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6 **BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**

7 **STATE OF NEVADA**

8 IN RE

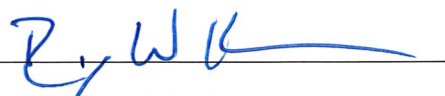
9 NEVADA VIRTUAL ACADEMY

10 **STATE PUBLIC CHARTER SCHOOL**
AUTHORITY'S RESPONSE TO NEVADA
VIRTUAL ACADEMY'S HEARING
BRIEF

11 _____
12 The State of Nevada *ex rel.* the State Public Charter School Authority (hereinafter "the
13 Authority" or "SPCSA") hereby submits its Response to Nevada Virtual Academy's "Brief in
14 Opposition to the Termination of the Charter Contract of Nevada Virtual Academy" (referred to
15 herein as "NVA's Hearing Brief") and in connection with the public hearing scheduled for June
16 25, 2018.

17
18 This Response is made and based on the following Memorandum of Points and
19 Authorities, the attached exhibits (if any), and any and all evidence and testimony proffered at
20 the June 25, 2018 public hearing.

21 Dated this 19th day of June, 2018.

22
23 
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 NVA's Hearing Brief is perhaps most notable for the complete lack of any academic data
4 related to its woefully academically underperforming elementary school. Instead of addressing
5 the historic academic underperformance of its elementary school, NVA forwards a number of
6 procedural and legal arguments in support of its position that termination is somehow improper.
7 As discussed below, all of NVA's arguments contained in its Hearing Brief are without merit,
8 and termination of NVA's charter school contract, or elimination of academically
9 underperforming grade levels, is appropriate and proper.
10

11 **II. The State Public Charter School Authority's Response to Nevada Virtual**
12 **Academy's Arguments Raised in its Hearing Brief**

13 NVA's Hearing Brief, and the arguments contained in its Hearing Brief, can be summarized
14 and divided into three categories. Once again, none of these arguments directly addresses the
15 academic underperformance of NVA's elementary school.

16 First, NVA makes a number of miscellaneous, unsupported, and baseless arguments in its
17 attempt to stave off termination. These arguments include the fact that its charter school contract
18 is up for renewal this upcoming Fall, that the Notice of Intent to Terminate NVA's charter school
19 contract "has created uncertainty and unnecessary stress" for NVA students and teachers, and
20 NVA's assertion that it was willing to work "voluntarily" with the Authority to turn around its
21 woefully underperforming elementary school.
22

23 Second, NVA forwards a number of legal arguments it claims prevents the SPCSA Board
24 from terminating NVA's charter school contract, or eliminating academically underperforming
25 grade levels. As discussed in greater detail below, all of NVA's legal arguments are without
26 merit.
27

28 Finally, NVA points to what it claims are a number of procedural errors related to the

1 administrative proceedings related to the Notice of Intent to Terminate NVA's charter school
2 contract. As with each and every other argument forwarded by NVA, these procedural
3 arguments are without merit, and termination of NVA's charter school contract, or the
4 elimination of academically underperforming grade levels, is appropriate and proper.

5 **A. NVA's Extemporaneous, Misleading, and Unsupported Arguments**

6 First, NVA's Hearing Brief is filled with miscellaneous unsupported arguments that NVA
7 claims somehow mitigate against termination of NVA's charter school contract. However, these
8 unsupported arguments do nothing but distract from the undisputed woeful academic
9 performance of NVA's elementary school.
10

11 In this vein, NVA has the gall to claim that NVA's efforts to improve its elementary
12 school's academic performance have somehow been "stymied" by the Authority's "punitive
13 measures." See Hearing Brief, at 6. In support of this specious argument, NVA points to the
14 academic changes it claims it has already implemented, and the results NVA expects to see as a
15 result of these changes. *Id.*, at 6-9. However, it is wholly unclear how NVA believes that the
16 actions of the Authority – presumably issuing the Notice of Intent to Terminate NVA's charter
17 school contract and proceedings related to the issuance of the Notice – have "stymied" NVA's
18 efforts in this regard.
19

20 NVA also points several times in its Hearing Brief to the fact that its charter school
21 contract – related to NVA's *entire school* – is up for renewal in the Fall of 2018. *Id.*, at 9; 29.
22 Again, it is wholly unclear how any potential renewal request submitted to the Authority several
23 months from now effects the present termination proceedings.
24

25 Similarly, NVA states that it attempted to "voluntarily" work with the SPCSA in an effort
26 to avoid "formal" termination proceedings. *Id.*, at 9-10; 28-29. Just as with NVA's argument in
27 regard to renewal, it is wholly unclear how this argument mitigates against termination. In this
28 regard, NVA points several times to the Comprehensive Academic Improvement Plan that it

1 submitted to the Authority in connection with these termination proceedings. *Id.*, at 3; 6-9; 28-
2 29. However, as NVA is well-aware, the Authority reviewed NVA’s academic improvement
3 plan, and rejected it as insufficient to correct the deficiencies identified in the Notice of Intent to
4 Terminate NVA’s charter school contract. Again, these arguments have no effect whatsoever on
5 the propriety of the proceedings related to the Notice of Intent to Terminate NVA’s charter
6 school contract.
7

8 NVA goes on to argue that termination proceedings should be halted because of the
9 “uncertainty” and “unnecessary stress” that the instant termination proceedings have had on
10 NVA students and staff. *Id.*, at 4; 10-11; 27-28. This argument is particularly offensive, since
11 any such uncertainty or stress is a result of NVA’s woeful academic performance – not in any
12 way related to any action that the SPCSA has taken.
13

14 As is evident, none of NVA’s miscellaneous and unsupported arguments mitigate in any
15 way against termination of NVA’s charter school contract.
16

16 **B. NVA’s Legal Arguments**

17 For reference, below is NRS 388A.330(1)(a), NAC 386.332, and NRS 388A.330(1)(g).¹

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

19 “...the sponsor of a charter school may ... revoke a written charter or terminate a
20 charter contract before the expiration of the charter if the sponsor determines that:

21 (a) The charter school, its officers or its employees:

22 (1) Committed a material breach of the terms and conditions of the written charter
23 or charter contract;

24 (2) Failed to comply with generally accepted standards of fiscal management;

25 (3) Failed to comply with the provisions of this chapter or any other statute or
26 regulation applicable to charter schools; or

27 (4) If the charter school holds a charter contract, has persistently underperformed,
28

25 ¹ NVA’s current charter school contract makes abundantly clear that NVA must operate in
26 compliance with all federal and state laws and regulations. *See* Charter School Contract,
27 attached hereto as Exhibit 4, Section 1.4.3 (“The Charter School and its governing body (the
28 “Charter Board”) shall operate *at all times* in accordance with all federal and state laws, local
ordinances, regulations and Authority policies applicable to charter schools.”); Section 1.4.4
 (“The Charter School shall be deemed a public school subject to all applicable provisions of
local, state and federal law and regulation....”).

1 as measured by the performance indicators, measures and metrics set forth in the
2 performance framework for the charter school;...”

3 NAC 386.332 defines “persistent underperformance” as:

- 4 (1) The charter school was not rated in the first, second or third highest tier during the
5 last three ratings of the charter school pursuant to the statewide system of
6 accountability for public schools; or
7 (2) If the charter school is operating under a charter contract, the charter school has not
8 complied consistently with the performance indicators, measures and metrics set forth
9 in the performance framework of the charter school, as determined by the sponsor.

10 Furthermore, NRS 388A.330(1)(g) states that a charter school contract may be terminated if:
11 [p]upil achievement and school performance at the charter school is unsatisfactory as
12 determined by the Department pursuant to criteria prescribed by regulation by the
13 Department to measure the performance of any public school pursuant to the statewide
14 system of accountability for public schools.

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

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

26 NVA makes several legal arguments, claiming that the present termination proceedings are
27 somehow improper. None of these arguments have merit.

28 **1. NRS 388A.300 is Inapplicable to These Proceedings**

First, NVA claims that NRS 388A.300 somehow precludes and prevents that Authority
from utilizing any ratings prior to the 2015-2016 school year. *See* Hearing Brief, at 14-16; 24-
25. However, NVA’s argument in this regard is simply a misreading of Nevada’s public charter

1 school statutes related to termination proceedings.²

2 NVA conflates and confuses NRS 388A.300, Nevada’s mandatory charter school
3 contract termination statute, with NRS 388A.330 (the statute that the Authority is relying on in
4 connection with NVA), Nevada’s permissive charter school contract termination provision.
5 These two statutory provisions are separate and distinct, and NVA attempts to point to the
6 language contained in NRS 388A.330 that states “[e]xcept as otherwise provided in NRS
7 388.300” to tie the two separate statutory provisions together. However, instead of somehow
8 joining these two statutes, the “except as otherwise provided in NRS 388A.300” language makes
9 clear that the Authority can initiate termination proceedings in two separate and distinct ways.
10

11 First, the Authority is legislatively *required* to terminate a charter school contract if the
12 conditions set forth in NRS 388A.300 are met. *See* NRS 388A.300 (“The sponsor of a charter
13 school *shall* revoke the written charter or terminate the charter contract of a charter school....”)
14 (emphasis added). As is evident from the plain language of NRS 388A.300, no discretion is
15 afforded to the Authority under its provisions, and the Authority is *required* to terminate a
16 charter school contract under its mandate if the conditions set forth in NRS 388A.300 are met.
17

18
19 ² In this regard, in addition to its misplaced argument regarding NRS 388A.300, NVA also
20 previously argued that NAC 386.332, the regulatory definition of “persistent underperformance,”
21 somehow did not apply to these proceedings. While it appears that NVA has now abandoned
22 this argument, it is worth noting that NVA previously attempted to argue that the Authority’s
23 reliance on NAC 386.332, which is the charter school regulation that defines “persistent
24 underperformance” is improper because, according to NVA, NAC 386.332 was enacted after the
25 execution of NVA’s charter school contract. In this regard, NVA previously argued that “the
26 Authority cites to NAC 386.332, a regulation adopted by the Nevada Department of Education
27 well after the Contract was executed.” NVA went on to argue this point, stating that NAC
28 386.332 cannot be “applied retroactively.”

For reference, NAC 386.332 became effective on December 22, 2014, after the Department of
Education held public workshops and allowed for public comment.

NVA’s argument in this regard, however, was perplexing since the current version of the charter
school contract that it is operating under was executed by NVA in 2016. *See* Charter School
Contract. Presumably, NVA is in possession of its own, most recent charter school contract. As
is evident, any argument regarding NAC 386.332 and the date of NVA’s charter school contract
fails on its own terms.

1 However, NRS 388.330 offers an entirely separate and distinct avenue by which the
2 Authority can, but is not required to, initiate termination proceedings in connection with an
3 Authority-sponsored charter school. Just as with NRS 388A.300, the plain language contained in
4 NRS 388A.330 makes clear that the Authority “may” initiate termination proceedings if the
5 conditions contained in NRS 388A.330 are met. The Legislative mandate set forth in NRS
6 388A.330 is clear – the Legislature has granted the Authority with the discretion to initiate
7 termination proceedings if the conditions set forth in NRS 388A.330 are met. However, as is
8 plainly evident, these two statutory provisions are separate and distinct, and any attempt by NVA
9 to conflate the two statutes is misplaced.³
10

11
12 ³ While NRS 388A.300 is wholly inapplicable to the instant action, it should be noted that there
13 is an error in the text of NRS 388A.300(2) as it appears in the printed version of the Nevada
14 Revised Statutes. The correct text is set forth below, and will be corrected in future printed
15 versions of the Nevada Revised Statutes. Note that the typographical error appears after the
16 language contained in NRS 388A.300(2). The printed version of this statute adds the “2016-
17 2018 school year” following the reference to the 2015-2016 school year. Again, because ALL of
18 NRS 388A.300 is inapplicable to the present proceedings, this typographical error has no effect
19 whatsoever on the Authority’s legal basis underpinning these proceedings.

20 NRS 388A.300 Revocation of written charter, termination of charter contract or restart
21 of charter school by sponsor: Grounds for revocation, termination or restart without adherence to
22 procedural standards based upon ratings of charter school as underperforming; submission of
23 written report to Department; regulations governing restart of charter school. [Effective through
24 December 31, 2019.]

25 1. The sponsor of a charter school shall revoke the written charter or terminate the
26 charter contract of the charter school or restart the charter school under a new charter contract if
27 the charter school receives, in any period of 5 consecutive school years, three annual ratings
28 established as the lowest rating possible indicating underperformance of a public school, as
determined by the Department pursuant to the statewide system of accountability for public
schools.

 2. A charter school's annual rating pursuant to the statewide system of accountability
based upon the performance of the charter school must not be included in the count of annual
ratings for the purposes of subsection 1 for any school year before the 2015-2016 school year.

 3. If a written charter is revoked, a charter contract is terminated or a charter school is
restarted pursuant to subsection 1, the sponsor of the charter school shall submit a written report
to the Department and the governing body of the charter school setting forth the reasons for the
revocation or termination or restart of the charter school not later than 10 days after revoking the
written charter, terminating the charter contract or restarting the charter school.

 4. The provisions of NRS 388A.330 do not apply to the revocation of a written
charter, termination of a charter contract or restart of the charter school pursuant to this section.

 5. The Department shall adopt regulations governing procedures to restart a charter
school under a new charter contract pursuant to subsection 1. Such regulations must include,
without limitation, requiring a charter school that is restarted to enroll a pupil who was enrolled
in the charter school before the school was restarted before any other eligible pupil is enrolled.

(Added to NRS by 2013, 2908; A 2015, 2461, 3282)—(Substituted in revision for NRS

1 **2. “The Authority is Improperly Using the Performance of the Elementary**
2 **School Program as a Basis for [Terminating the Charter School Contract] of**
3 **the Whole School”**

4 NVA attempts to argue that the Authority cannot terminate NVA’s charter school
5 contract based solely on the academic underperformance of NVA’s elementary school. *See*
6 Hearing Brief, at 2, 20-22. This argument, however, is a misreading of Nevada’s charter school
7 statutes and regulations, and a misunderstanding of the charter school bargain.

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

9 “...the sponsor of a charter school may ... revoke a written charter or terminate a
10 charter contract before the expiration of the charter if the sponsor determines that:

11 (a) The charter school, its officers or its employees:

12 (1) Committed a material breach of the terms and conditions of the written charter or
13 charter contract;

14 (2) Failed to comply with generally accepted standards of fiscal management;

15 (3) Failed to comply with the provisions of this chapter or any other statute or
16 regulation applicable to charter schools; or

17 (4) If the charter school holds a charter contract, has persistently underperformed, as
18 measured by the performance indicators, measures and metrics set forth in the
19 performance framework for the charter school;

20 ...”

21 NAC 386.332⁴ defines “persistent underperformance” as:

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

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

29 NVA’s narrow reading of the statutes and regulation essentially reads “charter school” to
30 mean that the Authority cannot terminate a charter school’s “charter contract” unless all grade
31 levels – in the case of NVA, its elementary, middle, and high school – all meet the definition of
32 “persistent underperformance.” However, this misreads the intent of these charter school statutes
33 and regulations. These statutes are intended to allow the Authority, at its discretion, to terminate
34

35 _____ (continued)
36 386.5351).

37 ⁴ The Authority’s (proper) reliance on NAC 386.332 is addressed below.

1 a charter school contract for persistent underperformance of any of the school's grade levels.

2 In this vein, NRS 388A.330(7) expressly delegates to the Authority this discretion, by
3 allowing the Authority to eliminate grade levels within an Authority-sponsored public charter
4 school upon certain conditions. See NRS 388A.330(7) ("If the sponsor of a charter school
5 determines that not all of the grade levels in the charter school meet the criteria described in
6 paragraphs (a) to (g), inclusive, of subsection 1 and that the charter school can remain financially
7 viable if the charter school continues to operate and serve only the grade levels which do not
8 meet the criteria described in those paragraphs, the sponsor may amend the charter contract to
9 eliminate the grade levels that meet the criteria described in paragraphs (a) to (g), inclusive, of
10 subsection 1 and limit the enrollment in all other grade levels in the charter school."). As is
11 evident, The Authority is expressly delegated the discretion by Nevada's Legislature to terminate
12 a charter school contract in its entirety, or to simply eliminate persistently underperforming grade
13 levels under certain conditions.
14
15

16 Furthermore, NVA correctly notes in its Hearing Brief that Nevada's Department of
17 Education does not rate public charter schools that encompass more than one grade level as a
18 whole; instead, each elementary school, middle school, and high school operating under a single
19 charter school contract receives its own ratings. As a result, in the event that this Court were to
20 accept NVA's argument in this regard, the entire statutory and regulatory system and framework
21 related to terminating a charter school contract would be rendered void. Such a reading of
22 Nevada's statutes and regulations related to public charter schools cannot be what Nevada's
23 Legislature intended when enacting and adopting Nevada's public charter school statutes and
24 regulations.
25

26 **3. The Authority May Appropriately Utilize Ratings From Non-Consecutive**
27 **Academic School Years**

28 Next, NVA correctly states in its Hearing Brief that the Authority relied on academic

1 ratings related to NVA for academic school years 2012 – 2013, 2013 – 2014, and 2016 – 2017.⁵
2 However, NVA claims that the Authority improperly relied on non-consecutive academic school
3 years as the basis for issuing the Notice. It is important to note that NVA does not argue that its
4 elementary school ever received a rating high enough to exempt it from consideration for charter
5 termination. Rather, NVA attempts to use the statewide testing irregularity and the lack of data
6 created by that irregularity to escape its unbroken string of poor ratings.
7

8 NVA attempts to point to language contained in NRS 388A.330 related to the
9 “performance framework for the charter school” and language in the Authority’s performance
10 framework related to “three consecutive years.” However, this language is consistent with NAC
11 386.332, defining “persistent underperformance” as “[t]he charter school was not rated in the
12 first, second or third highest tier *during the last three ratings* of the charter school pursuant to the
13 statewide system of accountability for public schools....” (Emphasis added.)
14

15 To read this language as meaning three consecutive years would mean that any time a
16 testing irregularity occurs that the Authority is thereafter prevented from terminating a school’s
17 charter school contract would again, render the entire statutory scheme – and the very role of the
18 Authority – as void and meaningless. Instead, these statutes were intended and can be read to
19 require three consecutive years of ratings – a reading that would comport with the Legislature’s
20 intent in creating the Authority and enacting NRS Chapter 388A.
21

22 NVA then directs this Court to the language contained in NVA’s charter school contract
23 and the accompanying Performance Framework. NVA’s charter school reads as follows:
24 “Persistently underperformed, as measured by the performance indicators, measures and metrics
25

26 ⁵ Notably, the underlying data that the Authority has analyzed in regard to NVA shows that its
27 academic performance related to its elementary school for the 2014 – 2015 and 2015 – 2016
28 academic school years mirrors the performance from the above-referenced years. In other
words, NVA’s elementary school’s academic performance has been consistent from 2013 until
present. Academic performance prior to 2013 was described by Authority staff as “persistence
academic underperformance” and subjected the school to a high stakes review. *See* SPCSA staff
renewal recommendation, at 5, and 10

1 set forth in the Charter School Performance Framework for the Charter School.” See Charter
2 School Contract, at Section 8.1.1.4. The accompanying Performance Framework then states that
3 termination may be pursued by the Authority if the school is found to have academic
4 performance showing “persistent underperformance “for three consecutive *academic reporting*
5 *cycles.*” See Performance Framework, at 7. Finally, NVA analyzes the “Performance
6 Framework Ranking/Designation” chart found in the Performance Framework stating that “three
7 consecutive years” of one or two-star ratings may result in the charter school’s contract being
8 terminated.
9

10 Essentially, NVA points to the following definitions of “persistent underperformance”
11 and ratings in an attempt to claim that the Authority improperly issued the Notice:

- 12 • “last three ratings” – NAC 386.332(1);
- 13 • “three consecutive academic reporting cycles” – Performance Framework, at 7;
- 14 and
- 15 • “three consecutive years” – Performance Framework Ranking/Designation” chart,
16 at 7.
17

18 In other words, NVA attempts to argue that the above-quoted language means “three consecutive
19 [academic] years” or “three consecutive [school] years”... In support of this argument, NVA
20 cites to *Kay v. Nunez*, 122 Nev. 1100, 1104, (206) for the proposition that “absent an[y]
21 ambiguity, [the] court follows a statute’s plain meaning.”
22

23 However, “[a]n agency charged with the duty of administering an act is impliedly
24 clothed with power to construe it as a necessary precedent to administrative action.” See
25 *Pyramid Lake Paiute Tribe of Indians v. Washoe Cty.*, 112 Nev. 743, 747–48, 918 P.2d 697, 700
26 (1996); *State v. State Engineer*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988); *Clark Cty. Sch.*
27 *Dist. v. Local Gov’t Emp. Mgmt. Relations Bd.*, 90 Nev. 442, 446, 530 P.2d 114, 117 (1974).
28

1 Furthermore, “great deference should be given to the agency's interpretation...” of its own
2 statutes and regulations. *See Oliver v. Spitz*, 76 Nev. at 10, 348 P.2d 158 (1960). “When
3 determining the validity of an administrative regulation, courts generally give ‘great deference’
4 to an agency's interpretation of a statute that the agency is charged with enforcing.” *See State*,
5 *Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000); *see*
6 *also Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013)
7 (“Although statutory construction is generally a question of law reviewed de novo, this court
8 “defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation
9 is within the language of the statute.”); *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*,
10 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008); *State v. Morros*, 104 Nev. 709, 713, 766 P.2d
11 263, 266 (1988) (quoting *Clark Co. Sch. Dist. v. Local Gov't*, 90 Nev. 442, 446, 530 P.2d 114,
12 117 (1974)).

13
14
15 In this case, NVA’s reading contradicts the express language contained in NAC 386.332
16 – “*last three ratings.*” Furthermore, NVA’ interpretation contradicts the language contained in
17 the Performance Framework – “three consecutive academic *reporting cycles.*” Even the
18 additional language contained in the Performance Framework – “three consecutive years” – has
19 been interpreted by the Authority to mean three consecutive years of *ratings.*

20
21 To read the regulation and the language contained in the Performance Framework any
22 other way would mean that any time that the Department of Education faces any issue with the
23 releasing of the NSPF ratings that the entire statutory and regulatory framework related to charter
24 school contract termination is rendered meaningless. However, the Authority’s reading and
25 interpretation of this language takes into account that the Department of Education may
26 encounter – as it has – issues related to the release of the annual star ratings. Under the
27 Authority’s interpretation, however, the statutory and regulatory framework related to
28 termination of charter school contracts is not rendered meaningless, since the Authority is able to

1 utilize the last three NSPF ratings – even if there is a gap – to hold low-performing schools such
2 as NVA accountable. *See Bowyer v. Taack*, 107 Nev. 625, 627, 817 P.2d 1176, 1177 (1991);
3 *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989); *see*
4 *also Watson Rounds v. Eighth Judicial Dist. Court*, 131 Nev. –, 358 P.3d 228, 232 (2015) (“This
5 court “avoid[s] statutory interpretation that renders language meaningless or superfluous, ..., and
6 “whenever possible ... will interpret a rule or statute in harmony with other rules or statutes.”).⁶

8 Finally, the purpose of any statute or regulation is to put persons and entities on notice
9 regarding what conduct or actions may be prohibited. *See Gallegos v. State*, 123 Nev. 289, 293,
10 163 P.3d 456, 458 (2007); *State v. Webster*, 102 Nev. 450, 454, 726 P.2d 831, 834 (1986);
11 *United States v. Otherson*, 637 F.2d 1276, 1285 (9th Cir.1980); *Adler v. Sheriff*, 92 Nev. 436,
12 441, 552 P.2d 334, 337 (1976). In the case of Authority-sponsored public charter school like
13 NVA the purpose of Nevada’s charter school statutes and regulations, and the charter school
14 contract and Performance Framework – is to provide public charter schools like NVA with
15 notice regarding the standards under which public charter schools will be held accountable. In
16 this case, a historically underperforming public charter school such as NVA cannot reasonably
17 claim that it was not on notice regarding its low academic performance, or the fact that the
18 Authority may hold it accountable for its consistent low academic performance.

20 Finally, in this regard, NVA attempts to argue that the instant termination proceedings are
21 somehow improper because, according to NVA, any termination proceedings must be based on
22 the academic performance of a school under both the Department of Education’s Nevada School
23 Performance Framework and the SPCSA’s academic performance framework. *See* Hearing
24 Brief, at 12. Yet again, NVA’s argument in this regard is premised on a misreading of Nevada’s

26 _____
27 ⁶ Note that if the analysis is limited to simply NRS 388A.330(1)(a)(4), and persistent
28 underperformance” is defined in NRS 388A.330(1)(a)(4) as set forth in the charter school
contract and the Performance Framework, the Authority’s interpretation *still* governs, since the
Performance Framework defines “persistent underperformance” as a one or two-star ranking
under the NSPF for “three consecutive *reporting cycles*.”

1 public charter school statutes and regulations.

2 Again, NRS 388A.330(1)(a) reads as follows:

3 “...the sponsor of a charter school may ... revoke a written charter or terminate a charter
4 contract before the expiration of the charter if the sponsor determines that:

(a) The charter school, its officers or its employees:

5 (1) Committed a material breach of the terms and conditions of the written charter or
6 charter contract;

6 (2) Failed to comply with generally accepted standards of fiscal management;

7 (3) Failed to comply with the provisions of this chapter or any other statute or regulation
8 applicable to charter schools; or

8 (4) ***If the charter school holds a charter contract, has persistently underperformed, as
9 measured by the performance indicators, measures and metrics set forth in the performance
10 framework for the charter school;***

10 ...”

11 (Emphasis added.) And again, “persistent underperformance” is defined by NAC 386.332 as:

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

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

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

17 [p]upil achievement and school performance at the charter school is unsatisfactory as
18 determined by the Department pursuant to criteria prescribed by regulation by the Department to
19 measure the performance of any public school ***pursuant to the statewide system of
20 accountability for public schools.***

20 (Emphasis added.) As is clearly evident, there is ample statutory and regulatory authority for the
21 SPCSA to terminate NVA’s charter school contract.⁷ And again, it must be noted that *nowhere*
22 *does NVA contest or argue that its elementary school is wholly underperforming – under any*
23 *metric.*

24
25 ⁷ NVA’s current charter contract also makes abundantly clear that NVA must operate in
26 compliance with all federal and state laws and regulations. See Charter School Contract,
27 attached hereto as Exhibit 4, Section 1.4.3 (“The Charter School and its governing body (the
28 “Charter Board”) shall operate at all times in accordance with all federal and state laws, local
ordinances, regulations and Authority policies applicable to charter schools.”); Section 1.4.4
 (“The Charter School shall be deemed a public school subject to all applicable provisions of
local, state and federal law and regulation....”).

1 **C. NVA’s Procedural Arguments**

2 In addition to the legal arguments outlined above, NVA forwards a number of “procedural”
3 arguments, which NVA’s claims somehow render the instant termination proceedings invalid.
4 These arguments relate to NVA’s counsel’s claim that she was not provided an opportunity to be
5 heard at a single SPCSA Board meeting, issues related to the April 27, 2018 and May 14, 2018
6 SPCSA Board meetings, and purported “inconsistent instructions” related to NVA’s opportunity
7 to demonstrate that it had corrected the deficiencies identified in the Notice of Intent to
8 Terminate NVA’s charter school contract. As is discussed below, none of these arguments have
9 any merit whatsoever.
10

11 **1. February 16, 2018 SPCSA Board Meeting: Opportunity to be Heard**

12 NVA argues that it was not afforded an opportunity to be heard at the February 16, 2018
13 Authority Board meeting. *See* Hearing Brief, at 17-18. This argument falls flat for a number of
14 reasons.
15

16 First, the Authority Board meeting that NVA complains about – the February 16, 2018
17 Authority Board meeting – related to the issuance of the Notice. As was made abundantly clear
18 at that meeting, the issuance of the Notice was merely the first step in the administrative process
19 that may, or may not, eventually lead to a final agency decision. As NVA is well-aware at this
20 point in the proceedings, several additional steps are required before any final agency decision
21 will be made, and NVA has been afforded ample opportunity to be heard at each of these steps.
22

23 Second, NVA is simply factually mistaken in regard to any argument that it was not provided
24 with an opportunity to be heard at the February 16, 2018 Authority Board meeting. Prior to the
25 February 16, 2018 Board meeting, legal counsel for NVA submitted written correspondence to
26 the Authority regarding the potential issuance of the Notice. In that correspondence, all of the
27 very same legal arguments that NVA now presents to this Court were included and argued in that
28 correspondence. NVA’s correspondence was provide to the Authority Board prior to the

1 February 16, 2018 Authority Board meeting, and was included as part of the supporting materials
2 for the NVA agenda item.

3 Perhaps more importantly, NVA was, in fact, provided an opportunity to be heard at the
4 February 16, 2018 Authority Board meeting. School leaders provided a presentation to the
5 Authority Board, and spoke for approximately 20 minutes. In addition to providing the
6 Authority Board with a presentation, NVA school leaders answered questions and provided
7 information sought by Authority Board Members at that meeting. A video recording of that
8 meeting, and NVA's presentation, can be found at:

9
10 http://nvleg.granicus.com/MediaPlayer.php?publish_id=f86fbf15-1767-11e8-9a56
11 00505691de41, with NVA's presentation beginning at the 2:46 mark.

12 While legal counsel for NVA elected not to sit with NVA's school leaders during their
13 presentation, legal counsel was provided with an opportunity to present legal arguments – all of
14 which had previously been provided to the Authority Board as part of NVA's legal counsel's
15 written correspondence. In short, in no way can NVA argue that it was not given an opportunity
16 to be heard at the February 16, 2018 Authority Board meeting.

17
18 Finally, and perhaps most importantly, NVA's opportunity to be heard argument falls flat,
19 once any such argument is not limited to a single point in time. NVA's academic
20 underperformance of its elementary school has been on the agenda and heard at four separate
21 SPCSA meetings. Furthermore, a full hearing is now scheduled for June 25, 2018 in regard to
22 the Notice of Intent to Terminate NVA's charter school contract. In short, there is no tenable
23 argument whatsoever that NVA has not been afforded an opportunity to be heard in regard to
24 these proceedings.

26 **2. April 27 / May 14 SPCSA Board Meetings**

27 NVA also raises a number of procedural arguments in regard to both the April 27, 2018, and
28 May 14, 2018 SPCSA Board meetings. *See* Hearing Brief, at 16-17; 19; 27. None of these

1 arguments have any merit.

2 First, NVA complains that the April 27, 2018 SPCSA Board meeting was continued until
3 May 14, 2018. *Id.*, at 16. As an initial matter, there is nothing improper with continuing the
4 April 27, 2018 Authority meeting. Furthermore, counsel for NVA was apprised and well-aware
5 of the continuance both prior to and when the meeting was actually continued. Additionally,
6 NVA was present and allowed to be heard at both of the April 27, 2018 and May 14, 2018
7 Authority Board meetings. And the fact that the April 27, 2018 SPCSA Board meeting was held
8 in two separate rooms – both of which NVA was present at – is of no moment whatsoever.

9
10 Second, the fact that there are several minutes of the April 27, 2018 SPCSA Board meeting
11 that were not recorded is not a violation of Nevada’s Open Meeting Law. NRS 241.035(7)
12 provides for a “good faith” exception to the recording requirement. Likewise, moving the
13 meeting to another room, where NVA was present and had an opportunity to be heard, is not a
14 violation of Nevada’s Open Meeting Law. Just as with NVA’s other arguments, NVA’s
15 complaints regarding the April 27, 2018 and May 14, 2018 SPCSA Board meetings are without
16 merit.
17

18 **3. Inconsistent Instructions**

19 Finally, NVA argues that it was provided with “inconsistent instructions” regarding the
20 submission of NVA’s plan to correct the deficiencies contained in the Notice of Intent to
21 Terminate NVA’s charter school contract. *See* Hearing Brief, at 18. NVA’s argument in this
22 regard revolves around the “template” that NVA was initially provided in connection with the
23 Notice of Intent to Terminate NVA’s charter school contract, and NVA’s argument in this regard
24 goes hand in hand with NVA’s argument related to a perceived lack of “collaboration” on the
25 part of SPCSA staff. *Id.*, at 9-10.
26

27 While the template and process under which NVA submitted its Comprehensive Academic
28 Improvement Plan to the Authority – and which the Authority ultimately rejected – will be

1 explored at the public hearing set in this matter (albeit briefly, since the sufficiency or lack
2 thereof of the Comprehensive Academic Improvement Plan is not at issue at this point in these
3 proceedings), it is worth noting that NVA's argument in regard to "collaboration" appears to be a
4 fundamental misconception as to the role of the Authority as a sponsor and authorizer of public
5 charter schools, and that of the charter school itself.

6
7 Charter school sponsors, unlike a traditional school district or department of education that
8 oversee tradition non-charter public schools, do not issue directives or "guidance memorandums"
9 to its sponsored charter schools. Instead, the basis of the charter school bargain is
10 "accountability in return for autonomy." In this regard, Authority-sponsored public charter
11 schools are given the autonomy, flexibility, and freedom to develop and implement their own
12 individualized academic plans. More specifically, the governing body (essentially, the school
13 board) and leadership team of individual charter schools are responsible for promoting high
14 levels of student growth and outcomes, managing their finances, and staying true to the charter
15 law and their charter contract. The authorizer is focused almost solely on outputs, and holds
16 schools accountable for their performance.

17
18 As a charter school sponsor, the Authority is ever-mindful of the autonomy of its sponsored
19 schools. It is not appropriate for the Authority, or any sponsor, to make decisions or determine
20 the next steps for a public charter school. The level of performance of the school is heavily
21 dependent on the decisions of school leadership and the charter school's governing body. In the
22 case of NVA, it is not the role of the Authority, as a public charter school sponsor and authorizer,
23 to dictate to NVA an academic improvement plan as part of the Authority's Notice of Intent to
24 Terminate NVA's charter school contract. Doing so would violate the basic premise of charter
25 school autonomy. Instead, it is NVA's responsibility to provide the Authority with an academic
26 improvement plan that NVA believes will turn around NVA's academic performance. Much like
27 a charter school application, the Authority then evaluates this plan to determine its likelihood of
28

1 success based upon the information provided.

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III. Conclusion

SPCSA staff respectfully submits this Response to NVA's Hearing Brief in preparation for the June 25, 2018 public hearing.

Dated this 19th day of June, 2018.



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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of the State of Nevada, State Public Charter School
3 Authority, and that on this 15th day of June, 2018, I served the following by way of United State
4 Postal Service, with courtesy copies via electronic mail:

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State Public Charter School Authority