

2015-2019 Public Charter School Weighted Lotteries Report

Implementation Review

September 2019



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Executive Summary

In 2015, the Oregon legislature passed Senate Bill 820 allowing public charter schools to implement a weighted lottery to ameliorate the impact of discrimination against historically underserved students. This law has been difficult for public charter schools to implement because they are wary of the potential to limit enrollment of protected classes. For those few charter schools implementing a weighted lottery, they would like to see the law remain in effect for future implementing beyond 2020. As required by the 2015 act, no later than September 30, 2019, the Department of Education shall submit a report to the interim legislative committees on education on the implementation of public charter school weighted lotteries in Oregon. This report is made available to the Legislative Assembly and posted on the [Oregon Department of Education Charter School webpage](#).

Background

Public charter schools are voluntary schools of choice to which students apply for enrollment. Generally, public charter schools announce an enrollment window where families are able to submit applications and be enrolled by grade level. Students who live within or outside the district in which the charter school is located are eligible for enrollment if space is available. Similar to other public schools, a public charter school may not limit enrollment based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, the terms of an individualized education program, income level, proficiency in the English language, or athletic ability.

When a public charter school has limited the capacity of their program to a specific number of grades, class size, or overall enrollment, the charter school may give priority enrollment to students who:

- Were enrolled in the prior year;¹
- Have a sibling who was enrolled in the prior year and the current year;²
- Reside within the district boundary of a district that is a party to a cooperative agreement;³ or
- Reside within the prior attendance boundary of a school that was converted to a charter school after being closed by the district.⁴

The charter must conduct an equitable lottery for the remaining seats. As part of that lottery process, “for the purpose of ameliorating the impact of discrimination against historically underserved students, a public charter school may select students through a weighted lottery that favors historically underserved students.”⁵

The format with which public charter schools implement lotteries across the state varies greatly. The Department of Education has provided guidance on implementing general lotteries but charter schools are not required to use a standard process. The law is not prescriptive and allows local discretion.

¹ ORS 338.125(3)(c)(A)

² ORS 338.125(3)(c)(B)

³ ORS 338.125(3)(c)(C)

⁴ ORS 338.125(3)(b)

⁵ ORS 338.125(3)(d)

Weighted Lottery Law

In 2015, the legislature passed SB 820 to allow public charter schools the option of using a weighted lottery. The new law gave public charter schools the option of giving additional weight to students who are historically underserved. When SB 820 was signed into law, many public charter schools were eager to implement a weighted lottery but eventually found it too challenging to implement a weighted lottery that met the requirements of SB 820.

According to SB 820, a weighted lottery may be used by a public charter school for the purpose of ameliorating the impact of discrimination against historically underserved students. The law defines “historically underserved students” as those who are at risk because of any combination of **two or more** of the following factors:

- Race
- Ethnicity
- English language proficiency
- Socioeconomic status
- Gender
- Sexual orientation
- Disability
- Geographic location

The law allows public charter schools to give additional weight to students who have two or more of these factors and allows charter schools discretion on how to implement it. It does not define weight or a process for implementing the weighted lottery.

Implementing Weighted Lotteries

In the four years weighted lotteries have been allowed in Oregon, very few public charter schools have implemented one. Many charter schools claim they did not need to implement a weighted lottery, some charter schools point to the list of factors as too challenging to implement without legal risk, and less than ten have likely implemented one according to the law.

Because the law defines historically underserved students with a list of factors that include a number of protected classes, many charter schools were wary of the risks of explicitly extending access to one group which might limit access to another group. Because of these challenges, the Department did not recommend rules for the State Board to adopt or develop

written guidance on how to implement a weighted lottery. Public charter schools raised the following concerns with each factor:

Historically Underserved Factor	Challenge for Weighted Lottery
Race	Federal and state protected class
Ethnicity	Federal and state protected class
English Language Proficiency	Could be implemented in a way that has the impact of limiting enrollment based on Race or Ethnicity
Socioeconomic Status	Could be implemented in a way that has the impact of limiting enrollment based on Race or Ethnicity
Gender	Federal and state protected class
Sexual Orientation	State protected class
Disability	Federal and state protected class
Geographic Location	Could be implemented in a way that has the impact of limiting enrollment based on Race or Ethnicity

The Department surveyed 132 public charter schools in preparation for this report. Forty charter schools responded and provided input regarding their implementing or reasons for not implementing weighted lotteries. The 40 schools represent charter schools in all parts of the state – rural, suburban, and urban.

Six public charter schools implemented a weighted lottery at least one time since 2015. Of those, three used geographic location as their primary factor, two used socioeconomic status and English language proficiency as their two factors, and one used all factors in the law. The results were mixed. Of the three schools using geographic location, one school did not see any change. One of the two schools using socioeconomic status and English language proficiency saw the intended change in student demographics, and the school that used all factors did not see any change.

Some schools required families to provide evidence of the factors identified for the weighted lottery. Two schools required proof of residence and one school used the Free and Reduced Lunch Program form and the Home Language Survey. The school that used all factors did not require any evidence.

The school that used the Free and Reduced Lunch Program form and the Home Language Survey as evidence of socioeconomic status and English language proficiency as their two factors has consistently implemented the weighted lottery for multiple years and found positive results. That school shared the following:

The weighted lottery is instrumental in protecting access to our programs. The weighted lottery has provided additional access to our dual language program to historically

underserved populations in our community. As a dual language charter school, it is the only way to help ensure access of native Spanish-speaking students to our program. Prior to the ability to have a weighted lottery, [our school] had significantly more native English-speaking students than Spanish-speaking students in our lottery. Although there is not a way to guarantee a best practice of 50/50 language split in a charter setting, the weighted lottery adds access to the families that may be applying from our Migrant Head Start partner.

Many public charter schools in Oregon are receiving pressure from their sponsoring districts or other community groups to recruit and enroll students who mirror the demographics of the communities they serve. One charter school reported a related goal being incorporated into their charter contract and the charter school's hope to use a weighted lottery to increase enrollment of historically underserved students.

Charter Schools That Did Not Implement a Weighted Lottery

A majority of public charter schools have never implemented a weighted lottery in any year since 2015. Of the 40 charter schools that provided input for this report, many said it would just be too difficult to implement.

Fifteen charter schools said the legal risks outweighed the potential benefit, 11 said their charter board did not approve using one, and nine said their sponsor did not approve the use of a weighted lottery. Additionally, charter schools reported hesitation about requiring evidence or documentation regarding race, ethnicity, gender, sexual orientation, and disability.

Three charter schools that did not implement weighted lotteries said the following:

We would like to implement a weighted lottery; however, we would need additional guidance and process from Oregon Department of Education to implement a weighted lottery. We do not have the resources to investigate the validity of the lottery responses. We are a charter school with high demand, and already have families who misrepresent their address to (attempt to) obtain in-district residency. We are worried that families would misrepresent their membership in the historically underserved populations, and not have the resources to adequately manage this.

Honestly we could not figure out how to manage it. I did not know how to find out if they qualify without asking questions I was under the impression we were not allowed to ask. Also, how are we to verify the information is correct?

The information on how to implement has not been real clear and resources are not easy to find.

Conclusion

Weighted lotteries have been utilized by a small percentage of public charter schools in Oregon. Those charter schools who have successfully implemented a weighted lottery would like to see the law remain in effect in the future. Public charter schools interested in implementing weighted lotteries in the future want more direction and guidance or other factors like “pregnant or parenting” to be included. Public charter schools that do not implement a weighted lottery or do not use a lottery at all, have determined they do not need to use a weighted lottery, or struggle to find a way to implement a weighted lottery successfully.