

NEVADA STATE PUBLIC CHARTER SCHOOL AUTHORITY

January 18, 2019

Nevada Department of Education
700 East 5th Street
Board Room
Carson City, Nevada

Nevada Department of Education
9890 South Maryland Parkway
2nd Floor Board Room
Las Vegas, Nevada

MINUTES OF THE MEETING

BOARD MEMBERS PRESENT:

In Las Vegas:

Randy Kirner
Sheila Moulton
Jeff Hinton

In Carson City:

Melissa Mackedon
Jason Guinasso

BOARD MEMBERS ABSENT:

Nora Luna
Stavan Corbett

AUTHORITY STAFF PRESENT:

In Las Vegas:

Mark Modrcin, Director of Authorizing
Brian Scroggins, Deputy Director
Michael Dang, Management Analyst IV
Sandra Kinne, Education Programs Professional
Lisa Dzierbicki, Education Programs Professional

In Carson City:

Danny Peltier, Management Analyst I
Selcuk Ozdemir, Education Programs Supervisor
Sara Jorgensen, Education Programs Professional
Jennifer Bauer, Director of Finance and Operations
Ryan Herrick, General Counsel
Aisheh Quiroz, Legal Assistant

AUDIENCE IN ATTENDANCE:

In Las Vegas:

(See attached Sign-in Sheet)

In Carson City:

Rebecca Phipps

Pat Hickey

Susan Nielsen

Chris McBride

CALL TO ORDER; ROLL CALL; PLEDGE OF ALLEGIANCE; APPROVAL OF AGENDA

Agenda Item 1 – Call to Order, Roll Call, and Pledge of Allegiance

Chairman Guinasso called the meeting to order at 9:00am with attendance as reflected above.

Agenda Item 2 – Public Comment

Jonathon Patelo – Mr. Patelo, an attorney with Wilson Elser, who represents Quest Academy in the ongoing litigation brought by Josh Kern, receiver for Quest Academy. His questions were as follows:

Is Mr. Kern an SPCSA-administrated receiver or a court-appointed receiver?

What statute did the SPCSA rely upon to appoint Mr. Kern as a receiver?

Is Mr. Kern using taxpayer dollars to pay his attorneys?

When did Mr. Kern order Quest Academy to stop making payments to landlords?

Has Mr. Kern, or anyone else on behalf of Quest Academy, ever filed a claim with a governing body for the defendant in the above-referenced action, Kern v. Quest Academy?

Chair Guinasso directed Mr. Herrick to reach out and answer the questions as appropriate.

Agenda Item 3 – Approval of the December 14, 2018 Action Minutes.

Member Moulton moved to approve the minutes of the December 14, 2018 Authority Board meeting. Member Kirner seconded the motion. The motion carried unanimously.

Agenda Item 4 – SPCSA Staff Reports

1. Authorizing Team

Director Modrcin updated the board on his team's work:

- a. Performance Framework Update
 - i. Financial Performance Framework and will present on this item later in the agenda. The work on the Academic Framework is almost complete and the team will update on this item at the February 15.
 - ii. Academic Performance Framework – the team’s work is almost complete, and they will update the board at the February 15th meeting. The aim is to construct something that compliments the NSPF – not something that replaces it.
 - iii. Organizational Performance Framework – the team is continuing to work on this and will present at the February 15th meeting.
- b. Winter Cycle Charter Applicants
 - i. The team received one application by the deadline. They have begun the review process and are planning to bring recommendations to the board by April or May. The team will gather feedback from applicants who submitted a letter of intent but did not complete the application.

2. School Support Team

- a. School Support Site Visits
- b. Community, State, and National Conferences and Events
- c. Assessment Training
- d. NDE Meetings, Trainings, and Reporting
- e. Technical Support

Sara Jorgensen, Education Programs Professional, gave a brief presentation regarding the above items. Her remarks have been appended to this document.

3. Finance and Operations Team

- a. Budget

Jennifer Bauer, Director of Finance and Operations, gave a brief overview of the Governor’s Recommended Budget, which was made public earlier this week. She highlighted the changes that were made by the Governor’s Finance Office, including the removal of five requested positions, the denial of the request to increase the Executive Director salary by 10%, and the approval of four new positions. There were also two cost allocations added for two positions at NDE – a Business Process Analyst and an auditor.

4. Legal

- a. Renewed Contracts
 - i. Three of the approved contracts have been finalized. The fourth contract is in progress and should be complete in the next couple of weeks.
- b. Findings of Fact – OML complaint
 - i. Roughly a year ago, there was an OML complaint filed with the Attorney General’s office stating that the SPCSA did not properly notice a meeting. The process has since been corrected and the action taken at the meeting

when the violation occurred was voted on again at the June meeting.

Agenda Item 5 – Update Regarding Executive Director Recruitment Process

Mr. Herrick explained that the applicants before the board are all those who submitted an application during the application window. Board members will select six candidates to interview. Mr. Herrick and Ms. Gennie Hudson, of State HR, will tally the votes. The top candidates will be those who received a unanimous vote (five), then those who received four votes, and so on.

Chair Guinasso opened the floor for public comment.

Pat Hickey, CSAN President, spoke on behalf of CSAN and gave CSAN's list of top candidates for the Executive Director position. That list has been appended to this document.

Rebecca Feiden, an applicant for the Executive Director position, introduced herself to the board.

The board took a moment to vote, then there was a recess during which the votes were tallied.

Mr. Herrick read the results of the vote. The following candidates will be interviewed at the March 8, 2019 meeting:

Sami Randolph

Katherine Poulos

Brian Scroggins

Mark Modrcin

Rebecca Feiden

Eve Breir-Ramos

Member Moulton moved to approve the above candidates to move ahead to the interview process. Member Mackedon seconded. The motion carried unanimously.

Agenda Item 6 – 2019 Legislative Update

Acting Director Scroggins updated the board on the upcoming legislative session and the progress Staff has made regarding AB78 (SPCSA's bill). Director Scroggins stated that he had met with Dr. Canavero, State Superintendent of Public Instruction, and others from the Nevada Department of Education regarding some initiatives in AB78. The plan is to completely revamp AB78 and to focus on a few initiatives including accountability for the SPCSA as a sponsor, Special Education services, and the status of the SPCSA as an LEA.

Dr. Canavero explained to the Education Committee Chairs that his interpretation of statute is that the SPCSA has these responsibilities. He explained that there would be a need for additional staff, which will be addressed via the budget process.

Director Scroggins went on to explain that increasing the diversity of our schools is an important priority as well.

Staff is working closely with Dr. Canavero to draft language for a revised AB78 and will have a further update at the February meeting.

Member Kirner asked whether the SPCSA would still have the LEA responsibilities if we do not get the requested positions, or if those responsibilities would remain with NDE.

Director Scroggins explained that the LEA positions have been cut from the budget, but that does not necessarily mean that the LEA responsibilities will not fall on the SPCSA. Legally, the SPCSA is the LEA for the schools it sponsors.

Chair Guinasso reiterated that the SPCSA is, legally, the LEA and has the responsibilities outlined in the memo from Dr. Canavero. The only question that remains is how to do the work with which we have been charged while being significantly understaffed. Staff is working closely with Dr. Canavero to address this concern.

Chair Guinasso expressed his gratitude to Dr. Canavero for his partnership in working on AB78.

Chair Guinasso asked Member Hinton to update the board on the Fund Our Future coalition. The board is not officially a partner of the coalition but supports the cause and members want to be updated on what is happening with the coalition.

Member Hinton stated he had spoken with someone who was on a phone call with the coalition members recently, but that right now they are focusing on coalition-building ahead of the session. When he has more information, he will update the board.

Agenda Item 7 – American Leadership Academy – Summerlin

American Leadership Academy – Summerlin has submitted an amendment to change its name to Signature Preparatory Academy. No other changes to their charter will be made.

Chair Guinasso represents American Leadership Academy and therefore recused himself from voting on this agenda item.

Vice Chair Mackedon took over the item after Chair Guinasso left the room.

Member Moulton moved to approve the name change from American Leadership Academy to Signature Preparatory Academy. Member Hinton seconded the motion. The motion carried unanimously.

Agenda Item 8 – SPCSA Charter School Performance Framework

Director Modrcin explained that Staff has been working to update the Financial Performance Framework to facilitate more effective accountability measures.

Mike Dang, Manager of Organizational and Financial Frameworks, delivered a presentation regarding the Financial Performance Framework. His presentation can be found with the supporting materials for this agenda item.

Chair Guinasso asked how we individualize the financial framework to accommodate any special needs a school may have. Mr. Dang stated that schools could be addressed on a case-by-case basis, as each school has different needs. This framework captures the actual financial health and considers the financial context of each school.

Member Kirner and Chair Guinasso both thanked Staff for their efforts and work toward completing this framework.

Member Mackedon moved to approve staff's recommendation and the revised Financial Framework. Member Kirner seconded. The motion carried unanimously.

Agenda Item 9 – 2017-2018 SPCSA Graduation Rate

Dr. Ozdemir gave a presentation regarding the graduation rate of the SPCSA portfolio. His presentation can be found among the supporting materials for this meeting.

Member Kirner asked how the graduation rate would be impacted if the virtual schools were removed. Dr. Ozdemir explained that the graduation rate would go down without the virtual schools because there of the high number of students enrolled in virtual schools.

Member Moulton asked if everyone agreed with their graduation rates and if there is an appeal process if they did not agree. Dr. Ozdemir explained that there were some data problems with a couple of schools. They were given an opportunity to change or fix the data, but that window has closed and there is not an appeals process.

The Authority Board presented four schools with certificates for achieving a graduation rate of over ninety percent: Equipo Academy, Oasis Academy, Nevada State High School, and Coral Academy.

Chair Guinasso noted that the SPCSA would like to do a better job of highlighting the successes of our schools going forward.

Agenda Item 10 – Nevada Connections Academy

Dr. McBride gave a quarterly update regarding Nevada Connections Academy. Their graduation rate increased by eighteen percent. They have made significant improvements and hope to increase their graduation rate even more. Dr. McBride's report and presentation are available with the supporting materials for this agenda item.

Member Moulton asked Dr. McBride how many students NCA has. He answered that there are 3,500 students currently enrolled.

Dr. McBride responded to some concerns raised by Director Modrcin in a conversation they had on January 4th. The first concern was that the school had not submitted documentation that all of their teachers had completed the "Math, We Got This" professional development requirement.

Dr. McBride explained that there is a great deal of professional development taking place at the school and that they prioritized MAP training over the “Math, We Got This” training, but that the next quarterly update would show progress toward that goal.

The second concern Director Modrcin raised was that there was no evidence that the school was holding PLC’s on a biweekly basis. Dr. McBride cited a miscommunication between himself and staff and that the correct information would be submitted.

Finally, there was a concern regarding the Learning Coach trainings. There does not appear to be a way to find out who attended the sessions under a “guest” account. They are considering having specific training for K-5 so they will be able to be certain that the attendees are K-5 Learning Coaches. The training that Director Modrcin attended via telephone, when there were no other attendees, was actually an in-person training.

Director Modrcin explained that the conditions to which Dr. McBride alluded were the conditions that were approved by this body.

Director Modrcin expressed some concern that the training sessions have not been occurring consistently or as thoroughly as they were intended in the plan. The school has not implemented its plan with fidelity. NCA is up for renewal at the end of the school year. Director Modrcin explained that it is unlikely the school will have reached a three-star rating by that point, and if the school were up for renewal today, Staff would recommend against renewal.

Dr. McBride expressed his gratitude for Director Modrcin’s comments and concerns, and that they helped his team to prepare for this presentation.

Chair Guinasso asked if NCA is prepared to explain the problems with their performance when it comes to renewal. Dr. Scott Harrington, NCA’s Board President, responded and explained some of the problems that NCA has faced and how they are implementing the changes.

Chair Guinasso said that he would like to see more fidelity in the implementation of the plan and he wants to see dramatic improvement.

Dr. Harrington briefly explained the measures the NCA Board has taken to oversee the implementation of the improvement plans, including asking for a report of the attendance at Learning Coach trainings.

Agenda Item 11 – Quest Preparatory Academy

Josh Kern, Receiver for Quest Preparatory Academy, gave a short quarterly update regarding Quest Preparatory Academy. His written testimony is appended to this document.

Agenda Item 12 – Argent Preparatory Academy

Josh Kern, Receiver for Argent Preparatory Academy, gave a short update regarding the wind-down of Argent Preparatory Academy. His written remarks are appended to this document.

Mr. Kern took a few minutes to answer the questions that were asked during public comment.

1. Is Mr. Kern an SPCSA-administrated receiver or a court-appointed receiver?

For Quest, he is court-appointed. For Argent, SPCSA-appointed.

2. What statute did the SPCSA rely upon to appoint Mr. Kern as a receiver?

Mr. Kern referenced a brief that contains that information. Mr. Herrick and Mr. Kern will discuss disseminating that information.

3. Is Mr. Kern using taxpayer dollars to pay his attorneys?

Yes, due to the gross misconduct at the school which led to the legal issues Mr. Kern mentioned in his update. He stressed that the schools actually saved significantly more money than was spent on legal fees.

4. When did Mr. Kern order Quest Academy to stop making payments to landlords?

Mr. Kern stated that that information is available in the court documents relevant to the pending case.

5. Has Mr. Kern, or anyone else on behalf of Quest Academy, ever filed a claim with a governing body for the defendant in the above-referenced action, Kern v. Quest Academy?

This is the subject of a pending case and is best answered by the brief.

Chair Guinasso thanked Mr. Kern for updating the board and for his service as a receiver. He noted that Mr. Kern did not brief the board on all of the lawsuits that have been filed. He explained that the board does not like to be caught flat-footed and asked why those things were not mentioned in earlier reports.

Mr. Kern admitted that he did not do enough to explain the lawsuits but that he would do better going forward.

Member Moulton asked for a copy of the testimony and a copy of the receivership documents, as she was not on the board at the time of Mr. Kern's appointment.

Chair Guinasso asked what the process looks like for transitioning from receivership to a board of directors.

Mr. Kern acknowledged that this has been a topic of discussion for some time. He stated he would bring a plan and more firm details during his April presentation.

Agenda Item 13 – Long-Range Calendar

Mr. Herrick noted a few additions to the Long-Range Calendar.

Director Modrcin and Member Moulton are working on the Focus on Schools agenda item and should have something to discuss at the next meeting.

Agenda Item 14 – Public Comment #2

Ronald Fick, Principal of Founders Academy of Las Vegas, updated the board on the improvements going on at Founders Academy. They are doing a significant amount of professional development to ensure that their classical education model aligns with the state's expectations and standards.

Ryan Reeves, Chief Operating Officer of Academica spoke regarding graduation rates. There was some question regarding what the confusion may have been, and he wanted to bring some clarity to that issue. On November 8, 2018, an e-mail was sent out to schools requesting that their graduation rates be submitted and validated by NDE by November 30th. Then they said that between December 3rd and December 7th, the LEA would have five days to review the information and let NDE know if there were any issues. On November 29th and 30th, Bighorn, the data program from which that data would need to be accessed, was down. Some of the reports were not turned in on time. On December 4th, another e-mail came out stating that some schools had been late and that the data would be locked on December 5th. On December 5th, the data was locked and on December 5th, 6th, and 7th, the schools notified several people at NDE that the reports were not right. They were told on December 7th that the changes would not be made and on December 14th, incorrect data was posted to the Department of Education's website. Academica is continuing to try to have that bad data removed. The schools had graduation rates in the nineties that are being reported at sixty to seventy percent.

Agenda Item 15 – Adjournment

The meeting was adjourned at 1:22 pm.

Good Morning, Sara Jorgensen for the record.

Chairman Guinasso, Vice Chair Mackedon, members of the Board, I am pleased to provide a School Support summary on behalf of Brian Scroggins, Lisa Dzierbicki and myself.

- **School Support Site Visits**

- On December 19th acting Director Scroggins and Lisa Dzierbicki, as well as some Board members, attended the National Educator Award Ceremony with Lowell Milken at Pinecrest Academy of Nevada – Horizon Campus. Wendy Shirey, School Principal, was awarded the Milken Educator Award for 2018.
- On January 15th Brian Scroggins and I conducted school support site visits at:
 - Alpine Academy, Sparks
 - Mater Academy of Northern Nevada, Reno
 - Honors Academy of Literature, Reno
 - Doral Academy of Northern Nevada, Reno
- On January 23rd Brian and Lisa will attend the groundbreaking for Pinecrest Academy – Sloan Canyon and on January 24th Brian and Lisa will attend the Going Vertical Ceremony: Legacy Traditional School – Celebrating the construction of third campus.

- **Community, State and National Conferences and Events**

- Brian Scroggins attended a NAACP/Clark County Black Caucus event discussing the impact of judicial fines, fees and cash bail on families and children in poverty on January 8th.
- On January 12th, Brian attended the Mentoring Matters Summit at Nevada State College.
- Brian, with the assistance of Kerry Howard, requested and received a NDE grant for charter school representatives to attend the February Nevada Preparedness Summit in Reno.
- Lisa attended My Brother's Keeper Alliance Conference - No Student is Unreachable: School & Community Solutions for Student Success on January 17th in Las Vegas.
- Brian will participate in a Las Vegas National School Choice Week Event on January 19th.
- The first meeting of the Charter School Safety Committee will take place on January 22nd.
- From January 29th thru February 2nd Lisa will be attending the Council for Exceptional Children (CEC) Conference in Indianapolis, IN.
- From January 29th thru February 2nd I am attending the ESEA (*Elementary & Secondary Education Act*) Network (Formally National Title I Association) Conference in Kansas City, MO.
- Lisa is a planning committee member and presenter for the Nevada McKinney-Vento Liaison Conference, February 11th & 12th, in Carson City.

- **Assessment Training**

- As district test directors, Lisa and I have attended the following NDE assessment trainings;
 - On December 5th, WIDA ACCESS training, (English Language Learner assessment)
 - On January 8th and 24th, Nevada Alternate Assessment (NAA) 2019 Administration Training
 - On January 15th and 17th, NDE 2019 Online Test Administration Training

- **NDE Meetings, Trainings and Reporting**

- Lisa and I regularly attend meetings NDE offers such as Bighorn/SAIN/IC support calls, McKinney Vento Liaison support calls, Accountability and Test Director's trainings and technical support calls; Enhancing Challenging Conversations Training (provided by NDE Special Education Department), Assistive Technology Consortium meetings (provided by NDE Special Education Department)
- We maintain ongoing communication with our schools regarding Bighorn and Epicenter task and reporting deadlines; and communicate with NDE representatives, as needed, to facilitate the success of task reporting and completion.

- **Technical Support**

- We have recently provided Technical Support in the following areas: special education (*due processes/complaints*), title programs (such as McKinney Vento – Oasis Academy), assessment (WIDA ACCESS assessment window has begun), NDE accountability reporting, and parent complaints/concerns.

This concludes the School Support summary, but before I take any questions, I would like to wish my colleague, Lisa Dzierbicki, Happy Birthday. Thank you.

**Testimony of Josh Kern, Receiver, Quest Preparatory Academy and Argent Preparatory Academy,
to the SPCSA on January 18, 2019**

Good morning. My name is Josh Kern, and I am the SPCSA-appointed Receiver for Quest Preparatory Academy and the court-appointed Receiver for Argent Preparatory Academy.

I am before you this morning to address an important question being asked by the SPCSA, specifically, are all the steps and actions taken by the Receiver necessary and in furtherance of the goals of the appointment of a Receiver? And relatedly, when will these Receiverships end? Of special concern to the SPCSA seems to be the litigation commenced against the insurance carrier for both schools and against prior individual board members for their misconduct in order to recover losses related to and/or caused by their misconduct.

First, let me apologize if I have not sufficiently raised this matter in prior written and oral testimony. I greatly appreciate the opportunity to address it now.

Before jumping into the explanation of the suit itself I believe it's necessary to provide some context.

Quest

The SPCA appointed a Receiver over Quest based on the results of an investigation of the school, conducted by Deloitte (the "Deloitte Investigation"), for the review period of school years July 1, 2013 to June 30, 2015. Deloitte's process included interviews with Quest's staff, former and current governing board members; governing board minutes, bank statements, accounting records in QuickBooks, and agreements and contracts entered into on Quest's behalf, as well as NRS, NAC and Quest's Governing Board Bylaws to determine compliance with the prescribed procedures.

The Deloitte Investigation found evidence of gross mismanagement of Quest by the then Board and its officers, including nepotism and conflicts of interest between Quest and the Foundation. The investigation also uncovered evidence that Quest entered into a number of contracts that made no financial sense, rendering Quest insolvent.

To be clear, I was hired as Receiver for Quest in light of serious concerns related to "recurring financial mismanagement and ongoing governance irregularities" raised in Deloitte's forensic report on Quest, which was commissioned by the SPCSA. Among other things, Deloitte's forensic report "had revealed a pattern of self-dealing transactions by past members of this school's board. The ramifications of those decisions continue to adversely impact the school.

Among the specific tasks given to the Receiver was "to investigate Quest, its officers and directors, analyze contracts presented to and approved by the Quest board and if possible, to attempt to efficiently operate and salvage the Quest School system." Paragraph 1.8 of the Receiver appointment contract expressly authorized the Receiver to file lawsuits on behalf of Quest. This paragraph was included because it was abundantly clear at the time of the appointment that Quest

would soon be facing multiple legal challenges, any one of which could have forced the immediate closure of the entire network. Interestingly and importantly, the cause, and initial purpose, for the appointment of a Receiver was not to address then existing concerns over the school's academic program (although there was plenty of reason to be concerned then about the academic program).

Unfortunately, Quest was, in fact, forced to defend multiple lawsuits over the last four years and in some cases file suit because of prior board member's misconduct. Some of these suits include:

- ***Hertz Furniture v Teqlease Inc and Quest Preparatory Academy.*** TEQLease/Hertz filed this lawsuit against Quest seeking to recover approximately \$629,023.00 from Quest for leases of equipment furniture. Quest settled this case for \$100,000 saving \$529,023.
- ***James Truman & Assoc. v. Quest Preparatory Academy.*** This lawsuit was filed against Quest by Quest's former attorney for alleged unpaid legal fees. Quest filed a counterclaim for legal malpractice. To settle the case, both sides agreed to dismiss their claims without any payment.
- ***Quest Academy Preparatory Education v. Lavar Winsor and Tower Distribution Center, LLC:*** In August, 2016, Quest filed this lawsuit against Anthony Winsor and Tower Distribution Center, LLC regarding the Tower Lease for one of Quest's campuses and in response to repeated efforts to evict Quest from the campus. The lease was completely unaffordable and Quest was forced to vacate the premises and relocate. Quest settled this matter for \$103,306 in October 2017 and moved into much more affordable and higher quality space saving the school several millions of dollars.
- ***Quest Academy Preparatory Education v. Chartered for Excellence Foundation and CSP-Bridger, LLC:*** In May, 2016, Quest filed a complaint against its former board members' organization of the Chartered for Excellence Foundation (which was at the heart of the Deloitte report), and CSP-Bridger regarding the Bridger Sublease for one of Quest's campuses. This matter is still in litigation and remains a significant financial threat to the school.

These were not voluntary or discretionary actions on Quest's part. Rather, each one posed an existential threat to the school. The successful disposition of these matters was and continues to be essential for the ongoing viability of the school. Additionally, each of these suits arose directly out of the mismanagement found in the Deloitte report and Quest has made, and continues to make, every effort to settle these matters.

It's necessary to keep in mind that in addition to the gross fiscal mismanagement, self-dealing, and nepotism detailed in the Deloitte report, at the time of the appointment of the Receiver Quest had a negative \$116,000 cash balance and was in danger of not meeting payroll. In total, Quest, was facing approximately \$27MM in unfunded liabilities.

There is simply no way for a school in Quest's position, with no reserves and now undergoing a school turnaround, to self-fund, out of the per pupil funding formula, all the losses related to and

caused by prior Board members' misconduct. And the school had to address these issues (which would be true even in a winddown situation).

Simply put, Quest requires, and is owed, the insurance proceeds to cover the expense and losses caused by the prior board members' misconduct, and therefore, Quest needs to make every reasonable effort to recover those losses. Quest acquired the policy to protect itself against managerial misconduct. In fact, I believe if I did not reasonably pursue these proceeds I would be negligent in my duty to this body and to the school.

Ways to recover losses arising out of the wrongful conduct of former officers and directors under the D&O policy obtained by Quest include the following:

- A direct claim under the policy for the costs of the receivership including legal fees and costs, as a covered event. This is akin to making a demand for coverage under a Commercial Property Insurance Policy if the school was destroyed by a fire. Quest made this claim under the policy and the claim was denied by the insurance carrier. In September, 2018, Quest filed a lawsuit against the insurance carrier, Philadelphia Insurance, for declaratory relief (the only asserted claim) after nearly two years of discussions with the carrier. This lawsuit is still pending.
- The other way to recover losses is through an action against the former officers and directors for their misconduct. The school's Directors & Officers insurance policy protects against losses caused by the misconduct of the board members. The insurance company is funding the defense of the board members and will also cover any settlement with or judgment against the board members (up to the \$1M policy limits). In August, 2018, Quest filed a lawsuit against the former President, former Vice President, former Secretary/Treasurer, and former Principal/Superintendent for: (1) breach of fiduciary duty; and (2) aiding and abetting breach of fiduciary duties. This lawsuit is still pending.

In summary, it was necessary to file suit against the insurance company and prior board members and, I believe, necessary to continue these suits because 1) it is their misconduct, as determined by the SPCSA, which directly led to the appointment of the Receiver 2) the damages Quest is seeking are the losses directly related to, or caused by, their misconduct. 3) the policy was procured by Quest to protect itself against losses arising out of officer and director misconduct; and 4) Quest is seeking to recover those losses by pursuing claims against the policy.

After two years of communicating with the insurance company over this issue our time had nearly run out. We were up against hard time limitations to either initiate litigation or waive claims.

The insurance carrier has made it quite clear that it will not voluntarily cover such losses under the policy. Absent litigation, Quest will be required to absorb the losses arising out of misconduct the insurance policy was purchased to cover. Quest cannot afford to absorb these losses and Nevada tax-payers should not be required to do so.

Argent

Let me just briefly address Argent as well. Argent was in some respects a similar situation to Quest and the same concerns and concepts apply equally to Argent as they do to Quest. On December 12, 2014, the SPCSA issued a Breach letter to Silver State, which identified a “significant discrepancy” between the balances reported in Silver State’s bank accounts and the amounts reflected in the accounting system.

On October 26, 2015, the SPCSA held a public meeting in which findings from Deloitte’s forensic audit of the School were discussed. These findings discovered deficiencies including (1) a pattern of fiscal mismanagement and a failure to comply with generally accepted standards of fiscal management in violation of NRS 386.535; and (2) investing public funds in a high risk financial instrument, namely a derivatives contract with Bank of America in violation of NAC 387.565, which mandates that all school funds be appropriately insured, and in violation of NRS 386.490 to 386.649. The SPCSA sent Silver State a Notice of Closure notifying the School of the foregoing deficiencies, which ultimately led to the appointment of a Receiver.

Silver State Insurance Claims

As with Quest, Philadelphia was Silver State’s insurance carrier during the relevant time periods and has denied Silver State’s claim for coverage for losses arising from the misconduct of prior former officers and directors, including the fees and costs of the receivership.

In November, 2016, Silver State demanded that Philadelphia cover all amounts Silver State was required to pay pursuant to the Court orders related to the appointment of the Receiver. In 2017 Philadelphia denied Silver State’s claim. Silver State continued to communicate with the insurance carrier in an effort to persuade the carrier that the receiver fees and costs were covered under the policy. In 2018, Silver State was forced to file a lawsuit against Philadelphia for declaratory relief regarding the scope of coverage. This lawsuit is still pending.

In September, 2018, Silver State filed a lawsuit against the former Director of Finance, the former President, and the former Superintendent for: (1) breach of fiduciary duty; and (2) aiding and abetting breach of fiduciary duties. The lawsuit was filed to preserve and protect claims of Silver State which would expire upon the passage of time due to the applicable statute of limitations. This lawsuit is still pending.

I think the issue of these suits in the case of Argent is a slightly more complicated matter. Like Quest, I contend that Argent incurred losses as a result of the misconduct of prior officers and directors. The policy purchased by Silver State was to cover such losses. The insurance carrier has made it quite clear that it will not voluntarily cover such losses under the policy. Absent litigation, Argent will be required to absorb the losses arising out of misconduct the insurance policy was purchased to cover. On the other hand, the school is closed, the last property is about to be sold, and the final winddown anticipated within the next few months. The question is whether

Argent and Nevada tax-payors should bear the losses it suffered. The claims are presently preserved. If the litigation is dismissed the claims will be lost.

Ending Quest and Argent Receiverships

I am hoping to wind down the Receivership for both Argent and Quest by the end of this school year and calendar year, respectively. Argent is under contract to sell the third parcel on February 20. We will be able to complete the final wind down soon thereafter. I'm targeting June.

Quest is a more complicated matter. Someone will need to bring a productive resolution to these aforementioned matters, among others, for the school to be solvent. It is unfair to burden a new board with this task. I am hopeful that we can resolve the CSP-Bridger litigation. Trial is current scheduled for March 5 on a four-week trial stack. I would like to propose a plan going forward for Quest, as well as my transition from Quest, at the April SPCSA hearing.

Let me end by thanking all of you for the opportunity to speak to this issue. I welcome any questions or concerns you might have.



Charter School Association of Nevada

Recommendations for vacant SPCSA Executive Director Position: (no particular order or ranking)

Eve Breier-Ramos

Stacey Cooper

Rebecca Feiden

Mark Modrcin

Katherine Poulos

Sami Randolph

Brian Scroggins
