

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

2 **STATE OF NEVADA**

3	In Re:)	
4)	Hearing Date: March 30, 2017
5	Nevada Connections Academy)	Hearing Time: 8:00 a.m.
6)	
7	_____)	

8 **ORDER DENYING NCA’S REQUEST FOR A CONTINUANCE**

9 The Nevada State Public Charter School Authority (“SPCSA”) Board Chair has received and
10 carefully reviewed Nevada Connections Academy’s (“NCA”) Motion for Continuance of the NRS
11 388A.330 Hearing submitted on March 28, 2017. The Board Chair has also reviewed and considered
12 the SPCSA Staff’s Non-Opposition to NCA’s motion.
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14 The Chair notes as a preliminary matter that there are no specific rules or standards for
15 considering NCA’s motion under NRS 388A.330. Therefore, the Chair will rely upon the guiding
16 principles and authority of Nevada State Court Rules and related case law in considering NCA’s
17 Motion.
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19 No continuance of a hearing shall be granted except for good cause by a motion stating the
20 reasons for the continuance and whether a continuance had previously been requested. See, e.g.,
21 WDCR 13(1). The granting or denial of a motion for continuance is left to the sound discretion of the
22 Chair. See, e.g., Southern Pacific Transportation Co. v. Fitzgerald, 94 Nev. 241, 243, 577 P.2d 1234
23 (1978). Whether a continuance in a proceeding should be granted or denied because of the illness of
24 counsel or of a relative of counsel is also a matter that is largely committed to the discretion of the
25 Chair. Such discretion will not be disturbed by a reviewing court where the circumstances of the case
26 are not such as to show that it has been abused. The illness of an attorney or her relative does not
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1 *ipso facto* require the granting of the motion, except where otherwise expressly provided by statute.
2 There are no statutes, regulations or rules that mandate the granting of a continuance as a matter of
3 right.

4 In a survey of cases involving illness of counsel, a family member of counsel or a party, Courts
5 have found that factors that should be considered in connection with a request for continuance
6 include: (1) the length of the requested continuance; (2) whether the counsel who becomes
7 unavailable for trial has associates adequately prepared to try the case; (3) whether other
8 continuances have been requested and granted; (4) the inconvenience to all involved in the trial; and
9 (5) any other unique circumstances. See, e.g., Neven v. Neven, 38 Nev. 541, 148 P. 354, 154 P. 78
10 (1915); Benson v. Benson, 66 Nev. 94, 204 P.2d 316 (1949).

13 NCA's has requested in its Motion, "... at minimum, a three-week continuance of the
14 hearing to allow NCA's counsel to deal with this serious matter." The Declaration in Support of the
15 Motion explains that Counsel for NCA's mother has been ill for several months and that she has been
16 in and out of the hospital. Apparently, Counsel's mother's condition has worsened over the past
17 month and she was recently hospitalized. Under these circumstances, Counsel states that it would be
18 difficult for her to prepare for and attend the March 30 hearing.

20 This is NCA's third request for continuance. The first request for continuance came at the
21 December 16, 2016 Hearing where Counsel for NCA demanded space be made available for several
22 hundred parents to be present and give public comment at the hearing. Counsel for NCA threatened
23 to file an Open Meeting Law complaint if the hearing was not continued so arrangements could be
24 made for NCA parents to attend and speak at the hearing. NCA agreed to waive its NRS 388A.330(3)
25 right to a hearing within 90 days of the Notice of Intent so that the hearing could be continued to a
26 later date and appropriate venue.
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1 Thereafter, SPCSA's Staff worked with the Board to secure a new date and an appropriate
2 location for the hearing and scheduled the hearing for February 1-3, 2017. However, Counsel for NCA
3 complained that she had other commitments on those dates.¹ Therefore, NCA's counsel asked that
4 this scheduled hearing be continued to a later date. The Chair reluctantly granted NCA's request.

5 The SPCSA's Board is comprised of seven volunteer members. The hearing in question
6 requires three full days to complete at locations that can accommodate hundreds of people. Finding
7 three consecutive dates for the NCA hearing that would allow for a quorum of the Board to be present
8 was an extremely difficult undertaking for SPCSA's staff. This difficulty was compounded by the need
9 for facilities to accommodate the attendance of hundreds of NCA parents. In order to secure a venue
10 to accommodate hundreds of NCA parents, SPCA Staff had to work with three venues, including the
11 Nevada Department of Education in Las Vegas, SLAM Academy in Henderson, and the Nevada
12 Department of Education in Carson City. Consequently, appropriate dates and venues could not be
13 secured until two months later, on March 30, 31 and April 1. NCA and SPCSA's Staff agreed to these
14 dates.
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18 To continue this hearing, the foregoing process for securing three consecutive days for seven
19 volunteer Board members schedules at locations that can accommodate several hundred NCA parents
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21 ¹ On December 27, 2016, Counsel for NCA wrote to NSPCSA's attorney:

22 Hi, Robert – I really appreciate the Authority working with us on alternative dates. I apologize but I have a federal
23 court hearing on 2/1. I could do 2/2 but agree with you we probably need two days to be safe and cannot do 2/3.
24 I'm going to see if there's any way for me to move my other commitment on 2/3 but am wondering if there are
any alternate dates we can consider? I know there is a lot to coordinate with everyone's schedule and also the
facility...

25 Thereafter, Counsel for NCA was informed that the Chair was not inclined to move the dates of the rescheduled hearing.
26 In response, Counsel for NCA wrote to NSPCSA's attorney on January 3, 2017, explaining:

27 I have a federal court hearing in Reno on 2/1 and I have to be in southern California for a family matter on
28 2/3. Can we please discuss alternative dates? I cannot move either of these previously scheduled items but will
do what's necessary to find a date that works for everyone around this time frame.

1 would likely push the NCA hearing back several months at significant expense to the SPCSA.² The
2 result of this action would be to leave thousands of families in limbo regarding the future of their
3 school.³

4 While the Chair is sympathetic to Counsel for NCA's personal family matter, it is clear from her
5 motion that her mother's health condition had been tenuous for several months. In this regard, the
6 circumstances she is now facing could have and, indeed, should have been considered and
7 contingency plans should have been put in place given her obligation to represent NCA at the hearing
8 from March 30 to April 1, 2017. Notably, NCA's counsel is a partner at a very large firm with several
9 capable attorneys. Anyone of NCA's counsel's colleagues could have and should have been prepared
10 to step in and handle this hearing in the event that NCA's counsel's mother needed to be attended to
11 as a result of her health. Moreover, as evident by the pleadings prepared by NCA's counsel, NCA
12 benefits from the work of more than one attorney. In this regard, the signature lines of the pleadings
13 submitted on behalf of NCA, including the prehearing brief, indicate that both Ms. Granier and her
14 associate, Ms. Erica K. Nannini, have been the attorneys working for NCA. Nothing has been
15 submitted to the Chair to support the assertion that Ms. Nannini is not competent or qualified to take
16 over representation for Ms. Granier at the hearing in the event that Ms. Granier can not appear for
17 the hearing.

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21 In accordance with the foregoing, the Chair finds that NCA has failed to establish good cause
22 meriting a continuance given all the facts and circumstances.
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25 ² The cost to secure each venue, pay for travel of Board Members, secure a Court reporter, and provide for security and
26 portable restrooms is approximately \$10,472.62.

27 ³ The Chair further notes that, with respect to February 10, 2017, Notice of Intent, NCA did not waive its right to hearing
28 within 90 days provided for under NRS 338A.330(3) in its Motion for Continuance. This omission significantly constrains, if
not makes it impossible, for the NSPCSA to reschedule the hearing for three consecutive days at venues that can
accommodate hundreds of NCA parents on or before May 11, 2017.

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Therefore, IT IS HEREBY ORDERED THAT:

- (1) NCA’s Motion for a Continuance is DENIED;
- (2) NCA’s Counsel, Ms. Granier, is Ordered to appear and be prepared to represent NCA at the hearing scheduled for March 30, 2017, to April 1, 2017;
- (3) If Ms. Granier refuses to appear for the hearing or is otherwise unavailable, she is Ordered to have Ms. Nannini or other competent counsel from her law firm appear in her place on behalf of NCA; and
- (4) NCA’s failure to have legal representation at the hearing will not stop the hearing from proceeding as scheduled.

IT IS SO ORDERED.

DATED this _____ day of March, 2017.

“/s/ Adam Johnson, Chair SPCSA”

Adam Johnson
Chair, Nevada State Public
Charter School Authority Board