

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

3
4 In re:
5 NEVADA CONNECTIONS ACADEMY

Hearing Date: October 23-25, 2017
Hearing Time: 9:00 AM

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8 **STATE PUBLIC CHARTER SCHOOL AUTHORITY STAFF'S**
9 **OPPOSITION TO MOTION FOR RECUSAL AND/OR DISQUALIFICATION**

10 The State Public Charter School Authority Staff ("Staff"), through their counsel,
11 Adam Paul Laxalt, Attorney General of the State of Nevada, and Gregory D. Ott, Senior
12 Deputy Attorney General, submit this Opposition to Nevada Connections Academy's
13 (NCA) Motion for Recusal and/or Disqualification.

14 **I. INTRODUCTION**

15 NCA's Second Motion for Recusal of State Public Charter School Authority Member
16 Jason Guinasso (Member Guinasso) continues to improperly rely based on an improper
17 standard and does not demonstrate any bias on the part of Member Guinasso. The State
18 Public Charter School Authority Staff urges the Authority to apply the appropriate
19 standard under Nevada Law which does not require recusal.

20 **II. LEGAL ARGUMENT**

21 **A. Authority Members are Public Officers and are Subject to the**
22 **Recusal Standards Contained in NRS 281A as NCA Admits. NCA has**
23 **not alleged any Violation of NRS 281A.**

24 As admitted in NCA's brief, Authority members are not judges, and thus, decisions
25 regarding recusal are not governed by judicial standards. Instead, SPCSA members
26 appointed pursuant to NRS 388A.153 are public officers as defined by NRS 281A.160.
27 Thus, SPCSA members are not without ethical obligations, but they are different from
28 those imposed on judges. NRS 281A.420 prohibits public officers from approving,
disapproving, voting, abstaining from voting or otherwise acting upon items where they

1 have a pecuniary interest, have accepted a loan or gift or would be affected by the public
2 officer's commitments in a private capacity. NCA admits this is the appropriate standard
3 on Page 15 line 23 of its Motion. However, NCA then completely fails to allege any bias of
4 connection sufficient to support a recusal under NRS 281A.420. has not alleged any
5 violation of NRS 281A nor put forth any facts supporting a conclusion that Member
6 Guinasso has any obligation under NRS 281A.420 to recuse himself from this item.¹

7 The distinction between judges and public officers is supported by strong public
8 policy. Unlike judges, public officers appointed to boards, commissions and councils
9 develop or come to their position with specific subject matter expertise enabling them to
10 make informed and educated decisions regarding matters that come before their public
11 body. Public policy encourages public officers to respond to constituents and engage in
12 discussions with attorneys and parties with matters before the body so that the members
13 of the body may be fully apprised of all perspectives before engaging in the public
14 discourse and deliberation at open meetings as required by NRS 241. If judicial
15 standards were applied to public officers, the public would be denied access to its officers,
16 the decision making process would be starved of useful and pertinent information,
17 decision making would be less informed.² Thus, public policy supports the existing legal
18 framework of applying the recusal standards of NRS 281A.420 to SPCSA members, the
19 judicial standards that NCA continues to seek to apply.

20 As NCA admits, the prior opinion regarding recusal is binding. That decision is
21 based solely on the application on NRS 281.420, not as NCA proposes some
22 Frankensteinian mix of NRS 281A.420 and the Revised Nevada Code of Judicial Conduct
23 ("RNCJC"). Chair Johnson's order specifically was based only on Chapter 281A of NRS,

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25 ¹ Any facts alleged would have to overcome the presumption of honesty and
26 integrity which cloaks those who serve as adjudicators. *Gilman v. State Bd. Of Vet. Med.*
Examiners 120 Nev. 263, 269 (2004) citing *Withrow v. Larkin* 421 U.S. 35 (1975).

27 ² The application of the Judicial Standards, as NCA continues to propose, to
28 Administrative boards, councils and commissions could result in time intensive and costly
trainings that would place further significant demands on board and commission
members (many of whom have no legal training and serve without compensation).

1 “NRS Chapter 281A governs recusal standards for Board members.” Chair Johnson then
2 went on to explain that not only did Member Guinasso meet the NRS 281A standards, he
3 also met the higher RNCJC standards. However, Chair Johnson’s comments regarding
4 the RNCJC are dicta. His prior order did not require member Guinasso or any other
5 member to meet the RNCJC, his order says exactly the opposite. The only applicable
6 standard for the recusal of an Authority member is NRS 281A and NCA failed to even
7 allege a violation of the recusal standard of NRS 281A.420. The motion should be denied
8 on this basis alone.

9 **B. Even if the RNCJC is Improperly Applied to the SPCSA, an**
10 **Allegation of Bias Generated from the Case is Insufficient.**

11 Extrajudicial bias, or bias arising from something other than things learned from
12 participation in the case is generally required for recusal of judges.³ The extrajudicial
13 source doctrine provides that a judge’s bias or prejudice is grounds for recusal if the bias
14 or prejudice arose outside of his judicial function.⁴ The only allegations NCA uses to
15 allege extrajudicial bias against Member Guinasso are his relation during the trial of his
16 own childhood experience. His experience did not involve NCA, nor the SPCSA, nor any
17 individual involved in the case, but was simply his own high school experience. However,
18 impartiality does not require a display of “child-like innocence, [for] [i]f the judge did not
19 form judgments of the actors in those court-house dramas called trials, he could never
20 render decisions.”⁵ This is especially true for an Administrative body like the SPCSA,
21 where Members are required to bring knowledge with them to the Authority Board.⁶ The
22 Authority Board must include a person with a demonstrated understanding of a charter
23 schools, but NCA’s argument for recusal of Member Guinasso would prevent Members
24 from accessing that experience because it was acquired outside of its hearing.⁷ The
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26 ³ See *Commonwealth v. Eddington*, 71 Mass. App. Ct. 138, 144 (2008).

27 ⁴ *United States v. Baltistrieri*, 779 F.2d 1191 (7th Cir. 1985).

28 ⁵ *Liteky v. United States*, 114 S. Ct. 1151 (1994).

⁶ NRS 388A.153(2).

⁷ NRS 388A.153(2)

1 ridiculous argument that SPCSA members are prevented from accessing the very life
2 experiences that qualify them for the Authority Board in the first place is not only grossly
3 beyond the requirements of NRS 281A, but it also writes NRS 388A.153(2) out of
4 existence. Indeed, even United States Supreme Court Justices have recognized that the
5 richness of experiences helps individuals reach better conclusions than those who have
6 not experienced as much.⁸

7 Furthermore, Member Guinasso's came at the close of Phase I of this hearing
8 where he was obligated to deliberate and to come to a decision. The rendering of a
9 decision in one case does not prohibit a judge from hearing successive cases regarding the
10 same parties.⁹

11 II. CONCLUSION

12 The Motion for Recusal sets forth no adequate ground for recusal and should be
13 denied. Member Guinasso and all members should base all recusal decisions based on the
14 standards set forth in NRS 281A.420. NCA's repeated citations to inappropriate law
15 attempting to ascribe judicial standards to Authority Members remain as legally
16 incorrect now as they did in May. Continued efforts to hide from their own performance
17 by attacking anyone and everyone involved in reviewing their performance should
18 be dismissed.

19 DATED: October 19, 2017.

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28 ⁸ "Personal experiences affect the facts that judges choose to see. My hope is that I will take the good from my experiences and extrapolate them further into areas with which I am unfamiliar" Justice Sonia Sotomayor. <https://tinyurl.com/qs9zyu>.

⁹ *Liteky v. United States*, 114 S. Ct. 1155 (1994).

1 **CERTIFICATE OF SERVICE**

2 It is hereby certified that I am an employee of the Office of the Attorney General,
3 State of Nevada, and that on October 19, 2017 a true and correct copy of the foregoing
4 STATE PUBLIC CHARTER SCHOOL AUTHORITY STAFF'S OPPOSITION TO
5 MOTION FOR RECUSAL AND/OR DISQUALIFICATION was sent by email to the
6 following parties:

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