

Lottery Guidance

(Updated 8.18.23)

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.

The lottery/admission process should align with law which states that a charter school shall not charge tuition or have admission requirements (Section 22-8B-4(K) NMSA (1978)). The lottery/admission process is distinct from the enrollment/registration process. Lottery/admission comes first, and the enrollment/registration process occurs after a student has been admitted and has accepted that admission.

Must a charter school admit students through a lottery process?

Yes. New Mexico, by statute, requires a charter school to employ a lottery selection process if the total number of applicants exceeds the space available, Section 22-8B-4.1 NMSA (1978). All charter schools are expected to have a policy that describes a lottery admission process any time the total number of applicants for admission exceeds the spaces available.

When and how must the lottery be conducted?

There is neither federal nor state law prescribing the manner in which, nor the time when, the lottery must be conducted. A charter school should determine when and how the lottery will occur and implement a process that is open, fair, and consistent with the written policies that their board has approved. The Charter Schools Division recommends schools conduct at least one lottery in the spring semester of the year prior to enrollment and provide families with at least two weeks to accept or decline admission.

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/admission policy. When and how the lottery/admission 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, and should distinguish the lottery/admission process from the enrollment/registration process.

Why does a charter school need to implement a lottery/admission process?

New Mexico law, at Section 22-8B-4(T) NMSA (1978), requires that charter schools provide open enrollment to students and provide a free and appropriate education. A charter school is subject to all federal and state laws and provisions prohibiting discrimination on the bases of disability, physical or mental capacity, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, national origin, religion, ancestry, or need for special education services. A charter school's lottery/admission and enrollment/registration processes should eliminate any real or perceived unfairness in a charter school's admission process.

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

A charter school's application for admission (the lottery application) 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 the name of the student and parent, a telephone or cell phone number and an e-mail address **can be** requested.

Lottery applications **should not** request ethnic, racial, gender, religious or language information from the applicants. Applicants cannot be required to submit copies of test scores, transcripts, immunization records, IEP, 504 or EL files from the student's previous school. Applicants cannot be required to provide the name of the school previously attended nor whether the student has been suspended or expelled from another 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. Additionally, a charter school cannot require a parent to watch videos or to visit the school in person prior to submitting a lottery application. The CSD recommends that the lottery/admission application be available and easy to find on each school's website. Any additional information desired by the school can be requested only after a lottery is complete.

When can a charter school ask for additional information on a student that seeks enrollment?

Only after a student has been notified that they have been admitted to the charter school may a school seek additional information from families to fully register and enroll the student. A charter school should maintain records that demonstrate a student has been notified of admission prior to collecting the information.

May a charter school give certain categories of applicants enrollment preference in the lottery process?

State law 22-8B-4.1 NMSA (1978) provides that only the following categories of applicants may be given enrollment preference in the lottery/admission process: (1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades; (2) children of employees employed by the school; and (3) siblings of students already admitted to, or attending, the same charter school.

If a charter school offers a pre-kindergarten program, may students of that program who wish to continue into the charter school's elementary program be exempted from the requirement they participate in the charter school's enrollment lottery?

No. Charter schools must employ a lottery selection process when applicants exceed available space. Section 22-1-2(L) NMSA 1978 defines a "public school" as a "single attendance center in which instruction is offered . . . and is . . . generally recognized as an elementary, middle, junior high, or high school." Section 22-1-3(A) NMSA 1978 defines "elementary school" as a public school providing instruction in grades kindergarten through eight, unless there is a junior high program, in which case, an elementary school provides instruction in kindergarten through grade six. As a result, students enrolled in a prekindergarten program should not be considered to be

enrolled in a public school and may not receive enrollment preference when seeking to enroll in a charter school, even if seeking to continue into elementary education with the same charter school that provided that student's pre-kindergarten program. However, siblings of students already attending the charter school, or children of school employees, would receive enrollment preference under Section 22-8B-4.1, as noted above.

What actions should be taken before the lottery/admission process is conducted?

Charter schools should take a variety of actions to promote community awareness of the school mission, location and grade levels served in a given year. The school should conduct extensive information dissemination and recruitment activities, which may occur over several weeks or months. ***A charter school should advertise its lottery admission process on their website.*** Charter schools should consider using social media, 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 for admission. The information about admission should advise potential students and their parents that all available spaces will be included in the lottery selection/admission process.

Charter schools must also, prior to opening admission, 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 or limited availability in particular programs, the school should establish these specific parameters before the lottery/admissions process begins.

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 a lottery admission period and, if at the end of that 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 all applicants can be admitted to the school.

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

Yes. However, in any admission period there must be sufficient time to disseminate information about the available spaces and lottery/admission process to the community.

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 has already implemented an admission period. However, once the school reaches capacity, any subsequent applicants should be placed on a waitlist. Schools can choose to do this via lottery or place students on the waitlist in the order in which the students express interest.

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

No. New Mexico law (Section 22-1-4(C) NMSA 1978) states that "any 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/admission process.

Can a waitlist carry over to subsequent years?

No. Waitlists from the prior year should not carry over to a subsequent year. The school should conduct a new lottery for each enrollment year.