

**IN THE
ILLINOIS STATE CHARTER SCHOOL COMMISSION**

Elgin Charter School Initiative)	
)	
v.)	
)	No. 2015-01
Illinois School District U-46)	
)	

FINAL DECISION OF THE COMMISSION

On October 28, 2014, the Illinois State Charter School Commission (the “Commission”) voted to deny the charter school proposal that the Elgin Charter School Initiative (“ECSI”) initially submitted to Illinois School District U-46 (“the District”). ECSI sought to open the Elgin Math and Science Academy Charter School (“EMSA”). The Commission finds that although the proposal may be sufficient to meet the minimum legal requirements necessary to comply with the Charter Schools Law, 105 ILCS 5/27A, *et seq.*, establishment of EMSA, at this time, would not be in the best interest of the students that ECSI intends EMSA to serve.

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 (LEA), School District U-46, voted to deny ECSI’s charter school proposal on July 21, 2014. On Aug. 15, 2014, the applicant filed an appeal with the Commission. The appeal contained all the required components and was timely submitted. Thus, the EMSA appeal is properly before the Commission under 105 ILCS 5/27A-8(g).

II. Procedural Background

In late 2011, when the District became aware that ECSI was planning to file a charter school proposal, the District prepared a document entitled Guidelines for Charter School Proposals, which established a process for the review of any charter school applications submitted to the U-46 Board of Education. The Guidelines specifically provide for the appointment of a Charter School Evaluation Committee (CSEC), comprised of appropriate District staff members, and creation of a local rubric that the evaluation Committee proposed to use to evaluate proposals and determine whether they meet the educational and operational requirements of School District U-46.

The District gave these Guidelines to ECSI. ECSI elected to submit a proposal in response to the Guidelines and followed its requirements. However, the District’s Guidelines made clear that it sought only those applications intended to establish charter high schools for students who are at risk of dropping out, who have returned to school after having dropped out,

who have been identified as being chronically truant, or who have failed two or more courses. ECSI's proposal does not intend to serve this specific population. It instead seeks to serve District students in grades K-8. However, the District accepted ECSI's proposal and conducted a full review of the proposal within the statutory timeline. The District did not conduct an interview, but instead assembled a CSEC to evaluate the proposal. Following the team's evaluation, the District prepared a written report that summarized its concerns. The District also held two separate public hearings within the timeline. On July 21, 2014, the members of the Board of Education for the District voted 6 to 1 to deny the proposal to open EMSA Charter School. The District articulated seven (7) different reasons as the bases for its decision and properly notified ECSI, the Commission and ISBE of its decision.

On Aug. 15, 2014, ECSI filed an appeal with the Commission. The Commission retained a team of experts to analyze ECSI's proposal and appeal. Commission staff and the expert evaluation team conducted a capacity interview with representatives from ECSI's Design Team and the District on September 19, 2014. At the interview, both parties were asked and responded to questions about the proposal and the District's review and decision. Following the interview, the parties addressed various procedural matters by engaging in case management calls with the Executive Director. These calls took place throughout the processing of the appeal as needed to consult with the parties and address questions and concerns.

After the interview, the parties participated in a public hearing, which took place in Elgin, Illinois on September 30, 2014. Commissioners Greg Richmond, Bill Farmer and Rudy Valdez represented the Commission at the hearing. A total of 48 speakers made comments on the EMSA proposal at the public hearing. A review of the comments indicates that 26 of the speakers were in favor of opening EMSA and 22 were against it. Commission staff received additional comments on the proposal for a one-week period after the public hearing via electronic mail. In total, the Commission received 123 emails during this additional comment period. A review of the emails showed that 103 of those comments submitted were in favor of granting the appeal and 22 were against it.

Subsequent to the public hearing, ECSI submitted additional materials to the Commission in support of its appeal and in response to questions and/or issues raised as part of the appeal process. Those materials included:

- A City Council resolution and a conditional lease on a proposed facility
- A new Board Member with financial expertise
- An update regarding the hiring of a potential Acting Principal
- An update regarding outreach to the educationally disadvantaged
- Material substantiating comments at the District's public hearings

Commission staff performed an initial review of the supplemental materials submitted. Ultimately, it was determined that accepting the supplemental materials was proper but that certain of the materials would require further explanation or additional verification so that Commission staff, evaluators and Commissioners could properly assess the overall proposal. On October 10, 2014, on behalf of the Commission, staff requested this additional information. ECSI provided the information, which the staff and the evaluation team reviewed and weighed to

the extent possible given the time constraints posed by the statutory timeline for consideration of the appeal.

Having reviewed all the materials submitted by the parties and concluding the due diligence conducted by staff and the evaluation team, Commission staff prepared its recommendation to the Commission. On October 22, 2014, Commission staff met with the parties to this appeal and informed them that Commission staff would recommend that the appeal be denied. On October 28, 2014, the Commissioners met and voted on Commission staff's recommendation regarding the appeal. All eight (8) Commissioners who participated in the meeting and the discussion of the appeal at the public meeting voted to adopt the staff recommendation and to deny the appeal.¹

III. Findings of Fact

A. Overview of the EMSA Proposal

1. ECSI proposed to open EMSA as an elementary school serving 450 students in grades Kindergarten through eight (K-8). The school would open in August 2015 with 150 students in grades K-2 initially and would add students and grades each year until 2021-2022, when the school would reach its full capacity.
2. According to ECSI, EMSA would “provide a high quality education to a racially, ethnically and socioeconomically diverse student population through the rigorous, innovative Expeditionary Learning approach.”
3. EMSA submitted its proposal to Illinois School District U-46 seeking to serve students and families who reside in the District. School District U-46 serves 40,000 students in a 90 square mile area around Elgin, Illinois and 10 other communities, which makes it the second largest school district in Illinois. The District operates forty (40) elementary schools and three (3) high schools. The District currently does not offer any public charter schools.
4. ESCI expressed an intent to focus its recruiting efforts on enrolling students who reside in Elgin, Illinois. Elgin has 108,000 residents and the portion of the District's student population who reside in Elgin can be characterized as 76% Free and Reduced Lunch (FRL) and 70.3% Hispanic, 14.5% White, 8.1% Black, with smaller percentages of other populations.
5. The parties dispute the appropriate measures to be used to assess the district's academic performance. A review of Illinois State Report Cards shows that student performance has declined academically in District U-46 over the past several years.

¹ Commissioners voting affirmatively to deny the appeal included: Commissioners Farmer, (appearing telephonically), Guzman, Richmond, Robbins, Rudolph, Valdez, Williams, (appearing telephonically) and Zaldivar. Commissioner Jacoby was unable to participate in the October 28, 2014 meeting.

6. The original ECSI design team as described in its May proposal was comprised of twelve individuals from Elgin and the surrounding communities.
7. On appeal, ECSI expressed that its preference would be to locate EMSA at either the Rakow Center in a former alternative school building or the Fox River Country Day School, a former private school facility. Both facilities need repairs.
8. ECSI compiled significant evidence of community support for the establishment of EMSA. The team obtained 500 petition signatures, including 320 families with eligible students who have requested to pre-enroll. Many supporters attended the two public school board meetings in U-46 held in July regarding this proposal. The proposal included letters of support from State Senator Noland and State Representative Moeller, both of whom represent residents of the District.

B. The District's Reasons for Denial

9. Pursuant to its Guidelines for Charter School Proposals, the District assembled a CSEC comprised of various District staff members to review the EMSA Proposal. The team issued a Report Regarding the ECSI Proposal ("CSEC Report") on June 23, 2014 and presented it to the District's Board of Education.
10. The CSEC Report contained a recommendation that the District deny ECSI's application to open EMSA. It stated seven primary reasons for its recommendation:
 - a. The CSEC that ECSI failed to submit an acceptable facility to house EMSA.
 - i. It concluded that because the primary facility that ECSI selected to locate EMSA at the time of the original proposal, the Fox River Country Day School (FRCD), was located outside the physical boundaries of School District U-46, the charter proposal could not be submitted to the District.
 - ii. The CSEC believed that location at the second proposed site would necessitate conversion of an existing private/parochial school to a charter in violation of the Charter Schools Law.
 - iii. Finally, it determined that the third proposed site was too small to accommodate EMSA as ECSI planned.
 - b. The CSEC found that, due to its focus on Elgin students and "lack of a transportation plan," the proposal effectively created boundaries for non-Elgin students and did not comply with Section 27A-4(d) of the Charter School Law, which would require EMSA to enroll any student within the District.
 - c. The CSEC also pointed to ECSI's failure to respond to the educational need articulated in the Request for Proposals that the District issued. The Report notes that the District specifically identified its educational need as "serving students in grades 9 through 12 who have dropped out, or who are at risk of dropping out, or who are chronically truant." It indicated that ECSI neglected to address the identified need.

- d. The CSEC questioned the ECSI's commitment to serve at-risk students due to inconsistencies within the EMSA proposal. As evidence, the CSEC points to the ECSI's reliance on the District to provide bilingual and special education services, ECSI's transportation plan, certain materials that indicate EMSA is looking to attract students currently enrolled in private school or home schooled and the EMSA budget, which assumes the majority of students will be able to pay the proposed \$100 annual student fee.
 - e. The Committee also questioned the ECSI's planned implementation of the Expeditionary Learning curriculum. It raised various concerns about the plan to conduct only two expeditions per year, and argued ECSI failed to provide sufficient science and lab spaces which given the importance of the activity to the overall instructional model raised questions about the group's capacity to implement its vision fully.
 - f. The Committee also highlighted as a separate basis for denial, the lack of science laboratories in the facilities ECSI identified and the plan to teach science without a laboratory for two years, given the fact that the EMSA proposal focused so heavily on providing science instruction.
 - g. The CSEC raised several concerns regarding ECSI's budget and concluded that it did not meet the Charter Law's requirement that evidence of economic soundness be presented. Overall, the CSEC concluded that the EMSA budget was too optimistic and could result in a single year deficit in an amount over \$1 million. Therefore, it concluded that the budget proposal is not fiscally sound. As evidence, the CSEC indicates that: (1) the per capita tuition charge cost ECSI utilizes in its budget is significantly higher than the actual instructional per pupil cost for the general education students in the grades EMSA would serve; (2) ECSI miscalculated the amount it would receive for transportation reimbursements; (3) ECSI neglected to allocate funds to pay for bilingual or special education programs; (4) ECSI underestimated the amount of money it would need for pension fund contributions; (5) miscalculated the amount of money it would receive in state categorical funds and (6) relied too heavily on the proposed receipt of a \$250,000 federal grant.
11. On June 23, 2014, the CSEC presented its report to the Board of Education for the District. At the meeting, the Board also received public comments and other information regarding the EMSA proposal. A representative from Expeditionary Learning, along with the ECSI design team made a presentation. Several board members asked questions and the CSEC presented its recommendation that the proposal be denied by the Board.
12. On July 21, 2014, the Board of Education voted to approve the CSEC recommendation to deny the EMSA charter school proposal. Six members of the Board voted to deny the proposal and one Board member voted to approve it.
13. The District published a formal Resolution dated July 21, 2014 stating that the Board of Education denied the proposal to open EMSA and setting forth its reasons for the denial.

The reasons essentially mirror those identified in the CSEC Report. (See July 21, 2014 Resolution at 2-8).

C. Commission Staff Findings On Appeal

14. The Commission delegated to staff the task of conducting an independent analysis of the proposal with the assistance of a team of independent, expert evaluators. Along with the independent evaluators, staff reviews and assesses the proposal, as well as the District's response. The proposal is evaluated on the basis of four different criteria: the education plan, the business plan, the organizational plan, and the evidence of capacity. Based upon a review and analysis of the materials and information gathered during the appeal process, each criteria is given a rating on a scale from does not meet the standard, partially meets the standard, approaches the standard, to meets the standard.

The Education Plan

15. After performing their due diligence, the Commission staff and team of evaluators concluded that the EMSA Proposal's Education Plan *approaches the standard* for the following reasons.
16. The proposed curriculum at the center of the EMSA educational plan is Expeditionary Learning (EL). ECSI has developed a strong partnership with EL for curriculum development, professional development, and leadership coaching. EL is a well-respected developer of curriculum and professional development. Research on schools that have implemented EL appears to demonstrate that these schools have good results in different areas of the United States. The curriculum presents a constructivist approach to education, with a heavy emphasis on math and science, and hands-on learning technique. This approach is one that members of the public testified would be of great interest to them and their children.
17. The EMSA plan for student assessments would need additional development before implementation because the proposal lists a number of different assessments the team considered using but it lacked details and specificity as to what support students would receive for remediation, how grade level promotion would be determined and how teachers would be trained to administer the various assessments and use the data to inform instruction.
18. Although the ECSI proposal sought to serve at-risk students, the proposal contained inconsistent evidence that ECSI would be prepared to serve these students adequately, as the original proposal to the District relied on ECSI's ability to retain support for English Language Learners and special education students from the District or from educational staff that the ECSI team has not yet been identified.
19. The EMSA proposal stated that it expected to serve approximately the same percentage of special needs students as the District (12%), but a review of the educational plan suggested that ECSI was not prepared to provide special needs students with the resources that would be necessary to support them and ensure compliance with applicable

laws and regulations. Similarly, the EMSA proposal did not appear to contain sufficient instructional and support services for ELL students. During the appeal process, ECSI acknowledged that in order to provide a quality education to special needs and ELL students as a Commission-authorized school that would become its own LEA, EMSA would need a more comprehensive and detailed plan for supporting these students and a greater level of resources dedicated to them.

20. After the interview and public hearing, the ECSI team began to develop plans to assume the responsibility of special education and ELL compliance as an LEA. ECSI thereafter supplemented its application on or about October 17, 2014 to provide evidence that it had retained a consultant with special education expertise. ECSI also completed an Initial Application to the State Board for approval of its LEA special education services as evidence of its plan to support special education students. Although the additions offered by ECSI with regard to its plan for serving special needs students provides evidence of team's capacity to adjust and identify resources, questions remain about the team's ability to serve a significant special needs student population. In addition, even after the supplements the ECSI team made to the proposal, the proposal still lacked detail with regard to its plan to serve ELL students.

The Business Plan

21. Upon completion of their due diligence with regard to the EMSA Proposal's Business Plan, the Commission staff and team of evaluators found that the Business Plan only *partially meets the standard* based upon the reasons set forth below.
22. In many respects, the EMSA budget is well-constructed and assumptions are well-documented. For the most part, the budget uses realistic assumptions for both revenue and expenses.
23. However, the ECSI proposed budget relies heavily on very small rental payments and repair costs, which is an atypical scenario for charter schools facilities. In addition, questions were raised regarding the overall financial stability of the school due to the small surpluses that the proposed budget generates each year, and the fact that the organization generates little, if any, cash reserve and relies so heavily on the availability of funds from grants and other philanthropic sources.
24. The plan for making any necessary adjustments to the EMSA budget needs to be more concrete given the significant number of contingencies and the materiality of the contingencies that exist in the budget. The uncertainty around the plan for facilities costs, as well as the availability of reimbursements for special education costs, start-up funds and fundraising dollars, requires that ECSI have a comprehensive plan to adjust the budget in the event that a critical aspect of its budget forecast changes, yet no such comprehensive plan was evident.
25. At the time of the interview, ECSI had no Board member who could speak to the financial aspects of the EMSA proposal. On October 14, ECSI notified the Commission staff that a Board member with the requisite financial expertise had recently been added to the team.

26. At the interview with Commission staff and evaluators during the appeal, District personnel acknowledged that operation of EMSA, even if funded at 100% of the per capita tuition charge (PCTC), would not result in a financial hardship for the District.
27. The impact of the proposed charter school on enrollment in the District would be very small. With a proposed enrollment of a maximum of 450 students, EMSA would serve a small fraction of the 40,000 students who attend District schools.

The Organizational Plan

28. The Commission staff and team of evaluators, after reviewing and assessing the proposal, concluded that the EMSA Proposal's Organizational Plan *approaches the standard* for the reasons set forth below.
29. Although the ECSI Board members who have been identified to date all have valuable, valid and substantial experience, the governing board currently has no members with school administrator experience and lacks capacity to manage all the tasks necessary to open, manage and govern a \$3.5 million public organization. It also lacks the experience, expertise and a plan to hold its curriculum partner, EL, accountable for results.
30. The applicant was unable to identify an educational leader who would work with EMSA until the Commission's October 28, 2014 meeting. At the meeting, the team reported that it had hired an Acting Principal who would serve on only a part-time basis and address decisions such as building concerns, meeting with the Regional Office of Education, publicity, marketing, enrollment procedures, back office procedures, equipment needs and quotes, furniture and supply issues, insurance, and other operational issues. The Acting Principal would only be retained until a "national search" for the Founding Principal could be conducted and that person was hired. Yet ECSI provided no concrete plan or timeline for the national search.

The Evidence of Capacity

31. The Commission staff and team of evaluators conducted their due diligence and ultimately concluded that EMSA proposal only *partially meets the standard* with regard to evidence of capacity.
32. None of the ECSI Board members possess experience operating a school like EMSA. Therefore, the Board/Design Team has not manifested a demonstrable record of performance running schools or similar organizations, especially schools with a significant population of educationally disadvantaged students, like other schools in the District.

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. *See* 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. v. Ill. State Bd. of Educ.*, 358 Ill. Dec. 285 (App. Ct. 1st Dist. 2011).

Under the Charter Schools Law, the Commission gives preference to those 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” *See* 105 ILCS 5/27A-8(a).

B. Legal Compliance

As a threshold matter, the Commission addresses the District's objection to its decision to allow ECSI to supplement its proposal and provide additional information regarding its plans for EMSA that were not established at the time ECSI applied to the District. The Commission is not required to base its decision on appeal exclusively on the merits of the proposal that was submitted to the District. The Illinois Supreme Court has specifically held that in reviewing appeals from a district's denial of a charter school proposal, the decision need not be based on the District's evidence alone. Charter school proposals can be revised on appeal. *See Board of Education of Rich Township High School Dist. No. 227 v. ISBE* (2011) (“Once an appeal is filed, the ISBE may direct the parties to provide additional information.”) Applying the Charter Schools Law to ISBE's review on appeal, the Court held that “[t]he authority granted . . . makes clear that charter applications are subject to revision. . . . A mandate that a charter application revised with the assistance of the ISBE must return to the local school board for consideration before the ISBE can rule upon it would be contrary to the clear import of the Charter Schools Law”). *See also*, 23 Ill. Admin. Code § 650.100(e) (expressly permits the Commission to require submission of additional information upon a determination that such information is necessary to evaluate a proposal).

Additionally, like its predecessor ISBE, 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 Law. *See* 105 ILCS 5/27A-7.5. The Commission has adopted a *de novo* standard of review, which requires it to take a fresh look at proposals submitted by the parties. *See* 105 ILCS 5/27A-11(f). Thus it is appropriate for the Commission to consider new information as part of that *de novo* review. This is especially true for most proposals submitted to the Commission that are first presented to a local education agency (LEA) on the assumption that the charter school will be operating as a

public school within the district. On appeal to the Commission, the charter school applicant will need to modify its proposal to reflect the additional obligations the charter school would be required to meet as its own LEA, if authorized by the Commission. Therefore, the Commission properly allowed ECSI to submit additional materials at the time it filed its appeal and subsequently, at different points during the appeal process.

Based upon its review and analysis of the proposal, public hearing comments, the information presented by the parties on appeal and obtained by Commission staff, the Commission concludes that ECSI's proposal to establish EMSA, as revised during the appeal process, meets the minimum technical, legal requirements of the Law. *See* 105 ILCS 5/27A-7.

The District contends that the EMSA proposal does not comply with Section 27A-7(a) of the Charter Schools Law on a number of different grounds. 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 also relies on Section 27A-8 which requires the Commission to give a preference to those proposals that demonstrate evidence of certain elements. *See* 105 ILCS 5/27A-8(a). The Commission concludes that the various issues raised by the District as legal barriers to the establishment of EMSA are either unfounded or more appropriately framed as concerns with the quality of ECSI's proposal, its plan for implementation, and the governing board as currently composed and, therefore, its overall capacity to serve the students of the District as intended.

Consistent with its statutory mandate to encourage best practices in charter school authorizing, the Commission sets forth the following analysis of the primary legal arguments posed by the District on appeal and urges the District to utilize any guidance the analysis may offer in the review of its Guidelines and consideration of future charter applications.

1. Compliance with Section 27A-7(a)(3) – Identification of Potential School Buildings

First, the District argues that the EMSA proposal must be rejected because it fails to comply with Section 27A-7(a)(3), which requires the proposal include a "description of and address for the physical plant in which the charter school will be located. . ." The provision does not actually require that a proposal be denied because a school building has not been acquired or rented at the time the proposal is submitted. Instead, all that Section 27A-7(a)(3) requires is that "the proposal or submission 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." 105 ILCS 5/27A-7(a)(3). Although ECSI identified three different potential sites as part of its initial application to the District, the District found problems with each site. On appeal, ECSI identified a fourth site and executed a letter of intent to enter into a lease agreement with the City of Elgin to occupy the facility. The District noted its concerns regarding that facility for the record as well.

The Commission disagrees with the District's conclusion that the EMSA proposal does not comply with the § 27A-7(a)(3). ECSI has identified four separate facilities that are potentially available to house EMSA in 2015 and it provided a description and address for each.

- Fox River Country Day School. The District complains that FRCD sits on property that falls outside the official district boundaries.² However, the fact that one of the proposed facilities sits outside the proposed host district is not a basis to deny a charter school proposal. First, the Law does not require that a site actually sit in the district from which it intends to draw all of its students. The facility itself may be located outside the District, but students will be considered and counted as students enrolled in U-46 for various state administrative purposes. The District appears to rely on the language in the Law relating to open enrollment, 105 ILCS 5/27A-4, to suggest that ECSI must apply to the local school board that governs the geographic area where the proposed school is physically located. However, the Law contains no such requirement. *See* 105 ILCS 5/27A-7(b) (“The proposal shall be submitted to the local school board for consideration . . .”)

The District also contends that the facility would need significant repairs before it could be occupied and the costs would be substantially higher than the City of Elgin has estimated. The Commission determines that the required facility repairs and concerns about costs at FRCD are not issues that remove the site as a potential building under Section 27A-7(a)(3). While these issues contribute to the budgetary concerns mentioned below, they could arguably be cured or charter approval could be conditioned upon meeting certain requirements with regard to the facility. *See* Final Decision of the Commission Regarding the Appeal of Concept Schools Horizon Science Academy, No. 2013-07.

Additionally, ECSI has submitted three other sites that appear to qualify as potentially available. Therefore, the District’s argument that ECSI’s proposal must be rejected because FRCD is not a viable option is not supported by a fair reading of § 27A-7(a)(3).

- Highland Christian Academy. The District argues that because Highland Christian Academy is currently being used as a private religious school, locating there would necessarily require conversion to a charter, which is forbidden under the Charter Schools Law. However, the proposed co-location or location in the building does not amount to a conversion under 105 ILCS § 5/27A-4c. ECSI proposed to locate in the facility, but as a separate school. Charter schools commonly co-locate within the building of another school. In addition, as noted above, ECSI presents three other potential building sites.

² The District also argues that ECSI does not have a transportation plan sufficient to enable students to travel to school if EMSA is located at FRCD and on that basis, the facility could not be considered a viable site. However, 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). On appeal, ECSI presented a reasonable transportation plan that ensures the special needs students and low income and at-risk students can get to the school facility. Contrary to the District’s argument, the applicant is not required to provide transportation to the entire 90 square miles of the District or be found to limit enrollment in violation of the Charter Law.

Therefore, even if the Highland Christian Academy was not to be considered a viable option, that alone would not serve as a basis to deny the charter proposal.

- Good Shepherd. The District contends that the space at Good Shepherd is insufficient to serve as a long term space for EMSA and provides no capacity to provide science labs or have a separate cafeteria. However, the applicant does not present Good Shepherd as a permanent location for the school. Additionally, the Law does not require that a facility provide a science lab or separate cafeteria space. Therefore, the identification of Good Shepherd as a temporary location does not violate the Law and is not a basis for denial of the proposal.
- Rakow Center. On appeal, ECSI identified a fourth site to house EMSA. The property, located at 515 Sports Way in Elgin, Illinois is known as the Rakow Center. In October, ECSI negotiated a Letter of Intent and Lease with the City of Elgin for the Rakow Center. ECSI secured the right to enter into a one year lease, renewable for an additional four years, subject to certain conditions.³ The facility is a single building, large enough to house the EMSA’s planned enrollment of 450 students in grades K-8. It was most recently occupied by operators of an alternative school, which closed in the summer of 2014. The City of Elgin City Council passed a resolution enabling ECSI to lease the property and to submit documentation of its intent to lease to the Commission.

The District objected to the Commission’s decision to accept ECSI’s submission of information about the Rakow Center to supplement its charter school proposal. However, Illinois law and the Commission’s own precedent allow it to accept supplemental material from applicants on appeal. The District has also raised concerns regarding whether ECSI would be able to perform the repairs to the building necessary to ensure that it is ADA accessible and compliant with applicable law before the start of school in 2015 and whether ECSI’s governing board would have the expertise to ensure the necessary work was performed. As noted below, while they do contribute to the Commission’s concerns regarding EMSA’s proposed budget, because the facilities’ issues relating to the Rakow Center and FRCD can be cured or resolved as conditions to the grant of a charter application, these concerns about facility repairs and costs do not amount to legal noncompliance under Section 27A-7(a)(3).

2. *Compliance with Section 27A-7(a)(9) – Economic Soundness*

Next, in a written statement provided to the Commission at its October 28, 2014 hearing, the District asserted that EMSA would not be economically sound for either School District U-46 or the proposed school. 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.

³ Those conditions include: approval from the State of Illinois and the formal termination of the prior lease held by the school operator.

The District's analysis and argument focuses on the flaws in the EMSA budget. During the appeal, the District did not provide any evidence to support a claim that the proposed charter school would be not be economically sound for the District. To the contrary, at the interview, District representatives acknowledged that the proposed charter school, even if funded at 100% per capita tuition charge (PCTC), EMSA would not cause a financial hardship for the District. Although the Commission finds that there are significant issues overall with the EMSA budget and the financial sustainability of the proposed charter school (see Section IV.C. Best Interests Analysis), it concludes that the concerns raised about EMSA's budget and finances do not amount to legal noncompliance with Section 27A-7(a)(9), specifically as it relates to the economic soundness of the proposed school.

First, the EMSA budget is well-constructed and the assumptions ECSI relies upon are well-documented. For the most part, ECSI uses realistic assumptions for both revenue and expenses, and if the assumptions hold true, EMSA would be able to maintain a balanced budget throughout the term of its charter.

Second, notwithstanding the District's focus on EMSA's budget rather than any potential impact on the District's financial condition, the Commission conducted a separate financial impact analysis with regard to the District. The Commission determined that the operation of EMSA, if funded at a per pupil amount equal to 100% of the District's PCTC rate, would not materially impact the District's overall budget or financial solvency of the District. The District argues that EMSA would not be entitled to the full PCTC rate proposed given the grades that EMSA would serve. If true, that means the financial impact on the District would be even less. Moreover, the impact of the charter school on the District, in terms of enrollment, would also be very small. Accordingly, the Commission cannot conclude that the EMSA proposal would cause the District to suffer economic hardship in violation of Section 27A-7(9).

3. Preferences Under Section 27A-8(a) – Serving At-Risk Students and Evidence of Public Support

a. Serving At-Risk Students

The District asks the Commission to affirm its decision to deny ECSI's proposal based upon its conclusion that EMSA is not designed to enroll and serve a substantial number of at-risk children. Section 27A-8(a) of the Charter Law, upon which the District relies, does not require EMSA to enroll and educate a majority of at-risk children. Instead, the provision requires the Commission 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 District denied the EMSA proposal in part because it did not fit the specific criteria set forth in its Guidelines. The District determined that it would evaluate charter school proposals "based on their ability to serve at-risk populations." The District defined "at-risk populations" specifically as "including: Students in grades 9 through 12 who are at risk of dropping out, or who have returned to school after having dropped out; and/or Students in grades

9 through 12 who have been identified as being chronically truant, or who have failed two or more courses.” (CSEC Report at 7.) It excluded other categories of at-risk students defined in the Charter Law.⁴ However, the Charter Law does not require an authorizer to reject a proposal because it fails to serve a substantial number of at-risk students, either broadly or narrowly defined. Section 27A-8(a)(3) also states 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’s denial of the proposal on the basis of Section 27A-8(a) alone is not contemplated under the Charter Law. The Charter Law makes clear that an authorizer has a responsibility to solicit and evaluate charter applications and for “approving quality charter applications that meet identified educational needs and promote a diversity of educational choices.” The District identified a public charter high school that serves drop-out students as one educational need, but it likely has other educational needs as well.⁵ Therefore, the Commission concludes that the questions surrounding EMSA’s commitment to serve at-risk students are not a sufficient basis to find that the proposal violates the Charter Schools Law.

b. Evidence of Public Support

The District argues that the proposal lacks public support because the majority of signatures that ECSI collected in support of the school were from residents of Elgin, which is only one of many communities by the District. The Charter Schools Law does not require that a proposed school show that it can gather support from students throughout a particular school district. Instead, Section 27A-8(a) merely requires that the Commission prefer those proposals that demonstrate “a high level of local pupil, parental, community, business, and school personnel support.” A proposal that lacks this type of support is not deemed out of compliance with the Charter Law. Accordingly, the evidence that ECSI collected and presented is sufficient.

4. *Compliance with Section 27A-7(a)(10) – Governance and Operation*

The District contends that the proposal lacks sufficient information regarding the governance and operation of the school to meet the requirements of this section. All that the Charter Schools Law requires is that the proposal contain a description of the “governance and operation of the charter school, including the nature and extent of the parental, professional educator, and community involvement in the governance and operation of the charter school.” 105 ILCS 5/27A-7(a)(10). The EMSA meets this requirement as it describes the proposed governing board, identifies the current board members that have been recruited and offers a general description of how the school will be governed and operated. Although not all school

⁴ “At-risk pupil” is defined as a student “who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional environment.” 105 ILCS 5/27A-3.

⁵ In addition, the Charter Law specifically precludes an authorizer from imposing regulations that are inconsistent with the spirit and intent of the Charter Law. *See* 105 ILCS 5/27A-7.10(a) and (c) (“Regulation by authorizers is limited to the powers and duties set forth in subsection (a) of this Section and must be consistent with the spirit and intent of this Article.”)

leaders and other personnel have not been hired, the Charter Schools Law does not require that those persons be identified at this stage. Additionally, on appeal, ECSI supplemented its proposal to include two additional board members (one on October 14 and another at the October 28, 2014 Commission meeting), and more information regarding the school leadership. While these are arguably late submissions of information, they still do not amount to a legal basis to conclude that the proposal does not comply with Section 27A-7(a)(10).

V. Best Interests Analysis

Although the Commission has determined that the EMSA proposal meets the technical, legal requirements of the Charter Schools Law, on balance, the Commission finds that the EMSA proposal, as supplemented with the additional materials submitted during the appeal process, demonstrated that ECSI is not prepared to open a public charter school in August 2015 that is in the best interest of the students EMSA is intended to serve. Therefore, the Commission cannot reverse the District's decision to deny the proposal to establish EMSA. *See* 105 ILCS 5/7A-8(h)(ii).

As noted above, the Commission asked staff to conduct an independent analysis of the proposal. With the assistance of an independent evaluation team, staff evaluated the proposal and the District's response with regard to four different criteria: the education plan, the business plan, the organizational plan, and the evidence of capacity. The evaluators rated each criteria based upon the cumulative due diligence 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 the EMSA proposal and all the information collected during due diligence, the Commission staff concluded the following:

- **The education plan approaches the standard.** The Expeditionary Learning program provides a solid curriculum, but the proposal lacks clarity regarding how EMSA will utilize the EL curriculum to deliver instruction to educationally disadvantaged students, and the proposal is ambiguous regarding the assessments to be used to see if the EL curriculum is working.
- **The business plan only partially meets the standard.** The budget is based on overly ambitious fundraising goals and is not conservative in terms of cash on hand and other measures. Further, this precarious budget only works if the proposed leasing arrangements for facilities and low-cost facility repairs become reality. Finally, on appeal, ECSI requests an unprecedented 113% PCTC, due to its expected status as an LEA.
- **The organizational plan approaches the standard.** The ECSI team has garnered significant community support, and enough families to fill available seats in the first year (150). Also, the proposed Board consists of four dedicated members. However even these four talented individuals were unable to demonstrate that they possess the collective experience necessary to open a new charter school successfully and govern a multi-million dollar operation.
- **The evidence of capacity only partially meets the standard.** The proposed Board of Directors and Design Team, while committed to continuous progress, have not manifested a "track record" of delivering high academic, organizational, financial

performance in schools or school-like settings, especially for educationally disadvantaged students who are likely to be a significant portion EMSA student population. Because the team is comprised of first time charter school applicants and included no individuals experienced in educational administration, Commission staff was unable to gather evidence of the team's performance in creating and/or leading other schools.

Ultimately, after evaluating and weighing the information gathered throughout the appeal process, the Commission staff determined that granting the EMSA proposal at this time would not be in the best interest of the students it was intended to serve and recommended that the Commissioners deny the appeal. The Commission agrees with Commission staff that, notwithstanding the strengths found in the EMSA proposal and the substantiated need in District U-46 for more quality educational options, allowing ECSI to open EMSA at this time would not be in the best interest of students in the District. The Commission bases its decision primarily on its concern that ECSI has not yet developed a budget and financial plan that is founded upon reliable revenue sources and that will be sustainable over time and is sufficient to support the proposed program and student population that EMSA will serve.

First, although the very dedicated design team and governing board members have spent a number of years planning to date, the Commission concludes that the team still needs additional time to develop a comprehensive budget that is more realistic with respect to expected revenue from grant sources, PCTC (allocation of 113% is unprecedented) and categorical fund reimbursements and expenditures. As it currently stands, the budget relies too heavily on acquiring large federal grants and other philanthropic dollars from unknown sources, which are very difficult to obtain. The budget also depends substantially on ECSI's ability to (1) maintain below-average facilities costs and the hard to replicate leasing deals it has secured, (2) collect categorical aid fund reimbursements that were projected at flawed rates, and (3) obtain general aid dollars from Springfield at an unprecedented PCTC rate. Although the overall budget generates a small annual surplus, if you accept all of ECSI's assumptions, it is clear that a single misstep or failed contingency could threaten EMSA's financial condition. Therefore, the proposed school's financial plan would benefit greatly from further development.

Second, accepting that ECSI's commitment to serve at-risk and educationally disadvantaged students, as well as other students in the community, is genuine, the Commission concludes that ECSI needs additional time to develop a budget that better reflects the resources that will be necessary to provide all students who may enroll at EMSA with the academic support they will need. The current proposal, as supplemented by ECSI on appeal, begins to address the various needs that special needs, economically disadvantaged and English Language Learner (ELL) students who enroll in EMSA will likely have. The budget should contain evidence that the team has an educational, business and organizational plan in place that is capable of serving those students. However, to date, the EMSA proposal lacks a comprehensive approach to delivering instruction and support to ELL students and the proposed budget fails to identify sufficient resources that will be necessary to implement such an approach. Further, the evidence of ECSI's increased capacity to support special needs students, while encouraging, does not allow a definitive conclusion to be drawn. Although ECSI recently indicated its intention to conduct a national search for a permanent educational leader, without a more concrete plan for educational leadership nor an instructional staff or Board members in place with the expertise or

experience sufficient to explain how the team will address these concerns, the Commission must deny the appeal at this time. The students of the District will be better served if ECSI takes additional time to strengthen its proposal and ensure that it has the means to provide the high quality educational program it is planning to all students who enroll at EMSA.

For these reasons, the Commission agrees with Commission staff that establishment of EMSA at this time would not be in the best interests of the students ECSI intends to serve. As indicated at the October 28, 2014 hearing, the Commission encourages the design team to continue its ongoing commitment to establishment of an alternative option in the community and to improvement of its proposal.

VI. Conclusion

On the basis of the information presented to the Commission, the Commission concludes that reversal of the District's decision to deny ECSI's proposal to establish the Elgin Math and Science Academy Charter School is not warranted at this time. The appeal is DENIED.

Dated: November 6, 2014