

INCORPORATION

WHY INCORPORATE?

Has your local association become active in collective bargaining and community politics? Does your budget finance equipment, office space, and other materials? If so, incorporation is important.

You and the other officers of your association and your members are all at greater risk of personal liability if the association is not incorporated. A dissatisfied member, a school board candidate you opposed, these and others all may sue your association, and if you are not incorporated you may be held personally liable. Incorporation protects your officers' personal assets from suits for actions undertaken in the association's name. Incorporation is essential to protect yourself and your association.

Incorporation and the procedures you must follow also contribute to an orderly run association. For all of these reasons, the 1986 NEA-New Hampshire Delegate Assembly mandated that all local affiliates be incorporated and file copies of their incorporation with NEA-NH.

STEPS FOR INCORPORATION

1. **Draft Articles of Agreement:** First you should draft the Articles of Agreement. The Articles of Agreement are required by law (RSA 292:2) for incorporation. You will find attached, as Appendix A, a sample for your Articles of Agreement. Each article is necessary.
 - a. **Name of Association:** Since by incorporating you are forming a legal entity under the law, it is necessary that your association name be different than all others. The law also requires that the name of each corporation be unique, and that name be dissimilar enough so as to inhibit confusion. Before your Articles of Agreement are typed in final form, check with the Secretary of State on the availability of the name you plan to use. (The Secretary of State's telephone number is 271-3246, in Concord.) Your name for purposes of incorporation should match the name on your PELRB certification.

- b. **Objectives of the Association:** The objectives of your association must also be included in your articles. The state requires this in order to insure that your objectives are consistent with standards for non-profit corporations. The suggested objectives can be found in Article 2 or Appendix A.
 - c. **Provisions for Establishing Membership and Participation in Association:** See Appendix A, Article 3, for suggestion.
 - d. **Disposition of Assets:** See Appendix A, Article 4. As a non-profit corporation, your association has a legal responsibility to use its money solely for the furtherance of its legal objectives. Also, this article provides for the distribution of its assets if the association becomes defunct. This rarely happens. But if it does, the law requires a contingency. NEA-NH suggests, but by no means requires, that in the event the association is dissolved, its assets be placed in the trusteeship of NEA-NH until such time as another association is organized. This would give any new organization the wherewithal to represent members effectively in the future.
 - e. **Place of Business:** The address of the corporation should be the town/city where the association would conduct most of its business. Normally, this would be where your members are employed. This could be the SAU office or a post office box opened for the purposes of your association. See Appendix A, Article 5.
 - f. **Not-for-Profit:** See Appendix A, Article 6.
 - g. **Limitation on Personal Liability of Officer(s):** See Appendix A, Article 7.
 - h. **Amendment of Articles:** See Appendix A, Article 8.
 - i. **Meeting to Incorporate:** See Appendix A, Article 9. When your Articles of Agreement have been completed, you are ready to proceed with incorporation. NEA-NH suggests that those acting as incorporators should be the present association officers. **The law requires that there be at least five incorporators.** This meeting should be well advertised to the association membership. This is time for pride. The association is taking an important step in organizing itself.
2. **Constitution and Bylaws:** NEA-NH strongly urges that your local association adopt bylaws which cover the "nitty-gritty" aspects of running a local association. These are only suggestions; the state law does not require you to have bylaws. Nor must you file

either bylaws or minutes with the NH Secretary of State. However, the NEA-NH Constitution requires that all local associations have a constitution that is consistent with NEA-NH's constitution. To simplify matters, your charter of incorporation (which encompasses the Articles of Agreement) may "double" as your constitution. You can then adopt bylaws supplementing that document. *See* Appendix B.

3. **Filing Requirements: NH Secretary of State**

- a. Check with Secretary of State as to whether the name for the organization is available.
- b. Write up **Articles of Agreement**. Make at least **4 copies** and **sign all copies separately**, that is, **do not photocopy the signatures**--only the articles. One copy with original signatures, is for your records; one copy should be forwarded to NEA-NH, Attn: Legal Department, 9 South Spring Street, Concord, NH 03301. (RSA 292:1)
- c. Take two copies to the Secretary of State's Office for filing; the fee is \$25.00 (RSA 292:5). Retain a receipt for your filing fee as the record of filing. Subsequently, you will receive a charter from the Secretary of State. A copy of that charter should be sent to NEA-NH. The Secretary of State will return the Articles for you to file with the Town Clerk.
- d. When the Articles are returned from the Secretary of State; take a copy to the Town Clerk for filing (RSA 292:4), the town clerk's office in which the business resides. There is a \$5 filing fee at the Town Clerk's Office. (RSA 292:5).
- e. Under New Hampshire law, each association must file a return containing certain information every 5 years. This requirement began in 1990. Forms may be obtained from the Secretary of State. (RSA 292:25) There is a \$25.00 fee to file the return. Any corporation which does not properly renew its charter shall have the charter repealed, revoked, and annulled.
- f. Changes may be made in the Articles of Agreement by a vote of such corporation, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the Office of the Secretary of State and in the office of the clerk of the town or city which is its principal place of business. (RSA 292:7)

NOTE: These steps are further described in Appendix C, which are the NH Secretary of State's instructions for nonprofit corporations.

4. **Filing Requirements: Internal Revenue Service**

- a. Upon receipt of the corporate Charter, your association should apply for an Employer Identification Number. To do this, complete the attached SS-4 form first. Then either call the IRS at 1-800-829-4933 or complete the process using the IRS website (www.irs.gov). The IRS will give you an ID# to include on the SS-4 form. The IRS will also mail you the employer identification number once the process is complete. Keep this form for your records.

NOTE: NEA-NH cannot contact the IRS on the association's behalf. The person who has been selected to sign checks for the association must make this call to the IRS. For your information, the address of the IRS is Internal Revenue Service, Andover, MA 05501.

- b. **IMPORTANT:** Your association must file with the Internal Revenue Service an annual information return on IRS Form 990-N, if the *gross receipts of the organization "normally are less than "\$50,000*. If you have trouble filing the 990-N online at the IRS, please contact the NEA-NH Finance Department.*
- c. *If you think you have more than \$50,000 in gross receipts*, please contact the NEA-NH Finance Department for information regarding the IRS filing requirements.

***IMPORTANT NOTE: If you do not file a Form 990-N for three (3) consecutive years, the IRS will notify you that your IRS tax-exempt status has been dissolved. If that happens, you would need to file a Form 1024 to apply to get your tax-exempt status back. There are significant costs related to this process - \$400 filing fee, penalties and interest.**