

National **Charter School** Resource Center

at Safal Partners

CONNECT. Resources to Build Top-Notch Charter Schools.

Master Class 3: Emerging Legal Issues

June 10, 2015



National Charter School Resource Center



About the NCSRC

- Funded through the U.S. Department of Education
- Makes accessible high-quality resources to support the charter school sector
- Safal Partners is leading the center; partners include National Alliance for Public Charter Schools (NAPCS), Colorado League of Charter Schools, National Association of Charter School Authorizers (NACSA), American Institutes of Research (AIR), and Public Impact

About Safal

Founded in 2010, Safal Partners is a Texas-based mission-driven education consulting firm. Safal works across the education landscape, including the federally-funded Center for Educator Effectiveness, districts (e.g. Houston Independent School District), foundations (e.g. Bill and Melinda Gates Foundation, Houston Endowment), and nonprofits (e.g. Educate Texas, Teach For America Houston).

www.CharterSchoolCenter.org

The screenshot displays the homepage of the National Charter School Resource Center. At the top, the site title "National Charter School Resource Center" is shown, along with navigation links for "About", "Contact", and "Events", and a search bar. Below the title, a tagline reads "CONNECT. Resources to Build Top-Notch Charter Schools." and a "Subscribe to our Newsletter" button is present. A horizontal menu lists various sections: "Our Work", "Focus Areas", "Resource Library", "Videos", "Funding Opportunities", "Events", "Teachers", and "Parents".

The main content area features a large video player with the title "Student Achievement in Charter Schools: What the Research Shows". To the right of the video is a "GET STARTED" sidebar with links for "Start a Charter School", "Understanding Charter Schools", "Watch a Webinar", "View Authorizer-School Catalog", "Read our Latest Newsletter", and "Log in to online Exchanges".

Below the video, there are four resource cards:

- GENERAL:** Notice of Proposed Priorities, Requirements, Definitions & Selection Criteria for CSP Grants.
- RESOURCE:** Common Core State Standards Resource List.
- RESOURCE:** Certain Weighted Lotteries Permitted Under January 2014 Update to CSP Nonregulatory Guidance.
- RESOURCE:** Charter Schools Program Seeks Peer Reviewers for Grant Applications.

A "Multimedia Case Studies" section includes a video thumbnail and a link to "All Case Studies".

The "RESOURCES & RESEARCH" section is divided into "Recent" and "Popular" views, with a link to "All Resources & Research". It features three featured items:

- REPORT:** Student Achievement in Charter Schools: What the Research Shows. Description: "The charter sector has grown dramatically since its beginnings in..."
- CASE STUDY:** School Closures and Student Achievement: An Analysis of Ohio's Urban District and Charter Schools. Description: "Closing poor-performing schools is an increasingly..."
- REPORT:** The Status of Charter Schools in Texas. Description: "Children languish in poor-performing charter schools, while the outstanding charters..."

A "CHARTER SCHOOL NEWS" section lists recent news items, including "Charters Look to Change Perceptions on Teacher Turnover - Education Week EDWEEK | 06/02/2015 - 12:05am" and "Teacher Retention Data for Charters Still Murky - Education Week EDWEEK | 06/02/2015 - 12:05am".

NCSRC publications as well as up-to-date resources and news from the field

Recently Published Content

Resource	URL
Student Achievement in Charter Schools: What the Research Shows	http://www.charterschoolcenter.org/resource/student-achievement-charter-schools-what-research-shows
An Analysis of the Charter School Facility Landscape	http://www.charterschoolcenter.org/resource/analysis-charter-school-facility-landscape-california
Finding Space: Charters in District Facilities	http://www.charterschoolcenter.org/resource/finding-space-charters-district-facilities
Charter Schools and Military Communities: A Toolkit	http://www.charterschoolcenter.org/resource/charter-schools-and-military-communities-toolkit
Legal Guidelines for Educating English Learners in Charter Schools	http://www.charterschoolcenter.org/resource/legal-guidelines-educating-english-learners-charter-schools
Engaging English Learner Families in Charter Schools	http://www.charterschoolcenter.org/resource/engaging-english-learner-families-charter-schools
Serving English Language Learners and Families	http://www.charterschoolcenter.org/newsletter/april-2015-serving-english-language-learners-and-families
Charter Schools Serving Military Families	http://www.charterschoolcenter.org/newsletter/december-2014-charter-schools-serving-military-families
English Learners in Charter Schools: Key Opportunities for Engagement and Integration	http://www.charterschoolcenter.org/newsletter/october-2014-english-learners-charter-schools-key-opportunities-engagement-and-integratio
Finding Space: Analyzing Charter School Facilities	http://www.charterschoolcenter.org/newsletter/april-2015-finding-space-analyzing-charter-school-facilities

 Reports & White Papers

 Newsletters

Recently Published Content (Webinars)

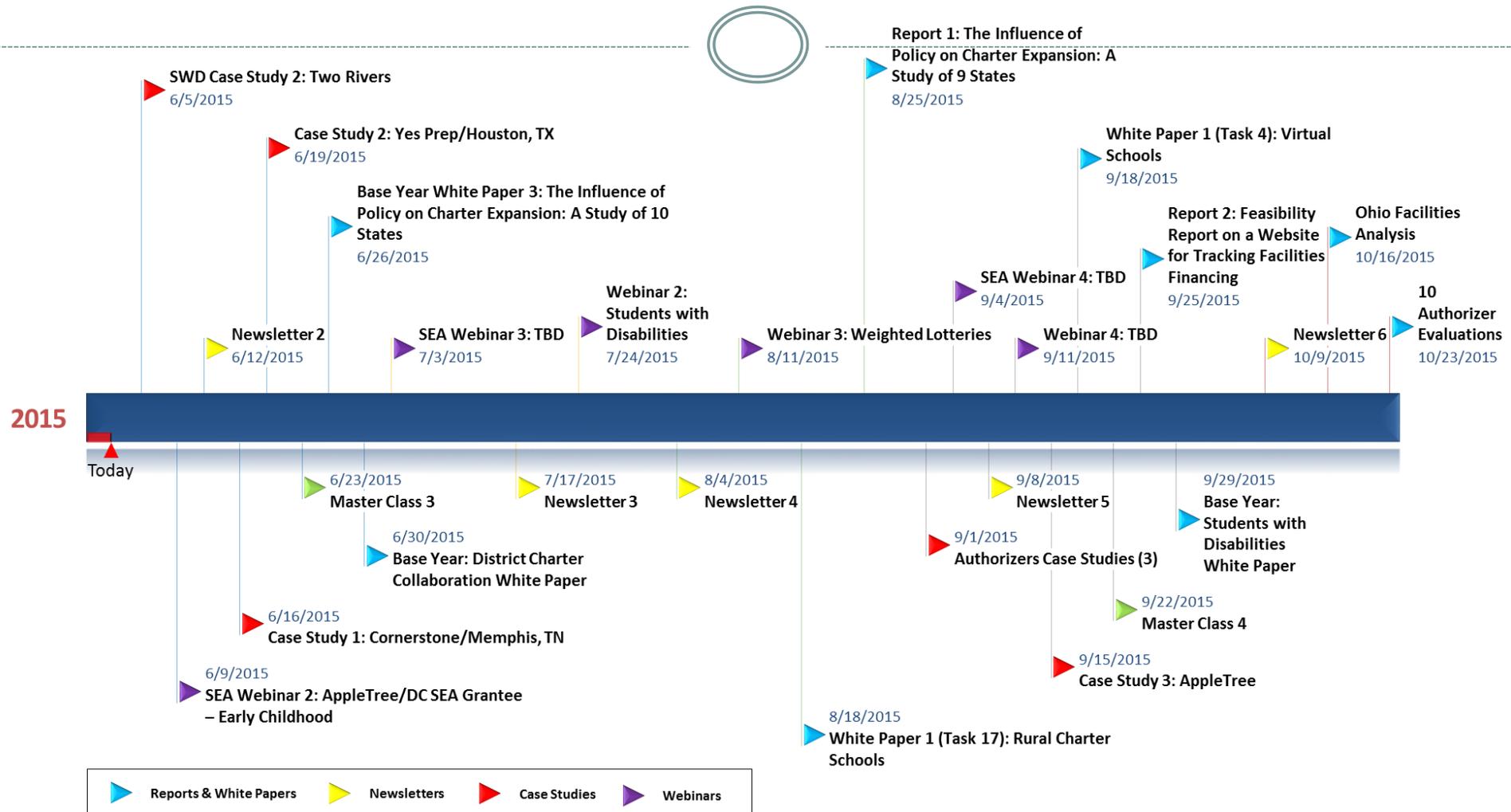
Resource	URL
Serving English Language Learners and Families	http://www.charterschoolcenter.org/webinar/serving-english-language-learners-and-families
Credit Enhancement Webinar One: Evaluating Charter School Performance	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-one-evaluating-charter-school-performance
Credit Enhancement Webinar Two: Evaluating Charter School Performance During the Transition to Common Core	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-two-evaluating-charter-school-performance-during-transition-commo
Credit Enhancement Webinar Three: Recent Developments in CSP Guidance	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-three-recent-developments-csp-guidance
Credit Enhancement Webinar Four: Authorizer Collaboration	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-four-authorizer-collaboration
Credit Enhancement Webinar Five: Collaboration to Enhance Facility Financing	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-five-collaboration-enhance-facility-financing
Credit Enhancement Webinar Six: May 2015 Workshop Preparation	http://www.charterschoolcenter.org/webinar/credit-enhancement-webinar-six-may-2015-workshop-preparation
SEA Webinar: Weighted Lotteries	http://www.charterschoolcenter.org/webinar/sea-webinar-four-weighted-lotteries
SEA Webinar: Data Management Tools for Risk Based Monitoring	http://www.charterschoolcenter.org/webinar/sea-webinar-five-data-management-tools-risk-based-monitoring

Recently Published Content (Case Studies)



Resource	URL
Folk Arts Cultural Treasures Charter School (FACTS) (EL Case Study)	http://www.charterschoolcenter.org/mmcasestudy/folk-arts-cultural-treasures-charter-school-facts
Alma del Mar (EL Case Study)	http://www.charterschoolcenter.org/mmcasestudy/alma-del-mar
El Sol (EL Case Study)	http://www.charterschoolcenter.org/mmcasestudy/el-sol
Brooke Roslindale Charter (SWD Case Study)	http://www.charterschoolcenter.org/mmcasestudy/brooke-roslindale-charter

Upcoming Publications



The Use of Weighted Lotteries in Charter Schools



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Agenda



- History of CSP treatment of weighted lotteries
- Changes in 2014 CSP guidance
- State by state review
- Examples of change in response to 2014 guidance

Treatment of Weighted Lotteries Before January 2014



- Only permitted under two circumstances:
 - When necessary to comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Equal Protection Clause of the Constitution, or applicable State law; or
 - 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
- Weighted lottery defined in 2011 guidance as “lotteries that give preference to one set of students over another”
- NAPCS and others have been pushing for changes in CSP treatment of weighted lotteries for years

January 2014 Nonregulatory Guidance



- Expanded circumstances in which weighted lotteries could be used by CSP grantees
- In addition to the two circumstances permitted previously, a third circumstance was added:
 - To give slightly better chances for admission to all or a subset of *educationally disadvantaged* students *if State law permits* the use of weighted lotteries in favor of such students

What is an “educationally disadvantaged student”?



- Economically disadvantaged
- Students with disabilities
 - ✦ protected class pursuant to Section 504 and ADA
- Migrant students
 - ✦ protected class pursuant to Title VI of the Civil Rights Act
- Limited English proficient students
 - ✦ protected class pursuant to Title VI of the Civil Rights Act
- Neglected or delinquent students
- Homeless students

How can weighted lotteries be used?



- New Definition - “lotteries that give additional weight to individual students who are identified as part of a specified set of students, but do not reserve or set aside seats for individual students or sets of students”
 - Set asides are not weighted lotteries
- *Slightly* better chance for admission
 - “two or more chances to win the lottery” when other students only get one chance to win
- May not be used for the purpose of creating schools exclusively to serve a particular subset of students
- Department encourages schools to use weighted lotteries as part of a broader strategy that includes existing responsibilities related to outreach, recruitment, and retention for all students, including educationally disadvantaged students

Who Can Use Weighted Lotteries?



- Existing and future CSP grantees must seek approval to amend grant application
- Specific information must be included in the request for approval (see E-3a in 2014 Nonregulatory Guidance)
 - Included in this information is evidence that State law permits the use of weighted lotteries
- Operators that aren't interested in CSP funds can use any enrollment process they want in accordance with state/federal law and charter

Evidence of State Law Permission



- Express permission under State charter school law, State regulation, or a written State policy consistent with the State charter school law or regulation
- Confirmation from the State's Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students

What states expressly permit the use of weighted lotteries?



- Only 4 states even use the term “weighted lottery” in law or regulation
 - Arkansas
 - Georgia
 - Louisiana
 - Rhode Island

Arkansas



- Permits the use of weighted lotteries “when necessary to comply with Title VI of the federal Civil Rights Act of 1964, Title IX of the federal Education Amendments of 1972, the equal protection clause of the Fourteenth Amendment to the United States Constitution, a court order, or a federal or state law requiring desegregation” - A.C.A. § 6-23-306 (6)(B), 14(C);
- Also permits charter schools to adopt admissions policies that are consistent with federal law, regulations, or guidelines applicable to charter schools - A.C.A. § 6-23-306 (6)(A)
 - This may allow expansion of the use of weighted lotteries consistent with the 2014 guidance

Louisiana



- Requires charter schools to perform lotteries in a way that assures compliance with all at-risk student population requirements, and expressly permits the use of a weighted lottery to ensure that these requirements are met
- “Nothing herein shall preclude the implementation of a weighted lottery to ensure all at-risk student population requirements are met” - BESE Bulletin 126 §2709 (F)

Rhode Island



- Permits the use of weighted lotteries “if the Commissioner of Education deems it necessary to fulfill statutory requirements” – Board of Regents’ Regulations Governing Rhode Island Public Charter Schools, Chapter 5, Section C-5-2

Georgia



- Law amended during the 2015-2016 legislative session in response to 2014 guidance
- Georgia law generally requires all students be given an equal chance in the lottery; exception for educationally disadvantaged students created to allow charter schools to provide an increased chance of admission through a weighted lottery if permitted by the school's charter
 - “Except for educationally disadvantaged students who may be provided an increased chance of admission through a weighted lottery if permitted by the school's charter, all such applicants shall have an equal chance of being admitted through a random selection process unless otherwise prohibited by law...” GA Code § 20-2-2066

What states expressly prohibit the use of weighted lotteries?



- No states expressly prohibit the use of weighted lotteries, but some State charter school laws may be interpreted to exclude the use of weighted lotteries

State laws that likely exclude the use of weighted lotteries



- States that expressly require lotteries where each student is given equal weight
 - Indiana
 - Florida
 - Maine
 - Missouri
- Exception for use of weighted lotteries in certain circumstances would be necessary

State laws that likely exclude the use of weighted lotteries



- States that expressly prohibit preferences beyond those authorized by law
 - Indiana
 - Minnesota
 - South Carolina
 - Washington
- Additional language permitting use of weighted lotteries would be necessary

State laws that likely exclude the use of weighted lotteries



- States that significantly limit the use of preferences for educationally disadvantaged students by prohibiting enrollment decisions on the basis of ethnicity, national origin, English proficiency, income, disability
 - Arizona
 - DC
 - Hawaii
 - Oklahoma
 - Oregon
- No specific limitation for neglected, delinquent or homeless students

State laws that likely exclude the use of weighted lotteries



- States that leave little room, if any, for interpretation that would permit preferences beyond those explicitly authorized by law
 - Idaho
 - Michigan
 - Texas
 - Wisconsin

States That Are Silent On Preferences



- Alaska
- Colorado
- Kansas
- Maryland
- New Hampshire
- Virginia
- Wyoming

States that may be interpreted to permit the use of weighted lotteries



- States that expressly permit the use of “preferences” for educationally disadvantaged students
 - Delaware
 - Illinois
 - Missouri
 - New York
 - Nevada
 - Tennessee
 - Utah
- If the term “preference” is interpreted to include use of a weighted lottery, then weighted lotteries are permissible for the subgroups specifically identified in each state

States that may be interpreted to permit the use of weighted lotteries



- States that permit charter schools to limit admissions to educationally disadvantaged students depending on the school's focus
 - Connecticut
 - Illinois
 - Louisiana – could expand use of weighted lotteries beyond meeting at risk student population requirements
 - New Hampshire
 - New Jersey
 - Nevada
 - North Carolina
 - Ohio
 - Pennsylvania

States that may be interpreted to permit the use of weighted lotteries



- **CAUTION:** “limiting admissions” to subgroups of students could pose risks
- Charter schools are not eligible for CSP grants if they use weighted lotteries that reserve or set aside seats or if they use weighted lotteries for the purpose of creating schools exclusively to serve a particular subset of students
- No definition of what it means to “limit admissions” – if use of a weighted lottery is one way of limiting admissions, then could interpret to permit weighted lotteries

States that may be interpreted to permit the use of weighted lotteries



- States that allow enrollment preferences beyond those expressly permitted – as approved by authorizer
 - California – does not permit preference on the basis of race/national origin/ethnicity or ELL status
 - Connecticut – students with history of behavior/social difficulties, special education students, ELL students
 - Hawaii – neglected, delinquent or homeless students
 - Oregon – neglected, delinquent or homeless students

States that may be interpreted to permit the use of weighted lotteries



- States that express specific intent to ensure access and opportunities for educationally disadvantaged students
 - Massachusetts
 - Mississippi
 - New Hampshire
 - New Jersey
 - New York
 - Nevada

Examples of Change: Georgia



- In response to the 2014 guidance, Georgia law was changed to permit the use of weighted lotteries to give preference to educationally disadvantaged students
- Advocates for this change saw the 2014 guidance as an opportunity to create additional opportunities for schools to serve educationally disadvantaged student populations
- Very little, if any, opposition; thoughtful approach

Examples of Change: Colorado



- Colorado law is silent on preferences; law requires only that enrollment process be non-discriminatory; policy preference to provide opportunity and access to educationally disadvantaged students
- In recent years, some authorizers were permitting the use of weighted lotteries
- Colorado Department of Education worked with U.S. Department of Education to develop a weighted lottery policy for CSP grantees; provided letter from Attorney General; provided necessary evidence for approval of amendment to grant application

Examples of Change: Colorado



- **Key Priorities in Developing the Policy Terms**
 - Ensure we met the federal guidance requirements
 - Ensure only applied to “Educationally Disadvantaged”
 - Ensure amount of weights proposed was well justified
 - ✦ To meet or exceed state, district or local representation for that student group.
 - ✦ Tied to court orders issued to geographic school district where the school resides, where appropriate
 - ✦ Tied to vision & mission of the school
 - No cap on amount of weights, to allow for accommodation of emergency circumstances
 - ✦ For example, Colorado recently had massive fires and mass flooding dramatically increasing homeless populations in areas of the state. We wanted to allow enough scope for charters to choose to be responsive to these students.
 - Weighted lotteries could not be used to create schools exclusively to serve a particular subset of students
- National Charter School Resource Center SEA Webinar Series: Weighted Lotteries, 12/10/14

Colorado Weighted Lottery Policy



- Defined as an individual school-based lottery or centralized lottery for multiple public schools that gives additional weight (e.g.. two or more chances to win the lottery) to students identified as part of a specified set of students, but that does not reserve or set aside seats for individual students or sets of students
- Can only be used under the three circumstances described in the CSP guidance
- May not be used for the purpose of creating schools exclusively to serve a particular subset of students
- Use does not relieve a school from its existing responsibility under the Colorado CSP program to ensure a broad strategy of outreach, recruitment, and retention for all students, including educationally disadvantaged students

Contact



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