



Kara B. Hendricks
Tel 702.938.6856
Fax 702.792.9002
hendricksk@gtlaw.com

April 26, 2018

VIA U.S. MAIL & ELECTRONIC MAIL

Ryan Herrick
General Counsel
State Charter School Authority
1749 North Stewart Street, Suite 400
Carson City, NV 89706-2543
rherrick@spcsa.nv.gov

Re: Nevada Virtual Academy Items on April 28, 2018 Agenda

Dear Mr. Herrick:

I am writing in response to the Briefing Memorandums posted regarding Agenda Items 5 and 6 for the April 27, 2018 State Public Charter School Authority (“SPCSA” or “Authority”) meeting. NVVA school administrators look forward to providing the Authority with additional information regarding the improvement plan the school submitted to staff and the supplemental information submitted in response to inquiries received. However, due to the number of issues raised in the staff memorandums and to avoid the need to spend unnecessary time discussing background issues during the public hearing, this correspondence will address several inaccuracies and/or concerns we have regarding information contained in the staff memos.

We request that a copy of this letter be provided to all SPCSA Board Members in advance of the April 27, 2018 public meeting and be made part of the record.

Format of Plan Submittal

As a preliminary matter, we are concerned regarding the multiple references in the staff memo to NVVA’s decision not to use the template that staff provided. As you are aware, the template provided to the school was designed as an application for a school under a termination order to comprehensively restructure the school. However, NVVA was not under a termination order and was requested by Chairman Guinasso to submit material demonstrating it had corrected deficiencies in its elementary school program. Not only did you assure me that NVVA was not required to use the termination order form, but you acknowledged that certain portions of the form may not be applicable to the school based on the virtual platform and the proposed changes that the school believed were best to correct the issues outlined in Chairman Guinasso’s letter. You also assured me there would not be any retaliation against NVVA for submitting information in a different

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format. Notwithstanding, the briefing memo appears to suggest there was some malfeasance on NVVA's part by using a different format and goes as far as to suggest the school's decision to do so created "self-inflicted issues" that required staff to request supplemental information. Not only are we concerned by the use of such language which seems to suggest that NVVA did something wrong, but you and I had discussions prior to the submission wherein I requested a period in which staff would provide feedback to the school regarding the submittal and NVVA provided a chance to respond. The only feedback received by the school was the clarifying questions and request for supplemental information received from Mr. Modrcin on April 5, 2018 which NVVA responded to by the requested date.

Our discussions regarding this issue and the actions taken by the school in submitting a cure plan by April 2, 2018, requesting feedback and responding to Mr. Modrcin's inquiries do not support a conclusion that NVVA's team lacks a sense of urgency to resolve the academic issues facing the school or that the guidance staff provided was dismissed by the school.

Historical Performance, Data Issues & Contractual Requirements

Although the chronology in the "Historical Performance" section of the memo related to Agenda Item 5 appears to be mostly accurate, it leaves out critical information regarding changes to the State and Authority Frameworks since NVVA opened in 2007 including changes in testing provided to students, how it was reported and what data can be deemed reliable.

As you are aware, NVVA operates an elementary school program, middle school program and high school program all of which operate pursuant to a single charter contract and collectively comprise the "charter school". NVVA, as a charter school, has never been ranked by the Nevada School Performance Framework ("State Framework") and was only twice ranked by the Authority Charter School Performance Framework ("Authority Framework")¹. Due to testing irregularities, a change in testing vendor, and other changes in federal and state law, both the State Framework and the Authority Framework have not been fully implemented. Nevertheless, NVVA has worked hard to make continuous improvements throughout its student body and has had significant successes in the past few years at the middle school and high school level. There is no reason to believe, NVVA will not be successful with the changes it has already started to implement in its elementary school program.

The memorandums also do not acknowledge that the written contract NVVA entered with the Authority in 2013 which was amended in 2016 contained specific requirements relating to when a school's charter can be terminated, none of which have been met. Specifically, the Contract provides that the Authority may terminate the charter for one of a number of listed reasons including that the school "persistently underperformed, as measured by the performance indicators, measures and metrics set forth in the Charter School Performance Framework for the

¹ Under the Authority Framework the charter school – received an "Unsatisfactory" for the 2012-2013 school year and improved to "Approaches" for the 2013-2014 school year.

Charter School.” Contract, Part 8.1.1.4. This contractual language mirrors statutory language in NRS 388A.330, which also allows for termination 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). The Contract further defines “persistent underperformance” as “a school with any combination of ‘Unsatisfactory’ or ‘Critical’ designations on the Authority Framework *and* two-star and one-star rankings on the Nevada School Performance Framework for *three consecutive reporting cycles*,” which it further defines as “*three consecutive years*.” Thus, according to the Contract, before termination proceedings commence, a school’s performance must be analyzed under both the Authority Framework *and* the State Framework and the school must be found to have underperformed according to *both* standards. That has not occurred here.

In addition, on page 7 of the Charter School Performance Framework, incorporated into the Contract as Exhibit #1, in the section entitled “Contract Termination,” the Charter School Performance Framework agreed to by the Authority when it executed the Contract in 2013 includes the following chart.

Designation	NSPF		Authority	Timeframe
Contract Renewal Expectation	3-stars or above	AND	“Adequate” or above	Preceding Year
Quality	4-star or 5-star	AND	“Exceptional” or “Exceeds	Preceding Year
Contract Termination	Any combination of 1-star or 2 star	AND	Any combination of “Unsatisfactory” & “Critical”	Three consecutive years
Auto-Termination	1-star			Three consecutive years starting in 2013-2014

It is undisputed that the Authority’s Notice of Intent to Terminate NVVA’s Charter School Contract was based on the ratings of three *non*-consecutive school years and only partial scores for NVVA’s elementary school program. Thus, NVVA is challenging the Authority’s statutory ability to even issue a Notice of Intent to Terminate NVVA’s Charter Contract since the Authority did not use data to show that NVVA as “the school” persistently underperformed nor did it use “three consecutive years” of ratings for the selective grade levels identified.

These issues are further developed in the legal briefs submitted to the Court. However, because Judge Russell indicated they should be addressed by the Authority, we believe it prudent to include the same herein.

Additionally, the briefing memos make reference to certain notices that were sent to the school in 2013 and 2014, but fails to acknowledge that NVVA contested the notices and

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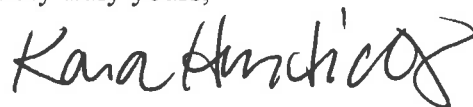
specifically the use of data from 2012-2013 to evaluate the school on a framework that did not exist when the data was created. This was an issue of discussion between NVVA and the Authority for quite some time. To complete the record in that regard, attached hereto as **Exhibit 1** is correspondence to Patrick Gavin on July 20, 2015 regarding the issue and **Exhibit 2** is his response to the same. NVVA appealed the issue to the Vice President of the Authority Board and thereafter opted not to immediately take additional action regarding the same. However, the Authority's decision to try and use 2012-2013 data now is just as troubling as it was back in 2015 and no justification has been provided for the same. Both the Notice of Concern and the Notice of Breach were flawed at the outset because they were based on improper data. The Authority Board members rightfully decided not to act on either of those notices.

Finally, NVVA is compelled to correct the record to note that contrary to the assertions in the memo submitted by staff on agenda item 5, a high-stakes review was not conducted in 2016 after the matter was fully vetted by the existing Authority Board. Interestingly, on page five of the February 16, 2018 staff memo, Mr. Gavin indicated that "the Authority board decided not to conduct the high stakes review and took no action." References to the contrary are wholly inaccurate.

Next Steps

NVVA will begin the application process for renewing its charter later this year. As seen by the materials submitted by the school, NVVA has a plan in place to improve its elementary school program. NVVA is confident that the plan it has in place will provide positive results for its students and improve the school's overall standing. NVVA would like to avoid a legal battle regarding the process that is currently being utilized to terminate the existing contract, a process which we have set forth as lacking legal authority. The Board will have the opportunity to revisit the school's performance and the results of the plan that the school has implemented as part of the renewal process. There simply is no reason for termination proceedings to continue at this juncture.

Very truly yours,



Kara Hendricks

cc: Samantha Morris (via electronic mail only)
Yolanda Hamilton (via electronic mail only)
Patrick Gavin (via electronic mail only)

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EXHIBIT 1

Accordingly, NVVA formally requests that it receive a written response to this letter within 30 days. NVVA's complaint regarding the use of data from the 2012-2013 school year and its placement on the Performance Framework Intervention Ladder in September of 2013 is set forth below as well as its recommendation for a resolution.

Complaint

Background

As you are aware, in June of 2013, NVVA came before the Authority to have its charter renewed. (A copy of NVVA's Charter School Contract ("NVVA Contract") is attached hereto as **Exhibit B**.) At that time, the Authority made it clear that NVVA's academic and financial performance was below the Authority's expectations and certain conditions were placed on the operations of NVVA. Additionally, the Authority directed that a high stakes review of NVVA's performance would be held in the fall of 2015 and included guidelines for the review in Appendix D to NVVA's Contract. Separate and apart from the high stakes review, NVVA's Contract also included requirements under the Performance Framework that was adopted by the Authority on June 21, 2013 (the very same day that NVVA's Contract was renewed).² NVVA took the direction it received from the Authority very seriously and has implemented a number of measures to improve both the academic and financial performance of the school.

The Performance Framework adopted by the Authority in June of 2013 is distinct from the high stakes review. The stated objective of the Charter School Performance Framework is "to provide charter school boards and leaders with clear expectation, fact-based oversight, and timely feedback while ensuring charter autonomy." *See* Ex. A, page 1. The stated objective of "clear expectations" is clear evidence of the Authority's intent to provide charter schools with specific goals and oversight going forward. There is no indication therein that the Performance Framework would be applied retroactively and used to evaluate a schools prior performance. Indeed, given that the framework was not adopted by the Authority prior to June of 2013, a retroactive application would be counter-intuitive in that charter schools would be unable to fully prepare for a review and would not know prior to an evaluation what standards it was being evaluated on.

The minutes from the Authority Board meeting on the day the Performance Framework was approved provide further guidance regarding its use and implementation. (A copy of the minutes from the June 21, 2013 Charter School Authority Board Meeting are attached hereto as **Exhibit C**.) Specifically, the heading used on page 6 in the minutes specifies that the Performance Framework would be implemented for the 2013-2014 school year and states:

² *See* Exhibit A. Additionally, the Performance Framework is referenced as Exhibit 1, to NVVA's Contract.
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Approval of the State Public Charter School Authority Performance Framework for implementation in the FY14/SY2013-2014.

See, Ex. C, page 6 (emphasis added).

The text of the minutes from the Authority's June Board Meeting also evidences a plan to transition schools from "demonstrated compliance to assumed compliance." *Id.* at 7. Director Canavero explained that "if the Authority approves these frameworks then the board is approving the standards to which non-renewal and revocation would be made." *Id.* According to the minutes, a discussion was also had regarding transitioning forward into a full framework model. *Id.* Ultimately, the Board unanimously voted in favor for the approval of the Performance Framework "for implementation in the FY14/SY 2013-2014." *Id.* All references to implementation of the Performance Framework in the minutes of the June 21, 2013 Board Meeting specify that it will be implemented for the 2013-2014 school year. The minutes also reference "transitioning forward" with the new framework as well as providing the charter school with clear objectives.

Included within Section 5 of the Performance Framework is an Intervention Ladder that is to be utilized when the Performance Framework process results in adverse findings. See Ex. A, page 6. Moreover, as explained in Section 5 of the Performance Framework, all schools begin outside of the intervention ladder and are considered to be in "Good Standing" *Id.* As detailed below, NVVA was immediately issued a Notice of Concern and deemed not to be in "Good Standing." NVVA did not get the benefit of working under the guidelines of the Performance Framework before it was placed on Level 1 of the Intervention Ladder. This was an error that must be corrected.

Use of Performance Framework & Intervention Ladder

As set forth above, the Performance Framework adopted by the Authority in June of 2013 was to be implemented in the 2103-2014 school year. Moreover, it is well documented that the new Performance Framework and the Intervention Ladder would be utilized in evaluations of charter schools **beginning with the 2013-2014 school**. Notwithstanding the clear language within the Performance Framework and the meeting minutes from the June 2013 Authority Board; data from the 2012-2013 was used and NVVA received a "Notice of Concern" and was placed in Level 1 of the Intervention Ladder on September 15, 2013. (A copy of the September 15, 2013 correspondence from Steve Canavero is attached hereto as **Exhibit D.**)

NVVA was thereafter issued a Notice of Breach and moved to the second rung of the Intervention Ladder based on data from the 2013-2014 school year. Specifically, in December of 2014, NVVA received correspondence notifying it that the school had moved to the second rung of the Intervention Ladder and was deemed to have received a "Notice of Breach". (A copy of the December 15, 2014 correspondence from Patrick Gavin is attached hereto as **Exhibit E.**)

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NVVA is diligently working to improve the education it provides children in Nevada and serves a unique population that is not being catered to by the public school system. NVVA is making great strides in a number of areas and believes the Authority will continue to see progress in its academic and financial performance. NVVA is not disputing the need to improve its performance. However, using data from the 2012-2013 school year to place NVVA on the Intervention Ladder escalates the potential for revocation of NVVA's charter in an unfair and prejudicial manner. The use of the 2012-2013 data in a framework that was not adopted until after the 2012-2013 school year was complete is improper as a matter of law. Accordingly, NVVA seeks to resolve the discrepancies it sees with the use of the 2012-2013 data and its placement on the Intervention Ladder in September of 2013.

Recommended Resolution

Although NVVA understand that the 2012-2013 school year will be used as the baseline for the high stakes review in the fall of 2015, we find no support for the position that the 2012-2013 can be used in the Intervention Ladder that is part of the Performance Framework that was not adopted by the Authority until June of 2013.³ The use of the 2012-2013 data and placing NVVA on the Intervention Ladder just months after the Performance Framework was implemented is problematic and a critical issue for NVVA.

NVVA believes there is a simple resolution and that Letter of Concern sent to NVVA by Steve Canavero on September 23, 2013 should be withdrawn and the December 15, 2014, Notice of Breach should be amended and reissued as a Letter of Concern. This would place NVVA on the first rung of the Intervention Ladder. NVVA is not making excuses for what happened in its past, but is asking the Authority Board to provide it the three years contemplated by the Performance Framework to improve its school.

We appreciate your time and attention to this matter and look forward to receiving a written response to the foregoing complaint and recommendation that outlines your position regarding the relevant issues and either accepts the proposed resolution or offers an alternative resolution.

Very truly yours,



Kara B. Hendricks, Esq.

cc: Nevada Virtual Academy Board

³ During our meeting in April of this year, you explained that the Authority used the 2012-2013 school year data to place NVVA on the Intervention Ladder based on a reference to the 2012-2013 school year in Appendix D to NVVA's Charter Contract. NVVA believes this was done in error and that the reference in Appendix D is specific to the upcoming high stakes review.

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EXHIBIT 2

BRIAN SANDOVAL
Governor

STATE OF NEVADA

PATRICK GAVIN
Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

1749 North Stewart Street Suite 40
Carson City, Nevada 89706-2543
(775) 687 - 9174 · Fax: (775) 687 - 9113

August 13, 2015

VIA FIRST CLASS MAIL & EMAIL

Ms. Kara Hendricks
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
hendricksk@gtlaw.com

***Re: Nevada Virtual Academy Concerns Regarding Premature
Placement on Charter Authority Intervention Ladder***

Dear Ms. Hendricks,

I write in response to your July 20, 2015 letter on behalf of Nevada Virtual Academy, which was submitted pursuant to Section 10.1.1 of the charter contract.

Based on consultation with counsel, the Authority's position on this matter remains unchanged. Pursuant to AB205 of the 2013 legislative session, the charter contract, and the performance framework, the SPCSA's issuance of the 2013 Notice of Concern and the 2014 Notice of Breach lie well within the agency's statutory authority. Moreover, these actions were mandated by the Authority's statutory responsibilities.

Pursuant to Section 10.1.1 of the charter contract, the school has an opportunity to appeal this decision. Due to the presence a previously disclosed conflict of interest, an appeal to the Board Chair of the SPCSA is likely to result in the Chair recusing herself from reviewing this complaint. In lieu of a review by the Board Chair, the Authority instead proposes that this matter be reviewed by the Board's current Vice Chair, Elissa Wahl.

Per the charter contract, the reviewer has fifteen calendar days from the receipt of your appeal request to render a decision. There is also an opportunity for the school to appeal the decision of the reviewer to the Board of the SPCSA at the next regularly scheduled board meeting. Pursuant to the terms of the charter contract, any decision by the SPCSA regarding this dispute is final.

Sincerely,

A handwritten signature in black ink that reads "Patrick J. Gavin". The signature is written in a cursive style with a large initial "P" and "G".

Patrick J. Gavin
Director
State Public Charter School Authority