
UTAH STATE BOARD OF EDUCATION ADMINISTRATIVE HEARING

In re:

APPEAL OF DECISION OF UTAH STATE
CHARTER SCHOOL BOARD
REGARDING CLOSURE OF CAPSTONE
CLASSICAL ACADEMY

HEARING PANEL REPORT

Hearing Officer: Patrick Tanner

On February 25, 2020, this matter came before the hearing panel (“the Panel”) designated by leadership of the Utah State Board of Education. The Panel consisted of State Board Chair Mark Huntsman, State Board Vice Chair Brittney Cummins, Board Member Jennie Earl, and Board Member Laurieann Thorpe, with Patrick Tanner acting as hearing officer. Capstone Classical Academy (“Capstone”) was represented by Joan M. Andrews and the State Charter School Board (SCSB) was represented by David C. Jones.

Following opening statements by Ms. Andrews and Mr. Jones, Capstone presented testimony from 7 witnesses: Brittni Donnelson (Capstone Assistant Director, Manager / Registrar / Student Records Officer); Brittany Bennett (Capstone parent involved with marketing, fundraising, and enrollment recruitment); David Strait (Capstone ARTS ALT/Music Mentor); Steven Finley (Executive Director, Red Apple Financial, Capstone’s business manager); Kristin Elinkowski (SCSB Chair); Robert Fontenot (Capstone Board Chair); and Susan Goers (Capstone Director and Founder). SCSB presented testimony from 3 witnesses: Kelsy Vargo (Portfolio Manager for Highmark School Development); Jennifer Lambert (SCSB Director); and Stewart Okobia (SCSB Financial Auditor). Each party examined and cross-examined each witness, and the Panel posed additional questions of the witnesses as desired. Fifty-four documentary exhibits and one recording were admitted into evidence for consideration by the Panel. Mr. Jones presented a closing statement on behalf of SCSB and Ms. Andrews presented a closing statement on behalf of Capstone, after which the Panel deliberated.

The following documents were entered into evidence:

1. Charter Agreement dated June 8, 2017 between Capstone Classical Academy and the Utah State Charter School Board
2. Capstone Classical Academy Financial Statements dated June 30, 2019
3. Summary of Audited Financial Statements
4. Notice of Concern and Email transmittal of Notice of Concern dated June 17, 2019
5. Emails to and from Capstone Classical Academy dated August 19 and 20, 2019
6. Email dated September 18, 2019 from Jennifer Lambert to Capstone Classical Academy Governing Board Members and Dr. Goers with regard to the State Charter School Board’s October meeting
7. Email dated October 3, 2019 from Jennifer Lambert to Capstone Classical Academy Governing Board Members and Dr. Goers with regard to the State Charter School Board’s October meeting

8. Email dated October 9, 2019 from Dr. Susan Goers with attachments of Capstone's Budget Detail as of September 30, 2019, Data Summary, and Capstone's power point presentation to the State Charter School Board
9. Agenda of the October 10, 2019 Meeting of the State Charter School Board
10. Letter dated October 11, 2019 to Capstone Classical Academy from the Utah State Charter School Board concerning the proposed termination of Capstone Classical Academy
11. Letter dated October 23, 2019 Formal Hearing Request
12. Email dated October 30, 2019 regarding possibility of Capstone Classical Academy being put on probation instead of being closed if financial viability could be demonstrated
13. November 4, 2019 letter to Capstone Classical Academy from Christian Heritage Ministries regarding fundraising matching grant
14. Emails dated November 5, 2019 to and from Susan Goers including Grant Award letter from Christian Heritage Ministries, Cash Flow and Budget Report as of October 31, 2019; update to State Charter School Board; specific responses to Jennifer Lambert and Financial Summary as of October 31, 2019
15. Letter dated November 20, 2019 to Capstone Classical Academy Governing Board regarding procedures for December 9th hearing
16. Letter dated December 23, 2019 to Sydnee Dickson regarding Capstone's Amended Notice of Appeal
17. Capstone Financial Summary including Budget Detail Reports, Cash Flow Reports, and Restricted Fund Balance
18. UTRx Reports for Capstone Classical Academy as of Oct. 1, 2018; June 9, 2019, and October 1, 2019 with regard to enrollment
19. Capstone Governing Board Meeting Agenda dated March 21, 2018 with regard to Enrollment
20. Initial Site Visit – Capstone Classical Academy dated September 27, 2018 regarding enrollment
21. Utah State Charter School Board Oversight Model
22. Charter School Accountability Framework
23. Comprehensive Board Review FAQ of the State Charter School Board
24. First Year Training Forms
25. Readiness to Open Checklist and Enrollment Chart for 2018
26. Capstone Classical Academy Enrollment Comparison between actual enrollment, maximum allowed, break even enrollment, and required by Lease
27. Capstone Classical Academy Anticipate Enrollment compared to Actual Enrollment
28. Capstone Classical Academy Net Enrollment Increase from SY 2018 to SY 2019
29. Letter dated February 14, 2020 from Charter WC Pleasant View LLC regarding rent reduction for lease period from August 1, 2020 to July 31, 2021
30. SCSB Bylaws – As Amended, May 9, 2019
31. SCSB Code of Conduct
32. SCSB School Oversight Policy
33. SCSB Oversight Model – April 2019
34. December 2019 SCSB Newsletter

35. Utah Charter School Accountability Framework
36. January 2020 Budget Report
37. February 11, 2020 Budget Report
38. Fiscal Year 20 Cash Flow
39. Fiscal Year 21 Budget Forecast
40. Fiscal Year 22-23 Budget Forecast
41. October 10, 2019 SCSB Approved Meeting Minutes
42. December 9, 2019 SCSB Approved Meeting Minutes
43. December 12, 2019 SCSB Approved Meeting Minutes
44. Utah Charter School Retention Data Chart
45. Utah Charter School Transfer Data Chart
46. GRAMA request documents information regarding oversight committee
47. December 12, 2019 Salt Lake Tribune Article
48. September 4, 2019 Updated Notice of Concern
49. 2019-10-03 Lambert Email with Attachments
50. July 14, 2016 SCSB Meeting Minutes
51. January 12, 2017 SCSB Meeting Minutes
52. Capstone Lease Agreement
53. December 16, 2019 Letter of Support from Dr. Jeff Stephens, Superintendent, Weber School District
54. Capstone Classical Academy Lease Agreement Base Rent and Escalation Article 1(h) spreadsheet

In addition, a recording of a portion of a telephone call between Brittni Donnelson and Stewart Okobia was heard by the Panel and received into evidence.

Having heard the evidence and reviewed the documents in the record, the Panel makes the following Findings, Conclusions, and Recommendation.

PANEL FINDINGS

1. SCSB terminated Capstone's charter because of concerns regarding financial stability and viability, specifically that it concluded that Capstone had insufficient enrollment and funds to successfully operate in the short and long term.

2. The primary funding for ongoing operations of a charter school is received on the basis of student enrollment. Although grants and fundraising can supplement such funding, those sources are not reliable and generally should not be depended on to cover deficits in funding from enrollment. Although the Panel acknowledges Capstone's diligent efforts at fundraising and that those efforts have reduced the level of Capstone's deficits, the Panel concludes that fundraising will not be adequate to make Capstone financially viable and that the level of fundraising Capstone has had to conduct to this point is not sustainable.

3. The evidence presented did not persuade the Panel that SCSB erred in concluding that Capstone is not financially viable for the upcoming school year. To the contrary, the Panel

would conclude that Capstone is not financially viable when considered under generally accepted standards of fiscal management. Among other issues, the evidence demonstrated that Capstone continues to operate at a deficit, that enrollment history and projections indicate it would continue to operate at a deficit and be compelled to rely on fundraising during subsequent school years, and that in addition Capstone's substantial financial obligations relating to lease of their building (which have been deferred, not eliminated) will come due during the upcoming year. In addition, there is good reason to question whether Capstone will be able to complete the current school year without failure to meet its obligations.

4. The Panel is not persuaded that SCSB violated Capstone's charter by acting to terminate the charter without taking other intermediate steps and on the basis of concerns about fiscal viability. The Panel finds that SCSB was not required to take lesser intermediate actions under the Oversight Model or otherwise and that Utah Code § 53G-5-503(1)(b) and (e) authorizes termination because of failure to meet generally accepted standards of fiscal management or other good cause shown.

5. The Panel is not persuaded that SCSB failed to follow its oversight model by terminating Capstone's charter after the Notice of Concern without additional intermediate actions or opportunities to resolve deficiencies. SCSB may exercise oversight in a flexible manner and as determined by the specific facts and Capstone was given the opportunity to demonstrate that it was financially viable.

6. The Panel is not persuaded that SCSB's alleged deficiency with regard to giving Capstone notice that it might act to terminate the charter warrants re-examination of the decision. Capstone was made aware of the specific concerns that SCSB had and the action taken was based on those concerns and SCSB's evaluation of the information presented to it.

7. The Panel is not persuaded that SCSB Vice Chair DeLaina Tonks was required to recuse herself from the action on Capstone due to a conflict of interest which Capstone asserts exists because of her involvement with an online charter school. Considering the substantial differences in structure and target student population between Capstone and an online-only charter school, there is no actual or potential conflict of interest which would mandate her recusal. Further, because the SCSB vote to terminate Capstone's charter was a unanimous 7-0 vote at its October 2019 meeting and again a unanimous 7-0 vote at its December 2019 meeting, the Panel concludes that Vice Chair Tonks' participation in the votes did not affect the outcome.

8. The Panel is not persuaded that SCSB acted arbitrarily by treating Capstone dissimilarly to other charter schools in similar circumstances. Although Capstone pointed to Utah Military Academy as a school with similar circumstances to Capstone but which was treated much more leniently than Capstone, the Panel finds that there are sufficient differences between the circumstances of the two schools to support SCSB concluding that different actions were warranted. SCSB showed that it was willing to consider Capstone's specific circumstances when, based on consideration of Capstone's fundraising efforts, it modified its initial decision to terminate the charter effective January 1, 2020 by making the termination effective at the end of the 2019-2020 school year.

PANEL CONCLUSIONS

Based on the findings and the applicable standards, the Panel makes the following conclusions:

1. Capstone has not persuaded the Panel that SCSB either erred or acted without substantial evidentiary basis in concluding that Capstone had failed to meet generally accepted standards of fiscal management and that Capstone would not be financially viable in the upcoming school year.
2. Capstone has not shown that SCSB's action was arbitrary and capricious based on any of the theories advanced by Capstone.
3. Therefore, Capstone has not established grounds for the State Board of Education to overturn SCSB's decision.

PANEL RECOMMENDATION

Based on the foregoing, the Panel recommends that the State Board of Education uphold the State Charter School Board's decision to terminate the charter of Capstone Classical Academy effective at the end of the 2019-2020 school year.

NOTICE AND CERTIFICATION

Pursuant to Utah Admin. Rules R277-553-7(7), the State Board of Education may accept or reject the Panel's report (including the findings, conclusion, and recommendation) and pursuant to Utah Admin. Rules R277-553-7(5) in acting on Capstone Classical Academy's appeal may uphold the State Charter School Board's decision or may remand the matter to the State Charter School Board with identified deficiencies in its decision and suggested remedies.

The Hearing Officer certifies that the foregoing Hearing Panel Report has been circulated to the Panel members, that they have been given the opportunity to review the contents and comment thereon, and that the Report reflects the Panel's findings, conclusions, and recommendation as communicated to the Hearing Officer.

Respectfully submitted this 11th day of March, 2020.

Patrick L. Tanner

Patrick L. Tanner
Hearing Officer