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VIA U.S. MAIL & ELECTRONIC MAIL

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***Re: Nevada Virtual Academy
Renewal Recommendation Grades 6-12***

Ryan:

This letter is sent in response to the discussion we had the last week of October regarding the proposed Renewal Recommendation for Nevada Virtual Academy (“NVVA”) and your email of November 9, 2018. As a preliminary matter, we appreciate you providing us information regarding the renewal recommendation in advance of the public hearing on November 30, 2018. We also appreciate having an opportunity to respond to the same.

It is our understanding that staff for the State Public Charter School Authority (“SPCSA”) intends to recommend renewal of NVVA’s Charter Contract for grades 6-12 with conditions relating to: enrollment and growth; benchmarks; and organization and oversight as set forth below.

• **Enrollment and Growth**

- Enrollment caps as set forth in the Stipulated Agreement.
- NVVA will be eligible to request an increase in these caps after three consecutive years of improvement.
- Improvement will be defined in connection with NVVA’s middle school as a 10% increase in ELA proficiency and an 18% increase in math proficiency as measured by the NSPF. The three consecutive years period will begin with the 2018-2019 school year.
- In regard to NVVA’s high school, improvement will be defined as three consecutive years at or above an index score of 50 as measured by the NSPF. (Because NVVA’s high school achieved an index score above 50 for the 2017-2018 school year, NVVA’s high school needs two additional

consecutive school years at or above an index score of 50 to meet this benchmark.)

- **Benchmarks**

- Under NVVA's renewed charter contract, if NVVA's middle or high school earns an index score of less than 50 adjusted index points for any two consecutive years, the middle or high school, respectively, will close at the end of the current school year. (Because NVVA's middle school did not achieve an index score of 50 or better for the 2017-2018 school year, an index score below 50 index points for the 2018-2019 school year will result in the closure of NVVA's middle school at the end of the 2019-2020 school year.)

- **Organizational Conditions, and Oversight and Monitoring**

- Governing body compliance with all applicable statutes, regulations, and charter school contractual provisions.
- Quarterly reports.
- SPCSA staff access to NVVA student databases, including any Learning Management Systems.
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NVVA is responding to the draft recommendations, as the school understands them. While NVVA agrees that the charter contract should be renewed, the school takes issue with some of the conditions that staff is currently considering recommending. The school believes that the conditions are unwarranted for an applicant whose grades 6-12 have performed well over the last charter contract. NVVA's middle school program has consistently been rated at 3 stars with the last school year being a recent exception where the school received a 49, one point away from a 3-star rating, prior to the score being reduced due to participation penalty. (The school is making adjustments to ensure the school does not receive a participation penalty again.) Moreover, NVVA's high school program received 3 stars in the most recent rating and has an above average graduation rate. To that end, NVVA is providing herein additional information and support for a recommendation for renewal with reasonable and appropriate conditions.

Relevant Background Information

As you are aware, in July of this year, NVVA and the SPCSA entered into a "Stipulated Agreement" following NVVA receiving a Notice of Intent to Terminate due to the alleged persistent underperformance of its elementary school program. While NVVA disputed the Notice of Intent to Terminate and raised a number of procedural matters, the parties came to a settlement through the Stipulated Agreement. NVVA has faithfully abided by the terms of the Stipulated Agreement, and the renewal application that was submitted to the Authority does not include grades K-5. NVVA is only seeking renewal of

its charter contract for grades 6-12. Since the SPCSA and NVVA agreed that grades K-5 would not be included in the renewal application, the SPCSA should not base any decisions on the renewal application on past performance of grades K-5, as those grades are not included in the application.

That said, because NVVA's renewal application only seeks renewal of its middle school and high school programs which have demonstrated improved performance over the last five years, NVVA was surprised by the extent of the conditions that SPCSA staff is proposing for a renewed contract. Indeed, the proposed recommendations seek to define "improvement" in a limited manner which only looks at proficiency scores, drastically limits the ability of NVVA to grow, and takes away all due process rights the school is entitled to under the existing statutory scheme should it not meet performance metrics. Indeed, it appears that NVVA is being treated very differently than other schools that have a similar performance record. In fact, a 2-Star school with similar ratings to NVVA had its contract renewed at the last public meeting with a single condition - that it submit an academic improvement plan if its 2-Star elementary school fails to reach a 3-Star level next year.¹ NVVA simply asks that it be treated fairly and that SPCSA staff recommendations be based solely on the performance of the middle school and high school programs. Indeed, the Stipulated Agreement provides that "[a]ny recommendation related to NVVA's middle and high school programs [for renewal] will be based on the performance of *those* programs based on *those* programs' historical performance, and assuming no significant changes related to those programs' performance." Stipulated Agreement, p. 3. (Emphasis added.)

As you are likely aware, since NVVA's charter was renewed in June of 2013, both its middle school and high school have improved with NVVA's middle school being consistently rated a 3-Star school subsequent to the 2015 NSPF ratings and NVVA's high school demonstrating significant improvements in its graduation rates even when star ratings were not provided.

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¹ Learning Bridge Charter School's renewal request was approved at the November 2, 2018 SPCSA meeting. Based on the last available state ratings, Learning Bridge's elementary school received 2 stars and was operating under a Notice of Concern and its middle school received a 3-star rating.

	2013/14 NSPF	2014/15 NSPF	2015/16 NSPF	2016/17 NSPF	2017/18 NSPF
	HS Grad rate	HS Grad rate	HS Grad rate	HS Grad rate	HS Grad rate
Middle School	2 Star	3 Star	3 Star	3 Star	2 Star ²
High School	2 Star	2 Star	N/A	N/A	3 Star
	56.61	63.54	67.44	84.20	80+ ³

NVVA provides the star rating data as a response to the SPCSA staff’s draft recommendation, however, it should be noted that the NSPF and star system have been riddled with consistent implementation and reliability problems over the years of the charter contract that is expiring. These problems have resulted in the state legislature twice passing legislation, which banned the use of past data for charter revocation purposes. Additionally, state law currently states that only 2015-16 school year data and data starting with the 2018-19 school year may be used for these high stakes decisions. See NRS 388A.300(2). With that track record and the unreliability that the legislature has placed on the NSPF and underlying data, it seems unwise to use that data in the ways SPCSA staff have suggested.

As set forth in the supplementation document NVVA submitted with its renewal application, it serves a unique and diverse student demographic with the mission “to promote student achievement by preparing EVERY student for college and career readiness EVERY day.” In an effort to comply with NRS 388A, in addition to submitting the renewal form, the supplemental information NVVA provided to the SPCSA included measurable goals to continue to improve its middle school and high school programs. NVVA suggests that SPCSA staff look at NVVA’s goals and metrics as we move forward, and the parties should discuss those goals as a better measure for whether the school is on track to meet performance metrics.

² NVVA’s middle school received 49 points before the Participation Penalty removed 9 points from the Academic Achievement measure.

³ 2018 graduation rates will be finalized December 1, 2018. Based on NVVA’s initial analysis, we believe the rate will be over 80 %.

Concerns Regarding Proposed Renewal Recommendation

As you are aware, NVVA has concerns regarding what the school understands will be included in the conditions SPCSA staff will be recommending to the SPCSA as it relates to NVVA's renewal application. For ease of reference, this letter will address each draft recommendation, the school's concerns, and provide a better approach (where appropriate) in the categories identified in your prior correspondence.

Enrollment and Growth

There were four draft conditions or bullet points identified by SPCSA staff relating to the enrollment and growth of NVVA's middle school and high school programs.

○ *Enrollment caps as set forth in the Stipulated Agreement.*

NVVA is, in good faith, abiding by the enrollment caps set forth in the Stipulated Agreement which were specific to the 2018-2019 school year.

○ *NVVA will be eligible to request an increase in these caps after three consecutive years of improvement.*

NVVA's middle school program was short of being rated 3 stars by a mere one point, prior to the participation penalty reducing that score. In consideration of its rating, NVVA is not requesting an increase in total enrollment for the 2018-2019 school year. The middle school program, pursuant to the Stipulated Agreement, is currently capped at 780 students. NVVA is experiencing enrollment challenges with the specific grade level caps placed on grades 6-8 as certain grade levels are not at capacity while other grade levels have a wait list.⁴ As such, NVVA recommends that the specific grade level caps be eliminated with only a total middle school cap of 780 students remaining. Additionally, NVVA proposes that if it meets or exceeds the goals set forth in its application as it relates to the middle school program this year, that the middle school program be allowed to increase its enrollment by 10 % for the 2019-2020 school year.

NVVA's high school program over the last five years has demonstrated continued improvement, including substantial growth in its graduation rates. Because the high school program has already demonstrated consecutive years of growth, NVVA should be able to increase its high school enrollment by 10% each school year beginning next school year unless for two consecutive school years, the high school program does not meet or exceed the goals specific to the high school as outlined in the school's renewal application. In that instance, the high school program's enrollment will be frozen at that school year's level until

⁴ 6th grade is capped at 260 students and has 138 students enrolled.
7th grade is capped at 260 students and has 216 students enrolled.
8th grade is capped at 260 students and has 259 students enrolled with 28 on a waitlist.

it meets or exceeds the goals set forth in the its application as it relates to the high school program for two consecutive years and then the high school program may again resume increasing its enrollment by 10% so long as it meets or exceeds the aforementioned goals. As you are aware, NVVA's high school program's enrollment is currently capped at 1010 students and each grade has a specific student cap. The grade level cap has created some challenges for NVVA as it has certain grade levels not at capacity and a waiting list of students interested in enrolling in NVVA for grade levels that are at capacity.⁵ As such, NVVA recommends that for the 2019-2020 school year, that NVVA's high school enrollment be capped at 1,111 (a 10% increase over the current year), but that the only grade level with specific enrollment caps be 12th grade which would be capped at 240 students. This would allow NVVA to absorb students currently on its waiting list without specific grade restrictions.

- *Improvement will be defined in connection with NVVA's middle school as a 10% increase in ELA proficiency and an 18% increase in math proficiency as measured by the NSPF. The three consecutive years period will begin with the 2018-2019 school year.*

NVVA disagrees with the proposed definition of "improvement," especially its arbitrary nature of limiting how "improvement" is measured by linking it only to ELA proficiency and math proficiency and requiring a 10% or 18% increase in such categories. In its renewal application and consistent with state law, NVVA has identified a number of measurable goals to ensure the program is on track to meet performance metrics. Those goals are a better measure of improvement, not the arbitrary and very limited definition proposed by SPCSA staff. What the school has identified as goals includes ELA and math proficiency improvements, but goes beyond just those two data points to look at the success of the school as a whole and how it is serving its students.

- *In regard to NVVA's high school, improvement will be defined as three consecutive years at or above an index score of 50 as measured by the NSPF. (Because NVVA's high school achieved an index score above 50 for the 2017-2018 school year, NVVA's high school needs two additional consecutive school years at or above an index score of 50 to meet this benchmark.)*

○
As stated above, NVVA's high school program received a 3-star rating and had a graduation rate of 84.2% for the 2017 cohort, which was 3.3 percentage points better than the state average of 80.9%. The high school program is not operating under a Notice of

⁵ 9th grade is capped at 260 students and has 186 students enrolled.
10th grade is capped at 260 students and has 257 students enrolled with 3 on a waitlist.
11th grade is capped at 260 students and has 260 students enrolled with 118 on a waitlist.
12th grade is capped at 230 students and has 228 students enrolled.

Concern or otherwise been cited by the Authority for persistent underperformance. As such, there is no basis to cap future growth of the high school program. NVVA is simply proposing the ability to increase enrollment by 10%, according to the terms set forth above. Moreover, given that high schools were not rated from 2015 to 2017 because of the statewide testing irregularity and implementation of the new Nevada School Performance Framework, restricting the growth of NVVA's high school program for two additional years is unwarranted and entirely unfair.

Benchmarks

The benchmarks proposed by SPCSA staff would unilaterally take away statutorily required due process rights and impose unfair requirements on NVVA that are inconsistent with what is required of other charter schools in the state and impose unwarranted repercussions that could lead to the middle school being shut down after one more academic year. Specifically, it is our understanding that SPCSA staff intends to recommend that:

- *Under NVVA's renewed charter contract, if NVVA's middle or high school earns an index score of less than 50 adjusted index points for any two consecutive years, the middle or high school, respectively, will close at the end of the current school year. (Because NVVA's middle school did not achieve an index score of 50 or better for the 2017-2018 school year, an index score below 50 index points for the 2018-2019 school year will result in the closure of NVVA's middle school at the end of the 2019-2020 school year.)*

○
There is no need for such action.

As you are aware, NRS 388A.300 *et. seq.* sets forth specific triggers relating to school performance that would warrant the revocation or termination of a charter contract. In codifying such provisions, the legislature incorporated the statewide system of accountability which was established specifically for the purpose of holding schools accountable. NVVA and the Authority are legally required to abide by such statutes. These statutory provisions were the result of much discussion and debate and provide the SPCSA with a mechanism to close low performing schools and at the same time provide the schools certain due process rights. Moreover, given the numerous changes that have occurred at the state level relating to testing and ratings, requiring NVVA to hit arbitrary targets creates confusion and an undue burden on NVVA. Further, what SPCSA staff is proposing essentially wipes out any due process rights NVVA has and takes away the rights of NVVA's Board and NVVA's stakeholders and members of the public to address and/or correct concerns that may arise in the future. This proposed recommendation is

problematic and legally unsound. Such a recommendation should be removed and replaced with language indicating the parties will proceed according to state law.⁶

It is unclear why NVVA, as a renewal applicant, is being targeted and why SPCSA staff is suggesting closure triggers for NVVA that are not consistent with statute. Given that this was the first year in four years that NVVA's middle school program received a 2-Star rating and missed a 3-Star rating by a mere one point prior to the participation penalty being applied, it is hard to fathom why SPCSA staff wants to include language in a charter contract that could result in the closure of NVVA's middle school program at the end of the 2019-2020 school year. Moreover, given that Learning Bridge Charter School, which had similar ratings to NVVA, had its charter contract approved without threat of closure if it did not immediately improve and instead only requiring an academic improvement plan be submitted if they fail to obtain a 3-Star rating, SPCSA staff's recommendation for NVVA should not include this unwarranted and unlawful closure trigger.

Organizational Conditions, and Oversight and Monitoring

NVVA's Board and school leaders are committed to providing a quality education to the students they serve and have demonstrated a willingness to work with the SPCSA and its staff in recent months to resolve differences and position NVVA for success. We understand that SPCSA staff has drafted the following additional recommendation:

- *Governing body compliance with all applicable statutes, regulations, and charter school contractual provisions.*
- *Quarterly reports.*
- *SPCSA staff access to NVVA student databases, including any Learning Management Systems.*

NVVA does not generally object to these recommendations, but seeks further clarification regarding what is being asked for.

- In regard to governing body compliance, NVVA's Board has focused on additional training and is in the process of adding additional board members. It strives to comply with all applicable statutes, regulations, and charter school contractual provisions. If there are specific concerns

⁶ Given that the Renewal Report, which the Authority issued on June 29, 2018, did not identify any deficiencies which would result in nonrenewal, if not corrected, the inclusion of conditions that could shut down the middle school in less than two years without providing the school any due process is not appropriate. Moreover, the state legislature has already passed legislation on two occasions finding that the state data, which SPCSA staff wants to rely on, is not reliable and the legislature banned its use for high stakes decisions.

regarding the same, NVVA's Board is more than willing to address the same.

- NVVA has no objection to quarterly reports and would request the opportunity to discuss what information SPCSA staff would like to see contained therein, all in an effort to position the school and its underlying programs for success.
- NVVA is unclear what databases SPCSA staff want access to, some of which may be proprietary to outside vendors. As you can imagine, to the extent certain access can be accommodated, Non-Disclosure Agreements may need to be executed and other measures taken to ensure student data and other sensitive information remains confidential.

Conclusion

As an online school NVVA has something unique to offer students and families in this state. In fact, thousands of students have enrolled in NVVA and each one of them did so, by choice. Not one child is zoned to NVVA. The fact that NVVA has a waitlist should say something about the need for this public-school option and the trust the stakeholders have in NVVA.

Because Nevada does not have a separate framework for virtual or online schools, NVVA is doing everything it can to work within the existing framework despite facing unique challenges due to the demographics it serves. Notably, NVVA has seen successful at the middle school and high school levels. NVVA understands that it, like all school, must continue to strive for improvement, and NVVA submitted measurable goals with its renewal application to demonstrate its commitment to ensure the school is on track with performance metrics.

NVVA submits the foregoing information to you in good faith, in hopes of enabling further discussions regarding SPCSA staff's draft recommendations in advance of the November 30, 2018 SPCSA Board meeting. We believe there is great value in both sides discussing these issues in advance of the meeting and hopefully walking into the meeting in an amicable posture. In summary, we believe the proposed recommendations are arbitrary and contrary to state law and that NVVA is being treated differently than other similarly situated schools. NVVA has identified measurable goals to serve as a better gauge for improvement and raised valid concerns why closure triggers, as the conditions set forth in SPCSA staff's draft recommendations, are not appropriate nor permissible. NVVA has also provided what we believe to be reasonable oversight and renewal conditions and sincerely hope you consider the same.

Ryan Herrick
General Counsel
State Charter School Authority
November 16, 2018
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As we have previously discussed, please let me know when you and Mr. Modrcin and/or members of his team are available to meet to further address these issues.

Very truly yours,



Kara B. Hendricks, Esq.

KBH/sn

cc: Samantha Morris
Yolanda Hamilton
Jason Guinasso