

## Frequently Asked Questions: **Lottery**

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

The source of the lottery requirement (i.e. that charter schools with more applicants than places admit students by way of a lottery) is a federal law, 20 U.S.C. Sec. 7221i. New Mexico, by statute, also requires a charter school (whether “start up” or “conversion”) 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 U.S. Dept. of Education has issued Non-Regulatory Guidance on the subject of lotteries which can be found at: <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>. It should be noted that the guidance represents the U.S. Dept. of Education’s program division’s interpretation of the law. A charter school that follows this guidance is not protected from liability if, as a result of litigation, a court determines that the U.S. Dept. of Education’s program division’s interpretation of the law is not correct. The guidance contains a number of frequently asked questions regarding charter school lotteries which can be very helpful to charter schools in planning how to conduct a lottery.

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. This guidance will not repeat questions answered by the guidance from the U.S. Dept. of Education.

### **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.

### **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 an enrollment period followed by a lottery selection process if there are more applicants than spaces.

### **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: (a) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school; (b) **in subsequent years (emphasis added)** of its operation, a charter school shall give enrollment preference to: (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.

**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 after the lottery has been conducted.