

School District U-46
Elgin, Illinois

June 13, 2017

The Special Meeting of the Board of Education was called to order at 7:02 p.m. at the Educational Services Center, 355 East Chicago Street, Elgin, Illinois. The following Board Members answered roll call: Phil Costello, Sue Kerr, Veronica Noland, Melissa Owens, Jeanette Ward, and Donna Smith.

Also in attendance were: Chief Executive Officer Tony Sanders and Chief Legal Officer Miguel Rodriguez. The following administrators were also present: Dr. Suzanne Johnson, Dr. Jeff King, Dr. Ushma Shah, Mary Fergus, Brian Lindholm, Luis Rodriguez, and Leatrice Satterwhite. Also present were: media representatives Janelle Walker of the Courier and Seth Hancock of the Examiner, as well as other administrators, guests, and visitors. Mrs. Smith led the recitation of the Pledge of Allegiance.

President Smith requested a motion to allow Mrs. O'Neal Ellis to participate in the Special Meeting of June 13, 2017 via telephone due to personal illness. The motion was made by Ms. Noland, second by Mrs. Ward, to allow Mrs. O'Neal Ellis to participate by phone. Upon roll call, yes votes: Mr. Costello, Ms. Kerr, Ms. Noland, Ms. Owens, Mrs. Ward, and Mrs. Smith. No votes: 0. The motion carried by a vote of 6-0. Mrs. O'Neal Ellis did not participate in the June 13, 2017 meeting.

1. Comments from the Audience

Kerry Kelly, the President of the EMSA Charter School, spoke in support of the EMSA Charter School proposal. Ms. Kelly reviewed the changes to the proposed contract regarding special education. Ms. Kelly stated that in the end EMSA is proposing that they will be responsible for all special education services and they will set up the special fund for extraordinary expenses and litigation. Ms. Kelly also stated that EMSA is requesting some flexibility on the facility timeline in the event EMSA does not want to use the Fox River Country Day School facility. Ms. Kelly stated that EMSA is working on getting the Board a new budget; they are waiting on some special education numbers and their treasurer to return from vacation. Ms. Kelly stated that EMSA would have a copy of their proposed outreach program to the Board tomorrow.

Larry Bury Spoke about his concerns with the proposed EMSA Charter School. Mr. Bury questioned why the Board is having this special meeting when EMSA has been asked repeatedly to submit a revised budget and has still not done so. Mr. Bury feels that EMSA has been less than forthcoming with critical information. Mr. Bury feels that the failure of EMSA to provide a revised budget is enough of a reason to terminate the negotiation process.

Karen McGuire spoke in support of the proposed EMSA Charter School. Ms. McGuire asked the Board if they had visited the proposed property. Ms. McGuire stated that the property is fantastic and they should all visit it. Ms. McGuire also feels that the special

education portion of this proposal should be fully funded by U-46. Ms. McGuire asked how the District currently teaches science and if the District has science labs. Ms. McGuire supports EMSA wholeheartedly.

2. Work Session

Motion by Mrs. Ward, second by Ms. Noland, to allow Ms. Kelly to answer questions from the Board regarding the Elgin Charter School Initiative EMSA Charter School agreement. Upon roll call, yes votes: Mr. Costello, Ms. Kerr, Ms. Noland, Ms. Owens, Mrs. Ward, and Mrs. Smith. No votes: 0. The motion carried by a vote of 6-0.

A. Elgin Charter School Initiative Elgin Math and Science Academy (EMSA) Charter School Agreement

The Board of Education discussed the Elgin Charter School Initiative's EMSA proposed Charter School Agreement and gave further direction to administration regarding the proposed agreement. Administrative presenters were Tony Sanders, Chief Executive Officer, Miguel Rodriguez, Chief Legal Officer, Dr. Leatrice Satterwhite, Director of Specialized Student Services, Brian Lindholm, Professional Development and Project Manager, and Luis Rodriguez, Staff Attorney. Mr. Sanders stated that on May 22, 2017, the Board gave feedback to administration on the proposal and administration crafted a draft contract and presented it to EMSA. Further discussion was necessary because EMSA did not agree with the proposed contract. Since that time EMSA has submitted two memos regarding their concerns and proposed changes. Administration drafted additional changes to the proposed contract that was presented to EMSA. The purpose of this meeting was for the Board to provide feedback on the proposed contract.

Chief Legal Officer (CLO) Rodriguez reviewed the questions raised by the Board regarding the current information submitted by EMSA. The questions include:

Student Discipline. Ms. Kerr raised a concern regarding the Student Code of Conduct and if EMSA will follow the District's procedures including progressive discipline.

Building. Ms. Kerr raised a concern regarding a reasonable time to obtain a construction permit for a building to open in August 2018.

CLO Rodriguez responded that after some research it was determined that obtaining a construction permit in 2017 is not unreasonable.

Additionally, Ms. Kerr raised a concern regarding the facility and whether EMSA should be allowed to change the location of the facility before school opens.

Administration agrees that the proposed location should be designated not less than 120 days prior to school opening. Mr. Lindholm added this amount of time would be needed to allow for transportation arrangements for student relocation.

Data System. Ms. Kerr suggested that language regarding the data system needs to be specific.

Funding. Ms. Kerr believes the special education reserve fund should be at least partially funded as soon as the school opens, including a contingency that in the event the special education fund and the reserve fund are depleted the two parties would agree to increase the reserve fund the following year.

Administration has provided for a reserve fund in the most current proposed contract that is under discussion. The amount of the fund is yet to be determined. The current proposed contract also provides for an annual audit of the funds.

Site Visits. Ms. Kerr stated that the contract should include a minimum number of site visits per year.

Administration will work with EMSA to determine the number of site visits.

Specialized Services Personnel. Ms. Kerr is not in agreement with paying 100% of the nurse and social worker salaries from the special education fund.

Dr. Satterwhite responded that the reimbursement from the state is minimal since nurses and social workers serve both general education and special education students. Mr. Sanders suggested this contract language should be updated to reflect this expense.

Related Service Providers. The concern raised here is whether EMSA will be providing its own special education services and will only use district staff if needed. Additionally, how will the District be reimbursed for staff participating in an IEP meeting.

CLO Rodriguez responded that it is the mutual understanding that EMSA proposes to provide its own special education services. If the District is asked for assistance in providing services, the District will seek reimbursement for said services.

Additional Resources. Ms. Kerr would like this section of the contract to be revised to state that the District will be reimbursed for PCTC (Per Capita Tuition Charge) and state/federal categoricals.

CLO Rodriguez stated that the Administration is in agreement.

School Based Allocations for Federal or State Categorical Aid Funds. Ms. Owens stated that this section does not include a clear specification that categorical payments are contingent upon the state making payments.

CLO Rodriguez stated that this language can be strengthened to address this concern.

At-Risk Students. Ms. Owens would like the percentage of at-risk students at EMSA to be included in the Accountability Plan.

Mr. Lindholm stated that in the latest version of the contract the Accountability Plan does include for that information to be provided to the District.

Revised Budget. Ms. Owens would like to see the updated budget and asked for a timeline on when to expect that budget.

CLO Rodriguez stated that after a conversation with Ms. Kelly, she stated that an updated budget should be submitted to the District by June 18, prior to the next Board meeting.

GSA/Categorical Reimbursement. Mrs. Smith asked in what section of the contract does the language specify how the District will be protected if GSA is prorated or if categoricals are not reimbursed.

Mr. Sanders stated that GSA is reflected in the per-capita tuition reimbursement from the state.

After review of the Board's questions, CLO Rodriguez referred to the memo from Ms. Kelly, dated June 13, 2017 addressing the Board's previous concerns. They are as follows.

Recruitment and Enrollment. EMSA would like the phrase "and maintain" removed from this section and move that language to the Accountability Plan. The proposed clause sets up EMSA for a potential breach of contract if they do not maintain a 60% at-risk population.

CLO Rodriguez stated that Administration respectfully disagrees. Language has been added stating that if the at-risk student population falls below 50%, EMSA will amend the student recruitment plan to address the deficiency. Therefore, this would not become a breach of contract. Mrs. Ward stated that the language does address a potential drop in population, however, it states that EMSA needs to maintain at least 60% enrollment. CLO Rodriguez agreed and further stated that the language allows for EMSA to amend their student recruitment plan to address the deficiency, and therefore, does not become a material breach. Mrs. Ward and Mr. Costello would like the clause "and maintain" removed. Ms. Kerr would like it to remain. Mrs. Smith believes this section refers only to the recruitment plan not the actual enrollment. Therefore, she believes the clause should remain. Ms. Owens believes the clause should remain as it refers back to the original EMSA proposal. Ms. Owens suggested revising the language to read "work to maintain" as stated in the previous sentence. The Board was in agreement with this change.

Student Discipline. The District insisted that EMSA adopt a Student Code of Conduct.

In response, EMSA is willing to adopt the District's fundamental approach to discipline as reflected in the requested language. "The Charter School will adopt a student discipline policy that substantially incorporates the following District policies: 1) the District's process for student expulsions and alternative placements; 2) the prohibition of punitive measures; 3) the acknowledgement that IEP requirements be considered when assessing the appropriateness of discipline and that IEP requirements must continue to be met while a student is in discipline. The District's Student Code of Conduct will be the Charter School's Code of Conduct if the Charter School does not implement its own and provide written notice and a copy of the policy to the District."

CLO Rodriguez stated that for the first year EMSA should adopt the District's Student Code of Conduct. CLO Rodriguez added that the IEP requirements need to be followed—not just considered. Also, it should first be determined whether the misconduct of the student is directly related to the student's disability. Mr. Sanders clarified that the District would like EMSA to follow the District's Code of Conduct for the first year, however; after that, they are not prohibited from adopting their own code of conduct.

Mrs. Ward stated that EMSA should not be required to adopt the District's Student Code of Conduct since they stated that they will be complying with the District's policies. Mr. Sanders stated that the concern is with the timeline to put a plan in place. Mr. Sanders suggested that the Board should review a student code of conduct developed by EMSA.

In response, Ms. Kelly stated that EMSA is currently reviewing codes of conduct from other EL charter schools. These codes will be used as a basis, along with the U-46 Student Code of Conduct, for the development of a student code of conduct for EMSA. Mrs. Ward asked if a student code of conduct could be adopted prior to hiring a principal. Ms. Kelly stated that the principal would be a big part of the development; therefore, a code of conduct would not be adopted prior to hiring a principal. Ms. Kelly stated that a proposed code of conduct could be submitted pending review by a new principal. Ms. Noland suggested amending the contract language so that it would put in place the District's Student Code of Conduct, if EMSA does not adopt a student code of conduct by a specified date. Mr. Luis Rodriguez pointed out that the current proposed contract language provides for a default if EMSA does not adopt a code of conduct in time for the opening of school.

Ms. Owens would support EMSA using the District's Student Code of Conduct which is extensive and vetted. Ms. Owens added that either the District is the Local Education Agency (LEA) or it is not. EMSA will be operating as a District

charter school therefore using the District's Code of Conduct would be appropriate. Mr. Costello feels that EMSA needs to maintain control and autonomy within reason and be allowed to develop its own code of conduct. Ms. Kerr would support EMSA using the District's Code of Conduct at least for the first year. Mrs. Smith stated that she would want to see a code of conduct prior to approving the contract. Mrs. Smith added that the bottom line is that the District will be responsible. Mr. Sanders restated that EMSA would still be allowed to develop a code of conduct; however, until one can be developed the District's Code of Conduct should be in place.

In response to a question from Mrs. Smith, Ms. Kelly stated that EMSA could only provide a sample code of conduct. A code of conduct for EMSA could not be adopted until a principal was in place with input from parents.

Conflict of Interest. CLO Rodriguez stated that EMSA is requesting this new paragraph be removed from the proposed contract. Ms. Kelly stated that EMSA has its own conflict of interest policy which it will be proposing. Ms. Kelly believes having this language in the contract is not necessary and implies an extra layer of control by the District. CLO Rodriguez stated that this section is significant and needs to remain.

Special Education Transportation Expenses. CLO Rodriguez stated that EMSA has requested the language in this section be updated. CLO Rodriguez acknowledged that EMSA is right and the language needs to be updated.

Maintenance of Corporate Status and Good Standing. EMSA has requested this provision be removed. CLO Rodriguez stated this is standard language in any agreement. EMSA has to follow its bylaws. Ms. Kelly stated that this is required by law and therefore does not need to be restated in the contract.

Building. EMSA needs to have the ability to go to an alternative site if the Fox River Country Day School (FRCDS) property becomes unavailable. EMSA is requesting their language proposed in a memo dated June 2 be incorporated including notification of a location change timeline to 60 days rather than the District's initial timeline of 120 days. CLO Rodriguez stated that a 120 day timeline would allow for adequate time to establish the feasibility of an alternate location including lease agreements and student transportation. Dr. King provided additional information regarding the potential use of Wayne Elementary which would include a negotiated lease agreement with EMSA. EMSA would also need to install their own phone and data system. Dr. King strongly believes 60 days is too short of a timeline to accomplish the occupancy of Wayne Elementary. Dr. King also spoke to the potential use of the Rakow building and believes there would need to be remodeling of the interior to accommodate 20-student classrooms. Ms. Kerr raised a concern regarding the use of FRCDS versus Wayne Elementary because of the location and distance between each facility. Mr. Costello believes that the 120 day timeline is not unreasonable.

Withholding of Funds. EMSA is requesting a new provision that would clarify what is “reasonable” language. If the District’s delay in quarterly payments is reasonable then liability for special damages can be waived. CLO Rodriguez stated the suggested language is standard and that it is possible the District may not get the funding and therefore, EMSA would not be paid. Mr. Sanders restated the intent of the language which is what happens if the state does not pay the District. Essentially, the District then could not pay EMSA. Additionally, this language protects EMSA from vendors suing them for non-payment. Ms. Kelly clarified that this provision refers to reasonable delay beyond the District’s control—not unreasonable delay of payment.

Specialized Services. Serving students with special needs is important to EMSA and the District. EMSA has agreed to set aside 8.5% plus categoricals to pay for the cost of three special education related positions and establish a reserve fund to be funded equally by the District and EMSA. EMSA also asked that the District help if the costs for services exceed the reserve fund. CLO Rodriguez stated that the current contract language is in line with the EMSA statement. CLO Rodriguez specifically referred to section 9d that states that the parties will maintain a reserve fund to pay for costs related to extraordinary circumstances.

Ms. Kerr raised a concern that the reserve fund may not be enough to pay the costs of three special education positions and extraordinary costs. Ms. Kerr added that she believes the proposed language suggests that the District will pick up additional costs. Mr. Sanders added that initially EMSA proposed the three positions to be a teacher, a nurse and a social worker. However, the nurse and the social worker cannot be paid from special education funds.

CLO Rodriguez stated that although the proposed contract does not specifically name EMSA as the LEA by funding special education services at 100% would make them the LEA.

Ms. Owens asked if the District approves the contract does that make the District the LEA for the entire contract not just a portion of the services. Mr. Luis Rodriguez stated that his reference to LEA relates only to the special education services. Mr. Luis Rodriguez added that EMSA will essentially become the LEA receiving 100% of the special education funds. Ms. Owens and Mrs. Smith again raised the concern of what happens when the funds are exhausted and who would be responsible to provide the required services.

Ms. Noland asked for an explanation regarding funding of the nurse and social worker as it relates to this area. Mr. Sanders stated that the .5 school nurse and the social worker should not be considered special education; therefore, this portion of the contract should be revised. The nurse and the social worker will also be working with the general education population students.

Ms. Noland also asked about case law that would hold a school district liable whether they are the LEA or not. CLO Rodriguez gave an example involving the Charter School Commission when the Illinois Charter School Commission (“Commission”) approves a charter, the Commission does not become the LEA for the charter approved by the Commission and the same applies to the District. Mr. Luis Rodriguez added that he is not aware of any pending case law. He indicated that he would do more research on this question.

Ms. Ward asked EMSA what the rationale was for establishing a shared fund contributing \$100,000.00 and the 8.5% rather than the 91%. Ms. Kelly stated that the 91% required EMSA to have the three special education staff members which EMSA considered the 8.5%. The 8.5% would be easier for EMSA to also have the requested three staff members. Knowing the risks in the first years of operation is important to EMSA.

Mrs. Smith asked direction from the Board on this matter. Mrs. Smith believes that either way works—either the District is the LEA using the 91% or if they were to establish a shared fund the District should be sure they are not liable if EMSA does not have the funds. Mrs. Ward would like the 8.5% set-aside by EMSA, a shared fund and a provision that protects EMSA and the District would help if needed. Mrs. Smith raised a concern that if the services are required and EMSA does not have the money what happens if the District does not have funds either. Ms. Noland stated that the students’ needs must be met and believes the District and EMSA should be able to work out paying for those services. Mr. Costello believes there should be an upper limit—not so high that it would bankrupt EMSA but protect them in an event of an unforeseen need. Ms. Kerr stated that if EMSA is the LEA the contract needs to be clear that the District will not be held liable. Ms. Kerr added that she would prefer EMSA be the LEA and would like to see an updated budget. Ms. Owens stated she believes the only way to not overburden EMSA is for the District to control the special education services 100%. Ms. Owens added that she too, would like to see the updated EMSA budget before making an informed decision on this area. Ms. Noland would rather see the risk shared by both EMSA and the District.

CLO Rodriguez stated that the initial contract proposal to EMSA was for collaboration to ensure the students’ needs are met. CLO Rodriguez stated that a meeting is scheduled for Wednesday, June 14, 2017 to further discuss the proposed contract.

Mr. Sanders summarized:

Mrs. Smith: the District remains the LEA at 91% or EMSA becomes their own LEA.

Ms. Owens: 91% per capita and the District would be responsible for the special education services.

Ms. Noland: the District should be the LEA with cooperation from EMSA. Ms. Noland also needs to see the updated budget.

Ms. Kerr: to protect the District, EMSA should be their own LEA or if the District is the LEA then the Charter School should receive 91% PCTC.

Mrs. Ward: contingency with 8.5% as it is currently drafted.

Mr. Costello: the District should be the LEA, the District cannot afford to take on the risks and negotiate the PCTC.

Mrs. Ward also reviewed an example from the Cambridge Lakes Charter School agreement in District 300, where this language has worked. It was noted that the newly renewed charter school contract in this case was updated in this area to provide additional protection for the district. Ms. Kelly confirmed that District 300 remains the LEA for this charter school. Ms. Kelly added that Prairie Crossing Charter School in Grays Lake is its own LEA. Ms. Kelly stated that Prairie Crossing has not had extraordinary expenses that they have not been able to handle. District 300 provides most of the special education services except for the services provided by the three charter school employees.

In summary, the Board feels they need to see an updated budget to make an informed decision on this matter. EMSA needs to let the Board know what they believe will fit into their budget. Mrs. Ward asked when the Board will be voting on a contract.

Mrs. Smith stated that after discussion, the Board will review the contract at the next regular meeting on June 19, 2017 and plan to make a decision at a special meeting on June 26, 2017.

Educational Programs/Age, Grade Range. Ms. Owens raised a concern regarding EMSA expanding and whether they will need to get approval from the District first. CLO Rodriguez stated that the limit would be for the duration of the contract and would not go above 470 students. Mrs. Ward stated that the growth each year would not be compounded. CLO Rodriguez stated this is correct. It was agreed that the growth in numbers could be listed in a chart. Ms. Owens wants to make sure EMSA is prepared to budget for growth in enrollment.

3. **Comments from the Audience**

Michael Baier spoke about his concerns with the proposed EMSA Charter School proposal. Mr. Baier asked what is the definition of an at risk student; how does EMSA relate to any personal or professional relationships with the Board; what is the history of EMSA and how can he research it; and what is the benefit that EMSA provides to the District that the District cannot currently provide.

4. Adjournment

Motion by Mrs. Ward, second by Ms. Kerr, to adjourn the Special Board Meeting of June 13, 2017, at 10:02 p.m. Upon roll call, yes votes: Mr. Costello, Ms. Kerr, Ms. Noland, Ms. Owens, Mrs. Ward, and Mrs. Smith. No votes: 0. The motion carried by a vote of 6-0.

Approved this 21st day of August, 2017.



President



Secretary