

As more fully set forth herein and as provided by Memphis Academy of Health Sciences Middle School's and High School's (collectively "MAHS") January 7 and 11 submissions to the Shelby County Board of Education ("SCBE"), January 11 Sworn Petition for Injunctive Relief, and December 13, 15, 23, 27, 29 and January 7, and 10 written communications to Shelby County Schools' (SCS) General Counsel and/or its Office of Charter Schools¹, SCBE erred in revoking MAHS' charter agreements pursuant to T.C.A. §49-13-122(b)(1) and (3), and in so doing, also failed to comply with SCBE Policy 1011 ("Policy 1011") and Tennessee's Quality Charter Authorizing Standards (the "Authorizing Standards").

MAHS has been in operation since 2003 and through its 19 years of operation, has never required any intervention or any "Action Plan"². MAHS' Operational Scorecards for the past year are 4.8 (middle school) and 4.6 (high school). MAHS has never had a written charter agreement with SCS, and its governing contracts with SCS are its 2012 Charter Renewal Applications.

In November 2019, the MAHS governing board learned that the Tennessee Office of the Comptroller of the Treasury ("Comptroller") had initiated an investigation based upon school officials' reporting of "questionable transactions" by MAHS' Executive Director. The scope of the investigation was later expanded to include the directors of Finance and Nutritional Services – all three (3) trusted employees in key management and fiduciary positions. It was only then that the MAHS board began to discover that MAHS had fallen victim to the criminal acts perpetrated by these three (3) employees, at least two (2) of whom appear to have been conspiring to avoid MAHS' internal controls. MAHS did not learn the extent of these crimes until the Comptroller's Investigative Report (the "Report") was released on December 1, 2021. The Report describes in detail the egregious acts by the former employees; however, its purpose was not to describe the measures taken by these former employees to circumvent MAHS' internal controls, or how these former employees worked together to perpetrate their crimes. These crimes required the cooperation of at least two (2) key employees. Unfortunately, there were two (2) key employees willing to engage. Seven (7) days following the Report's publication, after denying MAHS' requests for meetings, SCS made the immediate jump to revocation, providing written notice of its intent to recommend revocation on December 8, 2021.

Upon learning of the Comptroller's investigation in 2019, not content to wait for the results thereof, the MAHS governing board, independently took swift action. MAHS began conducting its own internal investigation, retained outside legal counsel to assist in its investigation and in cooperating with the Comptroller, and terminated the subject employees. MAHS also revised its: (a) organizational structure to ensure tighter internal controls and increase oversight and responsibilities for finance and operations; (b) internal controls to require that its auditors report directly to the board; (c) Employee Handbook; (d) purchasing requirements; Fiscal Policies and Procedures Handbook; (f) employee contract forms; and (g) travel forms. MAHS hired a new Executive Director with substantial experience, created a new position of Financial Analyst, hired

¹ All of which are incorporated by reference as if fully set forth herein.

² Policy 1011 requires consideration of an "Action Plan" prior to finalizing a recommendation of revocation with only one exception: an "emergency" condition - which condition requires a separate, written justification by the Superintendent which did not occur in this situation.

a new Finance Director, Accounting Coordinator, and Director of Operations. Further, MAHS developed additional human resources procedures, conducted additional procurement training, participated in TCSC training, implemented new annual budgeting processes, and employed an automated employee timekeeping system. These board actions were completed prior to the release of the Report and illustrate the Board's commitment to the organization, and its investment in the success of the schools. These actions were also taken in the midst of the COVID-19 pandemic during which MAHS achieved a one-to-one ratio for electronic devices and wi-fi. In short, the actions of this dedicated and tireless volunteer governing board exceeded the expectations any reasonable authorizer should expect of a governing board once issues are identified.

The Report describes five (5) alleged deficiencies in internal control and compliance³. Prior to recommending revocation, SCS should have considered these five (5) alleged deficiencies, in turn, reviewed those actions already taken by the board to determine whether any compliance issues remained, and provided MAHS an opportunity to remedy remaining issues, if any. That is the opposite of what occurred. Instead, SCS focused on the criminal activities of the former employees, denying MAHS' requests that it be allowed to provide SCS with information, and its requests to obtain that information MAHS was entitled to receive from SCS. In short, nothing MAHS could have done would have altered the recommendation. While it is concerning when funds, be they public or private, are unlawfully appropriated, it is certainly not uncommon for organizations to fall victim to crimes when the crimes are perpetrated by trusted high-ranking employees in key roles. MAHS' charters have now been revoked because it fell victim to these crimes, and because it - along with its third-party auditors - failed to promptly detect them and the lengths to which these former employees went to ensure their crimes went undetected⁴. Regardless, punishing the governing board and closing these schools will be catastrophic to the students, their families, staff, and the neighborhood who will certainly not understand the logic in closing these schools only to send its students to those lower-performing schools as identified by SCS in its Closing Impact Reports.

SCBE erred by revoking MAHS' charters under T.C.A. §49-13-122(b)(1) because the allegations of internal control deficiencies, even if serious and substantiated, are not *material* violations of the charter agreements as SCS did not give timely notice and an opportunity to remedy the non-emergency issues⁵, nor did it give any indication, prior to initiating revocation, that the issues equated to material violations. Per T.C.A. §49-13-108(f), SCS was required to adopt the Authorizing Standards which require that quality authorizers give clear, adequate, evidence-based, and timely notice, and allow reasonable time and opportunity for remediation. It did not do so. SCS and SCBE also failed to follow Board Policy 1011 in numerous ways, including failing to provide 30-days' notice (§XIV(B)(1)), failing to provide "any additional documentation

³See MAHS' January 11 submission to SCBE for its detailed response to each alleged deficiency.

⁴Had SCS complied with Authorizing Standard 4 (reviewing MAHS' annual financial audits), perhaps it could have assisted MAHS in detecting the misappropriations earlier.

⁵This was no emergency. The employees had been terminated, the corrective actions completed, and the middle and high school scored 3.66 and 4.18 respectively on the FY 20 SCS Financial Scorecard.

supporting the recommendation to close a school” (§XIV(A)(2)(a), and denying MAHS’ numerous requests for submission and consideration of an Action Plan/intervention (§§ XIII(B), XIV(2)(a)).

SCS failed to consider any effective solution other than revocation, closure, and punishment. SCS: (1) actively thwarted MAHS’ attempts to communicate with its Office of Charter Schools; and (2) expressly denied MAHS’ numerous written requests for clarification, information and documents (including but not limited to a reasonable request for those additional documents relied upon by SCS to recommend revocation, if any, and its requests for access to the electronic version of those documents compiled for Closing Impact Reports to which access was promised in the Closing Impact Reports but never provided⁶). The evolving nature of the reasons cited by SCS for its refusal to communicate with MAHS about the substantive issues resulted in SCS finally “extend[ing] an invitation to discuss” on January 10, 2022, one (1) day prior to the due date for MAHS’ written submission to SCBE while SCS still contended that neither SCBE Policy 1011 nor T.C.A. §49-13-122 contemplate a document sharing process. 24 hours before the revocation hearing, without explanation, SCS emailed some documents to MAHS’ counsel that it “might rely upon”, some of which, inexplicably, pertained entirely to a different charter school.

Due to SCS’ refusal to provide information, MAHS was forced to speculate what exactly SCS was relying upon, had to assume SCS deemed all five (5) of the Report’s listed deficiencies as *material*, and to try to craft a response to each of them with only 15 minutes allowed to do so. MAHS remained unaware – until during the SCS slideshow at the revocation hearing – that (1) SCS was erroneously relying on a 2007 charter renewal application as its only evidence supporting Allegation No 2 – as opposed to the current governing agreement which neither contains a Section 7 nor the detailed procedures of the 2007 application; (2) that SCS’s basis for denying MAHS’ requests for intervention was because the former employees’ criminal acts had already occurred, which is not only oxymoronic, but fails to comport to the law; (3) that SCS now baselessly contended that MAHS somehow “concealed” the existence of the investigation⁷, and (4) that SCS and SCBE were “embarrassed” when the Report was published, which appears to have been the basis of SCS and SCBE’s refusal to consider any effective solutions other than revocation.

MAHS is committed to its students, families, staff, and neighborhood. SCBE erred, pursuant to T.C.A. §49-13-122, by revoking its charters without notice and opportunity to remedy. SCS and SCBE further ignored Board Policy 1011 and the Authorizing Standards. If offered the opportunity, MAHS remains determined to correct any remaining issues and, if required, have a corrective action plan in place. We respectfully request that this Commission overturn SCBE’s decision to revoke MAHS’ charter agreements.

⁶ This resulted in MAHS being unable to review the accuracy of the Reports, one of which was subsequently revised only six (6) days before the revocation hearing, after SCS stated that it had discovered a significant error contained in the original Report to MAHS’ detriment.

⁷When the MAHS governing board first learned of the investigation and placed its Executive Director on administrative leave, it promptly discussed the issues with Asst. Superintendent Monda who thanked the board for taking the initiative to meet with her to discuss the situation at a high level. MAHS also believes that Ms. Monda had direct communications with investigators.