

February 14, 2018

**VIA U.S. MAIL & ELECTRONIC MAIL**

Ryan Herrick  
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***Re: Nevada Virtual Academy***

Dear Mr. Herrick:

This correspondence is sent in response to your February 5, 2018 correspondence regarding Nevada Virtual Academy (“NVVA” or “the School”) and the upcoming meeting of the State Public Charter School Authority (“SPCSA”). We understand that NVVA is on the Agenda for the February 16, 2018 SPCSA meeting and that Staff intends to recommend that a Notice of Intent to Terminate NVVA’s charter school contract be issued. As detailed below, we believe a Notice of Intent to Terminate should not be issued for a number of reasons including: 1) the quick response NVVA provided to Staff after first being questioned regarding plans for the elementary school program going forward including but not limited to the School’s immediate submittal of plan that demonstrates a commitment to improvement; 2) NVVA’s willingness to submit a formal turnaround plan without a Notice of Intent to Terminate issuing; and 3) flaws in the legal analysis and procedural steps proposed by Staff and lack of data previously available.

As a preliminary matter, it is important to note that NVVA has high school, middle school and elementary school programs. NVVA’s high school program achieved an 84% graduation rate for the 2017 school year, higher than the state average, and NVVA’s middle school program received a 3-Star rating, up from a 2-Star rating during the 2012-13 school-year. However, despite showing improvements in areas such as math proficiency and English proficiency, NVVA’s elementary school received a one star rating and saw deficiencies in several areas including chronic absenteeism and engagement, and the School’s lowest performing students were identified as not progressing fast enough to be proficient within 3 years.

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NVVA took steps even before the Nevada Star Ratings were released to target growth and progress in its elementary school program. Notably, in the fall of 2017, Dr. Andre Denson joined NVVA as the principal of grades K-8, bringing a wealth of administrative experience to the School. Additionally, a new assistant principal, April Koebcke joined NVVA last fall as an assistant principal for grades K-5. Together Dr. Denson and Ms. Koebcke began diving into the data and developed five strategies that are currently being utilized to improve the elementary school program: 1) data-driven instruction; 2) developing a culture of high expectations; 3) frequent and intensive interventions providing multi-tiered support; 4) extending school instruction; and 5) focusing on excellence in teaching and leadership. Using these strategies, a Continuous Improvement Plan was implemented by the School. This plan was shared with NVVA's Board at its January 2018 meeting and the highlights were provided to you the day after we first spoke about the performance of NVVA's elementary program, just two weeks ago.

We note that you have included the PowerPoint presentation regarding NVVA's Continuous Improvement Plan in the materials provided to SPCSA's Board members. While the school is happy to share this information, it should be clear that the information was not prepared at SPCSA's request and was not formatted and/or intended to be a formal turnaround plan. Indeed, given that you first inquired regarding NVVA's plans for the elementary school on February 1, 2018, and NVVA provided a copy of its Continuous Improvement Plan on February 2, 2018 it should be clear that NVVA was acting in good faith and was/is taken steps to improve the elementary school. As such, the comments in the Briefing Memo that the plan alone "is wholly insufficient to forestall the issuance of the Notice" are disingenuous at best. NVVA had just over two weeks' notice of the action being proposed at the February 16, 2018 SPCSA meeting and never represented what was submitted on February 2<sup>nd</sup> was all encompassing.

Moreover, NVVA has repeatedly expressed its willingness to submit a formal turnaround plan without the need for a Notice of Intent to Terminate to issue. Unfortunately, the School's requests in regard to submitting a turnaround plan were met by statements indicating that Staff's role is not to collaborate with the School and an indication that the agenda for the February 16, 2018 SPCSA meeting would include a recommendation to terminate NVVA's charter regardless of anything the school did in the nominal period it was provided to address the issue prior to the scheduled SPCSA meeting. This is unnecessary. NVVA is willing to submit such a plan to Staff by April 2, 2018 without the need for a Notice of Intent to Terminate. Additionally, as you are aware, the School has already had discussions with Staff regarding the information Staff would like to see included in a turnaround plan and has requested a template to facilitate formatting the same in user-friendly manner. To be clear, NVVA is not making excuses for the performance of its elementary school program and is committed to improving the same.

In addition to the foregoing, there are a number of legal issues that should preclude the proposed action. Notably, the Briefing Memorandum provided by Staff to SPSCA's Board does not reference Nevada's Administrative Procedures Act which further defines the rights of the parties involved. While we trust that was just an oversight by Staff, we do hereby request clarification from the SPSCA that the process will be governed by the Administrative Procedures Act.

Additionally, there have been a number of changes that affected the School and its ability to track its performance including the precarious state of testing data over the last several years, the suspension of the charter school academic framework, the fits and starts in the star rating system utilized by the Nevada Department of Education, and revisions to Nevada's statutes governing charter schools. Given these changes and the fact that the recommended action is based on data from 2013, 2014 and 2017 (not consecutive academic reporting cycles), the ability of the Authority to jump to a Notice of Intent to Terminate appears contrary to the existing Charter Contract and attachments thereto.

Additionally, NVVA's elementary school program is not the "charter school" nor does it hold a charter contract, which are conditions required under NRS 388A.330 in order to take the recommended action. That provision of law also requires that the recommended action be based on performance of the charter school under the school's performance framework, a framework that is currently suspended and cannot be used as a basis to close the school.

Moreover, the use of 2012 and 2013 data as the basis for the recommended action is prohibited by statute. Based on AB 205, the charter contract, and the performance framework, no data prior to the 2013-2014 school year can be used for these purposes. Please note that this correspondence is not intended to fully brief these and/or other legal arguments NVVA may have and should not be considered an admission of liability and/or a waiver of any of NVVA's administrative or judicial rights. Indeed, NVVA is hopeful this matter can be resolved without the need for legal action as there are serious violations of statute and due process at stake.

We are disappointed that Staff is taking such aggressive action shortly after the Nevada Star Ratings were issued for the first time in multiple years and without first attempting to work through the issues with the School. Such action is premature and unnecessary. This was not situation where NVVA and the Authority Staff were at an impasse that escalated to a Notice of Intent to Terminate. In fact, the parties had not discussed performance issues in over a year, and recent conversations were cordial. NVVA is willing to work with SPSCA Staff and will voluntarily submit an elementary school program turn-around plan for review and evaluation.

NVVA hopes that the discussion at the upcoming Board meeting will be on the steps it is currently taking and/or planning to take to improve its elementary school program.

For all of the reasons stated above, we request mutual consent that this item be removed from the agenda so that we can schedule a time to discuss the outstanding legal issues as well as have School staff work on a turnaround plan. We hope the parties can work together in an amicable manner to improve NVVA's elementary school program and improve the education of the students enrolled. Should you have any questions or concerns regarding the above, please do not hesitate to contact me.

Very truly yours,



Kara B. Hendricks, Esq.

KBH/sn

cc: Samantha Morris  
Yolanda Hamilton  
Patrick Gavin  
SPSCA Board Members  
The Honorable Brian Sandoval  
The Honorable Adam Laxalt