

The Need for Changing NEACAC's Articles of Organization

Definitions and purpose:

The Articles of Organization and Bylaws are NEACAC's two legal governing documents. The name "Articles of Organization" is required by Massachusetts statute for incorporation as a non-profit organization. Much of the content is dictated by the Commonwealth of Massachusetts, and state law requires significant attention by every NEACAC member in order to change the Articles. A 2/3 or greater majority of all eligible voting members must vote in favor of ratifying the new document for passage.

Rationale:

We are proposing changes to these governing documents to bring our documents into conformity with NACAC documents, as well as to adjust our documents to gain increased flexibility.

Explanation:

NACAC ratified new bylaws in 2008; NEACAC must now come into compliance. In addition, our current documents are very specific, and can hamper our ability to be responsive to new needs. Accordingly the following topics in our former Articles are being moved to our new Bylaws: Membership; General Meetings; Officers; Governing Board; Assembly Delegates; and Amendments. The new documents will allow NEACAC to make changes more readily. Organizations similar to ours emphasize accountability, transparency, and responsibility; we can better emphasize these values through new governing documents.

Process, timeline, and your role:

Step one: Ratifying our new Articles of Organization

February - September 2009: The proposed Restated Articles of Organization have been completed by the Articles of Organization and Bylaws Committee, reviewed by an attorney, and by the NEACAC Executive and Governing Boards.

October 15 – 30, 2009: NEACAC members reviewed the Restated Articles of Organization. All feedback and responses were posted on the NEACAC website.

November 4, 2009: The Governing Board approved the Restated Articles of Organization and voted to bring them to the membership for formal ratification by voting eligible members.

January 15 – February 15: On-line voting period. We urge all eligible voting members to cast their vote in this critical process.

Step two: Updating our Bylaws

Proposed changes will be presented to the NEACAC membership during the winter/spring of 2010, and more specific information will be forthcoming.



**NEACAC Restated Articles of Organization
Presented to Members for Adoption - January 2010**

ARTICLE I

The name of the corporation is: New England Association for College Admission Counseling, Inc. (the "Corporation").

ARTICLE II

The Corporation shall be a non-profit corporation and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may be amended hereafter (the "Code"). These purposes include (a) shaping and developing ethical and effective college counseling, admission and enrollment practices that influence the development and realization of students' educational goals; and (b) doing everything necessary, proper, advisable or convenient for the accomplishment of the Corporation's purposes and objectives and doing all other things incidental to them or connected to them that are not forbidden by these Restated Articles of Organization, Massachusetts law, the Code or by any other applicable law.

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.

ARTICLE IV

Section 4.01. The Corporation shall have in furtherance of its corporate purposes all of the powers specified in Section 6 of Chapter 180 and in Sections 9 and 9A of Chapter 156B of the Massachusetts General Laws (except for those provided in paragraph (m) of Section 9) as now in force or as thereafter amended, and may carry on any operation or activity referred to in Article II to the same extent as might an individual, either alone or in a joint venture or other arrangement with others, or through a wholly or partly owned or controlled corporation; provided, however, that no such power shall be exercised in a manner inconsistent with Chapter 180 or any other

chapter of the Massachusetts General Laws or inconsistent with the exemption from federal income tax to which the Corporation shall be entitled under § 501(c)(3) of the Code.

Section 4.02. Meetings of the members may be held in or outside the United States.

Section 4.03. No director or officer of the Corporation shall be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as such director or officer notwithstanding any provision of law imposing such liability, except to the extent that such exemption from liability is not permitted under Chapter 180 of the Massachusetts General Laws.

Section 4.04. The Corporation shall, to the extent legally permissible, indemnify each person who serves as one of its members, directors or officers, or who serves at its request as a member, director or officer of another organization (each such person being called in this Section 4.04 a "Person") against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees, reasonably incurred by such Person in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which such Person may be involved or with which such Person may be threatened, while in office or thereafter, by reason of being or having been such a Person, except with respect to any matter as to which such Person shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation or, to the extent that such matter relates to service at the request of the Corporation for another organization, in the best interests of such organization. Such best interests shall be deemed to be the best interests of the Corporation for the purposes of this Section 4.04.

Notwithstanding the foregoing, as to any matter disposed of by a compromise payment by any Person, pursuant to a consent decree or otherwise, indemnification either for such payment or for any other expenses shall not be provided unless such compromise shall be approved as in the best interests of the Corporation, after notice that it involves such indemnification, (a) by a disinterested majority of the directors then in office; or (b) by a majority of the disinterested directors then in office, provided that there has been obtained an opinion in writing of independent legal counsel to the effect that such Person appears to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation; or (c) by a majority of disinterested members entitled to vote, voting as a single class.

Expenses, including counsel fees, reasonably incurred by any Person in connection with the defense or disposition of any action, suit or other proceeding may be paid from time to time by the Corporation in advance of the final disposition thereof upon receipt of an undertaking by such Person to repay the amounts so paid if such Person ultimately shall be adjudicated to be not entitled to indemnification under this Section 4.04. Such

an undertaking may be accepted without reference to the financial ability of such Person to make repayment.

The right of indemnification hereby provided shall not be exclusive. Nothing contained in this Section shall affect any other rights to indemnification to which any Person or other corporate personnel may be entitled by contract or otherwise under law.

The Board of Directors may purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee, or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such Person against such liability under the provisions of this Section.

In no case, however, shall the Corporation indemnify, reimburse, or insure any Person for any taxes imposed on such an individual under Chapter 42 of the Code. Further, if at any time the Corporation is deemed to be a private foundation within the meaning of § 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in § 4941(d) or § 4945(d), respectively, of the Code.

If any part of this Section shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining part shall not be affected.

As used in this Section 4.04, the term "Person" includes such Person's respective heirs, executors and administrators, and a "disinterested" member, director or officer is one against whom in such capacity the proceeding in question, or another proceeding on the same or similar grounds, is not then pending.

Section 4.05. No part of the assets or net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation or any individual; no substantial part of the activities of the Corporation shall consist of the carrying on of propaganda, or otherwise attempting, to influence legislation except to the extent permitted by § 501(h) of the Code; and the Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. It is intended that the Corporation shall be entitled to exemption from federal income tax under § 501(c)(3) of the Code and shall be a public charity under § 509(a) of the Code.

Notwithstanding any other provision of these Restated Articles of Organization, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from federal income taxation as a corporation described in § 501 (c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity

not permitted to be carried on by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.

Section 4.06. During such period, or periods, of time as the Corporation is treated as a “private foundation” pursuant to § 509 of the Code, the directors must distribute the Corporation’s income at such time and in such manner so as not to subject the Corporation to tax under § 4942 of the Code, and the Corporation is prohibited from engaging in any act of self-dealing (as defined in § 4941(d) of the Code), from retaining any excess business holdings (as defined in § 4943(c) of the Code) which would subject the Corporation to tax under § 4943 of the Code, from making any investments or otherwise acquiring assets in such a manner so as to subject the Corporation to tax under § 4944 of the Code, from retaining any assets which would subject the Corporation to tax under § 4944 of the Code if the directors have acquired such assets, and from making any taxable expenditures (as defined in § 4945(d) of the Code).

Section 4.07. Upon the liquidation or dissolution of the Corporation, after payment of all of the liabilities of the Corporation or due provision therefore, all of the assets of the Corporation shall be disposed of pursuant to Massachusetts General Laws, Chapter 180, § 11A, to one or more organizations with similar purposes and as shall qualify as an exempt organization or organizations under § 501(c)(3) of the Code.

ARTICLE V

The effective date of the Restated Articles of Organization of the Corporation shall be the date approved and filed by the Secretary of the Commonwealth of Massachusetts.