



September 25, 2020

VIA EMAIL ONLY (publiccomment@spcsa.nv.gov)

State Public Charter School Authority
1749 North Stewart Street #40
Carson City, NV 89706

Re: Public Comments for October 2, 2020 Board Meeting, Agenda Item 4.

Dear Board Members:

Please allow the comments provided in this letter to serve as a demand that you immediately rescind the COVID-19 In-Person Learning Guidance that was adopted on August 14, 2020.

I trusted this Authority to follow the law and to make decisions that are in the best interests of my children. That trust was violated on August 14, 2020. On August 14, 2020, you voted on agenda item No. 4 which led to the adoption of the COVID-19 In-Person Learning Guidance that established the conditions in which charter schools may provide in person instruction. As explained in more detail in the following pages, it is my opinion that the COVID-19 In-Person Learning Guidance was adopted without legal authority, and in a massive breach of public trust. For the reasons stated herein I encourage you to rescind the COVID-19 In-Person Learning Guidance so that the schools that you sponsor may move forward with reopening plans pursuant to Governor Sisolak's *Emergency Directives 022 and 028*.

If you compare Executive Director Rebecca Feiden's recommendation presented to the board on August 14, 2020 regarding the COVID-19 In-Person Learning Guidance to Governor Sisolak's *Road to Recovery: Moving to a New Normal*, you will see that the information provided by Director Feiden was false and misleading. Governor Sisolak's *Road to Recovery: Moving to a New Normal* states, "[s]chools fall under a different criterion than the mitigation requirements noted above" which Director Feiden failed to mention in her recommendation. Furthermore, nothing in Governor Sisolak's *Road to Recovery: Moving to a New Normal* amends, changes or cancels the directives provided for in Governor Sisolak's *Emergency Directives 022 and 028*. In addition, in adopting the COVID-19 In-Person Learning Guidance, the Authority has failed to follow and has prevented the charter

schools from following the directives outlined in Governor Sisolak's *Emergency Directive 022*.

Statutory Authority - NRS 388A.397(5)

During the March 14, 2020 meeting, your general counsel opined that NRS 388A.397(5) provides this Authority with a legal basis for adopting the COVID-19 In-Person Learning Guidance. NRS 388A.397(5) states,

If the State Public Charter School Authority determines that the current operations of the charter school pose an imminent danger to the health and safety of the pupils or staff of the charter school, the State Public Charter School Authority shall order the charter school to suspend its operations at any or all of its facilities until appropriate corrective action has been taken.

The words "suspend its operations" have a very specific meaning which is to end the operation. The statute does not convey any authority to dictate a modification or exchange of education models. If there is some other authority that your general counsel believes would allow you to dictate what education model a school may employ, I would request that you discuss it during the meeting.

Even if there is implied legal authority for this board to dictate that a school employ a specific education model pursuant to NRS 388A.397(5), there is no imminent danger. According to OSHA,¹ the definition of "imminent danger" includes "for a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency." This, by definition, does not include the potential presence of a hazard within the community, but actual presence of the hazard at the place of employment, or in this case, at the school. During the August 14, 2020 meeting, there was no discussion by the members of the Authority or by the Executive Director of any actual hazard in any of the schools affected by the Guidance. There is no evidence at this time that I am aware of the actual presence of COVID-19 in any of the affected schools.² If there is no actual hazard, the Authority may not require a school to cease operations, per the statute.

¹ <https://www.osha.gov/as/opa/worker/danger.html>

² The State of Nevada Dept. of Health and Human Services Office of Analytics maintains a "Facilities Dashboard" that reports cases associated with various facilities, including schools and childcare facilities. While I am not familiar with all the various schools affected by the Guidance, I am certain that the schools that I am

Even if there is evidence of an imminent danger, the statute implies that the State Public Charter School Authority must give NOTICE of the “appropriate corrective action” the school may take and give the school an opportunity to take the “appropriate corrective action.” Prior to your August 14, 2020 vote to adopt the COVID-19 In-Person Learning Guidance, each school was required to prepare a reopening plan pursuant to the Governor’s *Emergency Directives 022* and *028* and presumably to ensure that “appropriate corrective action” was being taken so that operations of the charter school did not pose an imminent danger to the health and safety of the pupils or staff. Accordingly, if schools are following the directives provided for in Governor Sisolak’s *Emergency Directives 022* and *028*, there is no basis for this Authority to act.

Governor Sisolak’s Road to Recovery: Moving to a New Normal

Your Executive Director stated that her recommendation that in-person instruction be limited to “less than 25% of the school’s enrollment” was based on Governor Sisolak’s *Road to Recovery: Moving to a New Normal*. Even though Governor Sisolak’s *Road to Recovery: Moving to a New Normal* states that “[s]chools fall under a different criterion than the mitigation requirements noted above,” the document states specifically that a 25% capacity recommendation is for “high-risk settings where face coverings may need to be removed (food establishment, pool, gym/fitness location, and bar).” As of September 20, 2020, bars, pubs, taverns, breweries, distilleries, and wineries in Clark County were permitted to open at a 50% capacity limit.³ However, at the same time, you are still limiting charter schools in Clark County to “less than 25% of the school’s enrollment.” Your COVID-19 In-Person Learning Guidance far exceeds the guidelines outlined in Governor Sisolak’s *Road to Recovery: Moving to a New Normal*. Furthermore, The Guidance fails to take into consideration the capacity of the school as mandated by Section 3 of *Emergency Directive 022*.

In relying on anything stated in Governor Sisolak’s *Road to Recovery: Moving to a New Normal* when schools are specifically excluded from the criteria, as well as the oversight and recommendations from the task force puts charter schools into a

familiar with are not on the Facilities list. For more information, you can find the Facilities Dashboard here: <https://app.powerbigov.us/view?r=eyJrIjoiaNDMwMDI0YmQtNmUyYS00ZmFjLWl0MGltZDM0OTY1Y2Y0YzNhliwidCI6ImU0YTM0MGU2LWl4OWUtNGU2OC04ZWFlLTElNDRkMjcwMzk4MCMJ9>

³ Restaurants were permitted to open at 50% capacity in Clark County in June 2020 and have remained open since.

unique category, with the sole discretion of the Executive Director to determine if schools may offer hybrid or in-person education. The Governor's Emergency Directives, however, delegate that authority to the Charter Schools themselves, and to the school leaders.⁴

Governor Sisolak's Emergency Directive 022

According to Governor Sisolak's [Emergency Directive 022](#), "the State Medical Officer has reviewed the risk of transmission in Nevada and determined that schools may reopen subject to the conditions set forth in this Directive and any subsequent directives that may be issued based on any change in the risk of transmission in Nevada." Governor Sisolak's *Emergency Directive 022* is the current mandate that this Authority must follow with respect to the process of determining if schools may offer hybrid or in-person education. The directive also has the appropriate guidance for occupancy in Section 3.

Governor Sisolak's Emergency Directive 028

Section 1 of *Emergency Directive 028* states that "County school districts, charter schools, and private schools shall monitor local and statewide COVID-19 data and community transmission rates and consult with local public health officials when making determinations regarding delivering instruction through in-person, distance or hybrid learning models."

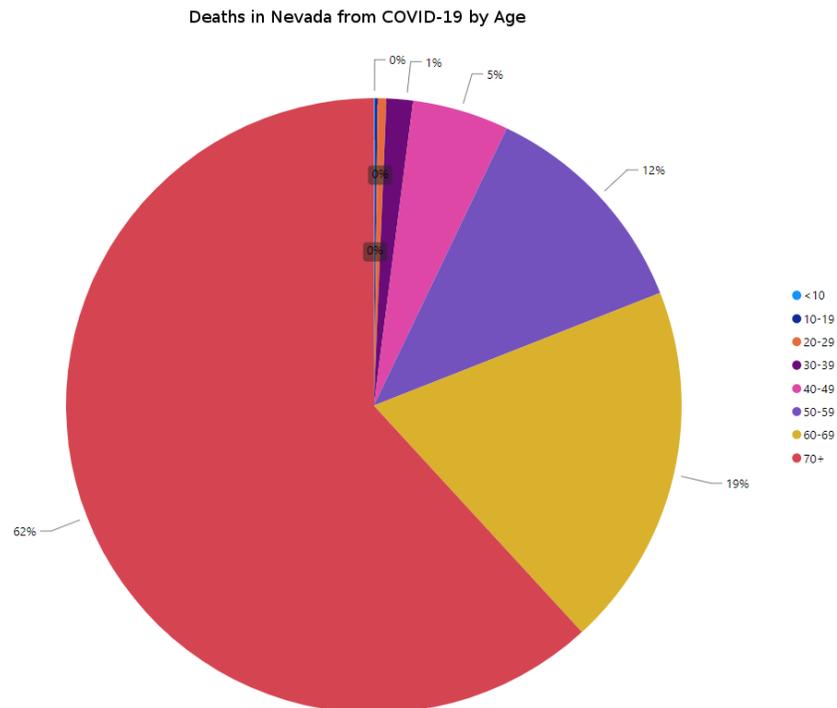
The State Public Charter School Authority is not a county school district, a charter school, or a private school and has no authority pursuant to the Directive.

Emergency Directive 028 Section 8 states specifically that "charter school leaders are delegated the authority to implement hybrid learning models through which in-person instruction is offered concurrently with distance education to accommodate social distancing requirements." The State Public Charter School Authority requires each charter school to name a Charter School Leader. Presumably, *Emergency Directive 028* Section 8 is delegating authority to each school leader, not the State Public Charter School Authority.

⁴ See [Emergency Directive 022](#) and [Emergency Directive 028](#).

If there is any implied authority provided for in the Directive, the COVID-19 In-Person Learning Guidance appears to completely ignore “local public health officials.” Instead, the Guidance appears to rely solely on Nevada Health Response Team’s County COVID tracker. Governor Sisolak’s Road to Recovery: Moving to a New Normal provides that “A task force will be established to support this concept and to ensure statewide adoption. At a minimum, it will be made up of heads of key state agencies, private sector representatives, and local representatives. This task force will be charged with ensuring accountability for state-level efforts, coordinating essential activities between departments, and providing a sustainable model for receiving and sharing data and vetting proposals and recommendations.” However, since “Schools fall under a different criterion,” neither they nor the State Public Charter School Authority benefit from guidance provided by the task force.

Furthermore, the tracker does not consider what this Authority is trying to prevent, which presumably is the deaths of student in Charter Schools. The board failed to consider the actual risk of death to children from COVID-19. This year, in Nevada, three people under the age of 20 died from COVID-19.⁵ That is out of more than 76,000 confirmed cases of COVID-19 in Nevada. *Id.* In Clark County alone more children have died from accidental drowning than have died from COVID-19 in the entire state.⁶ In Clark County alone more children have died from car accidents than have died from COVID-19 in the entire state. *Id.* In Clark County alone more children have died from drug overdose than have died from COVID-19 in the entire state. *Id.* In Clark County alone more children have died from abuse and neglect than have died from COVID-19 in the entire state.⁷ What evidence do you have



⁵ Both the numbers cited and the “Deaths in Nevada from COVID-19 by Age” graphic came from <https://nvhealthresponse.nv.gov/>. One person was younger than 10, the other two were between 10 and 19.

⁶ <https://www.southernnevadahealthdistrict.org/>

⁷ <http://dcfs.nv.gov/Programs/CWS/CPS/ChildFatalities/Clark/>

that you are going to save any children by not permitting in-person or hybrid education?

Distance Education Model

The COVID-19 In-Person Learning Guidance states that “a charter schools (sic) sponsored by the SPCSA shall operate under a **distance education model**” when a county is under Mitigation Level 1 or 2 as defined by Governor Sisolak’s *Road to Recovery: Moving to a New Normal*. You have failed to consider or discuss the viability of distance education as an alternative to hybrid or in-person education. A Distance Education Model for school age children is not an education model at all.⁸ The In-person Education Model was developed over the course of many centuries. It is ignorant and arrogant of you to believe that a few minutes of prerecorded video and independent study time will in any way replace the In-Person Education model.

For Those that Disagree

I understand that there have been several people who expressed support for the COVID-19 In-Person Learning Guidance. If you now rescind the adoption of the Guidance, you are not condemning anyone to die; you are not requiring any parent to send their child into an environment that may cause them to become ill. What you would be doing is simply giving back control to the parents of children enrolled in charter schools to make decisions themselves.⁹ You would be giving back the authority to make education model decisions to the school leaders to whom that authority was properly delegated by the governor. You would be following the law.

If the operations of any specific charter school pose an imminent danger to the health and safety of the pupils or staff of the charter school we would expect the Authority to act swiftly and decisively to alert the school of the problem, and require the school to suspend its operations at any or all of its facilities until appropriate corrective action has been taken.

⁸ See also Nevada Senate Bill 441.

⁹ It may be helpful to provide parents with useful information so that they can make informed decisions. For example, this CDC report, *Hospitalization Rates and Characteristics of Children Aged <18 Years Hospitalized with Laboratory-Confirmed COVID-19*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932e3.htm>, posted August 14, 2020.

Legal Action

I entrusted the education of my children to a very dedicated team of teachers, administrators, and board of directors of a specific charter school. I expect you to allow them to do their jobs. If the State Public Charter School Authority is not going to permit that, I will consider legal action.

If you have any questions about these comments, you may contact me by telephone at 702-514-0102 or email at jmaridon@maridonlaw.com.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph R. Maridon, Jr.", with a long horizontal flourish extending to the right.

Joseph R. Maridon, Jr.