

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

615.741.2956
David.Lillard@tn.gov

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Dr. John Aitken
Superintendent, Shelby County Schools
160 South Hollywood Street
Memphis, Tennessee 38112
jaiken@scsk12.org

Lillian I. Hodges
Global Leadership, Inc.
377 Buckingham Cove
Cordova, Tennessee 38018
caceforprogress@yahoo.com

Dr. Kriner Cash
Superintendent, Memphis City Schools
2597 Avery Avenue
Memphis, Tennessee 38112
cashk@mcsk12.net

Ciji Pittman
Aurora Collegiate Academy
cpittman@buildingexcellentschools.org
cijipittman@gmail.com

Jason Bolden
Advanced Learning Academy
jbolden_1906@hotmail.com

LeMoyne Robinson
City University Schools Girls Prep
City University School of Independence
rlemoyne@influence1.org

Dr. Willie W. Herenton
The W.E.B. Dubois Consortium
of Charter Schools, Inc.
5281 Horn Lake Road
Memphis, Tennessee 38109
wwherenton@comcast.net

Carlos Shaw
Maslow Middle School
cshaw195@aol.com

Joseph Lee, III
Arrow Academy of Excellence
645 Semmes Street
Memphis, Tennessee 38111
jlee3339@hotmail.com

Elizabeth Simpson
Memphis Grizzlies Preparatory
eliz.simpson@gmail.com

Dr. John Barker
Chief of Staff
Memphis City Schools
2597 Avery Avenue
Memphis, Tennessee 38112
barkrjr@mcsk12.net

RE: Treasurer's Final Determination re the Denial by the Shelby County/Memphis City Schools' Board of Education of Charter School Applications Based on Substantial Negative Fiscal Impact

Dear Parties:

When a local board of education denies an amended charter school application because of a substantial negative fiscal impact, Tenn. Code Ann. §49-13-108(b)(2) requires the local board to submit the information identified in subsection (b)(1) to the State Treasurer. The statute then requires the Treasurer to review the local board's supporting documentation and written statement, along with any response and supporting documentation of the applicant's sponsor to determine the reasonableness of the denial based on substantial negative fiscal impact.

This matter is before the Treasurer for such a review. On November 22, 2011, the Shelby County/Memphis City Schools' Board of Education ("Unified Board" or "Board") denied seventeen (17) amended charter school applications relative to the following schools because of a substantial negative fiscal impact: Advanced Learning Academy; Arrow Academy of Excellence; Aurora Collegiate Academy; City University Schools Girls Prep; City University School of Independence; DuBois Elementary School of Arts & Technology; DuBois Middle School of Arts & Technology; DuBois High School of Arts & Technology; DuBois Elementary School of Entrepreneurship; DuBois Middle School of Entrepreneurship; DuBois High School of Entrepreneurship; DuBois High School of Teacher Education; DuBois Middle School of Leadership & Public Policy; DuBois High School of Leadership & Public Policy; Global Leadership, Inc.; Memphis Grizzlies Preparatory; and Maslow Middle School.

As authorized by the statute, the Treasurer appointed the Comptroller's Offices of Research and Education Accountability as experts to assist in the review process. Further, the Treasurer made requests for additional information to the Unified Board and the charter school applicants. The responses to these requests for additional information are included in the record of the Treasurer's review of this matter.

The procedural history in this matter is as follows:

On November 22, 2011, the Unified Board denied a total of seventeen (17) charter school applications; of the total applications, fourteen (14) were from Memphis City Schools, and three (3) were from Shelby County Schools.

On or about November 25, 2011, the Treasurer received a letter from the Arrow Academy of Excellence appealing the denial of its charter school application.

On November 27, 2011, the Treasurer received a letter from the W.E.B. DuBois Consortium of Charter Schools, Inc. with accompanying documentation responding to the denial of its charter school applications.

On or about November 28, 2011, the Treasurer received a letter from Memphis Grizzlies Preparatory Charter School providing the Treasurer information after the denial of its charter school application.

On November 28, 2011, the Treasurer received a letter from the Unified Board indicating that on November 22, 2011, the Board voted to deny seventeen (17) charter school applications based on substantial negative fiscal impact. The letter was accompanied by documentation supporting the Board's denial.

On November 28, 2011, the Treasurer received a letter from Global Leadership Academy, Inc. requesting the Unified Board to reconsider the denial of its application and requesting the Treasurer to consider the fiscal impact of its charter school on the overall school system.

On or about November 28, 2011, the Treasurer received a letter from the Advanced Learning Academy appealing the Unified Board's denial of its charter school application.

On November 28, 2011, the Treasurer received an email communication from Aurora Collegiate Academy, Inc. with an attached response to the Unified Board's denial of its charter school application.

On December 13, 2011, the Treasurer sent a letter to the Comptroller of the Treasury appointing the Comptroller's Offices of Research and Education Accountability as his experts to assist him in analyzing the matter.

On December 13, 2011, the Treasurer sent a letter to the Unified Board and the charter school applicants acknowledging receipt of documentation from the parties. The letter also indicated that all future communications relative to this matter should be directed to a dedicated email address for charter school communications and that the Treasurer is authorized by statute to request additional information from the parties.

On December 15, 2011, the Treasurer sent to the Unified Board and the charter school applicants all of the filings submitted by the parties as of December 15, 2011.

On December 15, 2011, the Treasurer received two (2) letters from The Influence 1 Foundation on behalf of the City University School of Independence and the City University Schools Girls Preparatory appealing the denial of its charter school applications.

On January 10, 2012, the Treasurer sent a letter to the parties requesting additional information.

On or about January 13, 2012, the Treasurer received additional information from the Memphis Grizzlies Preparatory.

On or about January 16, 2012, the Treasurer received additional information from the W.E.B. DuBois Consortium of Charter Schools, Inc.

On or about January 17, 2012, the Treasurer received additional information from the Advanced Learning Academy.

On or about January 18, 2012, the Treasurer received additional information from Aurora Collegiate Academy, Inc.

On or about January 19, 2012, the Treasurer received additional information from Global Leadership Academy, Inc.

On or about January 20, 2012, the Treasurer received additional information from Arrow Academy of Excellence.

On January 22, 2012, the Treasurer received additional information from Global Leadership Academy, Inc.

On January 23, 2012, the Treasurer received an email communication from Arrow Academy of Excellence with additional responses to the Treasurer's request for additional information.

On January 25, 2012, the Treasurer received three (3) separate email communications from Global Leadership Academy, Inc. with its final response, amended curriculum and amended proposal.

On February 6, 2012, the Treasurer received additional information from Maslow Middle School.

On February 8, 2012, the Treasurer received information from the Unified Board relative to: district budgets; district enrollment; and information regarding charter school applicants.

On February 10, 2012, the Treasurer received an initial submission of the requested additional information via a jump drive from the Unified Board.

On February 14, 2012, the Treasurer sent a letter to the Unified Board requesting supplemental information because the information previously submitted from the Unified Board did not appear to contain the information requested in the January 10, 2012 letter.

On February 20, 2012, the Unified Board submitted three (3) spreadsheets, which did not appear to be accurate for the Treasurer's consideration.

Between February 21, 2012 and February 29, 2012, the Comptroller's Offices of Research and Education Accountability had several communications with the Unified Board about the apparent inconsistencies or inaccuracies in the information that it submitted and in an

effort to assist the Unified Board in complying with the information request. A summary of the communications is as follows:

On February 21, 2012, the Comptroller's Offices of Research and Education Accountability communicated with the Unified Board indicating that the information relative to Memphis City Schools may not be correct; the Unified Board replied indicating that it would submit the required information.

On February 22, 2012, the Unified Board submitted three (3) spreadsheets reflecting the number of homerooms by school grades for the School Years ("SYs") 2009-2010; 2010-2011; and 2011-2012.

On February 23, 2012, the Comptroller's Offices of Research and Education Accountability communicated with the Unified Board indicating that the numbers submitted by the Unified Board did not appear to be accurate. On that same day, the Unified Board advised the Comptroller's Offices of Research and Education Accountability that it would re-review the data submitted.

On February 28, 2012, the Unified Board emailed the Treasurer asking if the Treasurer had received all of the information he needs. The Unified Board sent another email on that day indicating that its own data still did not appear to be accurate but that more accurate data would be forthcoming.

On February 29, 2012, the Treasurer received three (3) new spreadsheets from the Unified Board as a result of communications between the Unified Board and the Comptroller's Offices of Research and Education Accountability.

On March 1, 2012, the Treasurer received the additional information he requested from the Board in a usable format.¹

On March 15, 2012, the Treasurer received an analysis from the Comptroller's Offices of Research and Education Accountability.

On March 16, 2012, the Treasurer sent a letter to the parties giving them an opportunity to submit final arguments or positions in this matter by no later than the close of business on March 20, 2012.

¹ The procedural history indicates that the Treasurer provided the Unified Board with more than an adequate amount of time in which to submit all of its additional information for the Treasurer's consideration. The Treasurer's letter requesting additional information was dated January 10, 2012; however, the Treasurer did not receive the Unified Board's additional information in a usable format until March 1, 2012. The delay in the submission of this information is attributed to inconsistent or inaccurate data sent by the Unified Board and subsequent attempts by the Comptroller's Offices of Research and Education Accountability to assist the Unified Board in submitting accurate data. Even though the data provided by the Unified Board, as highlighted in this opinion, indicates that it still contains flaws, it is adequate enough to make this determination. Any further attempts to request additional information from the Unified Board would only prolong this matter without any anticipated changes in the results.

Between March 16, 2012 and March 20, 2012, the Treasurer received final arguments from: The Influence 1 Foundation; Advanced Learning Academy; Aurora Collegiate Academy, Inc.; and the W.E.B. DuBois Consortium of Charter Schools, Inc.

The Treasurer understands the importance of deciding these matters as expeditiously as possible for operational reasons and for the mission of educating children; however, in order to render a decision, the Treasurer must have a basis on which to decide the case in the form of reliable data. In this case, the Treasurer made requests for additional data from the Unified Board in an effort to gather relevant and reliable data as the basis for his decision-making. The Unified Board attempted to comply with this request, but it submitted inaccurate and unusable data that required additional submissions that ultimately prolonged the resolution of this matter. As soon as the Treasurer received usable data from the Unified Board, it was promptly analyzed. To have done less would have been an injustice to the process and the parties.

The Treasurer's review is a new statutory requirement imposed by Chapter 466 of the Public Acts of 2011, codified at Tenn. Code Ann. §49-13-108(b). The fundamental rule of statutory construction is to ascertain and give effect to the intention of the Legislature in passing a law. Worrall v. Kroger, 545 S.W.2d 736, 738 (Tenn. 1977). This legislative intent is to be determined from the natural and ordinary meaning of the language used in the statute, read in the context of the entire statute, without any forced or subtle construction.

Here, the statute provides for the Treasurer “to determine the reasonableness of the denial based on substantial negative fiscal impact.” Tenn. Code Ann. §49-13-108(b)(2). The statute uses key words such as “reasonableness” and “substantial.” The statute does not expressly define either term. In instances where key words are not defined in the statute, Tennessee’s appellate courts have held such words are to be given their usual and accepted meaning from common usage. E.g., Bryant v. Genco Stamping & Mfg., Inc., 33 S.W.3d 761, 765 (Tenn. 2000). Thus, in this case I have applied “reasonableness” as meaning fair, objective, and creditable under the facts and circumstances. I have further applied “substantial” as meaning clearly greater than ordinary in degree or extent. Reasonableness must also be determined on a case-by-case basis. Equal Employment Opportunity Commission v. Arlington Transit Mix, Inc., 957 F.2d 219 (6th Cir. 1991) quoting Redmond v. GAF Corp., 574 F.2d 897, 902-03 (7th Cir. 1978). The plain language of the statute (Tenn. Code Ann. §49-13-108(b)(1)) indicates that the review of charter school applications by the local school board should be performed on an individual basis by referring to the charter school applications in the singular instead of the plural. The statute provides that “[p]rior to approving or denying a charter school’s application, the local board of education may consider whether the establishment of *the* charter school will have a substantial negative fiscal impact on the LEA....” [emphasis added].

The Treasurer's determination is further guided by the language of Tenn. Code Ann. §49-13-108(b). Subsection (b)(2) of the statute provides that the initial information the Treasurer shall review is the supporting documentation and written statement of the local board as set forth in subsection (b)(1), which states:

(b)(1) Prior to approving or denying a charter school's application, the local board of education may consider whether the establishment of the charter school will have a substantial negative fiscal impact on the LEA such that authorization of the charter school would be contrary to the best interests of the pupils, school district or community. If the local board of education denies an initial application in whole or in part for this reason, the local board of education shall provide the following supporting documentation to the sponsor:

(A) Current student enrollment figures in the LEA and an estimate of the number of students currently enrolled who will transfer to the charter school seeking authorization;

(B) 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;

(C) A projection of the LEA's student enrollment 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 projection shall include estimates, using prior years' data, of increased revenue to the LEA from first-time enrollees or transferees into the district; and

(D) Specific facts or financial information and a written statement demonstrating how placement or transfer of students to a 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.

With its letters of November 28, 2011 and February 8, 2012, the Unified Board supplied information and documentation which is summarized as follows:

(A) The current student enrollment figure for Memphis City Schools ("MCS") for the FY2011-2012 for grades Kindergarten through twelve (12) is 106,127 students. The current student enrollment figure for Shelby County Schools ("SCS") for FY 2011-2012 for grades Kindergarten through twelve (12) is 45,680.

The Unified Board estimated that for MCS there will be a total of approximately four thousand five hundred forty-five (4,545) students who will transfer to the charter schools. It appears that as a part of its calculations in arriving at the total number of students who will transfer, the school district included a projected number of students who will transfer to already existing charter schools. The Unified Board indicated that it is estimated that one thousand seven hundred five

(1,705) students currently enrolled in MCS will transfer to the newly created charter schools. The Unified Board also indicated that relative to MCS, it is anticipated that an additional one thousand two hundred fifteen (1,215) will transfer to already existing charter schools. The school district also anticipates that at projected peak capacity of the new charter schools approximately two thousand five hundred ten (2,510) students will transfer.²

The Unified Board estimated that for SCS there will be a total of approximately four hundred ninety (490) students who will transfer to the newly created charter schools. It is estimated that four hundred (400) of those students are those currently enrolled in SCS. The school district also anticipates that at projected peak capacity of the new charter schools, approximately five hundred eighty (580) students will transfer.³

(B) The Unified Board indicated that based on prior years' data, it is estimated that one thousand two hundred ninety-six (1,296) students will no longer be enrolled in MCS, and one thousand one hundred (1,100) will no longer be enrolled in SCS for reasons other than a transfer to a charter school.

(C) The Unified Board did not provide a number projection of the LEA's student enrollment for the school year in which the charter school or schools seek(s) to begin operation, excluding the estimated number of students who will transfer to the charter school seeking authorization. The Board indicated that the school district did not anticipate any enrollment growth for FY 2012-2013 for MCS and anticipated a decline in growth for SCS for the FY 2012-2013.

(D) Relative to MCS, the Unified Board indicated that the transfer of students to the twelve (12) new charter schools approved on merit would represent a loss of twenty-four million dollars (\$24,000,000.00). The Board indicated that this loss would need to be added to the sixty-two million dollar (\$62,000,000.00) loss that the Board will experience as a result of the already existing twenty-seven (27) charter schools and the two (2) recently approved charter schools for the 2012-2013 school year, amounting to a total loss of eighty-seven million dollars (\$87,000,000.00).

² It is uncertain how the Unified Board arrived at four thousand five hundred forty-five (4,545) as the total number of students who will transfer from MCS to the newly created charter schools based on the numbers that it provided. Assuming that the student enrollment numbers that should be added together to arrive at the total are one thousand seven hundred five (1,705) + two thousand five hundred ten (2,510), that total would be four thousand two hundred fifteen (4,215). Equally uncertain from the data provided by the Unified Board is the anticipated number of students who will transfer to the newly created charter schools from MCS because the Unified Board provided a range of student numbers between one thousand seven hundred five (1,705) and two thousand five hundred ten (2,510).

³ It is also uncertain how the Unified Board arrived at four hundred and ninety (490) as the total number of students who will transfer to and from SCS to the newly created charter schools because the Unified Board provided a range of student numbers between four hundred (400) and five hundred eighty (580).

Relative to SCS, the Unified Board indicated that it will experience a total loss of three million four hundred ten thousand dollars (\$3,410,000.00) from the two (2) charter schools approved on merit. The Unified Board arrived at this amount by adding two hundred eight thousand eight hundred four-seven dollars (\$208,847.00), which represents the amount lost by a charter school approved by SCS in FY 2011-2012, plus an additional three million two hundred thousand dollars (\$3,200,000.00) that would be lost with the formation of the new charter schools. The Unified Board indicated that "[t]he additional \$3.2M would result in a significant fiscal hardship on the district as the district would have to reduce its general fund budget while still maintaining services to the remaining students without sufficient funds."

Upon consideration of the Unified Board's supporting documentation and written statement; the charter school applications and amended applications; the additional information sought from and submitted by the Unified Board, the sponsors, and the Comptroller's Offices of Research and Education Accountability, along with the record as a whole, the Treasurer finds and concludes as follows:

1. The information provided by the Unified Board does not reasonably demonstrate that establishment of the charter schools shall have a substantial negative fiscal impact on the LEA such that authorization of the charter schools would be contrary to the best interests of the pupils, school district, or community.
2. In reviewing the reasonableness of the denial based on substantial negative fiscal impact, the Treasurer first reviewed how the Unified Board reached its decision to deny all seventeen (17) applications. In its consideration of the applications, the Unified Board did not make a specific case-by-case determination of each charter school application; rather, the Unified Board made two (2) motions, grouping the MCS applications and the SCS applications together in making the motions to deny the applications based on substantial negative fiscal impact. The lack of any particularized finding for each application relative to each application's substantial negative fiscal impact on the LEA (or lack thereof) was not reasonable and did not comply with the plain language of the statute which appears to require an individualized determination.
3. Even though the Unified Board did not perform a specific case-by-case assessment of each charter school application to determine if the establishment of some of the charter schools would have resulted in a substantial negative fiscal impact while others would not, the Treasurer cannot perform this analysis for the LEA. Based on the plain language of the statute, the scope of the Treasurer's authority is limited to determining "the reasonableness of the [LEA's] denial based on substantial negative fiscal impact." Tenn. Code Ann. §49-13-108(b)(2). In this capacity, the Treasurer does not have the authority to determine which applications should have been granted by the local school board. The Treasurer is only authorized to review the reasonableness of the school board's decision to deny the applications based on an examination of the information provided to the Treasurer by the local school board in reaching its decision(s).

4. The statute establishes the factors that the LEA must consider in reviewing charter school applications in reaching its decision. Tenn. Code Ann. §49-13-108(b)(1) provides that in the event that a local board of education denies an initial charter school application, the local school board shall provide supporting documentation to the sponsor and that this documentation along with any response from the sponsor shall be submitted to the Treasurer for review. In addition to providing student enrollment and transfer figures, the LEA shall provide the “[s]pecific facts or financial information and a written statement demonstrating how placement or transfer of students to a 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.” Tenn. Code Ann. §49-13-108(b)(1)(D).

5. In attempting to provide this information, in its November 28, 2011 letter, the Unified Board provided the total number of students who would transfer to already existing charter schools as well as to the newly formed charter schools that are the subject of this instant action. The Treasurer’s review of the reasonableness of the LEA’s denial of charter school applications based on substantial negative fiscal impact is relative to the applications that were denied by the local board of education at the November 22, 2011 Board meeting and does not include enrollments that would change in already existing charter schools. Tenn. Code Ann. §49-13-108(b)(1)(A) provides that one (1) of the factors for consideration by the local school board and, by extension, the Treasurer, is the “current enrollment figures in the LEA and an estimate of the number of students currently enrolled *who will transfer to the charter school seeking authorization.*”[emphasis added] Accordingly, any references to the loss of student enrollment due to already existing charter schools and unrelated to the instant charter school applications will not be a part of the Treasurer’s review. Similarly, any budgetary information provided by the Unified Board that includes the cost of already existing charter schools or the cost associated with students who will be enrolled in already existing charter schools will not be considered in the Treasurer’s review based on the statutory language that requires a review of the effect of the charter schools seeking authorization only.⁴

6. Excluding the enrollment numbers provided by the Unified Board for already existing charter schools, the Unified Board indicated that there will be one thousand seven hundred five (1,705) students from MCS and four hundred (400) students from SCS who will transfer to the charter schools seeking authorization, amounting to a total of two thousand one hundred five (2,105) students transferring to the charter schools seeking authorization for the FY 2012-2013.⁵ Based on the data compiled by the Comptroller’s Offices of Research and Education

⁴ It is conceivable that such information might be relevant as a part of an objective analysis of the LEA’s ability to adjust expenses on a systemwide basis within the meaning of Tenn. Code Ann. §49-13-108(b)(1)(D). But, the information has not been used in this manner, and thus, its consideration by the Treasurer is not appropriate under the facts and circumstances of this review.

⁵ Because it is difficult to determine the estimated number of students who will transfer to the newly created charter schools based on the data provided by the Unified Board, the Treasurer will use the initial estimates of one thousand seven hundred five (1,705) for MCS and four hundred (400) for SCS.

Accountability, the charter school projected enrollments for FY 2012-2013 based on the instant charter school applications would be a total of two thousand four hundred-sixty three (2,463).

7. Based on the fiscal year enrollments for the merged school districts provided by the Unified Board from FY 2008 to FY 2012, the average fluctuation in student enrollment is one thousand six hundred eighty-seven (1,687) students from fiscal year to fiscal year. Based on the analysis provided by the Comptroller's Offices of Research and Education Accountability, the fluctuation in the Average Daily Membership ("ADM") for FY 2008 to FY 2012 for MCS and SCS is a reduction of two thousand one hundred sixty-four (2,164) students.

8. Once the normal enrollment fluctuation has been established as well as the estimated number of students who would transfer to the charter school, it is incumbent upon the school district to show how the transfer of the students to a charter school would impose a budgetary and financial burden on the LEA beyond that associated with the normal enrollment fluctuations, which would include "an objective analysis of the LEA's ability to adjust expenses on a systemwide basis due to the estimated numbers and anticipated placement of students who will transfer to the charter school seeking authorization." Tenn. Code Ann. §49-13-108(b)(1)(D).

9. In providing this budgetary information, the Unified Board submitted that its decision was based, in part, on the financial uncertainties that may result from the merger of the Shelby County School District with the Memphis City School District. The Unified Board indicated that as a result of the merger, it anticipates a loss of approximately seventy million dollars (\$70,000,000.00) in its overall operating budget because once the merger occurs, it is anticipated that the City of Memphis will no longer provide this funding amount. The Unified Board indicated that it is anticipating the loss of this money which will result from the unification of the MCS and SCS school districts and not because of the charter school applications. In part, because of this financial uncertainty, the Unified Board asserted that the charter school applications should not be approved at this time.

While the Treasurer acknowledges the submission of this information as a part of the Unified Board's reasons for the denial of the charter school applications, the anticipated loss of funds, unrelated to the instant charter school applications, cannot be considered by the Treasurer in his review, absent its inclusion as a part of an objective analysis of the LEA's ability to adjust expenses on a systemwide basis within the meaning of Tenn. Code Ann. §49-13-108(b)(1)(D). Subsection (b)(1)(D) provides that the financial information provided by the local school board would need to "demonstrat[e] how placement or transfer of students to a charter school within the LEA will impose a budgetary or financial burden on the LEA beyond that associated with normal fluctuations." In its submission, the Unified Board did not indicate how the anticipated loss of approximately seventy million dollars (\$70,000,000.00) would be associated, if at all, with the charter school applications. In fact, the Unified Board indicated that it may lose that sum of money as a result of the merger of the two (2) school districts, regardless of the formation of the new charter schools.

The absence of an objective analysis of the effect of the anticipated loss of approximately seventy million dollars (\$70,000,000.00) relative to the instant charter school applications leads

the Treasurer to determine that the denial based, in part, on the loss of this money, was not reasonably concluded. The Treasurer understands the challenges facing the Unified Board through the merger of the school districts and the impact of the anticipated loss of money; however, the Treasurer is required to make this review based on the statutory requirement that the Board's denial be based on an objective analysis of the LEA's ability to adjust expenses on a systemwide basis within the meaning of Tenn. Code Ann. §49-13-108(b)(1)(D).

10. In attempting to provide this objective analysis relative to the impact of the charter school applications on the Unified Board's budget (aside from the anticipated seventy million dollar (\$70,000,000.00) loss), the Board indicated that the loss of students from the charter school applications would cost the Board approximately twenty-seven million dollars (\$27,000,000.00). An analysis performed by the Comptroller's Offices of Research and Education Accountability indicated a loss of approximately thirteen million one hundred sixty-nine thousand six hundred eighty-nine dollars (\$13,169,689.00) in state and local basic education program ("BEP") funding. Despite the inconsistency in projected losses, a further analysis of data demonstrates that regardless which number is used, the placement or transfer of students to charter schools in the context of an approximate one billion dollar (\$1,000,000,000.00) budget for the Unified Board will not impose a budgetary or financial burden on the LEA beyond that associated with normal enrollment fluctuations.⁶

11. While there is a discrepancy in the data provided by the Unified Board and the data compiled by the Comptroller's Offices of Research and Education Accountability relative to student enrollment fluctuations, the average enrollment fluctuation for FY08 to FY12 provided by the Comptroller's Offices of Research and Education Accountability of -2,164 is within the range of normal student enrollment fluctuations.⁷ The Comptroller's Offices of Research and Education Accountability indicated that based on the projected enrollment of two thousand one hundred five (2,105) students provided by the Unified Board, the difference between the projected ADM for FY 2012 and the projected ADM for FY 2012 minus two thousand one hundred five (2,105) is -1.38%. The chart below compiled by the Comptroller's Offices of Research and Education Accountability demonstrates that this percentage fluctuation has been experienced in the past when combining data for MCS and SCS and that based on past abilities, the Unified Board could absorb this fluctuation again.

<u>BEP July Final</u>	<u>Total ADM</u>	<u>Percentage Change from Prior Year</u>
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⁶ In analyzing each case, the Treasurer reviews the data provided by the school district to attempt to determine how the school district arrived at data provided to ensure its reliability. In this instance, the Treasurer could not substantiate the twenty-seven million dollar (\$27,000,000.00) loss submitted by the Unified Board because the Unified Board did not indicate how it arrived at this number.

⁷ Because the inconsistency between the student enrollment fluctuation numbers provided by the Unified Board and those compiled by the Comptroller's Offices of Research and Education Accountability could not be reconciled, the Treasurer relied on the data compiled by the Comptroller's Offices of Research and Education Accountability which was derived from the Department of Education. The Department of Education data was presumed to be more reliable because it is used to provide BEP funding to the schools on a per student basis.

FY 2012	152,066.13	-1.33%
FY 2011	154,118.38	-0.28%
FY 2010	154,554.72	-1.70%
FY 2009	157,223.61	-2.18%
FY 2008	160,722.89	N/A
Average	155,737.15	-1.37%

FY 2012 ADM: 152,066.13
 Projected FY 2012 minus 2,105: 149,961.13
Difference: -1.38%

As further evidence that the fluctuation in student enrollments experienced in prior years is commensurate with the anticipated fluctuation due to the charter school applications, the Unified Board's own data provides as follows:

Year	District Provided Enrollment	Percentage Change from Prior Year
FY 2012	151,807	-1.07%
FY 2011	153,445	-0.96%
FY 2010	154,933	-0.26%
FY 2009	155,335	-2.03%
FY 2008	158,553	N/A
Average	154,815	-1.08%

Total change from FY08 to FY12: -6,746
 % change from FY08 to FY12: -4.25%

Based on prior years' data, it appears that the Unified Board could absorb any losses associated with a -1.38% enrollment change because that change appears to be within normal fluctuations. To the extent that the anticipated number of students transferring to the newly created charter schools is within normal student enrollment fluctuations, the LEA's budget must be examined to determine whether the Board has shown an ability to absorb those fluctuations or whether the Board has shown that the transfer of the students to the newly created charter schools would impose a budgetary of financial burden beyond that associated with normal fluctuations. Additionally, the Unified Board has not provided any documentation in the form of specific facts, financial information, or a written statement to demonstrate how the students transferring to the charter schools would result in a financial burden to the LEA.

12. The following comprehensive analysis of the Unified Board's budget data provided by the Board and compiled by the Comptroller's Offices of Research and Education Accountability indicates that the Unified Board could absorb any changes associated with the charter school applications that appear to be within normal fluctuations:

Budget Data for Memphis City/Shelby County Schools

Year	Expenditures	Percentage Change	Status
FY 2011-2012	1,200,878,992	-0.78%	Budget
FY 2010-2011	1,210,272,847	2.36%	Budget
FY 2009-2010	1,182,379,570	-0.81%	Actual
FY 2008-2009	1,192,029,397	0.82%	Actual
FY 2008-2007	1,182,324,632	N/A	Actual ⁸

The data illustrates that the respective school districts have and, moving forward, the Unified Board can adjust its expenses on a systemwide basis to accommodate the charter school applicants. While the respective school districts (shown as combined above) have shown some budgetary decreases; they have also experienced some gains all while there have been fluctuations in student enrollments. Throughout the fluctuations in student enrollments over the course of a five (5) year period, the expenditures have remained consistent in the context of a large budget.

13. Another factor for consideration in determining whether the Unified Board could absorb the transfer of students to the newly created charter schools is whether the respective school districts have been able to adjust the number of classrooms in the past to accommodate the normal fluctuations in student enrollments. To the extent that student enrollment in the newly created charter schools is commensurate with normal student enrollment fluctuations and that the school districts have been able to adjust the number of classrooms as a means of accommodating student enrollment fluctuations, the unified school district should be able to make that same accommodation for the transfer of students to the newly created charter schools. Despite apparent inconsistencies or inaccuracies in the classroom data provided by the Unified Board, the Comptroller's Offices of Research and Education Accountability performed an analysis of the data provided.⁹ The analysis indicated the following: in SY 2009-2010, both school districts had a combined number of ten thousand seven hundred seven (10,707) classes; in SY 2010-2011, both districts had a combined number of ten thousand six hundred sixty-seven (10,667) classes; and in SY 2011-2012, both districts had a combined number of ten thousand fifteen (10,015) classes. Between SY 2010-2011 and SY 2011-2012, the school districts reduced the number of classrooms by six hundred fifty-two (652). Without exceeding the BEP classroom size limits, the Unified Board could reduce the number of classrooms in order to accommodate

⁸ The expenses for the already existing charter schools have been excluded from the combined expenditures for the Memphis City/Shelby County School Districts.

⁹ Examples of the data inaccuracies provided by the Unified Board are as follows: For grade 6, the Unified Board indicated that A. Maceo Middle School had one hundred seventy-six (176) students with fifty-one (51) classrooms amounting to three (3) students in each classroom; Airways Middle School had eighty-five (85) students with twenty-two (22) classrooms amounting to four (4) students in each classroom; American Way Middle School had one hundred thirty-five (135) students with sixty (60) classrooms amounting to two (2) students in each classroom; and Bellevue Middle School had one hundred fifty-eight (158) students with thirty-three (33) classrooms amounting to five (5) students in each classroom. In all of these instances, the number of students in each classroom is so low that it is assumed that the data is inaccurate. There are numerous other apparent data inaccuracies such as these throughout the data provided by the Unified Board for grades 6 through 8.

the anticipated number of students who would transfer to charter schools. Even taking a view most favorable to the Unified Board, it appears that based on the data provided, the Unified Board has the ability to reduce the number of classrooms and reduce expenses as contemplated by the statute, which clearly supports a finding that the application denials were not reasonable based on a substantial negative fiscal impact.

14. Based on the Treasurer's review of the analysis provided by the Comptroller's Offices of Research and Education Accountability relative to ADM figures and the number of classes and given the school districts' demonstrated flexibility in reducing the number of classes based on normal student enrollment fluctuations, the Unified Board could demonstrate the same flexibility with the transfer of students to the newly created charter schools.

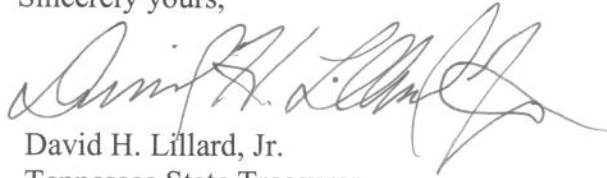
15. The Treasurer concludes that the record does not reflect "an objective analysis of the LEA's ability to adjust expenses on a systemwide basis due to the estimated numbers and anticipated placement of students who will transfer to the charter school," as contemplated by the statute. The Board's documentation, therefore, does not demonstrate "how placement or transfer of students to a charter school within the LEA will impose a budgetary or financial burden on the LEA beyond that associated with normal enrollment fluctuations...." Tenn. Code Ann. §49-13-108(b)(1)(D).

Considering the above analysis of fiscal impact based on enrollment and budget fluctuations, together with the natural and ordinary meaning of "reasonableness" and "substantial," it is the Treasurer's determination that the information provided by the Unified Board does not reasonably demonstrate that establishment of the additional charter schools will have a substantial negative fiscal impact on Memphis City/Shelby County School District such that the authorization of the charter schools would be contrary to the best interests of the pupils, school district, or community. It should be noted that there are a number of other methods of analysis (other than those described in paragraphs 11., 12. and 13. above) that could have been applied in this matter, but each case should be reviewed in the context of its own specific facts and circumstances. In this case, incorporating other analyses was not necessary.

This constitutes the Treasurer's final determination under Tenn. Code Ann. §49-13-108(b)(2). Tenn. Code Ann. §49-13-108(b)(4) provides that in the event that the Treasurer determines that the information provided by the local board of education does not reasonably demonstrate that the establishment of the charter school shall have a substantial negative fiscal impact on the LEA, then the sponsor may appeal the denial to the state Board of Education; however, the sponsor must request this appeal within five (5) days of the date of this decision.

I appreciate the effort and consideration of the Unified Board and the charter school applicants and thank all for their cooperation in this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David H. Lillard, Jr.", written in a cursive style.

David H. Lillard, Jr.
Tennessee State Treasurer

CC: Gina J. Barham, Deputy Attorney General
Phil Doss, Comptroller's Office
Department of Education
Kevin S. Huffman, Commissioner, kevin.s.huffman@tn.gov
Rich Haglund, Director of Charter Schools, rich.haglund@tn.gov
Christy Ballard, General Counsel, christy.ballard@tn.gov
Dannelle F. Walker, General Counsel, TN State Board of Education,
dannelle.walker@tn.gov
Tony Thompson, tthompson@lobbytn.com