

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK GAVIN
Executive Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

**1749 North Stewart Street Suite 40
Carson City, Nevada 89706-2543
(775) 687 - 9174 • Fax: (775) 687 – 9113**

BRIEFING MEMORANDUM

TO: SPCSA Board
FROM: Patrick Gavin, Executive Director
SUBJECT: Agenda Item 5: Nevada Virtual Academy: Notice of Intent to Terminate Charter Contract
DATE: February 16, 2018

Introduction and Summary of Recommendation

Nevada Virtual Academy (NVA) is an online school serving grades Kindergarten through 12. The school originally operated under a written charter from 2007 to 2013. In 2013 its charter was renewed, and it now operates under a charter school contract. that the charter contract expires June 30, 2019. The school currently serves over 2,000 students statewide.

Its elementary program was recently ranked as a 1-Star school under the Department of Education's Nevada School Performance Framework; its middle school program was ranked as a 3-star school; and NVA's high school program had a graduation rate of 84% for the 2016-2017 school year. Its historical academic performance at the elementary level can be summarized as poor, as the elementary program has persistently underperformed, being rated at a 1 or 2-Star levels since the inception of the Nevada School Performance Framework. It is important to note that since the charter contract expires on June 30, 2019, the sole remaining opportunity to reverse this performance issue is immediately at hand; the data from this academic year will drive the results for the NSPF ratings that the Department will release at some point during NVA's final academic year under the current contract.

As a result, and as discussed in greater detail below, Staff recommends that the SPCSA Board issue a Notice of Intent to Terminate (the "Notice") NVA's charter school contract pursuant to [NRS 388A.330](#), providing a period of at least 30 days within which it may correct the deficiencies identified in the Notice (the "cure period"), or up to and including April 2, 2018, and direct Staff to place NVA on the agenda for the Authority Board meeting currently scheduled for April 27, 2018. At the April 27, 2018 Board meeting, Staff will provide the Authority with an update and recommendation regarding NVA's proposed cure, and whether the deficiencies that are identified in the Notice have been corrected.

At the April 27, 2018 Board meeting, the Authority can determine whether the deficiencies outlined in the Notice have been remedied.

If the Authority determines at the April 27, 2018 Board meeting that it is not satisfied that the deficiencies outlined in the notice have been remedied, a public hearing pursuant to [NRS 388A.330\(2\)\(d\)](#) can be held so that the Authority may consider terminating NVA's charter school contract.

A proposed Notice of Intent to Terminate NVA's Charter School Contract is included with the supporting materials to this Agenda Item.

Legal Framework

Standards for Termination of a Charter Contract

[NRS 388A.330](#), as amended by Section 24 of Assembly Bill 49 of the 2017 Legislative Session, sets forth the grounds under which the Authority may terminate a charter contract. While NRS 388A.330 sets forth numerous grounds under which the Authority may terminate a charter contract, in regard to academic performance, NRS 388A.330 sets forth, essentially, three standards: (1) "persistent[] underperform[ance];" a graduation rate if the charter school operates a high school under 67% for the preceding year; or if the charter holder operates an elementary or middle school ranked in the lowest 5% of all public schools in the State.

In part, NRS 388A.330(1) reads as follows:

"...the sponsor of a charter school may ... revoke a written charter or terminate a charter contract before the expiration of the charter if the sponsor determines that:

- (a) The charter school, its officers or its employees:
 - (1) Committed a material breach of the terms and conditions of the written charter or charter contract;
 - (2) Failed to comply with generally accepted standards of fiscal management;
 - (3) Failed to comply with the provisions of this chapter or any other statute or regulation applicable to charter schools; or
 - (4) If the charter school holds a charter contract, has persistently underperformed, as measured by the performance indicators, measures and metrics set forth in the performance framework for the charter school;
- ...
- (e) The charter school operates a high school that has a graduation rate for the immediately preceding school year that is less than 60 percent;
- (f) The charter school operates an elementary or middle school or junior high school that is rated in the lowest 5 percent of elementary schools, middle schools or junior high schools in the State in pupil achievement and school performance, as determined by the Department pursuant to the statewide system of accountability for public schools; or
- (g) Pupil achievement and school performance at the charter school is unsatisfactory as determined by the Department pursuant to criteria prescribed by regulation by the Department to measure the performance of

any public school pursuant to the statewide system of accountability for public schools.¹

NAC 386.332 defines “persistent underperformance” as:

- (1) The charter school was not rated in the first, second or third highest tier during the last three ratings of the charter school pursuant to the statewide system of accountability for public schools; or
- (2) If the charter school is operating under a charter contract, the charter school has not complied consistently with the performance indicators, measures and metrics set forth in the performance framework of the charter school, as determined by the sponsor.

This statutory and regulatory framework is mirrored in both NVA’s charter school contract, and the incorporated Charter School Performance Framework.

Notice and Procedure

If these standards are met, the Authority may vote to provide written notice to the governing body of the charter school of its intention to terminate the charter school contract. This notice must include a statement of deficiencies and reasons for termination, must provide a cure period of not less than 30 days, and must include a date when the sponsor will hold a public hearing to determine whether the school has corrected the deficiencies. Finally, in the event that the Authority determines that the deficiencies identified in the notice have not been cured, the notice must also include a date when the sponsor will hold a public hearing to determine whether to terminate the charter contract (this hearing must be not more than 90 days after the date of the notice). Note that the sponsor and the school can mutually agree upon dates and deadlines other than specified above.

In part, NRS 388A.330(2) states:

2. Before the sponsor reconstitutes a governing body, revokes a written charter or terminates a charter contract, the sponsor shall provide written notice of its intention to the governing body of the charter school. The written notice must:
 - (a) Include a statement of the deficiencies or reasons upon which the action of the sponsor is based;
 - (b) Except as otherwise provided in subsection 4, prescribe a period, not less than 30 days, during which the charter school may correct the deficiencies, including, without limitation, the date on which the period to correct the deficiencies begins and the date on which that period ends;
 - (c) Prescribe the date on which the sponsor will make a determination regarding whether the charter school has corrected the deficiencies, which determination may be made during the public hearing held pursuant to subsection 3; and
 - (d) Prescribe the date on which the sponsor will hold a public hearing to consider whether to reconstitute the governing body, revoke the written charter or terminate the charter contract.

¹ Note that NRS 388A.330 was amended in 2017 to clarify that a charter school that “operates” an elementary, middle, or high school is subject to the statutory provisions regarding termination and revocation of a charter school contract.

3. Except as otherwise provided in subsection 4, not more than 90 days after the notice is provided pursuant to subsection 2, the sponsor shall hold a public hearing to make a determination regarding whether to reconstitute the governing body, revoke the written charter or terminate the charter contract. If the charter school corrects the deficiencies to the satisfaction of the sponsor within the time prescribed in paragraph (b) of subsection 2, the sponsor shall not reconstitute the governing body, revoke the written charter or terminate the charter contract of the charter school. The sponsor may not include in a written notice pursuant to subsection 2 any deficiency which was included in a previous written notice and which was corrected by the charter school, unless the deficiency recurred after being corrected or the sponsor determines that the deficiency is evidence of an ongoing pattern of deficiencies in a particular area.

4. The sponsor of a charter school and the governing body of the charter school may enter into a written agreement that prescribes different time periods than those set forth in subsections 2 and 3.

...

7. If the sponsor of a charter school determines that not all of the grade levels in the charter school meet the criteria described in paragraphs (a) to (g), inclusive, of subsection 1 and that the charter school can remain financially viable if the charter school continues to operate and serve only the grade levels which do not meet the criteria described in those paragraphs, the sponsor may amend the charter contract to eliminate the grade levels that meet the criteria described in paragraphs (a) to (g), inclusive, of subsection 1 and limit the enrollment in all other grade levels in the charter school.

Note that NRS 388A.330(7) also allows the Authority to amend a charter school contract eliminating low performing grade levels (i.e., in the case of NVA, the elementary grade levels) if the charter school can remain “financially viable” after the elimination of the low performing grade levels.

Staff Recommendation

As shown below in Table 1, based on the validated count of students enrolled on Monday, October 2, 2017 (validation day—formerly “count day”), Nevada Virtual Academy currently serves 2,097 students in grades Kindergarten through 12.

Table 1: Nevada Virtual Academy's 2017-18 Validated Enrollment by Grade Level

	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Enrollment	86	70	76	83	113	112	153	249	300	183	259	230	183	2,097

As demonstrated below in Table 2, of those 2,097 students, 540 students were enrolled in the elementary grades, while 1,557 students were enrolled in the middle and high schools (702 middle school students and 855 high school students respectively).

Table 2: Nevada Virtual Academy's Validated Elementary, Middle, and High School Program Enrollment

	Elementary	Middle	High	Total
Enrollment	540	702	855	2,097

Under its existing charter contract, NVA's total enrollment is capped at no more than a 10 percent increase in the number of students who were enrolled on validation day of the previous year. Consequently, Nevada Virtual would be able to serve no more than 2,306 students in 2018-19.

As noted previously, NVA was renewed by the State Public Charter School Authority by a 4-2 vote on June 21, 2013; its current contract expires on June 30, 2019. This renewal was based on the school's argument that it was in the midst of a turnaround and that it was poised for significant improvement. As a condition of the renewal in 2013, the school agreed to a "high stakes review" to be conducted in 2015, wherein the Authority would consider whether the school had met targets under the charter school performance framework. Based on those criteria, the Authority issued a Notice of Concern to NVA in the Fall of 2013 and a Notice of Breach in the fall of 2014.

In the 2014-15 school year, prior to the scheduled 2015 high stakes review, the State Board of Education and the Department of Education changed testing vendors, initiated a mandatory pause in the Nevada School Performance Framework, and later declared a statewide testing irregularity that combined to preclude the issuance of a new charter school academic performance framework in the fall of 2015. Subsequent changes in federal law and State Board and Department policy changes resulted in further suspension of the Nevada School Performance Framework pending revision. While the Department has finalized the elementary and middle school portions of that framework, it has not yet finalized a high school framework. Due to the delays in the approval of the full statewide framework, the charter school academic performance framework remains suspended and cannot be revised until the Department adopts a final NSPF for all grade levels.

On August 24, 2015, SPCSA Staff recommended that the Authority conduct the high stakes review required under the contract, recommending termination of the charter contract as the school had failed to meet the target based on the data available. Based on concerns raised by the school, the Authority board decided not to conduct the high stakes review and took no action. The Department of Education has repeatedly updated its listings of schools rated under the "Star System," the Nevada School Performance Framework which comprises the Statewide System of Accountability. NVA's elementary school was identified as a 2-Star school in 2012, 2013, and 2014 and it was identified as a 1-Star school in 2017, following the cessation of the statewide "pause" in accountability adopted by the State Board of Education and the Department of Education, the subsequent 2015 statewide testing irregularity, and the signing of the Every Student Succeeds Act, on December 10, 2015. It is important to note that the regulation adopted by the Department anticipates the eventuality of a pause, irregularity, or legislative change that results in an interruption of the issuance of annual ratings, providing a definition of "persistently underperformed" that refers to receipt of a 1 or 3-Star rating "during the last three ratings of the charter school pursuant to the statewide system of accountability for public schools." Consequently, the pause in accountability does not short circuit the rating system or result in a reset of any accountability clock.

It is important to note that the school was previously recommended to receive a Notice of Intent to Terminate NVA's charter contract in 2016 based, in part, on its elementary grade level performance rates in 2012, 2013, and 2014. NVA disputed this recommendation, arguing that the school had made considerable programmatic changes since 2014 and that the recommendation relied on out-of-date information. The Authority ultimately did not take any action.

Due to the "pause" in the statewide system of accountability, the State's reported Star Ratings were continued from 2014 to 2015, and no ratings were reported by the Department in 2016 due to changes in federal law. As a result, the most recent "rating" prior to 2017 occurred in 2014 and the

2013, 2014, and 2017 ratings are the three most recent ratings issued by the Department pursuant to the statewide system of accountability.

NVA operates pursuant to a charter contract and it operates an elementary school that was rated at the bottom 2-Star levels during each the three most recent ratings pursuant to the statewide system of accountability (2013, 2014, and 2017). As noted previously, NVA's elementary grade levels have performed at unacceptable levels since the inception of the statewide system of accountability in 2012, and its performance actually declined between the two most recent ratings, dropping from the 2-Star rating level it received in 2013 and 2014 to a 1-star level in 2017. Consequently, the provisions of [NRS 388A.330\(1\)\(a\)\(4\)](#) and [NAC 386.332](#) apply and NVA is eligible for issuance of a Notice of Intent to Terminate the Charter Contract pursuant to that section of statute and the associated regulation.

Recently, Staff received a "K8 Continuous Improvement Plan and Evaluation" from NVA. The Improvement Plan is included along with the supporting materials for this Agenda Item. Based on a review of the PowerPoint Improvement Plan, SPCSA Staff believes that the Improvement Plan, standing alone, is wholly insufficient to forestall the issuance of the Notice. Given the severity of NVA's elementary grade levels' chronic underperformance, SPCSA staff believes that something much more significant must be submitted in order to constitute a remedy under NRS 388A.330. NRS 388A.330 provides for the submission of such a remedy, and the scope of any remedy that SPCSA would potentially recommend as acceptable is described in greater detail below.

Based on the foregoing, Staff recommends that, pursuant to [NRS 388A.330\(1\)\(a\)\(4\)](#) and [NAC 386.332](#), the Authority direct the Chair to Issue a Notice of Intent to Terminate the Charter Contract of Nevada Virtual Academy based on the identification by the Department of NVA's elementary grade levels being in the bottom two tiers of the statewide system of accountability for its performance in the academic years 2012-13, 2013-14, and 2016-17 and the 2013, 2014, and 2017 accountability years. The above-referenced notice is attached hereto for the Authority's consideration and approval.

As outlined above, Nevada's charter school statutes and regulations provide for the issuance of a notice outlining deficiencies, a cure period of at least 30 days, and two statutory deadlines: First, a date upon which the Authority will determine that the deficiencies have been cured; and, second, if the cure is not satisfactory to the Authority, a date upon which a public hearing will be held to determine whether to terminate the school's charter contract.

Staff recommends that the Authority issue a notice pursuant to [NRS 388A.330\(1\)\(a\)\(4\)](#) and [NAC 386.332](#), providing a cure period of at least 30 days, until Monday, April 2, 2018 within which the school may attempt to remedy the identified deficiencies, and direct Staff to place NVA on the agenda for the next regularly-scheduled Authority Board meeting, currently scheduled for April 27, 2018. Staff will evaluate the quality of the remedy submitted and will provide a recommendation to the Authority. At the April 27, 2018 Board meeting, Staff will provide the Board with Staff's recommendation.

At the April 27, 2018 Board meeting, the Authority can determine whether the deficiencies outlined in the Notice have been cured to the satisfaction of the Authority based on the submission of the remedy into Epicenter by 5 pm Pacific Daylight Time on Monday, April 2, 2018 that is acceptable to both staff and the Authority.

If the Authority determines at the April 27, 2018 Board meeting that the deficiencies outlined in the Notice have not been remedied to the satisfaction of the Authority, a public hearing pursuant to

NRS 388A.330(2)(d) shall be held on May 7, 2018 so that the Authority may consider terminating Nevada Virtual Academy's charter contract. In the event that the Authority votes to terminate Nevada Virtual Academy's charter contract, no closure of the school would occur prior to the end of the 2017-18 academic year.