

# Frequently Asked Questions: **Lottery**

## **Must a charter school admit students through a lottery process?**

New Mexico, by statute, requires a charter school to employ a lottery selection process, if the total number of applicants exceeds the space available, 22-8B-4.1 NMSA (1978). A charter school will need to use a lottery selection process any time the total number of applicants exceeds the spaces available.

## **When and how must the lottery be conducted?**

There is neither federal nor state law prescribing the manner in which the lottery is to be conducted or the time when the lottery is to be conducted.

The guidance provided by the Charter Schools Division in these frequently asked questions is not a safe harbor from legal actions if it is later determined by a court that the Charter Schools Division's interpretation of the law is not correct. However this guidance does represent the Charter Schools Division's opinion of the best practices to follow by charter schools until there is clarifying legislation or a definitive ruling from a court.

## **How is a charter school's lottery policy developed?**

The governing body of a charter school is responsible for the development of the school's lottery policy. When and how the lottery will be conducted should be set forth in the school's policy. The policy should be developed with input from parents, the community, and the school's legal counsel.

## **What actions should be taken before the lottery is conducted?**

Charter schools should take a variety of actions to promote community awareness of the lottery. The process should involve extensive information dissemination and recruitment activities, which may be conducted over several weeks or months. A charter school should advertise its enrollment process using newspapers, bulletin boards, and other methods designed to disseminate the availability of spaces over a sufficiently large window of time prior to the time the lottery is held. This practice is intended to ensure that there is equal opportunity for all parents and students to learn about the school and apply. The information about enrollment should advise potential students and their parents that all available spaces will be included in the lottery.

Charter schools must also, prior to opening enrollment, determine its capacity for the particular school year. This determination may depend upon several factors, including any enrollment capacity established in the charter contract, facility constraints, and teacher/student ratio calculations. If the school has grade level limits, these should be established with specificity before the lottery process begins. If the school has limited enrollment into particular programs, this should also be clearly laid out.

**Can enrollment be on a first come, first served basis until all available spaces are taken and then use a lottery selection process to develop a wait list?**

No. A charter school must first establish an enrollment period and, if at the end of the enrollment period the total number of applicants exceeds the number of spaces available, a lottery selection should be conducted. If the number of applicants does not exceed the number of spaces available, a lottery selection is not necessary and all applicants can be admitted to the school

**If at the end of the enrollment period there are more spaces available than applicants applying, can the school admit the applicants and initiate another enrollment period?**

Yes. However in any enrollment period there must be sufficient time to disseminate to the community information about the enrollment and all available spaces must be included in the lottery.

**After the academic year has commenced, can students be enrolled on a first come first served basis, if the school is not at capacity?**

Students can be enrolled on a first come first served basis, if the school is not at capacity and the school had an enrollment period. However, once the school reaches capacity, any subsequent applicants should be subject to placement on a waitlist. Schools can choose to do this via lottery or placement on the waitlist in the order the students express interest.

**After the academic year has commenced, can the school establish specific dates on which new students will be admitted off the waitlist when there is student attrition?**

No. New Mexico law states that "[a]ny person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time." (Emphasis added.) When a vacancy is created at a charter school, the school has capacity to accept new students and must do so until the school has reached the capacity that was established before the beginning of the lottery process.

**Can a waitlist carry over to subsequent years?**

Waitlists from the prior year should not carry over to a subsequent year. The school should conduct a new lottery for each enrollment year.

**What information can the application for admission to the charter school request before the names are placed in the lottery pool?**

The application for admission to the charter school should only request information necessary to enable the school to identify the student and determine what grade the applicant is seeking to enter. Basic contact information such as address telephone number and e-mail address can be requested. Applications should not request ethnic, racial, religious or language information from the applicants. Applicants cannot be required to submit copies of test scores, transcripts, immunization records, IEP or 504 files from the last school. The charter school cannot require applicants to write an essay or letter of intent before an applicant's name is placed in the lottery. Any additional information desired by the school can be requested only after a student is admitted through the lottery.

**May a charter school exempt certain categories of applicants from the lottery and admit them automatically?**

State law provides that only the following categories of applicants may be exempted from the lottery process: (1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; and (2) siblings of students already admitted to, or attending, the same charter school. There is **no** exemption for children of a charter school's founders or children of employees of the charter school.