
BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

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IN RE:)	State Board of Education Meeting
NASHVILLE CLASSICAL)	February 7, 2020
Charter School Appeal)	
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**FINDINGS AND RECOMMENDATION REPORT
OF THE EXECUTIVE DIRECTOR**

Pursuant to Tennessee Code Annotated (T.C.A.) § 49-13-110 and State Board emergency rule 0520-14-01-.06¹, a charter school that has its petition to amend its charter agreement denied by their charter school authorizer may appeal the denial to the State Board of Education (State Board). On December 6, 2019, Nashville Classical Charter School (NCCS) appealed the denial of its petition to amend its charter agreement by the Metropolitan Nashville Public Schools (MNPS) Board of Education to the State Board. Based on the following procedural history, findings of fact, and analysis of the issues, I believe the decision to deny NCCS’s amendment petition was contrary to the best interests of the students, LEA, or community. Therefore, I recommend that the State Board overturn the decision of MNPS to deny the petition to amend the NCCS charter agreement.

STANDARD OF REVIEW

Pursuant to State Board emergency rule 0520-14-01-.06, State Board staff conducted a review of the documentation included in the notice of appeal and the decision to deny the amendment petition, including additional information gathered by State Board staff. Additionally, the State Board held a public hearing in the district where NCCS operates.

¹ State Board emergency rule 0520-14-01-.06 expired on December 24, 2019. The decision of the MNPS Board of Education to deny the NCCS amendment application was made on November 26, 2019, and the NCCS appeal of the MNPS Board of Education’s decision was submitted to the State Board on December 6, 2019. Because the decision of the MNPS Board and the appeal were both made during the time that the emergency rule was in effect, the State Board is able to consider this appeal under the emergency rule that was in effect at the time.

In order to overturn the decision of the local board of education, the State Board must find that the local board's decision to deny the charter amendment petition was contrary to the best interests of the students, LEA, or community.

In this case, the State Board has the ability to affirm the MNPS decision to deny the amendment petition or overturn the decision of MNPS and remand the decision to MNPS with written instructions for approval of the amendment. MNPS shall remain the chartering authority.

PROCEDURAL HISTORY

1. On May 29, 2012, the MNPS Board of Education approved the charter application for NCCS to open a charter school serving grades kindergarten through 8th.
2. On July 9, 2013, the MNPS Board of Education executed a charter agreement with NCCS.
3. NCCS began operation at the start of the 2013-2014 school year, serving kindergarten students.
4. For the 2019-20 school year, NCCS serves grades kindergarten through 6th.
5. On July 30, 2019, NCCS submitted a letter of intent to amend its charter agreement to the MNPS Office of Charter Schools.
6. On October 1, 2019, NCCS submitted an application to amend its charter agreement to the MNPS Office of Charter Schools.
7. On November 12, 2019, the MNPS Office of Charter Schools presented a recommendation at the MNPS Board of Education meeting to approve the NCCS amendment application. The MNPS Board of Education requested additional fiscal information about the amendment applications prior to voting on the recommendations.
8. On November 26, 2019, the MNPS Office of Charter Schools presented a recommendation at the MNPS Board of Education meeting to approve the NCCS amendment application along with additional fiscal information requested by the MNPS Board of Education. The MNPS Board of Education voted to deny the amendment application of NCCS.
9. On December 6, 2019, NCCS appealed the denial of its amendment application in writing to the State Board.
10. On December 9, 2019, the State Board sent a request for additional information to NCCS and MNPS.

11. On January 13, 2020, the State Board staff held a public hearing in Nashville. At the public hearing, the Executive Director, sitting as the State Board's designee, heard presentations from NCCS and MNPS and took public comment.

FINDINGS OF FACT AND ANALYSIS

I. FINDINGS OF FACT REGARDING DISTRICT'S DECISION

According to NCCS's signed charter agreement with the MNPS Board of Education "The Charter School may enroll students up to a total maximum enrollment of 450. Increases in total enrollment numbers greater than 5% or 25 students, whichever is less, constitute material changes in this Charter Agreement, and are not permitted unless formal amendment to this Charter Agreement is secured in advance according to the provisions outlined in TCA 49-13-110(b)."

The MNPS Office of Charter Schools developed a charter amendment application that charter schools were required to use when submitting an amendment petition to the district. The charter amendment application stated that each application would be reviewed by a review team, each member of the review team would complete an evaluation report that would be submitted to the MNPS Office of Charter Schools, and a "recommendation report will be compiled from the combined analysis of the entire process and presented to the MNPS Board of Education for their review..." The introduction section of the MNPS charter amendment application stated "We are committed to granting amendments only to those schools who clearly demonstrate the academic track record and financial and operational capacity necessary to govern and operate high-performing schools. We particularly welcome amendment requests from schools that bring a strong benefit to various areas of the district and meet the needs of all students, especially those in special population subgroups." Additionally, the amendment application outlined eligibility requirements for submission of an amendment application, including that a school "must be in years 4 through 8 and in good standing for a period of three years in all three domains of the Authority's academic, financial, and organizational performance frameworks and it must not be considered a low-performing school."

On October 1, 2019, NCCS submitted an amendment application to MNPS Office of Charter Schools to increase its maximum enrollment from 450 students to 572 students. On September 4, 2019, NCCS met with the Office of Charter Schools and revised its amendment application to reduce the maximum enrollment request from 572 students to 527 students.

The MNPS Board of Education met on November 12, 2019 to discuss four (4) amendment petitions that had been submitted by charter schools and to consider the recommendations of the Office of Charter Schools. The Board did not vote on the petitions at the November 12, 2019 meeting and requested the Office of Charter Schools provide additional fiscal information regarding the impact of approving the amendment petitions to the Board prior to voting on the amendment applications.

On November 26, 2019, the MNPS Board of Education met again to discuss the amendment petitions and the additional information regarding fiscal impact provided by the Office of Charter Schools. In the MNPS Office of Charter School's presentation to the MNPS Board of Education on November 26,

2019, the Office of Charter Schools recommended that the MNPS Board of Education approve all four (4) charter amendment applications that were submitted. This included amendment applications from STEM Prep Charter School, Purpose Prep Charter School, the Valor network of charter schools, and NCCS. The presentation from the Office of Charter Schools to the MNPS Board indicated that all four (4) amendment petitions met the requirements for amendment application submission as stated in the MNPS amendment application and that the MNPS review team had found all four (4) petitions met the requirements for approval of the application, as outlined below:²

APPLICATION SUBMISSION REQUIREMENTS	MEETS
Operating in years 4-8?	<input checked="" type="checkbox"/>
<u>Academics</u> : 3 years of good standing on Performance Framework?	<input checked="" type="checkbox"/>
<u>Operations</u> : 3 years of good standing on Performance Framework?	<input checked="" type="checkbox"/>
<u>Finances</u> : 3 years of good standing on Performance Framework?	<input checked="" type="checkbox"/>
REVIEW TEAM FINDINGS	MEETS
<u>Academics</u> : Strong likelihood of continued academic success?	<input checked="" type="checkbox"/>
<u>Operations</u> : Strong likelihood of continued strong operational practices?	<input checked="" type="checkbox"/>
<u>Finances</u> : Strong likelihood of continued financial stability?	<input checked="" type="checkbox"/>
Clear explanation of rationale for contract amendment?	<input checked="" type="checkbox"/>

On November 26, 2019, the MNPS Board of Education voted to approve the amendment applications of STEM Prep, Purpose Prep, and the Valor network. The MNPS Board of Education voted to deny the NCCS amendment application.

A letter dated November 26, 2019 from the Executive Director of Charter Schools for MNPS to the Head of School for NCCS notified NCCS that the MNPS Board of Education voted five (5) to four (4) to deny the NCCS amendment request based on fiscal impact and “other reasons addressed on the board floor, including but not limited to MNPS school capacity in the area.”

II. State Board Review of the Record and Requests for Additional Information

Following the denial of the NCCS amendment application, NCCS appealed the denial of its charter amendment application in writing to the State Board on December 6, 2019. State Board staff collected evidence from NCCS and MNPS to determine whether the decision of the MNPS Board of Education was contrary to the best interests of the students, LEA, or community. Information collected by State Board staff focused on the reasons for denial cited by the MNPS Board of Education outlined above.

² MNPS Board of Education Meeting Presentation, November 26, 2019

Additionally, the Executive Director, sitting as the State Board’s designee, held a public hearing in Nashville, Tennessee on January 13, 2020. Both parties presented evidence at the public hearing and the State Board staff collected public comments.

III. Facts and Analysis Related to the Reasons for Denial

The decision of the MNPS Board of Education to deny the amendment application of NCCS was based upon the following reasons outlined in the November 26, 2019 letter from the Office of Charter Schools to NCCS: “Fiscal impact, and other reasons addressed on the board floor, including, but not limited to MNPS school capacity in the area.” Based on the totality of the evidence presented by both parties during this appeal, including information gained at the public hearing and through public comments, I determine that the decision of the MNPS Board of Education to deny the amendment application of NCCS was contrary to the best interests of the students, LEA or community. As such, pursuant to State Board emergency rule 0520-14-01-.06, I recommend that the State Board overturn the decision of the MNPS Board of Education and remand the decision back to the MNPS Board of Education to approve the amendment application of NCCS.

In the MNPS Amendment Application Report for NCCS (the “Recommendation Report”) submitted by the MNPS Office of Charter Schools to the MNPS Board of Education recommending approval of the NCCS amendment application, the Office of Charter Schools noted that “[o]ver the past three years, NCCS has outperformed both the district and the state in ELA and Math with the number of students proficient and/or advanced. This success culminated in 2019, when NCCS was named a Tennessee Reward School.” The Recommendation Report further stated that “It is important to note 82% of the current student population at NCCS is part of the state’s ‘Super Subgroup,’ which includes racial minorities, English language learners, Students with Disabilities, and Economically Disadvantaged scholars. NCCS’s Super Subgroup outperformed the district and the state.” The Recommendation Report also highlighted NCCS’s steady enrollment and waitlist data, as well as its low student attrition, strong community partnerships, after-school enrichment programs, and healthy financial position. The presentation given to the MNPS Board of Education cited the following data in support of the recommendation to approve the NCCS amendment application:

TN Ready Performance			
Year	NCCS ELA	MNPS ELA	State ELA
16-17	67%	25%	34%
17-18	49%	27%	35%
18-19	50%	28%	35%
Year	NCCS Math	MNPS Math	State Math
16-17	55%	29%	37%
17-18	55%	28%	40%
18-19	65%	33%	45%

Super Subgroup Performance			
	Super Subgroup	ELA	Math
NCCS	82%	50%	65%
MNPS	82%	27%	33%
State	59%	35%	45%

Additionally, the Office of Charter Schools included an “Impact Statement” slide in its PowerPoint presentation to the MNPS Board of Education outlining a proposed total fiscal impact on MNPS of negative \$990,000 over the period of four (4) years if the NCCS amendment was approved. Additionally, the Impact Statement slide included a list of “Primary Impacted Schools” in the East Nashville area where NCCS is located and their current capacity:

Primary Impacted Schools	Students	Capacity	
Hattie Cotton Elementary	19	482	49%
Ida B. Wells Elementary	19	413	63%
KIPP Academy Nashville Elementary	22	470	86%
Stratford STEM Magnet School	25	1278	74%
Warner Elementary	31	529	40%

The MNPS Board of Education’s decision to deny the NCCS amendment application relied heavily on the Impact Statement contained within the PowerPoint presentation given to the Board. In the statement provided by MNPS in response to the State Board’s first request for information, MNPS stated “The information presented to the MNPS Board of Education by the Charter Office at the November 26, 2019 meeting shows that local elementary schools (including KIPP Academy Nashville Elementary) in the area have an abundance of open seats. Nashville Classical is most likely to pull students from schools that are at 40-86% capacity. It is immaterial that MNPS may have a need for additional seats in the Antioch area of town, since students in that area would not be served by Nashville Classical expanding.” Additionally, MNPS noted “Approval of the Nashville Classical charter amendment results in an additional \$390,000 per year drain on the district.” At the Public Hearing, MNPS further argued that other schools within the enrollment zone surrounding NCCS were not only under-enrolled, but were demonstrating progress on TVAAS growth measures.

In response to the reasons for denial cited by the MNPS Board of Education, NCCS presented evidence refuting the MNPS reasons for denial. At the public hearing, NCCS argued that the school’s high academic achievement and status as a 2019 reward school coupled with strong enrollment, low attrition and demand for the school merited approval of the amendment application. NCCS stated it will reach its total maximum enrollment under the current charter agreement two (2) years earlier than projected. In support of its amendment request, NCCS cited data showing the school has outperformed both the district and the state in ELA and Math achievement, the school’s “super subgroup” outperformed both the district and the state in ELA and Math achievement, and that the school was recently named a 2019 Reward

School by the state. Additionally, NCCS noted that it is the highest performing Title I school in MNPS and that its 5th grade success rate was 2.5 times the MNPS average.

Additionally, NCCS outlined how a denial of the amendment application would have a negative effect on current students and families by forcing the school to reduce enrollment either through elimination of 7th and 8th grades or reduction of enrollment in incoming Kindergarten classes from 69 students to 33 students. The school argued that the elimination of 7th and 8th grades would have an immediate negative impact on current 6th grade students who would be forced to withdraw from NCCS and enroll in another middle school mid-way through their middle school career rather than being able to matriculate through 8th grade at NCCS as expected. The alternate option of reducing Kindergarten enrollment, NCCS argued, would result in many families with siblings not being able to attend the same school, a large increase in the school's waitlist, the loss of staff jobs, and a negative impact on the school's ability to continue robust programming that has led to the school's academic and cultural success. NCCS also pointed out that if denied the ability to increase enrollment, students will have few high-quality zoned options. Of the elementary schools highlighted by MNPS in the November 26, 2019 presentation as "Primary Impacted Schools" within the East Nashville zone, two (2) of three (3) zoned schools are on the state's Priority List and score well below NCCS in achievement. Additionally, NCCS noted that the four (4) closest zoned middle schools score far below state and district averages and half are on the state's current Priority List. Furthermore, NCCS presented evidence of high demand for the school, noting it receives eight (8) applications for every available seat and that the school currently carries a waitlist.

NCCS also highlighted that MNPS's analysis of open seats in the East Nashville enrollment zone failed to take into consideration that NCCS students come from 26 unique zip codes in Davidson County, with Antioch being the third most popular zip code. At the Public Hearing, NCCS noted that only 31% of students come from the East Nashville area, with 69% of students coming from areas across Nashville. This runs in contrast to MNPS's assertions that the need for additional seats in the Antioch area was "not relevant" and demonstrates that MNPS's assumption that NCCS drew students primarily zoned to the East Nashville schools cited in the "Primary Impact" slide presented to the MNPS Board of Education was not based on accurate information. Finally, NCCS argued that MNPS relied upon flawed data to determine fiscal impact, noting that the fiscal impact numbers used an opaque formula for determining the per pupil cost and did not take into account the annual lease payments NCCS makes to MNPS on an annual basis, totaling \$500,000 a year over the next four (4) years. NCCS also noted the calculations excluded the annual authorizer fee paid by NCCS to MNPS totaling \$35,000 per year.

With regard to the fiscal impact analysis relied on by MNPS, MNPS argued that substantial negative fiscal impact under T.C.A. § 49-13-108(c) is a permissible ground for denial of charter amendment applications. However, an analysis of the statute reveals this is not the case. T.C.A. § 49-13-108(b)(1) expressly states "this section only applies to applications for the creation of new public charter schools that are submitted to a local board of education." Since the NCCS application was an application to amend its existing charter agreement under T.C.A. § 49-13-110(d) and not an application for the creation of a new charter school under section 108, substantial negative fiscal impact was not a permissible reason for denial. While substantial negative fiscal impact under T.C.A. § 49-13-108(c) is not applicable here, the

fiscal impact of the approval of the NCCS amendment application can be analyzed as a factor in determining the best interests of the students, LEA or community.

However, I determine that the evidence collected during this appeal demonstrates that the fiscal impact outlined by MNPS is outweighed by the extremely strong academic performance of NCCS, demand for the school, and lack of high performing options for students in zoned schools. NCCS's data shows that it has outperformed both MNPS and the state averages on TNReady assessments in Math and English Language Arts, including outperforming the district and state averages with students in the "super subgroup" over the last three (3) years. The success rate of NCCS's Economically Disadvantaged and minority students far outperforms state and district averages. Additionally, the school has been designated as a 2019 Reward School and maintains strong student retention and a robust wait list. There is clear demand in the community for the school, and NCCS was able to demonstrate that it draws students from across the district. Additionally, data presented by MNPS and NCCS shows that of the zoned elementary schools in the East Nashville area, two (2) of the three (3) highlighted by MNPS are on the state's Priority List. NCCS also provided evidence that denial of the amendment would have a negative impact on current students and families as they would be forced to either eliminate 7th and 8th grades and force current students to find a new school mid-way through middle school, or the school will be forced to drastically reduce its incoming kindergarten class, which will have a lasting impact on the school's ability to enroll siblings of current students, and to continue staffing at the level to support its current programming. Given this evidence, it is clear that denial of this amendment would negatively impact not only students currently enrolled in NCCS, but will reduce opportunity for additional students to gain access to a high performing school that is already in demand. Additionally, the fiscal impact analysis employed by MNPS did not take into account a number of other factors, including the \$500,000 rent payments from NCCS to MNPS over the next four (4) years. Given the undisputed success of the school, the demand in the community, and lack of high performing options at zoned schools, I believe the evidence is clear that approval of the NCCS amendment is in the best interests of the students, LEA, and community.

ALIGNMENT TO QUALITY AUTHORIZING STANDARDS

Detailed information regarding MNPS's amendment petition process was collected and analyzed by State Board staff to determine alignment with the State Board Quality Authorizing Standards as set forth in State Board policy 6.111 and as required by T.C.A. § 49-13-108(f). The State Board Quality Authorizing Standards serve as a crucial guidepost for authorizers to ensure quality and fairness.

MNPS developed an amendment application for its charter schools to use when petitioning to amend their charter agreements, and this aligns with provisions under T.C.A. § 49-13-110 and State Board policy 6.111, which allow charters schools to occasionally modify their charter agreements. The amendment application clearly communicated the performance requirements that a charter school must demonstrate to amend its agreement and how the academic, operational, and financial performance of the school would be evaluated when considering the amendment application.

Furthermore, in the recommendation to the MNPS Board of Education, the Office of Charter Schools grounded its recommendation in the district's adopted performance framework and only recommended approval of the amendments from schools that demonstrated strong and sustained

performance on the district's performance framework. This demonstrates alignment to the principle of maintaining high standards for schools it oversees.

However, ultimately, the MNPS Board of Education did not align its decision to the quality authorizing standards by failing to ground its decision in the performance of the authorized charter school and not considering the well-being and interests of students within the school when making the decision to deny them a continued pathway in a high-achieving school.

CONCLUSION

It is evident based on the information contained in this report that NCCS offers a high-quality option for students across MNPS, many from some of the city's most vulnerable populations zoned to attend low performing or Priority schools. This success has been recognized by both the state, who named NCCS a 2019 Reward School, and the MNPS Office of Charter Schools in their recommendation that the MNPS Board of Education approve the NCCS amendment application. For these reasons, I conclude that the decision to deny the NCCS amendment application was contrary to the students, LEA or community. As such, pursuant to State Board emergency rule 0520-14-01-.06, I recommend that the State Board overturn the decision of the MNPS Board of Education and remand the decision back to the MNPS Board of Education to approve the amendment application of NCCS.



Dr. Sara Heyburn Morrison, Executive Director
State Board of Education

2/3/2020

Date