

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 206, 207, 305 and 2854 and Chapter 101 of the Laws of 2010

Section 119.5 of the Regulations of the Commissioner of Education is added, effective January 4, 2012, as follows:

§119.5 Random Selection Process for Charter School Student Applicants. If the number of timely submitted applications of eligible students for admission to a charter school exceeds the capacity of the grade level of a charter school (or building if the school does not distinguish between grades), students shall be accepted for admission from among such applicants by a random selection process (lottery) pursuant to the requirements of this section.

(a) Preferences. (1) Notwithstanding the provisions of this section, a charter school shall provide an enrollment preference to:

(i) pupils returning to the charter school in the second or any subsequent year of operation;

(ii) pupils residing in the school district in which the charter school is located, or in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and

(iii) siblings of pupils already enrolled in the charter school.

(2) Establishment of specific school design. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment

preferences for students at-risk of academic failure, students with disabilities and English language learners.

(b) Notice. The charter school shall provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104.

(c) Procedures for conducting lottery.

(1) The person(s) conducting the selection of lottery applicants or acting as an impartial observer of the selection of lottery applicants shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school.

(2) The lottery shall be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104. Nothing herein shall be construed to require or exclude attendance at the lottery by parents, persons in parental relationships, guardians and/or students participating in the admissions process.

(3) A charter school may structure the actual lottery process in any manner consistent with its approved admissions policy and this section.

(4) The random process used in the lottery may be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

(d) Records. The charter school shall document the lottery process, and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.