

<b>TENNESSEE STATE BOARD OF EDUCATION</b>	
<b>CHARTER SCHOOL APPEALS</b>	<b>2.500</b>

**Purpose:** The purpose of this policy is to set forth the process for submitting an appeal of the denial of a charter school application by the local board of education to the State Board of Education (the “State Board”) until December 31, 2020.

**Policy Sections**

1. Generally
2. Notice of Appeal
3. Information from the Local Board of Education
4. Request for Additional Information
5. Fiscal Impact Information
6. Public Hearing
7. Standard of Review
8. Interviews
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10. Decision-Making Principles
11. Decision of State Board
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1. **Generally.** Pursuant to T.C.A. § 49-13-108, if a local board of education denies an amended charter school application, the sponsor may appeal the decision to the State Board within ten (10) calendar days of the local board of education’s decision to deny the charter school application.

The State Board will not consider appeals of applications that did not include all of the statutorily required elements or that were submitted outside the application window set by the local board of education in accordance with T.C.A. § 49-13-107.

2. **Notice of Appeal.** The sponsor shall notify the State Board by email of the sponsor’s decision to appeal the local board of education’s denial of the amended charter school application within ten (10) calendar days of such denial. The notice of appeal must be received by the State Board by 4:30 p.m. Central Time on the tenth (10<sup>th</sup>) day. In order to be considered a complete appeal, this notice of appeal shall contain the following information:

- (a) Copies of the initial and amended applications submitted to the local board of education;
- (b) A summary of the application timeline including the dates that the initial and amended applications were originally submitted to the local board of education, the date of public hearing, the date of the capacity/applicant interview (if applicable), and the dates the initial and amended applications were denied by the local board of education;

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- (c) Copies of the letters informing the sponsor of the local board of education's reasons for denying the initial and amended applications;
- (d) A clean version of the amended application without any tracked changes that includes all changes made upon resubmission to the local board of education and, if applicable, any corrections to the application allowed under T.C.A. § 49-13-108(b)(4) upon appeal to the State Board of Education as outlined in 2(e) in this policy;
- (e) If applicable, a document outlining any proposed corrections allowed under T.C.A. § 49-13-108(b)(4) made to the amended application upon appeal to the State Board of Education. The sponsor shall use the template provided by the State Board to submit any proposed corrections. The template will require the sponsor to list the page number of each correction, the original language of the amended application, the proposed corrected language of the amended application, and the reasoning for the proposed correction. Any proposed corrections to the charter school amended application, as permitted by T.C.A § 49-13-108(b)(4), must be made at the time of the appeal to the State Board. The State Board will only accept corrections permitted by T.C.A § 49-13-108(b)(4). Corrections are changes that are minor in nature such as typographical, grammatical, or transposing. The State Board will review all proposed corrections and notify the sponsor if the corrections will be accepted. If the State Board does not accept a proposed correction, the State Board will redact it from the amended application; and
- (f) A brief statement, no longer than three (3) pages, including, but not limited to, an explanation of why the local board of education's denial of the charter school application was contrary to the best interests of the pupils, school district, or community.

State Board staff will confirm to the sponsor receipt of the appeal and the date of receipt. State Board staff will not accept an incomplete appeal or any additional documentation from the sponsor beyond the contents of the notice of appeal unless requested by the State Board staff.

- 3. Information from the Local Board of Education.** State Board staff will gather information related to each appealed application from the local board of education. The information requested may include, but is not limited to:

- (a) A list of individual(s) who reviewed the initial and amended applications.
- (b) Copies of the minutes, notes and presentations, if such were prepared, from any review team meetings, capacity/applicant interview, local board of education work sessions, and/or meetings in which the application(s) was discussed.

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- (c) Copies of the completed scoring sheets used to evaluate the applications.
- (d) Copies of any reports or notes prepared for the local board of education by reviewers or other local board of education staff.
- (e) Copies of the letters informing the sponsor of the local board of education's reasons for denying the initial and amended applications.

The local board of education shall comply with such document request and provide any applicable documents to the State Board staff within five (5) calendar days of receipt of the document request.

**4. Request for Additional Information.** State Board staff may gather additional information related to each appealed application from the sponsor, the local board of education, and/or the Tennessee Department of Education. The sponsor, local board of education, and/or the Tennessee Department of Education shall comply with such document request and provide applicable documents to the State Board staff within five (5) calendar days of receipt of the document request.

**5. Fiscal Impact Information.** If the denial by the local board of education was based upon substantial negative fiscal impact, the local board of education must submit documentation explaining the fiscal impact of the charter school. The local board of education shall provide this documentation within five (5) calendar days of receiving notification from the State Board that a sponsor is appealing the local board of education's denial of a charter application. The burden will be on the local board of education to prove that substantial negative fiscal impact does exist. The State Board reserves the right to obtain information independently from the information provided by the local board of education. Supporting documentation should include, but is not limited to:

- (a) Average Daily Membership (ADM) figures of the local education agency (LEA) (specifically all Kindergarten through grade 12 and special education students) for the current and two preceding school years and an estimate of the number of students currently enrolled who will transfer to the charter school seeking authorization;
- (b) An estimate, based on prior years' data, of the number of students who will no longer be enrolled in the LEA during the school year in which the charter school seeks to begin operation for reasons other than a transfer to the charter school;
- (c) A projection of the LEA's ADM figures (specifically all Kindergarten through grade 12 and special education students) for the school year in which the charter school seeks to begin

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operation, excluding the estimated number of students who will transfer to the charter school seeking authorization. Such projections shall include estimates, using prior years' data, of increased revenue to the LEA from first-time enrollees or transferees into the district; and

- (d) Specific facts or financial information and a written statement demonstrating how placement or transfer of students to a charter school within the LEA will impose a budgetary or financial burden on the LEA beyond that associated with normal enrollment fluctuations, including an objective analysis of the LEA's ability to adjust expenses on a system-wide basis due to the estimated numbers and anticipated placement of students who will transfer to the charter school seeking authorization.

In compliance with T.C.A. § 49-13-108(c), the State Board will conduct a separate analysis for each application that was denied based upon substantial negative fiscal impact.

**6. Public Hearing.** The State Board is required to hold a public hearing on the charter application within sixty (60) calendar days after receipt of the notice of appeal.

- (a) *Date.* State Board staff will schedule a date for the public hearing to be held in the school district where the sponsor proposes to open the charter school and will communicate the date and time of this hearing to the sponsor and the local board of education and post notice of the hearing on the State Board's website.
- (b) *Conduct.* The Executive Director of the State Board or a State Board staff member will preside over the hearing. The Executive Director or other staff member may ask questions of the sponsor, local board of education, or those offering public comments at any time during the hearing. The Executive Director or other staff member may end portions of the hearing or the hearing itself if the sponsor, local board of education, or members of the public are out of order. Examples of conduct that may warrant calling speakers out of order include, but are not limited to: yelling or using obnoxious or offensive language; speaking out of turn; or denigrating participants or other employees or officials of either the sponsor or the local board of education by name calling or similar conduct.
- (c) *Presentations.* The local board of education will have fifteen (15) minutes to present the reasons for the local board's denial. The sponsor will have fifteen (15) minutes to respond and show why the local board of education's decision is contrary to the best interests of the students, school district, or community. Presentations may include PowerPoints and charts. Copies of any PowerPoints or charts utilized by the sponsor or local board shall be provided to the State Board staff.

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- (d) *Public Comment.* There will be at least fifteen (15) total minutes for public comment, and the Executive Director or other staff member, in their discretion, may increase the time for public comment based on the circumstances. Members of the public who wish to comment shall register through a process designated by State Board staff, and to the extent time permits, will be called to speak in the order their names appear on the registration list. Each member of the public will be permitted to speak for no more than three (3) minutes, but the Executive Director or other staff member will have discretion to set a time limit of less than three (3) minutes based on the circumstances. Written comments may also be submitted at the public hearing or submitted to the State Board as specified by State Board staff.
- (e) *Closing.* The local board of education and the sponsor will each have ten (10) minutes for a closing statement.

**7. Standard of Review.**

- (a) State Board staff and a charter application review committee (the “Review Committee”) will conduct a de novo on the record review of the proposed charter school’s application and provide recommendations to the Executive Director of the State Board.
- (b) In order to overturn a denial of the local board of education, the State Board must find that that the local board’s decision was contrary to the best interests of the pupils, the school district, or the community.
- (c) If a local school board’s denial of a charter application is based on substantial negative fiscal impact, the State Board should also consider the financial impact of the charter school on the LEA. If the State Board finds that the proposed charter school will have a substantial negative fiscal impact on the LEA, it may uphold the decision of the LEA as authorization of such school would be contrary to the best interests of the pupils, the school district, or the community.
- (d) The State Board shall abide by the principles and criteria for application review set forth in State Board Policy 6.300.

**8. Interviews.**

- (a) The State Board shall interview the governing board and school leadership, if named, of each sponsor that has filed an appeal in accordance with this policy. The interview panel may consist of State Board staff, a State Board member, and members of the Review

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Committee and shall be conducted in accordance with State Board Policy 6.300. These interviews shall not be open to the public. Results of the interview shall be considered in the Executive Director's recommendations to the State Board.

**9. Transparency and Public Engagement.** The State Board is committed to employing fair and transparent procedures that promote evidence-based decisions regarding a charter application received on appeal. The State Board will inform appellants and applicable local boards of education of their rights and responsibilities at all stages of the process, promptly notifying them of approval or denial decisions, including the basis for the decision.

**10. Decision-Making Principles.**

(a) Pursuant to State Board Policy 6.111, the State Board commits to using rigorous decision-making in granting charters only to sponsors that have demonstrated competence and capacity to succeed in all aspects of the proposed charter school.

(b) The Review Committee members will provide evidence-based recommendations to the State Board staff that address established approval criteria. The Executive Director of the State Board will consider the recommendation of the Review Committee in his or her recommendation to the State Board for final approval or denial of the appeal consistent with the approval criteria and processes set forth in this policy and State Board Policy 6.300.

**11. Decision of the State Board.**

(a) Following the public hearing and review of the application, the Executive Director of the State Board will provide written findings and recommendations to the State Board. The State Board will consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the Board is not bound by the recommendation. The findings and recommendations of the Executive Director of the State Board will be discussed in a work session, if ruling at a regular meeting, or, prior to the vote on the agenda item, if ruling at a special-called meeting.

(b) A representative of the sponsor and/or local school board may submit a written comment to be read into the record by a member of the State Board staff during the board meeting where the State Board will consider the findings and recommendations of the Executive Director. Written comments shall not be more than one (1) page typed in length and shall be received by the Executive Director at least forty-eight (48) hours prior to the scheduled board meeting. The State Board shall accept only one written comment from each party.

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- (c) The State Board will meet and render a decision within sixty (60) calendar days of receipt of the appeal. The State Board may:
- i. Affirm the decision of the local board of education, or
  - ii. If the application is for a charter school in an LEA that does not contain at least one (1) priority school on the current or last preceding priority school list, and if the State Board finds that the local board's decision was contrary to the best interests of the pupils, the school district, or the community, the State Board shall remand the decision to the local board of education with written instructions for approval of the charter. These written instructions shall specify the objective reasons for the decision. The decision of the State Board shall be final and not subject to appeal. The LEA, however, shall be the chartering authority,<sup>1</sup> or
  - iii. If the application is for a charter school in an LEA that contains at least one (1) priority school on the current or last preceding priority school list, and if the State Board finds that the local board's decision was contrary to the best interests of the pupils, the school district, or the community, the State Board may approve the application for the charter school. The decision of the State Board shall be final and not subject to appeal, and the State Board shall become the chartering authority.<sup>2</sup>
- (d) If the State Board becomes the chartering authority pursuant to 11(c)(iii) above, the LEA and the charter school may submit a charter agreement signed by the LEA and the charter school to the State Board stating that the charter school shall be overseen and monitored by the LEA. If such charter agreement is received by the State Board within thirty (30) calendar days after the State Board becomes the charter authorizer, then the authorization of the charter school shall be officially transferred to the LEA. Such agreement can be submitted electronically.

**12. Post Application Approval.**

- (a) No charter school may begin operation before obtaining the chartering authority's approval of its charter agreement.
- (b) For all charter schools authorized by the State Board, the following shall apply.

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<sup>1</sup> T.C.A. § 49-13-108(b)(4).

<sup>2</sup> *Id.*

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- i. The State Board's approval of a charter school's application is separate and distinct from the State Board's approval of its charter agreement and a school's right to open.
- ii. Once an application is approved by the State Board, the State Board will negotiate a charter agreement with the school's governing board that must be approved by the State Board and signed by both parties. The approved amended application shall be included as an exhibit to the charter agreement.
- iii. The State Board will establish a Pre-Opening Checklist, substantial compliance therewith shall be a prerequisite for opening the charter school.