



DEVELOPING ADMISSIONS
AND ENROLLMENT POLICIES
FOR YOUR PUBLIC CHARTER SCHOOL

July 2017

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This admissions and enrollment brief was developed by the Arizona Charter Schools Association in partnership with David Garner, Esq. and Nathan Arrowsmith, Esq., of Osborn Maledon, P.A. This brief is not intended to take the place of advice from competent legal counsel as to particular facts and circumstances. The Arizona Charter Schools Association strongly recommends that you consult with your attorney regarding the application of these laws and regulatory guidance to your charter school.



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INTRODUCTION

In Arizona, families have the right to choose among district and charter public schools. Charter schools are open-enrollment, tuition-free, public schools that operate based on a contract with their authorizer.

Almost all of Arizona’s 546 charter schools are authorized by a single, state agency—the Arizona State Board for Charter Schools.¹ Arizona charter schools are open to any student who wishes to attend. By law, charter schools must admit all students who submit a timely application, up to the capacity of the school. If the number of students interested in attending the school exceeds the school’s capacity, the school must institute a random drawing – or “lottery” – process for admissions.

A parent whose child is unable to gain admission to a public charter school may allege unfairness in the admission practices of the school, which in turn may lead to scrutiny from state or federal regulators and damage to relationships in the school community and with potential supporters. Accordingly, charter school developers and operators must understand and observe the applicable laws governing charter school admissions policies.

This brief offers an overview of federal and state laws and regulations that govern charter school admissions policies and practices, including those regarding admissions preferences and lottery procedures. It also provides information and guidance for charter schools on implementing recruitment efforts and admissions practices to assist you in achieving compliance with applicable requirements.

This brief is not intended to take the place of advice from competent legal counsel as to particular facts and circumstances. The Arizona Charter Schools Association strongly recommends that you consult with your attorney regarding the application of these laws and regulatory guidance to your charter school.

OVERVIEW OF LAWS AND LEGAL ISSUES

Although charter schools are generally exempt from statutes and rules relating to traditional public schools, governing boards, and school districts, several carve-outs from this exemption are noted in Arizona law. These carve-outs include charter schools’ obligations to comply with: (1) all federal, state and local rules, regulations and statutes relating to healthy, safety, civil rights and insurance; (2) all federal and state laws relating to children with disabilities; and (3) the requirements of Chapter 15, Article 8, of the Arizona Revised Statutes (the statutes that generally address charter schools), unless otherwise indicated.²

¹ 99% of Arizona’s charters operate on this contract.

² A.R.S. § 15-183(E).

STATE LAW REGARDING ADMISSIONS

GENERAL

Arizona law requires charter schools to enroll all eligible students who submit a timely application, so long as the school has capacity.³ If the school receives more applications than it has seats available, it must determine admission based on an “equitable selection process such as a lottery.”⁴ Charter schools may develop waiting lists and an equitable system of enrolling students from a waiting list. State law prohibits charter schools from limiting admission on the basis of ethnicity, national origin, gender, income level, disability, English language proficiency or athletic ability.⁵

PREFERENCES

Arizona law requires charter schools to provide enrollment preference to returning students and siblings of pupils already enrolled in the school.⁶ In addition, state law allows charter schools to adopt additional enrollment preferences for certain situations, such as children of teachers at the school.⁷

PERMITTED LIMITATIONS AND EXCLUSIONS

Arizona law allows charter schools to limit admissions to pupils within a certain grade level or a within a certain age group.⁸ Charter schools may also limit admissions to students of a single gender, if approved by the school’s sponsor.⁹ Any such limitations should be clear in the school’s charter application and should be clearly explained to families.

Arizona law also gives charter schools specific authority to refuse to admit any pupil who has been expelled, or is in the process of being expelled, from another school.¹⁰ This is true regardless of whether the charter school is at capacity.

A.R.S. § 15-184(D) provides that a charter school **may** give enrollment preference to children who are homeless or in foster care, or who are the “children, grandchildren or legal wards” of:

- ◇ School employees
- ◇ Employees of the charter holder
- ◇ Members of the school governing body
- ◇ Directors, officers, partners, or board members of the charter holder

Charter schools may also give enrollment preference to children that attended an affiliated school (meaning another school operated by the same charter holder, board, and governing board membership; or a school that is managed by the same management organization or service provider).

³ A.R.S. § 15-184(A). The capacity of a charter school is set by its authorizer. Although charter schools work with their authorizers to determine the appropriate capacity based on a number of factors (described in more detail below), the ultimate authority to establish capacity (or “enrollment cap”) resides with the authorizer.

⁴ A.R.S. § 15-184(E).

⁵ A.R.S. § 15-184(F).

⁶ A.R.S. § 15-184(B).

⁷ A.R.S. § 15-184 (C)-(D).

⁸ A.R.S. § 15-184(G).

⁹ A.R.S. § 15-184(H).

¹⁰ A.R.S. § 15-184(J).

STATE LAW REGARDING ENROLLMENT

Enrollment of a student is different from admission of a student. When a school admits a student, it offers the student a spot at the school; the student can decide to accept the spot and attend the school or not. When a school enrolls a student, the student is indicating his or her intention to attend the school and be included in the school's student count.

Although charter schools may offer admission to students simply upon submission of an application, before a student may be enrolled in and attend school, schools must obtain certain documentation from each student's parent or guardian. The schools' auditors, its authorizer, the Arizona Department of Education, and even the Arizona Auditor General may review school records to determine whether schools have complied with these requirements, and schools may be subject to administrative penalties for failing to do so. There is one exception to this general rule: Homeless students are exempt from the obligation to produce the records normally required for enrollment.¹¹

PROOF OF AGE/IDENTITY

All Arizona schools must obtain age and identity documentation from students when they enroll. Specifically, within 30 days of enrollment, the person enrolling the student must provide the school with one of the following:

- ◇ A certified copy of the pupil's birth certificate;
- ◇ Other reliable proof of the pupil's identity and age, including the pupil's baptismal certificate, an application for a social security number or original school registration records and an affidavit explaining the inability to provide a copy of the birth certificate; or
- ◇ A letter from the authorized representative of an agency having custody of the pupil pursuant to a juvenile court proceeding, certifying that the pupil has been placed in the custody of the agency as prescribed by law.¹²

PROOF OF RESIDENCY

As with all public schools in Arizona, charter schools are required to obtain and maintain verifiable documentation of a student's Arizona state residency upon enrollment.¹³ The Arizona Department of Education has prepared Residency Guidelines available for review at <http://www.azed.gov/policy/files/2017/06/revised-residency-guideline-2017-1.pdf>. Residency documents are different from citizenship or immigration documents. Schools **may not** request or require documentation regarding a student's citizenship or immigration status in connection with enrollment or at any other time.

PROOF OF IMMUNIZATION

Arizona law requires that a student shall be suspended and not allowed to attend school without submitting proof of required immunizations, absent an applicable immunization exemption.¹⁴

¹¹ A.R.S. §§ 15-828(I), 15-872(H); 42 U.S.C. § 11432(g)(3)(C)(i).

¹² A.R.S. §15-828(A)(1)-(3).

¹³ A.R.S. § 15-802(B).

¹⁴ A.R.S. § 15-872.

FEDERAL LAWS

CIVIL RIGHTS/NON-DISCRIMINATION

Federal law prohibits public charter schools from discriminating on the basis of race, color, or national origin;¹⁵ sex;¹⁶ disability;¹⁷ or immigration status.¹⁸ Included among these laws is Section 504 of the Rehabilitation Act, which protects persons with disabilities from discrimination in any program receiving federal funds; ensures persons with disabilities equal access to such programs; and requires programs to make reasonable accommodations, where necessary, to provide such access.

LAWS APPLICABLE TO STUDENTS WITH DISABILITIES

Children who attend public charter schools and their parents retain all rights under the Individuals with Disabilities in Education Act (IDEA) and Section 504 of the Rehabilitation Act.¹⁹ These laws require that all public schools—including charter schools—provide a continuum of placements for student with disabilities. This means that charter schools may not limit the amount or type of special education or related services that can be provided to children with disabilities.²⁰ Accordingly, when a child attending a charter school needs special education and related services that the charter school does not currently offer, the charter school may, among other things: (1) develop its own program of services; (2) contract with other public or private providers to provide the program or services; or (3) place the child in a private school at the charter school’s expense. A charter school may not, however, decline to provide such services (including through denying admission or encouraging enrollment in another public school with a more robust program already in place).

HOMELESS STUDENTS

Federal law prohibits schools from denying enrollment to homeless students, based on either (1) the students’ inability to produce records normally required (either by state law or by the charter school) for enrollment; or (2) the students’ having missed application or enrollment deadlines during any period of homelessness.²¹

CHARTER SCHOOL PROGRAM (FEDERAL START-UP FUNDING)

Some charter schools obtain federal start-up funding through the Charter School Program (CSP).²² The United States Department of Education has published the “Charter Schools Program Non-Regulatory Guidance,” which outlines additional admissions and enrollment requirements for charter schools that receive CSP funds.²³ It is important for any charter school that accepts these federal funds to understand and comply with the enrollment and admissions requirements of the program, including utilizing a lottery if more students apply for admission than can be admitted.²⁴

¹⁵ 42 U.S.C. § 2000d *et seq.*; 34 C.F.R. Part 100.

¹⁶ 20 U.S.C. § 1681 *et seq.*; 34 C.F.R. Part 106.

¹⁷ 29 U.S.C. § 794; 42 U.S.C. § 12131 *et seq.*

¹⁸ *See Plyler v. Doe*, 457 U.S. 202, 229-30 (1982).

¹⁹ 34 C.F.R. § 300.209; 34 C.F.R. §§ 104.2, 104.4, 104.21-104.27.

²⁰ *See* 20 U.S.C. § 1411 *et. seq.*; 29 U.S.C. § 701

²¹ 42 U.S.C. § 11432(g)(3)(C)(i).

²² 20 U.S.C. 7221-7225g.

²³ <https://www2.ed.gov/programs/charter/nonregulatory-guidance.html>

²⁴ The Charter Schools Program Non-Regulatory Guidance discusses, among other permissible preferences, the use of weighted lotteries “to give better chances for admission to all or a subset of educationally disadvantaged students if State law permits[.]” However, such weighted lotteries are not permitted under Arizona law. A.R.S. § 15-184(E).

BEST PRACTICES FOR CRAFTING ADMISSIONS AND ENROLLMENT POLICIES

In general, charter schools should develop and implement admissions and enrollment policies and practices that:

- ◇ Are consistent with Federal and State laws; and
- ◇ Are non-discriminatory on their face and are implemented in a non-discriminatory manner;

In other words, charter schools' admission and enrollment policies must be fair to *all* student populations and not discourage any student (except expelled students or those in expulsion proceedings) from seeking admission and enrollment. A school's policies should be readily available and accessible to parents.

It is also important that charter schools implement the policies and practices as described in their charter. Schools should monitor the implementation of their policies and practices and make any changes necessary to ensure that their actual admission and enrollment practices are consistent with the written policies and are not discriminatory.

Finally, a charter school's admission and enrollment policies should clearly outline the timeline for applications and enrollment, and whether and under what conditions students, either on the waiting list or otherwise, may be admitted mid-year.

DETERMINING CAPACITY

Prior to opening enrollment, a charter school should determine its projected capacity for the school year, keeping in mind that the maximum capacity of a school (its enrollment cap) is set by its authorizer. A school may set its capacity for programs, classes, grade levels, or building space.²⁵ Capacity determinations may take into account several factors, including any enrollment capacity described in the charter application and contract, facility constraints, and teacher/student ratio calculations. A charter school's admissions policy and recruitment materials should be clear about the school's capacity, as it triggers the lottery process.

OUTREACH AND RECRUITING

Charter schools have substantial flexibility in how they can conduct their admissions procedures. Charter schools typically begin the admissions process with informational open houses, parent meetings, and other recruiting efforts. Through these events and other efforts, charter schools begin to collect interest forms

²⁵ A.R.S. § 15-184(A).

OUTREACH AND RECRUITING (CONTINUED)

(sometimes referred to as “intent to enroll” forms). These forms should only be used to collect basic contact information so that the schools may continue to engage with families who are interested in eventually completing an admission application. Recruitment materials must include a notice that the school does not discriminate on the basis of disability in its admission and treatment of students.²⁶

Charter schools are required to hold an “open enrollment” period, which can vary in length and typically has a cut-off date. At the end of the open enrollment period, if it appears that one or more grade levels, classes or programs will be oversubscribed, a lottery or other equitable selection process must be conducted consistent with the school’s policy.

In conducting recruiting and outreach efforts, charter schools should implement a process designed to encourage participation and interest among diverse groups of students. Charter schools should also remain open and transparent about all policies, including any limitations on admission (if a school is limited to a particular age group, grade level, or gender) and any preferences given to students (whether the school has elected to give preference to the children of teachers, employees, board members, etc.).

APPLICATIONS

As previously discussed, charter schools must be open to all students that wish to attend (up to the school’s capacity and excluding expelled students) and may not have selective admissions criteria or practices.

Accordingly, any application requirements beyond collecting the basic information needed to enroll a student may run afoul of Arizona law. The Arizona Charter Schools Association recognizes that many charter schools have unique focus areas, such as visual and performing arts or cultural and language immersion, and that these schools may wish to tailor portions of their application processes toward their particular educational mission – i.e., an audition for a performing arts school. Although evaluating a student for placement following admission is permissible, a student’s admission **may not** be conditioned on the results of an evaluation, audition, or other subjective criteria. The Arizona Charter Schools Association recommends that any schools that wish to evaluate or assess incoming students in any way consult with legal counsel to confirm that the school’s application process complies with state and federal law.

²⁶ 34 C.F.R. § 104.8(a)-(b).

SPECIAL NOTE ON STUDENTS WITH DISABILITIES

As discussed above, charter schools may not discriminate on the basis of disability. Accordingly, schools should not collect or use information about whether an applicant is, or may be, eligible for special education services under federal law, for the purpose of making admission decisions. Schools that engage in behaviors similar to the following risk a claim that the school is discriminating against the student on the basis of a disability:

- ◇ Stating that the school only has capacity to serve a maximum number of students with IEPs;
- ◇ Requiring that a student include a copy of his/her IEP with the completed application for admission;
- ◇ Advising students and parents that the school has limited resources and cannot always comply with students' IEPs or cannot serve the needs of the student;
- ◇ Discouraging the student from enrolling, and stating or suggesting that the student's needs would be better served by enrollment in another school.

In order to avoid any appearance of discrimination, “screening,” or “counseling out” on the basis of a disability, the Arizona Charter Schools Association recommends that the school not seek information specific to a student's special education eligibility or service needs until after a student has been admitted to the school. To the extent any such information is obtained at the application stage, schools should ensure that it is not used in the admission-decision process, but only to enable the school to better serve the student promptly, following admission.

LOTTERIES, PREFERENCES, AND WAIT LISTS

In cases where the applicant pool exceeds the capacity of the charter school, Arizona law requires schools to select students for admission through an equitable selection process, such as a lottery. However, the law contains no requirements indicating how schools should conduct such lotteries. Accordingly, charter schools have considerable flexibility in the way they implement their lotteries, so long as the process is equitable and is governed by a clear and comprehensive admissions policy that does not violate state or federal law.

Admissions preferences can be implemented in several ways. In one method, students who qualify under mandatory enrollment preferences, such as siblings of current students, are completely exempted from the lottery and are automatically admitted to the school as long as there is space available. As to permissible enrollment preferences,

LOTTERIES, PREFERENCES, AND WAIT LISTS (CONTINUED)

schools often have a hierarchy of preferred groups, and they admit groups in order of preference as outlined in their policies.

Charter schools also have substantial flexibility regarding their waiting lists, including whether to maintain a waiting list at all. A charter school's admissions policy should address how students are placed on the waiting list and how students are chosen from the waiting list if openings occur during the school year. If a school decides to keep a waiting list, the process by which students are both placed on the list and selected off of the list must be clear and non-discriminatory. Schools are not permitted to rank order wait lists by any type of rating factor. The policy should also address whether the wait list is used only for a particular school year or will carry over from year to year.

Because many public charter schools approach lotteries, preferences, and wait lists differently, it is important that each school provide information about their policies and practices to families in a clear and transparent manner.

ENROLLMENT

During application and enrollment, charter schools should communicate to parents that *any* of the documents referenced on page 6 are acceptable to verify a student's age or identity. It is also important to remember that schools cannot require parents to provide information or documentation of their or their child's citizenship or immigration status in order to enroll their child.²⁷ Finally, schools should maintain a copy of all required enrollment documents in students' educational files.

²⁷ *Plyler*, 457 U.S. at 229-30.

CONCLUSION

Charter school developers and operators should proceed thoughtfully and deliberately when developing and implementing admissions policies and practices. This brief outlines the law and policies governing charter school admissions, and provides recommendations from the Arizona Charter Schools Association on developing admissions and enrollment policies that comply with state and federal law. As mentioned in the introduction, this brief is not legal advice. Charter schools should always obtain assistance from legal counsel when seeking to understand applicable laws and regulations or when adopting new admissions and enrollment policies and practices.



The Arizona Charter Schools Association is a nonprofit membership and professional organization that advocates and strengthens the autonomy, equity, and quality of Arizona's diverse public charter schools. Founded in 1995, the Association is dedicated to supporting Arizona's thriving public charter school sector. For more information, visit www.azcharters.org or call 602.944.0644.



Osborn Maledon's lawyers have extensive experience advising and representing charter schools on a range of legal issues, including general charter school law, employment matters, Open Meeting Law and Public Records Law, regulatory and enforcement matters, and special education issues. For more information, visit www.omlaw.com or call 602.640.9000.