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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

Dear State Public Charter School Authority Board Members and Staff:

Nevada Connections Academy (“NCA”) submits this correspondence to you, as supported by evidence and information uploaded in Epicenter¹, to support your decision that NCA has effectively cured the concerns you have identified with respect to the NCA high school four-year cohort graduation rate. You identified the 2015 and 2016 four-year rate as the trigger for the Notices of Closure (the “Notice”) issued on September 30, 2016 and January 2017.

Taking the Notice very seriously, NCA reached out to the Authority’s counsel, Greg Ott, right away by email on October 5, 2016, asking for the Authority’s guidance with respect to what it would consider an acceptable cure. See **Exhibit 1**. NCA followed up again with Mr. Ott on October 6, 2016. When NCA received no response, it again followed up with Mr. Ott on October 24, 2016. Mr. Ott responded on October 25, 2016, that he did not believe the Authority was obligated to “tell the school how the deficiency may be cured.” **Exhibit 2.**²

Without the benefit of any guidance from the Authority Staff, NCA prepared a proposed cure and submitted it to Mr. Ott on November 14, 2016. Unfortunately, we did not receive any response from Mr. Ott about Staff’s feedback on the proposal until November 29, 2016 at which time he stated that Staff did not think it was a cure because it required action by the Authority. On November 30, 2016, we requested a meeting with Authority Staff to obtain guidance and feedback from the Authority Staff on NCA’s proposed cure. Mr. Ott advised us that Patrick Gavin would not speak with NCA about the cure during the cure period leading up to the December hearing. **Exhibit 3.**³

¹ NCA request that the Board adopt the Epicenter submissions made on or about December 2, 2016.

² Mr. Ott did reference how Beacon Academy cured, by entering into the contract we understand includes a waiver of rights to judicial review but, in addition, we note that the cure for a high school is not applicable to NCA’s K-12 school.

³ We are disappointed by Staff’s unwillingness to discuss or collaborate on a possible cure and also believe it is inconsistent with the Charter Agreement with NCA, the covenant of good faith and fair dealing under that agreement, NRS 338A.150 – requiring the Authority “foster a climate in this State in which all charter schools, regardless of sponsor, can flourish”, and the Authority’s State Performance Framework (requiring timely feedback and maximum transparency). Yet, given the school’s strong desire to continue serving its students without interruption and reserving all rights, NCA submits this proposed cure.

Without the benefit of guidance from the Authority Staff, NCA proposed to “cure” the deficiency identified in the Notice of Closure issued in September 2016 in a letter to Authority Staff in December (attached hereto).⁴ In the Authority Staff’s prehearing brief submitted prior to the December closure hearing, the Authority Staff criticized that the proposed cure measures were not approved by the NCA governing board. In response, the NCA board reviewed and approved the provisions at its January 2017 board meeting. **Exhibit 10**, Jan. 25, 2017 NCA Board Meeting minutes. Following that NCA board approval, we again requested feedback from Staff who raised additional questions to which the school has been responding. The school continues to attempt to negotiate a contract⁵ with Staff and hereby proposes the following cure:

1. NCA’s four-year cohort graduation rate must be calculated consistent with Nevada law, including NRS 385A.260 which prohibits the State from reporting as drop-outs, students who provide proof of successful completion of the high school equivalency assessment selected by the State Board (a “GED”), students who are enrolled in courses approved by the Nevada Department of Education for an adult standard diploma (“Adult Ed”), and students who withdraw from school to attend another school. NAC 389.699(3) further mandates that a “pupil who qualifies for a certificate of attendance must not be counted as a dropout.”

NCA’s 2016 four-year cohort graduation rate as calculated to exclude those students who received a GED or went on to Adult Education is 50.7%, and the percentage will increase once NCA factors in the 48 non-graduates from the 2016 cohort who are enrolled at NCA for a 5th year.

2. NRS 388A.330 does not define “graduation rate” for purposes of the potential closure of a high school. Accordingly, it is appropriate to look to Nevada law as we propose above. In addition, the Federal Department of Education’s (“DOE”) definition of “graduation rate” being applied by the Authority is not mandatory for states to use; rather, reporting of that rate to the DOE is required for states to access Title I funding.⁶ Therefore, it is not appropriate to apply this “graduation rate” when the Nevada legislature could have, but did not provide for such use under NRS 388A.330.⁷ Even if that definition is applied, however, given the Federal regulations promulgated under the Every Student Succeeds Act, students enrolled for 50% of the school year or less would be excluded from NCA’s graduation rate. This adopted federal policy recognizes that a school should not be penalized for students the school had inadequate time to impact relative to their academic progress toward graduation. With that calculation, we estimate NCA’s 2015 graduation rate would be **43.91%** -- **an improvement of 8.28%** from the rate reported by the Authority in the Notice of Closure. NCA believes when combining this increase with the increase from excluding students who Nevada law prescribes from being reported as dropouts, NCA’s graduation rate will be even higher and potential within striking distance of the 60% minimum threshold at issue. This was before NCA has even had an opportunity to implement the

⁴ Although, as you know, NCA believes there are legal concerns with the Notice and how it was issued, NCA continues to seek a mutually agreeable resolution with the Authority.

⁵ See **Exhibit 11**, Draft Authority Contract.

⁶ See, e.g., Title I, Part A, Section 1005 of the Every Student Succeeds Act (reauthorizing the Elementary and Secondary Education Act of 1965) provides that failure to file a plan including an accountability system makes a state ineligible for Title I funds.

⁷ See *Holiday Ret. Corp. v. State*, DIR, 274 P.3d 759, 761 (Nev. 2012) (“It is the prerogative of the Legislature, not [the] Court to change or rewrite a statute.”).

graduation rate improvement plan. The 2016 graduation rate has shown some of the success already seen from the Graduation Rate Improvement plan—according to the Authority’s calculations, the school’s four-year cohort graduation rate has increased by almost 5 percentage points. **Exhibit 9**. Under ESSA’s partial attendance rate calculation, it is clear that the 2016 four-year cohort graduation would even be higher, approximately 47.2%.

This highlights an important point – the United States Department of Education has recognized it is improper to hold a high school accountable for students enrolled in a high school for 50% or less of the current school year. This is compelling evidence for you to consider relative to the issue at hand given that the Nevada Legislature did not mandate closure of a high school based on the 60% graduation rate but instead allowed the Authority the discretion to consider closure, in light of all compelling evidence (such as this).

3. As some of you know, in March 2016 when the Authority Staff included NCA on an agenda for issuance of a Notice of Closure, NCA submitted evidence through documents and witness testimony to explain the basis for the four-year cohort graduation and why it did not accurately reflect NCA’s performance given the credit-deficient and transient students NCA serves. After hearing that evidence, the Authority Board directed NCA to work with Staff to prepare a graduation rate improvement plan. NCA did so and presented that plan at the Authority’s May 2016 hearing where the Authority Board members praised the plan:

Vice Chair Mackedon: “. . . **this report is really well done.**” May 20, 2016 Transcript at 196.

Member McCord: “I’d really like to congratulate you on that. . . . I congratulate the school for putting this in there. It speaks to the integrity of the data collection, but it does one other thing. **It actually defines the actionable data.**” *Id.* at 199, 203.

Chair Johnson: “. . . if you implement this **really stellar plan** that I think we’ve all been impressed by . . .” *Id.* at 212.

NCA believes the “cure” for the four-year cohort graduation rate issue the Authority has identified is implementation of that graduation rate improvement plan, **Exhibit 4**, which this Authority praised in May 2016.⁸ This is a new and innovative graduation rate improvement plan prepared at the Authority Board’s direction and with the guidance of Staff and NCA has demonstrated it is working – and the school should be allowed reasonable time to continue implementation. NCA should be given the chance to demonstrate success under the improvement plan prepared at the Authority’s direction and praised by all of the Authority board members in May of this year. Below is an update on the success already seen from the school’s implementation of the graduation rate improvement plan.

With respect to measuring the school’s progress in implementing that plan, NCA is proposing the benchmark of reaching 49% by 2017 and 60+% by 2018, but would welcome further discussion and review of that benchmark or an interim benchmark in light of the new Federal regulations and the consideration of

⁸ Member Mackedon expressed this same view that “It’s their responsibility to put forth the plan, which they did, and to get results on it. And it’s our responsibility to make a decision when the results come out in a year or six months or whenever it is they come out.” May 20, 2016 SPSA Transcript at 234-235.

Nevada law relative to GED and Adult Ed students. Of course, as you know, if at any time during these years the Authority believed that NCA was not demonstrating adequate improvement or there were another basis for closure, the Authority retains the ability and jurisdiction to again consider closure of the school. Thus, the Authority is not giving anything up by allowing the school time for implementation of the plan for at least another year to demonstrate results. In addition, in the interim, we incorporate the proposal shared with Mr. Ott and Mr. Gavin this week to provide a financial penalty to the school for students who do not accrue credits on track during their time at NCA – showing a true and transparent performance accountability measure for NCA. The details are outlined as follows and could be included in a charter contract between the Authority and the NCA Board:

The School will be required to demonstrate year over year improvement in its graduation rate, as measured by the following targets:

2017 graduation rate - - 49%
2018 graduation rate - - 60+%

NCA will continue to be funded in accordance with applicable Nevada and federal law. However, in any given year identified above where the school's graduation rate (as measured in accordance with then applicable federal and state law) falls below the target graduation rate set forth above, the school would be subject to a reimbursement penalty calculated as follows:

1. Identifying the student population used to determine penalty
 - Exclude all K-8 students.
 - Exclude all high school students on track to graduate on time (defined as all first-year 9th graders, 10th graders who began the school year with at least 5 credits, 11th graders who began with at least 11 credits, or 12th graders who began with at least 17 credits).
 - Exclude all high school students with 504 plans and IEPs.
 - Exclude all high school students who enrolled part-time (if there are any it is a handful), or who are not enrolled for the full semester (Start Date > 1st day of semester (either first or second semester)).
 - Exclude all high school students who withdraw from NCA and transfer to another high school (or its recognized equivalent) located within Nevada or elsewhere within the United States or abroad.
2. Calculating the penalty based on the remaining students (high school students not on track and without 504s & IEPs)
 - Assume full funding for a full year student is \$7,000 per year, roughly 1/7th supports "administrative costs" (administration, counseling services, etc.) and the remaining can be allocated per course - approximately \$1000 per full credit and \$500 per ½ credit.

- 6 credits (12 ½ credits) is full funding for a full school year, 3 credits (6 ½ credits) is full funding for a ½ school year (e.g., a student who is only enrolled for a full semester, perhaps with a start date 11/1 but who stays through the end of the year).
- Students are evaluated only for those semesters during which they are fully enrolled - students can be full year students or ½ year students.
- Penalty is lost funding per half-credit: 1/14th of the funding earned by a full-time student enrolled for the entire school year or 1/7th of the funding earned by a ½-year student (assumed \$500 in this example) for every 0.5 credit below the target of six during the academic year in question for a full-year student or below the target of three for a ½-year student.

4. Although NCA has a dedicated and highly qualified governing board, given the Authority Staff's repeated references to board reconstitution, in an attempt to respond to those references, as part of the proposed cure, if accepted by the Authority and subject to NCA board approval, NCA will voluntarily reconstitute its board by replacing a board member at least one a year (or potentially as quickly as every 6 months) with complete reconstitution by June 30, 2019. This time period allows for a reasonable transition that will not be disruptive to school operations or governance. Although NRS 388A.223(1)(h) requires the Authority adopt regulations for appointing a new governing body of a charter school when a board is reconstituted under NRS 388A.330, we are not aware of the Authority having adopted such regulations; however, we believe NCA's approach is reasonable under the circumstances if the Authority accepts the school's proposed cure. NCA also would amend its bylaws to achieve this voluntary reconstitution and provide for term limits so that board members will not serve consecutive terms (if this cure is accepted by the Authority and, subject to NCA board approval).

5. Progress to date of implementation of the graduation rate improvement plan:

ACADEMIC INTERVENTIONS

Thoughtful effort has been given to providing educationally sound opportunities for credit recovery to maximize chances of on-cohort graduation. As part of its pilot program last year, NCA instituted a Tiered system of instructional support and intervention, which grouped students according to credit status and other risk factors. Of the students grouped into Tier I and Tier II (minimal need for intervention and some level of targeted intervention and support, respectively) **nearly 80% of those expected to graduate actually did**. Of the students in Tier III—which is the highest level of intervention and support and was focused on retention and perseverance, approximately 60% of the students remain enrolled, and have a strong chance of graduating this year. NCA is committed to re-evaluating its individualized supports for these students—which we see as being mission-critical given the fact that for the 2016 cohort **49% of our high school students were credit deficient when they enrolled with NCA**. Excluding students who enrolled at NCA at least one semester behind from the cohort, NCA's 2016 graduation rate is 62%. Exhibit 9.

Grad Point Credit Recovery: After the initial piloting of Grad Point, NCA has greatly expanded its use. Roughly 500 students are currently enrolled in one or more Grad Point courses. The format of Grad Point supports individualized learning while not sacrificing exposure to key, standards-driven concepts.

This method has proven to be more successful with credit deficient students as seen in the following comparison:

Time Period	Completion Rate
Fall Semester 2015-Traditional "Foundations Courses"	42%
Fall Semester 2016-to date-Grad Point Courses	64%

It should be noted that this rate will likely increase as students retake courses and complete them.

Summer School: NCA offers a robust summer school/completion program. During summer of 2016, there was a higher than 75% pass rate on all original credit courses. Additionally, 12 students were able to complete all requirements for graduation.

Enhanced Synchronous Instruction: Targeted, skill-specific instruction to support students' progress towards graduation is a fundamental component of the graduation rate improvement plan. Both Math and ELA teachers offer such instruction to supplement that which is already offered.

Student mentoring: The mentor pilot, which helped 83% of participants pass all of their courses, is being implemented for two specific sub-groups of students: those still needing to pass one or more HSPE test, and those who are part of the 2017 cohort who are earning a grade of "F" in any core class. After looking at the needs of the students and likelihood of success, it was decided that these two groups had the greatest needs.

Every Student Succeeds Academy (ES2) and Greater Accountability: Students who enroll in NCA off-cohort are automatically placed into the ES2 academy and are provided with increased adult interaction, enhanced learning opportunities, and clear guidelines to govern expectations. (see **Exhibit 5**; see also ES2 Academy Success Coach Guide uploaded to Epicenter).

EFFORTS TO LOCATE WITHDRAWN STUDENTS

At the suggestion of Executive Director Gavin in September of 2015, NCA instituted more thorough actions to find students who left NCA – in order to remove them from NCA's cohort. An analysis of the 2016 cohort supports that NCA's high school population is highly transient, and students often enroll at the school for short periods of time. See **Exhibit 9**. When combined, these factors prove to be challenging when it comes to locating students no longer enrolled at the school.

Of the 279 students without a verified "transfer out" status, it should be noted that many were not enrolled at NCA for even a full academic year. **Students whose enrollment lasted from one day to 8 months numbered 160. It should be noted that new federal guidelines under the Every Student Succeeds Act (ESSA) require states to implement a "partial attendance" requirement (see ESSA 1111(c)(4)(f)) to assign accountability to schools who have had the greatest impact on a student's success or lack thereof in graduating on time. While Nevada has not yet formally adopted such rules, their inclusion in the most recent ESSA advisory group's recommendations is explicit.**

The following table provides some insight into the characteristics of the 2016 cohort:

Length of Enrollment	Count of Students
1 month or less	21
1-2 months	31
2-3 months	32
3-4 months	24
4-5 months	18
5-6 months	18
6-7 months	9
7-8 months	7

Additional Action Taken By School: To investigate students' whereabouts and statuses, the school employed the following:

- Members of the school's administration and administrative support team dedicated additional time to employ non-traditional means (social media for example) to locate students—both in and out of state. This approach involved making multiple phone calls—often to students' family members on a regular basis. At a minimum, 7-8 staff members were spending 2-4 hours per week doing such investigations.
- Door to Door canvassing: Students who were not able to be located had their last known residences visited by school personnel.
- Private Investigator: A private investigator was hired, at the school's expense, and employed both physical and electronic methods to locate the families of withdrawn students.

Results: Of the initial group of 279 students, only 35 remain as not having been located and contacted.

Actions Going Forward: In addition to the school's standard withdrawal procedures, these enhanced methods will be used (when needed) BEFORE the student's scheduled cohort graduation year to improve the number. In addition, NCA believes the results of this work will increase its previous years' cohort graduation rates and asks that the Authority allow for that and consider it relevant to these proceedings.

3RD PARTY DATA VALIDATION OF RELEVANT DATA

At the direction of the SPCSA's governing board and staff, NCA entered into a contract with a third party (AdvancED) to conduct analysis of our high school data relevant to taking a "hard look" at the graduation rate and how NCA's enrollment of credit deficient students, for example, impacts that rate. The scope of the work, timeline, deliverables, and cost to the school is detailed in the attached contract. **Exhibit 6.** NCA was actively engaged in conversations with AdvancED staff and is complying with all requests for data. The most recent conversation took place in January and specifically addressed the analysis of both the 2015 and 2016 cohorts. NCA needed to wait until the most accurate and complete cohort information was available from the Nevada Department of Education to ensure accurate analysis. This proved to be a challenging process, as throughout the official cohort validation period, there were multiple updates and changes made to NCA's official numbers. Then, unexpectedly, just weeks ago AdvancedED terminated its contract, apparently out of concern that the Authority Staff was upset at them for doing this work the Authority Staff requested that we contract with them to do. Accordingly, NCA has found a new third party validator who is providing the same validation. With respect to the proposed financial penalty, that reporting data also could be reviewed by a mutually agreeable third party validator at the school's expense.

6. NRS 388A.330(1)(e) allows the Authority to consider closure of a **high school** that has a graduation rate for the immediately preceding school year that is less than 60%. As discussed above, we ask that you consider NCA's graduation rate consistent with Nevada law and also in light of the compelling evidence NCA presented at the March 2016 Authority Board meeting (uploaded again to Epicenter for your convenience and access and, incorporated herein by reference) – which demonstrates that NCA is effectively serving its students – with a graduation rate approaching 80% for high school students enrolled for all four years at NCA. The aggregated number of students continuously served by NCA is a number Member Mackedon indicated should be considered relative to NCA's performance. See **Exhibit 7**, Minutes from 2013 Renewal Hearing for NCA at 9. It also is a number that holds NCA accountable for its time and service of these students rather than for other schools' performance with students who are newly enrolled at NCA or enrolled with NCA credit deficient. This "compelling evidence" is what was promised would be considered if the legislature granted the Authority discretion to consider potential closure of a high school on this basis.⁹

The statute does not allow for the closure or board reconstitution of an entire K-12 school based solely on a high school graduation rate. NRS 388A.330(1)(e).¹⁰ This makes sense given that NCA, as an example, was last rated by NDE as having a four-star middle school. Neither the middle nor elementary school are within the performance accountability triggers for potential closure.

The Authority recently did suggest that the school consider bi-furcating its charter to separate out the high school in order to address this issue. If the Authority accepts NCA's proposal to cure as set forth herein, NCA would seek authorization to formally establish an alternative performance framework school under its charter – a "school within a school" in which it would serve all of its students who enroll at NCA credit deficient and those students would have separate codes and be included in that school's graduation rate while NCA's

⁹ Testimony of P. Gavin on Senate Bill 509, **Exhibit 8**.

¹⁰ Where the "language of the statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction." *Erwin v. State of Nevada*, 111 Nev. 1535, 1538-39 (1995).

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general high school population, all students who enroll in NCA on track, would be included in the NCA high school graduation rate. This properly holds NCA accountable for the students it serves who come to the school "on cohort" but allows the school to continue effectively serving students who come to NCA credit deficient without penalizing NCA for enrolling those students by adversely impacting the NCA high school graduation rate. As noted above, NCA anticipates this would mean the school immediately has a graduation rate approaching 80%.

Finally, if the alternative performance framework school within a school were approved by the Authority as described above, then NCA would apply to the Authority to sever the high school from the K-8 charter as the Authority Staff has requested, in order to resolve the Authority's concern that it cannot, under the statute, close the K-12 school based on the high school graduation rate.

Sincerely,



Laura K. Granier
Erica K. Nannini
for
DAVIS GRAHAM & STUBBS LLP

LKG:js

Encls.: Exhibits 1-11
Cc: Steve Werlein
Jafeth Sanchez