

**IN THE ILLINOIS STATE  
CHARTER SCHOOL COMMISSION**

Pathways in Education – Illinois )  
 ) No. 2013-07  
v. )  
 )  
Chicago Public Schools District 299 )

FINAL DECISION OF THE COMMISSION

On March 19, 2013, the Illinois State Charter School Commission (the “Commission”) voted to affirm the Chicago Public Schools District 299 (“CPS”) decision denying a charter school proposal submitted by Pathways in Education – Illinois (“Pathways”) to open five alternative charter schools. The Commission finds that the proposal does not comply with the provisions of the Charter Schools Law, 105 ILCS 5/27A, *et seq.*, and that establishment of the Pathways Alternative Charter School would not be in the best interest of the students that Pathways intends to serve. Therefore, the Commission affirms the CPS decision to deny Pathways’ proposal.

I. Jurisdiction

The Commission exercises jurisdiction in this matter pursuant to the Illinois Charter Schools Law, 105 ILCS 5/27A, *et seq.* The local educational agency, CPS, voted to deny a charter school proposal by applicant Pathways on December 19, 2012. On January 9, 2013, well before the statutory deadline, Pathways submitted an appeal to the Commission. Thus, the appeal is properly before the Commission under 105 ILCS 5/27A-8(g).

II. Procedural Background

Pathways submitted a charter school proposal to CPS for consideration on August 13, 2012. On August 20, 2012, CPS interviewed Pathways regarding its proposal. Although the Charter Schools Law requires a district to hold public hearings on charter school proposals within forty-five days of receipt and to vote on the proposals within thirty days of the public hearing, CPS failed to vote by the statutory deadline.

As permitted under Section 8(e) of the Charter Schools Law, on November 29, 2012, Pathways submitted a protective appeal with the Commission based on CPS’s inaction. On December 19, 2012, CPS met and voted to deny Pathways’ proposal. CPS issued a report dated December 28, 2012, explaining its reasons for not authorizing Pathways’ proposal. In letters dated January 8, 2013, Pathways withdrew its pending appeal based on inaction and submitted an appeal to the Commission based on CPS’s vote to deny the proposal.

The Commission retained a team of experts to analyze Pathways’ proposal and appeal. Commission staff conducted a capacity interview with representatives from Pathways and CPS on February 15, 2013. At the interview, both parties were asked and responded to questions about the proposal and CPS’s review. In addition, CPS submitted a written statement responding

to Pathways' appeal and four exhibits that detail the CPS charter authorization process, the record of its denial, correspondence relevant to the appeal, and the most recent Request for Proposals to which Pathways responded. After the interview, the parties participated in a public hearing regarding Pathways' appeal on February 21, 2013. Commissioner Michael Jacoby, Commissioner Angela Rudolph, and Executive Director Jeanne Nowaczewski represented the Commission at the hearing.

Based on an initial evaluation of the materials Pathways submitted on appeal, the responses Pathways gave to questions at the capacity interview, and comments made at the public hearing, Commission staff determined that Pathways' proposal merited further investigation. Evaluators, including an expert who has experience evaluating alternative school programs, then conducted a desktop review of student achievement results at schools affiliated with the appellant, analyzed the feasibility and suitability of the proposed facilities, and performed an assessment of the financial impact of authorization on CPS. Additionally, counsel conducted a legal compliance review. On March 5, 2013, members of the evaluation team for the Commission visited Pathways' Alternative Learning Opportunities Program (ALOP) in Chicago. A representative from CPS also attended. After the site visit, Pathways provided written responses to a number of questions raised by Commission evaluators. The majority of questions involved Pathways' proposed facilities, the organization's finances, the proposed governance structure, and the educational program.

Having reviewed all the materials submitted by the parties and concluding an extensive due diligence, the evaluation team prepared its recommendation to the Commission. On March 12, 2013, Commission staff met with the parties to this appeal and informed them that Commission staff would recommend that the appeal be denied. On March 19, 2013, the Commissioners met and voted on Commission staff's recommendation regarding Pathways' appeal. All eight Commissioners serving on the Commission as of March 19 participated in the discussion of the appeal at a duly noticed public meeting. Seven Commissioners voted to adopt the staff recommendation and to deny the appeal and one Commissioner voted to reverse the CPS decision.

### III. Findings of Fact

#### A. Overview of Pathways' Proposal

1. According to its proposal, the mission of the Pathways in Education Illinois Charter School would be to provide comprehensive high school education programs and support services to at-risk students in Chicago in order to help them attain a high school diploma and acceptance to college or gainful employment.
2. The educational program would be tailored to the needs of high school-aged youth who have dropped out of school or are at significant risk of dropping out. Each Pathways student would develop an individualized learning plan, and the school would offer extended hours and flexible scheduling. Pathways students would complete their course requirements via traditional classroom settings, online learning labs, and independent workbooks. Post-secondary preparation would include leadership and development courses, senior seminars, and college counseling.

3. The school would be governed by the board of directors of Pathways. The board currently has six members, with combined expertise in education, at-risk populations, community relations, human resources, and business. There are no board members with legal, real estate, or financial expertise. The board reportedly meets at least quarterly.
4. Pathways currently operates an Alternative Learning Opportunities Program (“ALOP”) in Chicago that serves 200 students.
5. The board would contract with an educational management organization, Pathways Management Group (“PMG”), to manage the daily operations of the proposed school sites. The scope of services PMG would provide includes curriculum development and selection, professional development, support services and activities, special education services, testing, evaluation, reporting human resources, information technology equipment and support, facilities management, insurance, and financial management. PMG currently operates alternative programs in 44 California cities through partnerships with two other organizations.
6. Under the proposal submitted to CPS, the school would serve grades 9-12 at ten sites, each with an enrollment capacity of 165 students. The first two campuses would open in 2013 and an additional campus would be added each year, for four years, and four more campuses would be added in the sixth year.
7. The proposed school sites would be in the Wrightwood, Lawndale, West Rogers Park, West Law, or Englewood areas of Chicago. Pathways identifies five potentially available facilities. PMG would locate and develop facilities for the school.
8. The proposed budget is based on a start-up loan from PMG for \$1.4 million. The loan is referenced in the management agreement, but Pathways did not initially provide detailed information about the terms of the loan or specific provisions relating to termination of the management agreement, default, or repayment.
9. The management agreement between PMG and Pathways provides that PMG will charge Pathways a fee of \$127 per pupil per month. If for some reason the agreement with PMG is terminated, then the Pathways board would be required to contract with a new educational management organization within ninety days. Pathways would also be required to fully reimburse PMG for the cost of services provided up to the date of termination and to pay for any reimbursable items PMG purchased on behalf of Pathways.

#### B. CPS’s Reasons for Denial

10. CPS denied Pathways’ proposal due to numerous concerns with the proposal’s educational plan, governance plan, business plan, and evidence of capacity. Those reasons include, but are not limited to:

- a. Regarding the proposed education plan, CPS was concerned because: Pathways did not provide a sample individualized learning plan; it proposed insufficient counseling for the target population; there was no evidence that Pathways' proposed life skills development course was associated with a research-based curriculum; and there was no method proposed to track the schools' post-secondary outcomes. (CPS Authorization Report 7-8, 19.)
- b. Regarding the governance plan, CPS was concerned because: The lines of authority and accountability between the board, PMG, and the proposed schools were unclear; the current board appeared to lack the capacity to effectively govern; and there was a lack of clarity about a financial model that relied on a significant loan from a management organization. (*Id.* at 5-6, 13.)
- c. Regarding the business plan, CPS was concerned in part because there were unanswered questions about the loan between Pathways and PMG and about the timeline for securing facilities. (*Id.* at 6, 14.)

### C. Findings From the Commission's Due Diligence

11. An analysis of the achievement data regarding students at schools that use Pathways' educational model, Options for Youth and Opportunities for Learning, reveals that Pathways students inconsistently met California's established academic performance index targets in 2012. According to state reports, none of the Pathways-affiliated schools earned an "A" rating.
12. The site visit to Pathways' existing ALOP program in Chicago revealed the following:
  - a. The program is in a bright, clean, and welcoming environment. Students are provided with one central instructional space dedicated to quiet self-directed study and a computer lab for testing and e-learning options.
  - b. The principal has implemented the Danielson Framework teacher observation and evaluation model. Teacher growth and development is supported on-site and at annual PMG national conferences. Teachers feel empowered to serve students in ways that work for their unique student body.
  - c. The program has established strict attendance policies that are used to motivate students to attend school. Students report that their peers comply with behavioral expectations, which contributes to an atmosphere safe from distractions and disruption. Students are expected to earn a C or better to demonstrate mastery of content and earn high school credits.
  - d. The program leader and PMG ensure that there is strong accountability for student achievement throughout the school and they emphasize graduate rates.

13. Three Pathways board members were interviewed during the site visit. The board members expressed a clear understanding of the mission of the school and the need for a program like the one Pathways provides in the community. However, when asked more detailed questions about the proposed governance structure, board members presented conflicting descriptions of Pathways' governance plan. In addition, the board members' understanding of the board's fiduciary obligations and responsibility to monitor school operations was insufficiently developed.
14. The Pathways board did not appear to have a consistent schedule of regular board meetings. Pathways reported that the board is scheduled to meet quarterly. However, board members who were interviewed stated that they had only met one time per year. In addition, the Pathways board does not operate any subcommittees even though it is only scheduled to meet one time per quarter. Pathways explained that it maintains this structure because it wants each board member to participate in all board activities as much as possible.
15. In a written statement submitted in response to questions posed about the board's capacity to govern the proposed schools, Pathways indicated that it would be willing to increase the size of the board. Three days after the Staff shared its recommendation of denial with the parties, Pathways stated it would plan to vote to add three new board members with legal, fundraising, and real estate expertise to its board.

#### IV. Analysis

##### A. Standard of Review

The Commission may reverse a local school board's decision to deny a proposal when the Commission finds that the proposal (i) is in compliance 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 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).

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. . . ." 105 ILCS 5/27A-8(a).

##### B. Legal Compliance

The Commission will not reverse CPS's decision in the present case because serious questions exist as to whether Pathways' proposal to establish a charter school is in compliance with the Charter Schools Law. *See* 105 ILCS 5/7A-8(h)(i). First, concerns regarding the proposed governance structure for the school and whether the governing board has sufficient mechanisms in place to protect against breaches of fiduciary duty and conflicts of interest

persisted throughout the evaluation team's due diligence. Second, although the existence of a loan between the proposed management company, PMG, and Pathways does not in and of itself pose a problem, the combination of the lack of a strong governing body and lack of structural mechanisms needed to respond to the schools' need for funding in case the PMG contract is terminated raises a question about the economic soundness of the Pathways budget. This is particularly true given that the budget relies so heavily on the PMG loan.

## 1. Governance

The Charter Schools Law requires that proposals include a "description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school." 105 ILCS 5/27A-7(a)(10). Pathways' governance descriptions in its proposal and in interviews before CPS and the Commission were inconsistent and failed to clearly describe the governance plan.

CPS's written explanation of its denial notified Pathways that there were concerns about Pathways' governance plan. For example, CPS raised a concern that the lines of authority and accountability structures presented conflicts of interest, particularly in regard to the relationship between Pathways' board, its education management organization PMG, and the proposed schools. CPS also noted a concern that the board member present at the capacity interview did not demonstrate a clear understanding of her role as providing academic and fiscal oversight for the school.

On appeal, Pathways responded to CPS's denial in part by emphasizing that Pathways board members would be appointed by Pathways' sole member, Education in Motion, Inc. At the capacity interview with the parties, no Pathways board members were present but the Commission requested clarification about the structure of its board and Pathways' relationships to other entities. At the site visit, the Commission separately interviewed three board members about Pathways' proposal. The information collected during these interviews further confused rather than clarified the description of the governance structure.

Throughout the appeal process, Pathways representatives submitted inconsistent information regarding the formal and informal relationships between PMG, Opportunities for Learning, Options for Youth Charter Schools, and Education in Motion. For example, Pathways' proposal demonstrated dotted-line reporting from the Pathways board to PMG. At the site visit, a Pathways representative drew an organizational chart for the Commission showing the Pathways' board directly reported to PMG leadership. There was similar confusion in the evidence presented to the Commission about the identity and role of Education in Motion in the proposed charter school. In Pathways' appeal it stated that Pathways' board members are appointed by Education in Motion. In response to questions immediately prior to the Commission's vote, Pathways' representative stated that the individuals it had presented as Pathways board members were on the board of Education in Motion.

In sum, it appears that Pathways does not have a governance structure in place that will be sufficient to support the needs of the proposed multiple site school. Pathways proposes to dramatically expand the number of students it serves and to serve those students at five different school sites. The complexity of operational, financial, and legal decisions that the governing

board will have to make to effectively govern five different alternative school sites is exponentially greater than the decisions the Pathways board makes currently in the oversight of its single site program. Notwithstanding the evaluation team's concerted effort to obtain clear answers about the governing body and how Pathways' school would be governed, the Commission concludes that Pathways has failed to describe the governance structure for the proposed charter school as required under the Charter Schools Law.

## 2. Economic Soundness

The Charter Schools Law also requires that proposals 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. Here, the evidence before the Commission was insufficient to allow the Commission to conclude that the terms of the charter would be economically sound for the school.

Under the proposal, Pathways would receive a \$1.4 million loan from its educational management organization, PMG. Ordinarily, receipt of a loan by a charter applicant from a proposed educational management organization would not be cause for concern. The practice is generally accepted so long as the terms are reasonable, appropriate safeguards against conflicts of interest are in place, and transactions are arms-length. However, in this particular case, the Pathways board's lack of expertise and uncertainty regarding the relationship between Education in Motion, Pathways, and PMG raises questions as to whether the board has the capacity to provide sufficient resources for the school, if for some reason Pathways terminates PMG's contract. If PMG's contract as the educational management organization is terminated, it is unclear how the loan would be impacted and how Pathways would raise alternative funds. A review of the draft promissory note and draft security agreement between Pathways and PMG did not answer those questions and failed to allay the Commission staff's concerns; concerns that were also raised by CPS during its review of the Pathways proposal. Taken together, the loan and the Commission's concerns regarding the strength and capacity of the governing board make the Commission apprehensive about the reasonableness of Pathways' budget. On the basis of the information provided, the Commission cannot conclude that the budget presented by Pathways and, by extension, the terms of the charter, are economically sound.<sup>1</sup>

### C. Best Interests Analysis

The Commission also will not reverse CPS's decision in the present case because it does not find that the proposal “is in the best interests of the students the charter school is designed to serve.” 105 ILCS 5/7A-8(h)(ii).

---

<sup>1</sup> Although CPS did not cite the potential financial impact that the proposed Pathways schools would have on the District as a basis for its denial of the proposal, pursuant to the Charter Schools Law, the Commission conducted its own financial impact analysis and determined that the Pathways school could be funded at a per pupil amount equal to 100 percent of the CPS per capita tuition rate without materially impacting the overall CPS budget or financial solvency of the District.

In order to assess whether authorization would be in the best interest of the students Pathways intends to serve, Commission staff conducted an independent analysis of four aspects of the proposal: the education plan, the organization plan, the business plan, and the evidence of capacity. The Commission staff rated each criteria on a scale from does not meet the standard, partially meets the standard, approaches the standard, to meets the standard. Upon review and analysis of Pathways proposal and all the information collected during due diligence, the Commission staff concluded that the education plan meets the standard and that the business plan and the evidence of capacity approach the standard. However, the organization plan only partially meets the standard. Ultimately, the Commission staff determined that Pathways' proposal was not in the best interest of the students it was intended to serve and recommended that the Commissioners deny the appeal.

The Commission finds that the educational plan proposed is strong. In fact, Pathways' proposal has many strengths. Pathways has a clear mission and vision for success and a cohesive and comprehensive plan that seems well-suited to the target student population. The design team presented a clear plan for student assessment and academic performance management. Pathways also appears to be running a successful ALOP program in Chicago.

Notwithstanding the strength of Pathways' educational plan and the obvious need in Chicago for more quality alternative school seats, the Commission is ultimately unable to conclude that the establishment of the schools Pathways proposes to open at this time would be in the best interest of the students. The Commission bases its decision primarily on two fundamental concerns. Both concerns stem from the Commission's finding that the Pathways board lacks the capacity to govern effectively.

First, the evidence Pathways presented fails to persuade the Commission that the Pathways board, as currently configured, has the capacity to govern the proposed schools and oversee the rapid expansion of seats contemplated under Pathways' proposal. Pathways' representatives generally had inconsistent explanations of the nature of the relationships between the Pathways board, PMG, and Education in Motion. Board members interviewed by the Commission lacked a firm understanding of the board members' fiduciary obligations and the responsibilities they would have with regard to oversight of PMG's operation of the proposed schools. In addition, the Pathways board only meets quarterly and has no subcommittees organized with authority to act and respond to the needs of the schools between board meetings. This organizational structure leaves the board without any ability to promptly address the many, varied problems that charter school operators must face when opening new schools. Finally, the governing board has no members with the legal and financial expertise needed to ensure that the board asks the right questions, complies with applicable law and regulations, secures the appropriate resources and addresses the inevitable issues that will arise as Pathways works to expand and operate multiple schools.

Second, as noted above, the Pathways board does not have in place sufficient structural safeguards to address the potential conflicts of interest between Pathways and its related entities. The proposed charter school would both accept a significant loan from PMG and employ PMG as the schools' educational management organization. The PMG loan appears to be the primary source of the funding to support start-up activities for the proposed schools. However, the board members interviewed were unable to identify any specific measures that would be in place to ensure the loan would not prevent Pathways from holding PMG accountable as the primary



service provider to the schools. Nor did Pathways make clear how it would raise alternative funds if for some reason PMG is terminated. The combination of Pathways' reliance on PMG for such a significant loan, the lack of any plan to secure alternate funding sources, and Pathways' relatively weak governing board leaves the Commission with no confidence that Pathways has a sound plan to ensure the financial stability of its schools. Thus, at this time, the Commission cannot conclude that Pathways' plan to open its proposed charter schools is economically sound. *See Comprehensive Cmty. Solutions*, 216 Ill. 2d at 477.

For these reasons, the Commission agrees with Commission staff that, at this time, establishment of Pathways Alternative Charter Schools would not be in the best interests of the students Pathways intends to serve.

V. Conclusion

On the basis of the information presented to the Commission on appeal, the Commission concludes that reversal of CPS's decision to deny Pathways' proposal to establish the Pathways Alternative Charter Schools is not warranted at this time. The appeal is DENIED.

Dated: March 25, 2013