



STATE PUBLIC CHARTER SCHOOL AUTHORITY

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BRIEFING MEMORANDUM

TO: SPCSA Board

FROM: Mark Modrcin, Director of Authorizing
Ryan Herrick, General Counsel

SUBJECT: Nevada Strong Academy: Request for a Good Cause Exemption to Submit a Notice of Intent to Form A Charter School

DATE: December 14, 2018

Summary of Request:

Potential applicant Nevada Strong Academy is requesting that the Authority accept a Notice of Intent to Form a Charter School outside of the traditional window, September 1 – 15, provided for in regulation. The request notes that the school did not comply with the traditional Notice of Intent window for the following reasons:

- Nevada Strong Academy had an application outstanding and currently under review with the Achievement School District (ASD) at the time of the Authority Notice of Intent window;
- Nevada Strong Academy was confused about the correct Notice of Intent window for the Authority;
- Nevada Strong Academy believes it can submit an outstanding, high-quality application after the Notice of Intent window; and
- Nevada Strong Academy contends that the Notice of Intent window functions as a procedural deadline.

As discussed below, SPCSA staff recommends that the Authority deny the request of Nevada Strong Academy to submit a Notice of Intent to Form a charter school outside of the prescribed window.

Good Cause

The State Public Charter School Authority's regulation related to applications to form a charter school mandates that a notice of intent to submit a charter school application must be submitted to the SPCSA 120 days prior to the submission of the charter school application. Further, applications to form a charter school must be submitted to the SPCS in either the Winter or Summer application window.

In this regard, the SPCSA's charter school application regulation reads as follows:

Except as otherwise provided in this section and section 6 of this regulation, an application to form a charter school must be submitted to the State Public Charter School Authority by an applicant on or after January 1 and on or before January 15 or on or after July 1 and on or before July 15 of each year. A prospective applicant must submit a written notice of intent to submit an application to form a charter school to the Executive Director, in the manner prescribed by the Executive Director, not less than 120 days before submitting the application. The State Public Charter School Authority may, upon request and for good cause shown, accept an application to form a charter school at any time.

See R089-16A, section 4(1). While this regulation does not provide a mechanism for a charter school applicant to request a "good cause" exemption to submit the charter school application notice of intent after the 120-day deadline, the regulation does provide for a good cause exception for submitting the charter school application outside the Winter or Summer application window.¹ For context, the 120-day deadline regarding the notice of intent to submit a charter school application for the Winter charter school application window is September 1 through September 15.

Although not defined in Nevada's charter school statutes or regulations, "good cause" has been defined in various, other contexts. In part, "good cause" is defined, in a great measure, by reference to the particular facts and circumstances appearing in the particular case. However, "good cause" has been defined as a "substantial reason," "urgent" or a "compelling" reason. Also, the reasons or rational constituting "good cause" generally must be an external reason – in other words, the diligence of the party claiming good cause in attempting to comply with the deadline may be taken into account. As is evident, the Authority Board has substantial discretion to determine if an applicant has met the "good cause" standard.

SPCSA staff has a number of concerns with this request. They are as follows:

- The Notice of Intent deadline is not a simple procedural deadline. The Notice of Intent is defined in regulation because of its import and what it communicates to any authorizer. The successful and timely submission indicates to an authorizer that the applicant has identified and solidified many fundamental pieces of their application. These components include any affiliation and effective governance of an Education Management Organization (EMO), selected curriculum, general geographic location of the school, proposed grades, proposed

¹ Note that a bedrock principle of administrative law is that administrative agencies – such as the SPCSA – is afforded significant and substantial deference in regard to interpreting their own regulations.

number of students, and the proposed inaugural school year. By submitting a Notice of Intent before the deadline, a prospective charter applicant is demonstrating that they have:

- Performed a great deal of due diligence;
- An understanding of the key pieces of their proposal;
- Alignment across their entire team around fundamental tenets;
- Engagement around the authorization process;
- Begun to put their ideas into practice.

The timing of this request – nearly 90 days after the regulatory deadline – casts doubt on the principles above. SPCSA staff disagrees with Nevada Strong Academy that these principles are technicalities and the timing of this request calls into question the preparedness of the applicant team

- The fact that Nevada Strong Academy had an outstanding application under review with the ASD is no fault of SPCSA staff or this Board. Moreover, the applicant was not excluded from submitting a Notice of Intent with the Authority while the ASD application was under review. ***It is not clear to SPCSA staff why Nevada Strong Academy withdrew their application from the ASD.***
- The successful and timely submission of a Notice of Intent is tremendously helpful to the authorizer so as to ensure that there is a high-quality review process that involves external reviewers with the appropriate expertise. ***While SPCSA staff has a small number of external reviewers available to review all applications during this upcoming cycle, the applicant may be negatively impacted by their own request.***

Outside of the above, there are two secondary issues of which the Board should be mindful:

- SPCSA staff is not aware of another applicant making a request for an exception during a previous application cycle. ***Staff is concerned about the precedent that granting this exception could set for future new charter application cycles.***
- SPCSA staff is gravely concerned about the timeline to implement any proposal, high-quality or otherwise, in no more than four months. ***While staff recognizes that the applicant may be able to deliver a high-quality application, successfully executing on any proposal and the required pre-opening processes in such a short time present significant and avoidable challenges and risks for the applicant, families and students. As the Authority is well aware, this is particularly true for an applicant that proposes to contract with an EMO that is currently not established in Nevada.***

For all of these reasons, SPCSA staff is recommending that the Authority deny the request for Nevada Strong Academy to submit a Notice of Intent to Form a charter school outside of the prescribed window.