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DATE: January 22, 2024

TO: Melissa Mackedon, Executive Director of the State Public Charter School Authority

FROM: Chief Deputy Attorney General Greg Ott

SUBJECT: Legal Issues Raised by Washoe County School District's January 17, 2024 Letter Opposing Mater Academy of Northern Nevada's Request to Amend Charter School Contract

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1. Introduction

On January 17, Washoe County School District (WCSD) Interim Superintendent Kristin McNeil sent a letter (the WCSD Opposition) asserting that Mater Academy of Northern Nevada's (MANN) application for amendment "...must be denied or reconsidered at a future date..." based in part on apparent legal issues with the submission. Staff for the State Public Charter School Authority (SPCSA) has requested a review of legal contentions contained in the letter.

2. Legal Contentions

The WCSD Opposition contains two separate legal contentions in the legal issues section of the letter. Neither of them prevent consideration of this item by the SPCSA as described below:

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- a. **Contention 1: 'NRS 388A.279 does not permit the SPCSA to consider an amendment where a charter school seeks to purchase a plot of land to begin new construction' is incorrect**

The sponsor of a charter school may consider amendment of the charter contract for any number of reasons. Five of those reasons are included in section 279 of Chapter 388A of the Nevada Revised Statutes. Before enumerating the five purposes, NRS 388A.279 includes the phrase **without limitation**, meaning that the list is not exhaustive and a charter school may consider charter amendments for reasons not included in NRS 388A.279. Thus WCSD's contention that an amendment to a charter contract must be limited to a reason specifically enumerated in 388A.279 is incorrect.¹ Additionally, NAC 388A.315(1)(b) clearly allow for an amendment of a charter contract for the acquisition and construction of a facility.

- b. **Contention 2: 'The new school is an expansion and not authorized by NRS 388A.3934, because the new school is offering new grades' is inapplicable to the amendment request**

NRS 388A.3934 allows certain high performing charter schools to request permission to operate "an experimental academic program or new school model in the charter school." The purpose of this section of the law is to allow already high performing schools to continue to innovate and experiment with academic programs separate and apart from their previously approved academic programs. The scope of these programs is limited by statute to 50 students in year 1, 100 in year 2, and 150 in year 3. This is commonly know as the 'school within a school' model similar to magnet, immersion, or other specialized academic programs offered at public schools throughout the country. MANN is not requesting to operate an experimental academic program or new school model and this code section is inapplicable to their application and should be ignored.

3. **Other Legal Contentions in the Operational and Financial Section of the WCSD Opposition**

The WCSD Opposition also contains several legal contentions in other sections. None of these contentions prevent the SPCSA from consideration of the amendment request.

¹ Even if the list was exhaustive, MANN's request to acquire land for construction of a facility is within the meaning of subsection (d), as NAC 388A.315(1)(b) makes clear.

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- a. **Contention 3: 'NRS 388A.279(3)(b) requires the charter school to provide a comprehensive and feasible plan to operate additional facilities' and "NRS 388A.087(1) requires the charter school to follow laws of the state regarding purchase of land" are accurate recitations of Nevada Law that the SPCSA must consider when evaluating the amendment request**

The WCSO Opposition accurately quotes a requirement in NRS 388A.279(3)(b) that a charter sponsor must deny an amendment request if the sponsor determines that "the governing body does not have a comprehensive and feasible plan to operate additional facilities." The SPCSA shall consider this as part of their evaluation of the application at the public hearing and make a determination.

The WCSO Opposition further cites NRS 388A.087(1) for the requirement that charter schools are considered public entities for the purposes of "any law of this State relating to purchasing or leasing public land." This contention accurately reflects state law but does not prevent the SPCSA from examining the application and making a determination in accordance with its expertise in charter authorizing.

- b. **Contention 4: 'The financial modeling in the application fails to meet the requirements of NRS 388A.273(b) and NRS 388A.274(2)(a)' refers to two statutes that are irrelevant to the amendment application**

NRS 388A.273 is a statute which places an obligation on the sponsor of charter schools to adopt a performance framework. Subsection 1(b) addresses the financial component of the sponsor's performance framework. This section does not place any requirements on schools and is not relevant to the application.

NRS 388A.274 relates to applications of charter schools that seek to be rated under Nevada's Alternative Performance Framework (APF) established in NRS 385A.730. MANN is not seeking to be rated under the APF so this provision is inapplicable to the application.

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- c. **Contention 5: 'NRS 388A.167 requires the SPCSA to create a plan to manage the growth of charter schools' does not state a basis for rejection of the application.**

NRS 388A.167 does require the SPCSA to adopt a growth management plan. The SPCSA's plan is available online.² The WCSD Opposition does not allege that the MANN application is in violation of the plan. NRS 388A.167 does not require the SPCSA to reject an amendment application that is not in strict compliance with the growth management plan. Instead statute clearly indicates that the plan is projection that the SPCSA is required to revisit no less than biannually and include provisions giving the SPCSA the authority to "revise the plan as necessary." This contention does not contain a valid basis to reject the application.

- d. **Contention 6: 'There are concerns related to the proposal's ability to adhere to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 in serving student with disabilities on an individualized Education Plan (IEP)' is an important consideration that lacks specific or factual support**

As the SPCSA is very well aware, requirements to serve students with disabilities apply to charter schools just as they apply to other public schools. Charter schools are, of course, prohibited from discriminating against students with disabilities in the application process. NRS 388A.453(6)(e). Importantly the WCSD Opposition does not allege any such discrimination.³

However, enrollment percentages alone are not evidence that a population is successfully served. All potential schools are required to explain "[t]he manner in which the charter school plans to identify and serve

² Available at: https://charterschools.nv.gov/uploadedFiles/Charter_Schoolsnvgov/content/Families/Growth%20Management%20Plan_2023_FINAL.pdf

³ Data also does not support any discrimination as MANN has enrolled IEP students at a higher rate than Washoe County and the state for the last three years, MANN having 15.05%, 14.7% and 15.54% students on IEPs in 2020-21, 21-22, and 22-23 compared with Washoe County's IEP percentages of 14.31%, 14.14%, and 14.55%) according to NevadaReport Card.NV.Gov.

the needs of pupils with disabilities...” as part of an application process. So MANN's plan regarding these students has already been considered as part of the initial application process. While the WCSD Opposition is vague with regard how or why the WCSD believes MANN will be unsuccessful in identifying or serving students with IEPs, the SPCSA may review the amendment application for indicia that the school is unable to serve this population.

4. **Conclusion**

None of Washoe County's legal contentions disqualify the amendment application from consideration. Those that are relevant simply state the law or serve to remind the SPCSA of its existing and continuing legal mission to expand education opportunities for pupils in this state, including without limitation, those who are at risk.