

BRIEF EXHIBIT C

BRIEF EXHIBIT C

1 BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY

2 STATE OF NEVADA

3
4 VIDEOCONFERENCED PUBLIC HEARING

5 VOLUME III

6 FRIDAY, MAY 26, 2017

7 (CONTINUATION OF AGENDA ITEM NO. 3)

8 RENO AND LAS VEGAS, NEVADA

9
10 THE BOARD:

11 JASON GUINASSO, Acting Chair (In Las Vegas)
12 ADAM JOHNSON, Chair/Member (In Las Vegas)
13 MELISSA MACKEDON, Vice Chair (In Las Vegas)
14 PATRICK GAVIN, Executive Director (In Las Vegas)
15 STAVAN CORBETT, Member (In Las Vegas)
16 NORA LUNA, Member (In Las Vegas)
17 JACOB SNOW, Member (In Las Vegas)
18 DAVID GARDNER, Member (Via telephone)

19
20 FOR THE BOARD:

21 GREG OTT, Deputy Attorney General (In Las Vegas)
22 ROBERT WHITNEY, Deputy Attorney General (In Las Vegas)
23 DANNY PELTIER, Management Analyst I (In Reno)
24 TANYA OSBORNE, Administrative Assistant III (In Reno)

FOR NEVADA CONNECTIONS ACADEMY:

LAURA GRANIER, ESQ. (In Las Vegas)

Reported by: DENISE HINXMAN, CCR #234
STEPHANI L. LODER, CCR #862

1 "Question: And so you acknowledge that
2 there are challenges for schools that
3 receive students that are credit-deficient
4 when they arrive?")

5 ACTING CHAIR GUINASSO: Okay. Go ahead and
6 answer the question, Mr. Gavin.

7 THE WITNESS: I believe I said yes, I am aware
8 that schools that -- any school, which would be any school
9 in the state, that receives a credit-deficient student --
10 and I'm not aware of any school in the state that does not
11 receive credit-deficient students -- has to meet that
12 student's needs, and that that is more challenging than
13 meeting the needs of a student who arrives on grade level.

14 BY MS. GRANIER:

15 Q Thank you. And yesterday, you testified as to
16 NCA's population of English language learners. Do you
17 recall that testimony?

18 A I do recall that, yes.

19 Q Okay. So what is NCA's population of
20 credit-deficient students?

21 A That is not information that is reported as
22 part -- under Nevada Report Card.

23 Q Do you have access to that information?

24 A I believe that you provided self-reported data

1 over a year ago in relation to a potential consideration
2 for adding NCA as a potential alternative ed school. I
3 don't have that in -- I don't have that number off the top
4 of my head, no.

5 But I do recall that it was well below the
6 statutory cutoff for a school to be considered as a school
7 serving alternative education students, which is to say
8 that it was not dissimilar, to the degree that we know,
9 from any other comprehensive high school in the state.

10 Q And when you say to the degree that we know, to
11 what degree do you know how many credit-deficient students
12 are served in other comprehensive high schools in the
13 state?

14 A That is a very good question, Ms. Granier. As
15 that information is not reported statewide, there is no
16 way to know that.

17 Q So when you said just now under oath, to the
18 degree that we know, what is the degree that you know?

19 A That is purely anecdotal. That is a fact, yes.

20 Q Okay. And when we provided you the information
21 of the number of credit-deficient students we have served
22 in the 2015 and 2016 year cohorts relative to this matter,
23 did you review that information?

24 A Can you please repeat the question?

1 County, for example?

2 A That -- that sounds consistent with my belief,
3 yes.

4 Q Okay. And that belief was solely based on
5 anecdotal information based on your testimony today.

6 A It was based on the -- yes. That is accurate.
7 Yes, because there is -- again, this state does not and
8 has not ever publicly reported this data point that you're
9 referencing.

10 Q And have you ever made representations to this
11 board about how the credit-deficient population that NCA
12 serves compares to other schools in the state of Nevada?

13 A I have absolutely made the assertion that it is
14 less than the 75 percent that is required under law. And
15 hence, it is no different than the broad range of schools
16 that service students across this state.

17 Q And again, to try to -- being sensitive to
18 everyone's time today, I'm not asking you questions that
19 relate to whether NCA hits that 75 percent threshold. So
20 I just want to be clear with you again to try to save
21 time.

22 My question to you is: Have you ever made
23 representations to this board about how NCA's
24 credit-deficient population compares to other high schools

1 improvement plan in bullet point No. 3?

2 A There's more stuff in bullet point No. 3, I
3 think, so I just --

4 Q Okay.

5 A -- wanted to go through that.

6 So I just looked at the next page.

7 ACTING CHAIR GUINASSO: Just for clarity, we're
8 still in bullet point No. 3?

9 THE WITNESS: Mm-hmm.

10 ACTING CHAIR GUINASSO: Thank you.

11 THE WITNESS: You then propose a financial
12 penalty, which I believe has been discussed previously.
13 But I reviewed this, and we do not have the Authority to
14 assess any type of financial penalty to a school. There
15 is no mechanism in statutes for us to take payments from a
16 school related to a penalty, nor would ---- nor does the
17 Department of Education.

18 BY MS. GRANIER:

19 Q Is there a -- and on that note, is there a
20 mechanism in a statute that allows you to require a
21 charter school to waive its rights to judicial review if
22 in a contract with you?

23 MR. OTT: Objection. NRS 48.105 settlement
24 discussion we had discussed about previously.

1 misrepresenting that there was a requested waiver of
2 judicial review in the contract provision.

3 My question to you is whether, if the school
4 disagreed with you about the number -- how you were using
5 that provision in the contract to say a receiver should be
6 appointed, for example, to that school, would they be able
7 to seek judicial review under that contract provision?

8 MR. OTT: I'm going to object as speculative.
9 The document's not in evidence so there's no language to
10 anchor the statement.

11 MS. GRANIER: And Mr. Gavin opened this up. He
12 testified about the language and what it was and what it
13 meant and said that I was misrepresenting. So I should be
14 allowed to pursue this line of questioning.

15 ACTING CHAIR GUINASSO: So here's -- Mr. Gavin is
16 not an attorney so he's not going to be able to answer
17 legal questions.

18 MS. GRANIER: I understand. I understand.

19 ACTING CHAIR GUINASSO: But he can speak to the
20 intent with regard to negotiations.

21 And I think the reason why you're bringing up
22 judicial review is, as a part of what the Authority wanted
23 as a part of the cure, I mean, that is they wanted to
24 limit judicial review. If I understand this right, they

1 no, you answer yes or no or I don't know. And then if you
2 want to provide an explanation, of course, you can do
3 that. I think it will help speed things along, though.

4 MS. GRANIER: Thank you.

5 THE WITNESS: I'm sorry. Could you repeat your
6 question?

7 BY MS. GRANIER:

8 Q Yes. Was it your intention that the school would
9 not be able to raise certain arguments about the trigger
10 for appointment of a receiver to a judge with the
11 provision included in that contract that I referred to as
12 a judicial waiver?

13 A The intention was to define on the front end what
14 the applicable law was, and that is to say the graduation
15 requirement that is set forth in the statute.

16 ACTING CHAIR GUINASSO: I wasn't sure, Mr. Gavin.
17 Was that a yes or a no?

18 THE WITNESS: I'm -- I -- I'm --

19 MS. GRANIER: That's the problem.

20 THE WITNESS: I'm really unclear here as to --

21 ACTING CHAIR GUINASSO: Okay. Let's take a
22 two-minute recess.

23 Mr. Ott, would you take some time with your
24 client? I just -- one of the things that's difficult for

1 us is there are questions being asked, and they're yes or
2 no questions or I don't know. And so maybe you could talk
3 to your client about addressing those questions like that.

4 And then we can come back and just make sure
5 that, you know, we're answering the questions that are yes
6 or no, yes or no.

7 And then if you want to provide an explanation at
8 that point, that's always fine. But it's hard for us to
9 understand what the answers to the question are when a
10 question is asked and then there's a different narrative
11 that's provided.

12 MS. GRANIER: And I appreciate that very much.
13 So thank you for that.

14 I would ask that you -- I do not think that's
15 appropriate while the question is pending. I would simply
16 ask that he answer the question that is pending, and then
17 I would be happy to take that break to save us all time.

18 ACTING CHAIR GUINASSO: Yeah. That would be
19 good.

20 And, Mr. Ott, if you have objections or want
21 to -- just let me know. It's just I'm struggling up here
22 to follow the testimony because, you know, the questions
23 aren't being answered as directly as I think they need to
24 be.

1 THE WITNESS: And I apologize. That's not my
2 intent. So let me be very direct.

3 Yes. Yes. That is correct.

4 BY MS. GRANIER:

5 Q Yes, that was your intent?

6 A Yes.

7 Q Okay. Thank you.

8 MS. GRANIER: Now we can take a break.

9 MEMBER JOHNSON: The last question -- I'm now
10 unclear as to what the last question was. I know I got --

11 MS. GRANIER: It related to whether it was
12 Mr. Gavin's intent that the school be limited with respect
13 to the arguments it could raise in judicial review.

14 ACTING CHAIR GUINASSO: But in answer to your
15 previous question, it wasn't to foreclose judicial review
16 in its entirety, if I understood your testimony correctly;
17 is that right?

18 THE WITNESS: That is accurate, yes. Thank you,
19 Mr. Chairman.

20 MEMBER JOHNSON: The question was: Was it the
21 intent to --

22 MS. GRANIER: -- limit the arguments that NCA
23 would be able to raise to a court?

24 THE WITNESS: Yes. The intent was to define the

1 So you believe there's a statute that is clear
2 that you can limit a school's ability to raise certain
3 arguments on judicial review?

4 ACTING CHAIR GUINASSO: He just said he didn't
5 know the answer to that question, I believe.

6 MS. GRANIER: Well, I know, but the answer before
7 we thought we were going to take a break was -- I'm sorry.
8 That was a different question. Okay.

9 BY MS. GRANIER:

10 Q So you don't know if there's a statute?

11 A I'm not attorney. I don't know.

12 Q Okay. Are you aware -- so you can't identify any
13 statute that allows you to do that, as you sit here today?

14 A That is correct.

15 Q Okay. But you did include such a provision in a
16 proposed contract with a school that you deemed an
17 acceptable cure?

18 MR. OTT: I'm going to object to the reference to
19 the contract. It's not in evidence.

20 MS. GRANIER: Okay. We've marked it as B-11, and
21 it's part of the school's proposed cure.

22 ACTING CHAIR GUINASSO: Yeah. I'm going to make
23 a motion now, considering that it was a part of the
24 proposed cure letter that was -- that's now been marked as

1 correct, was part of our cure, and so it was submitted as
2 part of the cure letter.

3 ACTING CHAIR GUINASSO: That's great. Appreciate
4 the clarification. I just think, in deciding whether the
5 cure is effective or not, we need to consider that
6 document as a board. It's a part of the cure, not
7 necessarily a part of a litigation settlement, as far as I
8 read it. At least the way that it's presented with this
9 Exhibit B.

10 So anything further, Member Gardner? Okay.

11 MEMBER GARDNER: No. That was it. I just wanted
12 to get that objection. Thank you.

13 (Motion to accept Exhibit No. B-11 made,
14 seconded, and carried, with Member Gardner
voting nay.)

15 ACTING CHAIR GUINASSO: Madam Reporter, we have
16 been awful to you.

17 MS. GRANIER: Sorry.

18 ACTING CHAIR GUINASSO: I would hate to be in
19 your job right now, trying to keep track of our
20 discussions. But nevertheless, there was a question
21 pending before we had this brief discussion on the prior
22 motion. Can you get to that question?

23 THE COURT REPORTER: Yes. Just a moment.

24 (The record was read by the reporter as

1 follows:

2 "Question: But you did include such a
3 provision in a proposed contract with a
4 school that you deemed an acceptable cure?")

5 THE WITNESS: Yes.

6 BY MS. GRANIER:

7 Q And based on that answer and a prior answer about
8 your ability to contract with schools and some flexibility
9 to contract about things, why couldn't you enter into a
10 contract with the school, from your perspective, to
11 provide for such financial penalty if you deemed it
12 appropriate?

13 A We do not administer distributive school account
14 funds. We do not have -- there is nowhere in the statute
15 that provides for us to receive any payment from schools
16 other than -- so that is a -- so that was the -- that was
17 certainly a concern.

18 And then additionally, as I -- as I think I
19 discussed yesterday, it also seemed, frankly,
20 inappropriate in terms of taking funds away from students
21 that -- funds the school could use to serve what you have
22 stated yourself is a high-need population.

23 Q And again, I'm sorry. That wasn't my question.
24 My question to you wasn't whether you deemed it

1 appropriate.

2 In fact, I said if you deemed it appropriate, is
3 there a reason you think you could not include such a
4 provision in a contract as a cure?

5 ACTING CHAIR GUINASSO: I think he answered and
6 said that there was no authority. I think he answered
7 that question.

8 MS. GRANIER: Well, he did, and his reason was
9 because there was no statute. And then I went through
10 several lines of questions about there not being a statute
11 about a provision for a contract. And so I'm trying to
12 follow up on the previous line of questioning.

13 ACTING CHAIR GUINASSO: Okay. Maybe just
14 rephrase the question a little bit to get to the point
15 you're trying to make. That would be good.

16 MS. GRANIER: Okay.

17 ACTING CHAIR GUINASSO: All right. Thanks.

18 THE WITNESS: I am not aware of any statute that
19 permits us to accept that kind of a payment or penalty
20 from a school.

21 BY MS. GRANIER:

22 Q And is that the reason -- strike that.

23 So do you believe you need express statutory
24 authority for any provision you include in a contract with

1 a charter school?

2 A No.

3 Q Okay. You spoke yesterday of your experience
4 over 19 years in the charter school industry. Do you
5 recall that?

6 A I do.

7 Q Are you familiar with any financial mechanisms in
8 other states such as Florida and Texas where online
9 schools are paid based on their level of performance and
10 student achievement?

11 A I am aware of that, yes.

12 Q Okay. I think I had interrupted you. You were
13 going through your list of all of the evidence you
14 considered in reaching your determination that the school
15 had failed to adequately address the notice of intent from
16 February 2017.

17 A Yes. So we -- I think we just touched on that
18 calculation, the penalty.

19 ACTING CHAIR GUINASSO: And we're still on point
20 No. 3; is that right?

21 THE WITNESS: Yes. And I believe -- I'm just --
22 it appears that everything else under bullets 1 --
23 subpoints 1 and 2 of -- and again, just to be clear, I'm
24 looking at number R -- the page number R0012, and now

1 moving to R0013.

2 So I think that -- so I think everything else
3 here is related to the penalty under point 3.

4 With regard to point 4, the points here relate to
5 a proposed cure that would provide that the school would
6 reconstitute its governing body based on one member a
7 year. We determined that was insufficient.

8 BY MS. GRANIER:

9 Q Why was that insufficient, while you're there?

10 A Number one, it would involve the school
11 continuing to self-perpetuate its governing body. This
12 level of replacementship is really no different than what
13 many boards do on a regular basis anyway.

14 So and most importantly, it does not provide for
15 the full replacement of the board, and it provides for an
16 acceptable degree of continuity between the existing board
17 and the future -- and any future board.

18 So it is not a reconstitution. It is simply --
19 it's no different really than what we see in the bylaws of
20 a lot of schools that turn people out or what have you.

21 Q Every year?

22 A That is certainly something that has been
23 observed across the country, yes.

24 Q Are there bylaws of charter schools in Nevada

1 where they replace their board members every year --

2 A I'm sorry. Individual board -- so like term
3 limits or what have you. I'm aware of a number of schools
4 that do have term limits for board members, yes.

5 Q And is the term limit just one year?

6 A That's ultimately the discretion of that school.

7 Q Right, but are you aware of any term limits where
8 you have a charter school and the board replaces the
9 members every -- a member -- every member just serves one
10 year?

11 A I don't believe -- that is not what I was saying.

12 Q Okay. Yesterday, on this issue, you testified
13 that -- I think you said something like there's a growing
14 body of evidence that wholesale replacement of the
15 governing board has been proven to improve graduation
16 rate.

17 Did I understand that testimony correctly?

18 A I think I spoke more broadly of school
19 performance, yes. And I believe I referenced a number of
20 initiatives around the country where there is documentary
21 evidence of that.

22 Q So is there any evidence that you're aware of
23 that wholesale reconstitution of the board makes a
24 dramatic change to a graduation rate issue?

1 A I can't speak to that specifically.

2 Q Okay. So with respect to the growing evidence
3 that you were speaking to yesterday, can you give us very
4 specifically what that evidence is?

5 A I believe I spoke specifically yesterday about a
6 number of restart initiatives, and reconstitution is a
7 form of restart. Specifically, the Harlem Prep restart in
8 New York City. A number of restarts conducted by -- as --
9 by Mastery Charter Schools, and I would note restart as
10 well as charter conversion of an existing public school to
11 a charter school in the city of Philadelphia, those are
12 the two that specifically came to mind at the time.

13 Q So I just want to be sure I have a very clear
14 record on this.

15 With respect to your example that you were
16 relying upon yesterday when you spoke of this growing body
17 of evidence, do you know what the circumstances were for
18 Harlem Preparatory?

19 A In the case of Harlem Prep, there was an existing
20 school called Harlem Day which had -- had initially had
21 strong academic -- or relatively strong academic
22 performance in the early years of its charter term and
23 then saw a significant decline in performance, and that
24 remained sort of at a very low level for a number of

1 years.

2 At the time -- in the lead up to the renewal
3 period for that particular school, the governing body of
4 that school, the board, approached its authorizer and
5 suggested the opportunity to effectively restart the
6 school through what I believe the term of art used in New
7 York by the charter schools is a restructuring RFP whereby
8 that board agreed to step aside, and a new board and a new
9 management team were brought in to restart that school.

10 Q And what were the -- if you know, what were the
11 problems the school was facing relative to its
12 performance, even just generally speaking? Was it just
13 the high school graduation rate?

14 A No. It was elementary and middle school test
15 scores.

16 Q Okay. Anything else?

17 A That's -- that's the best of my recollection.

18 Q Okay. Any financial issues?

19 A No. None at all.

20 Q Okay. Any other performance-related issues?

21 A Academic performance was the primary issue.

22 Q Okay. And with respect to Mastery Charter School
23 restarts, can you be specific about any examples --

24 A Sure.

1 increases a graduation rate?

2 A We have a statute that provides -- so no.

3 Q Thank you. Okay. And I'm sorry, I'm just trying
4 to make sure we kind of address topics as you go through
5 them. So I did interrupt you. So if you could proceed
6 with all of your list of all of the evidence you
7 considered as to whether or not NCA cured responsive to
8 the February 2017 notice of intent.

9 A Okay. So I believe, then, we were on to point
10 No. 5.

11 With regard to point No. 5, these are all
12 programmatic changes which may or may not improve student
13 performance. There was no evidence provided to
14 demonstrate that the school was -- that these were
15 actually at this -- were increasing graduation rates.

16 So while it is encouraging, for example, to
17 see -- or may be encouraging to see that there was a
18 75 percent pass rate with summer school, it is unclear
19 what this means in terms of whether students are likely to
20 graduate on time. So they are inputs.

21 There are leading indicators, and they're not
22 something we can rely on to make a determination of
23 whether the school has effectively closed the gap.

24 Q What, if any, investigation or analysis did you

1 undertake to determine beyond the information provided
2 here as to whether the graduation improvement plan was
3 working or not?

4 A We reviewed the information that the school
5 provided.

6 Q All of the information the school provided?

7 A To the best of my knowledge, yes.

8 Q Okay. And you -- strike that --

9 I believe, based on your representations prior to
10 today and part of the reason we're here today is you
11 believe the school's four-year cohort graduation rate for
12 2015 was around 35 percent? You might have a more precise
13 number than I do.

14 A If you will allow me to refer to the exhibit --

15 Q Of course.

16 A -- I can give you --

17 Q Sure.

18 A -- the exact number.

19 So I just want to clarify, were you saying for
20 the graduating year of 2015 or 2016?

21 Q 2015 first, please.

22 A 2015, it was 35.63 percent.

23 Q And what was it for 2016?

24 A 40.09 percent.

1 Q And that's how much of an increase?

2 A About four and a half percentage points. It's a
3 little less than that. 4.4, somewhere in there.

4 Q And so is that not evidence that the
5 graduation -- that the -- the performance measures, the
6 programmatic changes that were being made were helping?

7 A Incremental improvement from a school that is
8 currently 20 points below the statutory minimum graduation
9 rate of 60 percent, based on that track record, it would
10 take five years for this school to achieve a minimally
11 acceptable graduation rate.

12 Q And I understand, Director Gavin, that we all
13 would like things to happen more quickly, but my question
14 to you was not: Was it fast enough for you?

15 My question for you was: Wasn't that nearly five
16 percentage point increase in a single year some evidence
17 that the changes this school was making in response to
18 your concerns were actually working to improve the
19 graduation rate?

20 A No. It was inadequate.

21 Q Why not?

22 A Because it was insufficient to close the gap on
23 the trajectory the school itself had set, which was
24 closing the gap within three years.

1 Q Okay. Again, my question is: Was that
2 evidence -- I'm not asking you if it was sufficient to
3 close the gap as quickly as you wanted. Okay?

4 My question is: Was it some evidence that the
5 school's changes were working to, in fact, improve the
6 graduation rate by almost five percent in one year?

7 ACTING CHAIR GUINASSO: Ms. Granier, I believe he
8 answered the question.

9 MS. GRANIER: It's a yes or no question, and he
10 did not.

11 ACTING CHAIR GUINASSO: He answered no, and then
12 he provided an explanation, if my recollection is correct.

13 MS. GRANIER: Well, okay.

14 ACTING CHAIR GUINASSO: If you don't like his
15 explanation, cross-examine him on that explanation.

16 MS. GRANIER: I understand. I don't think he
17 answered my question, but I'll try --

18 ACTING CHAIR GUINASSO: He said no. He said no,
19 and then he provided an explanation. That's what I heard.

20 MS. GRANIER: Okay.

21 BY MS. GRANIER:

22 Q Do you have any evidence as to what caused NCA's
23 graduation rate to increase five percentage points in one
24 year?

1 A No.

2 Q Do you have any opinions?

3 A No.

4 Q Did you conduct any analysis?

5 A No.

6 Q Did you conduct any research?

7 A No.

8 Q Okay. Isn't it true that in discussions with me
9 and members of NCA, you expressed your acknowledgment that
10 if a school's graduation rate increased too quickly, you
11 would have to question the legitimacy of that and what was
12 really going on with the students?

13 A To the precise -- to -- not precise -- so no.
14 Not to -- not in the way you just characterized it, no.

15 Q Okay. Could you correct me?

16 A Yes. I did certainly say that a significant
17 spike in any academic indicator would certainly merit
18 scrutiny. But by the same token, we have seen schools
19 that have posted dramatic graduation rate improvement
20 over -- in just one year.

21 Q What schools?

22 A Silver State went from zero to 40 percent in one
23 year.

24 Q How many students?

1 meeting?

2 A I do.

3 Q Okay. And would you read that -- those two
4 sentences into the record that begin "Member Mackedon
5 asked" at the bottom of R0213.

6 A "Member Mackedon asked why messages she had
7 received on social media were saying NVVA would be
8 enrolling K-11 and not K-12."

9 Q And the following sentence?

10 A "Member Mackedon said the school had made a
11 decision to stop enrolling new 12th graders until the
12 school had a more robust credit recovery program."

13 Q And at this time, had NVVA amended its charter to
14 only serve K-11?

15 A It had not.

16 Q Had you provided them some sort of authority to
17 stop accepting 12th graders?

18 A We had not.

19 Q Does her reference to having a more robust credit
20 recovery program suggest that the 12th graders that were
21 being turned away were perhaps credit-deficient?

22 A That's speculative.

23 Q Well, do you know?

24 A I don't know.

1 Q Do you know whether turning away 12th graders who
2 are credit-deficient could have a dramatic increase of the
3 school's graduation rate?

4 A That would be speculative, but it's certainly
5 possible.

6 Q Okay. Well, I don't need you to speculate. You,
7 at this time, were considering very serious high-stakes
8 decisions against this school, correct?

9 A I believe that -- not at this board meeting, no.

10 Q Well, during this time period?

11 A Broadly speaking, yes.

12 Q And in fact, you had been possibly pursuing
13 high-stakes decisions against this school for several
14 months.

15 A That's a fair characterization.

16 Q Okay. So in the course of pursuing those
17 high-stakes decisions, did you become very familiar with
18 the population or the circumstances of this school?

19 A I was certainly very familiar with the school's
20 performance.

21 Q Okay. And was one of your concerns about the
22 school's performance their graduation rate?

23 A Historically, yes.

24 Q Okay. And not historically, but at this time in

1 September of 2015, were you concerned with NVVA's
2 graduation rate?

3 A I believe so, yes.

4 Q Okay. What, if any -- strike that.

5 Do you believe it was a violation of state law
6 requiring that charters accept all students for enrollment
7 to turn away 12th graders as Ms. MacIntosh said she was
8 doing?

9 A If that actually occurred, yes, it would be.

10 Q Well, we don't have to speculate. The minutes --
11 do you dispute that the minutes say that Ms. MacIntosh
12 said the school had made a decision to stop enrolling new
13 12th grade students?

14 MR. OTT: I'm going to make a relevance objection
15 to this entire line of questioning.

16 MS. GRANIER: I have established the relevance
17 about schools being treated differently. This is a
18 substantial factor in graduation rate, and one school has
19 been allowed to simply stop enrolling 12th graders. And
20 as a result, they are no longer subject to the closure
21 proceedings we are.

22 ACTING CHAIR GUINASSO: Okay.

23 MS. GRANIER: So the schools are not being
24 treated with the same rules.

1 for the 2016 cohort?

2 A No.

3 Q When you reviewed this information on R0015,
4 where the school's reporting to you the diligent efforts
5 it undertook to try to track these students down, did you
6 have concerns that the school had not adequately addressed
7 your issue?

8 A Based on the information provided in the letter,
9 it was unclear what this meant.

10 Q It was unclear to you?

11 A Yes. Of an initial group of 279 students. It
12 doesn't say out of what full number. So there's no
13 information -- there's nothing in here, for example, that
14 says that you have been able to -- you know, just because
15 the student has been located, contacted, does not mean
16 that the student is now enrolled in a new high school.

17 It doesn't tell us anything about -- perhaps the
18 school [sic] has moved out of -- nothing in this
19 information provides any contextual information to make a
20 determination about whether this will materially improve
21 the graduation rate for the upcoming year.

22 The fact that students have been located and
23 contacted says nothing about how they are currently
24 situated and so that there could be any degree of

1 prediction of what this would mean for the school.

2 Q So did you communicate to the school that there
3 was additional information you needed to fully understand
4 the relevance of this information?

5 A Ms. Granier, this is your client's cure. It's up
6 to you to make the --

7 Q That's a yes or no question, Mr. Gavin.

8 A Absolutely not.

9 Q Thank you.

10 MR. OTT: Just for the record, while there's a
11 pause, we're at two hours. I think the court reporter is
12 okay.

13 ACTING CHAIR GUINASSO: Okay. How are we doing
14 in terms of your outline?

15 MR. PELTIER: She would love a break.

16 MS. GRANIER: I have a ways to go. But yeah --

17 ACTING CHAIR GUINASSO: Well, I'll let you --

18 MS. GRANIER: You want me to wrap up --

19 ACTING CHAIR GUINASSO: Is this a good place --

20 MS. GRANIER: I can do just a few more questions
21 on this, and then we can break. Does that work?

22 ACTING CHAIR GUINASSO: Yeah, yeah, that would be
23 good. All right. So we're going to take -- we're going
24 to wrap up this line of questioning, and then we'll take a

1 ten-minute break.

2 MS. GRANIER: Thank you.

3 BY MS. GRANIER:

4 Q So looking again at R0014, under efforts to
5 locate withdrawn students, the second paragraph under that
6 heading says: Of the 279 students without a verified
7 transfer-out status, it should be noted that many were not
8 enrolled at NCA for even a full academic year.

9 Did I read that correctly?

10 A That is what that sentence says, yes.

11 Q And do you have any reason to question the
12 accuracy of that sentence?

13 A No.

14 Q And do you believe that -- strike that.

15 Can you offer any opinion as to how well NCA
16 served those 200 and -- the numerous students who were not
17 even enrolled with NCA for a full academic year?

18 A No.

19 Q And then the next sentence says: Students whose
20 enrollment lasted from one day to eight months numbered
21 160.

22 Did I read that correctly?

23 A Yes.

24 Q Do you have any reason to dispute the accuracy of

1 that statement?

2 A It's self-reported data, but I have no reason to
3 dispute the accuracy.

4 Q Okay. And can you express any opinion on NCA's
5 performance in serving those students whose enrollment
6 lasted from one day to eight months referenced in that
7 sentence?

8 A No.

9 Q And on the next page, under the table you see,
10 there is an explanation of additional actions taken by the
11 school, correct?

12 A Yes.

13 Q To investigate students' whereabouts and
14 statuses, the school employed the following: Members of
15 the school's administration and administrative support
16 team dedicated additional time to employ nontraditional
17 means, social media, for example, to locate students both
18 in and out of state.

19 Did I read that correctly?

20 A Yes.

21 Q And for brevity -- I know the document's in the
22 record -- I'm just going to summarize that there was also
23 door-to-door canvassing, and there was the hiring of a
24 privacy investigator.

1 A No.

2 Q Okay. And then it says: In addition, NCA
3 believes the results of this work will increase its
4 previous year's cohort graduation rates and asks the
5 Authority allow for that and consider it relevant to these
6 proceedings.

7 Did I read that correctly?

8 A You did read that correctly.

9 Q And did you consider that relevant to these
10 proceedings?

11 A No.

12 Q Why not?

13 A Because we do not have the authority to calculate
14 an adjusted cohort graduation rate or to retroactively
15 apply some calculation. That is the domain of the
16 Department of Education.

17 Q I understand that. So I'm not asking you to
18 recalculate. And I don't think the school was asking you
19 to recalculate anything here.

20 What it says is: Will you just consider the
21 information relevant to the proceedings?

22 So did you consider using the four-year -- when
23 you use the four-year cohort graduation rate as you are
24 here to say it is a determinative factor of how a school

1 is performing, did you consider that the number of these
2 withdrawals that had not been located would impact that
3 number and not reflect on the academic performance of this
4 school?

5 A No.

6 Q Okay. And on the next page -- I'm sorry.

7 MS. GRANIER: That concludes that line of
8 questioning if you would like to take a break.

9 ACTING CHAIR GUINASSO: Thank you, Ms. Granier.

10 What we'll do is we'll take a ten-minute break,
11 give the court reporter a chance to shake her hands out
12 and clear her mind, and we'll come back here. It is now
13 10:15. We'll be back and start at 10:25.

14 (Recess taken.)

15 CHAIRMAN GUINASSO: Thank you. We just have got
16 to wait for one more member. We don't quite have a
17 quorum. We've got three.

18 Okay. We have a quorum now. Member Gardner
19 wanted to make a statement.

20 So Member Gardner, go ahead.

21 MEMBER GARDNER: Thank you, Member Guinasso.
22 This is Member Gardner.

23 I just wanted to put on the record that I'm
24 having a little concern with how we're allowing the

1 Q So if they tracked them down and did provide the
2 information of where the student had reenrolled, it could
3 significantly impact the graduation rate?

4 A It would -- it could certainly impact what -- the
5 graduation rate that was calculated by the department,
6 yes.

7 Q I think your point with respect to the
8 information contained in Exhibit 2, the school's cure
9 letter, was that the school didn't provide you the
10 information in this letter as to how much finding those
11 withdrawn students would increase the school's four-year
12 cohort graduation rate?

13 A I think my point was actually more that, in order
14 to even consider this, there would actually have to be an
15 argument provided and evidence. There was not.

16 Q And did you ever advise the school that you
17 needed that additional information to make use of the
18 information provided here?

19 A No, I did not.

20 Q Okay. Moving on to the next page, the heading
21 is: Third-Party Data Validation of Relevant Data,
22 correct?

23 A Yes.

24 Q So I should just for a moment let you proceed. I

1 think you're continuing for the record with your list of
2 all of the evidence that you considered relative to
3 whether NCA adequately responded to your February 2017
4 notice of intent.

5 A Certainly. So this is -- again, this is a letter
6 dated March 24th, which was the deadline for the
7 submission of the cure and all evidence supporting the
8 cure. And this discusses that the school is continuing
9 to -- has attempted to contract with somebody. For
10 whatever reason, that did not work out, and that now
11 you're working with someone new. There is, again, no
12 evidence provided.

13 With relation to No. 6, let me just peruse it
14 very quickly.

15 No. 6 is another attempt to argue for the
16 calculation of an alternate graduation rate, and that is
17 inappropriate.

18 The subsequent paragraph starting with the
19 statute, again, proposes a legal argument which can be
20 discussed here.

21 And then the final piece here is related to this
22 bifurcation question. And I believe we have -- I believe
23 this is already something I've discussed that we don't
24 have the authority to bifurcate a charter.

1 this work?

2 A I do not.

3 Q And isn't it true you are aware that NCA did
4 retain, after AdvancEd terminated this contract, Dr. Garza
5 to conduct this third-party validation?

6 A I am aware that that is something you have
7 asserted here, yes.

8 Q And I think earlier -- correct me if I'm wrong.
9 Earlier you weren't sure if you had reviewed Dr. Garza's
10 report which was uploaded to Epicenter before the
11 March 30th hearing.

12 A I have not reviewed it because it was uploaded
13 past the deadline.

14 Q Okay. You don't dispute that it was uploaded
15 prior to the March 30th hearing?

16 A I do not.

17 Q Okay. You agree with me that enrolling students
18 who come to NCA credit-deficient will adversely impact
19 NCA's four-year cohort graduation rate?

20 A Yes. I think that is true for any public school
21 in the state.

22 Q And --

23 A That's part of the job of being a public school.

24 Q Have you ever looked at how much that impacts

1 A Based on the most recent data available, yes.

2 Q And how is Nevada Connections Academy doing?

3 A As of 2014, the last year for which there was
4 data available, the Authority determined that while the
5 school was -- it was -- it was not in a position where it
6 was woefully underperforming.

7 Q It was actually in good standing according to a
8 letter from the Authority; isn't that true?

9 A Yes.

10 Q And since 2014, the school has continued to
11 administer standardized tests, correct?

12 A Yes.

13 Q And the State continues to collect data on how
14 the students at the school are performing on those tests;
15 is that correct?

16 A No -- no -- no data has been -- has yet been
17 issued with relation to academic growth, for example, or
18 other key elements -- other key data points.

19 ACTING CHAIR GUINASSO: Mr. Ott, would you
20 stipulate that the only issue that we're considering
21 relative to NCA's deficiency is the graduation rate, not
22 test scores or other factors of school performance?

23 MR. OTT: Yes.

24 ACTING CHAIR GUINASSO: Okay. So if you

1 the rulemaking initiative that we began over a -- almost a
2 year ago -- over a year ago now. And the Legislative
3 Counsel Bureau determined that we did not have the
4 Authority to adopt such a policy.

5 Q So is it your testimony, as you sit here today,
6 that this board has no policy that describes how charter
7 schools will be -- that you sponsor will be evaluated?

8 A That is correct.

9 Q Okay. What about the performance framework?

10 A The performance framework specifically applies to
11 charter schools that are under charter contracts.

12 Q Where is that? Strike that.

13 The fact that it applies to schools that are
14 under charter contracts does not necessitate that it does
15 not apply to other charter schools, does it?

16 A Nothing in the statute says that the performance
17 framework applies to charter schools under written
18 charters.

19 Q Does something in the statute say it does not
20 apply?

21 A The performance framework is -- it is -- the
22 explicit construction of the statute, if I recall, is that
23 the performance framework shall be adopted by the sponsor
24 for incorporation into a charter contract.

1 A To the extent permissible under statute, we have
2 complied with that.

3 Q I need factual acts that you -- is what I'm
4 asking for, that you undertook to comply with it.

5 A Under existing law, we are not permitted to
6 actually implement that section of the statute. We have
7 requested funding explicitly to do so, both in the 2013
8 session and -- sorry, the 2015 session and in the session
9 we had -- we asked for specific resources to provide that
10 level of training.

11 In neither -- in neither session were those --
12 were those investments of training and resources
13 authorized. Consequently, it would be a violation of
14 statutes and actually a crime for me to furnish resources
15 for which there was no -- for which there were no moneys
16 appropriated.

17 Q Okay. So I think that addresses -- I understand
18 your response with respect to training. Is it your
19 testimony that you took no acts as the Authority to
20 provide NCA or its governing board information as the
21 statute requires about the relevant provisions of statute?

22 A I think we have engaged in extensive discussion
23 in this area. That's what this process is.

24 Q Prior to being subject to closure proceedings,

1 included schools in any rulemaking that we have
2 undertaken.

3 Q Okay. And the information you circulated on SB
4 509, was it just a summary of the bill and what it does?

5 A I believe we provided a copy of the bill, and we
6 have posted it -- and we have posted it on our website.
7 We have also posted on our website links to all of the
8 relevant NAC.

9 Q And you don't believe that, within that
10 obligation or any other provision of Nevada law, it is
11 appropriate for you as a sponsor to provide reasonable
12 guidance to a school as to how to cure a deficiency under
13 which it is threatened with closure?

14 A I do not.

15 Q Under NRS 388A.229, as sponsor of a charter
16 school, you have a statutory obligation to ensure
17 collection, analysis, and reporting of all data results of
18 pupils enrolled in the charter school on statewide exams
19 to determine whether the charter school is meeting the
20 performance indicators, measures, and metrics for the
21 achievement of proficiency of pupils.

22 Do you agree with that?

23 A Yes.

24 Q Okay. And have you complied with that statutory

1 obligation with respect to NCA?

2 A Yes.

3 Q And have you analyzed, relative to your
4 recommendation for these proceedings, any of that data
5 that you have collected?

6 A We collect that data on behalf of the Department
7 of Education, and we provide it to the Department of
8 Education for analysis.

9 Q And so is the answer, no, you have not analyzed
10 it relative to these proceedings?

11 A We have analyzed the data. We have taken the
12 data reported by the Department of Education, and we have
13 utilized it.

14 Q And what data would that be?

15 A The four-year adjusted cohort.

16 Q Anything else?

17 A There is no other information that is relevant to
18 these proceedings.

19 Q Okay. Yesterday you testified that when you
20 provided testimony to the Legislature in 2015 relative to
21 this trigger for closure of charter schools, and you made
22 reference to where schools had a low graduation rate, you
23 would consider a compelling explanation.

24 Do you recall that?

1 spent significant time working on this contract together,
2 an agreeable contract with the exception of that judicial
3 waiver provision?

4 A That is my recollection, yes.

5 Q Okay. And that version of the contract did not
6 have reference to third-party validation and a change in
7 governance that you just referenced?

8 A Ms. Granier, without having seen the entirety of
9 your cure, it would be difficult to know what should or
10 should not be included in the contract.

11 Q Okay. I'm sorry. I guess I misunderstood your
12 testimony.

13 I thought we just established that when we were
14 all having these discussions about an acceptable contract
15 that could get us to an acceptable cure, we had narrowed
16 down our discussion to just the issue of the judicial
17 waiver provision.

18 A Again, there are a myriad of statements or
19 commitments, whatever you want to call them, that are made
20 in this proposed cure. We went through that this morning.

21 Q Yeah. I just want to focus on the contract. I
22 don't want to focus on -- I'm sensitive to everyone's time
23 here, including yours. I'm very focused on this contract
24 as just the single element of the cure. What was wrong

1 don't think we'll include that as a part of the record,
2 because those are different circumstances and not directly
3 applicable to -- at least you haven't established that
4 they're directly applicable in this case, unless I'm
5 missing something.

6 MS. GRANIER: I'm afraid maybe I'm not being
7 clear. So let me give this another try. The witness just
8 testified under oath that he would have allowed NCA to
9 enter into a contract similar to Beacon and that would
10 have been deemed an acceptable cure just like it was for
11 Beacon.

12 We were offered -- this can come in through
13 future testimony. So you will hear from other witnesses
14 that the school was told if they had just signed that
15 contract -- the only objectionable provision in the
16 contract was the judicial waiver provision.

17 Otherwise, we were at contract and we would not
18 be here. So it is highly relevant to this proceeding what
19 is an acceptable cure.

20 ACTING CHAIR GUINASSO: How about if we
21 stipulate -- if I recall correctly, and this is a matter
22 of record -- the board actually gave specific direction
23 that that provision be included in the contract for Nevada
24 Connections. And so that was definitely an expectation

1 ACTING CHAIR GUINASSO: When we gave specific
2 direction to -- first, I remember Ms. Granier's point.
3 We gave specific direction and negotiate mutually
4 agreeable terms, we gave a timeline, I believe, with that,
5 yes, September 27th.

6 And then it came back to our attention that the
7 judicial review piece was not acceptable to Connections.
8 And so the question for the board was: Did we want that
9 term or not?

10 And I think the board decided in that meeting, it
11 would have been the September meeting, that that term had
12 to be a part of the contract.

13 So that's what I recall with regard to the
14 timeline of events, July, August and September, there
15 would have been some discussion of this issue in all three
16 of those meetings, I believe.

17 MR. OTT: That's fine. I was just trying to see
18 if those minutes were already in the record somewhere.

19 ACTING CHAIR GUINASSO: Yeah, I think a few
20 are -- the July 1, I know, is. I'm not sure about the
21 August, perhaps September. I just can't recall.

22 MS. GRANIER: I can't either, and I was trying,
23 just in the interest of time.

24 ACTING CHAIR GUINASSO: That's fine. So if you

1 last few weeks, that you might have ideas to share about
2 how to solve this matter but would not share them with the
3 school unless they entered into a confidentiality
4 agreement; is that right?

5 MR. OTT: Objection, relevance and settlement
6 discussions under 48.105.

7 MS. GRANIER: And I don't want to talk about
8 settlement discussions. This was a precondition to
9 Director Gavin sharing ideas about an acceptable solution.

10 ACTING CHAIR GUINASSO: So your question is
11 whether he would share those ideas if a confidentiality
12 agreement was signed?

13 MS. GRANIER: Well, close. He said he wouldn't
14 unless a confidentiality agreement was signed. I'm just
15 trying to confirm that for the record.

16 ACTING CHAIR GUINASSO: I think he just answered
17 that question, but I wouldn't go too far --

18 MS. GRANIER: I agree.

19 THE WITNESS: Yes.

20 MS. GRANIER: Thank you.

21 ACTING CHAIR GUINASSO: Before you go to the next
22 line of questioning, I want to understand something in
23 terms of the questions that were just asked.

24 The limitation on judicial review was with regard

1 performance indicators and measures set forth by the
2 performance framework and the Statewide System of
3 Accountability," with a citation to NRS 385.3455 through
4 385.391. Did I read that correctly?

5 A Yes.

6 Q Have you based your evaluation of student
7 achievement on the academic performance indicators and
8 measures set forth in the performance framework and the
9 Statewide System of Accountability for NCA?

10 A NCA has received an annual star rating consistent
11 with the Statewide System of Accountability, and NCA has
12 also received a performance framework.

13 The most recent performance framework issued for
14 any school in the state was in 2014 due to the pause in
15 accountability and the lack of available data. I would
16 note that there is also additional statutory language that
17 supersedes this.

18 Q So what is your testimony about what you have
19 done to evaluate student achievement on the academic
20 performance indicators and measures set forth in the
21 performance framework for NCA since 2014?

22 A As I just testified, there is insufficient data
23 to calculate a performance framework since 2014.

24 The State Board of Education initiated a pause

1 for one year. We then had a statewide data irregularity.
2 And, finally, we do not yet have growth data.

3 The next time the authority will be in a position
4 to issue a performance framework will be this coming fall
5 once those data points are available.

6 Q And the second bullet point says, "The
7 performance framework may include school-specific
8 performance goals to the extent such goals meet the
9 sponsor's expectations for rigor, validity and
10 reliability." Did I read that correctly?

11 A Yes.

12 Q Do you know, as you sit here today, what are the
13 school-specific performance goals for NCA?

14 A I am not aware of any charter amendment that has
15 ever been filed by NCA to amend its performance framework
16 to incorporate any mission-specific indicators.

17 Q Okay. And does its existing performance
18 framework include measures or indicators for evaluating
19 academic performance?

20 A Yes.

21 Q And is it your testimony that there's no way --
22 there's no information for you to look at to conduct any
23 kind of evaluation of student performance at NCA since
24 2014, as provided under that framework?

1 A There's insufficient data on which to base a
2 calculation.

3 Q That there is some data?

4 A There is some data, but it is incomplete.

5 Q What data is there?

6 A There's initial status proficiency data that was
7 based on last year's test scores. There's no information
8 regarding academic growth, which I believe both this
9 school and the authority believe is the most important
10 measure of school performance, is how it's actually
11 impacting the students it gets.

12 Q And with respect to the data that you do get,
13 have you looked at that?

14 A We have.

15 Q For NCA?

16 A Yes.

17 Q And does it create concerns that would rise to
18 the level of recommending closure based on that data?

19 A No.

20 Q And the third bullet point says, "The sponsor
21 shall evaluate the charter school at least annually
22 consistent with the indicators and measures set out in the
23 performance framework in the Statewide System of
24 Accountability."

1 Q And if you go down to the fourth paragraph, it
2 reads:

3 "The objective of the charter school performance
4 framework is to provide charter school boards and leaders
5 with clear expectations, fact-based oversight and timely
6 feedback when ensuring charter school autonomy."

7 Did I read that correctly?

8 A You did.

9 Q When is the first time you notified NCA they
10 would be subject to closure because of their four-year
11 cohort graduation rate?

12 A When the board authorized us to issue a notice
13 based on that. I do not have the authority to issue a
14 notice on my own.

15 Q You have the authority to make a phone call and
16 let a school know that you will be recommending this,
17 right?

18 A Yes.

19 Q But you did not do that with NCA?

20 A I did not.

21 Q And what fact-based oversight have you provided
22 to NCA relative to the closure proceedings and your
23 recommendation?

24 A We notified you of the fact that your graduation

1 rate was less than 60 percent.

2 Q If you go down to the next paragraph it says, "In
3 addition to achieving this objective, a performance
4 framework should deliver important secondary benefits."

5 Did I read that correctly?

6 A Yes.

7 Q And under the second data point, or bullet point,
8 it says, "Comprehensive information for data-driven and
9 merit-based charter renewal and contract revocation
10 termination."

11 Did I read that correctly?

12 A You did.

13 Q And other than the single data point of the
14 four-year cohort graduation rate, what comprehensive
15 information that was data-driven and merit-based did you
16 consider before recommending that this school be
17 considered for closure?

18 A Pursuant to the statute, the single data point is
19 sufficient.

20 Q And if you turn to the next page, page 4, under
21 the heading Academic Financial Organizational and
22 Mission-Specific Indicators, do you see that?

23 A Yes.

24 Q For Academic, it says, "Academic achievement

1 the next page of this document provides that for a level
2 one there will be a Notice of Concern. Is that correct?

3 A That's correct.

4 Q And when did you issue NCA a Notice of Concern,
5 if ever?

6 A We did not.

7 Q Okay. And then this explains if schools enter
8 level one and get the Notice of Concern and then fail to
9 adequately address that Notice of Concern, they will be
10 escalated to level two in which case they get a Notice of
11 Breach; is that true?

12 A That is correct for elements that are under the
13 performance framework, yes.

14 Q When, if ever, did you send NCA a Notice of
15 Breach?

16 A We did not, because the statutory provision
17 supersedes the performance framework.

18 Q Did you issue a Notice of Concern or a Notice of
19 Breach to NVVA?

20 A We did.

21 Q And was one of the reasons for that notice --
22 strike that. Was it a Notice of Concern?

23 A There was a Notice of Concern issued and a Notice
24 of Breach issued.

1 Q And was the fact that their graduation rate was
2 below the 60 percent one of the reasons?

3 A The notices were issued prior to the adoption of
4 that statute.

5 ACTING CHAIR GUINASSO: For the record, can you
6 clarify the school we're talking about?

7 MS. GRANIER: Oh, NVVA.

8 ACTING CHAIR GUINASSO: NVVA.

9 MS. GRANIER: Nevada Virtual Academy.

10 ACTING CHAIR GUINASSO: Madam Recorder, NVVA is
11 Nevada Virtual Academy.

12 THE WITNESS: I believe I answered the question.
13 BY MS. GRANIER:

14 Q Okay. So following the passage of SB 509, is it
15 your testimony that you terminated pursuing action under
16 the Notice of Breach that you had issued to NVVA?

17 A No.

18 Q Why not? Strike that. I thought it was your
19 testimony that the Notice of Breach didn't apply anymore
20 because of SB 509. Did I misunderstand?

21 A You misunderstood, yes.

22 Q So following passage of SB 509, the Notice of
23 Breach is still --

24 A In effect for NVVA, yes.

1 Q And it's still part of the process under the
2 performance framework?

3 A Yes.

4 Q Okay. Thank you.

5 And under section 6 on the next page of this
6 document, it says, "High stakes decisions."

7 Are you following me?

8 A I am, yes.

9 Q And it reads: "The Authority will consider the
10 collective record of a school's academic, financial,
11 organizational and mission-specific performance when
12 making high stakes decisions through the academic
13 performance framework. Though the academic performance
14 framework will be the most important factor in most
15 decisions."

16 Did I read that correctly?

17 A I don't believe you did. I think you said
18 performance framework when you meant to say performance.

19 Q Fair enough. Other than that?

20 A Other than that, I believe it's accurate.

21 Q Okay. Thank you.

22 And I think you've already answered this, but
23 just to be clear on the record: You have not considered
24 this collective record in making your recommendation to

1 issue a Notice of Closure for the school?

2 A That is correct.

3 Q Looking at Appendix A on R0226, this again, under
4 the performance framework adopted by this agency, there is
5 a weight given for evaluation of academic performance for
6 high schools to three different factors, correct?

7 A That is correct.

8 Q And where does graduation rate fall?

9 A I believe it falls under college and career
10 readiness.

11 Q Okay. And what percentage of that is considered
12 for the detailed academics performance indicator under the
13 performance framework? It's on page R0226, I think.

14 A Thank you. I was going to the actual data
15 further down. R0226. I'm sorry. Yes, college and career
16 ready. I thought you were asking specifically on grad
17 rate as a component of that. I misunderstood. I
18 apologize. 30 percent.

19 Q Okay. That's a good point. Thank you. As far
20 as that 30 percent goes, is then the high school four-year
21 cohort graduation rate just a piece of that college and
22 career readiness factor?

23 A Yes, it is.

24 Q Okay. And what percentage is that of that

1 A Yes.

2 Q Okay. Did you ever notify Nevada Connections
3 Academy before this hearing that you believed that the
4 Charter School Authority Performance Framework does not
5 apply to them?

6 A I don't recall.

7 Q Okay. I think I have two more questions and I'm
8 done with this portion of it.

9 I just need to make sure I understand your
10 position on credit deficiency relative to the proceedings
11 today.

12 So I want to give you a hypothetical: Assume in
13 a given cohort, 84 percent of credit-deficient
14 non-graduates arrived at Nevada Connections Academy in
15 their 11th or 12th grade year?

16 A Okay.

17 Q Assume that 80.4 percent of those
18 credit-deficient non-graduates arrived one semester or
19 more credit-deficient.

20 A Okay.

21 Q Would that information be relevant to your
22 decision as to whether to recommend closure of a school
23 for a graduation rate below 60 percent?

24 A There's insufficient information to make that

1 determination.

2 Q What other information would you need?

3 A Specifically whether the student was in the 11th
4 or the 12th grade, because, clearly, you have more time to
5 catch a student up who is in the 11th grade than the 12th
6 grade.

7 Q Additionally -- and I just want to be clear --
8 what percentage of students did you say would meet this
9 standard?

10 I said in a given cohort, 84 percent of
11 credit-deficient non-graduates arrived in their 11th or
12 12th grade year.

13 A What percentage of all kids is that?

14 Q 80.4 percent.

15 A Of the entire school? You're saying 80 percent
16 of the full school was to some degree, was one or more --

17 Q I'm sorry, let's say 50 percent of the entire
18 school.

19 A 50 percent of the entire school?

20 Q Yes.

21 A Of the entire school or the entire cohort?

22 Q I'm sorry. The entire cohort.

23 A So, then, the other 50 percent should be on
24 track.

1 Q Correct.

2 A Okay. So if that were the case, you would have
3 met -- your client would have met its performance target
4 for this part of the improvement plan that it missed.

5 Q That wasn't my question, Director Gavin. Madam
6 court reporter --

7 A Let me -- without the entirety of the information
8 it's very hard to make suppositions. So let's make -- so
9 50 percent is only 10 points below the 60 percent
10 threshold, which means you need, effectively, 10 percent
11 of those kids need to be able to graduate on time. So
12 certainly we would be looking at the number of kids who
13 got caught up.

14 And especially for an 11th grader, being able to
15 make up five classes is certainly something that is
16 possible within a two-year period. So that's one example.

17 Similarly, to the degree that this school was
18 continuing to keep the student engaged, students who -- so
19 it was kids who are taking summer school, doing whatever
20 else, loading on more credits to be able to get caught
21 up -- that would certainly be important. And that would
22 likely result in a lot more kids graduating on time.

23 And then for those kids for whom, despite that
24 level of acceleration, were not meeting that target of the

1 Alternative Performance Framework, because you just said
2 75 percent is the threshold, would the SPCSA entertain a
3 request to modify enrollment criteria to allow it to --
4 for it to seek admission to the Alternative Performance
5 Framework?

6 A Yes. And we have done so in the past.

7 Q When you're thinking about a school that would
8 make that sort of request to serve that sort of
9 population, what kind of a window for a transition would
10 you allow, or recommend to be allowed?

11 A Without knowing the totality of circumstances,
12 particularly the total number of students who currently
13 meet the criteria -- so that's sort of what the gap is --
14 but two years would seem to be a reasonable time period,
15 generally speaking.

16 Q Yesterday you testified that a five-year
17 graduation rate calculated by the Department of Education
18 that exceeded the state minimum could be a compelling
19 explanation that would allow you to recommend a school to
20 remain open despite a graduation rate below 60 percent.

21 Do you remember that testimony?

22 A I do.

23 Q What is the reason that could be a compelling
24 explanation?

1 A Because such a school is demonstrating that it is
2 taking students who were behind and is keeping them
3 engaged and getting them on track to a diploma in five
4 years, which is a great outcome for those kids.

5 Q So the Alternative Performance Framework for
6 schools over 75 percent, for schools that may be just
7 below, they have the ability to transition into the
8 Alternative Performance Framework; additionally, you said
9 you could look at the five-year cohort graduation rate to
10 look at schools that are effectively serving
11 credit-deficient students.

12 Is there any other method that would be
13 persuasive for schools attempting to serve a high
14 credit-deficient population?

15 A I can't think of any at the present time.

16 MR. OTT: That's all I have. I'll pass the
17 witness.

18 ACTING CHAIR GUINASSO: Thank you, Mr. Ott. Now
19 is the time that we've designated for board member
20 questions.

21 What I'd like to do before I ask my questions is
22 open it up to board members who have questions they'd like
23 to ask of Mr. Gavin.

24 MEMBER JOHNSON: Member Gardner, are you going to

1 THE WITNESS: There are currently no provisions
2 in law or regulation providing for a separate school
3 within a school. That would require, among other things,
4 for the Department of Education to adopt regulation
5 permitting it and issuing a separate school code for that
6 separate program.

7 To my knowledge, there is no current policy that
8 permits that.

9 MEMBER JOHNSON: So it's a policy, not
10 necessarily --

11 THE WITNESS: It's an illegal impossibility at
12 the current time. So that's an impractical issue.

13 MEMBER JOHNSON: An impracticality, not
14 necessarily ineffectiveness? Meaning --

15 THE WITNESS: I think the other important
16 questions to consider, which we do not have evidence
17 related to, are: Does the school and does the current
18 operator, the educational management organization, operate
19 similar schools, similar alternative education schools
20 around the country; is there a track record of that either
21 within the existing program that the school can build a
22 business case for, or is there a track record of success
23 in doing that on the part of the operator?

24 Because I would assume this would either have to

1 would be the contract that we're talking about; you
2 wouldn't have been able to approve that, knowing that the
3 board gave you direction not to do that; is that right?

4 THE WITNESS: That's correct.

5 ACTING CHAIR GUINASSO: Two more questions and
6 then we'll stop. One of the things I'm troubled by is,
7 when a school finds itself in the position that it's
8 deficient and they're searching for a cure to get back on
9 track and to address the deficiency, how is it they're
10 supposed to know whether what they're proposing will
11 ultimately be acceptable to the board?

12 I mean, how is it they are -- how is it they're
13 going to know that those factors that you consider
14 attainable, measurable, leadership, commitment, how are
15 they going to know without some kind of communication from
16 you in that regard?

17 THE WITNESS: So I believe that in each of the
18 situations where we've contemplated a closure, we had
19 significant discussion on the front end regarding the need
20 to have measurable targets that the school would commit to
21 as a condition of ongoing operation.

22 So I believe, certainly, we have been very clear
23 with Connections, with Discovery, and with Beacon, which
24 are the three schools for which this board has issued

1 It says, "NCA 36.1," and then "NV" meaning
2 Nevada, actually "63.08," and these are consistent with
3 the adjusted cohort, four-year adjusted cohort graduation
4 rates for the school. So even in 2013 the charter school
5 acknowledged in its own internal documents that the school
6 had a graduation rate of 36.1 percent based on the ACGR.

7 Q Right. The four-year cohort graduation rate. So
8 do you have any knowledge of discussions the school had
9 with Dr. Canavero about the fact that that was in part
10 because the school was getting enrolling students who were
11 credit-deficient when they arrived at NCA?

12 A I was not privy to those conversations.

13 Q You would agree with me, though, that there is a
14 key difference between a school having credit-deficient
15 students and having a lot of students who are already
16 credit-deficient when they enroll at that school, correct?

17 A So for a school that caused the deficiency as a
18 result of failing to educate the student, failing to
19 engage them, et cetera, yes, that is clearly a distinct
20 difference. It is not something that is currently
21 captured in any metric calculated by the Department of
22 Education.

23 Q With respect to that metric calculated by the
24 Nevada Department of Education, that is required for

1 presented both in December and in March, I think -- I
2 don't think I'm prepared to entertain a motion or give a
3 motion that would decide the issue of whether cure is
4 adequate, because, really, as a board this is the first
5 time we've had an opportunity to consider the entirety of
6 the proposed cure.

7 I would say, though, that one of the elements of
8 cure that we've already decided and that Connections
9 Academy has been well aware of, is that whatever contract
10 was entered into would have some limited judicial review
11 as exchange for the consideration that we would not
12 initiate closure or reconstitution proceedings.

13 So, as we proceed forward with the hearing to
14 deal with the issue of whether the cures that you have
15 proposed are adequate, I just want you to keep in mind
16 that that was something that the board has already decided
17 previously.

18 And we'll entertain argument as to why you think
19 that that is inappropriate so that we can reconsider that
20 past action.

21 So it's not like we're bound by that past action,
22 but as you can imagine, if we've already decided that as a
23 board, your burden is going to be particularly high with
24 regard to that particular issue as to explaining why

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 We, DENISE HINXMAN and STEPHANI L. LODER,
5 Certified Court Reporters in and for the County of Washoe,
6 State of Nevada, do hereby certify that on Friday,
7 May 26, 2017, at the Grand Sierra Hotel, in the Nevada
8 Room, located at 2500 East Second Street, Reno, Nevada, we
9 reported the videoconferenced public hearing in the matter
10 entitled herein;

11 That the foregoing transcript, consisting of
12 pages 1 through 363, inclusive, is a true and correct
13 transcript of the stenographic notes taken by us in the
14 above-captioned matter to the best of our knowledge,
15 skill, and ability.

16 As we were not present in the room with all of
17 the participants, the appearances on the cover page are
18 from our understanding of who was present via
19 videoconference and telephone during the proceeding, and
20 that speaker identification was made to the best of our
21 ability through voice recognition;

22 We further certify that we are not attorneys or
23 counsel for any of the parties, nor relatives or employees
24 of any attorney or counsel connected with the action, nor

1 financially interested in the action.

2 Dated at Reno, Nevada this 19th day of June,
3 2017.

4
5 /s/ Denise Hinxman
6 Denise Hinxman, CCR #234

7 /s/ Stephani L. Loder
8 Stephani L. Loder, CCR #862

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24