



JOY HOFMEISTER
STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

March 9, 2020

VIA E-MAIL ONLY

William Hickman

hickman@hickmanlawgroup.com

Attorney, Appellant/Harlow Creek

Eric Wade

ericw@rfrlaw.com

Attorney, Appellee/Tulsa Public Schools

Re: Appeal by Harlow Creek of denial of
charter school sponsorship

Dear Counsel,

This letter shall serve as written record of the Oklahoma State Board of Education's (the "State Board") official receipt of the charter school application submitted by Harlow Creek Charter School ("Appellant") from the prior denials of said application by Tulsa Public Schools (the "District" or "Appellee"). Prior to addressing the State Board's consideration of the appeal, the procedures and process set forth in the Oklahoma Charter Schools Act (the "Act") and those utilized by the parties hereto leading to this appeal merit discussion.

Procedural History

The Act, at 70 O.S. § 3-134, provides that when the proposed sponsor of a school district is the *board of education* of a school district, an applicant for a charter school can submit an application to the proposed board of education and that shall either be accepted or rejected by the proposed sponsor (i.e., the board of education) within ninety (90) days of receipt of the application. If the proposed sponsor rejects the application, it is to notify the applicant in writing of the reasons for the rejection. *Id.* Then, upon receipt of the reasons that the board of education rejected the application, the applicant may submit a revised application for reconsideration to the proposed sponsor within thirty (30) days after receiving notice of the rejection and the proposed sponsor must then accept or reject the revised application within thirty (30) days of its receipt. Upon denial of the revised application by the proposed sponsoring board of education, and only then, can the

charter school applicant submit an appeal to the State Board. In the instant matter, the following events transpired leading to the submission of the appeal by Harlow Creek on February 19, 2020.¹

1. March 2019 – application (the “Initial Application”) submitted by Harlow Creek to Tulsa Public Schools;
2. May 2019 – Tulsa Public Schools administration (not the board of education) rejected the Initial Application;
3. June 2019 – Harlow Creek submitted a second application (the “Second Application”) to Tulsa Public Schools;
4. August 2019 – Tulsa Public Schools administration (not the board of education) rejected the Second Application;
5. September 2019 – Harlow Creek submitted its appeal to the State Board²

The Act requires that the State Board hear the appeal no later than sixty (60) days from the date received by the Board. *Id.* Pursuant to these requirements, this matter was originally scheduled to be heard by the State Board at its November 25, 2019, meeting. However, as a result of scheduling conflicts among the parties, it was agreed to be heard at the December 19, 2019, meeting of the State Board.

At the December, 2019 meeting, the State Board unanimously voted to remand the matter for a hearing and consideration by the Tulsa Public Schools board of education. *See* enclosed Minutes, December, 19, 2019, State Board Meeting. The basis for the remand was that although the Tulsa Public Schools board of education was the proposed sponsor, neither the Initial Application nor the Second Application had been presented to and/or considered by the Tulsa Public Schools board of education. As a result, the appeal by Harlow Creek was premature, was not ripe for hearing by the State Board and Harlow Creek’s administrative remedies had not been exhausted. With its decision, the State Board instructed Harlow Creek to submit a final application to Tulsa Public Schools and that the Tulsa Public Schools board of education act upon that application within thirty (30) days of receipt, as required by the Act when presented with a revised application.

Upon remand, Tulsa Public Schools advised Harlow Creek that there was no need to resubmit an application as it was already in possession of the Second Application, which would be considered by its board of education on January 21, 2020. *See* enclosed January 2020 e-mails. In response, Harlow Creek advised Tulsa Public Schools that it intended to submit a final revised application by January 24, 2020, as directed by the State Board and requested the parties convene in good faith to resolve any outstanding issues. *Id.* Approximately one week thereafter Tulsa Public Schools advised, through its retained legal counsel, that there

“is no law that authorizes the State Board of Education to provide a charter school applicant with a third chance to submit a high-quality charter school application that meets authorizing standards. Accordingly, we do not interpret the State Board

¹ It should be noted that the submission of the appeal did not include the application on appeal or any exhibits thereto. Rather, on March 2, 2020, the appeal and corresponding documents were provided to the State Board.

of Education's action as authorizing the submission of a second revised application by Harlow. Harlow's revised application of June 27, 2019, will be considered by the Tulsa Public Schools Board of Education on January 21, 2020. There is no need for you to re-submit Harlow's revised application because Tulsa Public Schools already has it." *Id.*

At 3:00 p.m. on January 21, 2020, Harlow Creek provided Tulsa Public Schools with additional records, including an amended (third) application, for consideration by the Tulsa Public Schools board of education that evening. *See* enclosed e-mail dated January 21, 2020. Subsequently, at 3:35 p.m. on January 21, 2020, Tulsa Public Schools provided Harlow Creek with a summary of deficiencies in the Second Application. A few hours later, after providing Harlow Creek with an opportunity to make brief comments (limited to 5 minutes) about its proposed charter school application(s), the Tulsa Public Schools board of education voted to reject Harlow Creek's application for charter school sponsorship. From there, Harlow Creek submitted the current appeal to the State Board.

Appeal to the State Board – Process and Procedure

In order to authorize a charter school, Oklahoma law and Board rules require evidence of the following:

- A. a thorough and high-quality charter school application from the applicant based on the authorizing standards in subsection B of Section 3-134 of this title;
- B. a clear demonstration of community support for the charter school; and
- C. the grounds and basis of objection by the school district for denying the operation of the charter are not supported by the greater weight of evidence and the strength of the application. *See* 70 O.S. §3-132(8).

To assist the Board in its review and determination, State Department of Education (the "Department") staff will utilize the enclosed [rubric](#) and [procedures](#) to review the information submitted by the Appellant to determine compliance with the law, fulfillment of the purpose of the Oklahoma Charter Schools Act, and adherence to the Board's [standards and principles](#) for charter schools. Department staff will review the applications based on the soundness and quality of the charter school proposed, and will communicate their findings to the Chair for presentation and consideration by the Board. Further, with its appeal, Harlow Creek submitted and designated the enclosed documents relating to the Initial Application, the Second Application and the final application submitted to Tulsa Public Schools. By way of this correspondence, Tulsa Public Schools is respectfully requested to file a counter designation of record.

This matter is currently scheduled to be considered by the State Board at its regularly scheduled meeting on March 25, 2020, commencing at 9:30 A.M., at the Oliver Hodge Education Building, State Board Room, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. As such, and to afford the State Board and Department staff adequate time to review the documents provided on appeal, it is respectfully requested that Appellee provide its counter designation of record by the close of business, Monday, March 16, 2020.

Please be advised that Appellant, or representative(s) thereof, is invited to make a brief presentation to the State Board, lasting no longer than twenty (20) minutes, and shall be prepared to address and defend its respective position on the issues pertinent to this cause. Similarly, by way of this correspondence, the District (copied herein) is invited to appear and present its respective position on the issues pertinent to this issue. To the extent the parties have presentation materials (i.e., PowerPoint Presentation), I respectfully request that these are received by my office no later than close of business on March 18, 2020. However, should Appellant and/or the District not wish to appear, I respectfully request that you advise me of this by March 18, 2020.

Should you have any questions or want to further discuss this matter, please do not hesitate to contact me.

Sincerely,


Brad Clark,
General Counsel

Cc: Jana Burk (via email)
General Counsel, Tulsa Public Schools

Enclosures:

1. Oklahoma Statutes, 70 O.S. §§ 3-132 and 3-134
2. Department Review Rubric
3. Department Processes and Procedures
4. Harlow Creek Designation of Record
 - a. January 2020 Application (on remand from State Board of Education)
 - i. Appeal (email dated February 19, 2020)
 - ii. Application (received March 2, 2020)
 - iii. Exhibits to Appeal and Application (received (March 2, 2020)
 - b. June 2019 Application
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 - ii. Amended Application w/ Exhibits (A-J)
 - iii. TPS Administrative Denial of Amended Application, August 21, 2019
 - c. March 2019 Application
 - i. Proposed Application, March 2019
 - ii. TPS Administrative Denial, May 29, 2019
5. Proceedings before Tulsa Public Schools Board of Education, January 2020
 - a. Email correspondence (January 7, 2020 through January 21, 2020)
 - b. Tulsa Public Schools Notice of Deficiencies to Second Application
 - c. Tulsa Public Schools Denial of Charter School Sponsorship, January 26, 2020
6. Minutes of State Board of Education Meeting, December 19, 2019



JOY HOFMEISTER

STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

May 8, 2020

VIA E-MAIL ONLY

William Hickman

hickman@hickmanlawgroup.com

Attorney, Appellant/Harlow Creek

Eric Wade

ericw@rfrlaw.com

Attorney, Appellee/Tulsa Public Schools

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At the December, 2019 meeting, the State Board unanimously voted to remand the matter for a hearing and consideration by the Tulsa Public Schools board of education. *See* enclosed Minutes, December, 19, 2019, State Board Meeting. The basis for the remand was that neither the Initial Application nor the Second Application had been presented to and/or considered by the Tulsa Public Schools board of education. As a result, the appeal by Harlow Creek was premature as it was not ripe for hearing by the State Board and Harlow Creek's administrative remedies had not been exhausted. With its decision, the State Board instructed Harlow Creek to submit a final application to Tulsa Public Schools and that the Tulsa Public Schools board of education act upon that application within thirty (30) days of receipt, as required by the Act when presented with a revised application.

Upon remand, Tulsa Public Schools advised Harlow Creek that there was no need to resubmit an application as it was already in possession of the Second Application, which would be considered by its board of education on January 21, 2020. *See* enclosed January 2020 e-mails. In response, Harlow Creek advised Tulsa Public Schools that it intended to submit a final revised application by January 24, 2020 and requested the parties convene in good faith to resolve any outstanding issues. *Id.* Approximately one week thereafter Tulsa Public Schools advised, through its retained legal counsel, that there

"is no law that authorizes the State Board of Education to provide a charter school applicant with a third chance to submit a high-quality charter school application that meets authorizing standards. Accordingly, we do not interpret the State Board of Education's action as authorizing the submission of a second revised application

¹ It should be noted that the submission of the appeal did not include the application on appeal or any exhibits thereto. Rather, on March 2, 2020, the appeal and corresponding documents were provided to the State Board.

by Harlow. Harlow's revised application of June 27, 2019, will be considered by the Tulsa Public Schools Board of Education on January 21, 2020. There is no need for you to re-submit Harlow's revised application because Tulsa Public Schools already has it." *Id.*

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- B. a clear demonstration of community support for the charter school; and
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To assist the Board in its review and determination, State Department of Education (the "Department") staff will utilize the enclosed [rubric](#) and [procedures](#) to review the information submitted by the Appellant to determine compliance with the law, fulfillment of the purpose of the Oklahoma Charter Schools Act, and adherence to the Board's [standards and principles](#) for charter schools. Department staff will review the applications based on the soundness and quality of the charter school proposed, and will communicate their findings to the Chair for presentation and consideration by the Board. Further, with its appeal, Harlow Creek submitted and designated the enclosed documents relating to the Initial Application, the Second Application and the final application submitted to Tulsa Public Schools. By way of this correspondence, Tulsa Public Schools is respectfully requested to file a counter designation of record.

This matter is currently scheduled to be considered by the State Board at its regularly scheduled meeting on May 28, 2020, commencing at 9:30 A.M., This meeting will include teleconferencing or videoconferencing however there will be parties present at at the Oliver Hodge Education Building, State Board Room, 2500 N Lincoln Boulevard, Oklahoma City, Oklahoma 73105. As such, and to afford the State Board and Department staff adequate time to review the documents provided on appeal, Tulsa Public Schools shall provide its counter designation of record by the close of business, Friday, May 22, 2020.

Please be advised that Appellant, or representative(s) thereof, is invited to make a brief presentation to the State Board, lasting no longer than twenty (20) minutes, and shall be prepared to address and defend its respective position on the issues pertinent to this cause. Similarly, by way of this correspondence, the District (copied herein) is invited to virtually attend and present its respective position on the issues pertinent to this issue. To the extent the parties have presentation materials (i.e., PowerPoint Presentation), I respectfully request that these are received by my office no later than close of business on May 25, 2020. However, should Appellant and/or the District not wish to virtually appear, I respectfully request that you advise me of this by May 25, 2020.

Should you have any questions or want to further discuss this matter, please do not hesitate to contact me.

Sincerely,



Brad Clark,
General Counsel

Cc: Jana Burk (via email)
General Counsel, Tulsa Public Schools

Enclosures:

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