

September 19, 2017

Robert Whitney  
[RWitney@ag.nv.gov](mailto:RWitney@ag.nv.gov)

**Re: Nevada Connections Academy - Objections to Draft Findings of Fact and Conclusions of Law**

Dear Mr. Whitney:

Nevada Connections Academy (“NCA”) hereby objects in part to the draft Findings of Fact and Conclusions of Law (“draft”) which State Public Charter School Authority (“SPCSA” or “Authority”) Staff served upon NCA on September 12, 2017.

In this letter, NCA provides an explanation of each substantive objection to the draft, and each objection corresponds with a proposed substantive redline change in the attached draft. *See Exhibit A.* In addition, the attached draft contains redline grammatical and minor language changes which NCA does not address in this letter due to their self-explanatory nature. *See id.* However, should the Authority Board request additional explanation for any redline change, NCA would provide it.

NCA’s substantive objections to the draft are as follows:

**I. Findings of Fact and Conclusions of Law—Introductory Section**

**a. Page 1, Lines 20-23<sup>1</sup>**

In its draft, Staff states that “The First Notice was set for hearing December 16, 2016, but was continued after counsel for NCA raised concerns about the public’s ability to give comment regarding the hearing.” Exhibit A, Page 1, Lines 20-23.

NCA objects to this statement because it is an inappropriate characterization of the December 16, 2016, hearing, and one that unfairly prejudices NCA. In fact, the Authority continued the

---

<sup>1</sup> Page and line specifications in this letter correspond with the attached version of the draft Finding of Fact and Conclusions of Law, which contains NCA’s proposed redline changes. *See Exhibit A.*

December hearing on its own due to the chosen venue's inability to accommodate the public.<sup>2</sup> During a break, the Authority asked NCA to consider waiving its right to a hearing within 90 days under NRS 388A.330(3) because the Authority was not sure it could reach a quorum if the rehearing were rescheduled to accommodate the public and prior to the 90 days expiring. NCA agreed in the spirit of cooperation. Specifically, Chair Johnson stated the following during that meeting:

So the reason why we are continuing this, we're taking this action, contemplating this action is **because of the space constraint that we have here today and the ability for the full public to engage in this process.** We wanted to acknowledge the fact that many families, students, parents wanted to be here to listen, and we certainly don't take it lightly that you've taken your time off from school and from work today, and we want to acknowledge that this was not ideal.

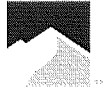
However, **in the vein of ensuring that we can provide access and space and opportunity for everyone to engage, we are continuing this in between today and January 27th when we resume.** I would encourage staff and Connections Academy to see if a cure can be found, and then on the 27th, we will resume this hearing. And at that date, we will also have accommodations that will allow for as many as necessary to be a part of this process so that all families, students who want to take part in this certainly can take part in this. (emphasis added)

See Exhibit 2 to NCA's Emergency Motion for Reconsideration (as filed with the Authority on March 29, 2017), email from L. Granier to R. Whitney on March 10, 2017, and Exhibit 3 to NCA's Emergency Motion for Reconsideration (as filed with the Authority on March 29, 2017), **Exhibit B**, excerpts from the December 16, 2016 SPCSA Transcript of Hearing.

Therefore, Chair Johnson made it abundantly clear that the Authority was rescheduling to accommodate the public, not based on a statement of NCA's counsel. Given the misleading verbiage regarding the December hearing in the draft, NCA proposes that the language be amended to read: "The First Notice was set for hearing December 16, 2016, but was continued after the venue proved inadequate to accommodate all members of the public who sought to participate in the hearing." Exhibit A, Page 1, Lines 20-23 (redline).

---

<sup>2</sup> NCA has previously attempted to correct Staff's same inappropriate and prejudicial characterization regarding NCA's role at the December hearing in NCA's Emergency Motion for Reconsideration as filed March 29, 2017. In John Sande's affidavit attached thereto, he describes that his recollection of the events at the December Hearing did not include a request for a continuance from NCA's counsel. See Exhibit 1 to NCA's Emergency Motion for Reconsideration (as filed with the Authority on March 29, 2017), Affidavit of John P. Sande, IV, Esq., in support of NCA's Motion for Reconsideration.

**b. Page 1, Lines 24-26**

Staff states the following in its draft: “The hearing set for March 30, 31, and April 2017, was then continued pursuant to a request from NCA.” Exhibit A, Page 1, Lines 24-26.

NCA objects to this characterization because it is incomplete in a manner that unfairly prejudices NCA. Given Staff’s desire to lay out the full procedural history leading up to the August 23, 2017, hearing, as well as NCA’s role in any continuances, a brief explanation of the need for the continuance at issue is appropriate. Specifically, the continuance at issue was due to a serious family emergency for NCA’s counsel’s—a sudden turn in Ms. Granier’s mother’s health which necessitated Ms. Granier’s full and immediate attention as her mother’s primary caregiver. Because the need for this continuance request was entirely out of Ms. Granier’s control, Staff’s characterization of the circumstance, is incomplete in a manner that stands to unfairly prejudice NCA. Therefore, NCA proposes a minor addition to the language as follows: “The hearing set for March 30, 31, and April 2017, was then continued pursuant to a request from NCA due to the serious medical condition of counsel’s immediate family.” Exhibit A, Page 1, Lines 24-26 (redline).

**c. Page 1, Line 27 through Page 2, Line 4**

Staff states the following in its draft: “The consolidated hearings were then set for hearing to take place May 25 through May 27, 2017. At the conclusion of those three days, the parties *agreed to complete the record* with supplemental affidavits and documents from witnesses submitted in compliance with an order after hearing consistent with a stipulation on the record.” Exhibit A, Page 1, Line 27 – Page 2, Line 4 (emphasis added).

NCA objects to the language at issue because NCA’s initial agreement was based on the reasonable understanding that it would have the opportunity for collaborative cure discussions with Chair Guinasso prior to the August hearing. Therefore, as NCA has repeatedly argued before the Authority, the statement that NCA “agreed” to the procedural schedule the Authority adopted is a mischaracterization of the record because the premise underlying the agreement materially changed following the agreement. Indeed, while it has recently been suggested a confidentiality agreement was a prerequisite for such discussions, as you know that was not a condition and, in fact, we all participated in a call with Chair Guinasso, your client and the school with no such agreement in place. The Authority’s prehearing procedural schedule allowed NCA to include additional proposals for cure of the alleged deficiency as part of its written closing argument as submitted August 14, 2017. *See* SPCSA Amended Order After Hearing, issued August 3, 2017. Pursuant to the schedule, the Authority would then hold a hearing on August 23, 2017, to consider oral rebuttal arguments to the parties’ closing arguments, and then a brief final rebuttal, immediately after which the Authority would render a decision regarding whether NCA has adequately cured the alleged deficiency to conclude Phase I of the hearing. *See id.*

Clearly, the schedule as agreed upon did not provide NCA with time to meaningfully respond to Staff's oral criticisms of the latest cure proposal's novel components prior to the Authority's decision, which necessarily involved a determination regarding the latest cure proposal. Regardless, NCA agreed to the truncated schedule on Phase I with the understanding that Chair Guinasso and Authority Staff would work with the school to understand if NDE would support this approach by allowing student coding for the bifurcation approach proposed in NCA's cure. Yet, following a single phone call during which Chair Guinasso indicated he was agreeable to jointly seeking that approval from NDE, Staff suddenly insisted that no further discussions be had with NCA absent a confidentiality agreement—a position that is, to say the least, problematic given that Director Gavin and Staff are adversary parties in an ongoing proceeding at the time such directive was communicated to the Authority. As a result, Chair Guinasso improperly and, contrary to the assertions provided to and relied upon by NCA at the conclusion of the three days of hearings held on May 25-27, 2017, refused to engage in further discussions or to pursue this discussion with NDE and the school. As justification for this position, Chair Guinasso asserted that he thought the difference between “settlement” and a “cure” was a distinction without a difference (*see Exhibit C*, July 24, 2017 Email string between J. Guinasso to L. Granier, et al.), although throughout the course of the hearing he acknowledged that the cure and its adequacy were not confidential. *See* May Transcript Vol. III at 67, 69 (acknowledging “cure” clearly falls outside settlement); *see also* May Transcript Vol. III, at 212 (Director Gavin admits he refused to discuss a cure without a confidentiality agreement in place, yet he previously stated that the proposal NCA sent to him in November 2016 was not a “cure” because it was a “settlement”).

Once NCA had discerned that Chair Guinasso's position regarding collaboration on a cure proposal had changed and that NCA would receive no additional collaboration prior to submitting its cure proposal—materially altering the premise underlying NCA's agreement to the truncated procedural schedule—NCA's counsel raised this concern with the Authority several times in an attempt to receive adequate time to respond to concerns Staff would raise at the hearing.<sup>3</sup> During

---

<sup>3</sup> NCA raised this concern first during a phone call with Chair Guinasso and Staff on August 11, 2017. NCA raised this concern again in its closing argument as submitted to the Authority on August 14, 2017. *See* NCA's Closing Argument, at 22 (“... it was NCA's understanding as part of its agreement to truncate the hearing on Phase I that Board Member Guinasso and Authority Staff would work with the school to understand if NDE would support this approach by allowing student coding for the bifurcation.”). Finally, NCA raised the same concern during the August 23, 2017, hearing. *See* Expedited Transcript of August 23, 2017, hearing, at 7 (“A material piece of the school agreeing to a truncated hearing and submitting evidence following the hearing in writing in the interest of time was that we would have access to Chair Guinasso as a member of the Board, who we understood could not speak on behalf of the full Board, but as a member of the Board to collaborate with us in the interim following that May hearing and discuss our opportunity to present to you a proposed amended cure in hopes that the school would be able to resolve this in a collaborative manner with the input of a board member understanding what

the August 23, 2017, hearing, Chair Guinasso rejected NCA's argument, basing his decision on an apparent misrecollection of the record. Specifically, he asserted that the parties left the May hearing aware of a condition that there must be a confidentiality agreement in place prior to Chair Guinasso's participation in collaborative discussions. *See* Expedited Transcript of August 23, 2017, hearing, at 9 ("... an essential element of that from the Authority's perspective -- and this was discussed at the last hearing. My notes reflect that and I think the record reflects that -- is that the Authority would only agree to participate in that process if there was a confidentiality agreement in place. That was made clear at the last hearing."). In fact, the May hearing transcript includes no such condition or discussion upon Chair Guinasso's participation as a member of the Authority board in a collaborative discussion. *See generally* May Transcript. While SPCSA director Patrick Gavin testified that he had previously refused to share ideas with NCA regarding what constitutes an adequate cure, no condition was placed upon further discussions with Gavin, Guinasso, or Authority Staff. *See, e.g.*, May Transcript, Vol III, at 212.

Because the material understanding underlying NCA's initial agreement to the schedule has changed and NCA now disputes the procedural schedule given that it denied NCA due process, NCA objects to the language in Staff's draft. However, NCA understands that Staff may be disinclined to explain the circumstance, and NCA therefore requests that this language be amended as follows to preserve the rights of the parties: "The consolidated hearings were then set for hearing to take place May 25 through May 27, 2017. At the conclusion of those three days, the Authority established a process to complete the record with supplemental affidavits and documents from witnesses submitted in compliance with an order after hearing consistent with a stipulation on the record -- though the parties dispute certain understandings relevant to that stipulation." Exhibit A, Page 1, Line 27 -- Page 2, Line 4 (redline).

**d. Page 2, Lines 8-9 & Lines 26-28**

Staff states the following in its draft: "NCA was represented by Laura Granier, Esq., and Erica Nannini, Esq., of Davis Graham & Stubbs LLP." Exhibit A, Page 2, Lines 8-9. In a footnote corresponding with this text, Staff provides the following: "Ms. Granier and Ms. Nannini may have transitioned to Holland & Hart LLP prior to the meeting on August 23, 2017, however, no substitution of attorney was filed substituting Holland & Hart LLP into the case, nor was any objection made by NCA to Ms. Granier's continued representation. Ms. Nannini did not appear at this meeting." Exhibit A, Page 2, Lines 26-28.

NCA objects to this language because Staff was aware of NCA's counsels' transition to Holland & Hart prior to August 23, 2017. Ms. Granier relayed this information to Mr. Ott during a telephone discussion on August 11, 2017, and via email on August 15, 2017 (*see Exhibit D*). Chair Guinasso was also aware of NCA's counsels' transition to Holland & Hart prior to August

---

perhaps would be deemed to be an adequate cure."). The Authority dismissed NCA's argument each time.

23, 2017, and mentioned it before the hearing began on that day. The uncertain nature of the language regarding Ms. Granier's and Ms. Nannini's transition is inappropriate and unnecessary given Mr. Ott's knowledge and Chair Guinasso's language demonstrating his knowledge prior to the hearing, and the language identifying Ms. Granier and Ms. Nannini as attorneys with Davis Graham & Stubbs is inaccurate at the time the draft will be filed. As officers of the Court we all have duties to avoid representing facts we know to be untrue – which is the case with the statement suggesting the Authority was uncertain as to the timing of our transition.

Therefore, NCA proposes that footnote 1 on page 2 (lines 26-28 of Exhibit A) be deleted in its entirety, and that the text be modified to read as follows: "NCA was represented by Laura Granier, Esq., and Erica Nannini, Esq., of Holland & Hart LLP." *See Exhibit A, Page 2, Lines 8-9.*

## **II. Issues Presented**

Staff's draft states the following with regard to the issues presented:

- (1) Whether NCA's graduation rate for the 2015 graduating cohort was below 60%.
- (2) Whether NCA's graduation rate for the 2016 graduating cohort was below 60%.
- (3) Whether NCA corrected the deficiency to the satisfaction of the SPCSA Board.

*Exhibit A, Page 2, Lines 17-24.*

NCA objects to the language contained in issues (1), (2), and (3) only insofar as NCA proposes to supplement these issues with additional language to render the issues consistent with the Authority's prior orders and repeated statements by the Authority throughout these proceedings. Specifically, NCA proposes that the issues presented be modified as follows for the sake of consistency in the record:

- (1) Whether SPCSA Staff demonstrated by a preponderance of the evidence that NCA's graduation rate for the 2015 graduating cohort was below 60%.
- (2) Whether SPCSA Staff demonstrated by a preponderance of the evidence that NCA's graduation rate for the 2016 graduating cohort was below 60%.
- (3) Assuming the SPCSA Board concludes that NCA's graduation rate was below 60% pursuant to issues (1) and (2), whether SPCSA Staff demonstrated by a preponderance of the evidence that NCA failed to correct the deficiency to the satisfaction of the SPCSA Board.

*Exhibit A, Page 2, Lines 17-24 (redline).*

///

///

### **III. Conclusion**

#### **a. Page 3, Lines 8-10**

As reflected in the attached Exhibit A, NCA objects to Staff's language here only insofar as NCA proposes minor language additions to clarify the nature of the evidence the Authority received, to provide a more accurate description of the proceedings. *See* Exhibit A, Page 3, Lines 8-10 (redline).

### **IV. Findings of Fact**

#### **a. Page 3, Lines 19-20**

Staff states the following in its draft: "NCA is a charter school authorized by the SPCSA pursuant to NRS Chapter 388A under a written charter originally approved May 5, 2007." Exhibit A, Page 3, Lines 19-20.

NCA objects to this language only insofar as it proposes additions to render the brief description of NCA complete. Staff attempts here to lay out a brief history and description of NCA, which is followed by an extensive factual discussion of NCA's historical graduation rate and charter renewal. *See* Exhibit A, Page 3, 23-28; *see also* Page 4, Lines 1-16. As such NCA proposes minor additions to the brief description of NCA to accurately describe the nature of NCA's charter and the number of students served under NCA's written charter.

Therefore, NCA proposes minor additions to the language as follows: "NCA is a K-12 charter school authorized by the SPCSA pursuant to NRS Chapter 388A under a single written charter originally approved May 5, 2007. . . NCA currently operates as a K-12 virtual charter school serving over 3,200 Nevada students." Exhibit A, Page 3, Lines 19-22.

#### **b. Page 3, Lines 23-26; Page 4, Lines 6-9**

Staff states the following in its draft: "2. The four year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 26.5% for the 2011 graduating cohort. 3. The four year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 36.08% for the 2012 graduating cohort." Exhibit A, Page 3, Lines 23-26. Staff further states: "7. The four-year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 33.91% for the 2013 graduating cohort. 8. The four-year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 37.19% for the 2014 graduating cohort." Exhibit A, Page 4, Lines 6-9.

NCA objects to this language because the years described are not at issue in Phase I of these proceedings, which this draft order aims to resolve. *See, e.g.*, Expedited Transcript of August 23, 2017, hearing, at 3 (“Today’s hearing is really to just address whether or not the graduation rate was deficient for both 2015 and 2016 . . . .”), 60 (“So Phase I is dealing with two issues; one, whether the preponderance of the evidence supports a finding that NCA’s graduation rate is under 60 percent for both 2015 and 2016 . . . .”). The Authority Board made no findings relative to the graduation rates from years 2011 through 2014 – nor were they at issue, so these statistics cannot be reasonably be considered “findings of fact.” Not only is the inclusion of this information entirely unnecessary to the proceedings, it is inappropriate to declare them “findings” and they have the potential to unfairly prejudice NCA. NCA therefore proposes to strike these paragraphs, as reflected in the redline attachment. *See* Exhibit A, Page 3, Lines 23-26. Should Staff insist upon including this information, NCA proposes including data regarding NCA’s test scores on statewide assessments within the “Findings of Fact” section, and would request the opportunity to revise the draft to add this information.

**c. Page 4, Lines 3-5**

Staff states the following in its draft: “NCA developed a 2012-13 school improvement plan in September of 2013.” Exhibit A, Page 4, Lines 3-5.

NCA objects to this language only insofar as it proposes additions to render the brief description of this earlier school improvement plan complete so as not to cause confusion between the 2012-13 plan and the 2016 plan. Therefore, NCA proposed minor additions as follows: “NCA developed a 2012-13 school improvement plan in September of 2013 which discussed improvement of the high school graduation rate but was not the in-depth analysis and improvement plan proposed in 2016.” Exhibit A, Page 4, Lines 3-5 (redline).

**d. Page 4, Lines 15-16**

Staff states the following in its draft: “The five year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 40.93% for the 2014 graduating cohort.” Exhibit A, Page 4, Lines 15-16.

NCA objects to this language because NCA’s 2014 graduation rate is not at issue in Phase I of these proceedings, which this draft aims to resolve. *See, e.g.*, Expedited Transcript of August 23, 2017, hearing, at 3 (“Today’s hearing is really to just address whether or not the graduation rate was deficient for both 2015 and 2016 . . . .”), 60 (“So Phase I is dealing with two issues; one, whether the preponderance of the evidence supports a finding that NCA’s graduation rate is under 60 percent for both 2015 and 2016 . . . .”). The Authority Board made no findings relative to the 5-year graduation rate for 2014, so this statistic is inappropriate to include within the “findings of fact” in this order.



Instead, because the 2015 five-year graduation rate was considered during Phase I of these proceedings, NCA proposes that the language be revised as follows: “The five year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 42.22% for the 2015 graduating cohort.” Exhibit A, Page 4, Lines 15-16 (redline).

**c. Page 4, Lines 17-25**

Staff states the following in its draft: “10. Since 2011, the Nevada Department of Education has not calculated any graduation rates other than the four and five year adjusted cohort graduation rates. 11. SPCSA Staff has interpreted the term graduation rate to mean the four-year adjusted cohort graduation rate as calculated by the Nevada Department of Education. “ Exhibit A, Page 4, Lines 19-24.

NCA objects to this language only insofar as it seeks to complete and clarify the language. Given the dispute between the parties regarding the meaning of “graduation rate” pursuant to these proceedings, it is necessary for context to explain that Nevada law does not define the term (giving rise to the dispute), and NCA therefore seeks to add language to that effect. Additionally, the wording of paragraph (10) is confusing to the reader, and NCA has edited this section to make it straight forward and include a reference to the federal calculation which NDE employs. Finally, NCA proposed modifications to paragraph (11) to explain that NCA disputes the NDE’s calculation in an effort to ensure that its rights are preserved.

For the foregoing reasons, NCA’s proposed additions and modifications are as follows:

“9. The term “graduation rate” as used in NRS 388A.330(1)(e) is not defined in Nevada law.

10. Since 2011, the Nevada Department of Education calculated “graduation rate” pursuant to Federal Regulation 34 CFR 200.19(b), issuing four- and five-year adjusted cohort graduation rates.

11. SPCSA Staff has interpreted the term “graduation rate” to mean the four-year adjusted cohort graduation rate as calculated by the Nevada Department of Education. NCA disputes this calculation.”

Exhibit A, Page 4, Lines 17-25 (redline).

**f. Page 5, Lines 2-5 & 10-13**

Staff states the following in its draft: “NCA presented a letter including a plan to increase its graduation rate on December 2, 2016, which included proposed graduation rate benchmarks of 45% in 2016, 52% in 2017 and 60% in 2018.” Exhibit A, Page 5, Lines 2-4. Staff then states: “NCA presented another letter including a plan to increase its graduation rate on March 24, 2017 which included proposed graduation rate benchmarks of 49% in 2017 and 60+% in 2018.” Exhibit

A, Page 5, Lines 10-12. As you know, this presents an incomplete (and, therefore, erroneous) description of those proposed benchmarks.

NCA objects to this only insofar as it proposes additions to render the brief description of NCA's cures and the targeted benchmarks therein complete and accurate. Specifically, NCA proposes adding the following language to each paragraph reprinted above: "... with provisions to take into account the number of students who enrolled in NCA's high school credit-deficient relevant to that calculation." Exhibit A, Page 5, Lines 2-5 & 10-13 (redline).

**g. Page 5, Lines 14-16**

Staff states the following in its draft: "NCA's 2012-13 school improvement plan of September of 2013 was not successful in raising NCA's graduation rate." Exhibit A, Page 5, Lines 14-15.

NCA objects to this statement and requests that Staff identify evidence in the record to support this assertion, with the understanding that statements of counsel do not constitute evidence or findings of fact. *See Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993) ("Arguments of counsel are not evidence and do not establish the facts of the case."). In addition to Staff's demonstration of such evidence, NCA proposes that the following be added to the draft pursuant to undisputed facts established at hearing: "The last rating by the NDE in 2014 reflected that NCA was in good standing." Exhibit A, Page 5, Lines 15-16. This addition is appropriate pursuant to the evidence established during the May hearing. *See* May Transcript Vol. III, at 132.

**h. Page 5, Lines 18-21**

Staff states the following in its draft: "NCA failed to meet the 2016 graduating cohort graduation rate benchmark of 45% contained in its December 2, 2016 graduation rate plan." Exhibit A, Page 5, Lines 18-21.

NCA objects to this language because it is erroneous -- NCA's proposed benchmark as contained in the December cure proposal took into account the student population—specifically, the number of credit-deficient and transient students NCA enrolls—whereas NDE's calculation does not. Accordingly, there is no evidence to support this statement regarding a failure to meet the benchmark NCA offered. Therefore, NCA proposes striking this paragraph entirely.

**i. Page 5, Lines 24-26**

Staff states the following in its draft: "NCA's most recent rating for its high school was not within the three highest ratings of performance pursuant to the statewide system of accountability for public schools." Exhibit A, Page 5, Lines 24-26.

NCA objects to this language because it is inaccurate. The evidence established during the May hearing demonstrates that the last rating issued by the NDE in 2014 reflected that NCA was in good standing. *See* May Transcript Vol. III, at 132; *see also* Hearing Ex. Y (5/20/2016 SPCSA hearing transcript), at R0878 (Gavin states that “other than on this matter of grad rate, the school is currently – was in good standing as of the most recent full framework”). Therefore NCA requests that Staff provide evidence to support this finding of fact, and if Staff is unable to do so, NCA proposes striking this paragraph entirely.

**j. Page 5, Line 27 – Page 6, Line 1**

Staff states the following in its draft: “The enrollment cap contained in NCA’s August 16, 2017 plan was unlikely to correct NCA’s deficient graduation rate as its current high school population is more than six hundred students below the proposed cap of two thousand students.” Exhibit A, Page 5, Lines 27—Page 6, Line 1.

NCA objects to this statement because no evidence in the record supports it as a “finding of fact.” NCA requests that Staff provide a citation to support this established finding, and if it is unable to provide one, NCA proposes that Staff remove the paragraph entirely.

**k. Page 6, Lines 2-3**

Staff states the following in its draft: “NCA has not submitted an application or letter of intent to the SPCSA to apply to form a new school.” Exhibit A, Page 6, Lines 2-3.

NCA objects to this statement because nowhere is this part of the record—no evidence was provided to establish this fact nor was there a request for administrative notice of this fact. Therefore, NCA proposes that this paragraph be deleted entirely.

**l. Page 6, Lines 4-6**

Staff states the following in its draft: “NCA’s proposal to have its credit-deficient students evaluated separately from the rest of its high school students was unlikely to correct the school’s deficient graduation rate as there are no current efforts to establish a separate school.” Exhibit A, Page 6, Lines 4-6.

NCA objects to this statement because nowhere is this part of the record—no evidence was provided to establish this fact nor was there a request for administrative notice of this fact. During the August 23, 2017, hearing, Authority board members discussed NCA’s school within a school proposal, but never established that it was unlikely to correct the school’s graduation rate and made no statement regarding current efforts to establish the school within a school. Additionally, the assertion that “there are no current efforts to establish a separate school” is inaccurate and unsupported by the record, as NCA has offered detailed proposals to accomplish this through either

a charter amendment or separate charter. Therefore, NCA proposes that this paragraph be deleted entirely.

**m. Page 6, Lines 7-9**

Staff states the following in its draft: “The other provisions (exclusive of the enrollment cap and proposal to have credit-deficient students evaluated separately) contained in the August 16, 2017 plan were unlikely to improve the graduation rate by themselves.” Exhibit A, Page 6, Lines 7-9.

NCA objects to this statement because it is unaware of any facts upon which this “finding” is based, as the Authority Board did not break out and analyze each component of the cure proposal to determine whether each component alone would cure the graduation rate. NCA requests that Staff provide support in the record for this statement, and if it is unable to do so, NCA proposes that this section be deleted entirely.

**n. Page 6, Lines 10-11**

Staff states the following in its draft: “NCA’s efforts to improve its graduation rate since its 2013 renewal, inclusive of its efforts contained in the December 2, 2016 plan have been unsuccessful.” Exhibit A, Page 6, Lines 10-11.

NCA objects to this statement as it has argued throughout these proceedings that NCA’s implementation of the graduation rate improvement plan is working to increase the graduation rate, and is unaware of any specific “finding” of the Authority Board during the Phase I proceedings that supports this overly broad, and therefore, highly subjective, assertion. In addition, this seems more appropriate as a legal conclusion of the Authority, as opposed to a “finding of fact.” Therefore, NCA requests that Staff provide support for this “finding of fact” regarding the generalized success of the plan, and if it is unable to provide the same, NCA proposes striking this paragraph entirely, or at least narrowing the statement to accurately reflect the record.

**o. Page 6, Lines 12-14**

Staff states the following in its draft: “The proposed cures as presented by NCA were insufficient to correct the deficiencies in the graduation rates that the SPCSA Board found for the 2015 and 2016 graduating cohorts.” Exhibit A, Page 6, Lines 12-14.

NCA objects to this statement because it is not a “finding of fact,” and was rather a conclusion of law the Authority made via motion, as evidenced by Chair Guinasso’s repeated usage of the term “conclude” relative to the motion during the August 23, 2017, hearing. *See* Expedited Transcript of August 23, 2017, hearing, at 122 (“the motion is that the Board conclude that the proposed cure as presented by NCA is insufficient to correct the deficiencies in the graduation rates that we found for the 2015 and 2016 school years.”). Chair Guinasso’s motion carried, and this was a legal

conclusion regarding the central question of the hearing. Therefore, Staff inappropriately included this statement as a “finding of fact,” and it should be deleted entirely.

**V. Conclusions of Law**

**a. Page 6, Lines 24-26**

Staff states the following in its draft: “The term graduation rate as used in NRS 388A.330(1)(e) means the four year adjusted cohort graduation rate calculated and published by the Nevada Department of Education.” Exhibit A, Page 6, Lines 24-26.

NCA objects to this statement only insofar as it seeks to clarify that the SPCSA is adopting this definition of the term “graduation rate” because no definition exists in Nevada law. Therefore, NCA proposes the following language: “The SPCSA will define the term “graduation rate” as used in NRS 388A.330(1)(e) as the four-year adjusted cohort graduation rate calculated and published by the Nevada Department of Education.” Exhibit A, Page 6, Lines 24-26 (redline).

**b. Page 6, Lines 27-28**

Staff states the following in its draft: NCA did not qualify for the experimental academic program authorized by Section 12.3 of Assembly Bill 49 of the 79<sup>th</sup> legislative session.” Exhibit A, Page 6, Lines 27-28.

NCA objects to this statement because it is based on statements made by Mr. Ott during the August 23, 2017, hearing, and not on a conclusion adopted by the Authority Board. *See* Expedited Transcript of August 23, 2017, hearing, at 26, 66. “Arguments of counsel are not evidence and do not establish the facts of the case.” *See Jain v. McFarland*, 109 Nev. 465, 475–76, 851 P.2d 450, 457 (1993). While Member Mackedon opined that the school would not qualify for this program in her discussion of NCA’s “school within a school” proposal, this was not a conclusion reached by the Authority Board. *See* Expedited Transcript of August 23, 2017, hearing, at 114. Therefore, NCA proposes that this paragraph be deleted entirely.

**c. Page 7, Lines 1-2**

Staff states the following in its draft: “Charter schools without an enrollment cap are not able to prevent credit-deficient students from enrolling.” Exhibit A, Page 7, Lines 1-2.

NCA objects to this statement because it is based on statements made by Mr. Ott during the August 23, 2017, hearing, and not on a conclusion adopted by the Authority Board. *See* Expedited Transcript of August 23, 2017, hearing, at 28 (Mr. Ott stated: “If a credit deficient student wants to come to the school, the credit deficient [sic] gets to come to the school unless there's an enrollment cap or something else preventing it.”) “Arguments of counsel are not evidence and

do not establish the facts of the case.” *See Jain*, 109 Nev. at 475–76, 851 P.2d at 457. Therefore, NCA proposes deleting this paragraph entirely as the Authority Board did not make a conclusion regarding enrollment caps during Phase I of these proceedings

**d. Page 7, Lines 3-8**

Staff states the following in its draft: “The SPCSA’s September 30, 2016 Notice of Intent to Revoke a Written Charter was validly issued, as NCA’s graduation rate for the 2015 graduating cohort was below 60%. . . . The SPCSA’s February 10, 2017 Notice of Intent to Revoke a Written Charter was validly issued as NCA’s graduation rate for the 2016 graduating cohort was below 60%.” Exhibit A, Page 7, Lines 3-8.

NCA objects to this statement because, to NCA’s knowledge, the Authority made no determination or conclusion regarding whether Staff’s notices of intent were “validly issued.” This conclusion is therefore unsupported by the record, and runs afoul of NCA’s arguments that the initial notice of intent violated Nevada’s Open Meeting Law and that Staff failed to follow its own Charter School Performance Framework in issuing both notices of intent. Therefore, NCA requests that Staff provide evidence to support this conclusion, and if it is unable to provide the same, NCA proposes that these paragraphs be deleted entirely.

We have reached out to Mr. Ott to meet and confer to see if we can resolve NCA’s concerns ahead of the September 29, 2017 SPCSA meeting. We will propose that the parties provide a joint update following these discussions.

Please let us know if you have any questions or comments regarding these objections.

Sincerely,



Laura K. Granier  
Erica K. Nannini  
for Holland & Hart LLP

LKG/EKN:js

Encls.: Exhibit A: Redlined version of FOF, COL  
Exhibit B: Excerpts from 12/16/2016 SPCSA Transcript of Hearing  
Exhibit C: 7/24/17 Email string  
Exhibit D: 8/15/17 Email

cc: Greg Ott, Esq.

**EXHIBIT A**

**EXHIBIT A**

BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY

IN RE:

NEVADA CONNECTIONS ACADEMY

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This decision addresses the Notice of Intent to Revoke Written Charter of September 30, 2016, and Notice pursuant to NRS 388A.330(1)(e) of February 10, 2017, brought by the State Public Charter School Authority (“SPCSA”) Staff and concerning Nevada Connections Academy (“NCA”).

The Notice of Intent to Revoke the Written Charter of September 30, 2016, (the “First Notice”) was issued pursuant to NRS 388A.330(1)(e) based on the allegation that NCA’s graduation rate for the year immediately preceding the notice (the graduating cohort of 2015) was 35.63%.

The Notice Pursuant to NRS 388A.330(1)(e) of February 10, 2017 was issued pursuant to NRS 388A.330(1)(e) (the “Second Notice”) based on the allegation that Nevada Connections Academy’s graduation rate for the year immediately preceding the notice (the graduating cohort of 2016) was 40.09%.

The First Notice was set for hearing December 16, 2016, but was continued after the venue proved inadequate to accommodate all members of the public who sought to participate in the hearing. The hearing was continued to March 30 through April 1, 2017, and consolidated with the hearing regarding the Second Notice. The hearing set for March 30, 31, and April 1, 2017, was then continued pursuant to a request from NCA due to the serious medical condition of counsel’s immediate family.

The consolidated hearings were then set for hearing to take place May 25 through May 27, 2017. At the conclusion of those three days, the Authority established a process to complete the record with supplemental affidavits and documents from witnesses

**Deleted:** counsel for NCA raised concerns about the public’s ability to give comment regarding the hearing.

**Deleted:** parties agreed



1 submitted in compliance with an order after hearing consistent with a stipulation on the  
2 record – though the parties now dispute certain understandings relevant to that  
3 stipulation. The hearings concluded with written closing arguments and oral rebuttals  
4 on August 23, 2017.

5 The SPCSA Staff was represented by Senior Deputy Attorney General Gregory D.  
6 Ott, Esq., of the Nevada Attorney General's Office.

7 NCA was represented by Laura Granier, Esq., and Erica Nannini, Esq., of Holland  
8 & Hart LLP.

9 The SPCSA Board was represented by Deputies Attorney General Robert Whitney,  
10 Esq., and Edward Magaw, Esq., of the Nevada Attorney General's Office.

11 The administrative hearing before the State Public Charter School Authority  
12 Board in this matter was conducted pursuant to Nevada's Administrative Procedure Act  
13 under Chapter 233B of the Nevada Revised Statutes ("NRS"), Chapters 388A of NRS, and  
14 related regulations.

### 15 ISSUES PRESENTED

- 16 (1) Whether SPCSA Staff demonstrated by a preponderance of the evidence that  
17 NCA's graduation rate for the 2015 graduating cohort was below 60%.
- 18 (2) Whether SPCSA Staff demonstrated by a preponderance of the evidence that  
19 NCA's graduation rate for the 2016 graduating cohort was below 60%.
- 20 (3) Assuming the SPCSA Board concludes that NCA's graduation rate was  
21 below 60% pursuant to issues (1) and (2), whether SPCSA Staff  
22 demonstrated by a preponderance of the evidence that NCA failed to correct  
23 the deficiency to the satisfaction of the SPCSA Board.

### 24 CONCLUSION

25 The SPCSA Board finds that SPCSA Staff has carried its burden and proven by a  
26 preponderance of the evidence that NCA's graduation rate for the 2015 graduating cohort  
27 was below 60%. Likewise, the SPCSA Board finds that SPCSA Staff has carried its  
28 burden and proven by a preponderance of the evidence that NCA's graduation rate for the

Deleted: Davis, Graham & Stubbs

Deleted: <sup>1</sup>

Deleted: ;

Deleted: W

Deleted: corrected

2016 graduating cohort was below 60%. The SPCSA Board further finds that SPCSA Staff has carried its burden and proven by a preponderance of the evidence that NCA did not correct the deficiency to the satisfaction of the SPCSA Board.

Having considered the oral testimony during hearing of Patrick Gavin, Russell Keglovits, Matthew Wicks, Steve Werlein, Jafeth Sanchez, and Richard Vineyard, and the submitted written declarations of Joe Thomas, Lisa Malabago, Gina Hames, Dianne Karp, Miranda Shults, Jacki Richards, Mindi Dagerman, Tessa Rivera, Shannon Pierce, Veronica Berry, J. Berry, M. Hiett, Alexandra Castillo, Dawn Starrett, Michell Nelson, David Held, and N. Held, reviewed the documents submitted as evidence as Exhibits 1 through 13, A through FF, and Supplemental Exhibits 1 through 5 and A through HH, and considered the arguments of counsel for SPCSA Staff and counsel for NCA, the SPCSA Board has carefully considered and applied the requirements of the governing law and hereby makes the following findings:

#### FINDINGS OF FACT

1. NCA is a K-12 charter school authorized by the SPCSA pursuant to NRS Chapter 388A under a single written charter originally approved May 5, 2007.

2. NCA currently operates as a K-12 virtual charter school serving over 3,200 Nevada students.

3. NCA's application for written charter renewal was approved on or about May 30, 2013 by the SPCSA Board.

4. The 2013 renewal of NCA's charter was accompanied by a provision from the SPCSA Board that NCA create a plan for improvements of high school graduation rates.

5. NCA developed a 2012-13 school improvement plan in September of 2013 which discussed improvement of the high school graduation rate but was not the in-depth analysis and improvement plan proposed in 2016.

...

6. The four-year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 35.63% for the 2015 graduating cohort.

Deleted: .

Deleted: .

Deleted: <#>The four- year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 26.5% for the 2011 graduating cohort. ¶  
<#>The four- year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 36.08% for the 2012 graduating cohort. ¶

Deleted:

Deleted: <#>The four- year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 33.91% for the 2013 graduating cohort. ¶  
<#>The four- year adjusted cohort graduation rate as calculated by the Nevada Department of Education for NCA was 37.19% for the 2014 graduating cohort. ¶

Deleted:

1 7. The four-year adjusted cohort graduation rate as calculated by the Nevada  
2 Department of Education for NCA was 40.09% for the 2016 graduating cohort.

3 8. The five-year adjusted cohort graduation rate as calculated by the Nevada  
4 Department of Education for NCA was 42.22% for the 2015 graduating cohort.

5 9. The term "graduation rate" as used in NRS 388A.330(1)(e) is not defined in  
6 Nevada law.

7 10. Since 2011, the Nevada Department of Education has calculated "graduation  
8 rate" pursuant to Federal Regulation 34 CFR 200.19(b), issuing four- and five-year  
9 adjusted cohort graduation rates.

10 11. SPCSA Staff has interpreted the term "graduation rate" to mean the four-  
11 year adjusted cohort graduation rate as calculated by the Nevada Department of  
12 Education. NCA disputes this calculation.

13 12. NCA's graduation rate for the 2015 graduating cohort was below 60%.

14 13. NCA was notified of its deficient graduation rate for the 2015 graduating  
15 cohort pursuant to NRS 388A.330(1)(e) through a Notice of Intent to Revoke a Written  
16 Charter, dated September 30, 2016.

17 14. NCA presented a letter including a plan to increase its graduation rate on  
18 December 2, 2016, which included proposed graduation rate benchmarks of 45% in 2016,  
19 52% in 2017 and 60% in 2018, with provisions to take into account the number of  
20 students who enrolled in NCA's high school credit-deficient relevant to that calculation.

21 15. NCA's graduation rate for the 2016 graduating cohort was below 60%.

22 16. NCA was notified of its deficient graduation rate for the 2016 graduating  
23 cohort pursuant to NRS 388A.330(1)(e) through a Notice of Intent to Revoke a Written  
24 Charter, dated February 10, 2017.

25 17. NCA presented another letter including a plan to increase its graduation  
26 rate on March 24, 2017 which included proposed graduation rate benchmarks of 49% in  
27 2017 and 60+% in 2018 with provisions to take into account the number of students who  
28 enrolled in NCA's high school credit-deficient relevant to that calculation.

Deleted:

Deleted:

Deleted: 40.93

Deleted: 4

Formatted: Indent: First line: 0.75"

Formatted: Font: (Default) Century Schoolbook, 12 pt

Deleted: not calculated any graduation rates other than the

Deleted:

Deleted: calculated pursuant to Federal Regulation 34 CFR 200.19(b).

Deleted:

Deleted:

1 18. NCA's 2012-13 school improvement plan of September of 2013 was not  
2 successful in raising NCA's graduation rate. The last rating by the NDE in 2014 reflected  
3 that NCA was in good standing.

4 . . .

5 19. .

6 20. NCA presented an amended plan to improve its graduation rate in  
7 conjunction with its written closing argument submitted August 14, 2017.

8 21. .

9 22. .

#### 10 CONCLUSIONS OF LAW

11 NRS 233B requires that the SPCSA must establish by a preponderance of evidence  
12 that NCA was deficient as defined by NRS 388A.330 and had failed to correct that  
13 deficiency within the time allotted;

14 . . .

15 The SPCSA Board has considered and analyzed the foregoing requirements of the  
16 governing law, evaluated the evidence and argument proffered by the parties at the  
17 hearing, and has concluded as a matter of law:

18 1. The SPCSA will define the term "graduation rate" as used in NRS  
19 388A.330(1)(e) as the four-year adjusted cohort graduation rate calculated and published  
20 by the Nevada Department of Education.

21 2. .

22 3. NCA did not correct the deficiency regarding its graduation rate to the  
23 satisfaction of the SPCSA Board.

24 . . .

25 . . .

26 . . .

27 . . .

28 . . .

**Deleted:** NCA's 2016 graduating cohort graduation rate as calculated by the Nevada Department of Education was below the failed to meet the 2016 graduating cohort graduation rate benchmark of 45% contained in its December 2, 2016 graduation rate plan

**Formatted:** Highlight

**Deleted:** 6

**Deleted:** NCA's most recent rating for its high school was not within the three highest ratings of performance pursuant to the statewide system of accountability for public schools.

**Deleted:** <#>The enrollment cap contained in NCA's August 16, 2017 plan was unlikely to correct NCA's deficient graduation rate as its current high school population is more than six hundred students below the proposed cap of two thousand students.¶  
<#>NCA has not submitted an application or letter of intent to the SPCSA to apply to form a new school. ¶  
<#>NCA's proposal to have its credit- deficient students evaluated separately from the rest of its high school students was unlikely to correct the school's deficient graduation rate as there are no current efforts to establish a separate school.¶  
<#>The other provisions (exclusive of the enrollment cap and proposal to have credit- deficient students evaluated separately) contained in the August 16, 2017 plan were unlikely to improve the graduation rate by themselves.¶  
NCA's efforts to improve its graduation rate since its 2013 renewal, inclusive of its efforts contained in the December 2, 2016 plan have been unsuccessful.

**Deleted:** <#>The proposed cures as presented by NCA were insufficient to correct the deficiencies in the graduation rates that the SPCSA Board found for the 2015 and 2016 graduating cohorts.¶

**Deleted:** The SPCSA Board determined

**Deleted:** by a preponderance of the evidence

**Deleted:** means

**Deleted:**

**Deleted:** <#>NCA did not qualify for the experimental academic program authorized by Section 12.3 of Assembly Bill 49 of the 79<sup>th</sup> legislative session.¶  
Charter schools without an enrollment cap are not able to prevent credit- deficient students from enrolling.

**Deleted:** <#>The SPCSA's September 30, 2016 Notice of Intent to Revoke a Written Charter was validly issued, as NCA's graduation rate for the 2015 graduating cohort was below 60%.¶  
<#>The SPCSA's February 10, 2017 Notice of Intent to Revoke a Written Charter was validly issued as NCA's graduation rate for the 2016 graduating cohort was below 60%.¶

**Deleted:** in

1 ...  
2 ...  
3 ...  
4 ...  
5 ...  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

In accordance with the foregoing findings of fact and conclusions of law, the SPCSA Board may proceed to determine if it is appropriate and lawful to reconstitute the governing body of NCA, revoke the written charter of NCA or take no action.

Deleted: or

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

SPCSA Governing Body

\_\_\_\_\_  
Jason Guinasso, Chair

**NOTICE:** Pursuant to NRS 233B.130, if any party desires to appeal this final decision of the Appeals Officer, petition for judicial review must be filed with the District Court within thirty (30) days after service of this final decision.

Submitted By:

\_\_\_\_\_  
Gregory D. Ott  
Senior Deputy Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1229  
Gott@ag.nv.gov

*Attorney for State Public Charter School Authority Staff*

# **EXHIBIT B**

# **EXHIBIT B**

NEVADA STATE PUBLIC CHARTER SCHOOL AUTHORITY

TELECONFERENCED OPEN MEETING

FRIDAY, DECEMBER 16, 2016

RENO, NEVADA

THE BOARD:

ADAM JOHNSON, Chair  
PATRICK GAVIN, Executive Director  
MELISSA MACKEDON, Vice-President  
NORA LUNA, Member  
KATHLEEN CONABOY, Member  
JACOB SNOW, Member  
STAVAN CORBETT, Member  
JACOB GUINASSO, Member

FOR THE BOARD:

GREG OTT,  
Deputy Attorney General

ROBERT WHITNEY,  
Deputy Attorney General

DANNY PELTIER, Management  
Analyst I

TANYA OSBORNE,  
Administrative Assistant III

REPORTED BY:

CAPITOL REPORTERS  
BY: NICOLE HANSEN,  
Nevada CCR #446

1 THE BOARD: Aye.

2 MEMBER GUINASSO: Mr. Chairman, I asked to  
3 suspend public comment so I could make a motion now to  
4 continue the public hearing, the hearing that was  
5 scheduled today regarding whether to revoke the written  
6 charter of Connections Academy to January 27th of 2017,  
7 pursuant to an agreement between Nevada Connections  
8 Academy and the Authority that was negotiated during this  
9 waiting period.

10 THE COURT: Do I have a second?

11 VICE-CHAIR MACKEDON: Melissa Mackedon.  
12 Second.

13 CHAIR JOHNSON: So the reason why we are  
14 continuing this, we're taking this action, contemplating  
15 this action is because of the space constraint that we  
16 have here today and the ability for the full public to  
17 engage in this process. We wanted to acknowledge the  
18 fact that many families, students, parents wanted to be  
19 here to listen, and we certainly don't take it lightly  
20 that you've taken your time off from school and from work  
21 today, and we want to acknowledge that this was not  
22 ideal.

23 However, in the vein of ensuring that we can  
24 provide access and space and opportunity for everyone to  
25 engage, we are continuing this in between today and



1 January 27th when we resume. I would encourage staff and  
2 Connections Academy to see if a cure can be found, and  
3 then on the 27th, we will resume this hearing. And at  
4 that date, we will also have accommodations that will  
5 allow for as many as necessary to be a part of this  
6 process so that all families, students who want to take  
7 part in this certainly can take part in this.

8 Is there any further discussion before I call  
9 for votes? All right. All in favor of continuing this  
10 until January 27th, 2017?

11 THE BOARD: Aye.

12 CHAIR JOHNSON: All right. The motion  
13 carries.

14 MEMBER CONABOY: Mr. Chair?

15 CHAIR JOHNSON: So we still do have one  
16 agenda item.

17 MEMBER CONABOY: Mr. Chair?

18 MEMBER GUINASSO: Mr. Chairman?

19 CHAIR JOHNSON: Member Guinasso?

20 MEMBER GUINASSO: Yes. Now that we've taken  
21 care of that item of business and continued the public  
22 hearing, I'd like to move that we reconvene public  
23 comment.

24 CHAIR JOHNSON: We will.

25 MEMBER GUINASSO: Okay.

1 STATE OF NEVADA, )  
2 CARSON CITY. )

3  
4 I, NICOLE J. HANSEN, Official Court Reporter for the  
5 Nevada State Public Charter School Authority,  
6 do hereby certify:

7 That on the 16th day of December, 2016, I was  
8 present at said hearing for the purpose of reporting in  
9 verbatim stenotype notes the within-entitled public  
10 meeting;

11 That the foregoing transcript, consisting of pages 1  
12 through 61, inclusive, includes a full, true and  
13 correct transcription of my stenotype notes of said  
14 public meeting.

15 Dated at Carson City, Nevada, this 23rd day of  
16 December, 2016.

17  
18  
19  
20  
21 NICOLE J. HANSEN, NV CCR #446

# **EXHIBIT C**

# **EXHIBIT C**

**From:** Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
**Sent:** Monday, July 24, 2017 12:40 PM  
**To:** Granier, Laura  
**Cc:** Greg D. Ott; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven Werlein  
**Subject:** Re: Settlement Discussions

Hi Laura -

With regard to dates, I am told that we are just waiting on the venues to confirm the dates and times requested. I expect that this date will be confirmed very soon. Thereafter, I will provide an amended order after the hearing providing notice of the hearing dates and re-iterating the deadlines. I will also reach out to you, Greg and Robert on the best time to schedule the pre-hearing conference.

While I appreciate your perspective and I understand the arguments you are making, I don't want to have to decide between what are settlement discussions and what are discussions regarding a cure. It seems to me to be a distinction without a difference. Nevertheless, it does not matter what we label the discussions, the Authority Staff will not participate in conversations regarding settlement or conversations regarding cure without a confidentiality agreement in place. So, the only relevant question regarding continuing to have a conversation is whether you and your client will agree to a confidentiality agreement or not? I am not passing judgment either way. I understand both your perspective and the perspective of the Authority's Staff. I am content with whatever you all decide.

At this point, without the Authority being a part of the discussion and voluntarily agreeing on terms of your proposed collaboration, I will not comment on the "the school within a school option." That said, you can present the idea as a part of your proposed cure to the Board as a whole. If the Board agrees to such collaboration, the Board can direct staff accordingly.

In closing, I think you and your client have received ample feedback from me as an individual Board member, the Board as a whole and from the Authority' staff. I am really not sure there is anything useful I would have to offer you and your

clients at this point. Again, I think we have a fair process in place to hear and consider all of you and your client's proposal. I can assure you the Board will carefully consider everything you submit.

As as the dates for the hearing are confirmed, let's make sure you, Greg, Robert and I connect so that we can confirm all the deadlines and expectations leading up to the hearing.

Very truly yours -

Jason

Jason D. Guinasso, Esq.

Board Member, Nevada State Public Charter School Authority

P: (775) 527-4202

On Jul 20, 2017, at 7:07 AM, Granier, Laura <Laura.Granier@dgslaw.com> wrote:

Jason –

Thank you for the email. I do have a few questions and wanted to follow-up on the hearing schedule.

I believe we had circulated available dates by email several weeks ago but it is my understanding from discussions with Authority Staff and Mr. Ott that finding a location has been a challenge. Could we set up a brief call to discuss this and identify dates to get this on calendar as soon as possible and in an efficient manner?

I think there is some conflation of "settlement discussions" and the cure. With respect to a proposed cure, we discussed requesting jointly from NDE to work with us on the school within a school proposal and you indicated you would be willing to do that, I believe. It is important to NCA to understand if this option will work or, if not, what the problems are with it. I don't understand a need for any confidentiality agreement to have the school's authorizer work with the school on this option – or simply meet with the school and NDE to discuss this. Can we please proceed with that as we had discussed?

We also have been working on other potential options for a cure considering the feedback you have provided and would like to discuss that with you to understand if you have concerns with these options. As you know, this matter touches thousands of Nevada families across our state in a very significant way, so as we mentioned before, we ask that the process remain transparent. Families and the public should understand how the school might cure. If we can delineate between cure discussions and settlement discussions perhaps we can get somewhere on the confidentiality agreement staff requested.

I look forward to our continued discussions in hope that we can all work together toward a resolution that is in the best interest of Nevada and our youth.

Kind regards,

Laura

**LAURA K. GRANIER** ▪ Partner

P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard

Davis Graham & Stubbs LLP

50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501

---

**From:** Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]

**Sent:** Friday, July 14, 2017 5:07 PM

**To:** Granier, Laura

**Cc:** Greg D. Ott; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven Werlein

**Subject:** Re: Settlement Discussions

Laura -

I have just returned to the office and I am getting caught up with responding to emails. I think I need to clarify a few points.

First, I am not aware of any agreements being reached between the Authority and NCA. I know there were discussions, but I believe those discussions stalled due to a dispute over whether settlement discussions would be considered confidential. In this regard, I believe the Authority requested the parties execute a confidentiality agreement; however, you and your client did not want to execute a confidentiality agreement.

Second, as I stated previously, I think the SPCSA Board and the Authority Staff have given your client a lot of valuable feedback regarding elements of a cure that the Board could find acceptable. I am not sure what more I can add to the conversation at this point? I think it is unfortunate that NCA could not come to some agreement about confidentiality of the discussions between NCA and Authority Staff. This seemed to be a reasonable request and, to date, I am not sure why you or NCA would be reluctant to enter into confidential discussions.

Nevertheless, I am confident that we have set into motion a fair process for your client to submit a revised proposed cure to the SPCSA Board for review and consideration. Let's continue to proceed along the timeline we have established.

Speaking of timeline, I am not sure we have rescheduled the hearing yet? What is the status of rescheduling a hearing? We need to get this on calendar soon so that the deadlines that were agreed upon can be entered into everyone's calendars. My August calendar is beginning to fill up rapidly, so agreeing on dates and times sooner rather than later will be important for me as well as other Board members. Once that date is agreed upon, the other deadlines will be established in accordance with the Order After Hearing.

I look forward to working with you and the Authority in reaching a resolution to the issues presented to the SPCSA Board.

Have a good weekend.

Jason D. Guinasso, Esq.

Board Member, Nevada State Public Charter School Authority

P: (775) 527-4202

On Jul 10, 2017, at 1:05 PM, Granier, Laura <Laura.Granier@dgsllaw.com> wrote:

Jason,

I am back in the office and looking forward to hearing from you as to how we can proceed to make our joint request to NDE as discussed during our call and referenced below.

Please let me know what we can do to proceed.

Thank you,

Laura

**LAURA K. GRANIER** ▪ Partner

P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard

Davis Graham & Stubbs LLP

50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501

---

**From:** Granier, Laura

**Sent:** Thursday, June 15, 2017 8:22 AM

**To:** Jason Guinasso

**Cc:** Greg D. Ott; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven Werlein

**Subject:** RE: Settlement Discussions

Jason,

I apologize for the delayed response - I was in a hearing. On hearing dates, I am available for three days beginning August 9th or August 16th.

With respect to the cure, I understood from our last two discussions that the Authority was willing to go hand in hand with the school to NDE to discuss the "school within a school" proposal that has received support from legislators and, I am told, the Governor's office (per John Sande). I will be back in the country late on June 28th and ask that we work with my assistant, Jenny Sparks, to set up a time we can all go have this discussion as it appears it could address the Authority's concerns about the four year cohort graduation rate, while allowing the continued and important school choice for so many students including some of our most at-risk youth that NCA is very effectively serving.

With respect to further discussion of the cure, I am puzzled by your latest communication. Do I understand correctly that the dialogue is being cut off because of my concerns with forcing the school into a confidentiality agreement in order to discuss cure? In our last discussion, you mentioned the idea of a cap and we have been discussing that internally and would like to get your feedback on some ideas to pursue if the first option above - with NDE - does not work. Please let me know so that we can fully evaluate all possible options to find a mutually agreeable resolution that avoids eliminating school choice for thousands of our Nevada families and students.

As I previously mentioned, I am headed out of the country today (writing this from an airplane, though still in the states at this time). Accordingly, while I will have intermittent access to email and try to respond, please excuse any delay in my doing so.

Thank you again for your continued attention to this important matter.

Best,

Laura

---

**From:** Jason Guinasso [jdgnevadaspcsa@gmail.com]  
**Sent:** Sunday, June 11, 2017 11:00 PM  
**To:** Granier, Laura  
**Cc:** Greg D. Ott; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven Werlein  
**Subject:** Re: Settlement Discussions

Hi Laura -

At this point, I think the SPCSA Board and the Authority Staff have given your client a lot of feedback regarding elements of a cure that the Board could find acceptable. I am not sure what more I can add to the conversation at this point?

The good news is that we have set into motion a process for your client to submit a revised proposed cure to the SPCSA Board for review and consideration. Let's continue to proceed along the timeline we have established.

I am not sure we have rescheduled the hearing yet? It would be good if we got that onto everyone's calendar for late July or early August. Once that date is established, the other deadlines will be established in accordance with the Order After Hearing.



Jason D. Guinasso, Esq.

Board Member, Nevada State Public Charter School Authority

P: (775) 527-4202

On Jun 11, 2017, at 7:47 AM, Granier, Laura <Laura.Granier@dgsllaw.com> wrote:

Jason/Robert -

We continue to look for collaborative efforts and guidance/thoughts from the Authority to identify a cure the Authority Board may deem adequate. While we believe it would be productive to have Staff in these discussions as well, if it is their preference to not participate per their counsel's advice, we still would like to discuss with you if that is the appropriate route.

We are sensitive to timing here especially given my time out of the country. I am in a hearing tomorrow and Tuesday but could try to speak on Wednesday if that works with others' schedules, or upon my return on June 29th.

We look forward to hearing from you.

Regards,  
Laura

Laura K. Granier  
Partner  
775.473.4513  
775.403.2187  
775.750.9295  
Davis Graham & Stubbs LLP  
50 W. Liberty Street, Suite 950, Reno, NV 89501  
<http://www.dgsllaw.com>

-----Original Message-----

From: Greg D. Ott [mailto:GOtt@ag.nv.gov]  
Sent: Thursday, June 08, 2017 11:43 AM  
To: Granier, Laura  
Cc: Jason Guinasso; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven Werlein  
Subject: RE: Settlement Discussions

I haven't reviewed the transcript, but I don't believe there was any motion to amend the notice to extend the cure period.

There was never any discussion of a judicial waiver. I don't recall if you included any allegations beyond the temporary limitation to the scope of judicial review discussed in conjunction with the lowered graduation rate benchmarks in either of your two current and ongoing lawsuits against the Authority. However, regardless of whether there are other allegations or not, the point is that any solutions offered by staff that are not subject to explicit confidentiality provisions may be used in either of the current cases or future litigation (just as discussions in the past have been). The school does not see any of these discussions as confidential. As staff has no obligation to offer proposals to help the school fix its graduation rate problems, I cannot recommend staff expose itself to potential future lawsuits by continuing in discussions without assurances that the school agrees that these discussions are in fact confidential settlement discussions.

-----Original Message-----

From: Granier, Laura [mailto:Laura.Granier@dgslaw.com]  
Sent: Thursday, June 8, 2017 11:22 AM  
To: Greg D. Ott <GOtt@ag.nv.gov>  
Cc: Jason Guinasso <jdgnevadaspcsa@gmail.com>; Robert A. Whitney <RWhitney@ag.nv.gov>; Sparks, Jenny <Jenny.Sparks@dgslaw.com>; Patrick Gavin <pgavin@spcsa.nv.gov>; Steven Werlein <swerlein@nca.connectionsacademy.org>  
Subject: Re: Settlement Discussions

My understanding is we have been invited to amend our proposed cure for the board's consideration in the administrative hearing and that these discussions are to facilitate the school's ability to propose amendments the board might consider effective.

Greg- if you could be more specific it would help as my recollection is the discussion cited in any litigation was with respect to the judicial waiver clause which has been very publicly discussed at all times. If there were other issues it would help us understand the need for this if you identify them.

Sent from my iPhone

On Jun 8, 2017, at 11:09 AM, Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov>> wrote:

We are outside the cure period designated in the notice, so nothing proposed at this point has any relevance to the administrative hearing at all. The cures that are part of the hearing have been submitted. The draft confidentiality agreement that I sent over does not cover any conversations while the cure period is open, so their ability to present their case is unaffected by the draft agreement.

Prior efforts by staff to collaborate with the school have been cited by the school in a complaint for damages for a breach of an implied covenant of good faith and fair dealing so the confidentiality agreement is necessary to for staff to be able to have a dialog with the school while also being protected against the active legal claims.

Without an agreement regarding the confidentiality of these settlement discussion, I would recommend to staff that future communications with the school be in writing so I don't see the need for a call tomorrow, or if there is a call, I recommend staff not participate.

From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Thursday, June 8, 2017 10:59 AM  
To: Granier, Laura <Laura.Granier@dgslaw.com<mailto:Laura.Granier@dgslaw.com>>  
Cc: Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov>>; Robert A. Whitney <RWhitney@ag.nv.gov<mailto:RWhitney@ag.nv.gov>>; Sparks, Jenny <Jenny.Sparks@dgslaw.com<mailto:Jenny.Sparks@dgslaw.com>>; Patrick Gavin <pgavin@spcsa.nv.gov<mailto:pgavin@spcsa.nv.gov>>; Steven Werlein <swerlein@nca.connectionsacademy.org<mailto:swerlein@nca.connectionsacademy.org>>  
Subject: Re: Settlement Discussions

Greg- can you please respond to Laura's questions? You and your client have asked for the confidentiality agreement and I would like to respect that request, while at the same time building some trust between the Authority and NCA and working to keep the lines of communication open.

Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C.      jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<http://www.rkglawyers.com/>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On Jun 8, 2017, at 10:19 AM, Granier, Laura <Laura.Granier@dgslaw.com<  
mailto:Laura.Granier@dgslaw.com>> wrote:  
Thank you again for your time on Saturday. We are working through  
possibilities in light of the discussion and think a follow-up call would be useful.  
Do you have any time tomorrow afternoon for such a call?

With respect to a confidentiality agreement, we want to consider all possibilities  
to facilitate collaboration and reaching a cure that is acceptable to the Authority  
Board. It occurs to me that part of our contested case is whether the school  
has corrected the deficiency and/or proposed an acceptable cure and that any  
confidentiality agreement should not touch on those discussions as it could  
hamper presentation of the case and also close off what I think should be a  
transparent process given the gravity of the decision and the more than 3,200  
students and families that will be affected by it. Having said that, I am very  
open to understanding what I might be missing here and, as I have said before,  
it is the school's desire to collaborate with you.

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<http://www.dgslaw.com/images/vCards/lgra.vcf>  
Davis Graham & Stubbs LLP <http://www.dgslaw.com>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Sunday, June 04, 2017 8:58 AM  
To: Granier, Laura  
Cc: Greg D. Ott; Robert A. Whitney; Sparks, Jenny; Patrick Gavin; Steven  
Werlein  
Subject: Re: Settlement Discussions

It seemed to me that the discussion we had yesterday did not touch upon any  
topic or address any issue that were confidential and/or prejudicial. I think it is  
good to have open conversations that focus on interests and objectives so that  
we can work toward a set of concrete solutions to the problem we face with a  
very low graduation rate at NCA.

I don't think we covered any real new ground yesterday. I think the benefit of  
yesterday was (1) it helped clarify important elements of a possible cure, and  
(2) identified opportunities to collaborate on potential public policy, rule and law  
changes over the next few years.

That said, I perceive that the trust between NCA and the Authority is very low. Perhaps coming to some sort of mutually agreeable confidentiality agreement would help begin to build trust? If NCA and the Authority can't begin to build trust in this way, I will recommend that further communication between the parties be in writing.

Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C.      jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<http://www.rkglawyers.com/>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On Jun 4, 2017, at 6:51 AM, Granier, Laura <Laura.Granier@dgsllaw.com<mailto:Laura.Granier@dgsllaw.com>> wrote:  
I am just catching up on emails as I was out on Friday. I'm not sure what else there is to discuss but also don't want to foreclose an opportunity if there is some other avenue for resolution for the parties. If there are things Patrick/Jason believe could lead to a resolution that you felt could not be shared yesterday because we did not have a confidentiality agreement in place, please advise and we can work on this issue.

Thank you,  
Laura

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<http://www.dgsllaw.com/images/vCards/lgra.vcf>  
Davis Graham & Stubbs LLP <http://www.dgsllaw.com>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Greg D. Ott [mailto:GOtt@ag.nv.gov]  
Sent: Friday, June 02, 2017 11:46 AM  
To: 'Jason Guinasso'; Granier, Laura  
Cc: Robert A. Whitney; Sparks, Jenny; 'Patrick Gavin'  
Subject: RE: Settlement Discussions

I can do 3 PM. Patrick's availability is dependent upon legislative activities. So we can plan on a 3 PM, but if the legislature is hearing a bill and his input is needed, he would have to drop for a time.

Also it's important to remember that if we cannot agree on a confidentiality agreement today, my recommendation will be that our participation is offering feedback on proposed cures and not suggesting anything. I sent an email regarding the agreement on Wednesday and a redline on Thursday. If NCA needs more time to respond, it may be wise to consider pushing a call to next

week if they want the SPCSA to do more than offer feedback on proposed cures.

Thanks, Greg

From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Thursday, June 1, 2017 5:46 PM  
To: Granier, Laura <Laura.Granier@dgsllaw.com<mailto:Laura.Granier@dgsllaw.com>>  
Cc: Robert A. Whitney <RWhitney@ag.nv.gov<mailto:RWhitney@ag.nv.gov>>; Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov>>; Sparks, Jenny <Jenny.Sparks@dgsllaw.com<mailto:Jenny.Sparks@dgsllaw.com>>  
Subject: Re: Settlement Discussions

Okay- let's make sure Greg and Patrick are available as well.

What about the rest of your team? Does Saturday work for them as well?

Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C. jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<http://www.rkglawyers.com/>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On Jun 1, 2017, at 5:44 PM, Granier, Laura <Laura.Granier@dgsllaw.com<mailto:Laura.Granier@dgsllaw.com>> wrote:  
Hello – thank you for checking in. I had the impression from emails we were looking at Saturday after 3pm. I will be available anytime Saturday from 3pm on and believe that Robert indicated 3pm is when he frees up on Saturday.

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<http://www.dgsllaw.com/images/vCards/lgra.vcf>  
Davis Graham & Stubbs LLP <http://www.dgsllaw.com>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Thursday, June 01, 2017 5:37 PM  
To: Granier, Laura  
Cc: Robert A. Whitney; Greg D. Ott; Sparks, Jenny  
Subject: Re: Settlement Discussions

Hi all-

Just wanted to check in ...

I regret that we could not meet today. I don't think Friday (tomorrow) works for Laura? If this changes for Laura, then I am available 11 am to 2:30 and then

from 4pm to 7 pm.

Perhaps Saturday? I am available all day Saturday.

Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C.      jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<http://www.rkglawyers.com/>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On Jun 1, 2017, at 12:27 PM, Granier, Laura <Laura.Granier@dgsllaw.com<  
mailto:Laura.Granier@dgsllaw.com>> wrote:  
Absolutely. We will circulate one.

Sent from my iPhone

On Jun 1, 2017, at 11:38 AM, Robert A. Whitney <RWhitney@ag.nv.gov<mailto:  
RWhitney@ag.nv.gov>> wrote:

Hi,

If we do happen to move forward on Saturday is there a call in number  
which we can use? Thank you.

From: Greg D. Ott  
Sent: Thursday, June 01, 2017 9:48 AM  
To: 'Granier, Laura'; Robert A. Whitney; 'Jason Guinasso'  
Cc: Sparks, Jenny  
Subject: RE: Settlement Discussions

Patrick needs to be present for a legislative work session that should start  
around 3. We could do a call then, but he might have to leave when he's  
needed by the legislature.

Its too soon for him to know what his Saturday schedule will look like as the  
legislature will likely work through the weekend and we won't know when they  
are working on what until closer to Saturday.

From: Granier, Laura [mailto:Laura.Granier@dgsllaw.com]  
Sent: Thursday, June 1, 2017 6:14 AM  
To: Robert A. Whitney <RWhitney@ag.nv.gov<mailto:RWhitney@ag.nv.gov>>  
<mailto:RWhitney@ag.nv.gov>>; 'Jason Guinasso'  
<jdgnevadaspcsa@gmail.com<mailto:jdgnevadaspcsa@gmail.com>

<mailto:jdgnevadaspcsa@gmail.com>>  
Cc: Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov>  
<mailto:GOtt@ag.nv.gov>>; Sparks, Jenny <Jenny.Sparks@dgsllaw.com<  
mailto:Jenny.Sparks@dgsllaw.com><mailto:Jenny.Sparks@dgsllaw.com>>  
Subject: RE: Settlement Discussions

Good morning – after 3pm on Saturday works for me.

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<<http://www.dgsllaw.com/images/vCards/lgra.vcf>>  
Davis Graham & Stubbs LLP <<http://www.dgsllaw.com>>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Robert A. Whitney [mailto:RWhitney@ag.nv.gov]  
Sent: Thursday, June 01, 2017 6:13 AM  
To: 'Jason Guinasso'; Granier, Laura  
Cc: Greg D. Ott; Sparks, Jenny  
Subject: RE: Settlement Discussions

Hi,

This Saturday is not a good day for me to meet until the afternoon, I am most likely going to be out of cell phone range until approximately 3 pm. Thank you.

From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Wednesday, May 31, 2017 5:29 PM  
To: Granier, Laura  
Cc: Greg D. Ott; Robert A. Whitney; Sparks, Jenny  
Subject: Re: Settlement Discussions

I could meet Saturday anytime, but not Sunday.  
Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C. jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com><mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<<http://www.rkglawyers.com>><<http://www.rkglawyers.com>>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On May 31, 2017, at 5:10 PM, Granier, Laura <Laura.Granier@dgsllaw.com<  
mailto:Laura.Granier@dgsllaw.com><mailto:Laura.Granier@dgsllaw.com>>  
wrote:

If 10 a.m. tomorrow does not work I can also be available anytime from about 3pm on in Carson or by phone (or, 3:30 back in Reno). Unfortunately, I'm not available Friday but could do anytime Saturday after 2pm or Sunday (if folks are working this weekend and have a desire to meet).

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<<http://www.dgsllaw.com/images/vCards/lgra.vcf>>

Davis Graham & Stubbs LLP <<http://www.dgslaw.com>>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Jason Guinasso [mailto:jdgnevadaspcsa@gmail.com]  
Sent: Wednesday, May 31, 2017 5:07 PM  
To: Greg D. Ott  
Cc: Granier, Laura; Robert A. Whitney; Sparks, Jenny  
Subject: Re: Settlement Discussions

I can be available most of the day tomorrow. My afternoon meetings have been cancelled.

If tomorrow does not work, I am available Friday most of the day except between 2 and 4.  
Jason D. Guinasso, Esq.  
Shareholder  
Reese Kintz Guinasso, L.L.C.      jguinasso@rkglawyers.  
com<mailto:jguinasso@rkglawyers.com><mailto:jguinasso@rkglawyers.com>  
www.rkglawyers.com<<http://www.rkglawyers.com>><<http://www.rkglawyers.com>>/>

Sent from Jason Guinasso's iPhone

936 Southwood Blvd., Suite 301<x-apple-data-detectors://2/0> Incline Village,  
Nevada 89451<x-apple-data-detectors://2/0>  
p. 775.832.6800<tel:775.832.6800>

190 W. Huffaker Lane, Suite 402<x-apple-data-detectors://3/0> Reno, Nevada  
89511<x-apple-data-detectors://3/0>  
p. 775.853.8746<tel:775.853.8746>

2300 W. Sahara Ave., Suite 800<x-apple-data-detectors://4/0> Las Vegas, NV  
89102<x-apple-data-detectors://4/0>  
p. 702-856-4333<tel:702-856-4333>

On May 31, 2017, at 4:15 PM, Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov><mailto:GOtt@ag.nv.gov>> wrote:  
I will check on Patrick's availability at 10.  
Isn't a possible cure also a settlement?

From: Granier, Laura [mailto:Laura.Granier@dgslaw.com]  
Sent: Wednesday, May 31, 2017 4:12 PM  
To: Robert A. Whitney <RWhitney@ag.nv.gov<mailto:RWhitney@ag.nv.gov><mailto:RWhitney@ag.nv.gov>>; Greg D. Ott <GOtt@ag.nv.gov<mailto:GOtt@ag.nv.gov><mailto:GOtt@ag.nv.gov>>  
Cc: 'Jason Guinasso' <jdgnevadaspcsa@gmail.com<mailto:jdgnevadaspcsa@gmail.com><mailto:jdgnevadaspcsa@gmail.com>>; Sparks, Jenny <Jenny.Sparks@dgslaw.com<mailto:Jenny.Sparks@dgslaw.com>><mailto:Jenny.Sparks@dgslaw.com>>  
Subject: RE: Settlement Discussions

Thanks – could we schedule a call for 10 a.m.? I understood we are initially only speaking about a possible cure. If that is incorrect, please let me know.

Laura K. Granier ▪ Partner  
P: 775.473.4513 ▪ F: 775.403.2187 ▪ C: 775.750.9295 ▪ vcard  
<<http://www.dgslaw.com/images/vCards/lgra.vcf>>  
Davis Graham & Stubbs LLP <<http://www.dgslaw.com>>  
50 W. Liberty Street, Suite 950 ▪ Reno, NV 89501  
From: Robert A. Whitney [mailto:RWhitney@ag.nv.gov]  
Sent: Wednesday, May 31, 2017 3:38 PM  
To: Greg D. Ott; Granier, Laura  
Cc: 'Jason Guinasso'; Sparks, Jenny  
Subject: RE: Settlement Discussions



Hi,

I am open tomorrow morning until about 10:45 am for a phone conference regarding below and to discuss cure. Thanks.

From: Greg D. Ott  
Sent: Wednesday, May 31, 2017 2:21 PM  
To: 'Granier, Laura'  
Cc: Robert A. Whitney; 'Jason Guinasso'  
Subject: Settlement Discussions

Laura,

Following up on last week's conversation to have further discussions regarding settlement and the confidentiality agreement that you sent over before the hearing (attached). I agree that the agreement can't change Public records law, that language was simply an agreement that we would both be treating the documents as privileged to the maximum extent possible under the law. I'd prefer that stay but I'm fine clarifying that our intent is not to modify the law. Also I think we need reference to both the September and February notices. Also considering the suggestion about an agreement to jointly propose a legislative change regarding enrollment during the next legislative session, I was wondering if you think it is appropriate for John to participate in discussion. I have no objection to his participation, but if so we may need to add Connections Inc. as a signatory.

Copying Jason so that we can discuss dates/times for a follow up phone call. Also, I've attached the transcript from the last hour of the Saturday hearing because the comments from various Members could be helpful in the consideration of possible elements to be included in any settlement.

Thanks, Greg

Gregory D. Ott  
Senior Deputy Attorney General  
Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701  
Phone: (775) 684-1229  
Fax: (775) 684-1108  
gott@ag.nv.gov<mailto:gott@ag.nv.gov><mailto:gott@ag.nv.gov>

This e-mail and any attachments are confidential and protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the email or any attachments is prohibited. If you have received this e-mail in error, please notify the sender immediately by replying to the sender and deleting this copy and the reply from your system. Thank you.

---

This email message (including any attachments), delivered by Davis Graham & Stubbs LLP, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

# **EXHIBIT D**

# **EXHIBIT D**

## Jenny E. Sparks

---

**From:** Sparks, Jenny  
**Sent:** Tuesday, August 15, 2017 2:58 PM  
**To:** 'Danny Peltier'  
**Cc:** 'pgavin@spcsa.nv.gov'; Greg D. Ott; Granier, Laura; Nannini, Erica  
**Subject:** Public Records Request 8-15-2017 #1  
**Attachments:** Public Records Request to SPCSA No 1 - 08152017.pdf

Attached please find a letter of today's date from Laura K. Granier, Esq. and Erica K. Nannini, Esq.

Should you have any questions, please advise.

~ Jenny

**JENNY SPARKS** • Legal Administrative Assistant to Laura K. Granier, Esq. and Erica K. Nannini, Esq.

P: 775.473.4515 • F: 775.403.2187 • C: 808.728.5601 • [vcard](#)

Davis Graham & Stubbs LLP  
50 W. Liberty Street, Suite 950 • Reno, NV 89501

DAVIS  
GRAHAM &  
STUBBS

Laura K. Granier  
775 473 4513  
laura.granier@dgsllaw.com

August 15, 2017

Via Electronic Mail

Danny Peltier  
State Public Charter School Authority  
1749 N. Stewart Street, Suite 40  
Carson City, Nevada 89706

**Re: Public Records Request**

Dear Mr. Peltier,

Under NRS 239.0107, on behalf of Nevada Connections Academy ("NCA"), we hereby request electronic copies of the following public records in the legal custody and control of your office. We intend the scope of each separate request to include, but in no way be limited to, communication by or between Authority staff, Authority personnel, Authority board members, and the Executive Director of the Authority, whether stored electronically, on private mobile devices, or otherwise.

All documentation, including communications, correspondence, notes, or information of any kind, regarding or reflecting any litigation hold implemented related to Nevada Connections Academy to preserve evidence.

All documentation, including communications, correspondence, notes, or information of any kind, regarding or reflecting any internal policies, guidelines, or requirements relative to documentation retention and preservation.

All documentation, including communications, correspondence, notes, or information of any kind, regarding or reflecting any internal policies, guidelines, or requirements relative to Authority staff, Authority personnel, Authority board members, and the Executive Director of the Authority preserving and retaining all emails and text messages and any other communications or documentation relative to any work or issues relating to the State Public Charter School Authority.

We note that, under Nevada law, text messages of public or state officials contained on private mobile devices are considered public record. *Compare Reno Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010) ("The Nevada Public Records Act considers all records to be public documents available for inspection unless otherwise explicitly made confidential by statute . . ."), with NRS 239 generally (containing no provision that provides for confidentiality of public or state officials' text messages). Courts in other jurisdictions have confirmed that the same is true under the Public Records Act. *See Nissen v. Pierce County*, 183 Wash. 2d 863, 357 P.3d 45 (2015) (concluding that content of work-related text messages sent and received by county prosecutor on his private cellular telephone in his official capacity were "public records" under Public Records Act).

Therefore, a state official's destruction of text messages stored on a personal mobile device without taking efforts to preserve an electronic copy that is subject to public records requests is a violation of NRS 239.051. See NRS 239.051(1) ("Unless destruction of a particular record without reproduction is authorized by a schedule adopted pursuant to NRS 239.080 or 239.125, any custodian of public records in this State may destroy documents, instruments, papers, books and any other records or writings in the custodian's custody only if an image of those records or writings has been placed on microfilm or has been saved in an electronic recordkeeping system which permits the retrieval of the information contained in the records or writings and the reproduction of the records or writings"); see also *Small v. Univ. Med. Ctr. of S. Nevada*, 2014 WL 4079507, at \*36 (D. Nev. Aug. 18, 2014) (court issues case dispositive sanctions against a party for destruction or failure to preserve text messages and messages stored on personal mobile devices in response to a subpoena).

Information stored on computer hard drives, mobile devices, or copied onto microfilm is as much a public record as information contained in filing cabinets. Thus, we specifically request that you provide copies of any of the foregoing, regardless of the method by which such information is stored or maintained.

Please provide the requested records by no later than August 22, 2017 pursuant to NRS 239.0107. I understand there is a charge for copies of public records. I understand I will receive a written estimate for production of the records indicated above if the estimated cost is expected to be over \$200.00, which I will be required to pay in full prior to inspection or reproduction.

Please note that as of August 17, 2017, we will no longer be with Davis Graham & Stubbs LLP. Our new contact information is:

Holland & Hart LLP  
5441 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
775-327-3000  
[lkgranier@hollandhart.com](mailto:lkgranier@hollandhart.com)  
[eknannini@hollandhart.com](mailto:eknannini@hollandhart.com)

Thank you in advance for your cooperation in this matter. If you have any questions or require additional information, please advise.

Sincerely,



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

ENAN:js

cc: Greg Ott, Nevada Attorney General's Office  
Patrick Gavin  
Tanya Osborne