

**NEVADA STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**November 4, 2016**

Nevada Department of Education  
Board Room  
Carson City, Nevada

And

Nevada Department of Education  
2<sup>nd</sup> Floor Board Room  
Las Vegas, Nevada

**MINUTES OF THE MEETING**

**BOARD MEMBERS PRESENT:**

**In Las Vegas:**

Adam Johnson  
Jacob Snow  
Nora Luna

**In Carson City:**

Melissa Mackedon  
Jason Guinasso  
Kathleen Conaboy

**Teleconference:**

None

**BOARD MEMBERS ABSENT**

Stavan Corbett

**AUTHORITY STAFF PRESENT:**

**In Las Vegas:**

Patrick Gavin, Director, State Public Charter School Authority  
Brian Scroggins, Deputy Director, State Public Charter School Authority  
Nya Berry, Education Program Professional, State Public Charter School Authority  
Joan Jurgensen, Education Program Professional, State Public Charter School Authority

**In Carson City:**

Patrick Gavin, Director, State Public Charter School Authority  
Tanya Osborne, Administrative Assistant III

Katie Baldwin, Management Analyst II  
Danny Peltier, Management Analyst I

**LEGAL STAFF PRESENT:**

**In Carson City:**

Greg Ott, Deputy Attorney General

**In Las Vegas**

Robert Whitney, Deputy Attorney General

**AUDIENCE IN ATTENDANCE:**

**In Las Vegas:**

Attendance Sheet Attached

**In Carson City:**

Kara Hendricks

Victoria Neer

Jim Endres

**CALL TO ORDER; ROLL CALL; PLEDGE OF ALLEGIANCE; APPROVAL OF AGENDA**

**Member Conaboy moved to have a flexible agenda. Member Snow seconded the motion. The motion carried unanimously.**

**Agenda Item 1 – Public Comment**

Kara Hendricks, representing Nevada Virtual Academy, spoke about changes the school would like to see for R089-16P. Her comments are attached. Victoria Neer, representing Nevada Connections Academy, spoke about changes the school would like to see in R089-16P. Her comments are attached.

**Agenda Item 2 – Public Hearing and Possible Adoption of Proposed Regulation R087-16. The proposed regulation, R087-16, amends NAC 386 to revise the deadlines for an application for a loan from the Account for Charter Schools, revises the dates on which the Authority must determine the balance of money in the Account, and requires that, to the extent permitted by law, the Authority may expend money obtained by a grant, gift, bequest, or donation which requires terms different than those established by the Authority in accordance with the terms of the grant, gift, bequest, or donation.**

Director Gavin and the Authority Board discussed the proposed regulation. SB509, codified in NRS 388A, requires the State Public Charter School Authority to adopt regulations prescribing the deadline for submission of an application for a loan from the Account for Charter Schools and allows the Authority to adopt such other regulations as it deems necessary to carry out the provisions of law related to the Account. The SPCSA held a regulation workshop on January 8, 2016 to solicit public comment on the proposed regulation. The SPCSA sent the proposed regulation to interested stakeholders and published to the SPCSA website on October 5, 2016 for further comment from the public. The SPCSA

held public comment at the November 4, 2016 Regulation hearing where interested parties were welcome to submit testimony regarding the proposed regulations.

**Member Conaboy moved for approval of R087-16P with proposed SPCSA staff changes and posted on the SPCSA website. Member Snow seconded. There was no further discussion. The motion passed unanimously.**

**Agenda Item 3 – Public Hearing and Possible Adoption of Proposed Regulation R088-16. The proposed regulation, R088-16, adds new language to Chapter 388A of NAC. It requires that a charter school sponsored by the State Public Charter School Authority use a unique identifier to identify itself and use a unique identified for any campus of a charter school. The regulation also provides that each such charter school shall maintain and report certain data to the State Public Charter School Authority both as aggregate data for the charter school as a whole and separately for each campus of the charter school in a format that allows for both the evaluation of each campus of the charter school and the charter school as a whole.**

Director Gavin and the Authority Board discussed the proposed regulation. SB509, codified in NRS 388A, permits the State Public Charter School Authority to adopt regulations establishing requirements concerning the manner in which it reports data including, without limitation, the manner in which data must be aggregated or disaggregated in any report. The SPCSA held a regulation workshop on January 8, 2016 to solicit public comment on the proposed regulation. The SPCSA sent the proposed regulation to interested stakeholders and published to the SPCSA website on October 5, 2016 for further comment from the public. The SPCSA held public comment at the November 4, 2016 Regulation hearing where interested parties were welcome to submit testimony regarding the proposed regulations.

**Member Conaboy moved for approval of R088-16P as posted on the SPCSA agenda dated September 28, 2016. Member Mackedon seconded. There was no further discussion. The motion passed unanimously.**

**Agenda Item 4 – Public Hearing and Possible Adoption of Proposed Regulation R089-16. The proposed regulation, R089-16, creates a new section of NAC 388A. It establishes the contents and process for the submission of an application to form a charter school to the State Public Charter School Authority; establishes the contents and process for the submission of a request to amend a written charter, or charter contract, as applicable, to the State Public Charter School Authority; establishes the contents and process for the submission of a request to renew a charter contract, as applicable, to the State Public Charter School Authority; and establishes provisions relating to the investigation and evaluation of such applications and requests by the State Public Charter School Authority.**

Director Gavin and the Authority Board discussed the proposed regulation. SB509, codified in NRS 388A, requires the State Public Charter School Authority to adopt regulations prescribing the contents and process for submission to the State Public Charter School Authority of applications to form a charter school, to amend a written charter or charter contract, or to renew a charter contract; and the procedure for the investigation of and criteria to evaluate such applications. SB509 also authorizes the State Public Charter School Authority to establish different timelines and review procedures for different types of applicants and to establish an abbreviated application. The SPCSA held a regulation workshop on January 8, 2016 to solicit public

comment on the proposed regulation. The SPCSA sent the proposed regulation to interested stakeholders and published to the SPCSA website on October 5, 2016 for further comment from the public. The SPCSA held public comment at the November 4, 2016 Regulation hearing where interested parties were welcome to submit testimony regarding the proposed regulations.

Member Conaboy stated that she would be abstaining from the vote because one of the public comments submitted earlier at the meeting is a current client in her private work.

Member Mackedon moved for approval of R089-16P dated November 1, 2016 with revisions proposed by SPCSA staff and noted amendments taken at the November 4 meeting. Member Luna seconded. There was no further discussion. The vote passed unanimously. Member Conaboy abstained.

#### **Agenda Item 5 – Public Comment**

There was no public comment in Carson City and Las Vegas

**Chair Johnson adjourned the meeting at: 4:46 pm**

Kara B. Hendricks  
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November 3, 2016

**VIA ELECTRONIC MAIL**

Mr. Adam Johnson  
Chair, Nevada State Public Charter School Authority  
1749 North Stewart Street  
Suite 40  
Carson City, NV 89706-2543  
ajohnson@spesa.nv.gov

***Re: Nevada State Public Charter School Authority  
Regulation Hearing  
November 4, 2016***

Dear Chairman Johnson:

Please be advised that Nevada Virtual Academy (“NVVA”) intends to appear at the Regulation Hearing that is scheduled for tomorrow afternoon and will request that the adoption of Proposed Regulation R089-16 be postponed.

NVVA participated in the regulatory workshop that was held on January 8, 2016 and provided comments regarding what was proposed. However, what is now before the Nevada State Public Charter School Authority (“Authority”) for approval is substantially different than what was presented for comment in January. Additionally, despite representations at the January workshop that there would be additional discussions regarding the applicability of NRS 233B to the Authority, we have not had the ability to confer regarding the issue and no additional workshops have been held. Prior to adoption of the proposed regulation, we would request that an additional workshop be facilitated to allow for broader comment and possible revisions.

Not only does Proposed Regulation R089-16 raise new issues relating to NRS 233B that need to be fully vetted and amended prior to adoption, but NVVA has a number of other concerns regarding the scope of the proposed regulations which in some instances appears to extend beyond what was intended by the legislature and/or conflict with existing statutes. In other instances, clarifying language is needed as there is conflicting language in what was proposed. Attached to this correspondence is a red-line of Proposed Regulation R089-16 which we hope will aide further discussion. Because public comment is limited at the hearing tomorrow to 3 minutes, we will ask that this letter and NVVA’s comments regarding the Regulation be made a part of the official record.

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Mr. Adam Johnson  
Chair, Nevada State Public Charter School Authority  
November 3, 2016  
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Should you have any questions or concerns regarding the above, please do not hesitate to contact me.

Very truly yours,



Kara B. Hendricks, Esq.

Enclosure as stated

cc: Melissa Mackedon, Vice Chair  
Kathleen Conaboy, Board Member  
Nora Luna, Board Member  
Stavan Corbett, Board Member  
Jacob Snow, Board Member  
Jason Guinasso, Board Member  
Gregory Ott, Deputy District Attorney  
Patrick Gavin, Executive Director  
Anne Mendenhall, Board President, NVVA

November 4, 2016

Patrick Gavin  
Executive 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 ("NCA") Comments on Proposed Regulations**

Dear Director Gavin and Members of the Board,

Thank you for the opportunity to comment on the draft regulation R089-16P (the "Draft Amendment Regulation"). We appreciate that certain changes have been made to the Draft Regulation as it was previously proposed in December 2015 and respectfully request you consider further modifications.

The Draft Regulation exceeds the SPSCA's statutory authority and violates the statutory requirements for the mandated regulations. Under NRS 388A.169 the SPSCA is required to adopt regulations that prescribe "the process" for submission of an amendment to a written charter or charter contract "and the contents of such an application." N.R.S. 388A.168 (3). The statute does not authorize the SPSCA to expand the circumstances under which an amendment is required – especially in the manner proposed under the Draft Regulation. As an administrative agency, the SPSCA is limited to those powers specifically set forth in statute, here, NRS Chapter 388A. See *Andrews v. Nevada State Board of Cosmetology*, 467 P.2d 96 (1970). The grant of authority to an agency must be clear in the statute, otherwise, the agency lacks the power. *Id.* Several of the proposed provisions in the Draft Amendment Regulation exceed the agency's statutory authority and, therefore, are ultra vires:

- Section 10, subsection (1)(b) requires the director's approval for a charter school to submit external evaluations of academic data relevant to a renewal application. This is in direct conflict with the provisions of NRS 388A on renewal applications.
- Section 10, subsection (4) prohibits an application for renewal from containing "a material change from the existing charter contract." This too violates NRS 388A on renewal applications and makes no sense given that the renewal process is contemplated (as provided in statute) as involving a collaborative dialogue between the sponsor and the charter school which may identify concerns and need for changes in operations or academics or otherwise that the agency would consider "material." In addition, the SPSCA's recent proposed draft charter contract states the authority shall decide what is "material" for purposes of the charter contract which places absolute power in the agency and potentially the director to attempt to prohibit a school from presenting critical information for its renewal application. This violates express provisions of NRS 388A and also deprives the school of its autonomy and ability to implement or even propose innovation.

- Section 10 also unlawfully interferes with the school's ability to present information the school believes is important and relevant to its renewal application – until the director decides he will recommend denial of the application.
- Section 11 states that renewal of a charter will be in the Authority's "sole discretion" – this is beyond the statutory authority and ultra vires.

In addition, Section 7, subsection (3)(f) and (3)(g) of the Draft Amendment Regulation suggest that a charter amendment is necessary to change the membership of the governing body of the charter school. There is no statutory authority to require an amendment of a charter for such a day-to-day operational situation and, indeed, suggesting such membership must be approved by the Authority or its Director is an improper assertion of control over the charter school. NRS 388A.320 sets forth the clear requirements for membership and qualifications for governing board members and provides for removal of members convicted of certain crimes. Aside from these requirements, no further regulatory approval of governing board members of a charter school is lawful or appropriate. An agency only has the power to promulgate regulations within the express authority granted by the Legislature. Accordingly, this provision is unlawful and exceeds the Authority's jurisdiction. In addition, proposing the regulation violates the Executive Director's duties under NRS 388A.196 to "[e]nsure the autonomy provided to charter schools in this State pursuant to state law and regulation is preserved." N.R.S. 388A.196(4).

Section 7, subsection (e) purports to require a charter amendment for any change to the academic program of the school. This is unreasonably and unnecessarily broad and unlawfully encroaches upon the school's autonomy. No school could possibly operate under such a requirement nor could the Authority keep up with the number of amendments this could generate. This unreasonably interferes with a school's operations and is beyond the SPSCA's statutory authority. NRS 388A.279 provides the charter amendments that require approval by the SPSCA and, while it is not an exhaustive list, it is emblematic of the materiality required before an amendment is necessary: expanding the school to offer instruction to new grade levels; increasing the enrollment in a particular grade level to more than 120%; seeking to acquire an additional facility; or consolidating operations of multiple charter schools. Requiring a charter amendment for the most minor of instructional changes which could be considered within a "change to the academic program of the school" goes beyond the statutory authority and intent. The existing regulations governing amendment track those in the statute and then provide for a determination as to materiality of an amendment and that a nonmaterial amendment does not require the sponsor's approval. NAC 386.3269. This is a lawful and reasonable regulation compliant with the statutory authority.<sup>1</sup> Revising or replacing the existing regulation with one that requires amendments for changes in a governing board and in any academic program is unlawful and interferes with autonomy and innovation. The Nevada Legislature's intention in creating the SPSCA was to increase school choice and encourage innovation – preserve charter school autonomy – and "foster a climate in this State in which all charter schools, regardless of sponsor, can flourish." N.R.S. 388A.150. Not only does the Draft Amendment Regulation exceed the agency's statutory authority, it violates the very purpose of the SPSCA as expressly stated by the Nevada Legislature.

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<sup>1</sup> These existing regulations also demonstrate compliance with NRS 388A.168 to identify the procedure for investigation to consider an amendment application and the criteria for approval of such an application – the Draft Amendment Regulation omits these statutorily required details.



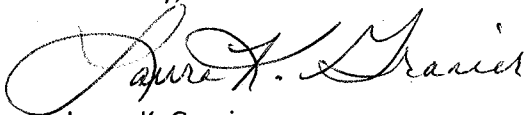
These overly broad requirements for amendments to a charter are combined with the arbitrary attempt to limit evidence and testimony a charter school may submit in support of such an amendment, according to Section 9 of the Draft Amendment Regulation. There is no statutory basis to limit the evidence an applicant can provide an agency for such a regulatory hearing and review process and, in fact, such an arbitrary and unreasonable attempt to limit such evidence to be offered to the agency is ultra vires and violates fundamental principles of due process and the Nevada Administrative Procedures Act, NRS Chapter 233B. One must also question why an agency would seek to prohibit a charter school from presenting information and evidence it believes is important for the SPSCA to hear relative to an amendment.

The Draft Amendment Regulation also fails to provide statutorily mandated details – “the procedure for the investigation” of an application for an amendment and the “criteria” that the SPSCA “will use to evaluate such applications.” N.R.S. 388A.168(4). The SPSCA is statutorily required to adopt regulations that include these details. The Draft Amendment Regulation is legally defective as it is silent on these critical elements the Legislature deemed necessary. These statutory provisions also limit the authority of the SPSCA to adopt regulations and the Draft Regulation exceeds that lawful authority.

The SPSCA also is required to develop policies and practices that describe how the sponsor will maintain oversight of its charter schools including an assessment of the needs of the charter schools sponsored by the sponsor that is prepared with input of the governing bodies of such charter schools and a description of the process of evaluation for charter schools. NRS 388A.223. We respectfully request that the SPSCA commence proceedings to gather input from the governing bodies to develop these policies.

Again, we appreciate the opportunity to work with you on these important matters and, we request an additional workshop with meaningful opportunity for stakeholder input similar to the workshops previously conducted by former SPSCA Director Canavero. We also incorporate by reference our letter submitted January 22, 2016 as certain of the concerns previously identified have not been addressed.

Sincerely,



Laura K. Granier  
Partner  
for  
DAVIS GRAHAM & STUBBS LLP

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