
BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN RE:
New Consortium of Law and Business
Charter Revocation Appeal

State Board of Education Meeting
May 27, 2016

**FINDINGS AND RECOMMENDATION REPORT OF THE
EXECUTIVE DIRECTOR TO THE STATE BOARD OF EDUCATION
NEW CONSORTIUM OF LAW AND BUSINESS**

On March 29, 2016, the chartering authority, Shelby County Board of Education (“SCS”), a local education agency, voted to revoke the charter agreement for the New Consortium of Law and Business (“NCLB”), a charter school sponsored by Smart Schools, Inc. SCS revoked the charter for the following reasons: (1) NCLB teachers were enrolled in a non-Shelby County Schools group insurance plan before the law was amended to allow it; (2) NCLB failed to pay its teachers and failed to remit payments on behalf of its employees to the Tennessee Consolidated Retirement System in a timely fashion; (3) SMART Schools, Inc., the sponsor of the school, has not filed financial audits for School Year 2013-14 and School Year 2014-15; (4) NCLB improperly assigned students to a teacher for TVAAS purposes; (5) NCLB also did not follow Tennessee Department of Education guidance indicating that teachers should be actively involved in the student claiming process for TVAAS; (6) NCLB’s master schedule for School Year 2014-15 included staff assigned to classes who were not actually teaching or working at the school; (7) NCLB did not enter attendance data for students for at least the first 48 days of School Year 2015-16; and, (8) NCLB kept at least two students enrolled during School Year 2014-15 who were enrolled in schools outside SCS.

Pursuant to Tenn. Code Ann. (T.C.A.) § 49-13-122, charter school operators may appeal the revocation of their charter agreement by a local education agency (LEA) to the State Board of Education (“State Board”). NCLB appealed the revocation of their charter by SCS to the State Board on April 8, 2016.

Based on the following procedural history and findings of fact, I believe that NCLB committed “material violation[s] of the conditions, standards, or procedures set forth in the charter agreement” and “failed to meet generally accepted standards of fiscal management.”¹ Therefore, I recommend that the State Board affirm the decision of SCS.

STANDARD OF REVIEW

In order to overturn an LEA’s decision to revoke a charter agreement, the State Board must find that such decision was contrary to the Tennessee Public Charter Schools Act, § 49-13-122.² Under T.C.A. § 49-13-122 (c), a chartering authority may revoke or deny renewal of a public charter school agreement if the chartering authority determines that the school did any of the following: “(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter agreement; (2) Failed

¹ T.C.A. § 49-13-122.

² State Board Policy 6.110

to meet generally accepted standards of fiscal management; or (3) Performed any of the acts that are conditions for nonapproval of the charter school under § 49-13-108(c).” Pursuant to that code section and State Board Policy 6.110, the executive director of the State Board and other members of the State Board staff will conduct a de novo, on the record review of the revocation decision, taking into account the information submitted by the charter school and chartering authority, the public hearing, and any additional information gathered at the discretion of the State Board staff. Based on this information, the executive director will provide a recommendation to the State Board.

PROCEDURAL HISTORY

1. SCS voted to revoke the charter of NCLB on March 29, 2016.
2. The State Board received NCLB’s appeal on April 8, 2016.
3. On April 11, 2016, State Board staff requested additional information from SCS and NCLB.
4. On April 18, 2016, the parties provided information including the following:
 - a) Documentation of the LEA’s revocation decision;
 - b) Copies of the approved charter school application and signed contract between the charter school’s governing board and the LEA;
 - c) Timeline of the approval of the original charter application, any renewals of the charter school approved by the LEA, and the revocation decision;
 - d) Copies of all correspondence from the LEA to the charter school’s governing board regarding the status of the charter school including notices of good standing, compliance or non-compliance with the charter agreement, policy, or statute, and any plans of corrections required by the LEA of the governing board;
 - e) Any evidence supporting or refuting the LEA’s reasons for revocation;
 - f) A list of the grade levels being served and the final Average Daily Membership counts for each year the school has been in operation;
 - g) Copies of all reports, including any annual reports, site visit reports, and five-year interim reports, from LEA to governing board on the performance status of the charter school;
 - h) Copies of all annual progress reports submitted by the governing board to the LEA and Commissioner of Education in accordance with T.C.A. § 49-13-120; and,
 - i) Copies of all annual financial audits submitted by the governing board to the LEA, the Commissioner of Education, and the Comptroller of the Treasury in accordance with T.C.A. § 49-13-127.
5. A public hearing was held on May 6, 2016, at which NCLB and SCS had an opportunity to present information and respond to questions from the executive director. During the public comment portion of the hearing, six people spoke in support of NCLB, including current students, parents, teachers, and business partners.
6. The State Board received five written comments regarding the revocation, four of which were in support of NCLB. The fifth written comment was from a former NCLB employee criticizing NCLB’s fiscal management.

FACTS

I. District Revocation of Charter Agreement

On March 29, 2016, SCS voted to revoke the charter of NCLB. SCS revoked the charter based on the following actions of NCLB:

1. Prior to the passage of the law allowing charter school participation in a non-LEA insurance plan, enrolled staff in a non-Shelby County Schools' insurance plan;
2. In School Year 2014-2015, fell delinquent on Tennessee Consolidated Retirement System contributions;
3. In School Year 2014-2015, failed to pay its teachers in a timely fashion;
4. In School Years 2013-2014 and 2014-2015, failed to file an annual audit;
5. In School Year 2014-2015, improperly assigned students to a teacher for TVAAS purposes;
6. In School Year 2014-2015, did not follow Tennessee Department of Education guidance in the process of teachers claiming students for TVAAS purposes;
7. In School Year 2014-2015, included teachers in the master schedule who were not teaching classes or working at the school;
8. In School Year 2015-2016, did not enter attendance data for students for at least the first 48 days of the school year; and,
9. In School Year 2014-2015, enrolled at least two students who were also enrolled in schools outside of Shelby County Schools, provided grades and credits for the students, and received Average Daily Membership credit for the students.

II. Public Hearing

Pursuant to T.C.A. § 49-13-122 and State Board Policy 6.110, the Executive Director of the State Board presided over a public hearing in Memphis on May 6, 2016.

A. SCS Arguments

At the hearing, SCS argued that the revocation of NCLB's charter was appropriate because NCLB committed financial and data violations that amounted to material violations of the charter agreement. Specifically, SCS pointed to NCLB's failure to meet general guidelines of fiscal management as evidence of a financial violation. SCS also discussed how NCLB failed to make timely contributions to the Tennessee Consolidated Retirement System (TCRS) on behalf of its employees, failed to submit annual audit reports as required by law, and enrolled employees in a non-SCS health insurance plan in violation of the law at the time. In a preemptive response to NCLB's assertion that it could not contribute to TCRS or pay for an audit due to SCS's delay in disbursing funding, SCS explained that it made timely distributions of BEP funds, federal funding was distributed as reimbursement of expenditures, and NCLB should have had sufficient contingency funds to ensure consistent cash flow throughout the year.

Next, SCS addressed the data issues that it asserted were material violations. The first data issue surrounded the claiming of students for TVAAS purposes. SCS explained that NCLB allocated 100% of students' English language arts TCAP scores to one teacher despite evidence that another teacher taught English language arts. According to SCS, the student data should have been distributed between the two teachers at the very least. Additionally, SCS raised the issue that NCLB had teachers on its master schedule in PowerSchool who were not teaching at the school, and the account of the President & Executive Director of NCLB, Tommie Henderson, was used to make the teacher assignments.

SCS discussed issues with student attendance data and student enrollment data at NCLB. SCS recounted that NCLB failed to enter attendance for the first forty-eight (48) days of School Year 2015-16. According to SCS, while some employees at NCLB had log-in issues that delayed their access to the student records system, as early as August 16, 2015, at least three NCLB employees had the ability to enter

attendance and were making entries in the system. SCS pointed out that once the log-in issues were corrected on September 15, 2015, eighteen days passed before attendance was entered.

NCLB also had students enrolled on their roster who were not enrolled at NCLB, but rather were enrolled in other schools outside of SCS. These students received grades and credits from NCLB, and these students counted as a part of NCLB's Average Daily Membership for purposes of calculating the per pupil allotment for the school. SCS argued that these issues were material violations because they affect students' ability to graduate, the processing of student transcripts, and Tennessee Student Aid Commission eligibility.

B. NCLB Arguments

In response, NCLB argued that the violations cited by SCS did not rise to the standard of material violations. Regarding teachers being enrolled in a non-SCS insurance plan, NCLB explained that teachers voluntarily opted out after their insurance agent explained to them they had the option to opt out or continue enrollment in the SCS plan. NCLB denied that their insurance coverage lapsed, as claimed by two employees. NCLB further asserted that because the statute requiring teachers to enroll in the district plan was amended, there was not a reason for revocation.

Regarding missed TCRS payments, NCLB stated that although delayed, the payment was paid before the next payroll cycle. NCLB was unable to timely contribute to TCRS and was unable to make payroll because of low cash flow, which it attributed to SCS's consistent failure to pay accurate and timely per pupil allotments and reimburse Title I expenses. NCLB noted that their memorandum of understanding (MOU) with SCS in regard to TCRS defines what constitutes a material violation for revocation purposes. According to NCLB, SCS may revoke the school's charter for missing TCRS payments only if the district pays TCRS on behalf of NCLB, and NCLB reimburses district. NCLB stated that according to the MOU, there is no violation here because SCS never had to pay TCRS on behalf of NCLB. Likewise, concerning the failure to submit audits, NCLB stated that it made a \$30,000 payment to an auditor to work on the audits; however, it was unable to pay for the completion of the work because of delayed payment disbursements from SCS.

In response to the issues regarding student claiming and TVAAS data, NCLB posited that it was only an issue of semantics. NCLB stated that it should be undisputed at this point that the teacher in question characterized the class as reading and literature and, therefore, taught reading to 6th and 7th graders. NCLB had two separate classes—one was law (reading and literature) and the other was language arts (more grammar). NCLB claimed it was sufficient to assign the students to the teacher in question for TVAAS purposes. NCLB said that a discussion should have occurred between the teachers for claiming purposes; but, these were not co-teachers as one teacher was responsible for an entire period. NCLB gave the teacher the opportunity to claim her students, and she failed to do so, so NCLB assigned them to her. Further, NCLB maintained that SCS has not presented any requirements that a teacher must sign off on students claimed and that there was no material violation based on this issue. NCLB stated that SCS accepted the teacher's allegations against NCLB without a proper investigation and moved straight to revocation.

NCLB conceded that there were teachers assigned to classes who did not actually teach at NCLB but stated that they did not know who introduced those errors into the system. Mr. Henderson denied entering the teachers' names in the system and said other people had access to his system login. In addition, Mr. Henderson claimed there were a number of individuals he did not recognize in the system

and that there was a teacher with elementary credentials who was shown to teach 11th grade. NCLB stated that proper communication with the district could have resolved these errors.

On the subject of the failure to enter student attendance, NCLB stated that they did not have working log-in information for the student information system. Eventually, three staff members received log-in credentials, but according to NCLB, entering daily attendance was not within their job descriptions. Mr. Henderson stated that he could have either assigned this work to someone else who was busy or continued to work with the district to fix the issue. NCLB maintained that it was reasonable to select the latter option. Regarding the students who were incorrectly enrolled, NCLB stated that SCS information seemed to change and was confusing. NCLB asserted that they do not have access to these student records, and SCS has not provided them. Further, they suggested that these errors were inadvertent or due to technology and not material violations or fiscal mismanagement.

In closing, NCLB claimed the district conducted a hasty investigation, gathered minimal evidence, and then recommended revocation. NCLB maintained that none of the reasons given by SCS justified revocation, as they were not material violations of the charter agreement nor was there evidence of fiscal mismanagement.

III. Public Comments

Six people, including two NCLB students, signed up to comment at the public hearing. All those who gave oral comments did so on behalf of NCLB. The State Board also received five written comments regarding the revocation, four of which were in support of NCLB. The fifth written comment was from a former NCLB employee criticizing NCLB's fiscal management.

ANALYSIS

In order to overturn an LEA's decision to revoke a charter agreement, the State Board must find that such decision was contrary to the Tennessee Public Charter Schools Act, § 49-13-122.³ As stated above, T.C.A. § 49-13-122 allows a chartering authority to revoke a charter agreement if it determines that the school (1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter agreement; (2) Failed to meet generally accepted standards of fiscal management; or (3) Performed any of the acts that are conditions for nonapproval of the charter school under § 49-13-108(c). Here, SCS revoked the charter agreement because NCLB committed "material violation[s] of any of the conditions, standards, or procedures set forth in the charter agreement" and "failed to meet generally accepted standards of fiscal management."⁴

It is clear from the record that NCLB has had issues with school finances, as well as operational processes and the maintenance of timely, accurate data. The undisputed facts show that NCLB failed to pay its teachers in a timely fashion, fell delinquent to TCRS contributions, failed to file an annual audit for two years in a row, had teachers included in the master schedule who did not actually teach at NCLB, failed to enter attendance for the first forty-eight days of School Year 2015-2016 school, failed to follow Tennessee Department of Education guidance in the process of teachers claiming students for TVAAS purposes, and enrolled, provided grades and credits for, and received Average Daily Membership credit for at least two students who were also enrolled in schools outside of Shelby County Schools. These occurrences amount to more than "technicalities" as argued by NCLB. As noted by SCS, mistakes and

³ Tennessee State Board Policy 6.110

⁴ T.C.A. § 49-13-122(c)

omissions of this magnitude, particularly around student data, have the potential to create lasting harmful effects to students.

The decision to revoke a charter agreement is extremely difficult for all involved and affected by the revocation and proceeding closure. Through the hearing and public comments, it was evident that NCLB staff, students, parents, and other stakeholders have an attachment to NCLB and a vested interest in keeping its doors open. Conversely, SCS also has a responsibility to act dutifully as a quality charter authorizer and to “revoke a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds.”⁵ As such, the autonomy afforded to charter schools is at times a tough, but critical, bargain.

The charter school contract is the embodiment of the autonomy-for-accountability bargain and the commitments of both parties. The authorizer commits to entrusting public dollars and public school students to the independent governing board of the school. It also commits to giving the governing board more flexibility in how it operates the school than is afforded traditional public schools. In return, the school’s governing board commits to handling the funds responsibly, complying with its legal obligations, and educating students well.⁶

In this case, it is clear the NCLB has not fulfilled its end of the autonomy-for-accountability bargain. The record shows that NCLB committed material violation of the conditions, standards, or procedures set forth in state law, the charter agreement, and memorandum of understanding and has failed to meet generally accepted standards of fiscal management.⁷

CONCLUSION

Based on the foregoing, it is my recommendation that the State Board uphold SCS’s revocation of NCLB’s charter.



Dr. Sara Heyburn, Executive Director
State Board of Education

5/25/2016

Date

⁵ Principles & Standards for Quality Charter School Authorizing, 2015 Edition, National Association of Charter School Authorizing, Page 20, available at http://www.qualitycharters.org/wp-content/uploads/2015/08/Principles-and-Standards_2015-Edition.pdf.

⁶ Haft, William, “The Terms of the Deal: A Quality Charter School Contract Defined,” National Association of Charter School Authorizers, February 2009, page 1, available at http://www.qualitycharters.org/wp-content/uploads/2015/11/IssueBrief_TheTermsOfTheDeal_2009.02.pdf.

⁷ T.C.A. § 49-13-122(c)