

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 701 KAR 8:010. Charter school student application, lottery, and enrollment.

6 RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596,

7 160.1597, 160.1598, 160.1599

8 STATUTORY AUTHORITY: KRS 160.1591

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591 requires the Kentucky Board
10 of Education to promulgate an administrative regulation to guide student application, lottery, and
11 enrollment in public charter schools. This administrative regulation sets forth the requirements for
12 charter school student application, lottery, and enrollment.

13 Section 1. Definitions.

14 () “Academically behind” means at risk of academic failure.

15 () “Achievement gap” is defined in KRS 160.1590(2) and means the same as in KRS
16 158.649.

17 () “Adult student” means a student who is eighteen (18) years or older who is still eligible for
18 enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

19 () “Applicant” is defined in KRS 160.1590(3).

20 () “Area of exceptionality” means categories of disabilities of students with special needs.

21 () “At risk” means at risk of academic failure.

- 1 () “At risk of academic failure” means:
- 2 (a) Inclusion in a subgroup of students for whom there is:
- 3 1. A significantly large gap between a student comparison group and student reference group;
- 4 or
- 5 2. A significantly large gap between a student demographic group and the goal of proficiency;
- 6 (b) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or
- 7 intervention;
- 8 (c) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support
- 9 and improvement;
- 10 (d) Current achievement two (2) or more grade levels below the student’s age group;
- 11 (e) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2)
- 12 of the past four (4) school years;
- 13 (f) Consistent absence or tardy and absence twenty-five (25) or more unexcused days in the last
- 14 two (2) school years and an overall grade point average below a C;
- 15 (g) Suspension (in-school suspension or home suspension) two (2) or more times during the past
- 16 school year and an overall grade point average below a C;
- 17 (h) Family history of dropping out or lack of family support for the student in the completion of
- 18 school;
- 19 (i) Little or no participation in school cocurricular or extracurricular programs;
- 20 (j) Below grade level in reading or math skills;
- 21 (k) Indication of being socially isolated; or
- 22 (l) An applicant’s definition for this term in its authorizer approved charter application,
- 23 pursuant to KRS 160.1594(2).

- 1 () “Bilingual students” means students who are fluent in English and a foreign language.
- 2 () “Charter application” is defined in KRS 160.1590(4).
- 3 () “Children with special needs” or “Special needs students” means:
- 4 (a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible
- 5 pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an
- 6 individual education plan, as described in KRS 157.196, or an individual education program, as
- 7 described in KRS 158.281; and
- 8 (b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973,
- 9 as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one or more major life
- 10 activities.
- 11 () “Cocurricular programs” means school programs which have activities that are
- 12 unequivocally instructional in nature, directly related to the instructional program, and scheduled
- 13 to minimize absences from classroom instruction.
- 14 () “Computerized randomization” means use of a computer software program for
- 15 randomization.
- 16 () “Comprehensive learning experiences” means daily, rigorous learning experiences that
- 17 build on a student’s talents, challenge the student’s skills and understandings, and develop the
- 18 student’s ability to reason, problem solve, collaborate, and communicate to prepare the student for
- 19 success in college and career.
- 20 () “Conversion public charter school” is defined in KRS 160.1590(7).
- 21 () “Days” means calendar days and shall be calculated pursuant to KRS 446.030.
- 22 () “Education service provider” is defined in KRS 160.1590(8).
- 23 () “Emancipated youth” means a student under the age of eighteen (18) who is or has been

- 1 married or has by court order or otherwise been freed from the care, custody, and control of the
2 student's parents.
- 3 () "Enrollment" means the process for the charter school board of directors to register a
4 student for attendance at the charter school.
- 5 () "Enrollment preference" means the priority of the student application from students
6 identified in KRS 160.1591(5).
- 7 () "Extracurricular programs" means voluntary programs that are offered by a school but are
8 not part of the required school program.
- 9 () "Gifted" means a "gifted and talented student" as defined in KRS 157.200(1)(n).
- 10 () "Grade" or "Grade Level" or "Level" means elementary, middle, or high school grade of
11 school.
- 12 () "Human randomization" means randomization without the use of computer randomization.
- 13 () "Lottery" means the transparent, open, equitable, and impartial process that is competently
14 conducted with randomization in accordance with the targeted student population and service
15 community as identified in KRS 160.1593(3) for the charter school board of directors to choose
16 students for enrollment and attendance at the charter school when the student applications received
17 by the charter school exceed the charter school's capacity.
- 18 (). "Notice" means written notice.
- 19 () "Notify" means provide written notice.
- 20 () "Parent" is defined in KRS 160.1590(11).
- 21 () "Persistently low-achieving public schools" or "Persistently low-achieving non-charter
22 public schools" means non-charter schools identified for comprehensive support and improvement
23 pursuant to KRS 160.346.

1 () “Person with custody or charge” means any adult, pursuant to KRS 159.010, who falls
2 within the definition of KRS 387.010(2) for interested person or entity and with whom the student
3 resides.

4 () “Primary enrollment preference” means any enrollment preference other than a secondary
5 enrollment preference.

6 () “Randomization” means to leave to chance alone and eliminate bias and interference.

7 () “Secondary enrollment preference” means the priority of a resident student application for
8 enrollment in a public charter school, after acceptance of all the student applications with primary
9 enrollment preference, if the public charter school’s capacity has not been exceeded.

10 () “Start-up public charter school” is defined in KRS 160.1590(17).

11 () “Student” is defined in KRS 160.1590(19) and includes any person who is entitled to
12 enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

13 () “Student application” means an application submitted to a charter school board of directors
14 for student enrollment in the charter school.

15 () “Traditionally underperforming” means at risk of academic failure.

16 Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or
17 emancipated youth student may initiate a student application to a charter school for any student,
18 for whom the parent, person with custody or charge, adult student, or emancipated youth student
19 has the ability to enroll pursuant to Kentucky law, who is eligible for attendance at the charter
20 school under KRS 158.030, 158.100, or 160.1591(5) or (6).

21 (2) Any adult student or emancipated youth student may initiate the student’s own application
22 to a charter school.

1 (3) A student application for enrollment in a charter school shall list the grade level the
2 parent, guardian, adult student, or emancipated youth student understands to be the most
3 appropriate grade level for the student based on available information. Any future determination
4 by the resident school district or the charter school that the student should be placed in a different
5 grade level shall not invalidate the student's application unless the charter school determines that
6 the parent, guardian, adult student, or emancipated youth student intentionally misrepresented the
7 grade level most appropriate for the student on the student application.

8 (4) Consent of the parent, person with custody or charge, adult student, or emancipated youth
9 student to serve on the charter school's board of directors shall not be a condition for student
10 application to the charter school.

11 (5) The charter school shall not limit the number of applications that it accepts from students
12 based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in
13 the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964,
14 42 U.S.C. secs. 1981 to 2000h-6, as amended, KRS 160.1591(5), or KRS 160.1593(19).

15 (6) For a start-up charter school, the enrollment preference described in KRS 160.1591(5)(d)
16 is only available to:

17 (a) A child of a Kentucky resident who is on the board of directors and resides within the
18 charter school's enrollment boundaries; or

19 (b) A child of a Kentucky resident who will be a full-time employee of the charter school.

20 (7) The charter school shall utilize a uniform application process for all student applications,
21 including use of the Kentucky Charter School Student Application, incorporated by reference.

22 Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and
23 procedures for conducting the lottery that include the following:

- 1 (a) Identification and designation of duties for board members, any education service provider,
2 charter school staff, and volunteers prior to the lottery event;
- 3 (b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference,
4 and increase the public perception that the lottery is a randomized, transparent, open, equitable,
5 and impartial process that is competently conducted;
- 6 (c) Provision for breaks during the lottery;
- 7 (d) Retention of records from the lottery for two (2) years;
- 8 (e) Creation of minutes from the lottery; and
- 9 (f) Procedures for receipt, investigation, and handling of complaints regarding the lottery with
10 concurrent provision of all documents to the charter authorizer and the Board. Procedures shall
11 include:
- 12 1. Any remedies the charter school shall provide upon determination that student
13 selection during the lottery was affected by an error committed by individuals acting on behalf of
14 the charter school during the application or lottery processes;
- 15 2. Transparency in the charter school's remedying of such an error; and
- 16 3. Actions to prevent reoccurrence of errors in the application and lottery processes in
17 future years.
- 18 (2) A charter school board of directors shall conduct the lottery in compliance with the
19 requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures,
20 that may include, as allowed by the charter authorizer:
- 21 (a) Selection of numbers assigned to individual students; and
- 22 (b) Human randomization or computerized randomization.
- 23 (3) The charter school shall afford primary and secondary enrollment preferences only to

1 students as allowed in KRS 160.1591 and this administrative regulation, as designated in the
2 charter application, and as allowed in the charter contract.

3 (4) A charter school shall not conduct a lottery for enrollment if the number of student
4 applications does not exceed the capacity of the charter school.

5 (5) If the number of student applications exceeds the capacity of the charter school, then
6 pursuant to KRS 160.1592(5)(c), the charter school shall reserve space for enrollment of returning
7 students and then conduct the lottery for the other student applications.

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

11 (7) At least thirty (30) days prior to conducting a lottery, the charter school board of directors
12 shall publish on its website notice of the lottery and hold a meeting to provide information on the
13 lottery to parents, persons with custody or charge, adult students, and emancipated youth students.

14 The notice shall include:

15 (a) The date and location of the lottery;

16 (b) Information on the legal requirements and policies and procedures utilized in holding the
17 lottery;

18 (c) Information for filing a complaint regarding the lottery monitor;

19 (d) Information for filing a complaint regarding an error committed by individuals acting on
20 behalf of the charter school during the application or lottery processes; and

21 (e) Identification of the charter school for the lottery.

22 (8) The charter authorizer may include in the charter contract a requirement for the charter
23 school board of directors to conduct a practice lottery, in the presence of the lottery monitor, to

1 reduce shareholder concerns, to identify potential issues and perceptions with the selected lottery
2 method, and to build the charter school's capacity to conduct the lottery.

3 (9) The charter school shall not require the presence of the parent, person with custody or
4 charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for
5 eligibility for enrollment.

6 (10) The charter school shall not require the consent of the parent, person with custody or
7 charge, adult student, or emancipated youth student to serve on the charter school board of
8 directors for inclusion in the lottery or for eligibility for enrollment.

9 (11) If a charter school determines capacity by grade level, then the charter school shall hold
10 lotteries only in those grade levels where student applications exceeded the charter school's
11 capacity and shall hold separate lotteries, which may occur on the same date, for each of those
12 grade levels. A student shall be eligible for the lottery for the grade level listed on the student's
13 application.

14 (12) The lottery shall be held in accordance with the Open Meetings Act at a time and location
15 convenient to parents, persons with custody or charge, adult students, and emancipated youth
16 students who have submitted a student application for enrollment in the charter school.

17 (13) The lottery shall be monitored by a competent, independent, impartial party to ensure
18 compliance with KRS 160.1591 and 160.1592 as follows:

19 (a) The charter school board of directors shall include the identity, qualifications, and
20 affiliations of the lottery monitor in the information they provide to the public thirty (30) days
21 prior to the lottery, pursuant to subsection (7) of this section;

22 (b) Complaints regarding the competence, independence, or impartiality of the lottery monitor
23 shall be brought to the commissioner of education who shall conduct an investigation and render

1 a decision within seven (7) days of receipt of the complaint; and

2 (c) If the lottery monitor is determined by the commissioner of education to lack competence,
3 independence, or impartiality, the commissioner of education shall appoint an individual who does
4 meet these requirements to serve as a monitor for the lottery selection process.

5 (14) In the lottery, the charter school shall select students for enrollment up to the capacity of
6 the school and then the charter school shall select students for inclusion on the wait list above the
7 school capacity as follows:

8 (a) The charter school shall continue to select students for placement on the wait list until the
9 charter school has exhausted the student applications for that school year;

10 (b) The charter school shall ensure that lottery drawing for the wait list is separate from the
11 lottery for selection of students for enrollment and that each parent, person with custody or charge,
12 adult student, and emancipated youth student who submitted a student application to the charter
13 school and is placed on a wait list is notified in writing of the student's inclusion on the wait list
14 and the student's position on the wait list after the conclusion of the wait list lottery process;

15 (c) The charter school shall place students on the wait list in the order they are drawn during
16 that portion of the lottery process;

17 (d) The charter school shall maintain and continuously update accurate records related to the
18 order of the wait list;

19 (e) The charter school shall update the wait list as students are admitted; and

20 (f) The charter school shall weekly publish on its website updated information on each
21 student's position on the wait list as well as the last date for enrollment for that year.

22 Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures
23 on student enrollment:

- 1 (a) Notice of the status of an enrollment preference and eligibility for a student if the student
2 ceases to be a resident during the school year;
- 3 (b) Notice of the status of an enrollment preference for a sibling under KRS 160.1591(5)(c)
4 if the student who was enrolled the previous year withdraws from the charter school;
- 5 (c) Notice of the status of an enrollment preference for a student under KRS 160.1591(5)(d)
6 if the resident ceases to be a member of the board of directors or ceases to be a full-time
7 employee of the charter school; and
- 8 (d) Notice of the status of an enrollment preference for a student under KRS 160.1591(5)(e)
9 if the student ceases to be eligible for free or reduced price meals.
- 10 (2) A charter school shall accept student applications for enrollment and attendance from all
11 resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5)
12 or (6) as follows:
- 13 (a) Only a student who is a Kentucky resident by the student's first day of student attendance
14 is eligible for enrollment and attendance at the charter school that school year; and
- 15 (b) A student who attended the public charter school the previous year shall be automatically
16 re-enrolled for attendance each school year unless:
- 17 1. The student has been awarded a high school diploma after meeting or exceeding the
18 minimum requirements for high school graduation set by the Board;
- 19 2. The charter school has expelled the student pursuant to KRS 158.150; or
- 20 3. The student has voluntarily withdrawn from enrollment in the charter school.
- 21 (3) In addition to the requirements of KRS 160.1592(14), a charter school shall not
22 discourage, restrict, or prohibit enrollment of a student, including but not limited to:
- 23 (a) Based on whether the emancipated youth student, adult student, parent, or person with

- 1 custody or charge gives consent for the charter school to unenroll or withdraw the student from
2 the charter school without providing the due process protections in KRS 158.150;
- 3 (b) Based on the student’s disability, academic performance, athletic ability, or the ability of
4 the parent or person with custody or charge to volunteer at the charter school;
- 5 (c) Based on the student’s ability to meet academic minimum requirements;
- 6 (d) Based on the student’s English competence;
- 7 (e) Based on the student’s status as a student with special needs;
- 8 (f) Based on the student’s status as a student at risk of educational failure;
- 9 (g) Based on the student’s status as a homeless child or youth, under the McKinney-Vento
10 Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or
- 11 (h) Based on the student’s eligibility for free or reduced price meals, under the Richard B.
12 Russell National School Lunch Act, 42 U.S.C. 1751 et seq.
- 13 (4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:
- 14 (a) Require an interview prior to enrollment;
- 15 (b) Select a student based on the student’s performance on entrance essays or interviews;
- 16 (c) Require or request:
- 17 1. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;
- 18 2. Information on the legal residence or presence in the United States of the student, parent,
19 or person with custody or charge; or
- 20 3. Information regarding the cause of any student’s residency with a person other than the
21 parent; or
- 22 (d) Require a family to volunteer at the charter school or provide payment to the school,
23 except:

- 1 1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same
2 extent as other public schools; and
- 3 2. The charter school may encourage parental involvement in the charter school as long as
4 involvement is not required and there are no adverse consequences for family and student that
5 cannot be involved.
- 6 (5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS
7 159.010.
- 8 (6) By the first day of student attendance, a charter school shall verify the residence of the
9 student and use methods similar to those employed by a local school district to verify residence.
- 10 (7) A conversion public charter school shall accept for enrollment student applications with
11 secondary enrollment preference after accepting student applications with primary enrollment
12 preference, if the conversion public charter school's capacity has not been exceeded. After
13 complying with the primary enrollment preference requirement in KRS 160.1591(5)(b), a
14 conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5)(c-e)
15 in enrolling additional resident students pursuant to KRS 160.1591(5)(b).
- 16 (8) A charter school shall conduct enrollment as follows:
- 17 (a) A charter school shall establish and publish on its website an open enrollment period during
18 which the charter school shall accept applications for enrollment of new students;
- 19 (b) A charter school shall establish and publish on its website a specific deadline for
20 notification to parents, persons with custody or charge, adult students, or emancipated youth
21 students of the charter school's decision to accept the student's application for enrollment;
- 22 (c) A charter school shall notify parents, persons with custody or charge, adult students, and
23 emancipated youth students of their opportunity to enroll in the charter school and the deadlines

1 and required documentation for enrollment;

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

- 12 1. Phone;
- 13 2. Email;
- 14 3. Mailed correspondence; or
- 15 4. Home visit; and

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

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

- 1 (a) Proof of the student’s age, as required pursuant to KRS 158.032;
- 2 (b) Immunization records, as required by KRS 158.035;
- 3 (c) Proof of residency in the district, as required by the resident school district;
- 4 (d) Home language survey, as required by 703 KAR 5:070, as a first screening process to
- 5 identify students who are English learners; and
- 6 (e) Proof of the student’s current grade level.

7 (10) A charter school may request additional information with the consent of the authorizer, but
8 the refusal or failure to provide additional information cannot be a cause for denial of enrollment
9 or for withdrawal of a student.

10 Section 5. Incorporation by Reference. (1) “Kentucky Charter School Student Application”,
11 January 2018, is incorporated by reference.

12 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
13 the Department of Education, Office of Legal, Legislative and Communication Services, 5th
14 floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m.
15 to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Stephen L. Pruitt, Ph.D.
Commissioner of Education

(Date)

William Twyman, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on _____, 2017, at 10 a.m., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through _____, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.