

Sounding Board



A publication of Osprey Wilds Environmental Learning Center Charter School Division

Charter School Mergers: What Boards Need to Know

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From time to time, charter schools consider merging with another school. A merger can be a practical solution when two schools share a mission, serve overlapping communities, or are looking for ways to strengthen their long-term sustainability. It can also be a complex undertaking that requires careful planning, legal guidance, and strong communication with staff, families, your authorizer, and the authorizer of the other school.

This issue of The Sounding Board walks through what a merger involves, what the law requires, and what your board should be thinking about as you work through the process. Osprey Wilds (OW) is available to support schools considering a merger, and we encourage you to reach out early.

This paper is not intended to be legal advice. Please check with the school's legal counsel and review the full text of statute for additional information.

First Things First: What Is a Charter School Merger?

In a charter school merger, two or more schools combine into one. One school is designated the surviving school (it continues operating under its charter, its legal identity, and (usually) its name). The other school (the non-surviving school) ceases to exist as a separate legal entity and merges into the surviving school.

After the merger, there is one school, one board, one charter contract, and one employer. The surviving school takes on the assets, liabilities, staff, and students of both schools.

Minnesota law governs how this works. The primary statutes are MN Stat. Chapter 124E (charter school law) and Chapter 317A (nonprofit corporation law). The Minnesota Department of Education has also published guidance on the merger process that you can find on the "[Charter School Resources](#)" page of the Minnesota Department of Education website.

When Can't a School Merge?

Not every school is eligible to merge. Two situations prohibit a school from merging:

- If an authorizer has terminated or chosen not to renew a charter contract under MN Stat. 124E.10, subd. 4(b) that school cannot merge. It must go through dissolution instead.
- If a school received a subgrant under Minnesota's 2023 federal Charter Schools Program (CSP) grants, it cannot merge with another school until five years after the school's CSP grant project ends.

If you are unsure whether either of these applies to your school, contact OW before exploring a merger further.

The Legal Process: What Has to Happen

Minnesota law requires three main legal steps for a merger: developing a Plan of Merger, notifying the Attorney General, and filing Articles of Merger with the Secretary of State. Both schools' boards must be involved, and both schools' authorizers must be engaged throughout. Here is how it works:

Step 1: Develop a Plan of Merger

The first formal step is creating a Plan of Merger. This document lays out the terms of the merger and must include:

- The names of both schools.
- The name of the surviving school.
- The terms and conditions of the merger.
- How board memberships of both schools will be handled going forward.
- Any changes to the surviving school's articles of incorporation.
- Any other provisions the parties consider necessary.

Each school's board must formally approve the Plan of Merger. How that vote works depends on whether your board has members with voting rights (as defined in your bylaws).

- **If your board does not have members with voting rights:** A majority vote of all directors at a properly noticed board meeting is sufficient to approve the Plan of Merger. (This instance applies to most charter schools.)
- **If your board has members with voting rights:** The board must pass a resolution by majority vote of all directors and then submit the Plan of Merger to a vote of those members, with proper notice.

If you are unsure which of these applies to your school, contact OW before going further. Both schools need to approve the plan, not just one.

Step 2: Notify the Minnesota Attorney General

The non-surviving school must notify the Minnesota Attorney General of its intent to merge, as required by MN Stat. 317A.811. The notice to the Attorney General must be signed by an authorized representative of the non-surviving school and must include the following information:

- The school's purpose or mission.
- A list of assets the school owns or holds for charitable purposes.
- A description of any restricted assets (i.e. funds or property that were given to the school for a specific purpose) and what those purposes are.
- A description of the school's debts, obligations, and liabilities.
- A description of any tangible assets (such as equipment or furniture) that will be converted to cash, and how they will be sold.
- The anticipated costs of the merger, including attorney fees.
- A list of the people or organizations that will receive the school's assets, if known, or the name of the surviving school.
- The purposes of whoever is receiving the assets.
- Any terms, conditions, or restrictions that will apply to the transferred assets.

This requirement applies to all charter school mergers. The Articles of Merger (Step 3) cannot be filed until the waiting period required by state law has expired or has been waived by the Attorney General.

Step 3: Prepare and File Articles of Merger

Once the Plan of Merger is approved, the surviving school prepares the Articles of Merger. This document must include:

- The Plan of Merger.
- A statement that each school's board approved the plan.
- A statement about whether the Minnesota Attorney General was notified (required by MN Stat. 317A.811).
- The effective date of the merger, which by law must be July 1.

Both schools must sign the Articles of Merger. The surviving school then files them with the Minnesota Secretary of State, which issues a certificate of merger. The surviving school retains its existing LEA (Local Educational Agency) number.

Step 4: Execute a New Charter Contract

After the merger documents are filed, the surviving school and its authorizer must execute a new charter contract by June 1 (one month before the date the merger takes effect, July 1). This contract covers the merged school going forward.

The term of the contract for the merged entity depends on where things stood with the surviving school's existing contract:

- If the surviving school's contract was not expiring: The new contract can carry forward the same term. No renewal evaluation is needed.
- If the surviving school's contract was expiring: A renewal evaluation must be completed before the merger takes place, and the new contract will include the merged school. The new contract can run for a maximum of five years.

Step 5: Submit Documents to OW and MDE

Within 10 business days of executing the new charter contract, OW must submit the following to MDE:

- The Articles of Merger filed with the Secretary of State.
- The Certificate of Merger issued by the Secretary of State.
- The new, fully executed charter contract, including all exhibits and attachments signed by the school board chair, and the signed Statements of Assurances (Exhibit L) from all board members of the surviving school.

Schools should plan to have all signed contract documents to OW by May 31.

MDE will review the new charter contract for statutory compliance and notify OW and the school of any required revisions.

The Merger Process at a Glance

1. **Osprey Wilds notified.** Communicate to OW that the school plans to seek merger with another charter school. Provide regular updates throughout the process.
2. **Schools negotiate.** Both boards agree on the terms of the merger.
3. **An attorney drafts documents.** The Plan of Merger and Articles of Merger are drafted and shared with OW in draft form.
4. **Attorney general notified.** The non-surviving school must notify the Minnesota Attorney General of its intent to merge.
5. **Special board meetings.** At these meetings, each board votes to approve the Plan of Merger and the Articles of Merger. The schools' board chairs sign the Articles of Merger. The surviving school's board must also approve an amended charter contract.
6. **File with the Secretary of State.** The surviving school files the signed Articles of Merger and Plan of Merger and receives a Certificate of Merger.
7. **Submit to OW.** The surviving school provides OW with the signed Articles, Certificate, and the fully executed charter contract by May 31.
8. **OW submits to MDE.** OW submits all required documents within 10 business days of contract execution.

All of this must be completed by June 1 so that the merger takes effect on July 1.

Build your timeline accordingly.

What Happens After the Merger

Once the merger is effective, the surviving school carries forward with the rights, privileges, and obligations that each school previously held. There are several important things to know about the first year of operation.

Attorney General Notification

After the merger is complete and the non-surviving school's assets have been transferred to the surviving school, the non-surviving school must send the Attorney General a follow-up notice. This notice should list who received the school's assets, their addresses, and what each recipient received.

Financial Records and Audits

Even though the schools have merged, each school must still submit a separate year-end financial report for the fiscal year that ended before the merger. After those reports are finalized and the pre-merger fiscal year is closed out, any remaining fund balances and debts from each school are transferred to the merged school.

The merged school must then submit audit reports for each of the pre-merger schools to MDE and to OW by December 31 of its first year of operation.

Aid and Funding

For its first year of operation, the merged school is eligible to receive state aid at a combined level:

- For programs that require an approved application, the merged school is eligible to receive aid equal to the sum of what each school was receiving.
- For aids calculated based on prior-year data, the merged school uses the combined prior-year data of both schools.

Property, Debts, and Liabilities

The surviving school takes on all of it — the good and the complicated. All property, debts, liabilities, and obligations of the non-surviving school transfer automatically to the surviving school. Creditors' rights are not affected by the merger. Existing liens on property remain on that specific property.

This is one reason why financial due diligence before committing to a merger matters so much. See the next section for more on that.

What Boards Should Be Thinking About

A merger is much more than a legal transaction. Before your board commits, there are a number of important questions to work through together. Here are the key areas to consider.

Which School Will Be the Surviving School?

One school must be designated the surviving entity. This is not just a symbolic choice. The surviving school's charter, legal history, and LEA number carry forward. In making this decision, boards should honestly evaluate which school has:

- A cleaner legal and financial history.
- Fewer outstanding liabilities or compliance concerns.
- Stronger brand recognition and community trust.
- More favorable existing contracts (leases, vendor agreements, etc.).

Board Governance

How the combined board will be structured is often one of the most sensitive conversations in a merger. Questions to work through include:

- How many board seats will each legacy school contribute to the new board?
- Will there be a transition period with a larger combined board that shrinks over time?
- How will officers be selected?
- Are there board members from either school whose term limits, skills, or fit need to be evaluated honestly?

The surviving school may need to revise its bylaws to address board composition before the merger is finalized, not after. This is not a conversation to defer.

School Name and Identity

Will one school's name survive? Will the merged school use a combined name? Or will both schools retire their names in favor of something new? This decision affects families, staff, branding, and community perception, and it should be made intentionally rather than assumed.

Staff and Employment

All employment relationships need careful review. After the merger, the surviving school becomes the employer of record for all staff from both schools. Key questions include:

- Are there duplicate positions (two principals, two business managers)? How will redundancies be resolved?
- What happens to existing employment agreements?
- How will staff be communicated with throughout the process?

Due diligence regarding employment law and transparent communication with staff can prevent legal exposure and reduce the fear and uncertainty that mergers may create.

Financial Due Diligence

Before either board commits to a merger, both boards should conduct a thorough review of the other school's finances. This means looking at:

- Audit history and any findings or concerns.
- Outstanding liabilities and debt obligations.
- Lease terms and equipment ownership.
- Any unresolved compliance findings.

Remember: the surviving school takes on everything. An undisclosed deficit or unresolved audit finding does not disappear in a merger; it becomes the merged school's problem. The merged school should also develop a clear plan for unified budgeting and financial systems before the merger takes effect.

Facilities

If both schools have leases or own their facilities, decisions need to be made about which spaces to keep, which to exit, and how. A few things to keep in mind:

- Landlords must typically consent to any changes in lease arrangements, so this requires lead time.
- Exiting a lease may involve negotiating a termination or finding a subtenant.
- Property that belonged to either school transfers automatically to the surviving school under state law.

Educational Program

If the two schools have different instructional models, grade configurations, or student populations, the merged school needs a coherent academic plan. OW will want to see that the merged entity has a credible educational design, not just an administrative consolidation with two schools operating side by side under one legal name. This discussion may include the following topics:

- **Grade configuration and enrollment.** If the two schools serve different grade bands, what will the merged school serve? Will both sites remain open, and if so, how are students assigned?
- **Instructional model.** If the schools have different approaches to teaching and learning, which model carries forward, or how will they be blended?
- **Mission alignment.** Charter schools exist to fulfill a specific mission. The merged school should be able to articulate a coherent mission.
- **Staffing for instruction.** Who will be leading the academic program? Are there gaps in instructional leadership created by the merger?
- **Support services.** How will the merged school ensure continuity of services for students with disabilities, multilingual learners, and other students with specific needs during the transition?
- **Academic continuity.** What is the plan for students during the initial year of the merger, when disruption is most likely?

The surviving entity should be aware that these changes may require revisions to the contract, such as:

- Exhibit D: Description of Educational Program
- Exhibit E: Description of Additional Programs
- Exhibit F: Implementation of Statutory Purposes
- Exhibit G: Academic & Academic-Related Goals
- Exhibit H: Environmental Education Goals
- Exhibit I: Admissions Policies & Procedures

Timeline and Communication

Mergers require multiple approval processes to happen in parallel: both boards vote, OW is engaged for contracting, legal documents are drafted and filed, and the surviving school approves the amended or new contract. All of this must be completed by June 1.

Start planning early. And when you communicate with staff, families, and your community, be honest about what you do and do not know. Mergers that involve surprises or promises that can't be kept ("Nothing will change!") tend to generate distrust that is hard to rebuild.

How OW Is Involved

As your authorizer, Osprey Wilds plays an important role in the merger process. Here is what to expect:

- OW should be informed early that a merger is under consideration. Do not wait until documents are drafted to make contact.
- OW will review draft merger documents before they are finalized.
- OW and the surviving school's board will execute the new charter contract.
- OW is responsible for submitting the completed merger documentation to MDE within 10 business days of contract execution.
- If a renewal evaluation is required (because the surviving school's contract was expiring), OW will conduct that evaluation and include it in the charter contract.

Questions about the merger process? Contact the Osprey Wilds Charter School Division at csdadmin@ospreywilds.org or your school's primary contact.