

Legal and Other Consideration for Youth as Non-Profit Board Members in New York State

There are legal and other considerations when including youth on non-profit Boards of Directors. New York State is one of just a few states that have made it explicitly legal (given the legal parameters as stated below) to include youth on non-profit boards. This “cheat sheet” provides the actual law, as well as other issues to consider, including amending bylaws, fiduciary responsibilities of those under age 18, insurance considerations, and conflict of interest concerns. Please keep in mind that this “cheat sheet” was created by educators. Any legal matters should be discussed with your organization’s attorney before proceeding with changes in structure and practices of your non-profit corporation. The following should not be construed as legal advice.

The “Legalese”: For those who Need to Know:

New York State has legalized the right for those under the age of eighteen to sit on Boards of Directors given certain circumstances. The following has been excerpted from the NY State Assembly Website <http://assembly.state.ny.us/leg/?cl=76&a=8> (accessed 10/6/2005). New York law is unique in that the minimum age for directors varies depending upon the nature of the corporation. See below for details on the statute.

ARTICLE 7 DIRECTORS AND OFFICERS

S 701. Board of directors.

(a) Except as otherwise provided in the certificate of incorporation, a corporation shall be managed by its board of directors. Each director shall be at least eighteen years of age; provided, however, that a member of the board of directors of any girl scout council chartered by Girl Scouts of the United States of America, Inc., or any Camp Fire Girls club member serving as a member of the board of directors on the National Board and National Council of Camp Fire Girls, Inc. or on the local board of the Camp Fire Girls, Inc. or any member of Aspira of America Inc. or Aspira of New York Inc. serving on the board of directors, shall be at least sixteen years of age. Notwithstanding the above, **a corporation organized for educational purposes primarily for the benefit of individuals below eighteen years of age may include one director below eighteen years of age who is at least sixteen years of age.** Further, **a corporation organized for recreational or youth development and delinquency prevention purposes primarily for the benefit of individuals below eighteen years of age may include one or more directors, the number of which shall not exceed one-half of the total number of directors for a quorum for the transaction of business, who are at least sixteen years of age but not over eighteen years of age.** The certificate of incorporation or the by-laws may prescribe other qualifications for directors, provided, however, any corporation organized for recreation or youth development and delinquency prevention purposes, when increasing the number of directors between the ages of sixteen and eighteen years old to more than one, shall prescribe in its certificate of incorporation the number of such directors not to exceed the limitations of this paragraph.

(b) If the certificate of incorporation vests the management of the corporation, in whole or in part, in one or more persons other than the board, individually or collectively, such other person or persons shall

be subject to the same obligations and the same liabilities for managerial acts or omissions as are imposed upon directors by this chapter.

However, those that incorporate a non-profit must be at least 18 years of age. See statute accessed from <http://assembly.state.ny.us/leg/?cl=76&a=5> on 10/6/2005 below:

S 401. Incorporators.

One or more natural persons at least eighteen years of age may act as incorporators of a corporation to be formed under this chapter.

Amending Bylaws:

If you are including youth on your Board of Directors in NYS – it is recommended and sometimes required to change your bylaws to reflect such practice. Section 701 on the previous page states that:

.. any corporation organized for recreation or youth development and delinquency prevention purposes, when increasing the number of directors between the ages of sixteen and eighteen years old to more than one, shall prescribe in its certificate of incorporation the number of such directors not to exceed the limitations of this paragraph (S701).

Therefore, if you are planning to include more than one youth board member, you must, according to NYS law, prescribe this change (the number of youth directors) in your certificate of incorporation. If your organization is planning to include only one youth board member, a review and amendment of your bylaws may help ensure that young people are seen as vital members of your steering body, with decision-making authority. Formalizing these practices creates visibility and adult/youth buy-in – for members, board and staff.¹

Fiduciary Responsibility – “Say What?”

Technically speaking, although youth under age 18 may be full voting members of the board and cast votes on financial matters – they are not, legally speaking, able to hold a fiduciary duty to the organization – meaning they cannot be held legally responsible for looking out for organizational best interests or enter into legally enforceable contracts.² Youth under the age of 18 cannot sign legally binding documents, agreements, or contracts and they cannot be signatories on financial accounts. All youth board members should be advised of these issues during orientation and periodically. Youth board members may need to be reminded that their input **is** valued, although there are some legal constraints to their full participation.³

Insurance Considerations:

If your organization carries “directors and officers insurance” to protect board members from financial and legal liability, you may want to check with your agent to clarify if the policy specifies a minimum age for board members, and/or allows for full coverage/protection of youth members.⁴

Conflicts of Interest:

“Conflict of interest arises whenever the personal or professional interests of a board member are potentially at odds with the best interests of the nonprofit. Such conflicts are common: A board member performs professional services for an organization, or proposes that a relative or friend be considered for a staff position. Such transactions are perfectly acceptable if they benefit the organization and if the board made the decisions in an objective and informed manner. Even if they do not meet these standards, such transactions are usually not illegal. They are, however, vulnerable to legal challenges and public misunderstanding.”⁵

Conflicts of interest invariably arise in every organization, and it is no surprise that conflicts will arise as youth who were or are participants in your organization become board members. Personnel and financial decisions must be made by the board that can affect personal and programmatic relationships. The best way to handle these inevitable conflicts is to address this possibility head on with a short, but succinct, conflict of interest statement to advise and dictate what all members (including youth) must and must not do when such conflict arises. Each board member, regardless of age, should have such a statement on file. BoardSource, an online clearinghouse for building effective non-profit boards suggests:⁶

- Adopting a conflict-of-interest policy that prohibits or limits business transactions with board members and requires board members to disclose potential conflicts.
- Disclosing conflicts when they occur so that board members who are voting on a decision are aware that another member’s interests are being affected.
- Requiring board members to withdraw from decisions that present a potential conflict.
- Establishing procedures, such as competitive bids, that ensure that the organization is receiving fair value in the transaction.

Again, legal considerations vary from state to state, so consult with your organization’s attorney before setting policy.

Working with youth to help them understand potential conflicts of interest before they occur assists youth in helping them understand their roles within the organization and provides them with indispensable life skills.

Compiled by the ACT for Youth Upstate Center of Excellence, October 2005

^{1, 2, 3, 4} Youth Leadership Institute (2002). Legal considerations about youth participation in your leadership group. In *Young active citizens curriculum: What do adults need to know?* www.yli.org Youth Leadership Institute with assistance from the Levi Strauss Foundation.

^{5, 6} What is conflict of interest? (2005). Board Source. <http://www.boardsource.org/FullAnswer.asp?ID=89>. Accessed October 6, 2005