

January 22, 2016

FIRST-CLASS MAIL & EMAIL

Patrick Gavin
Executive Director
Nevada State Public Charter School Authority
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Re: Legislative Workshop January 8, 2016

Dear Director Gavin:

On behalf of Nevada Virtual Academy (“NVVA”), we respectfully write to provide additional comments and feedback related to issues discussed at the regulatory workshop held on January 8, 2016. We appreciate being a part of the process and hope the comments below will be helpful as the Nevada State Public Charter School Authority (“Authority” or “SPCSA”) moves forward with the process to implement additional regulations pursuant to provisions of Senate Bill 509. For purposes of this correspondence, comments will be made primarily in regard to agenda items 3 and 4 as posted prior to the workshop.

Workshop Agenda Item 3

Agenda Item 3 was intended to solicit feedback regarding the definition of key contractual and performance framework terms; clarification of the interaction between contractual charter documents and regulations of general applicability; accountability requirements for multi-campus schools for reporting and evaluation purposes and policies for appointing a new governing body of a charter school that is reconstituted.

Although this letter is not intended to be an exhaustive list of issues for further consideration, we believe the following critical issues warrant further discussion and need to be addressed: 1) the definition of a charter school; 2) recognizing and defining “Distance Education”; 3) the assessment mandate; and 4) the high stakes review process. Additionally, we continue to evaluate the applicability of NRS 233B to the Authority and specifically as it relates to the enforcement of provisions of a charter contract. As you indicated at the workshop the matter would be subject to further discussion, we reserve our right to bring our questions and concerns to your attention.

Charter School Definition

In regard to the proposed definition of a charter school, we have been unable to find statutory authority supporting the conclusion that a charter school is a political subdivision of the state. Such a designation would need to come from the legislature. Although we are not necessarily opposed to such a designation, we believe the Authority should be cautious in making such a conclusion.

Recognizing and Defining "Distance Education"

During the workshop we had a discussion regarding how/where an online or virtual school fell within the definitions provided. We suggest that the regulations promulgated by the Authority be consistent with the definition recognized by the Nevada Department of Education and that the definition of "Distance Education" be added to the proposed definition section of the regulation as follows:

The term "Distance Education," often used interchangeably with "Virtual education," is defined as instruction during which students and teachers are separated by time and/or location and interact via computers and/or telecommunications technologies. Virtual education ranges from straightforward coursework presented online for students to view at their own pace to interactive, real-time instruction between teachers and students over an electronic medium unconstrained by geographic or temporal boundaries. When properly employed by skilled instructors, technology can make many learning opportunities available to any student, at any location, and at any time.

With this definition in mind, further discussion is warranted regarding what constitutes a Distance Education campus and the ability of Distance Education school to establish learning centers in multiple locations to provide instruction that supplements online learning. Additionally, a discussion is needed regarding how a Distance Education school that has multiple grade levels, i.e. K-12, is evaluated. Specifically, for evaluation purposes is such a school evaluated in three parts based on elementary, middle school and high school data? If so, does the Authority intend to make separate recommendations for each subset of the school? Prior to proposing new language we would like to have a better understanding of the Authority's position in this regard.

Assessment Mandate

As you are aware, there is also a concern among charter schools regarding the assessment process that has been proposed. There should be a limit to the number of assessments required by any school in a given year. As you are well aware, focusing on assessments takes away from time that teachers can be working with students on other instructional matters. Additionally, there should not be limits placed on members of the task force that will be considering and

providing feedback regarding assessments. By excluding schools that have not been in good standing for two years, the Authority loses a unique perspective on the assessment process and the impact it may have on lower performing schools that are working to improve.

High Stakes Review

We recognize the value of the high stakes review process utilized by the Authority. However, as the Authority looks to further define the process *via* a regulation, more structure should be provided. For example, if a high stakes review is scheduled, there should be a defined process that the school and the Authority follow. We respectfully suggest that a timeline be implemented for the process which provides for a meeting between Authority staff and the school 90 days prior to the high stakes review. It is anticipated that at the meeting there would be a candid discussion regarding what the Authority believes are the key issues to be evaluated. Thereafter the school should be allowed to submit information to the Authority in support of its position 60 days prior to the high stakes review. The Authority would then evaluate the data provided and issue a recommendation regarding what action is to be taken 30 days prior to the high stakes review. The school should then be provided 15 days to submit any additional information to the Authority for consideration. Such a process would be beneficial for all parties involved, would add clarity and transparency to the process, and would likely streamline the issues to be addressed at the actual high stakes review proceedings.

Furthermore, there needs to be a mechanism within the regulation that allows for review of the decision made by the Authority. This is especially true in situation in which a decision is made not to renew the charter contract or to reconstitute the school. There is fundamental due process issues that must be addressed based on the current proposal that states:

the issuance of a high stakes decision which is subject to the provisions of contract law instead of the broader set of statutes and regulations that govern actions which are driving by statute instead of the contract. Under such circumstances, the school explicitly agrees to abide by the decision of the authorizer with regard to the revocation/termination or renewal.

We suggest that the language identified above be deleted as it is beyond what was intended by the legislature when it passed SB 509.

Workshop Agenda Item 4

Agenda Item 4 was intended to solicit feedback regarding the procedures and criteria for soliciting and evaluating applications to form a charter school; procedures and criteria for renewal application; procedures and timeline for amending a written charter; and the procedure for investigation and review of charter applications.

Once again, this letter is not intended to be an exhaustive list of issues for further consideration. Many of the issues set forth above also have an impact and should be considered as a part of the items discussed in Agenda 3 and are adopted by reference herein. Obviously, the

goal is to have consistency in the regulations. Additionally, we believe the following issues must be addressed: 1) amendments to charter contracts and 2) the renewal process.

Amendments to Charter Contracts

We certainly understand the need to streamline the amendment process and want to emphasize the need for some flexibility in proposed procedures. We ask that an annual date be specified by which the Executive Director would establish guidelines prior to the next calendar year. Additionally, to help streamline the process we believe that schools should be provided with a form or specific guidelines should be created for what an amendment is to look like. Additionally, it would be beneficial for a specific procedure to be put in place for submitting the proposed amendment. Further, if an amendment is approved, there should be a procedure in place for finalizing the amendment and incorporating the same into the contract.

When it comes to the proposed language, our primary concern is the language which indicates that:

A charter school which submits an amendment request pursuant to Section 2 which will come into effect within 18 months of the expiration of the written charter or charter contract explicitly waives any right to submit anecdotal evidence or testimony related to data not reflected in the NSPF or the SPCSA PF in its appeal of a non-renewal recommendation to the SPCSA Board.

We believe this language should be stricken as it is fundamentally unfair especially in situations where a school is striving to improve, obtains the Authority's approval to make changes and sees benefits of those changes in the 18 months prior to a renewal period.

Additionally, we believe further discussion is needed relating to the "Consideration of Amendment Request" section of the proposed language, specifically item number 4 which states "The Executive Director shall propose business rules for consideration of charter amendment requests for adoption." It is unclear when such rules would be proposed and if such rules would be uniformly applied to all charter schools. We also believe that the next sentence in the proposed regulation should be deleted. Specifically, "[a]s such guidelines are related to changes to a contract, they are not considered rules of generally applicability." We disagree with this conclusion and do not believe is proper in a regulation.

Renewal

The proposed language appears to take away a school's due process rights in a situation where a charter contract is not renewed. This is problematic for a number of reasons and we believe the following language should be deleted:

As the renewal of a charter contract is subject to the provisions of contract law, the provisions of the contract and any internal policies developed by the Authority which are applicable to charter contracts govern and these

regulations shall be considered advisory guidelines instead of rules of general applicability in such situations.

There are a number of concerns related to this language including that it appears to make an unwarranted legal conclusion, is inconsistent with other statutory references, would elevate the terms of a contract above state law, and seems to be an attempt to take the renewal process outside of the provisions of NRS 233B. We do not see anything within SB 509 which contemplates such action.

We also have concerns regarding the language proposed in section (b)(2) of the renewal portion of the proposed regulation, which excludes a school from referencing future plans as part of the renewal process and strongly ask that such be reconsidered and deleted.

Further, in regard to the proposed language in section (c)(3)(i)(d)(1)(ii) which provides notification requirements related to the renewal recommendation, we request that in the event that the recommendation is to not renew the charter school's contract, that the school be given at least **sixty (60)** calendar days after the issuance of the recommendation to the Board to furnish a written response to the recommendation and to cure the problems. The seven days in the proposed regulation is insufficient. We highly recommend that the regulations promulgated by the Authority include the following which is taken in large part from language adopted in Arizona and Oklahoma:

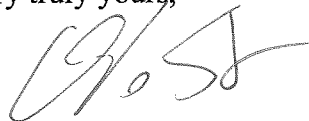
At least sixty (60) days prior to the effective date of the recommended non-renewal, the SPCSA shall give written notice to the operator of the charter school of its intent to not renew the charter. Notice of the SPCSA's intent to not renew the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. The notice shall incorporate a statement of reasons for the recommendation to not renew the charter. The SPCSA shall allow the charter school at least sixty (60) days to correct the problems associated with the reasons for the recommendation to not renew the charter. The final determination of whether to not renew the charter shall be made at a public hearing called for such purpose. The charter school must be provided an opportunity to submit documents and give testimony challenging the rationale for not renewing the charter at the public hearing. The charter school must be allowed access to representation by counsel, be permitted to call witnesses on its behalf, and be permitted to record the proceedings. After a reasonable period for deliberation, the SPCSA must make a final determination and convey that decision in writing to the charter school. If a sponsor decides to not renew a charter, the sponsor shall clearly state in a resolution the reasons for the nonrenewal.

Closing Comments

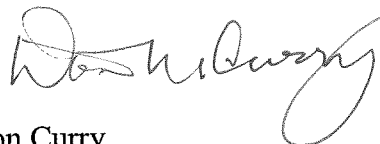
We hope the comments provided herein will prove useful as part of a continued dialog regarding regulations. Our comments should not be construed as being critical of the language proposed as we very much appreciate the work that went into drafting the proposed language. We look forward to being a part of the process to create long-standing regulations that are fair and beneficial to all involved.

As always, we appreciate your consideration of these matters and look forward to working with you to address the concerns we have identified. To the extent we may assist you or provide further information, we remain available and are happy to discuss such matters at your convenience.

Very truly yours,



Orlando Dos Santos
Interim Head of School



Don Curry
President, Nevada Virtual Academy Board

cc: Kara B. Hendricks, Esq.