

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amended After Comments)

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

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596,
160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591 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 sets forth 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 in KRS 160.1590(3).

(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 in 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 its authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).

(7) "Charter application" is defined in KRS 160.1590(4).

(8) "Charter contract" or "contract" is defined in KRS 160.1590(5).

(9) "Charter school" means a public charter school.

(10) "Charter school board of directors" is defined in KRS 160.1590(6).

(11) "Cocurricular programs" means school programs which 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 in KRS 160.1590(7).

(14) “Days” means calendar days calculated pursuant to KRS 446.030.

(15) “Education service provider” is defined in 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 students identified in 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 in 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 identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school when 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 in 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 of 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 in KRS 160.1590(12).

(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) "Start-up public charter school" is defined in KRS 160.1590(17).

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

(37) “Student application” means an application submitted to a charter school for student enrollment in the charter school.

(38) “Students with special needs” or “Special needs students” means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one or more major life activities.

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

(40) “Year” or “Academic year” or “School year” means school year as defined 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 under KRS 158.030, 158.100, or 160.1591(5) or (6).

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

(3) 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. 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 160.1593(19).

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

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

(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.

(7) 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 website for conducting the lottery that include the following:

- (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 the length of the charter contract ~~two (2) years~~;
- (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 such 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, that 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 afford primary enrollment preferences and secondary enrollment preferences only to students as allowed in KRS 160.1591, 160.1592, and this administrative regulation, as designated in the charter application, and as allowed in 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 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 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 website and provide notice of the lottery to provide information on the lottery to parents,

persons with custody or charge, adult students, and emancipated youth students, **notice of the lottery and information on the lottery**. The **website 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 utilized in 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 reduce charter school community shareholder concerns, to identify potential issues and perceptions with the selected lottery method, and to 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 where 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 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 pursuant to the terms of the charter contract,** to ensure compliance with KRS 160.1591 and 160.1592 as follows:

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information they provide to the public thirty (30) days prior to the lottery, pursuant to 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; and

(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 follows:

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

(b) The charter school shall ensure that lottery drawing for the wait list is 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, is 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) The charter school shall place students on the wait list in the order they are drawn during that portion of the lottery process;

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

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

(f) The charter school shall weekly publish on its website 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) The charter school shall 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 ~~be a resident of the local school district~~ prior to or during the school year;

(b) The status of an enrollment preference for a sibling under KRS 160.1591(5)(c) 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 under 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;

(d) The status of an enrollment preference for a student under 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

(e) The status of an enrollment preference for a student under KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving 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) or (6) as follows:

(a) Only a student who resides within the charter school's enrollment boundaries ~~is a resident of the local school district~~ by the student's first day of student attendance is eligible for enrollment and attendance at the charter school that school year; and

(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 set by the Kentucky Board of Education;

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 another~~ 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 ~~is~~ no longer resides within the charter school's enrollment boundaries ~~a resident of the local school district~~.

(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 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;

- (f) The student's status as a student at risk of academic failure;
 - (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 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 as allowed pursuant to KRS 158.155;
 - 109.** Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;
 - 110.** Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

1 ~~121~~. Information regarding the cause of any student's residency with a person other than the
 2 parent; or

3 (b) Require a family to volunteer at the charter school or provide payment to the school, except:

4 1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as
 5 other public schools; and

6 2. The charter school may encourage ~~parental~~ involvement **by parents, persons with custody**
 7 **or charge, adult students, and emancipated youth students** in the charter school as long as
 8 involvement is not required and there are no adverse consequences for the family or student who
 9 cannot be involved; or

10 (c) Require or request a parent, person with custody or charge, adult student, or emancipated
 11 youth student to consent to the charter school's withdrawal or unenrollment of the student from
 12 the charter school without providing the due process protections in KRS 158.150.

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

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

17 (7) A conversion public charter school shall accept for enrollment student applications with
 18 secondary enrollment preference after accepting student applications with primary enrollment
 19 preference, if the conversion public charter school's capacity has not been exceeded for that
 20 school year. After complying with the primary enrollment preference requirement in KRS
 21 160.1591(5)(b), a conversion public charter school may utilize the enrollment preferences in
 22 KRS 160.1591(5)(c-e) in enrolling additional local school district resident students pursuant to
 23 KRS 160.1591(5)(b).

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

(a) A charter school shall establish and publish on its website 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 website 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 website 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, 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, until successful:

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 cannot be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept ~~local school district resident~~ student applications **from students who reside within the charter school's enrollment boundaries** and enroll additional ~~local school district resident~~ students **who reside within the charter school's enrollment**

1 **boundaries** for that school year after the end of the open enrollment period if the charter school
2 has capacity to educate additional students at that grade level for that school year.

3 Section 5. Incorporation by Reference. (1) “Kentucky Charter School Student Application”,
4 February 2018, is incorporated by reference.

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

Mary Gwen Wheeler, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, 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 November 30, 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 701 KAR 8:010

Agency Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on student application, lottery, and enrollment in the public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable student application, lottery, and enrollment in the public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on student application, lottery, and enrollment in the public charter schools.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts, whose students seek enrollment in public charter schools, should not need to take action related to the lotteries. Public charter schools, who seek to enroll students, will have to create and execute a student lottery as detailed by statute and this regulation. Students, who seek enrollment in a public charter school will have to assure they qualify for lottery entry. The Kentucky Department of Education shall provide support to ensure the transparent and uniform application, lottery, and enrollment of students in public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This new administrative regulation will create one consistent standard for the application, lottery, and enrollment of students in public charter schools.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees or additional funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 701 KAR 8:010

Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.
 - (c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to none.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There should be no fiscal impact resulting from the new administrative regulation.

Summary Page - Incorporation by Reference

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

The following documents are incorporated by reference:

(1) “Kentucky Charter School Student Application”, February 2018. The document incorporated by reference consists of three (3) pages. This document is the form for a student to apply for enrollment in a charter school.

STATEMENT OF CONSIDERATION
RELATING TO 701 KAR 8:010
Kentucky Department of Education

Amended After Comments

1. A public hearing was held on the above regulation on November 21, 2017 at 10:00 a.m. Eastern Time, in Room 116, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky. Written comments were also received during the public comment period.

2. The following individuals attended this public hearing or submitted written or verbal comments:

Disclaimer: All titles and affiliations were provided by the commenters through public written comments or testimony at the public hearing. The titles and affiliations of each person have not been evaluated by the agency, and the listing of specific titles and affiliations in the Statement of Consideration does not confer status or actual authority upon an individual not otherwise qualified by other authoritative source.

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Lindsay Baechtold	Student, Model Lab
Cody Bailey	Student, Model Lab
Ethan Bailey	Student, Model Lab
Mr. or Ms. Ballard	Student, Model Lab
Morgan Barnes	Student, Model Lab
Laura Barthel	Private individual and parent of Model Lab student
Calvert Benson	Student, Model Lab
John Benson	Student, Model Lab
Evan Blakeman	Student, Model Lab
Erin Bradburn	Student, Model Lab
Judith Bradley, Executive Director	Jack Be Nimble
Kayla Brown	Student, Model Lab
Samuel Bucknam	Student, Model Lab
Colton Collier	Student, Model Lab
Nathan Aaron Corder	Student, Model Lab
Lexi Daniel	Student, Model Lab
Tyler Dedic	Student, Model Lab
Camille Dyer	Student, Model Lab
Tori Ellis	Student, Model Lab
Olivia Florell	Student, Model Lab
Kristin Forbriger, VP	National Association of Charter School Authorizers

Nick Ford	Student, Model Lab
Troy Foster	Private individual and parent of Model Lab student
Katrina Godsey	Student, Model Lab
Chris Harmer, Co-Chair	Fellowship of Reconciliation, Louisville Chapter
Cindy Heine	Private individual
Lucy Heskins, Attorney Supervisor	Kentucky Protection & Advocacy
Mr. or Ms. Higgs	Student, Model Lab
Jarett Insko	Student, Model Lab
McKenzie Johnson	Student, Model Lab
Tyler Johnson	Student, Model Lab
Mr. or Ms. Kelley	Student, Model Lab
Abigail Knapp	Student, Model Lab
Gus LaFontaine, Administrator	Fontaine Preparatory School
Mr. or Ms. Luxon	Student, Model Lab
Travis Marcum	Teacher, Model Lab
Mike Magee, CEO	Chiefs for Change
Caleb Mayer	Student, Model Lab
Abby McAvoy	Student, Model Lab
Jacob Murphy	Student, Model Lab
Paul O'Neill, Co-Founder	National Center for Special Education in Charter Schools
Bryson Perry	Student, Model Lab
Jackson Perry	Student, Model Lab
Thelma Ramsey	Private individual
Elle Renfro	Student, Model Lab
Joseph Risser	Student, Model Lab
Mary Ruble, Executive Director	Kentucky Education Association
Jean Sabharwal	Child Advocate
Lynn Schaber	Potential regional achievement zone charter school applicant
Allison Shaffer	Student, Model Lab
Aashini Shah	Student, Model Lab
Mr. or Ms. Shah	Student, Model Lab
Carmelinda Shear	Private individual and parent of Model Lab student
Julia Smith	Student, Model Lab
Stacy Starnes	Private individual and parent of Model Lab student
Emilee Stites	Private individual and parent of Model Lab student
Charlie Szold, Reg. Field Manager	Public School Options
Mary Alex Taylor	Student, Model Lab
Mr. or Ms. Taylor	Student, Model Lab
Christopher Tioukalov	Student, Model Lab
McKenna Tuttle	Student, Model Lab
Katelyn Upchurch	Student, Model Lab
Analyce Valencia	Student, Model Lab
Lillie Weaver	Student, Model Lab
Laura Webb	Student, Model Lab

Jenna Wells	Student, Model Lab
David Wickersham, Director	Office of Education Accountability
Brad Woods	Private individual and parent of Model Lab student
Eddie Woolery	Student, Model Lab
Daniel Yacek	Student, Model Lab
Kathy Yates	Private individual and parent of Model Lab student
Zane Zhang	Student, Model Lab
Ron Zimmer, Professor/Director	Martin School of Public Policy and Administration, University of Kentucky

3. The following people from the promulgating administrative body responded to the written comments:

Name and Title

Kevin C. Brown, General Counsel/Associate Commissioner, Office of Legal, Legislative, and Communication Services (OLLCS)

Amy Peabody, Assistant General Counsel, OLLCS

Earl Simms, Director, Division of Charter Schools

Summary of Comments and Responses

1. Subject Matter: Eligibility for conversion and retention of current student body population

(a) Comment: Ms. Barthel, Ms. Shear, Mr. Woods, Ms. Starnes, Ms. Stites, Mr. Foster, and Ms. Yates stated that they are parents of students attending EKV's Model School in Richmond, Kentucky, which may be pursuing charter designation. Mr. Marcum, as a teacher at Model Lab, made a similar comment as described below. Commenters requested, as stated by Ms. Shear, the following amendment to 701 KAR 8:010 Section 2. Student Application: "I respectfully ask the Kentucky Board of Education to consider extending enrollment preference to all currently attending students. Requiring students to disenroll and reapply to the school lottery imposes an unnecessary burden. I don't believe the intent of the legislation is to disrupt student education, but rather to expand opportunities. Please allow students to finish their education at the school they currently attend." The above listed Model Lab student commenters echoed this comment. Contrastingly, Ms. Ramsey commented that allowance for "a guarantee of priority placement for students who are current students at Model ... would be an abhorrent act of exclusivity" and that "[c]hildren who should have equal opportunities would be swept aside because of some sense of entitlement."

(b) Response: The agency appreciates these comments but responds that the change requested is one which would have to occur at the legislative level with a statutory change. Kentucky statute KRS 160.1591(5) sets forth the enrollment preferences for charter schools and includes an enrollment preference for a conversion public charter school for "students who attended the school the previous school year." This enrollment preference for students currently attending a particular school is limited to charter schools that are converted from existing public

schools of the district. KRS 160.1590(7) defines a conversion public charter school as “a public charter school that existed as a noncharter public school prior to becoming a public charter school.” This statute, in subsection 17, also defines “start-up public charter school” as “a public charter school that did not exist as a noncharter public school prior to becoming a public charter school”. The two exclusive routes, created by the statutes, for creation of a charter school allow for creation of a public charter school either as a conversion public charter school or a start-up public charter school. Kentucky statute 160.1599 provides the process for conversion of an existing noncharter public school of a district to a conversion public charter school. This process includes three routes to eligibility for conversion and evidences an overall scheme that is available only to schools under the control of the local board of education. KRS 160.290 places schools that are part of the local school district within the control and authority of the local board of education. A school, like Model Lab, is reportedly not a school of a local school district but is instead a school under the authority of a Kentucky public postsecondary educational institution, Eastern Kentucky University (EKU). It is the information of the agency that EKU and the local school district have a contract in place for the operation by EKU and funding of Model Lab and that Model Lab is not a school under the authority of the local board of education. For this reason, this particular school is not eligible for conversion under the statutes, primarily KRS 160.1599, and would not be able to convert to a conversion charter school and provide an enrollment preference to the students who currently attend Model Lab. Any school that is not eligible for conversion under the statutes has to abide by the enrollment preferences set forth in KRS 160.1591(5) for a start-up public charter school, which does not include a preference for students attending a school prior to its conversion to a charter school. This is true for all current schools in existence that are not part of a school district under the authority of the local board of education. As well, the agency understands that it may be important to state publicly again that charter schools are schools of choice, as stated by the Kentucky General Assembly in KRS 160.1591(2) in their purposes for this legislation, and no school or student can be forced to seek charter school status or enrollment. Model Lab is not being required by any person or entity to seek charter school status. The current Model Lab can stay intact and not seek charter school status. If Model Lab does choose to seek and receive charter school status, the statutes require that only the enrollment preferences available to start-up charter schools are utilized in an application and enrollment process. In response to Ms. Ramsey’s comment, the sentiment expressed is the exact reason that start-up charter schools are prohibited from selecting students and this administrative regulation is the agency’s effort to provide clarification on this part of the statutes’ requirements. For these reasons, a change to this administrative regulation has not been made in response to this comment.

2. Subject Matter: “Enrollment preference” definition

(a) Comment: OEA commented that the administrative regulation’s definition of the term “enrollment preference” “does not differentiate between required and permissive preferences in compelling content for charter school policies and procedures. OEA asks that KDE clarify how the imposition of these requirements comports with KRS 13A.120(2)(f).”

(b) Response: The agency thanks OEA for its comment but believes that the language on the administrative regulation on “enrollment preferences”, specifically Section 3(3) provides clarification that enrollment preferences are only those allowed in the statutes that are also in the approved application and in the charter contract and the provisions of the administrative

regulation are applied in that environment for each separate charter school with a separate approved application and charter contract, in keeping with the combined requirements of the statutes:

The charter school shall afford primary enrollment preferences and secondary enrollment preferences only to students as allowed in KRS 160.1591, 160.1592, and this administrative regulation, as designated in the charter application, and as allowed in the charter contract.

Because each application and each charter school may include different combinations of enrollment preferences for the proposed school's student body, the agency draft the provisions of this administrative regulation flexibly enough to provide administrative regulation of student application, lottery, and enrollment and to account for the many different possible combinations of these enrollment preferences in charter schools. The agency believes this administrative regulation has accomplished that task. In response to OEA's comment that it is seeking clarification from the agency as to "how the imposition of these [policy and procedure] requirements comports with KRS 13A.120(2)(f)", the agency responds that the legislative authority for this administrative regulation, found in KRS 160.1591 provides the following, which encompasses the entire breadth of the content of this administrative regulation:

“(7) Consistent with the requirements of KRS 160.1590 to 160.1599 and 161.141, the state board shall promulgate administrative regulations to guide student application, lottery, and enrollment in public charter schools.”

No changes have been made to the administrative regulation in response to this comment.

3. Subject Matter: Forfeiture of enrollment preference

(a) Comment: OEA commented that Section 4(8)(d), which provides the process for enrollment forfeiture “does not indicate that such efforts [to contact the family to enroll] may cease upon the closure of the open enrollment period. Read in conjunction with Section 4(11), it is unclear how the two parts mesh.”

(b) Response: The administrative regulation, as Section 4(8)(d) provides each charter school the authority to set its own deadline “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” and establishes that the “[f]ailure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student *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.” (emphasis added) To provide clarity on the question raised by the comment, the agency has made a change to this portion of this administrative regulation in response to this comment.

4. Subject Matter: Student equal access to public education

(a) Comment: Ms. Heine commented that she was: “concerned about the implementation of charter schools in Kentucky and the threat it represents to public schools. Equal access to quality education is essential for preparing Kentucky students for the future. Because of that concern, I believe the principles of the Annenberg Rules found in ‘Public Accountability for Charter Schools: Standards and Policy Recommendations for Effective Oversight’

(2013) should serve as the primary guide for establishing and assessing the implementation of charter schools in the Commonwealth.

In particular, the principle that "Charter schools should ensure equal access to interested students and prohibit practices that discourage enrollment or disproportionately push enrolled students out of the school," leads me to a question about proposed 701 KAR 8:010. I may have missed it but I did not see guidelines or directions about who or what body selects the 'lottery monitor.' Would that be done by the local board or the charter school governing body? I appreciate the opportunity for the public to question the impartiality of the monitor, but defining who makes the appointment may lead to fewer complaints about the process.

In addition, was any consideration given to appointing an independent ombudsman with a role beyond that of a lottery monitor, to whom, as the Annenberg standards suggest, 'parents could challenge or appeal enrollment, classification (as special education), or withdrawal decisions by the charter school.' The ombudsman's office should have... 'the authority to take action or to direct the authorizer to take action against any school found to be in violation of the law...'. Ms. Sabharwal similarly commented that the administrative regulations should ensure that "non performing students are not pushed out of Charter Schools due to their need for extra support services."

(b) Response: The agency agrees that equal access to quality education should be paramount for all students, regardless of which public school they attend. The statutes creating charter schools have established a basis for this requirement in KRS 160.1592(14):

A public charter school shall be nonsectarian in its programs, admissions policies, employment practices, partnerships, and all other operations and shall not have entrance requirements or charge tuition or fees, except that a public charter school may require the payment of fees on the same basis and to the same extent as other public schools.

This administrative regulation has language in each section to provide more specific requirements regarding the prohibitions found in KRS 160.1594(14). For this reason, the agency understands the administrative regulations to already generally address the overall concern expressed and does not believe an amendment in regard to the overall concern expressed is necessary.

As to the specific suggestions and questions about the lottery monitor, the agency agrees that there is a lack of specificity as to the entity that selects the lottery monitor but wants to allow the authorizer and the charter school to retain the ability to agree on the selection of the lottery monitor. For this reason, a change has been made to Section 3(15) of the administrative regulation in response to this portion of the comment.

As to the specific suggestions and questions about the possible creation of an ombudsman with "the authority to take action or to direct the authorizer to take action against any school found to be in violation of the law", the agency believes the authority and processes for authorizer evaluation standards, investigation, and consequences in 701 KAR 8:020 substantially occupy the space and role suggested by the commenter. For this reason, the agency agrees with the sentiments expressed by the commenter but has declined to amend this administrative regulation or 701 KAR 8:020 in response to this portion of the comment.

5. Subject Matter: Lottery records

(a) Comment: Mr. Zimmer commented that the administrative regulation's two (2) year retention period requirement for lottery records was insufficient, given the interest in the use of that data for research on the educational outcomes of students who were successful in the lottery to enroll in a charter school and those who were not as well as the need for this data in reviewing an application for renewal of the charter contract. Mr. Zimmer commented that it would be better for the lottery data to be maintained at the state level and to include information on whether a student received an enrollment preference, such as being the sibling of a currently enrolled charter school student, for the purposes of research on charter schools and their efficacy. Kentucky Education Association (KEA) commented similarly regarding the record retention period.

(b) Response: The agency has considered the suggestion to length the retention period for lottery records and has decided to extend it to mirror the length of the charter contract. The agency has amended Section 3(1)(d) of the administrative regulation accordingly. The agency has considered the request that the data be retained at the state level for research purposes and that data be created or retained indicating whether students in the lottery were afforded enrollment preferences, for research purposes. The agency is declining to make amendments to the administrative regulation in response to this portion of the comment as this decision is outside the requirements of this administrative regulation and could be a decision made by the agency or the Kentucky Department of Education in the future, outside these administrative regulations.

6. Subject Matter: Special education and charter schools

(a) Comment: The National Center for Special Education in Charter Schools (NCSECS) commented that Section 4(4) should be amended to add a prohibition on a charter school requesting information on a student's disability status to prevent a charter school from using this information to create an impermissible barrier to admission. Mr. LaFontaine commented in response to NCSECS's comment that Mr. LaFontaine would want, as a charter school, to request and receive information on a student's disability, as this information is requested in his private school's current student application, to get a head start on ensuring that his school can meet the student's needs. Jack Be Nimble agreed with and supported NCSECS's comments.

(b) Response: The agency appreciates both comments but believes the better path, to ensure the prevention of discrimination against a student applicant by a charter school is to add to Section 4(4) a prohibition specifically on a charter school requesting or requiring special education disability or status from a student applicant except to the extent allowed by the authorizer in the charter contract for providing a special needs student an enrollment preference. The authorizer shall be responsible, per the statutes, for ensuring the charter school is not requesting or requiring this information, or using this information, to discriminate against a charter school applicant or student based on the student's disability. As a result, the agency is making a change to the administrative regulation in response to this comment.

7. Subject Matter: Enrollment preference for current students of an existing private school

(a) Comment: Mr. LaFontaine commented that he is excited about the prospect of being able to offer his private school program to more students through the charter school laws recently enacted in Kentucky but he is concerned about whether an enrollment preference would be available for current students of his existing private school if his application for a charter school is granted. Mr. LaFontaine asked that, if Model Lab students are allowed a current student enrollment preference, his private school's students be afforded that same enrollment preference for any charter school that he should start. Mr. LaFontaine also commented that he understood from the charter school statutes that, if he were to start a charter school, he could offer enrollment preferences to students who are eligible for free or reduced price lunch but he questioned whether he could offer preferences for minority students, students based on sex, or students based on their ethnicity. Mr. LaFontaine commented that he would like to offer his program to a more demographically diverse group of students.

(b) Response: The agency is restricted by the statutes governing this administrative regulation and cannot afford an enrollment preference in an administrative regulation that is not allowed in statute. The agency's more full response on this issue generally is in response to the Model Lab comments above. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

8. Subject Matter: Enrollment preferences

(a) Comment: Mr. Ford commented that he was supportive of the enrollment preferences afforded to students, as described in KRS 160.1591(5) and the lottery provisions of 701 KAR 8:010, to provide open and equitable access to all students who want to attend charter schools.

(b) Response: The agency thanks the commenter for this comment. The agency does not believe there is a need to make a change to the administrative regulation in response to this comment.

9. Subject Matter: Enrollment preferences and the lottery

(a) Comment: Mr. LaFontaine commented that he was supportive of the enrollment preferences afforded to students, as described in KRS 160.1591(5) and the lottery provisions of 701 KAR 8:010, to provide open and equitable access to all students who want to attend charter schools.

(b) Response: The agency thanks the commenter for this comment. The agency does not believe there is a need to make a change to the administrative regulation in response to this comment.

10. Subject Matter: Wait list publication and confidentiality

(a) Comment: Mr. LaFontaine commented that he was concerned that the wait list website publication requirements would violate confidentiality laws.

(b) Response: The agency understands that a charter school could assign a number to each student on the wait list, either the number assigned the student during the lottery process or a new number, without publishing the student number assignment master list, and could publish the wait list student numbers to meet the website publication requirements for the wait list

included in this administrative regulation while maintaining the confidentiality of the student information protected by the federal Family Educational Rights and Privacy Act (FERPA). The agency does not believe there is a need to make a change to the administrative regulation in response to this comment.

11. Subject Matter: Enrollment preferences and race and gender

(a) Comment: Mr. LaFontaine commented that he was unclear whether the statutes and the administrative regulations allow, but was supportive of, enrollment preferences afforded to students based on race or gender.

(b) Response: The use of race or gender/sex by a public school in selecting students for enrollment is governed by federal civil rights laws. KRS 344.550 to 344.575 as well provide state statutory sex discrimination prohibitions for “any education program or activity receiving state financial assistance” with exceptions described in those statutes. The U.S. Department of Education (USED) guidance on the legally permissible use of race in admissions for elementary and secondary schools is available at their website at <https://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>. The 2014 USED guidance on single sex schools is based on 34 C.F.R 106.34 and available on their website at <https://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>. USED has informed the agency that a charter school may be authorized as a single sex school as long as the students of the public school district have an offering of a substantially equal educational opportunity to the excluded sex in a separate single sex or co-ed program in the local school district.

Additionally and to the extent not in conflict with civil rights laws, KRS 160.1592(3)(q) requires a charter school to:

“Conduct an admissions lottery if capacity is insufficient to enroll all students who wish to attend the school and ensure that every student has a fair opportunity to be considered in the lottery and that the lottery is competently conducted, equitable, randomized, transparent, impartial, and in accordance with targeted student population and service community as identified in KRS 160.1593(3) so that students are accepted in a public charter school without regard to ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability.”

Section 2(5) of this administrative regulation prohibits a charter school from:

“limit[ing] 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 160.1593(19).”

A charter school wanting to increase its diversity may choose to strategically target its recruiting and advertising efforts to attract more diverse student applicants to the charter school.

12. Subject Matter: Enrollment preferences and residency of student

(a) Comment: Mr. LaFontaine commented that he was unclear whether the enrollment preference for students of full-time employees or charter school board members was available to a student that is not a resident of the local school district.

(b) Response: The legislation only allows a charter school to enroll a student who resides within the boundaries set for the charter school pursuant to the territory governed by the authorizer (e.g., usually the local school district for a local board of education authorizer) and the regional achievement zone specific statutory allowances and the collaboration of local boards of education authorizer. See KRS 160.1591(5)(a). Therefore, the agency understands the enrollment preference possibly available to students of charter school full-time employees and board members is only available to those students who are eligible for enrollment at all in the charter school. The agency does not believe there is a need to make a change to the administrative regulation in response to this comment.

13. Subject Matter: Regional achievement zone charter schools and different authorizers

(a) Comment: Ms. Schaber commented that she was concerned that some of the provisions of the administrative regulation were not written to contemplate and adequately provide for student application, lottery, and enrollment in a regional achievement academy in a regional achievement zone. Ms. Schaber also commented that she was concerned that the administrative regulations did not adequately provide for the authorizers other than a single local board of education.

(b) Response: The agency has reviewed the administrative regulation in light of this comment and made changes to ensure that a student's "residence within the charter school boundaries", rather than residence in the local school district, is the phrasing utilized to account for those charter schools that are not limited to a single resident school district and its students.

14. Subject Matter: Emancipated youth

(a) Comment: Kentucky Protection & Advocacy (KYPA) commented that they were concerned with the definition of "emancipated youth" including mention of the possibility of this legal autonomy for a minor student through a court order and commented that it was KYPA's understanding that this was not possible through a Kentucky court under Kentucky law.

(b) Response: The agency has reviewed the Kentucky law on this comment and understands emancipation of a youth to be available to a minor in Kentucky through a Kentucky court order as stated in a few Kentucky statutes, notably KRS 402.020. The agency understands emancipation of a minor to be the result of either a court order, marriage or pregnancy of the minor, or other circumstances in which the parent or legal guardian has either expressly or by implication given up authority and rights regarding the minor. See *Carricato v. Carricato*, 384 S.W.2d 85, 88 (Ky. 1964) for a description of the law generally on emancipation of a minor in Kentucky. For this reason, the agency believes no change to the administrative regulation in response to this comment is required.

15. Subject Matter: Recognition of authority of non-legal custodian of minor for educational decision-making

(a) Comment: KYPA commented that they were concerned that the administrative regulation did not include, in the list of persons with authority to initiate a student application through the rest of the education process, an adult who has educational decision-making authority without a legal grant or right of guardianship or custody.

(b) Response: The agency has reviewed the Kentucky law on this comment and agrees with the commenter that Kentucky law does not limit educational decision-making to only those adults who are parents or legal guardians or granted legal custody by a court. For this reason, the agency has included a definition for “person with custody or charge” and provided all the rights to that “person” as are afforded in the administrative regulations to a parent or guardian. This is because KRS 159.010 allows any “person with custody or charge” to present a student for enrollment in a public school district of residence of the adult person. This does not require formal, legal guardianship but instead just “charge” (which is the child physically being in the adult’s “charge” at the time of presentation for enrollment). The federal Family Educational Rights and Privacy Act (FERPA) similarly allows for the sharing of a student’s education record with a “parent” which is defined by FERPA as “a parent of a student and includes a natural parent, a guardian, *or an individual acting as a parent in the absence of a parent or a guardian*” (emphasis added). The Individuals with Disabilities Education Act (IDEA) as well has a process for allowing a person who is not the biological parent to serve in this role for IDEA decisions. See 34 C.F.R. 300.30. Often families handle matters, such as allowing another relative or close family friend to care for and raise a child, privately and informally for a variety of reasons (e.g., cannot afford the cost of formal transfer of guardianship to another relative or do not want to go through the public process related to a private and sensitive family matter which would shed negative light on the family). Especially in the current economic climate, anyone can understand that the choice or only option for a family may be an informal, rather than formal guardianship or custody arrangement and therefore the adult with “charge” of the student should be allowed to enroll the student who is truly residing with the adult in the school district. Educational agencies have a duty to provide educational services and resources to students who face these extra challenges. The school district’s DPP has the general authority to conduct a home visit of any home in the school district in which there is a representation that the school age child resides to confirm their compliance with the compulsory attendance requirements of KRS Chapter 159 (e.g., confirm that the child is enrolled in a school and that the school meets the educational requirements just like would occur if the child was being home schooled) and that the child actually resides with a resident of the district.

In 1978, the Kentucky Office of the Attorney General issued OAG 78-64 (emphasis added below) which describes the reasoning behind the broad allowance of any adult with “custody or charge” of a resident child to enroll students in the district:

“...regarding the situation of a child living with someone other than the person who has legal custody of the child. As a general rule, we believe a child would only be entitled to attend school tuition free in the school district in which the legal custodian resides. **However, if a child is not living with his or her legal custodian, we believe the circumstances surrounding such a situation must be considered on a case-by-case basis [for the purposes of establishing residency within the district].... It is not too difficult to imagine such**

situations as a child living with grandparents or even with friends out of a matter of basic physical necessity and with no form of legal intervention having taken place. If the facts of such a situation would establish that the child was not residing in a particular school district primarily for school purposes, we believe tuition generally would not be chargeable. The school board must exercise reasonable, unarbitrary discretion in considering these matters....

Thus, since the compulsory attendance laws are directed to those having responsibility in some respect over children residing in the Commonwealth, we believe the intent of the General Assembly in using the terms “other person” and “custody or charge” was to be as all encompassing as possible. **This statutory language covers everyone from the adult having legal custody of a child to one having mere custody or control, under their charge, of a child, as discussed above.”**

It is for these reasons that the administrative regulation’s definition of “person with custody or charge” is reflective of the other Kentucky statutory authority for an adult person who is not a legal guardian or parent to make educational decisions for a minor student and the definition has as well drawn on the KRS 387.010(2) for “interested person or entity”:

“‘Interested person or entity’ means an adult relative or friend of the minor, an official or representative of a public or private agency, corporation, or association concerned with the minor's welfare, or any other person found suitable by the District Court.”

The administrative regulation’s definition of “person with custody or charge” also includes the residency requirement for the minor student who is with the person with custody or charge, as is required for the residency of any adult to be utilized for education of the student based on residency within a district pursuant to KRS 158.030 and 158.100. The traditional method of confirmation of the minor student’s residency with the adult person is a home visit by the relevant school personnel who confirms that the student is laying his head down, most nights of the week, in that residence. For the foregoing reasons, the agency believes the concerns expressed in this comment are already covered by the current language in the administrative regulation and that no change to the administrative regulation in response to this comment is required.

16. Subject Matter: Notice to student applicants and their families

(a) Comment: KYPA commented that they believed actual notice, not just notice published on the charter school’s website, needed to be required of a charter school when notifying student applicants about the lottery and about student enrollment requirements. KYPA stated that they work with many families that do not have Internet service and that publication on a website alone would not reach these families and would therefore disenfranchise them from the charter school application, lottery, and enrollment opportunities.

(b) Response: The agency appreciates this thoughtful comment and agrees that no family, regardless of Internet connectivity access, should be precluded from receiving the information required by the administrative regulation for student applicants on the lottery and enrollment requirements. A charter school can provide notice in addition to the website publication to the

student applicants without significant additional cost. For this reason, the agency is amending these portions of the administrative regulation in response to this comment.

17. Subject Matter: Special education students' right to education until twenty-first birthday

(a) Comment: Jack Be Nimble commented that the administrative regulation did not mention that a special education student in Kentucky has a right to education until he has attained a high school diploma or until his twenty-first birthday and suggested that this language be added to this administrative regulation.

(b) Response: The agency appreciates this thoughtful comment and agrees that every student, those receiving special education services and those not, is eligible under Kentucky law for public education in the elementary and secondary schools, including charter schools, until the student has either attained a high school diploma or until the student's twenty-first birthday, whichever occurs earlier. See KRS 158.030, 158.100, and *Board of Education v. Bentley*, 383 S.W. 2d 677, 679 (Ky. 1964). The agency's regulation, 702 KAR 7:125 Section 7 (3), also reiterates this right for these individuals. As well, for the identical provision of free and appropriate public education to special education students in Kentucky, see *J.R. v. Cox-Cruey*, 2015 WL 4080052 (E.D.Ky.). For this reason, the agency believes the law in Kentucky is already clear on this point, that guidance is the appropriate home for this clarification for charter schools, and that no change to the administrative regulation is necessary in response to this comment.

18. Subject Matter: Gifted students

(a) Comment: Jack Be Nimble commented with the following suggestion:

“Add language in 701 KAR 8:010 (38)(a) to make clear that students who have been identified as gifted or talented are also considered ‘exceptional children’ under KRS 157.200 (1)(n). Include in regulations that charter school operators must, therefore, also comply with 704 KAR 3:285 and provide each GT student with a Gifted Student Services Plan.”

(b) Response: The agency appreciates this thoughtful comment and agrees that gifted students are included in the definition for “exceptional children” in KRS 157.200(1)(n). For this reason and the inclusion of requirements for charter schools to provide special education services to students with disabilities pursuant to their individual education programs and “all federal and state laws, rules, and regulations”, in KRS 160.1592, and the charter school application requirements in KRS 160.1593(3)(v)(emphasis added) for the charter school applicant to provide its “*plan for identifying and successfully serving* students with disabilities, students who are English language learners, bilingual students, and *students who are academically behind and gifted, including but not limited to the school's plan for compliance with all applicable federal and state laws and regulations*”, the agency does not believe an amendment to the administrative regulation in response to this comment is required.

19. Subject Matter: Enrollment preferences

(a) Comment: Chiefs for Change commented that the administrative regulation should not allow a charter school to ask for additional information from students, even with the consent of

the authorizer, and that the administrative regulation should be amended to add further enrollment preferences for traditionally underperforming students.

(b) Response: The agency appreciates this thoughtful comment and has amended the administrative regulation to restrict the additional information the charter school can request for students, even with the consent of the authorizer, to that information the charter school requires to process the application, conduct the lottery, or enroll the student. The agency also responds to this commenter that the administrative regulation already describes the availability of enrollment preferences in Section 3(3).

20. Subject Matter: Uniform student application

(a) Comment: Public School Options commented that the administrative regulation should not require a uniform student application.

(b) Response: The agency appreciates this comment but believes a uniform student application is necessary to ensure the prohibitions in Kentucky law, on discrimination and cherry-picking of students by charter schools. For this reason, the agency is not amending the administrative regulation or its document incorporated by reference in response to this comment.

21. Subject Matter: Definition of “at risk of academic failure”

(a) Comment: KEA commented that it disagreed with the definition in the administrative regulation for “at risk of academic failure” and believe the categories included in the definition “are too broad and will encompass individual students who are performing well academically.”

(b) Response: The agency appreciates this comment but responds that this definition was borrowed largely from the list of circumstances identifying students at high risk of dropping out in 704 KAR 7:070. The agency is attempting to weave the requirements and provisions of these administrative regulations into existing Kentucky law, especially existing administrative regulations previously promulgated by this agency, and for that reason relied upon the existing definition of an extremely similar categorical description of indicators of threat to student success. The agency is not making a change to the administrative regulation in response.

22. Subject Matter: Person with custody or charge

(a) Comment: KEA commented that it disagreed with the administrative regulation’s allowance for a person without parent-child or guardian-ward relationship to submit a student application on behalf of the student.

(b) Response: The agency appreciates this comment but believes the administrative regulation’s provisions regarding those persons with authority to apply for a student to attend a charter school and pursue enrollment for the student is reflective of existing Kentucky law, as stated above. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

23. Subject Matter: Limitation of enrollment preference for charter school board member and employee children

(a) Comment: KEA commented that the administrative regulation should reiterate the availability of the enrollment preference for children of charter school board members and employees for only ten percent (10%) of the charter school population.

(b) Response: The agency appreciates this thoughtful comment responds to this commenter that the administrative regulation already describes the availability of enrollment preferences in Section 3(3).

24. Subject Matter: Enrollment preference outcomes after changes

(a) Comment: KEA commented that it disagreed with allowing a charter school to “determine how the withdrawal of a sibling will affect the enrollment of the remaining sibling(s).”

(b) Response: The agency appreciates this comment and responds that this is an outcome not provided by the statutes and therefore transparency in how the charter school will treat this circumstance is the aim of this portion of the administrative regulation. For this reason, no change to the administrative regulation is being made in response to this comment.

25. Subject Matter: Human randomization

(a) Comment: KEA commented that it disagreed with the administrative regulation’s allowance for human randomization as this “increases the likelihood of student selection errors and/or tampering.”

(b) Response: The agency appreciates this comment but references the commenter to the lottery monitor requirement and the segregation of duties policy requirement in the administrative regulation to prevent these outcomes. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

26. Subject Matter: Lottery monitor

(a) Comment: KEA commented that it suggested definition of the role and establishment of qualifications beyond those in the administrative regulation already for the lottery monitor.

(b) Response: The agency appreciates this comment and has added language to the lottery monitor provisions in response to an earlier comment to require the lottery monitor selection process be set in the charter contract by the charter school and the authorizer. The agency does not believe additional definition of this role and the person’s qualifications is necessary to address the stated concern. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

27. Subject Matter: Information on cause of a student’s residency with an adult other than the student’s parent

(a) Comment: KEA commented that it disagreed with the administrative regulation’s prohibition on the charter school “requesting information about the cause of a student’s residency with a person other than his or her parent” and that this prohibition will cause

difficulty in enforcing and confirming the adherence to the student residency requirements of the charter school statutes.

(b) Response: The agency appreciates this comment but believes this prohibition is necessary for two reasons. First, allowing a charter school to request this information could prove in certain circumstances to be a violation of the U.S. Supreme Court case, *Plyler v. Doe*, which prohibits a public school from making inquiries that would or could cause a “chilling effect” on the student’s attendance or pursuit of education due to fear of repercussions for the student or family based on the legality of the student and family’s presence in the United States. Second, a charter school could use this information, if allowed to request it, to discriminate against a student who may be most in need of educational opportunity and lacking in family support. Third, the provisions of this administrative regulation do not negate the responsibility and lawful duty of every person in Kentucky to report suspected dependency, neglect, or abuse of a minor under KRS 620.030. Finally, a charter school can confirm a student’s residency requirement adherence with a home visit, just like a local school district performs, verifying that the student lays his head down most nights of the week with the indicated adult who is a resident within the charter school’s attendance boundaries. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

28. Subject Matter: Lottery and charter school capacity

(a) Comment: KEA commented that the lottery process is required only when the stated capacity of the charter school is exceeded, based on the number of submitted student applications. KEA stated that it had concerns that the charter school could understate the capacity for students and then raise the capacity of the school and avoid the lottery process after applications in excess of the initial capacity number were received.

(b) Response: The agency appreciates this comment points out that 701 KAR 8:020 and its documents incorporated by reference require the charter school applicant to state the charter school capacity maximum and minimum and the number of students by which the charter school can exceed the maximum capacity, if any. As well, that administrative regulation requires a charter contract amendment, which has to be approved by the commissioner of education, for a change in the capacity of the charter school. This is not a change the charter school can make, on its own or spontaneously. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

29. Subject Matter: Lottery monitor and complaint investigation authority

(a) Comment: The National Association of Charter School Authorizers commented that it agreed with the transparency and integrity requirements for lotteries, as established by this administrative regulation, but that NACSA believed complaints about the lottery monitor should be investigated by the authorizer rather than the commissioner of education to “avoid any perception of bias – and that the Commissioner have a limited appellate role.”

(b) Response: The agency appreciates this comment but responds that the perceived most neutral party for investigation of lottery or lottery monitor complaints is the commissioner of education. The agency is not making a change to the administrative regulation in response to this comment.

30. Subject Matter: Website listing

(a) Comment: The Fellowship of Reconciliation commented that it believed the administrative regulation should contain the URLs for the student application and for the list of schools “identified for comprehensive support and improvement”.

(b) Response: The agency appreciates this comment but responds that exact URL for each of these online resources is not known at this time. Both of these will be on the Kentucky Department of Education website, but the specific location of each resource is not known and may change over time. For these reasons, the agency is not making a change to the administrative regulation in response to this comment.

**Summary of Statement of Consideration
Action Taken by Promulgating Administrative Body**

**THIS SECTION TO BE COMPLETED UPON APPROVAL OF ABOVE CHANGES BY
KBE**