

BRIAN SANDOVAL
Governor

STATE OF NEVADA

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Executive Director



STATE PUBLIC CHARTER SCHOOL AUTHORITY

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BRIEFING MEMORANDUM

TO: SPCSA Board
FROM: Ryan Herrick, General Counsel
SUBJECT: Agenda Item No. 6: Nevada Virtual Academy – Potential Future Termination Proceedings
DATE: April 27, 2018

Introduction

This Briefing Memorandum summarizes the proceedings to date as they relate to the Notice of Intent to Terminate Nevada Virtual Academy’s charter school contract, issued on February 21, 2108. A copy of the Notice is attached to this Memorandum. This Memorandum also summarizes NVA’s legal arguments forwarded in connection with the Notice, and SPCSA staff’s response. Finally, this Memorandum proposes a procedure for any potential post-April 27 proceedings, and outlines several options that the Authority Board may consider at this juncture.

The Notice of Intent to Terminate NVA’s Charter School Contract:

On February 16, 2018, this Board unanimously voted to issue Nevada Virtual Academy a Notice of Intent to Terminate NVA’s charter school contract (“the Notice”).

Notably, both the Authority Board and SPCSA staff were clear at the February 16, 2018 Authority Board meeting that the issuance of the Notice did not necessarily mean that NVA’s charter school contract would be terminated, or that NVA would close at the end of this school year. Instead, the Authority Board and SPCSA staff were clear at the February 16, 2018 Authority Board meeting that the issuance of the Notice started a statutory process, part of which was the submission by NVA of an academic improvement plan demonstrating to the Authority how NVA would correct the deficiencies and turn around its elementary school’s historically poor academic performance.

The Notice was issued on February 21, 2018. The Notice informed NVA of several deadlines and upcoming dates. First, the Notice stated that NVA shall have up to and including April 2, 2018 to submit documentation to the Authority “demonstrat[ing] that it has corrected the deficiencies” identified in the Notice. Next, the Notice states that the Authority Board “will determine whether NVA has corrected the deficiencies identified [in the Notice] to the satisfaction of the Authority at

[the Authority’s] April 27, 2018 Board meeting. Finally, the Notice specifies that “*in the event that the SPCSA Board determines at its April 27, 2018 Board meeting that NVA has not corrected the deficiencies identified [in the Notice] a public hearing will be held on May 14, 2018 for the SPCSA Board to determine whether to terminate NVA’s charter school contract.*” (Emphasis added.)

NVA’s Legal Arguments Related to the Notice:

As part of its April 2, 2018 submission, and in connection with NVA’s subsequent responses to SPCSA staff’s clarifying questions, NVA forwards a number of legal arguments in support of its position that the Notice and all related proceedings are not valid. These four primary legal arguments are summarized below.

Initially, two of NVA’s legal arguments are without any merit whatsoever. First, NVA’s argument that NRS 388A.300 constrains the Authority in regard to the notice falls flat. The Notice was issued pursuant to NRS 388A.330, and as such, NRS 388A.300 has no applicability to this matter whatsoever. NRS 388A.300 is a non-discretionary, automatic closure statute completely distinct from the permissive closure procedure set forth in NRS 388A.330. Second, NVA claims that it is not bound by the provisions of NAC 386.332, which defines “persistent underperformance.” In this regard, NVA claims that NAC was not effective at the time NVA’s current charter school contract was executed. This is factually incorrect, and NVA’s argument in this regard is without merit.¹

Third, NVA claims that the Authority cannot terminate NVA’s charter contract as it relates to the entire school – in this case grades K through 12 – based on the academic underperformance of its elementary school. This argument likewise falls flat, and is a misreading of NRS 388A.330(1) and (7). These statutory provisions allow the Authority Board to terminate a charter school contract based on the underperformance of a segment of the school – in this case, NVA’s elementary school – or amend the school’s charter contract to eliminate underperforming grade levels. Both of these options are within the discretion of the Authority Board should it determine that the deficiencies have not been corrected.

Finally, NVA argues that the Notice and related proceedings are improper because the Authority is relying on “non-consecutive years” worth of Nevada School Performance Framework data. In this regard, while Nevada’s charter school statutes and regulations, as well as the charter school contract and incorporated Performance Framework are ambiguous, SPCSA staff is confident that the transition to a new statewide assessment, the SBAC, and the subsequent statewide testing irregularity depriving the state of testing and performance data, does not prohibit use of ratings immediately preceding and immediately succeeding the irregularity. Furthermore, the reliance on multiple years of ratings without any intervening year of higher performance complies with both the language of the statutes, regulations, and charter school contract, as well as with the intent of these provisions.²

In this same vein, NVA points to language contained in the Authority’s Performance Framework that NVA argues requires the Authority to rely on data and ratings from both the Nevada School Performance Framework (Nevada’s Star Ratings) as well as the Authority’s own Performance

¹ NAC 386.332 was adopted in 2014, NVA’s current charter contract was executed in 2016.

Framework. Again, SPCSA staff is confident that its reliance on data and ratings from the Nevada School Performance Framework is proper and appropriate.

Potential Post-April 27 Proceedings:

NRS 388A.330 states that a “public hearing” shall be held to determine whether to terminate a charter school contract.

SPCSA staff began discussions with NVA’s legal counsel following the February 21, 2018 issuance of the Notice, in order to attempt to come to an agreement regarding any potential pre-hearing procedures and hearing procedures. These discussions culminated in a written proposal provided by SPCSA staff to NVA’s legal counsel on March 27, 2018.

While, as of the date of this Briefing Memorandum, no agreement with NVA has been reached in regard to any pre-hearing procedures, or procedures related to any potential public hearing, productive discussions regarding any potential post-April 27, 2018 procedures are continuing. In this regard, it is contemplated that NVA and the Authority will likely come to an agreement to move the presently-scheduled May 14, 2018 public hearing, to sometime during the second week in June 2018. SPCSA staff is hopeful that a new date can be proposed at the April 27, 2018 Authority Board meeting.

Based on the foregoing, SPCSA staff is proposing that the Authority Board adopt the proposed procedure, which is attached and incorporated into this Briefing Memorandum.

Note Regarding Renewal:

As SPCSA staff has noted several times during this process, NVA’s charter school contract expires on June 30, 2019. Pursuant to NRS 388A.285, the renewal process will begin in June of 2018, and NVA will submit any potential renewal application to the Authority during the Authority’s renewal window of October 1 to October 15. *See* R089-016, effective December 21, 2016. As is evident, the process related to any renewal of NVA’s charter school contract will begin in less than two months.

Recommendation: In the event that the Authority Board wishes to proceed with the termination process, SPCSA staff recommends that the Authority Board adopt the attached proposed procedures. Note that the attached proposal presupposes a June 6, 2018 public hearing date. However, in the event that NVA and the Authority agree to a different date for the public hearing contemplated by NRS 388A.330, the dates and deadlines included in the attached proposal can and should be modified accordingly. In essence, the attached proposal is meant to serve as a template for any potential post-April 27, 2018 proceedings, should such proceedings be necessary.

In the event that the Authority Board does not wish to proceed with the termination process, the Authority Board can take no action in regard to this Agenda Item.

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**VIA ELECTRONIC MAIL AND
CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

February 21, 2018

Mrs. Samantha Morris
Board President
Nevada Virtual Academy
4801 S. Sandhill
Las Vegas, Nevada 89121

Re: Notice of Intent to Terminate Nevada Virtual Academy's Charter School Contract

Mrs. Morris,

Pursuant to NRS 388A.330, this correspondence constitutes the State Public Charter School Authority's Notice of Intent to Terminate Nevada Virtual Academy's charter school contract. As you are aware, at the February 16, 2018 SPCSA Board meeting, the SPCSA Board voted to issue this Notice.

This Notice is based on NRS 388A.330(1)(a)(4), which states that the sponsor of a charter school may revoke or terminate a charter contract if the charter school has persistently underperformed. Nevada Virtual Academy's elementary school was rated as a 1-star school in the 2017 Nevada School Performance framework, and has persistently underperformed as defined in NAC 386.332 as it was rated below the three-star level during the last three ratings.

Now that the SPCSA Board has voted to issue this Notice, pursuant to NRS 388A.330, the following will occur:

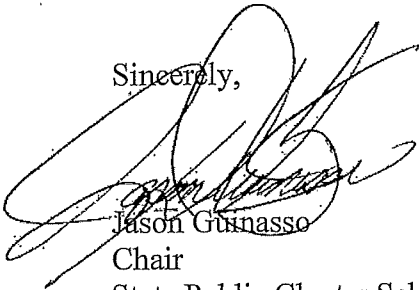
1. NVA will be provided with at least 30 days to correct the deficiencies identified above. This period begins as of the date of this Notice, February 21, 2018, and ends on April 2, 2018. The transmitting correspondence, written legal argument, evidence, and supporting materials that the charter school chooses to provide to demonstrate that it has corrected the deficiencies must be uploaded into Epicenter by close of business on April 2, 2018. The Authority cannot consider materials submitted following this deadline.

2. The SPCSA Board will determine whether NVA has corrected the deficiencies identified above to the satisfaction of the Authority at its April 27, 2018 Board meeting.
3. In the event that the SPCSA Board determines at its April 27, 2018 Board meeting that NVA has not corrected the deficiencies identified above, a public hearing will be held on May 14, 2018 for the SPCSA Board to determine whether to terminate NVA's charter school contract.

Note that the Authority and NVA may agree in writing to different time periods than those prescribed by NRS 388A.330.

Finally, no action by the SPCSA Board to terminate NVA's charter school contract would be effective until the end of the 2017-2018 school year.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Guinasso", is written over the typed name and title.

Jason Guinasso
Chair
State Public Charter School Authority

cc: Patrick Gavin; Executive Director, State Public Charter School Authority
(via *electronic mail only*)

Post-April 27, 2018 SPCSA Board Meeting Procedures:

In the event that the SPCSA determines at its April 27, 2018 Board meeting that NVA has not corrected the deficiencies identified in the Notice, the following procedures will be utilized:

- a. Within ten (10) business days of the April 27, 2018 Board meeting, (no later than the May 11, 2018), counsel for NVA and the SPCSA shall exchange written briefs, consisting of both legal and factual arguments, a list of potential witnesses, any documentary evidence that NVA and the SPCSA contemplate presenting at the June 6, 2018 public hearing.
- b. Within five (5) business days (no later than the May 18, 2018) after the exchange of briefs, witness lists, and documents, NVA and the SPCSA shall exchange any responses in regard to the previously-exchanged briefs, witness lists, evidentiary objections, and documentary evidence.
- c. Six (6) business days prior to the June 6, 2018 (no later than the May 29, 2018) public hearing, NVA and the SPCSA shall submit their respective briefs and responses to the SPCSA Board, along with a joint list of witnesses and documentary evidence. Documentary evidence and witnesses shall be limited to the previously exchange evidence and witness lists absent agreement between the parties or a showing that the additional evidence and/or newly proposed witness was unknown and unknowable to the party prior to the deadline described in paragraph (a) above.

June 6, 2018 Public Hearing Procedures:

At the June 6, 2018 public hearing, the following procedure will be utilized:

- a. Opening Statements;
 - i. The SPCSA shall present the SPCSA Board with its opening statement;
 - ii. NVA shall present the SPCSA Board with its opening statement.
- b. Presentation of Evidence;
 - i. The SPCSA shall call its witnesses and present any evidence to the SPCSA Board;
 - ii. NVA shall present its rebuttal to the SPCSA's witnesses and evidence, including cross-examination of any witnesses presented by the SPCSA;
 - iii. NVA shall call its witnesses and present any evidence to the SPCSA Board;
 - iv. The SPCSA shall present its rebuttal to NVA's witnesses and evidence, including cross-examination of any witnesses presented by NVA;

- v. The SPCSA Board may ask any questions at any point during the presentation of evidence.
- c. Closing Arguments;
 - i. The SPCSA shall present its closing arguments;
 - ii. NVA shall present its closing arguments;
 - iii. Rebuttal may be allowed at the discretion of the SPCSA Board.

Counsel for NVA and the SPCSA shall utilize good faith efforts to conduct the June 6, 2018 public hearing within a single day. Following the procedure as set forth above, it is contemplated that the SPCSA will deliberate and make a determination whether to terminate NVA's charter school contract, take other action, or take no action. It is further contemplated that findings of fact and conclusions of law shall be submitted to the Authority Board following the conclusion of the above-referenced public hearing.