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## **Background on Asbestos Management Plan**

A non-profit New Jersey Charter School that provides any grade of K-12 education is considered to be a “Local Education Agency” (“LEA”) pursuant to the USEPA’s Asbestos-Containing Materials in Schools Rule ( the “Rule”, 40 CFR 763, Subpart M). This Rule is what is commonly referred to as the “AHERA” regulations, as it was the Rule that was promulgated by the United States Environmental Protection Agency (USEPA) after the passing of the Asbestos Hazard Emergency Response Act (i.e., “AHERA”) by the United States Congress in 1988.

The Rule requires that LEAs establish an Asbestos Management Plan (AMP) for each of its educational facilities. Development of an AMP requires that the facility be investigated for asbestos-containing materials (ACMs), the hazards posed by ACMs identified be formally assessed, and then decisions be made regarding how to manage the ACM pursuant to the assessment. In New Jersey, USEPA has designated the New Jersey Department of Health and Senior Services (NJDHSS) to be the “lead agency” that administers the Rule in this State. NJDHSS has developed its own program for fulfilling its responsibilities under the USEPA designation.

The Rule applies to educational facilities, both owned and leased. The Rule applies to educational facilities that are part of larger buildings that otherwise are not used as schools, and for temporary school facilities as well. Further, facilities that are newly brought into service (that is, if the Charter school buys or leases a new facility), the Charter School is required to develop and institute an AMP for the new facility prior to its use. Note that in the instance of a leased facility, it is the LEA, not the property owner that is ultimately responsible for development of the AMP and ongoing compliance with the Rule.

Generally, asbestos management compliance requires that the LEA hire a professional consultant to conduct the investigation, assessment, and AMP development. The need for a consultant is tied to requirements that the investigation be completed by personnel that are USEPA-accredited as Asbestos Building Inspectors, and that the AMP is developed by an individual that is a USEPA-accredited Asbestos Management Planner. Also, samples collected for asbestos-content analysis need to be analyzed by an accredited laboratory, a service usually either also provided by an asbestos management consultant, or by a lab routinely subcontracted to the consultant.

This information is a summary as of the date hereof. It is not legal advice. Consult with your attorney.