

1 Ryan W. Herrick, Esq.  
2 State Bar No. 7380  
3 STATE PUBLIC CHARTER  
4 SCHOOL AUTHORITY  
5 1749 North Stewart Street, Suite 40  
6 Carson City, Nevada 89706  
7 775-687-9159 (phone)  
8 775-687-9113 (fax)  
9 rherrick@spsca.nv.gov

10  
11  
12 **BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**  
13 **STATE OF NEVADA**

14 IN RE

15 NEVADA VIRTUAL ACADEMY

**HEARING STATEMENT**

16 The State of Nevada *ex rel.* the State Public Charter School Authority (hereinafter “the  
17 Authority” or “SPCSA”) hereby submits the Authority’s Hearing Statement in regard to the public  
18 hearing scheduled for June 25, 2018, and in connection with the Notice of Intent to Terminate  
19 Nevada Virtual Academy’s (hereinafter “NVA”) Charter School Contract, issued by the Authority  
20 on February 21, 2018. Concurrently along with this Hearing Statement, the SPCSA serves its  
21 witness and exhibit list in connection with the June 25, 2018 public hearing.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
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

This Hearing Statement is made and based on the following Memorandum of Points and Authorities, the attached exhibits, and any and all evidence and testimony proffered at the June 25, 2018 public hearing.

Dated this 11<sup>th</sup> day of June, 2018.



Ryan W. Herrick, Esq.  
State Bar No. 7380  
STATE PUBLIC CHARTER  
SCHOOL AUTHORITY  
1749 N. Stewart Street, Suite 40  
Carson City, Nevada 89706  
775-687-9159 (phone)  
775-687-9113 (fax)  
rherrick@spsca.nv.gov

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 On February 21, 2018, the Authority issues a Notice of Intent to Terminate NVA's charter  
4 school contract (referred to herein as "the Notice").<sup>1</sup> Following the issuance of the Notice, NVA  
5 submitted a "Comprehensive Academic Improvement Plan" in order to attempt to correct the  
6 deficiencies identified in the Notice. The deficiencies identified in the Notice related to NVA's  
7 elementary school, and its persistent underperformance as defined in NAC 386.332. At its May  
8 14, 2018 Board meeting, the SPCSA Board rejected NVA's Comprehensive Academic  
9 Improvement Plan. As a result, a public hearing is scheduled for June 25, 2018, in order for the  
10 SPCSA Board to determine whether to terminate NVA's charter school contract.  
11

12 **II. Legal Authority**

13 In part, NRS 388A.330(1)(a) reads as follows:

14 " ...the sponsor of a charter school may ... revoke a written charter or terminate a  
15 charter contract before the expiration of the charter if the sponsor determines that:  
16 (a) The charter school, its officers or its employees:  
17 (1) Committed a material breach of the terms and conditions of the written charter  
18 or charter contract;  
19 (2) Failed to comply with generally accepted standards of fiscal management;  
20 (3) Failed to comply with the provisions of this chapter or any other statute or  
21 regulation applicable to charter schools; or  
22 (4) If the charter school holds a charter contract, has persistently underperformed,  
23 as measured by the performance indicators, measures and metrics set forth in the  
24 performance framework for the charter school;  
25 ..."

26 NAC 386.332 defines "persistent underperformance" as:

27 (1) The charter school was not rated in the first, second or third highest tier during the  
28 last three ratings of the charter school pursuant to the statewide system of  
accountability for public schools; or

---

<sup>1</sup> All documents referenced in this Hearing Statement will be provided to the SPCSA Board as part of a separate set of Exhibits.

1 (2) If the charter school is operating under a charter contract, the charter school has not  
2 complied consistently with the performance indicators, measures and metrics set forth  
3 in the performance framework of the charter school, as determined by the sponsor.

4 Furthermore, NRS 388A.330(1)(g) states that a charter school contract may be terminated if:

5 [p]upil achievement and school performance at the charter school is unsatisfactory as  
6 determined by the Department pursuant to criteria prescribed by regulation by the  
7 Department to measure the performance of any public school pursuant to the statewide  
8 system of accountability for public schools.

9 Notably, in addition providing the Authority with the discretion to terminate a charter school  
10 contract, NRS 388A.330(7) allows the Authority to amend the school's charter school contract to  
11 eliminate low performing grade levels. In part, NRS 388A.300(7) reads as follows:

12 If the sponsor of a charter school determines that not all of the grade levels in the charter  
13 school meet the criteria described in paragraphs (a) to (g), inclusive, of subsection 1 and  
14 that the charter school can remain financially viable if the charter school continues to  
15 operate and serve only the grade levels which do not meet the criteria described in those  
16 paragraphs, the sponsor may amend the written charter or charter contract, as applicable,  
17 to eliminate the grade levels that meet the criteria described in paragraphs (a) to (g),  
18 inclusive, of subsection 1 and limit the enrollment in all other grade levels in the charter  
19 school.

### 20 **III. NVA Performance**

21 NVA originally entered into a six-year written charter in 2007 by its then-sponsor, Nevada's  
22 Department of Education. NVA's charter school contract expires on June 30, 2019.

23 In 2013, NVA applied for renewal of its written contract. In regard to NVA's charter school  
24 contract renewal application in 2013, SPCSA staff noted in its recommendation that NVA  
25 exhibited "persistent academic underperformance," "low continuous enrolled percentages," "low  
26 graduation rates," and "a high percentage of students transferring out before graduation." In  
27 conclusion, the SPCSA found that NVA's "academic program has not been a success."

28 Notwithstanding the foregoing, in 2013 the Authority renewed NVA's written charter, upon  
certain conditions. NVA's 2013 charter school contract included an expiration date of June 29,  
2019. These conditions included NVA facing a "high stakes review" during the Fall of 2015, at

1 which time NVA was to show “substantial progress” to improve its academic performance.

2 In September of 2013, the Authority issued NVA a Notice of Concern due to academic  
3 underperformance. The Notice of Concern noted that NVA’s elementary, middle, and high school  
4 had all recently been rated as 2-Stars under the Department of Education’s Nevada School  
5 Performance Framework.

6 One year later, in December of 2014, the Authority issued NVA a Notice of Breach due to  
7 academic underperformance related to the 2013-2014 academic school year. While NVA’s middle  
8 school was ranked in 2015 as a 3-Star school under the NSPF, NVA’s elementary and high school  
9 were still ranked as 2-Star schools.

10 Although the high-stakes review originally scheduled for the Fall of 2015 was ultimately  
11 postponed until 2016, NVA’s high-stakes review ultimately resulted in SPCSA staff  
12 recommending to the Authority that NVA’s charter school contract be terminated due to NVA’s  
13 consistent academic underperformance. However, the Authority Board elected not to terminate  
14 NVA’s charter school contract.

15 In 2015 and 2016, the Department of Education did not release ratings due to testing  
16 irregularities and changes to federal law.

17 However, in December of 2017, the Department of Education released new ratings for the  
18 2016-2017 academic school year.

19 Below is a table summarizing NVA’s historical enrollment from the 2011-2012 school year to  
20 present, broken down by grade level. Note that NVA’s enrollment has decreased from a high of  
21 3,500 students to approximately 2,000 students for the 2017-2018 school year.

22 ///  
23 ///  
24 ///  
25  
26  
27  
28

1  
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

Grade Level	Number of Students						
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Pre-K	N/A	N/A	N/A	N/A	53	N/A	N/A
K	167	224	195	140	50	78	86
1	167	184	227	160	110	92	70
2	160	234	214	180	122	84	76
3	186	187	213	166	132	118	83
4	196	248	212	184	132	129	113
5	230	273	258	186	151	136	112
6	258	362	310	216	183	155	153
7	381	457	395	267	222	217	249
8	466	566	490	337	260	246	300
9	353	435	372	272	188	170	183
10	326	457	266	205	268	203	259
11	429	482	278	159	221	238	230
12	259	389	239	160	116	186	183
<b>Total</b>	<b>3578</b>	<b>4498</b>	<b>3669</b>	<b>2632</b>	<b>2208</b>	<b>2052</b>	<b>2097</b>

///  
///  
///

1  
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

Below is a table summarizing NVA's historical academic performance from the 2011-2012 school year through the 2016-2017 school year under the Nevada School Performance Framework.

School Year	NSPF Rating
2011-2012	Elementary: 2 Star Middle School: 2 Star High School: 1 Star
2012-2013	Elementary: 2 Star Middle School: 2 Star High School: 2 Star
2013-2014	Elementary: 2 Star Middle School: 3 Star High School: 2 Star
2014-2015	Elementary: 2 Star (frozen from 2014) Middle School: 3 (frozen from 2014) High School: 2 Star (frozen from 2014)
2015-2016	No star rating published by State
2016-2017	Elementary: 1 Star Middle School: 3 Star High School: N/A

Note that NVA's high school graduation rate has steadily increased from 36% in 2012 to 84% for the 2016-2017 school year.

Since its charter school contract was renewed in 2013, NVA has submitted a number of reports, updates, and academic improvement plans to the Authority. Notably, these reports and

1 plans have had little impact on the academic performance of NVA's middle school, and no impact  
2 whatsoever on the academic performance of NVA's elementary school.

3 In regard to NVA's financial performance, NVA was issued a Notice of Concern for the  
4 2015-2016 school year. Below is a comparison related to NVA's financial performance for the  
5 2015-2016 school year and the 2016-2017 school year.

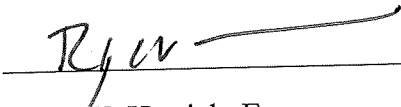
Nevada Virtual Academy			
Financial Measure	SY2015 - 2016	SY2016 - 2017	Progress
Current Ratio	Meets Standard	Meets Standard	Equivalent
Days of Cash-on-Hand	Meets Standard	Meets Standard	Equivalent
Enrollment Forecast Accuracy	Falls Far Below Standard	Does Not Meet Standard	Improved
Debt Default	Meets Standard	Meets Standard	Equivalent
Total Margin	Does Not Meet Standard	Falls Far Below Standard	Declined
Debt to Asset Ratio	Meets Standard	Meets Standard	Equivalent
Cash Flow	Does Not Meet Standard	Falls Far Below Standard	Declined
Debt Service Coverage Ratio	#N/A	Meets Standard	#N/A

6  
7  
8  
9  
10  
11  
12 As to organization, NVA has a number of issues as it related to its governing body,  
13 including its governing body not being properly constituted, Open Meeting Law violations, and  
14 other issues. Just as with the financial issues, these issues will all be detailed at the June 25, 2018  
15 public hearing.

#### 16 17 **IV. Conclusion**

18 SPCSA staff respectfully submits this Hearing Statement in preparation for the June 25, 2018  
19 public hearing.

20 Dated this 11<sup>th</sup> day of June, 2018.

21  
22  
23   
24 Ryan W. Herrick, Esq.  
25 State Bar No. 7380  
26 STATE PUBLIC CHARTER  
27 SCHOOL AUTHORITY  
28 1749 N. Stewart Street, Suite 40  
Carson City, Nevada 89706  
775-687-9159 (phone)  
775-687-9113 (fax)  
rherrick@spcsa.nv.gov



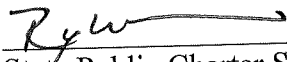
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**CERTIFICATE OF SERVICE**

1  
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

I certify that I am an employee of the State of Nevada, State Public Charter School Authority, and that on this \_\_\_\_ day of June, 2018, I served the following by way of United State Postal Service, with courtesy copies via electronic mail:

Kara B. Hendricks  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway  
Suite 4000 North  
Las Vegas, Nevada 81969  
702-792-3773  
hendricksk@gtlaw.com

  
\_\_\_\_\_  
State Public Charter School Authority

## STATE PUBLIC CHARTER SCHOOL AUTHORITY WITNESS LIST

### Nevada Virtual Academy Public Hearing

The State Public Charter School Authority hereby submits its list of individuals who will or may be called as witnesses at the Nevada Virtual Academy hearing set for June 28, 2018.

1. Mark Modrcin; SPCSA Director of Authorizing

Mr. Modrcin will testify regarding Nevada Virtual Academy's academic, financial, and organizational performance.

2. Selcuk Ozdemir, PhD; SPCSA Education Programs Supervisor

Dr. Ozdemir will testify regarding the Nevada School Performance Framework as it relates to Nevada Virtual Academy, and Nevada Virtual Academy's academic performance.

3. Yolanda Hamilton, PhD; Nevada Virtual Academy, Head of School

Dr. Hamilton will testify regarding Nevada Virtual Academy's academic performance.

4. Andre Denson, PhD; Nevada Virtual Academy, K-8 School Principal

Dr. Denson will testify regarding Nevada Virtual Academy's academic performance.

5. Ben Gerhardt; Nevada Virtual Academy, Federal Grants and Assessments Director

Mr. Gerhardt will testify regarding Nevada Virtual Academy's academic performance

6. Samantha Morris; Nevada Virtual Academy, Board President

Ms. Morris will testify regarding Nevada Virtual Academy's academic, financial, and organizational performance.

7. Any other witnesses called by Nevada Virtual Academy

The State Public Charter School Authority reserves the right to supplement or amend this list of witnesses.

## STATE PUBLIC CHARTER SCHOOL AUTHORITY LIST OF EXHIBITS

### Nevada Virtual Academy Public Hearing

The State Public Charter School Authority hereby submits its list of exhibits and documents that will or may be utilized at the Nevada Virtual Academy hearing set for June 28, 2018.

1. Notice of Intent to Terminate NVA's charter school contract, dated February 21, 2018.
2. Charter School Contract between SPCSA and NVA, executed October 24, 2016.
3. SPCSA Renewal Recommendation, dated June 21, 2013.
4. Notice of Concern, dated September 16, 2013.
5. Notice of Breach, dated December 15, 2014.
6. Briefing Memorandum, dated February 22, 2016, and accompanying documents.
7. Notice of Concern, dated July 14, 2017.
8. Assembly Bill 49 Notice, January 8, 2018.
9. NVA AB 49 Certification and accompanying documents, dated January 26, 2018.
10. Assembly Bill 49 Notice, dated February 28, 2018; NVA Certification and accompanying documents.
11. NVA High Stakes Review Material, dated March 25, 2016.
12. NVA Executive Summary, dated August 2016.
13. NVA Comprehensive Academic Improvement Plan, 2017-2018 School Year and Beyond.
14. Nevada School Performance Framework documents (2008-present).
15. Four Year Adjusted Cohort Rate for the Class of 2016-2017.
16. Any other exhibits utilized by Nevada Virtual Academy.

The State Public Charter School Authority reserves the right to supplement or amend this list of exhibits and documents.