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BRIEFING MEMORANDUM

TO: SPCSA Board
FROM: Rebecca Feiden, Executive Director; Ryan Herrick, General Counsel
SUBJECT: Executive Order 2023-003
DATE: March 3, 2023

Background

On January 12, 2023, Governor Lombardo issued Executive Order 2023-003 (EO 2023-003). A copy of the Executive Order can be found here: https://gov.nv.gov/Newsroom/ExecOrders/2023/Executive_Order_2023-003/.

Executive Order 2023-003 requires state agencies such as the SPCSA to do several things. First, EO 2023-003 requires state agencies to conduct a comprehensive review of agency regulations and submit a report to the Governor's Office by May 1, 2023 on how regulations can be "streamlined, clarified, reduced or otherwise improved to ensure those regulations provide for the general welfare of the State without unnecessarily inhibiting economic growth." Additionally, as part of the report submitted to the Governor's Office, state agencies must prioritize and rank not less than 10 regulations for removal. State agencies are also required to solicit stakeholder input to vet recommended changes, solicit input on changes, and identify other regulatory changes that stakeholders feel are worthy of consideration.

In this regard, SPCSA staff has reached out to charter school leaders, other charter school representatives, the Charter School Association of Nevada, local school districts, and representatives from Nevada's Department of Education, among others, in order to solicit input regarding EO 2023-003 and Nevada's charter school statutes. As part of this outreach, two meetings were held on February 22, 2023, and February 23, 2023 in order to receive charter school stakeholder input regarding Nevada's charter school regulations. EO 2023-003 has also been placed on this meeting's agenda, with a separate period of public comment, in order to

receive feedback regarding Nevada’s charter school regulations from the SPCSA board and to provide a public forum for any input or feedback.

Nevada’s Charter School Regulations

Nevada’s charter school regulations are contained in Nevada Administrative Code Chapter 388A. NAC Chapter 388A can be found here:

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/NAC/NAC-388A.html#NAC388ASec250>.

Because local school districts as well as the SPCSA sponsor public charter schools, the bulk of the 100 regulations contained have been adopted by Nevada’s Department of Education. The reasons behind this is to ensure that all public charter schools in Nevada – whether sponsored by local school districts or the SPCSA – are subject to a uniform system of charter school regulations. However, 13 of the 100 charter school regulations contained in NAC Chapter have been adopted by the SPCSA and apply only to the SPCSA and SPCSA-sponsored public charter schools. Additionally, a handful of charter school regulations contained in NAC Chapter 388A have been adopted by Nevada’s Department of Business and Industry pertaining to the bonds financing by charter schools. These different charter school regulations, and the different state agencies that are responsible for and have adopted these different charter school regulations, are described in greater detail below.

For context, NAC Chapter 388A can generally be categorized as follows:

- General provisions and definitions (NAC 388A.010 – 039);
- Charter school regulations related to new charter school applications (NAC 388A.100 – 270);
- Charter school regulations related to charter school contract amendments (NAC 388A.300 – 340; NAC 388A.400 – 410);
- Charter school contract renewal (NAC 388A.415; 420);
- Charter school termination, revocation, and closure (NAC 388A.345 – 355);
- Charter school operations, personal, facilities, and finances (NAC 388A.500 – 600);
- The SPCSA’s revolving loan account for charter schools (NAC 388A.650 – 680); and
- Charter school facilities bonds (NAC 388A.700 – 750).

Again, the vast majority of these charter school regulations have been adopted by NDE, and the charter school facilities bond regulations have been adopted by the Department of Business and Industry.

The 13 charter school regulations that have been adopted by and are the responsibility of the SPCSA can be categorized as follows:

- New charter school applications (five regulations; NAC 388A.250 – 270);
- Charter contract amendments (three regulations; NAC 388A.400 – 410);
- Charter contract renewal (two regulations; NAC 388A.415, 420);
- Data reporting (one regulation; NAC 388A.560)
- Procedures to apply for the SPCSA's revolving loan account (one regulation; NAC 388A.665); and
- Gifts and donations to the SPCSA (one regulation; NAC 388A.680).

The SPCSA's regulations related to new charter school applications, amendments, renewal, and data reporting only apply to SPCSA-sponsored public charter schools; these charter school regulations do not apply to public charter schools sponsored by local school districts. However, the SPCSA's revolving loan account is available to all public charter schools, whether sponsored by the SPCSA or local school districts, so this SPCSA regulation is applicable to all public charter schools; and obviously the SPCSA's regulation related to gifts and donations to the SPCSA (to our knowledge, the SPCSA has never received a gift or donation), only applies to the SPCSA.

As is evident, the SPCSA has limited legislative authority to adopt charter school regulations. Specifically, the SPCSA is required to adopt charter school regulations regarding the process, required contents, and the criteria related to new charter school applications, charter contract amendment applications, and charter contract renewal applications that are submitted to the SPCSA. See NRS 388A.168. The SPCSA also has permissive legislative authority to adopt charter school regulations regarding regulations establishing different timelines and review procedures for different types of new charter school applicants, data reporting, and the SPCSA's revolving loan account. NRS 388A.258; NRS 388A.229(4); and NRS 388A.438.

SPCSA's Recommendations for Eliminating Regulations

SPCSA staff has identified six SPCSA's charter school regulations that can easily be eliminated with those ranked as highest priority to be eliminated listed first.

Regulation	What the regulation does	Why it can be eliminated, clarified, or streamlined	Notes
NAC 388A.680	Sets various conditions related to gifts and donations received by the SPCSA.	Eliminate this regulation as an unnecessary regulation.	The SPCSA has never received a gift or donation, and in the unlikely event that the SPCSA were ever to receive such a gift or donation, current statutes govern this situation.
NAC 388A.560	Requires SPCSA-sponsored public charter schools to use a unique identifying number for certain reporting requirements.	Eliminate this regulation as an unnecessary regulation.	The SPCSA does not need regulatory authority to require SPCSA-sponsored charter schools to use a unique identifying school number for reporting purposes.
NAC 388A.265	Requires new charter school applicants to submit a separate redacted version of the new charter school application.	Eliminate this regulation as an unnecessary regulation.	The SPCSA does not need regulatory authority to redact personally identifiable information from public documents.
NAC 388A.405	Requires existing SPCSA-sponsored public charter schools to submit a separate redacted version of a request to amend the charter school's contract.	Eliminate this regulation as an unnecessary regulation.	The SPCSA does not need regulatory authority to redact personally identifiable information from public documents.
NAC 388A.420	Requires existing SPCSA-sponsored public charter schools to submit a separate redacted version of a request to renew the charter school's contract.	Eliminate this regulation as an unnecessary regulation.	The SPCSA does not need regulatory authority to redact personally identifiable information from public documents.
NAC 388A.255	Allows for an abbreviated new charter school application.	Eliminate this regulation because this regulation is duplicative with NAC 388A.270.	Duplicative of another charter school regulation.

Additionally, the SPCSA has identified **two** regulations that can be eliminated by combining and simplifying some of the provisions into other existing regulations. This would result in the elimination of two additional SPCSA regulations, and simplify and clarify existing SPCSA regulations:

Regulation	What the regulation does	Why it can be eliminated, clarified, or streamlined	Notes
NAC 233A.250	Defines a new charter school “applicant.”	This regulation can be eliminated and made a part of NAC 388A.255-270.	NAC 388A.255-270 deal with new charter school applications that are submitted to the SPCSA. The regulatory definition of an “applicant” contained in NAC 388A.250 can be eliminated and made a part of the other SPCSA charter school application regulations.
NAC 388A.410	Allows the SPCSA to impose additional conditions and requirements in regard to new charter school applications AND charter school contract amendments.	This regulation can be eliminated, and made a part of the new charter school application and the charter school amendment regulations.	This is a stand-alone regulation that creates confusion because this regulation applies to new charter school applications AND charter school amendment applications for charter schools that are currently open and operating. While conditions attached to new charter school applications and amendment requests for existing SPCSA-sponsored charter schools is an integral part of the SPCSA’s process, the ability of the SPCSA to impose additional conditions on new charter school applications and amendment requests should be included in those regulations. This will provide additional transparency and simplifying the SPCSA’s regulations.

The Executive Order 2023-003 requires agencies to identify ten regulations for possible elimination. The eight regulations identified above can be cut without significant impact to the operations of the agency. However, eliminating any of the five remaining regulations would pose potential challenges for the SPCSA and sponsored charter schools. That said, if necessary, SPCSA staff would recommend eliminating NAC 388A.270 and NAC 388A.665.

- NAC 388A.270 is the SPCSA’s “proven provider” regulation, which allows the SPCSA to have a streamlined new charter school application process for certain experienced new charter school applicants. While this regulation has never been utilized, eliminating this regulation would eliminate a tool that the SPCSA could utilize to attract high-quality experienced charter school applicants.
- NAC 388A.665 is the SPCSA’s revolving loan application regulation that specifies what information must be submitted to the SPCSA to apply for the SPCSA’s revolving loan account. While this regulation could be eliminated, and the requirements related to the SPCSA’s revolving loan application could be adopted through policy, SPCSA staff would caution against eliminating this regulation unless necessary.

SPCSA's Recommendations for Clarifying and Streamlining Regulations

The SPCSA has also identified **three** additional SPCSA regulations that can be clarified and streamlined:

Regulation	What the regulation does	Why it can be eliminated, clarified, or streamlined	Notes
<p>NAC 388A.260 (revised by R043-21)</p>	<p>This regulation specifies the requirements related to a new charter school application notice of intent; the SPCSA's new charter school application window; the contents of a new charter school application; the review process that the SPCSA undertakes regarding new charter school applications, including outside reviewers; conflict of interest policies for outside reviewers; the ability of a new charter school applicant to withdraw their application; the SPCSA's Executive Director's recommendation to the SPCSA board regarding whether to approve or deny a new charter school application; and the criteria under which the SPCSA board may approve or deny a new charter school application.</p>	<p>Clarify and streamline.</p>	<p>NAC 388A.260 deals with a myriad of issues, from the timing and contents of a new charter school applicant's notice of intent to submit a new charter school application to the SPCSA, the timing and contents of the actual new charter school application, to the review and criteria related to the SPCSA's review of the new charter school application, the SPCSA's Executive Director's recommendation to the SPCSA board regarding a new charter school application, and the criteria related to the SPCSA's board's decision whether or not to approve a new charter school application. This charter school regulation can be clarified and streamlined, particularly sections 9 through 11 deal with the SPCSA's criteria for evaluating the capacity of an applicant and the actions taken following the approval of a new charter school application.</p>

Regulation	What the regulation does	Why it can be eliminated, clarified, or streamlined	Notes
NAC 388A.400	The SPCSA-specific regulation deals with charter contract amendment requests.	Clarify and streamline.	NRS 388A.276, 279, and 282 governs requests to amend a charter school contract, regardless of whether the charter school is sponsored by the SPCSA or a local school district. NAC 388A.305 through 340 also govern the amendment process for a charter school contract for SPCSA and local school district sponsored charter schools. However, NAC 388A.400 only applies to charter school contract amendment requests related to SPCSA-sponsored charter schools, and this regulation, along with the nine NDE charter school amendment regulations, can be simplified and clarified, particularly sections 1, 2, 7, 9, 10, 12, and 14 which deal with the processes for application and approval of various types of requests for charter contract amendments (see below regarding the NDE charter school regulations).
NAC 388A.415	Governs charter school contract renewal requests submitted to the SPCSA.	Clarify and streamline.	This regulation related to charter school renewal applications for SPCSA-sponsored charter schools, contains 16 separate sections, and numerous subsections. This regulation can be clarified and streamlined, particularly sections 1 which deals with the contents of the renewal application, sections 5-11 and 13 which deal with the process for evaluating and making a determination as to whether to renew a charter contract, and section 14 which addresses certain circumstances where a renewal application is denied.

As noted above, the vast majority of the charter school regulations contained in NAC Chapter 388A are charter school regulations adopted by NDE. These charter school regulations relate to new charter school applications; charter school amendment requests; revocation and termination, and closure of charter schools; and facilities, operations, and personal requirements at charter schools. These charter school regulations are adopted by NDE – and not the SPCSA – but these charter school regulations apply to both SPCSA and local school district sponsored public charter schools. As a result, the SPCSA has been in communication with NDE regarding opportunities to eliminate, clarify, and simplify NDE’s charter school regulations that are contained in NAC Chapter 388A.