

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

2 **STATE OF NEVADA**

3 In Re:
4 Nevada Connections Academy Notice of
5 Closure or Possible Board Reconstitution

6
7 **OBJECTION TO FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 Nevada Connections Academy (“NCA”), by and through their undersigned counsel,
9 Holland & Hart LLP, hereby objects to the draft Findings of Fact and Conclusions of Law
10 submitted by Greg Ott, counsel for State Public Charter School Authority (“SPCSA” or
11 “Authority”) Staff on September 22, 2017. Specifically, NCA objects on the following bases:

12
13 **I. Information Staff Added after Staff’s Explicit Submission Deadline Should be Stricken from the Findings of Fact and Conclusions of Law**

14 According to the Authority’s Order After Hearing issued August 31, 2017:

15 The Authority is ordered to prepare Findings of Facts And Conclusions of Law
16 consistent with the SPCSA Board’s decisions on the issues presented. The
17 Findings of Fact and Conclusions of Law must be *completed* within twenty (20)
18 days of the SPCSA Board’s August 23, 2017, decision. The proposed findings
19 of fact and conclusions of law must, *after completion*, be provided to the
20 opposing party, who will have five (5) business days to prepare a letter stating
21 any objections to the proposed findings of fact and conclusions of law and the
22 basis for the objections.

23 Order After Hearing issued August 31, 2017, at 3 (emphases added). The Order goes on to
24 provide that “[t]he SPCSA Board will receive, consider, possibly edit, and then approve the
25 Findings of Fact and Conclusions of Law at the next regularly scheduled meeting after the
26 hearing, wherein the decision of the SPCSA Board will become final upon approval by the
27 SPCSA Board.” *Id.*

28 Pursuant to this procedural schedule, Staff submitted to NCA its completed draft of the
Findings of Fact and Conclusions of Law exactly twenty days after the August 23, 2017 hearing—

1 on September 12, 2017. NCA submitted a letter with its objections and a redline draft five
2 business days later, on September 19, 2017 (“objection letter”).

3 NCA then reached out to Mr. Ott to meet and confer about NCA’s objections, and whether
4 the parties could reach any resolution on certain objections. NCA’s counsel and Mr. Ott
5 participated in a telephone conference on September 21, 2017, regarding NCA’s objections in
6 which Mr. Ott agreed to certain changes as proposed by NCA and disagreed with others, and Mr.
7 Ott submitted the draft with certain of NCA’s changes on September 22, 2017.

9 **a. Information Regarding NCA’s Funding was Submitted After the Deadline**
10 **and NCA had no Opportunity to Challenge the Same Pursuant to the**
11 **Authority’s Procedural Schedule**

12 As Mr. Ott notes in his email accompanying the draft of the findings of fact and conclusion
13 of law submitted on September 22, 2017, additional information regarding funding NCA received
14 in 2016 was added after Staff’s explicit submission deadline, and should therefore be stricken
15 pursuant to the Authority Board’s August 31 Order After Hearing. It also is irrelevant to the
16 issues being decided in Phase I of the proceeding as it does not demonstrate or prove the
17 graduation rate for the school or whether the school adequately addressed the graduation rate
18 issue in the amended proposed cure.

19 NCA proposed in its objection letter to add the following to the biographical information
20 contained in the “findings of fact” section of Mr. Ott’s draft submitted September 12, 2017: “NCA
21 currently operates as a K-12 virtual charter school serving over 3,200 Nevada students.” The
22 parties did not discuss this objection in detail during the meet and confer telephone conference,
23 and did not discuss additional language tacked onto this objection. Mr. Ott’s draft submitted
24 September 22, 2017, contained the following language: “NCA currently operates as a virtual
25 charter school serving over 3,200 Nevada students *and receiving over 20 million dollars in*
26 *funding in the 2016 fiscal year.*” Draft Findings of Fact and Conclusions of Law, as submitted
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1 by Greg Ott on September 22, 2017, at 3 (emphasis added to represent language Staff added after
2 the deadline).

3 NCA objects to the language regarding NCA's funding as contained in Mr. Ott's draft as
4 submitted on September 22, 2017. The Authority Board's August 31 Order After Hearing made
5 it abundantly clear that Staff was required to submit its final, completed draft to NCA for NCA
6 to raise objections. While NCA appreciates Staff's willingness to meet and confer and submit a
7 draft accepting certain changes NCA raised in its objection letter, the Order After Hearing did not
8 contemplate Staff's ability to make additional changes not raised in NCA's objection letter, as a
9 subsequent change like the one added here affords NCA no opportunity to object to this language
10 pursuant to the procedural schedule.

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12 Mr. Ott appears to agree with this reading, as he pointed out in his September 22, 2017,
13 email accompanying the draft that he "went back and accepted [NCA's] request, with the
14 inclusion also about the amount of funding the school received in FY 2016. We didn't discuss
15 that so if you want to take it out, that's fine with me." NCA's counsel did indeed object to this
16 language, but has not heard back from Mr. Ott or Mr. Whitney about this objection as of the date
17 of this filing. See **Exhibit A**. Therefore, NCA submits this filing to note its objection to the
18 additional language regarding NCA's funding to the Authority Board and asks that the Authority
19 Board strike the same in its consideration of the draft.
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22 **b. Information Regarding the nature of NCA's Cure Proposal as it Relates to**
23 **the Cure Period was Submitted After the Authority's Procedural Deadline**
and Mischaracterizes the Proceedings

24 Not only was Mr. Ott's addition regarding the nature of NCA's cure proposal and how it
25 relates to the NRS 388A.330(3) cure period added after the submission deadline giving NCA no
26 opportunity to challenge the same, the additional language attempts to recharacterize what
27 occurred during Phase I of the proceedings.
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1 Pursuant to NRS 388A.330(3), “[e]xcept as otherwise provided in subsection 4, not more
2 than 90 days after the notice is provided pursuant to subsection 2, the sponsor shall hold a public
3 hearing to make a determination regarding whether to reconstitute the governing body, revoke
4 the written charter or terminate the charter contract. If the charter school corrects the deficiencies
5 to the satisfaction of the sponsor within the time prescribed in paragraph (b) of subsection 2, the
6 sponsor shall not reconstitute the governing body, revoke the written charter or terminate the
7 charter contract of the charter school” (emphasis added). Under NRS 388A.330(2)(b) as
8 referenced in that subsection, the SPCSA must include the following in its written notice of intent
9 to close a school: “[e]xcept as otherwise provided in subsection 4, prescribe a period, not less
10 than 30 days, during which the charter school may correct the deficiencies, including, without
11 limitation, the date on which the period to correct the deficiencies begins and the date on which
12 that period ends.” As cited therein, subsection (4) provides that “[t]he sponsor of a charter school
13 and the governing body of the charter school may enter into a written agreement that prescribes
14 different time periods than those set forth in subsections 2 and 3.”

17 Mr. Ott’s completed draft as submitted to NCA on September 12, 2017, did not contain a
18 provision addressing or challenging the Authority’s decision to allow NCA to submit a cure
19 proposal along with NCA’s written closing argument, or the nature and scope of the Authority’s
20 allowance. Accordingly, NCA’s objection letter and accompanying redline draft as submitted on
21 September 19, 2017, did not contain a provision regarding the same. However, during the meet
22 and confer telephone conference, the parties discussed the nature of the Authority’s determination
23 allowing NCA to submit the cure during the May hearing, and agreed that they would raise the
24 issue to Chair Guinasso. In an attempt to address this confusion, Mr. Ott added the following
25 language to the draft he submitted to NCA and Mr. Whitney on September 22, 2017:
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1 NCA was also allowed to submit an additional proposal for cure of its
2 deficiency with its written closing argument. However, this opportunity for
3 submission was to be made after the close of evidence and operated as a final
4 opportunity for NCA to propose a plan to cure its deficiency, not an extension
5 of the NRS 388A.330(3) period to correct deficiencies.

6 Draft Findings of Fact and Conclusions of Law, as submitted by Greg Ott on September 22, 2017,
7 at 2. Corresponding with this addition in the draft was the following comment: "Added to explain
8 the lack of findings of fact surrounding the last proposed cure submitted after the close of
9 evidence." *Id.* In addition, Mr. Ott characterized the confusion as follows in his September 22,
10 2017, email to NCA's counsel and Mr. Whitney, and requested a conversation with Chair
11 Guinasso and the parties regarding this confusion:

12 Robert,
13 Laura, Erica and I had one issue that we think might be helpful to address with
14 Chair Guinasso. That is manner in which to address the final cure proposed by
15 NCA along with their written closing argument. As evidence had already been
16 closed, the board did not accept any evidence when considering the cure, but
17 did discuss some items of public record. During our conversation Laura, Erica
18 and I discussed possible ways to handle this such as taking judicial notice of the
19 public facts that the board discussed such as the size of the school and star
20 ratings. Laura pointed out that the Chair had said that the Board would not take
21 additional notice and proposed that some written minutes of a pre-hearing
22 telephone conference be admitted to clarify that (no minutes have been prepared
23 or circulated at this time). The current redline attempts to address the issue by
24 clarifying that the final cure was not a statutory correction of deficiency as
25 required to be considered by NRS 388A.330, but simply the Board's
26 willingness to continue to receive proposed solutions beyond those required by
27 NRS 388A.330. Laura and Erica have not seen this language previously and
28 there was no consensus on this item and it wasn't included in my original
draft. If Jason has time and is able to have a call with us to discuss early next
week that might make sense so that he can be aware of the concerns of both
sides prior to the Friday meeting.

Exhibit A. In including this explanation along with his late-changed draft, Mr. Ott attempted to
clarify to the Authority Board that the additional language was not intended to be a final
representation of the record and that NCA had no opportunity to challenge the language. NCA's
counsel Ms. Granier responded via email to notify Mr. Ott and Mr. Whitney that NCA objects to
the addition of this language, stating that Mr. Ott's "email presents a new proposal not discussed
about the proposed cure and how it was handled in the proposed order. If this is considered we

1 request the opportunity to make argument on that.” *See* Exhibit A. Mr. Whitney responded in an
2 email stating that Chair Guinasso had reviewed the draft Staff submitted on September 22, 2017,
3 with the late addition, and that “Chair Guinasso believes that the language at the top of page two
4 of seven proposed by Mr. Ott concerning the submission of the additional proposed cure is clear,
5 and that the language can be reviewed, considered and decided upon by the SPCSA Board at the
6 meeting on Friday, so that no call about that matter is necessary.” *See* Exhibit A.
7

8 NCA objects to the late-added characterization of the proceedings as submitted past the
9 Authority’s deadline, as Staff’s late-added characterization was not intended to be a final addition
10 to the findings of fact and was instead intended to open up a dialogue between the parties and
11 Chair Guinasso about an apparent legal defect in the proceedings, and should be stricken. The
12 plain language of the Authority’s Order After Hearing clearly prevented Staff from adding to the
13 findings of fact and conclusions of law after the deadline for completion, and NCA objects to this
14 new language on that basis. In addition, this is prejudicial to NCA and attempts to rewrite history.
15

16 Staff’s late-added characterization of the cure proposal misrepresents the record regarding
17 the close of the cure period under NRS 388A.330(3). The Authority made it clear that the record
18 was closed for evidence following any June 12, 2017, submissions (and then supplemental
19 submissions thereto), and refused to accept additional evidence presented during August 23, 2017,
20 hearing. *See* Expedited Transcript of August 23, 2017, hearing, at 15; *see also* Order After
21 Hearing, issued June 1, 2017. During a telephone call with counsel and Mr. Guinasso, NCA’s
22 counsel requested the ability to request administrative/judicial notice within the closing argument
23 and Mr. Guinasso rejected that request and stated that the record was closed – and would not be
24 enlarged at that time (Friday, August 11, 2017).¹ However, the Authority Board did not state
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27 ¹ NCA requests that the Chair’s decision on that call be put on the record especially given this
28 issue of the Chair relying on statements of Staff’s counsel during the August 23 hearing to render
a decision on Phase I.

1 that the period during which NCA was entitled to cure the deficiency did not extend to its
2 opportunity to submit a proposed cure on August 14, 2017, and such a conclusion is absurd.
3 Rather, the Authority explicitly allowed NCA to submit a proposed cure along with its closing
4 argument to be considered at the August 23, 2017, hearing relative to whether NCA had cured
5 the alleged deficiency. Specifically, Chair Guinasso stated the following during the May hearing:
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7 And with regard to the proposed cures that have been presented both in
8 December and March, you may have gotten a better sense of where the board
9 sits and what the board's interests are. So I'll give you the ability in your closing
10 argument, if you would like, to present new elements to the cure **that you**
11 **believe the board should consider** based on what you have heard.

12 Essentially, **what we are here to do as a board is to give you de novo review**
13 **of the proposed cure and make our own decision as a body as to whether**
14 **those cures are satisfactory**, and if we don't find them satisfactory, to give you
15 cogent reasons why we think it's not. Or if we think it is satisfactory, to give
16 you cogent direction as to what our expectations are with regard to following
17 through on the proposed cure.

18 I'd also suggest that if your proposed cure doesn't have some limitation on
19 judicial review, you will be proposing a cure that will not satisfy what the board
20 has previously directed.

21 *See* May Transcript, Vol IV, at 266-67. The Authority's subsequently-issued order confirmed
22 that that Authority would consider NCA's August cure relative to whether or not NCA had cured.

23 *See* Amended Order After Hearing, issued August 3, 2017, at 1-2 (providing that the parties'
24 written closing arguments should address "[w]hether the Authority has established by
25 preponderance of the evidence that [NCA] failed to propose an adequate cure of the alleged
26 deficiency in its graduation rate," and then providing that "[a]s a part of Connections' written
27 closing argument, Connections may include any additional proposals for cure of the alleged
28 deficiency in its graduation rate that it would like the Board to consider even if the proposals have
not previously been submitted for consideration by the Authority."). Neither the Authority Board
nor Staff made any representations to the effect that NCA's opportunity to submit a proposed cure
along with its closing argument would be outside of the period to correct deficiencies pursuant to
NRS 388A.330(3). *See generally* May Transcript, Vol IV. Likewise, the Authority's Orders after
Hearing did not include representations to the effect that NCA's opportunity to submit a proposed

1 cure along with its closing argument would be considered outside of the period to correct
2 deficiencies pursuant to NRS 388A.330(3). *See generally* Order After Hearing, issued June 1,
3 2017; Amended Order After Hearing, issued August 3, 2017. Nor did NCA waive any due
4 process rights related to the Board's consideration of this amended proposed cure and, thus, the
5 Authority's decision must be based on evidence in the record.

6 The Authority's position allowing NCA to submit a proposed cure on August 14 extended
7 the cure period, which is not statutorily capped under Nevada law. *See* NRS 388A.330(2)(b)
8 (providing that the period during which the charter school may correct deficiencies must be "not
9 less than 30 days"). The Authority's February notice of intent to close or reconstitute NCA stated
10 that NCA would have the opportunity to correct deficiencies during a period from February 13,
11 2017, to March 24, 2017, and NCA submitted a cure proposal on March 24, 2017, pursuant to
12 this provision. *See* SPCSA's Notice of Intent to Revoke Charter or Reconstitute Governing
13 Board, issued February 10, 2017. The parties did not decide upon a new cure period following
14 the February notice of intent, or enter into a written agreement regarding the duration of the cure
15 period pursuant to NRS 388A.330(4). However, the Authority's position during the May hearing
16 allowed NCA to submit an additional cure proposal along with its closing Argument on August
17 14 and its representation that it would consider that cure proposal relative to whether NCA has
18 corrected deficiencies to implicitly extended that deadline. While Staff objected to this extension
19 during a phone call and/or emails among the parties and Chair Guinasso, Staff never filed any
20 formal objection or request for the Authority to reconsider that decision.

21 The Authority cannot now retroactively revise its position to correct what appears to have
22 been a legal defect in the proceedings and claim that August 14 proposed cure would not be
23 considered relative to whether NCA had corrected the alleged deficiency where NCA has
24 detrimentally relied on the Authority's representations to the contrary. *Ah Moo v. A.G. Becker*
25 *Paribas, Inc.*, 857 F.2d 615, 621 (9th Cir. 1988) ("Generally, promises that reasonably and
26 foreseeably induce detrimental reliance permit recovery under the theory of promissory
27 estoppel."). Pursuant to the Authority Board's representations through Chair Guinasso's
28 statements and the subsequent orders, NCA invested a substantial amount of time, resources, and

1 effort into drafting and refining a proposed cure which incorporated the Authority Board's
2 comments and criticisms from the May hearing under the reasonable assumption that the
3 Authority would consider the cure proposal pursuant to the cure period during which NCA is
4 allowed to demonstrate that it corrected deficiencies. Moreover, the Authority Board did, in fact,
5 consider NCA's cure during the August 23 hearing, and heard the parties' arguments (but took
6 no evidence) regarding the proposed cure on the record. *See* Expedited Transcript of August 23,
7 2017, hearing, at 3 ("Today's hearing is really to just address whether or not the graduation rate
8 was deficient for both 2015 and 2016, and if the Board finds that a preponderance of the evidence
9 does support that conclusion, that it was deficient, the next step would be to determine whether
10 the proposed cure submitted by Connections would address those deficiencies."), 21-29 (Mr. Ott
11 discusses elements of NCA's August 14 proposed cure), 29-48 (Ms. Granier discusses elements
12 of NCA's August 14 proposed cure), 96-118 (Authority Board Members discuss the efficacy of
13 each element of NCA's August 14 proposed cure, after which Chair Guinasso stated that "I don't
14 find that the cure is 'sufficient,' that is, when I'm looking at the cure, the question in my mind is
15 will this get [NCA] to a 60 percent graduation rate over the next two years, and for me that answer
16 is no"), 19 (Mr. Ott describes that correcting the deficiency would mean that NCA's graduation
17 rate is no longer below 60 percent). Therefore, the Authority Board is now estopped from
18 claiming that the cure NCA prepared for its consideration, and which it actually considered prior
19 to rendering a decision in Phase I of the NRS 388A.330 proceedings, was submitted outside of
20 the cure period – or somehow not a cure proposed under NRS 388A.330, which it clearly was –
21 in order to attempt to avoid the need for Phase II and an adverse decision in Phase I.

22 Given that Staff did not intend for the addition to be final language, that NCA did not have
23 an opportunity to challenge the language given the late addition, and that the language
24 mischaracterizes the proceedings in an attempt to cure an apparent legal defect, the Authority
25 Board should strike from the draft Staff's late-added language regarding the nature of NCA's
26 August 14 proposed cure and the scope of the cure period.


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II. Conclusion

For the foregoing reasons, the Authority Board should strike from the draft Staff's late additions to the draft findings of fact and conclusions of law.

DATED this 28th day of September, 2017.

HOLLAND & HART LLP

By: 

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Attorneys for Nevada Connections Academy

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs
3 LLP and not a party to, nor interested in, the within action; that on September 28, 2017, a true
4 and correct copy of the foregoing document was served as listed below:
5

6 Gregory D. Ott, Esq.
7 Deputy Attorney General
8 100 N. Carson Street
9 Carson City, NV 89701

VIA EMAIL

9 Robert A. Whitney, Esq.
10 Deputy Attorney General
11 100 N. Carson Street
12 Carson City, NV 89701

VIA EMAIL

11 *Attorneys for State Public Charter School Authority*

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14 
15 Jeanette Sparks, an Employee of
16 Holland & Hart LLP
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EXHIBIT A

EXHIBIT A

Jenny E. Sparks

From: Robert A. Whitney <RWhitney@ag.nv.gov>
Sent: Friday, September 22, 2017 3:56 PM
To: Greg D. Ott; Laura K. Granier; Erica K. Nannini
Cc: Jenny E. Sparks; Marissa Kuckhoff
Subject: RE: Nevada Connections Academy

Hi,

Thank you for your email, I will forward your e-mail and attachment to Chair Guinasso. Thank you.

From: Greg D. Ott
Sent: Friday, September 22, 2017 3:50 PM
To: Laura K. Granier <LKGranier@hollandhart.com>; Robert A. Whitney <RWhitney@ag.nv.gov>; Erica K. Nannini <EKNannini@hollandhart.com>
Cc: 'Jenny E. Sparks' <JESparks@hollandhart.com>; Marissa Kuckhoff <MKuckhoff@ag.nv.gov>
Subject: RE: Nevada Connections Academy

Robert, Laura and Erica,
Attached are revised Findings of Fact and Conclusions of Law after Laura, Erica and I met and conferred yesterday afternoon. I tried to insert a comment whenever a change was accepted or rejected so that it would be easy to track the rejections. Laura and Erica, the language that we talked about trying to address the submission of the last cure after the close of evidence is at the top of page two. Also as I was reviewing your suggestions again after the call, I accepted one other change that you had suggested with a modification. Finding of Fact two was proposed to include the size of NCA. I went back and accepted this request, with the inclusion also about the amount of funding the school received in FY 2016. We didn't discuss that so if you want to take it out, that's fine with me.

Robert,
Laura, Erica and I had one issue that we think might be helpful to address with Chair Guinasso. That is manner in which to address the final cure proposed by NCA along with their written closing argument. As evidence had already been closed, the board did not accept any evidence when considering the cure, but did discuss some items of public record. During our conversation Laura, Erica and I discussed possible ways to handle this such as taking judicial notice of the public facts that the board discussed such as the size of the school and star ratings. Laura pointed out that the Chair had said that the Board would not take additional notice and proposed that some written minutes of a pre-hearing telephone conference be admitted to clarify that (no minutes have been prepared or circulated at this time). The current redline attempts to address the issue by clarifying that the final cure was not a statutory correction of deficiency as required to be considered by NRS 388A.330, but simply the Board's willingness to continue to receive proposed solutions beyond those required by NRS 388A.330. Laura and Erica have not seen this language previously and there was no consensus on this item and it wasn't included in my original draft. If Jason has time and is able to have a call with us to discuss early next week that might make sense so that he can be aware of the concerns of both sides prior to the Friday meeting.
Thanks, Greg

From: Jenny E. Sparks [<mailto:JESparks@hollandhart.com>]
Sent: Tuesday, September 19, 2017 4:47 PM
To: Robert A. Whitney <RWhitney@ag.nv.gov>
Cc: Greg D. Ott <GOtt@ag.nv.gov>; Laura K. Granier <LKGranier@hollandhart.com>; Erica K. Nannini <EKNannini@hollandhart.com>
Subject: Nevada Connections Academy

Attached please find NCA's objections to the proposed Findings of Fact and Conclusions of Law served on September 12, 2017. I have also attached a redlined Word version of the Findings of Fact and Conclusions of Law that contains NCA's proposed revisions.

~ Jenny

Jenny Sparks

Legal Secretary to Laura K. Granier, Esq. and Erica K. Nannini, Esq.
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HOLLAND & HART 



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