
BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

IN RE:

Southern Avenue Middle School
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
SOUTHERN AVENUE MIDDLE SCHOOL**

On April 26, 2016, the chartering authority, Shelby County Board of Education (“SCS”), a local education agency, voted to revoke the charter for Southern Avenue Middle School (“SAMS”), a charter school sponsored by Children’s Care and Development Center Inc. (“Sponsor”). SCS revoked the charter for the following reason: SAMS’s failure to meet minimum performance requirements set forth in its charter agreement constituted a material violation of the charter agreement.¹

Pursuant to Tenn. Code Ann. (T.C.A.) § 49-13-122, charter school sponsors may appeal the revocation of their charter agreement by a local education agency (LEA) to the State Board of Education (“State Board”). SAMS timely appealed the revocation of its charter by SCS to the State Board on May 3, 2016.

Based on the following procedural history and findings of fact, I believe that SAMS committed a material violation of the conditions, standards, or procedures set forth in the charter agreement.² 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- 122.³ 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 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

¹ SCS also revoked the charter of SAMS because, per TCA § 49-13-108(b), “the ‘substantial negative fiscal impact’ to the District in maintaining such low-performing charters is contrary to the best interest of students.” However, the State Board does not consider this reasoning when determining whether to affirm or overturn an LEA’s revocation decision because it is not one of the reasons that a chartering authority can revoke a charter agreement under T.C.A. § 49-13-122.

² T.C.A. § 49-13-122.

³ Tennessee State Board Policy 6.110

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 SAMS on April 26, 2016.
2. The State Board received SAMS's appeal on May 3, 2016
3. On May 4, 2016, State Board staff requested additional information from SCS and SAMS.
4. On May 5, 2016 (SAMS) and May 11, 2016 (SCS), the parties provided information regarding the following:
 - a) Documentation of the LEA's revocation decision;
 - b) Copies of the approved charter school application;
 - c) Timeline of the approval of the original charter application 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 18, 2016, at which SAMS and SCS had an opportunity to present information and respond to questions. During the public comment portion of the hearing, six people spoke in support of SAMS, including current students, parents, and teachers.
6. The State Board also received twenty-six written comments in support of SAMS, all requesting that the Board overturn the decision of SCS, and one written comment in support of revocation.

FACTS

I. District Revocation of Charter

On April 26, 2016, SCS voted to revoke the charter of SAMS. SCS revoked the charter based on the following:

1. In School Years 2013-2014 and 2014-2015, SAMS failed to meet the minimum performance requirement set forth in its charter that by the end of year three, 100% of at-risk students enrolled in SAMS for at least two years would meet and/or exceed state and national averages in reading and/or mathematics as verified by TCAP and NAEP standards; and,

2. In School Year 2013-2014, SAMS failed to meet the minimum performance requirement set forth in its charter agreement that by the end of year two, 100% of at-risk students enrolled in SAMS for at least two years would score at or above grade level on end of course curriculum-based exams in reading and/or mathematics. No data was provided for School Year 2014-2015.

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 18, 2016.

A. SCS Argument

SCS argued that on April 16, 2016, it revoked the charter agreement with SAMS pursuant to TCA § 49-13-122 because SAMS committed a material violation as set forth in the charter agreement. Although there was no signed agreement between the Sponsor and SCS, SCS explained that, pursuant to Tennessee Attorney General Opinion 10-15, if there is no signed agreement, the approved charter school application serves as the agreement.

According to SCS, SAMS failed to meet the following minimum performance requirements in its charter agreement: (1) By the end of year three, 100% of the at-risk students who have been enrolled at least two years will meet and/or exceed state and national averages in reading and or math and (2) By end of year two, 100% of at risk students enrolled at least two years will score at or above grade level on end of course curriculum-based exams in reading and/or math. SCS explained that data shows that SAMS had a 23.1% success rate in 2014 and had a 4.6 percentile rank on the August 2014 Priority List, meaning roughly 95% of schools in Tennessee ranked higher. SCS further noted that SAMS has not performed as well as the other SCS and charter schools in the region and has had the following yearly Tennessee Value-Added Assessment System (TVAAS) composite levels:

- 2013: TVAAS Level 1
- 2014: TVAAS Level 2
- 2015: TVAAS Level 1

SCS asserted that SAMS was made aware of its performance issues as early as August 2014 when it was designated as a Priority School by the Tennessee Department of Education. SCS presented evidence that SAMS was on both the 2015 Priority List (with a percentile rank of 4.6 and a success rate of 23.1%) and the January 2016 list (based on School Year 2014-2015 data of the bottom 10% of Tennessee state schools with a percentile rank of 5.2). When SAMS was placed on the 2015 list of Priority Schools, SCS proceeded with the revocation process based on the law at the time. As SCS explained, in the 2015 legislative session, the law was changed so that Priority Schools would not be closed until 2017; however, the law states that nothing should prevent the charter authorizer from closing the school.

SCS stated that T.C.A. §49-13-122 (g) is not relevant for a revocation decision and speaks only to closure process (e.g., the winding down of a school after a revocation decision has been made). SCS further stated that it has had an established closure process since September 2014. SCS argued that neither state law nor State Board polices and rules require a process for revocation other than what is provided in the statute. SCS asserted that the State Board should give weight to what is in the best interest of the students

and not allow a consistently poor-performing charter to continue operation, because it unnecessarily and unfairly diverts funds away from helping all SCS students.

B. SAMS Argument

SAMS began its presentation by playing a video of the Metro Nashville Public Schools Director of Schools Round 1 Interview of Brad Leon, SCS Chief of Strategy & Innovation, from May 5, 2016. In the video, Mr. Leon stated that SCS was working on its charter schools compact, which would lay out performance standards for all charter schools. He further stated that there was no performance framework currently in place and that SCS was currently using a variety of data in evaluating student achievement for school revocation determinations. SAMS asserted that: (1) SCS's decision was contrary to T.C.A. § 49-13-122 and should be reversed because there was no procedure in place for closure; (2) There was no violation of the charter agreement; (3) SCS's decision was based on a negative fiscal impact; (4) SCS's revocation decision was discriminatory; and, (5) SCS applied selective enforcement, and SCS's decisions to revoke were not uniformly applied.

SAMS argued that the law requires a chartering authority to have a procedure in place prior to closure. SAMS asserted that the video of Mr. Leon's interview shows that SCS did not have any closure procedure prior to its decision to revoke the charter agreement with SAMS. SAMS noted as well that SCS does not have a closure committee.

SAMS further argued that it did not violate the charter agreement and that none of the three revocation reasons listed in T.C.A. § 49-13-122 are applicable in this case. SAMS stated that SCS's use of the application as de facto contract and "measuring stick" for performance is flawed, as achievement goals are self-imposed and vary among schools, and thus, SCS cannot make accurate comparisons between them. SAMS further discussed that pursuant to T.C.A. § 49-13-122(a)(2) the issue of revocation under subsection (a)(1) cannot be raised until 2017 and that SCS had assured SAMS that it would not pursue the closure of SAMS prior to 2017. SAMS posited that it is making progress, fiscally sound, and properly managed.

Next, SAMS argued that SCS was discriminatory in its revocation decisions and applied selective enforcement. SAMS stated that according to information obtained from the Tennessee Department of Education and an article on Chalkbeat.com, at least five charter schools and thirty-five district schools in SCS ranked lower than SAMS, but were not being subjected to closure. SAMS claimed that SCS applied selective enforcement to three of the six schools that it voted to close during an SCS Board of Education work session. SAMS further maintained that the decisions to revoke charter agreements were not uniformly applied to each school since the SCS board made motions to list out separately the schools that would and would not be voted on for closure (district schools) or revocation (charter schools). SAMS asserted that selective enforcement was a violation of equal of protection rights which, SAMS claimed, was also alluded to during the SCS board meeting. Furthermore, SAMS alleged that SCS was unfairly punishing the school for lobbying against the bill in the 2015 legislative session that postponed the automatic closure provision to 2017.

III. Public Comments

Eight individuals, including SAMS parents, students, and teachers, signed up to comment at the public hearing. Six of those attended the public hearing and gave oral comments in support of the continued operation of SAMS. The State Board also received twenty-six written comments in support of

SAMS, all requesting that the Board overturn the decision of SCS, and one written comment in support of revocation.

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, § 49-13-122.⁴ 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 non-approval of the charter school under § 49-13-108(c).

Therefore, the sole consideration for the Board is whether any of the three statutory reasons for revocation exist.⁵ Here, SCS revoked the charter agreement with SAMS because they believe SAMS committed a material violation of the conditions, standards, or procedures set forth in the charter agreement. Specifically, SCS asserts that SAMS violated the performance standards contained in its charter agreement.⁶

Initially, it is important to note that SCS and SAMS did not have an actual charter contract in place with SCS. As noted in Tennessee Attorney General Opinion No. 10-45, if the chartering authority grants approval to the charter school's sponsor and the chartering authority and sponsor do not execute a separate charter agreement, the charter application becomes the charter agreement.⁷ Thus, SAMS's charter application became the de-facto charter agreement between SAMS and SCS. SCS voted to revoke SAMS's charter because SAMS failed to meet the minimum performance requirements as set forth by SAMS in the application, which stands as their charter agreement in this case: (1) By the end of year three, 100% of the at-risk students who have been enrolled in SAMS for at least two years will meet and/or exceed state and national averages in reading and/or mathematics as verified by TCAP and NAEP Standards and; (2) By the end of year two, 100% of the at-risk students who have been enrolled in SAMS for at least two years will score at/or above grade level on end of course curriculum-based exams in reading and/or mathematics. The performance data provided by SCS and verified by TDOE, attached to this report as Exhibit A, shows that SAMS has not missed these performance goals by a small margin, but rather, the data shows extreme underperformance of SAMS's stated goals.

Since first opening doors in August 2010, SAMS has shown a continued pattern of significant underperformance towards its achievement goals. In August 2014, SAMS was designated as a Priority School based on the prior years' academic performance. In 2015, SAMS remained a Priority School and did not move into the Priority Improving or Priority Exit status by demonstrating growth in achievement

⁴ Tennessee State Board Policy 6.110.

⁵ In its appeal, SAMS raised the issues of a lack of closure procedure, discrimination, and selective enforcement; however, those issues are not properly before the State Board for consideration.

⁶ SCS included "substantial negative fiscal impact" as a reason for revocation; however, that is not a basis for revoking a charter under T.C.A. § 49-13-122 and will not be considered in this recommendation.

⁷ Tenn. Op. Atty. Gen. No. 10-45 (Tenn. A.G.), 2010 WL 1495645 (citing Tenn. Code Ann. §§ 49-13-104(1); 49-13-106(b)(1)(B); 49-13-108(1); and 49-13-110(a)).

in School Year 2014-15. In the January 2016 notification of schools currently in the bottom 10% of schools, SAMS remained in the bottom 10% of schools statewide, and, in fact, was in the 4.6 and 5.2 percentile of schools in 2014 and 2015, respectively.

The decision to revoke a charter agreement is extremely emotional for all involved and affected by the revocation and closure proceedings. Through the hearing and public comments, it was evident that SAMS's staff, students, parents, and other stakeholders have an attachment to SAMS and a vested interest in keeping its doors open. Conversely, SCS also has a responsibility to act dutifully as a quality charter authorizer and "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."⁸ 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.⁹

In this case, it is clear the SAMS has not fulfilled its part of the autonomy-for-accountability bargain. The record shows that SAMS consistently failed to come even close to meeting its performance expectations and thereby has committed a material violation of the conditions and/or standard set forth in the charter agreement.

Similarly, SCS did not adequately fulfill its duties under the autonomy-for-accountability bargain and, as an authorizer, has significant room to improve practices for transparency, performance evaluation, and timeliness of revocation decisions. In sum, a quality authorizer:

1. Has clearly established performance frameworks by which it holds charter schools accountable and annually communicates about a charter school's performance against goals;
2. Releases an annual report on each charter school to provide students, families, stakeholders, and the public with important information about a school's growth and achievement, among other key success indicators; and,
3. Has an intervention policy in place to notify schools of performance, operational, or financial issues in a timely way, and where applicable, provides a timeline and expectations for remedying the issue(s) prior to a revocation decision.¹⁰

⁸ 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.

⁹ 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.

¹⁰ Principles & Standards for Quality Charter School Authorizing, 2015 Edition, National Association of Charter School Authorizing, Pages 14-21, available at http://www.qualitycharters.org/wp-content/uploads/2015/08/Principles-and-Standards_2015-Edition.pdf.

Moreover, while legally permissible, SCS's communication and notification regarding the revocation of SAMS's charter agreement, particularly the timing of the decision, is troubling. The extremely short notice of the revocation decision and the significantly late timing in the academic year negatively impacts transition plans for affected students and places an undue burden on families surrounding school choices for the upcoming year. Ultimately, the way the revocation decision was made and communicated to SAMS, its students, parents, and stakeholders, does not embody the actions of a quality authorizer.

Considering the disruption to students and families, SCS must be extremely conscientious and intentional in its efforts to comply with the provisions of T.C.A. § 49-13-122(g). Specifically, SCS shall communicate within thirty (30) days to the families of students enrolled in the school all other public school options for which the student is eligible to enroll. Pursuant to T.C.A. § 49-13-123, if a charter agreement is terminated in accordance with § 49-13-122, "a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to § 49-6-3105 at any time. Applications and notices required by this section shall be processed and approved in a prompt manner." Moreover, SCS shall "communicate regularly and effectively with the families of students enrolled in the school, as well as with school staff and other stakeholders, to keep the families, staff and other stakeholders apprised of key information regarding the school's closing."¹¹ Given the timing of this revocation decision, the burden is on SCS to ensure each student and family affected is afforded excellent communication and support in creating a smooth transition for the coming 2016-17 school year.

In closing, the revocation of a charter agreement is a serious and impactful decision, and one that all involved should contemplate with great care. As an appellate authorizer, the State Board of Education continues to be focused on quality school choices for all students across our state. Allowing low-performing charter schools to remain open is a disservice to the students it serves and to the charter community as a whole, in terms of ensuring the health and quality of the charter sector. Furthermore, as a state, we owe all students the opportunity to attend a high-quality school that will prepare them for a successful future. As the record shows, SAMS continually failed to meet the most minimal of performance standards as illustrated by its status on the 2014 and 2015 list of Priority Schools, and thus is in violation of its charter agreement with SCS.

CONCLUSION

Accordingly, my recommendation is that the State Board uphold SCS's revocation of SAMS's charter.



Dr. Sara Heyburn, Executive Director
State Board of Education

5/25/2016

Date

EXHIBITS

- **Exhibit A: Shelby County Schools - Charter School Minimum Performance Requirements for Southern Avenue Middle School**

¹¹ T.C.A. § 49-13-122(g)



THE OFFICE OF PLANNING AND ACCOUNTABILITY

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**Southern Avenue Middle School
Failure to Meet Minimum Performance Requirements of Charter Agreement**

Minimum Performance Requirement	13-14 Results					14-15 Results					Data Sources & Notes																																																				
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