Developing Admissions and Enrollment Policies for your Charter School

I. INTRODUCTION

Charters schools are public schools that operate independently from local school districts. They are tuition-free and open to any student who wishes to attend. By law, charter schools must admit all students who wish to attend the school and must institute a public random drawing – or “lottery” – process for admissions if the number of students interested in attending the school exceeds the school’s capacity.

Because every charter school is allowed the freedom to design their own educational program, charter schools may, with approval from their authorizer, adopt admissions policies and practices that enable them to carry out their unique educational mission. Such policies and practices often include outreach and marketing strategies, and may include application process, admissions requirements, and lottery preferences.

However, these admissions policies and practices can receive scrutiny at various junctures. The more significant times of review include the time of petition submission to the chartering authority, the time of funding applications, at renewal, and during each school year’s enrollment process. Charter authorizers may take the position that an admissions policy is legally impermissible and use that as the basis to deny a charter petition. Moreover, even if a charter petition is granted, other impediments to the charter school’s progress may be based on its admissions policies. For example, charter schools seeking funding under the Federal Public Charter Schools Grant Program may encounter challenges receiving funding if they have adopted certain admissions policies and practices, as discussed later in this Knowledge Brief. In addition, if a charter school’s admissions policies are challenged, tested, and ultimately found illegal, those policies and practices could lead to charter revocation. Lastly, a parent whose child is unable to gain admission to a charter school may point out real or perceived unfairness in the admission practices of a charter school, causing damage to relationships in the school community and with potential supporters. Accordingly, charter school developers and operators must understand and observe the applicable laws governing charter school admissions policies.

This Knowledge Brief will examine federal and state laws, including those regarding admissions preferences and lottery procedures, and other rules that may govern admission policies and practices. It will also provide information and guidance for charter schools on implementing recruitment efforts and admissions practices that will assist in achieving a diverse student population.

CCSA strongly recommends that you consult with your attorney regarding the applicability of these laws to your charter school.
II. GUIDELINES FOR DEVELOPING ADMISSIONS AND ENROLLMENT POLICIES

State law authorizes charter schools to establish admissions practices that align with the school’s educational mission, as well as contribute to school diversity and serving disadvantaged student groups. Charter schools must ensure that any admission practice or preference does not unlawfully favor or discourage any particular student or parent group. Both State and Federal law prohibit charter schools from discriminating on the basis of race, color, national origin, gender or disability in determining whether an applicant satisfies any admission requirements.¹

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

- Are consistent with Federal and State laws;
- Are designed to contribute to a diverse student population that is reflective of the community in which the school is located;
- Are nondiscriminatory on their face, are implemented in a nondiscriminatory manner, and do not have the effect of excluding students on the basis of race, color, national origin, gender or disability;
- Are fair to all student populations and are not likely to discourage any student or parent group from seeking enrollment; and
- Are designed to assist the charter school in carrying out its educational mission.

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

III. LAWS REGARDING ADMISSIONS POLICIES

¹ California Constitution Article I, Section 31; Education Sections 220, 47605 (d)(1); U.S. Const., Amdt. 14, Section 1; 42 U.S.C.A. Section 2000d
A. Overview of Laws Governing Charter School Admissions

The primary authorities governing charter schools admissions policies and practices are the following:

- California Charter Schools Act (“Act”);
- Federal Elementary and Secondary Education Act (“ESEA”), as amended by No Child Left Behind;
- Federal and state civil rights legislation, contained in various federal statutes, which prohibits discrimination on the basis of race, color, national origin, sex, disability, and age; and,
- Certain policies and practices adopted by your charter authorizer regarding the admissions process.
- Once your charter is approved, the admissions policies and practices set forth in your charter, if any.

The federal and state authorities will be discussed in this Knowledge Brief. You should familiarize yourself with any policies or practices adopted by your charter authorizer regarding the charter school admissions process, and seek legal counsel if you have any questions.

B. California Charter Schools Act

The Act requires charter schools to admit all pupils who wish to attend and who are residents of California. Charter schools may not discriminate against any pupil on the basis of certain characteristics, including disability, gender, nationality, race or ethnicity, religion, or sexual orientation. Charter school petitions are required to address “the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.”

If applications for admission exceed the targeted enrollment for the school or grade, the Act requires schools to initiate a “public random drawing,” or lottery.

The Act requires charters schools to provide preferences for the following students:

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2 Education Code Section 47605(d)
3 Id., Education Code Section 220
4 Education Code section 47605 (b)(5)(G)
5 Education Code Section 47605(d)(2)(B)
6 Note that the Act does not specifically define the term “preference.” While the Federal Charter Schools Program Non-Regulatory Guidance distinguishes between weighted lotteries, separate lotteries and lottery exemptions, California law is silent as to the mechanics of how lottery preferences may be implemented. This is further discussed in Section III.
• Students currently attending the charter school.
• Student who reside in the district in which the school is authorized.
• Students who reside within the former attendance area of a charter school that was converted from an existing public school.\(^7\)

The Act expressly permits, but does not require, charter schools to extend the following additional preferences:

• Charter schools located in the attendance area of a public elementary school in which 50% or more of the pupils are eligible for free or reduced price meals may give a preference in admissions to pupils who are currently enrolled in that public school and to pupils who reside in the public school attendance area where the charter school is located.\(^8\)

• Other preferences, so long as they are permitted by the chartering authority on an individual school basis and are consistent with law.\(^9\)

In addition, charter schools applying for funding under the Charter School Facility Grant Program must provide an admissions preference to students who are currently enrolled in a public elementary school in which 70 percent or more of the pupil enrollment is eligible for free or reduced-price meals and who reside in the elementary school attendance area where the charter school.\(^10\)

The Act requires charter schools to include their proposed admissions requirements in their charter petitions.\(^11\) However, the Act does not provide further guidance regarding what these requirements may be. Therefore, you should seek the assistance of legal counsel in developing your admissions criteria and policies, especially if your charter school seeks to institute admission preferences that are not specifically authorized by law.

### C. Federal Laws and Non-regulatory Guidance

Charter schools often obtain start-up federal funding through the Public Charter Schools Grant Program (“PCSGP”) established by the federal Elementary and Secondary Education Act (“ESEA”), as amended by No Child Left Behind. The United States Department of Education (“DOE”) has published a document referred to as the Charter Schools Program Non-Regulatory Guidance which was revised in January 2014 (“Non-Regulatory Guidance”). There is debate in the legal community as to whether the Non-Regulatory Guidance bears the weight of law. Nevertheless, the DOE and the California Department of Education (“CDE”), which implements the program for California, has taken the position that a charter school wishing to accept PCSGP funds should follow the terms of the Non-Regulatory Guidance.

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\(^7\) Education Code Section 47605(d)

\(^8\) Education Code Section 47605.3

\(^9\) Education Code Section 47605(d)(2)(B)

\(^10\) Education Code Section 47614.5

\(^11\) Education Code Section 47605(b)(5)(H)
The Non-Regulatory Guidance provides directives regarding admissions and preferences. Specifically, it provides that recipient charter schools provide admissions preferences only in limited circumstances:

- A charter school may provide an *exemption* from the lottery only for those students who are deemed to have been admitted to the charter school already and, therefore, do not need to reapply. This includes the following categories of applicants:
  - Students who are enrolled in a public school at the time it is converted into a public charter school;
  - Students who are eligible to attend, and are living in the attendance area of, a public school at the time it is converted into a public charter school;
  - Siblings of students already admitted to or attending the same charter school;
  - Children of a charter school’s founders, teachers, and staff, so long as the total number of students allowed under this exemption constitutes only a small percentage of the school’s total enrollment; and
  - Children of employees in a work-site charter school, (so long as the total number of students allowed under this exemption constitutes only a small percentage of the school’s total enrollment).\textsuperscript{12}

- A charter school may use a *weighted lottery*, or a lottery that gives preference to one category of students over another, only when:
  - The weighted lottery is necessary to comply with title VI of the Civil Rights Act of 1964 (“Title VI”), title IX of the Education Amendments of 1972 (“Title IX), Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the equal protection clause of the Constitution, or applicable State law; or
  - The weighting is in favor of students seeking to change schools under the public school choice provisions of title I, part A of the ESEA for the limited purpose of providing greater choice to students covered by those provisions;\textsuperscript{13} or
  - The weighting is in favor of certain subgroups of educationally disadvantaged students and State law permits the use of weighted lotteries in favor of such students.\textsuperscript{14} “Educationally disadvantaged students” means the categories described in section 1115(b)(2) of the ESEA, which include students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, and homeless students.

\textsuperscript{12} Answer to Question E-4 of the Non-Regulatory Guidance
\textsuperscript{13} Answer to Question E-4 of the Non-Regulatory Guidance
\textsuperscript{14} The Non-Regulatory Guidance makes clear that weighted lotteries may not be used to create schools exclusively to serve a particular subset of students. The Department of Education also encourages charter schools that use weighted lotteries to do so as part of a broader strategy that includes fulfillment of their existing responsibilities related to outreach, recruitment, and retention for all students.
Please note that before charter schools may use weighted lotteries under these circumstances, the CDE must first amend its CSP grant application with the Department of Education to allow grantee-charter schools to implement these weighted lotteries. Charter schools that are direct-recipients of CSP funding must amend their CSP applications directly with the Department of Education. Please review the Non-Regulatory Guidance for more details on amending your grant application.

- The Non-Regulatory Guidance specifically prohibits PCSGP grantees from using separate lottery pools for different groups of students. A charter school receiving PCSGP funds must hold one lottery that provides qualified students with an equal opportunity to attend the school.

There are significant differences between the state’s relatively broad authority on admission preferences and the limited preferences and exemptions allowed under the federal Non-Regulatory Guidance. Many PCSGP applicants have encountered difficulty in obtaining approval of their applications if their charter petitions include admissions preferences aside from those permitted under the Non-Regulatory Guidance, even if the chartering authority is in agreement with those preferences. An argument could be made that preferences not specifically provided for or contemplated by the Non-Regulatory Guidance may, nonetheless, be consistent with the Non-Regulatory Guidance if they are authorized by state law.

Finally, both State and Federal law prohibit charters schools from providing admissions preferences that would result in discrimination against any student on the basis of certain characteristics, including disability, gender, nationality, race or ethnicity, religion, or sexual orientation.¹⁵ Moreover, under California’s Proposition 209, charter schools may not discriminate against, or grant preferential status to, any individual or group on the basis of race, sex, color, ethnicity or national origin.¹⁶

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¹⁵ Education Code Section 47605(d)(1), 220
¹⁶ California Constitution Article I, Section 31
IV. ADMISSIONS POLICIES

A. Determining School Capacity and Enrollment Timeline

Prior to opening enrollment, a charter school should determine its projected capacity for the particular school year. This determination may depend upon several factors, including any enrollment capacity\textsuperscript{17} that you may have described in your charter petition, facility constraints, and teacher/student ratio calculations. A charter school’s admissions policy and recruitment materials should be clear about the school’s capacity as it triggers the lottery process (see below).

Finally, a charter school’s admissions policy should also discuss the timeline for applications and enrollment, and whether and under what conditions students, either on the waiting list or otherwise, may be admitted mid-year.

B. Recruiting and Outreach

The Act affords charter schools substantial flexibility in how charter schools may conduct their admissions procedures.

Charter schools typically begin the admissions process with open houses, parent meetings, and other recruiting efforts. Because State law requires charters to address the means by which the school will achieve the racial and ethnic balance reflective of the district, charter schools may consider focusing outreach and recruitment efforts to target certain student groups, as discussed in more detail later in this knowledge brief.

During or following these events, charter schools begin to accept enrollment forms (frequently referred to as “intent to enroll” forms). Many charter schools have an “open enrollment” period with a cut-off date. At the end of the open enrollment period, if it appears that one or more grade levels will be oversubscribed, then a public lottery is conducted. In conducting these recruiting and outreach efforts it is important that charter schools remain open, transparent and designed to encourage participation and interest among diverse groups of students.

C. Enrollment Procedures and Application Requirements

Because charter schools often have unique educational missions, many schools have chosen to implement enrollment practices designed to engage interested students in the school’s focus area or design an appropriate program for the student once he or she is enrolled. These enrollment practices sometimes include applications or auditions, and may involve the review of a student’s academic proficiency levels. This section discusses ways in which a charter school

\textsuperscript{17} It is important to note that the Act does not require a charter petition to state the enrollment capacity of the proposed charter school or place a limit on enrollment growth. In addition, the Act requires chartering authorities to make reasonable efforts to accommodate the growth of charter schools and prohibits authorizers from taking any action that would impede a charter school from expanding enrollment to meet pupil demand. (Educ. Code 47065(d)(2)(C)).
may implement enrollment procedures designed to further the school’s mission, while still maintaining compliance with the requirements of state and federal law.

i. Applications and Auditions

As public schools, charter schools must be open to all students that wish to attend and may not have selective admissions criteria or practices. However, charter schools may design admissions processes tailored to assist them in carrying out their educational mission.

Many charter schools have unique focus areas, such as visual and performing arts, college readiness, or cultural and language immersion. For these schools, an application or admissions process geared to the school’s particular focus area can be an effective way to engage students in this focus area and ensure that the school can effectively carry out its particular educational mission. Some charter schools require applicants to participate in an audition, write an essay, or submit a letter of recommendation.

Depending on how these requirements are implemented, they may or may not be acceptable. Applications and auditions can be used as part of the admissions process, but a student’s admission to the school should not be conditioned solely on this criteria. For example, a student should not be denied enrollment based on the content of an admissions essay, but only for failure to write the essay. Charter schools seeking to employ admissions requirements or application requirements should first seek advice of legal counsel.

In addition, application procedures must not discriminate on the basis of race, color, or national origin in determining whether an applicant satisfies any admissions requirements. Eligibility criteria must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. For example, students with limited-English proficiency must have the opportunity to meet any eligibility criterion for admission in their native language. If such criteria have a disparate impact on the basis of race, disability, or national origin, then the criteria should be examined to ensure that they are educationally justified and that no alternative criteria exist that would equally serve the school’s goals and have a lesser disparate impact.

ii. Academic Proficiency

Some charter schools have attempted to condition admission on having achieved a certain grade average or grades in certain subject areas. It is unlikely that California law would permit such a practice, since charter schools must accept all students, space-permitting. However, as discussed below, charter schools may institute application procedures that evaluate a student’s academic proficiency or other factors. While these factors cannot be used to determine whether a student will be admitted to the school, they can be used for purposes of placement and educational programming once a student is enrolled.

In addition, charter schools can, and often do, require that students have matriculated from the previous grade in order to be admitted. For example, 9-12 charter high schools typically require that entering students have matriculated from eighth grade before being admitted.
V. LOTTERY PROCEDURES AND PREFERENCES

The following section discusses the ways in which a charter school may implement a public random drawing to determine admissions, and examines the legality of popular admissions preferences under California and federal law and the federal Non-Regulatory Guidance.

A. Mechanics of the Admissions Lottery

The Act provides that if the number of students who wish to attend the charter school exceeds the school’s capacity, attendance, except for existing pupils of the school, shall be determined by “a public random drawing.” However, the Act is silent regarding the particulars of how schools may conduct their lotteries and how preferences may be implemented. Charter schools have considerable flexibility in the way in which they implement their lotteries, so long as the process is transparent and governed by a clear and comprehensive admissions policy that does not violate established state or federal law. For example, some schools hold a public meeting in which they draw numbered cards or balls from a large bowl.

Admissions preferences can be implemented in several ways. In one method, “preferred” students are completely exempted from the lottery and are automatically admitted to the school. Often, schools have a hierarchy of preferred groups, and they admit groups in order of preference as outlined in their charter. Alternatively, preferred students may receive additional “tokens” when participating in the school’s lottery and the lottery is weighted to their advantage. One may think of this like a raffle in which some participants have multiple raffle tickets and others only have one. Still, another option for schools not seeking or receiving PCSGP funding is to conduct several lotteries, with more students being selected from the “preferred” lottery pool than the non-preferred lottery pool.

B. Waiting Lists

Your charter authorizer may have adopted a policy regarding charter school admissions policies and preferences. Be sure to consult with your authorizer and its charter school policy to ensure that your charter petition complies with your authorizer’s requirements.

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\[18\] As discussed above, a charter school may be limited in how it conducts its lottery during the term of the school’s participation in the federal PCSGP.
Charter schools also have substantial flexibility regarding their waiting lists, including whether or not to maintain a waiting list at all. A charter school’s admissions policy should address how students are placed on the waiting list and how students are chosen from the wait list if openings occur during the school year. The policy should also address whether the wait list is used only for a particular school year or may carry over from year to year.

C. Popular Admissions Preferences

i. Children of Founders, Board Members and Employees

The federal Non-Regulatory Guidance allows children of founders to be exempted from admissions lotteries, so long as the total number of students allowed under each exemption is a small percentage of the schools’ total enrollment. However, the federal Non-Regulatory guidance does not allow for admissions preferences to be granted to children of board members or children of employees, except for employees at a work-site charter school.

California law is silent on admissions preferences for children of founders, board members, and employees. However, these preferences would be acceptable with authorizer approval. Many charter authorizers seek to limit the number of students admitted under this preference to a small percentage of total enrollment in order to ensure that the admissions process is open to the public.

Some charter schools have extended founder status to children of parents who contribute significant time or skills to the development of the school. Family involvement is critical to the overall success of a school community and many existing charter schools owe their success, in part, to parental support in the school’s developing stages. Recognizing this, the Association supports admissions policies and practices that grant an admissions preference to children of those who contribute time or skills to establishing a charter school. However, it is appropriate to grant such benefits only during the initial charter school term. In addition, a charter school seeking to implement this type of preference should clearly define who qualifies as a founder in their admissions policies.

ii. Siblings

Admissions preference for siblings of current students is not prohibited under California law, so such a preference would be allowable with authorizer approval. Admissions preference for siblings is a common practice in charter schools. As discussed above, the federal Non-Regulatory Guidance specifically allows siblings of current students to be exempted from a charter school’s lottery and be given an automatic preference.

iii. Other Preferences

There are many other admissions preferences considered by charter schools. These include, but are not limited to, preferences for the following:
- Students who attended an affiliated charter school; or
- Students whose parents did not attend or complete college.

State law allows charter schools to implement other admissions preferences, so long as they are approved by the charter authorizer on an individual school basis and are otherwise consistent with law. However, charter schools that provide admissions preferences not expressly authorized by the federal Non-Regulatory Guidance will not be eligible PCSGP funding.

A charter school seeking to implement an admissions policy not expressly authorized under both California law and the federal Non-Regulatory Guidance, including those outlined immediately above, should seek legal counsel before implementing such an admissions policy.

VI. SPECIAL CONSIDERATIONS: CREATING A DIVERSE STUDENT POPULATION

The Charter Schools Act requires schools to describe in their charters how the school will achieve a racial and ethnic balance among its pupils that is reflective of the authorizing district. Schools also likely have their own reasons for seeking a diverse student population. A charter school may use a variety of strategies to achieve this diversity. For example, many charter schools choose to advertise or distribute fliers in socioeconomically disadvantaged neighborhoods, present at community fairs and festivals, and offer outreach materials in multiple languages. Coupled with robust outreach and recruitment efforts, admissions preferences can also be an important tool for charter schools to reach certain student populations and achieve a diverse student population.

This section explores recruitment practices and admissions policies targeted to help schools recruit specific groups of students.

A. Racial and Ethnic Diversity

A charter school is required to include in its charter petition, "the means by which the school will achieve a racial and ethnic balance" among its students that is "reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted."

However, both state and federal laws restrict a charter school’s ability to take race and ethnicity into account when making admissions decisions.

The Charter Schools Act provides that charter schools may not discriminate against any student on the basis of disability, gender, nationality, race or ethnicity, religion, or sexual orientation, among other characteristics. Under Proposition 209, charter schools may not discriminate against, or grant preferential status to, any individual or group on the basis of race, sex, color, ethnicity or national origin. Therefore, charter schools are generally prohibited under these laws from instituting any admissions policies or practices which would discriminate against or grant preference to particular racial or ethnic group.

19 Education Code Section 47605(b)(5)(G)
20 Education Code Section 47605(d)(1)
21 California Constitution Article I, Section 31
Federal laws also restrict charter schools’ ability to take race into account in making admissions decisions. In December 2011, the United States Department of Justice and Department Education jointly issued guidance\(^\text{22}\) explaining how educational institutions can lawfully implement policies and practices to achieve racial diversity within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and existing case law.

This guidance makes clear that charter schools, as well as other educational institutions, may take race into account in making admissions decisions in only limited circumstances. Charter schools should consider approaches that do not take race into account before implementing any raced-based admissions practices. Race may be used only in a narrowly-tailored way to meet a compelling interest, such as to remedy discrimination, to promote the educational benefits of diversity, or to reduce minority-group isolation.\(^\text{23}\)

In developing any policies or practices that would take race into account in determining admissions, schools should do the following:

- Identify a compelling interest, tied to your school’s mission, for considering race during the admissions process.
- Determine how the proposed policy relates to your school’s mission and unique circumstances.
- Consider whether there are race-neutral approaches that you can use to achieve your goal. Race-neutral approaches can take racial impact into account but do not rely on race as an express criterion. Examples of race-neutral criteria include socioeconomic status, parental education, and geography.
- If race-neutral measures would be unworkable, consider measures that rely on the generalized use of racial criteria. Generalized race-based approaches employ expressly racial criteria, such as the overall racial composition of neighborhoods, but do not involve decision-making on the basis of any individual student’s race.
- If both race-neutral and generalized race-based approach would not accomplish the school’s goal, the school may consider using individual racial classifications under appropriate factual circumstances. Schools using individualized racial classifications must periodically review their policies and practices to determine whether racial classifications remain necessary and modify practices as needed.
- Schools should maintain documents that describe the compelling interest for which race is being used to determine admissions, the process the school followed in developing the policy (including alternatives considered), and the ways in which the policy helps to achieve diversity or avoid racial isolation.

\(^{22}\) *Guidance on the Voluntary Use of race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, United States Department of Justice and Department Education (2011).

Notwithstanding these limitations, charter schools are free to engage in vigorous recruiting and outreach campaigns targeted to reach the student population desired by the charter school. Charters may also offer admissions preferences not tied to race or ethnicity, such as geography, to achieve socioeconomic and demographic diversity (discussed below).

Charter schools should consult their legal counsel and authorizer about the feasibility of instituting admissions preferences not specifically mentioned in the Act. Additionally, applicants to the federal Public Charter School Grant program will be restricted in their admissions preferences under the terms of that program.

B. Gender

California law regulates gender preferences in public education, though not specifically through the Charter Schools Act. In 1996, Californians passed Proposition 209, which bars the use of race, ethnicity and gender in public school admissions decisions, among other areas. Unless a charter school is specifically created under No Child Left Behind’s grant for single sex schools, or the preference is specifically designed to meet a compelling interest under federal civil rights laws, it is likely that gender preference in admissions to charter schools is prohibited under Prop. 209.

Federal law does allow single sex charter schools on a limited basis. Federal civil rights laws allow preference based on sex, if the preference is narrowly tailored to meet a compelling interest, such as to remedy past discrimination. In addition, No Child Left Behind created grant funding specifically for single-sex schools meeting certain criteria.

However, the federal Non-Regulatory Guidance provides that charter school lotteries may not be weighted to favor one gender over another.

A charter school considering an admissions preference for a certain gender or separate lotteries based on certain gender should consult with an attorney.

C. Geography

State law provides that admission to a charter school may not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian. The federal Non-Regulatory Guidance for PCSGP grantees does not expressly prohibit preferences based on geography. However, as discussed above, the only geographic preferences expressly allowable under both California law and the federal Non-Regulatory Guidance are preferences for:

- In-district students;

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24 California Constitution Article I, Section 31
25 34 C.F.R. Section 106.3
26 20 U.S.C. Section 7215(a)(23)
27 Answer to Question E-5 of the Non-Regulatory Guidance
28 Education Code Section 47605(d)
• Conversion school students residing within the attendance area of the former district school; and

• Students residing in the attendance area of a public school in which 50% or more of the students are eligible for free or reduced price meals.

However, some schools consider conducting separate lotteries based on ZIP Codes or other geographic criteria to achieve such geographic balance and/or to reflect the population of the chartering district.

Charter schools seeking to craft some form of geographic preference for their admissions policies should seek the advice of their legal counsel to ensure the policy meets legal requirements. Charter petitioners are also advised to review any policies that their authorizer may have in place, or review recently approved petitions, to determine whether geographic preferences are likely to be approved by the authorizer.

D. Socioeconomic Diversity and Free and Reduced Price Lunch Status

A charter school may seek to serve students that would otherwise have limited opportunities to attend schools of choice, such as students from socioeconomically disadvantaged families. The best way to recruit students from a targeted demographic is to advertise or distribute information in specific neighborhoods and conduct outreach at community events that are likely to be attended by the student groups the charter school is trying to reach.

As of January 2014, the federal Non-Regulatory Guidance allows charter schools to implement weighted lotteries in favor of educationally disadvantaged students, including economically disadvantaged and homeless students, so long as the practice is consistent with State law. A charter school may now provide a lottery preference for all or a subset of economically disadvantaged students if the preference is approved by the authorizer in the charter petition. As noted above, charter schools seeking to implement such a preference must wait for the CDE to amend its CSP grant application with the U.S. Department of Education or must amend their own application if they are a direct recipient of grant funds from the U.S. Department of Education.

Under State law, a school may also offer admissions preferences to students who are eligible for the free and reduced price lunch program depending on where the school is located. A charter school physically located in the attendance area of a public elementary school in which 50% or more of the pupil enrollment is eligible for free or reduced price meals may give a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter school is located. However, the Charter Schools Act neither prohibits nor specifically allows a charter school not located in such an attendance area to institute the same admissions preference. Therefore, a charter school that is interested in instituting such an enrollment preference and is not located in such an attendance area should seek approval from its authorizer.

29 Education Code Section 47605.3
Please note that additional requirements related to free and reduced price lunch status may apply for charter schools seeking facilities funding under the Charter School Facility Grant Program, enacted by Senate Bill (SB) 740.  

E. Cultural Groups, Language Groups, and English Language Learners

In addition to attempts to achieve demographic diversity, some charter schools have worked to highlight cultural and language issues in their programs and in their student populations.

The charter school movement throughout the country is experiencing growth in “single-culture” charter schools, which dedicate a significant portion of the schools’ curricula to teaching about a specific culture and that culture’s native language. There is also growth in “dual language immersion” charter schools, which teach curricula both in English and a second language.

Regardless of a charter school’s academic or cultural focus, charter schools must not discriminate against or give admissions preference to a particular ethnic, cultural, or religious group. These practices would likely be subject to challenge under California and federal law.  

In the past, charter schools have been scrutinized for instituting admissions preferences for students who speak dual languages or who are classified as English Language Learners. Charter authorizers have viewed this as a proxy for preferring students of a specific culture or ethnicity, and often reluctant to allow such a preference.

As of January 2014, the federal Non-Regulatory Guidance allows charter schools to implement weighted lotteries in favor of limited English proficient students, so long as the practice is consistent with State law. A charter school may now provide a statistical lottery preference for limited English proficient students if the preference is approved by the authorizer. However, it is critical that any such practices be designed in such a way that they do not result in disparate treatment of students of a particular race, ethnicity or national origin in violation of Proposition 209. As noted above, charter schools seeking to implement such a preference must wait for the CDE to amend its CSP grant application with the U.S. Department of Education or must amend their own application if they are a direct recipient of grant funds from the U.S. Department of Education.

Charter schools seeking to implement admissions requirements or grant admissions preferences for other cultural or language groups should consult with their authorizer and legal counsel about whether these practices would be allowable.

F. Students with Disabilities

The Act requires that all applicants be accepted for admission as long as space is available. Charter schools must have nondiscriminatory enrollment practices, and should not collect or

30 Please review the resources available on the California Department of Education’s website, at http://www.cde.ca.gov/sp/cs/as/facgrntoc.asp.
31 California Constitution Article I, Section 31; Education Sections 220, 47605 (d)(1); U.S. Const., Amdt. 14, Section 1; 42 U.S.C.A. Section 2000d
use information about whether a student seeking to enroll is, or may be, eligible for special education services under the Individuals with Disabilities Education Act\(^\text{32}\) ("IDEA") or accommodations under Section 504 of the Rehabilitation Act\(^\text{33}\) to determine the student's eligibility for enrollment. In addition, charter schools may not request or require students or parents to waive their right to a free appropriate public education in order to attend the charter school.

Charter schools that use any of the following admissions methods may risk a claim from a student or parent that the school is discriminating against the student on the basis of his or her disability in its admissions process:

- Stating that the school only has capacity to serve a maximum number of students with IEPs and any additional students with IEPs may not be admitted;
- Requiring that a student include a copy of his or her IEP with the completed application for admission;
- Advising students and parents that the school has limited resources and cannot always comply with students’ IEPs.

In order to avoid the appearance of discrimination or “screening out” on the basis of disability, CCSA recommends that schools collect information about a student’s special education eligibility or services only after a student is admitted to the school, except as discussed below.

Charter schools using a lottery system or waiting list for admissions should consider using a two-step enrollment process. In the first stage, the school would collect only basic information required to determine the student’s eligibility for enrollment or participation in the admissions lottery. After the student is determined to be eligible for enrollment or is admitted through the lottery or waitlist, the school would collect more detailed information necessary to enroll and serve the student, such as a copy of the student’s IEP.

Under the revised Non-Regulatory Guidance, charter schools may implement weighted lotteries in favor of students with disabilities, so long as the practice is consistent with State law. A charter school may provide a lottery preference of this nature for all or a subset of students with disabilities, such as students with specific needs, if the preference is approved by the authorizer in the charter petition. Enrollment and lottery procedures should be carefully developed and implemented to ensure that information regarding a student’s disability is used only to improve the student’s chances of admission through the lottery, and is not used to discriminate against the student in any way. For example, schools might consider requesting a simple “yes” or “no” response as to a student’s eligibility for the preference, without collecting additional information about the student’s disability or special education needs. Schools might also consider tracking the number of students who received the preference each year, along with the number of students who received the preference and were admitted to the school through the lottery, to demonstrate that the information was used to improve students’

\(^{32}\) 20 U.S.C. Section 1411 et. seq.  
\(^{33}\) 29 U.S.C. Section et seq.
changes of admission to the school. Charter schools seeking to use a weighed lottery for students with disabilities, are strongly encouraged to work with legal counsel to ensure these procedures are legally compliant.

These admissions guidelines apply irrespective of a charter school’s resources or degree of responsibility for delivering special education services. In some cases, the duty to provide special education services students with disabilities enrolled in a charter school may fall on the charter school’s authorizing district. However, this is dependent on the charter school’s legal status for special education and the terms of the school’s charter and agreements with its authorizer. Regardless of these arrangements, all charter schools must have nondiscriminatory enrollment practices and must not take disability into account when determining admissions.

We strongly recommend that you seek legal counsel familiar with special education and charter schools laws in developing policies and practices that may impact students with disabilities.

**VII. CONCLUSIONS**

Charter school developers and operators should proceed thoughtfully and deliberately when developing and implementing admissions policies and practices. This Knowledge Brief has outlined the state and federal authorities and policies governing charter school admissions, and it has discussed various admissions preferences and how they might be implemented. As can be seen, many gray areas exist about the legality of certain admissions preferences. Accordingly, charter schools seeking to implement admissions policies and practices should seek legal counsel for assistance.
## Appendix A: Admissions Preferences Summary Table

<table>
<thead>
<tr>
<th>TYPE OF PREFERENCE</th>
<th>CALIFORNIA LAW</th>
<th>FEDERAL LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current students</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>In-District students</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Students in the attendance area for a conversion charter school</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Students in the attendance area of a public school where 50% of students are eligible for the Free and Reduced Price Lunch Program</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Siblings of current students</td>
<td>Yes, with authorizer consent</td>
<td>Yes</td>
</tr>
<tr>
<td>Students exercising school choice under NCLB</td>
<td>Yes, with authorizer consent</td>
<td>Yes, but usually restricted to a small percentage of total enrollment</td>
</tr>
<tr>
<td>Children of founders</td>
<td>Yes, with authorizer consent</td>
<td>Only for work-site charter schools and if limited to a small percentage of total enrollment</td>
</tr>
<tr>
<td>Children of employees</td>
<td>Yes, with authorizer consent</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Children of board members</td>
<td>Yes, with authorizer consent</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Students on previous wait list</td>
<td>Yes, with authorizer consent</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Students attending an affiliated charter school</td>
<td>Yes, with authorizer consent</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Gender</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Geography</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Racial/Ethnic/Cultural Groups</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Academic proficiency</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Language proficiency</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Disciplinary issues</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Students eligible for Free and Reduced Price Lunch</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Parents’ education level</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Disability or special education eligibility</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Neglected or delinquent students</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Migrant students</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
<tr>
<td>Economically disadvantaged students</td>
<td>Consult with attorney</td>
<td>Consult with attorney</td>
</tr>
</tbody>
</table>