

**IN THE ILLINOIS STATE CHARTER
SCHOOL COMMISSION**

Elgin Charter School Initiative)	
)	
v.)	Appeal No. SCSC-2018-001
)	
Elgin Area School District U-46)	

FINAL DECISION OF THE COMMISSION

On October 3, 2017, the Illinois State Charter School Commission (the “Commission”) voted to **grant** the charter school appeal filed by the Elgin Charter School Initiative (“ECSI”) to establish the Elgin Math & Science Academy Charter School (“EMSA”). The appeal was based on a denial decision rendered by the Elgin Area School District U-46 (“District U-46”). The Commission finds that the proposal is legally sufficient to meet the minimum requirements under the Charter Schools Law, 105 ILCS 5/27A-7(a), et seq., and that the establishment of the proposed new charter school would be in the best interests of the students that the EMSA proposal intends to serve. This final vote taken by the Commission was rendered pursuant to 23 Ill. Admin. Code 650.110(d)(3) within 30 days of the public hearing held September 7, 2017. A copy of the Final Decision is provided to each party by certified mail.

I. Jurisdiction

The Commission exercises jurisdiction in this matter pursuant to the Illinois Charter Schools Law, 105 ILCS 5/27A-7(a), et seq. The Local Education Agency (“LEA”), Elgin Area School District U-46 (the “District U-46”), received the EMSA charter proposal on January 31, 2017. District U-46 held a public hearing regarding the proposal on March 13, 2017 and on April 10, 2017 approved the EMSA’s charter school proposal. On June 26, 2017 the U-46 Board of reversed the April 10th approval and voted to deny the charter school proposal, citing among

several reasons, a failure to enter a mutually-agreed upon charter contract. On July 26, 2017, ECSI filed an appeal with the Commission. The appeal contained all of the required components and was timely submitted. Thus, the EMSA appeal is properly before the Commission pursuant to 105 ILCS 27A-8(g).

II. Procedural Background

Elgin Charter School Initiative, an Illinois not-for-profit corporation with 501 (c)(3) tax exempt status, was created for the purpose of governing and operating the Elgin Math and Science Academy Charter School. ECSI filed its original charter proposal on January 31, 2017 to open a new charter school in District U-46. ECSI proposed an elementary school, serving 702 students in grades kindergarten through eight. The proposal anticipated opening in fall 2018 with 208 students in grades K-3.

District U-46 serves approximately 39,963 students in 11 communities across Cook, DuPage, and Kane counties. District U-46 is comprised of fifty-seven (57) schools; forty (40) elementary schools, five (5) high schools, one (1) alternative high school, one (1) alternative middle school, and two (2) early learning centers. Per the 2015-16 Illinois State Report Card, District U-46 is 57.8% low-income, 52.3% Hispanic, 28.5% White, 8.3% Asian, 6.3% Black, 28.4% ELL, and 13% with IEPs.

On April 10, 2017, District U-46, in a 6 to 1 vote, approved the EMSA proposal and initiated negotiations on the charter school agreement. On June 26, 2017, the District U-46 Board of Education concluded the negotiated contract was not sufficient and denied the charter proposal. The Per Capita Tuition Charge (“PCTC”) negotiated as of June 26th was 92%. ECSI timely filed its appeal to the Commission on July 26, 2017.

Pursuant to its policies and procedures, the Commission delegates the duty to perform due diligence and evaluation of appeals to staff and a panel of independent experts. Acknowledgment of the appeal and timeline setting forth key dates in the appeal process were published and provided to the parties on August 2, 2017.

District U-46 submitted a response to the ECSI appeal on August 18, 2017. On August 25, 2017, in response to a request by Commission staff, the parties submitted supplemental briefs in response to inquiry regarding (1) the legal effect of the Resolution entered on April 10, 2017 and June 26, 2017; and (2) the status of the contract negotiations as of June 26, 2017; and a detailed statement of the specific conditions or terms the parties were to agree upon and which specific conditions or terms were not satisfied by the Elgin Charter School Initiative as of June 26, 2017.

On September 7, 2017, pursuant to 105 ILCS 27A-8(c) of the Charter Schools Law, the Commission held a public hearing in Elgin, which was chaired by Commissioners Troy Ratliff and Carlos Perez. Representatives from ECSI and District U-46 provided statements and presented arguments of their respective positions on the appeal. The public hearing was held at the Centre of Elgin, located at 100 Symphony Way, Elgin, Illinois. Approximately 108 people attended the hearing and 49 people provided testimony (35 on behalf of the EMSA charter school and 14 in favor of the District U-46 decision). The Commission also held open, for seven days following the public hearing, an Email Forum to allow for additional public input and comment. A total of 429 emails were received - 218 were in support of the District U-46's decision to deny the charter and 211 emails were in support of EMSA to grant the charter. In addition to the emails received during the Email Forum, the Commission received approximately 235 emails in support of the EMSA proposal over the 75-day appeal review period.

On September 18, 2017, Commission staff and the expert evaluation team conducted a joint capacity interview with representatives from both parties. The interview was held at the Gail Borden Public Library, located at 270 N. Grove Avenue, Elgin, IL 60120. Both parties responded to questions about the proposal and District U-46's review and decision.

Following the joint capacity interview, both parties submitted, on September 22, 2017 supplemental information to further clarify positions and information presented in the interview. Additionally, on September 25, 2017, Commission staff, experts and Commissioner David Feinberg conducted a site visit at the preferred school facility located at 1600 Dundee Avenue, Elgin, Illinois.

The Commission staff prepared its recommendation to the Commission based on the review of all the materials submitted by the parties and the due diligence conducted by the Commission staff and the expert evaluation team. On September 29, 2017, the Commission staff discussed with the ECSI representatives proposed modifications to the EMSA proposal and its recommendation for Commissioners. ECSI later agreed to the proposal modifications and submitted confirmation that it would accept them on October 2, 2017.

On October 3, 2017, the Commission held a public meeting and voted on EMSA's appeal. The Commission meeting was also held at the Gail Borden Public Library. Seven of the nine Commissioners were physically present for the meeting and one Commissioner, pursuant to a motion, attended via teleconference.¹ Public comment was received by 13 individuals (9 in support of the EMSA appeal and 4 in opposition to the EMSA charter school).

Commissioner Williams introduced a motion to grant the appeal of the EMSA charter school with a funding allocation of 100% of the District U-46 PCTC and with the following proposal modifications: (1) enrollment cap of 400 students for the charter term, July 1, 2018 to June 30, 2023; (2) the school will operate, exclusively, in the Neill Building for the term of the charter, during which any exploratory plans or development for additional buildings will not be funded by monies provided through state or federal funding for the school; and (3) instructional leader hiring and reporting to ECSI board by December 15, 2017. The motion was called and seconded. Following a lengthy, more than two hour discussion on the motion, which included a presentation by staff, both parties, questions from Commissioners to the parties and their respective responses, Commissioners, on a roll call, voted five to three, (5-3) in favor of granting the appeal based on the modified proposal for the EMSA charter school.²

Thus, the Commission granted the EMSA appeal and reversed the decision by District U-46 to deny ECSI's the new charter school proposal.

¹Commissioner Burns appeared telephonically and Commissioner Schuchart was absent from the meeting.

² Commissioners Williams, Burns (appearing telephonically), Ratliff, Feinberg, and Perez voted in favor of the motion to grant the appeal. Commissioners Farmer, Robbins, and Van Evera voted in opposition of the motion to grant the appeal.

III. Findings of Fact

A. Overview of ECSI's Proposal

1. ECSI proposed the Elgin Math and Science Academy Charter School would open in fall 2018, serving 208 students in grades K-3 (52 students per grade). (Appeal App., Five Year Enrollment Projection)
2. ECSI's vision is to provide students with an academically comprehensive learning experience in math and science, coupled with tenets that encourage making contributions to the community to conserve the environment. (Charter Proposal, Section II: Mission and Vision)
3. The EMSA mission is that "[s]tudents and teachers will reach their highest potential through active exploratory learning and social responsibility." (Charter Proposal, Section II: Mission and Vision)
4. The foundation of EMSA's educational program is a project, inquiry-based learning model, which is provided by EL Education (*formerly Expeditionary Learning*), with a focus on math and science exploration.
5. EL Education, a nonprofit entity, partners with districts (48%) and charter (46%) in 30 states and 152 schools to provide curriculum and teacher training.
6. EMSA established performance goals of 40% of its students meeting or exceeding growth targets in year one; and achievement of 60% of EMSA students meeting and/or exceeding growth targets in year five.
7. EMSA identified two potential facilities for the proposed school: (1) 1600 Dundee Avenue, Elgin, Illinois (*formerly the Fox River Country Day School*) and (2) the Rakow Building located at 505 Sports Way, Elgin, Illinois.
8. The campus of former Fox River Country Day School was the preferred site for the school. The site, owned by the City of Elgin, includes an extensive nature reserve, is recognized as an Illinois Natural Heritage Landmark, and was leased to ECSI for \$1/year.
9. The Neill Building, built in 2005, contains 13 classrooms (*each ranging 700 to 800 sq. ft. each*), two administrative offices, a conference room, an assistant's room, and various areas of common space (*totaling approximately 2900 sq. ft.*).

10. ECSI planned to secure loans, starting in year three, in excess of \$5 million dollars to address overall abatement, renovation and repairs to additional buildings at the Fox River Country Day School (“FRCDS”) campus site.

11. The Illinois State Board of Education awarded the charter school a \$950,000 federal charter school program grant. The grant award spans three years and anticipates allocation of funds for planning in advance of the school opening.

12. The proposed charter agreement between ECSI and District U-46, anticipated a 92% PCTC, in consideration of a partnership agreement for special education services, training and support.

13. On appeal, the budget presented by ECSI anticipated 100% of the PCTC, which was \$10,368.30 at the time of the appeal. Revenues were projected in year one at \$2,845,284, growing to \$4,846,574 in year five. Expenditures in year one were \$2,799,867, growing to \$4,778,251 in year five.

14. The modified budget based on an enrollment cap of 400 students anticipates revenue of \$2,845,284 in year one and expenditures of \$2,799,867.

B. District U-46’s Rationale for Denial

As required by 105 ILCS 5/27A-8(f), District U-46 provided its rationale for denying the EMSA proposal. A high-level overview of the reasons cited by District U-46 includes the following:

1. *Compliance with Section 27A-7.* District U-46 staff suggests that the proposed contract does not comply with the requirements of Section 27A-7 of the Charter Schools Law.

2. *Economic Soundness.* District U-46 contends that there is no evidence of economic soundness for both the Charter School and U-46. U-46 asserts that EMSA’s proposed budget reflects inadequate cash flow, particularly in their planning year prior to opening in August 2018.

3. *Enrollment.* District U-46 suggests that enrollment is not open to all students who reside within the attendance boundaries of U-46 because of the lack of viable transportation to students who are at-risk, homeless, and/or live outside the Elgin area.

4. *Service of At-Risk Students.* District U-46 concluded that the charter school proposal is not designed to enroll and serve a substantial number of at-risk children. District U-46 finds that, in addition to failing to address transportation needs of low-income and at-risk students who reside in any other communities served by U-46, EMSA's proposal also failed to appropriately address the needs of English Language Learners (ELL) and ESL students.

C. Commission's Due Diligence Findings

1. ECSI's Board of Directors is a strong, diverse group of professionals fully-committed to the vision and mission of EMSA, equipped with the knowledge and acumen to appropriately oversee the charter school, and well-versed in the needs and interests of families and students of District U-46. The Board has also identified a highly-reputable board training program to educate the Board and further solidify its governance capacity.

2. The ECSI Board retained highly-qualified and respected experts, from the traditional and charter school sector, to formalize plans to secure an instructional leader, service to special student populations, and the overall fiscal management and policy structure.

3. Commission staff conducted reference checks and verified commitments made by the experts to support EMSA in the planning and first year of operation.

4. EMSA's partnership with EL Education (*formerly Expeditionary Learning*) will provide extensive professional development, on-going training to teachers and school staff, and support to hire the instructional/academic leader for the school.

5. School wide assessments to measure proficiency, PARCC, and growth, NWEA/MAPP, in addition to WIDA, will be administered to ensure student and school performance goals are met.

6. Based on the site visit to the preferred location, the Neill Building can sufficiently meet the needs of EMSA during the five-year term of the charter, with a modified enrollment cap of 400 students.
7. The significant amount of debt required for the charter school to occupy additional buildings at the campus site is an avoidable risk during the five-year charter term.
8. In its initial year of operation, EMSA will provide a minimum of two school buses to not only accommodate students requiring bus service, but to further ECSI's desire to ensure at-risk students have access to EMSA. The two school buses will accommodate at least 50% of the student population.
9. District U-46 administrators and ECSI negotiated charter agreement terms to require EMSA to: maintain at least 60% at-risk student body; provide a student recruitment plan with specific details on attracting at-risk students; regularly report the percentage of at-risk students and amend the student recruitment plan if the percentage of at-risk students enrolled at the Charter School falls below 50%.
10. The budget plan includes a 4% contingency, which appropriately anticipates unforeseen enrollment reductions or expenses.
11. In addition to the \$950,000 grant award from ISBE, ECSI secured an additional \$55,000 from private foundations.
12. EMSA's impact as a percentage of District U-46's FY 17 budget is negligible based on enrollment of 400 students.
13. On March 13, 2017, District U-46 administrators published an analysis of the EMSA proposal and recommended the denial of the charter proposal.
14. The composition of the District U-46 Board changed between the April 10th approval of the charter and the June 26th denial of the charter school.
15. District U-46 administrators and ECSI negotiated terms specifically designed to provide service, support and staff training for special student populations.
16. A charter agreement, negotiated between District U-46 administrators and ECSI was presented to the District U-46 Board on June 26, 2017.

IV. Analysis

A. Standard of Review

The Commission may reverse a local school board's decision to deny a proposal to establish a new charter school when the Commission finds that the proposal (i) complies with the Charter Schools Law and (ii) is in the best interests of the students the charter school is designed to serve. 105 ILCS 5/27A-8(h). *Comprehensive Cmty. Solutions, Inc. v. Rockford Sch. Dist. No. 205*, 216 Ill. 2d 455, 471 (2005). To determine whether a new school proposal satisfies this standard, the Commission conducts a de novo review of the proposal and the school district's response. 23 Ill. Admin. Code 650.110 (d)(1). See also *Bd. of Educ. of Rich Twp. High Sch. Dist. No. 227 v. Ill. State Bd. of Educ.*, 965 N.E.2d 13 (Ill. App. Ct. 1st Dist. 2011).

As required under the Law, the Commission gives preference to proposals that: "(1) demonstrate a high level of local pupil, parental, community, business, and school personnel support; (2) set rigorous levels of expected pupil achievement and demonstrate feasible plans for attaining those levels of achievement; and (3) are designed to enroll and serve a substantial proportion of at-risk children; provided that nothing in the Charter Schools Law shall be construed as intended to limit the establishment of charter schools to those that serve a substantial portion of at-risk children or to in any manner restrict, limit, or discourage the establishment of charter schools that enroll and serve other pupil populations under a nonexclusive, nondiscriminatory admissions policy." 105 ILCS 5/27A-8(a).

B. Legal Compliance

Based upon its review and analysis of the proposal, public hearing comments, the information presented during the due diligence and following the Commission staff's recommendation, the Commission concludes that ECSI's proposal to establish EMSA, as modified during the appeal process, complies with the Charter Schools Law. See 105 ILCS 5/27A-7. The Commission is not required to base its decision exclusively on the merits of the proposal submitted to District U-46. The Illinois Supreme Court has specifically held that, review of a charter school appeal from a district's denial, the decision need not be limited to the evidence submitted to the district. See *Bd. Of Rich Twp. High Sch. Dist. No. 227*, 965 N.E.2d at 19 ("Once an appeal is filed, the ISBE may direct the parties to provide additional

information.”) The Charter Schools Law provides that the Commission is responsible for “authorizing high-quality charter schools throughout this State, particularly schools designed to expand opportunities for at risk-students, consistent with the purpose of the Charter Schools Law. 105 ILCS 5/27A-7.5. The Commission, like the State Board did in the exercise of its responsibility to authorize high-quality charter schools on appeal, may receive additional information from an applicant after a district denies the applicant’s charter proposal. The Court expressly stated that charter school proposals can be revised on appeal. *Bd. Of Rich Twp. High Sch. Dist. No. 227*, 965 N.E.2d at 37 (applying the Charter Schools Law to ISBE, the Court held that “[t]he authority granted ... makes clear that charter applications are subject to revision. “ *Id.* See also 23 Ill. Admin. Code 650.60(b).

On appeal, ECSI agreed to modifications to its proposal and presented a revised budget to comport with modifications. In response to community concerns about the significant debt associated with renovating and repairing facilities owned by the City of Elgin, the Commission proposed and ECSI agreed to pursue private funds for any building outside of the Neill Building and unless otherwise approved by the Commission, the school would only occupy the Neill Building during the five-year charter term.

The District insists that it properly denied the Charter School’s proposal because EMSA’s proposal and contract do not comply with Section 27A-7(a) of the Charter Schools Law. It asserts that the proposal and/or contract falls short because it: 1) does not comply with statutory requirements under 105 ILCS 5/27A-7; 2) is not economically sound for the Charter School and the District; 3) fails to maintain open enrollment for all students within the attendance boundaries due to lack of viable transportation; and 4) is not designed to serve at-risk students.

The Commission rejects each of these arguments and concludes, for the reasons set forth below, that the proposal to establish EMSA, as modified, meets the minimum technical, legal requirements of the Charter Law. See 105 ILCS 5/27A-7. Moreover, the District’s decision to deny EMSA’s proposal months after voting to approve the very same proposal was at a minimum inappropriate and undoubtedly indicative of poor authorizing practices that violate the spirit, if not the letter, of the Charter Schools Law.

Compliance with Section 27A-7(a). Section 27A-7(a) of the Charter Law sets forth the precise legal requirements for the contents of a charter school proposal, as it specifically articulates what a proposal “shall include.” 105 ILCS 5/27A-7(a). The District suggests that EMSA’s proposal falls short regarding requirements under 105 ILCS 5/27A-7(a)(9), 7(a)(3), 7(a)(5) and 7(a)(7), and 7(a)(13). A close examination of the District’s arguments indicates that the various issues raised by the District as legal barriers to EMSA’s proposal are unfounded. As discussed in more detail below, the Charter School’s proposal complies with the requirements of Section 7 of the Charter Schools Law.

Economic Soundness and Section 7(a)(9). The Commission concludes that there is sufficient evidence of economic soundness for both the Charter School and the District. Charter school proposals must include “[e]vidence that the terms of the charter as proposed are economically sound for both the charter school and the school district” 105 ILCS 5/27A-7(a)(9). The terms of the proposed charter must leave the charter school and the school district “financially secure and solvent.” *Comprehensive Cmty. Solutions*, 216 Ill. 2d at 477.

The Commission’s due diligence findings above serve as the basis for the Commission’s conclusion that EMSA’s proposal is economically sound for the District and the Charter School. None of the concerns the District raises about EMSA’s budget and finances amount to legal noncompliance with Section 27A-7(a)(9). (See Findings, § 3A, 10-14 and §3C 7-12.) The District argues that the potential uncertainty that would have resulted from the parties’ agreement to provide GSA funding to the Charter School on when the District received its share of GSA funds from the state is fatal to EMSA’s proposal. Putting aside the question of whether the Charter Law would even permit the District to withhold payments from a duly authorized Charter School, the mere threat of statewide budget uncertainty does not provide a sound basis to deny a charter school proposal. In addition, recent legislation adopted at the state level to stabilize the budget picture for all Illinois public schools, reduces the risk of financial harm to the District or EMSA.

The Commission conducted its own analysis of economic soundness. Due diligence by the Commission staff indicates that EMSA’s budget is economically sound and that the establishment of the Charter School would not materially impact the District’s overall budget or

financial solvency of the District. Accordingly, the Commission must reject the District's argument that EMSA's proposal violates Section 27A-7(9).

Section 7(a)(3). The EMSA proposal satisfactorily complies with the requirement that the proposal "identifies and names at least 2 sites that are potentially available as a charter school facility by the time the charter school is to open." EMSA's proposal identified more than one potentially available facility. Additionally, EMSA secured a lease for the buildings and grounds at the Fox River Country Day School site for a fall 2018 opening. The District also complains about the facility's structural flaws. However, the Charter Schools Law does not require applicants to identify perfect facilities, just ones that are "potentially available."

Section 7(a)(5) and 7(a)(7). As detailed above, the Commission also determined that EMSA's proposal satisfies the requirement that the Charter School include a description of its educational program and curriculum. (See Findings, § 3A, 1-6 and §3C 1-5, 8-9.) The Commission is satisfied that the proposal provides enough information regarding the Charter School's plan for delivering instruction and providing educational services to all students, including those taking science courses, diverse learners with special needs, English Language Learners, students with social and emotional needs and homeless or otherwise at-risk students.

Section 7(a)(13). The Charter Law does not require a charter school to provide door-to-door bus service for all its students. Instead, it requires that a proposal to establish a charter school include "[a] description of how the charter school plans to meet the transportation needs of low-income and at-risk pupils." See 105 ILCS 5/27A-7(a)(13). EMSA's proposal contains a reasonable transportation plan that ensures the special needs students and low income and at-risk students can get to the school facility. (See Findings, § 3C, 8-9) Contrary to the District's argument, the proposal need not specify in detail how it will transport each potential student living within the District's attendance boundaries. Moreover, the contract negotiated by the parties required the Charter School to submit a specific transportation plan for regular education low-income students annually. The Commission is persuaded that the Charter School's transportation plan is sufficient to meet the needs of its students, including low-income and at-risk students and that the Charter School is committed to providing transportation as required under the law.

Enrollment. The District also argues that it had to deny EMSA's proposal because the Charter School would not be open to any student residing within the District's geographic attendance boundaries. Under the Charter Schools Law, with few exceptions, the Charter School must be open to any student residing within the boundaries established for students served by the District. See 105 ILCS 5/27A-4(d). Again, there is nothing in the record to support the District's contention that EMSA intended to limit enrollment to any eligible students or planned to deprive students of the transportation services they might be entitled to receive. EMSA's proposal and the mutually agreed upon contract the District U-46 administrators negotiated explicitly incorporates the requirement for open enrollment. Specifically, in Section 4c. Recruitment and Enrollment, the contract provides "[e]nrollment in the Charter School shall be open to any pupil who resides within the boundaries of the District." The Commission is satisfied that the Charter School meets all legal requirements to provide transportation to eligible students and ensure that EMSA is open to students throughout the District's attendance area.

Service to At-Risk Students. The District insists that EMSA's proposal is not designed to enroll and serve a substantial number of at-risk children. It is important to note that the Charter Law does not require a charter school to enroll and educate a majority of at-risk children. Section 27A-8(a) of the Charter Law, requires authorizers to grant a preference to those proposals that intend to serve at-risk student populations. The provision states, in relevant part: "In evaluating any charter school proposal submitted to it . . . the Commission shall give preference to proposals that are designed to enroll and serve a substantial proportion of at-risk children." See 105 ILCS 5/27A-8(a)(3). The Law does not mandate rejection of any proposal that fails to meet the goal of serving at-risk children. Section 27A-8(a)(3) provides that "nothing in the Charter Schools Law shall be construed as intended to limit the establishment of charter schools to those that serve a substantial portion of at-risk children or to in any manner restrict, limit, or discourage the establishment of charter schools that enroll and serve other pupil populations under a nonexclusive, nondiscriminatory admissions policy." Therefore, the District cannot rely on lack of service to at-risk students as a basis for denying the proposal.

Accordingly, the Commission's due diligence and analysis of the law favor a determination that EMSA's proposal complies with the Charter Schools Law and that the District's contrary decision should be reversed.

C. Best Interests

As indicated above, the Commission asked staff to conduct an independent analysis of the proposal. Commission staff retained independent, expert evaluators to evaluate appeal documents and conduct further due diligence related to the ECSI's capacity as well as the District's rationale for denial. The Commission staff and evaluators' review of the appeal focused on the proposal and charter capacity in the areas of the Educational Plan, Organizational Plan and Finance/Facility Plan. The Commission acknowledges there are inherent risks with any new charter school; however, in this case, those risks are outweighed by the unique and proven EL Education curriculum, the strong and diverse members of the ECSI Board and the well-respected and experienced professionals retained to execute the proposal. The foregoing was determined based on a rigorous and comprehensive analysis of the overall appeal, which includes the original proposal, information articulated in the joint capacity interview, supplemental information presented by the parties, and modifications to the proposal. Thus, leading to a conclusion by the Commission that the EMSA is in the best interests of the students it is designed to serve. See 105 ILCS 5/27A7-8(h)(ii).

ECSI's impetus to start a charter school is to "create a diverse school that provide[s] an exceptional and unique education to students of varied races and ethnicities, socioeconomic and language backgrounds." The Commission finds noteworthy that District-U46 presented ECSI with a proposal to establish EMSA as a magnet school; thus acknowledging that the EMSA model would be beneficial for *some* students within the district.

The EMSA proposal described that EL (*formerly Expeditionary Learning*) Education curriculum will provide a comprehensive literacy curriculum that endeavors to close the literacy achievement gap by building and developing foundational literacy and critical thinking skills. Students entering below grade level will experience a robust and stimulating array of materials, labs, and hands-on learning projects that are both rigorous and differentiated to meet

social/emotional needs of students. EMSA's partnership with EL Education, coupled with the high-caliber talent identified to lead and provide training to the special education program and departments, establishes that EMSA, as an LEA, will meet the needs of all students and Commission standards for academic performance.

A predominant indicator of success for any charter school, especially a new charter, is the diversity of experience and talent of the board. ECSI's founding board of eight has representatives in the areas of education, financial management, marketing, property management, entrepreneurial business, legal, non-profit, and STEM. Further indicative of ECSI's commitment to developing capacity is its partnership with a nationally, reputable charter school governance and board development organization. The ECSI board has the capacity, acumen and experience to effectively govern the charter school, ensuring it achieves overall school performance goals and accountability standards.

EMSA's partnership with EL Education solidifies recruitment access to experienced instructional leaders and teachers, and best practice sharing among the more than 150 EL schools nationwide. Based on community events, parent surveys, and public meetings, there is community support for developing the school. Public comment and testimony provided during the public hearing, email forum and public meeting confirmed sufficient interest in the school across the Elgin community.

The Charter Schools Law defines "at-risk students" as *"a pupil who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional educational environment."* 105 ILCS 5/27A-3. The Commission finds that this preference is established when the applicant can present evidence that a "substantial portion of the student population," will be considered at-risk.

The Commission acknowledges and commends ECSI for its commitment to provide two school buses for up to 50% of its student population. However given the extensive geography (90 square miles) within District U-46, it cannot assume not conclusive that this strategy, in isolation, will result in a "substantial student population," of at-risk students. As the authorizer of EMSA, the Commission supports EMSA's goal to serve a 60% at-risk student population and believes it is in the best interest of all students that the school include diversity across racial,

cultural and socio-economic demographics.

The EMSA proposal will allow the school to be operated in a manner that is financially sound. The Commission approved funding for EMSA with 100% of the District U-46 Per Capita Tuition Charge (PCTC). In addition to the \$950,000 competitive Charter Schools Program Grant, for up to three years, the ECSI Board has secured private donations and grants.

The Commission concluded that it is in the best interests of future EMSA students that ECSI raise private dollars to cover any expense associated with the exploration or development of plans to restore and renovate buildings, other than the Neill Building.

The former FRCDS campus includes expansive nature reserves and outdoor space to further support the expeditionary learning and science components of the EMSA program. This unique elementary school experience will be offered to District U-46 students, and will require a minimal facility, furniture, and equipment investment for the charter term; an investment that is also supported by the Elgin City Council through an \$1/year lease, renewable for 30 years.

Accordingly, the Commission determines it is in the best interests of students it is designed to serve. *See* 105 ILCS 5/27A7-8(h)(iii).

D. District Compliance with the Charter Law

EMSA urges the Commission to find the District's June 26th denial vote a violation of the Charter Schools Law because the Board's re-vote fell outside the statutory time prescribed for evaluation of charter school proposals. The Commission need not reach this question directly because it is not outcome determinative. However, it is important to note that the evidence calls into serious question the propriety of the District's June decision to deny EMSA's proposal. At minimum, it suggests that the District needs to improve its charter approval process so that the Board can make final decisions within the time allowed under the Law. At worst, it shows the District's June 26th vote to deny the proposal was untimely and improper under the Charter Schools Law.

When it mattered – during the 75-day period the Charter Law gives the District to hear and vote on a charter school proposal – the District evaluated the Charter School's proposal and concluded that it complied with the law and that establishing EMSA was in the best interest

of the students that the Charter School indicated it would serve. The only condition the Board established for consummation of its decision to grant the charter school proposal was that the specific terms of a charter contract be negotiated.³ The District's own communications suggest that by June 23rd, the representatives for the parties had satisfied that condition. Yet, even though the time for rendering judgment on EMSA's proposal had lapsed two months earlier, the District took the extraordinary step of rejecting the charter school contract it had directed its staff to negotiate and execute.

On April 10, 2017, the Board voted 6-1 to approve the Charter School's proposal. In that Resolution, the District stated:

"after reviewing and considering the provisions and requirements of the Charter Schools Law, the Proposal, and the information provided at the public meeting referred to above, the Board of Education stands ready to make a determination regarding the Proposal . . . The Board of Education grants approval to the Charter School Proposal submitted by EMSA based upon a mutually agreed upon contract negotiated and submitted to the Board by June 30, 2017. . . The Chief Executive Officer or designee and the Chief Legal Officer are hereby authorized and directed to perform such action and to prepare and execute such documents as necessary to effectuate under law the grant of the Final Proposal submitted by EMSA, including . . . the mutually agreed upon contract. (Apr. 10, 2017 District Resolution, ("the Resolution")). The Resolution further indicated that it was to be "in full force and effect immediately and forthwith upon its passage." *Id.*

The only logical interpretation of the District's April 10th Resolution is that the Board approved the EMSA's charter based upon its consideration of the Staff's due diligence and its conclusion that the proposal did in fact comply with the "provisions and requirements" of the Charter Schools Law. Although the Resolution states that "conditions" were to be discussed during contract negotiations, the Resolution does not specify any actual conditions the failure of which would have served to defeat the District's approval or render it null and void. Instead, the Resolution directs the parties to discuss general topics such as "special education services

³ Of course, the Charter Law itself sets forth this condition. See 105 ILCS 5/27A-6. Ordinarily, a conditional charter approval is one that requires the parties to reach agreement on contract terms that compel the Charter School to perform specific actions by a certain date. If the authorizer determines that the charter school has not performed those actions satisfactorily, then the condition fails and no charter issues. The Resolution issued by the District on April 10, 2017 contained no clear condition other than that the parties' representatives develop a "mutually agreed upon contract."

and budget, economic soundness, charter school facility, at risk populations, systems alignment and student discipline.” Neither party disputes that these topics were discussed leading up to a mutually agreed upon contract that was ready for execution as of June 26, 2017.

The District’s claim that its June 26th reversal of its April 10th decision was instead just the result of failed contract conditions lacks credibility. The District’s June 26th Resolution reflects an inappropriate re-vote to deny EMSA’s proposal and improperly reverses its April 10th decision. That conclusion is supported by the following facts.

First, the June 26th Resolution reflects a second vote on the same question that was presented on April 10th, but that was conducted by a different slate of board members, nearly ninety (90) days after the first public hearing on March 13, 2017. By April 17th, the law required the District to determine whether the proposal submitted complied with the Charter Schools Law and would serve the best interests of students who would attend. It made that determination and the Board voted to grant the proposal. The substance of the Charter School’s proposal did not change after April 10th. Yet, on June 26th, the Board voted to deny the essentially the same proposal it had already deemed worthy just months earlier. We can find no material difference in the proposal submitted and approved on April 10th and the one rejected on June 26th. And although the charter proposal did not change in substance, the composition of the Board did. During the two-month period following the April 10th approval decision, an election changed the composition of the Board.

On these facts, it appears that contract approval was delayed until a new slate of board members was in place. Rather than simply verify that the contract that staff was authorized to negotiate contained the terms needed to implement the approved charter school proposal that new Board was allowed to re-evaluate the charter proposal. The Charter Schools Law, however, does not permit an authorizer to make a charter approval decision within the statutory timeline and then reach back to reverse the decision later after the time for action has lapsed, simply because the individual decisionmakers change.

Second, the District’s contention that the Board vote on June 26th reflected the failure of the condition it imposed on the April 10th approval is belied by the evidence. The record

suggests that the parties met the one condition set forth in the Resolution – development of a mutually agreed upon contract.

In the weeks following the April 10th District vote, the parties exchanged drafts of the proposed charter agreement. The final draft indicates the District’s authorized representatives accepted the substance of EMSA’s charter proposal. A number of contract provisions obligated EMSA to implement its educational program in a manner consistent with its Charter School Proposal. Each party compromised on specific terms, including the percentage of the per capita tuition charge that would be used to calculate funding for the Charter School, the number of special education staff positions EMSA would retain and the allocation of other costs like special education student services and litigation. On June 22, 2017, emails exchanged by counsel indicate that the parties’ representatives had reached agreement on outstanding terms and finalized the charter contract. District staff’s preparation for a Resolution “Granting Approval to the Charter School Proposal Based Upon the Mutually Agreed Upon Contract Hereby Attached as Exhibit A” serves as further proof that the parties had in fact reached agreement on all material terms. That draft Resolution was prepared for the June 26, 2017 meeting.

Even though the parties apparently reached agreement on a contract that embraced the Charter School’s proposal, on June 26th, the Board adopted a new resolution that purported to “supersede” the Resolution. The new resolution “Denying the Charter School Contract and Proposal” proclaims that the Charter School’s contract and proposal did not “conform to the standards and requirements of the Charter Schools Law for granting a charter school proposal” (the “June Resolution”). The June Resolution does not point to any contract terms over which the parties failed to reach agreement. Instead, it simply announces that, in a complete reversal of its April 10 decision, the Board “considered the Contract and Proposal” and “denies them.” In its Rationale for Denial, the District does not describe any conditions that EMSA refused to accept concerning special education, economic soundness, the school facility or any of the other areas the April 10th Resolution required the parties to discuss; nor could it have. The mutually agreed upon contract that the parties’ representatives negotiated reflected their resolution of those issues.

Thus, the District's argument that the separate vote held to approve the contract entitled the Board to reverse its original decision even though the parties negotiated a mutually agreed upon contract is severely flawed. The specific circumstances here suggest that the Board's second vote to deny the charter proposal had little to do with the contents of the charter contract. Instead, the vote was an excuse to revisit the decision it made to approve the charter proposal. The use of a contract approval vote as a way to reverse the Board's original vote suggest that the District's rationale for its June 26 denial vote is pretext.

The Commission cannot countenance such questionable charter authorizing practices.

While the District's improper second vote does not serve as the official basis for the Commission's decision to grant the appeal, the Commission cannot countenance such questionable charter authorizing practices. The Charter Schools Law mandates that all authorizers run a fair and transparent charter application process. Subversion of that process by using tactics like the ones applied in the District's review of EMSA's proposal is a disservice to that goal and the students and families the Law and those who implement it aim to serve.

V. Conclusion

On the basis of the information presented to the Commission on appeal, and as reflected by the vote taken on October 3, 2017, the Commission concludes that EMSA has met the requirements of the Illinois Charter Schools Law and is in the best interest of students it intends to serve. Thus, the District U-46 decision to deny the EMSA proposal to establish a charter school is reversed.

Appeal SCSC18-001 is GRANTED.

Dated: October 10, 2017.