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**BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**  
**STATE OF NEVADA**

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

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**NEVADA CONNECTIONS ACADEMY'S**  
**MOTION FOR RECUSAL AND/OR DISQUALIFICATION**

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Nevada Connections Academy (“NCA”), by and through their undersigned counsel, Davis Graham & Stubbs LLP, hereby moves for an order recusing and/or disqualifying State Public Charter School Authority (“SPCSA” or “Authority”) member Jason Guinasso from the closure and reconstitution hearing regarding NCA, and any additional proceedings regarding NCA.

**I. INTRODUCTION**

As members of the panel determining whether NCA will be closed or reconstituted pursuant to NRS 388A.330(3), Authority members occupy quasi-judicial roles. As such, they are required to comply with Nevada standards regarding impartiality and fair treatment, yet NCA has unfairly been subject to closure proceedings where other similarly situated schools have not. Authority member Guinasso’s comments on March 29, 2017, as outlined in the attached declaration of NCA high school principal Joseph Thomas, are the most recent evidence of impartiality by a member of the Authority—the public entity which will determine NCA’s fate. See **Exhibit 1**, Thomas Declaration. Member Guinasso’s shocking comments indicating his predetermined outcome for the hearing at issue and that NCA’s counsel must appear and “if Laura’s Mom does die, we would take a brief recess; allow her to handle the situation...” violate the Nevada Code of Judicial Conduct, NRS 1.230(1), and the agency standard governing

1 impartiality, and therefore require that Member Guinasso be recused and/or disqualified from  
2 participation in the upcoming hearing and any subsequent matters involving NCA.

## 3 4 **II. BACKGROUND**

5 NCA is an accredited, comprehensive, online public charter school serving more than  
6 3,200 Nevada students in grades K-12 under one charter granted in 2007 and renewed in 2013.  
7 The SPCSA issued a notice of closure or reconstitution to NCA in February 2017, scheduling a  
8 public hearing regarding potential closure and reconstitution to begin March 30, 2017.

9 On March 28, 2017, NCA filed a motion for continuance of the hearing with the SPCSA  
10 due to a sudden and serious health condition of NCA's counsel's mother who was hospitalized  
11 and in serious condition. *See NCA's Motion to Continue.* In response, SPCSA Staff filed a non-  
12 opposition to NCA's motion. Notwithstanding Staff's non-opposition and the compelling  
13 humane and legal reason to delay the hearing, the Nevada State Public Charter School Authority  
14 ("SPCSA" or "Authority") Board Chair denied NCA's motion based on erroneous facts—  
15 including a false assertion that NCA had requested two prior continuances which it had not – and  
16 ordered Ms. Granier to appear for the hearing on March 30, 2017. On March 29, 2017, NCA  
17 filed a motion requesting that the Authority reconsider its denial and pointing out the factual  
18 errors in the Authority's order denying continuance out of grave concern of the position it was  
19 put in to have Ms. Granier be forced to leave her dying mother and attempt to prosecute a  
20 hearing after having slept in the hospital with her mother for several nights, or appear with no  
21 counsel. *See NCA's Motion for Reconsideration.* While awaiting a response from the SPCSA,  
22 NCA filed an emergency motion for temporary restraining order with the Nevada district court to  
23 enjoin the hearing.

24 The court granted NCA's motion for TRO, and the hearing has now been rescheduled to  
25 begin on May 25, 2017. However, because the court granted the order late in the day, some  
26 parties had already initiated travel to the hearing in Las Vegas on March 29. This unfortunate  
27 circumstance gave rise to the attached declaration by Joseph Thomas, NCA's high school  
28 principal, who overheard a conversation between Authority members Jason Guinasso and

1 Melissa Mackedon at the Reno International Airport. See Exhibit 1. The declaration of Mr.  
2 Thomas forms the basis for this motion for recusal along with Director Gavin's statements to  
3 third parties that Member Guinasso had been appointed to the Authority to close down particular  
4 schools and, upon information and belief, Director Gavin's recent statement to a third party that  
5 the school would be closed down by summer.

### 6 III. ANALYSIS

#### 7 A. Recusal Standard

##### 8 1. NCA's motion is timely and sufficient under NRS 1.235, meaning that 9 Member Guinasso may not proceed in this matter

10 The privilege to disqualify a decision-maker upon an affidavit alleging bias is not  
11 confined to the trial of the action on its merits, but may be exercised in any separate step in the  
12 cause. *State ex rel. Stokes v. Second Judicial Dist. Court*, 55 Nev. 115, 116, 27 P.2d 534, 536  
13 (1933). Under NRS 1.235,

14 Any party to an action or proceeding pending in any court other than the Supreme  
15 Court or the Court of Appeals, who seeks to disqualify a judge for actual or  
16 implied bias or prejudice must file an affidavit specifying the facts upon which  
17 the disqualification is sought. The affidavit of a party represented by an attorney  
must be accompanied by a certificate of the attorney of record that the affidavit is  
filed in good faith and not interposed for delay.

18 The affidavit must be filed not less than 20 days before the date set for trial or hearing of  
19 the case or 3 days before the date set for the hearing of any pretrial matter, unless the facts upon  
20 which disqualification of the judge is sought are not known to the party before the party is  
21 notified before any pretrial hearing is held. NRS 1.235(1)-(2); see also *Towbin Dodge, LLC v.*  
22 *Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 121 Nev. 251, 260, 112 P.3d 1063,  
23 1069 (2005). Under NRCP 6(a), weekends and non-judicial days are included in the 20-day  
24 count. NRCP 6(a) ("When the period of time prescribed or allowed is less than 11 days,  
25 intermediate Saturdays, Sundays, and nonjudicial days shall be excluded in the computation  
26 except for those proceedings filed under Titles 12 or 13 of the Nevada Revised Statutes.")

27 "At the time the affidavit is filed, a copy must be served upon the judge sought to be  
28 disqualified. Service must be made by delivering the copy to the judge personally or by leaving it

1 at the judge's chambers with some person of suitable age and discretion employed therein."  
2 NRS 1.235(2). After the affidavit is filed, the judge in question may not proceed further with the  
3 matter. NRS 1.235(5). Instead, the judge must "[i]mmediately transfer the case to another  
4 department of the court, if there is more than one department of the court in the district, or  
5 request the judge of another district court to preside at the trial or hearing of the matter; or . . .  
6 [f]ile a written answer with the clerk of the court within 5 judicial days after the affidavit is filed,  
7 admitting or denying any or all of the allegations contained in the affidavit and setting forth any  
8 additional facts which bear on the question of the judge's disqualification." NRS 1.235(5).  
9 Should the judge choose the second option, another judge will hear the matter pursuant to the  
10 procedure outlined in NRS 1.235(5)(b)(1)-(2).

11 The instant motion for recusal is timely under NRS 1.235(2) and NRCP 6(a) because the  
12 SPCSA hearing is scheduled to begin on May 25, 2017—20 days from the date of filing.  
13 Moreover, NCA's counsel will personally serve this motion and accompanying affidavit on  
14 Member Guinasso at the time it is filed with the SPCSA. Therefore, pursuant to NRS 1.235(5),  
15 Member Guinasso must immediately cease involvement in matters regarding NCA. This will not  
16 cause any delay of the hearing given that there are enough other Authority Board Members to  
17 preside over the hearing scheduled.

18 **2. Authority members occupy quasi-judicial roles and are therefore required to**  
19 **comply with the NCJC**

20 "A commissioner's role as a hearing officer or as a member of a panel to decide contested  
21 cases is quasi-judicial." Office of the Attorney General of the State of Nevada, Opinion No. 95-  
22 19, at 3 (November 7, 1995). "The Nevada Code of Judicial Conduct 'Application of the Code  
23 of Conduct' states: . . . Anyone, whether or not a lawyer, who is an officer of a judicial system  
24 and who performs judicial functions, including an officer who is a magistrate, court  
25 commissioner, special master or referee, is a judge within the meaning of this Code. All judges  
26 shall comply with this Code. . . ." *Id.* Analyzing the NCJC, the Attorney General applied this  
27 section of the NCJC to commissioners of the Public Service Commission of Nevada, where a  
28 "commissioner acts as a hearing officer or sits as a member of a panel to decide contested cases."

1 *Id.* at 1. The Attorney General further noted that “at least one jurisdiction, New York, [has  
2 interpreted] an identical provision, [and] has held that administrative law judges and others in  
3 administrative agencies acting in quasi-judicial capacities are subject to provisions of the Code  
4 of Judicial Conduct. . . . Other jurisdictions have stated that the Code of Judicial Conduct may  
5 provide guidance in determining propriety of conduct of attorneys serving in quasi-judicial  
6 roles.” *Id.* at 3 (footnotes omitted).

7 Here, Authority members undoubtedly act in a quasi-judicial capacity during a closure  
8 and reconstitution hearing like that which NCA faces. *See* NRS 388A.330(3) (“[T]he sponsor  
9 shall hold a public hearing to make a determination regarding whether to reconstitute the  
10 governing body, revoke the written charter or terminate the charter contract. If the charter school  
11 corrects the deficiencies to the satisfaction of the sponsor within the time prescribed in paragraph  
12 (b) of subsection 2, the sponsor shall not reconstitute the governing body, revoke the written  
13 charter or terminate the charter contract of the charter school.”). The Authority is sitting in a  
14 judicial capacity to determine NCA’s fate, and Member Guinasso is a member of a panel  
15 deciding a contested case. Therefore, pursuant to the Nevada Attorney General’s opinion,  
16 Member Guinasso’s actions are subject to the NCJC, or at least must be guided by the provisions  
17 therein.

18 **3. Authority member Guinasso’s comments and predetermination of the**  
19 **outcome violate the NCJC, Nevada statutes governing judicial requirements,**  
20 **and agency standards for impartiality**

21 Pursuant to the Nevada Code of Judicial Conduct, “[a] judge shall disqualify himself or  
22 herself in any proceeding in which the judge’s impartiality might reasonably be questioned,  
23 including but not limited to the following circumstances: The judge has a personal bias or  
24 prejudice concerning a party *or a party’s lawyer*, or personal knowledge of facts that are in  
25 dispute in the proceeding.” NCJC Rule 2.11 (emphasis added). Likewise, under NRS 1.230(1),  
26 “[a] judge shall not act as such in an action or proceeding when the judge entertains actual bias  
27 or prejudice for or against one of the parties to the action.”  
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1           Recusal is required in an agency setting where, as here, the trier of fact has an  
2 unalterably closed mind on matters critical to the proceeding and/or has a personal bias  
3 concerning a party or a party's lawyer.

4           Authority member Guinasso's comments violate the NCJC and NRS 1.230(1) – both of  
5 which he is required to follow. First, his explicit remarks regarding NCA's counsel's behavior  
6 as suspect and underhanded would cause a listener to "reasonably question" Guinasso's bias  
7 against a party's counsel, satisfying the NCJC standard for disqualification. *See* Exhibit 1 ("The  
8 more they postpone this, the more likely they will be granted an injunction and be allowed to  
9 operate during the next school year—which has been Laura's plan the entire time."). Not only  
10 are Member Guinasso's comments speculating as to NCA's counsel's tactics patently untrue, as  
11 NCA's counsel has not delayed the hearing except on a single occasion to care for her mother,  
12 who passed on April 14, 2017 (*see* **Exhibit 2**), but the comments are evidence of unwarranted  
13 bias against NCA that appears to be the subject of casual discussions among Authority members  
14 – "if Laura's Mom does die, we would take a brief recess; allow her to handle the situation...."  
15 *See* Exhibit 1; *see also*, NCA's Motion for Reconsideration of the SPCSA's Order Denying  
16 NCA's Motion to Continue; NCA's Motion for TRO, at 3-8. Due to the bias demonstrated in his  
17 comment, Member Guinasso's participation in the upcoming hearing would violate NRS  
18 1.230(1) because he would be acting as a judge in an action or proceeding in which he entertains  
19 actual bias or prejudice against NCA and/or its counsel. Therefore, NCA requests that Member  
20 Guinasso be disqualified from participating in the upcoming hearing and subsequent hearings  
21 regarding NCA.  
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25           In addition, pursuant to the agency standard, Member Guinasso's comments demonstrate  
26 that he, as a trier of fact, has predetermined a particular outcome and this requires his recusal.  
27 Member Guinasso refers to the probability that NCA's efforts to delay will lead to the likelihood  
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1 that NCA will obtain an injunction, and be allowed to operate for the coming school year. This  
2 statement presumes the outcome at the very hearing to which he was en route at the time he  
3 made these statements—namely, that the Authority would absolutely vote to close and/or  
4 reconstitute NCA regardless of public comment, evidence warranting a different outcome, or any  
5 other persuasive factors at hearing. Such a presumption renders a closure hearing meaningless,  
6 and demonstrates that “the trier of fact has an unalterably closed mind on matters critical to the  
7 proceeding,” requiring recusal under the agency standard. The fact that the hearing did not occur  
8 as scheduled due to NCA’s counsel’s family emergency does not negate Member Guinasso’s  
9 apparent bias against NCA or its counsel, which is relevant to the hearing as it has been  
10 rescheduled. Moreover, his biased statements show no sign of waning over time. Instead, his  
11 prejudice toward NCA’s counsel likely only deepened because counsel was able to obtain an  
12 emergency TRO to prevent the hearing from taking place as scheduled so that she could spend  
13 and care for her mother during her last days. Therefore, Guinasso’s bias requires him to recuse  
14 himself from the Authority’s hearing regarding NCA’s closure or reconstitution.

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17 Given NCA’s limited access to discussions between Director Gavin and Member  
18 Guinasso, if the Authority believes further evidence is necessary to demonstrate recusal is  
19 required, NCA requests expedited discovery to depose Mr. Gavin in order to quickly resolve this  
20 and provide reasonable due process.

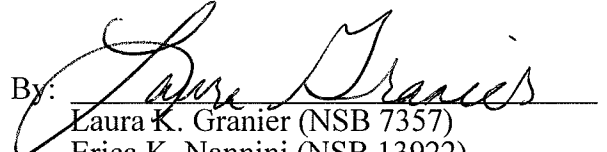
#### 21 22 **IV. CONCLUSION**

23 For the foregoing reasons, NCA requests that Authority member Guinasso recuse himself  
24 and/or be disqualified from participation in the closure and reconstitution hearing scheduled to  
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1 begin on May 25, 2017, and any additional proceedings regarding NCA.

2 Respectfully submitted this 5<sup>th</sup> day of May, 2017.

3 DAVIS GRAHAM & STUBBS LLP

4  
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12 *Attorneys for Nevada Connections Academy*

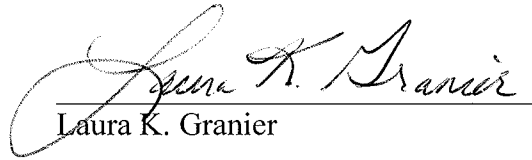
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CERTIFICATE OF COUNSEL

I, Laura K. Granier, hereby certify that this Motion for Recusal and supporting declaration is filed in good faith and not interposed for delay.

Dated this 5<sup>th</sup> day of May, 2017.

  
Laura K. Granier

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1 CERTIFICATE OF SERVICE

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3 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs  
4 LLP and not a party to, nor interested in, the within action; that on May 5<sup>th</sup>, 2017, a true and  
5 correct copy of the foregoing document was served as listed below:  
6

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

VIA EMAIL


11 Robert A. Whitney, Esq.  
12 Deputy Attorney General  
13 100 N. Carson Street  
14 Carson City, NV 89701

VIA EMAIL

*Attorneys for State Public Charter School Authority*

15 Jason D. Guinasso, Esq.  
16 Reese Kintz Guinasso  
17 190 West Huffaker, Suite 402  
18 Reno, NV 89511

VIA HAND DELIVERY

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Jeanette Sparks

# **EXHIBIT 1**

# **EXHIBIT 1**

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**BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**  
**STATE OF NEVADA**

In Re:

Nevada Connections Academy Notice of  
Closure or Possible Board Reconstitution

**DECLARATION OF JOSEPH THOMAS**  
**IN SUPPORT OF NEVADA CONNECTIONS ACADEMY'S**  
**MOTION FOR RECUSAL AND/OR DISQUALIFICATION**

## DECLARATION OF JOSEPH THOMAS

Joseph Thomas, over the age, and competent to testify to the matters herein.

1. I am the high school principal for Nevada Connections Academy (“NCA”) and have been employed in that role since August 15, 2016. Prior to that I was employed as NCA’s assistant high school principal for 4 years. I make this declaration in support of NCA’s motion for recusal.

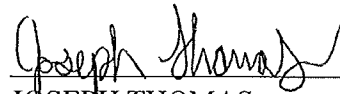
2. On March 29, 2017, I was at the Reno International Airport waiting to board a flight to Las Vegas to attend a hearing scheduled on a possible closure of NCA. While waiting just outside of a restaurant located at the airport, the Wild Garlic, I realized I was standing approximately 10 feet away from two individuals I recognized as Jason Guinasso and Melissa Mackedon, two members of the State Public Charter School Authority, the public board that was holding the hearing on the possible NCA closure.

3. The two were engaged in conversation. I do not know if they were aware of my presence. I did not announce myself. Because of my proximity to them, I was able to clearly hear Jason Guinasso’s comments to Melissa Mackedon. I was not able to hear her replies, however. The purpose of this declaration is to memorialize my memory of that conversation.

4. I have a clear recollection of Board member Guinasso stating the following: “John Sande says public comment is very important to the merits of this hearing.” “My take is that if Laura’s Mom does die, we would take a brief recess; allow her to handle the situation; and if she had to leave NCA would have to be flexible on public comment.” “The more they postpone this, the more likely they will be granted an injunction and be allowed to operate during the next school year—which has been Laura’s plan the entire time.” Following these comments, Board

member Mackedon was making statements I was unable to hear and then shortly thereafter Southwest Airlines called us to board and I walked away.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and corrected and was executed this 5th day of May, 2017, in Reno, Nevada.

  
\_\_\_\_\_  
JOSEPH THOMAS

# **EXHIBIT 2**

# **EXHIBIT 2**

## Lila "Donna" Hubach



December 9, 1929  
April 14, 2017

Lila Donna Hubach: December 9, 1929 to April 14, 2017

Lila "Donna" passed peacefully at her home in the afternoon on April 14, 2017, surrounded by love with her family and friends. Lila was born to Jean and Louis Golden in Milwaukee, Wisconsin. She grew up in Chicago where she would walk to Wrigley Field and watch double headers. A faithful "Cubbies" fan all her life, she rejoiced at finally seeing them win the 2016 World Series. She moved to Los Angeles, California when she was 17 and found a job at Dun & Bradstreet where she met the love of her life, Charles ("Chuck") Hubach. Donna and Chuck married in Sacramento, California on July 4, 1964 and moved to San Gabriel, California where Donna gave birth to their daughter Jenny on July 11, 1965. Donna enjoyed spending her days sewing, cooking, planning birthday parties for Jenny and busily tending to all the details of making a loving home for Chuck and Jenny. Seven

years later their second daughter, Laura ("Laurie"), was born.

Chuck's work resulted in them moving throughout California, stopping in Pomona, Fremont, and San Mateo, California. Then in 1976 they moved to Palm Desert, California, and became proprietors – founding Sahara Date & Gift Shop – a specialty store that sold all different kinds of the dried fruit and other gifts. Little did she know, this little store would change their lives and the lives of others for years to come. In 1978, Donna and Chuck moved to Reno, Nevada – where they would live the rest of their lives, raise their daughters, and where Donna would forever be remembered as the "coffee" lady. They found a little building at 673 West Second Street and continued with their "mom and pop" business that would soon become "Sahara Coffee" – Reno's first gourmet coffee roaster. It was in Reno that they invested their savings in a coffee roaster and learned the science and art of roasting the perfect bean and brewing the perfect cup – decades before coffee roasting became so widely known and appreciated in the U.S. Always ahead of her time, Mom was one of the first establishments in Reno that served food and drink and would not allow cigarette smoking in the store because it would ruin the coffee. While often times this was met with annoyance by the individual wanting to enjoy their cigarette, mom's smile and sense of humor always turned even the most disgruntled

visitor into a friend. She wanted to help people and talk to them about their challenges and daily lives and families and so Sahara Coffee became known not just for the amazingly delicious and perfect cup of coffee, but equally for Donna's kind and loving smile and wonderful conversations you got with each visit to their store.

Donna and Chuck would travel to San Francisco always with their girls to work with a green bean coffee broker, Erna, and import coffee from all over the world. Through their love of coffee and ingenuity they began serving cold pressed coffee and other specialty espresso drinks long before it became a fad in the region. Chuck was always busy roasting the coffee while Donna thrived at getting to know every person to come into the store. She loved people and her customers became cherished friends who marveled that through the years even as the store grew and she had a large list of dozens of coffees to provide, Donna always knew what you wanted as soon as you walked in the door and would start bagging the "Coffee Hound Blend" or "Flying Dutchman" or "Jamaica Blue Mountain" – and then spend the rest of the time visiting to hear the latest in the lives of each of her friends/customers. They raised their daughters in this family run business and, along the way, taught them an incredible work ethic. They never expanded the business, adamant that it would not be the same if every cup and pound of coffee sold was not prepared by the

family.

When they finally retired from the coffee business after so many decades, Donna and Chuck enjoyed daily walks in their neighborhood where they became known as the neighborhood "mascots" by loving soon to be friends who marveled at their determination to walk miles every day, despite the weather and their frailty that came with age. Their walks led them to make very special connections with neighbors and bring the community together in a way that will never be forgotten – and created an extended family who helped mom after Chuck passed and into her beautiful last days here on earth.

Donna is survived by her daughter Jenny, daughter Laura (Frank Granier), Grandson Rocco, Granddaughter, Francesca, and her beloved border collies, Zach and Angel and Sheltie, Remy – each of whom have loving homes with some of Donna's closest friends.

The family extends heartfelt thanks to St. Mary's Hospice and Donna's countless friends and neighbors who did so much to make her smile and bring her joy each and every day. Donna is being laid to rest at Home of Peace in Los Angeles, California, and a celebration of life will be held in Reno on April 29, 2017. In lieu of flowers, Donna asked that donations be made to the Nevada Human Society.

Donna never liked saying "goodbye" but instead always parted with "until we meet again."