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

9 DAVID & CARLY HELD individually)
and on behalf of their minor child N.H.;)
10 VERONICA BERRY individually and on)
behalf of her minor child J.B.; RED AND)
11 SHEILA FLORES individually and on)
behalf of their minor child C.F.;)
12 JAOUAD AND NAIMI BENJELLOUN,)
individually and on behalf of their minor)
13 children L.K.1 and L.K.2.; NEVADA)
CONNECTIONS ACADEMY,)

14 Plaintiff,

15 v.

16 STATE OF NEVADA, ex rel., STATE)
PUBLIC CHARTER SCHOOL)
17 AUTHORITY, a political subdivision of)
the STATE OF NEVADA, and PATRICK)
18 GAVIN, in his official capacity as)
Executive Director of the STATE)
19 PUBLIC CHARTER SCHOOL)
AUTHORITY,)
20

21 Defendants.

CASE NO. 16 OC 002491 B

DEPT. NO. I

**EX PARTE MOTION TO AMEND
TEMPORARY RESTRAINING
ORDER
(WITH NOTICE)**

22 Defendants STATE OF NEVADA, ex rel., STATE PUBLIC CHARTER SCHOOL
23 AUTHORITY (Authority), and PATRICK GAVIN (Gavin), through their counsel, Adam
24 Paul Laxalt, Attorney General of the State of Nevada, and Gregory D. Ott, Senior Deputy
25 Attorney General, hereby move this Court for an ex parte order amending the Temporary
26 Restraining Order filed on March 29, 2017 at 4:02 p.m. (Order). The request is necessary
27 on an ex parte basis as the Authority believes, based on past experience, that hundreds of
28 families will be appearing at previously noticed locations attempting to give comment

1 regarding the continued hearing and the Order is unclear as to whether the Authority
2 may commence its properly noticed meeting on March 29, 2017 and continue the hearing
3 regarding Nevada Connections Academy (NCA).

4 **Factual Background**

5 At approximately 3:49 p.m., shortly before this court issued its Temporary
6 Restraining Order, the Authority issued an order granting NCA's Motion For
7 Reconsideration and relieving attorney Laura K. Granier of any responsibility for
8 attending today's hearing (SPCSA Order). A copy of the SPCSA Order is attached as
9 Exhibit 1. The SPCSA Order states that the Authority meeting could commence as
10 scheduled beginning with public comment, which is anticipated to take roughly 15 hours.
11 "If Ms. Granier is not available at the conclusion of the public comment portion of the
12 hearing agenda, the Board will stand in recess until Ms. Granier, SPCSA Staff, and the
13 Board are available to reconvene the meeting. This compromise will satisfy the needs of
14 NCA's attorney, while honoring the need of NCA parents to participate in the hearing and
15 to receive resolution regarding the Notices of Intent and whether their school will remain
16 open or not."¹ The SPCSA Order goes on to address three additional items mentioned in
17 NCA's Motion for Ex Parte Restraining Order (With Notice) and Exhibits: 1) the location
18 of the continued hearing, (NCA offered to secure a venue for a hearing at a later date and
19 share the cost of the venue scheduled for today and the future venue)², 2) the cost of the
20 continued hearing (NCA offered to cover all costs for the venue for a future date and up to
21 \$3,000 of cost for this week's hearing,³ and 3) a waiver of the requirement that the
22 Authority hold a hearing within 90 days of the issuance of the notice of intent within the
23 90 days required by NRS 388A.330(3).⁴

24
25 ¹ Exhibit 1, Page 2, lines 2-4.

26 ² Ex Parte Motion, page 9, line 27-28 and Page 4 line 28 through page 5, line 1.

27 ³ Ex Parte Motion, page 9, line 27-28.

28 ⁴ Exhibit 3 to Ex Parte Motion, Staff's non-opposition page 1, line 15-17 "Staff . . .
bases its non-opposition on the understand that Nevada Connections Academy's ("NCA")
request for an extension is accompanied by a wiaver of the requirement that a hearing be
held within 90 days as required by NRS 388A.330(3)."

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Pursuant to Nevada Rules of Civil Procedure (NRCP) 60(a), errors in judgments or
3 orders arising from oversight or omission may be corrected by the court at any time of its
4 own initiative or on the motion of any party and after such notice (if any) as the court
5 orders. First Judicial District Court Rule 18 likewise authorizes *ex parte* motions and
6 orders. "On motion and upon such terms as are just, the court may relieve a party or a
7 party's legal representative from a final judgment, order, or proceeding for the following
8 reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud (whether
9 heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of
10 an adverse party;"⁵ Here, the Temporary Restraining Order issued by the court failed to
11 address issues which have a real and immediate impact on the Authority, its staff and the
12 public.

13 This Motion is based on NRCP 60(b)(1) and (3) misrepresentation of the adverse
14 party⁶ as well as the Authority's surprise (having received no notice of the Ex Parte
15 Motion). Counsel for NCA, John Sande was informed via telephone at approximately 7:00
16 p.m. on March 29, 2017 that Defendants would be filing this Ex Parte Motion and was
17 sent a copy shortly before filing.⁷

18 **A. This Court Should Amend its Order Clarifying that the SPCSA**
19 **Correctly Allows Public Comment to Continue at its Properly**
20 **Scheduled Meeting While Continuing the Hearing Regarding NCA.**

21 The public has been notified of this hearing and the Authority believes that many
22 members of the public may appear and attempt to give Public Comment at the hearing
23 today. This Court should amend its order to clarify that the Authority's meeting may
24 commence and then be recessed prior to the commencement of a hearing to allow NCA
25 counsel to appear.

26 ⁵ NRCP 60(b)

27 ⁶ Plaintiffs assert that that they attempted to provide notice to Gregory D. Ott, but
28 fail to attach an exhibit and any such attempt was unsuccessful. See, Ex Parte Motion
page 7, line 12-13. And Exhibit 2, Declaration of Gregory D. Ott, Paragraph 4

⁷ Exhibit 2, Declaration of Gregory D. Ott.

1 **B. This Court Should Amend its Order Clarifying that NCA Will Be**
2 **Required to Cover all Costs for the Venue on a Future Date.**

3 The Authority should not be required to bear the cost of a continuance that was
4 completely beyond its control. The Order should be amended to clarify that NCA will be
5 required to cover all costs for the future meeting as it volunteered in its Ex Parte Motion.⁸

6 **C. This Court Should Amend its Order Clarifying that NCA Will Be**
7 **Required to Secure a Venue for a Hearing At a Later Date and Cover**
8 **all Costs for the Venue on a Future Date.**

9 The Authority should not be required to secure a venue for a continuance that was
10 completely beyond its control. The Order should be amended to clarify that NCA will be
11 required to secure a venue for a later date as it volunteered in its Ex Parte Motion.⁹ Such
12 venue must be large enough to accommodate the public interest and for such time as
13 necessary based on the good faith estimates of the parties.

14 **D. This Court Should Amend its Order Clarifying that NCA's Request for a**
15 **Continuance Constitutes A Waiver of the 90 day Requirement of NRS**
16 **388A.330(3)**

17 The Authority may not be able to schedule the re-commencement of the hearing
18 within the 90 day time frame required by NRS 388A.330(3). Authority Staff's non-
19 opposition to the repeated requests for continuance were based on the good faith
20 assumption that NCA was waiving any right to hearings within 90 days as required by
21 NRS 388A.330(3).¹⁰ That waiver should be made explicit in the Temporary
22 Restraining Order.

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27 ⁸ Ex Parte Motion, Page 9, line 27-28.
28 ⁹ Ex Parte Motion, Page 9, line 27-28 and Page 4 line 28 through page 5, line 1.
 ¹⁰ Exhibit 3 to Ex Parte Motion, Staff's non-opposition page 1, line 15-17 "Staff . . .
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CONCLUSION

This Court's Temporary Restraining Order could be construed as conflicting with or Overuling the SPCSA Order issued prior to its existence. The Authority requests that the Court clarify its intent with regard to today's meeting as well as NCA's waiver of the 90 requirement of NRS 388A.330(3) and the cost and location of todays and future hearings.

DATED: March 30, 2017.

ADAM PAUL LAXALT
Attorney General

By: 
GREGORY D. OTT
Senior Deputy Attorney General

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED: March 30, 2017.



GREGORY D. OTT
Senior Deputy Attorney General

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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EXHIBIT INDEX

Exhibit	Description	Pages
1	SPCSA Order	3
2	Declaration of Gregory D. Ott	2

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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EXHIBIT 1

EXHIBIT 1

1 Board will stand in recess until Ms. Granier, SPCSA Staff and the Board are available to reconvene the
2 meeting. This compromise will satisfy the needs of NCA's attorney, while honoring the need of NCA
3 parents to participate in the hearing and to receive resolution regarding the Notices of Intent and
4 whether their school will remain open or not.

5 In accordance with the foregoing, IT IS HEREBY ORDERED THAT:

- 6
- 7 (1) NCA's Motion for a Continuance remains DENIED; however, the Board will stand in recess at
8 the conclusion of public comment due to Ms. Granier inability to appear at the hearing and
9 represent NCA;
- 10 (2) NCA's Counsel, Ms. Granier, is Ordered to secure at date with the SPCSA staff within 30 days of
11 the date of this Order to resume the hearing;
- 12 (3) If Ms. Granier can not appear for and represent NCA at a hearing within thirty days, she will
13 ensure that other legal counsel is secured and ready to take over representation in her
14 absence;
- 15 (4) NCA will work with SPCSA staff to secure a venue for the agreed upon date to resume the
16 hearing;
- 17 (5) NCA will cover all costs for the agreed upon venue and will work to ensure that there is
18 enough space to accommodate all NCA parents and members of the public who wish to attend
19 the hearing;
- 20 (6) NCA will cover up to \$3,000 of the costs associated with the lost rental for the space obtained
21 to accommodate this week's hearing; and will cooperate on any other issues regarding
22 continuing the hearing .

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1 (7) After the hearing resumes on a date as yet to be determined there will be no further delays in
2 the hearing

3 IT IS SO ORDERED.

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5 DATED this 29th day of March, 2017.

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7 *"/s/ Adam Johnson, Chair SPCSA"*

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Adam Johnson
Chair, Nevada State Public
Charter School Authority Board

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EXHIBIT 2

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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EXHIBIT 2

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20 AUTHORITY,)

21 Defendants.

CASE NO. 16 OC 002491 B

DEPT. NO. I

**DECLARATION OF GREGORY D.
OTT IN SUPPORT OF
DEFENDANTS' EX PARTE MOTION
TO AMEND TEMPORARY
RESTRAINING ORDER (WITH
NOTICE)**

22 I, Gregory D. Ott, do certify under penalty of perjury as follows:

23 1. I am the Deputy Attorney General currently assigned as counsel to the State
24 Public Charter School Authority staff and have personal knowledge of the facts stated
25 herein, and if called upon to testify as to the matters set forth herein, I would be
26 competent to do so. I make this declaration in support of Defendants' Ex Parte Motion To
27 Amend Temporary Restraining Order ("Motion").

28 ///

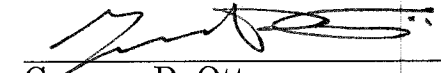
1 2. On March 29, 2017 at approximately 7:00 p.m., I telephoned John Sande IV,
2 attorney for Nevada Connections Academy and informed him that I would be filing an Ex
3 Parte Motion to Amend the Temporary Restraining Order.

4 3. Mr. Sande informed me that he had other commitments on the morning of
5 March 30, 2017, but would attempt to make himself available via cellphone if the court
6 wished to discuss the matter with counsel for both sides.

7 4. On March 29, 2017 I was working at my desk for the majority of the day and
8 did not receive any telephone calls, voicemails, or emails attempting to notify me of NCA's
9 Ex Parte Motion filed with the court on March 29, 2017.

10 DATED this 30th day of March, 2017.

11
12 By:



Gregory D. Ott
Senior Deputy Attorney General