

BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY

In re:)) NEVADA CONNECTIONS ACADEMY))	Hearing Date: August 23, 2017 <i>(continued date)</i> Hearing Time: 8:30 AM
--	--

**STATE PUBLIC CHARTER SCHOOL AUTHORITY STAFF'S
WRITTEN CLOSING ARGUMENT**

The State Public Charter School Authority’s staff, through their counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Gregory D. Ott, Senior Deputy Attorney General, submit this Written Closing Argument pursuant to the Amended Order After Hearing dated August 3, 2017, amending the previous Order After Hearing, dated June 1, 2017.

**I.
INTRODUCTION**

The evidence is not disputed that the graduation rate for Nevada Connections Academy (“Connections”), as calculated by the Nevada Department of Education (“NDE”), is 35.63% for the class of 2015 and 40.09% for the class of 2016.¹ Both these numbers are below the 60% threshold set forth in NRS 388A.330(1)(e). Connections’ legal arguments that the graduation rate calculated by NDE is not the proper standard lack any merit. The corrections proposed by Connections are not sufficient to correct its deficient graduation rate, as shown by its historic failures to improve the graduation rate, its inability to meet its own graduation rate targets, and its own witness testimony. The cures proposed have no historic record of success and Connections’ own officials admit they will be ineffective.² Thus, the State Public Charter School Authority (“SPSCA”) staff have clearly established that the graduation rate is below 60%, that the proposed

¹ Exhibit 1, Cohort Graduations Rates, Nevada Connections Academy.
² Supplemental Exhibit A, Declaration of Steve Werlein, 3:19–24 and Supplemental Exhibit E, Declaration of Matt Wicks, 5:8.

1 corrections are not sufficient to correct the deficiency, and that the State Public Charter
2 School Authority’s Board (“Board”) should move on to consideration of Phase 2 of the
3 hearing, regarding what actions (if any) are warranted by the school’s graduation rate.

4 **II.**

5 **ARGUMENT**

6 **A. Connections’ Graduation Rates for 2015 and Graduating Cohorts for**
7 **2016 Were Less Than 60%.**

8 “Nevada uses the Adjusted Cohort Graduation Rate (ACGR) to report high school
9 graduation rates. School Year 2014–2015 [was] the third year Nevada has calculated its
10 graduation rate using this new formula as required by the U.S. Department of
11 Education.”³ All 50 states now report their graduation rates using this formula.⁴

12 The Board heard testimony from Russ Keglovits, NDE’s Assistant Director,
13 Accountability for the Office of Assessment, Data and Accountability Management,
14 explaining NDE’s graduation rate calculation. Mr. Keglovits stated that the only
15 graduation rate the NDE calculates is pursuant to Federal Regulation 34 CFR 200.19(b)
16 (1) and that is the graduation rate reported on the State’s accountability
17 NevadaReportCard.com.⁵ The Board also heard testimony from the SPCSA’s Executive
18 Director Patrick Gavin stating that the SPCSA, just like the NDE, uses the graduation
19 rate calculation specified in federal regulation and has for several years.⁶ Mr. Keglovits
20 explained how the graduation rate was calculated and that Connections participated in
21 the verification of the data.⁷ The graduation rate calculated by NDE is also used by the
22 Achievement School District to determine the eligibility of schools for entrance into that
23 program.⁸ Mr. Keglovits further confirmed that the graduation rates for Connections for
24

25 ³ Exhibit DD, Legislative Counsel Bureau’s 2015 Education Data Book, at 35.

26 ⁴ *Id.*

27 ⁵ Transcript of May 26, 2017, 305:1–8, 17–21.

28 ⁶ Transcript of May 25, 2017, 160:20–161:6.

⁷ Transcript of May 26, 2017, 306:22–307:2.

⁸ Transcript of May 26, 2017, 308:1–4.

1 the 2015 graduating cohort and the 2016 graduating cohorts are both below 60%.⁹
2 Connections' own witness, Richard Vineyard, Ph.D., testified that during his time at NDE
3 they always used the federal definition of graduation rate.¹⁰

4 Connections' arguments that another rate should be used are, in addition to being
5 inconsistent with the Education Data Book published by the Legislative Counsel Bureau
6 ("LCB") and the interpretation of NDE and the SPCSA, belied by their own documents.
7 In response to provisions included in the renewal of its charter in 2013, Connections
8 produced a 2013-14 School Improvement Plan.¹¹ Connections' own school improvement
9 plan indicated that its graduation rate was 36.1 percent, which is the rate calculated by
10 NDE for Connections in year 2012-13.¹²

11 It's clear from the LCB Education Data Book, that Nevada uses the same federal
12 definition of graduation rate as the rest of the country. Also, testimony confirmed that
13 NDE's Office of Assessment, Data and Accountability Management has used the federal
14 definition of graduation rate, and that NDE's Achievement School District does as well.
15 Further, it is also clear that the SPCSA has used that definition and Connections itself
16 used that definition in 2013. However, assuming for the sake of argument that the term
17 graduation rate in NRS 391.330(1)(e) does not explicitly require the definition of federal
18 regulation 34 CFR 200.19(b) (1), that unclarity does not change the conclusion.

19 It is a well-established tenet of Nevada law that the agency tasked with administering
20 a statute has the discretion to interpret the language. "[S]o long as that interpretation is
21 reasonably consistent with the language of the statute, it is entitled to deference in the
22 courts."¹³ Whether the agency tasked with administering the statute is the SPCSA or the
23

24 ⁹ Transcript of May 26, 2017, 311:4–8.

25 ¹⁰ Transcript of May 27, 2017, 62:4–23.

26 ¹¹ Exhibit 10, page 115, Minutes of March 22, 2013 SPCSA meeting, and Exhibit Z,
Connections 2013-14 School Improvement Plan.

27 ¹² Exhibit Z, R0174, Connections 2013-14 School Improvement Plan and Exhibit 1,
Cohort Graduation Rates for Connections.

28 ¹³ *International Game Technology, Inc. v. Second Judicial Dist Court*, 122 Nev. 127
(2006).

1 NDE, the result is the same, graduation rate has consistently been interpreted to mean
2 the adjusted four year cohort graduation rate as calculated by NDE pursuant to 34 CFR
3 200.19(b) (1) and published on NevadaReportCard.com. Using those calculations
4 Connections graduation rates are 36.63% for the 2015 graduating cohort and 40.09% for
5 the 2016 graduating cohort.¹⁴

6 **B. Connections Proposed Corrections Are Not Sufficient to Correct the**
7 **Alleged Deficiencies in Graduation Rates Prospectively.**

8 Connections submitted two letters containing proposals to remedy the graduation
9 rate deficiencies in its 2015 and 2016 cohorts.¹⁵ Both begin with the legal
10 mischaracterization that the SPCSA has some obligation to provide a cure to Connections'
11 deficiencies. Charter schools are autonomous entities authorized to exist by their
12 sponsors. They operate under the twin principles of accountability and autonomy and
13 have considerable freedom to create and operate schools in a manner that is consistent
14 with the law. Unlike traditional school districts with a centralized decision making
15 authority that is directed down to individual schools, charter schools make their own
16 decisions and are then held accountable for the results of those decisions by the school's
17 sponsor. NRS 388A.330 does not impose any obligation on the Authority to direct a school
18 in how to correct its deficiencies. Instead, it allows the school the freedom to fashion a
19 correction and then allows the Authority to determine whether that correction was
20 satisfactory. Additionally, Executive Director Gavin testified that NRS 388A.196(4)
21 forbids him from directing schools as to how to correct their deficiencies.¹⁶ Again, were
22 there ambiguity in the law regarding the obligation of the Authority to prescribe a cure,
23 the Agency's interpretation is entitled to deference.¹⁷ Connections' corrections include
24 several components, none of which were shown to be sufficient alone or in concert to
25

26 ¹⁴ Exhibit 1, P003.

27 ¹⁵ Exhibits A and B.

28 ¹⁶ Transcript of May 25, 2017, 145:5–146:11.

¹⁷ *International Game Technology, Inc. v. Second Judicial Dist Court*, 122 Nev. 127 (2006).

1 correct its deficient graduation rate.

2 **1. Connections' Proposal to Modify the Graduation Rate Calculation Is**
3 **A Legal Argument Not a Proposed Correction**

4 Connections alleges that the NDE has improperly calculated its graduation rate by
5 including in the calculation students who received a GED; enrolled in a fifth year; or went
6 on to adult education.¹⁸ However, Mr. Keglovits explained that NDE calculates dropout
7 rates as well as graduation rates and these rates are completely unrelated.¹⁹ Connections'
8 repeated attempts to conflate graduation rate and dropout rate is an attempt to use an
9 exclusion from one calculation (dropout rate) to impact a different calculation (graduation
10 rate) without any legal support.

11 Connections argument that the passage of the Every Student Succeeds Act
12 mandates a revised graduation rate is also unsupported by law. The ESSA provisions do
13 not require a change to the way graduation rates are calculated.²⁰

14 **2. Connections Has Failed to Meet Its Own Proposed Benchmarks**
15 **Regarding Its Graduation Rate Improvement Plan**

16 Connections first proposal for corrections included benchmarks for the
17 improvement of its graduation rate.²¹ The proposed plan was to achieve a graduation
18 rate of 45% for 2016. Connections actual graduation rate for 2016 was 40.09%.²²
19 Connections sometimes argues that the benchmarks it proposed for its graduation rate
20 improvement plan were premised on a recalculation of the graduation rate excluding
21 dropouts.²³ This is the definition attached to the benchmarks when Connections Board
22 approved them on January 25, 2017.²⁴ Consequently it is important for the SPCSA Board
23 to consider both alternatives. Either Connections approved a plan with benchmarks
24

25 ¹⁸ Exhibit A R002 and Exhibit B R0010.

26 ¹⁹ Transcript of May 26, 2017, 312:24–313:5.

27 ²⁰ Transcript of May 26, 2017, 313:12–314:1.

28 ²¹ Exhibit A, at R0003.

²² Exhibit 1.

²³ Exhibit 6, at P082.

²⁴ *Id.*

1 aligned to the State graduation rate as proposed in Exhibit A and failed to meet those
2 benchmarks in 2016 or Connections proposed a plan that achieves a 60% graduation rate
3 only using an alternative graduation rate calculation that is unsupported by law as
4 proposed in Exhibit 6. Either way, the evidence supports the conclusion that the plan
5 will not achieve a graduation rate of 60% as calculated by NDE.

6 **3. Connections Personnel Admit that Its Graduation Rate**
7 **Improvement Plan Will Not Increase Its Graduation Rate and**
8 **Considers Past Efforts to Improve Graduation Rates Successful.**

9 Connections Education LLC's own Vice President of Policy and Data Analysis has
10 stated that "the only way to significantly change [Connections] graduation rate is change
11 the type of students who are enrolling."²⁵ Similarly Steve Werlein, Connections' current
12 School Leader admitted that the existing programs will be unsuccessful, "[d]espite NCA's
13 efforts to increase the graduation rate by implementing programs to assist its existing
14 students, it is likely, if not inevitable, that, as NCA continues to enroll more credit-
15 deficient students throughout each school year, NCA's graduation rate will not increase
16 overall because each new credit-deficient student enrolled results in an immediate drop of
17 the graduation rate."²⁶ While Mr. Wicks and Mr. Werlein should be commended for their
18 honesty, these arguments clearly show that the schools proposed corrections are
19 insufficient to correct a deficient graduation rate. Furthermore, Connections Board chair
20 Dr. Jafeth Sanchez stated that the school's 2013 response to the SPCSA requirement of a
21 plan to improve the graduation rate was a success, despite the graduation rate's failure to
22 significantly improve or approach 60%.²⁷

23 In summary, Connections' Board chair has deemed its 2013 efforts to improve its
24 graduation rate as a success despite an unchanged graduation rate, its data expert and
25 School Leader have stated that the graduation rate is unlikely to improve without
26 changes to its enrollment patterns, and the school has failed to meet its own goals when it

27 ²⁵ Supplemental Exhibit E, Declaration of Matt Wicks, 5:8.

28 ²⁶ Supplemental Exhibit A, Declaration of Steve Werlein, 3:19–24.

²⁷ Transcript of May 27, 2017, 245:15–248:1.

1 submitted its own cure to this Board in December of 2016. The evidence clearly shows
2 that the school’s proposed graduation rate improvement plan will be ineffective to remedy
3 the deficiencies contained in the Notices of Closure.

4 **4. No One Believes that Connections’ Proposed Plan to Reconstitute**
5 **Its Board Will Improve Its Graduation Rate**

6 Executive Director Gavin explained that the time for reconstitution proposed by
7 Connections was too long to effectively change the school’s trajectory.²⁸ He further
8 explained that for a reconstitution to be effective, the wholesale replacement of the
9 governing board must be accompanied by the replacement or reorganization of
10 management, and neither of those items were present in the Connections proposal.²⁹
11 Connections High School Principal Joe Thomas also said that a change in the
12 Connections Governing Board would not positively impact school performance.³⁰ School
13 Leader Steve Werlein similarly praised the current Connections Board saying that “I
14 have never worked with a more talented, diverse or dedicated board of directors that that
15 of NCA.”³¹ The evidence demonstrates that Connections believes that its board is not a
16 problem stating in its proposal that “[a]lthough NCA has a dedicated and highly qualified
17 governing board. . .” it would accept reconstitution because SPCSA staff repeatedly
18 references reconstitution.³² Thus Connections own reconstitution proposal states that
19 they don’t believe it will be effective. The evidence is clear that the school does not
20 believe that board is an impediment to success so its reconstitution cannot be the impetus
21 for academic improvements. SPCSA staff agrees that the proposal put forth by
22 Connections is unlikely to positively affect outcomes as it is too slow and there is no
23 national precedent for this sort of plan demonstrating academic improvement.

24 . . .

25
26 ²⁸ Transcript of May 25, 2017, 180:7–181:2.

27 ²⁹ Transcript of May 25, 2017, 182:2–183:6.

28 ³⁰ Supplemental Exhibit 3, Testimony of Joe Thomas, page 26:16–25.

³¹ Supplemental Exhibit A, Declaration of Steve Werlein, 4: 11-13.

³² See also, Exhibit 1, page R0003 and Exhibit 2, page 0013.

1 **C. The Authority has Established by a Preponderance of the Evidence**
2 **that Connections Failed to Propose an Adequate Cure to the Alleged**
3 **Deficiency in Its Graduation Rate.**

4 More compelling than the testimony of the witnesses regarding the future
5 prospects of Connections proposal are the lessons of history. The SPCSA Board faced a
6 similar decision in 2013, and thus has the unique advantage of hindsight in considering
7 this present decision. At that time the question was not whether to revoke Connections'
8 written charter, but whether to renew its charter despite a history of struggling to
9 graduate its students. In 2013, this Board chose to give Connections a chance to improve
10 and chose to renew the charter on the condition that the school create a plan for
11 improvement of math proficiency and graduation rates.³³ The graduation rate at the time
12 was 36.08%.³⁴ The graduation rate then went to 33.91% in 2013-14, 37.19% in 2014-15,
13 35.63% in 2015-16, and 40.09% in 2016-17.³⁵ When the 2013 version of this Board
14 demanded that Connections improve its graduation rate, there were 439 students about
15 to enter high school who would eventually comprise the 2016-17 cohort of Connections.
16 176 of those students would graduate in four years, while 263 would not. Those are the
17 school's results for the students who started high school after Connections was told to
18 improve its graduation rate the first time. Those are the results that its Board chair
19 deemed successful.³⁶

20 More recently, in 2016, Connections was again told that its graduation rate was
21 unacceptable, this time by a Notice of Intent issued in September of 2016.³⁷ Another plan
22 has been assembled to increase graduation rates. There is no reason to believe the 2016
23 plan will be any more successful. Connections has either already missed its first
24 graduation rate benchmark by 5 percentage points if judged by its December 2, 2016,

25 ³³ Exhibit 10, P115 SPCSA Minutes of March 22, 2013.

26 ³⁴ Exhibit Z, Page R0174 Connections 2013-14 School Improvement Plan and
27 Exhibit 1, P002 Cohort Graduation Rates for Connections.

28 ³⁵ Exhibit 1, P002, Exhibit 11, P127.

³⁶ Transcript of May 27, 2017, 245:15–248:1.

³⁷ Exhibit 2, a second notice of intent for the following school year was issued in
February, 2017, and is included as Exhibit 3.

1 letter³⁸ or Connections' Board has already shown a lack of faith in its ability to increase
2 the NDE calculated graduation rate, by attempting to judge its success by a revised, self-
3 reported and self-calculated graduation rate completely unsupported by Nevada Law.³⁹
4 Either way, the first year's implementation of the 2016 plan demonstrates that this plan
5 will not be able to correct the deficient graduation rate any more than the 2013 plan did.
6 Additionally, we know that Connections' contention that significant numbers of students
7 are graduating a year late is not persuasive because the school's five year graduation rate
8 for the 2014-15 cohort of 40.93% is only slightly improved from its four year rate⁴⁰ and
9 remains well below the statutory limit set forth in NRS 388A.330.

10 Executive Director Gavin testified regarding why Connections proposals to
11 increase its graduation rate were inadequate. The 2013 efforts, despite being judged a
12 success by the school, failed to get the school close to a 60% graduation rate and the 2016
13 plan is following a similar trajectory. Connections' own school leader agrees that the
14 school cannot expect to achieve a 60% graduation rate. As Mr. Werlein stated, "[d]espite
15 NCA's efforts to increase the graduation rate by implementing programs to assist its
16 existing students, it is likely, if not inevitable, that, as NCA continues to enroll more
17 credit-deficient students throughout each school year, **NCA's graduation rate will not**
18 **increase overall** because each new credit-deficient student enrolled results in an
19 immediate drop of the graduation rate."⁴¹ [emphasis added]

20 III.

21 CONCLUSION

22 This Board heard from many parents, students and teachers during public
23 comment in May, many of them urging this body not to act based "a single data point".
24 That is primarily a question for Phase 2 of this hearing. For this initial phase of the
25 hearing, the Board need not determine what action if any is necessary, it need only

26 ³⁸ Exhibit 1, R003.

27 ³⁹ Exhibit 6, P0082.

28 ⁴⁰ Transcript of May 26, 2017, 314:2–315:6.

⁴¹ Supplemental Exhibit A, Declaration of Steve Werlein 3:19–24.

1 evaluate whether the graduation rates in question were below the legal threshold and the
2 sufficiency of the proposed corrections. The evidence is inescapable that the graduation
3 rates calculated by NDE pursuant to federal regulations are the appropriate measure to
4 use for NRS 388A.330 purposes and there is no dispute that those rates fall well below
5 60%. The evidence also clearly establishes that the proposed measures to correct the
6 deficiency are likely to result in a graduation rate well below 60% just as they did the last
7 time Connections was told to increase its graduation rate in 2013.

8 Staff respectively submits that the Board should find that the Board should find
9 that the school has not corrected its deficiencies and move this hearing forward to
10 Phase 2.

11 DATED: August 14, 2017.

12 ADAM PAUL LAXALT
13 Attorney General

14 By: /s/ Gregory D. Ott
15 GREGORY D. OTT
16 Senior Deputy Attorney General
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 It is hereby certified that I am an employee of the State of Nevada, Office of the
3 Attorney General, and on this 14th day of August, 2017, a true and correct copy of the
4 foregoing **STATE PUBLIC CHARTER SCHOOL AUTHORITY STAFF’S WRITTEN**
5 **CLOSING ARGUMENT** was served by way of email on the following parties:

6
7 Robert A. Whitney
8 Office of the Attorney General
9 555 E. Washington Avenue, Suite 3900
10 Las Vegas, NV 89101
11 RWhitney@ag.nv.gov

12 Laura K. Granier
13 Davis Graham & Stubbs
14 50 W. Liberty Street, Suite 950
15 Reno, NV 89501
16 Laura.Granier@dgsllaw.com

17 /s/ Marissa M. Kuckhoff
18 Marissa M. Kuckhoff, Legal Secretary II

1 **INDEX OF FOOTNOTE ATTACHMENTS**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

FOOTNOTE NO.	FOOTNOTE DESCRIPTION
5	Transcript of May 26, 2017, 305:1–8, 17–21
6	Transcript of May 25, 2017, 160:20–161:6
7	Transcript of May 26, 2017, 306:22–307:2
8	Transcript of May 26, 2017, 308:1–4
9	Transcript of May 26, 2017, 311:4–8
10	Transcript of May 27, 2017, 62:4–23
16	Transcript of May 25, 2017, 145:5–146:11
19	Transcript of May 26, 2017, 312:24–313:5
20	Transcript of May 26, 2017, 313:12–314:1
27	Transcript of May 27, 2017, 245:15–248:1
28	Transcript of May 25, 2017, 180:7–181:2
29	Transcript of May 25, 2017, 182:2–183:6
40	Transcript of May 26, 2017, 314:2–315:6