



## **Charter School New Start Appeal Process – Guidance Document**

*Disclaimer: This document is for guidance purposes only and does not supersede any statute, rule, or policy. Local boards of education and sponsors may be held to requirements and deadlines not contained in this document.*

### **Overview of the Appeal Process**

Pursuant to Tennessee Code Annotated (“T.C.A.”) § 49-13-108, public charter school sponsors may appeal the denial of their application by a local board of education to the Tennessee Public Charter School Commission (“Commission”). The Commission conducts a de novo, on the record review of the amended application using the Tennessee Department of Education application and rubric. As a part of the appeal process, the Commission will hold a public hearing in the school district where the sponsor proposes to open the charter school. The Commission will also hold a capacity interview with the new start applicant. The Commission’s decision is final and not subject to further appeal. An appeal of a charter school application to the Commission is governed in accordance with T.C.A. § 49-13-108(b)(5), Commission Rule 1185-01-01-.01, and Commission Policies 2.000 – Charter School Appeals and 2.100 – Charter School Application Review<sup>1</sup>. Upon receipt of an appeal, the Commission has seventy-five calendar days to render a decision.<sup>2</sup>

### **Standard of Review**

Pursuant to T.C.A. § 49-13-108, Commission Rule 1185-01-01-.04, and Commission Policy 2.000 – Charter School Appeals, Commission staff and an independent charter application review committee conduct a de novo, on the record review of each amended application. The Tennessee Department of Education’s charter application evaluation guidance and review tool (“scoring rubric”) states that authorizers should adopt the State Board of Education’s Quality Authorizing Standards, which establishes rigorous decision-making criteria. Specifically, SBE Policy 6.111 states a “quality authorizer requires all applicants to present a clear and compelling mission, a quality educational program, a demonstration of community support, a solvent and sustainable budget and contingency financial plans, a clear demonstration of the effectiveness of the model for the target student population, effective governance and management structures and systems, founding team members demonstrating diverse and necessary capabilities in all phases of the school’s development, and clear evidence of the applicant’s capacity to execute its plan successfully. An application that merits a recommendation for approval should satisfy each of these criteria.”<sup>3</sup> In addition, the Commission is required to hold a public hearing in the district where the proposed charter school seeks to locate.<sup>4</sup>

In order to overturn the decision of the local board of education, the Commission must find that the application meets or exceeds the metrics outlined in the department of education’s application scoring rubric and that approval of the amended charter application is in the best interests of the students, the local educational agency (“LEA”), or community.<sup>5</sup> If the local board of education’s decision to deny the amended application is overturned, then

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<sup>1</sup> All Commission rules and policies, including all referenced in this document, are found on the Commission’s [website](#).

<sup>2</sup> Unless otherwise agreed to by the local board of education and the sponsor to extend the deadline. T.C.A. § 49-13-108(b)(5); Commission Policy 2.000 – Charter School Appeals.

<sup>3</sup> SBE Policy 6.111

<sup>4</sup> T.C.A. § 49-13-108.

<sup>5</sup> Ibid.

the Commission has the ability to approve the application, and thereby authorize the school, or the Commission can vote to uphold the local board of education's decision to deny the amended application.

If an application is approved by the Commission, the local board of education and the charter school may agree within thirty calendar days of the Commission's vote<sup>6</sup> that the charter school is overseen and monitored by the local board of education. If no written, mutual agreement is made, the Commission is the authorizer of the charter school, and the school is evaluated and held accountable to the Commission's Charter School Performance Framework – Commission Policy 3.700.

### **Statutes, Rules, and Policies Governing the New Start Appeal Process**

The following statutes, Commission rule, and Commission policies govern the charter application appeal process. The Commission staff suggests that any sponsor or local board of education participating in the appeal process be familiar with the contents of these documents:

- T.C.A. § 49-13-108
- Commission Rule 1185-01-01-.01
- Commission Policy 2.000 – Charter School Appeals
- Commission Policy 2.100 – Application Review

### **Guidance for Sponsors Submitting Appeals**

Charter school sponsors submitting an appeal of a local board of education's denial of an amended application should do so in accordance with T.C.A. § 49-13-108, Rule 1185-01-01-.01, and Commission Policy 2.000 – Charter School Appeals. **The notice of appeal must be submitted via email to the Commission ([CharterSchool.Appeals@tn.gov](mailto:CharterSchool.Appeals@tn.gov)) within ten calendar days of the local board of education's denial of the amended application. Any materials submitted after 11:59 p.m. central time on the tenth calendar day are not accepted.**<sup>7</sup> Documents must be submitted to the Commission via a file-sharing website (e.g., Microsoft Teams). The Commission staff sets up and invites the sponsor's team members to a Microsoft Teams ("Teams") folder for each appeal. The folder has clearly labeled subfolders for the required information below. The notice of appeal materials must include all of the following to be considered:

- 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;
- 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
- e. A brief statement, no longer than three 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 students, LEA, or community.

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<sup>6</sup> T.C.A. § 49-13-108.

<sup>7</sup> Commission Rule 1185-01-01-.01

Commission staff confirms receipt of the appeal and the date of receipt with the sponsor. Commission staff shall not accept an incomplete appeal or any additional documentation from the charter school sponsor beyond the contents of the notice of appeal unless requested by the Commission staff. If the sponsor indicates in the notice of appeal that one of the requirements listed in paragraphs (a)–(e) above cannot be submitted, the sponsor shall include an explanation in the notice of appeal.

The Commission meets and renders a final decision on each appeal within seventy-five calendar days of receipt of the charter school appeal.<sup>8</sup> The Commission may meet at a special-called meeting or at a regularly scheduled meeting. The Commission considers the Executive Director’s Findings and Recommendation Report for the appeal, but the Commission is not bound by the recommendation.<sup>9</sup>

### **Guidance for Local Boards of Education Participating in Appeal Process**

Upon receipt of an appeal, Commission staff notifies representatives of the local board of education that an appeal has been received and that a request for information is forthcoming. The local board of education shall provide the requested information within five calendar days of receipt of the request, but in no event more than seven calendar days from the request.<sup>10</sup> Documents must be submitted to the Commission via a file-sharing website (e.g., Microsoft Teams). The Commission staff sets up and invites the local educational agency (“LEA”) team members to a Microsoft Teams folder for each appeal<sup>11</sup>.

The Teams folder has clearly labeled subfolders for the required information below. The information from the LEA must include all of the following:

- a. A list of individual(s) that reviewed the initial and amended applications;
- b. Copies of the minutes and/or notes and all presentation materials, 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;
- 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; and
- e. Copies of the letters informing the sponsor of the local board of education’s reasons for denying the initial and amended applications.

### **Fiscal Impact Information**

If the denial by the local board of education was based upon substantial negative fiscal impact, as defined by T.C.A. § 49-13-108(c), the local board of education must submit documentation explaining the fiscal impact of the charter school as requested by the Commission staff. The local board of education is requested to submit documentation within five calendar days of the request, but in no event more than seven calendar days. The burden is on the local board of education to prove that substantial negative fiscal impact does exist. The Commission reserves

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<sup>8</sup> Unless otherwise agreed to by the local board of education and the sponsor to extend the deadline. T.C.A. § 49-13-108(b)(5); Commission Policy 2.000 – Charter School Appeals.

<sup>9</sup> Commission Policy 2.000 – Charter School Appeals

<sup>10</sup> Ibid.

<sup>11</sup> NOTE: LEA/district level email addresses that are connected to an existing @tneducation.gov account are often returned as undeliverable when the Commission tries to invite it to the Teams folders. The Commission strongly recommends that LEA staff provide an alternative email address to the Commission for full access to the Teams folders.

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 LEA (specifically all kindergarten through grade twelve 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 twelve and special education students) for the school year in which the charter school seeks to begin 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 the 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 Commission conducts a separate analysis for each application that was denied based upon substantial negative fiscal impact.

### **On the Record Review**

Pursuant to T.C.A. § 49-13-108, Commission Rule 1185-01-01 et. seq., and Policy 2.000 – Charter School Appeals, Commission staff and an independent charter application review committee conduct a de novo, on the record review of each amended application. The amended application, as reviewed by the local board of education, is considered the foundation of the Commission's record. In addition to the amended application, Commission staff conducts a full review of the record prior to forming the Executive Director's Recommendation to the Commission, and this information includes from the sponsor through the notice of appeal, documents submitted by the local board of education, the review committee's recommendation, testimonies heard at the public hearing, and public comment.

Commissioners are also charged with conducting a de novo on the record review of the appeal. "On the record" for purposes of appeals before the Commission will include the amended application, as submitted to the local board of education, any additional clarifying information requested by the Commission staff in accordance with Commission rule, the notice of appeal from the sponsor, contents of the capacity interview, the public hearing and public comment (both oral and written), the Executive Director's Recommendation including the review committee report, and written statements in response to the recommendation. The Commission has determined that the appellate record is closed one week after the public hearing. This timeframe permits the submission of additional written comments that were not provided prior to the public hearing and ensures that all evidence submitted by the parties is given equal consideration.

The Commission recognizes that sponsors seeking to establish a public charter school in the state of Tennessee may continue to make progress towards that establishment after submission of the amended application to the local board of education. However, to protect the integrity of the Commission's role as an appellate body, the introduction of new and/or additional information to the record that is not contained within the amended application



will be evaluated by the Commission's Executive Director and General Counsel. Consideration is only given to information that is based in the amended application. Wherever new or additional information is offered or requested, the Commission evaluates whether it was presented within the amended application, if the local board of education was notified about the information, and/or if the local board of education gave any consideration to the information in its decision-making process.

### **Request for Additional Information**

Commission 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. In such case, each is requested to comply with the document request within five calendar days of the request or as soon as possible thereafter, but in no event more than seven calendar days after the request.<sup>12</sup> In filing an appeal with the Commission, the sponsor consents to the Commission staff completing a general due diligence review in order to form an accurate recommendation.

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<sup>12</sup> Commission Rule 1185-01-01-.01(2)(b).

## Frequently Asked Questions

### 1. How long does the appeal process take?

The Commission is required to render a decision on an appeal within seventy-five calendar days of the receipt of the notice of appeal.<sup>13</sup> Typically, the Commission's meeting to render a decision on an appeal is near the end of the seventy-five calendar day timeframe.

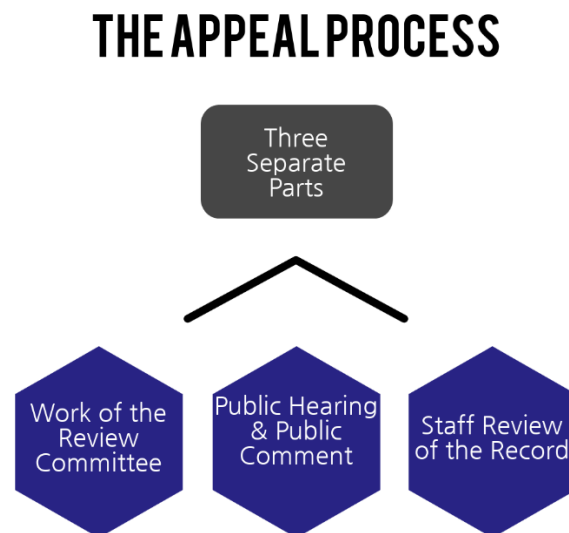
### 2. Who is my main contact during an appeal?

Questions related to the new start appeal process should be sent to [CharterSchool.Appeals@tn.gov](mailto:CharterSchool.Appeals@tn.gov). Once an appeal has been submitted, please continue to send any questions or concerns regarding the process to this email address, and a Commission staff member will reply to the email within one business day.

### 3. Can we receive copies of the information submitted by the sponsor or local board of education as a part of the appeal process?

Upon written request to [CharterSchool.Appeals@tn.gov](mailto:CharterSchool.Appeals@tn.gov), the Commission staff will provide the information submitted by the sponsor on appeal or the information submitted by the local board of education as a part of the request for information.

### 4. What does the Commission analyze in an appeal?



The Commission shall conduct a de novo, on the record review of the amended charter application.<sup>14</sup> Therefore, the substantive review of the application and record by the Commission is done in three distinct parts, each operating separately from one another. All three of these parts come together to inform the Executive Director's Findings and Recommendation Report that is presented to the Commission. The Commission considers, but is not bound by, the Executive Director's Recommendation.<sup>15</sup> The recommendation report is based on the following:

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<sup>13</sup> Unless otherwise agreed to by the local board of education and the sponsor to extend the deadline. T.C.A. § 49-13-108(b)(5); Commission Policy 2.000 – Charter School Appeals

<sup>14</sup> T.C.A. § 49-13-108(b)(4)

<sup>15</sup> Commission Policy 2.000 – Charter School Appeals

- Part 1: Work of the Review Committee:<sup>16</sup> The Commission assembles a charter application review committee (“Review Committee”), comprised of both internal and external evaluators, to review the amended charter school application. The Review Committee is trained by the Commission staff to ensure consistent standards and fair treatment of all applications, and all Review Committee members complete a conflict-of-interest disclosure form before beginning any reviews. The Review Committee’s work consists of three key parts, outlined below, and is completely separate from the public hearing and staff review of all documents on the record.
  - a. Evaluation of the Application: The Review Committee is responsible for conducting a de novo review of the amended application, as submitted to the local board of education. The committee only reviews the amended application and accompanying attachments including the budget, and **it does not review any additional information submitted by the sponsor or local board of education upon appeal.** Therefore, the Review Committee does not see the local board of education’s reasons for denial nor is the Review Committee confined to the local board’s reasons for denial. The Review Committee scores the amended application based on the Tennessee Department of Education’s Application Scoring Rubric<sup>17</sup> which is used by local boards of education during review of charter school applications.
  - b. Capacity Interview: After an initial review of the application, the Review Committee conducts a ninety-minute capacity interview with the proposed school leaders and officers of the governing board **virtually**. Additional information about the interview is contained in Commission Policy 2.100 – Charter School Application Review. The sponsor does not have opportunity for an opening statement at the beginning of the interview but there is an opportunity for a closing statement during the last five minutes of the interview. To start the interview, the Review Committee and individuals representing the sponsor briefly introduce themselves, and then the Review Committee moves straight into questions for the sponsor based on their review of the application. Since the Review Committee conducts a de novo review of the application, the Review Committee is not confined to the local board’s reasons for denial. Therefore, the Review Committee may ask questions about areas or issues that were or were not raised by the local board of education. Accordingly, the sponsor should prepare to answer questions about the academic, operational, financial, and past performance sections, if applicable, of the application.

The Commission staff may ask sponsors with multiple active appeals to hold a combined capacity interview to be efficient with the sponsor’s and Review Committee’s time. If combined, the capacity interview is designed to permit time for questions related to the sponsor’s capacity as a potential network as well as questions related to each application on appeal.
  - c. Review Committee Report: After reviewing the application and holding the capacity interview(s), the Review Committee develops a consensus rating for each of the main sections of the application and provides a recommendation to the Executive Director on the amended application. Applicants must receive a “meets or exceeds the standard” in the academic, operational, financial, and past performance sections, if applicable, for the Review Committee to recommend approval.
- Part 2: Public Hearing and Public Comment: The Commission holds a public hearing on the charter application during the seventy-five calendar days that the Commission is considering an appeal.<sup>18</sup> The public hearing is

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<sup>16</sup> Commission Policy 2.000 – Charter School Appeals and 2.100 – Application Review

<sup>17</sup> Rubric is available on the Tennessee Department of Education’s [website](#).

<sup>18</sup> T.C.A. § 49-13-108(b)(5) and Commission Policy 2.000 – Charter School Appeals



held in the local school district in which the applicant proposes to operate and provides an opportunity for the members of the specific community to be heard as it relates to the charter school application. Specific details regarding the hearing can be found in Commission Policy 2.000 – Charter School Appeals. The proceedings of the public hearing are wholly separate from the work of the Review Committee described in Part 1, and neither part informs the other’s work. There are two opportunities for the public to participate in this process:

- a. Oral Public Comment: The Executive Director reserves forty minutes for oral public comment during the public hearing. Commission staff allots ten spots to members of the public speaking in favor of approval of the charter application and ten spots to members of the public speaking in favor of the local board’s decision to deny the application. The Commission notifies both parties in advance of when the sign-up for public comments will be posted on the Commission’s website. Oral public comment sign-ups close when all slots are full or twenty-four hours in advance of the hearing, whichever occurs first.<sup>19</sup> A list of public speakers is provided to both parties in advance of the hearing after the sign-up process has closed. Slots that remain unfilled after the sign-up has closed or that become available due to an individual not showing up for in-person comment cannot be transferred to an alternative speaker.

During the public hearing, the individuals who signed up in advance are recognized by Commission staff to provide up to two minutes of comments. When signing up for public comment, the individual is asked to confirm that they are a resident of the school district and select which party they are speaking in support of. Further, before beginning the public comment, each speaker must identify themselves by name, resident district status, relation to the application/school district (e.g., prospective parent, community member, local elected representative, etc.) and clearly state for the record whether they are in support or opposition of the proposed school. The first and last name of individuals who have signed up for public comment is displayed at the hearing in speaking order to minimize the transition time between speakers.

While signs are permitted, individuals that are considered disruptive to the order of the public hearing will be asked to refrain from disorderly conduct or be escorted out by designated personnel, in accordance with Commission Policy 1.200. Additionally, any comment submitted by a member of the public is considered a public record and may be provided in response to a public records request.<sup>20</sup>

- b. Written Public Comment: At any point prior to the public hearing and up to the deadline set by the Commission, the public may submit written comments to the Commission for consideration in the Executive Director’s Recommendation. All written comments submitted to the Commission’s office are provided to the members of the Commission, will be posted to the Commission’s website, and are public records. The Commission staff will set a deadline by which no further written comment is accepted, and this deadline is stated on the public hearing agenda and the Commission’s website.
- Part 3: Staff Review of the Record: The Commission staff conducts a de novo on the record review of all documentation submitted by the sponsor and local board of education. This documentation includes the amended application, as submitted to the local board of education, all materials submitted within the notice of appeal by the sponsor, all materials submitted by the local board, the review committee report, and

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<sup>19</sup> Oral public comment sign-ups will close on Friday for hearings that occur on a Monday.

<sup>20</sup> Any personally identifiable information is removed prior to responding to a public record request. Please note: first and last name, email addresses, and phone numbers are not considered personally identifiable information.





information received during the public hearing, including public comment. Additionally, the Commission staff may conduct due diligence on the applicant, including but not limited to outreach to current authorizers or a review of state and nationally normed internal assessment data.

**5. Are all components of the appeal process considered equally in the Executive Director's Recommendation?**

The amended application, as submitted to the local board of education, is the foundation of the record before the Commission and serves as the foundation of the Executive Director's Recommendation. The Executive Director's Recommendation summarizes all parts of the appeal process: the notice of appeal, the Review Committee Report, information presented at the public hearing, public comment, information from the local board of education, and the staff review of the record.

**6. Can a sponsor make changes or corrections to the amended application?**

In accordance with T.C.A. § 49-13-108, the sponsor cannot make any changes to the amended application upon appeal.

**7. What could the Executive Director recommend?**

The Executive Director could recommend that the Commission affirm the local board of education's decision to deny the amended application or recommend that the Commission overturn the local board of education's decision to deny the amended application.<sup>21</sup> If approved, the Commission is the charter school authorizer,<sup>22</sup> unless the local board of education and charter school agree in writing within thirty calendar days of the Commission's vote that the charter school will be overseen by the local board of education.<sup>23</sup>

**8. When is the Executive Director's Recommendation published online?**

The Executive Director's Findings and Recommendation Report is posted on the Commission's website prior to the Commission meeting, and both parties in an appeal are notified by Commission staff when the recommendation is posted.

**9. What is the Commission's decision-making process?**

The Commission meets at a special-called meeting or a regularly scheduled quarterly meeting to render a decision within seventy-five calendar days of receipt of the notice of appeal.<sup>24</sup> The Commission discusses the Executive Director's Recommendation prior to the vote on the agenda item, regardless of the type of meeting.<sup>25</sup> All Commission meetings are livestreamed and open to the public, and the link is available on the Commission's website.

**10. Is there time for public comment on the appeal at the Commission meeting?**

Requests for public comment at Commission meetings are governed by Commission Policy 1.200 - Commission Meetings. In accordance with Commission policy, each meeting of the Commission shall reserve at least thirty minutes for in-person, oral public comment. The public may sign up to give a comment at the Commission

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<sup>21</sup> T.C.A. § 49-13-108(b)(5)

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Unless otherwise agreed to by the local board of education and the sponsor to extend the deadline. T.C.A. § 49-13-108(b)(5); Commission Policy 2.000 – Charter School Appeals

<sup>25</sup> Commission Policy 2.000 – Charter School Appeals

meeting by visiting the meeting page of the Commission's website. Additionally, the Commission accepts written public comments, submitted through its website, on any agenda item before the Commission for consideration. Commission meetings are also open to the public and livestreamed for viewing. Because the official record for the new start appeal is closed prior to the Commission meeting, these public comment opportunities are reserved for comments related to Commission business and should not be used by sponsors or LEAs to add additional information to the record that was not presented throughout the appeal process (e.g., within the notice of appeal, public hearing, etc.).

In accordance with Commission rule and policy, one representative of the sponsor's governing board and the local board of education are permitted to submit a response to the recommendation, either by speaking in-person at the Commission meeting or by submitting a written comment to be read into the record by a member of the Commission staff prior to the Commission's discussion of the Executive Director's Recommendation. In-person speakers are provided up to two minutes to speak, and written responses shall not be more than one page typed in length. Written statements and the names of representatives speaking in person shall be received by the Executive Director at least forty-eight hours prior to the scheduled Commission meeting. The Commission staff shall accept only one written response/in-person representative from each party. Any comment submitted in response to the Executive Director's recommendation, written and oral, shall be recognized for a maximum of two (2) minutes.<sup>26</sup>

**11. What happens after the Commission renders a decision?**

The sponsor and local board of education are notified via e-mail of the Commission's decision on the charter school appeal. If the Commission approves the application, the local board of education and the sponsor can mutually agree for the charter school to be overseen by the local board of education. Written notification of this agreement must be submitted to the Commission within thirty calendar days of the Commission's decision.<sup>27</sup>

**12. What happens if the Commission remains the authorizer?**

If after thirty calendar days the local board of education and the sponsor do not mutually agree for the charter school to be overseen by the local board of education, Commission staff reaches out to the charter school sponsor to discuss next steps for the charter school to be overseen by the Commission, including the negotiation of the charter agreement. The amended application is an exhibit to the charter agreement.

**13. Can the Commission's decision be appealed?**

The Commission's decisions in appeals are final.<sup>28</sup>

**14. If the Commission affirms the local board of education's decision to deny the application, can the sponsor apply in the following year?**

Yes, the sponsor can submit a new application the following year.

**15. Whom should I contact with additional questions?**

Please contact the Commission at [CharterSchool.Appeals@tn.gov](mailto:CharterSchool.Appeals@tn.gov).

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<sup>26</sup> Commission Policy 2.000 – Charter School Appeals

<sup>27</sup> T.C.A. § 49-13-142(b)(5).

<sup>28</sup> T.C.A. § 49-13-108(b)(5)