Standards for excellence

AN ETHICS AND ACCOUNTABILITY CODE FOR THE NONPROFIT SECTOR

Strategic Partnerships

The Standards for Excellence Institute
1500 Union Avenue Suite 2500
Baltimore, MD 21211
Phone: 410-727-1726
www.standardsforexcellenceinstitute.org

A MARYLAND NONPROFITS MEMBER BENEFIT

PREAMBLE

America's nonprofit sector serves the public interest and plays an essential role in our society and economy. Hard at work strengthening communities across the nation, nonprofits enrich our lives in a variety of ways by creating a broad array of benefits to society in fields such as charitable, religious, scientific, economic, health, cultural, civil rights, environment, and education.

Public investment and confidence drive the success of nonprofit organizations. Individuals, corporations, foundations, and federal, state, and local governments add value to the services that nonprofits provide by investing time, resources, and funds.

The Standards for Excellence Institute aims to raise the level of accountability, transparency, and effectiveness of all nonprofit organizations to foster excellence and inspire trust. The Standards for Excellence code (Standards, or code) provides a framework and step-by-step guidelines to achieve a well-managed and responsibly governed organization.

The code builds upon the legal foundations of nonprofit management, governance, and operations to embrace fundamental values such as honesty, integrity, fairness, respect, trust, compassion, responsibility, and transparency. The code consists of six Guiding Principles in 27 topic areas with specific performance benchmarks that characterize effective, ethical, and accountable organizations. The Institute helps the nonprofit sector operate in accordance with the Standards for Excellence code by providing educational resources, assistance, and a voluntary accreditation process.

The Standards for Excellence Institute encourages all nonprofit organizations to adopt the Guiding Principles of the Standards for Excellence code. By implementing the performance benchmarks in the code, nonprofit organizations will meet the highest ethical standards for effective service in the public interest.

STANDARDS FOR EXCELLENCE - GUIDING PRINCIPLES

I. MISSION, STRATEGY, and EVALUATION

Guiding Principle: Nonprofits are founded for the public good and operate to accomplish a stated purpose through specific program activities. A nonprofit should have a well-defined mission, and its programs should effectively and efficiently work toward achieving that mission. Nonprofits have an obligation to ensure program effectiveness and to devote the resources of the organization to achieving its stated purpose.

II. LEADERSHIP: BOARD, STAFF, and VOLUNTEERS

Guiding Principle: Nonprofits depend upon effective leadership to successfully enact their missions and programs. Effective leadership consists of a partnership between the board and management, each of which plays an essential role. Understanding and negotiating these shared and complex elements of leadership is essential to the organization's success. A nonprofit's employees and volunteers are fundamental to its ability to achieve its mission.

Board members are in a position of trust to ensure that resources are used to carry out the mission of the organization. An organization's board leadership should consist of volunteers who are committed to the mission and who demonstrate an understanding of the community served. An effective nonprofit board should determine the mission of the organization, establish management policies and procedures, assure that adequate human and financial resources are available, and actively monitor the organization's allocation of resources to effectively and efficiently fulfill its mission.

Nonprofits should also have executive leadership which carries out the day-to-day operations of the organization, ensures financial and organizational sustainability, and provides adequate information to the board of directors. An organization's human resource policies should address both paid employees and volunteers and should be fair, establish clear expectations, and provide meaningful and effective performance evaluation.

III. LEGAL COMPLIANCE and ETHICS

Guiding Principle: Nonprofits enjoy the public's trust, and therefore must comply with a diverse array of legal and regulatory requirements. Organizations should conduct periodic reviews to address regulatory and fiduciary concerns. One of a leadership's fundamental responsibilities is to ensure that the organization governs and operates in an ethical and legal manner. Fostering exemplary conduct is one of the most effective means of developing internal and external trust as well as preventing misconduct. Moreover, to honor the trust that the public has given them, nonprofits have an obligation to go beyond legal requirements and embrace the highest ethical practices. Nonprofit board, staff, and volunteers must act in the best interest of the organization, rather than in furtherance of personal interests or the interests of third parties. A nonprofit should have policies in place, and should routinely and systematically implement those policies, to prevent actual, potential, or perceived conflicts of interest. Ethics and compliance reinforce each other.

IV. FINANCE and OPERATIONS

Guiding Principle: Nonprofits should have sound financial and operational systems in place and should ensure that accurate records are kept. The organization's financial and nonfinancial resources must be used in furtherance of tax-exempt purposes. Organizations should conduct periodic reviews to address accuracy and transparency of financial and operational reporting, and safeguards to protect the integrity of the reporting systems.

V. RESOURCE DEVELOPMENT

Guiding Principle: The responsibility for resource development is shared by the board and staff. Nonprofit organizations depend on an array of sources of financial support. An organization's resource development program should be maintained on a foundation of truthfulness and responsible stewardship. Its resource development policies should be consistent with its mission, compatible with its organizational capacity, and respectful of the interests of donors, prospective donors, and others providing resources to the organization.

VI. PUBLIC AWARENESS, ENGAGEMENT, and ADVOCACY

Guiding Principle: Nonprofits should represent the interests of the people they serve through public education and public policy advocacy, as well as by encouraging board members, staff, volunteers, and stakeholders to participate in the public affairs of the community. When appropriate to advance the organization's mission, nonprofits should engage in promoting public participation in community affairs and elections. As such, they should communicate in an effective manner to educate, inform, and engage the public.

ABOUT THE STANDARDS FOR EXCELLENCE INSTITUTE

The Standards for Excellence Institute is a national initiative established to promote the highest standards of ethics and accountability in nonprofit governance, management, and operations, and to facilitate adherence to those standards by all nonprofit organizations. The Institute uses as a vehicle the Standards for Excellence program, a system of nonprofit sector industry self-regulation originated by the Maryland Association of Nonprofit Organizations and currently replicated by licensed partners in Alabama, Delaware, the District of Columbia, Eastern Tennessee, Ohio, Oklahoma, Memphis, Pennsylvania, and Virginia. The program is also being offered to chapters of The Arc nationwide through The Arc of the United States, to the American Nurses Association, to the Sacred Sector program of the Center for Public Justice, to Catholic nonprofit organizations nationwide through the National Leadership Roundtable on Church Management, and through the Markkula Center for Applied Ethics at the Santa Clara University.

The centerpiece of the Institute's program is the Standards for Excellence: An Ethics and Accountability Code for the Nonproft Sector. The Institute also makes available to member organizations a comprehensive system of educational tools to enable individual nonprofit organizations to improve their governance and management practices. Standards for Excellence accreditation is available to individual organizations through a rigorous peer review process in selected locations and nationwide through the Standards for Excellence Institute.

For more information about joining the Standards for Excellence Institute or to obtain additional copies of the booklet or educational resource packets visit our website at www.standardsforexcellence.org.

Strategic Partnerships

> As the *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector®* states:
>
> Nonprofits engaging in strategic partnerships and formal alliances with other organizations should do so within the context of a board-approved policy outlining the goals and parameters of such partnerships. Depending on the type of strategic partnership, nonprofits should ensure that proper due diligence has been followed and that agreements, memoranda of understanding, or similar documentation have been thoughtfully reviewed and considered.

As the number of nonprofit organizations in the United States continues to grow, many nonprofit organizations are increasingly engaging in strategic partnerships to help provide higher-quality programs and services, leverage funding, broaden or strengthen impact, and improve administrative efficiency.

The purposes and types of these types of partnerships can vary widely. A workforce development organization might partner with a business to identify opportunities for graduates of its training program. A nonprofit that provides after school enrichment programming might partner with a school to broaden its reach. Two small nonprofit organizations with similar clientele might merge the administrative and advocacy functions of their respective organizations to save costs. And, two sports and recreation organizations may undertake a full scale merger of their organizations and operations to eliminate redundancies and maximize programmatic strength.

Whatever the reason for a strategic partnership, nonprofit organizations should have an understanding of how to identify potential partners and complete due diligence, determine what type of partnership is most appropriate, and create a memorandum of understanding or other written agreement outlining the important aspects of the collaborative effort.

Types of Partnerships and Important Considerations

Strategic partnerships take many forms. At one end of the spectrum, the highest level of collaboration may result in a merger of two organizations. At the other end of the spectrum, nonprofits may simply be engaged in providing joint programming. David La Piana, a recognized national leader on nonprofit mergers and related activity, coined the term "strategic restructuring" where he refers to the "continuum of mergers, joint ventures, consolidations, and joint programming."

A thorough discussion of examples of different types of strategic partnerships can be found in *Models of Collaboration: Nonprofit Organizations Working Together* (https://lodestar.asu.edu/research/aim-alliance/images/coll_models_report-2009).

Nonprofit organizations should consider the following characteristics when determining which type of partnership is most appropriate to their goals, structure, and resources:

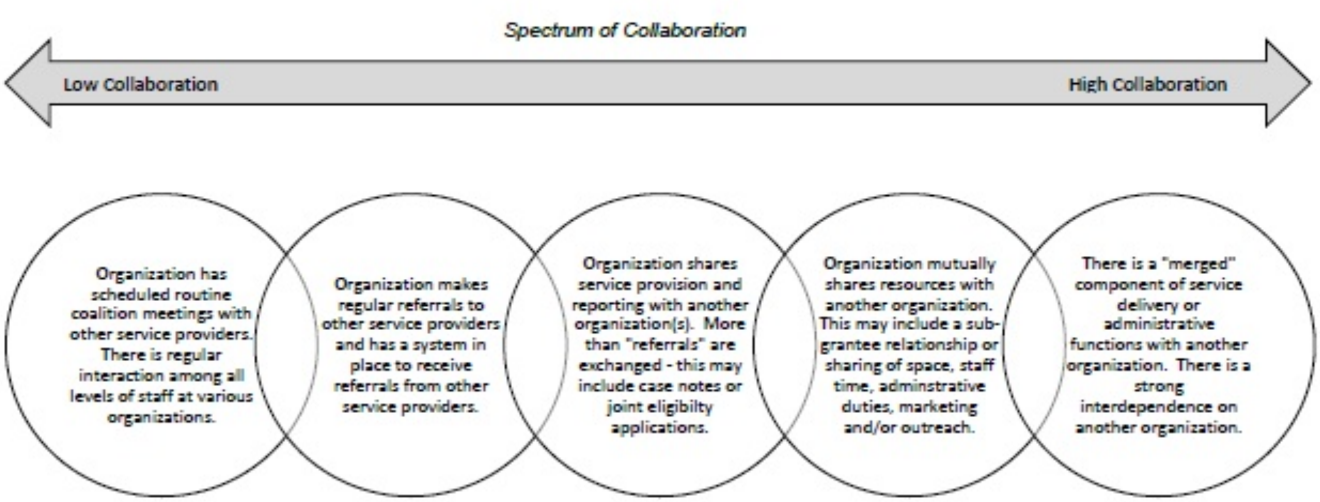
- Purpose. The purposes of strategic partnerships can include saving on program or administrative costs, delivering joint services or programs to improve operations and increase capacity, coordinating advocacy efforts, and identifying new pools of funding and resources, among others. Partners (beginning with the Board of Directors of each involved organization) should agree on the defined purpose of a partnership before engaging in one.

- Autonomy. Partnerships can range from simple information sharing to the integration of program services and administration. Based on the results of an internal assessment to determine the desired outcomes of the partnership, the organization should determine what degree of autonomy is necessary for shared activities, and also whether it is necessary to build new organizational structures for the partnership to be successful. Partnerships high in collaboration often allow less autonomy for the partnering organizations individually.

- Cross-sector partnership. Nonprofits commonly partner across sectors with businesses, government agencies, donors, and other nonprofits, among others. Nonprofit organizations should be cognizant of the differences in the ways that cross-sector partners operate (for example, time schedules, communication protocols, etc.), discuss them openly with their partners, and factor them into plans for managing the potential partnerships.

Another example of the continuum of strategic partnerships is offered by the United Way of Frederick County, Maryland:

(Reprinted with permission, United Way of Frederick County, 2014)



A nonprofit merger represents the most highly integrated form of a nonprofit partnership. Before considering a merger, or any other partnership, organizations should take great care to fully assess the possibilities with the partnership and the partner.

Identifying and Vetting Potential Partners

Nonprofits should evaluate potential partnerships in terms of their own mission, internal goals, and the desired results of their strategic plan. Organizations should be able to identify and effectively communicate the specific need and reasons for the partnership. They should also be clear about what they can bring to the table and about what they expect to receive in return.

Nonprofits also should research potential partners thoroughly before entering into a partnership. To the extent possible, the nonprofits should conduct appropriate due diligence by researching a potential partners' history, accomplishments, key stakeholders, and, last but not least, financial position. Nonprofits also should solicit information from current and former employees and partners. Additionally, it is paramount that the organization considers partners with similar cultures and core values, as differing corporate cultures is one of the main reasons for that partnerships and mergers fail.

A few criteria to consider when evaluating a potential partnership include:

- *Alignment* – Will this further our mission and programs in a meaningful way? Does it align with our current programs? Does this compete with other offerings? Are the image, activities, and values of the partner consistent with our own? How does this contribute something new?

- *Benefit* – What benefits or considerations will the partners provide each other? How are we improving ourselves as an organization, raising our visibility, and helping our stakeholders? How will we evaluation the success of this effort?

- *Continuity* – Is this a single or short-term event or will it be ongoing? Do we have the capacity and desire to sustain the effort?

- *Delivery* – Do we have the capacity to do this? If not, what would be required to do so? What are the risks, including reputation, legal, financial, and opportunity costs?

- *Equity* – Does the relationship provide the opportunity for equal value or benefit? If unequal, is this justified and understood? Are roles, relationships, and obligations clearly defined?

- *Financial* – What will this cost us? Will we derive income?

Resources: *Evaluating Potential Partnerships: A Checklist, ASSOCIATIONS NOW*, May 2010, *and Urbanowicz, Nancy, Benefits of Strategic Alliances and Partnerships, American Society of Association Executives http://www.asaecenter.org/AboutUs/content.cfm?ItemNumber=137633.*

A sample list of due diligence documents that may be appropriate for organizations evaluating a merger partner is provided as part of this educational resource packet in Attachment A. When organizations are considering strategic partnerships that are less intense than mergers, nonprofit leaders may wish to request a selection of the due diligence documents suggested in merger situations.

Other helpful resources and checklists on mergers and similar programs:

- The Nonprofit Risk Management Center also provides a useful risk management checklist for partnering with private organizations that can be viewed on their website at https://www.nonprofitrisk.org/library/fact-sheets/collaboration.shtml.
- The Mandel Center for Nonprofit Organizations provides a comprehensive step-by-step guide on mergers, as well as a due diligence checklist in "*Merging Nonprofit Organizations: The Art and Science of the Deal*" http://www.orgwise.ca/sites/osi.ocasi.org.stage/files/resources/Merging%20Nonprofit%20Organizations%20The%20Art%20and%20Science%20of%20the%20Deal_0.pdf

Memorandum of Understanding

Before entering into a partnership, nonprofit organizations should develop a Memorandum of Understanding (MOU). A successful MOU will eliminate ambiguity around management responsibilities, resource agreements, timelines of activities, and other important details of the partnership. Specifically, a basic MOU should include:

1) <u>The goals and/or mission(s) of the partnering organizations.</u> The MOU should contain a summary of the goals and mission(s) of the partnership to ensure that both parties have a clear understanding of the purpose of their collaboration.
2) <u>Objectives and outcomes of the partnership activities.</u> In addition to a statement of goals, the MOU should contain the expected objectives and outcomes of the partnership activities in as much specificity as possible/appropriate.
3) <u>Roles and responsibilities of each partner.</u> Each partner should have a clear understanding of their respective roles and responsibilities in managing the partnership, providing programming or services, providing administrative support, etc.
4) <u>Communications plans and protocol.</u> Communication is key to building trust and maintaining productive relationships between or among organizations engaged in strategic partnerships. Communication policies should ensure that information is shared openly, consistently and appropriately between organizations.
5) <u>Funding and resource agreements.</u> To avoid confusion, each organization should agree on whose responsibility it is to provide specific resources and when those resources will be provided. Implement a system to record all transactions to ensure that both organizations comply with the clauses of the agreement.
6) <u>Schedules and important benchmarks.</u> Partnering organizations should ensure that they are operating on the same timetable to achieve important strategic goals by developing mutually agreed-upon schedules and instituting check-ins around important benchmarks.
7) <u>Performance management and evaluation plans.</u> Each organization should understand who is responsible for collecting performance data on partnership activities, what metrics will be

used, how the partnership's activities will be evaluated, and with whom the results of the evaluation will be shared.

8) Plans for the contingency that a party breaches the agreement or contract. Parties should identify next steps for conflict resolution should the need arise. Avenues may include mediation, arbitration, etc.
9) Clause on partnership dissolution. The parties should also agree ahead of time on an appropriate means by which either can dissolve the partnership. Do you each require 30- or 60-day's notice? What would it take for your two organizations to comfortably dissolve your working relationship? (This is, of course, in the case of partnerships which fall more toward the "low collaboration" end of the spectrum.)

MOUs should be signed by the CEO, board chair, or other member of senior leadership with the authority to consent to the partnership, and should identify points of contact for partnership activities at each organization. Before committing to an MOU, nonprofits should seek legal counsel to review the agreement if the agreement contains provisions that are legally binding.

Some sample MOUs include:

- Sample MOU providing for a lead agency and one or more partner agencies working together to provide a service: The Department of Justice: http://www.ovw.usdoj.gov/docs/sample-mou.pdf
- Sample MOU between a nonprofit and a school district (government entity) describing the provision of services: The University of Washington: http://depts.washington.edu/ccph/pdf_files/MOU8.pdf
- Sample MOU between nonprofit and a state agency for the provision of services: The Urban Institute: http://www.urban.org/reentry_mapping/Sample_MOU.pdf

Role of the Board

If a nonprofit organization is considering a strategic partnership, the Board of Directors has an important role in the consideration, fact finding, parameter setting, and ultimate approval of the strategic partnership. In fact, governance 101 would dictate that one of the key roles of a Board of Directors is to determine whether a nonprofit would benefit from a strategic partnership. It is the Board's job to analyze the organization's internal goals and expected outcomes of any potential partnership. The process involves outlining the organization's strengths and what it has to offer to a partnership or merger. Similarly, this step offers an opportunity to create a specific criterion to evaluate and select candidates. Once a partnership has been created, or a merger has taken place, the board must remain involved in ensuring that the results of the partnership or merger match the original desired goals.

The level of board involvement is highly related to the autonomy retained by the organization in the partnership. For instance, sponsoring or marketing a common event is low on the spectrum in terms of how much board involvement is needed. On the other hand, an initiative involving combining advocacy or administrative efforts requires a higher degree of board commitment to review, approve, and monitor, and a merger needs the highest level of commitment from the board in preparing, researching, reviewing, approving, implementing monitoring, etc.

For organizations undergoing a merger, there are specific legal steps the organization should undertake regarding the organization's corporate structure, some of which will be outlined in an organization's bylaws and some of which are codified in state law. But, the board's involvement in a strategic partnership does not end when the memorandum of understanding is signed or the merger documentation is filed. Rather, as part of its important planning and monitoring role, the board should continue to be involved in the process.

Selected Resources

Building Partnerships with Businesses, Hitachi Foundation
http://www.hitachifoundation.org/storage/documents/pocket_guide_nonprofit.pdf

*Nonprofit Collaboration D*atabase, Foundation Center
http://collaboration.foundationcenter.org/search/searchGenerator.php

Partnerships: Frameworks for Working Together
http://strengtheningnonprofits.org/resources/guidebooks/Partnerships.pdf

Community Collaboration Factsheet, Nonprofit Risk Management Center
http://nonprofitrisk.org/library/fact-sheets/collaboration.shtml

What Your Organizations Needs to Know about Successfully Collaborating with the For-Profit Sector, Center for Non-profit Strategy and Development
http://www.appl.org/files/Corporate_Partnership_article-F_Thompson.pdf

Collaboratives Toolbox – guide for communities to create collaboration, including tools and models by the White House Council for Community Solutions
http://www.serve.gov/new-images/council/pdf/CommunityCollaborativeToolkit_all%20_materials.pdf

The M Word: A Board Member's Guide to Mergers – How, Why & Why Not to Merge Nonprofit Organizations by Compass Point Nonprofit Services and The San Francisco Foundation
http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf

Merging Wisely, Stanford Social Innovation Review
http://www.ssireview.org/articles/entry/merging_wisely/

Nonprofit Mergers and Acquisitions: More Than a Tool for Tough Times, The Bridgespan Group
http://www.bridgespan.org/Publications-and-Tools/Funding-Strategy/Nonprofit-Mergers-and-Acquisitions-More-Than-a-Too.aspx#.VLRAZlrmZW0

Books on Mergers and Strategic Partnerships

Nonprofit Mergers Workbook Part I: The Leaders Guide to Considering, Negotiating, and Exacting a Merger, David LaPiana, Fieldstone Alliance, 2008.

Nonprofit Mergers Workbook Part II: Unifying the Organization After a Merger, La Piana Associates, Fieldstone Alliance, 2004.

Strategic Restructuring for Nonprofit Organizations: Mergers, Integrations and Alliances, Amelia Kohm and David La Piana, Praeger Publishers, 2003.

Nonprofit Mergers and Alliances, Thomas A. McLaughlin, 2010.

Nonprofits and Government: Collaboration and Conflict. Edited by Elizabeth T. Boris and C. Eugene Steuerle, The Urban Institute, 2006.

Win-Win for the Greater Good, Bruce W. Burtch, 2013.

Attachments

Attachment A: Sample Policy on Strategic Partnerships, Source: Pathfinders for Autism, 2014.

Attachment B: Mergers, Due Diligence Checklist

Attachment C: Legal Issues and Nonprofit Mergers

Acknowledgements: Special thanks to Ashley Williams and Sylvia Nudler for their excellent contributions to this educational resource packet.

Attachment A

SAMPLE POLICY ON STRATEGIC PARTNERSHIPS

Special Thanks to Pathfinders for Autism for providing permission to include their policy in this Standards for Excellence educational resource packet.

Policy on Strategic Partnerships

Policy for Strategic Partnerships

Pathfinders for Autism will identify, pursue, engage in, and evaluate strategic partnerships consistent with our vision and mission.

Pathfinders for Autism believes in the importance and value of partnerships and collaboration. We know that families and individuals with autism benefit from engaging with and learning from a broad range of community resources – and as an organization, we too are strengthened by partnering and collaborating with others.

Principles for Strategic Partnerships

Pathfinders for Autism targets its resources toward the development of strategic **Cooperative** and **Coordinated** partnerships as defined below:

- **Cooperative:** Shorter-term informal relationships that may not have a defined structure or planning effort, yet demonstrate a willingness to work together
- **Coordinated:** Longer-term, more formal relationships that rely on alignment of missions and goals and typically focus on a specific effort or program

From Forming Alliances: Working Together to Achieve Mutual Goals by Hoskins and Angelica. Copyright 2005, Fieldstone Alliance.

Successful partnerships will:

- Enhance our programs by expanding our scope and reach
- Allow us to combine resources that increase the impact of our programs
- Increase the awareness of our organization and build our brand
- Be of mutual benefit to both organizations

Goals for Strategic Partnerships

Strategic partnerships are designed to achieve one, or a combination, of the following goals:

- To deliver our products or services to a broader set of customers, by tapping into the partner's constituents, networks, and/or knowledge base

- To jointly develop new or enhanced products and services, by working with organizations that have complementary products, services, or skills
- To work with local or regional organizations to drive a common agenda, by joining forces to push forward an advocacy or legislative agenda for the benefit of both organizations

Procedures

- As part of its strategic planning, environmental scan, and program evaluation processes, the Board of Directors identifies opportunities for partnerships and collaborations.
- The Executive Director and other designated staff are responsible for initiating contacts with potential partners and for reporting inquiries from potential partners to the Board.
- Staff obtains relevant information about the potential partner (reputation, core competencies, capacity, resources) and conducts a due diligence review of the organization.
- Staff reviews the proposed type and scope of collaboration in light of existing programs, internal capacity, and financial impact.
- The Executive Director evaluates proposed partnerships and approves, amends, or disapproves the proposed partnership, based on the following criteria:
    - *Alignment* – Will this further our mission and programs in a meaningful way? Does it align with our current programs? Does this compete with other offerings? Are the image, activities, and values of the partner consistent with our own? How does this contribute something new?
    - *Benefit* – What benefits or considerations will the partners provide each other? How are we improving ourselves as an organization, raising our visibility, and helping our stakeholders? How will we evaluation the success of this effort?
    - *Continuity* – Is this a single or short-term event or will it be ongoing? Do we have the capacity and desire to sustain the effort?
    - *Delivery* – Do we have the capacity to do this? If not, what would be required to do so? What are the risks, including reputation, legal, financial, and opportunity costs?
    - *Equity* – Does the relationship provide the opportunity for equal value or benefit? If unequal, is this justified and understood? Are roles, relationships, and obligations clearly defined?
    - *Financial* – What will this cost us? Will we derive income?
- If the Executive Director identifies potential risks associated with the partnership, then the assessment is presented to the Board for recommendation or action.
- Staff enters into a written agreement with the partner that defines roles, responsibilities, evaluation criteria, financial obligations, and conflict resolution strategies.
- The Executive Director reports to the Board at a board-specified timeframe about the accomplishment of the partnerships, issues that arose and how they were handled, and a recommendation about continuing the partnership.

Approved by the Pathfinders for Autism Board: June 11, 2014

Attachment B

MERGER DUE DILIGENCE DOCUMENT CHECKLIST

- ❑ Articles of Incorporation
- ❑ Bylaws
- ❑ Board member list
- ❑ Staff member list
- ❑ Organizational chart
- ❑ Board meeting minutes (last 3 years)
- ❑ Strategic Plan
- ❑ Conflict of Interest Policy
- ❑ Personnel Handbook/Policies
- ❑ IRS Form 990 (last 3 years)
- ❑ Current financial statements
- ❑ Current balance sheet, with supporting documentation of all assets and liabilities
  - ➢ underlying documentation regarding liabilities of $1,000 or more
  - ➢ underlying documentation regarding any tax liabilities
- ❑ Fixed assets schedule from last audit
- ❑ Insurance schedules from last audit
- ❑ Insurance policies, last 3 years
  - ➢ Directors & Officers
  - ➢ general liability
  - ➢ other
- ❑ Last 3 audited financial statements
  - ➢ management letters from auditors
  - ➢ organization's written reply, if any, to auditor's management letters
- ❑ List of key funders
- ❑ State Personal Property Tax Returns (last 3 years)
- ❑ State Corporate Income Tax Returns (including unrelated business income tax return), if any (last 3 years)
- ❑ Unemployment Rate Notices (most recent)
- ❑ IRS Form 941 (quarterly federal withholding for FICA, Medicare)
  - ➢ Request cancelled checks for proof of payment
- ❑ IRS Form 940 (federal unemployment report)
- ❑ W2 forms
- ❑ State unemployment insurance quarterly reports
- ❑ Any letters from the IRS (requesting payment)
- ❑ Inventory of computer hardware & software
- ❑ Inventory of furniture & equipment, of goods & supplies (items w/value >$100)
- ❑ List of current strategic partners
- ❑ All existing contracts
  - ➢ real estate leases
  - ➢ equipment lease or purchase contracts
  - ➢ vehicles lease or purchase contracts

- government contracts

- Names of current banks, investment advisors, attorneys, accountants, and other contractors or services
- Listing of any pending, threatened, or recently settled, law suits - last 3 years
- Listing of any pending, threatened, or recently settled, workers compensation claims
- Information regarding recent or pending government audits

Standards for Excellence Institute

Attachment C

LEGAL ISSUES AND NONPROFIT MERGERS- Standards for Excellence Institute

There are a host of legal issues that need to be considered for organizations interested in merging with another organization. Leaders of potential merger partners will want to be sure to engage an attorney with expertise in the state requirements where the merger will take place. For instance, your attorney will need to be up-to-speed on state regulations such as:

- Current ownership structure;
- Incorporation type for the merging entities;
- Restrictions on types of organizations that can merge with one another;
- Approval needed by the surviving board of directors;
- Requirements around filings for the surviving entity and the dissolving entity; and
- Requirements around registration for charitable solicitation, if applicable.

Your attorney will also need to be clear on requirements with respect to the federal government and the Internal Revenue Service for example:

- The IRS must determine whether the post-merger entity continues to be organized and operated for section 501(c)(3) purposes. If an organization is unsure about whether a proposed change in its purpose or activities is consistent with its status as an exempt organization, it may request a private letter ruling from the IRS or a determination letter.
    - Procedures to obtain a Private letter ruling can be found under Revenue Procedure 2010-4
    - Certain areas will require advance notice to the IRS
        - Private foundations
        - Organizations with scholarship programs or grant making procedures
    - Accordingly, you should notify the IRS, by letter, of the merger, and submit copies of any amendments to your articles of organization or by-laws as part of the merger transaction. You may also wish to consider whether the merger will result in other adverse tax consequences, such as recognition of gains on assets transferred.
    - If one of the organizations ends its operations, either by ceasing to exist, shutting down its operations or merging with another organization, it must inform the IRS of the details of its actions.
- Changes in name and corporate status must also be reported to the IRS[2]
- Upon the filing of the annual report the following year, all updated documents must be included and changes reported, including changes to mission statement
    - The merging entity will need to file a copy of the certificate of merger with its Form 990 and the dissolving entity will need to fill out a Schedule N to the Form 990 (http://www.irs.gov/pub/irs-pdf/p4779.pdf)

For key legal issues associated with nonprofit partnerships, including taxes, intellectual property rights, and contract basics, see the Venable LLP article, *Nonprofit Partnerships: A Guide to the*

Key Legal Issues and Pitfalls (http://www.venable.com/nonprofit-partnerships--a-guide-to-the-key-legal-issues-and-pitfalls-08-16-2011/).