

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Board Members Introductions**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  / x /  </u>	Information
<u>  /  /  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 4

NUMBER OF ENCLOSURE(S): 0

**PRESENTER(S):** Dr. Steve Canavero, Director, SPCSA

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**RECOMMENDATION:**

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

**BACKGROUND:**

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

## **Dr. Robert S. McCord**

### Biographic Information:

Robert S. McCord

AASA Research Professor in Residence

Associate Professor of Education Leadership

University of Nevada, Las Vegas

Dr. Robert S. McCord's career in education began in the 300,000 student Clark County School District (CCSD) in Las Vegas where he served as a teacher, counselor, dean, assistant principal, principal, director of federal programs, director of research and development, and completed the final decade of his 30-year career with the district as the assistant superintendent for school accountability and government relations. After retiring from the CCSD, he joined the Department of Education Leadership at the University of Nevada, Las Vegas where he also directs the Center for Education Policy Studies. In addition, Dr. McCord is widely published with a particular emphasis on school policy and law. He also serves on the board of many organizations including WestEd.

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## **Elissa Wahl**

I'm the product of 2 public school teachers who loved to instill in their children a love of learning. Growing up, I was forever playing with math manipulatives, workbooks, and reading. We had a great home on a rural lane, lots of trees, a stream, and friendly neighbors. It made for a lot of outdoor play with our imaginations.

While pregnant with my first son, I heard about homeschooling. After he was born I realized I was meeting his needs, not only developmentally, but he was learning! I enjoyed watching his brain spin and grasp things...by the time he was 2 I knew we would homeschool!

Married to Chris for almost 12 years, together we have 2 sons, my son from a previous marriage, and Chris' 2 sons from a previous marriage. Yes, adding correctly that is a total of 5 boys! Their ages are 18, 18, 15, 10 & 5. My oldest, 18, has been homeschooled since birth, as have the 2 youngest. I was also able to homeschool 1 of my stepsons from 5th-7th grade, until he moved out of state. The other has Cerebral Palsy and has always been in public school.

While religious reasons were not the primary reason for choosing to homeschool, we do indeed try to walk with the Lord.

Between our 5 boys, 4 have some special need or another, and one would be termed "gifted" if in school. This allows me to truly know that homeschooling evolves not only from year to year, but also from child to child.

I have been active in the homeschool/educational community for many years and in many different ways:

- Hosted for AOL in the Homeschool Chatroom for 3 years
- Co-Authored "Christian Unschooling: Growing Your Children in the Freedom of Christ"
- Edited and Published an online ezine, Seedling (yahoogroups)
- Formed a local homeschool support group in the NW area of Las Vegas

- Mentoring leader for 2 other local support groups
- Founding Officer, past President and current Officer, of Nevada Homeschool Network, NV's statewide homeschool advocacy organization
- continually lobbying for homeschool freedoms
- Clark County point of contact for new homeschoolers
- many tv and print interviews
- volunteer mentoring in the community
- speaking engagements on homeschooling
- blogging about Christian Unschooling

And my newest endeavor..... RISE Resource Center. RISE's mission is to provide a facility and resources to support educational choice. In October of 2011 we moved from our kitchens to a building.

We are now running this educational non-profit as an all volunteer organization. Our goals include educating every parent about the educational options available in Las Vegas, and then supporting them in a variety of ways no matter what their choice is. We currently offer programs and classes such as "New Homeschoolers", "Parent Effectiveness Training", "Immersion Spanish", "Out Of The Box Language Arts", "Reading Circles With the Love Dogs", ongoing crafts days, science days, math days and so much more.

RISE's biggest goal is to change the face of education in Las Vegas. We are working towards having our own dedicated educational facility in the future and satellite offices around the valley. Check out what we're doing at [www.riseresourcecenter.org](http://www.riseresourcecenter.org)

That's it...I'm a mom who loves education and wants to help others in their educational journey!

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## **Nora Luna**

Nora Luna is currently the Hispanic/Latino Program Manager for Nathan Adelson Hospice (NAH). She develops and manages community outreach programs and facilitates partnerships between NAH and other Hispanic/Latino organizations. Previously she was an Assistant Professor and School Retention Specialist for the University Of Nevada Reno (UNR), Cooperative Extension. She developed, implemented, monitored and evaluated programs to enhance school engagement, prevent high school dropout and increase college attendance among underrepresented youth and families in Clark County. Prior to that, she served as the Associate Director of the U.S. – Mexico Border Communities Alliance for the Western Center for the Application of Prevention Technologies (CAPT) at UNR. She provided training and technical assistance related to research-based prevention and education to state, school and community personnel in Alaska, California Montana, Nevada, Oregon, Utah, Wyoming and the U.S. – Mexico border region. She was the lead in the development of all Western CAPT Spanish products and other training materials. She has a Bachelor of Arts degree in Criminal Justice and a Master's degree in Education. During her employment at the YMCA of Southern Nevada, Ms. Luna implemented positive youth development programs, parenting programs and after-school tutoring programs. Currently she serves on the board of the Girls Scouts of Southern Nevada. Nora Luna was born in Las Vegas, Nevada and is the daughter of Mexican immigrants.

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## **Kathleen A. Conaboy**

Ms. Conaboy is a member of the Government Affairs Group, a subsidiary of the statewide law firm McDonald Carano Wilson. As a member of the Government Affairs Group, Ms. Conaboy represents Nevada, regional and national clients in a variety of sectors, including energy, health care, education, hospitality, public safety, transportation, recycling/waste management, communications, and project

development. The Group represents clients in grassroots campaigns, in local government proceedings, in the state legislature, at the agencies of the executive branch, and in regulatory proceedings. Before joining MCW in December 2006, Kathleen spent 25 years in medical education administration. As Assistant Dean for Planning and Development at the University of Nevada School of Medicine, she worked on federal issues such as Medicare support for graduate medical education, rural health issues such as funding for the National Health Service Corps and Area Health Education Centers, and clinical projects such as the Nevada Suicide Research Center. On the state level, she advocated for issues such as GME funding and capital construction projects and worked on the development of a Medicaid managed care program.

Kathleen also consulted with DJW Associates, a national consulting firm specializing in accreditation, development of new medical schools, and organizational change in academic medicine.

Kathleen has extensive experience in USAID-funded international development projects in medical education. From 1999 to 2006, she coordinated reform projects in the Central Asia Republics (CAR), including the formation of the CAR Council of Rectors, an association of the region's leading medical educators, and extensive collaboration with Kazakhstan's Ministry of Health in the development of a national reform strategy for health professions education. She has presented this work at international meetings.

She is married to John Bardwell, an illustrator and renowned artist with works in numerous private and corporate collections.

She currently serves on the boards of the Children's Cabinet Foundation and the Ronald McDonald House in Reno; she recently completed a term on Board of Directors of the Nevada Women's Fund, during which time she chaired the Development Committee.

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### **Melissa Mackedon**

Melissa grew up in Fallon, Nevada. She graduated with honors from the University of Nevada Reno in 1997, with degrees in elementary and special education. She earned her Master's Degree in Educational Leadership from the University of Nevada Reno in the spring of 2006. She taught for eight years in Utah, California and Nevada, both special education and regular education. While teaching she served on a variety of school level and district level committees. She quit teaching full time when she became a mother in 2007, and went to work part time for Western Nevada College where she taught English, Education and GED Preparatory Classes. She is one of the founders of Oasis Academy, a charter school in Fallon, Nevada which opened in the fall of 2011. Currently, she is the busy mother of two young children, Fenn and Hazel, and the administrator of Oasis Academy.

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### **Marc Abelman**

Raised in San Diego, CA I enjoyed the beach lifestyle until I moved to Las Vegas in '98. While attending San Diego State University I studied English. For most of my life I have worked in the restaurant industry.

After moving to Las Vegas, I married and have been actively raising a family (2 daughters ages 9 and 10). In '04, my wife and I started an Interior Design business. We have steadily grown and

last year purchased our “permanent home”, an architecturally beautiful building in the Arts District downtown. Thus, firmly planting our roots here in Las Vegas.

Actively involved in my daughters’ education, I joined the governing board at Imagine in the Valle in ‘09 as what is now Quest Academy.

My interest in being a board member at Quest and on the SPCSA is largely due to a need for change. Personally, it has taken me most of my adult life to figure out what I am passionate about. I feel that growing and learning are a life long journey, not just a way to get a job.

Through life experiences and formal education, I believe I bring the balance needed to help our children find their true passion.

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**Michael Van**

I am married with three children. I am Active in church and community, coaching youth baseball. I enjoy the outdoors, hunting, fishing, golf and when possible other athletic events.

I was an in-house counsel for two large construction companies which had several affiliated companies. The companies collectively maintained a work force of more than 2000 employees. The principals for the companies also had several real estate holdings and investments which were created and monitored. Further, managed, maintained and monitored all litigation.

Currently I work for Shumway Van & Hansen is a General Practice firm. Primary areas of practice include: representation of individual and business debtors and creditors in bankruptcy in both Utah and Nevada bankruptcy courts.

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Election of Officers**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  X/  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 5

NUMBER OF ENCLOSURE(S): 0

**PRESENTER(S):** Dr. Steve Canavero

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**RECOMMENDATION:** Election of Officers for the State Public Charter School Authority Board

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**FISCAL IMPACT:** None

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

**BACKGROUND:** The forming of the State Public Charter School Authority Board requires the election of officers to serve on the Board.

**NRS 386.5095 Appointment and qualifications of members; terms; vacancies; selection of Chair and Vice Chair; compensation, allowances and travel expenses.**

5. The members of the State Public Charter School Authority shall select a Chair and Vice Chair from among its members. After the initial selection of those officers, each of those officers holds the position for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the Chair or Vice Chair, the vacancy must be filled in the same manner as the original selection for the remainder of the unexpired term.

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T:** State Public Charter School  
Director Opening Comments/Orientation, Overview  
of Statute, Staff Introductions, Staffing and Budget

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  x / </u>	Information
<u>  /  X/ </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 6

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S):** Dr. Steve Canavero

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**RECOMMENDATION:** Opening Comments/Orientation, Overview of Statute, Staff Introductions, Staffing and Budget

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**FISCAL IMPACT:** None.

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

**BACKGROUND:** Dr. Steve Canavero will comment and provide an overview of the statute establishing the SPCSA, lead staff introductions, and detail the office staffing and budget.

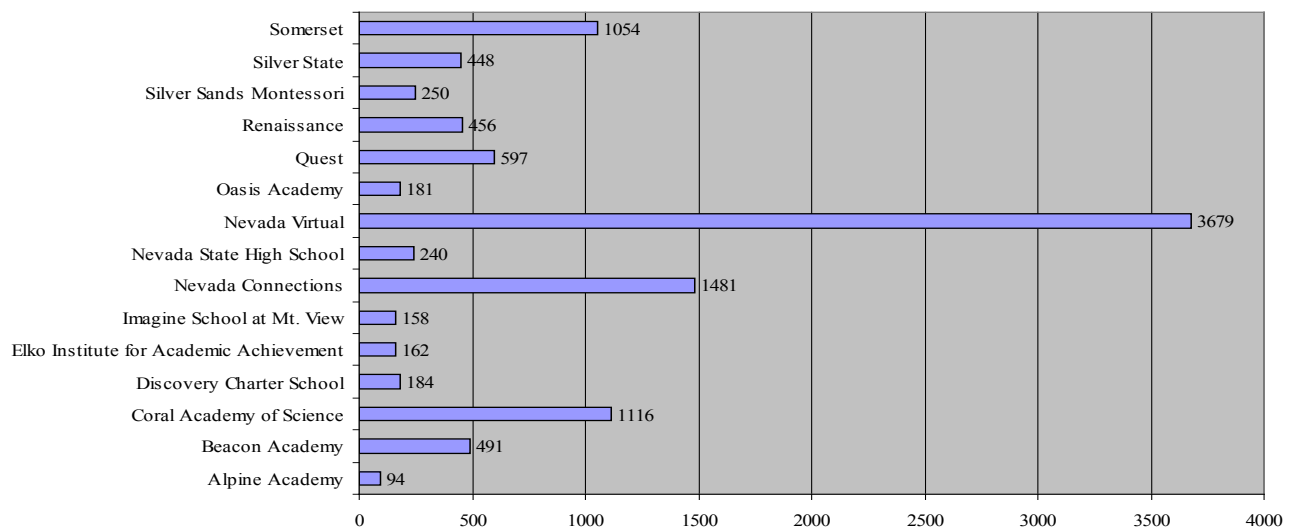
**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

## STATE PUBLIC CHARTER SCHOOLS: GENERAL OVERVIEW

Name of School	Grade Levels	Location	Type	School Website
<b>*Alpine Academy</b>	9-12	Sparks	On-site	<a href="http://www.alpineacademy.net">www.alpineacademy.net</a>
<b>*Beacon Academy</b>	9-12	LV	Distance	<a href="http://www.banv.org">www.banv.org</a>
Coral Academy Las Vegas	K-12	LV	On-site	<a href="http://www.coralacademylv.org">www.coralacademylv.org</a>
Discovery Charter School	K-8	LV	On-site	<a href="http://www.dcslv.org">www.dcslv.org</a>
Elko Institute for Academic Achievement	K-8	Elko	On-site	<a href="http://www.elkocharterschool.com">www.elkocharterschool.com</a>
Imagine School Mt. View	K-2	LV	On-site	<a href="http://www.imaginemountainview.com">www.imaginemountainview.com</a>
Nevada Connections	K-12	Sparks	Distance	<a href="http://www.conectionsacademy.com">www.conectionsacademy.com</a>
Nevada State High School	11-12	LV	On-site	<a href="http://www.earlycollegeNV.com">www.earlycollegeNV.com</a>
Nevada Virtual	K-12	LV	Distance	<a href="http://www.k12.com/nvva">www.k12.com/nvva</a>
Oasis Academy	K-8	Fallon	On-site	<a href="http://www.oasisacademyfallon.us">www.oasisacademyfallon.us</a>
<b>*Quest Academy Preparatory Education</b>	K-8	LV	On-site	<a href="http://www.questacademylv.com">www.questacademylv.com</a>
<b>*Renaissance Academy</b>	K-12	LV	Distance	<a href="http://www.nevadainternetacademy.com">www.nevadainternetacademy.com</a>
Silver Sands Montessori	K-7	Henderson	On-site	<a href="http://www.silversandsmcs.org">www.silversandsmcs.org</a>
<b>*Silver State</b>	7-12	Carson City	Distance	<a href="http://www.SSHS.org">www.SSHS.org</a>
Somerset Academy/N. LV	K-7	LV	On-site	<a href="http://www.somersetacademyoflasvegas.com">www.somersetacademyoflasvegas.com</a>

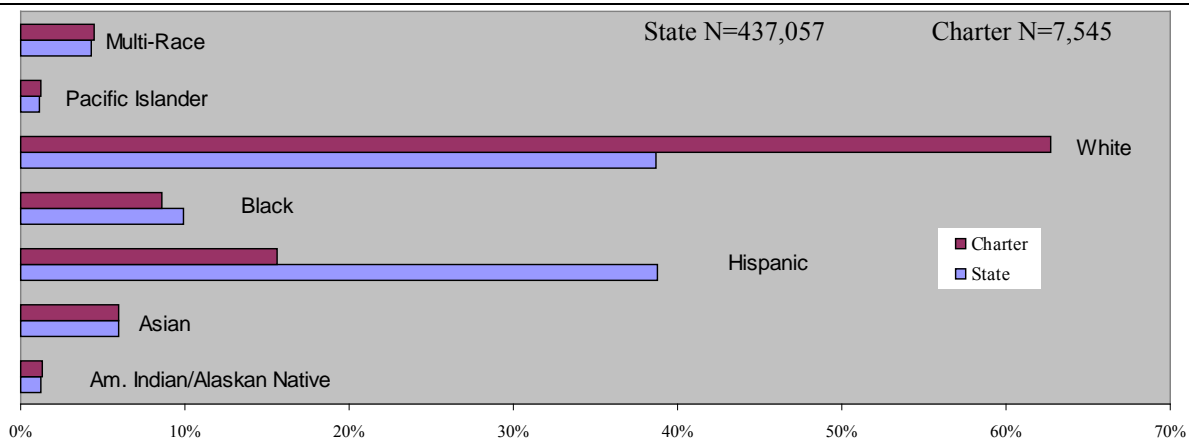
**\*Schools who identified in their charter as targeting at-risk student population**

## 2011-2012 STUDENT POPULATION



Enrollment data current as of 12/22/2011--Source: Bighorn Enrollment Matrix Report

## 2010-2011 STUDENT ETHNICITY



Source: 2010-2011 Nevada Annual Reports of Accountability

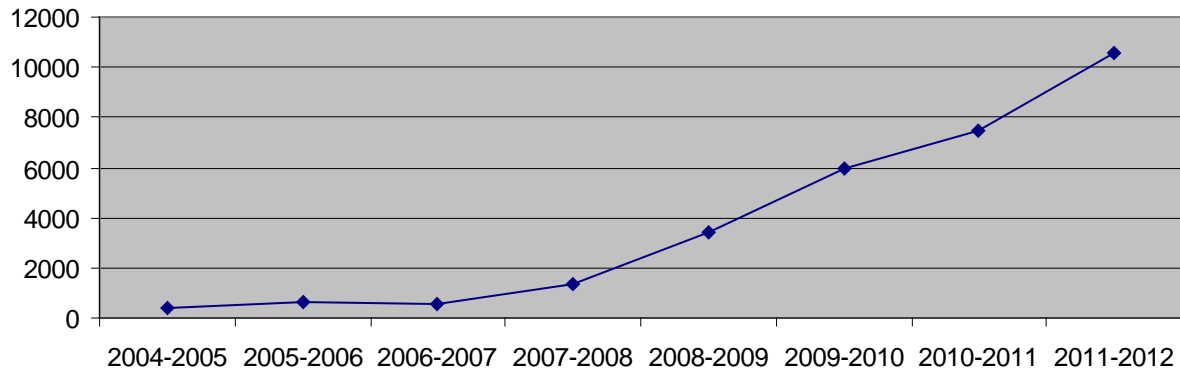


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## SCHOOL ENROLLMENT OVERVIEW

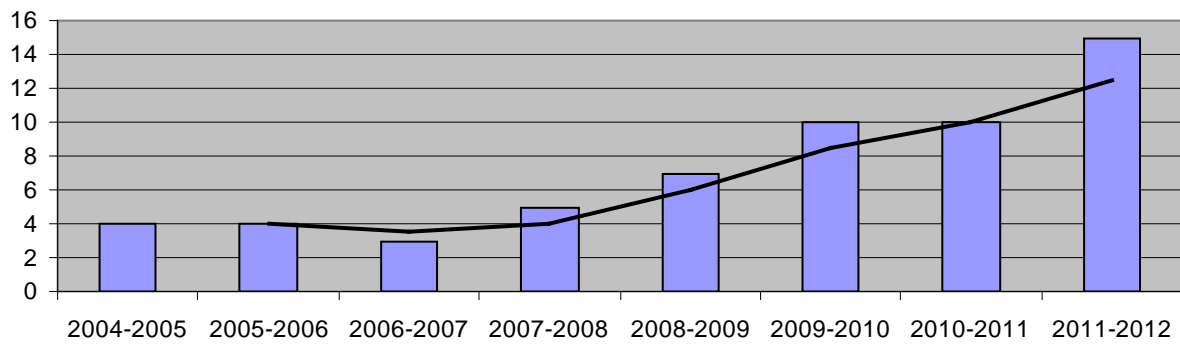
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**Charter School Student Population by School Years**



Source: Department of Education Enrollment-Public Schools

**Number of Active Charter Schools by School Year**

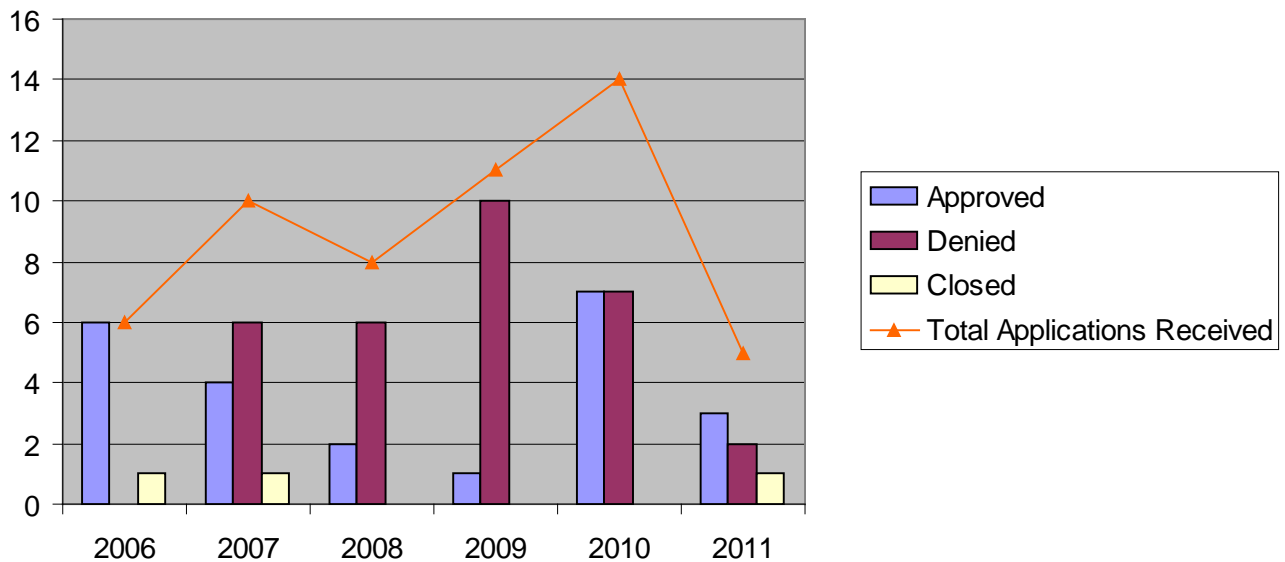


Source: Department of Education Enrollment-Public Schools

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## CHARTER SCHOOL APPLICATION HISTORY

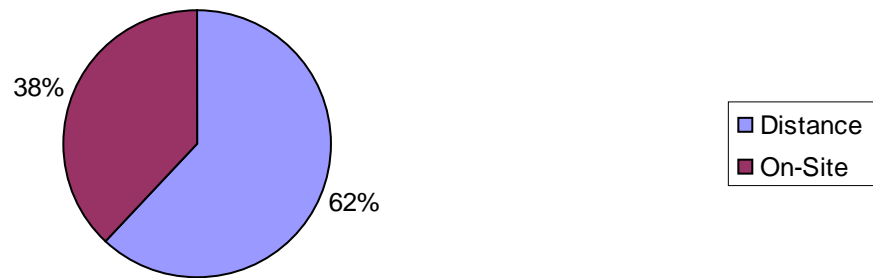
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Source: NRS 386.525 (9) Legislative update

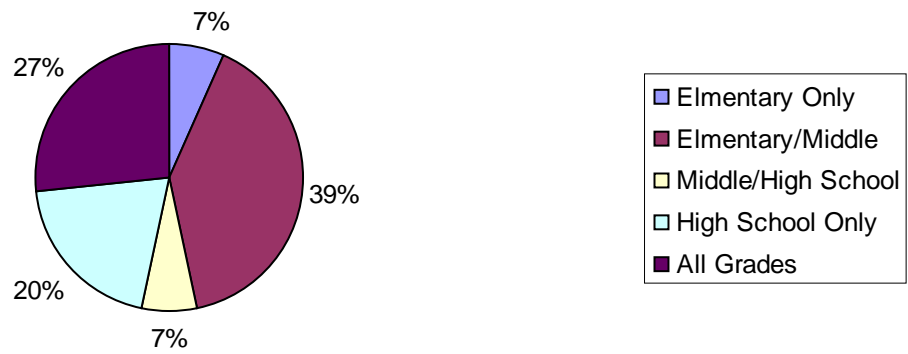
## OVERVIEW

### Percentage of Student Population by School Type



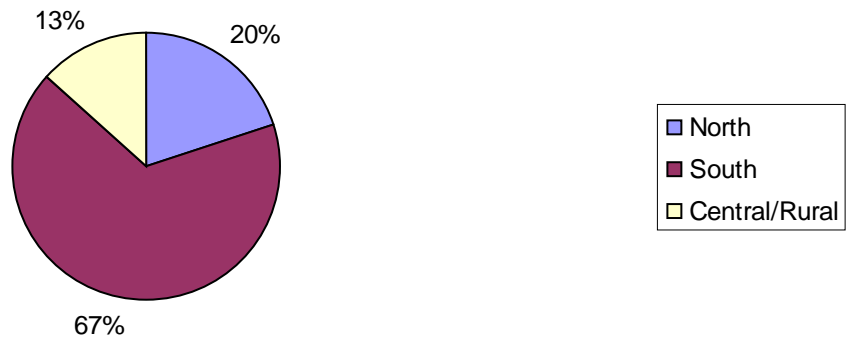
**N=10,591**

### Percent of Schools by Grade Level



**N=15**

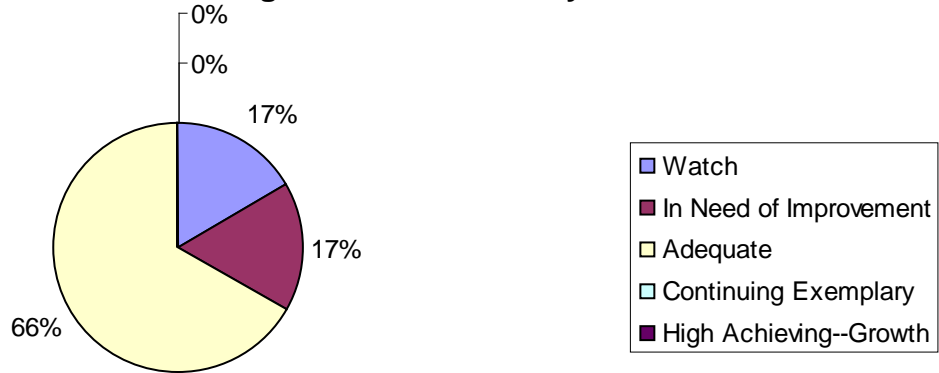
### Percentage of Schools by Region



**N=15**

## 2010-2011 ADEQUATE YEARLY PROGRESS

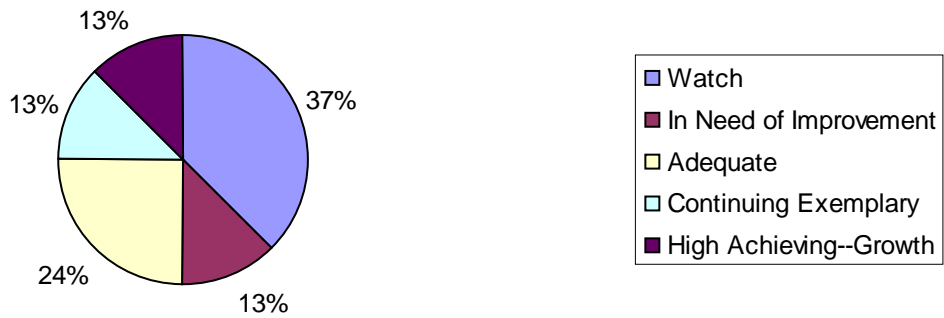
### 2010/2011 AYP Designations: Elementary Schools



**N=6**

Source: 2010-2011 Nevada Annual Reports of Accountability

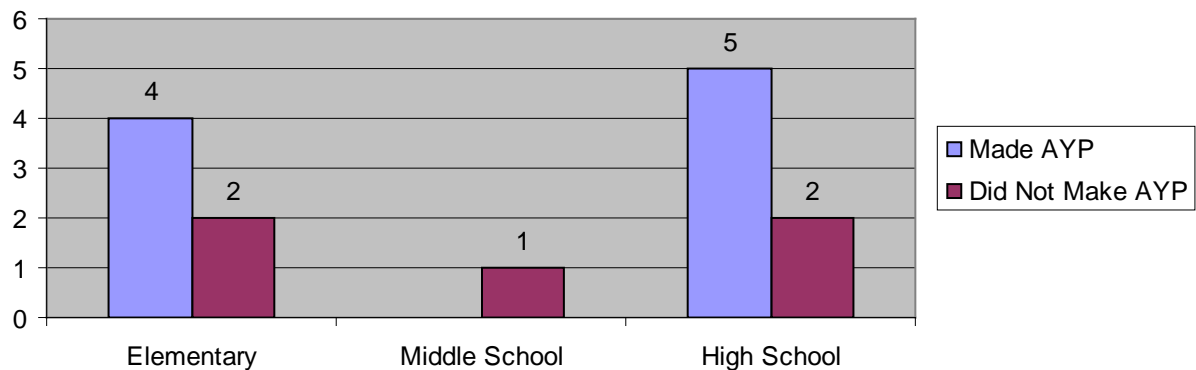
### 2010/2011 AYP Designations: Secondary Schools



**N=8**

Source: 2010-2011 Nevada Annual Reports of Accountability

### 2010/2011 AYP Classification

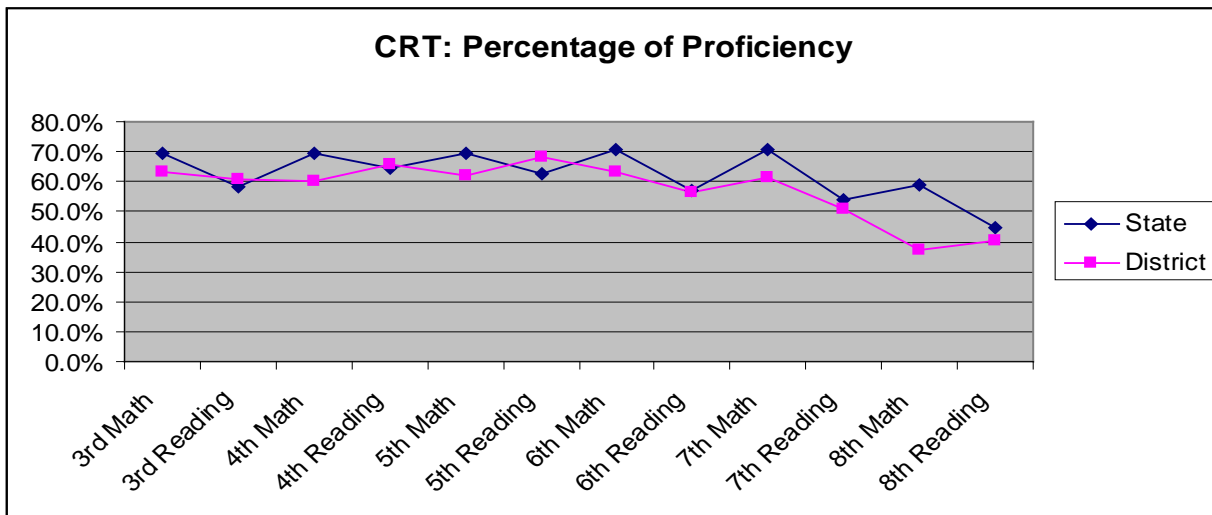


Source: 2010-2011 Nevada Annual Reports of Accountability

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## 2010-2011 CRITERION REFERENCED TEST

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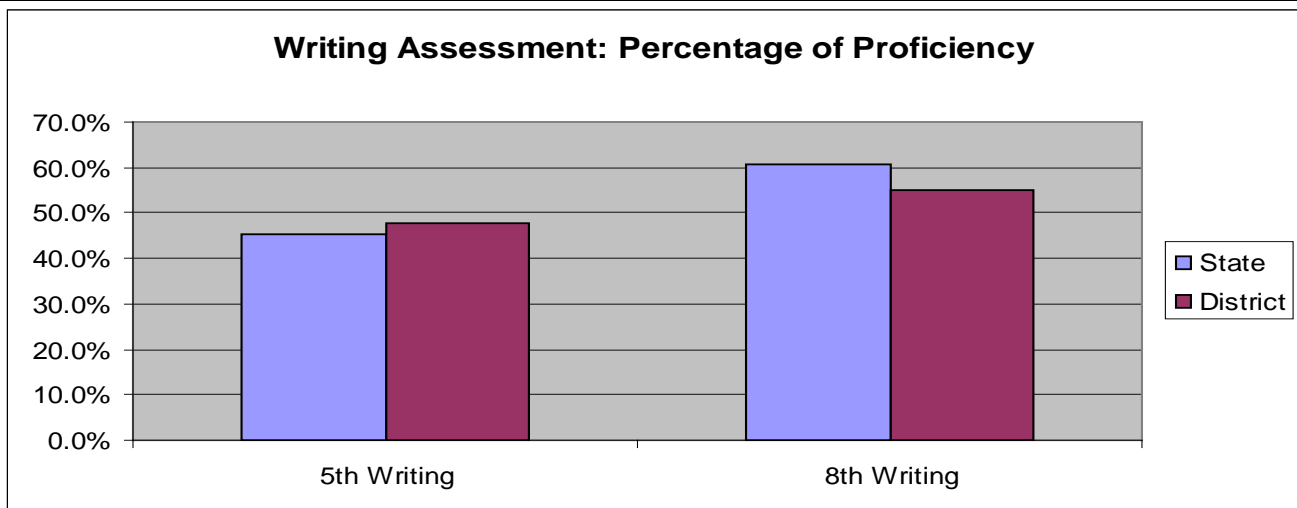


Source: 2010-2011 Nevada Annual Reports of Accountability

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## 2010-2011 WRITING ASSESSMENT

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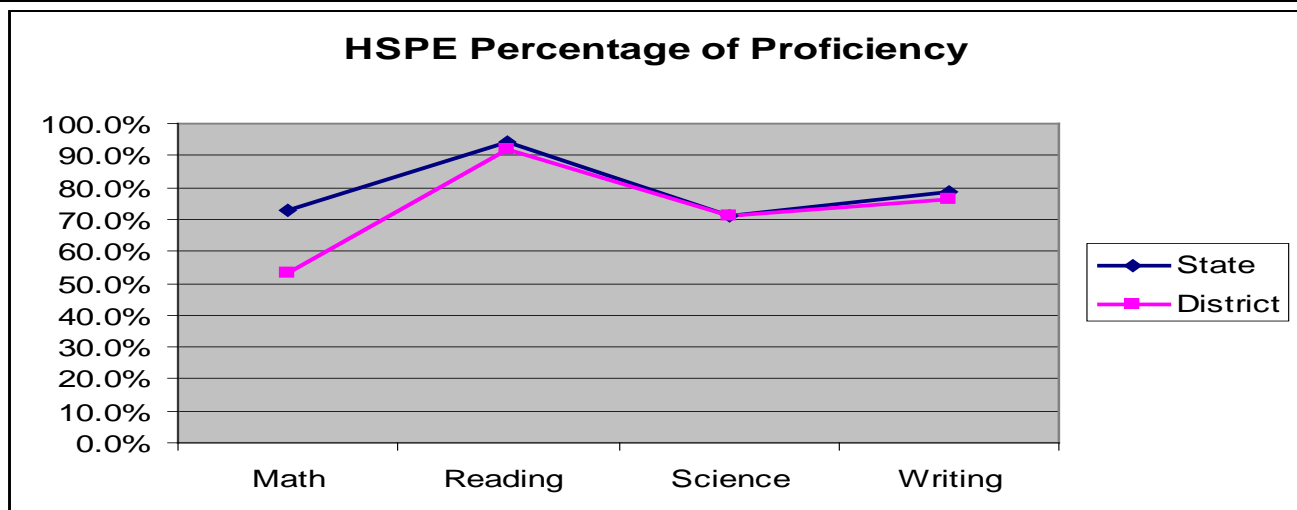


Source: 2010-2011 Nevada Annual Reports of Accountability

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## 2010-2011 High School Proficiency Exam

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Source: 2010-2011 Nevada Annual Reports of Accountability

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Overview of Open Meeting Law  
and Nevada Ethics in Government**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  / x /  </u>	Information
<u>  /  /  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 7

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S):** Dr. James E. Irvin, Deputy Attorney General and Dr. Steve Canavero, Director,  
SPCSA

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**RECOMMENDATION:**

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

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**BACKGROUND:**

**SUBMITTED BY:** Dr. James E. Irvin, Deputy Attorney General and Dr. Steve Canavero, Director,  
SPCSA

## CHAPTER 241 - MEETINGS OF STATE AND LOCAL AGENCIES

<u>NRS 241.010</u>	Legislative declaration and intent.
<u>NRS 241.015</u>	Definitions.
<u>NRS 241.020</u>	Meetings to be open and public; notice of meetings; copy of materials; exceptions.
<u>NRS 241.030</u>	Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons.
<u>NRS 241.031</u>	Meeting to consider character, misconduct or competence of elected member of public body or certain public officers.
<u>NRS 241.033</u>	Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.
<u>NRS 241.034</u>	Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain: Written notice required; exception.
<u>NRS 241.035</u>	Public meetings: Minutes; aural and visual reproduction; transcripts.
<u>NRS 241.0353</u>	Absolute privilege of certain statements and testimony.
<u>NRS 241.0355</u>	Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum.
<u>NRS 241.036</u>	Action taken in violation of chapter void.
<u>NRS 241.037</u>	Action by Attorney General or person denied right conferred by chapter; limitation on actions.
<u>NRS 241.038</u>	Board of Regents to establish requirements for student governments.
<u>NRS 241.040</u>	Penalties; members attending meeting in violation of chapter not accomplices; enforcement by Attorney General.

NRS 241.010 Legislative declaration and intent. In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

(Added to NRS by 1960, 25; A 1977, 1099)

**NRS 241.015 Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Action" means:

- (a) A decision made by a majority of the members present during a meeting of a public body;
- (b) A commitment or promise made by a majority of the members present during a meeting of a public body;
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or
- (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

3. Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the Legislature of the State of Nevada.

4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.

(Added to NRS by 1977, 1098; A 1993, 2308, 2624; 1995, 716, 1608; 2001, 1123, 1836)

**NRS 241.020 Meetings to be open and public; notice of meetings; copy of materials; exceptions.**

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate physically handicapped persons desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

↪ As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

↪ If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

(a) Disasters caused by fire, flood, earthquake or other natural causes; or

(b) Any impairment of the health and safety of the public.



(Added to NRS by 1960, 25; A 1977, 1099, 1109; 1979, 97; 1989, 570; 1991, 785; 1993, 1356, 2636; 1995, 562, 1608; 2001, 2395; 2003, 488; 2005, 2243)

**NRS 241.030 Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons.**

1. Except as otherwise provided in this section and NRS 241.031 and 241.033, a public body may hold a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:

(a) May be made at any time before or during the meeting; and

(b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.

3. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

(a) The nature of the business to be considered; and

(b) The statutory authority pursuant to which the public body is authorized to close the meeting.

4. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

5. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331; 1993, 2637; 2005, 977, 2244)

**NRS 241.031 Meeting to consider character, misconduct or competence of elected member of public body or certain public officers.**

1. Except as otherwise provided in subsection 2, a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of:

(a) An elected member of a public body; or

(b) A person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university, state college or community college within the Nevada System of Higher Education, a superintendent of a county school district, a county manager and a city manager.

2. The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.

(Added to NRS by 1993, 2636; A 2005, 2245)

**NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.**

1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:

(a) Given written notice to that person of the time and place of the meeting; and

(b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

(a) Except as otherwise provided in subsection 3, must be:

(1) Delivered personally to that person at least 5 working days before the meeting; or

(2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

(b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) Must include:

(1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and

(2) A statement of the provisions of subsection 4, if applicable.

3. The Nevada Athletic Commission is exempt from the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 2, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

4. If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, the public body must allow that person to:

(a) Attend the closed meeting or that portion of the closed meeting during which his character, alleged misconduct, professional competence, or physical or mental health is considered;

(b) Have an attorney or other representative of his choosing present with him during the closed meeting; and

(c) Present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.

5. Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, physical or mental health or appeal of the results of an examination is considered, the chairman of the public body may at any time before or during a closed meeting:

(a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or

(b) Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.

6. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person who received written notice of the closed meeting pursuant to subsection 1.

7. For the purposes of this section, casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person.

(Added to NRS by 1993, 2636; A 2005, 977, 2246, 2248)

**NRS 241.034 Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain: Written notice required; exception.**

1. Except as otherwise provided in subsection 3:
  - (a) A public body shall not consider at a meeting whether to:
    - (1) Take administrative action against a person; or
    - (2) Acquire real property owned by a person by the exercise of the power of eminent domain,
  - ↪ unless the public body has given written notice to that person of the time and place of the meeting.
  - (b) The written notice required pursuant to paragraph (a) must be:
    - (1) Delivered personally to that person at least 5 working days before the meeting; or
    - (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
  - ↪ A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in paragraph (a) relating to that person at a meeting.
2. The written notice provided in this section is in addition to the notice of the meeting provided pursuant to NRS 241.020.
3. The written notice otherwise required pursuant to this section is not required if:
  - (a) The public body provided written notice to the person pursuant to NRS 241.033 before holding a meeting to consider his character, alleged misconduct, professional competence, or physical or mental health; and
  - (b) The written notice provided pursuant to NRS 241.033 included the informational statement described in paragraph (b) of subsection 2 of that section.
4. For the purposes of this section, real property shall be deemed to be owned only by the natural person or entity listed in the records of the county in which the real property is located to whom or which tax bills concerning the real property are sent.

(Added to NRS by 2001, 1835; A 2001 Special Session, 155; 2005, 2247)

**NRS 241.035 Public meetings: Minutes; aural and visual reproduction; transcripts.**

1. Each public body shall keep written minutes of each of its meetings, including:
  - (a) The date, time and place of the meeting.
  - (b) Those members of the public body who were present and those who were absent.
  - (c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.
  - (d) The substance of remarks made by any member of the general public who addresses the public body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.
  - (e) Any other information which any member of the public body requests to be included or reflected in the minutes.
2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the minutes may be transferred for archival preservation in accordance with NRS 239.080 to 239.125, inclusive. Minutes of meetings closed pursuant to:
  - (a) Paragraph (a) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was considered has consented to their disclosure. That person is entitled to a copy of the minutes upon request whether or not they become public records.
  - (b) Paragraph (b) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality.
  - (c) Paragraph (c) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters considered no longer require confidentiality and the person who appealed the results of the examination has consented to their disclosure, except that the public body shall remove from the minutes any references to the real name of the person who appealed the results of the examination. That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Except as otherwise provided in subsection 6, a public body shall, for each of its meetings, whether public or closed, record the meeting on audiotape or another means of sound reproduction or cause the meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS. If a public body makes an audio recording of a meeting or causes a meeting to be transcribed pursuant to this subsection, the audio recording or transcript:

(a) Must be retained by the public body for at least 1 year after the adjournment of the meeting at which it was recorded or transcribed;

(b) Except as otherwise provided in this section, is a public record and must be made available for inspection by the public during the time the recording or transcript is retained; and

(c) Must be made available to the Attorney General upon request.

5. Except as otherwise provided in subsection 6, any portion of a public meeting which is closed must also be recorded or transcribed and the recording or transcript must be retained and made available for inspection pursuant to the provisions of subsection 2 relating to records of closed meetings. Any recording or transcript made pursuant to this subsection must be made available to the Attorney General upon request.

6. If a public body makes a good faith effort to comply with the provisions of subsections 4 and 5 but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this chapter.

(Added to NRS by 1977, 1099; A 1989, 571; 1993, 449, 2638; 2005, 978, 1404)

**NRS 241.0353 Absolute privilege of certain statements and testimony.**

1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.

(Added to NRS by 2005, 2242)

**NRS 241.0355 Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum.**

1. A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this subsection, a public body may not count an abstention as a vote in favor of an action.

2. In a county whose population is 40,000 or more, the provisions of subsection 5 of NRS 281.501 do not apply to a public body that is required to be composed of elected officials only, unless before abstaining from the vote, the member of the public body receives and discloses the opinion of the legal counsel authorized by law to provide legal advice to the public body that the abstention is required pursuant to NRS 281.501. The opinion of counsel must be in writing and set forth with specificity the factual circumstances and analysis leading to that conclusion.

(Added to NRS by 2001, 1123; A 2003, 818)

**NRS 241.036 Action taken in violation of chapter void. The action of any public body taken in violation of any provision of this chapter is void.**

(Added to NRS by 1983, 1012)

**NRS 241.037 Action by Attorney General or person denied right conferred by chapter; limitation on actions.**

1. The Attorney General may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

(Added to NRS by 1983, 1012; A 1985, 147)

**NRS 241.038 Board of Regents to establish requirements for student governments.** The Board of Regents of the University of Nevada shall establish for the student governments within the Nevada System of Higher Education requirements equivalent to those of this chapter and shall provide for their enforcement.

(Added to NRS by 1983, 1013; A 1993, 369)

**NRS 241.040 Penalties; members attending meeting in violation of chapter not accomplices; enforcement by Attorney General.**

1. Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which action is taken in violation of this chapter is not the accomplice of any other member so attending.

4. The Attorney General shall investigate and prosecute any violation of this chapter.

(Added to NRS by 1960, 26; A 1977, 1100; 1983, 1013)



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## Protect Board Members Against Liability for Illegal E-Mail 'Meetings'

Chances are, members of your school board use e-mail to communicate with each other. While this is a great convenience, it can also lead to unforeseen legal consequences. All 50 states have laws requiring school boards to hold meetings in public. When board members e-mail each other, they may inadvertently violate this law. A disgruntled staff member, parent, or citizen may sue, claiming that the e-mail discussion among the board members was a nonpublic "meeting," in violation of the law. This can lead to embarrassing publicity, as well as liability for both the district and individual board members.

To avoid trouble, create a policy governing board members' use of e-mail. We'll give you some tips about what to put in the policy, as well as a Model Policy (see p. 3) that you can adapt and use.

### What the Law Says

Every state has an open meeting, or "sunshine," law requiring public officials, including school board members, to hold their meetings in public. "The purpose of these laws is to promote open government and public participation and prevent backroom deals," notes Virginia attorney R. Craig Wood.

Since school boards hold most formal meetings in public, open meeting laws aren't at the forefront of most board members' minds. So they may not realize that the open meeting law doesn't cover just in-person meetings and that an e-mail discussion among board members may also be considered a "meeting" under the law. Consequently, when board members communicate with one another via e-mail, they may inadvertently hold a non public meeting that violates their state's open meeting law.

### Court Says E-Mail Discussion May Be an Illegal Meeting

A Washington school board learned this lesson the hard way. Board members had discussed district personnel issues with each other via e-mail. After the board decided

not to renew a school administrator's contract, she sued the board, claiming that the e-mail discussion among the board members violated the state's open meeting law. The board members asked the court to dismiss the case, but the court refused. It found that by e-mailing each other, the board members may have held an illegal meeting.

Under Washington law, a meeting occurs when a quorum—in this case, a majority—of board members deliberate on issues that could come before the board for a vote. The court noted that a majority of board members had exchanged e-mails regarding official board business. That is, a board member had sent an e-mail to all of the other board members, discussing whether to replace the administrator. The court said a jury would have to decide if the board had violated the open meeting law [Wood v. Battle Ground Sch. Dist.].

### Set Policy on Board Member E-Mails

Don't let your board members fall into this trap. If you haven't already done so, create and enforce an acceptable e-mail use policy for board members and make sure it includes a section telling board members how to avoid inadvertent violations of the open meeting law. Your policy, like our Model Policy, should do the following:

**Describe the open meeting law.** The first section of your policy should tell board members that your state's open meeting law requires school boards to meet in public and warn that e-mail communications may violate this law [Policy, par. 1].

**Explain when e-mail may constitute a meeting.** Next, tell board members how to stay out of trouble. "The key to compliance," explains Wood, "is making sure board members understand when e-mailing may be considered a meeting under the law." To establish appropriate guidelines, you'll need to ask your district's attorney what your state's open meeting law says about e-mail.

Since many states passed their open meeting laws before the Internet came into widespread use, they don't specify whether e-mail exchanges among board members

are considered a meeting. That means if somebody sues the board for meeting illegally via e-mail, the court must interpret the law and decide if a violation occurred. That's what happened in the Washington case, above.

The key to avoiding liability, then, is understanding how a court would decide this question. Although details may vary from state to state, courts generally consider the same factors in determining whether an exchange of e-mails constitutes a meeting under the state's open meeting law:

➤ *Whether a majority of board members participated.* Our Model Policy tells board members to avoid e-mail correspondence that involves a quorum and warns against forwarding e-mails and posting messages on listservs [Policy, par. 2a].

The reason for this is that many states define "meeting" as an interaction among a quorum of board members. Consequently, an e-mail exchange between two members of a seven-member board probably wouldn't violate the law because there would be no quorum. But if one of the board members forwards one or more of the e-mail messages to two other members (or if each of the original participants forwards the e-mail to one other board member), it becomes a problem because now four of seven members have participated in the discussion. (Wood notes that simply receiving a message may be enough for a court to rule that a member participated, even if she just reads the e-mail without replying.) Similarly, a court might find a quorum if a board member posts a note on a listserv or chat room in which at least three other board members participate.

➤ *What the board members discussed.* Our Model Policy cautions board members against discussing district matters by e-mail [Policy, par. 2b].

A court is more likely to consider an e-mail correspondence among board members a meeting if it addresses official board business. "Personal conversations and social exchanges are fine—even if a quorum participates," explains Minnesota attorney Gloria Blaine Olsen. "But if the e-mail discusses faculty, funding, facilities, or other district matters, it may look like an attempt to reach a consensus on a matter that should be considered in an open meeting," she warns.

➤ *The amount of correspondence.* Our Model Policy cautions board members to keep the amount of correspondence on a given subject to a minimum [Policy, par. 2c].

The amount of give-and-take between and among board members is another key factor courts look at in determining if an e-mail correspondence is a meeting. "Simply e-mailing board members an agenda, board packet, background reading material, and the like is generally fine," notes Wood. "But a court is more likely to rule that a meeting has occurred if there's a response, reaction, or some similar interchange that could be characterized as a 'discussion' or 'deliberation,'" he adds. ♦

#### INSIDER SOURCES

Gloria Blaine Olsen, Esq.: Rider, Bennett, LLP, 333 S. Seventh St., Ste. 2000, Minneapolis, MN 55402.

R. Craig Wood, Esq.: McGuire Woods, LLP, Court Sq. Bldg., 310 Fourth St. NE, Ste. 300, PO Box 1280, Charlottesville, VA 22902-1288.

#### LEGAL CITATION

■ Wood v. Battle Ground Sch. Dist.: 27 P.3d 1208 (Wash. Ct. App. Div. 2 2001).

## MODEL POLICY

### Help Board Members Avoid Inadvertent Open Meeting Violations

State open meeting, or "sunshine," laws require school boards to hold meetings in public. When board members communicate with one another via e-mail, they may inadvertently violate this law. So districts should create a policy on e-mail use that protects board members against this risk. Here's a Model Policy that you can adapt and use for this purpose—either as a freestanding policy or as an addition to your current e-mail use policy for board members. Para-

graph 1 warns board members that e-mails may be considered illegal meetings; Paragraph 2 tells board members how to e-mail one another without violating the open meeting law. Our Model Policy assumes a seven-member board. If your board is bigger or smaller, simply change the numbers. Show this Model Policy to your attorney, and adapt it based on your state's laws.

#### E-MAIL COMMUNICATIONS POLICY

##### 1. E-MAILS AND SUNSHINE LAWS

The Board of Education acknowledges that e-mail facilitates communication among board members. However, board members are reminded that the state open meeting—also called "sunshine"—law requires that school board meetings be held in public.

*Board members should be advised that the sunshine law applies not just to in-person meetings but to certain electronic communications among board members, possibly including the use of e-mail, to discuss matters of district business with other board members.*

##### 2. AVOIDING LIABILITY

To avoid liability, board members must make sure that the e-mail communications in which they engage are not considered a meeting under the sunshine law. The following guidelines are designed to help you do that:

- a. **Limit e-mail discussions to three board members.** The law defines a meeting as a gathering—either physically or electronically—of a quorum, or majority, of board members. Since there are seven members of the school board, members should limit e-mail communications to no more than three members.
  - **Caveat:** Simply getting an e-mail may be enough to make a board member a participant, even if the board member does not actually respond to the message. Consequently, when one board member e-mails one or two other members, it doesn't create a quorum, but a quorum may be created if the sender and/or recipient forwards the e-mail to two other board members. Similarly, if one board member e-mails a message to a listserv or chat room in which at least three other board members participate, it may involve a quorum.
- b. **Do not discuss district business.** E-mails among board members are more likely to be considered meetings to the extent that they address matters of official district business. Accordingly, board members should avoid discussing district business—that is, issues subject to a board vote—when they e-mail other board members.
- c. **Keep responses to e-mails to a minimum.** The more an e-mail correspondence resembles a discussion, the greater the risk of liability under the sunshine law. Accordingly, board members are advised to minimize the degree of interaction and give-and-take when communicating with each other via e-mail. So, for example, simply e-mailing board members a copy of an article about the school budget is fine—as long as board members don't e-mail back their comments or responses to the article.





STATE OF NEVADA  
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION  
CONCERNING THE CONDUCT OF  
MICHAEL MACK, Member, Las Vegas City Council.

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Opinion No. 03-40

This matter came before a quorum<sup>1</sup> of the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on November 13, 2003, pursuant to a Request for Opinion filed on September 11, 2003, on the Commission's own motion pursuant to NRS 281.511(2)(c), and a determination on October 21, 2003, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Las Vegas City Councilman Michael Mack's conduct violated the disclosure and abstention provisions of NRS 281.501(2) and/or NRS 281.501(4).

The following issues are before the Commission in this matter:

1. Did Councilman Mack violate NRS 281.501(2) and deprive his constituents of the vote and voice he was elected to represent by abstaining from voting on a matter for which there are no facts to support that he (a) had accepted a gift or a loan, or (b) had a pecuniary interest, or (c) had a commitment in a private capacity to the interests of others (as defined by Subsection 8) which would materially affect the independence of judgment of a reasonable person in his situation?

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<sup>1</sup> The quorum consisted of Chairman Sheets and Commissioners Berman, Flangas, Keele and Kosinski. Commissioners Rick Hsu and Caren Jenkins served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

2. Did Councilman Mack violate NRS 281.501(2) by failing to disclose sufficient information concerning (a) his acceptance of a gift or a loan, or (b) his pecuniary interest, or (c) his commitment in a private capacity to the interests of others (as defined by Subsection 8) regarding his relationship with attorney Goodman to inform the public of the potential effect of his action as required by NRS 281.501(4) prior to determining whether the independence of judgment of a reasonable person in his situation would be materially affected by his interests/commitments under the circumstances presented in the particular matter and prior to abstaining from voting thereon pursuant to NRS 281.501(2)?

3. Did Councilman Mack violate NRS 281.501(4) by failing to disclose sufficient information concerning (a) his acceptance of a gift or a loan, or (b) his pecuniary interest, or (c) his commitment in a private capacity to the interests of others (as defined by Subsection 8) regarding his relationship with attorney Goodman to inform the public of the potential effect of his decision to vote or abstain from voting on the matter?

Notice of the hearing was properly posted and served. Councilman Mack was present with his counsel, Richard A. Wright, Esq., and Bruce M. Judd, Esq., of the law firm of Wright Judd & Winckler, and provided sworn testimony. Brad Jerbic, Esq., Las Vegas City Attorney, appeared in person as a witness on behalf of Councilman Mack and provided sworn testimony.

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. Michael Mack is an elected member of the Las Vegas City Council.
2. The Las Vegas City Attorney regularly and frequently advises and counsels members of the Las Vegas City Council regarding their ethical disclosure, participation and abstention obligations pursuant to NRS 281.501.
3. In advising and counseling members of the Las Vegas City Council on their ethical obligations, the Las Vegas City Attorney relies on the statutory ethics in government provisions of NRS Chapter 281 and published Commission Opinions.
4. The Las Vegas City Attorney is familiar with the entire agenda for each Las Vegas City Council meeting.
5. Prior to each Las Vegas City Council meeting, a member of Councilman Mack's staff reviews the meeting agenda for matters that may implicate Councilman Mack's personal and/or business interests and consults with the Las Vegas City Attorney's Office regarding Councilman Mack's disclosure, participation and abstention obligations with regard to those matters.
6. The agenda for the August 6, 2003, Las Vegas City Council meeting included item 120, a public hearing on a variance request, and item 121, a public hearing on a special use permit related to the variance. Both items identified the name of the applicant, a summary of the applicant's request, and the Las Vegas City staff and Planning Commission recommendations. Neither item identified the name of the attorney representing the applicant.<sup>2</sup>

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<sup>2</sup> The name of the attorney, if any, representing an applicant before the Las Vegas City Council is never listed on the agenda.

7. Eric Goodman, Esq., of the Las Vegas law firm Goodman, Brown and Premsrirut, appeared at the Las Vegas City Council meeting on August 6, 2003, to represent the applicants identified in agenda items 120 and 121.

8. Prior to the August 6, 2003, Las Vegas City Council meeting, Councilman Mack had retained Puoy Premsrirut, Esq., an attorney in the law firm Goodman, Brown and Premsrirut, to provide legal representation to him on an unrelated matter regarding a personal business venture. Neither Eric Goodman, Esq., nor his law firm were involved financially with Councilman Mack in the business venture.

9. When the Public Hearing was declared "open" for agenda items 120 and 121 at the August 6, 2003, Las Vegas City Council meeting, Eric Goodman, Esq., of the law firm Goodman, Brown and Premsrirut, appeared on behalf of the applicant. Prior to any presentation by Eric Goodman, Esq., or discussion on the matter, Councilman Mack disclosed "for the record" that Eric Goodman, Esq., "also does some legal work for a personal venture that I'm involved with" and concluded that "I don't believe it'll have any effect on my voting ability here today." At the end of the discussion on the agenda items, Councilman Mack stated, "Our City Attorney has mentioned that it's probably prudent for me to abstain, even though I feel I could be - subjective of mind." "But I will abstain, since Mr. Goodman is representing me on a separate matter." Councilman Mack abstained from voting on agenda items 120 and 121.

10. The Las Vegas City Attorney routinely and consistently advises members of the Las Vegas City Council that an on-going attorney-client relationship between an attorney appearing on a matter before the Las Vegas City Council and a Las Vegas City Councilperson creates a commitment in a private capacity to the interest of another because it is a "substantial and continuing business relationship" and, therefore, it is the kind of relationship that should

always result in the councilperson's abstention in the matter under NRS 281.501. The Las Vegas City Attorney also routinely and consistently advises members of the Las Vegas City Council that in such a situation, the councilperson need disclose nothing more than that an attorney-client relationship exists.

11. In Advisory Opinion No. 02-22, the Commission provided to Councilman Mack general and specific guidance regarding the disclosure, participation and abstention provisions of NRS 281.501.

#### CONCLUSIONS OF LAW

1. Councilman Mack is a public officer as defined in NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, Subsection 2(c).

WHEREFORE, based upon a preponderance of the evidence in this matter, the Commission by majority vote<sup>3</sup> renders the following Opinion:

#### OPINION

In pertinent part, NRS 281.501(4) provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
  - (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
  - (c) In which he has a pecuniary interest,
- without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest.

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<sup>3</sup> Commissioner Flangas dissented.

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In pertinent part, NRS 281.501(2) provides:

...[A] public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

NRS 281.501(8) defines "commitment in a private capacity to the interests of others" as a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship;  
or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

The disclosure and abstention provisions of NRS 281.501 are at the heart of Nevada's public policy that requires public officers, who are both public servants and private citizens, to perform their public duties in a manner that will enhance the people's faith in their integrity and impartiality.<sup>4</sup> When faced with a conflict between his private interests and those of the public whom he serves, NRS 281.501, therefore, requires a public officer to disclose sufficient information concerning his private interests and/or commitments to inform the public of the potential effect of his action or abstention upon those private interests and/or commitments. This gives the citizens represented by the public officer the opportunity they deserve to evaluate the nature of the conflict and the public officer's exercise of discretion in determining whether the conflict will materially affect his judgment. The public officer must then make a proper determination regarding abstention where a reasonable person's independence of judgment

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<sup>4</sup> See, NRS 281.421.

would be *materially* affected by those private interests and/or commitments. Public officers are the voice of and accountable to their constituents.<sup>5</sup> Therefore, when not prohibited from voting on a matter, a public officer has a duty to act on all matters that come before him.<sup>6</sup>

Abstention in all such cases would be a safe harbor for public officers and employees. However, the public and an elected official's constituents have an interest in matters that come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would *materially* affect one's independence of judgment.

See, Commission Opinion No. 99-56, *In the Matter of the Opinion Request of Bruce L. Woodbury*, dated December 22, 1999 (hereinafter the "Woodbury Opinion").

The Commission has previously referred Councilman Mack to the *Woodbury Opinion* for guidance,<sup>7</sup> reminding him that the burden is on the public officer to disclose private commitments *and the effect those private commitments can have on the decision-making process*, and to "make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments."

Since at least 1999,<sup>8</sup> the Las Vegas City Attorney's Office has regularly and consistently advised members of the Las Vegas City Council that an attorney-client relationship falls under NRS 281.501 and creates the kind of relationship that should always result in disqualification for a member of the Las Vegas City Council. Further, the Las Vegas City Attorney's Office has

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<sup>5</sup> See, Commission Opinion No. 99-56, *In the Matter of the Opinion Request of Bruce L. Woodbury*, dated December 22, 1999.

<sup>6</sup> See, Commission Opinion No. 99-56, *In the Matter of the Opinion Request of Bruce L. Woodbury*, dated December 22, 1999.

<sup>7</sup> See, Advisory Opinion No. 02-22, *In the Matter of the Request for Advisory Opinion of Michael Mack, Member, Las Vegas City Council*, dated March 4, 2003. (Pursuant to NRS 281.511(5), the content of Advisory Opinion No. 02-22 is no longer confidential and was discussed openly and freely by Councilman Mack and his counsel during the hearing in this matter.)

<sup>8</sup> Following the 1999 legislative changes to NRS 281.501.

regularly and consistently advised members of the Las Vegas City Council in such situations that a disclosure need provide no information other than a simple statement that the City Council member has an attorney-client relationship with the attorney appearing before the City Council. The Las Vegas City Attorney's position is based on the generally privileged nature of attorney-client relationships, which are much like relationships between doctor-patient and priest-confessor.<sup>9</sup> However, the Las Vegas City Attorney's position on this issue effectively creates an attorney-client exception to the disclosure and abstention requirements provided in NRS 281.501. Such an exception does not exist in the language of the statute or in the legislative history. The Commission, therefore, respectfully disagrees with the Las Vegas City Attorney's position on this issue and declines to adopt such an exception to the disclosure and abstention requirements of NRS 281.501. The issue is not the personal relationship between a public officer and his or her attorney (or doctor or priest). Rather, it is the action that is being taken by the public officer and how that action affects that attorney (or doctor or priest) given the context of the matter before the public body.

On August 6, 2003, Councilman Mack made the following disclosure after Agenda Items 120 and 121 were discussed before the Las Vegas City Council:

Our City Attorney has mentioned that it's probably prudent for me to abstain, even though I feel I could be – subjective of mind. But I will abstain, since Mr. Goodman is representing me on a separate matter.

However, NRS 281.501 and the Commission opinions interpreting NRS 281.501 require a more substantial disclosure. Councilman Mack's disclosure failed to meet the requirements of NRS 281.501 because it failed to provide sufficient information to inform the public of the

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<sup>9</sup> The Las Vegas City Attorney's Office believes that the mere "an attorney-client relationship exists" disclosure is sufficient because the public understands the confidential and/or business nature of such a relationship.



potential effect of his action or abstention upon the attorney given the context of the matters before the Las Vegas City Council in Agenda Items 120 and 121.

By way of disclosure, Councilman Mack should have had the opportunity on August 6, 2003, to disclose to the public and his constituents not only that he had an attorney-client relationship with the attorney (or the attorney's law firm) appearing before the Las Vegas City Council on behalf of the applicants in Agenda Items 120 & 121, but also sufficient information about the effect that relationship would have on the decision-making process so that the public and the citizens represented by Councilman Mack would have had the opportunity they deserved to evaluate the nature of the conflict and Councilman Mack's exercise of discretion in determining whether the attorney-client relationship would materially affect his judgment on the matter pending before the Las Vegas City Council. After such proper disclosure, the burden was on Councilman Mack to make a proper determination regarding whether to abstain in the matter based upon whether a reasonable person's independence of judgment in acting on the matter would have been materially affected by the attorney-client relationship. Councilman Mack was deprived of that opportunity when his disclosure and abstention decision making process was preempted by advice from the Las Vegas City Attorney's office that compelled him to abstain, disclosing merely and attorney-client relationship.

Unless the attorney-client relationship would have materially affected a reasonable person's independence of judgment in acting on Agenda Items 120 and 121, Councilman Mack, by abstaining from voting on those agenda items on August 6, 2003, failed to perform the duties for which he was elected and deprived his constituents of a voice in those matters.

Councilman Mack's disclosure did not meet the requirements of NRS 281.501. However, the long-standing practice of the Las Vegas City Attorney's Office of advising

members of the Las Vegas City Council to automatically abstain and disclose nothing more than "an attorney-client relationship" appears to have created an environment in which members of the Las Vegas City Council believed they were compelled in such matters to act in accordance with advice and instruction from the Las Vegas City Attorney's Office. Further, on August 6, 2003, the Las Vegas City Attorney's Office specifically advised Councilman Mack to abstain on Agenda Items 120 and 121 based solely on an attorney-client relationship between Councilman Mack and the attorney representing the applicants in those agenda items. Based solely on those limited circumstances in this particular matter, the Commission declines to find that Councilman Mack violated the provisions of NRS 281.501 subsection (2) or (4).

However, by this opinion, public officers are admonished that the Commission takes seriously the issues of proper disclosure and abstention. The Commission will not hereafter under circumstances substantially similar to those discussed herein tolerate disclosures or abstentions that fail to meet the requirements of NRS 281.501 and the standards of the Commission's published opinions.

**NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.**

DATED: June \_\_16\_\_, 2004.

NEVADA COMMISSION ON ETHICS

By: \_\_\_\_\_/S/\_\_\_\_\_  
RICK HSU, Chairman

**Advisory Opinions No. 03-43 and 03-44**  
**IN THE MATTER OF THE REQUESTS FOR ADVISORY OPINION OF**  
**JOHN LOURITT and KEITH ROMAN, Members, Douglas County School Board**

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on Thursday, November 13, 2003, on the requests for advisory opinion filed pursuant to NRS 281.511, Subsection 1, by John Louritt and Keith Roman, Members, Douglas County School Board. The requests for advisory opinion were consolidated for purposes of hearing and rendering an opinion on the matter.

The matter was properly noticed. Mr. Louritt and Mr. Roman expressly waived the confidentiality provisions of NRS 281.511(5) and requested that this matter be public. Mr. Louritt and Mr. Roman appeared in person and were sworn and presented testimony. Also present in person was Michael Smiley Rowe, Esq., counsel to the Douglas County School Board, who provided a statement and information.

Mr. Louritt and Mr. Roman request the Commission's advisory opinion addressing the same issue: Do the provisions of NRS 281.501 require him to abstain from participating in deliberations and voting on collective bargaining agreements because his spouse is a member of the collective bargaining unit being discussed and/or voted upon?

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. In his public capacity, Mr. Louritt is an elected member of the Douglas County School Board.
2. In his public capacity, Mr. Roman is an elected member of the Douglas County School Board.
3. The Douglas County School Board consists of seven elected members and is the governing body of the Douglas County School District, a local government employer.
4. Mr. Louritt's wife is employed by the Douglas County School District as a classified staff member. She is represented by the Douglas County Support Staff Organization, a collective bargaining unit.
5. Mr. Roman's wife is employed by the Douglas County School District as a certified teacher. She is represented by the Douglas County Professional Education Association, a collective bargaining unit.
6. The Douglas County Support Staff Organization and the Douglas County Professional Education Association negotiate with the Douglas County School Board collective bargaining agreements on behalf of the members they represent. The collective bargaining agreements include salaries, benefits, and grievance procedures for all members of the collective bargaining units.
7. Collective bargaining agreements between the Douglas County School Board and the collective bargaining units are negotiated by the Douglas County Human Resources Department and approved by the Douglas County School Board in executive session.
8. When a matter comes before the Douglas County School Board that concerns issues involving a collective bargaining agreement affecting Mr. Louritt's wife, it is Mr. Louritt's practice, on advice of counsel for the Douglas County School Board, to disclose his marital relationship and his abstention in the matter and leave the room during

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the board's discussion and vote on the matter.

9. Mr. Louritt believes that, as an elected member of the Douglas County School Board, he should be allowed to remain in the room during the board's discussion and action on a matter involving a collective bargaining agreement (even if the collective bargaining agreement before the Douglas County School Board affects his wife) so that he may, after disclosing his marital relationship, represent his constituents by participating in the board's discussion of the collective bargaining agreement, but abstain from voting thereon.

10. When a matter comes before the Douglas County School Board that concerns issues involving a collective bargaining agreement affecting Mr. Roman's wife, it is Mr. Roman's practice, on advice of counsel for the Douglas County School Board, to disclose his marital relationship and his abstention in the matter and leave the room during the board's discussion and vote on the matter.

11. Mr. Roman believes that, as an elected member of the Douglas County School Board, he should be allowed to remain in the room during the board's discussion and action on a matter involving a collective bargaining agreement (even if the collective bargaining agreement before the Douglas County School Board affects his wife) so that he may, after disclosing his marital relationship, represent his constituents by participating in the board's discussion of the collective bargaining agreement and voting on the matter.

#### CONCLUSIONS OF LAW

1. In their capacities as elected members of the Douglas County School Board, Mr. Louritt and Mr. Roman are both "public officers" pursuant to NRS 281.4365.

2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281.511, Subsection 1, and NRS 281.521.

WHEREFORE, on motion duly made, seconded, and unanimously approved, the Commission renders the following Opinion:

#### OPINION

In general, the Nevada Legislature's declaration of public policy concerning Nevada's Ethics in Government Law (NRS 281.411-281.581) offers important guidance to public officers.

In enacting Nevada's Ethics in Government Law, the Nevada Legislature declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the role of persons who are both public servants and private citizens." NRS 281.421.

The apparent intent of the ethical standards provided in NRS Chapter 281 is to prevent public officers and employees from becoming involved in situations generating conflicts between private and public interests so as to preserve and enhance impartiality of public officers and faith in the integrity of government.

In performing their public duties, therefore, public officers must be mindful of the Nevada Legislature's public policy declarations of NRS 281.421 and conduct themselves to avoid conflicts between their private interests and those of the general public whom they serve.

NRS 281.501 requires public officers to adequately disclose private interests and commitments when considering matters before them and, as appropriate, refrain from advocating the passage or failure of matters[1] and abstain from voting on matters when the independence of judgment of a reasonable person in their position would be materially affected by such personal commitments and/or interests.

NRS 281.501, Subsection 2, provides:

...in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 3 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

NRS 281.501, Subsection 4, provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
  - (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
  - (c) In which he has a pecuniary interest,
- without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

NRS 281.501(8) defines "commitment in a private capacity to the interests of others" as a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

In its Abstract of Opinion No. 91-1, the Commission addressed the disclosure and abstention standards of NRS 281.501 specifically as they related to a member of a school board whose spouse was a classified employee of the local school district. In that opinion, the Commission held:

- When the matter of approval/disapproval of a negotiated collective bargaining agreement for school district classified employees comes before the school board, a member of the school board whose spouse is a school district classified employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.
- When the subject of approval/disapproval of a negotiated collective bargaining agreement for school district certified employees comes before the school board, a member of the school board whose spouse is a school district professional employee must disclose the full nature and extent of the school board member's interest in the collective bargaining agreement, i.e., the spousal relationship with a classified school district employee, the percentage of the total household income the spouse's salary constitutes, and the school board member's fifty percent community property interest therein. The school board member must also abstain from voting on the matter.
- When the matter of approval/disapproval of a school district's budget comes before the school board, a school board member whose spouse is employed by the school district as a classified or certified employee is not required to make a disclosure and is not restricted from participating in and voting on the matter. The salary of the school board member's spouse appears merely as a line item in the individual school's budget, in which the school board member holds no direct pecuniary interest, and the school board member's interest in the spouse's salary does not affect the school district budget as a whole.
- When the matter of approval/disapproval of the budget line item which represents the salary of the spouse of a member of the school board, the school board member must disclose the spouse relationship (a commitment in a private capacity to the interest of another) affecting the independence of judgment of a reasonable person in that position and abstain from participating in and voting on the matter.

Although the 1999 Legislature made minor changes to the abstention provisions of NRS 281.501, the Commission's guidance in Abstract of Opinion 91-1 is relevant to Mr. Louritt's and Mr. Roman's circumstances as members of the Douglas County School Board with spouses employed by the Douglas County School District when matters concerning collective bargaining agreements affecting classified and/or certified school district employees and/or school district budgets come before them. Mr. Louritt and Mr. Roman are also referred to the Commission's more recent published opinions[2] interpreting and applying the disclosure, participation, and abstention standards of NRS 281.501 since the 1999 legislative changes for general guidance.

Specifically, however, pursuant to the requirements of NRS 281.501(2), when a collective bargaining agreement that affects Mr. Louritt's spouse (who is as a classified employee of the Douglas County School District) and/or Mr. Roman's spouse (who is employed as a certified teacher for the Douglas County School District) comes before the Douglas County School Board, Mr. Louritt or Mr. Roman, as the case may be, must, after making a proper disclosure pursuant to NRS 281.501(4) and the Commission's published opinions interpreting those disclosure standards, (a) refrain from advocating the passage or failure of the matter and (b) abstain from voting on the matter.

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NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: January 22, 2004.

# NEVADA COMMISSION ON ETHICS

By: /s/ RICK HSU, Acting Chairman

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[1] The Commission previously distinguished impermissible advocacy from permissible participation as follows: "Our analysis, therefore, must seek to discern between those acts that would constitute impermissible advocacy and those acts that would be permissible participation. We think the line is most evident through illustration. For example, if [public officer] were an applicant for a permit before her own County Commission, she would be required by NRS 281.501(2) and (3) to disclose her interest and abstain from voting on or advocating for the passage of her permit *as a County Commissioner*, but she could step out into the audience and testify regarding her permit *as the applicant*. We see nothing in NRS 281.501(2) and (3) or elsewhere in the Ethics in Government Law that would compel the conclusion that once [public officer] became a County Commissioner, she became barred for the remainder of her term from participating in the ordinary processes of...county government as any other citizen would. Such a conclusion would be absurd and would severely restrict the pool of potential candidates for any office." Nevada Commission on Ethics Opinion No. 97-07.

[2] See, e.g., Nevada Commission on Ethics Advisory Opinions No. 99-56 (Woodbury) and No. 03-34 (Boggs-McDonald). All of the Commission's published opinions are available on the Commission's website, <http://ethics.state.nv.us>.

[3] The provisions of NRS 281.501 do not require a public officer who is refraining from participating in the discussion of, and abstaining from voting on, a particular matter to leave the room while the public body considers and votes on the matter.

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## Opinion No. 97-07

## BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION concerning the conduct of  
JANET KUBICHEK, Humboldt County Commissioner

This opinion is in response to a first-party request for opinion filed with the Nevada Commission on Ethics (Commission) by Janet Kubichek concerning her voting and conduct as a Humboldt County Commissioner. A hearing on this matter was held by the Commission on April 24, 1997 in Reno, Nevada, at which Ms. Kubichek and Mr. Michael McCormick, Humboldt County District Attorney, testified and presented evidence. At this hearing, Mrs. Kubichek waived her right to confidentiality for this proceeding. On May 30, 1997, the Commission publicly deliberated the matter and rendered its decision. The Commission now issues the Findings of Fact and Opinion which follow.

## FINDINGS OF FACT

1. Until September 1995, Ms. Kubichek was married to Keith Kubichek, and the couple has one son. In September 1995, Mr. and Ms. Kubichek divorced in an attempt to avoid some of the effects of the bankruptcy of Ms. Kubichek's prior husband. For all practical purposes, Mr. and Ms. Kubichek still live together as though they were husband and wife.
2. The Kubicheks own and operate Desert Disposal, a hauler of solid waste in Humboldt County. Serving the same area as Desert Disposal is one comparable competitor and a one person operation. Desert Disposal is the source of income for the Kubichek household, and both Mr. and Ms. Kubichek work for and operate the company which is legally owned solely by Mr. Kubichek as a result of the divorce.
3. In January 1997, Ms. Kubichek was sworn in as a County Commissioner for Humboldt County after successfully winning election in November 1996.
4. Prior to and throughout Ms. Kubichek's candidacy, the Humboldt County Commission (County Commission) had been considering and deciding issues related to the County's garbage collection service and the closure of rural landfills. Regarding the garbage collection, the County Commission had considered four options: (1) instituting mandatory pick-up, (2) instituting a drop-box program, (3) instituting a voluntary commercial haul or self-haul program, or (4) leaving the rural landfills open. The District Attorney opined that the only feasible solution for the County would be the closure of the County's rural landfills because of new federal regulations that would become effective in October 1997.
5. Ms. Kubichek had publicly expressed her opinions regarding the garbage collection and rural landfill issues, both before her candidacy and throughout her candidacy. Ms. Kubichek is very knowledgeable regarding these issues because of her extensive personal involvement in Desert Disposal.
6. Ms. Kubichek testified that Desert Disposal would financially benefit from the closure of the rural landfills because some of the county's residents who are presently hauling their own garbage to the rural landfills would be required to contract with the county's three private garbage haulers, including Desert Disposal, for their garbage hauling. Nonetheless, Ms. Kubichek has always publicly argued, both before and after becoming a County Commissioner, that the rural landfills should not be closed.
7. Shortly after being sworn in as a County Commissioner, Ms. Kubichek and Mr. McCormick, the District Attorney, began discussions intended to assist Ms. Kubichek to understand her disclosure and abstention obligations under NRS 281.501(2) and (3) regarding garbage hauling and landfill issues. Ultimately, by letter dated January 21, 1997, Mr. McCormick advised Ms. Kubichek that she should not "partake in any discussion regarding these (solid waste disposal) matters, nor should you vote on these matters." At our hearing, Mr. McCormick explained that he gave the most conservative advice under NRS 281.501(2) and 281.481(2) pending this Commission's opinion, and thus, he instructed Ms. Kubichek not to discuss or otherwise participate in any matter involving solid waste disposal and

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landfills when those matters came before the County Commission. At our hearing, Ms. Kubichek indicated that she knew she would need to disclose her interest in Desert Disposal and to abstain from participating in garbage haul and landfill issues, but she believed that Mr. McCormick's advice was unduly restrictive. Mr. McCormick prohibited Ms. Kubichek, after her disclosure and abstention, from going into the audience to participate as a member of the public. Ms. Kubichek contended that this advice kept her from providing the County Commission with her unique and knowledgeable opinion. Nonetheless, Ms. Kubichek did comply with Mr. McCormick's advice even though she disagreed with it.

8. At our hearing, Ms. Kubichek indicated that if the County Commission ultimately decided to put out some or all of the County's garbage hauling to bid, that Desert Disposal would like to be able to submit a bid.

### ANALYSIS AND OPINION

The Commission has jurisdiction over this matter pursuant to NRS 281.511(2) because Ms. Kubichek is a public officer as defined in NRS 281.4365. By the time of our hearing, Ms. Kubichek conceded and agreed with Mr. McCormick that she must disclose her interest in Desert Disposal and how that interest would be affected by matters relating to garbage disposal and landfills before the County Commission and that she must abstain from voting as a County Commissioner upon such matters. The real question, therefore, is a novel one in the jurisprudence of this Commission: Where is the line between prohibited advocacy and allowed participation in the consideration of a matter under NRS 281.501(2)?

As a starting point, NRS 281.501(2) explicitly prohibits only two acts by a member of the legislative branch, namely voting and advocacy. The legislative intent, therefore, is that anything that is not a vote or advocacy is allowed a member of the legislative branch. Furthermore, under this construct, a "vote" is readily and objectively ascertainable, since it is a formal and binding acknowledgement of assent in or dissent from a formally made motion to take a particular action. Ms. Kubichek did not vote in contravention of NRS 281.501(2).

Our analysis, therefore, must seek to discern between those acts that would constitute impermissible advocacy and those acts that would be permissible participation. We think the line is most evident through illustration. For example, if Ms. Kubichek were an applicant for a permit before her own County Commission, she would be required by NRS 281.501(2) and (3) to disclose her interest and abstain from voting on or advocating for the passage of her permit *as a County Commissioner*, but she could step out into the audience and testify regarding her permit *as the applicant*. We see nothing in NRS 281.501(2) and (3) or elsewhere in the Ethics in Government Law that would compel the conclusion that once Ms. Kubichek became a County Commissioner, she became barred for the remainder of her term from participating in the ordinary processes of Humboldt County government as any other citizen would. Such a conclusion would be absurd and would severely restrict the pool of potential candidates for any office.

In so saying, though, we must caution that Ms. Kubichek could not use her position as a County Commissioner to affect the outcome of her application, because to do so would violate NRS 281.481(2) and cause her other commissioners to violate NRS 281.481(1). Thus, Ms. Kubichek could not threaten her fellow commissioners with her opposition to their measures unless they passed hers. Likewise, Ms. Kubichek could not promise that she would act positively toward measures proposed by her fellow commissioners if they supported her personal measures. In other words, if Ms. Kubichek had a personal matter before her County Commission, she would need to be treated by them and she would need to treat them as any other citizen would.

The issues raised in this Opinion present another scenario where the fine line between advocacy and participation can be seen. For example, let us assume a matter involving garbage collection came before the County Commission, so Ms. Kubichek had to disclose her interest in Desert Disposal and abstain from voting or advocating regarding the matter. NRS 281.501(2) would allow Ms. Kubichek to "otherwise participate" in the matter, and in order to render this term meaningful, we find that the Legislature meant that Ms. Kubichek could do *something*. That "something" might be, for example, that Ms. Kubichek could provide facts *as any other citizen*. This is particularly crucial to this Opinion because Ms. Kubichek was, presumably, elected in part because of her unique knowledge of garbage and landfill issues that were pertinent to her constituents. Again, we cannot find in NRS 281.501(2) and (3) or any other portion of the Ethics in Government Law that a public official loses her voice after her election regarding issues about which she might possess unique and valuable knowledge and experience.

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We must caution, though, that the line dividing allowable factual testimony and prohibited advocacy is razor thin. Statements that begin, "in my opinion...," "I think...," "I believe...," or "I would hope...," would be signals that the statement might be more advocate than informative. A statement like, "The standard dumpster you see in the back of restaurants holds X cubic yards of garbage," would clearly be an allowable statement of fact. The intent of the statement is guiding. A statement of advocacy is prohibited, even if factual, because the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself. On the other hand, a statement of fact, without any overtones of advocacy, is allowed because the intent of the speaker is merely to inform the hearer and so theoretically the person of the speaker should be irrelevant because information is information and facts are facts, regardless of who provides them.

As we have said before, the line between a statement of fact and a statement of advocacy will often be razor thin. Because the consequences of crossing the line will always rest upon the elected official proffering the statement, the best general rule we can give is that an elected official who has already disclosed and abstained from a matter because of a disabling conflict of interest should always consider whether what she has to say really needs to be said, and if she thinks so, then she must be very careful with what she says and how she says it. Prudential forethought, common sense, and concern for appearances of impropriety will be the best prophylaxis. We interpret NRS 281.501(2) not to be a strict prohibition, but a stiff caution. In other words, a member of the legislative branch may speak about a matter in which she is interested, but she had better know why, what, and how *before* she does so.

Thus, we interpret NRS 281.501(2) to allow an otherwise legally conflicted elected official to "otherwise participate" in a matter by participating as a citizen applicant before the elected official's body and by participating as a provider of factual information. We appreciate the difficult position Mr. McCormick found himself in when he advised Ms. Kubichek regarding NRS 281.501(2) and NRS 281.481(2) because this Commission had no previous analogous opinions. Mr. McCormick gave the most conservative advice, and Ms. Kubichek abided it, even though she disagreed with it. We applaud both Mr. McCormick and Ms. Kubichek for the civil and appropriate way in which they handled their impasse. Would that more public officials would act so professionally and in the public's best interest.

### CONCLUSION

Based upon the record, the Commission concludes that NRS 281.501(2) might allow Ms. Kubichek to "otherwise participate" in matters before the Humboldt County Commission for which she had to disclose and from which she had to abstain, as long as her participation is limited as we have discussed in this opinion.

### COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: June 11, 1998.

NEVADA COMMISSION ON ETHICS

By: /s/ MARY BOETSCH, Chairwoman

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Charter School Application  
Approval or Denial Decision-Making Policy**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  X/  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 8

NUMBER OF ENCLOSURE(S): 2

**PRESENTER(S):** Dr. Steve Canavero

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**RECOMMENDATION:** Adopt the proposed “Charter School Application Approval or Denial Decision-Making Policy of the Nevada State Public Charter School Authority” including the “Review by the State Public Charter School Authority of a Charter School Application for a Fall, 2013, Startup”

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

**BACKGROUND:** The transition from the State Board of Education as a charter school sponsor to the State Public Charter School Authority as a sponsor requires revisions to the charter school application review process and decision making policy. The proposed process and policy are consistent with national best practices for application review and decision-making.

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

## Review by the State Public Charter School Authority Of a Charter School Application for a Fall, 2013, Startup

Suggested Authority Board meeting date to comply with statutory requirements and based on a September 4, 2012, application due date is in **bold font**:

1. A charter school application for sponsorship by the State Public Charter School Authority (Authority) proposing a fall, 2013, startup of the school must be submitted by the Committee to Form the School and received by Authority staff at 1749 Stewart Street, Suite 40, Carson City, between 8:00AM, Monday, August 27, 2012, and 5:00PM, Friday, August 31, 2012. For the purposes of NRS 386.525, the date of receipt of an application submitted between the dates and times identified above will be Tuesday, September 4, 2012.
2. Upon receipt of an application by Authority staff, a copy of the application will be sent to all Authority Board members.
3. The Authority Board will meet 45 days after September 4, 2012 (**Friday, October 19, 2012**), to review the application for compliance with statute and regulation and for completeness and for approval or denial.
4. During the 45 day period between receipt of the application and the meeting of the Authority Board, the Application Review Team will review the application and interview the members of the Committee to Form the School.
5. Based on its review of the application and interview of the Committee, the Application Review Team, at the Authority Board meeting to be held October 19, 2012, will make a recommendation to the Authority Board for approval or denial of the application.
6. Within 30 days after the October 19, 2012, meeting Authority staff will provide written notice of the Authority Board's determination to the applicant.
7. If the Authority Board denies an application, and the applicant wishes to resubmit the application for further consideration by the Authority Board, the applicant will be given 30 days after receipt of the written notice referred to in 6, above, to correct the application's deficiencies and resubmit the application.
8. Upon receipt of a resubmitted application by Authority staff, a copy of the application will be sent to all Authority Board members.

9. The Application Review Team will review the resubmitted application for correction of the deficiencies identified in the written notice.
10. At its next regularly scheduled meeting, the Authority Board will review the resubmitted application for compliance with applicable statute and regulation and for completeness and for approval or denial.
11. Based on review of the resubmitted application, the Application Review Team, at the meeting identified in 10, above, of the Authority Board, will make a recommendation to the Authority Board for approval or denial of the resubmitted application.

Timeline:

Tuesday, September 4, 2012: Effective date of application receipt by Authority staff. Per statute, the Authority Board shall meet to consider the application “not later than 45 days after receipt of the application.” 45 days after September 4 is October 19.

**Friday, October 19, 2012:** Meeting of the Authority Board. Per statute, “not more than 30 days after the meeting,” the Authority staff shall provide written notice of the Authority Board’s determination regarding the application to the applicant.

Within 30 days of October 19, 2012: Authority staff will provide written notice of the Authority Board’s determination to the applicant. Per statute, if the Authority Board denies the application, “the applicant must be granted 30 days after receipt of the written notice” to correct and resubmit the application.

Within 30 days of receipt by the application of the written notice: Resubmitted application due to the Authority staff.

Next regularly scheduled meeting of the Authority Board: Board considers the resubmitted application.

**Excerpts of NRS 386.525 follow:**

**NRS 386.525 Submission of application to form charter school to proposed sponsor; review of application; assistance of Department; opportunity to correct deficiencies; appeal of denial; biennial report by Superintendent of Public Instruction concerning status of applications.**

2. If the board of trustees of a school district or a college or a university within the Nevada System of Higher Education, as applicable, receives an application to form a charter school, the board of trustees or the institution, as applicable, shall consider the application at a meeting that must be held not later than 45 days after the receipt of the application, or a period mutually agreed upon by the committee to form the charter school and the board of trustees of the school district or the institution, as applicable, and ensure that notice of the meeting has been provided pursuant to [chapter 241](#) of NRS. If the proposed sponsor requested that the Department review the application

pursuant to [NRS 386.520](#), the proposed sponsor shall be deemed to receive the application pursuant to this subsection upon transmittal of the application from the Department. The board of trustees, the college or the university, as applicable, shall review an application to determine whether the application:

- (a) Complies with [NRS 386.490](#) to [386.610](#), inclusive, and the regulations applicable to charter schools; and
- (b) Is complete in accordance with the regulations of the Department.

6. If the State Public Charter School Authority receives an application pursuant to subsection 1 or 5, it shall consider the application at a meeting which must be held not later than 45 days after receipt of the application. If the State Public Charter School Authority requested that the Department review the application pursuant to [NRS 386.520](#), the State Public Charter School Authority shall be deemed to receive the application pursuant to this subsection upon transmittal of the application from the Department. Notice of the meeting must be posted in accordance with [chapter 241](#) of NRS. The State Public Charter School Authority shall review the application in accordance with the factors set forth in paragraphs (a) and (b) of subsection 2. The Department shall assist the State Public Charter School Authority in the review of an application. The State Public Charter School Authority may approve an application if it satisfies the requirements of paragraphs (a) and (b) of subsection 2. Not more than 30 days after the meeting, the State Public Charter School Authority shall provide written notice of its determination to the applicant.

7. If the State Public Charter School Authority denies or fails to act upon an application, the denial or failure to act must be based upon a finding that the applicant failed to adequately address objective criteria established by regulation of the Department or the State Board. The State Public Charter School Authority shall include in the written notice the reasons for the denial or the failure to act and the deficiencies in the application. The staff designated by the State Public Charter School Authority shall meet with the applicant to confer on the method to correct the identified deficiencies. The applicant must be granted 30 days after receipt of the written notice to correct any deficiencies identified in the written notice and resubmit the application.

8. If the State Public Charter School Authority denies an application after it has been resubmitted pursuant to subsection 7, the applicant may, not more than 30 days after the receipt of the written notice from the State Public Charter School Authority, appeal the final determination to the district court of the county in which the proposed charter school will be located.

Charter School Application Approval or Denial Decision-Making Policy of the  
Nevada State Public Charter School Authority

A Nevada Charter School Application packet identifying everything that must be addressed in a charter school application and providing guidance for completion of the application shall be developed, adopted by the Authority Board, and made available to all charter school stakeholders. The Packet shall identify Required Elements and Evaluation Criteria for each of three “plans” addressing major school-operation considerations: Education Plan, Organization Plan, and Business Plan. Authority staff shall provide periodic trainings and as-needed and other technical assistance for Committees to Form Charter Schools attempting to prepare and submit an application and open and operate a charter school.

Authority Board members, through training provided or coordinated by Authority staff and others, or obtained independently, shall make approval or denial decisions based on a thorough understanding of the charter school concept, including charter school accountability and autonomy. Consideration of charter school “best practices,” including those related to charter school operation and charter school application review as identified by the National Association of Charter School Authorizers, shall be a key component of such training.

An application review process consistent with NRS 386.525 and application review best practices shall be developed, adopted and implemented by the Authority Board. The process shall be incorporated into the decision-making policy stated herein. The Authority Board shall propose to the State Board of Education, which solely retains regulation-making authority, that the process be established in NAC (Nevada Administrative Code; regulation).

The Authority’s Application Review Team (ART) shall consist of members collectively possessing expertise in all areas of public school operation, including but not limited to curriculum, instruction, finance, discipline, special education, safety, and facilities. The ART shall also include at least one peer reviewer, that is, a current charter school operator, and at least one external reviewer, that is, an out-of-state national charter school expert. The role of the ART is, after appropriate deliberation, to recommend to the Authority Board either approval or denial of the application.

The ART shall consist of both Generalist and Specialist application reviewers. Although all ART members shall read the entire application and contribute to the ART’s recommendation to the Authority Board for approval or denial of the application, deference and weight shall be given in the recommendations to the findings and concerns of Specialist reviewers for their area of expertise. For example, the ART’s budget and finance Specialist’s findings, concerns and recommendations regarding the proposed school’s budget and financial plan shall be given deference and weight over Generalists’ findings for the budget and financial plan.

ART members’ findings leading to approval or denial recommendations to the Authority Board shall be based upon analysis of the application for completeness (Have all requirements identified in the

Application Packet been addressed?); compliance with applicable law and regulation; whether or not the application, in each part and as a whole, meets standards identified in the Charter School Application packet; and whether or not the application meets the requirements of any Request for Proposals the Authority Board may have issued.

Equally pertinent to the application review, and given equal weight as the application review in the formation of a recommendation by the ART to the Authority Board, shall be the results of an interview by the ART of the members of the Committee to Form the School that submitted the application. The purpose of such an interview shall be to ascertain Committee members' familiarity with the application and knowledge of public charter school operation. For example, the interview may reveal misunderstanding by Committee members of special education requirements; such potentially damaging misunderstanding may not have been revealed in the application, given a written application's inherent limitations. Alternatively, an interview may clear up ART members' misunderstanding of the Committee to Form's intentions; in any case, the interview is an indispensable communication tool further informing the ART's recommendation to the Authority Board.

Authority Board members shall acquaint themselves with the application's contents by reading it and by attending a presentation of the application by the applicants at the regularly scheduled meeting of the Board in which the Board shall consider the application for approval or denial. The Board's decision for approval or denial shall be based upon the ART's recommendation; the presentation by the applicants; Board members' own analysis of the application for completeness and compliance; and Board Members' analysis of the application for meeting standards identified in the Application Packet and in any Request for Proposals the Authority Board may have issued. Full public disclosure of Board members' relevant interests and background shall prevent conflicts of those interests from interfering with the State Public Charter School Authority's mission to authorize high quality charter schools.



# STATE PUBLIC CHARTER SCHOOL AUTHORITY

## SUPPORTING DOCUMENT

**S U B J E C T: Review of an application to form a charter school at a meeting pursuant to subsection 5 of NRS 386.525.**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  x / </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 9

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S): Dr. Steve Canavero, Director State Public Charter School Authority**

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**RECOMMENDATION: Pinecrest Academy of Nevada**

The Application Review Team's consensus recommendation is for the Authority Board to approve the Pinecrest Academy of Nevada application for a Subsection 7 Charter.

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 10 minutes**

**BACKGROUND:**

The Authority's Application Review Team reviewed the application to form Pinecrest Academy for sponsorship by the State Public Charter School Authority. A number of concerns regarding the application were formally communicated to the Committee to Form the School, and the Committee was allowed 30 days to revise and resubmit the application. During this time Application Review Team members offered and provided assistance to the Committee. Upon resubmission of the application and review of the resubmission by the Application Review Team, the Authority notified the Committee that the application was now sufficiently complete and compliant to warrant advancement to the next stage in the process, an interview of Committee members by the Application Review Team. The interview addressed remaining fundamental concerns of the review team, and thus staff recommends approval of the application to form the Pinecrest Academy of Nevada charter school.

**SUBMITTED BY: \_\_\_\_\_**

## **Report on Charter Applicant: Pinecrest Academy of Nevada**

Mission from charter application: Pinecrest Academy of Nevada will provide a safe and nurturing educational environment that maximizes student achievement and fosters respect for all. Pinecrest Academy will utilize ongoing assessments, engaging activities, the creation of a strong community environment and regular parent involvement to achieve student success. In this manner, Pinecrest Academy will assist all students to become equally successful as lifelong learners and responsible citizens.

County in which school will be located: Clark; Henderson (specific location TBD)

School Type: Elementary (K-8)

Grades Served Year 1: K-5

Grades Served Year 2: K-6

Planned Opening: Fall 2012

Projected Enrollment: Y1 – 300; Y2 – 400

Proposed Charter: Subsection 7 (of NRS 386.527)

Lack of facility

Educational Management Organization (if applicable):

Academica Nevada, LLC

Pinecrest Academy, INC

Curriculum model or special focus:

Based on South Florida Pinecrest Academy - Rigorous academic environment; coherent and aligned professional development; safe environment conducive to learning.

Not Distance Education, Not primarily for at-risk youth, Not Vocational Education

Legislative Intent

2) Increase the opportunities for learning and access to quality education by pupils.

Report:

On December 13, 2011, members of the Committee to Form the Pinecrest Academy of Nevada participated in an interview with the State Public Charter School Authority's Application Review Team. The purpose of the interview was to inform the Application Review Team's recommendation to the Board of the State Public Charter School Authority. Based on the application and the Committee members' responses to the Review Team's interview questions, the Review Team recommendation is for the Authority Board to approve the application for a Subsection 7 Charter. The Subsection 7 Charter will identify the remaining tasks that must be accomplished in order to have the Subsection 7 Charter converted to a NRS 386.527(5) charter under which the school may receive state funding and commence operation.

<b>Pinecrest Academy</b>				
<b>Application Section</b>	<b>ART Finding</b>	<b>Interview Topics</b>	<b>ART Determination</b>	
<b>A.1 Mission, Vision, and Educational Philosophy</b>	Approaches Standard	Rationale for inclusion of Sizer's ten principles in the education philosophy	Meets Standard	
<b>A.2 School-Specific Goals and Objectives</b>	Meets Standard		Meets Standard	
<b>A.3 Curriculum and Instruction</b>	Meets Standard		Meets Standard	
<b>A.4 Assessment and Accountability</b>	Meets Standard		Meets Standard	
<b>A.5 Tentative School Calendar and Daily Schedule</b>	Meets Standard		Meets Standard	
<b>A.6 School Climate and Discipline</b>	Meets Standard		Meets Standard	
<b>A.7 Target Population</b>	Approaches Standard	Suitability of Pinecrest "model" and target population	Meets Standard	
			Meets Standard pending Subsection 7 Provisions: Continuum of Services notice to sponsor if changed; Corrected form required	
<b>A.8 Special Student Populations</b>	Approaches Standard	Continuum of services defined	Meets Standard	
<b>A.9 Records</b>	Meets Standard		Meets Standard	
<b>A.10 Career Education</b>	N/A	N/A	N/A	
<b>B.1 Governing Body</b>	Approaches Standard	Board development and operational expectations	Meets Standard	
<b>B.2 Composition of the Committee to Form the School</b>	Meets Standard		Meets Standard	
<b>B.3 Management and Operation</b>		Committee to Form expectations of services provided by each EMO; Pinecrest affiliation	Meets Standard	
<b>B.3.1 Educational Management Organizations</b>	Approaches Standard	Anticipated relationship between EMO and Board	Meets Standard	
<b>B.4 Staffing and Human Resources</b>	Meets Standard		Meets Standard	
<b>C.1 Budget</b>	Meets Standard		Meets Standard pending Subsection 7 Provisions	
<b>C.2 Financial Management</b>	Meets Standard		Meets Standard	
<b>C.3 Facilities</b>	Approaches Standard	Committee to Form rationale on facility selection	Meets Standard pending Subsection 7 Provisions	
<b>C.4 Transportation, Health Services, and Emergency Services</b>	Meets Standard		Meets Standard	

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Review of an application to form a charter school at a meeting pursuant to subsection 5 of NRS 386.525.**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  x / </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 10

NUMBER OF ENCLOSURE(S):

**PRESENTER(S): Dr. Steve Canavero, Director State Public Charter School Authority**

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**RECOMMENDATION: Honors Academy of Literature**

The Application Review Team's consensus recommendation is for the Authority Board to approve the Honors Academy application for a Subsection 7 Charter.

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 10 minutes**

**BACKGROUND:**

The Authority's Application Review Team reviewed the application to form Honors Academy for sponsorship by the State Public Charter School Authority. A number of concerns regarding the application were formally communicated to the Committee to Form the School, and the Committee was allowed 30 days to revise and resubmit the application. During this time Application Review Team members offered and provided assistance to the Committee. Upon resubmission of the application and review of the resubmission by the Application Review Team, the Authority notified the Committee that the application was now sufficiently complete and compliant to warrant advancement to the next stage in the process, an interview of Committee members by the Application Review Team. The interview addressed remaining fundamental concerns of the review team, and thus staff recommends approval of the application to form the Honors Academy of Literature charter school.

**SUBMITTED BY: \_\_\_\_\_**

## **Report on Charter Applicant: The Honors Academy of Literature**

Mission from charter application: Our mission is to offer a differentiated curriculum that supports education equity through consistent learning and growth; to enliven a love of learning and educational discovery through the exploration of children's literature; and to provide all students a foundation for excellence upon which to build success in future learning.

County in which school will be located: Washoe; Reno (specific location TBD)

School Type: Elementary (K-8)

Grades Served Year 1: 3-8

Grades Served Year 2: K-8

Planned Opening: Fall 2012

Projected Enrollment: Y1 – 330; Y2 – 450

Will limit enrollment: 20:1 in Grades K-2    25:1 in Grades 3-5    30:1 in Grades 6-8

Proposed Charter: Subsection 7 (of NRS 386.527)

Lack of facility; Special Education Plan;

Educational Management Organization (if applicable): N/A

Curriculum model or special focus:

The Honors Academy offers enriched exposure to contemporary high interest literature across the curriculum and developmental teaching as the primary approach to instruction. Students will interact in a student centered, cooperative learning environment.

Not Distance Education, Not primarily for at-risk youth, Not Vocational Education

Legislative Intent

Establishing accountability of public schools

Creating new professional opportunities for teachers

Report:

On December 13, 2011, members of the Committee to Form the Honors Academy of Literature participated in an interview with the State Public Charter School Authority's Application Review Team. The purpose of the interview was to inform the Application Review Team's recommendation to the Board of the State Public Charter School Authority. Based on the

application and the Committee members' responses to the Review Team's interview questions, the Review Team recommendation is for the Authority Board to approve the application for a Subsection 7 Charter. The Subsection 7 Charter will identify the remaining tasks that must be accomplished in order to have the Subsection 7 Charter converted to a NRS 386.527(5) charter under which the school may receive state funding and commence operation.

<b>Honor's Academy</b>	<b>Application</b>	<b>Concerns: Interview</b>	<b>Determination</b>
<b>A.1 Mission, Vision, and Educational Philosophy</b>	Meets Standards	Explanation of Committee to Form use of equity	Meets Standards
<b>A.2 School-Specific Goals and Objectives</b>			Meets Standards pending Subsection 7 Provisions: Technical edits; Clarifying "proces" versus "outcome".
<b>A.3 Curriculum and Instruction</b>	Approaches Standards	Performance Indicators: Rationale on why not measure growth in YI	Meets Standards
<b>A.4 Assessment and Accountability</b>	Meets Standards		Meets Standards
<b>A.5 Tentative School Calendar and Daily Schedule</b>	Data Management Team's preperation, inquiry and action using MAPS data		Meets Standards
<b>A.6 School Climate and Discipline</b>	Approaches Standards		Meets Standards
<b>A.7 Target Population</b>	Meets Standards	Strategies considered to reach traditionally less infomed families	Meets Standards
<b>A.8 Special Student Populations</b>	Approaches Standards	Continuum of services in initial years of operation; Special Education budget assumptions.	Meets Standards pending Subsection 7 Provisions: Special Education budget revisions
<b>A.9 Records</b>	Meets Standards		Meets Standards
<b>A.10 Career Education</b>	N/A	N/A	N/A
<b>B.1 Governing Body</b>	Approaches Standards	Technical deficiencies	Meets Standards pending Subsection 7 Provisions: Technical edits of bylaws
<b>B.2 Composition of the Committee to Form the School</b>	Meets Standards		Meets Standards
<b>B.3 Management and Operation</b>		Rationale for organizational structure and alternative structures considered; teacher evaluation model; relationship between the Board and administrtion of the school	Meets Standards
<b>B.3.1 Educational Management Organizations</b>	Approaches Standards		Meets Standards
<b>B.4 Staffing and Human Resources</b>	N/A	N/A	N/A
<b>C.1 Budget</b>	Meets Standards		Meets Standards
<b>C.2 Financial Management</b>	Approaches Standards	Special Education; research and rationale on teacher compensation	Meets Standards
<b>C.3 Facilities</b>	Meets Standards		Meets Standards
<b>C.4 Transportation, Health Services, and Emergency Services</b>	Meets Standards		Meets Standard pending Subsection 7 Provisions
	Meets Standards		Meets Standards



# STATE PUBLIC CHARTER SCHOOL AUTHORITY

## SUPPORTING DOCUMENT

**S U B J E C T: Review of an application to form a charter school at a meeting pursuant to subsection 5 of NRS 386.525.**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  x / </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 11

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S): Dr. Steve Canavero, Director State Public Charter School Authority**

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**RECOMMENDATION: Learning Bridge**

It is the Authority staff recommendation to deny the application to form Learning Bridge Charter School.

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES): 10 minutes**

**BACKGROUND:**

The Authority's Application Review Team reviewed the application to form Learning Bridge for sponsorship by the State Public Charter School Authority. A number of concerns regarding the application were formally communicated to the Committee to Form the School, and the Committee was allowed 30 days to revise and resubmit the application. During this time Application Review Team members offered and provided assistance to the Committee. Upon resubmission of the application and review of the resubmission by the Application Review Team, the Authority notified the Committee that the application was now sufficiently complete and compliant to warrant advancement to the next stage in the process, an interview of Committee members by the Application Review Team. The interview, however, failed to address remaining fundamental concerns of the review team, and thus staff recommend denial of the application to form the Learning Bridge charter school. The Committee may re-submit another application as allowed in statute.

**SUBMITTED BY: \_\_\_\_\_**

## **Report on Charter Applicant: Learning Bridge**

Mission from charter application: The Learning Bridge Charter School will provide an environment in which students will be immersed in an intense educational experience that will greatly improve their knowledge base and their chances for a successful future.

County in which school will be located: White Pine; Ely

School Type: Elementary (K-8)

Grades Served Year 1: K-5

Grades Served Year 2: K-6

Planned Opening: Fall 2012

Projected Enrollment: Y1 – 100; Y2 – 120

Enrollment limited to 20:1 ratio across grades

Proposed Charter: Subsection 7 (of NRS 386.527)

Educational Management Organization (if applicable): N/A

Curriculum model or special focus:

Core Knowledge and CELL-ExLL, positive school culture achieved through use of 7 Habits books by Sean Covey, school wide offering of Chinese language and culture

Not Distance Education, Not primarily for at-risk youth, Not Vocational Education

Legislative Intent

Increase the opportunities for learning and access to quality education by pupils.

### Report

On December 13, 2011, members of the Committee to Form the Learning Bridge participated in an interview with the State Public Charter School Authority's Charter School Application Review Team. Based on your application and the Committee members' responses to the Review Team's interview questions, the Review Team has developed a recommendation to the Authority Board. The Review Team's recommendation is for the Authority Board is to deny the application for a Subsection 7 Charter.

The recommendation for denial is a consensus decision of the Review Team that the interview did not sufficiently resolve certain of the Review Team's concerns including:

- School-Specific Goals and Objectives
  - Use of McGill/Ely as a meaningful measure of student achievement
  - Rationale for determining Status/Proficiency targets

- Logic for sole inclusion of status rather than growth
- Assessment and Accountability
  - Reliance on first generation assessments without meaningful inclusion of second generation assessments (e.g., growth)
  - Determination of one year's growth as a standard for promotion
- Governance/Financial
  - General approach to ensure strong fiscal stewardship

## The Learning Bridge

Application Section	ART Finding	Interview Topics	ART Determination
A.1 Mission, Vision, and Educational Philosophy	Meets Standard		Meets Standard
A.2 School-Specific Goals and Objectives	Approaches Standard	Rationale for outperforming local school/district as a meaningful measure of performance; Basis for selecting 4% increase in CRT scores as a target; Rationale for excluding a measure of student academic growth	Approaches Standard
A.3 Curriculum and Instruction	Approaches Standard	Core Knowledge and common core; Basis for selecting Core Knowledge;	Meets Standard
A.4 Assessment and Accountability	Approaches Standard	Promotion standard of one years' growth; Determination on use of assessments	Approaches Standard
A.5 Tentative School Calendar and Daily Schedule	Meets Standard		Meets Standard
A.6 School Climate and Discipline	Meets Standard		Meets Standard
A.7 Target Population	Meets Standards	Suitability of proposed educational program given target population	Meets Standard
A.8 Special Student Populations	Meets Standard		Meets Standard
A.9 Records	Meets Standard		Meets Standard
A.10 Career Education	N/A	N/A	N/A
B.1 Governing Body	Approaches/Meets Standard Technical revisions: Specific editing of bylaws		Technical Deficiencies Exist Approaches Standard
B.2 Composition of the Committee to Form the School	Approaches/Meets Standard Technical revisions: Specific editing of bylaws		Technical Deficiencies Exist Approaches Standard
B.3 Management and Operation	Approaches Standard	Use of committee for high stakes personnel decisions	Meets Standard
B.3.1 Educational Management Organizations	N/A	N/A	N/A
B.4 Staffing and Human Resources	Meets Standard		Meets Standard
C.1 Budget	Approaches/Meets Standard Technical revisions: Specific editing of bylaws	Contingency plan to maintain viability with lower than anticipated enrollment - budget analysis	Technical Deficiencies Exist Approaches Standard
C.2 Financial Management	Approaches Standard	Strong sense of fiscal stewardship; description of internal controls	Approaches Standard
C.3 Facilities	Meets Standard		Meets Standard pending Subsection 7 Provisions
C.4 Transportation, Health Services, and Emergency Services	Meets Standard		Meets Standard

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Establish Board Member's**

**payment at \$80 or less per meeting**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  /  </u>	Information
<u>  /  X/  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 12

NUMBER OF ENCLOSURE(S): 0

**PRESENTER(S):** Dr. Steve Canavero

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**RECOMMENDATION:** Establish Board Member's payment per meeting.

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**FISCAL IMPACT:** The payment of each board member will have a fiscal impact dependent upon the frequency of meetings.

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

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**BACKGROUND:**

**NRS 386.5095 Appointment and qualifications of members; terms; vacancies; selection of Chair and Vice Chair; compensation, allowances and travel expenses.**

6. Each member of the State Public Charter School Authority is entitled to receive:

(a) For each day or portion of a day during which he or she attends a meeting of the State Public Charter School Authority a salary of not more than \$80, as fixed by the State Public Charter School Authority; and

(b) For each day or portion of a day during which he or she attends a meeting of the State Public Charter School Authority or is otherwise engaged in the business of the State Public Charter School Authority the per diem allowance and travel expenses provided for state officers and employees generally.

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Discussion of Future Agenda  
Items**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  / x /  </u>	Information
<u>  /  /  </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 13

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S):** Dr. Steve Canavero

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**RECOMMENDATION:**

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**FISCAL IMPACT:**

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):**

**BACKGROUND:**

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA

## **Mission**

The Nevada State Public Charter School Authority sponsors high-quality charter schools through practices informed by state law and nationally recognized standards in order to serve as a model sponsor and ultimately improve student educational outcomes.

## **Core Principles of a Model Sponsor**

### **Maintain High Standards**

- Sets high standards for approving charter applicants.
- Maintains high standards for the schools it oversees.
- Effectively cultivates quality charter schools that meet identified educational needs.
- Oversees charter schools that, over time, meet the performance standards and targets set forth in their charter contracts on a range of measures and metrics.
- Closes schools that fail to meet standards and targets set forth in law and by contract.

### **Uphold School Autonomy**

- Honors and preserves core autonomies crucial to school success, including;
  - Governing board independence from the sponsor;
  - Personnel;
  - School vision and culture;
  - Instructional programming, design, and use of time; and
  - Budgeting.
- Assumes responsibility not for the success or failure of individual schools, but for holding schools accountable for their performance.
- Minimizes administrative compliance burdens on schools.
- Focuses on holding schools accountable for outcomes rather than processes.

### **Protect Student and Public Interests**

- Makes the well-being and interests of students the fundamental value informing all the sponsor's actions and decisions.
- Holds schools accountable for fulfilling fundamental public education obligations to all students, including providing:
  - Nonselective, nondiscriminatory access to all eligible students;
  - Fair treatment for all students in admissions and disciplinary actions; and
  - Appropriate services for all students in accordance with law.
- Holds schools accountable for fulfilling fundamental obligations to the public, including providing:
  - Sound governance, management, and stewardship of public funds; and
  - Public information and operational transparency in accordance with law.
- Ensures in its own work:
  - Ethical conduct;
  - Focus on the mission of chartering high-quality schools;
  - Clarity, consistency, and public transparency in authorizing policies, practices, and decisions;
  - Effective and efficient public stewardship; and
  - Compliance with applicable laws and regulations.
- Supports parents and students in being well-informed about the quality of education provided by charter schools.

**STATE PUBLIC CHARTER SCHOOL AUTHORITY**

**SUPPORTING DOCUMENT**

**S U B J E C T: Establish Meeting Schedule**

<u>  /  /  </u>	Public Workshop
<u>  /  /  </u>	Public Hearing
<u>  /  /  </u>	Consent Agenda
<u>  /  /  </u>	Regulation Adoption
<u>  /  /  </u>	Approval
<u>  /  /  </u>	Appointments
<u>  /  x / </u>	Information
<u>  /  X/ </u>	Action

MEETING DATE: February 10, 2012

AGENDA ITEM: 14

NUMBER OF ENCLOSURE(S): 1

**PRESENTER(S):** Newly Elected President

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**RECOMMENDATION:** To establish meeting dates for upcoming SPCSA Board meetings.

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**FISCAL IMPACT:** Per diem rates will be paid to Board members when meetings take place.

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**BUDGET ACCOUNT (FOR PRINTING CHARGES ONLY):**

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**LENGTH OF TIME EXPECTED FOR PRESENTATION (IN MINUTES):** 15 minutes

**BACKGROUND:** In order for the SPCSA Board to minimize schedule conflicts, a calendar of meetings should be established so all board members are aware of upcoming meeting dates.

**SUBMITTED BY:** Dr. Steve Canavero, Director, SPCSA



# Proposed State Public Charter School Authority 2012/2013 Meeting Schedule

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SPCSA 2012 Mtg Schedule	
February 10, 2012	Initial meeting Charter application hearing for fall 2012 start
March	Meeting: General
April or /	Board Retreat and Meeting: General
May	Meeting: Sub 7 conversion: for schools seeking early payment
(June) (July)	Meeting (if needed): Sub 7 conversion
August 17 or 24, 2012	Meeting: Sub 7 conversion: final opportunity for fall 2012 start
<u>October 19, 2012</u>	Meeting: Charter Application hearing for fall 2013 start (initial submission)
December 13,14, 2012	Meeting: Charter Application hearing for fall 2013 start (resubmission of previously denied application); Application release

SPCSA 2013 Mtg Schedule	
February or March	Meeting: General
May, 2013	Meeting: Sub 7 conversion: for schools seeking early payment
(June) (July)	Meeting: (if needed) Sub 7 conversion
August, 2013	Meeting: Sub 7 conversion: final opportunity for fall 2013 start
October, 2013	Meeting: Charter Application hearing for fall 2014 start (initial submission)
December, 2013	Meeting: Charter Application hearing for fall 2014 start (resubmission of previously denied application); Application release

+Special Meeting may be called at any time.