

**BEFORE THE TENNESSEE STATE BOARD OF EDUCATION**

**2012 CHARTER SCHOOL APPEAL  
Great Hearts Academies**

**FINDINGS AND RECOMMENDATION**

Pursuant to Tenn. Code Ann. § 49-13-108, sponsors proposing to open new charter schools may appeal the denial of their amended applications by a local board of education to the State Board of Education (State Board).

On Tuesday, July 17, 2012, a hearing was held at the Metropolitan Nashville Board of Education (MBPE) in Nashville, Tennessee, to consider Great Hearts Academies' appeal of the denial of its application by the MBPE.

Based on the following procedural history and findings of fact, I believe that the decision to deny Great Hearts Academies' application was "contrary to the best interests of the pupils, the school district, and the community", and therefore recommend that the Board remand the decision back to the Metropolitan Nashville Board of Public Education with instructions to approve the charter application contingent upon the following:

1. Great Hearts' ability to develop a diversity plan that mirrors the plan for diversity that MNPS utilizes in its Schools of Choice.
2. Great Hearts employing licensed teachers.
3. Greats Hearts only being authorized to open one school in this application cycle.

**PROCEDURAL HISTORY**

1. On May 30, 2012, the Metropolitan Nashville Board of Public Education unanimously denied Great Hearts Academies' initial application, following the unanimous

recommendation of the Metropolitan Nashville Public Schools (MNPS) charter school review committee.

2. Great Hearts Academies amended and resubmitted its application on June 13, 2012.

3. On June 26, 2012, the MNPS Charter School review committee recommended approval of Great Hearts Academies' amended application. An overriding decision to deny the amended application was submitted from the MNPS Office of Innovation. After much debate, the Metropolitan Nashville Board of Public Education voted to deny the amended application of Great Hearts Academies in a 7-2 decision.

4. Great Hearts Academies then appealed the denial by email to the State Board, received July 5, 2012.

#### **FINDINGS OF FACT**

1. MNPS' Office of Innovation, Division of Charter Schools, worked closely with the National Association of Charter School Authorizers (NACSA) to set up an evaluation process that embodied best practices from authorizers throughout the country. In accordance with the NACSA Principles and Standards, four (4) review teams were assembled to review the applications that MNPS received. Each team consisted of a team lead plus individuals who had expertise with curriculum, special education, English language learners, charter school financials, operations, management and legal compliance. Each team was given extensive training in application review and interviewing techniques.

2. The evaluation team was instructed to submit their final recommendation to approve or deny the application to the Office of Innovation. The Office of Innovation would then review with each team lead the objective reasons and prepare the recommendation for the MNPS Board of Education.

3. The MNPS Charter School Review Committee team evaluating the Great Hearts Academies application included the following individuals:

- a. Lisa Wiltshire, Team Lead – Assistant Director of Strategic Planning, MNPS
- b. Brian Williams – CEO Hands On Nashville
- c. John Thomas – SIP Planning Facilitator, Federal Programs, MNPS
- d. Pam Burgess – Family Involvement Specialist, MNPS
- e. Todd Wigginton – Coordinator of High Schools, MNPS
- f. Celeste Hentz – EL Specialist, MNPS
- g. Rick Caldwell – Charter School Liaison, Exceptional Education, MNPS
- h. Mark Mason – Consulting teacher, middle schools, MNPS
- i. Gary Satyshur – Director of Operations, LEAD Public Schools

4. Ex-Officio members of the MNPS Charter School Review Committee included:

- a. Dr. JoAnn Brannon, Board Member, MNPS Board of Public Education
- b. Alan Coverstone, Executive Director, Office of Innovation, MNPS
- c. Carol Swann, Coordinator of Charter Schools, MNPS

5. Using the Tennessee Department of Education’s (TDOE) scoring rubric as a guide for evaluating the application, the review committee scored the application, combining the TDOE’s thirteen separate areas of scoring into four main domains: Educational Plan, Organizational Plan, Business Plan, and Evidence of Capacity.

6. For applicants who were interested in operating one or more charter schools in the 2013-2014 school year, MNPS required information published in a document titled “Application Supplement for Existing Operators.” The replicator supplement was meant for existing operators to describe their organization’s structure, track record, and capacity to operate one or more schools in Nashville. The supplement was to be completed in addition to the Application for a Public Charter School.

7. To be recommended for approval to the MBPE, applicants must meet or exceed the criteria in all four areas.

8. On the initial application, Great Hearts Academies' application was labeled according to the scoring guidelines developed and promulgated by the Tennessee Department of Education. Great Hearts Academies' initial application scored as follows:

Educational Plan	Meets the Standard
Organizational Plan	Partially Meets the Standard
Business Plan	Meets the Standard
Evidence of Capacity	Meets the Standard

9. After the Metropolitan Nashville Board of Public Education (MBPE) voted to deny Great Hearts Academies' initial application, MNPS sent Great Hearts Academies the complete recommendation report of the committee, the average scores from the committee, and overall reasons for denying the Great Hearts Academies Charter School application.

10. Great Hearts Academies' amended application scored as follows:

Educational Plan	Meets the Standard
Organizational Plan	Meets the Standard
Business Plan	Meets the Standard
Evidence of Capacity	Meets the Standard

11. After review of the application, the committee unanimously recommended approving the amended application.

12. The MNPS Office of Innovation recommended denial of the amended application, citing the following reasons that the application should be denied:

- a. MNPS should not be in the position of authorizing five schools at one time.
- b. The plan is contrary to MNPS' commitment to diversity.
- c. The proposed transportation plan is inadequate.
- d. The target student population is not diverse.

13. The minutes of the June 26, 2012 MBPE meeting state, “Mr. Coverstone stated that the Charter School Committee recommends denial of the Great Hearts amended application.”

14. At the June 26, 2012 meeting, there was a motion to adopt the Charter School Committee’s recommendation to deny the amended application for Great Hearts Academies, which was adopted by a 7-2 decision.

### **CONCLUSION**

State law requires the State Board of Education to review the decision of the local board of education and determine whether the denial of the charter school was in the “best interest of the pupils, school district, and the community.”<sup>1</sup> The 2011 legislative session marked a change in policy for the charter schools in Tennessee. Previously, charter schools were reserved for those students who had historic disadvantages to educational achievement. The 2011 session removed those constraints, allowing charter schools to be formed “to provide quality educational options for all students...”<sup>2</sup> within the Local Education Agency (LEA), not just historically disadvantaged students. LEAs are, however, permitted to give preference to applicants who “demonstrate the capability to meet the needs of” students facing historical disadvantage.<sup>3</sup> It is under this lens that I view the application of Great Hearts Academies.<sup>4</sup>

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<sup>1</sup> T.C.A. § 49-13-108(a)(3).

<sup>2</sup> T.C.A. § 49-13-106(a)(1).

<sup>3</sup> T.C.A. § 49-13-106(a)(1).

<sup>4</sup> Tennessee Public Chapter 102, 107<sup>th</sup> Gen. Assemb., Reg. Sess. (Tenn. 2012), the portion making it impermissible to unfavorably score applicants who did not demonstrate a commitment to serving disadvantaged students, was not considered in my analysis because the application was evaluated before this act became effective.

*Procedural History*

Metropolitan Nashville Public Schools (MNPS) is to be applauded for its efforts in ensuring the quality evaluation and authorization of charter applications. It is clear that MNPS has gone to great lengths to ensure a rigorous and thorough evaluation of each charter application that it receives. Much was said at the July 17 hearing about the detailed, thorough, well-documented nature of the process and that it should be upheld. In evaluating that process, however, it appears that MNPS did not, in fact, follow it as stated.

In reviewing the recommendation of the MNPS review committee, it is clear that the review committee recommended approval of the application. Even in the section discussing the highly contentious issue of diversity, the recommendation states, “The applicant has articulated and outlined detailed plans to promote diversity and equitable access to school choice options.” Again, it is clear that the recommendation of the committee on amended review was to approve the application. Yet, the Metropolitan Nashville Board of Education (MBPE) minutes state, “the Charter School Committee recommends denial of the Great Hearts amended application.” It appears that it was not, in fact, the committee’s recommendation on which the Board based its vote.

I believe that even though the review committee recommended approval of the application, an additional step in the process was added by the MNPS Office of Innovation whereby the Office of Innovation recommended to the MBPE that Great Hearts be denied. One cannot tout the robustness of the process on one hand and then usurp the process on the other. If MNPS is going to utilize a committee to evaluate an application, go to great lengths to train the committee, and hold its process up as the “Gold Standard” of processes, it should trust the committee’s recommendation and process 100%. Failure to do so suggests that an arbitrary

decision was made, which would be contrary to the best interests of the students, school district, and community.

For this reason, I am recommending that the decision of Metropolitan Nashville Board of Education to deny Great Hearts Academies be overturned.

### *Diversity Plan*

Understanding the type of charter schools that could potentially be authorized following the changes to the charter school statute, I am sensitive to the concerns of MNPS in maintaining diversity in the charter schools it authorizes. At the July 17 hearing, MNPS raised several issues with the lack of diversity which would result if the proposed Greats Hearts Academy were to be located in West Nashville and if they failed to provide sustained transportation to their students. Both issues of location and transportation are related to the overall issue of diversity, thus I will address both.

Great Hearts contends that the area where they intend to locate is diverse and that, through the blind lottery process, there is no way that Great Hearts would be able to self-select a homogenous group of students. I tend to agree. Because Great Hearts will essentially be an open enrollment school, any parent can apply for their child to attend. State statute requires a charter to utilize a lottery process that is certified by an independent accounting firm or one approved by the Tennessee Department of Education.<sup>5</sup> Great Hearts, within their application, states that they will engage in recruitment efforts to attract a diverse pool. The non-biased lottery process will ensure a fair selection within the diverse pool of applicants that Great Hearts recruits. The checks and balances lie in the charter agreement itself. Because the charter application is incorporated into the charter agreement as part of the contract, failure of Great Hearts to engage in diverse

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<sup>5</sup> T.C.A. § 49-13-113(d)(2).

recruiting efforts could be considered as a “material violation”<sup>6</sup> of the agreement, which would be grounds for MNPS to revoke the charter.

Even with the non-biased lottery, the possibility that parents may choose not to enter their children into the lottery process due to the lack of provision of transportation is a real concern. To date, all of the existing charters schools within MNPS provide transportation for their students. During the public hearing, many opponents of Great Hearts expressed concern that it would be unfair for Great Hearts not to provide what the other MNPS charter schools provide. However, I must distinguish Great Hearts from the other charter schools within the district. Great Hearts and the other applicants in this application cycle are the first of their kind to operate under the 2011 legislative changes. In light of this, Great Hearts should be held to the same standard as an open enrollment school, also known as a “School of Choice”, within MNPS. MNPS does not provide transportation to parents who chose to send their children to schools other than their zoned school, yet those schools are presumably diverse. For MNPS to ask Great Hearts to do something greater than what it does for its own students is unbalanced. This is not to state that Great Hearts should not provide transportation, especially when they have indicated in their application that limited transportation will be provided.

For these reasons, I recommend that approval of Great Hearts Academy be contingent upon Great Hearts’ ability to develop a diversity plan that mirrors the plan for diversity that MNPS utilizes in its Schools of Choice.

#### *Teacher Licensing*

The Great Hearts application requests a waiver from state law requiring the employment of licensed teachers. Tennessee statute expressly requires all teachers in a public charter school

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<sup>6</sup> T.C.A. § 49-13-122(a)(1).

to “have a current valid Tennessee teaching license...”<sup>7</sup> A waiver from this statute cannot be granted. All teachers employed by Greats Hearts Academy must be licensed.

For this reason, I recommend that approval of Great Hearts Academy be contingent upon Great Hearts employing licensed teachers.

#### *Number of Charters*

There has been some discussion on (1) whether Great Hearts has applied to open five (5) schools using a single application, and (2) whether MNPS has the authority to approve five (5) schools using a single application.

The standard application requires a sponsor to submit detailed plans for the opening of a school. The information is required so that the application’s evaluators can accurately assess the school’s likelihood of success if approved. In reviewing the standard application, Great Hearts only includes enrollment figures, curriculum plans, location details, budget details, etc. for one school. In addition to the standard application, MNPS requested that Great Hearts complete a replication supplement. The replication supplement required, among other things, that sponsors provide the name and desired opening year for each school proposed to open; however, the replication supplement does not contain the same level of detail as the regular application. It cannot be assumed that the information contained in the application for one school would automatically be applicable to the other four (4), unless expressly stated (which was not the case). Therefore, it stands that the MNPS Charter School Review Committee only reviewed the details for one school, not five (5). I recognize that completion of the replication supplement could give the impression that a charter applicant could apply to open multiple schools using one application. However, in the supplemental document, MNPS indicates that it would have an

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<sup>7</sup> T.C.A. § 49-13-111(i).

internal process for approving charters for subsequent years. This indicates to me that the replication supplement was a request for information only, and not an application to approve multiple charters within a single application. This is not to preclude an LEA from creating an abbreviated application process for sponsors wishing to open multiple schools in one application cycle so as to avoid duplication of those parts that may be applicable across all proposed schools. In this instance, however, that process was not in place.

Even if reasonable minds were to conclude that Great Hearts applied to open five (5) schools using a single application, this is not authorized by statute. When reading the Tennessee Public Charter Schools Act in its entirety, the statute does not contemplate the ability of an applicant to open multiple schools using one single application. In fact, in the section governing the creation of charter schools<sup>8</sup>, it is riddled with language like “a public charter school” or “a charter application.” The Tennessee Department of Education promulgated the charter application that all charter applicants must use. The title on that application states, “Application for a Public Charter School.” (Emphasis added.) Local boards of education are creatures of state statute, and their authority is limited to that explicitly bestowed on them.<sup>9</sup> That narrow construction applies to a local government's authority to contract.<sup>10</sup> Thus, even in the context of the charter agreement, which is a contract, if a statute does not expressly give authority for an LEA to grant authorization of multiple charter schools using a single application, the LEA does not have such authority. Because MNPS is only authorized to approve one charter school in a single application and Great Hearts only submitted one application, the application must be

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<sup>8</sup> T.C.A. § 49-13-106(b).

<sup>9</sup> *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn.2001). (applying The Dillon Rule, which “is a canon of statutory construction that calls for the strict and narrow construction of local government authority.”)

<sup>10</sup> *Arnwine v. Union County Bd. of Educ.*, 120 S.W.3d 804, 809 (Tenn.2003) (holding that school boards have no statutory authority to enter into multi-year contracts with “assistant superintendents” because they have no authority to enter into such contracts with teachers).

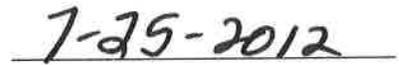
viewed as an application for one school. For this reason, I recommend that approval of Great Hearts Academy be contingent upon only being authorized to open one school in this application cycle.

In summation, I believe that the decision to deny Great Hearts Academies' charter application was contrary to the best interests of the students, the school district, and the community. Therefore, I recommend that the State Board of Education remand the decision back to Metropolitan Nashville Board of Public Education with instructions to approve Great Hearts Academies' charter application contingent upon the following:

1. Great Hearts' ability to develop a diversity plan that mirrors the plan for diversity that MNPS utilizes in its Schools of Choice.
2. Great Hearts employing licensed teachers.
3. Greats Hearts only being authorized to open one school in this application cycle.



Dr. Gary L. Nixon, Executive Director  
State Board of Education



Date