or current tax year:
 - Before the audit: review scope & planning of the audit with the auditor
 - After the audit: review & discuss with the auditor:
 - any material risks & weaknesses in internal controls
 - any restrictions on auditor's activities or access to information
 - any significant disagreements with management
 - adequacy of the accounting & financial reporting processes
 - Annually consider auditor's performance and independence

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 **Sample Provisions: Committees**

- Committees of the Board: A committee of the Board is one that shall have authority to bind the corporation and shall be comprised solely of Trustees. There may be committees of the Board, as follows: **[complete with name/scope/power of specific committees]**.
- By resolution of the Board at a meeting at which a quorum is present, the Board may establish other committees of the Board consisting of at least three Trustees with such powers and duties as the Board may prescribe. The members of each committee of the Board shall be elected by a majority of the entire Board.
- Committees of the Corporation: The Board by resolution may appoint from time to time any number of persons as advisors of the Corporation to act either singly or as a committee or committees of the Corporation. Each advisor shall hold office during the pleasure of the Board and shall have only the authority or obligations as the Board may from time to time determine.

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Sample Provisions: Removal of Trustees

- The Board, by vote of a majority of the entire Board, may remove or suspend from office any Trustee, on examination and due proof of the truth of a written complaint by any other Trustee, of misconduct, incapacity or neglect of duty; provided, that at least one week's previous notice of the proposed action shall have been given to the accused and to each other Trustee.
- The Regents may also remove any Trustee for misconduct, incapacity, neglect of duty, or where it appears to the satisfaction of Regents that the corporation has failed or refuses to carry into effect its educational purposes. NYEL §226.8

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Amending the Bylaws

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Reasons to Amend the Bylaws

- Common changes include:
 - Elimination of unduly specific provisions
 - Size and composition of Board
 - Length, number, staggering of Board terms
 - New or evolving Board committees
 - Titles and responsibilities of officers
 - Indemnification clauses

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Reasons to Amend the Bylaws - NPRA

- Common changes in light of NPRA include:
 - Updated definitions: entire Board, independent director, key employee
 - Clarification of who is a voting member of Board committees
 - Authorization of Audit Committee
 - Revised language as to when supermajority vote is required
 - Reference to separate conflict of interest policy

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Authorizer Approval

- Don't forget to send proposed changes to bylaws to authorizer for review!
- Bylaws should include specific language:
 - "Any material amendment of the bylaws shall not be effective without the approval of [authorizer]."

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Open Meetings Law

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Open Meetings Law

- Charter schools must comply with the New York Open Meetings Law
- Key requirements:
 1. publicize when and where meetings of the Board will take place
 2. provide information as to topics to be discussed
 3. hold meetings in a publicly accessible space
 4. make available a record of each meeting and decisions made
- Affects various provisions in the Bylaws

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Open Meetings Law

Place of Meetings.

- Meetings of the Board shall be held at the address of the School. NYEL §2851(2)(c)
- Meetings of the Board are open to the public pursuant to the Section 103 of the New York Open Meetings Law.

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Open Meetings Law

Notices.

- Public notice of meetings shall be given in a manner consistent with Section 226(3) of the New York Education Law, or successor law, and Section 104 of the New York Open Meetings Law, or successor law. Notices must provide date, time, location.
- If a Board's meeting is scheduled at least one week in advance, notice of its time and place shall be given to the news media and conspicuously posted (e.g., school's website) in one or more public locations at least 72 hours before the meeting.
- If a meeting is scheduled less than one week in advance, notice of the time and place of the meeting shall be given to the news media, to the extent practicable, and shall be conspicuously posted in one or more public locations at a reasonable time before the meeting.

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 **Open Meetings Law**

Topics to be discussed.

- Schools should provide “to the extent practicable” any proposed resolution or policy of the school that is scheduled to be a subject of discussion at the board meeting. This means that if schools have a website, these materials should be posted on website prior to the meeting.
- Only those documents, resolutions or policies that are subject to the Freedom of Information Law (FOIL) must be made available.
- Schools are allowed to charge the same fees for making paper copies available (either before or at the meeting) as permitted in fulfilling any FOIL request.

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 **Open Meetings Law**


Meeting location.

- Meetings must be held in an accessible place, meaning that if not in public facilities, the owner/operator of the private office or residence must be willing to invite in members of the public.
- Schools must make all reasonable efforts to ensure that meetings are held in a space where the members of the general public who wish to attend can adequately be accommodated.
- Schools must also make reasonable efforts to permit persons with disabilities to have barrier-free access to their meetings at existing facilities.

Meeting minutes.

- Schools must make a record of summary or all motions, proposals, resolutions, actions taken, and the votes of the members of the board.
- These minutes must be made available upon request within two weeks of the meeting.


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 **Open Meetings Law**

Executive Session.

- To enter into executive session, a motion for executive session must be made during a meeting by a trustee, the subject of the executive session must be specifically identified at such time, and the motion to conduct the executive session must be carried by a majority vote of the trustees.
- Topics for an executive session are limited by law.
- No action for the appropriation of public monies shall be made in executive session.
- The Board may vote while in executive session on matters related to the reason for such a session and when a vote is taken, minutes of the executive session shall be taken and made public in accordance with the Open Meetings Law of New York.


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 **Open Meetings Law**

Topics for Executive Session.

1. matters which will imperil the public safety if disclosed;
2. any matter which may disclose the identity of a law enforcement agent or informer;
3. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
4. discussions regarding proposed, pending, or current litigation;
5. collective negotiations pursuant to article fourteen of the civil services law;
6. the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
7. the preparation, grading, or administration of a corporation; or
8. the proposed acquisition, sale, or lease of real property or proposed acquisition of securities or sale or exchange of securities held by such a public body, but only when publicity would substantially affect the value thereof.

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 **Open Meetings Law**


Other considerations.

- Notice of time/place of meetings must be mailed to all trustees 5-10 business days prior to meeting unless this is waived by trustees.
- To be counted as quorum, members must be at the site of the meeting or in a public meeting space that is open to the public via video conference.
- Board members can participate via phone, but do not contribute to quorum and may not vote.
- Committee meetings are subject to OML and must make a record of summary or all motions, proposals, resolutions, actions taken, and the votes of the members of the board.
- Minutes of meetings *may* be posted on the school's website.

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 **Conflict of Interest Policy**

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 **Conflict of Interest Policy - Basics**


- Required for *all* New York not-for-profit corporations
- Sets forth procedures for board to determine if a conflict exists, and to address transactions when a conflict arises

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 **Conflict of Interest Policy – Governing Law**

- Governed by the NPCL, General Municipal Law
- Also governed by federal law

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 **Conflict of Interest Policy – Required Provisions**

Per the NPCL, must have:

- A definition of conflict of interest
- Procedure for disclosing a conflict or a possible conflict to the audit committee, board, or other designated compliance officer
- A requirement that a person with a conflict not be present at or participate in board/committee deliberations or vote on the matter giving rise to the conflict; and a prohibition against any attempt by the person with a conflict to improperly influence the deliberation or voting on the matter
- A requirement that the Board must approve the transaction on the basis that it is in the **best interest** of the corporation and must be noted in the minutes of the meeting
- A requirement that the existence and resolution to the conflict be **documented**, including in the minutes of any meeting at which the conflict was discussed or voted on

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Conflicts: Disclosure Obligations

- A requirement that **before** a trustee is initially elected, and **annually** thereafter, the trustee must complete, sign and submit to the board secretary a written statement identifying:
 - an entity of which the trustee is an officer, trustee, trustee, member, owner, or employee, and
 - any transaction in which the corporation is a participant and in which the trustee might have a conflicting interest
 - Initial and annual disclosure statements must be submitted to the audit committee chair, board chair or designated compliance officer

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General Municipal Law

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General Municipal Law

- Charter schools must also comply with General Municipal Law (GML)
- GML covers how schools must handle conflicts of interest, codes of ethics and gifts

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General Municipal Law

- GML provides that school board members or employees are prohibited from having an interest in any contract with the school board or school from which they may benefit financially and over which they have authority as a result of their position
- Generally speaking, school leader, teacher or other staff member should not be on a school's board of trustees

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Bylaws and Conflict of Interest Policies for Charter Schools

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