

**EXHIBIT BB**

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March 24, 2016

Via Email

Patrick Gavin  
Director, State Public Charter School Authority  
1749 N. Stewart Street  
Carson City, Nevada 89706

Members of the Board of the State Public  
Charter School Authority  
1749 N. Stewart Street  
Carson City, Nevada 89706

**Re: Nevada Connections Academy**

Dear Mr. Gavin and Members of the Board,

Nevada Connections Academy (“NCA”) is an accredited, comprehensive, online public charter school serving approximately 3,000 students from across our great state. NCA provides highly individualized learning opportunities for students and provides Nevada youth an important and innovative option. Its innovative nature was an important factor in the Authority’s decision to grant the school a charter and more recently to renew its charter and has been recognized as an important tool in the State’s ongoing efforts to improve educational outcomes of at-risk youth. Over the past years, the Authority and legislature have recognized the important role NCA plays in providing educational opportunities for Nevada’s most important resource, its youth. However, the positive impact NCA has on families seems to have been masked by the State Public Charter School Authority’s (“Authority”) recent singular focus on NCA’s 4-year cohort graduation rate, as calculated under current methodology under the No Child Left Behind (“NCLB”) waiver.

We are submitting this letter to you to request that you not put this school in jeopardy, and elevate concern among parents without engaging with NCA to understand all of the relevant data and to carefully consider the important role NCA plays in the State’s efforts to provide effective and meaningful education opportunities for its youth, especially those who are at risk of giving up on earning a high school diploma or equivalent alternative high school credential. Although we are providing some of the pertinent information in this letter, this is not a comprehensive discussion on the issues and cannot be a substitute for meaningful dialogue between a school and its authorizer which has never occurred to consider the students, their growth, and success at NCA.

**A. Communications with NCA Would Inform the Authority of Compelling Evidence Material to the Issue of the Notice of Intent to Close**

NCA is effectively serving students in Nevada and a meaningful look at NCA’s student population and graduation information reflects that. An arbitrary citation to a single data point such as the 4-year cohort graduation rate as calculated under current methodology under the NCLB waiver does not.

Virtual schools have a high mobility rate due to the various factors that lead a student to choose to enroll in a virtual school. Many students chose NCA to solve a problem for a particular period of time such as bullying, medical issues, family situation, pregnancy, or other crisis situation. It is well known that a person who does not complete high school, or obtain an equivalent high school credential is at greater risk of falling below the poverty level.<sup>1</sup> This population of Nevada youth that NCA serves are some of the most at risk of giving up on completing high school. The alternative education opportunity NCA provides for hundreds of these students has allowed them to leave the traditional brick and mortar school during the period of crisis, while remaining engaged in their academic pursuits, and then re-enroll in their traditional school when the crisis has ebbed. For some students who choose not to return to their traditional school, it has meant the ability to gain the education foundation they need to be successful pursuing their GED or other equivalent alternative high school credential. The success that NCA achieves during that time is not reflected in future graduation success if students transfer to a new school or other education program once their crisis situation is over, but the bridge NCA plays is often the difference between a student becoming a dropout statistic or a success story. In addition, mobility can be a challenge for state data systems to accurately reflect a mobile student population. Finally, many students come to a virtual school academically behind. It takes time for these students to catch up and they may need more than four years to graduate. Nevada does not include extended year graduation success into the cohort rate. NCA 2013-14 Cohort (started 9<sup>th</sup> grade in 2010-11 and expected to graduate in 2013-14):

- **77%** of full academic year 12th graders graduated in 2015 (enrolled by October 1st and continuously enrolled until graduation or end of the school year including summer);
- **83%** of students graduated who enrolled on cohort and stayed through the end of the Senior year regardless of grade level in the 2013 and 2014 graduation cohorts (126/151);
- **79%** of students graduated who entered in 9th grade and stayed all four years in the 2013 and 2014 graduation cohorts (41/52);
- **48%** of students enrolled were behind in credits at the time they entered NCA;
- **47%** of the students enrolled for the 2013-2014 school year qualified for the free or reduced lunch program.

NCA is focused on increasing the four-year cohort graduation rate as calculated under current methodology under the NCLB waiver (or as modified by the NDE under the ESSA); however, NCA would like to stress the importance of looking at multiple measures of evaluating schools and point out a few issues with the four-year cohort graduation rate as calculated under the NCLB waiver being such a high-stakes indicator of a school's quality.

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<sup>1</sup> Among those between the ages of 18 and 24, high school dropouts were more than twice as likely as college graduates to live in poverty according to the Department of Education. They are more likely to be unemployed and are at greater risk of incarceration. See The Consequences of Dropping Out of High School at [http://www.northeastern.edu/clms/wp-content/uploads/The\\_Consequences\\_of\\_Dropping\\_Out\\_of\\_High\\_School.pdf](http://www.northeastern.edu/clms/wp-content/uploads/The_Consequences_of_Dropping_Out_of_High_School.pdf)

Almost half of our students are credit deficient when they enroll in our school. That means even if every single one of our kids accumulated credits at a normal on-track rate from the moment they enrolled, our graduation rate would still be barely over 50%. Arbitrary graduation rate thresholds, especially a threshold based on a calculation methodology that is soon to be significantly changed under ESSA, are not a fair way to evaluate schools that serve a high percentage of credit deficient students.

For such schools there should be other metrics, such as rate of credit accumulation. Otherwise who will serve the credit deficient students when the schools doing so, but not reaching the 75% requirement to qualify for the alternative framework, are closed? This is precisely the reason why Senate Bill ("SB") 509 was amended to remove the automatic trigger of closing a school for sub 60% graduation rate, and instead to give the Authority discretion. That discretion should not be exercised in an arbitrary and capricious manner or without meaningful dialogue between the Authority and a school.

Including NCA on an agenda item for consideration of possible issuance of a Notice of Closure without first working with the school to evaluate this type of material information, relevant data and the students behind a single data point or understand NCA's progress and plans for change is arbitrary and capricious and in violation of Nevada law. It would be an abuse of discretion to issue a Notice of Intent to Close under these circumstances.

The recent NACSCA evaluation of the Authority reported that the Authority "is not effectively communicating with schools about their performance" on the frameworks. The only request NCA is making of this agency is precisely what NACSA recommended: "the opportunity for schools to meet with staff to discuss the underlying data and how this data is used to calculate their ratings."

As the NACSCA report suggested, NCA requests the Authority (i) "focus on preserving the school autonomies when considering new regulations or requirements"; (ii) develop "a plan for differentiated oversight" which would squarely address the concerns NCA is raising about being considered under a potential notice of closure for a single and misleading data point; and (iii) "[r]evis[e] the organizational performance framework so that it describes what information the Authority will review and how the Authority will verify schools' compliance with the requirements." **Exhibit 2**, Minutes from Jan. 2015 Board Meeting (summarizing NACSCA findings and report).

**B. The Failure to Provide NCA An Opportunity for Meaningful Dialogue and Notice and Opportunity to be Heard Prior to Issuing a Notice of Closure Violates Nevada Law & Policy**

On February 22, 2016 we received a copy of the publicly posted amended agenda for the Authority's February 26, 2016 meeting which included an item for "[c]onsideration and possible action to direct Authority staff to issue Notices of Closure to Beacon Academy of Nevada, Nevada Connections Academy and Nevada Virtual Academy pursuant to NRS 386.535." You can imagine the confusion and concerns this raised for NCA, which had received no notice of the agenda item, any concerns from the Authority about its performance and, according to the Authority's last formal written communication to the school, was in Good Standing. **Exhibit 1**, (Letter from P. Gavin stating that for the 2013-14 school year NCA was "considered to be in Good Standing.")

Even more troubling was that the last in-person communication in a meeting with Mr. Gavin, Deputy Attorney General Greg Ott, NCA's Board President, Dr. Jafeth Sanchez, NCA school leader, Steve

Werlein, and me occurred on September 1, 2015 at NCA's request. The purpose of that meeting was to follow-up on issues discussed during the 2015 legislative session, explained below, relevant to the State's calculation of the graduation rate in a manner that would recognize and account for a school's effective service to credit deficient and highly mobile students.

During that meeting NCA expressed a desire to work with the Authority and the Nevada Department of Education ("NDE") on these issues to ensure the school was not blindsided by any attempts under Senate Bill 509 to rigidly or suddenly assert compliance issues related to the graduation rate. NCA expressed its desire to understand any concerns the Authority had and work cooperatively to address those concerns head-on in a transparent and collaborative manner. NCA explained that it served a significant population of credit deficient students and was receiving more and more enrollees with increasing credit deficiency issues. We also discussed student mobility issues and the school's exhaustive efforts to track where students go if they withdraw from NCA which, sometimes despite the school's best efforts, are unsuccessful.

Mr. Gavin's response was that the school could hire a private investigator to show it really tried to keep track of students who withdrew but also that he understood the concern about academic performance and the graduation rate issue. It was very clear from the September 2015 meeting that Nevada Connections Academy was still in "good standing" and that the Authority, at least for the upcoming year, had "bigger fish to fry" according to Mr. Gavin. It is troubling that the next communication from the Authority on this issue was NCA's receipt of the public agenda for the Authority's February 2016 meeting including the Notice of Closure item.

Last Friday during a telephone call with Mr. Gavin and Mr. Ott, NCA requested the Authority not include consideration of a notice of closure against NCA on the March agenda but instead work with NCA to meet and hear about NCA's students behind the single graduation rate data point, other critically relevant information about student growth, NCA's progress and expectations for graduation rates for the 2015-16 school year and discussion of continuing plans to increase the 4-year cohort graduation rate currently calculated under the NCLB waiver according to the Authority and NDE. Mr. Gavin insisted that a notice of closure would be considered by the Authority but did express a willingness to consider supporting a request by NCA for the Authority to continue consideration of the agenda item to allow collaboration between the Authority staff and the school.

While we appreciate the potential support of continuance of the item, we are concerned about the uncertainty that will have for families who are looking for certainty as to the availability of this important education option for their students for the 2016-2017 academic year and beyond and for NCA staff who want certainty that their teaching position is not at risk of being eliminated. NCA feels compelled to be responsive to these legitimate concerns and anxieties of its families and staff and move forward without further delay to demonstrate to the Authority why NCA should not be subjected to closure proceedings. Accordingly, NCA hereby requests that you vote down the Notice of Closure and direct Staff to work with NCA on a three year plan for increasing the graduation rate while continuing to effectively serve a significant population of credit deficient students and work with NDE to ensure accountability measures provide adequate consideration of such issues. This opportunity to provide meaningful information relevant to your consideration of issuing such a notice is required under the Nevada Open Meeting Law, Nevada Charter School Law, fundamental principles of due process and the Nevada Administrative Procedures Act. It is fundamental to the stewardship role this Authority plays in

providing and preserving meaningful alternative education opportunities for Nevada's youth. It also is consistent with Mr. Gavin's and Dr. Canavero's representations to the Nevada Legislature, as explained below.

**C. Issuing a Notice of Closure with NCA Having Had No Opportunity to Discuss its Successes, Provide Information Relevant to the 4-Year Cohort Graduation Rate Calculated under the NCLB, Anticipated Increased Graduation Rate for 2015-16, and Plans for 2017 with the Authority Violates Nevada Law and Causes Irreparable Harm**

The 2014-2015 graduation cohort was made up of 334 students and resulted in a graduation rate of 35.63% as calculated under the 4-year cohort rate under the NCLB. Respectfully, that does not provide a meaningful data point without consideration of all of the relevant information which is required under Nevada law and assurances made to legislators by the Authority in considering the relevant provision of SB 509. NCA's 119 graduates included 12 students who enrolled off-track and caught up and another 5% of students who graduated in less than four years. Our graduation rate for students enrolled with NCA all four years of high school exceeds 70%.

NCA's non-graduates for 2015 included **74.9% who were off-track when they enrolled**. 59 of the non-graduates (27.4%) have enrolled for a 5<sup>th</sup> year to attempt to graduate and a total of 67.9% of non-graduates are continuing in education (i.e. re-enrolled for 5<sup>th</sup> year, adult education, or GED program). Of the non-graduates for 2015, **44.7% enrolled with NCA in 12<sup>th</sup> grade**, 33.5% started with NCA in 11<sup>th</sup> grade, 16.1% started in 10<sup>th</sup> grade and only 5.6% started with NCA in 9<sup>th</sup> grade meaning NCA had less of an opportunity and less time to help these students "catch up." **Six of the non-graduates were enrolled at NCA for one month or less and one student was enrolled at NCA for only 14 days**. In addition, 14 of the students classified as "non-graduates" have enrolled in a post-secondary institution, calling into question if these students are really non-graduates: 12 of these students have enrolled in 4-year college and the other 2 in a 2-year college. Clearly, a single metric such as 4-year cohort graduation rate as calculated under current methodology under NCLB does not come close to providing a full picture of the academic results of NCA or justify closure of a school. The proposed application of this provision of SB 509 in this retroactive manner based on last year's graduation rate is unreasonable and does not have the best interests of Nevada's youth, whom this Authority ultimately serves, as its main focus.<sup>2</sup>

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<sup>2</sup> The retroactive effect of the Authority's proposed application of SB 509 is also unlawful and should be rejected on that basis alone. "[A] statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." *Corp. Bishop, LDS v. Seventh Jud. Dist. Ct.* (2016 WL 348038). "Substantive statutes are presumed to only operate prospectively, unless it is clear that the drafters intended the statute to be applied retroactively. *Sandpointe Apartments v. Eighth Jud. Dist.*, 129 Nev., Adv. Op. 87, 313 P.3d at 853. As the Supreme Court has instructed, "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Id.* at 265, 114 S.Ct. 1483. "Courts will take a 'commonsense, functional' approach' in analyzing whether applying a new statute would constitute retroactive operation. *PEBP*, 124 Nev. at 155, 179 P.3d at 553 (quoting *Immigration & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 321, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001)). "Central to this inquiry [is] 'fundamental notions of fair notice, reasonable reliance, and settled expectations.'" *Id.* at 155, 179 P.3d at 554. The Authority's threat to consider issuance of a notice of intent to close a high school having provided NCA no opportunity for any meaningful dialogue or consideration of relevant and material information and based

NCA is engaging some of our most at-risk youth in Nevada, who come to NCA behind in credits, sometimes significantly behind and in the middle of what should be their senior year. NCA knows that based on the way the State of Nevada currently calculates the 4- year cohort graduation rate under NCLB, accepting these students means NCA's graduation rate will be considerably lowered.

Yet NCA accepts these students, re-engages them, helps many of them achieve graduation and others of them to be able to successfully pursue their GED or other equivalent alternative high school credential. To paraphrase Senate Education Committee Chair, Senator Becky Harris, in the 2015 Legislative Session, **we should be celebrating their work** not threatening to shut down schools serving these students. NCA submits that the Authority staff did not consider any of this information when it proposed adding NCA to the agenda for a possible notice of closure.<sup>3</sup> NCA sees its mission as helping the students it serves to maximize their potential, whether that student came to them in kindergarten or six months before that student's expected graduation date. It understands the direct correlation between being a high school dropout and becoming caught up in a cycle of poverty, not just for themselves but their potential offspring. Out of its desire to help the students who come to NCA escape this fate, NCA is continuously striving to improve and increase its four-year cohort graduation rate. Toward that end, attached hereto as **Exhibit 6** is the tiered plan NCA put in place to increase NCA's 2016 4-year cohort graduation rate.

Rest assured, NCA is working hard to address this issue. NCA knows exactly where every student stands with regard to graduation, and works individually with each one to get them the support they need. NCA's efforts this year have borne fruit. NCA expects our 2016 four-year cohort grad rate will be significantly higher than 2015's. We welcome the chance to collaborate with the Authority to further improve our efforts.

**D. Issuing a Notice of Intent to Close Based on a Single Misleading Data Point, the Calculation of Which Will Significantly Change under the Every Student Succeeds Act (ESSA) Is Arbitrary and Capricious and in Violation of Law**

Calculation of graduation rate under ESSA will be changed in order to avoid punishing schools that are effectively serving students with mobility issues and/or credit deficiencies. For example, ESSA requires that a student attend a school for at least 50% of a full academic year before that student can be counted in the school's 4-year graduation cohort.

This policy change acknowledges that it does not make sense for a school that has had a student for a short period of time to be held accountable for the student not graduating on-time. A student who

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solely on last year's 4-year cohort graduation rate calculated under the NCLB and based on a statute that became effective *after* completion of the 2015 school year is precisely the circumstance in which courts prohibit such retroactive application of a new rule of law. Such action violates fundamental notions of fair notice, reasonable reliance and disrupts settled expectations for not just the schools but their staff and the thousands of students they serve.

<sup>3</sup> This is an abuse of discretion and it would be arbitrary and capricious and in violation of law to issue a notice of closure with the Authority having no information other than this single data point to trigger issuance of the notice, and no opportunity for the school to present its information and discuss changes that have occurred since last year's graduation, progress already seen and future changes planned.

transfers to a new school but does not stay enrolled at the new school *for at least half of the school year* and has exited without a diploma must be counted for purposes of graduation cohort calculations for the school that they either were “enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or in which the student was most recently enrolled (prior to the transfer).” Nevada has the flexibility to increase this minimum attendance period above 50% of the academic year. It would make sense that this minimum period be the same as the definition of “Full Academic Year” used for which students are included in a school’s proficiency testing cohort. In many states this definition is 90% of the school year. Analyzing NCA’s 2015 graduation class according to the new ESSA graduation rate methodology provides additional important information for this dialogue. As noted above, **6 of the non-graduates were enrolled at NCA for 1 month of less – one student was enrolled for only 14 days!** Is this student’s performance a reflection of NCA or their prior school when the student is only enrolled 14 days? ESSA accounts for this mobility. The following chart shows the impact on graduation rate if the provisions of ESSA were applied to NCA’s 2015 graduation class based on three potential minimum attendance periods required before including the student in the cohort: 1) students enrolled for less than 50% of a school year, 2) students enrolled for less than 75% of a school year, and 3) students enrolled less than 90% of a school year:

Scenario	# of student removed from cohort	# Graduates	# Non-graduates	Graduation Rate
Original	N/A	119	215	35.63%
ESSA 50% cut-off	63	119	152	43.91%
ESSA 75% cut-off	86	119	129	47.98%
ESSA 90% cut-off	89	119	126	48.57%

It is important to note that under ESSA, Nevada must account for students enrolled at least 50% of the school year but has the flexibility to increase the percentage. As you can see, this single factor which does not even account for the credit deficient students NCA is serving, significantly increases the graduation rate by as much as nearly 13 percentage points. This is the type of information you and the NDE should be evaluating to ensure you do not threaten schools with closure when really they should be celebrated for serving our most vulnerable youth.

Issuing a notice of closure to NCA under these circumstances violates the spirit and intent of SB 509, the express language and a primary purpose of the legislation creating this Authority, and harms student school choice and some of our most vulnerable youth in Nevada.

**E. Nevada Law Mandates this Authority Collaborate with Charters and Foster a Climate in which all Charters Can Flourish; Issuing a Notice of Intent to Close Under these Circumstances Violates that Statutory Mandate**

NRS 385.509 provides that the Authority shall serve “as a model of the best practices in sponsoring charter schools and foster a climate in this State in which all charter schools, regardless of sponsor, can flourish.” Toward that end, the Authority obtained a performance evaluation from NACSA which reported its findings to this Board in January 2016. NACSA’s recommendation included that the Authority “ensure schools up for renewal receive performance information in a timely manner” and provide schools the opportunity to “meet with staff to discuss the underlying data and how this data is



used to calculate their ratings” and revision of the organizational performance framework so that it “describes what information the Authority will review and how the Authority will verify schools’ compliance with the requirements.” **Exhibit 4**, Excerpts of NACSA Report to Authority (Jan. 2016). Information required to be provided for a school relative to its request for renewal also must be made available to a school before it is included on a public meeting agenda for consideration of issuance of a notice of closure.

Respectfully, NCA submits that the Authority has failed to provide relevant performance information in a timely manner to NCA on this proposed action item or to meet with NCA to discuss the underlying data and how this data is used prior to escalating this matter to the most severe of sanctions for a charter school – issuance of a notice of closure. All this would have required was a delay in putting this item on the agenda to allow for some meaningful interaction and dialogue between the school and its authorizer – the collaboration mandated by Nevada law, fundamental due process and fairness, and good policy to foster an environment where charters can flourish.

Senate Bill 461 in the 2015 Nevada Legislative Session proposed individualized graduation plans for credit deficient students, as introduced by the Senate Education Committee Chair, Becky Harris. During legislative committee hearings on that bill, NCA raised the issue of graduation rate calculations penalizing schools serving credit deficient students. The Committee requested that NCA work with staff and stakeholders to add language to address the issue. Although SB 461 did not pass, this issue carried through to two bills that did pass: Senate Bill 509 and Senate Bill 460 the latter of which established an alternative framework for schools with student populations made up of 75% of students from certain populations. SB 460 also has an automatic closure provision and this is where part of the relevant dialogue from SB 461 carried over.

In the April 3rd minutes of the Senate Education Committee, Chair Harris raised the concern about section 4 of SB 460 (automatic closure provision) which ties back through the testimony to the closure provision related to graduation rates. Senator Harris stated that many charter schools had expressed concerns about their charter contracts being automatically revoked as provided by statute and that, while she believed an automatic-closure provision was an important safeguard, “it is evident this policy does not account for the big picture in all circumstances.” **Exhibit 5**, Minutes from April 3, 2015 Senate Education Committee hearing.

Moments later during that same committee meeting, Senator Harris spoke to SB 461 and emphasized the importance of schools serving students who “have dropped out, been expelled, been declared habitual disciplinary problems or others with similarly difficult situations.” She stated that “[r]eaching out to and embracing these kids is critical. It is tough; it is often unsuccessful, but it sometimes works. Moreover, when it does work, lives are changed.” *Id.*

She then recognized the problem that NCA faces here – “that the Nevada School Performance Framework and the charter school automatic-closure provision do not recognize the circumstances of these students adequately.” Although she referenced a high school whose population is made up entirely of these students, the policy also applies to NCA which serves a large population of these students in its high school. As Senator Harris stated, even if a school gets a third of these students to graduation and “even if it takes an extra year or two, should we close that school, or should we celebrate its good work?” *Id.* at 29.

“At the very least, the work should be given a further look, and the measuring stick we use to assess these schools should consider the larger circumstances of their students and missions.” Statement of Senator Harris, April 3, 2015 Senate Committee on Education Minutes at 29. While ultimately the Nevada Legislature required the Alternative Performance Framework apply only to schools whose population is at least 75% comprised of certain identified at-risk youth, the same policy concerns carried over into the discretionary closure provision of SB 509.

When Senator Harris expressed that with respect to this issue and the automatic closure provision in SB 460, groups with concerns would be heard later in the hearing, Dr. Steve Canavero, then Deputy Superintendent for Student Achievement for NDE (now State Superintendent) testified “The NDE can create, through regulation if necessary, a flexible graduation rate requirement.” *Id.* at 30. Dr. Canavero made that same representation to NCA’s counsel during the legislative session suggesting that new statutory language to address this issue was unnecessary because the issue would be addressed under existing law.

Both the Nevada legislators and NCA relied upon those representations. Mr. Gavin’s insistence that this Authority consider issuing a notice of closure to NCA without any opportunity to address these very issues violates the law, the Legislature’s intent and is arbitrary and capricious and an abuse of discretion under SB 509 and NRS 233B. The May 27, 2015 Minutes from the Assembly Committee on Education hearing on Senate Bill 509 reflect the State’s commitment to create policy that would not punish charter schools for serving credit deficient or at-risk youth. **Exhibit 6**, Assembly Committee on Education Minutes, May 27, 2015 at p.36. NCA presented testimony to the Assembly Committee at that hearing confirming its understanding from discussions with Mr. Gavin and then Chairwoman of the Authority, Kathleen Conaboy, that the 60% graduation rate identified in SB 509 for discretionary closure “would, in fact, take into account data that demonstrates the fact that there is student growth; the school is performing as expected” and required under the performance framework and the charter, and “would not create circumstances where a school would be closed” based on an unreliable graduation rate that does not disaggregate data to account for schools serving credit deficient students. *Id.*

Mr. Gavin was in attendance and heard all of NCA’s testimony at this hearing. His own testimony confirmed the Authority wanted to make “thoughtful and judicious decisions” and to that end, make sure “anything above that ‘three strikes and you are out’ level is discretionary on the part of the Authority or sponsor board so that we can take into account those kinds of nuances.” *Id.* at 38. By nuances, Mr. Gavin was referencing schools serving “alternative populations” not being “subject to an arbitrary catch-22 situation.” Mr. Gavin made reference to schools having a “27 or 37 percent graduation rate” and not being “classified as an alternative” school and asserted “we need to ensure that we are looking very carefully at why that is and if there is some kind of compelling explanation, certainly taking that into account, but also holding any school that is at that level accountable.” *Id.* Mr. Gavin’s well-articulated and thought provoking testimony should be heeded by this Authority in these present proceedings. Look carefully at the population of students being served by this school and the positive impact NCA is having on their lives before you take an action that will deprive them of this meaningful alternative education program.

We request that the Charter Authority Board fulfill Director Gavin’s and Dr. Canavero’s assurances to the Nevada legislature and to NCA by doing the following:

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1. Protecting students who are credit deficient and who need access schools that can meet their educational needs and whose mission it is to serve them.
2. Protecting students, who are already in a state of crisis, from being placed at greater risk by avoiding signaling to them and the staff who staff who serve them that their school is at risk of closure before their school has an opportunity to engage with the Authority prior to a decision being made to place it on the public agenda for possible notice of intent to close.
3. Examining all relevant information, the students being served, student growth and multiple metrics before issuing a notice of closure on one data point.
4. Allowing for time for a school to improve its measurements before issuing a notice of intent to close
5. Recognizing that accountability is in period of change including Nevada and the Federal government's changes to the graduation rate calculation.

Should you have any questions, or require any additional information, please do not hesitate to contact me at (775) 473-4513 or [Laura.Granier@dgsllaw.com](mailto:Laura.Granier@dgsllaw.com).

Sincerely,

/s/Laura K. Granier

Partner

for

DAVIS GRAHAM & STUBBS LLP

LKG:js

cc: Nevada Connections Academy Board of Directors  
Steve Werlein, Principal  
Steve Canavero, Superintendent

**EXHIBIT 3**

**EXHIBIT 3**

**MINUTES OF THE  
SENATE COMMITTEE ON EDUCATION**

**Seventy-Eighth Session  
April 3, 2015**

The Senate Committee on Education was called to order by Vice Chair Scott Hammond at 4:09 p.m. on Friday, April 3, 2015, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Becky Harris, Chair  
Senator Scott Hammond, Vice Chair  
Senator Don Gustavson  
Senator Mark Lipparelli  
Senator Joyce Woodhouse  
Senator Moises (Mo) Denis  
Senator Tick Segerblom

**STAFF MEMBERS PRESENT:**

Todd Butterworth, Policy Analyst  
Risa Lang, Counsel  
Jan Brase, Committee Secretary

**OTHERS PRESENT:**

Kathleen Vokits, President elect, Nevada State Association of School Nurses  
Deborah Pontius, Nevada State Association of School Nurses  
Virginia Williamson  
Sheila Story  
Mary-Sarah Kinner, Las Vegas Sands  
Leslie Pittman, American Federation for Children  
Michael Chartier, The Friedman Foundation for Educational Choice  
Jennifer Hammond, Advocates for Choice in Education of Nevada  
Rebecca Franks, Advocates for Choice in Education of Nevada  
Tiecha Ashcroft

**Ms. Durish:**

A cohesive plan is meant to address statewide initiatives and allow for a wide range of providers. Any plan would be aligned with statewide goals to ensure teachers and leaders who are most in need of professional development are guaranteed opportunities.

**Chair Harris:**

I will close the hearing on S.B. 474.

**Senator Hammond:**

I will open the hearing on S.B. 460.

**SENATE BILL 460**: Revises provisions related to the statewide system of accountability for public schools. (BDR 34-1108)

**Senator Becky Harris (Senatorial District No. 9):**

Senate Bill 460 addresses an alternative school performance framework and can be considered a companion bill to S.B. 461, which proposes individual graduation plans. Many charter schools have expressed concerns about their charter contracts. The contracts may be automatically revoked as provided by statute. While I believe this automatic-closure provision is an important safeguard to ensure we have high quality charter schools in Nevada, it is evident this policy does not account for the big picture in all circumstances.

**SENATE BILL 461**: Provides for an individual graduation plan to allow certain pupils enrolled in a public high school to remain enrolled in high school for an additional period to work towards graduation. (BDR 34-1091)

**Senator Harris:**

The NDE and others are aware of the plight of schools serving at-risk children. In fact, this past year the NDE convened a work group to examine the issue and make policy recommendations. As I understand it, the work group has recommended the creation of an alternative framework to measure the performance of schools serving at-risk kids. However, it is limiting their definition of these schools to very specific entities. They are adjudicated youth schools, credit recovery schools, and behavior continuation schools. While I agree that all these schools should be considered at-risk, I believe the door should be opened for the inclusion of additional, but narrowly defined, public schools. For example, there are charter schools specifically targeting their

services to students who have washed out of the local school district. These are students who have dropped out, been expelled, been declared habitual disciplinary problems or others with similarly difficult situations. Reaching out to and embracing these kids is critical. It is tough; it is often unsuccessful, but it sometimes works. Moreover, when it does work, lives are changed.

The problem for these schools is that the Nevada School Performance Framework and the charter school automatic-closure provision do not recognize the circumstances of these students adequately. If a high school has a student population made up entirely of students who have washed out of the school district and if that high school is able to get a third of its students through to graduation, even if it takes an extra year or two, should we close that school, or should we celebrate its good work?

At the very least, the work should be given a further look, and the measuring stick we use to assess these schools should consider the larger circumstances of their students and missions.

Language on page 2, section 2 of S.B. 460 requires the State Board of Education to adopt regulations prescribing an alternative performance framework for the evaluation of schools serving certain populations, as well as the manner in which those schools will be included in the statewide accountability system. Section 3 requires a public school wishing to be rated under the alternative framework to work with the local school board, or the charter school sponsor, to apply to the State Board for approval. Section 3 also prescribes eligibility requirements for the applicant schools. In short, 75 percent of the school's students must fall into one of five at-risk categories.

It is important to note these categories do not include students we traditionally think of as at-risk, English Language Learners, special education students and those living in poverty. To be considered at-risk for the purpose of changing a school's performance framework, a student must have been expelled, formally deemed a habitual disciplinary problem, an adjudicated delinquent, held back at least twice or subject to other very serious issues.

Section 4 amends the automatic-closure provision. Currently, a charter school is automatically closed if it receives three consecutive annual ratings at the lowest possible level. Senate Bill 460 changes this to any 3 years during the 6-year term of a charter contract. However, the school's sponsor may take other

action if the school has shown ongoing improvement. These actions could include extending the period of evaluation, creating or continuing a plan for improvement, or changing terms of the charter contract. Section 4 also authorizes an underperforming charter school to request assistance from its sponsor and requires the sponsor to provide such assistance.

Section 5 is responsive to a recommendation made by the NDE work group on the alternative framework. Because of the implementation of new criterion-referenced tests this school year, it prohibits the NDE from considering a school's rating for the 2014-2015 school year only.

Rather than punish, we need to encourage schools that take on our most difficult-to-educate students. This will not happen as long as our school performance framework provides no consideration to schools drawing three-quarters of their student bodies from the ranks of those who could not be educated elsewhere.

**Senator Denis:**

How many schools would fit these criteria?

**Steve Canavero, Ph.D. (Deputy Superintendent for Student Achievement, Department of Education):**

It would be difficult to provide a definite number, approximately 20 schools would immediately qualify, based on students' behavioral profiles.

**Senator Harris:**

We are in discussions with groups who have concerns about section 4 of S.B. 460, and we will hear from some of them today.

**Dr. Canavero:**

The NDE can create, through regulation if necessary, a flexible graduation rate requirement.

**Senator Hammond:**

One of the strengths of the American education system is the ability to give students many opportunities to succeed.