



CHARTER SCHOOL OFFICE
ROOM 5N EB Mezzanine, 89 WASHINGTON AVENUE, ALBANY NY, 12234
Tel. 518/474-1762; charterschools@nysed.gov

NYSED Enrollment Guidance For New York State Charter Schools In Receipt of Charter Schools Program (CSP) Grants

All CSP subgrantees must make their enrollment plan, including information regarding the use of a lottery or weighted lottery, public. The enrollment plans of CSP subgrantees are subject to annual monitoring by NYSED and its representatives to ensure that the plans adhere to this guidance.

In New York State, charter schools are open to all students. Section 2854(2)(b) of the New York State Education Law states that any student who is qualified for admission to a public school is qualified for admission to a charter school. A charter school must enroll each eligible student who submits an application by April 1st prior to the beginning of each school year, unless the number of applicants exceeds the number of available seats.

Charter schools have the same flexibility as school districts in New York State to determine a student admission cut-off birth date and may enroll students who will turn five after December 1st, consistent with State Education Law §3202(1). Charter schools are not bound by a particular school district's admission policy.

Single-sex charter schools are allowed. A charter school designed as a single-sex school, or that serves particular at-risk students, may limit admissions to that category of students unless such an action would constitute discrimination under federal law. A charter school may not hold separate, gender-specific lotteries.

All charter schools in receipt of CSP funding must comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, Section 444 of the General Education Provisions Act (commonly referred to as the "Family Educational Rights and Privacy Act of 1974"), and Part B of the Individuals with Disabilities Education Act.

A non-discrimination statement must be included in any charter school's enrollment policy as well as its enrollment application, as follows:

Non-Discrimination Statement: *A charter school shall not discriminate against or limit the admission of any student on any unlawful basis, including on the basis of ethnicity, national origin, disability, intellectual ability, measures of achievement or aptitude, athletic ability, race, creed, gender, religion or ancestry. A school may not require any action by a student or family (such as an admissions test, interview, essay, attendance at an information session, etc.) in order for an applicant to either receive or submit an application for admission to that school.*

Lotteries

If the number of timely applications exceeds the number of seats available at grade level, regulations require that all charter schools follow a random selection process (a lottery). Section 119.5 of the

Regulations of the Commissioner specify that the random process used in the lottery may be a traditional lottery ball system, technology-based software, paper ticket process or another methodology that generates random results. Any lottery should be scheduled as soon as is practicable after April 1 of the prior school year.

- The lottery must be publicly noticed (date, time, and location), consistent with Section 104 of Public Officers Law (<https://opengovernment.ny.gov/open-meetings-law>).
 - Provide notice of the time and place of the lottery to the news media (the same media outlet the charter school uses to notice board meetings) at least one week before the lottery; and,
 - Conspicuously post notice of the lottery in the one or more designated places where the charter school posts notice of its board meetings at least 72 hours before the lottery; and,
 - Conspicuously post notice of the lottery on the charter school's website at the same time as the media notice.
- Per the NYSED regulations, the person(s) conducting the selection of lottery applicants or acting as an impartial observer of the selection of lottery applicants cannot be a board member, an employee of the education corporation, or a parent, person in a parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the charter school or of any student enrolled in the charter school.
- The lottery must be: 1) held in a space that is open and accessible to the public; and 2) capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade-level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law §104 and Education Law §2854(2)(b). The location chosen for the lottery should be:
 - accessible by all persons in terms of being able to sign in or pass through security;
 - accessible by persons with disabilities (or reasonable accommodation should be made for them to access the space); and
 - accessible for parents and guardians of ELLs with translators or translated materials
- Once the lottery has been conducted, all parents/guardians who submitted applications by the application deadline must be notified that their student has either been granted a seat in the charter school or if they are on the wait list.
- Timely applicants who were not selected via a lottery are to be placed on a waiting list that is ordered in accordance to the results of the lottery. The waiting list must be used to select applicants to fill any open seats during the school year in the order of the lottery results. Applicants after April 1 are placed at the bottom of the waiting list.

The charter school should document the steps taken throughout its lottery process and make such records available to NYSED and its charter authorizer upon request. Records should be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the education corporation's charter, and determine that the procedures used were consistent with those set forth in the charter.

Section 2854(2)(b) of State education law specifies that charter schools must provide an enrollment preference to:

- Students returning to the charter school from the preceding year;
- Students residing in the school district of location; and

- Siblings of students already enrolled in the charter school.

The law does not specify the order in which the preferences are applied. Commonly, charter schools place returning students first in the order of preference.

Section 119.5 of Commissioner's regulations allows a charter school to also apply an additional preference for students who are children of the school's employees, as long as the number of those students does not exceed 15 percent of the school's total enrollment. The regulations allow charter schools, with charter authorizer approval, to also give preference to students with disabilities, economically disadvantaged students, and/or English language learners as part of good faith efforts to attract and retain a comparable or greater enrollment of students who fall into those at-risk subgroups as are enrolled in the school district in which the charter school is located. Adding such a preference would constitute a revision to a school's charter and thus must be approved by the charter school's authorizer.

Weighted Lotteries

New York's 2024 CSP grant's over-arching objective is to support the launch of high-quality charter school models tailored to the specific needs of their communities and to build the capacity to promote student learning outcomes. The New York State Charter Schools Act of 1998 laid the foundation for this objective by requiring that charter schools must demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities, English language learners, and economically disadvantaged students when compared to the enrollment figures for those students in the school district in which the charter school is located.

Charter schools that wish to increase the chances of at-risk students obtaining an enrollment offer at their school should first consider their enrollment efforts. Authentic community-based outreach efforts that foster direct connections between prospective families and the charter school have been shown to be most effective. If the efforts do not yield satisfactory results, and the number of applications exceed the number of available seats in a charter school, the school may want to consider a weighted lottery, as it can be a key tool to meet enrollment targets for at-risk students. Charter schools receiving CSP funds that employ a weighted lottery upon their authorizer's approval may only use a methodology that gives a slightly better chance, which would be a single weight, for admission to students in one of the three at-risk subgroups. Charter schools receiving CSP funds may not use a weighted lottery methodology to create a school that exclusively serves a particular subset of students.

Charter schools must give a statutory admissions preference to students residing within the geographical boundaries of the school district (or community school district, if located in New York City) in which the charter school is located. Employing a lottery that provides a slightly better chance to one of the three at-risk subgroups does not mean that the residency preference is ignored; rather, both must be applied together. For example, a charter school having an English language learner design factor would establish its admission priority as follows:

- Is an ELL and resides in the school district (or CSD) of location;
- Is an ELL and does not reside in the school district (or CSD) of location;
- Resides in the school district (or CSD) of location;
- Does not reside in the school district (or CSD) of location.

Charter schools in receipt of a CSP grant may automatically enroll students from an affiliated charter school operated by the same education corporation only if there are enough seats in the enrolling

school to accept all of those students. If there is not, a lottery must be conducted for all students who apply to the charter school, and students from the affiliated school may not be given preference in the lottery. In addition, as seats become available in the receiving school during the year, those seats must be filled through the lottery waitlist without a preference for students from an affiliated sending school.

References

New York State Education Law Section 2854(2)(a):

A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment of fees on the same basis and to the same extent as other public schools. A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing in this article shall be construed to prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure or students with disabilities and English language learners; and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program when compared to the enrollment figures for such students in the school district in which the charter school is located. A charter shall not be issued to any school that would be wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine would be taught.

New York State Education Law Section 2854(2)(b):

Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school. Preference may also be provided to children of employees of the charter school or charter management organization, provided that such children of employees may constitute no more than fifteen percent of the charter school's total enrollment. The commissioner shall establish regulations to require that the random selection process conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of section one hundred four of the public officers law and be open to the public. For the purposes of this paragraph and paragraph (a) of this subdivision, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located.

END

Commissioner's Regulations Section 119.5. Random selection process for charter school student applicants:

If the number of timely submitted applications of eligible students for admission to a charter school exceeds the capacity of the grade level of a charter school (or building if the school does not distinguish between grades), students shall be accepted for admission from among such applicants by a random selection process (lottery) pursuant to the requirements of this section.

(a) Preferences.

(1) Notwithstanding the provisions of this section, a charter school shall provide an enrollment preference to:

- (i) pupils returning to the charter school in the second or any subsequent year of operation;
- (ii) pupils residing in the school district in which the charter school is located, or in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and
- (iii) siblings of pupils already enrolled in the charter school.

(2) Establishment of specific school design. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners.

(b) Notice.

The charter school shall provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104 and if such lottery is provided during a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, such notice shall also be posted on the charter school's website.

(c) Procedures for conducting lottery.

- (1) The person(s) conducting the selection of lottery applicants or acting as an impartial observer of the selection of lottery applicants shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school.
- (2) The lottery shall be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104. Nothing herein shall be construed to require or exclude attendance at the lottery by parents, persons in parental relationships, guardians and/or students participating in the admissions process. Consistent with Executive Order No. 202.1, if such lottery occurs during a school closure ordered pursuant to an Executive Order of the Governor for the COVID-19 crisis, such lottery may be held remotely by conference call or similar service, provided that the public has the opportunity to view or listen and such lottery is recorded and later transcribed.
- (3) A charter school may structure the actual lottery process in any manner consistent with its approved admissions policy and this section.
- (4) The random process used in the lottery may be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

(d) Records.

The charter school shall document the lottery process and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.

END

ESEA Section 4310. DEFINITIONS. [Also found in NIA FY18 I. Funding Opportunity Description, Definitions]

(2) CHARTER SCHOOL. —The term “charter school” means a public school that —

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 444 of the General Education Provisions Act (20 U.S.C. 1232g)(commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and part B of the Individuals with Disabilities Education Act;

(H) is a school to which parents choose to send their children, and that—

(i) admits students on the basis of a lottery, consistent with section 4303(c)(3)(A), if more students apply for admission than can be accommodated; or

(ii) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are specifically waived by the State;

(J) meets all applicable Federal, State, and local health and safety requirements;

(K) operates in accordance with State law; and

(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(M) may serve students in early childhood education programs or postsecondary students.

ESEA Section 4303. GRANTS TO SUPPORT HIGH-QUALITY CHARTER SCHOOLS.

(c) STATE ENTITY USES OF FUNDS. —

(3) RULE OF CONSTRUCTION. —

(A) USE OF LOTTERY. —Nothing in this Act shall prohibit the Secretary from awarding grants to State entities, or prohibit State entities from awarding subgrants to eligible applicants, that use a weighted lottery to give slightly better chances for admission to all, or a subset of, educationally disadvantaged students if—

(i) the use of weighted lotteries in favor of such students is not prohibited by State law, and such State law is consistent with laws described in section 4310(2)(G); and

(ii) such weighted lotteries are not used for the purpose of creating schools exclusively to serve a particular subset of students.

Charter Schools Program Title V, Part B of the ESEA Non-Regulatory Guidance January 2014

E-4. May a charter school exempt certain categories of applicants from the lottery and admit them automatically?

A charter school that is oversubscribed and, consequently, must use a lottery, generally must include in that lottery all eligible applicants for admission. A charter school may exempt from the lottery only those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply. Specifically, the following categories of applicants may be exempted from the lottery on this basis:

- (a) Students who are enrolled in a public school at the time it is converted into a public charter school;
- (b) Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;
- (c) Siblings of students already admitted to or attending the same charter school;
- (d) Children of a charter school's founders, teachers, and staff (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment); and
- (e) Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school's total enrollment).