

2.000 Charter School Appeals

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Purpose

The purpose of this policy is to set forth the process for submitting an appeal of the denial of a charter school application by the local board of education to the Tennessee Public Charter School Commission (the “Commission”).

Policy Sections

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Generally

Pursuant to T.C.A. § 49-13-108, if a local board of education denies an amended charter school application, the prospective charter school sponsor (the “sponsor”) may appeal the decision to the Commission no later than ten calendar days after the date of the local board of education’s decision to deny the charter school application.

The Commission will not consider appeals of applications that did not include all the statutorily required elements or that were submitted outside the application window set by T.C.A. § 49-13-107.

Notice of Appeal

The sponsor shall notify the Commission by email to CharterSchool.Appeals@tn.gov of the sponsor’s decision to appeal the local board of education’s denial of the amended charter school application no later than ten calendar days after the date of such denial. The notice of



appeal must be received by the Commission by 11:59 p.m. Central Standard Time on the tenth day. To be considered a complete appeal, this notice of appeal shall contain the following information:

- Copies of the initial and amended applications submitted to the local board of education;
- 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;
- Copies of the letters informing the sponsor of the local board of education's reasons for denying the initial and amended applications;
- 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
- 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.

Commission staff will confirm to the sponsor receipt of the appeal and the date of receipt. 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. Commission staff may conditionally accept the appeal and collect additional information to determine whether the appeal may be accepted despite the sponsor's inability to submit one the requirements listed in paragraph (a)–(e) above.

Information from the Local Board of Education

Commission staff will gather information related to each appealed application from the local board of education. The information requested may include, but is not limited to:

- A list of individual(s) who reviewed the initial and amended applications;
- Copies of the minutes, notes and presentations, 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;
- Copies of the completed scoring sheets used to evaluate the applications;
- Copies of any reports or notes prepared for the local board of education by reviewers or other local board of education staff; and



- Copies of the letters informing the sponsor of the local board of education's reasons for denying the initial and amended applications.

The local board of education is requested to comply with such document request and provide any applicable documents to the Commission staff within seven calendar days after receipt of the document request.

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 seven calendar days of the request. 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.

Fiscal Impact Information

If the denial by the local board of education was based upon substantial negative fiscal impact, 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 provide this documentation within seven calendar days of receiving notification from the Commission that a sponsor is appealing the local board of education's denial of a charter application. The burden will be on the local board of education to prove that substantial negative fiscal impact does exist. The Commission reserves 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:

- Average Daily Membership (ADM) figures of the local education agency (LEA) (specifically all Kindergarten through grade 12 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;
- 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;
- A projection of the LEA's ADM figures (specifically all Kindergarten through grade 12 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 of revenue to the LEA based on the LEA's ADM figure; and

- 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 will conduct a separate analysis for each application that was denied based upon substantial negative fiscal impact.

Public Hearing

The Commission is required to hold a public hearing on the charter application no later than seventy-five calendar days after receipt of the notice of appeal.

- *Date.* Commission staff will schedule a date for the public hearing to be held in the school district where the sponsor proposes to open the charter school and will communicate the date and time of this hearing to the sponsor and the local board of education and post notice of the hearing on the Commission's website and publish the same in a newspaper of general circulation in the county where the local board of education is located.
- *Conduct.* The Executive Director of the Commission or a Commission staff member will preside over the hearing. The Executive Director or other staff member may ask questions of the sponsor, local board of education, or those offering public comments at any time during the hearing. The Executive Director or other staff member may end portions of the hearing or the hearing itself if the sponsor, local board of education, or members of the public are out of order. Examples of conduct that may warrant calling speakers out of order include, but are not limited to: yelling or using obnoxious or offensive language; speaking out of turn; or denigrating participants or other employees or officials of either the sponsor or the local board of education by name calling or similar conduct.
- *Presentations.* The local board of education will have fifteen minutes to present the reasons for the local board's denial. The sponsor will have fifteen minutes to respond and show why the local board of education's decision is contrary to the best interests of the students, LEA, or community. Presentations may include PowerPoints and charts. Copies of any PowerPoints or charts utilized by the sponsor or local board shall be provided to the Commission staff.
- *Public Comment.* There will be at least thirty total minutes for public comment, and the Executive Director or other staff member, in their discretion, may increase the time for public comment based on the circumstances. Members of the public who wish to

comment shall register through a process designated by Commission staff, and to the extent time permits, will be called to speak in the order their names appear on the registration list. Each member of the public will be permitted to speak for no more than two minutes, but the Executive Director or other staff member will have discretion to set a time limit of less than two minutes based on the circumstances. Written comments may also be submitted at the public hearing or submitted to the Commission as specified by Commission staff.

- *Closing.* The local board of education and the sponsor will each have ten minutes for a closing statement.

Standard of Review

- Commission staff and a charter application review committee (the “Review Committee”) will conduct a de novo on the record review of the proposed charter school’s application and provide recommendations to the Executive Director of the Commission.
- To overturn a denial of the local board of education, the Commission must find that the application meets or exceeds the metrics outlined in the Tennessee Department of Education’s scoring rubric and that approval of the application is in the best interests of the students, the LEA, or the community.
- If a local school board’s denial of a charter application is based on substantial negative fiscal impact, the Commission should also consider the financial impact of the charter school on the LEA. The Commission shall not approve for operation any public charter school that the Commission determines will have a substantial negative fiscal impact on an LEA, such that authorization of the public charter school would be contrary to the best interests of the students, LEA, or community.
- The Commission shall abide by the principles and criteria for application review set forth in Commission Policy 2.100.

Interviews

- The Commission’s interview panel may also interview the governing board and school leadership, if named, of each sponsor that has filed an appeal in accordance with this policy. The interview panel may consist of Commission staff, a Commission member, and members of the Review Committee and shall be conducted in accordance with Commission Policy 2.100. These interviews shall not be open to the public. Commission staff will schedule a date for the interview to be conducted electronically. Results of the interview shall be considered in the Executive Director’s recommendations to the Commission.

Transparency and Public Engagement

- The Commission is committed to employing fair and transparent procedures that promote evidence-based decisions regarding a charter application received on appeal. The Commission will inform the sponsor and local board of education of their rights and responsibilities at all stages of the appeal process, promptly notifying them of approval or denial decisions, including the basis for the decision.

Decision-Making Principles

- Pursuant to State Board Quality Charter Authorizing Standards, the Commission commits to using rigorous decision-making in granting charters only to sponsors that have demonstrated competence and capacity to succeed in all aspects of the proposed charter school.
- The Review Committee members will provide evidence-based recommendations to the Commission staff that address established approval criteria. The Executive Director of the Commission will consider the recommendation of the Review Committee in his or her recommendation to the Commission for final approval or denial of the appeal consistent with the approval criteria and processes set forth in this policy and Commission Policy 2.100.

Decision of the Commission

- Following the public hearing and review of the application, the Executive Director of the Commission will provide written findings and recommendations to the Commission. The Commission will consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the Commission is not bound by the recommendation. The findings and recommendations of the Executive Director of the Commission will be discussed prior to the vote on the agenda item at a regular or special-called meeting.
- A representative of the sponsor and/or local school board may speak at the Commission meeting where the Commission will consider the findings and recommendations of the Executive Director in accordance with Commission policy 1.200. Alternatively, a representative of the sponsor and/or local school board may submit a written comment to be read into the record by a member of the Commission staff during the meeting where the Commission will consider the findings and recommendations of the Executive Director.
 - Written comments shall not be more than one page typed in length and shall be received by the Executive Director at least forty-eight hours prior to the scheduled board meeting. The Commission shall accept only one written comment 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 minutes.

- The Commission will meet and render a decision within seventy-five calendar days after receipt of the appeal. The Commission may:
- Affirm the decision of the local board of education, or
 - If the Commission finds that the application meets or exceeds the metrics outlined in the state board of education's application-scoring rubric and that approval of the application is in the best interests of the students, LEA, or community, the Commission may approve the application for the charter school. The decision of the Commission shall be final and not subject to appeal, and the Commission shall become the authorizer and LEA for that public charter school.
- If the Commission overturns the decision of the local board of education, the LEA and the charter school may agree to have the local board be the chartering authority for the school. If the local board of education and the charter school mutually agree that the local board of education shall be the authorizer and LEA, then the parties shall notify the Commission that there has been a reconciliation via email to CharterSchool.Appeals@tn.gov. If a charter agreement or other proof of approval by both parties is not received by the Commission within thirty calendar days, the Commission shall proceed as the authorizer of the charter school.

Post Application Approval

- No charter school may begin operation before obtaining the authorizer's approval of its charter agreement.
- For all charter schools authorized by the Commission, the following shall apply.
 - The Commission's approval of a charter school's application is separate and distinct from the Commission's approval of its charter agreement and a school's right to open.
 - Once an application is approved by the Commission, the Commission will negotiate a charter agreement with the school's governing board that must be approved by the Commission and signed by both parties. The approved amended application shall be included as an exhibit to the charter agreement.
 - The Commission will establish a Pre-Opening Checklist, substantial compliance therewith shall be a prerequisite or opening the charter school.