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BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY
STATE OF NEVADA

In Re:

Nevada Connections Academy Notice of
Closure or Possible Board Reconstitution

Hearing Date: October 23, 2017
Hearing Time: 8:30 AM

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NEVADA CONNECTIONS ACADEMY'S PREHEARING BRIEF

10 Nevada Connections Academy ("NCA"), by and through their undersigned counsel,
11 Holland & Hart, LLP, hereby files its prehearing brief for the October 23, 2017 hearing.

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I. Introduction

14 NCA is successfully serving a large population of students who enroll with NCA credit
15 deficient – 49% of the 2016 graduating cohort came to NCA at least a semester or more behind.
16 These students will testify that if it were not for NCA they would not be in school or have
17 graduated. The high transiency rate of NCA's students cannot be ignored as Staff recommends
18 but should be thoughtfully analyzed as part of these proceedings. *"Reaching out to and*
19 *embracing these kids is critical. It is tough; it is often unsuccessful, but it sometimes works . . .*
20 *and the measuring stick we use to assess these schools should consider the larger circumstances*
21 *of their students and missions."* Senator Becky Harris, 2015 Senate Committee on Education
22 Hearing, **Hearing Ex. G**, at R0205. At the heart of this proceeding is whether the State Public
23 Charter School Authority Board ("SPCSA" or "Authority") will penalize NCA and deny Nevada
24 families their school of choice because NCA serves a large population of vulnerable youth who
25 likely would drop out entirely but for NCA.

26 Following Phase I proceedings, the SPCSA concluded that NCA's graduation rate falls
27 below 60 percent, and that NCA failed to adequately cure this single deficiency. Director Gavin
28 himself testified this was the only issue of concern with NCA – and it was all that mattered for

1 this proceeding. **Hearing Ex. Y**, at R0878 (Gavin states that “other than on this matter of grad
2 rate, the school is currently – was in good standing as of the worst recent full framework”). In
3 Phase II of these proceedings, NCA will demonstrate that the Authority’s only identified concern
4 with the school for these proceedings—NCA’s graduation rate as calculated by the NDE for
5 school years 2015 and 2016—is not an accurate measure of NCA’s academic performance.
6 NCA will present evidence regarding its ability to successfully reengage students who have
7 enrolled at NCA as a final option before dropping out of high school altogether; assist credit-
8 deficient students with credit accrual, giving them an opportunity to graduate on-cohort that had
9 previously seemed unattainable for many students; provide the individualized and flexible
10 education necessary to accommodate the vastly different student schedules and learning styles of
11 an at-risk population where other Nevada public schools are unable to do so; to educate all its
12 students at a level that exceeds the Nevada statewide testing standards based on third-party
13 validated data of measurable performance indicators (including what Member Snow described as
14 “impressive” test scores); and develop, implement, and sustain efforts that have shown
15 demonstrable improvement in its overall graduation rate.

18 Pursuant to the discretionary standard for school closure in NRS 388A.330 and the
19 legislative history behind that standard demanding that a high stakes decision not be based on
20 graduation rate alone, the Authority must consider the evidence demonstrating that NCA is
21 performing well in all measurable indicia of academic performance during the 2015 and 2016
22 school years. NCA respectfully requests that the Board also consider other evidence regarding
23 the nature of NCA’s student population as the legislature intended. NCA will present evidence
24 to demonstrate that other public schools in Nevada are actively pushing their most credit-
25 deficient students away, refusing to enroll them, or moving them closer to graduation despite a
26 students’ inability to pass their classes. NCA also will present evidence that during the same
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1 time periods at issue here when NCA's population of credit deficient students was increasing, the
2 Authority Staff had "limited" another charter school's enrollment of 12th graders – resulting in
3 those credit deficient students enrolling instead in NCA. **Hearing Ex. L.** Because of this (in
4 part), high numbers of credit-deficient students have enrolled in NCA toward the end of their
5 junior or senior years and behind in credits-- severely impacting NCA's graduation rate, such
6 that NCA's 2016 graduation rate but for these students would be 87 percent, in line with SPCSA
7 Executive Director Patrick Gavin's statement that "the most important measure of school
8 performance, is how [the school is] actually impacting the students it gets." May Transcript,
9 Vol. III, at 217. In so arguing, NCA is not, as Chair Guinasso admonished NCA during Phase I,
10 demonstrating arrogance, suggesting that these students do not matter, or blaming these students
11 for their predicament. To the contrary—NCA accepts all of these students with no reservations
12 where other schools do not, prepared with tools that give an at-risk and transient student
13 population the best chance of graduating—if not on-cohort, then as soon as possible given how
14 they came to NCA (sometimes already two years behind or with few credits at all). So while
15 NCA accepts accountability and hereby submits an additional cure proposal to demonstrate the
16 same, NCA simply asks that the Authority not penalize the school for NCA's commitment to
17 ensure that no students slip through the cracks. To close a K-12 school based on a four-year
18 adjusted cohort graduation rate in the face of evidence demonstrating that the school is
19 performing well and filling a void in Nevada education would be arbitrary, capricious, and in
20 violation of Nevada law.

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24 The evidence will show that no action should be taken to reconstitute the NCA board or
25 to close the school based on this single uninformed data point. Should the Authority conclude
26 otherwise, NCA asks that the Authority exercise its ample discretion under NRS 388A.330 to
27 employ a less drastic alternative, such as issuing a directive with compliance items NCA must
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1 meet in its continuing effort to better serve Nevada students, adopting a Student Performance
2 Compact, providing for a charter amendment to include an enrollment cap on the high school of
3 1,500 students (down from its current enrollment of 1,712 students – but accommodating
4 returning students) and that the high school will not grow beyond 1,300 students for the 2019-20
5 school year (still accommodating returning students) and any other measures included in NCA’s
6 proposed amended cure, and possibly future high stakes reviews (as proposed by Staff for other
7 virtual schools and in accordance with the Authority’s performance framework).
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9 **II. Evidentiary Standard**

10 Staff must demonstrate by a preponderance of the evidence that its recommendations
11 should be followed. NRS 233B.121(9); 233B.125. This requires that Staff present “**reliable,**
12 **probative, and substantial evidence** of such **sufficient quality and quantity** that a reasonable”
13 fact-finder could conclude that the existence of the facts supporting the claim are more probable
14 than their nonexistence. *Nassiri v. Chiropractic Physicians’ Bd.*, 140 Nev. Adv. Op. 27, 327
15 P.3d 487, 491 (2014). Staff failed to prove through “reliable, probative and substantial
16 evidence” that NCA has not cured the single deficiency staff has identified or that as a result
17 NCA should be closed or reconstituted. A reviewing court will conclude that an administrative
18 agency abused its discretion if it renders a decision that is arbitrary and capricious, meaning that
19 its decision is not based upon substantial evidence. *United Exposition Serv. Co. v. State Indus.*
20 *Ins. Sys.*, 109 Nev. 421, 424, 851 P.2d 423, 424 (1993). “Substantial evidence is that which a
21 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 424-25.
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24 **III. Argument**

25 **I. Closure or reconstitution would be arbitrary, capricious & violate Nevada law**

26 **a. The Authority must consider the students served and school performance for** 27 **the years at issue – 2015 and 2016**

28 A high school’s graduation rate is merely a trigger for the Authority to consider whether

1 closure, reconstitution, or other action is appropriate under NRS 388A.330. Staff conceded in
2 Phase I, under oath, that the NDE-calculated graduation rate¹ is its only concern with NCA's
3 performance and the sole basis for this proceeding, but argues this single data point means NCA
4 is not adequately serving its students. NCA presented overwhelming evidence the school is
5 serving its students well—in many subjects outperforming other Nevada schools.

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7 NRS 388A provides that the Authority "may" consider closing a high school if its
8 graduation rate² for the previous year is below 60%. This provision was revised from an earlier
9 draft of the bill (SB 509) that would have mandated closure of a high school (using the term
10 "shall") if the preceding year's graduation rate was less than 60%. First Draft of SB 509 (March
11 23, 2015), **Hearing Ex. F**. Rather than mandate closure, the Legislature afforded the Authority
12 discretion to consider the possibility of closure, board reconstitution, or other action, if
13 compelling and substantial evidence supported such a decision. During a 2015 Senate
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16 ¹ The Authority has elected to utilize the four-year cohort federal calculation of graduation rate. NRS
17 388A.330 does not define graduation rate, the federal definition is not mandatory, the federal calculation
18 does not exclude certain students in violation of Nevada law—including displaced students, students who
19 have received a GED or moved onto adult education, and students who have been with a school for less
20 than 50% of a year. *See, e.g.*, NRS 385A.260, NAC 389.699(3). However, the Authority's decision to
21 utilize the federal calculation *in no way forecloses* consideration of the impact on NCA's federally-
22 calculated graduation rate of students for whom the school does not have an adequate opportunity to
23 serve: when these students arrive, in what credit status they arrive, how long they remain with the
24 school—all of this is key evidence that the Authority must consider in exercising its discretion regarding
25 potential closure, because it is the only way the Authority may familiarize itself with the information
26 behind a number that is not designed to measure student transience. As Expert Matt Wicks explained, the
27 federal four-year cohort graduation rate was intended "to create a standard way across states to measure
28 graduation rate," designed with students in mind who "were relatively stable within the four-year period."
Vol. IV, at 143. However, as the Authority is aware, "relative stability" is not an accurate description for
many at-risk students who enroll at NCA, and a one-size-fits-all number to measure schools must be
supplemented with an understanding of the humans behind that number, so as not to render it a
meaningless statistic. *See Hearing Supp. Ex. D*, Declaration of Gina Hames, at 2-3 (explaining that, as
director of NCA's Grad Point Recovery Program, she sees students who face mental illness, severe and
debilitating physical illness, become parents during high school, homelessness, must maintain full-time
jobs, and more—all to the detriment of the students' abilities to accumulate credits at the typical rates).

² Chair Guinasso and other board members asserted they seek to treat all schools the same and will use
the same measure for "graduation rate" for purposes of NRS 388A.330 – which constitutes a rule of
general applicability and requires compliance with the rulemaking requirements under NRS 233B which
have not been satisfied here. Similarly, the Authority began rulemaking proceedings to establish process
and procedures for closure hearings but never completed that process and, as a result, has adopted ad hoc
rules that allow Staff to treat schools differently as will be demonstrated by the evidence.

1 Committee on Education meeting, legislators expressed concerns of unfairly penalizing schools
2 that serve at-risk students. Senator Harris stated: “The NDE and others are aware of the plight of
3 schools serving at-risk children”—many of which, she stated, do not qualify for the limited
4 definition of an alternative framework but who provide “their services to students who have
5 washed out of the local school district.” See **Hearing Ex. G** at R0204-R0205 (Excerpts from
6 4/3/2015 Minutes of Senate Education Committee Meeting). Senator Harris continued:
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8 ***Reaching out to and embracing these kids is critical. It is tough; it is often***
9 ***unsuccessful, but it sometimes works.*** . . . The problem for these schools is that
10 the Nevada School Performance Framework and the charter school automatic-
11 closure provision do not recognize the circumstances of these students adequately.
12 . . if that high school is able to get a third of its students through to graduation,
13 even if it takes an extra year or two, should we close that school, or should we
14 celebrate its good work? At the very least, the work should be given a further
15 look, ***and the measuring stick we use to assess these schools should consider the***
16 ***larger circumstances of their students and missions.***

17 *Id.* at R0205 (emphases added).

18 In response to those concerns also raised by NCA and other schools, Superintendent of
19 Public Instruction Dr. Steve Canavero indicated “the NDE can create, through regulation if
20 necessary, a flexible graduation rate requirement.” **Hearing Ex. G**, at R0206. Director Gavin
21 responded to legislators' concerns about penalizing schools for serving Nevada's at-risk youth
22 with assurances that the Authority would consider all evidence necessary to evaluate the four-
23 year cohort graduation rate—if the Legislature allowed that data point to be used as a trigger for
24 possible closure. See **Hearing Ex. B-8**, Excerpts from 5/27/2015 Minutes of Assembly
25 Education Committee Meeting (“[W]e want to make sure that we are making thoughtful and
26 judicious decisions. To that end, we have also endeavored to make sure that anything above that
27 “three strikes and you are out” level is discretionary on the part of the Authority or sponsor board
28 **so that we can take into account those kinds of nuances.** . . . [I]n cases where a school has a
27 or a 37 percent graduation rate . . . we need to ensure that **we are looking very carefully at**

1 **why that is and if there is some kind of compelling explanation, certainly taking that into**
2 **account . . .”).** It is that “compelling explanation” we now ask you take into account, as Director
3 Gavin assured the Nevada legislature you would.

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5 Yet, contrary to these assurances, now that the Authority is faced with this high stakes
6 decision, Director Gavin testified to this Board during Phase I that “there is no information that
7 is relevant to these proceedings” other than the four-year adjusted cohort graduation rate. May
8 Transcript, Vol. III, at 174. Though never mentioned to the Legislature, Director Gavin claimed
9 during Phase I that what he meant by “compelling evidence” was to be limited to natural
10 disasters, consideration of the fifth year cohort rate, and schools that qualify for the alternative
11 performance framework – though he has not sought to promulgate regulations in compliance
12 with NRS 233B to create such a rule restricting what will be considered as such “compelling
13 evidence” in these proceedings. This position is completely inapposite to **Director Gavin’s own**
14 **admission that qualitative factors influencing the graduation rate would be relevant to his**
15 **decision as to whether to recommend closure** based on a school’s graduation rate falling below
16 60 percent (Vol. III, at 231-33; 239-240), his testimony that “the CSPF mandates
17 “comprehensive information for data-driven and merit based” decisions on charter renewal and
18 revocation (May Transcript Vol. III, at 221), and “the most important measure of school
19 performance, is how [the school is] actually impacting the students it gets” (May Transcript Vol.
20 III, at 217). Application of such a standard would not only conflict with common sense, the
21 statute, and the Authority Staff’s promise to Nevada legislators, but also would constitute ad hoc
22 rulemaking in violation of Nevada law. Not only has Director Gavin failed to consider the
23 substantial information NCA presented (which was validated by an independent third party as
24 Director Gavin requested), but his testimony reveals that the Authority has failed to analyze all
25 data results of NCA’s students on statewide exams during the 2015 and 2016 school years, in
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1 violation of NRS 388A.229³ and the CSPF. *See* Vol. III, at 173-174 (stating that the *only* data he
2 considered was the four-year adjusted cohort graduation rate).

3 Director Gavin's mixed messages have left NCA with no ability to understand what the
4 Authority wants in terms of a cure – until hearing for the first time from this Board on August
5 23, 2017 -- and has resulted in NCA facing closure in violation of the Legislature's explicit
6 intent behind NRS 388A.330 due to Director Gavin's refusal to consider the obstacles of schools
7 that enroll a large number of credit-deficient students, or to consider the impact of withdrawn
8 students on NCA's graduation prior to recommending NCA's closure. May Transcript, Vol. III,
9 at 220-21 (Director Gavin states that he did not need to consider data-driven and merit-based
10 comprehensive information beyond the graduation rate prior to recommending closure); 226-227
11 (Director Gavin admits that, prior to recommending that the Authority issue a notice of closure to
12 NCA, he did not consider the collective record, violating SPCSA's own Performance Framework
13 regarding high stakes decisions⁴).

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16 The Authority Board Members now have the opportunity to correct Director Gavin's
17 failure to comply with Nevada law—by rejecting Director Gavin's unlawful recommendation
18 and instead carefully reviewing the totality of the evidence NCA has presented and will present,
19 including all qualitative factors behind the graduation rate. Staff has conceded that NCA's high
20 school graduation rate is the single basis for closure proceedings and that NCA's other academic
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23 ³ NRS 388A.229 requires that the sponsor of a charter school must ensure collection, analysis, and
24 reporting of all data results of pupils enrolled in the charter school on statewide exams **to determine
whether the charter school is meeting the performance indicators, measures, and metrics** for the
achievement of proficiency of pupils.

25 ⁴ Gavin testified that “as a matter of law” the Charter School Performance Framework (“CSPF”) does not
26 apply to NCA (Vol. II at 152-153) – yet the Framework expressly states that it “provides the
27 accountability mechanism for *all* charter schools sponsored by the SPCSA”—proof that it applies to NCA
28 based on the plain language of the document. **Hearing Ex. E** at 2 (Introduction). The CSPF requires that
"The Authority will consider the collective record of a school's academic, financial, organizational and
mission-specific performance when making high stakes decisions through the academic performance
framework." **Hearing Ex. E** at 7.

1 metrics are not problematic. *See, e.g.*, May Transcript Vol. III, at 132 (SPCSA Staff’s Attorney
2 Greg Ott stipulates that “the only issue that the Authority is considering relative to NCA’s
3 deficiency is the graduation rate, not test scores or other factors of school performance”).
4 Therefore, closing or reconstituting NCA based on a single data point in the face of collective
5 performance measures during that same time period indicating that it is performing well,
6 testimony demonstrating that NCA offered the only opportunity for graduation for many
7 students, and evidence that NCA’s efforts to serve Nevada’s at-risk population has adversely
8 impacted that rate, would be arbitrary and capricious.
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10 **b. Qualitative performance measures demonstrate that NCA is performing well**
11 **when compared with other Nevada public schools**

12 NCA has demonstrated and will continue to demonstrate that it is performing well when
13 compared with other Nevada schools. Staff has failed to present any evidence to the Authority
14 that NCA’s four-year cohort graduation rate in fact represents NCA’s achievement failures, and
15 actually **concedes that NCA’s academic performance is not problematic**. *See* Vol. III, at 216-
16 17 (Director Gavin admits that nothing in NCA’s performance data currently available rises to
17 the level of concern to warrant closure); *see also* **Hearing Ex. Y**, at R0878 (Gavin states that
18 “other than on this matter of grad rate, the school is currently – was in good standing as of the
19 most recent full framework.”). In his compelling and unrefuted analysis of NCA’s graduation
20 rate data, expert Matthew Wicks presented numerous graduation rate calculations, disaggregating
21 the rate to demonstrate the growth of students in many different categories of transience and
22 credit-deficiency—so as to illustrate to the Authority the types of students NCA serves. *See* May
23 Transcript Vol. IV, at 147-148 and **Hearing Ex. EE**. **NCA’s graduation rate is 87.5% for**
24 **students that have been with the school for all four years of high school**—a category of
25 students that is demonstrative of NCA’s ability to serve its students. May Transcript Vol. IV, at
26 150. According to respected and unrefuted expert, Dr. Richard Vineyard, who has extensive
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1 experience with the NDE, this is much more reflective of what NCA is doing with these students
2 while they are there and **a graduation rate of 80 percent is “among the top 10 or 20 percent**
3 **of all the schools in the state.”** Vol. IV, at 55. The graduation rate increases in varying degrees
4 under each disaggregated calculation to which Mr. Wicks testified. *See* Vol. IV, at 148-150.

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6 These calculations are compelling evidence to demonstrate the significant impact that
7 enrolling roughly half of its students credit-deficient has on a school’s graduation rate. As Mr.
8 Wicks explained, “the more credit-deficient [students] are, the more challenging it’s going to be
9 to make up the credits for an on-time graduation.” Vol. IV, at 153. Two things stand out in
10 reviewing the data for NCA’s 2015 and 2016 cohorts (which Staff admittedly has not done): (1)
11 “the percentage of students that arrived at the school credit-deficient”—“just under half [of
12 students] for the 2016 cohort” and “just over half for the 2015 cohort, and (2) “the average length
13 of enrollment of all the students in the cohort . . . just under one and a half years.” Vol. IV at
14 142-43. Expert witness Wicks explained that where a student arrives “very late in their high
15 school career and is highly credit-deficient,” it is “highly unlikely” they will graduate in their
16 four year cohort. Vol. IV, at 153-154. For NCA, of the 49 percent, or 163 students, that enrolled
17 in NCA credit-deficient as part of the 2016 cohort, 84 percent of credit-deficient students were
18 credit-deficient by at least one year or more upon enrollment, and came to the school in either
19 11th of 12th grade—falling within “highly unlikely,” and near impossible, category for graduation
20 on-cohort. Vol. IV, at 154. This does not mean NCA is “giving up” on these students – to the
21 contrary, the school accepts them and works diligently to engage them and help them accrue
22 credits. However, relevant to these proceedings, NCA ranks among the highest in terms of
23 transiency rates when compared with other charter schools in 2015-2016. *See* **Hearing Supp.**
24 **Ex. HH**, at 1. This is compelling information for the Authority to consider in using its discretion
25 to analyze whether closure or reconstitution is a reasonable outcome under NRS 388A.330.
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1 Dr. Vineyard also confirms that a close look at the data and nature of the student
2 population behind a school’s “graduation rate” is necessary to fully judge and understand the
3 school’s progress. *See id.* at 56-58 (stating, for example, that “you’d want to look and see what
4 the graduation rate would be if they just used those students that were enrolled at the beginning
5 of that school year and not included the ones enrolled during the year”). Yet Staff admits to
6 having done none of this analysis when making the decision to seek a notice of closure – instead
7 relying solely on the four-year cohort graduation rate number with no analysis.

8 NCA is performing on-par with or outperforming other schools in terms of statewide
9 assessments. May Transcript Vol. IV, at 160 (NCA’s performance in the English language arts
10 has historically been “significantly better than the state average on . . . two end-of-course
11 assessments” and, for 2015-2016, NCA showed “one of the strongest performances” on the
12 same); *id.* at 161 (“in math, this year, [NCA] performed at about the same level as the state,”
13 which is consistent with its performance in the last five or six years); *id.* (in science, NCA’s high
14 school “performed quite a bit above the state average” this year, and, historically, there have
15 been a few years where NCA performed below the average but has “generally . . . performed
16 either above or about at the state average”). NCA is outperforming all but one other charter
17 school in English Language Arts, is performing on par with other charter schools—about the
18 average to high range—in Math I & II, and is outperforming all but two other charter schools on
19 Science statewide assessments for Grade 10. *See Hearing Supp. Ex. HH*, at 3-5 (submitted to
20 the Authority on June 16, 2017 in response to board member requests for a clean comparison of
21 NCA’s statewide assessment performance to other Nevada charter schools). Therefore, NCA’s
22 performance on statewide assessments, both historically and in the past year, demonstrate that
23 NCA is serving its students well.

24 Finally, NCA’s graduation rate is improving despite the consistently high number of
25 credit-deficient students it receives every year. NCA presented evidence that a nearly five
26 percentage point increase in its federally-calculated graduation rate is significant and rare when
27 compared with other Nevada schools—evidence that NCA’s March cure proposal and the
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1 associated implementation of the graduation rate improvement plan is working.⁵ See May
2 Transcript Vol. IV, at 56; *id.* at 55-56 (Dr. Vineyard testifies that a more dramatic increase of 10
3 percent would be improbable for a school that enrolls a number of credit-deficient students).

4 **c. Expert testimony demonstrates that closure or reconstitution of NCA based**
5 **on here would violate recognized Nevada efforts and legislative intent**

6 During the conclusion of Phase I, Chair Guinasso “categorically reject[ed] the arguments
7 that have been made to this body that the graduation rate is merely one data point” because “it
8 represents a tone deaf disregard for what we are trying to accomplish for our students in the state
9 of Nevada.” Transcript of August 23 hearing, at 87. However, it is Chair Guinasso’s rejection
10 of NCA’s plea for the Authority Board to consider the qualitative factors behind the graduation
11 rate as opposed to the number alone which constitutes a rejection of the Nevada Legislature’s
12 explicit intent regarding school closure. **Hearing Ex. G**, at R0205. NCA is serving students
13 who would otherwise dropout altogether and who other schools have rejected— and helping them
14 just as his school helped him avoid becoming a dropout. That others cannot always complete
15 high school in four years under their circumstances does not mean they should not be served.
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17 As Dr. Vineyard testified, it is important to the Nevada legislature to consider a students’
18 growth *during the time they were at a particular school* when determining the school’s
19 performance. May Transcript Vol. IV, at 30-31. The Nevada legislature’s goal, Dr. Vineyard
20 confirms, was to be sure that the school was being measured based on the services it provided
21 and how the child grew academically at the school, as opposed to how a student arrived at the
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24 ⁵ Along with the data and as part of the graduation rate improvement plan, NCA submitted declarations
25 from school teachers and personnel to demonstrate that implementation of the Grad Point Recovery Plan
26 has been effective from a ground floor perspective—though the school’s graduation rate would benefit
27 from additional time to continue implementing the same. See, e.g., **Hearing Supp. Ex. B**, Declaration of
28 Joe Thomas. In fact, this Authority Board (though with different members) accepted NCA’s cure and
elected not to vote to close. Rather than take an affirmative vote, they removed the item from the agenda.
When Staff again raised concerns with NCA’s graduation rate, the Board requested in March 2016 that
NCA prepare a graduation rate improvement plan, which this Board praised, requesting only inclusion of
measurable benchmarks. NCA complied with this request, and has repeatedly complied with all
subsequent requests of the Authority Board and Staff to no avail.

1 school. *Id.* at 33. Director Gavin also testified that what is significant is what the school has
2 done while the student is there. May Transcript Vol. III, at 110-11. Dr. Vineyard provided his
3 expert opinion that it would be part of the Authority’s responsibility in considering a high stakes
4 decision such as closure to examine the information behind the data so as to understand “more
5 than just the final results on a page,” and that roughly half of the states in the U.S. evaluate
6 impacts of credit-deficient student enrollment for this reason. May Transcript Vol. IV, at 50, 90;
7 *see also* 31, 36-37 (Dr. Vineyard testifies about the importance of growth measures and analysis
8 of multiple metrics to determine whether a school is performing adequately because “any single
9 data point isn’t going to give you a full picture of performance of a school . . . it’s not a broad
10 enough interpretation of the work of a school”). This opinion is consistent with the Legislature’s
11 concerns in passing SB 509 and the Authority’s discretion to close schools and avoiding policy
12 that penalizes schools that serve a high population of credit deficient students. This
13 demonstrates a statewide effort to recognize that credit-deficient students enrolling impacts
14 graduation rate, which is what NCA asks of the Authority here—to judge its performance based
15 on all of the relevant evidence and with several metrics as the CSPF and Nevada law require.

18 The NDE also recognizes the impact of mobility on performance measures. In addition
19 to Dr. Canavero’s assurance to the legislature that the NDE can create a flexible graduation rate
20 requirement,⁶ NDE’s Administrator of Assessment, Data & Accountability Management, Peter
21 Zutz, recently recognized in an article in the Reno Gazette-Journal that a large influx of students
22 can drag down a school’s/district’s test scores. **Phase II Hearing Exhibit G** (attached hereto).
23 Likewise, the NDE’s Consolidated State Plan under ESSA disaggregates data in analyzing the
24 graduation rate in subgroups because “in order for Nevada to improve its graduation rate,
25 Nevada must first acknowledge where its students are” **Phase II Hearing Exhibit D**, at 11

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28 ⁶ **Hearing Ex. G**, at R0206.

1 (attached hereto) and identifies that schools need to recognize the academic and non-academic
2 needs of “[n]eglected, delinquent, and at-risk students” – something NCA is doing. Phase II
3 Hearing Exhibit D, at 48. Additionally, schools and districts are now required to track
4 homelessness per ESSA, according to an article explaining the particular difficulties in
5 completing school that homeless youths face.⁷ **Phase II Hearing Exhibit E** (Aug. 21, 2017
6 article from EducationDive website).⁸
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8 In addition to Director Gavin’s own acknowledgments, Member Mackedon suggested in
9 the 2013 renewal hearing for NCA “segregating out students who had been continuously
10 enrolled at the school in order to determine how the school is educating those children.” *See*
11 **Hearing Ex. B-7**. Member Snow requested during the May hearing that NCA provide an
12 explanation regarding NCA’s “impressive” test scores compared and contrasted to the disparity
13 of graduation rate and why that is. NCA provided testimony of Matt Wicks explaining that high
14 mobility and the flawed federal calculation of the 4-year adjusted cohort rate contribute to the
15 disparity. *See Hearing Supp. Ex. E*, Declaration of Matt Wicks, at 2-3. NCA has continued to
16 perform well despite the challenges it faces where the average length of student enrollment in the
17 cohort is 1.5 years. In light of the Nevada Legislature’s concern that the Authority not use NRS
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20 ⁷ Homeless students are included in the at-risk population NCA serves. *See Hearing Supp. Ex. D*,
21 Declaration of Gina Hames, at 2-3

22 ⁸ In addition, the Department of Education has recently approved a plan that requires it to look beyond
23 adjusted cohort graduation rate and do further analysis of the school's performance when identifying
24 schools for inclusion in the Comprehensive Support program—evidencing in part an intent for
25 accountability measures to reflect a school’s performance with regard to those pupils who actually spend
26 an adequate amount of time with the school. *See The New Nevada ESSA Plan For Initial Public*
27 *Comment*, at 52, *available at* <http://bit.ly/2oSb5Ej> (stating that “calculation of 4-year Adjusted Cohort
28 Graduation Rate (ACGR) should also include ESSA’s Section 1111(c)(4)(F) “Partial Attendance”
requirement” and “Identify ‘Comprehensive Intervention’ high schools based on more than just the 4-year
ACGR graduation rates.”) The reason for doing so is to confirm that the school is actually in academic
distress, and that its low measured adjusted cohort graduation rate is not simply a by-product of the fact
that the school enrolls a high percentage of students who are already behind in credit when they enroll in
the school.

1 388A.330 to penalize schools that embrace at-risk students without looking at all the compelling
2 circumstances, closing NCA would be arbitrary and capricious.

3 **d. Witness testimony demonstrates that NCA is the school of choice for many**
4 **Nevada students, and the only school offering a path to graduation for others**

5 NCA is committed to helping its at-risk students get back on track academically and in
6 other areas of life that may be affecting academics. *See* **Hearing Supp. Ex. D**, Declaration of
7 Gina Hames, at 2 (as part of the Grad Point recovery program, she speaks with each of her
8 students every other week in a mandatory call, in which “I help them resolve challenges, both
9 with school work and with time management and organization, and keep them engaged in
10 school”).

11 Students with disabilities and severe medical issues have and will demonstrate to the
12 Authority in these proceedings that they continue to thrive—academically and personally—at
13 NCA, often in a way that students have not encountered at other schools. *See, e.g.*, **Hearing**
14 **Supp. Ex. N**, Declaration of J. Berry, at 2 (“teachers and staff at NCA . . . they really care about
15 my success” and that he would not be graduating if it weren’t for the NCA teachers). Parents of
16 NCA students demonstrate that NCA is the school of choice for their family—so much so that
17 they are willing to sacrifice significant time to save NCA from closure. **Hearing Supp. Ex. S**,
18 Declaration of David Held (stating that when his child was diagnosed with a severe brain
19 condition that required surgery, “[t]he school bent over backwards and did everything to make
20 sure that he was able to get his work done” and to ensure that he did not fall behind in credits).

21 NCA will present evidence that it serves exceptionally gifted students, students with
22 unusual schedules, and students who have decided to pursue rare and time-consuming talents at a
23 young age in addition to completing school. NCA serves students of parents who have
24 recognized that their children are better able to focus and thrive in an environment free from the
25 social anxiety and bullying that accompanies brick and mortar schools for some. **Hearing Supp.**
26 **Ex. Q**, Declaration of Dawn Starrett, at 3. NCA serves many students who have no other viable
27 choice for their education, as witness testimony will demonstrate that students are routinely
28 “counseled out” by their traditional zone schools and improperly recommended for adult

1 education, rejected from other online programs due to credit-deficiency, and hurried into the next
2 grade despite failing every course. NCA serves families who state they will be traumatized and
3 without any other option for education should the school close its doors or even undergo changes
4 to the model of education and the flexibility it provides. Finally, NCA serves students who have
5 failed to engage in other online schools which this Authority might consider comparable to NCA
6 or have been rejected from those schools—evidence that NCA fills a need for Nevada students.

7 As witness testimony will demonstrate, NCA’s caring teachers, individualized attention,
8 challenging but accommodating lesson plans, and world-class credit-recovery program have
9 drawn out-of-state students who move to Nevada for this program.

10 **e. NCA’s Board is successfully leading the school**

11 NCA has presented evidence that its Board members are highly experienced, engaged,
12 capable of leading, and willing to hold school leaders and personnel accountable. *See, e.g.,*
13 **Hearing Supp. Ex. I**, Declaration of Mindi Dagerman, at R1193-94; May Transcript Vol IV, at
14 220-224 (NCA Board President Jafeth Sanchez describes her extensive educational experience
15 and qualifications), 241, 247 (Ms. Sanchez describes Board efforts to hold NCA accountable
16 through collaboration with Staff). The Board members have met with Authority Staff to find out
17 how NCA can improve and identify Staff’s concerns, and have invited Authority Board members
18 to visit the school in an effort to demonstrate a willingness toward accountability. *See, e.g.,* May
19 Transcript Vol IV, at 229-32, 241. Moreover, NCA’s cure proposals have included provisions
20 that allow NCA’s Board greater involvement and accountability measures and increased Board
21 training.
22

23
24 During Phase I, Chair Guinasso opined that he did not see “red flags” with regard to
25 NCA’s board or leadership. Expedited Transcript of August 23 hearing, at 94. While Direct
26 Gavin opined during Phase I that wholesale reconstitution has been successful other schools,
27 Staff has failed to provide any research to corroborate that opinion. Therefore, NCA’s Board is
28

1 effectively serving this school and Staff is unable to demonstrate that reconstitution will improve
2 NCA's graduation rate in any way. Reconstitution despite a lack of concerns with NCA's board
3 and without evidence that reconstitution is effective would be an abuse of discretion.

4 **f. NCA's latest efforts to improve its graduation rate and attached cure**
5 **proposal demonstrate improvement and promise such that closure and**
6 **reconstitution are inappropriate**

7 NCA has demonstrated through personal accounts from teachers, students, and parents,
8 and through validated third-party data, that its graduation rate improvement plan has, after only
9 roughly a year of implementation, yielded success in improving its graduation rate. NCA's
10 federally-calculated graduation rate increased five percentage points in a single year—a jump
11 which is significant and rare when compared with other Nevada schools. *See* Vol. IV, at 55-56.
12 During Phase II, NCA will demonstrate the continued success of implementation, as well as
13 other initiatives NCA has taken in an effort to improve its graduation rate and additional
14 proposals it has offered since hearing from this Board, for the first time on August 23, 2017,
15 what concerns it had with NCA's proposed cure. NCA has hired a new school leader who is
16 adept at turning schools around and has significant experience in doing so.

17
18 NCA's previous cure proposal as submitted along with its closing argument for Phase I
19 ("August cure proposal") had addressed all cure elements that Director Gavin and the Authority
20 Board raised as necessary. Pursuant to Board member feedback regarding the August cure
21 proposal, NCA has revised that cure and attached it hereto (*see* **Phase II Hearing Exhibit A**) in
22 an effort to demonstrate to the Board once again its willingness to collaborate. For example,
23 NCA has lowered its proposed high school enrollment cap significantly – to 1,500 for the
24 upcoming school year and then 1,300 for 2019-20 -- in an attempt to respond to Board member
25 concerns during the August 23 hearing that NCA should "scale back" its enrollment. *See*
26 Expedited Transcript of August 23 hearing, at 99-100, 102-103. NCA would once again
27
28

1 welcome feedback on the latest cure proposal attached hereto – particularly given Staff’s failure
2 to follow the Authority’s own framework or to allow NCA the same opportunities as it has the
3 other two online schools subject to high stakes proceedings – Nevada Virtual Academy and
4 Beacon Academy -- and that the first time NCA received the Authority Board’s feedback on the
5 cure was on August 23, 2017.
6

7 **II. The Authority Board has discretion to pursue alternative options beyond closure,
8 reconstitution, and no action during Phase II of the proceedings**

9 While Chair Guinasso has repeatedly stated that during Phase II the Authority would
10 consider whether “closure, reconstitution, or no action” is appropriate, he has never allowed for
11 briefing or cited any authority to support that this Board cannot consider an option other than “no
12 action.” NCA asks that the Authority recognize that it may consider other options during Phase
13 II—action short of closure or reconstitution, but something more than “no action” to address any
14 lingering concerns, should the Authority deem it necessary. The NDE has confirmed this
15 through Guidance Documents and the Authority Staff has done this with other similarly situated
16 schools (Beacon Academy and Nevada Virtual Academy to name two).
17

18 The Nevada Legislature afforded the Authority discretion to consider such less drastic
19 alternatives where, as here, the circumstances do not warrant closure. NRS 388A.330(1)(e)
20 states that “[T]he sponsor of a charter school may reconstitute the governing body of a charter
21 school, revoke a written charter or terminate a charter contract before the expiration of the
22 charter if the sponsor determines that . . . [t]he charter school operates a high school that has a
23 graduation rate for the immediately preceding school year that is less than 60 percent.” As NCA
24 has pointed out, while this statute gives the Authority discretion to close or reconstitute if the
25 graduation rate is below 60 percent, it does not require it, and it does not require that the
26 Authority engage in one of three options as a result of a school meeting the 60 percent trigger.
27
28 The plain language of the statute demonstrates that the Authority is not bound to the three

1 options enumerated, only that the Authority cannot close or reconstitute without first notifying
2 the school about a hearing that will be held to do so. In fact, the Authority itself has recognized
3 that they are not bound to the three options in NRS 388A.330(2)(d)—as “no action” is not a
4 possibility referenced in that statute, yet the Authority has repeatedly stated that it is one option
5 they will consider during Phase II. The discretion to consider a fourth option beyond “closure,
6 reconstitution, or no action” is further evident in the broad discretion NRS 388A.330 necessarily
7 requires of the Authority—the Authority must make the determination whether a breach of the
8 terms of a written charter are material or not (NRS 388A.330(1)(a)(1)), what constitute generally
9 accepted standards of fiscal management (NRS 388A.330(1)(a)(2)), and when the “reasonable
10 cause” threshold is triggered to protect health and safety of pupils (NRS 388A.330(1)(c)).
11 Likewise, the Authority can impose additional oversight or conditions over certain governing
12 bodies. NAC 386.345.

15 “Each sponsor of a charter school shall develop policies and practices that are consistent
16 with state laws and regulations governing charter schools. In developing the policies and
17 practices, the sponsor shall review and evaluate nationally recognized policies and practices for
18 sponsoring organizations of charter schools” which must include “[a] description of how the
19 sponsor will maintain oversight of the charter schools it sponsors, which must include, without
20 limitation . . . A strategic plan for the oversight and provision of technical support to charter
21 schools that are sponsored by the sponsor in the areas of academic, fiscal and organizational
22 performance.” NRS 388A.223(2)(f)(2). Pursuant to this, the Authority adopted the Charter
23 School Performance Framework, which provides a simply framework through which the
24 Authority may implement measures short of closure or reconstitution. Namely, the CSPF
25 provides that the Authority will offer greater oversight to schools with which the Authority has
26 identified concerns. **Hearing Ex. E**, at 5. These include ongoing oversight measures to
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1 “intervene as needed” and to require “organizational compliance findings.” *Id.* Pursuant to this
2 section of the CSPF, intervention measures might include additional site visits, more frequent
3 term reviews, and additional data reporting. *Id.*

4 In light of the Nevada legislature’s and NDE’s recent recognition that certain schools,
5 NCA included, enroll a disproportionately high number of at-risk and credit-deficient students,
6 this administrative agency should use its discretion under NRS 388A.330 and its CSPF to
7 consider other actions during Phase II. The Authority acted upon its discretion to intervene in
8 ways short of closure or reconstitution when it allowed NCA to submit proposed cures outside of
9 the cure period relative to Phase I and has again allowed NCA to submit a proposed cure as part
10 of Phase II of these proceedings—and agreed to consider these cures as a means “short of”
11 closure or reconstitution through which NCA can avoid closure or reconstitution. *Compare* NRS
12 388A.330(2)(b). While NCA understands that the “cure” phase of the proceedings have
13 concluded, should the Authority conclude that NCA’s attached cure proposal requires additional
14 changes, should the Authority conclude that NCA’s attached cure proposal requires additional
15 changes, the Authority may exercise its discretion to issue a directive that contains components
16 of NCA’s cure proposal if it sees fit, pursue a negotiated settlement, or take another action which
17 the Authority deems appropriate. Such would be consistent with NRS 388A.330; the CSPF;
18 where Nevada as a collective has identified the precise issues NCA faces as a matter of growing
19 concern and fashioned legislation accordingly.
20

21 Evidence NCA intends to present at the hearing reflects that Nevada Virtual Academy
22 and Beacon Academy received multiple opportunities to work with Staff and that Staff proposed
23 alternatives to closure and reconstitution – including conditions and a required charter
24 amendment and yearly high stakes reviews. As a result, those schools have avoided closure or
25 board reconstitution. Additionally, NDE, through Dr. Steve Canavero, identified accountability
26 measures beyond closure or reconstitution under NRS 388A.300 in recent memos to the
27
28

1 Authority, stating “[i]t is the opinion of this office that there are four pathways available”—these
2 include closure, receivership, “[t]he charter school chooses to seek transformation partner and
3 opt in to be considered by the NV Achievement School District” and “development of a
4 remediation plan with clear student achievement targets that lead the school to removal from the
5 Rising Star designation in a specific period of years and prescribe consequences for failure to
6 meet the specified targets.” See **Phase II Hearing Exhibit Y**, Canavero Guidance Memo 16-06,
7 at 2 (issued December 19, 2016), attached hereto. While even this limitation in this manner to
8 these four pathways without accessing the proper legislative channels may constitute ad-hoc
9 rulemaking,⁹ these options were never presented to NCA by Staff or the Authority and perhaps
10 never have been presented to this full Board. Another option short of closure/reconstitution
11 which Dr. Canavero later identified to the SPCSA but which has never been offered to NCA is
12 the following: “SPSCA may elect to utilize a Student Performance Compact as a guide or
13 template with each of the *Rising Star* charter schools it sponsors. These compacts will be
14 considered addendums to the existing charter contract without an extension of the contract term.
15 The Student Performance Compacts serve to address how the sponsor will hold the school
16 accountable and appropriate consequences.” See **Phase II Hearing Exhibit Z**, Canavero
17 Guidance Memo 17-10, at 7 (issued April 5, 2017), attached hereto. NCA is proposing just that
18 and Phase II should include appropriate consideration of adoption of such a Student Performance
19
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21

22 ⁹ NRS 233B.038 describes a “regulation” in terms of being a “standard” of “general applicability” which
23 “effectuates policy.” An agency engages in ad hoc rulemaking where it adopts a policy that is “of such
24 general consequence and impact as to be governed by the rule-making requirement of the Administrative
25 Procedure Act,” and, in doing so, fails to follow the requirements of NRS 233B. *Pub. Serv. Comm’n of
26 Nevada v. Sw. Gas Corp.*, 99 Nev. 268, 272, 662 P.2d 624, 627 (1983) (generally applicable nature of
27 order was “of such major policy concern and of such significance to all utilities and consumers that it
28 cannot be characterized as a simple adjudication in a contested case”). An agency’s rulemaking in this
manner is “unlawful procedure which should be declared null and void.” *Id.* at 272, 662 P.2d at 627. An
agency may inadvertently engage in ad-hoc rulemaking where its order or policy is not limited to the
parties involved in the instant action or, if it is so limited, would affect the rights of other parties who
come before the agency, so as to effect policy. See *id.* at 272, 662 P.2d at 627; *Gates v. the Com’n on
Ethics*, 1999 WL 35128954 (Nev. Dist. Ct. Sept. 9, 1999).

1 Compact rather than closure. The Authority is therefore aware of its legal ability to explore
2 options short of closure or reconstitution that would allow the school to retain its autonomy and
3 ability to flourish, pursuant to the Authority’s obligations under NRS 388A, and is required to do
4 so where it is clear that it has offered other options to charter schools similarly facing closure.

5
6 Should the Authority conclude that this cure proposal still requires additional changes,
7 rather than deny Nevada families their school-of-choice by shutting down a school that has
8 demonstrated its commitment and success at engaging Nevada’s students, NCA asks that the
9 Authority consider issuing a directive as an alternative to the three drastic options it has
10 articulated: “closure, reconstitution, or no action.”¹⁰ Given the substantial indicia that NCA is
11 achieving and performing in a manner that this community desperately needs, NCA asks that the
12 Authority employ an approach such as this which would be less catastrophic for the 3200
13 families facing displacement in the event of closure or reconstitution, and would allow the
14 Authority to avoid issuing an oversight action that is arbitrary and capricious.¹¹ The Legislature
15 purposefully afforded the Authority discretion to consider such less drastic alternatives.
16

17 **III. Closure of a K-12 charter based solely on the graduation rate the charter’s high**
18 **school exceeds the SPCSA’s statutory authority**

19 Where Staff has conceded that its only reason for recommending closure is NCA’s high
20

21 ¹⁰ There is no statutory authority to limit the options to these three – and “no action” – as opposed to
22 some alternative directive or accountability measures or requirements from the SPCSA or negotiated
23 settlement as the Authority has achieved with other schools. Chair Guinasso simply announced this
24 without any request for or opportunity to NCA to brief or address this issue and during the October 13,
2017 call, Greg Ott even recognized there are things the Authority is prohibited from doing like
unilaterally changing the charter – but there clearly are some things that are allowed. NCA has requested
Chair Guinasso make the multiple telephone discussions and decisions he has made during such calls part
of the record.

25 ¹¹ Should the Authority choose to close or reconstitute the school despite evidence that one in every two
26 students who come to the school are credit-deficient, NCA’s graduation rate is 87.5 percent for the
27 students NCA has had the chance to educate, and limitless testimony establishing that this school fills a
28 void in Nevada education for the at-risk, credit-deficient, and alternative learners, the Authority’s decision
will have “entirely failed to consider an important aspect of the problem” and “offered an explanation for
its decision that runs counter to the evidence before the agency,” pursuant to the arbitrary and capricious
standard. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43

1 school's four-year graduation rate as calculated by the NDE, closure or reconstitution of NCA's
2 entire K-12 charter is inappropriate pursuant to Nevada laws which outline different closure
3 triggers for elementary, middle, and high schools.

4 The Authority has discretion to consider charter termination if "[t]he charter school is a
5 **high school**¹² that has a graduation rate for the immediately preceding school year that is less
6 than 60 percent." NRS 388A.330(1)(e) (emphasis added). By contrast, the Authority has
7 discretion to consider closure if "[t]he charter school is an elementary or middle school or junior
8 high school that is rated in the lowest 5 percent of elementary schools, middle schools or junior
9 high schools in the State in pupil achievement and school performance." NRS 388A.330(1)(f).
10 Nevada courts apply the plain-meaning rule in determining legislative intent, meaning that "[t]he
11 starting point for determining legislative intent is the statute's plain meaning; when a statute 'is
12 clear on its face, a court cannot go beyond the statute in determining legislative intent.'" *State v.*
13 *Lucero*, 249 P.3d 1226, 1228 (2011) (citing *Robert E. v. Justice Court*, 99 Nev. 443, 445 (1983)).

14 Therefore, while NRS 388A.330(1) affords the Authority discretion to close **high schools**
15 based on a graduation rate below 60%, the statute does not afford the Authority the power to
16 close **an entire K-12 school** based solely on that rate. NCA's middle and elementary schools

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22 (1983).

23 ¹² Director Gavin's unsuccessful attempts to change this language to "serves as a high school"
24 demonstrates that the Legislature did not intend for the Authority's misuse of the high school graduation
25 rate trigger in this manner. See **Phase II Hearing Exhibit HH**, Minutes of Assembly March 2017, at 34
26 (Gavin stated the following regarding proposed language in AB 49 in an attempt to expand the
27 applicability of NRS 388A.330(1)(e), acknowledging the validity of NCA's argument that the different
28 statutory triggers which are still in place do not allow the Authority to close a K-12 school based solely
on the high school graduation rate: "There is a material difference in whether a school 'is' an elementary,
middle, high, or vocational school or whether it 'operates' as one. We have schools that might operate as
all four. That creates some ambiguity as to whether these provisions apply to them."). The legislature's
intent may be inferred where it has the opportunity to change the language in a statute, but elects not to do
so. See, e.g., *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 679, 191 P.3d 1138, 1145
(2008); *Silvera v. Employers Ins. Co. of Nevada*, 118 Nev. 105, 109, 40 P.3d 429, 431-32 (2002).

1 are excelling in student achievement and school performance,¹³ and the Authority has not raised
2 any performance concerns with these programs which therefore do not meet the criteria for the
3 Authority to consider closure, as outlined in NRS 388A.330(1)(f).

4 IV. Conclusion

5 For the foregoing reasons, NCA requests that the Authority take no action, or, in the
6 alternative, issue a directive to NCA outlining compliance items, accept NCA's amended cure
7 provided herewith, or work with NCA, its board, and its new school leader to provide an
8 alternative solution as has been provided to Beacon and NVVA that provides for transparency
9 and accountability while avoiding eliminating a school of choice for thousands of Nevada
10 families.

11 In compliance with the Authority's directive, NCA is attaching hereto a list of its
12 proposed witnesses and an index of documents it intends to present at the October 23-25 hearing.

13 Respectfully submitted this 16th day of October, 2017.

14
15 HOLLAND & HART LLP

16
17 By: 

18 _____
19 Laura K. Granier (NSB 7357)
20 Erica K. Nannini (NSB 13922)
21 5441 Kietzke Lane, 2nd Floor
22 Reno, Nevada 89511
23 (775) 327-3000 (Telephone)
24 (775) 786-6179 (Fax)

25
26 *Attorneys for Nevada Connections Academy*

27 _____
28 ¹³ For example, for the time period at issue, NCA's middle school was among the highest-achieving schools in the state—the Nevada Department of Education's ("NDE") last rating of NCA's middle school was four-stars (on a five-star scale)—which Staff does not dispute.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Holland & Hart LLP and not
3 a party to, nor interested in, the within action; that on October 16, 2017, a true and correct copy
4 of the foregoing document was served as listed below:
5

6 Gregory D. Ott, Esq.
7 Deputy Attorney General
8 100 N. Carson Street
9 Carson City, NV 89701
10 Gott@ag.nv.gov

VIA EMAIL

9 Robert A. Whitney, Esq.
10 Deputy Attorney General
11 100 N. Carson Street
12 Carson City, NV 89701
13 RWhitney@ag.nv.gov

VIA EMAIL

14 *Attorneys for State Public Charter School Authority*

15 I further certify that a copy of the foregoing, along with NCA's hearing exhibits, will be
16 mailed or shipped via UPS to each Authority Board member at the addresses previously
17 provided, and to counsel listed above.
18

19 
20 Jeanette Sparks, an employee of
21 Holland & Hart LLP
22
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