

1 **BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**

2
3 In re:)
4 NEVADA CONNECTIONS ACADEMY)
5)
6)
7)

Hearing Date: March 31, 2017
Time: 9:00AM

8 **STATE PUBLIC CHARTER SCHOOL AUTHORITY’S**
9 **AMENDED PRE-HEARING STATEMENT AND WITNESS LIST**

10 The State Public Charter School Authority (“Authority”), through their counsel,
11 Adam Paul Laxalt, Attorney General of the State of Nevada, and Gregory D. Ott, Deputy
12 Attorney General, submit this Pre-Hearing Statement and Witness List as requested by
13 the Authority’s Board.

14 **I.**

15 **LEGAL BASIS FOR NOTICE OF INTENT**

16 The legal basis of this hearing is Nevada Connections Academy’s (“Connections”)
17 graduation rate of 35.63% for the class of 2015 and its graduation rate of 40.09% for the
18 class of 2016.¹ Pursuant to NRS 388A.330(1) (e), a graduation rate less than 60 percent
19 allows the Authority to consider reconstitution of the school’s governing body or closure of
20 the school. The graduation rate is calculated by the Nevada Department of Education
21 according to Code 34 of Federal Regulations Section 200.19(b) (1), published on
22 Nevadareportcard.com and is not in dispute.²

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27 ¹ Exhibit 1, Cohort Graduations Rates, Nevada Connections Academy.

28 ² Connections raises arguments that the rate is incorrectly calculated and those arguments are addressed in Section II(B).

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II.

VALIDITY OF PRIOR AUTHORITY ACTIONS

Connections is expected to raise several allegations that the Authority’s Notice of Intent to Revoke Written Charter (“Notice of Intent”) dated September 30, 2016 is invalid.³ No issues are expected to be raised regarding the Notice dated February 10, 2017.⁴ Each allegation lacks merit as the Authority’s actions in this matter have been lawful.

A. Authority Has Not Violated Open Meeting Law.

1) Authority Did Not Violate Open Meeting Law at Its February 26, 2016 Meeting.

Connections has alleged that the Authority violated Open Meeting Law at its meeting on February 26, 2016 (February Meeting) by failing to allow Connections to give public comment at the close of the meeting. The Authority did not take any action at the February Meeting relating to the Notice of Intent or NRS 388A.330 for Connections. An item was agendized, but removed before it could be considered. The Authority received substantial public comment at its February Meeting and it was unable to complete its agenda when the time allowed for the Authority to teleconference between Las Vegas and Carson City expired. Authority members in Carson City remained to hear comments from Connections’ representatives and their testimony was sent to members in the south to view. Additionally, the written testimony of Victoria Neer and Steve Werlein was added to the minutes.⁵ The remedy for a violation of Open Meeting Law is the voiding of the action. NRS 241.036. As no action was taken at the February Meeting, there is no action to be voided.

³ Exhibit 2, Notice of Intent to Revoke Written Charter.

⁴ Exhibit 3, Notice Pursuant to NRS 388A.330, dated February 10, 2017.

⁵ Exhibit 4, State Public Charter School Authority, Minutes of Meeting, February 26, 2016.

1 **2) Authority did not Violate Open Meeting Law at Its Meeting on**
2 **July 29, 2016.**

3 Connections has alleged that the Authority violated the Open Meeting Law at its
4 meeting on July 29, 2016 (July Meeting) by conditionally approving its graduation rate
5 improvement plan without specifically noting on its agenda that it was considering a
6 charter amendment. No charter amendment was considered or approved at the July
7 Meeting. The Authority noticed and considered Connections' graduation rate
8 improvement plan. The Authority conditionally approved the plan, contingent on
9 Connections including meaningful benchmarks in the plan and agreeing to a charter
10 amendment.⁶ That condition failed as no benchmarks were ever approved by
11 Connections' governing body and a charter contract was not agreed to, thus the approval
12 of the graduation rate improvement plan also failed. Connections may argue that it did
13 approve benchmarks at its January 25, 2017 meeting. However, the benchmarks
14 considered by its board were based on an alternative calculation of graduation rate
15 inconsistent with Federal law and existing Nevada Department of Education ("NDE")
16 policy.⁷ This action is not approval of the benchmarks conditionally approved by the
17 Authority Board. The Authority did not take any action at the July Meeting relating to
18 the Notice of Intent or NRS 388A.330. The remedy for a violation of the Open Meeting
19 Law is the voiding of the action. NRS 241.036. As the only action taken at the July
20 Meeting failed for failure of a condition precedent, there is no action to be voided.

21 **3) Authority Did Not Violate Open Meeting Law in at Its**
22 **September 23, 2016 Meeting.**

23 Connections has alleged that the Authority violated Open Meeting Law at its
24 meeting on September 23, 2016 (September Meeting) because prior notice of the
25 Authority's consideration of the Notice of Intent was required by NRS 388A.330(3). A

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27 ⁶ Exhibit 5, State Public Charter School Authority, Minutes of Meeting, July 29,
28 2016.

⁷ Exhibit 6, Nevada Connections Academy, Minutes of Board Meeting, January 25,
2017.

1 Notice of Intent is a notice of hearing required by NRS 388A.330, it does not require any
2 additional notice prior to consideration.

3 Connections also alleges that a violation occurred when Executive Director
4 Patrick Gavin (“Director Gavin”) erroneously indicated that Connections had prior
5 financial issues prior to the Authority Board’s vote to issue the Notice of Intent.
6 Moments after the vote, Director Gavin corrected himself and indicated that he was not
7 aware of any prior financial issues from Connections and the entire Authority was given
8 the opportunity to revote based on the corrected information. No members requested to
9 return the item to vote. Any erroneous information was corrected and cured with the
10 opportunity to revote.

11 Connections also alleges that the Notice of Intent exceeds the scope of the
12 agendized item at the September Meeting because the agendized item listed only closure,
13 and not reconstitution of the governing body, so the Notice of Intent exceeds the scope of
14 the agendized item by including the possibility of reconstitution. The September
15 Meeting’s agenda states that school has violated NRS 388A.330(e) and was eligible for
16 revocation of its written charter. The Notice of Intent issued is consistent with the
17 citation to NRS 388A.330 in that it provides that the Authority may either revoke the
18 written charter or reconstitute the governing body. Even if the Authority finds this
19 argument persuasive, the remedy is only to remove consideration of reconstitution of
20 Connections’ governing body from consideration.

21 Connections is not expected to allege similar violations of the Open Meeting Law
22 invalidating the February 10, 2017 Notice.

23 **B. Connections’ Graduation Rate was Properly Calculated by the**
24 **Nevada Department of Education.**

25 Federal Regulation 34 CFR 200.19(b) (1) specifies how states must calculate a
26 graduation rate. A state must calculate a “four-year adjusted cohort graduation rate,
27 defined as the number of students who graduate in four years with a regular high school
28 diploma divided by the number of students who form the adjusted cohort for that

1 graduating class”. The term adjusted cohort is further defined as “students who enter
2 grade 9 (or the earliest high school grade) and any students who transfer into the cohort
3 in grades 9 through 12 minus any students removed from the cohort.” Regulation further
4 limits the ways in which a student may be “removed from the cohort” to students who
5 have either transferred out, emigrated to another country, or are deceased. The Nevada
6 Department of Education (NDE) calculates the graduation rate of pupils pursuant to 34
7 CFR 200.19(b) (1). It calculates the graduation rate the correspondingly for all schools
8 throughout the state. It also works with schools to verify that the data is correct prior to
9 calculation. Connections’ graduation rates are published on NevadaReportCard.com and
10 included in Exhibit 1.

11 **1) The Dropout Rate is Different from the Graduation Rate**

12 Connections alleges that the NDE has improperly calculating its graduation rate
13 by improperly including in the calculation students who received a GED; enrolled in a
14 fifth year; or went on to adult education. NDE calculates graduation rates as required by
15 federal law, by dividing the number of graduates by the total number of students in the
16 adjusted cohort. NDE also calculates a dropout rate which must exclude from the
17 dropout rate: students who receive a GED; students who pursue an adult diploma; or
18 students who transfer to another school. NRS 385A.260(3). Nevada law does not
19 consider these pupils dropouts, nor does it consider them graduates. Connections’
20 requests that these students be excluded from the graduation rate calculation under 34
21 CFR 200.19(b) (1) and NRS 200.19(b) (1) is an attempt to use an exclusion from one
22 calculation (dropout rate) to impact a different calculation (graduation rate). The number
23 of dropouts at Connections as calculated by NDE is included in Exhibit 1 and is a subset
24 of non-graduates.

25 **2) The Every Student Succeeds Act does not Affect the Existing**
26 **Graduation Rate and its Impact on Future Graduation Rates**
is Misstated by Connections.

27 Connections argues that federal regulations promulgated under the Every Student
28 Succeeds Act (“ESSA”) would exclude students enrolled for 50% of the school year or less

1 from Connections' graduation rate. The ESSA is a United States law signed by the
2 President of the United States on December 20, 2015. It contains several changes to
3 federal law, including Section 1111(c) (4) (F), which concerns students who attend
4 multiple schools within a school year and how that data should contribute to schools
5 which they attended. Section 1111(c) (4) (F) of the ESSA goes into effect beginning with
6 the school year of 2017-2018⁸ and would not affect the graduation rates this action is
7 based on, thus arguments regarding ESSA are premature. Connections points to Section
8 1111(c) (4) (F) (i) for its argument that pupils attending a school for less than half the
9 year must be excluded from accountability:

10 In the case of a student who has not attended the same school
11 within a local educational agency for at least half of a school
12 year, the performance of such student on the indicators
13 described in clauses (i), (ii), (iv), and (v) of subparagraph (B)—
14 (I) may not be used in the system of meaningful differentiation
15 of all public schools as described in subparagraph (C) for such
16 school year;" [emphasis added]

17 However, the performance indicators described in clauses (i), (ii), (iv), and (v) of
18 Subparagraph (B) do not include graduation rate. Graduation rate is an indicator in
19 subparagraph (B) of Section 1111(c) (4) (B) of the ESSA, but it is contained in
20 subparagraph (B) (iii) which is excluded from the partial attendance provision relied on
21 by the school.

22 Instead, high school students who have not attended the same school within a local
23 education agency for at least a half of a school year are addressed in Section 1111(c) (4)
24 (F) (ii), which gives guidance on how local education agencies (LEA) address partial
25 attendance of students:

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⁸ ESSA, Section 5(e) (1) (B).

1 In the case of a high school student who has not attended the
2 same school within a local educational agency for at least half
3 of a school year, and has exited high school without a regular
4 high school diploma and without transferring to another high
5 school that grants a regular high school diploma during such
6 school year, the local educational agency shall, in order to
7 calculate the graduation rate pursuant to subparagraph (B)
8 (iii), assign such student to the high school—

9 (I) at which such student was enrolled for the greatest
10 proportion of school days while enrolled in grades
11 9 through 12; or,

12 (II) in which the student was most recently enrolled.

13 Thus, the ESSA does not modify the existing regulatory provision limiting the
14 ability to remove students from the cohort, rather it provides clarification as to the
15 permissible ways that an LEA may include and assign students who attend school for less
16 than half the year.

17 In the event that NDE decides to exercise the flexibility allowed by the ESSA in
18 the future, it could cause Connections to lose some students from its adjusted cohort
19 because they attended Connections for less than 50 percent of the school year. However,
20 it could also cause Connections to add students to its adjusted cohort because they
21 attended Connections for more than 50 percent of the year before transferring to a
22 different school. Students not counted toward Connections' graduation rate because of a
23 transfer to another school are substantial and are included as "transfer outs" on
24 Exhibit 1. Connections has not presented evidence regarding students that could be
25 brought back into their cohort by any change in allocation of mid-year transfers under the
26 ESSA, and NDE has not made a decision on whether to exercise this flexibility, so any
27 arguments regarding change to future graduation rates are entirely speculative in
28 addition to being premature.

Finally, even when Connections assumes the ESSA changes are mandatory and it
calculates the rates in the way most favorable to it (excluding students who attend for
less than half a year, but not counting in any new students), the un-validated, calculated
graduation rate they presented in their December 2, 2016 letter of 43.91% is still well

1 below the level of 60 percent allowed by NRS 388A.330(1) (e).⁹

2 **C. Connections is a High School under Nevada Law.**

3 In Nevada, a high school is a public school in which subjects above the eighth grade
4 may be taught. NRS §388.020. Connections provides instruction to students above
5 eighth grade, thus it is clearly a high school. Connections also argues that its grades
6 below high school cannot be affected by accountability actions for its high school.
7 However, Connections is a single school. It operates under a single written charter
8 authorizing it to operate a single school.¹⁰ NRS §388A.330 does not give the Authority
9 any ability to unilaterally reform a charter contract limiting the number or grade level of
10 students that school attempts to serve.¹¹ Connections does not allege that the Authority
11 has an ability to unilaterally amend the school’s charter based on the NRS §388A.330
12 criteria to eliminate the high school. Instead, Connections simply asks to prevent any
13 action against the school based on the school’s 35 percent and 40 percent graduation
14 rates.

15 **1) Connections Misrepresents Authority Suggestions regarding**
16 **Its High School**

17 Connections states that the Authority suggested the school bifurcate its charter to
18 separate its high school under a different charter. The Authority did not make such a
19 suggestion. In pleadings before the First Judicial District Court, State of Nevada, the
20 Authority simply noted that a charter amendment to eliminate the high school was
21 something Connections could propose, “There is nothing preventing NCA from requesting
22 an amendment to its charter to eliminate its high school and offering such amendment as
23 a cure to the deficient graduation rate as allowed by NRS 388A.330(3). The Authority’s
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25 ⁹ Letter from Connections Academy, dated December 2, 2016, page 2.

26 ¹⁰ Exhibit 7, Charter School Agreement.

27 ¹¹ Authority staff have previously noted that there is nothing preventing
28 Connections from requesting an amendment to its charter to eliminate its high school and
offering such amendment as a cure to the deficient graduation rate as allowed by NRS
388A.330(3). The Authority’s Board would then consider the requested correction as
contemplated by statute. However, as of this filing, Connections has made no such
requests to modify the students it serves.

1 Board would then consider the requested correction as contemplated by statute.
2 However, as of the filing of this opposition, [Connections] has made no such requests to
3 modify the students it serves.” Connections has not made such a request.

4 **D. Other Schools Have Not Received Preferential Treatment**

5 Connections alleges that both Nevada Virtual Academy (Virtual) and Beacon
6 Academy of Nevada (Beacon) have received preferential treatment by the Authority.
7 Accountability actions that may or may not exist against other schools are completely
8 irrelevant to the current action against this school. However, similarly situated schools
9 have been treated similarly.

10 **1) Virtual is not a Similarly Situated School**

11 Virtual’s graduation rate as calculated for the most recent year is above 60 percent,
12 thus it is not eligible for closure under NRS 388A.330(1) (e). Connections argues that the
13 Authority should be moving against Virtual for enrollment practices Connections alleges
14 violate Nevada law. This proposed action is substantially different in character from this
15 action and, if pursued, could not be expected to proceed on the same timeline.

16 **2) Beacon was Treated Identically to Connections**

17 Beacon had a graduation rate significantly higher than Connections, but still below
18 the NRS 388A.330(1)(e) threshold. Both Beacon and Connections were agendized for its
19 meeting on March 25, 2016 (March Meeting) and had no action taken against it at that
20 time. Each school was again agendized at the July Meeting for consideration of
21 graduation rate improvement plans and received similar conditional approvals. Each
22 school was again agendized for its September Meeting for consideration of Notices of
23 Intent. The Authority Board voted to issue Notices of Intent for both schools. Beacon
24 subsequently presented a proposed cure to staff, who recommended approval of the cure.
25 When the Authority approved the Beacon cure, the information and supporting
26 documents regarding the cure were transmitted to Connections so that the school could
27 be apprised of one cure of a similarly situated school that had been deemed acceptable by
28 the Authority.

1 III.

2 CONNECTIONS' EFFORTS TO CORRECT THE DEFICIENCIES

3 A. The Authority has no Obligation to Prescribe a Cure or Negotiate a
4 Cure.

5 Connections alleges that the Authority did not prescribe a cure and failed to
6 negotiate a cure with the school. Charter schools are autonomous entities authorized to
7 exist by their sponsors. They operate under the twin principles of accountability and
8 autonomy and have considerable freedom to create and operate schools in a manner that
9 is consistent with the law. Unlike traditional school districts with a centralized decision
10 making authority that is directed down to individual schools, charter schools make their
11 own decisions and are then held accountable for the results of those decisions by the
12 school's sponsor. This model has allowed Connections to offer online distance education,
13 but it also holds the school accountable when the resulting benefits to students do not
14 reach the levels expected by statute. In furtherance of the autonomy given to schools,
15 NRS 388A.330 does not impose any obligation on the Authority to direct a school in how
16 to correct its deficiencies. Instead, it allows the school the freedom to fashion a correction
17 and then allows the Authority to determine whether that correction was satisfactory.

18 1) Connections Proposed no Cure on November 14, 2016

19 Connections alleges that it proposed a cure on November 14, 2016 and that counsel
20 to the Authority did not respond. This is inaccurate. Connections is currently pursuing
21 two separate legal actions against the Authority in the First Judicial District Court, case
22 no. 16 OC 001941 B, filed August 26, 2015, and case no. 16 OC 0002491 B, filed October
23 14, 2016. On November 14, 2016, Connections sent a confidential settlement document
24 which it explicitly made subject to NRS 48.105 which proposed concessions from both
25 Connections and the Authority to resolve the existing litigation. When Connections
26 requested its litigation settlement be considered as a cure, Authority staff immediately
27 responded explaining why the proposed cure would not be recommended for approval by
28 staff. All communications regarding the proposed litigation settlement sent by both sides

1 were marked confidential under NRS 48.105 and are thus not relevant to, and should be
2 excluded from, the present proceedings.

3 **2) Staff was not Obligated to Participate in Telephonic**
4 **Discussions with Connections on November 30, 2016, but has**
5 **Provided Advance Staff Recommendations regarding**
6 **Connections tentative Proposals.**

7 Following a hearing in the First Judicial District Court on November 30, 2016,
8 Connections requested a telephone conference with the Authority's staff to discuss a cure.
9 Connections is currently pursuing two lawsuits against the Authority; is seeking
10 monetary damages; and is basing its complaint in part on comments made by staff in
11 efforts to work collaboratively with the school to avoid closure. Staff has been advised to
12 limit communications with the school to those required by law. The requested telephone
13 conference was not required by law.

14 During the cure period regarding Connections' graduation rate of 2016, Authority
15 staff and counsel participated in several telephone conferences with Connections' staff
16 and counsel so that Connections was able to understand the recommendations that staff
17 would make regarding its various proposals. Telephone calls occurred on March 8, 10,
18 and 15, 2016 and numerous emails were exchanged as well. The contents of the emails
19 and substance of the telephone calls are confidential pursuant to NRS 48.105.

20 **3) Connections Offered No Reason for its Requested Extension**

21 On December 1, 2016, Connections requested a one week extension of its time to
22 correct deficiencies of its 2015 graduation rate. Connections provided no reason for the
23 extension or explanation as to why the sixty days provided in the original notice was
24 insufficient for it to implement its corrective actions. The requested extension was not
25 granted. As of this filing, no extension of time has been requested for the 2016
26 graduation rate deficiency.

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1 **B. The Authority’s Board did not Direct a Graduation Rate**
2 **Improvement Plan**

3 Connections alleges that its graduation rate improvement plan was directed by the
4 Authority. The Authority had significant discussion on this issue in March of 2016, but
5 the only action taken by the Authority was the removal of the Notice of Intent from
6 consideration.¹² No plan was directed by action of the Authority.¹³

7 **1) The Graduation Rate Improvement Plan Presented in**
8 **Connections’ Proposed Cure is Insufficient as it does not**
9 **Include Meaningful Benchmarks.**

10 Connections graduation rate improvement plan does not include meaningful
11 benchmarks necessary to evaluate the progress and effectiveness of the plan. This is
12 especially essential in Connections case as it was previously directed to develop a
13 graduation rate improvement plan upon its renewal in 2013, but its graduation rate has
14 failed to improve. This indicates either the plan was insufficient or was not implemented
15 successfully. Meaningful benchmarks were one of the conditions of approval of the plan
16 at the July Authority meeting, yet the plan attached to the December 2 letter does not
17 include benchmarks.

18 **2) No Graduation Rate Improvement Plan Including**
19 **Benchmarks was adopted by the Connections Governing Body**

20 Connections has submitted no evidence demonstrating that the governing body of
21 Connections has approved implementation of a plan including benchmarks prior to the
22 cure period of the 2015 graduation rate. Without action from the governing body
23 approving the plan with significant benchmarks necessary to evaluate progress, the plan
24 is simply a proposal and cannot be considered an acceptable cure.

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26 ¹² Exhibit 8, State Public Charter School Authority, Minutes of Meeting, March 25,
27 2016.

28 ¹³ In July, 2016, the Authority conditioned its approval of the plan on the inclusion
of benchmarks and a transition to a charter contract. Neither condition was satisfied as
discussed in Section A2 of this prehearing statement.

1 Connections' Board's approval of benchmarks requiring the recalculation of
2 graduation rate inconsistent with federal law is not sufficient to demonstrate progress
3 toward the graduation rate as calculated by NDE and required by federal law.

4 **3) The Graduation Rate Improvement Plan was not Approved by**
5 **the Authority.**

6 Connections also alleges that the Authority approved its graduation rate
7 improvement plan at the July Meeting and cites various comments from Authority
8 members during discussion of the plan. The final Authority action at the July Meeting
9 clearly conditioned approval of the plan on the inclusion of benchmarks not yet approved
10 by the school's governing body and the negotiation of a charter amendment that included
11 the transition of the school to a charter contract.¹⁴ Staff and Connections were unable to
12 reach an agreement on a charter contract including benchmarks and had numerous
13 provisions in dispute. The conditional approval failed.

14 **4) Connections has Failed to Demonstrate why this Plan will**
15 **Succeed where its 2013 Plan did not.**

16 As part of its renewal in 2013, Connections was directed to create a plan to
17 improve graduation rates. However, despite the directive from the Authority,
18 Connections graduation rate showed little improvement. Connections' graduation rate
19 was 33.91% in 2013; 37.19% in 2014; it fell again to 35.63% in 2015 before rising slightly
20 to 40.09% in 2016.¹⁵ Connections has not demonstrated why its currently proposed
21 graduation rate plan will be more successful than its previous attempt to increase its
22 graduation rate.

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27 ¹⁴ Exhibit 5.

28 ¹⁵ Exhibit 1.

1 **C. Voluntary Reconstitution of a Governing Body over three years is**
2 **not a Satisfactory Cure.**

3 **1) The Reconstitution of the Governing Body was not Adopted by**
4 **the Connections Governing Body**

5 Connections has submitted no evidence demonstrating that its governing body has
6 approved its reconstitution plan prior to expiration of the cure period for the 2015
7 graduation rate. Without action from the governing body, the reconstitution is
8 speculative and cannot be considered an acceptable cure.

9 **2) Proposed Reconstitution Does Not Allow For External Input**
10 **Regarding Board Members**

11 The plan approved by the Connections board on January 25, 2015 allows for a
12 single board member to be replaced annually. This reconstitution does not align with the
13 statutory requirements of NRS 388A.333 in that it does not cede the authority to select
14 new board members to the sponsor, and requires the reconstitution occur over a lengthy
15 period of time of at least five years.¹⁶

16 **3) Proposed Reconstitution Is Designed Not to Disrupt the**
17 **Current Governing Body's Functions and is Thus Inadequate**

18 Reconstitution is allowed by NRS 388A.330 as a means to disrupt existing failed
19 policies of the current governing body and create a new oversight body composed of new
20 individuals with fresh ways of solving problems. Connections proposal to phase-in the
21 reconstitution over five years would prevent the disruption that the reconstitution is
22 supposed to create. Thus the proposed phase-in reconstitution is inadequate.

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¹⁶ Based on the replacement of one board member per year and the minimum of
five board members required by NRS 388A.320.

1 IV.

2 PAST PERFORMANCE OF SCHOOL MERITS CLOSURE

3 A. Connections' Graduation Rate Has Never Been Acceptable.

4 Connections' low graduation rate is not a new phenomenon. Connections'
5 graduation rate has ranged from 26.5% in 2011 to 40.09% in 2016.¹⁷ During Connections'
6 renewal hearing in 2013, the Authority board discussed concerns about the graduation
7 rate required Nevada Connections Academy to create a clear plan for high school
8 graduation rate improvements.¹⁸ Unfortunately the graduation rate failed to respond
9 and remained significantly below the 60 percent minimum prescribed by the legislature
10 in NRS 388A.330.

11 a. Graduation Rate is not a Single Data Point, but Represents
12 Hundreds of Students Who the School has Failed

13 Connections has, at times, objected to accountability based on its graduation rate
14 as a "single data point." Staff rejects this effort to minimize the importance of graduation
15 rate, which is a summary of what percentage of each graduating cohort have successfully
16 graduated as defined by 34 CFR 200.19(b)(1). NDE calculates not only graduation rate,
17 but also the total number of students in each class as well as the number of graduates
18 and transfers out of the school. Thus using the data available on Exhibit 1, it is clear
19 exactly how many students are not graduating and how far from the statutorily required
20 definition of acceptable, this school is. The graduating class of 2011 was composed of 325
21 students, 125 of whom transferred out, and 53 of who graduated, leaving 147 non-
22 graduates.¹⁹ Since 2011, Connections has graduated 538 students, 966 others did not
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26 ¹⁷ See Exhibit 9, graph of NCA Graduation Rate Over Time using data from exhibit
27 1, Connections Graduation rate as calculated by NDE and available on
28 NevadaReportsCard.com.

¹⁸ See Exhibit 10, Authority Board Minutes of March 22, 2013, page 9.

¹⁹ Exhibit 1, those that did graduate calculated by subtracting transfers out and
graduates from total class.

1 graduate with their cohort.²⁰ Exhibit 11 is graphical display of the number of students
2 that have graduated from Connections each year from 2011 through 2016 along with the
3 number of non-graduates. Unfortunately the number of non-graduates is increasing
4 rapidly from 115 in 2013, to 125 in 2014, to 215 in 2015, and 263 in 2016.²¹ The
5 contention that a graduation rate is just a single data point is belied by the hundreds of
6 students who comprise that number.

7 **b. No Evidence Demonstrating Graduation Rate Failures Are Caused**
8 **By the Shortcomings of Connections Students or Other Schools.**

9 Connections has in the past attempted to attribute its low graduation rate to
10 students enrolling in Connections behind on credits when they initially enrolled at
11 Connections or that students that enroll on cohort and stay through graduation exhibit a
12 higher graduation rate. These arguments are unsupported by any facts necessary for
13 them to be considered relevant at all. Instead Connections consistently presents
14 conclusory statements such as “approximately 50% of the students that were part of the
15 2015 NCA graduation cohort were behind in credits when they initially enrolled.”²² This
16 conclusory statement provides no data that is able to be reviewed or analyzed.

17 Even if Connections were to present data, instead of bar conclusions, the analysis it
18 presents is unpersuasive for 2 reasons. The first is that the statute does not concern
19 itself with alternative calculations of graduation rate or different metrics for analyzing
20 schools, NRS 388A.330 concerns itself with the graduation rate calculation made by NDE
21 pursuant to 34 CFR 200.19(b)(1). Had the legislature chosen a different or more lenient
22 metric it may well have chosen a different limit than the 60 percent presently in the law.
23 The second problem is that Connections efforts to examine different subsets of the data
24 create a false comparison because similar metrics are not available for the remainder of

25 ²⁰ Also calculated from Exhibit 1, by subtracting the transfers out and graduates
26 from the total class.

27 ²¹ Similarly, Exhibit 11 shows the number of additional graduates that
28 Connections would have needed to meet NRS 388A.330’s 60 percent threshold has
increased from 45 to 81 to 87 over the past 3 years.

²² Connections original pre-hearing brief, page 2, line 18 and 19.

1 the state. Thus, Connections may argue that its graduation rates would increase
2 markedly if it chose to calculate graduation rate by excluding those students in the most
3 need of assistance, but so would the graduation rates of most other high schools in the
4 State. Thus again, assuming for the sake of argument that Connections did present data,
5 and that data did show significant numbers of students came to the school behind in
6 credits, there is no data showing that Connections has any greater percentage of these
7 students that the state as a whole.

8 Connections' efforts to present conclusory statements blaming its failures on its
9 students must be rejected as factually bereft and wholly unpersuasive.

10 **c. Connections Education Management Company Has Vast**
11 **Resources and Has Been Unable to Improve Graduation Rates**

12 Connections is a public school and as such receives much of its funding from the
13 State's Distributive School Account (DSA). The DSA distributions to Connections are
14 readily available through the office of the State Controller's website.²³ The public
15 investment in Connections is substantial, over \$83 Million dollars in fiscal years 2011
16 through 2016 and on pace for another 20 Million dollars in the current fiscal year.²⁴ The
17 growth of the school has resulted in rapid expansion of public dollars into Connections
18 while its graduation rate and results have remained consistently well short of the
19 statutory minimums. Connections' education management organization, Connections
20 Education LLC is subsidiary of Pearson, PLC, a for profit company of significant
21 resources. If Pearson PLC, one of the largest education companies in the world with its
22 vast resources, has been unable to raise the graduation rate of Nevada students to an
23 acceptable level since Connections was directed to improve its graduation rate in 2013,
24 the task is beyond Connections ability to accomplish. The Authority should consider the
25 school's past inability to achieve an acceptable graduation rate as an indicator that future

26 ²³ <http://dawn12.state.nv.us:7777/swmenu.htm>

27 ²⁴ Exhibit 12, printouts of DSA distributions to Connections from 2011 through
28 2017, and Exhibit 13, a graphical representation of the payments from fiscal years 2011
through 2016.

1 graduation rates will continue at similar levels. These graduation rate levels are
2 unacceptable and merit closure of the school at the end of this academic year.

3 **V.**

4 **WITNESS LIST**

- 5 1. Patrick Gavin, Executive Director of the Authority.
6 2. Russ Keglovits, Assistant Director of Accountability for the Nevada
7 Department of Education's Office of Assessment, Data and Accountability
8 Management.

9 DATED this 23rd day of March, 2017.

10 ADAM PAUL LAXALT
11 Attorney General

12
13 By: /s/ Gregory D. Ott
14 GREGORY D. OTT
15 Deputy Attorney General
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EXHIBIT INDEX

Exhibit	Description	Bates Nos.
1	Cohort Graduation Rates, Nevada Connections Academy	P001-002
2	Notice of Intent to Revoke Written Charter, dated September 30, 2016	P003-005
3	Notice Pursuant to NRS 388A.330(1) (e), dated February 10, 2017	P006-008
4	State Public Charter School Authority, Minutes of Meeting, February 26, 2016	P009-073
5	State Public Charter School Authority, Minutes of Meeting, July 29, 2016	P074-079
6	Nevada Connections Academy, Minutes of Meeting, January 25, 2017	P080-083
7	Charter School Agreement	P084-090
8	State Public Charter School Authority, Minutes of Meeting, March 25, 2016	P091-103
9	NCA Graduates and Non-Graduates Over Time	P104-105
10	State Public Charter School Authority, Minutes of Meeting, March 22, 2013	P106-125
11	NCA Graduation Rates Over Time	P126-127
12	State of Nevada, Office of the Controller, Fiscal YTD Report	P128-142
13	Public Dollars Invested in NCA	P143-144