

April 2, 2018

Via Email

Ryan Herrick
General Counsel
State Public Charter School Authority
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RE: Nevada Virtual Academy Response to February 21, 2018 Notice

Dear Mr. Herrick,

This correspondence and attached documents will serve as a formal response to Chairman Guinasso's letter dated February 21, 2018 sent to Samantha Morris, Board President of Nevada Virtual Academy ("NVVA" or the "school") in which the State Public Charter School Authority ("Authority") purported to issue a Notice of Intent to Terminate NVVA's charter school contract (the "Notice").

Since the issuance of the Notice, the school has received mixed messages from Authority staff regarding the content and submittal of materials in response to the same. Importantly, the school was notified that any response to the Notice should be emailed to Mark Modrcin no later than April 2, 2018 and that Authority staff would then upload the same into Epicenter for archive purposes. The school is proceeding based on the additional instructions it received and pursuant to the reservation of rights and authority set forth below and will provide Mr. Modrcin a copy of all relevant documents contemporaneously herewith.

As you are aware, NVVA believes that the Authority's Notice goes against clear statutory authority and is not valid. Mr. Guinasso acknowledged at the February 16, 2018 Authority Board meeting that he did not believe that there was case law related to this matter and that there are arguments that could be made on both sides of this matter. However, he adopted opposing counsel's legal arguments without even allowing NVVA to present its side. NVVA is concerned regarding potential bias and a lack of impartiality in these proceedings. Based on these concerns and following Mr. Guinasso's direct invitation at the February 16, 2018 meeting that NVVA take its arguments to district court, NVVA has filed a lawsuit to enjoin the Authority from proceeding with the unlawful termination of the school's charter contract.

Nevertheless, in order to preserve the school's rights going forward and continue to demonstrate that the school is acting in good faith, enclosed please find the school's proposed cure for the alleged deficiencies noted in the Notice and in Patrick Gavin's February 16, 2018 Briefing Memorandum. NVVA files this response to the alleged deficiencies under protest of the legality of these termination proceedings and reserves all rights including, but not limited to, pursuing an injunction in Court.

As I tried to explain at the February 16, 2018 hearing before the Authority Board, NVVA believes these proceedings are prohibited by law for a number of reasons. I was not allowed to voice my legal analysis at the hearing, but I have laid it out below for your reference.

The Authority's action clearly violates the plain language of NRS 388A.330, upon which it relies as the basis for initiating these proceedings. The Authority's attempt to terminate NVVA's charter violates the statute and the school's contract in four primary ways: First, the statute sets forth that the Authority may terminate a charter contract if the "**charter school . . .** has persistently underperformed, as measured by the performance indicators, measures and metrics set forth in the **performance framework for the charter school.**" NRS 388A.330(1)(a)(4)(emphasis added). Here, the Authority is attempting to terminate the charter for the *whole school* based on the performance of a small segment of the school – its elementary school program. The school as a whole has not been found to be underperforming under either the Nevada School Performance Framework or the Authority's Charter School Performance Framework. Indeed, the school as a whole has not been recently rated by either the Authority or State frameworks, both of which are currently suspended.¹

Second, the Authority has no valid data on which to rely for its improper assertions that the school or the elementary school program are underperforming. According to NRS 388A.300(2), **the Authority may not rely on the data from any school year before 2015-2016 school year** or data from the **2016 to 2018** school year. This means that *at most* the Authority may have one school year - the 2015-2016 school year - upon which to rely. However, the Authority relies on data from the school years 2012-2013, 2013-2014, and 2016-2017. Use of data from all of these years is precluded by law.²

Third, the Authority ignores the statutory and contractual requirements for determining "persistent underperformance." NRS 388.330(1)(a)(4) requires the application of the "**performance framework for the charter school**" as the basis by which "persistent underperformance" is measured. Thus, the only performance framework that can be utilized by the Authority is the framework that was attached to the contract. The contract requires that the school's performance be measured by three **consecutive** years of ratings from **both** the State and Authority Frameworks. *See* Contract at 8.1.1.4 and Contract, Exhibit #1. In direct contravention of the statute and the contract, the Authority cites NAC 386.332, a regulation that was not enacted at the time the contract was executed and is not consistent with statute.

¹ Regardless of the current suspension, the school has **never** been rated by the State Framework. It has only been rated **twice** under the Authority Framework – first as "Unsatisfactory" and then the very next year as "Approaches."

² In addition, the school's charter contract also specifies that data before the 2013-2014 school year may not be used. *See* Charter Contract 8.2.1.

Even assuming for argument sake that the regulation was properly relied upon, the Authority still fails to meet even that regulatory definition of persistently underperforming. Since NVVA, as a school, has never received a star rating under the State Framework, the regulation's requirement of three years as a one-star or two-star school for the last three ratings cannot be met. In fact, as already stated, there is not even one year, let alone three consecutive years, of a one-star or two-star rating for NVVA³.

Fourth, even if the elementary school program's performance was sufficient to initiate termination proceedings (it is not), the Authority has misapplied the law and the terms of the Charter Contract and Charter Performance Framework – there must be three *consecutive* years of data. Thus, even if the data from 2012-2013, 2013-2014, and 2016-2017 were reliable, which it clearly is not, the Authority would still be in violation of the statute and the contract for relying on data propounded by the suspended State Framework without data from the Authority Framework for three *non-consecutive* years. As was pointed out in the Staff Briefing Memorandum to the Authority Board, the frameworks have been suspended for a variety of reasons, including a change in federal and state education policy. The frameworks and what they measure have changed, and it is difficult to draw a direct comparison between what was measured in 2012 and what would have been measured in 2017.

Forcing NVVA to proceed with this process is in violation of the statute and the contract and is causing irreparable harm to the school as it readies itself to apply for its charter renewal in 2019. The school was already working to identify and address areas of improvement in the elementary school program prior to being contacted by Authority Staff and repeatedly expressed a willingness to work with the Authority outside of a formal termination process to address any concerns. Not only were NVVA's actions rebuffed, but now its families, teachers, staff, and students have been thrown into turmoil and uncertainty because they do not know if the school will be open next year. The impact of the Authority's unlawful notice is compounded by the fact that this is a key time for registration, and NVVA has already had many families notify them that they are uncertain whether they will register with the school, despite the fact that absent the termination notice they otherwise would have.

As stated above, NVVA was already designing and implementing programs to bolster its elementary school program when contacted by Authority earlier this year. As the detailed Comprehensive Academic Improvement Plan ("Plan") indicates, NVVA has made strides in multiple areas since its contract renewal in 2013 and brought on new administrators this school year that have led the school with an eye towards improving the elementary school program. The multi-faceted changes are evident by a visit to NVVA's Blended Learning Center or discussions with the many students and parents that are taking advantage of the unique programs NVVA has to offer.

³ Though the Authority apparently relies on the language from subsection (1) as its (incorrect) basis for reviewing three non-consecutive years of data, it bears noting that subsection (2) requires that the performance of charter schools operating under contract should be measured by the metrics set forth in the Contract, which as outlined below requires *consecutive* years of data.

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NVVA respectfully makes its submission under protest, but would welcome an opportunity to discuss further with the Authority the changes and plans it has for its elementary school program without the threat of the termination of the school's charter contract. Indeed, the threats made by the Authority without first fully understanding the data and legal basis for proceeding are an unnecessary distraction that takes administrators away from helping kids to instead crunching data and summarizing and presenting information in written format for review and consideration in a vacuum. NVVA renews its invitation to Authority Staff and Board members to visit the school and see what is actually being implemented and how the school has made strides these past few years. Although nobody from the Authority has visited the school for years (other than for audit purposes), the attached Plan highlights the improvements that have been made and plans going forward.

NVVA deserves an opportunity to further implement its Plan and is confident it will be in a position at the time of its renewal to show the positive impact of the changes it has made.

Best regards,



Kara B. Hendricks

KBH/sn

Enclosure

cc: Patrick Gavin
Mark Modrcin
Jason Guinasso
Samantha Morris