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**BRIEFING MEMORANDUM**

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**TO:** SPCSA Board  
**FROM:** Ryan Herrick, General Counsel  
**SUBJECT:** Agenda Item 7 - Litigation Update: Kern v. CSP-Bridger and Commission on Ethics v. Hansen  
**DATE:** January 26, 2018

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The following is a brief summary and Staff's recommendations regarding two pending litigation matters: (1) Kern v. CSP-Bridger Ave., LLC (District Court Case No. A-16-736281-B); and (2) Commission on Ethics v. Hansen (Nevada Supreme Court Case No. 69100). As discussed below, Staff requests that the Authority approve Staff's recommendation to intervene in the Kern matter for the purpose of addressing CSP's pending motion seeking judicial oversight over the receiver, and likewise approve Staff's recommendation to file an *amicus curie* brief with the Nevada Supreme Court in support of the Commission on Ethic's position in that matter.

**Kern v. CSP-Bridger:**

Following an agreement and resolutions by both the SPCSA Board and the then-constituted governing Board of Quest Preparatory School (the governing board has since dissolved), Joshua Kern became the receiver overseeing Quest. Note that because Mr. Kern's appointment as receiver was the result of an agreement between the SPCSA Board and the governing body of Quest, no petition seeking a receivership was ever filed with the district court (as has been done in other SPCSA receivership matters).

As you are aware, after Mr. Kern's appointment as receiver in 2015, due to the severe mismanagement – both financially and organizationally – Mr. Kern inherited or instituted a number of lawsuits. The pending CSP matter is the last remaining of these litigation matters.

In summary, the CSP litigation is a landlord / tenant dispute that revolves around approximately \$1 million in disputed rent payments.

In December 2017, CSP filed a request with the district court as part of the landlord / tenant dispute, requesting that the district court provide "judicial oversight" over the receivership, since Mr. Kern's appointment as receiver was the result of an agreement, and not due to any court action. At the hearing held in regard to CSP's judicial oversight request, the district court did not issue any ruling,

and instead stated that it would not render any decision until such time as it heard from the SPCSA. Apparently, the district court was concerned about overseeing a SPCSA-sponsored charter school when that responsibility is statutorily delegated to the Authority.

SPCSA Staff now requests that the Authority approve Staff's recommendation, and allow Staff to intervene in the pending CSP litigation for the limited purpose of addressing CSP's judicial oversight motion. Note that SPCSA Staff does not in any way whatsoever want or need to become involved in the underlying landlord / tenant dispute – SPCSA Staff only request authorization for the Board to intervene in the CSP matter for purposes of the judicial oversight motion.

Note that while SPCSA Staff is still reviewing the merits and drawbacks of CSP's request, after an initial review of CSP's request, SPCSA Staff is of the opinion that judicial oversight may be in the best interest of Quest, the receiver, and the SPCSA. However, an initial review of CSP's request reveals that CSP's idea of judicial oversight is far too restrictive and will unduly hamper Mr. Kern.

Recommendation: Approve SPCSA Staff Recommendation to Intervene in the CSP Litigation  
Staff recommends that the SPCSA intervene in the pending CSP litigation, for the limited purpose of addressing CSP's request for judicial oversight.

**Commission on Ethics v. Hansen:**

In the Summer of 2017, a three-judge panel of the Nevada Supreme Court issued its opinion in the Hansen matter. According to the panel decision, any and all public agencies – such as the SPCSA – are required to obtain Board approval in a public and open meeting to take any “material steps” in pending litigation.

The Hansen matter will now be heard before the full Court to reconsider its prior decision. Several state and local agencies, including the Board of Medical Examiners, the State Contractors Board, and the City of Reno, have filed *amicus curie* (friend of the court) briefs with the Nevada Supreme Court in support of the Commission on Ethic's position that the Hansen case was wrongly decided.

While the SPCSA is not currently involved in many litigation matters – save and except for the various receivership matters – given the significant implications of the Hansen decision, SPCSA Staff requests approval from the SPCSA Board to file an amicus brief with the Nevada Supreme Court supporting the Commission on Ethic's position.

Recommendation: Approve SPCSA Staff Recommendation to File an Amicus Brief with the Nevada Supreme Court

SPCSA Staff requests approval from the SPCSA Board to file an amicus brief with the Nevada Supreme Court supporting the Commission on Ethic's position.