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SUSAN G. GRIBBLE
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7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR CARSON CITY

9 NEVADA CONNECTIONS ACADEMY,

10 Plaintiff,

11 v.

12 STATE OF NEVADA, ex rel. STATE
13 PUBLIC CHARTER SCHOOL
14 AUTHORITY, a political subdivision of the
15 State of Nevada, and PATRICK GAVIN, in
his official capacity as Director of the State
Public Charter School Authority,

16 Defendants.

Case No. 16 OC 001941 B

Dept. No. I

17 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR**
18 **JUDICIAL REVIEW, AND PETITION FOR WRIT OF MANDATE/REVIEW**

19 Plaintiff Nevada Connections Academy (“NCA”), by and through its undersigned
20 counsel, Davis Graham & Stubbs LLP, hereby files this Complaint for Declaratory and
21 Injunctive Relief, Petition for Judicial Review, and Petition for Writ of Mandate or Writ of
22 Review (the “Petition”). In support thereof, Plaintiff states as follows:

23 **I. THE PARTIES**

- 24 1. Nevada Connections Academy (“NCA”) is a Nevada Charter School sponsored
25 by the State Public Charter School Authority, a political subdivision of the State of Nevada.
26 2. Defendant State of Nevada, ex rel. STATE PUBLIC CHARTER SCHOOL
27 AUTHORITY (the “Authority”) is a governmental entity created pursuant to NRS Chapter 388A
28

1 with jurisdiction to carry out its authority as set forth under NRS Chapter 388A relative to
2 Charter Schools it sponsors in Nevada.

3 3. Defendant Patrick Gavin (“Director”) is the Director of the State Public Charter
4 School Authority.

5 **II. JURISDICTION & VENUE**

6 4. This Court has jurisdiction to issue a writ of mandate pursuant to NRS 34.150 *et*
7 *seq.* to command the Authority to refrain from further proceeding to assert authority to force
8 NCA to amend its existing charter when the Authority has no legal basis to do so. Jurisdiction is
9 proper because the Authority and its Director have failed, and continue to fail, to perform its and
10 his legal duty to (a) act within their statutorily defined authority; (b) make determinations
11 consistent with applicable law; and, (c) render a decision based on substantial evidence rather
12 than subjective opinions and erroneous conclusions.

13 5. This Court has jurisdiction for purposes of declaratory relief pursuant to NRS
14 233B.110, NRS 30.030 and 30.040 to consider the validity of a regulation or applicability of a
15 regulation, when it is alleged that the regulation, or its proposed application, interferes with or
16 impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

17 6. This Court has jurisdiction of the Complaint pursuant to NRS § 30.040 because
18 NCA’s rights or other legal relations are affected by a statute, namely the Nevada Open Meeting
19 Law, and NCA seeks a declaration of its rights, status or other legal relations thereunder.

20 7. This Court has jurisdiction over the petition for writ of review because the
21 challenged decision was arbitrary and capricious.

22 8. Venue is proper in this Court pursuant to NRS 233B.110(1) and because the
23 administrative proceeding from which this appeal arises was conducted in Carson City which, as
24 the State Capital, is also the headquarters for the Authority.

25 **III. BACKGROUND**

26 9. NCA is a statewide charter school serving approximately 3,000 students across
27 the State of Nevada.

28 10. Earlier this year, with no notice by letter, phone call or otherwise, and with the

1 last received notice from the Authority stating that the school was in “good standing” the
2 Authority placed NCA on an agenda item for consideration of whether the Authority should
3 issue NCA a “notice of closure.”

4 11. Apparently based on the lack of notice and that NCA was not even advised why it
5 was included in the agenda item, prior to the meeting, the Authority took no action on the agenda
6 item at the first meeting.

7 12. When NCA was considered in a public meeting of the Authority for a possible
8 notice of closure, the Board voted and did not pass any motion to proceed with such closure.
9 Instead, the Authority recognized that the sole basis of concern was the 4-year cohort graduation
10 rate and directed that NCA should work with the Authority Staff on a graduation rate
11 improvement plan. The Authority seemed to acknowledge that the evidence relevant to the
12 “graduation rate” included that NCA’s graduation rate approached 80% when calculated based
13 upon students enrolled at NCA for all four years of high school and that NCA’s 4-year cohort
14 rate was being significant negatively impacted by students who come to the school credit
15 deficient and, therefore, cannot graduate “on track” and students who are highly mobile and,
16 therefore, count as “drop outs” even if they might be enrolled at another school but have not been
17 reported in the system or matched to their new school.

18 13. At the Authority’s request, NCA spent weeks working collaboratively with the
19 Authority Staff and their own team of experts to prepare what the Authority recognized to be a
20 very commendable graduation rate improvement plan. The Authority then requested
21 benchmarks to measure success and improvement as a result of NCA’s efforts.

22 14. NCA worked with the Authority staff to agree to benchmarks with the
23 understanding that the 4-year cohort graduation rate depends heavily not only on how the current
24 student’s school has performed but also how all of the student’s prior schools have performed,
25 and does not reflect, for example, when NCA has successfully re-engaged students who have
26 come to the school credit deficient, but instead is punitive to NCA for having accepted those
27 students which it is required to do under Nevada law.

28 15. After several weeks of discussions regarding the benchmarks, the Director

1 presented a recommendation to the Authority that the benchmarks NCA proposed be approved
2 but only if NCA agreed to enter into an identical contract as a different charter school, Beacon
3 Academy – a contract NCA had never been presented by the Authority Staff to consider.
4 Director Gavin and his counsel, Greg Ott, represented that such contract included a waiver of the
5 school’s statutory rights to judicial review on certain issues.

6 16. NCA objected to such a condition as it was ultra vires, in violation of law, and the
7 school had never even been presented the contract to review prior to the Director’s
8 recommendation.

9 17. One Authority Board Member suggested that NCA had requested a “charter
10 amendment” which would give the Authority the legal right to require NCA to convert from a
11 charter, under which it currently operates, to a contract.

12 18. NCA never requested any amendment to its Charter.

13 19. The agenda item under which the Authority voted to accept Staff’s
14 recommendation with the sole modification that the contract not be the “Beacon Contract” but
15 one based on mutually agreeable terms, made no mention of any amendment application or any
16 amendment to the School’s charter.

17 20. The Authority unlawfully mandated that the school convert from its charter to a
18 contract and, on August 26, 2016, insisted that the entirely rewritten charter to govern the
19 school’s operations, not just the benchmarks, be completed by September 19, 2016.

20 21. The August 26, 2016 agenda did not include any request for amendment of
21 NCA’s charter or action to require such an amendment. The Authority Board Chair stated they
22 would just be receiving an update and, therefore, denied NCA’s request to be heard on the
23 agenda item.

24 **IV. COMPLAINT FOR DECLARATORY RELIEF**

25 22. NCA realleges the allegations in Paragraphs 1 through 21 of this Complaint as
26 though fully set forth herein.

27 23. The Authority’s actions in an attempt to force NCA to convert its charter to a
28 contract claiming there was a request to amend the NCA’s charter was not on any agenda and

1 violates the Nevada Open Meeting Law, NRS §§ 241.010 *et seq.*

2 24. NRS § 241.020 applies to the Authority and requires that Authority meetings be
3 open to the public and be preceded by notice of any issues on which action may be taken.

4 25. The Authority's vote to require NCA to convert from a charter to a contract
5 violated the Nevada Open Meeting Law as no proper notice was given.

6 26. NRS § 241.036 provides that any action taken in violation of the Nevada Open
7 Meeting Law is void. Thus, the Authority's vote requiring NCA to convert its charter to a
8 contract is void for failing to have complied with the Nevada Open Meeting Law.

9 **V. PETITION FOR JUDICIAL REVIEW**

10 27. NCA realleges the allegations in Paragraphs 1 through 26 of this Complaint as
11 though fully set forth herein.

12 28. The Authority's July 29, 2016 decision is a final decision subject to judicial
13 review.

14 29. This Court is empowered to review decisions of the Authority to determine if they
15 are supported by substantial evidence and compliant with the law.

16 30. The Authority lacked substantial evidence and exceeded its statutory authority by
17 voting to force NCA to convert its Charter to a contract – which according to the Authority's
18 Counsel and Director are to be “similar in form” to a contract proposed to an entirely different
19 school, Beacon Academy.

20 31. This Court also may review Authority decisions to determine whether the
21 Authority complied with its own procedures or acted in violation of the law or exceeded its
22 statutory authority. When a reviewed decision does not comport with the decisional body's
23 procedures, exceeds the body's statutory authority or is otherwise in violation of the law, this
24 Court should reverse that decision.

25 32. Here the Authority had no legal basis to mandate NCA to convert its charter to a
26 contract.

27 33. The Authority's attempt to compel conversion of NCA's charter to a contract thus
28 cannot survive judicial review.

1 **VI. PETITION FOR WRIT OF MANDATE OR WRIT OF REVIEW**

2 34. NCA realleges the allegations in Paragraphs 1 through 33 of this Complaint as
3 though fully set forth herein.

4 35. In the event judicial review of the Authority’s attempt to compel NCA to convert
5 its charter to a contract is not available, then this Court must consider whether a writ of mandate,
6 or writ of review is appropriate.

7 36. This Court should issue a writ of mandate, prohibition or writ of review where
8 necessary to compel the performance of an act that the law requires, or to control an arbitrary or
9 capricious exercise of discretion.

10 37. A writ of mandate or writ of review is warranted for substantially the same
11 reasons set forth above. The Authority’s attempt to mandate NCA to convert its charter to a
12 contract, without NCA having requested any amendment to its charter and without any proper
13 notice as required under the open meeting law, was not supported by substantial evidence,
14 violated the open meeting law and was done without substantial evidence which renders its
15 decision arbitrary and capricious.

16 **VII. PRAYER FOR RELIEF**

17 Wherefore, NCA prays for judgment against the Authority and Director Gavin as
18 follows:

19 1. An injunction and/or declaratory order declaring the Authority’s attempt to act on
20 their July 29, 2016 motion to force NCA to convert its Charter to a Contract is void.

21 2. An order on judicial review setting aside the Authority’s July 29, 2016 action on
22 NCA requiring that it convert its charter to a contract.

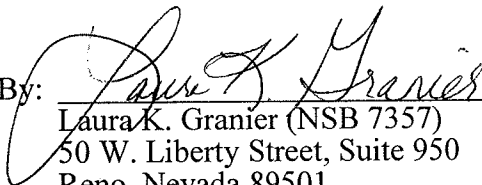
23 3. A writ of mandate or, in the alternative, a writ of review, directing the Authority
24 to proceed in a lawful manner and allow NCA to continue operations in accordance with Nevada
25 law under its existing charter and subject to the Authority’s continuing jurisdiction.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned affirms that the foregoing does not contain the personal information of any individual.

Respectfully submitted this 26th day of August, 2016.

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