

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

2 **STATE OF NEVADA**

3	In Re:)	
4)	Hearing Date: May 25, 26 and 27, 2017
5	Nevada Connections Academy)	Hearing Time: 8:00 a.m.
6)	

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9 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

10 **I.**

11 **FACTS**

- 12 1. Nevada Connections Academy (“NCA”) filed, on May 5, 2017, a Motion for
13 Recusal and/or Disqualification (“Motion”) of Nevada State Public Charter
14 School Authority (“Authority”) Board member and acting chair for the NCA
15 hearing, Jason Guinasso (“Member Guinasso”).
- 16 2. NCA filed a supplement to its Motion on May 9, 2017.
- 17 3. On May 17, 2017, the Authority filed its Opposition to Motion for Recusal
18 and/or Disqualification.
- 19 4. In the Motion NCA argued that Authority Board members occupied quasi-
20 judicial roles. As such, NCA argued, Board members were “required to comply
21 with Nevada standards regarding impartiality and fair treatment. . . .”
- 22 5. Attached to NCA’s Motion was a declaration from NCA High School Principal,
23 Joseph Thomas (“Mr. Thomas”).
- 24 6. Mr. Thomas’s declaration was about a conversation between Member Guinasso
25 and a second Board Member, Melissa Mackedon (“Member Mackedon”) that
26 allegedly occurred at the Reno-Tahoe International Airport on March 29, 2017.

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- 1 7. Some of Member Guinasso’s alleged comments to Member Mackedon included
2 comments such as “if Laura’s [Attorney Laura Granier] mom does die, we would
3 take a brief recess; allow her to handle the situation. . . .”
- 4 8. NCA argued that such comments indicated Member Guinasso’s had
5 predetermined the outcome of the NCA hearing, and that Member Guinasso
6 was biased against Attorney Granier.
- 7 9. NCA argued that Member Guinasso’s predetermination violated the Nevada
8 Code of Judicial Conduct (“NCJC”), Nevada Revised Statute (“NRS”) 1.230(1),
9 and “the agency standard governing impartiality,” and that Member Guinasso
10 was required to be recused.
- 11 10. NCA cited an Office of the Attorney General of the State of Nevada Opinion,
12 Opinion No. 95-19 (“Opinion 95-19”).
- 13 11. Opinion 95-19 stated in substance that the NCJC applied to “anyone, whether
14 or not a lawyer, who is an officer of the judicial system and who performs
15 judicial functions, including an officer who is a magistrate, court commissioner
16 special master or referee, is a judge within the meaning of the code. . .” and that
17 all judges needed to comply with the NCJC.
- 18 12. NCA argued that the Attorney General’s Office, through Opinion 95-19, had
19 applied the NCJC to commissioners of the Public Service Commission when the
20 commissioners sat as a hearing officer or members of a panel deciding a
21 contested case.
- 22 13. NCA also argued that the State of New York had an identical provision as in
23 the NCJC, and that New York Courts had held that administrative law judges
24 and administrative agencies acting in quasi-judicial capacities were subject to
25 the provisions of its Code of Judicial Conduct.
- 26 14. NCA argued that the Board members, including Member Guinasso, were sitting
27 in a judicial capacity deciding a contested case, and so were subject to the
28 NCJC.

1 15. NCA argued that pursuant to NCJC Rule 2.11 and NRS 1.230(1), Member
2 Guinasso was required to disqualify himself “because he would be acting as a
3 judge in an action or proceeding in which he entertains actual bias or prejudice
4 against NCA and/or its counsel.”

5 16. The Authority argued NCA’s Motion was based on improper standards and
6 unreliable hearsay, which did not demonstrate any bias on Member Guinasso’s
7 part.

8 17. The Authority also argued that NRS 1.020, by its plain language, only applied
9 to courts of record as defined in NRS Chapter 1, and not to other entities acting
10 in a quasi-judicial capacity.

11 18. Additionally, the Authority argued that neither NRS Chapter 388A nor NRS
12 Chapter 233B referenced NRS Chapter 1 as a standard to use.

13 19. The Authority also noted that the Revised Nevada Code of Judicial Conduct
14 (“RNCJC”) explicating excluded administrative law judges and hearing officers
15 from its application, and that therefore Opinion 95-19, which had stated that “a
16 commissioner of the Public Service Commission acts as a hearing officer to
17 decide a contested case” was no longer applicable.

18 20. The Authority also argued that even if the RNCJC were applied, the allegations
19 of bias against Member Guinasso were insufficient to disqualify him. The
20 Authority noted that “generally an allegation of bias in favor of or against
21 counsel for a litigant states an insufficient ground for disqualification because it
22 is not indicative of extrajudicial bias against the party,” and that extrajudicial
23 bias is generally required for recusal of judges.”

24 21. The Authority cited the case *Ainsworth v. Combined Ins. Co*, 1105 Nev. 237,
25 259 774 P. 2d 1003, 1019 (1989), in which former Justice Gunderson ridiculed
26 Combined’s Attorney a number of times in open court, and admitted entering
27 the case with a negative impression of Combined’s counsel.

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1 II.

2 CONCLUSIONS OF LAW AND ORDER

3 After having read, and considered the Motion, supplement and Opposition, it is
4 hereby found:

5 The Board members are not judges, and are therefore not subject to the RNCJC.
6 As pointed out in the Authority's Opposition, NCA relied upon a previous version of the
7 NCJC that is no longer effective. The revised version of the NCJC, the RNCJC, explicitly
8 excludes administrative law judges and hearing officers from its application. Since this is
9 the case, Opinion 95-19 is no longer effective, and its reference to commissioners acting as
10 hearing officers to decide contested cases is no longer applicable. Rather, it appears that
11 NRS Chapter 281A governs recusal standards for Board members.

12 However, even if the standards of RNCJC were applied to Board members, I find
13 that extrajudicial bias against NCA's counsel, bias arising from something other than
14 information/facts learned from participating in a case, is required for recusal of a Board
15 member. *Ainsworth v. Combined Ins. Co.*, 105 Nev. 237, 259, 774 P. 2d 1003, 1019
16 (1989); *See Commonwealth v. Eddington*, 71 Mas. App. Ct., 138, 144 (2008).

17 In the *Ainsworth* case, as stated above, former Justice Gunderson openly ridiculed
18 Combined Insurance's counsel in open court, and admitted entering the case with
19 preconceived and negative impressions of Combined Insurance's counsel. However, these
20 facts were found insufficient to disqualify former Justice Gunderson.

21 In the present motion, the allegations against Member Guinasso are insufficient to
22 establish bias arising from some other source than participation in the case.

23 The statements Member Guinasso was alleged to have made set forth in Mr.
24 Thomas' declaration were: "John Sandie says public comment is very important to the
25 merits of this hearing." "My take is that if Laura's mom does die, we would take a brief
26 recess; allow her to handle the situation, and if she had to leave NCA would have to be
27 flexible on public comment." "The more they postpone this, the more likely they will be

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1 granted an injunction and be allowed to operate during the next school year-which has
2 been Laura's plan the entire time."

3 Even if true, these comments alleged to have been made by Member Guinasso do
4 not demonstrate extrajudicial bias because they do not allege facts learned outside of
5 NCA's case. Additionally, I find the declaration of Member Mackedon, who indicated that
6 she did not remember Member Guinasso saying anything about NCA getting an
7 injunction during any point in their conversation on March 29, 2017, and the Affidavit of
8 Member Guinasso, who denied stating the words about attributed to him by Mr. Thomas,
9 persuasive.

10 Therefore, I find that NCA has not proven in its Motion that Member Guinasso
11 should be disqualified as a Board member for the NCA hearing, or in further proceedings
12 in this matter.

13 Accordingly, NCA's Motion is hereby DENIED.

14 IT IS SO ORDERED.

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16 DATED this 22nd day of May 2017.

17 "/s/ Adam Johnson, Chair, SPCSA"
18 Adam Johnson
19 Chair, Nevada State Public
20 Charter School Authority Board
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