

Affiliated Building Corporation Affidavit

This document provides instructions and forms to submit an Affiliated Building Corporation Affidavit (affidavit) to the Minnesota Department of Education (MDE) prior to the creation of an affiliated building corporation. The request is submitted by an approved authorizer on behalf of an existing charter school. This affidavit process applies only to charter schools and authorizers where no affiliated building corporation was formed prior to the changes in charter school law in 2009.

Minnesota Statutes, section 124D.10, Subdivisions 17a & 17b:

Subd. 17a. Affiliated nonprofit building corporation. (a) *Before a charter school may organize an affiliated nonprofit building corporation (i) to renovate or purchase an existing facility to serve as a school or (ii) to expand an existing building or construct a new school facility, an authorizer must submit an affidavit to the commissioner for approval in the form and manner the commissioner prescribes, and consistent with paragraphs (b) and (c) or (d).*

(b) An affiliated nonprofit building corporation under this subdivision must:

- (1) be incorporated under section 317A;*
- (2) comply with applicable Internal Revenue Service regulations, including regulations for "supporting organizations" as defined by the Internal Revenue Service;*
- (3) submit to the commissioner each fiscal year a list of current board members and a copy of its annual audit; and*
- (4) comply with government data practices law under chapter 13.*

An affiliated nonprofit building corporation must not serve as the leasing agent for property or facilities it does not own. A charter school that leases a facility from an affiliated nonprofit building corporation that does not own the leased facility is ineligible to receive charter school lease aid. The state is immune from liability resulting from a contract between a charter school and an affiliated nonprofit building corporation.

(c) A charter school may organize an affiliated nonprofit building corporation to renovate or purchase an existing facility to serve as a school if the charter school:

- (1) has been operating for at least five consecutive school years;*
- (2) has had a net positive unreserved general fund balance as of June 30 in the preceding five fiscal years;*
- (3) has a long-range strategic and financial plan;*
- (4) completes a feasibility study of available buildings;*
- (5) documents enrollment projections and the need to use an affiliated building corporation to renovate or purchase an existing facility to serve as a school; and*
- (6) has a plan for the renovation or purchase, which describes the parameters and budget for the project;*

- (d) A charter school may organize an affiliated nonprofit building corporation to expand an existing school facility or construct a new school facility if the charter school:
- (1) demonstrates the lack of facilities available to serve as a school;
 - (2) has been operating for at least eight consecutive school years;
 - (3) has had a net positive unreserved general fund balance as of June 30 in the preceding five fiscal years;
 - (4) completes a feasibility study of facility options;
 - (5) has a long-range strategic and financial plan that includes enrollment projections and demonstrates the need for constructing a new school facility; and
 - (6) has a plan for the expansion or new school facility, which describes the parameters and budget for the project.

Subd. 17b. Positive review and comment. A charter school or an affiliated nonprofit building corporation organized by a charter school must not initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as applicable, and receives a positive review and comment from the commissioner under section 123B.71.

The authorizer must submit documentation on the requirements contained below.

NOTE: Tips are provided based on previously successful affidavits. Instructions provided in the tips are not specifically required by statute, but are designed to ensure a comprehensive affidavit response.

Part A – Submission Eligibility (Authorizer Eligibility Certification – Form 2)

Proof of meeting eligibility criteria must be met *before* an affidavit will be reviewed. The requesting organization must be approved by the commissioner to authorize charter schools pursuant to Minnesota Statutes, section 124D.10, Subdivision 3(c). (Form 2, including any necessary attachments, attached.)

Part B – General Requirements (Assurances – Forms 3 & 4)

All affiliated building corporations, whether formed to renovate or purchase an existing facility pursuant to Minnesota Statutes, section 124D.10, Subdivision 17a(c) or to expand an existing building or construct a new facility pursuant to Minnesota Statutes, section 124D.10, Subdivision 17a(d) must:

- I. Incorporate the affiliated building corporation pursuant to Minnesota Statutes chapter 317A and provide the department with evidence of the incorporation when complete.
- II. Comply with all applicable Internal Revenue Service regulations.

TIP: The articles of incorporation should include language stating that the organization will not “initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as

applicable, and receives a positive review and comment from the commissioner under section 123B.71.” (Minn. Stat. § 124D.10, Subd. 17b.)

- III. Comply with the Minnesota Data Practices Act.
- IV. Submit to the commissioner each fiscal year a list of current board members of the affiliated building corporation.
- V. Submit to the commissioner each fiscal year a copy of its annual audit.
- VI. Provide information as to the composition of the board of the affiliated building corporation and the board of the charter school on an annual basis to ensure that the charter school’s dealings with the affiliated building corporation are not in violation of Minnesota Statutes, section 124D.10, Subdivision 4a Conflict of Interest.

The assurances, found in Forms 3 & 4 (attached to these instructions), require the authorizer and charter school to agree to ensure that the affiliated building corporation will fulfill the above conditions.

Part C – Requirements for Charter Schools that seek to Renovate or Purchase an Existing Facility

Please provide information ONLY on Part C or Part D depending on whether the school you authorize seeks to renovate or purchase an existing facility (Part C), or expand an existing facility or construct a new facility (Part D). Authorizers are free to apply under BOTH Part C and Part D, but to do so requires providing all information requested in both sections. If you are applying for both Part C and Part D, please specify that on the Cover Sheet (Form 1, attached).

In the event a charter school wishes to renovate¹ or purchase an existing facility, the authorizer must provide the following information about the school:

- I. Information showing the charter school has been operating for at least five consecutive school years.
- II. Information showing the charter school has had a net positive unreserved *general fund balance* as of June 30 in the preceding five fiscal years.
- III. A copy of the charter school’s *long-range strategic and financial plan* and the date the strategic and financial plans were reviewed and approved by the charter school’s board. Please attach board minutes for that date.
- IV. A copy of the charter school’s *feasibility study* of available buildings and the date the feasibility study was reviewed and approved by the charter school’s board. Please attach board minutes for that date.
- V. Information documenting *enrollment projections* for the school and the *need* to use an affiliated building corporation to renovate or purchase an existing facility to use as a school.

¹ “Renovate” excludes additions or expansions which increase the facility’s total square footage. Those additions and expansions are covered under Part D.

- VI. Information on the school's *plans* for a renovation or purchase, which describes the *parameters and budget* for the project.

TIP: This may include, but is not limited to: the proposed site(s) and estimated acreage; the estimated facility size and square footage allocations for classrooms, laboratories, support spaces, and other uses; the type of construction materials; proposed project construction schedule; the estimated total project cost, including land purchase, site development, and construction; the proposed source(s) of financing for the project; and projected annual operating costs.

A charter school or an affiliated nonprofit building corporation organized by a charter school must not initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as applicable, and receives a positive review and comment from the commissioner under section 123B.71.

Part D – Requirements for Charter Schools that seek to Expand an Existing Facility or Construct a New Facility

Please provide information ONLY on Part C or Part D depending on whether the school you authorize seeks to renovate or purchase an existing facility (Part C), or expand an existing facility or construct a new facility (Part D). Authorizers are free to apply under BOTH Part C and Part D, but to do so requires providing all information requested in both sections. If you are applying for both Part C and Part D, please specify that on the Cover Sheet (Form 1, attached).

In the event a charter school wishes to expand an existing facility or construct a new facility, the authorizer must provide the following information about the school:

- I. Information showing that the charter school has demonstrated that there is a *lack of available facilities* to serve as a school.
- II. Information showing the charter school has been *operating for at least eight consecutive school years*.
- III. Information showing the charter school has had a *net positive unreserved general fund balance* as of June 30 in the preceding five fiscal years.
- IV. A copy of the charter school's *feasibility study* of facility options and the date the feasibility study was reviewed and approved by the charter school's board. Please attach board minutes for that date.
- V. A copy of the charter school's *long-range strategic and financial plan* and the date the strategic and financial plans were reviewed and approved by the charter school's board. Please attach board minutes for that date.
- VI. Information documenting *enrollment projections* for the school and the *need* for constructing a new school facility.

- VII. A description of the proposed plan, including the parameters and budget for the project.

TIP: This includes, but is not limited to: the proposed site(s) and estimated acreage; the estimated facility size and square footage allocations for classrooms, laboratories, support spaces, and other uses; the type of construction materials; proposed project construction schedule; the estimated total project cost, including land purchase, site development, and construction; the proposed source(s) of financing for the project; and projected annual operating costs.

A charter school or an affiliated nonprofit building corporation organized by a charter school must not initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as applicable, and receives a positive review and comment from the commissioner under section 123B.71.

Submission Instructions:

- Affidavits may be submitted to MDE anytime. Forms 1, 2, 3 and 4 (included with these instructions) must be attached.

TIP: Charter schools and authorizers are encouraged to realistically plan ahead and submit an affiliated non-profit building corporation affidavit at least a year in advance of any construction.

- The commissioner's approval or disapproval of an affidavit is final.
- Page numbers should be included throughout the submission. Identify and sequence materials according to the outline in Parts A-D.
- When completing forms, type requested information into grey form fields **before** printing.
- Submit only complete affidavits; incomplete submissions will not be reviewed.
- Affidavits must be submitted electronically; hard copies will not be reviewed. Scan all elements **as one PDF** and email the PDF submission to MDE (as a single attachment) to Marsha.Davis-Busch@state.mn.us.
- MDE will confirm receipt of an affidavit within two business days. Please contact Marsha Davis-Busch at 651-582-8297 if a confirmation is not received within two days of submission.

NEED HELP?

Please email or call Karen.Dykoski@state.mn.us or 651-582-8766. If submitting questions via email, reference "Affiliated Building Corporation Affidavit" in the subject line of your message.

**Affiliated Building Corporation Affidavit
 Cover Sheet – Form 1**

NAME OF APPROVED AUTHORIZER:

NAME AND LEA NUMBER OF CHARTER SCHOOL:

School Contact Information (Mailing address, phone number and email address)	
Name of Primary School Contact	Primary School Contact Information (if different from above) (Mailing address, phone number and email address)
Name of Authorizer Liaison	Authorizer Liaison's Contact Information (Mailing address, phone number and email address)
Proposed Completion Date for purchase or renovation of School Facilities	Where will the School location be?
Applying pursuant to: Part C (<i>renovating or purchasing an existing facility</i>); Part D (<i>expanding an existing facility or constructing a new facility</i>); or Both	

Affiliated Building Corporation Affidavit Authorizer Eligibility Certification – Form 2

NAME OF APPROVED AUTHORIZER:

NAME OF CHARTER SCHOOL:

Check the appropriate box (Minn. Stat § 124D.10, Subd 3(b)):

- Independent school district school board, intermediate school district board, or education district organized under Minnesota Statutes, sections 123A.15 to 123A.19.
- Charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986 (exclusions apply; see Minn. Stat § 124D.10, Subd 3(b) for complete information.)

Also include the following documentation immediately after this form; clearly label each attachment:

Attachment A: Documentation of the authorizer's *current* status under section 501(c)(3) of the Internal Revenue Code of 1986. TIP: Search the [IRS website](#), print results screen with date.

Attachment B: Documentation to evidence the authorizer's *current* membership with the [Minnesota Council of Nonprofits](#) or the [Minnesota Council on Foundations](#) (membership must be active when the affidavit is submitted).

Attachment C: Documentation of the authorizer's "active" registration with the Office of the Minnesota Attorney General when the affidavit is submitted to MDE. TIP: Search the [Attorney General's website](#), print results screen with date.

Attachment D: Documentation to evidence the organization has been incorporated in the state of Minnesota and has been operating continuously for at least five years from the date of affidavit submission. TIP: Search the [Minnesota Business and Lien System](#) on the Minnesota Secretary of State's website, print results screen with date.

Attachment E: Documentation to verify the organization does not operate a charter school. TIP: Include a signed letter, on organizational letterhead, to verify this requirement.

- Institution of higher education; check the authorizer category the organization meets:
- Minnesota private college that grants two- or four-year degrees and is registered with the Minnesota Office of Higher Education under Minnesota Statutes, section 136A;
 - Community college, state university, or technical college, governed by the Board of Trustees of the Minnesota State Colleges and Universities; or
 - The University of Minnesota.
- Single-Purpose Authorizer – Charitable, nonsectarian organization formed under section 501(c)(3) of the Internal Revenue Code and incorporated in the state of Minnesota whose sole purpose is to charter schools.

Also include the following documentation immediately after this form; clearly label each attachment:

Attachment A: Documentation of the authorizer's *current* status under section 501(c)(3) of the Internal Revenue Code of 1986. TIP: Search the [IRS website](#), print results screen with date.

Attachment B: Documentation of the authorizer's "active" registration with the Office of the Minnesota Attorney General when the affidavit is submitted to MDE. TIP: Search the [Attorney General's website](#), print results screen with date.

**Affiliated Building Corporation Affidavit
Authorizer Assurances and Certification – Form 3**

NAME OF APPROVED AUTHORIZER:
NAME AND LEA NUMBER OF CHARTER SCHOOL:

Pursuant to Minnesota Statutes section 124D.10, the authorizer assures the commissioner of education that it will ensure: (initial each line)

_____ The charter school will incorporate the affiliated building corporation pursuant to Minnesota Statutes chapter 317A and provide the department with evidence of the incorporation when complete. The articles of incorporation will include language stating that the organization will not “initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as applicable, and receives a positive review and comment from the commissioner under section 123B.71.” (Minn. Stat. § 124D.10, Subd. 17b)

_____ The charter school’s affiliated building corporation will comply with all applicable Internal Revenue Service regulations.

_____ The charter school’s affiliated building corporation will comply with the Minnesota Data Practices Act.

_____ The charter school’s affiliated building corporation will submit to the commissioner each fiscal year a list of current board members of the affiliated building corporation.

_____ The charter school’s affiliated building corporation will submit to the commissioner each fiscal year its annual audit.

_____ The charter school and the affiliated building corporation will not initiate an installment contract for purchase or a lease agreement, or sell bonds, nor solicit bids for new construction, expansion, or remodeling of an educational facility prior to receiving a positive review and comment by the commissioner and the affiliated building corporation and charter school will submit a proposal for review and comment that provides the information required under Minnesota Statutes, section 123B.71, Subdivision 9.

_____ Upon approval of this affidavit, complete and submit to the commissioner of the Minnesota Department of Education the Assurances for Authorizers relating to leases with sectarian organizations and other matters regarding the accommodation of religion in public schools.

Certification: I hereby assure and agree to fully comply with the above assurances and all applicable federal, state and local laws, ordinances, rules, regulations and provisions governing the authorization of a charter school and will submit documents and certifications as required of approved authorizers in Minnesota.

Authorizer’s Identified Official with Authority

(Provide the name, title and signature of person with legal authority to certify on behalf of the authorizer.)

Name:	Title:
Signature:	Date:

**Affiliated Building Corporation Affidavit
School Assurances and Certification – Form 4**

NAME OF APPROVED AUTHORIZER:
NAME AND LEA NUMBER OF CHARTER SCHOOL:

Pursuant to Minnesota Statutes section 124D.10, the charter school assures the commissioner of education that the affiliated building corporation will: (initial each line)

_____ Incorporate pursuant to Minnesota Statutes chapter 317A and provide the department with evidence of the incorporation when complete. The articles of incorporation will include language stating that the organization will not “initiate an installment contract for purchase, or a lease agreement, or solicit bids for new construction, expansion, or remodeling of an educational facility that requires an expenditure in excess of \$1,400,000, unless it meets the criteria in Subdivision 17a, paragraph (b) and paragraph (c) or (d), as applicable, and receives a positive review and comment from the commissioner under section 123B.71.” (Minn. Stat. § 124D.10, Subd. 17b)

_____ Comply with all applicable Internal Revenue Service regulations.

_____ Comply with the Minnesota Data Practices Act.

_____ Submit to the commissioner each fiscal year a list of current board members of the affiliated building corporation.

_____ Submit to the commissioner each fiscal year its annual audit.

_____ The charter school and the affiliated building corporation will not initiate an installment contract for purchase or a lease agreement, or sell bonds, nor solicit bids for new construction, expansion, or remodeling of an educational facility prior to receiving a positive review and comment by the commissioner and the affiliated building corporation and charter school will submit a proposal for review and comment that provides the information required under Minnesota Statutes, section 123B.71, Subdivision 9.

_____ Upon approval of this affidavit, the charter school will complete and submit to the commissioner of the Minnesota Department of Education the Assurances for Charter Schools relating to leases with sectarian organizations and other matters regarding the accommodation of religion in public schools.

Certification: I hereby assure and agree to fully comply with the above assurances and all applicable federal, state and local laws, ordinances, rules, regulations and provisions governing the operation of a charter school and will submit documents and certifications as required of charter schools in Minnesota.

School’s Identified Official with Authority

(Provide the name, title and signature of person with legal authority to certify on behalf of the charter school, usually the chair of the school’s board of directors.)

Name:	Title:
Signature:	Date: