

APPENDIX F: ENROLLMENT AND LOTTERY GUIDANCE

Lottery and Enrollment Requirements

This policy seeks to enable high-quality charter schools to enroll and serve more educationally disadvantaged students to ensure all students in the state are ensured the opportunity to achieve state content standards, graduate from high school, and enter college or a career with the requisite knowledge and skills to succeed. In Colorado, charter school laws seek to provide opportunities to parents, educators, and community groups to develop innovative programs and to establish alternative means within the existing public school system to improve the education of students. Great Schools Colorado will guide and support charter schools and subgrantees in their work with their authorizers to implement state law as appropriate to increase opportunities, using weighted lotteries in some cases.

The practical application of this policy enables educationally disadvantaged students to have two chances in the lottery, whereas non-educationally disadvantaged students would have one opportunity in the lottery. Although it is the responsibility of the charter school’s authorizer to approve and provide oversight of the lottery, ultimately, it is the responsibility of the subgrantee to adhere to CSP statute and nonregulatory guidance for CSP-funded schools.

Federal Law	CSP Nonregulatory Guidance
<p>ESSA 4303 (c)(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.</p> <p>4310 – Definitions – Charter School (K) operates in accordance with State law.</p> <p>ESEA 1115(b)(2) and ESEA 1115(c)(2): Economically disadvantaged, SWD, ELL, Neglected or delinquent, homeless.</p>	<p>E-3. Are weighted lotteries permissible? Weighted lotteries (i.e., lotteries that give additional weight to individual students who are identified as part of a specified set of students, but do not reserve or set aside seats for individual students or sets of students) are permitted only in certain circumstances ... a charter school may weight its lottery to give slightly better chances for admission to all or a subset of educationally disadvantaged students if State law permits the use of weighted lotteries in favor of such students.</p> <p>E-4. May a charter school exempt specific categories of applicants from the lottery and admit them automatically? The following categories of applicants may be exempted from the lottery on this basis: 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)</p>

A charter school receiving CSP funds must use a lottery if more students apply for admission to the charter school than can be admitted. A charter school with fewer applicants than spaces available does not need to conduct a lottery. A lottery is a random selection process by which applicants are admitted to the charter school, as per ESEA §4303 (c)(3)(A).

Under §ESEA 4310(H)(i), a charter school must admit students based on a lottery, consistent with §4303(c)(3)(A) if more students apply for admission than can be accommodated.

A charter school is a school to which parents choose to send their children, and that --

- (i.) admits students based on a statistically random lottery, consistent with section
- (ii.) 4303(c)(3)(A), if more students apply for admission than can be accommodated; or 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 based on a lottery as described in clause (i);

As part of the lottery process, those students who do not get into the school are put on a waitlist in the order of their lottery selection. Students are offered seats if they become available, and if the waitlist seat is declined, then the school would move to the next student on the waitlist.

A charter school that is oversubscribed and, consequently, must use a lottery generally must include all eligible applicants for admission in that lottery. A charter school may exempt from the lottery only students deemed to have already been admitted to the charter school and, therefore, do not need to reapply.

Exemptions from the Lottery

While all eligible applicants for admission to the school generally must be included in the lottery, a school may exempt specific categories of applicants from its lottery within its enrollment policy. Specifically, the following categories of applicants may be exempted from the lottery on this basis, per the Charter School Program Nonregulatory Guidance.

- Students who are enrolled in a public school, or who are eligible to attend and are living in the attendance area at the time it is converted to a public charter school;
- Siblings of students already admitted to or attending that same charter school; and
- 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. The charter school should clearly define what constitutes a founder and the eligibility criteria for children of teachers and staff (full- or part-time, years of employment, etc.) in its enrollment policy.

NOTE: A charter school may never charge families a fee to apply, to be designated as a founder, or to be enrolled in the charter school.

When recruiting students, charter schools should target all segments of the parent community. ESEA §4303 (f)(1)(A)(viii)(I) requires charter school grant and subgrant recipients to inform students in the community about the charter school and to give each student "an equal opportunity to attend the charter school." A charter school must thus recruit in a manner that does not discriminate against students of a particular race, color, national origin (including English language learners), religion, or sex, or against students with disabilities. To meet this goal, charter schools should consider additional recruitment efforts toward groups that might otherwise have limited opportunities to participate in the charter school's programs.

Charter schools should reach out broadly to the community, including English language learners and students with disabilities. Once a student has been admitted to the charter school through an appropriate process, he or she may remain in attendance through subsequent grades. A new applicant for admission to the charter school, however, would be subject to the lottery if, as of the application closing date, the total number of applicants exceeds the number of spaces available at the charter school. ESEA §4303 (f)(1)(A)(viii)(I).

To be eligible for a CSP subgrant, a charter school's admissions practices must comply with applicable federal and state laws. Exemptions from the lottery specified above are permissible only to the extent that they are consistent with the state's charter school law, other applicable state laws, the school's charter, and any applicable Title VI desegregation plans or court orders requiring desegregation, or "hamper, delay or negatively effect" any voluntary desegregation efforts in the community. A charter school's admissions practices must be consistent 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; and Part B of the Individuals with Disabilities Education Act. Colorado law is consistent with these Acts.

Weighted Lottery Plan

Context:

In Colorado, charter schools are not required to implement a lottery for admission. Rather, a charter school must admit students through "a publicly verifiable selection process that is either random in nature or first-come-first-served" (1 CCR 301-88 section 2.02(F)).

In spite of these options, in order for a Colorado charter school to qualify for Federal CSP grants, the school must use a lottery if there are more students than seats available. Further, Federal law governing the Charter Schools Program permits charter schools to use weighted lotteries in admissions if it aligns with state law, particularly when serving educationally disadvantaged students.

There is no strict definition for educational disadvantage; however, we do know for certain that the term includes the following:

- economically disadvantaged students,
- students with disabilities,
- English-language learners, and
- students who are migrant, homeless, neglected, delinquent or in foster care.

There is nothing in Colorado law that prohibits the use of weighted lotteries for charter schools, so long as the underlying lotteries are otherwise random in nature and follow all other state and federal non-discrimination laws. In fact, weighted lotteries for students with disabilities are explicitly authorized in state law (see 22-30.5-104(3)(a.5), C.R.S.).

Under Federal statutes, such weighted lotteries must comply with 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; title II of the Americans with Disabilities Act of 1990, as applicable; the equal protection clause of the Constitution; and any other applicable State non-discrimination laws. For CSP participants, any weighted lottery must only give "slightly better chances" for admission to all or a subset of educationally disadvantaged students.

Plan:

In reviewing subgrant applications for the State Entities Grant (SE), Colorado will review applications that propose use of a weighted lottery in the following manner:

Criteria	Yes/No	Notes
1. Does the applicant use a lottery for assigning open seats?		If "no", the proposed lottery is ineligible for use while maintaining subgrant eligibility. If "yes", proceed to the next question

<p>2. Is the underlying methodology of the lottery random in nature?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>3. Is the process publicly verifiable?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>4. Is the proposed weighted lottery intended to support one or more of the following categories?</p> <ul style="list-style-type: none"> a. Economically disadvantaged, b. Students with disabilities, c. English-language learners, d. Students who are migrant, homeless, delinquent or in foster care? 		<p>If “yes”, proceed to question 7.</p> <p>If “no”, proceed to question 6.</p>
<p>5. If some other category is proposed, does the state find that the category reasonably could be found to be considered “educationally disadvantaged”?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>6. Does the policy, as written, appear to comply with Title VI of the Civil Rights Act of 1964?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>7. Does the policy, as written, appear to comply with Title IX of the Education Amendments of 1972?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>8. Does the policy, as written, appear to comply with Section 504 of the Rehabilitation Act of 1973?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>9. Does the policy, as written, appear to comply with Title II of the Americans with Disabilities Act of 1990, as applicable?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>10. Does the policy, as written, appear to comply with the equal protection clause of the Constitution?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>11. Does the policy, as written, appear to comply with any other applicable State non-discrimination law?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>
<p>12. Does the policy identify the weight to be assigned to each set or subset of students?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, proceed to the next question</p>

<p>13. Would a reasonable person conclude that the weight assigned provides “slightly better chances” for admission to all or a subset of educationally disadvantaged students?</p>		<p>If “no”, the proposed lottery is ineligible for use while maintaining subgrant eligibility.</p> <p>If “yes”, then the weighted lottery is allowed.</p>
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Before any potential CSP grant funds could be released, the school must provide the CSP project team with a signed and executed charter contract with a contract term that falls within the grant funding period. Whether through the contract or through any other written confirmation, staff shall also receive evidence of authorizer approval of the school’s lottery and enrollment policy. Any subsequent amendments that continue to offer a weighted lottery would require evidence of authorizer approval. If a CSP grant recipient chooses to subsequently add a weighted lottery, they must submit the policy to their CSP project team for pre-approval. Staff shall use the same approval process noted above.

Enrollment Policy

The following elements must be addressed in the charter school’s enrollment policy/report, which will be submitted as an attachment to the subgrant application. If awarded, the school’s enrollment policy MUST be submitted annually for the duration of the subgrant, regardless of whether or not there have been changes to the policy.

- Identifies how the community was/will be notified of the charter school’s opening;
- The date of the first, and thereafter annual, lottery;
- The charter school founding members and the percentage of students to be enrolled as children of founding members;
- The charter school’s definition of staff and the percentage of students to be enrolled as children of staff members;
- The processes and procedures that will guide how the lottery will be conducted;
- Identifies student groups that will be given priority notice or guaranteed admission; and
- Proposed weights to be used for educationally disadvantaged groups

Applicants must have a policy or plan targeting all segments of the parent community when recruiting students. They must recruit in a manner that does not discriminate against students of a particular race (including hair texture, hair type, or hairstyle), creed, color, national origin (including English language learners), religion, ancestry, gender, sexual orientation, or against students with disabilities. Applicants must specifically address what, if any, activities, actions, and/or plans are in place to support and encourage a diverse school, involve those who may not typically have a seat at the table, and have strategies to decrease disparities in recruiting and enrolling new students.

To be eligible for a GSC subgrant, a charter school’s admissions practices must comply with applicable Federal and State laws. Exemptions from the lottery specified above are permissible only to the extent that they are consistent with the State’s charter school law, other applicable State laws, the school’s charter contract, and any applicable Title VI desegregation plans or court orders. A charter school’s admissions practices must also comply with part B of the Individuals with Disabilities Education Act and Federal civil rights laws, including, but not limited to, Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, as applicable.

Definitions Applicable to a Lottery

- **Educationally Disadvantaged Students:** Under federal law (ESEA §1115(c)(2)), this includes economically disadvantaged children, children with disabilities, migrant children, English Learners, neglected or delinquent students, homeless students, and students who are in foster care.
 - **Economically Disadvantaged:** A family whose income would make a child eligible for free or reduced price meals if the child were in kindergarten. Maryland Code, Education §7-101.1.
 - **Children with Disabilities:** A child with a disability means a child evaluated under §300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. IDEA Part B, Section 300.8.
 - **Migrant/Immigrant Children and Youth:** The term “immigrant children and youth” means individuals who—(A) are aged 3 through 21; (B) were not born in any state; and (C) have not been attending one or more schools in any one or more states for more than three full academic years. ESEA §3201. 20 U.S.C. 7011.
 - **English Language Learner:** The term “English learner”, when used with respect to an individual, means an individual—(A) who is aged 3 through 21; (B) who is enrolled or preparing to enroll in an elementary school or secondary school; (C)(i) who was not born in the United States or whose native language is a language other than English; (ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or (iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and (D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual— (i) the ability to meet the challenging state academic standards; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society. ESEA §3201.20 U.S.C. 7011
 - **Neglected or Delinquent students:** The term 'neglected,' when used with respect to a child, youth, or student, means an individual who has been committed to an institution (other than a foster home) or voluntarily placed under applicable state law due to abandonment, neglect, or death of his or her parents or guardians. The term 'delinquent,' when used concerning a child, youth, or student, means an individual who resides in a public or private residential facility other than a foster home that is operated for the care of children and youth who have been adjudicated delinquent or in need of supervision.
- Homeless Students:** A child who is homeless or has attained 14 years of age and is an unaccompanied youth, as defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).
- **Foster Care Students:** Foster Care means 24-hour substitute care for children placed away from their parents or guardians, for whom the Title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes. Code of Federal Regulations [CFR] §1355.20