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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

DAVID & CARLY HELD individually and
on behalf of their minor child N.H.;
VERONICA BERRY individually and on
behalf of her minor child J.B.; RED AND
SHEILA FLORES individually and on behalf
of their minor child C.F.; JAOUAD AND
NAIMI BENJELLOUN, individually and on
behalf of their minor children N.B.1, N.B.2,
and N.B.3; KIMBERLY AND CHARLES
KING individually and on behalf of their
minor children L.K.1 and L.K.2; NEVADA
CONNECTIONS ACADEMY,

Plaintiffs,

v.

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

Defendants.

Case No. 16 OC 00249 1B

Dept. No. I

**ERRATA TO PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING
ORDER/PRELIMINARY INJUNCTION**

Plaintiffs, by and through their undersigned counsel, Davis Graham & Stubbs LLP,
hereby submit this errata to their Motion for Temporary Restraining Order/Preliminary
Injunction ("Motion") filed November 2, 2016.

ERRATA

1
2 1. *Page 5, lines 21-22:* The Declaration of Beverly Cather was inadvertently
3 omitted; therefore, “Declarations of A. Castillo, D. Starrett, P. Carey and M. Nelson, **Exs. 9, 10,**
4 **11 and 12.**” should read “Declarations of A. Castillo, D. Starrett, P. Carey, M. Nelson, and B.
5 Cather, **Exs. 9, 10, 11, 12 and 30.**” The original Declaration of Ms. Cather is attached hereto as
6 Exhibit 30.

7
8 2. *Page 13, line 15:* “Ex. 20, Transcript of May 2016 SPSCA Meeting” should read
9 “Ex. 20, Transcript of May 2016 SPSCA Meeting at 234-235”. Please note that the transcript of
10 the May 20, 2016 SPCSA Meeting is available for viewing and downloading on the State Public
11 Charter School Authority’s website but is a secured document that cannot be copied or printed.

12 **Plaintiffs would request that Defendants provide the Court with a copy of the transcript.**

13 In the meantime, the transcript is viewable on the Authority’s website at

14 http://charterschools.nv.gov/News/Public_Notices/. The transcript at pages 234-235 reads as
15 follows:
16

17 MS. MACKEDON: I would just say, I think, you know, we said
18 that we wanted like an update and a plan, and they have provided that.
19 And I think now - - I mean maybe that wasn’t wise on our part when we
20 said it. Maybe we wouldn’t do that again if we had it to do over again.
21 But that’s what we did. They provided the plan. It’s foolish for us, in my
22 opinion, to sit and argue about all of this - - the little nuances and the
23 numbers and the timelines.

24 The law is the law. The rules are the rules. It’s their responsibility
25 to put forth the plan, which they did, and to get results on it. And it’s our
26 responsibility to make a decision when the results come out in a year or
27 six months or whenever it is they come out. And I don’t really thing [sic]
28 that there’s much else we can do but say, good work, we wish you luck.
We hope that you meet all the marks that are required to meet before we -
- you know, before we’re all in this situation again. I think that’s all there
is for us to do at this point.

29 3. *Page 21, lines 8-9:* “**Ex. 26**, Transcript of September 2016 Agency Hearing”
30 should read “**Ex. 26**, Transcript of September 2016 Agency Hearing at 42-43; *see also* **Ex. 31**”

1 (9/23/2016 Staff Memo, "For the graduating cohorts included in this section, judicial review of
2 any decision to reconstitute the governing board, or appoint a receiver under this section or NRS
3 388A.330(1)(3) shall be limited to a review of whether the school has or has not achieved the
4 annual graduation rate target.") Similar to Exhibit 20, the transcript of the September 23, 2016
5 SPCSA meeting is available on the Authority's website but is a secured document. **Plaintiffs**
6 **would request that Defendants provide the Court with a copy of the transcript.** In the
7 meantime, the transcript is viewable on the Authority's website at
8 [http://charterschools.nv.gov/News/Public Notices/](http://charterschools.nv.gov/News/Public_Notices/). The transcript at pages 42-43 reads as
9 follows:
10

11 MEMBER GUINASSO: I'd like to make two motions. The first
12 motion, in accordance with the staff's recommendation, I'd like to move
13 that we clarify that the language that's been summarized in the memo be
14 included as an essential term of any agreement that we would reach with
15 Nevada Connections.

14 CHAIR JOHNSON: Do we have a second?

15 VICE-CHAIR MACKEDON: Melissa Mackedon, second.

16 CHAIR JOHNSON: All in favor?

16 THE BOARD: Aye.

17 Attached hereto is Exhibit 31, which was inadvertently omitted.

18 4. *Page 26, lines 1-2*: "Ex. 26, September 2016 Agency hearing" should read "Ex.
19 26, September 2016 Agency hearing at 9-11". Again, because Plaintiffs were unable to print the
20 transcript, we direct the Court to the Authority's website at
21 [http://charterschools.nv.gov/News/Public Notices/](http://charterschools.nv.gov/News/Public_Notices/) and request that Defendants provide the
22 Court with a copy. The transcript at pages 9-11 reads as follows:
23

24 CHAIR JOHNSON: Thank you, Dr. Kotler.

25 MS. GRANIER: Good morning, Mr. Chair, Members of the
26 Board. For the record, Laura Granier on behalf of Nevada Connections
27 Academy. I'm speaking during public comment because I've been
28 informed by your Deputy Attorney General, Greg Ott, that I would not be
allowed and the Nevada Connections Academy would not be allowed to
speak during the agenda item today that involves Nevada Connections
Academy, notwithstanding that agenda item includes a possible action

1 related to a Notice of Revocation.

2 What we were told was unless we agreed to the terms mandated by
3 the Authority staff for a contract and reached a contract agreement, we
4 would not be allowed to speak. If, on the other hand, we would agree to
5 the primary term that we dispute, which is it is staff's position this Board
6 directed staff that the school had to waive fundamental constitutional
7 statutory rights to judicial review, if the school was not willing to do that,
8 we would not reach an agreement and we would not be allowed to speak
9 during the agenda item.

10 We do object to that restriction on our speech, especially in light of
11 Member Guinasso's comment at the last Board meeting, that it was his
12 understanding when we were not allowed to speak at that Board meeting it
13 was just an update, and if we didn't reach a contract and there was action
14 taken, we would be heard at this meeting. So we asked permission to be
15 heard during that agenda item. We believe that's fundamental good policy
16 and public process.

17 In the event we are not heard, I want to be very clear that the
18 primary reason we did not reach mutually agreeable terms, which is what
19 was in this Board's motion that the school and the staff reach mutually
20 agreeable terms, is because it was staff's position that this Authority
21 directed them that the term had to be included in the contract that waived
22 the school's rights to statutory review. This is a fundamental violation of
23 the school's constitutional rights. It is fundamental that reliance on courts
24 as the ultimate guardian and assurance of limits set on executive power is
25 established by the Constitution and the legislature. That is clearly the law
26 here, and the school has been placed in the position of facing a threatened
27 closure notice or waiving its statutory and constitutional rights to have
28 judicial review of this agency's decision.

And the fundamental point is the Authority staff deems
appointment of a receiver and reconstitution of a Board as a magic
solution if the school does not reach a benchmark with respect to the
graduation rate. And importantly, the four-year cohort graduation rate is
the only basis to seek closure of Nevada Connections Academy, which is a
K through 12 school. So it is also unlawful. There is no legal basis to
seek closure or a Notice of Closure for an entire K through 12 school
based solely on the fact that there's below a 60 percent four-year cohort
graduation rate in the high school grades. That is the only basis.

Nevada Connections Academy has been operating as a four-star
middle school. There are no academic concerns with respect to their K
through 8 grades; and, in fact, there are no academic concerns that have
been identified by this Authority for the high school other than the four-
year cohort graduation rate.

MR. PELTIER: Three minutes.

MS. GRANIER: Thank you.

5. Page 24, line 27: "Ex. 24, Excerpts of March 2016 SPSCA Meeting" should read
"Ex. 24, Excerpts of March 2016 SPSCA Meeting at 99-102".

1 6. *Page 26, lines 15-16:* “Ex. 22, Excerpts of Transcript of July 2016 Authority
2 Meeting” should read “Ex. 22, Excerpts of Transcript of July 2016 Authority Meeting at 167-
3 168”. Similar to Exhibit 20, the transcript of the July 29, 2016 SPCSA meeting is available on
4 the Authority’s website but is a secured document. **Plaintiffs would request that Defendants**
5 **provide the Court with a copy of the transcript.** In the meantime, the transcript is viewable
6 on the Authority’s website at http://charterschools.nv.gov/News/Public_Notices/. The transcript
7 at pages 167-168 reads as follows:
8

9 CHAIR JOHNSON: Thank you, Mr. Gavin. Vice-Chair
10 Mackedon, would you like to repeat your motion?

11 VICE-CHAIR MACKEDON: Okay. Let’s see. I recommend the
12 approval of these goals contingent upon the school entering into a charter
13 contract which contains terms agreeable to both parties.

14 CHAIR JOHNSON: Is there a second?

15 MEMBER CORBETT: Second.

16 CHAIR JOHNSON: All in favor?

17 THE BOARD: Aye

18 CHAIR JOHNSON: Any opposed? Any abstaining? Member
19 Conaboy, I don’t know if we recorded your vote.

20 MEMBER CONABOY: I was saying aye while Danny was
21 talking.

22 CHAIR JOHNSON: Oh, okay. All right. So the motion passes.

23 7. *Page 26, line 19:* “*Id.*” should read “*Id.* at 163-165”. Again, because Plaintiffs
24 were unable to print the transcript, we direct the Court to the Authority’s website at
25 http://charterschools.nv.gov/News/Public_Notices/ and request that Defendants provide the
26 Court with a copy. The transcript at 163-165 reads as follows:
27

28 MS. GRANIER: And what’s the legal Authority to force the
school to go to a contract at this point when we have a charter in place?

 DEPUTY ATTORNEY GENERAL OTT: Well, I guess arguably,
I guess if you don’t consent, then that’s something that could be litigated.
If you choose to say no, we don’t want these conditions and we’re not
going to sign any contract, I’d have to look for the statutory Authority. I
was going to - - I saw no reason why the school would be unhappy with
this. It seemed to be 90 percent of what the school wanted, but we haven’t
had a chance to discuss that prior to. I’m kind of surprised by your
conversation.

1 CHAIR JOHNSON: It sounds like this particular part, I think at
2 least, I am ready to entertain a motion around what we did to move
3 forward because I think it's actually Chair Mackedon that the contractual
4 agreement actually, if we can't work it out, we're going to go back and
5 forth anyway. But again, for us to actually start moving forward and have
6 some very measurable benchmarks, we actually have to start putting some
7 things in place.

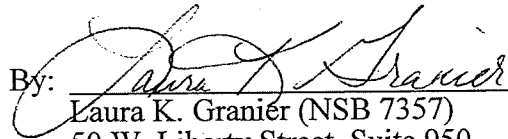
8 MEMBER CONABOY: Mr. Chair?

9 CHAIR JOHNSON: Yes, Member Conaboy?

10 MEMBER CONABOY: May I just ask if this item, this agenda
11 item, even though I'm not sure that I see the word anywhere, but is this
12 certain essentially an amendment to the written charter? And I ask that
13 question - - I mean, to amend metrics seems to me to be an amendment to
14 the charter, and what we have been doing since the passage of AB 205
15 with performance based charter contracts is to require schools that seek
16 significant amendments like this to enter into a charter contract with us.
17 I'm interpreting this.

18 Respectfully submitted this 8th day of November, 2016.

19 DAVIS GRAHAM & STUBBS LLP

20 By: 

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26 *Attorneys for Plaintiffs*

1 CERTIFICATE OF SERVICE

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs
3 LLP and not a party to, nor interested in, the within action; that on November 8, 2016, a true and
4 correct copy of the foregoing document was enclosed in a sealed envelope, and served as listed
5 below:
6

7 Gregory D. Ott, Esq.
8 Deputy Attorney General
9 100 N. Carson Street
10 Carson City, NV 89701
11 *Attorneys for Defendants*

VIA U.S. MAIL

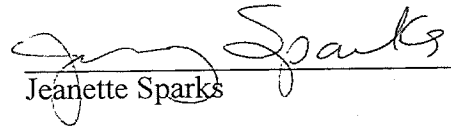
12 
13 Jeanette Sparks

EXHIBIT 30

EXHIBIT 30

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14 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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19 20 DAVID & CARLY HELD individually and on 21 behalf of their minor child N.H.; VERONICA 22 BERRY individually and on behalf of her minor 23 child J.B.; RED AND SHEILA FLORES 24 individually and on behalf of their minor child 25 C.F.; JAOUAD AND NAIMI BENJELLOUN, 26 individually and on behalf of their minor 27 children N.B.1, N.B.2, and N.B.3; KIMBERLY 28 AND CHARLES KING individually and on behalf of their minor children L.K.1 and L.K.2; NEVADA CONNECTIONS ACADEMY,	Case No. 16 OC 00249 1B Dept. No. I DECLARATION OF BEVERLY CATHER IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
Plaintiffs,	
v.	
STATE OF NEVADA, ex rel. STATE PUBLIC CHARTER SCHOOL AUTHORITY, a political subdivision of the State of Nevada, and PATRICK GAVIN, in his official capacity as Director of the State Public Charter School Authority,	
Defendants.	

I, Beverly Cather, do certify under penalty of perjury as follows:

1. The matters set forth in this declaration are based on my own personal knowledge. If called upon to testify, I am competent to testify to the matters set forth herein. I make this declaration in support of the Plaintiffs' Motion for Temporary Restraining Order/Preliminary Injunction.

2. My daughter attends Nevada Connections Academy and is in the 11 grade.

3. I believe the school is a great benefit to my family and others because of the structure how the students can work at their own pace. We do not have bullying issues as we would in public schools. In my opinion the faculty and staff support is very beneficial. The teachers have gone above and beyond normal teacher duties by being there for the students after normal working hours and care enough for the students to help them not just with school difficulties but

with personal ones also, by messaging and/or calling to make sure the students are doing okay and help them when and if they need help in anyway.

4. Because of the structure of the school, my daughter can work any hours of the day or night leaving us free to schedule other activities pertaining to school or personal reasons. Because of this my daughter is able to graduate a year early.

5. We have been with this school for 4 years, and yes there has been a few problems but, I haven't seen anything that hasn't been able to be resolved. This school has helped many students with all types of learning levels including disabilities and advanced abilities, I think more so than traditional brick and mortar public school could have resources or time for.

6. I don't know what we will do if this school is closed. I will not place my daughter back into the traditional brick and mortar public school systems with all the problems they have.

Therefore, I believe any interference with her school's continued operations would cause her and other students in Nevada irreparable harm by interfering with her education and our school choice. I ask that this Court issue an order to stop any attempt to close Nevada Connections Academy or interfere with its ongoing operations – and require that NCA be allowed to continue serving the thousands of Nevada students it is educating.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and corrected and was executed this 26 day of October, 2016, in RENO, Nevada.


BEVERLY CATHER

4225464.1

EXHIBIT 31

EXHIBIT 32

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK GAVIN
Executive Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

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BRIEFING MEMORANDUM

TO: SPCSA Board
FROM: Patrick Gavin
SUBJECT: Agenda Item 4—Nevada Connections Academy Update
DATE: September 23, 2016

Background:

At the August 26, 2016 Authority meeting, the Authority directed staff and Nevada Connections Academy to negotiate an amended charter contract by September 19, 2016.

After extensive discussions with the school and its counsel, Staff and counsel have not agreed to mutually agreeable terms. While the school has raised a number of objections related to standard terms in the charter contract and staff has proposed language to accommodate a number of their concerns, a variety of sticking points remain. Most notably, the school disagrees with staff's interpretation that the Authority directive included the expectation that in exchange for approval of the improvement plan targets and a prohibition on termination of the charter contract for failure to achieve those specific goals, the school would be required to agree that any judicial review of such a decision be limited to a determination of whether or not the school did or did not achieve the annual graduation rate target specified in the agreement.

Counsel is prepared to answer any questions the Authority may have with regard to the negotiations between the school and staff.

Recommendation:

Staff recommends:

- 1) The Authority affirm that the following language in the draft contract:

“For the graduating cohorts, as defined by NAC 389.0246, of 2016, 2017,

and 2018 the Charter School's Charter Contract shall not be eligible for termination based on a graduation rate, as calculated by the Nevada Department of Education, below 60%. However, the Charter School shall be eligible for reconstitution of its governing board or appointment of a receiver if its graduation rate is below the benchmarks established by this section. For the graduating cohorts included in this section, judicial review of any decision to reconstitute the governing board, or appoint a receiver under this section or NRS 388A.330(1)(e) shall be limited to a review of whether the school has or has not achieved the annual graduation rate target.

Graduation rate benchmarks for the Charter School:

Cohort 2016: 45%

Cohort 2017: 52%

Cohort 2018: 60%

- 2) Pursuant to NRS 388A.330 and NAC 386.330, the Authority direct staff to Issue a Notice of Intent to Revoke the Written Charter of Nevada Connections Academy based on having a graduation rate for the preceding school year that is less than 60 percent.