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10 *Attorneys for Nevada Virtual Academy.*

11
12 **BEFORE THE NEVADA STATE PUBLIC SCHOOL CHARTER AUTHORITY**

13 * * * * *

14 **DECLARATION OF KARA B. HENDRICKS IN SUPPORT OF NEVADA VIRTUAL**
15 **ACADEMY'S BRIEF IN OPPOSITION TO THE TERMINATION OF**
THE CHARTER CONTRACT OF NEVADA VIRTUAL ACADEMY

16
17 I, KARA B. HENDRICKS, declare as follows:

18 1. I am an attorney licensed to practice law in the State of Nevada, and am legal
19 counsel to Nevada Virtual Academy ("NVVA" or the "School"). I represent NVVA in the above
20 entitled action.

21 2. As NVVA's legal representative I have personal knowledge of the events leading
22 up to this litigation described herein. The following declaration is based on my personal
23 knowledge unless otherwise indicated.

24 3. I am over 18 years of age, and I am competent to testify as to same.

25 4. This declaration is submitted in support of NVVA's Brief in Opposition to the
26 Termination of the Charter Contract of Nevada Virtual Academy (the "Brief").
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1 5. I attended NVVA's Board meeting on January 30, 2018, during which the school's
2 staff and administration presented a Continuous Improvement Plan specific to NVVA's
3 elementary school program.

4 6. On February 1, 2018, during a call between myself and Ryan Herrick, General
5 Counsel for the Nevada State Public Charter School Authority ("Authority"), Herrick indicated
6 that the Authority's Board had concerns about NVVA's elementary school program's
7 performance. In an attempt to avoid any formal action by the Authority Board, I informed
8 Herrick that NVVA had already begun formulating a plan to address the performance of the
9 elementary school.

10 7. On February 2, 2018, I followed-up with Herrick regarding our conversation and
11 sent him a PowerPoint highlighting portions of the Continuous Improvement Plan that was
12 presented to NVVA's Board on January 30, 2018 and inquired as to who at the Authority the
13 school should collaborate with to address any concerns about the school's elementary program's
14 performance prior to the Board meeting.

15 8. Thereafter, I was advised by Authority staff members that the process was not
16 collaborative – NVVA should submit a plan and the Authority would accept or reject it.

17 9. Despite my attempts to work with the Authority to address the performance of the
18 elementary school program, on February 5, 2018 NVVA was notified that the Authority Staff
19 intended to recommend issuance of a Notice of Intent to Terminate and that the issue was on the
20 agenda for the February 16, 2018 Authority Board meeting. A true and correct copy of that email
21 is attached hereto as *Exhibit B*.

22 10. On February 14, 2018, I sent a letter to Herrick detailing the steps NVVA had
23 taken to address the deficiencies in its elementary school program ratings, the willingness of
24 NVVA to submit a formal turnaround plan without the necessity of a Notice of Intent to
25 Terminate, and the flaws in the legal analysis of the Staff, including its reliance on inapplicable
26 data. A true and correct copy of that email is attached hereto as *Exhibit C*. However, the hearing
27 proceeded.
28

1 11. As NVVA's legal representative I personally attempted to voice concerns about
2 the lack of legal foundation for the Authority's proposed action prior to and at the February 16,
3 2018 Hearing of the Authority's Board. At the hearing I was told by the Board's chair that my
4 arguments were better suited for district court. The Chair acknowledged that there was
5 uncertainty in the law, but nevertheless, decided to proceed with issuing the Notice of Intent to
6 Terminate.

7 12. As a result of the issuance of the Notice of Intent to Terminate, the school was
8 required to submit a proposed cure, but was provided contradictory instructions by the Authority
9 staff as to how the proposed cure should be submitted and in what format. The School was
10 initially provided a template for a school under a termination order, which included several
11 sections that were not pertinent to NVVA. I outlined the School's concerns with the proposed
12 template to the Authority in a letter on March 2, 2018, attached hereto as *Exhibit D*. Thereafter,
13 the Authority agreed that the school did not need to use the template to submit its responses and
14 counsel for the Authority assured me that there would be no retaliation if NVVA did not utilize
15 the template. See R. Herrick Letter to K. Hendricks, March 8, 2018, *Exhibit E*.

16 13. On April 27, 2018 the Board held a hearing to determine if NVVA's proposed cure
17 was sufficient, which I attended as legal counsel for the school. The Authority's staff did not
18 schedule the hearing room long enough for the meeting, the video feed cut off while NVVA was
19 still in the middle of responding to a question from a Board member, and to the meeting was
20 ultimately recessed for nearly three hours and restarted in a new location. Ultimately, the Chair
21 attempted to continue the hearing until May 4, 2018. However, a number of procedural errors
22 were made related to the Board's failure to make a determination at the April 27, 2018 hearing,
23 Open Meetings Law violations, and the attempted continuance of the hearing, which I outlined
24 for Chairman Guinasso in a letter on May 4, 2018, attached hereto as *Exhibit A*.

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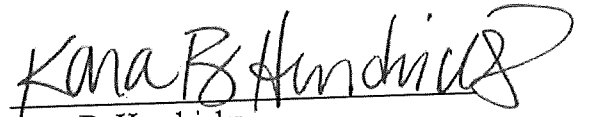
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1 14. I declare under penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct and that I am competent to testify to the facts contained in this
3 Declaration if called as a witness.

4 Executed on: June 11, 2018.


Kara B. Hendricks

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7 4810-6100-9513, v. 1

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Exhibit A

Exhibit A



Kara B. Hendricks
 Tel 702.938.6856
 Fax 702.792.9002
 hendricksk@gtlaw.com

May 4, 2018

Sent via First-Class U.S. Mail and Email (jdgnevadaspesa@gmail.com)

Chairman Jason Guinasso
 State Public Charter School Authority
 1749 N. Stewart Street #40
 Carson City, NV 89706

Dear Chairman Guinasso:

I write to you on behalf of my client, Nevada Virtual Academy (“NVVA” or the “School”), as a follow up to the State Public Charter School Authority (“SPCSA” or “Authority”) hearing held on April 27, 2018, and to inform you of a number of procedural errors that were made that render the proceedings and the Notice of Intent to Terminate closed. While I will outline the errors for you below, I want to assure you that the School is committed to improving its elementary school program and is true to its word that it wants to work collaboratively with the SPCSA to address concerns. To be clear, the procedural errors identified herein do not affect NVVA’s desire to constantly improve and develop a positive relationship with the Authority Staff and Board.

As you know, on April 27, 2018, the SPCSA held a hearing to determine whether NVVA’s proposed cure was sufficient, as indicated in its Notice of Intent to Terminate NVVA’s Charter Contract. Unfortunately, it appears that the SPCSA staff only reserved the hearing room for approximately three hours, which was not disclosed to NVVA and did not provide the Board adequate time to consider its full agenda. This was a disservice to all involved, including the Board members that traveled to Las Vegas for the meeting, NVVA’s team that spent countless hours preparing for the hearing and Samantha Morris, NVVA’s board chair, who left her husband and six children at their Disneyland vacation to fly back to Las Vegas solely for the hearing. In the limited time that was available at the scheduled meeting, the SPCSA staff presented its report on NVVA and its recommendation that the cure was not sufficient. The NVVA team put on part of its defense by walking through a PowerPoint presentation designed to respond to the SPCSA’s points of concern. However shortly after a question and answer session began and before I had an opportunity to present the legal issues I reserved time to present, the SPCSA hearing was abruptly recessed. After a nearly three hour break, the meeting resumed in a new location, but concluded shortly thereafter because there was insufficient time to hold the rest of the hearing and attempts were made to continue certain agenda items to May 14th.

LV 421140344v3

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* OPERATES AS GREENBERG TRAUIG GERMANY, LLP
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 - STRATEGIC ALLIANCE
 * OPERATES AS GREENBERG TRAUIG LLP FOREIGN LEGAL CONSULTANT OFFICE
 * A BRANCH OF GREENBERG TRAUIG, P.A., FLORIDA, USA
 * OPERATES AS GT TOKYO HORITSU JIMUSHO
 * OPERATES AS GREENBERG TRAUIG GRZESIAK SP

There were several procedural errors that occurred during and/or as a result of the process that was utilized on April 27th that we are compelled to bring to your attention.

Procedural Error #1 – Violation of Statute and Notice of Intent to Terminate

The Notice of Intent to Terminate that was sent to Mrs. Morris on February 21, 2018 stated that it was sent pursuant to NRS 388A.330(1)(a)(4), a provision of state law allowing a sponsor to terminate a charter contract if the charter school “has persistently underperformed, as measured by the performance indicators, measures and metrics set forth in the performance framework for the charter school.” NRS 388A.330 further sets forth that written notice must, among other things, “prescribe the date on which the sponsor will make a determination regarding whether the charter school has corrected the deficiencies, which determination may be made during the public hearing held pursuant to subsection 3.” NRS 388A.330(2)(c). Prescribed dates in the Notice are fixed and cannot be changed unless by written agreement by both the sponsor and the governing board of the charter school. See NRS 388A.330(4). The February 21, 2018 Notice of Intent to Terminate specifically included the following: “Note that the Authority and NVA [sic] may agree in writing to different time periods than those prescribed by NRS 388A.330.” See Notice, page 2.

Pursuant to NRS 388A.330, the February 21, 2018 Notice prescribes the following “[t]he SPCSA Board will determine whether NVA[sic] has corrected the deficiencies identified above to the satisfaction of the Authority at its April 27, 2018 Board meeting.” See Notice, page 2. The SPCSA Board did not make such a determination as set forth in the Notice, and as required by NRS 388A.330, nor did the parties agree in writing to change the time period set forth in that Notice for that determination to occur. This procedural error is fatal and means that the Notice of Intent to Terminate has concluded and no further action may be taken against NVVA in this regard.

Procedural Error #2 - Open Meetings Law Violations

There were two Open Meetings Law violations. First, the meeting was being streamed online for the public and cut off at approximately 11:30 am while the hearing was still ongoing. NRS 241.035(4) requires that meetings be audio recorded and available to the public. When the video feed cut off at 2:59:35, the hearing was in the middle of an exchange between Member Moulton and Dr. Denson, NVVA’s K-8 principal. The public did not see the conclusion of that exchange nor did they see announcements made by you, as chair, nor by DAG Whitney, who provided legal guidance to Board members about what can and cannot be discussed during recess. The SPCSA has posted the video link that covers part of the hearing, but has not posted an audio recording to cover all of the hearing. We request that the SPCSA provide a link to the audio recording that is required by the Open Meetings Law for the public to hear the full hearing, including the time after the video link cut off.

LV 421140344v3

Chairman Jason Guinasso
May 4, 2018
Page 3

The second violation occurred when the meeting was moved to a different room. The Notice of Public Meeting stated that the hearing would be held in Room 4412 of the Sawyer Building. Without the required notice to the public, the SPCSA moved its meeting to another location. That is a violation of NRS 241.020, which requires that the public be given at least three day's notice of the time, place, and location of the meeting. The SPCSA board was not permitted to recess the meeting and then start the meeting in a different location without that proper notice.

Procedural Error #3 - Failure to Vote on Continuance

Setting aside for the moment the Open Meetings Law violations referenced above, with switching the location of the meeting, you, as chairman, made a motion after recess to continue the matter until May 14, 2018. Member Corbett seconded the motion. You asked whether all members could participate on May 14th, and then realized you still had to call the matter to a vote, which you began to do. Some members said "aye," but Member Moulton interrupted to announce that she would not be able to participate as she would be out of town and suggested she participate by telephone. After you asked that Member Moulton be accommodated, you never returned to the vote of the body - a vote which had not concluded. You moved onto Agenda Item 7 and then adjourned the meeting without holding a vote on continuing Agenda Items 5 and 6.

As a result of these procedural errors, these proceedings and the Notice of Intent to Terminate are now concluded and no further action may be taken in that regard. Please send written confirmation that the SPCSA will be taking no further action as it relates to the February 21, 2018 Notice of Intent to Terminate. Once we receive that confirmation, my client is willing to withdraw the April 5th complaint filed in Carson City District Court.

It is my hope that after we dispense with the Notice of Intent to Terminate, which we believe was legally improper, that we can then hit the reset button and work collaboratively, just as the Charter Contract and Performance Framework say, so that NVVA can focus on improving its elementary school program and preparing its students for college and career success. Each student enrolled at NVVA has a different story, a different reason why NVVA is working for them and why their zoned school was not working for them. NVVA does provide a critical service to the public and wants to position itself for improvement over time and ultimately to have its charter contract renewed so this option continues to be available to Nevada families.

NVVA welcomes you or any other board member to come to its blending learning campus in Las Vegas and see the great things that NVVA is doing in the lives of thousands of Nevada

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Chairman Jason Guinasso
May 4, 2018
Page 4

families. We believe there is a role for collaboration between both parties and that the authorizing relationship need not be adversarial. We should all be working towards the same goals.

Sincerely,



Kara B. Hendricks
Shareholder

cc: Samantha Morris, NVVA Board Chair
Dr. Yolanda Hamilton, NVVA Head of School
Member Melissa Mackedon
Member Sheila Moulton
Member Nora Luna
Member Stavan Corbett
Member Jeff Hinton
Member David Gardner
Executive Director Patrick Gavin
Ryan Herrick, Esq., SPCSA General Counsel
Deputy Attorney General Greg Ott
Deputy Attorney General Robert Whitney
Governor Brian Sandoval
Attorney General Adam Laxalt

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Exhibit B

Exhibit B

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK GAVIN
Executive Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

1749 North Stewart Street Suite 40
Carson City, Nevada 89706-2543
(775) 687 - 9174 · Fax: (775) 687 - 9113

VIA ELECTRONIC MAIL ONLY

February 5, 2018

Kara B. Hendrick
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
hendricksk@gtlaw.com

Re: Nevada Virtual Academy

Kara,

Thank you very much for the PowerPoint presentation regarding the K8 Continuous Improvement Plan and Evaluation that you recently provided to me. As you know, we are scheduled to talk tomorrow, February 6, 2018, at which time I am happy to discuss the PowerPoint presentation, as well as the issues described in greater detail below.

As we recently discussed, given the performance of Nevada Virtual Academy, and particularly NVA's elementary school, SPCSA Staff has been discussing how best to proceed. In this regard, SPCSA Staff had determined to recommend that the SPCSA Board issue a Notice of Intent to Terminate NVA's Charter School Contract at the next regularly-scheduled Board meeting, currently scheduled for February 16, 2018. As you know, NVA currently operates under a charter contract that expires on June 30, 2019.

Procedurally, this process will work as follows: First, at the February 18, 2018 Board meeting, the SPCSA Board will determine whether to issue a Notice of Intent to Terminate NVA's Charter Contract ("the Notice"). In the event that the Board does, in fact, determine that it will issue the Notice, pursuant to NRS 388A.330 NVA will then be provided with a period of time not less than 30 days to correct the deficiencies outlined in the Notice. SPCSA Staff envisions that this would take the form of a proposal under which NVA plans to improve the academic performance of its elementary school. SPCSA Staff will then provide the Board with its recommendation regarding NVA's proposed plan at the SPCSA Board meeting currently scheduled for March 23, 2018. At this Board meeting, the SPCSA Board will vote to determine whether NVA's plan is acceptable to the Board.

If the Board accepts NVA's proposed plan, the Notice may be rescinded, and the Board, at its discretion, may determine that no further action is necessary. In the event that the SPCSA Board rejects NVA's proposed plan, we will move forward with a revocation hearing in accordance with NRS 388A.330.

Please note that when the agenda and supporting documentation for the February 16, 2018 Board meeting is posted in accordance with NRS Chapter 241, SPCSA Staff anticipates that a proposed Notice will be included along with Staff's recommendation, and the proposed Notice will include all of the foregoing information.

Finally, please note that NVA's charter school contract expires June 30, 2019, and nothing herein or in regard to the Notice or any related proceedings shall prejudice or otherwise limit the SPCSA in regard to any potential renewal application or related proceedings.

As always, please feel free to contact me with any questions or concerns.

/s RWH

Ryan Herrick
General Counsel

cc: Patrick Gavin, Executive Director (*via email only*)
Mark Modrcin, Director of Authorizing (*via email only*)

Jason Guinasso; Chair, State Public Charter School Authority (*via email only*)
Melissa Mackedon, Vice Chair (*via email only*)
Shelia Moulton, Member (*via email only*)
Nora Luna, Member (*via email only*)
Stavan Corbett, Member (*via email only*)
Jeff Hinton, Member (*via email only*)
David Gardner, Member (*via email only*)

Exhibit C

Exhibit C



Kara B. Hendricks
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February 14, 2018

VIA U.S. MAIL & ELECTRONIC MAIL

Ryan Herrick
General Counsel
State Charter School Authority
1749 North Stewart Street, Ste. 400
Carson City, NV 89706-2543
rherrick@spcsa.nv.gov

Re: Nevada Virtual Academy

Dear Mr. Herrick:

This correspondence is sent in response to your February 5, 2018 correspondence regarding Nevada Virtual Academy ("NVVA" or "the School") and the upcoming meeting of the State Public Charter School Authority ("SPCSA"). We understand that NVVA is on the Agenda for the February 16, 2018 SPCSA meeting and that Staff intends to recommend that a Notice of Intent to Terminate NVVA's charter school contract be issued. As detailed below, we believe a Notice of Intent to Terminate should not be issued for a number of reasons including: 1) the quick response NVVA provided to Staff after first being questioned regarding plans for the elementary school program going forward including but not limited to the School's immediate submittal of plan that demonstrates a commitment to improvement; 2) NVVA's willingness to submit a formal turnaround plan without a Notice of Intent to Terminate issuing; and 3) flaws in the legal analysis and procedural steps proposed by Staff and lack of data previously available.

As a preliminary matter, it is important to note that NVVA has high school, middle school and elementary school programs. NVVA's high school program achieved an 84% graduation rate for the 2017 school year, higher than the state average, and NVVA's middle school program received a 3-Star rating, up from a 2-Star rating during the 2012-13 school-year. However, despite showing improvements in areas such as math proficiency and English proficiency, NVVA's elementary school received a one star rating and saw deficiencies in several areas including chronic absenteeism and engagement, and the School's lowest performing students were identified as not progressing fast enough to be proficient within 3 years.

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NVVA took steps even before the Nevada Star Ratings were released to target growth and progress in its elementary school program. Notably, in the fall of 2017, Dr. Andre Denson joined NVVA as the principal of grades K-8, bringing a wealth of administrative experience to the School. Additionally, a new assistant principal, April Koebcke joined NVVA last fall as an assistant principal for grades K-5. Together Dr. Denson and Ms. Koebcke began diving into the data and developed five strategies that are currently being utilized to improve the elementary school program: 1) data-driven instruction; 2) developing a culture of high expectations; 3) frequent and intensive interventions providing multi-tiered support; 4) extending school instruction; and 5) focusing on excellence in teaching and leadership. Using these strategies, a Continuous Improvement Plan was implemented by the School. This plan was shared with NVVA's Board at its January 2018 meeting and the highlights were provided to you the day after we first spoke about the performance of NVVA's elementary program, just two weeks ago.

We note that you have included the PowerPoint presentation regarding NVVA's Continuous Improvement Plan in the materials provided to SPCSA's Board members. While the school is happy to share this information, it should be clear that the information was not prepared at SPCSA's request and was not formatted and/or intended to be a formal turnaround plan. Indeed, given that you first inquired regarding NVVA's plans for the elementary school on February 1, 2018, and NVVA provided a copy of its Continuous Improvement Plan on February 2, 2018 it should be clear that NVVA was acting in good faith and was/is taken steps to improve the elementary school. As such, the comments in the Briefing Memo that the plan alone "is wholly insufficient to forestall the issuance of the Notice" are disingenuous at best. NVVA had just over two weeks' notice of the action being proposed at the February 16, 2018 SPCSA meeting and never represented what was submitted on February 2nd was all encompassing.

Moreover, NVVA has repeatedly expressed its willingness to submit a formal turnaround plan without the need for a Notice of Intent to Terminate to issue. Unfortunately, the School's requests in regard to submitting a turnaround plan were met by statements indicating that Staff's role is not to collaborate with the School and an indication that the agenda for the February 16, 2018 SPCSA meeting would include a recommendation to terminate NVVA's charter regardless of anything the school did in the nominal period it was provided to address the issue prior to the scheduled SPCSA meeting. This is unnecessary. NVVA is willing to submit such a plan to Staff by April 2, 2018 without the need for a Notice of Intent to Terminate. Additionally, as you are aware, the School has already had discussions with Staff regarding the information Staff would like to see included in a turnaround plan and has requested a template to facilitate formatting the same in user-friendly manner. To be clear, NVVA is not making excuses for the performance of its elementary school program and is committed to improving the same.

Ryan Herrick
General Counsel
State Charter School Authority
February 14, 2018
Page 3

In addition to the foregoing, there are a number of legal issues that should preclude the proposed action. Notably, the Briefing Memorandum provided by Staff to SPSCA's Board does not reference Nevada's Administrative Procedures Act which further defines the rights of the parties involved. While we trust that was just an oversight by Staff, we do hereby request clarification from the SPSCA that the process will be governed by the Administrative Procedures Act.

Additionally, there have been a number of changes that affected the School and its ability to track its performance including the precarious state of testing data over the last several years, the suspension of the charter school academic framework, the fits and starts in the star rating system utilized by the Nevada Department of Education, and revisions to Nevada's statutes governing charter schools. Given these changes and the fact that the recommended action is based on data from 2013, 2014 and 2017 (not consecutive academic reporting cycles), the ability of the Authority to jump to a Notice of Intent to Terminate appears contrary to the existing Charter Contract and attachments thereto.

Additionally, NVVA's elementary school program is not the "charter school" nor does it hold a charter contract, which are conditions required under NRS 388A.330 in order to take the recommended action. That provision of law also requires that the recommended action be based on performance of the charter school under the school's performance framework, a framework that is currently suspended and cannot be used as a basis to close the school.

Moreover, the use of 2012 and 2013 data as the basis for the recommended action is prohibited by statute. Based on AB 205, the charter contract, and the performance framework, no data prior to the 2013-2014 school year can be used for these purposes. Please note that this correspondence is not intended to fully brief these and/or other legal arguments NVVA may have and should not be considered an admission of liability and/or a waiver of any of NVVA's administrative or judicial rights. Indeed, NVVA is hopeful this matter can be resolved without the need for legal action as there are serious violations of statute and due process at stake.

We are disappointed that Staff is taking such aggressive action shortly after the Nevada Star Ratings were issued for the first time in multiple years and without first attempting to work through the issues with the School. Such action is premature and unnecessary. This was not situation where NVVA and the Authority Staff were at an impasse that escalated to a Notice of Intent to Terminate. In fact, the parties had not discussed performance issues in over a year, and recent conversations were cordial. NVVA is willing to work with SPSCA Staff and will voluntarily submit an elementary school program turn-around plan for review and evaluation.

Ryan Herrick
General Counsel
State Charter School Authority
February 14, 2018
Page 4

NVVA hopes that the discussion at the upcoming Board meeting will be on the steps it is currently taking and/or planning to take to improve its elementary school program.

For all of the reasons stated above, we request mutual consent that this item be removed from the agenda so that we can schedule a time to discuss the outstanding legal issues as well as have School staff work on a turnaround plan. We hope the parties can work together in an amicable manner to improve NVVA's elementary school program and improve the education of the students enrolled. Should you have any questions or concerns regarding the above, please do not hesitate to contact me.

Very truly yours,



Kara B. Hendricks, Esq.

KBH/sn

cc: Samantha Morris
Yolanda Hamilton
Patrick Gavin
SPSCA Board Members
The Honorable Brian Sandoval
The Honorable Adam Laxalt

Exhibit D

Exhibit D



March 2, 2018

VIA U.S. MAIL & ELECTRONIC MAIL

Ryan Herrick
General Counsel
State Charter School Authority
1749 North Stewart Street, Suite 400
Carson City, NV 89706-2543
rherrick@spsca.nv.gov

Re: SPCSA's Comprehensive Restructuring Amendment for Schools Under a Notice of Termination for the 2018-2019 School Year

Dear Mr. Herrick:

I am writing as legal counsel to the Nevada Virtual Academy ("NVVA") with serious concerns over a document that the SPCSA staff is requiring my client to complete by April 2, 2018. I had previously inquired from you if there was any guidance document related to demonstrating that deficiencies listed in a Notice of Intent to Terminate have been cured. In response, NVVA received a "Comprehensive Restructuring Amendment for Schools Under a Notice of Termination For the 2018-2019 School Year" with instructions to complete the restructuring application by April 2, 2018. On your advice, Dr. Yolanda Hamilton, NVVA's Head of School, reached out to Mark Modrcin to clarify whether NVVA was being required to complete the document and all of its sections, and he confirmed yesterday by phone that the entire document should be populated by NVVA if they expect to receive a favorable decision at the April meeting. For the reasons outlined below, NVVA cannot agree to this request and will instead follow statute in this regard.

As a preliminary matter, I have reviewed the document, and it is clearly not intended for a school in NVVA's situation. Looking to the cover sheet, the document is meant for a school who has received a "notice of termination," not a notice of intent to terminate. The document is intended for the 2018-19 school year, but NVVA is in a cure period during the 2017-18 school year. It is also designed as an application for a school under a termination order to comprehensively restructure the school, whereas, state law only requires that NVVA demonstrate how it has addressed the alleged deficiencies at this phase in the proceedings. In fact, the Notice of Intent to Terminate signed by Chairman Guinasso specifically states that supporting materials "that the charter school chooses to provide to demonstrate that it has corrected the deficiencies must by [sic] uploaded into Epicenter by close of business on April 2, 2018." (emphasis added). However, SPCSA staff appear to be taking away the school's right to choose what supporting materials it wishes to submit to demonstrate alleged deficiencies have been cured and instead are demanding a comprehensive restructuring amendment. This is a serious process issue.

Ryan Herrick
General Counsel
State Charter School Authority
March 2, 2018
Page 2

My client will respond to the Notice of Intent to Terminate, but it would be entirely inappropriate and premature for my client to complete an application to comprehensively restructure the school when they are still in a cure period and no notice of termination has been issued. Accordingly, I would ask that you advise your client that the document is not a required document for NVVA to submit and that the school has discretion in what supporting material it wishes to submit.

My client is also concerned that SPCSA staff may retaliate against the school for not completing this cumbersome and inappropriate comprehensive restructuring application. As such, please confirm that SPCSA staff has been advised that NVVA need not complete the comprehensive restructuring application and that the school has discretion in what supporting documentation it wishes to submit and that no retaliatory action will be taken against NVVA for acting in a manner consistent with statute and the notice it was provided.

Please also know that while I am addressing this document and the Notice of Intent to Terminate from a process standpoint, my client has not waived its right to challenge the legality and appropriateness of the issuance of the Notice of Intent to Terminate in the first instance.

Very truly yours,



Kara Hendricks

KBH/sn

cc: Samantha Morris (*via electronic mail only*)
Patrick Gavin

Exhibit E

Exhibit E

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK GAVIN
Executive Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

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VIA ELECTRONIC MAIL ONLY

March 8, 2018

Kara B. Hendricks
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Re: Nevada Virtual Academy

Kara,

Thank you very much for your correspondence dated March 2, 2018. As a preliminary matter, I must take issue with several matters noted in your correspondence.

First, your correspondence misconstrues the conversations between you and I, as well as between Dr. Hamilton and Director Modrcin.

In regard to our conversations, at no time did you inquire of me if there was additional documentation further demonstrating the deficiencies listed in the Notice of Intent to Terminate NVA's charter contract. Instead, you inquired if there was any document that would provide NVA with some guidance as to what information the SPCSA would base its decision on in regard to whether or not NVA had corrected the deficiencies set out in the Notice. This is precisely what was provided to NVA.

In connection with Dr. Hamilton's conversation with Director Modrcin, I would initially note that during our conversation on February 21, 2018, when you expressed some concern to me regarding the form that was provided to NVA, I urged you to have NVA reach out to Director Modrcin to clarify any questions that NVA might have. After confirming with Director Modrcin on February 26, 2018, that no one from NVA had contacted him, I again spoke with you on February 27, 2018, and again urged NVA to contact Director Modrcin with any questions or concerns. On March 1, 2018, Dr. Hamilton contacted Director Modrcin.

Despite the assertions contained in your correspondence that Director Modrcin informed Dr. Hamilton that the entire form needed to be completed “if [NVA] expected to receive a favorable decision,” after speaking with Director Modrcin it is clear that this is not the information that was provided to Dr. Hamilton. Instead, Director Modrcin and Dr. Hamilton had what was described to me as a very cordial conversation that clarified questions that NVA staff had regarding the provided form.

At the onset of their conversation, Dr. Hamilton expressed some concern over the length of the form template and the amount of detail it seemed to necessitate. Director Modrcin clarified to both Dr. Hamilton and Mr. Gerhardt, who was also on the call, that certain portions of the form may not be applicable to NVA given the instructional delivery method of a virtual school (i.e. facility amendment) and the proposed changes NVA believes are best to correct the deficiencies outlined in the Notice of Intent to Terminate. Additionally, Director Modrcin emphasized that the intent of this form was to capture all programmatic shifts that the school anticipates undertaking to correct the outlined deficiencies. By way of example, Director Modrcin referenced section 2.A of the form which contemplates the mission and vision of the school. Director Modrcin informed Dr. Hamilton and Mr. Gerhardt that this section may not be necessary to complete if NVA’s leadership and NVA’s Board determines that changing the mission and vision is not fundamental to correcting the identified deficiencies. At the end of the conversation, Director Modrcin did advise Dr. Hamilton and Mr. Gerhardt that populating this form in a thorough, robust manner would provide NVA with the best opportunity to present their plan. SPCSA staff is familiar with this template, is confident that it incorporates the necessary elements of school turnaround, and firmly believes it sets up any school for success in implementing changes to their academic program. Despite the implications contained in your correspondence, the conversation ended amicably. Director Modrcin had no reason to believe that the provided form was overly burdensome to the school given the clarifications provided to Dr. Hamilton and Mr. Gerhardt, both of whom indicated they would follow up if further explanation would be beneficial.

Furthermore, you seem to take issue with the title of the form that was provided to NVA referring to a “notice of termination” and not related to a notice of intent to terminate NVA’s charter contract. This argument is a matter of semantics – the provided form is intended to provide NVA with some guidance as to the information that SPCSA staff is seeking in order to make its recommendation to the SPCSA Board. It was our understanding that this was what NVA was seeking. In this vein, we are concerned that NVA is more worried about the title of the document than providing information that will enable the SPCSA to make a determination regarding whether or not the deficiencies identified in the Notice of Intent to Terminate NVA’s charter contract have been corrected.

Perhaps most importantly, you state several times in your correspondence that you are concerned regarding the documents, supporting material, and information that the SPCSA is “requiring” NVA to submit in connection with the Notice of Intent to Terminate NVA’s charter contract. However, as mentioned above, neither myself nor Director Modrcin have stated that NVA is “required” to submit any particular information, or utilize any specific form. Instead, the message from the SPCSA has been clear – and is expressly stated in the Notice of Intent to Terminate NVA’s charter contract – that NVA may submit anything, in any form, in support of NVA’s corrective action. Again, the form provided to NVA was sent to NVA in order to allow NVA to see what information the SPCSA would be looking for in order to determine if NVA has corrected the deficiencies identified in the Notice.

In this regard, should NVA choose not to utilize the form that the SPCSA provided to NVA – which NVA may certainly choose not to utilize the provided form -- instead of informing me what NVA is not going to do (i.e., not utilize the provided form), please let me know what NVA plans to submit (i.e., in what format and what information NVA intends to provide to the SPCSA to demonstrate that it has corrected the deficiencies identified in the Notice of Intent to Terminate NVA’s charter contract). There is certainly no requirement that you provide me with this information; however, in the event that NVA is not going to utilize the template that the SPCSA provided to NVA, any information regarding what may be submitted will assist the SPCSA in its review of material submitted by NVA.

In reviewing your March 2nd letter, I also noticed that your client appears to be under the impression that simply submitting a response to the Notice of Intent to Terminate will lead to a favorable decision at the April 27th SPCSA Board meeting. No matter the chosen avenue or form used for submission, please remind your client that the quality of their response to the Notice of Intent to Terminate will ultimately drive the staff recommendation, nothing more. If NVA’s submission is incomplete or lacks sufficient level detail, this will be included in the overall recommendation, which will be presented on April 27. The recommendation, as you know, may be accepted or rejected by the SPCSA Board.

Finally, you note in your correspondence to me that NVA is concerned that SPCSA staff may “retaliate” against NVA in the event that NVA does not utilize the form provided to NVA. While I am unsure what, exactly, you may be referring to, I presume that you are implying that SPCSA staff may somehow base its recommendation to the SPCSA Board on the fact that NVA determines to submit something to the Authority that is not based on the provided form. As discussed above, the utilization of the provided form is not required, and you may rest assured that the SPCSA staff will base its recommendation on the material and information provided by NVA. Any assumption otherwise would be misguided.

As always, please feel free to contact me with any questions or concerns.

Sincerely,



Ryan Herrick
General Counsel

cc: Patrick Gavin, Executive Director