



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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GOVERNOR

THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

November 5, 2003

TO: State Board of Education

FROM: Thomas D. Watkins, Jr., Chairman

SUBJECT: K-12 Educational Corporations Process

The *Michigan General Corporations Act* requires every educational corporation, before being authorized to file its Articles of Incorporation, to present to the Michigan Corporation and Securities Commission written approval from the Department of Education concerning the adequacy of existing or proposed (1) housing space and administrative facilities, (2) educational programs leading to diplomas, (3) laboratories, libraries, and other teaching facilities, (4) staff, and (5) evidence that at least 50% of its capital has been paid in or reduced in possession [1937 PA 327, MCL 450.170 – 450.171]. (See Attachment A.)

Executive Order 1999-12 transferred all the powers, duties, functions and responsibilities for *postsecondary* educational corporations to the Department of Career Development. Executive Order 2003-18 transferred this same authority to the Department of Labor and Economic Growth, effective December 7, 2003. The authority for *K-12* educational corporations remains in the Department of Education.¹

In 1979, the State Board of Education adopted *Policies and Procedures on the Establishment and Approval of Nonpublic Colleges and Universities in Michigan*. The policy is specific to postsecondary educational corporations. Department staff has been working with the Attorney General's office to determine an approval process that would be more appropriate for K-12 educational corporations and that would also remain in compliance with the requirements of the *Michigan General Corporations Act*.

Over the past several months the Department has received 12 requests for approval to establish a K-12 educational corporation. Two of the requests have been from nonpublic schools that have met the nonpublic school reporting requirements for the 2003-2004 school year. Five nonpublic schools have requested a nonpublic membership report form but have not yet reported to the Department. A list of these schools is provided in Attachment B. In addition, the Department has received four requests to establish a nonpublic school as an educational corporation and one request to establish as an educational foundation.

The following process is being recommended for determining whether a nonpublic school has met the adequacy requirements as an educational corporation to be approved by the Department. The outline identifies the areas that should be discussed in a report to the Department to demonstrate required adequacy requirements. The Department of Education approval will take place only after the report has been reviewed and determined to meet the adequacy requirements as provided by law.

¹ Although *supervision and inspection* authority of an educational corporation was transferred from the State Board of Education to the Superintendent of Public Instruction by Executive Order 1996-12, the authority to *approve* an educational corporation that has met the adequacy requirements was not transferred to the Superintendent of Public Instruction and remains with the State Board of Education.

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Housing Space and Administrative Facilities

- Evidence of compliance with state fire regulations is required.

Proposed Educational Programs

- The grades and subjects taught must be described, including the following required core courses.
All levels: English, reading, mathematics, social studies and science.
Junior/Senior High School: U.S. Constitution, Michigan Constitution, and civics.

3. Laboratories, Libraries, and Other Teaching Facilities

- The size and nature of the teaching facility must be described, including descriptions of the number and size of classrooms, any libraries, computer technology, science laboratories, etc.

*4. Staff

- Staff qualifications must be described.

An individual may qualify to teach in Michigan nonpublic schools in one of three ways:

1. By obtaining a Michigan teaching certificate.
2. By obtaining a substitute, full-year or emergency teaching permit.
3. By obtaining a bachelor's degree.

However, if a nonpublic school claims an objection to teacher certification based on a sincerely held religious belief, the minimum education requirements for teachers are waived (*People v DeJonge* 442 Mich 266).

5. Financing

- A letter or report from a certified public accountant must be provided that would verify that "at least 50% of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced in possession" as required by the *Michigan General Corporations Act*. [MCL 450.171]

* Note: The *Nonpublic School Membership Report* form (SM-4325) may be used to provide verification under adequacy requirements numbers 2 and 4.

Department staff would submit an approval letter to the Corporations Unit, Department of Labor and Economic Growth if the Department determines that the nonpublic school has demonstrated that it has met the adequacy requirements by providing the above information.

It is recommended that the State Board of Education approve the K-12 Educational Corporations Process as provided in the Superintendent's memorandum dated November 5, 2003.

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450.169 Corporations to provide student aid.

Sec. 169. Same; corporations to provide student aid. Any corporation heretofore or hereafter organized for the purpose of providing scholarships in the University of Michigan or in any of the publicly maintained schools or colleges of this state or formed for the purpose of loaning money or giving other assistance to students at any of said schools or colleges or said university may, by 2/3 vote of its board of trustees, transfer and convey all its property and assets to, and become consolidated with, any other corporation organized under the laws of this state for corporate purposes of the same character. Notice of such transfer and consolidation shall be filed with the secretary of state within 30 days thereafter, and such corporation shall thereupon be deemed to have surrendered its corporate rights and shall have no rights except as may be necessary to close its corporate affairs.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.169.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 24 of Ch. I of Part IV of Act 84 of 1921, as added by Act 267 of 1929, being CL 1929, § 10100.

450.170 Educational corporations; incorporation.

Sec. 170. Any number of persons, not less than 3, may incorporate for the purpose of conducting a school, academy, seminary, college or other institution of learning where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. Such corporations are hereinafter called educational corporations. Educational corporations may be organized for profit or by trustee corporations if so provided. Educational corporations organized for profit or as trustee corporations shall also comply with the provisions of this act relating to corporations for profit or trustee corporations. Educational corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided and shall be subject to the provisions of Act No. 148 of the Public Acts of 1943, as amended, being sections 395.101 to 395.103 of the Compiled Laws of 1948.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.170;—Am. 1967, Act 157, Imd. Eff. June 30, 1967.

Former law: See section 4 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9946.

450.171 Educational corporations; classification; statement; guaranteed annual income as credit to capital; use of "college," "university," or "junior college" as name; expansion of program.

Sec. 171. For the purposes of this act, educational corporations shall be classified as follows:

- (w) Those having a capital of not less than \$500,000.00;
- (x) Those having a capital of not less than \$100,000.00, and less than \$500,000.00;
- (y) Those having a capital of \$1,000,000.00 or more;
- (z) Those instituted and maintained by any ecclesiastical or religious order, society, corporation or corporations, retaining control of such institution for denominational purposes.

Every educational corporation, before being authorized to file its articles, shall be required to present a statement to the Michigan corporation and securities commission in writing from the state board of education that (1) the housing space and administration facilities which it possesses or proposes to provide for its declared field or fields of education are adequate, (2) its proposed educational program leading to the diplomas or degrees which it proposes to offer is adequate, (3) its laboratory, library, and other teaching facilities which it possesses or proposes to provide are adequate, (4) it has or proposes to employ an adequate staff, fully trained, for the instruction proposed, and (5) at least 50% of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced to possession.

In determining whether any educational corporation satisfies conditions specified in classes (w), (x), (y) and (z) of this section, the state board of education may treat as a credit to the capital of such corporation the guaranteed annual income of that corporation to the extent that it deems such guaranteed income the equivalent of all or any part of the required endowment.

The use of the word "college" or "university" in the name of any group, organization or association hereafter formed in this state is limited to those educational corporations complying with the requirements for class (w) or class (y) educational corporations or to such educational corporations of class (z) as shall satisfy the requirements set up for class (y) corporations: Provided, however, That the words "junior college" may be used by educational corporations of class (x). Whenever this provision is violated it shall be the duty of the prosecuting attorney, in the county where the organization is located, to bring proceedings to enjoin the further use of such name in violation of this act.

Expansion of program, statement from state board of education.

No educational corporation shall be permitted to expand its program beyond that specified in its articles of

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incorporation until it has presented to the Michigan corporation and securities commission a statement in writing from the state board of education approving the facilities, equipment and staff or the proposed facilities, equipment and staff as adequate for the offering of the additional educational program.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—Am. 1943, Act 160, Imd. Eff. Apr. 17, 1943;—CL 1948, 450.171;—Am. 1958, Act 147, Eff. Sept. 13, 1958.

Former law: See section 2 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10102.

450.172 Educational foundations; colleges, establishment.

Sec. 172. (a) Educational corporations of class (w) as defined in section 171 of this act shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees and honors as shall be approved by the state board of education prior to the filing of articles of incorporation; and the term “college” as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred. Such colleges may also include preparatory schools as commonly understood;

(b) Educational corporations of class (x), as defined in section 171, shall have authority to establish and conduct junior colleges, seminaries, academies or preparatory schools, as determined and approved by the state board of education, but not general colleges or universities as defined in subsection (a) hereof;

(c) Educational corporations of class (z) as defined in said section 171 shall embrace such schools, academies, or colleges as have been heretofore founded under Act 135, Public Acts 1899, known thereunder as “Ursuline academies”; those founded under Act 121, Public Acts 1915, and known thereunder as “ecclesiastical seminaries”; those founded under Act 28, Public Acts 1901, and known thereunder as “Evangelical Lutheran deaf mute institutions”; those founded under Act 135, Public Acts 1867, known as “industrial and charitable schools”; those organized under paragraph (c), subdivision 1, chapter 2, part 4, of Act 84, Public Acts 1921, and such other schools, colleges and institutions of like character and purpose as may be formed under any law of this state for educational purposes shall have all the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this act, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this act: Provided further, That any corporation heretofore formed under Act 359, Public Acts 1913, and known thereunder as “kindergarten institutions” shall hereafter be classified under class (x) of sections 171 and 172 of this act: Provided further, That any corporation of class (z) hereafter organized under this act may enjoy the privileges provided under classes (w), (x) and (y) of section 171, on condition that it satisfies the requirements set up for corporations of these respective classes.

(d) Educational corporations of class (y) as defined in section 171 shall have authority to establish and conduct colleges or universities of a graduate rank with programs of studies of 5 years or more.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—Am. 1943, Act 160, Imd. Eff. Apr. 17, 1943;—CL 1948, 450.172;—Am. 1958, Act 147, Eff. Sept. 13, 1958.

Compiler's note: Act 135 of 1899, Act 121 of 1915, Act 28 of 1901, Act 135 of 1867, and Act 359 of 1913, referred to in this section, were repealed by § 10134 of the Compiled Laws of 1929. Act 84 of 1921, also referred to in this section, was repealed by Act 327 of 1931.

Former law: See section 3 of Ch. II of Part IV of Act 84 of 1921, as amended by Act 267 of 1929, being CL 1929, § 10103.

450.173 Educational foundations; articles of incorporation, contents, amendment.

Sec. 173. Same; articles of incorporation. The articles of every educational corporation shall clearly set forth the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant, and same shall be approved by the state board of education prior to the filing of the articles of incorporation. If a college or university, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same. Such articles shall be filed as provided in section 5 of this act. Any such corporation may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this act.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—CL 1948, 450.173.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 4 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10104.

450.174 Educational foundations; property, acceptance; government.

Sec. 174. Same; acceptance of property. The directors or trustees of any such educational corporation may accept gifts, devises, legacies or bequests, of personal or real property, or the principal or interest of any money or other

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fund, in trust for the benefit of such institution or particular faculties, departments or other special purposes thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this act respecting such boards; and as to their trusteeship of property they shall be governed by the provisions of this act governing trustee corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.174.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10105.

450.175 Educational foundations; board of directors, trustees; powers.

Sec. 175. Same; powers of board of directors or trustees. The control of the business and secular affairs of every such educational corporation shall be vested in a board of directors or trustees. Such board shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employees, as the board shall determine necessary;

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions within this country in promoting the best interests of education.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.175.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10106.

450.176 Educational foundations; holders of diplomas, certificates, privileges.

Sec. 176. Same; privileges of holders of diplomas, or certificates. Every diploma, certificate of graduation, or other evidence of attendance at such institution, shall entitle the lawful recipient thereof to all the privileges and immunities which by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country: Provided, That as to any occupation or profession regulated by statute as to the requirements and qualifications necessary to the practice thereof, no such diploma or certificate of graduation shall entitle the recipient to any such privilege or immunity where such statutory requirements or qualifications have not been complied with.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.176.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 7 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10107.

450.177 Educational foundations; inspection by state board of education, time; annual report, contents.

Sec. 177. Same; inspection by state board of education; annual report. Every such educational corporation shall be visited and inspected by the state board of education, in person or through visitors or inspectors appointed by them, at least once every 3 years. Said state board of education shall at the time of visitation ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of such corporations, and shall file a copy of their report with the Michigan corporation and securities commission. Upon evidence that the property is at any time less than is required by law, or that any such educational corporation is not otherwise complying with the provisions of this act, they shall serve notice on such corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by them, they may institute proceedings at law for the dissolution of such corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the state board of education, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other

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information as will tend to exhibit its condition and operations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—CL 1948, 450.177.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 8 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10108.

450.178 Ecclesiastical corporations; incorporation; purpose.

Sec. 178. Ecclesiastical corporations. Any number of persons, not less than 3, may incorporate for the purpose of establishing any church organization for the purpose of teaching and spreading their religious beliefs and principles. Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided. The term "church" and/or "church organization" used in this act shall be construed to include any church, denominational unit, or church society as the term is commonly used and understood but shall not apply to such organizations as Sunday schools, Epworth Leagues, Young People's Unions, Bible classes and similar societies organized by and affiliated with the parent churches. Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the accomplishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as provided for the filing of articles in section 5 of this act. The corporations formed under this section are hereinafter called ecclesiastical corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.178.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9947; and section 1 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10109.

450.179 Ecclesiastical corporations; articles of incorporation.

Sec. 179. Same; articles of incorporation. The articles of any such ecclesiastical corporation shall be executed by the incorporators and shall follow the form prescribed in this section, and contain such further statements as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

"We, the undersigned, desiring to become incorporated under the provisions of Act No. of the Public Acts of 1931 (namely, this act) do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the of county of and state of Michigan;

Third, The time for which said corporation shall be created shall be

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the church in the United States of America (or other jurisdiction as the case may be), as from time to time authorized and declared by the (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question);

Fifth, And succeeding articles, if any (containing in brief and concise language, such other and further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed).

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, County of and state of Michigan, this day of,
19

(Residences)

(Signatures)

(Acknowledgments.)

(Consent if any required.)

(Certificates, if any.)"

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.179.

Outstanding Educational Corporations Requests

Nonpublic schools that have met the nonpublic school reporting requirements for 2003-2004:

**Oakland Christian School (Auburn Hills)
Childs Academy Montessori Center (Lathrup Village)**

Nonpublic schools that have requested a nonpublic school membership report form:

**Al-Ikhlās Training Academy (Hamtramck)
Calvary Baptist School (Zeeland)
Here's Hope Christian Academy (Detroit)
Crossroads Christian Schools (Marquette)
Bright Horizons Educational Corporations (West Bloomfield)**