

**EDUCATION AND LABOR CABINET**

**Kentucky Board of Education**

**Department of Education**

**(Amended at ARRS Committee)**

**701 KAR 8:010. Charter school student application, lottery, and enrollment.**

RELATES TO: KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq., 1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591(6) requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation establishes the requirements for charter school student application, lottery, and enrollment.

Section 1. Definitions.

- (1) "Academically behind" means at risk of academic failure.
- (2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.
- (3) "Applicant" is defined by KRS 160.1590(2).
- (4) "At risk" means at risk of academic failure.
- (5) "At risk of academic failure" means:
  - (a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;
  - (b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;
  - (c) Current achievement two (2) or more grade levels below the student's age group;
  - (d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;
  - (e) Consistent absence or tardy and absence twenty-five (25) or more unexcused "student attendance days", as defined by KRS 158.070, in the last two (2) school years and an overall grade average below a C;
  - (f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;
  - (g) Family history of dropping out or lack of family support for the student in the completion of school;
  - (h) Little or no participation in school cocurricular or extracurricular programs;
  - (i) Below grade level in reading or math skills;
  - (j) Indication of being socially isolated; or
  - (k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).
- (6) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(15).
- (7) "Charter application" is defined by KRS 160.1590(3).
- (8) "Charter contract" or "contract" is defined by KRS 160.1590(4).
- (9) "Charter school" means a public charter school as defined by KRS 160.1590(14).
- (10) "Charter school board of directors" is defined by KRS 160.1590(5).
- (11) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

- (12) "Computerized randomization" means use of a computer software program for randomization.
- (13) "Conversion public charter school" is defined by KRS 160.1590(6).
- (14) "Days" means calendar days calculated pursuant to KRS 446.030.
- (15) "Education service provider" is defined by KRS 160.1590(8).
- (16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.
- (17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.
- (18) "Enrollment preference" means the priority of the student application from other students applications pursuant to KRS 160.1591(5).
- (19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.
- (20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.
- (21) "Human randomization" means randomization without the use of computer randomization.
- (22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.
- (23) "Local school district" is defined by KRS 160.1590(10).
- (24) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if the student applications received by the charter school exceed the charter school's capacity.
- (25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.
- (26) "Notice" means written notice.
- (27) "Notify" means provide written notice.
- (28) "Parent" is defined by KRS 160.1590(11).
- (29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement pursuant to KRS 160.346.
- (30) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by KRS 387.010(2) for interested person or entity and with whom the student resides.
- (31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.
- (32) "Public charter school" is defined by KRS 160.1590(14).
- (33) "Randomization" means to leave to chance alone and eliminate bias and interference.
- (34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded for that school year.
- (35) "Student" is defined by KRS 160.1590(18) and includes any person who is entitled to enrollment and attendance at a school program as established in KRS 158.030 and 158.100.
- (36) "Student application" means an application submitted to a charter school for student enrollment in the charter school.
- (37) "Students with special needs" or "Special needs students" means:

- (a) An "exceptional children and youth student", as defined by KRS 157.200, who is eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. for an individual education plan, as established in KRS 157.196, or an individual education program, as defined by KRS 158.281; or
  - (b) A student who is eligible for services pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to prevent substantial limitation of one (1) or more major life activities.
- (38) "Year", "academic year," or "school year" means school year as established in KRS 158.050.

## Section 2. Student Application.

- (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school pursuant to KRS 158.030, 158.100, or 160.1591(5).
- (2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.
- (3)
  - (a) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information.
  - (b) Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.
- (4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student application to the charter school.
- (5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or KRS 160.1592(19).
- (6) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

## Section 3. Lottery.

- (1) A charter school board of directors shall create and publish policies and procedures on its Web site for conducting the lottery that include:
  - (a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;
  - (b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;
  - (c) Provision for breaks during the lottery;
  - (d) Retention of records from the lottery for at least the length of the charter contract;
  - (e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;
2. Transparency in the charter school's remedying of an error; and
3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures as established in subsection (1) of this section, which may include, as allowed by the authorizer:

- (a) Selection of numbers assigned to individual students; and
- (b) Human randomization or computerized randomization.

(3) The charter school shall offer primary enrollment preferences and secondary enrollment preferences only to students as established in:

- (a) KRS 160.1591, 160.1592, and this administrative regulation;
- (b) The charter application; and
- (c) The charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

- (a) The automatic selection of the student's multiple sibling or siblings who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or
- (b) If the automatic selection of the student's multiple sibling or siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its Web site, and provide to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted student applications to the charter school, notice of the lottery and information on the lottery. The Web site publication and notice shall include:

- (a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;
- (b) Information on the legal requirements and policies and procedures for holding the lottery;
- (c) Information for filing a written complaint regarding the lottery monitor;
- (d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

- (e) Identification of the charter school for the lottery.
- (9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.
- (10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to:
- (a) Reduce charter school community shareholder concerns;
  - (b) Identify potential issues and perceptions with the selected lottery method; and
  - (c) Build the charter school's capacity to conduct the lottery.
- (11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.
- (12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.
- (13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels for which student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.
- (14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act, KRS 61.800 et seq., at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.
- (15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, who shall be selected by the charter school, to ensure compliance with KRS 160.1591 and 160.1592.
- (a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information provided to the public by the deadline established in subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section.
  - (b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education, who shall conduct an investigation and render a decision within seven (7) days of receipt of the written complaint.
  - (c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does meet these requirements to serve as a monitor for the lottery selection process.
- (16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year, and then the charter school shall select students for inclusion on the wait list above the school capacity as established in paragraphs (a) through (g) of this subsection. A charter school shall:
- (a) Continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;
  - (b) Ensure that lottery drawing for the wait list shall be separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, shall be notified in writing

of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c) Place students on the wait list in the order the students are drawn during that portion of the lottery process;

(d) Maintain and continuously update accurate records of the order of the wait list;

(e) Update the wait list as students are admitted;

(f) Weekly publish on its Web site updated information on each student's position on the wait list as well as the last date for enrollment for that year. The charter school shall weekly provide each parent, person with custody or charge, or student with notice of the student's updated position on the wait list as well as the last date for enrollment for that year; and

(g) Place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

#### Section 4. Student Enrollment.

(1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to reside within the charter school's enrollment boundaries prior to or during the school year;

(b) The status of an enrollment preference for a sibling pursuant to KRS 160.1591(5) (b) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student pursuant to KRS 160.1591(5) (c) if the student ceases to reside within close proximity to the school, as governed by the charter contract.

(d) The status of an enrollment preference for a student pursuant to KRS 160.1591(5) (d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(e) The status of an enrollment preference for a student pursuant to KRS 160.1591(5) (e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(f) The status of an enrollment preference for a student pursuant to KRS 160.1591(5) (e) if the student's former school ceases to be a persistently low-achieving public school or a persistently low-achieving noncharter public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5).

(a) Only a student who resides within the boundaries established by the charter school's resident and non-resident enrollment policy by the student's first day of student attendance shall be eligible for enrollment and attendance at the charter school that school year.

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation established by the Kentucky Board of Education pursuant to 704 KAR 3:305;

2. The charter school has expelled the student pursuant to KRS 158.150;

3. A court has ordered placement of the student in another school or a local school district outside the charter school's enrollment boundaries;

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student no longer resides within the charter school's enrollment boundaries.
- (3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:
- (a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections established in KRS 158.150;
  - (b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;
  - (c) The student's ability to meet academic minimum requirements;
  - (d) The student's English competence;
  - (e) The student's status as a student with special needs or special needs student;
  - (f) The student's status as a student at risk of academic failure, at risk, academically behind;
  - (g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or
  - (h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.
- (4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:
- (a) Require or request:
    - 1. An interview prior to enrollment;
    - 2. Letters of recommendation;
    - 3. Essays;
    - 4. Resumes or information regarding a student's school or community activities;
    - 5. Grades;
    - 6. Test scores;
    - 7. Attendance records;
    - 8. Special needs student status or special needs student disability information, at risk student information, free or reduced price lunch student eligibility information, or other education record information, except to the extent allowed by the authorizer in the charter contract for the purpose of confirming and providing an enrollment preference to the student pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;
    - 9. Disciplinary history except pursuant to KRS 158.155;
    - 10. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;
    - 11. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or
    - 12. Information regarding the cause of any student's residency with a person other than the parent;
  - (b) Require a family member or person with custody or charge of the student to volunteer at the charter school or provide payment to the school, except:
    - 1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and
    - 2. The charter school may encourage involvement by parents, persons with custody or charge, adult students, and emancipated youth students in the charter school if involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or
  - (c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections established in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(a), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(b) through (e) in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(a).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its Web site an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its Web site a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its Web site a specific deadline during the open enrollment period for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student by the deadline established by the charter school during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, and until the charter school is successful in contacting the parent, person with custody or charge, adult student, or emancipated youth student, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods:

1. Phone;
2. Email;
3. Mailed correspondence; or
4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

(a) Proof of the student's identity and age, as required pursuant to KRS 158.032;

- (b) Immunization records, as required by KRS 158.035;
  - (c) Proof of residency in the local school district, as required by the resident local school district;
  - (d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and
  - (e) Proof of the student's current grade level.
- (10) A charter school may request additional information with the consent of the authorizer only to process the student applications, conduct the lottery, or enroll the charter school students, but the refusal or failure to provide additional information shall not be a cause for denial of enrollment or for withdrawal of a student.
- (11) A charter school shall accept student applications from students who reside within the charter school's enrollment boundaries and enroll additional students who reside within the charter school's enrollment boundaries for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

#### Section 5. Incorporation by Reference.

- (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. (44 Ky.R. 1172, 1547, 1831; eff. 3-9-2018; 49 Ky.R. 1153, 1924; eff. 7-5-2023.)

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