



## **Executive Director's Findings and Recommendation Revocation Appeal for Memphis Academy of Health Sciences**

Pursuant to Tennessee Code Annotated (T.C.A.) § 49-13-122 and Commission rule 1185-01-01-.03, a decision to revoke a charter agreement may be appealed to the Tennessee Public Charter School Commission ("Commission"). On January 20, 2022, the governing board of Memphis Academy of Health Sciences Middle and High Schools ("MAHS") appealed the revocation of its charter agreements by the Memphis Shelby County Schools ("MSCS") Board of Education to the Commission. Based on the procedural history, findings of fact, and analysis, I believe that the decision to revoke the MAHS charter agreement was not contrary to T.C.A. § 49-13-122. Therefore, I recommend that the Commission uphold the decision of MSCS Board of Education to revoke the MAHS charter agreements.

### **STANDARD OF REVIEW**

Pursuant to Commission rule 1185-01-01-.03, Commission staff conducted a review of the documentation included in the notice of appeal and supporting documentation to revoke the charter agreements of MAHS, including additional information gathered by Commission staff. Additionally, the Commission held a public hearing in the district where MAHS operates.

T.C.A. § 49-13-122 holds that "a public charter school agreement may be revoked at any time by the authorizer if the authorizer determines that the school

1. Committed a material violation of any conditions, standards, or procedures set forth in the charter agreement;
2. Failed to meet or make sufficient progress toward the performance expectations set forth in the charter agreement; or
3. Failed to meet generally accepted standard of fiscal management."

MSCS voted to revoke the charter agreements for MAHS Middle and High School in accordance with T.C.A. § 49-13-122(b)(1) and (3), and MAHS exercised its right to file an appeal of the revocation decision. In order to overturn the decision of the local board of education, the Commission must find that the decision is contrary to T.C.A. § 49-13-122. In this case, the Commission has the ability to uphold the MSCS decision to revoke the MAHS charter agreements or overturn the decision of MAHS and remand the decision to MSCS. If overturned, MSCS shall remain the charter school authorizer.

### **PROCEDURAL HISTORY**

1. On July 21, 2003, MSCS executed a charter agreement with MAHS to open a charter school serving grades 6<sup>th</sup> through 8<sup>th</sup> ("MAHS Middle School").
2. MAHS Middle School began operation at the start of the 2003-2004 school year.
3. In 2007, MAHS submitted a charter renewal application to continue serving grades 6<sup>th</sup> through 8<sup>th</sup>.
4. In 2007, MAHS submitted a new charter application for MAHS to expand to serve grades 9<sup>th</sup> through 12<sup>th</sup> ("MAHS High School").
5. MAHS High School began operation at the start of the 2008-2009 school year.



6. On October 1, 2012, MAHS Middle School and MAHS High School submitted charter renewal applications. The next renewal submission date for MAHS Middle School and MAHS High School is April 1, 2022.
7. For the 2021-2022 school year, MAHS Middle and High Schools serves grades 6<sup>th</sup> through 12<sup>th</sup>.
8. On December 1, 2021, the Tennessee Comptroller of the Treasury released an Investigative Report regarding MAHS.
9. On December 2, 2021, MSCS notified MAHS that it was reviewing MAHS' conduct referenced in the Comptroller's Investigative Report.
10. On December 8, 2021, MSCS sent MAHS an official notice of its recommendation to revoke the charter agreements of MAHS Middle and High Schools.
11. On January 12, 2022, the MSCS Board of Education held a charter school closure hearing, where MSCS presented its revocation recommendation, and MAHS delivered a rebuttal.
12. On January 12, 2022, the Board voted to revoke the charter agreements of MAHS Middle and High Schools.
13. The revocation takes effect at the end of the 2021-2022 school year.
14. On January 20, 2022, MAHS appealed the revocation in writing to the Commission.

#### **FINDINGS OF FACT**

On December 1, 2021, the Tennessee Comptroller of the Treasury released an Investigative Report ("Report") pertaining to MAHS based on selected records for the period July 1, 2015 through February 28, 2021. The Report made the following findings:

1. Former Executive Director Corey Johnson misappropriated school funds totaling at least \$337,955.13.
2. Former Finance Director Robert Williams received improper payroll payments totaling at least \$35,295.95.
3. Former Nutritional Services Director Michael Jones misappropriated school funds totaling at least \$25,114.19.
4. Former Executive Director Corey Johnson and Former Finance Director Robert Williams made questionable disbursements totaling at least \$400,521.45.

Additionally, the Report found five internal control and compliance deficiencies within MAHS' operations.

1. The MAHS governing board failed to provide adequate oversight of school operations.
2. The three former directors did not comply with the MAHS Employee Handbook policies pertaining to purchase and travel reimbursements.
3. Williams made questionable accounting entries and maintained questionable account records in the general ledger.
4. Several school officials failed to report suspected unlawful conduct to the state Comptroller of Treasury.

5. The MAHS governing board failed to provide adequate oversight of Johnson's and Williams' time/work schedules.

MSCS revoked the MAHS' charter agreements based on the Tennessee Comptroller of the Treasury's Investigative Report ("Report"), as well as on the basis that MAHS committed material violations of their 2012 Charter Renewal Applications. MSCS cited two violations. First, MAHS violated Assurance of Compliance No. 18 of their 2012 Charter Renewal Applications by failing to maintain its accounts and records in accordance with generally accepted accounting principles and in conformance with the uniform chart of accounts and accounting requirements prescribed by the Tennessee Comptroller of the Treasury. Second, MAHS failed to adhere to its approved decision-making processes and procedures and fiscal oversight, as laid out in Section IV of MAHS 2012 Charter Renewal Applications.

Following MSCS' decision to revoke MAHS' charter agreements, MAHS appealed the decision in writing to the Commission on January 20, 2022. In its appeal, MAHS argued that they had remedied the deficiencies found in the Report by terminating the employees who had committed the wrongdoing and by revising several of its policies to prevent any future financial mismanagement. Specifically, MAHS claimed it had altered its organizational structure to ensure tighter internal controls over its finance and operations, including requiring auditors to report directly to the governing board. Additionally, MAHS explained that it had made changes to its purchasing requirements, employee contract forms, travel forms, as well as revised its Employee Handbook and Fiscal Policies and Procedures Handbook.

Pursuant to Commission rule 1185-01-01-.03 and Commission policy 2.300, Commission staff collected evidence from MSCS and MAHS to determine whether the decision of MSCS was contrary to T.C.A. § 49-13-122.

### **Public Hearing**

Pursuant to statute<sup>1</sup>, Commission rule 1185-01-01-.03 and Commission Policy 2.300, a public hearing chaired by the Executive Director was held on February 25, 2022 in Memphis, Tennessee. During the public hearing, MSCS indicated that the decision to revoke the charter agreements was made after a determination that MAHS violated MSCS' Board policies and the schools were in violation of T.C.A. § 49-13-122(b)(1) and (3). MSCS notified MAHS of the intent to revoke the agreements on December 2, 2021 after the Comptroller's Report was issued. MSCS asserted that the Comptroller's Office is the gold standard in relation to fiscal management, and it is the only state agency with authority to investigate charter schools. In its opening statement, MSCS re-iterated the information produced in the Report: MAHS placed two (2) employees in control of the schools' finances, and the MAHS governing board failed to adhere to its financial oversight standards. MSCS highlighted the other findings of the Report, including the misappropriation of funds by the former Executive Director and improper disbursements of payroll. MSCS indicated that the responsibilities of MAHS are detailed in their 2012 charter applications, and the governing board violated those responsibilities by not providing sufficient governance and internal controls. MSCS stated that employees of the school

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<sup>1</sup> T.C.A. § 49-13-122(g)(1).



misused approximately \$800,000 of funds which were obligated to the students of the school, and this was a violation of standards of financial management and imperiled public trust in the schools. As a result, the revocation of the charter agreements should be upheld.

In its opening statement, MAHS indicated that the question before the Commission is whether the revocation by MSCS was in accordance with Tennessee law. MAHS stated that a revocation must be supported by clear and compelling evidence, or, in the alternative, an emergency condition must exist. MAHS also stated that MSCS must adhere to Tennessee Quality Authorizing Standards prior to revoking a charter agreement, and the district failed to comply with several preliminary steps before issuing a notice of revocation. The legal counsel for MAHS stated that in November 2019 the governing board learned of the Comptroller's investigation, and by December 2019 the board placed the Executive Director on leave and subsequently terminated his employment. However, prior to the release of the Report, the governing board stated that they did not know the extent of the fraud undertaken by the former employees. MAHS stated, upon the release of the Comptroller's report, the governing board reached out to MSCS for a face-to-face meeting with the district. However, MSCS did not respond for a meeting but rather initiated revocation proceedings. MAHS then stated that they requested to be put on a corrective action plan as permitted in MSCS Board policy in lieu of revocation, but MAHS stated the district did not accept any additional documentation or was willing to discuss a corrective action plan. Therefore, MAHS states that the district's process violated its own procedures, and revocation was not warranted. MAHS stated that they remain committed to the students, staff, and neighborhood and should be permitted to remain open and move toward a corrective action plan.

The parties then answered questions posed by the Commission's Executive Director. Both parties confirmed that, without separate executed charter agreements, the 2012 charter renewal applications serve as the agreements between the parties, and the material terms of authorization are contained within those documents. In this case, MSCS stated that the egregious financial issues violated terms of the agreements. In response to questions from the Executive Director regarding the district's knowledge of issues within the schools, the Office of Charter Schools stated that they became aware of the staffing changes at MAHS in 2019, but they were not aware of the Comptroller's investigation or the egregious nature of the fraud before the Report was issued. After receiving the Comptroller's Report, MSCS determined that the actions of the former employees were so egregious the governing board could not correct and/or cure them. In looking forward, MSCS stated that as the authorizer, a comprehensive performance evaluation system is used for its charter schools, which includes financial core component framework based on the National Association of Charter School Authorizers. MSCS also developed and provided fraud training for charter leaders to help them better understand their duties in an effort to prevent any similar situation from occurring.

MSCS stated that, if the decision to revoke the charter agreement is upheld, MSCS would continue with its closing process which includes community engagement and supporting families to enroll in other schools. MSCS referred to its closing impact report that was presented to the MSCS Board, and the district stated it would host small group conversations with families to provide them with all quality options.



MAHS then responded to questions from the Commission's Executive Director. MAHS stated that, prior to receipt of the Comptroller's Report, the governing board had no knowledge of the extent of the fraud and misappropriation of funds. MAHS explained that, on November 8, 2019, the Comptroller's office executed a warrant to the MAHS office and seized records and/or documentation relating to the former Executive Director. MAHS stated that, after receipt of the executed warrant, the governing board placed the former Executive Director on administrative leave and began an internal investigation. MAHS found financial mismanagement through its internal investigation and took steps to terminate the employees involved beginning in late 2019 through 2020. The governing board did not realize that an ongoing investigation by the Comptroller was occurring and thought that these requests were "routine" in nature.

After the former Executive Director was placed on administrative leave, the governing board of the schools met in a special-called board meeting to discuss how financial reports would be provided and voted to increase the meetings from quarterly to monthly. MAHS changed the organizational structure of the board and updated its financial policies and procedures. It also replaced staff and included more regular financial reporting and auditing of the schools. The board elected an interim board chair with experience as a Chief Financial Officer for a non-profit, and the new Executive Director is required to provide high-level financial reports which includes budget to actuals and an annual balance sheet and income statement and audit report. MAHS explained that, since the publication of the Comptroller's Report, MAHS has established a financial committee and increased internal financial monitoring. The governing board now selects random reimbursements specific to travel and expenses over \$50,000 for audits, and there is a stricter payroll review. MAHS explained that they now have the correct individuals in the correct positions for the board and have instituted over twenty (20) internal controls, including new employee training for any staff member with a spending allowance and new contractual terms for employees. The new governing board members have instituted a new evaluation system for the Executive Director and financial staff, and the MAHS' new leader ensures that every expenditure is allowable. MAHS requires all staff responsible for procurement to attend training and have codified all changes in the training handbook.

In its closing statement, the district highlighted that local board policies permit a move to revocation after a finding of fiscal mismanagement, and this procedure was implemented in this case. MSCS explained that MAHS was notified on December 8, 2021 of an intent to vote for revocation, and the Board's vote occurred on January 12, 2022, which provided the required thirty (30) days' notice. Additionally, the district provided an opportunity for the governing board to participate in a hearing before the board prior to revoking the agreements. MSCS reiterated that a corrective action plan was not proposed because the action had previously occurred and could not be cured. MSCS stated that the financial mismanagement by the school leaders authorized MSCS to move immediately for revocation.

In MAHS' closing statement, MAHS stated that the governing board was informed by MSCS that they could not submit an action plan and was not provided with sufficient notice of the revocation vote by the MSCS Board of Education. MAHS explained that, if provided the opportunity, they would have set forth the changes that have occurred since publication of the Comptroller's Report and offered to provide those changes for the Commission's review. MAHS spoke to the success of the

middle and high schools, and, specifically, if the MAHS Middle and High schools close, many students will be forced to attend lower performing schools. MAHS also indicated that many of the parents have stated that they do not want another option for their children. Principal Brown<sup>2</sup> highlighted the students' gains in English and Math as well as the school focus on social-emotional learning options for students. Dr. Miles<sup>3</sup> discussed the way that MAHS addresses student needs academically and shared that MAHS High School experienced a 20% increase in students demonstrating on track or mastery in ELA, and a 9% increase in Math.

While there were no public comments at the public hearing, MAHS submitted 131 written comments after the public hearing by parents, faculty, and staff in support of overturning the decision to revoke the charters for MAHS. MAHS also submitted poll results showing that 189 parents support MAHS remaining open and in opposition to the revocation.<sup>4</sup>

### **ANALYSIS**

The Commission is charged with reviewing a revocation decision by a local board of education and determining whether the revocation decision was contrary to T.C.A. § 49-13-122. In preparing the recommendation, I have considered the documentation submitted by both MSCS and MAHS, the presentation of the parties at the public hearing, and public comments received by Commission staff and make the below conclusions.

T.C.A. § 49-13-122 provides three reasons for an authorizer to revoke a charter agreement, and MSCS cited two of the three reasons:

1. Committed a material violation of the charter agreement, and
2. Failed to meet generally accepted standards of fiscal management.

Based on the totality of evidence in the record, I do not find that MSCS's decision to revoke the charter agreements of MAHS is contrary to T.C.A. § 49-13-122. The Comptroller's Report details, and both parties acknowledge, that between July 2015 and December 2019, the former Executive Director, former Finance Director, and former Nutritional Services Director for MAHS misappropriated funds in an approximate amount of \$800,000.<sup>5</sup> The Comptroller's Report also put forth several significant internal control and compliance deficiencies by the governing board of MAHS. Over a period of four (4) years, MAHS' governing board failed to conduct oversight and review of such a nature that would have illuminated the improper conduct of the former employees. MAHS stated during the public hearing that, prior to the Comptroller's Office executing a warrant, there was no indication of any financial mismanagement. However, if the governing board had sufficient controls over the schools' finances, regular financial reporting, documented performance reviews, and a clear complaint policy where stakeholders could have shared concerns regarding the financial actions of the schools' top employees, it is possible that these concerns could have been identified earlier. If caught earlier, it is possible for a corrective action plan to have implemented and that some of the

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<sup>2</sup> Janice Brown, Principal, MAHS Middle School

<sup>3</sup> Dr. Michael Miles, Principal, MAHS High School

<sup>4</sup> Note, some of parents that submitted written comments also responded to the MAHS poll.

<sup>5</sup> Comptroller's Investigative Report, Tennessee Comptroller of the Treasury, pages 1-9.



\$800,000 in misappropriated funds could have made it into the classroom. Unfortunately, this did not happen.

The approximately \$800,000 of misappropriated funds intended for the benefit of MAHS students should have been discovered through tighter internal controls, the internal audits established in the MAHS Employee Handbook, and an open and transparent relationship between the school leaders and the governing board. However, these conditions were not present over a four-year period of time, and the impact of this inaction is beyond repair. I concur with MSCS that no plan of action could correct the mismanagement of those funds or the period of time that the employees were able to deceive the students, faculty, school board, and community investing in MAHS. MAHS has explained various measures taken to prevent any similar activity occurring in the future; however, the confidence in the MAHS governing board's meaningful oversight is not supported by past action.

I also reviewed the MAHS' audits from FY2015 through FY2021 to determine whether the audits included any findings related to material misstatements of the financial statements or internal control deficiencies. Beginning in FY2019, auditors noted that the schools were being reviewed by the Comptroller's Division of Investigation which should have been a significant flag for the governing board that the Comptroller's work was more than just "routine."

T.C.A. § 49-13-111(m) requires all charter schools to maintain their accounts and records in accordance with generally accepted accounting principles. Moreover, the charter applications for MAHS contain assurances that the parties have agreed are material terms for which the schools are accountable which specifically call out the expectation regarding these accounting principles. T.C.A. § 49-13-122(b) permits revocation "at any time" if it has been determined that a school "committed a material violation of any conditions, standards, or procedures set forth in the charter agreement..." or "failed to meet generally accepted standards of fiscal management." The fraud perpetuated by the former employees of MAHS and the failure of the governing board's oversight and controls are clear evidence a material violation of the agreement, failure to meet standards of financial management, and a violation of state law. Therefore, MSCS exercised its authority to revoke the charter agreements of MAHS. The parties disagree with the steps taken in effectuating the revocation proceedings; however, the documentation shows that MSCS provided MAHS proper notice of its intent to vote for revocation, prepared a school closing impact report which was provided to MAHS on December 13, 2021, and provided the governing board an opportunity to be heard at a closure hearing on January 12, 2022.<sup>6</sup> Therefore, the MAHS governing board was provided due process by the district in advance of the MSCS Board of Education's decision, even if it was not the process the governing board wanted or preferred.

The continued autonomy afforded public charter schools should only be allowed where there is a proven track record that it is earned. Charter schools are given public dollars for expected results and have the public's trust that the funds will be used appropriately and in line with state and federal law. I cannot recommend that MAHS continue in operation in light of the inactions by the governing board over a four (4) year period. While I understand that the governing board has made changes

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<sup>6</sup> Shelby County Schools 2021 Guidebook, pages 16-19.



since the Comptroller’s Report was issued, this does not negate the fact that MSCS had an ability within statute to revoke the charter agreements for such egregious acts of financial mismanagement and violations of the charter agreement. Based on the egregiousness of the findings in the Comptroller’s Report over the significant amount of time when the lack of internal controls and oversight occurred, I cannot recommend the Commission overturn the decision of the local board of education.

**CONCLUSION**

The decision to revoke a charter agreement and ultimately close a school is not one that should be made cavalierly. Public charter schools and local boards of education enter into a charter agreement with the mutual understanding of autonomy for accountability. Terms and assurances are established in the beginning so that all parties are operating from the same understanding, and state law lays out the requirements for charter schools to follow. A party that fails to honor that agreement, violates state law and the agreed-upon assurances in a manner that betrays the public trust cannot remain open. While I believe that the new governing board is well-intentioned in its desire to provide a quality education to its students, I cannot find that the decision of the local board of education is contrary to T.C.A. § 49-13-122 based on a totality of the evidence. Therefore, I recommend that the Commission affirm the MSCS Board of Education’s decision to revoke the agreements for MAHS.

A handwritten signature in black ink that reads "Tess Stovall". The signature is written in a cursive style.

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Tess Stovall, Executive Director  
Tennessee Public Charter School Commission

4/1/2022

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Date