
BEFORE THE TENNESSEE STATE BOARD OF EDUCATION

)
)
)
)
)
)

IN RE:) **State Board of Education Meeting**
COMPASS COMMUNITY SCHOOLS - MIDTOWN) **July 24, 2020**
Charter School Appeal)

**FINDINGS AND RECOMMENDATION REPORT
OF THE EXECUTIVE DIRECTOR**

Pursuant to Tennessee Code Annotated (T.C.A.) § 49-13-110 and State Board of Education rule 0520-14-01-.06, 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 May 21, 2020, Compass Community Schools – Midtown (Compass Midtown) appealed the denial of its petition to amend its charter agreement by the Shelby County Schools (SCS) 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 Compass Midtown’s amendment petition was not contrary to the best interests of the students, LEA, or community. Therefore, I recommend that the State Board uphold the decision of the SCS Board of Education to deny the petition to amend the Compass Midtown charter agreement.

STANDARD OF REVIEW

Pursuant to State Board rule 0520-14-01-.06, State Board staff conducted a review of the documentation included in the notice of appeal regarding the decision to deny the amendment petition, including additional information gathered by State Board staff from both SCS and Compass Midtown. Additionally, the State Board held a virtual public hearing with the Executive Director sitting as the Board’s designee and collected public comment.¹

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.

¹ A virtual hearing was held due to restrictions on in-person gatherings as a result of COVID-19.

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

PROCEDURAL HISTORY

1. On August 21, 2018, the SCS Board of Education approved the charter application for Compass Midtown to open a charter school serving grades seven (7) through twelve (12).
2. On May 24, 2019, the SCS Board of Education executed a charter agreement with Compass Midtown.
3. Compass Midtown began operation at the start of the 2019-2020 school year, serving grades seven (7) through twelve (12).
4. On December 24, 2019, State Board emergency rule 0520-14-01-.06 governing charter school amendment requests and amendment appeals expired.
5. On January 15, 2020, Compass Midtown submitted a letter of intent to amend its charter agreement to the SCS Office of Charter Schools.
6. On February 14, 2020, Compass Midtown submitted an application to amend its charter agreement to the SCS Office of Charter Schools.
7. On April 28, 2020, the SCS Office of Charter Schools presented a recommendation at the SCS Board of Education meeting to deny the Compass Midtown amendment application. The SCS Board of Education requested to return the amendment application back to committee and vote at a special-called meeting.
8. On April 30, 2020, State Board rule 0520-14-01-.06 governing charter school amendment requests and amendment appeals went into effect.
9. On May 11, 2020, the SCS Office of Charter Schools presented a recommendation at the SCS Board of Education special called meeting to deny the Compass Midtown amendment application. The SCS Board of Education voted to deny the amendment application of Compass Midtown.
10. On May 21, 2020, Compass Midtown appealed the denial of its amendment application in writing to the State Board.
11. On May 22, 2020, the State Board sent a request for additional information to Compass Midtown and SCS.

12. On July 8, 2020, the State Board staff held a virtual public hearing. At the public hearing, the Executive Director, sitting as the State Board's designee, heard presentations from Compass Midtown and SCS, and took public comment.
13. On July 8, 2020, the State Board sent a second request for additional information to Compass Midtown and SCS.

FINDINGS OF FACT AND ANALYSIS

Compass Midtown is part of the larger Compass Community Schools network of charter schools which operates a total of six (6) schools across Memphis: five (5) elementary schools serving grades Kindergarten through eight (8) and one (1) high school serving grades seven (7) through twelve (12), known as Compass Midtown. All six (6) schools were approved by the SCS Board of Education in 2018 and began operation in the 2019-20 school year. These schools occupy buildings and mirror the grade structures of the Jubilee Catholic schools that ceased operation in the 2018-19 school year.

At the time of Compass Midtown's amendment request, State Board Rule 0520-14-01-06 governing charter school amendment applications was not yet in effect, and no state-approved application or rubric was available. In the absence of a state rule, state application or rubric, the SCS 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: "In addition to the information received, the school's School Performance Framework (Academic Performance, Financial Performance, and Operational Performance) will be reviewed as stated in Shelby County Board Policy #1011." SCS Board Policy #1011 states that the district shall consider requests for charter agreement modifications "only after one (1) or more of the charter schools operated by the charter school operator has been in operation for at least three (3) academic years." Additionally, Board Policy #1011 sets forth the standard for amendment applications to receive an approval recommendation, stating: "A charter school operator that operates two or more charter schools or campuses will have its request for charter agreement modification recommended to the Board for approval if each of the operator's schools or campuses has a current composite score of 3.0 or better in each of the three core components (i.e. academic, operational, and financial) of the Performance Accountability Framework."

On February 14, 2020, mid-way through its first year of operation, Compass Midtown applied to the SCS Board of Education to amend its charter agreement to change the grade configuration of the school. Compass Midtown was approved to serve grades seven (7) through twelve (12) beginning in the 2019-20 school year with a maximum enrollment of 375 students by the 2023-24 school year. The requested amendment would allow Compass Midtown to gradually phase out grades seven (7) and eight (8) so that by the 2021-22 school year, and beyond, the school would only serve grades nine (9) through twelve (12). The amendment request would not change the maximum enrollment contained in the charter agreement, only the grade structure. In support of its amendment request, Compass Midtown explained that many of the students at their Compass elementary schools were opting to remain at their school for 7th and 8th grade rather than move to the Compass Midtown location for those grades. Additionally, Compass Midtown explained it was seeing a higher than anticipated number of rising 9th grade students

seeking to enroll at Compass Midtown from the other Compass network schools. This amendment request would allow the network to accommodate the increased demand for 9th grade seats at Compass Midtown and eliminate 7th and 8th grade seats to accommodate family preference to stay at the Compass elementary schools through 8th grade.

On April 28, 2020, the SCS Office of Charter Schools presented a recommendation at the SCS Board of Education meeting to deny the Compass Midtown amendment application. The SCS Board of Education requested to return the amendment application back to committee and vote at a special-called meeting.

On May 11, 2020, the SCS Board of Education met again at a special-called meeting and the Office of Charter Schools again presented a recommendation to deny the Compass Midtown amendment application. In the presentation given to the SCS Board of Education at the May 11, 2020 special-called meeting, the SCS Office of Charter Schools cited the district's policy #1011, stating "In conjunction with an EPDR² assessment, the Board shall use the following criteria to determine whether to approve a charter school agreement modification request: [. . .] A charter school operator that operates two or more charter schools or campuses will have its request for charter agreement modification recommended to the Board for approval if each of the operator's schools or campuses has a current composite score of 3.0 or better in each of the three core components (i.e. academic, operational, and financial) of the Performance Accountability Framework." The SCS Office of Charter Schools also cited the district's "Regional Seat Analysis" as part of that presentation, noting that the Midtown neighborhood where Compass Midtown is located has 34.2% of students attending schools with a school performance scorecard of less than 3.0 and that the neighborhood is in need of 734 quality Middle/Secondary seats. Additionally, the presentation included the recommendation that the school's amendment request be denied because "Compass-Midtown does not meet the criteria for all Performance Accountability Frameworks as the school has no data. Listed [sic] in Board Policy #1011 the school/network must be open at least 3 academic years to be eligible for an amendment." Based upon the Office of Charter Schools' recommendation, the SCS Board of Education voted to deny the amendment application of Compass Midtown.

On May 12, 2020, the SCS Office of Charter Schools sent a notification to Compass Midtown regarding the Board's vote. The notice stated "The decision to deny the petition was based on previous school performance as stated in Board Policy #1011. Compass Community Schools - Midtown will need to continue serving grades 7-12 as listed in the charter agreement for the 2020-2021 school year and beyond, as part of their charter term. The Office of Charter Schools will reach out to you for an action plan to meet the enrollment in your charter agreement in the new year."

During this appeal, SCS defended its decision to deny the Compass Midtown amendment application, stating it relied on Board Policy #1011, an objective standard for approval of amendment applications which was clearly communicated to its charter schools. In fact, Board Policy #1011 was used to evaluate amendment petitions heard by the SCS Board of Education in fall 2019, the semester prior to Compass Midtown submitting its amendment petition. In the statement provided by SCS in response to

² The EPDR appears to be a reference to the district's "Educational Priorities Document/Rubric" which contains the regional seat analysis.

the State Board's first request for information, SCS explained "The local board rule states that the amendment should not be considered if at least one of the schools, as part of their network, has not been in operation for at least three years. The current 2019-2020 school year is Compass Midtown's first school year, and would not meet the bar. The theory behind this is that during the 3-year period, the school is a new operator, and material changes to the charter agreement should not need to occur since they were very recently written." Additionally, SCS noted "the school has only served students for one school year. To already amend their agreement to serve a reduced grade-band brings concern as the school is in its first operating year. Their school has been approved to serve their community for the grade bands and enrollment threshold, which is included in the Shelby County footprint."

At the Public Hearing, SCS reiterated that the district had to develop its own application and rubric (i.e. Board policy #1011) in the absence of a state-approved application and rubric at the time. SCS argued denial of the Compass-Midtown amendment application pursuant to Board policy #1011 was in the best interest of both the school and the students because new operators need to focus the first three (3) years of operation on executing their approved charter application and meeting expectations on the performance scorecard before asking for a material amendment. Additionally, SCS reiterated that there was a need in the Midtown community for seats in grades 7-12 and that the district had anticipated the approval of Compass Midtown would help fill the district's need for quality seats in that community. When asked how many of those seats were needed in grades seven (7) and eight (8), which Compass sought to eliminate, SCS responded that they do not make those calculations on a grade-by-grade basis, but that a total of 254 seats were needed in the 6-8 grade band in the Midtown community. Compass-Midtown is approved to serve 120 seats in 7th and 8th grades.

In response to the reasons for denial cited by the SCS Board of Education, Compass Midtown presented evidence supporting their request for an amendment. Compass Midtown's evidence largely focused on enrollment during the first year of operation and the feedback they received from families currently in other Compass network schools. Compass Midtown explained the amendment request was driven primarily by feedback from current families who wished to remain at their Compass elementary school through 8th grade and enroll at Compass Midtown in 9th grade. This was reflected in the enrollment totals seen by the school in its first year of operation (the 2019-20 school year) and the enrollment trends for the 2020-21 school year. In Compass Midtown's charter application approved by the SCS Board of Education in 2018, the school anticipated that it would enroll sixty (60) 7th grade and sixty (60) 8th grade students in its first year of operation. These projections were based off of the enrollment numbers from the 7th through 12th grade Catholic high school that formerly occupied the building that Compass Midtown now occupies. Compass Midtown argued that instead of the projected enrollment of sixty (60) students per grade, the school's actual enrollment for the 2019-20 school year included twenty-three (23) 7th grade students and forty-five (45) 8th grade students. In response, the school submitted this amendment application mid-way through the 2019-20 school year to phase out the 7th and 8th grades.

In defense of its amendment request upon appeal, Compass Midtown stated at the Public Hearing that it has only received three (3) applicants for 7th grade and ten (10) applicants for 8th grade in the 2020-21 school year. However, the school noted that its enrollment for 9th grade has exceeded expectations, as 110 9th grade students have enrolled for the 2020-21 school year. Compass Midtown noted the

“overwhelming majority” of the 110 9th grade students are students currently enrolled in Compass’ elementary schools. When asked about recruitment efforts that the school has undertaken to recruit 7th and 8th grade students to enroll at Compass Midtown, school leadership noted that they had engaged in advertising on radio, social media and participation in the school choice fair, but that the vast majority of their recruitment is through current families attending other Compass network schools and new students brought in through recommendations from current families.

Based on the evidence presented during this appeal, it appears Compass Midtown has not focused on recruitment of students outside of the Compass network to fill its 7th and 8th grade seats. The low number of 7th and 8th grade applications Compass Midtown received for the 2020-21 school year reflects the school’s limited focus on recruitment of 7th and 8th grade students. The evidence submitted further demonstrates that Compass Midtown assumed their amendment request would be approved and did not plan to recruit or serve 7th grade students for the 2020-21 school year, despite knowing that SCS Board policy #1011 required three (3) years of operation and a performance scorecard of 3.0 or better in order for an amendment request to be recommended for approval, a standard which they could not meet.³ Additionally, only two (2) public comments were submitted to the State Board as part of the public hearing in support of the grade structure change proposed by Compass Midtown. Therefore, there is little evidence of significant demand for this grade structure change beyond the one-year enrollment totals for the school.

While it is clear that Compass Midtown is attempting to amend its grade structure to respond to the needs of families who are already enrolled in their schools, it appears that the school initiated a premature course correction in terms of its grade structure mid-way through the first year, rather than re-working its recruitment plan to ensure it could fill seats for all grades it was approved to serve. SCS presented evidence that there is a need in the Midtown community for quality seats in the 6-8 grade band and such need informed SCS’s original approval of the 7-12 grade structure for the school. Additionally, in the absence of a state-approved application and rubric, SCS created and followed a transparent process for amendment requests. While in many cases a policy, such as SCS Board Policy #1011, which discourages amendments in the first three (3) years of operation is reasonable in order to ensure schools focus on demonstrating success before applying for a material change to their charter agreement, I encourage SCS to reconsider such a bright line approach that excludes the possibility of any amendment during the first three (3) years of a school’s operation. A charter agreement represents a partnership, and the two (2) parties should be able to come together to determine if the change is needed to ensure success of the school and students. It is my strong recommendation that the SCS Office of Charter Schools reevaluate SCS Board Policy #1011 with this in mind. That said, SCS did the right thing in developing a clear, transparent process for charter school amendment requests in the absence of a state process and requirements. SCS has also committed to working with Compass Midtown on an action plan to recruit

³ In the second request for information sent to Compass Midtown by State Board staff, the staff asked what the school would do if the amendment petition was denied. The response clearly indicated that Compass Midtown was not currently engaging in recruitment of 7th grade students for the 2020-21 school year, nor had the school hired teachers or planned a schedule for the 7th grade. The school was assuming the petition would be approved.

students to fill the 7th and 8th grade seats and has recognized that a future amendment request may be needed if the school continues to struggle with recruitment after implementation of the action plan.⁴

For these reasons, based on the information submitted by both parties and the information collected as part of the public hearing, I believe the SCS Board of Education's decision to deny the amendment application was not contrary to the best interest of the students, LEA, and community. Therefore, I recommend that the State Board uphold the SCS Board of Education's decision to deny the amendment application submitted by Compass Midtown.

ALIGNMENT TO QUALITY AUTHORIZING STANDARDS

Detailed information regarding SCS'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.

In the absence of a state-approved application and rubric and an effective permanent rule, SCS developed an amendment application for its charter schools to use when petitioning to amend their charter agreements, which aligns with provisions under T.C.A. § 49-13-110 and State Board policy 6.111, which allow charters schools to 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 SCS Board of Education, the Office of Charter Schools grounded its recommendation in the district's board policy and only recommended approval of the amendments from schools that met the requirements outlined in its local policy. This demonstrates alignment to the principle of maintaining high standards for schools it oversees.

CONCLUSION

It is evident based on the information collected during this appeal that schools operated by the Compass network enjoy strong support from families who believe these schools present a quality option for their children in Memphis. However, given the evidence presented during this appeal, it is not clear that Compass Midtown's amendment request to eliminate the 7th and 8th grades is in the best interest of the students, LEA, or the community at this time. For these reasons, I conclude that the decision by the SCS Board of Education to deny the Compass Midtown amendment application was not contrary to the

⁴ It is important to note that the State Board's rule regarding amendment petitions is now in effect. Any amendment petition that the school may submit to SCS in the future would be evaluated under the rule and the State Board approved application and rubric. Under the State Board rule, changes to grade configuration are only permitted during the fall amendment window to ensure that any decisions are made well ahead of the school year in which the school plans to implement the grade change. This will ensure that operators do not end up in a situation such as this, where a decision on a grade configuration change is being made right before the beginning of a new school year.

best interests of the students, LEA or community and as such, pursuant to State Board rule 0520-14-01-.06, I recommend that the State Board uphold the decision of the SCS Board of Education.



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

7/24/20

Date