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**BEFORE THE TENNESSEE STATE BOARD OF EDUCATION**

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<b>IN RE:</b>	)	<b>State Board of Education Meeting</b>
<b>SOUTHWEST EARLY COLLEGE HIGH SCHOOL</b>	)	<b>January 6, 2020</b>
<b>Charter School Appeal</b>	)	
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**FINDINGS AND RECOMMENDATION REPORT  
OF THE EXECUTIVE DIRECTOR**

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Pursuant to Tennessee Code Annotated (T.C.A.) § 49-13-122, a charter school that has its charter agreement revoked by their charter school authorizer may appeal the revocation to the State Board of Education (State Board). On November 8, 2019, Southwest Early College High School (SECHS) appealed the revocation of its charter agreement by the Shelby County Schools (SCS) Board of Education to the State Board. Based on the following procedural history, findings of fact, and analysis of the issues, I believe the decision to revoke SECHS’s charter agreement was not contrary to T.C.A. § 49-13-122.<sup>1</sup> Therefore, I recommend that the State Board uphold the decision of SCS to revoke SECHS’s charter agreement.

As discussed in this report, each of the reasons asserted by the SCS Board of Education in support of its revocation decision were supported by evidence, and two of the three reasons met the requirements of T.C.A. § 49-13-122 for revocation. T.C.A. § 49-13-122 gives the following reasons that a charter agreement may be revoked by a charter school authorizer:

- (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 standards of fiscal management.

The SCS Board of Education cited the following three (3) reasons for revocation:

- (1) SECHS relied on uncertified teachers in multiple classes;

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<sup>1</sup> T.C.A. § 49-13-122(b).

- (2) SECHS failed to provide services to students with Individualized Education Programs (IEPs); and
- (3) Southwest Tennessee Community College (STCC) has terminated its partnership with SECHS effective May 30, 2020.

Upon review of the evidence collected during this appeal, including information gained at the public hearing, I find that each of the three issues raised by SCS in support of its revocation decision is substantiated. While all three issues are substantiated, only two of the three issues are *material* violations of the charter agreement under T.C.A. § 49-13-122(b)(1). The issue of unlicensed teachers is substantiated but is *not* a material violation of the charter agreement because the issue was not an emergency in nature, only arose at the beginning of the 2019-20 school year, and the school's leadership acted quickly to remedy the issue. Additionally, SCS's actions prior to revocation likely exacerbated this issue. The issue of special education services is substantiated and is a material violation because SCS gave prior notice and an opportunity to remedy issues with SECHS's special education program, and the continuation of special education issues into the 2019-20 school year presented an emergency situation meriting revocation of the agreement absent an opportunity to cure. Finally, the issue of the terminated partnership is substantiated and is a material violation meriting revocation of the agreement absent an opportunity to cure.

In determining whether or not an issue is a material violation meriting revocation under the law, the State Board's Quality Authorizing Standards provide important guidance, and pursuant to T.C.A. § 49-13-108(f), local boards of education shall adopt these standards. The standards state that quality authorizers give clear, adequate, evidence-based, and timely notice of contract violations or performance deficiencies and allow schools reasonable time and opportunity for remediation in non-emergency situations. Additionally, the standards state that authorizers revoke a charter school when there is clear evidence of violation of law. While there is opportunity for SCS to more effectively implement the quality authorizing standards with fidelity, SCS did communicate to SECHS the serious issues identified in its special education program through the SCS performance framework and also provided considerable support to mitigate egregious special education violations as the issues progressed. Further, SECHS's own negligence with a crucial partner and repeated failures to honor its MOU with STCC led to the termination of the partnership, thus fundamentally altering SECHS's ability to provide the academic plan outlined in the approved charter agreement and application. The SCS Board of Education acted based on substantiated evidence, which was corroborated by evidence garnered during a thorough investigation led by the SCS Office of Charter Schools.

#### **STANDARD OF REVIEW**

Pursuant to T.C.A. § 49-13-122 and State Board policy 6.110, State Board staff conducted a *de novo* on-the-record review of the SCS Board of Education's decision to revoke, including additional information gathered by State Board staff and the full record presented upon appeal. Additionally, pursuant to T.C.A. § 49-13-122(f)(1) and State Board policy 6.110, the State Board held a public hearing in the district where SECHS operates.<sup>2</sup>

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<sup>2</sup> T.C.A. § 49-13-122(f)(1).

In order to overturn the decision of the local board of education, the State Board must find that the local board's decision to revoke was contrary to T.C.A. § 49-13-122, which states:

(b) 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 standards of fiscal management.

The SCS Board of Education based its revocation of SECHS's charter agreement under paragraph (b)(1) quoted above. Pursuant to the language in (b)(1), it is important for the State Board to consider whether or not any of the violations by SECHS are *material* violations of the charter agreement such that they rose to a level meriting revocation under the statute.

### **PROCEDURAL HISTORY, FINDINGS OF FACT, AND ANALYSIS**

#### **I. Authorization of the School and District Decision to Revoke**

On August 23, 2016, the SCS Board of Education approved the charter application for SECHS and executed a charter agreement on August 31, 2016. SECHS began operation at the start of the 2017-18 school year serving 9th grade students. For the 2019-20 school year, SECHS is serving grades 9-11.

On August 20, 2019, SECHS Parent 1 filed a complaint with the SCS Office of Charter Schools (OCS). The parent complaint included numerous allegations against the school, including: a lack of student schedules, a delayed start of the school year, a lack of teachers, that students will not graduate with an associate degree, a lack of clarity on internal and external assessments and graduation requirements, and disorganized and non-transparent communication from the school to parents regarding the alleged issues. The OCS communicated the complaint to SECHS in a letter dated August 21, 2019 and asked SECHS to respond to the complaint within five (5) business days.

On August 23, 2019, SECHS Parent 2 filed a complaint with the OCS. The parent's complaint expressed concerns with student scheduling and credit recovery credits on student transcripts. The OCS communicated the complaint to SECHS in a letter dated August 23, 2019 and asked SECHS to respond to the second complaint within five (5) business days.

On August 26, 2019, SECHS responded to Parent 1's complaint in a letter from the CEO of Artesian Schools, Inc. (and Interim Principal of SECHS), the school's sponsor. The letter provided responses to each of the allegations included in Parent 1's complaint.

On August 27, 2019, three (3) students, two (2) parents, and one (1) former staff member brought concerns regarding SECHS to the SCS Board of Education meeting. The concerns included a lack of student schedules, a lack of teachers, graduation requirements, the ability of students to attain an associate

degree, and special education issues. Further, at the August board meeting, the SCS Director of Schools stated that the district was working with parents and the school to fix the issues within five (5) business days. He also directed the communications office to provide information to parents about choice options for students to leave SECHS.

On August 28, 2019, SECHS responded to Parent 2's complaint in a letter from the CEO. The letter provided a response to the credit recovery complaint and allegation concerning 11<sup>th</sup> grade schedules and was accompanied by supporting documentation.

Also on August 28, 2019, the SCS Office of Exceptional Children visited the SECHS campus. During the visit, SCS reported there was no permanent schedule for the special education teacher, and there was no evidence demonstrating that the school was providing the required services to special education students.

On August 29, 2019, following a directive from the SCS Chief of Strategy and Performance Management, the OCS began to coordinate an investigation into the SECHS allegations in response to the parent complaints, the August board meeting, and the SCS Office of Exceptional Children campus visit.

On September 4, 2019, the OCS held a conference call with SECHS, the SCS Office of Dual Enrollment, the SCS Office of Exceptional Children, and the SCS Office of Student Information Management, to discuss the allegations brought against SECHS and the documentation provided by SECHS in response.

On September 5, 2019, the OCS produced a memorandum to the SCS Chief of Strategy and Performance Management outlining its investigation of SECHS and its findings. The report outlined the allegations, investigation methodology, facts, and findings. Based on SCS interviews and a review of documents, OCS reported the following allegations as being substantiated:

- (1) Students do not have complete schedules;
- (2) Staffing shortages;
- (3) Students with IEPs not receiving proper services;
- (4) No textbooks and coursework for dual enrollment; and
- (5) Students unable to take credit recovery courses through SECHS.

On September 9, 2019<sup>3</sup>, the SCS Chief of Strategy and Performance Management and SCS Director of Schools met with the President of STCC to discuss the college's academic and operational concerns regarding SECHS and the intent of STCC to terminate its partnership with SECHS. The following day, September 10, 2019, STCC sent a letter to SECHS terminating their partnership, effective at the end of the 2019-2020 academic year, based on violations of the Memorandum of Understanding (MOU). Accompanying the letter was supporting evidence and documentation.<sup>4</sup>

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<sup>3</sup> Two separate dates were provided by representatives of SCS regarding when this meeting occurred: August 28, 2019 and September 9, 2019.

<sup>4</sup> SECHS stated they first received notice of this letter on September 19, 2019.

On September 12, 2019, an anonymous SECHS employee filed a complaint with the OCS. The employee lodged a series of allegations related to a lack of teaching staff, including unsupervised classrooms and students, students walking through the college campus unaccompanied by staff, and disorderly behavior in classrooms. The employee also alleged two additional staff members left the school, instruction was not being delivered, a lack of access to instructional technology, and long periods of unstructured and unsupervised time for students. The OCS communicated the complaint to SECHS in a letter dated September 12, 2019 and asked SECHS to respond to the new complaint within five (5) business days.

On September 17 and 18, 2019, SCS received two additional anonymous SECHS employee complaints. In the complaint made on September 17, 2019, an SECHS employee outlined several more allegations, including the CEO not allowing parents to withdraw students, that only one staff member currently held a proper teaching license, AmeriCorps service members were acting as substitute teachers, lack of a guidance counselor, ongoing scheduling errors with college classes, students spending multiple hours a day in study halls rather than classes, students receiving grades in classes where they have not completed coursework, and students unsupervised for much of the school day. In the complaint reported on September 18, the anonymous employee reported students were entering grades into the student information system at the request of the CEO's personal assistant. For each complaint, the OCS provided a letter to SECHS and asked SECHS to respond within five (5) business days.

On September 18, 2019, the OCS notified SECHS of their plan to recommend revocation of the charter agreement to the SCS Board of Education. In a letter addressed to the SECHS Board Chair, the OCS cited violations of Sections 7.e and 7.o of the charter agreement, which included failing to provide required special education services and failing to ensure only licensed teachers are employed in instructional positions, respectively. The letter also cited section 10.b of the charter agreement and stated the OCS's intention to recommend to the SCS Board of Education that it was in the best interest of students and the public to waive the Notice of Cause or cure period, as allowed per Exhibit E of the charter agreement.

On September 19, 2019, SECHS responded to the first anonymous employee complaint. The Artesian Schools, Inc. CEO also emailed the OCS encouraging them to visit the school to observe SECHS's operations.

On September 23, 2019, SECHS responded to the second and third anonymous employee complaints.

On September 26, 2019, the OCS requested additional documentation and informed SECHS of their plan to visit the campus.

On September 30, 2019, the OCS visited SECHS to observe operations and speak with SECHS administration.

On October 8, 2019, there was an Academic Performance Committee Meeting held by SCS Board of Education in which the SCS Board discussed the charter revocation of SECHS.

On October 28, 2019, there was a Charter School Grievance Meeting held by the SCS Board of Education in which SECHS participated.

On October 29, 2019, during a regularly called meeting of the SCS Board of Education, the OCS recommended that the SCS Board of Education approve the SCS Director of School's recommendation to revoke the charter agreement for SECHS effective immediately due to material violations of their charter agreement and Tennessee law. The SCS Board of Education approved the resolution, but amended the recommendation from an immediate revocation to a revocation effective at the end of the 2019-20 school year. The SCS Board of Education revoked the charter agreement pursuant to T.C.A. § 49-13-122(b) and cited the following reasons for revocation:

- (1) SECHS relied on uncertified teachers in multiple classes;
- (2) SECHS failed to provide services to students with IEPs; and
- (3) STCC had terminated its partnership with SECHS effective May 30, 2020.

## **II. State Board Review of the Record and Requests for Additional Information**

Following the revocation of SECHS's charter agreement, the Governing Board of SECHS appealed the revocation of its charter agreement in writing to the State Board on November 8, 2019. State Board staff collected evidence from SCS and SECHS to determine whether the decision of the SCS Board of Education was contrary to T.C.A. § 49-13-122. Information collected by State Board staff focused on the three (3) reasons for revocation cited by the SCS Board of Education outlined above.

Additionally, the Executive Director, sitting as the State Board's designee, held a public hearing in Memphis, Tennessee on December 4, 2019. Both parties presented evidence at the public hearing and the State Board staff collected public comments. After reviewing evidence submitted by both parties in response to the first request for information and information shared at the public hearing, State Board staff sent a second request for information to SECHS and SCS on December 6, 2019.

## **III. Facts and Analysis Related to the Reasons for Revocation**

The decision of the SCS Board of Education to revoke the charter agreement of SECHS was based upon a resolution presented by a SCS board member that cited three (3) allegations that the SCS Board of Education determined supported revocation.

*The following is an analysis of the evidence collected by the State Board from both parties on appeal regarding the three (3) allegations that the SCS Board of Education cited in its decision to revoke SECHS's charter agreement. A detailed description of the facts and evidence collected by the State Board relating to each allegation can be found in Appendix A.*

### **A. Issues Supporting Revocation**

- (1) SECHS failed to provide services to students with IEPs.

Based on the totality of the evidence presented on this allegation, I determine that this issue is substantiated and is a material violation of the charter agreement under T.C.A. § 49-13-122(b)(1). In

SECHS's first year of operation, the school received a perfect score of 5 in the area of Exceptional Education on the SCS 2017-18 Operations Scorecard. However, in its second year of operation, SECHS earned an average score of 2.7 in Exceptional Education on SCS 2018-19 Operations Scorecard. Specifically, SECHS earned the lowest score of a 1 for non-compliance in six (6) of ten (10) categories under Exceptional Education. These areas were:

- (1) Having staff with an appropriate license and certification;
- (2) Timely and complete IEP Progress Reports;
- (3) Adhering to SCS End of Year guidelines;
- (4) School's files in compliance;
- (5) Timely IEP and reevaluation meetings; and
- (6) Timely eligibility meetings.

At the start of 2019-20 school year, evidence from SCS's investigation revealed SECHS's continued non-compliance in special education, including a lack of institutional knowledge regarding compensatory services, lack of urgency for initiating special education services, and lack of planning for how to ensure special education students initiated dual enrollment classes at the community college with accommodations in place. During the State Board's public hearing, when asked about the reasons for the decline in their Exceptional Education score on the SCS Operations Scorecard in the 2018-19 school year, SECHS attributed the decline to losing their special education teacher midyear. When asked at the public hearing about the steps the school took in response to their results on the 2018-19 SCS Operations Scorecard, SECHS failed to articulate a clear plan of action taken to improve compliance in special education.

When the SCS Board of Education voted to revoke the charter agreement of SECHS due to SECHS's failure to provide services to students with IEPs, the primary evidence was from the SCS Office of Exceptional Children's observations and information collected during their August 28, 2019 site visit. The SCS Office of Exceptional Children found that SECHS lacked a permanent schedule for special education services, did not provide evidence that required services had been provided to students, was unaware of compensatory services required due to the modified start to the school year, failed to meet with STCC to discuss accommodations for dual enrollment courses until after college classes began, and the school's special education teacher was licensed for intervention only. In a letter to the SCS Board of Education<sup>5</sup> dated October 8, 2019, the SECHS Board Chair argued students were receiving services, including "collecting present levels of performance, contacting parents and scheduling IEP meetings, training teachers on providing special education services and alternate academic diploma", providing accommodations, and completing case management duties. While these are necessary administrative tasks for a special education program, they are not examples of how the school is providing special education services aligned to student goals and specified minutes required on their IEPs.

During the public hearing, SCS stated that the district went beyond the normal support provided to charter schools to help SECHS come into compliance, and that this level of assistance was unsustainable

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<sup>5</sup> The SECHS Board Chair addressed the letter to the SCS Commissioners rather than the SCS Board of Education members.

and outside of their responsibilities as an authorizer. In response, representatives for SECHS stated that the school was now in compliance with all special education requirements. In response to the State Board's second request for information, which occurred after the public hearing, SCS stated that while SECHS is currently in compliance, this was only due to the intense intervention of the SCS Exceptional Education staff. SCS claimed they were not confident the school could sustain these improvements without continuous intensive supports. In response to the State Board's second request for information, SECHS provided evidence of progress made in special education compliance, including up-to-date and completed IEPs, progress reports, RTI assessments, completion of compensatory services, and a special education schedule. However, the first score entered in the IEP Progress Reports were from Reporting Period 3, with no scores listed under Reporting Periods 1 or 2, and the staff listed as providing services included a licensed intervention teacher and an unlicensed education assistant.

Any issue involving special education services is one that needs to be remedied as soon as possible in accordance with state and federal law. The evidence collected during the appeal process supports that SECHS was put on notice by SCS through low scores on the 2018-19 SCS Operational Scorecard that its special education program was not in compliance. However, the special education issues at SECHS only worsened in the 2019-20 school year, demonstrating systemic non-compliance with the school's obligations under the Individuals with Disabilities Education Act (IDEA). As the LEA for SECHS, SCS does have a responsibility to monitor and support in areas of special education compliance. However, SCS presented clear evidence that after district communication regarding issues in the 2018-19 school year, the issue at SECHS worsened to an egregious level of non-compliance, thus affecting the special education program as a whole. Without the intense interventions provided by SCS, there was no clear evidence to suggest the Governing Board or leadership of SECHS would have the capacity to remedy the problem on their own. Therefore, the nature of this repeated failure to maintain compliance in special education is a material violation of the charter agreement and does merit revocation of the charter agreement.

I also find that SCS was justified in determining that the nature of these repeated special education violations merited a waiver of the specific revocation procedures in Exhibit B of the charter agreement between SCS and SECHS. Through the SCS Operations Scorecard, SCS notified the school's leadership of the concerns regarding their special education program, and these repeated, serious violations rose to the level of emergency issues meriting the waiver of the revocation procedures. Special education students are among the most vulnerable populations of students a school is obligated to serve and therefore require intentional and complete support as required by law. The evidence supports that while SECHS was put on notice and had the opportunity to cure issues with its special education program in 2018-19, the school's special education issues worsened in 2019-20 and the school failed to demonstrate any internal capacity to uphold its obligations to students under IDEA. This egregious level of non-compliance was an emergency issue that merited the waiver of an opportunity for remediation under Exhibit E of the charter agreement.

(2) SECHS's partnership with STCC was terminated, effective May 30, 2020.

Based on the totality of the evidence presented on this allegation, I determine that this issue is substantiated and is a material violation of the charter agreement under T.C.A. § 49-13-122(b)(1). Furthermore, the loss of the partnership with STCC was due to the direct actions of SECHS and was so



central to the school's charter agreement and approved application that the loss of the partnership due to SECHS's actions was an emergency issue meriting revocation without opportunity to cure.

When the SCS Board of Education voted to revoke the charter agreement of SECHS due to SECHS's terminated partnership with STCC, the primary evidence stemmed from STCC's letter dated September 10, 2019, officially terminating their partnership with SECHS effective May 2020. At the State Board's public hearing, SECHS recognized the importance of a college partnership but argued the termination of their partnership with STCC was not a violation of their charter agreement with SCS. During the public hearing, SCS claimed the termination of the college partnership was a material violation of the school's original plan provided in the charter application. SCS acknowledged that SECHS offered to close their school if they could not secure a new college partnership by the end of the school year, but noted the school only suggested this at the SCS board meeting in which the SCS Board voted to revoke SECHS's charter agreement.

During the public hearing, representatives for SECHS announced a new MOU with Bethel University, which would allow the school to continue to provide dual enrollment courses after their contract with STCC expired. In response to the State Board's second request for information, which occurred after the public hearing, SCS argued that STCC's termination of its partnership was further evidence of a lack of institutional control and that SECHS could not provide evidence to suggest that a new partnership would not have the same result. SCS also stated that the college partnership is essential to the school's academic plan and framework outlined in their charter application. In response to the State Board's second request for information, SECHS provided a list of alternate school site locations, a timeline for the transition of their school to a new location, and a plan for how they intend to move forward with a new college partnership, including hiring a new staff member specifically focused on fulfilling their early college vision for the school.

While SECHS did attempt to rectify this issue by seeking a new post-secondary partner, the options presented by SECHS would not allow the school to live up to the school's mission and goals or its academic plan as outlined in the approved charter application and charter agreement, notably the specific requirements for implementing their approach outlined in the academic plan and focus section of the approved application.<sup>6</sup> The charter agreement states that:

“[Artesian Schools, Inc.,] has set forth in the Application each of the following provisions which shall govern and be binding upon [SECHS] with respect to the establishment and operation of [SECHS]...(b) A proposed academic plan, including the instructional goals and methods for each grade level [SECHS] will serve....”

Furthermore, the charter agreement states:

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<sup>6</sup> Southwest Early College High School Amended Application, Pg. 21-22.

“prior to incorporating any material change to any of its educational programs, as detailed above, from the Application or this Agreement, [SECHS] shall notify [SCS] and may incorporate such change only upon prior approval of [SCS].”<sup>7</sup>

This language expressly included reference to SECHS’s academic plan as set forth in the approved application.<sup>8</sup> While there are dual enrollment and early college programs that do not take place on college campuses, the academic plan outlined by SECHS in its approved charter application was reliant on a co-located model. SECHS states in the charter application, “In order to implement [SECHS]’s academic plan and instructional framework, students will need to spend as much time on Southwest Tennessee Community College campuses as possible....For times when these [SECHS] students are not in a college class, the high school will occupy classroom on that campus.”<sup>9</sup> SECHS’s four-year plan outlined in the approved application states: “During students’ junior and senior years, they will be enrolled as full-time students at Southwest Tennessee Community College with the goal of completing all of the college course work outlined in their four-year plan.”<sup>10</sup> The entire academic plan, as outlined in the approved application, is reliant on this co-located partnership with STCC. Thus, the evidence supports that the loss of this partnership is so central to the school’s ability to comply with the approved charter application and agreement that it rises to the level of a material violation of the charter agreement.

Further, the evidence shows that the termination of the partnership was due to SECHS’s failure to fulfill its MOU with STCC. If the situation leading to the termination of the agreement with STCC had been different, and the resulting termination of partnership was due to no fault of SECHS (e.g. closure of STCC), this issue would likely have merited SCS providing SECHS the ability to cure the issue by finding a new partner that would allow the school to live up to its commitments, or seek to amend the agreement to allow them to alter the academic plan. However, the evidence supports that the loss of the STCC partnership is the direct result of the Governing Board and Artesian Schools, Inc. leadership failing to honor the MOU with a vital partner integral to their academic plan and school design. Even after documented attempts from STCC to work with the Governing Board to rectify issues in spring of 2019, the college cited continued breaches of the MOU with STCC by SECHS. Given these issues, I also find that the evidence supported a determination by SCS that the loss of this partnership was an emergency issue meriting a waiver of an opportunity for remediation under Exhibit E of the charter agreement.

#### B. Other Issues.

- (1) SECHS relied on uncertified teachers in multiple classes.

Based on the totality of the evidence presented on this allegation, I determine that this issue is substantiated, but is not a material violation of the charter agreement under T.C.A. § 49-13-122(b)(1). SECHS is in its third year of operation as a charter school serving grades 9-11, having grown by a grade level each year. In its first two years of operation, SECHS earned a perfect score of 5 on the SCS Operations Scorecards in the Human Resources category as a result of the 2017-18 and 2018-19 school years. The

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<sup>7</sup> Charter School agreement, pgs., 2; 24-25.

<sup>8</sup> Charter School Agreement, pgs. 2, ¶ (b); 10, ¶ 7.

<sup>9</sup> SECHS Amended Charter Application, pg. 21.

<sup>10</sup> Ibid, pg. 27.

Human Resources category reads, “100% of teachers are licensed in the area(s)/classes to which they are assigned”. Thus, prior to the 2019-20 school year, there is no evidence to suggest teacher licensure was an issue of concern for SECHS, and prior communication from the district indicated SECHS was in compliance.

In August 2019, SCS launched an initial investigation into this allegation based on a formal parent complaint made to the OCS. The OCS’s investigation findings substantiated this allegation through a staff list provided by SECHS in response to the parent complaint, which included unlicensed teachers as instructors for Algebra I and Biology and a long-term substitute for English II. SECHS did not attempt to obfuscate the staffing shortages they were experiencing to SCS. The CEO of Artesian Schools, Inc. addressed this allegation in a letter dated August 26, 2018 [sic] in which she cited three unexpected late-summer resignations prior to the start of the school year. Experiencing the loss of three teachers so close to the start of the school year in an area with a competitive teacher market posed a challenge which was exacerbated by the school’s already lean instructional staff numbers and SCS’s public announcement of its intent to revoke the school’s charter. In addition, in a letter dated November 8, 2019, the SECHS Board Chair identified the actions immediately taken by the school to correct the issue before SCS began its investigation, including: contracting with an outside agency which provides substitute teachers; contracting with an outside agency which provides remote mathematics instruction from a full-time, licensed teacher; and identifying interested individuals to enroll in SCS-approved education preparation programs.

When the SCS Board of Education voted to revoke the charter agreement of SECHS, the primary evidence regarding this issue included the OCS memo of investigation findings reported on September 5, 2019, SCS school visits conducted on August 28, 2019 and September 30, 2019, SCS Human Resource licensure checks based on staff lists provided during the investigation and prior to fall break, and a Charter School Grievance Meeting held on October 28, 2019. During the State Board’s public hearing, SCS stated that during the time of investigation, 60% of the teachers at SECHS lacked a proper license, certificate, or endorsement. Representatives for SECHS confirmed the school began the 2019-2020 school year with a number of open positions, but that all teachers working at SECHS, as of the date of the hearing, were appropriately licensed and endorsed. In response to the State Board’s second request for information, which occurred after the public hearing, SCS stated that in its communications with SECHS regarding unlicensed teachers, SECHS leadership lacked institutional knowledge, specifically concerning the school’s ability to seek a permit or waiver for unlicensed teachers. SCS argued the school’s lack of institutional knowledge, lack of a strong action plan to remedy the issue, and that the majority of instructional staff were unlicensed at the time of the investigation, constituted an emergency meriting revocation without a cure period.

In response to the State Board’s second request for information, SECHS provided an up-to-date staff list with teacher names, assigned classes, and license numbers, which showed that 100% of its current instructional staff is appropriately licensed. However, this information conflicted with staff names contained on an updated schedule provided by SECHS. For example, the schedule provided refers to different teachers than are listed in the staff list for Spanish, Biology, Math, and History. While the exact status of SECHS’s licensure compliance is unclear at this point, given SECHS’s past compliance with teacher

licensure and the nature of their situation at the start of the school year, I do not find that SCS presented sufficient evidence that this issue rises to the level of an emergency used to justify waiving a cure period to fix the licensure issues prior to revocation.

### **ALIGNMENT TO QUALITY AUTHORIZING STANDARDS**

Detailed information regarding SCS's revocation process was collected and analyzed by State Board staff to determine alignment with the State Board Quality Authorizing Standards as set forth in State Board policy 6.111 and as required by T.C.A. § 49-13-108(f). The State Board Quality Authorizing Standards serve as a crucial guidepost for authorizers to ensure quality and fairness. In totality, SCS aligned their practices to the state's quality authorizing standards.

SCS adopted and utilizes a performance framework that aligns with T.C.A. § 49-13-143(b) and State Board policy 6.111, and the performance framework includes standards for performance for charter schools in the areas of academics, operations, and finances. Furthermore, SCS meets the standard for quality authorizing by evaluating each school annually on the performance framework and clearly communicating the evaluation results to the school's governing board and leadership. SCS provided early indicators to the leadership of SECHS in the 2018-19 Operational Scorecard of concerns within the school's Exceptional Education program. The program was given a score of a 2.7 including scores of one (1) out of five (5) in six (6) of ten (10) components evaluated. SCS could have been clearer with SECHS leadership through the issuance of a notice of concern or the requirement to turn in a correction action plan in response to these low scores which would have significantly increased the transparency and urgency to fix the systemic issues. However, SCS did meet the minimum expectations of an annual performance report to its schools, and ultimately, it was up to SECHS leadership to use the information provided in the scorecard to identify the issues and correct the problems.

Furthermore, SCS demonstrated alignment to quality standards by protecting students' rights. SCS ensured SECHS provided equitable and inclusive services to all students as required by federal and state law, including but not limited to students with disabilities through its interventions and supports. Upon notification of potential concerns regarding SECHS's services to students with disabilities, SCS acted quickly to visit the school, monitor implementation of required services, and support the school in coming into compliance. These actions are both in alignment with quality authorizing standards and the requirements of an LEA to support their charter schools under IDEA.

Finally, SCS demonstrated alignment to quality authorizing standards by revoking a charter during the charter term if there is clear evidence of violation of law. In particular, the systemic and prolonged issues at SECHS particularly around special education were evidence of violations of state and federal law and a lack of clear understanding on the part of the school leadership of how to service some of the school's most vulnerable students. SCS's willingness to utilize the clear evidence of violation of state and federal law to revoke the charter agreement aligns with quality authorizing.

### **CONCLUSION**

It is evident that SECHS has experienced significant issues in the past year under its current administration, and despite its efforts to correct issues subsequent to SCS's investigation and decision to

revoke SECHS's charter, for the reasons outlined in this report, I conclude that the issues regarding special education compliance and the termination of its partnership with STCC supported the SCS Board of Education's decision to revoke the charter agreement under T.C.A. § 49-13-122(b). Therefore, I determine that the SCS Board of Education decision to revoke the charter agreement of Southwest Early College High School was not contrary to T.C.A. § 49-13-122(b) and I recommend that the State Board uphold the revocation decision of the SCS Board of Education effective at the end of the 2019-20 school year.



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Dr. Sara Heyburn Morrison, Executive Director  
State Board of Education

1/2/2020

Date

## APPENDIX A

ADDITIONAL FACTS AND EVIDENCE RELATING TO SCS REASONS FOR REVOCATION

## I. Revocation of the Charter Agreement under T.C.A. § 49-13-122(b)

1) SECHS failed to provide services to students with IEPs.

### Facts

SCS stated that during the 2019-20 school year, SECHS failed to ensure special education students receive services required by their IEPs and to otherwise comply with requirements of IDEA and Section 504 of the Rehabilitation Act of 1973 and therefore was in violation of state and federal law and their charter agreement. Section 7.e of the charter agreement between SCS and the Governing Board of Southwest Early College High School states the following:

*The CHARTER SCHOOL shall have highly qualified, as defined by federal law, special education teachers on staff the first day of school. The CHARTER SCHOOL will ensure that it complies with all laws governing special education students and maintain and implement all Individualized Education Plans, according to the Individuals with Disabilities Education Act (20 U.S.C. 1410 et seq.) (the "IDEA") and all plans in accordance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)("Section 504"). Any disproportion, discrimination or unequal treatment of special education students shall be remedied immediately. GOVERNING BODY of CHARTER SCHOOL shall be responsible for reimbursing the AUTHORIZER for all fines and fees, known or unknown at the time of the violation, which the AUTHORIZER incurs as a result of the CHARTER SCHOOL'S violation of the IDEA or Section 504.*

A letter submitted to the State Board by the Artesian Schools, Inc. Board Chair on November 8, 2019 recognized that some students with IEPs "did not receive the full complement of services from August 5 – September 9" but argued that SECHS has since corrected all special education concerns. In an SCS memo dated September 5, 2019 summarizing the investigation findings, the SCS Office of Charter Schools stated the SCS's visit to "the SECH campus, review of documents, and conversations with SECH staff confirmed that the school is struggling to adequately provide the required services to their students with special needs." Specifically, student schedules were not finalized by the start of the school year, there was confusion around how to provide compensatory hours for special education services not provided due to modified scheduling, and as late as "August 28, 2019 there was no indication that accommodations and services had been provided by SECH at all."

At the public hearing on December 4, 2019, representatives of SCS stated that intensive supports from the district were necessary to help SECHS become compliant with all special education requirements. Additionally, at the public hearing, representatives of SECHS stated that all special education concerns had been resolved and that the school was on track to fulfill all compensatory services necessary from the beginning of the school year. In addition, representatives of SECHS argued that failure to provide special education services was unique to this year, citing the 2017-2018 and 2018-2019 SCS operational score cards in which SECHS earned a perfect score of 5 in 2017-2018 for Exceptional Education and a 2.7 in 2018-2019, which fell within the acceptable range for SCS.

In response to the State Board's December 6, 2019 request for information, SCS emphasized that corrections made to SECHS's special education services were not made during the investigation period

and there was “no clear plan of action for moving forward.” They continued, “It is due to our district’s special education team that these violations have been corrected, as they created the schedule for both compensatory and general services.” SCS determined the “severity of the material violations was so egregious that the District determined the situation at Southwest constituted a true emergency and, therefore, an action plan was not an appropriate remedy.” This determination was made primarily due to SECHS’s inability to fix the problems without intensive intervention.

Based on documentation submitted by SECHS in response to a State Board’s December 6, 2019 request for information, it appears that as of December 11, 2019, SECHS is currently compliant in all special education requirements and has provided all necessary compensatory services.

2) SECHS’s partnership with STCC was terminated, effective May 30, 2020.

### Facts

SCS stated that on September 10, 2019, SECHS’s partnership with STCC was terminated effective May 2020. SCS claimed “SECH’s charter is wholly reliant on providing students an opportunity to receive Southwest Tennessee Community College credits on the college campus, and this termination of partnership will void Southwest Early College High School’s ability to deliver on the commitments it made in the initial charter.” Specifically, SCS cited the following violation of the original charter application:

*“At the end of their journey through [SECH], our students will have earned both their high school diploma and a college degree, or two years of transferable college credit.” pg. 11*

*“In order to implement [SECH]’s academic plan and instructional framework, students will need to spend as much time on Southwest Tennessee Community College campuses as possible. . . . For times when these [SECH] students are not in a college class, the high school will occupy classroom [sic] on that campus.” pg. 21*

*“During students’ junior and senior years, they will be enrolled as full-time students at Southwest Tennessee Community College . . .” pg. 27*

A letter submitted to State Board by the Artesian Schools, Inc. Board Chair on November 8, 2019 argued that this is not a violation of their charter agreement and that the school offered a “voluntary corrective action plan” shared at the SCS Board meeting on October 29 stating, “We will enter a formal partnership with at least one college by the beginning of the summer. Additionally, if this is not achieved we will voluntarily close our school before the start of the 2020-21 school year.”

At the public hearing on December 4, 2019, representatives of SCS stated that the letter provided by STCC terminating the partnership at the end of May 2020 corroborated the lack of institutional control reported in numerous parent and employee complaints and observed during their investigation. Additionally, at the public hearing, representatives of SECHS announced they had secured an MOU with Bethel University which would offer dual enrollment classes in place of its former partnership with STCC. SECHS also outlined plans to secure a new facility to house the school, which would not be on a college campus.



In response to the State Board's December 6, 2019 request for information, SCS emphasized that STCC "is a partner of the District at other high schools where students have been successful" but that the partnership, which was fundamental to the charter, "was irreparably damaged by the leadership of the CEO and no course of corrective action was presented" by SECHS. SCS determined the "severity of the material violations was so egregious that the District determined the situation at Southwest constituted a true emergency and, therefore, an action plan was not an appropriate remedy." This determination was made primarily due to SECHS's failure to fulfill its MOU with STCC despite the college providing the framework for its academic plan in the original charter application.

Based on documentation submitted by SECHS in response to a State Board's December 6, 2019 request for information, it appears SECHS has a preliminary MOU with Bethel University to provide dual enrollment classes, a list of potential new sites for the high school campus, and a timeline for the transition of SECHS to the new space by this summer. None of the sites provided are on a college campus.

3) SECHS relied on uncertified teachers in multiple classes.

### Facts

SCS stated that during the 2019-20 school year, SECHS had failed to ensure that only licensed teachers are employed or otherwise utilized in instructional positions and therefore was in violation of state law and their charter agreement. Section 7.o of the charter agreement between SCS and the Governing Board of SECHS states the following:

*CHARTER SCHOOL shall employ or otherwise utilize in instructional positions and shall require that its subcontractors, if any, employ or otherwise utilize in instructional positions only those individuals who are licensed teachers, as defined by the Act, or who otherwise meet the minimum requirements for licensure as defined by the State Board of Education. For purposes of this Section, "instructional positions" means all those positions involving duties and responsibilities which, if otherwise undertaken in Shelby County Schools, would require teacher certification.*

A letter in response to parent allegations submitted to SCS by the CEO of Artesian Schools, Inc., on August 26, 2019 states that the lack of licensed teachers was due to "last minute resignations of key teachers" which was a situation that "was not one within our control." The letter indicated that two teachers resigned two weeks prior to the start of school and a third teacher resigned on the first day of professional development. In an SCS memo dated September 5, 2019 summarizing the investigation findings, the SCS Office of Charter Schools confirmed that three classes did not have licensed teachers: Algebra I, Biology, and English II. In the presentation to the SCS Board of Education at the board meeting on October 29, 2019, the Office of Charter Schools reported "Going into fall break, documentation from SECH and PowerSchool showed that seven classes did not have licensed teachers" including: Algebra I, Biology, English II, English III, World History & Geography, US History and Geography, and Spanish I.

At the public hearing on December 4, 2019, representatives of SCS stated that even while the investigation was taking place, SECHS continued to hire unlicensed teachers and that the lack of institutional control and unprofessionalism of the school led them to determine the situation was an

emergency meriting revocation without a cure period or further corrective action. Additionally, at the public hearing, representatives of SECHS stated that all classes were currently being taught by appropriately licensed teachers, in part due to scheduling changes and decreases in student enrollment. In addition, representatives of SECHS argued that the lack of licensed teachers was unique to this year, citing the 2017-2018 and 2018-2019 SCS operational score cards in which SECHS earned a perfect score of 5 both years for having 100% of its instructional staff properly licensed.

In response to the State Board's December 6, 2019 request for information, SCS stated "During the first semester of their third year, 60% of the teachers for which the charter is responsible for hiring were unlicensed, uncertified, and without a permit or a waiver. Most of these teachers were in End of Course classes, jeopardizing the students' ability to graduate with the requisite number of credits." SCS determined the "severity of the material violations was so egregious that the District determined the situation at Southwest constituted a true emergency and, therefore, an action plan was not an appropriate remedy." This determination was made primarily due to the large percentage of unlicensed teachers, which worsened after their initial investigation period but also due to the lack of institutional knowledge displayed by charter leadership, specifically regarding the process to seek permits and waivers for teachers.

Based on documentation submitted by SECHS in response to a State Board's December 6, 2019 request for information, it appears that as of December 11, 2019, SECHS has a staff list including names and license numbers for each instructional staff member listed for each high school course.