

Questions, Comments and Concerns
with the Proposed New Articles of Organization
from Members

The questions or concerns are listed below with the committee's response to the query.

#1. Joanne Lynch, University of Rhode Island, wrote:

My comments appear below each section. Thanks for the opportunity to review.

ARTICLE III

The Corporation shall have one or more classes of members, the designation of such classes, the manner of election or appointments, the duration of membership and the qualification and rights, including voting rights of the members in each class, shall be set forth in the Bylaws of the Corporation.

Comment: This should either be two separate sentences, with the first sentence ending with “of members”, or else the comma after “of members” should be changed to a semi-colon.

Committee's response: We agree with you and will make the change.

Section 4.02. The directors may make, amend or repeal the Bylaws in whole or in part, except with respect to any provision thereof which by law, these Restated Articles of Organization or the Bylaws requires action by the members

Comment: This is not clear...elimination of the phrase “these Restated Articles of Organization or the Bylaws” makes it clearer, if that is, in fact, what you meant to say.

Committee's response: We note the difficulty. While the language is dense and difficult to understand, the idea is this: Bylaws may be made, amended or repealed by the directors. The exceptions to this are times when either current law or the restated articles of organization or the bylaws require members to be involved in that action.

#2. Melissa Michaud, Burr & Burton Academy, VT, wrote:

Thanks for all of your hard work. My only question is about incorporation in Massachusetts. We've operated out of different states over the years -- does it matter where we claim residency? Does it matter that we have a different mailing address? Is our bank still in MA and is that part of what dictated the choice? I'm sure you've investigated all of this but might we want a little blurb about why MA incorporation to explain to the membership? Please pardon me if I missed that statement in another document.

Committee's response:

Thank you for your support of our work and for your questions. Your questions and perspectives are invaluable to this process. Here are our responses:

NEACAC incorporated in Massachusetts many years ago for a variety of reasons: legal considerations, MA mailing address, the Executive Assistant's residence in MA, our funds were based in Boston, MA and the majority of our leadership was from MA institutions. Although our Executive Administrator has lived in other states (NH and ME) since 2002, our funds remained in MA. We maintain a mailing address in MA for the purpose of our formal correspondence with the Commonwealth. However, the location of our funds is not important for the legal recognition of our organization (and thus, we now have funds in ME and MA).

During the Baltimore NACAC conference, we asked your question about incorporation to Jackie Henson, Esq., NACAC legal counsel and currently on retainer during our revision of articles and bylaws. She said that NEACAC could choose to incorporate elsewhere, such as Delaware, but, the process is costly and not easy. Similar to the process to change the Articles of Organization, MA law requires a two-thirds or more majority vote of eligible members to disband our incorporation in MA and NEACAC would lose the non-profit 501(c)(3) organization IRS status it currently enjoys.

Essentially, if we choose not to incorporate in MA, it is equivalent to dissolving NEACAC's existence in MA and then creating the organization elsewhere. NEACAC would reapply to the IRS as a new non-profit organization and there is no guarantee that we could regain the 501(c)(3) organizational status. The IRS review process is a bit more complicated and rigorous these days.

As a result, our committee did not recommend changing our incorporation status at this time. Please know that NEACAC could choose to incorporate elsewhere in the future, especially if there are significant incentives for us to do so.

Thank you again for your thoughtful questions and suggestion. Please feel let us know if you have other questions or concerns.

#3. Mary Cahill, Boston College, MA, wrote:

I am concerned about using organizational funds to pay for meeting expenses outside of our primary region, the USA. The New England Association for College Admission Counseling, Inc. is not a national or international corporation. Promoting corporation meetings outside of the USA and not in conjunction/cooperation/coordination with our national organization implies a new line of business, expenditures, and risks.

Committee's response: Two points of information.

First, NACAC plans to hold its annual conference in Toronto in 2013. As you know, NEACAC holds a membership meeting yearly at the site of the NACAC annual conference. If we limited our meetings to meetings held within the United States, we would not be able to hold that membership meeting in Toronto. Knowing that, we added the phrase as we did, on advice of counsel.

Second, again on advice of counsel, we made the phrasing general, rather than specific, such as linking our meeting with the NACAC conferences. It allows more flexibility in arranging meeting times and locations. In practice and in policy, NEACAC holds a membership meeting in conjunction with the NACAC conference. We do not expect to promote other meetings outside of the USA.

#4. Joseph Bellavance, The College Board New England Regional Office, MA, wrote:

Nice job on the articles of organization. I know you have spent many hours reviewing this material. Thanks for the effort. I look forward to seeing the proposed bylaws after the new year. Best wishes to all.

Committee's response: Thanks for the vote of confidence.

#5. Deloris Curtis, Housatonic Community-Technical College, CT, wrote:

Why is the "inc." added to the name?

Committee's response:

Although it may appear that "inc." has been added to the name that is not the case. NEACAC has had this formal name since May 1983, when we received recognition as a non-profit corporation based in Massachusetts. If you take a look at the current version of Articles of Organization printed in the membership Resource Directory, you will see the same name listed under Article I.

#6. William Johnson, Fairfield University, CT wrote:

Language such as "directors" and "board of directors" is used throughout the proposed articles of organization. Does this mean that there will or could be changes to the current leadership structure (officers, governing board, etc.) within the organization?

Committee's response:

The Article's language is formal, legal, and consistent with titles used in the corporate world. The titles of "directors" or "board of directors" are used after review and approval of our legal counsel.

Please note: when the proposed revisions to the bylaws are presented to membership, it will state that directors are officers or members of the governing board. The board of directors is NEACAC's governing board. Our committee does not recommend changing the titles to directors right now.

It is our committee's understanding that the Ad Hoc Committee on Governance will review the make up of our current governance and make recommendations for any changes. This might include changes in who will be part of the governing board and the title of its members.

#7. Larry Rich, ACT – Northeast Region, NY wrote:

The bylaws look great. I was curious about membership. Having belonged to NEACAC for 8 years, I wanted to stay a part and be actively involved. ACT is a nonprofit organization like NEACAC and I would like to continue to support the great work of this group and provide future financial support and training opportunities for secondary and post-secondary professionals to better understand the ACT as an achievement test that can help with college and career readiness. I was not clear about membership from what I saw in this section of the by-laws. Is there more information somewhere else?

Committee's response:

Thank you for your support and thank you for asking. The online document that you have seen is the Articles of Organization. This has to do with incorporation. The statement about membership in the Articles is intended to be general and allow for more detail in the Bylaws. The Bylaws are found in a second document. We are reviewing and revising that document (bylaws) right now.

The membership categories are being reviewed and rewritten by the Member Services Committee. They will get their suggestions to the Articles of Organization and Bylaws Committee later this year, and we will bring the proposed revised Bylaws document for membership review in 2010.

We are forwarding your remarks and concern to Sherri Geller, chair of Member Services Committee, for her awareness. We in NEACAC appreciate your membership and want to continue our good relationship.