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DEPUTY

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

12 DAVID & CARLY HELD individually and
13 on behalf of their minor child N.H.;
14 VERONICA BERRY individually and on
15 behalf of her minor child J.B.; RED AND
16 SHEILA FLORES individually and on behalf
17 of their minor child C.F.; JAOUAD AND
18 NAIMI BENJELLOUN, individually and on
19 behalf of their minor children N.B.1, N.B.2,
20 and N.B.3; KIMBERLY AND CHARLES
21 KING individually and on behalf of their
22 minor children L.K.1 and L.K.2; NEVADA
23 CONNECTIONS ACADEMY,

24 Plaintiffs,

25 v.

26 STATE OF NEVADA, ex rel. STATE
27 PUBLIC CHARTER SCHOOL
28 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

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER/
PRELIMINARY INJUNCTION**

HEARING:

Date: November 30, 2016

Time: 3:00 PM

29 Plaintiffs, by and through their undersigned counsel, Davis Graham & Stubbs LLP,
30 hereby respond to the State Public Charter School Authority's (the "Authority's") and Patrick
31 Gavin's opposition to Plaintiffs' motion for preliminary injunction.
32

1 **I. Argument**

2 The Authority's reliance upon its statutory authority to institute closure proceedings
3 against NCA is misguided. First, while NRS 388A.330(1) affords the Authority discretion to
4 close high schools based on a graduation rate below 60%, the statute does not afford the
5 Authority the carte blanche power to close an entire K-12 school based solely on the high
6 school graduation rate. Second, the statute upon which the Authority relies does not permit
7 threatening closure in retaliation for NCA declining to waive its right to judicial review of an
8 agency decision. Third, the statute does not empower the Authority to take actions that violate
9 the Open Meeting Law, which is precisely what the Authority did when it placed on the
10 December 16, 2016 agenda the option of removing NCA's governing board even though the
11 Authority's vote taken in the September 23, 2016 meeting was only in connection with the
12 issuance of a notice of closure. The agency is acting in blatant disregard for the law and in
13 excess of its statutory authority – both reasons for this Court to enjoin further proceedings or
14 issue a writ mandating the Authority act in accordance with Nevada law.

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17 Plaintiff's claims are justiciable and ripe for review. A case is not moot when it presents
18 an issue that is capable of repetition yet evading review. *Southern Pacific Terminal Co. v. ICC*,
19 219 U.S. 498 (1911). Here, the agency's demand that the school waive its rights to judicial
20 review is ongoing – because to date that is the only cure the agency has identified for the school
21 to avoid closure, even of its high school. In addition, however, even if the issue were "mooted"
22 by the school's refusal to sign the contract, this would create an issue capable of repetition yet
23 evading review. The agency unlawfully demands the school agree to the onerous and unlawful
24 terms and if, when the school refuses to sign such a contract that moots the issue, leading to the
25 agency's action to close the school, the unlawful conduct will continue against this or other
26 schools absent this Court's intervention. Plaintiffs' separation of powers argument arises out of
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28

1 the Authority's attempt to encroach upon the oversight function of the judicial branch, by
2 seeking to force NCA to waive its constitutional and statutory right to judicial review – which
3 currently is the only communicated “cure” the Authority has identified to avoid closure of
4 NCA's high school. The Authority has exercised its seemingly unchecked power to subject
5 Plaintiffs to an Authority decision that is void *ab initio* under Nevada law, which, despite its
6 invalid nature, has placed students in an immediate, ongoing state of uncertainty concerning their
7 continued education and the existence of their school board. The Authority's notice of closure is
8 facially invalid, and its threat therein to immediately reconstitute NCA's school board constitutes
9 a violation of Nevada's open meeting law and charter school law (because a high school
10 graduation rate is not a basis under the statute, NRS 388A.030 to reconstitute the K-12 governing
11 board). Plaintiffs are entitled to judicial review at this time because review of the Authority's
12 decision at the December 16, 2016 hearing would not provide an adequate remedy given that
13 meeting as currently set would constitute an unlawful procedure.
14
15

16 Defendants ignore inconvenient facts: (1) the clear statutory language allows only
17 closure of a **high school** based on a high school graduation rate – not a K-12 school; (2) the
18 Authority voted in March 2016 not to close NCA but instead directed the school to prepare a
19 graduation rate improvement plan in response to the Authority's consideration of possible
20 closure – which the school did and presented in **May 2016** receiving great praise from the
21 Authority; (3) Defendants misstate that the school presented the plan for the first time in July
22 when, in fact, the school presented the plan in May 2016 – and received praise from Authority
23 board members. Motion Ex. 20, 5/20/2016 Transcript at 196 (Mackedon: “...this report is really
24 well done. And in fact, it's very easy to read.”), 199 (McCord: “I'd really like to congratulate
25 you on that. That's an element we don't see very often.”), 203 (McCord: “I congratulate the
26 school for putting this in there. It speaks to the integrity of the data collection, but it does one
27
28

1 other thing. It actually defines the actionable data.”), 212 (Johnson: “...if you implement this
2 really stellar plan that I think we’ve all been impressed by...”); Exhibit 4 (Granier Declaration).
3 Defendants appear to be attempting to somehow justify “re-opening” the matter at the July
4 meeting to try to force the waiver of judicial review under the guise of a “charter amendment”
5 that was never requested or even placed on an agenda and, therefore, violated the Open Meeting
6 Law.
7

8 Plaintiffs request that this Court issue a preliminary injunction to: mandate that the
9 Authority follow the law by considering all compelling evidence related to the graduation rate
10 issue (if the December 16th proceedings go forward), comply with its own policies and
11 regulations regarding its performance framework and the NCA’s written charter, collaborate on a
12 viable “cure” with NCA rather than forcing NCA to waive its judicial rights; and enjoin the
13 Authority from threatening closure of an entire K-12 charter school absent statutory authority to
14 do so. To date, the Authority has refused to engage in discussions with NCA about a potential
15 “cure” – and the Authority Director is “on leave” until December 1 – yet NCA’s deadline to
16 “cure” is December 2 –further demonstrating the Authority is refusing to act in good faith and
17 participate in meaningful discussions with NCA about a potential cure.
18

19 **A. This Court’s extraordinary intervention is warranted**

20 **i. The Authority’s July 2016 Decision violated Nevada law and its own**
21 **policies, resulting in an immediate, ongoing cognizable harm**

22 Declaratory relief is proper where a party has been deprived of statutorily required
23 procedures. *See Clark Cty. Sch. Dist. v. Riley*, 116 Nev. 1143, 1146 (2000) (affirming summary
24 judgment granting declaratory relief where a teacher was not afforded the procedures to which he
25 was entitled by statute which made the school district’s attempt to terminate the teacher invalid).
26 Here, the Agency has violated the Nevada Open Meeting Law on at least two occasions leading
27 to the December 16th closure hearing. These violations render the Authority’s acts void *ab initio*
28

1 regulations regarding the state performance framework and written charter, to consider the
2 evidence related to NCA's graduation rate, and to enjoin the Authority from exceeding its
3 authority by threatening closure of a K-12 school with no legal basis for doing so. Therefore,
4 plaintiffs are entitled to a declaratory judgment establishing that the SPSCA's decision in July
5 2016 to force NCA into a contract was void. The fact that NCA did not sign the Authority's
6 proposed contract does not moot the issue because the Authority used NCA's refusal to sign a
7 contract waiving its judicial review rights as the basis to move forward with closure of the school
8 – in blatant violation of Nevada law – and still today provides that entering into a contract that
9 contains the judicial waiver provision as the only “cure” for NCA to avoid closure of its high
10 school.
11

12 The Authority's argument that NCA students would not suffer harm in the event of the
13 school's closure because these students are constitutionally entitled to a public education is an
14 alarming disregard for a tenet of our public education system—maintaining a stable environment
15 in which children have the capacity to succeed at the school of their choice. NCA serves some
16 of Nevada's most at-risk students and students who require flexible schedules for a variety of
17 reasons, and the Authority's practice of failing to consider evidence to explain a school's four-
18 year cohort graduation rate has prompted schools similar to NCA to refuse to accept credit-
19 deficient students to avoid facing closure. *See supra* n.4. Therefore, the Authority's own
20 practices have resulted in reduced options for students with additional needs, and proceeding
21 with closure of NCA will contribute to this statewide harm.
22
23

24 **ii. The harm to NCA is irreparable**

25 Subjecting Plaintiffs to the Authority's facially invalid decision will result in irreparable
26 injury: Plaintiffs' Motion for Temporary Restraining Order/Preliminary Injunction (“Motion”)
27 cites to several declarations which establish NCA as the school of choice for many Nevada
28

1 students whose health concerns have required them to enroll in NCA's flexible regimen, or
2 whose experience at other schools prior to enrollment at NCA had resulted in immense
3 suffering—both socially and academically. See Motion at 4-5 and 11/10/2016 Errata at ¶ 1
4 (citing Declarations of A. Castillo, D. Starrett, P. Carey, M. Nelson and B. Cather, Exs. 9, 10, 11,
5 12 and 30). Plaintiffs' Motion also cites and attaches an October, 27, 2016, Las Vegas Review
6 Journal article detailing the importance of NCA as a choice for many students including those
7 who have suffered intolerable bullying. *Id.* at 5 (Motion Ex. 8). Therefore, the imminent threat
8 of NCA's closure would result in a concrete harm of an educational nature—especially to those
9 students and parents named in as Plaintiffs in this action who state that they have only found
10 academic success through NCA, which would be disrupted by NCA's closure or any interference
11 with NCA's operations – such as removing the school's entire governing board and appointing a
12 receiver who has no experience dealing with the school and will cost tens or hundreds of
13 thousands of dollars that should be spent on the students' education.
14
15

16 Unlike in *Goldie's*, the harm is not of an abstract “loss of goodwill,” nor is the potential
17 loss of “untold” customers. The Authority mentions only the time students and parents will have
18 to “make a transition,” ignoring entirely Plaintiffs' declarations, the Nevada students' right to
19 choose a school, and the immediate and future uncertainty and disruption in academic
20 achievement that Plaintiffs face due to the Authority's decision. Further, to counter the
21 Authority's argument that NCA's students will find alternative education in the event of NCA's
22 closure, Plaintiffs note that online schools which provide a similar framework to that of NCA
23 have been found to deny credit-deficient students in violation of Nevada law.¹ Nearly 50% of
24
25

26 ¹ NCA diligently complies with Nevada law by accepting students who are credit-
27 deficient, whereas Nevada Virtual Academy (“NVVA”) has admitted to turning away students
28 who attempt to enroll in their fourth year of high school in an unlawful attempt to bolster its
graduation rate. See Motion at 10 (citing Ex. 18, Minutes from SPSCA Meeting (the school's
admission and an Authority Board member's acknowledgment this was unlawful); Ex. 27,

1 NCA's students that comprised the 2015 graduation cohort were behind in credits when they
2 initially enrolled at NCA. *See* Motion at 6. Therefore, similarly credit-deficient students risk a
3 drastic decrease of their educational options in the face of NCA's closure. Director Gavin has
4 acknowledged we are "wrestling with some real issues" which was one of the reasons he
5 requested that NCA hire a third party to validate its data relied upon during the March 2016
6 Authority hearing on the notice of closure. *See Exhibit 1*, S. Werlein Declaration. NCA has
7 done this in reliance upon the Authority's directive to implement the graduation rate
8 improvement plan – in lieu of closure – as voted on at the March 2016 Authority meeting.
9

10 Furthermore, absent a preliminary injunction, Plaintiffs face an additional harm caused
11 by the Authority's attempted interference with NCA's operations. The September 23, 2016,
12 Notice of Intent to Revoke Written Charter ("notice of closure") states that "[a]t its December
13 16, 2016 meeting, the [Authority] Board will hold a public hearing to consider whether to
14 reconstitute the governing body, or revoke the written charter," where the former, if approved,
15 "could be effective immediately."² *See* notice of closure. This too is a blatant violation of the
16 open meeting law as the Authority voted to issue a notice of closure and said nothing of
17 reconstituting the board. Opposition Ex. 8 at 3. Despite this imminent possibility, there is no
18 regulation in place to replace the school board and the Authority has presented no evidence
19 indicating that this action would resolve the graduation rate issue. Nevertheless, this action
20 would throw the school into turmoil—subjecting thousands of students to endure the remainder
21 of the school year under the authority of an appointed receiver as opposed to a school board—
22 concrete, immediate harm that will likely cost hundreds of thousands of dollars each year that the
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26 Emails between NVA and Agency). The Authority board members have acknowledged that
27 NVVA's behavior is unlawful, and yet have failed to enforce against NVVA. *See id.* Instead,
28 the Authority continues to penalize NCA's compliance with the law by failing to consider
evidence to supplement NCA's graduation rate.

² This statement was included in the notice of closure in violation of Nevada's Open

1 receiver is in place. This also would jeopardize the school's ability to effectively implement the
2 graduation rate improvement plan the Authority praised at its May 2016 hearing. Motion Ex. 20,
3 5/20/2016 Transcript at 196, 199, 203, and 212.

4
5 **B. The Authority's violation of the charter and the state performance
6 framework constitutes a breach of contract**

7 The Authority's opposition largely ignores a key issue—that NCA's written charter
8 constitutes a contract and the Authority violated its contractual obligations thereto. In order for a
9 contract to be enforceable, there must be (1) offer; (2) acceptance; (3) meeting of the minds (i.e.
10 mutual assent); and (4) consideration (i.e. bargained-for exchange). *May v. Anderson*, 121 Nev.
11 668, 672, 119 P.3d 1254, 1257 (2005). Without any legal authority or analysis the Agency
12 argues the existing charter is not a contract – even though it satisfies all of the legal elements. In
13 doing so, the Defendants simply provide no response to Plaintiffs' argument that the Authority
14 breached the covenant of good faith and fair dealing by the Authority retaliating against NCA for
15 refusing to agree to waive its rights to judicial review. Where the terms of a contract may have
16 been literally complied with, but one party to the contract deliberately countervenes the intention
17 and spirit of the contract, that party can incur liability for breach of the implied covenant of good
18 faith and fair dealing. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d
19 919, 923 (1991).

20
21 NCA's existing charter granted by the State in 2007 and renewed in 2013 constitutes a
22 valid, enforceable contract between NCA and the Authority. NCA's charter meets the elements
23 of an enforceable contract, and therefore contains the implied covenant of good faith and fair
24 dealing. There was offer and acceptance during the Authority's agreement to allow the written
25 charter. Both the Authority and NCA formed mutual assent to operate the charter according to
26

27
28 Meeting Law, as detailed in section (C)(iii) of this brief.

1 Nevada statutory scheme and in good faith, and both parties offered consideration for the written
2 charter. The Authority has wrongfully insisted that in order to continue operating under its
3 existing charter and serving over 3,000 students in grades K-12, NCA must enter into an entirely
4 new charter contract that includes a waiver of all rights to judicial review for certain future
5 Authority actions. The Authority's action is a clear violation of the implied covenant of good
6 faith and fair dealing.
7

8 Moreover, as Plaintiffs outlined in the Motion, the Authority's proposed terms attempting
9 to force NCA to waive its rights to judicial review or face closure also suffer from substantive
10 unconscionability under *D.R. Horton*. See Motion at 30-31. As also noted in Plaintiffs' motion,
11 Defendants have ignored and violated the State Performance Framework and, therefore, Nevada
12 law. Motion at 16-18.
13

14 **C. The Authority's notice of closure is facially invalid, and the terms therein
15 violate Nevada law**

16 **i. NRS 388A.330 does not authorize the Authority's attempt to close the
17 entire K-12 school based on only the high school graduation rate**

18 NRS 388A.330(1) treats elementary, middle, and high schools differently. The statute
19 does not authorize the agency to close an entire K-12 charter school based on only the high
20 school's performance. There is no legal basis, statutory or otherwise, for the Authority to close
21 the entire K-12 school.

22 The Authority has discretion to consider charter termination if "[t]he charter school is a
23 **high school** that has a graduation rate for the immediately preceding school year that is less than
24 60 percent." NRS 388A.330(1)(e) (emphasis added). By contrast, the Authority has discretion
25 to consider closure if "[t]he charter school is an elementary or middle school or junior high
26 school that is rated in the lowest 5 percent of elementary schools, middle schools or junior high
27 schools in the State in pupil achievement and school performance." NRS 388A.330(1)(f).
28

1 Nevada courts apply the plain-meaning rule in determining legislative intent, meaning that “[t]he
2 starting point for determining legislative intent is the statute’s plain meaning; when a statute ‘is
3 clear on its face, a court cannot go beyond the statute in determining legislative intent.’” *See*,
4 *e.g.*, *State v. Lucero*, 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443,
5 445 (1983)).
6

7 The Authority is exceeding its statutory power to consider NCA’s closure based on only
8 the high school’s graduation rate, where the Authority agrees that NCA’s K-12 program operates
9 under a single charter. *See* Opposition at 9. While the Authority correctly argues that NRS
10 388A.330 does not provide for charter severability, the omission means the Authority lacks any
11 legal basis to close the entire K-12 school under the circumstances – as the plain statutory
12 language treats the separate grade levels differently. Moreover, NCA’s middle and elementary
13 schools are excelling in terms of student achievement and school performance, and the Authority
14 has not raised any performance concerns with these programs. *See* Motion at 7 (noting that the
15 NDE identifies NCA’s middle school as a “4-star school” based on student achievement,
16 meaning it is among Nevada’s higher-performing schools). These two programs therefore do not
17 meet the criteria for the Authority to consider closure, as outlined in NRS 388A.330(1)(f).
18 Finally, the Authority suggests that NCA request a charter amendment to eliminate its high
19 school as a potential “cure.” *See* Opposition at 9, fn 30. Receipt of the Authority’s Opposition
20 Brief was the first NCA learned of this “cure” – but really is no “cure” at all but a total
21 concession to close NCA’s high school. Prior to this suggestion in its brief filed with this Court,
22 the Authority has refused to provide the school any information, guidance, or collaboration to
23 discuss possible cures, other than signing a contract that waives the school’s rights to judicial
24 review.³ This suggestion to shut down NCA’s high school is inconsistent with the Authority’s
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26
27

28 ³ *See, e.g.*, email from Ott to Granier on 10/25/2016 (When NCA requested information

1 own directive in March 2016 that NCA prepare a high school graduation rate improvement plan
2 and implement the same.

3 Accordingly, Plaintiffs are entitled to a declaratory order that the Authority's act is
4 unlawful in issuing the notice of closure for an entire K-12 school based solely on a four-year
5 cohort graduation rate for its high school. Injunctive or writ relief is necessary to halt the
6 Agency's unlawful proceedings and mandate that the Agency follow Nevada law and its own
7 policy.
8

9 **1. Granting Plaintiffs' preliminary injunction would not relieve NCA**
10 **of accountability**

11 Contrary to the Authority's argument, Plaintiffs' requested relief—either preliminary
12 injunction or writ of mandate—does not avoid accountability on NCA's part. Rather, Plaintiffs'
13 requested relief simply asks that this Court hold the Authority accountable for compliance with
14 Nevada law. The Authority's own state performance framework and the Nevada statute
15 mandating such a framework provide numerous accountability measures for charter schools with
16 graduation rates below 60%. *See* NRS 388A.223. The Authority has largely ignored its own
17 performance framework, which should provide predictable and transparent means by which
18 charter schools can make improvements and collaborate with the Authority for the good of the
19 students. Rather than complying with the school accountability measures put in place, the
20 Authority sought closure to punish NCA for refusing to waive its rights to judicial review.
21

22 Moreover, the Authority's opposition ignores significant evidence that NCA is serving its
23 students and allowing them to excel, despite the high school graduation rate. The Authority calls
24 NCA's graduation rate "deplorable" and refers to the rate as a "statutory reason to be concerned
25

26
27 regarding a potential cure to prevent closure, the Authority responded in the following manner:
28 "I am unaware of any statute or regulation requiring the Authority to tell the school how the
deficiency may be cured. . . . As you know the Board will ultimately decide whether any
deficiency has been cured. I do not presume to know how the board would react to any

1 that the school is not serving children,” but does not address the lack of any concern with respect
2 to NCA’s performance in grades K-8 or the fact that the four-year cohort graduation rate is
3 explained as a result of the students NCA is serving and that many of them come to NCA credit
4 deficient. Opposition at 15. While NCA’s four-year cohort high school graduation rate has
5 dipped below 60%, the Authority’s March 2016 decision acknowledged that the evidence
6 relevant to the “graduation rate” included that NCA’s graduation rate approached 80% when
7 calculated based upon students enrolled at NCA for all four years of high school and that NCA’s
8 four-year cohort rate was being significantly negatively impacted by students who enroll at NCA
9 toward the end of their high school careers, and therefore are unable to graduate on track. *See*
10 Motion at 10. As also discussed in the Motion the graduation rate requires scrutiny as it counts
11 students as “drop outs” despite their enrollment at post-graduate school. *See id.* The Authority
12 failed in its opposition to address this evidence that NCA is serving its students, and instead
13 continues to rely solely on the four-year cohort graduation rate—a single misleading data
14 point—even though the evidence warrants a more thoughtful approach to its discretionary action
15 on the high school. As Director Gavin himself publicly acknowledged, we are dealing with “real
16 issues” which is part of the reason he directed NCA to hire a third party to validate the
17 information NCA presented at the March 2016 Authority hearing on its graduation rate – which
18 it did. Ex. 1, Werlein Declaration. Director Gavin has encouraged Mr. Werlein to pursue the
19 concerns with the Authority turning a blind eye to NVVA’s selective enrollment and the
20 problems that creates with relying on NVVA’s reported graduation rate – yet, for reasons
21 unknown, Director Gavin and the Authority have not pursued these issues.
22
23
24

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28 particular cure.” *See Exhibit 2; Exhibit 4 (Granier Declaration).*

1 information and belief, other than Beacon Academy, no other school has agreed to the onerous
2 waiver of rights to judicial review. *See* Opposition at 11-12.

3 The Authority misstates several material facts. First, the waiver of judicial review is not
4 as limited as the Authority describes. The Authority's proposed contract states under "Part 10:
5 Dispute Resolution" that "[a]ny decision by the Authority is final." Opposition Ex. 11 (Charter
6 School Contract between the Authority and NCA)] at 25-26. Further, the meeting minutes
7 reflect that the Authority's proposed charter contract purported to give the Authority the Court's
8 power to determine what was material under the contract and said that decision would be "final."
9 **Exhibit 3; Exhibit 4** (Granier Declaration). When NCA attempted to clarify that the contract
10 would be subject to judicial review, the Authority Director refused to add that term. Exhibit 4.
11 Such a contract attempts to deprive NCA of legal recourse for a variety of unilateral Authority
12 decisions, which Plaintiffs detailed in the Motion. *See* Motion at 14-15.

13
14
15 Further, regarding amendment, the Authority contends that NCA's attempt to work with
16 the Authority to implement a Graduation Rate Improvement Plan constitutes NCA's request for
17 an "amendment," such that the Authority could require the school to transition to a charter
18 contract. The Authority fails to provide any factual evidence to support this erroneous assertion,
19 and fails to outline the conditions which constitute an "amendment." *See* Opposition at 11.
20 Indeed, that is because no such amendment request was ever made, the Authority lacked
21 regulations on what constitutes or requires an amendment to a charter, and no agenda for the
22 Authority since February 2016 has included any public notice the Authority would consider such
23 a request which requires statutory proceedings under NRS 388A and 233B. *See* Motion at 15-
24 16.

25
26 Moreover, the Authority misstates that the contract negotiations during which the
27 Authority required judicial waiver were settlement discussions, as there was nothing to settle at
28

1 that time. There was no notice of closure and no threat to close NCA because NCA had done
2 what the Authority requested regarding implementation of the Graduation Rate Improvement
3 Plan. The Authority essentially admits in the opposition that waiving NCA's rights to judicial
4 review and signing the contract would have avoided the notice of closure.⁵

5
6 **iii. The Authority's attempt to reconstitute NCA's school board as part of
its notice of closure is void due to an Open Meeting Law violation⁶**

7 The Authority's notice declares it will consider on December 16th under the "Notice of
8 Closure" whether to remove and replace NCA's governing body. Such action would violate
9 Nevada's Open Meeting Law – there was no mention of possible board reconstitution in the
10 Authority's motion approved to issue the notice of closure. *See* Motion Ex. 26; Exhibit 4
11 (Granier Declaration). Therefore, the portion of the Authority's notice of closure which
12 threatens to immediately remove the NCA board members on December 16, 2016 is void.
13 Plaintiffs ask that this Court recognize the Authority's disregard for statutorily-mandated
14 transparent practices as an attempt to take control of the school, retaliate against the board
15 members who refused to waive the school's constitutional and statutory rights to judicial review,
16 and stack the board with members the Authority can control.

17
18
19 Nevada's Open Meeting Law requires that all meetings of a public body such as the
20 Authority be open and public and "written notice of all meetings," including an agenda listing all
21

22 ⁵⁵ In fact, the Authority forced the same waiver clause upon Beacon Academy, one of the
23 two "other schools" the Authority references. *See Exhibit 2*, Beacon Contract. The other
school, NVVA, has simply avoided enforcement for reasons unknown.

24 ⁶ Plaintiffs are entitled to seek relief from the Authority's Open Meeting Law violation
25 with this Court as private citizens, despite the fact that the Attorney General has not instituted a
26 separate proceeding regarding the violation. *See* NRS 241.037(2) (**In addition to enforcement
by the Nevada Attorney General, private citizens denied a right conferred under Nevada's
Open Meeting Law may sue in district court to have an action of the public body declared
void, to require compliance with Open Meeting Law, or to determine the applicability of
Open Meeting Law to the public body at issue**). More generally, citizens may seek a
27 district court's review in the event that a public body engages in unlawful behavior. *See*
28 *Hardy v. Commission on Ethics*, 125 Nev. 285, 300, 212 P.3d 1098, 1108 (2009) (The Nevada
Supreme Court's review of the district court's decision enjoining the commission on Ethics from

1 items on which action may be taken, “must be given at least 3 working days before the meeting.”
2 NRS 241.020(1)-(2). Action of any public body, such as the SPCSA, “taken in violation of any
3 provision” of the Nevada Open Meeting Law “is void.” NRS 241.036. Nevada’s Attorney
4 General Manual sheds light on the policy underlying this principal: “[a]n informal conference or
5 caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance.
6 There is rarely any purpose to a nonpublic, pre-meeting conference except to conduct some part
7 of the decisional process behind closed doors. Only by embracing the collective inquiry in
8 discussion stages, as well as the ultimate step of official action, can an open meeting regulation
9 frustrate these evasive devices. As operative criteria, formality and informality are alien to the
10 law’s design, disposing it to the very evasions it was designed to prevent.” 69 Cal.Rptr. at 485.
11

12 The Authority violated Nevada’s Open Meeting Law with respect to its threat to
13 reconstitute the NCA school board. The Authority’s September 23 notice of closure threatened
14 to reconstitute the board, notes that the Authority will make a final determination regarding
15 reconstitution during the December 16, 2016 meeting, and states that reconstitution could be
16 effective immediately. *See* notice of closure. Despite this immediate threat, the Authority did
17 not raise board reconstitution during the September 23 hearing or since then, and did not take a
18 public vote regarding reconstitution during the same open meeting. *See* Ex. 26 at 42-43
19 (mentioning closure but not reconstitution)]. The Authority’s actions undermine the Open
20 Meeting Law’s purpose, which includes compelling governing bodies to publish and follow an
21 agenda. Therefore, the Authority’s threat to reconstitute the board is void and the entire notice of
22 closure is defective and cannot be acted upon.
23
24

25 ///

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28 conducting further proceedings against a state senator on alleged ethic violation).

1 **iv. The Authority's attempt to reconstitute the school board as part of its**
2 **notice of closure violates NRS 388A.223**

3 The Authority also has no ability to reconstitute the Board because it failed to adopt
4 regulations setting forth how a board would be reconstituted in violation of Nevada law.

5 NRS 388A.223(1)(h) requires the Authority to “[adopt] a policy for appointing a new
6 governing body of a charter school for which the governing body is reconstituted in accordance
7 with NRS 388A.330.” Further, “[e]ach sponsor of a charter school shall develop policies and
8 practices that are consistent with state laws and regulations governing charter schools.” These
9 policies must include, in relevant part, “[a] description of how the sponsor will maintain
10 oversight of the charter schools it sponsors, which must include, without limitation . . . [a]n
11 assessment of the needs of the charter schools that are sponsored by the sponsor that is prepared
12 with the input of the governing bodies of such charter schools[,] and . . . [a] strategic plan for the
13 oversight and provision of technical support to charter schools that are sponsored by the sponsor
14 in the areas of academic, fiscal and organizational performance.” NRS 388A.223(2)(f). In
15 addition, the policies must include a description of the Authority's evaluation process for the
16 charter schools it sponsors. NRS 388A.223(2)(g).
17
18

19 Plaintiffs outlined in the Motion for Temporary Restraining Order and Preliminary
20 Injunction, and the Authority does not contest, the Authority violated its own State Performance
21 Framework (“policy”) regarding its promise to annually review each charter school regarding
22 academic, financial, organizational, and mission specific performance. *See* Motion at 16-17.
23 Specifically, contrary to the policy's provisions, the Authority failed to follow its rigid three-
24 level system when it failed to provide NCA with a notice of concern and notice of breach prior to
25 issuing its notice of closure. *Id.* at 17. The Authority also failed to adhere to its stated annual
26 timeline for policy implementation. *Id.* at 18. The timeline required that the Authority create
27 annual school reviews compiled from performance scores and site visit data, with the goal of
28

1 publicizing the information and setting clear expectations for charter schools. *Id.* The Authority
2 has never done a site visit at NCA and, therefore, has never provided site visit data as required by
3 its policy. The last written performance evaluation NCA received from the Authority stated that
4 the school was in “good standing.” The Authority Staff has never engaged in a meaningful
5 dialogue with the school prior to placing NCA on the February 2016 agenda for a notice of
6 closure.⁷ Finally, the Motion notes that the Authority again violated its policy when it failed to
7 permit NCA to speak during the September 23, 2016 meeting regarding notice of closure, despite
8 its policy to maintain a variety of evidentiary factors regarding a school’s performance prior to
9 making any “high stakes” decisions. *Id.* Notably, the Authority did not refute its failure to
10 follow its policy in its opposition. *See generally* Opposition.
11

12 The Authority’s uncontested failure to follow its own policy has also resulted in its
13 failure to comply with NRS 388A.223. The Authority has not, to Plaintiffs’ knowledge, adopted
14 a policy regarding board reconstitution pursuant to NRS 388A.223(1)(h), making its facially
15 invalid threat to immediately reconstitute the board even more troubling. While the Authority
16 has outlined practices and procedures for assessing, overseeing, and evaluating charter schools, it
17 has failed to abide by them in issuing its notice of closure to NCA, violating NRS 388A.223
18 (2)(f)-(g).
19

20
21 **D. Plaintiffs are entitled to judicial review at this time because review of the
Authority’s final decision would not provide an adequate remedy**

22 Contrary to the Authority’s assertion, judicial review of the December 16, 2016 hearing
23

24
25 ⁷ As noted in the Motion, meaningful discussion only occurred after the March 2016
26 hearing when the Authority failed to garner enough votes to issue a notice of closure and instead
27 was directed to work with NCA to develop an improvement plan. Discussions with Authority
28 staff that occurred after NCA’s improvement plan was approved certainly cannot be considered
meaningful, as those discussions have been focused on the Authority’s efforts to “strong arm”
NCA into negotiating a contract it has no present legal obligation to enter into and to use that
contract as an instrument to deny NCA its right to judicial review of the Authority’s possible
future actions taken against the school. *See* Motion Ex. 13, Werlein Declaration.

1 would not provide NCA with an adequate remedy. Therefore, Plaintiffs are statutorily entitled to
2 immediate judicial review. “Any preliminary, procedural or intermediate act or ruling by an
3 agency in a contested case is reviewable if review of the final decision of the agency would not
4 provide an adequate remedy.” NRS 233B.130(1)(b).
5

6 The Agency’s vote in July mandating that NCA convert its charter to a contract was final
7 on that matter, and NCA filed a timely appeal regarding the decision (Case No. 16 OC 00194
8 1B). The Authority’s vote in September to issue the notice of closure is reviewable because
9 review of the Authority’s final decision on closure would not provide an adequate remedy. *See*
10 NRS 233B.130(1)(b) To date, the Authority has refused to engage in discussions with NCA about
11 a potential “cure” – and, incredibly, its counsel takes the position the statute does not require the
12 Authority to have such meaningful dialogue with a school. We learned last week the Authority
13 Director is “on leave” until December 1 – yet NCA’s deadline to “cure” is December 2 which is
14 further evidence the Authority is refusing to act in good faith and participate in meaningful
15 discussions with NCA about a potential cure. However, the Authority fails to note that its notice
16 of closure threatens to immediately remove the NCA governing board members based on NCA’s
17 unwillingness to waive their rights to judicial review. Opposition Ex. 4. Therefore, on
18 December 16, 2016, the Authority and/or the Director will attempt to assert unchecked power
19 over the school if the Authority votes to close the school or reconstitute the NCA board, giving
20 the Authority the ability to stack the board with new members who the Authority believes will
21 waive NCA’s constitutional rights to judicial review. The harm of removing a highly qualified
22 board⁸ and replacing it with a receiver who knows nothing about the school or the graduation
23 rate improvement plan and at a premium monetary cost to the school is an immediate possibility,
24
25
26

27 ⁸ As Plaintiffs outlined in the Motion, the NCA board includes highly qualified and
28 dedicated board members with the expertise and experience that Authority Director Gavin
himself identified as the kind of board to look for to successfully operate a charter school. *See*

1 not a future one, meaning that future review would occur too late to provide meaningful relief
2 from the harm. This harm would ensue as a direct result of the Authority's blatant violation of
3 Nevada's Open Meeting Law regarding its intention to reconstitute the school board.

4 Further, contrary to the Authority's limited analysis of reviewability under NRS
5 233B.032, this Court has jurisdiction for purposes of declaratory and injunctive relief pursuant to
6 NRS 233B.130, NRS 33.010, NRCP 65, NRS 30.030, and NRS 30.040. Although the Authority
7 has not issued a final determination on the merits of the closure, Plaintiffs are aggrieved by the
8 Authority's issuance of the notice of closure and review of the Authority's final decision would
9 not provide an adequate remedy. NRS 233B.130(1)(b).

10 **E. The Authority misstates the record in its argument regarding Plaintiffs'**
11 **equitable estoppel theory**

12 Equitable estoppel may be invoked against an agency of the state. *See, e.g., State v.*
13 *Sponburgh*, 66 Wash.2d 135, 401 P.2d 635 (1965); *United States v. Lazy FC Ranch*, 481 F.2d
14 985 (9th Cir.1973); *Nevada Public Employees Retirement Board v. Byrne*, 96 Nev. 276, 607 P.2d
15 1351 (1980). Nevada courts have recognized that "the conduct of government should always be
16 scrupulously just in dealing with its citizens; and where a public official, acting within his
17 authority and with knowledge of the pertinent facts, has made a commitment and the party to
18 whom it was made has acted to his detriment in reliance on that commitment, the official should
19 not be permitted to revoke that commitment." *S. Nevada Mem'l Hosp. v. State, Dep't of Human*
20 *Res.*, 705 P.2d 139, 141-42 (Nev. 1985).

21 Contrary to the Authority's assertion, the Authority told NCA in March 2016 that the
22 school would remain open if NCA prepared a Graduation Rate Improvement Plan, during the
23 same meeting in which the Board voted not to accept Staff's recommendation to issue a notice of
24 closure. *See* Ex. 20 at 234-35 and 11/10/2016 Errata at ¶ 2. As a result, NCA expended
25 considerable time and effort between March and **May 2016** collaborating with the Authority to
26 prepare a plan – which it presented in **May 2016, not July** as Defendants erroneously argue. As
27

28 Motion Ex. 15, Sanchez Declaration

1 Plaintiffs outlined in the initial Motion, NCA expended considerable time and effort
2 collaborating with the Authority to prepare a plan in reliance on the Authority's statement, to
3 NCA's detriment. *See* Motion at 28-29. Defendants argue NCA's renewal in 2013 was
4 conditioned upon preparation of a graduation rate improvement plan but offer no evidence to
5 support this disputed fact. The Authority therefore misstates the facts and should be estopped
6 from denying NCA the ability to implement its graduation improvement plan to meet certain
7 graduation benchmarks without the threat of closure, converting their charter to contract, or
8 entering into a contract requiring the waiver of statutory and constitutional rights.

9 **F. In the event that this Court does not issue a preliminary injunction, a writ of**
10 **prohibition or mandamus is warranted**

11 Plaintiffs request that this Court issue a writ of mandate to compel the Authority to (1)
12 halt the closure proceedings; (2) allow NCA to continue implementing the Graduation Rate
13 Improvement Plan, which the Authority directed the school to prepare; and (3) follow the
14 Authority's State Charter School Performance Framework, which it has ignored. *See* Motion at
15 33. Each of these requests have already been overlooked or the duty omitted by the Authority, as
16 the Authority has (1) instituted closure proceedings with the notice of closure to NCA; (2)
17 threatened to immediately remove the entire NCA governing board; (3) reversed course in an
18 attempt to interfere with NCA implementing its Graduation Rate Improvement Plan to the degree
19 that the plan would yield a meaningful cure; and (4) failed to abide by the Authority's own State
20 Charter School Performance Framework. The Authority's omission of duty has occurred in that
21 it has violated the State Charter School Performance Framework, the NCA Charter, and acted in
22 excess of its statutory powers. *See State of Nevada v. Gracey*, 11 Nev. 223, 234 (1876) (holding
23 that a writ will not issue until an actual default or omission of duty has occurred).
24
25

26 **G. Both public policy goals and the balance of hardships are served by this**
27 **Court's intervention**

28 The Authority ignores a weighty policy repercussion of its attempts to proceed without

1 considering substantial evidence that demonstrates that NCA is serving its students, and that the
2 graduation rate is misleading regarding student performance. Namely, it appears that similarly-
3 situated charter schools like NVVA have been forced to decide between facing closure and
4 complying with Nevada's statutory requirement to accept credit-deficient students, and have
5 chosen the route that violates Nevada law. **Exhibit 5** (Sept. 28, 2015 Authority Minutes). The
6 Authority should not penalize NCA for serving some of Nevada's most at-risk students, many of
7 whom face significant hardship should their school of choice cease to offer its services
8 (beginning with the uncertainty of finding a school that will accept them at their credit-deficient
9 status, given the Authority's trend of condoning NVVA's behavior). Instead, the Authority
10 should incentivize charter schools to provide a platform for Nevada's at-risk students to succeed,
11 as NCA has done, based on the 80% graduation rate for those students who have stayed with
12 NCA since the beginning of their high school careers.

13
14
15 The Authority argues that this Court's review should be limited to whether or not the
16 Authority had an adequate statutory basis for issuing the notice of closure, but fails to discern
17 that this action is based largely on that very question. *See* Opposition at 16. The Authority had
18 no statutory basis because NRS 388A does not authorize closure of the K-12 school based on
19 only the high school's graduation rate, and NRS 233B requires substantial evidence support the
20 agency's decisions. The Authority points to no substantial evidence to support issuance of the
21 notice of closure, as corroborated by its March 2016 decision not to proceed with such notice.
22 Moreover, the Authority refused to allow the school to speak at the September hearing when the
23 notice issued and instead relied solely on the single data point and the school's refusal to waive
24 its rights to judicial review.
25

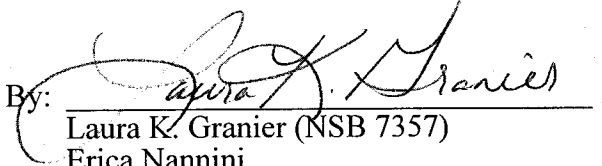
26 **II. Conclusion**

27 The Authority's opposition ignores or misstates facts to bolster its arguments and largely
28

1 fails to adequately address Plaintiffs' meritorious claims. For the foregoing reasons, this Court
2 should issue declaratory and injunctive relief, or, in the alternative, a writ of prohibition or
3 mandamus.

4 Respectfully submitted this 28th day of November, 2016.

5 DAVIS GRAHAM & STUBBS LLP

6
7
8 By: 
9 Laura K. Granier (NSB 7357)
10 Erica Nannini
11 50 W. Liberty Street, Suite 950
12 Reno, Nevada 89501
13 (775) 229-4219 (Telephone)
14 (775) 403-2187 (Fax)

15 *Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on November 28, 2016, a true and correct copy of the foregoing document was enclosed in a sealed envelope, and served as listed below:

Gregory D. Ott, Esq.
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701

VIA U.S. MAIL AND EMAIL

Attorneys for Defendants

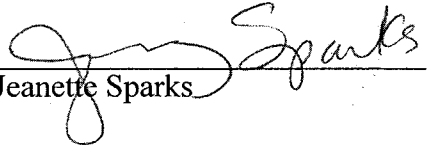

Jeanette Sparks

EXHIBIT 1

Declaration of S. Werlein

EXHIBIT 1

Declaration of S. Werlein

1 Laura K. Granier, Esq. (NSB 7357)
2 laura.granier@dgslaw.com
3 50 W. Liberty Street, Suite 950
4 Reno, Nevada 89501
5 (775) 229-4219 (Telephone)
6 (775) 403-2187 (Fax)

7 *Attorney for Plaintiffs*

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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

DECLARATION OF STEVEN WERLEIN IN SUPPORT OF REPLY MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Steven Werlein, 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' Reply Memorandum in Support of Motion for Temporary

1 Restraining Order and Preliminary Injunction.

2 2. I am the Principal and School Leader of Nevada Connections Academy (“NCA”).
3 I have held this position since July, 2013. I have a BA in international political economy and
4 Spanish from DePaul University, an MEd in secondary teaching and curriculum from DePaul
5 University, and a Certificate of advanced study in school leadership from National Louis
6 University. I am currently pursuing doctoral studies and the American College of Education.
7

8 3. Director Gavin has acknowledged we are “wrestling with some real issues” which
9 was one of the reasons he requested that NCA hire a third party to validate its data relied upon
10 during the March 2016 Authority hearing on the notice of closure.

11 4. During discussions about the Authority’s proposed contract, it was made clear
12 that the Authority was giving the school an ultimatum – to sign the contract waiving the school’s
13 rights to judicial review or face closure. Although we requested dialogue about a meaningful
14 “cure” of the alleged deficiency of the high school graduation rate, other than agreeing to this
15 waiver of judicial review the Authority would not offer any alternatives and would not engage in
16 meaningful discussion of the school’s suggestions.
17

18 I declare under penalty of perjury under the laws of the State of Nevada that the
19 foregoing is true and corrected and was executed this 28th day of November, 2016, in Reno,
20 Nevada.
21

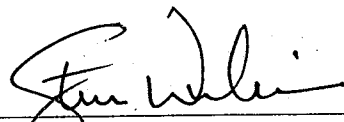
22
23 
24 _____
25 Steve Werlein
26
27
28

EXHIBIT 2

**October 2016 Emails between G. Ott and
L. Granier**

EXHIBIT 2

**October 2016 Emails between G. Ott and
L. Granier**

Sparks, Jenny

From: Greg D. Ott <GOtt@ag.nv.gov>
Sent: Tuesday, October 25, 2016 11:54 AM
To: Granier, Laura
Subject: RE: SPSCA - NCA

Laura,

The Authority is limited by statute in the amount of time before it must hold a hearing on the deficiencies. This obviously limits the time available for cure as well. The Authority is required to provide a minimum period and the time provided to NCA was well in excess of that minimum required period. I am unaware of any statute or regulation requiring the Authority to tell the school how the deficiency may be cured, if you believe one exists, please let me know and I will review.

As you know the Board will ultimately decide whether any deficiency has been cured. I do not presume to know how the board would react to any particular cure. However, I would note that Beacon Academy recently negotiated and executed a contract agreeing to benchmarks which would be renegotiated upon a school decision to adjust enrollment to enter into the alternative framework. On Friday the SPCSA board approved that contract and dismissed the Notice against that school. I am not telling you that this is something Connections should consider, I am simply apprising you of publicly available information regarding how a similarly situated school chose to deal with its notice and the Board's reaction to it.

If you have a proposal regarding how the school wants to cure the deficiency and would like to know what staff would recommend, please forward me your plan and I can discuss with Patrick.
Thanks, Greg

From: Granier, Laura [<mailto:Laura.Granier@dgsllaw.com>]
Sent: Monday, October 24, 2016 12:17 PM
To: Greg D. Ott
Subject: RE: SPSCA - NCA

Greg,

As you know, the Notice of Revocation is of grave concern to NCA. The Authority has provided a very limited period of time for the school to attempt to cure the alleged deficiency. While the school reserves all rights, it is the school's desire to understand how the Authority believes the identified deficiency can be cured.

Please let me know the Authority's response.

Thank you,
Laura

LAURA K. GRANIER • Partner

P: 775.473.4513 • F: 775.403.2187 • C: 775.750.9295 • [vcard](#)

Davis Graham & Stubbs LLP
50 W. Liberty Street, Suite 950 • Reno, NV 89501

From: Granier, Laura
Sent: Thursday, October 06, 2016 9:05 AM
To: 'Greg D. Ott'
Subject: RE: SPSCA - NCA

Greg,

Thank you for letting me know. Would you please provide a response to the other questions raised in my email below?

Thank you,
Laura

LAURA K. GRANIER * Partner

P: 775.473.4513 * F: 775.403.2187 * C: 775.750.9295 * [vcard](#)

Davis Graham & Stubbs LLP
50 W. Liberty Street, Suite 950 * Reno, NV 89501

From: Greg D. Ott [<mailto:GOtt@ag.nv.gov>]
Sent: Thursday, October 06, 2016 8:37 AM
To: Granier, Laura
Cc: Marissa M. Houk
Subject: RE: SPSCA - NCA

Our office policy does not allow us to accept service.

From: Granier, Laura [<mailto:Laura.Granier@dgsllaw.com>]
Sent: Wednesday, October 05, 2016 5:21 PM
To: Greg D. Ott
Subject: SPSCA - NCA

Greg,

I have attached a complaint for declaratory and injunctive relief filed on August 26th related to the Board's vote to require the conversion to a contract. Please let me know if you will accept service of process. Once we deal with the service, I would propose we stay any deadlines at least temporarily to see if we can find an alternative resolution.

Second, the notice of closure issued to NCA provides for a cure of the identified deficiency. Given that the sole issue is the Authority's interpretation of graduation rate to be the four-year cohort rate please let me know how the Authority believes this can be cured during the period identified and leading up to December of this year. I understood the "cure" was the Graduation Rate Improvement Plan; however, it appeared more recently the Authority's position may be that something else will be considered to constitute a "cure." Please provide me information to share with NCA on this point.

Thank you,
Laura

LAURA K. GRANIER * Partner

P: 775.473.4513 * F: 775.403.2187 * C: 775.750.9295 * [vcard](#)

Davis Graham & Stubbs LLP

50 W. Liberty Street, Suite 950 • Reno, NV 89501

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EXHIBIT 3

Excerpts from Draft Contract

EXHIBIT 3

Excerpts from Draft Contract

CHARTER SCHOOL CONTRACT

between

State Public Charter School Authority

and

Beacon Academy of Nevada

the governing body of the charter school has at any time made a material misrepresentation or omission concerning any information disclosed to the Authority

8.1.5 The Charter Contract may be terminated by the Authority if the Authority determines that the charter school operates a high school that has a graduation rate for the immediately preceding school year that is less than 60 percent;

8.1.5.1 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 or whether the Authority failed to follow the procedure specified by NRS 388A.330.

Graduation rate benchmarks:

Cohort 2016: 52%

Cohort 2017: 55%

Cohort 2018: 60%

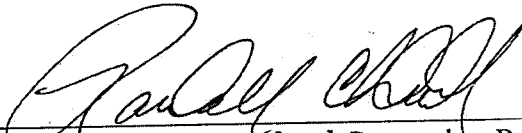
Should the Charter School, by November 1, 2016, submit an authorized request to change its enrollment policy and make other changes necessary or advisable for the school to seek entrance into the statutorily created Alternative Framework, the Authority shall work in good faith with the Charter School to revise these benchmarks to reflect the school's requested changes. The benchmarks provided above shall be renegotiated upon approval of the Charter School's amendment request to limit enrollment to at risk students. The benchmarks provided above shall be renegotiated upon approval of the Charter School's amendment request to limit enrollment to at risk students.

Any revisions to the benchmarks in this section will not be effective unless the Authority approves the Charter's School's requests made pursuant to this section.

8.1.6 The Charter Contract may be terminated by the Authority if the Authority determines that the charter school operates an elementary or middle school or junior high school that is rated in the lowest 5 percent of elementary schools, middle schools or junior high schools in the State in pupil achievement and

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Charter Contract:

 *President*

President, Charter School Governing Body

Please print your name: RANDALL C DONALD

Date: 10/17/16

Chair, State Public Charter School Authority

Please print your name: _____

Date: _____

1 the Plaintiffs' Reply in Support of the Motion for Temporary Restraining Order/Preliminary
2 Injunction ("Reply").

3 2. I have reviewed the transcript of the May 20, 2016 Authority meeting (available
4 online at http://charterschools.nv.gov/News/Public_Notices/) and the quotes cited on pages 3-4
5 of the Reply are accurate.

6 3. The transcript of the September 23, 2016 Authority meeting was cited as Exhibit
7 26 to the Motion. The transcript is available for viewing at
8 http://charterschools.nv.gov/News/Public_Notices/.

9 4. Attached to the Reply as Exhibit 2 is a true and correct copy of an email exchange
10 I had with counsel for Defendants between October 5 and October 25, 2016.

11 5. Attached to the Reply as Exhibit 3 is a true and correct copy of relevant pages of
12 the draft contract that the Authority required NCA to sign to avoid issuance of a Notice of
13 Closure.

14 6. Attached to the Reply as Exhibit 5 is a true and correct copy of excerpts from the
15 Minutes of the Authority's September 28, 2015 meeting.

16 7. NCA attempted to clarify that the contract would be subject to judicial review, but
17 the Authority Director refused to add that term.

18 I declare under penalty of perjury under the laws of the State of Nevada that the
19 foregoing is true and corrected and was executed this 29th day of November, 2016, in Reno,
20 Nevada.

21
22
23
24
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26 
LAURA K. GRANIER

EXHIBIT 5

**Excerpt from 9/28/2015 Authority Meeting
Minutes**

EXHIBIT 5

**Excerpt from 9/28/2015 Authority Meeting
Minutes**

why messages she had received on social media were saying NVVA would be enrolling K-11 and not K-12. Ms. McIntosh said the school had made a decision to stop enrolling new 12 graders until the school had a more robust credit recovery program. Member Wahl asked if a district brick-and-mortar school could limit its enrollment and not accept 12 graders. Director Gavin said a district school, along with charter schools, could not limit enrollment and not accept 12 graders. Member Wahl added it would be difficult to measure NVVA versus other online schools with regard to graduation rate because it had limited accepting new 12 graders while other online schools had not. Ms. McIntosh said the NVVA board had not meant anything disingenuously and ensured the board that NVVA would look into these policies and rectify the situation.

Member Wahl asked why the NVVA website said enrollment was closed for the 2015-2016 school year and whether that was legal or not. Director Gavin said it was not allowed, a school could say the additional students would be placed on a waiting list, but a school could not say enrollment was closed. Member McCord asked if the school tracks the records it requests as a way to see where students are going once they leave NVVA. Mr. Gerhardt said they do track that information, and Ms. McIntosh added that many times the students did not have a learning coach or the program was too rigorous. Discussion continued between the Authority and representatives of NVVA. Director Gavin asked if NVVA had moved into the additional facility that had been approved at during the last amendment request. Ms. McIntosh said they had not moved in yet but hoped to be doing so soon. Director Gavin also asked if the school would be undergoing a fire drill at the facility they currently operate at. Ms. McIntosh said they would be doing a fire drill at the end of the week. Member Wahl asked if the school would have any financial issues since they had not reached their target enrollment. Ms. McIntosh said the school would be able to make its financial commitments and there would be no issues with the school financially.

Agenda Item 14 - Update regarding new Open Meeting Law provisions passed at the 2015 Legislative session

Deputy Attorney General Ott spoke about the changes that were made to the Open Meeting Law and how it would affect the Authority. He said it would affect the Authority very little, while Mr. Peltier would have a few additional items he would have to monitor.

Agenda Item 17 – Next Board Meeting

The Authority Board will meet October 26, 2015

Agenda Item 18 – Public Comment

There was no public comment in either Las Vegas or Carson City

Member Wahl called for a motion for adjournment.

Member McCord moved for adjournment. Member Luna seconded. There was no further discussion. The motion passed unanimously. Chair Conaboy was absent.

The meeting adjourned at 3:55 pm.