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**BEFORE THE STATE PUBLIC CHARTER SCHOOL AUTHORITY**  
**STATE OF NEVADA**

In Re:

Nevada Connections Academy Notice of  
Closure or Possible Board Reconstitution

Hearing Date: May 25, 2017  
Hearing Time: 8:00 AM

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**FIRST SUPPLEMENT TO NEVADA CONNECTIONS  
ACADEMY'S PREHEARING BRIEF**

10 Nevada Connections Academy ("NCA"), by and through their undersigned counsel,  
11 Davis Graham & Stubbs LLP, hereby supplements its prehearing brief for the May 25, 2017  
12 hearing in this matter. Detailed data analysis validated by a qualified third party demonstrates  
13 that NCA is performing well in all measurable indicia of academic performance. This thorough  
14 evaluation supports that Staff's insistence that this K-12 school be closed based solely on a  
15 single data point, the four year cohort graduation rate – which NCA demonstrates is severely  
16 impacted by its acceptance of credit deficient students from other high schools – is arbitrary,  
17 capricious, and in violation of Nevada law. NCA has demonstrated through validated data that if  
18 students who came to NCA credit deficient (49% of the 2016 cohort) are not counted as non-  
19 graduates against NCA, the school's graduation rate is 62.2% -- above the trigger for the instant  
20 closure proceedings. Equally important, it is unconscionable that a State Agency Director would  
21 be so flippant in eliminating a school choice (*see, e.g.*, Exhibit 3) for more than 3,200 Nevada  
22 students – where a majority of the high school students coming to NCA credit deficient are  
23 economically disadvantaged -- without so much as taking the time to provide any meaningful  
24 look at the relevant information or attempting to collaborate with the school on solutions and an  
25 acceptable "cure."

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**I. The Authority has Violated its Statutory Duty to Assist NCA in Developing a Cure,  
Providing NCA Explicit Guidance Regarding How to Cure, and Allowing NCA  
Time to Implement that Cure**

1                   **A. The Authority is Statutorily Required to Cooperate with NCA on Developing**  
2                   **a Cure**

3                   NCA has repeatedly demonstrated its commitment to working with the State Public  
4 Charter School Authority (“SPCSA” or “Authority”) to draft a “cure” that will obtain the  
5 Authority’s approval, as evidenced by the thorough cure proposal NCA submitted on December  
6 2, 2016, and which NCA recently revised to incorporate feedback from the Authority Staff.

7                   Likewise, the Authority must fulfill its obligation to collaborate with NCA on an  
8 acceptable cure, and has largely disregarded that obligation thus far.<sup>1</sup> The Nevada Legislature  
9 provides that the Authority’s purpose includes to “[s]erve as a model of the best practices in  
10 sponsoring charter schools and foster a climate in this State in which all charter schools,  
11 regardless of sponsor, can flourish.” NRS 388A.150(3). Further, the Authority must take certain  
12 enumerated measures to “assist charter schools in achieving their academic, fiscal and  
13 organizational goals” under NRS 388A.171(1), and must base various decisions as an entity, in  
14 part, on the “needs of the charter schools” it sponsors. *See, e.g.*, NRS 388A.199(3).

15                   The Authority must appoint an Executive Director who will “[e]nsure that the **autonomy**

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17 <sup>1</sup> As NCA outlines in both its prehearing brief and its most recent proposed cure as submitted  
18 March 24, 2017 (*see Exhibit 1*, hereinafter “Proposed Cure” (attached without exhibits), NCA  
19 reached out to Mr. Ott via email after issuance of the first notice of closure (“Notice”) to  
20 cooperate regarding a proposed cure. *See, e.g.*, Exhibit 1 to Proposed Cure (previously filed with  
21 the Authority). After repeated efforts, Mr. Ott responded to NCA that he did not believe the  
22 Authority was obligated to “tell the school how the deficiency may be cured.” Exhibit 2 to  
23 Proposed Cure (previously filed with the Authority). Without the benefit of any guidance from  
24 Authority Staff, NCA prepared a proposed cure and submitted it to Mr. Ott on November 14,  
25 2016. Unfortunately, NCA received no response from Mr. Ott until November 29, 2016, at  
26 which time he stated that Staff did not think it was a cure because it required action by the  
27 Authority. On November 30, 2016, NCA requested a meeting with Authority Staff to obtain  
28 guidance and feedback from Authority Staff on NCA’s proposed cure. Mr. Ott advised NCA  
that Patrick Gavin would not speak with NCA about the cure during the cure period leading up to  
the December hearing. *See Exhibit 3 to Proposed Cure.*

24                   Therefore, and again absent the benefit of guidance from Staff, NCA proposed to “cure”  
25 the deficiency identified in the Notice of Closure issued in September 2016 in a letter to  
26 Authority Staff in December (previously filed with the Authority).<sup>1</sup> In the Authority Staff’s  
27 prehearing brief submitted prior to the December closure hearing, Staff’s sole criticism of the  
28 proposed cure was that certain measures had not been approved by the NCA governing board. In  
response, the NCA board reviewed and approved the provisions at its January 2017 board  
meeting. Following NCA board approval, NCA again requested feedback from Staff. Staff  
raised additional questions, to which NCA was actively responding at the time it submitted its  
most recent Proposed Cure on March 24, 2017.

1 provided to charter schools in this State pursuant to state law and regulations is preserved.” NRS  
2 388A.196(4). The sponsor of a charter school must develop policies and practices that are  
3 consistent with state laws and regulations governing charter schools that must include, in  
4 relevant part, “[a] description of how the sponsor will maintain oversight of the charter schools it  
5 sponsors, which must include, without limitation ... [a]n assessment of the needs of the charter  
6 schools that are sponsored by the sponsor that is prepared with the input of the governing bodies  
7 of such charter schools[,] and... [a] strategic plan for the oversight and provision of technical  
8 support to charter schools that are sponsored by the sponsor in the areas of academic, fiscal and  
9 organizational performance.” NRS 388A.223(2)(f).<sup>2</sup> Additionally, the sponsor of a charter  
10 school is required to “[p]rovide reasonable assistance to . . . a charter school in carrying out the  
11 provisions of this chapter” and to “[p]rovide technical and other reasonable assistance to a  
12 charter school for the operation of the charter school.” NRS 388A.226(1)(a)-(b). The Authority  
13 may employ Authority Staff to assist in carrying out these responsibilities. NRS 388A.119. The  
14 Nevada Legislature considers a charter school sponsor’s “material or persistent failure” in this  
15 regard as “grounds for revocation of the entity’s authority to sponsor charter schools.” NRS  
16 388A.223(3). Regrettably, the Authority Staff has consistently refused to comply with any of  
17 these statutory obligations and instead has demonstrated an unwavering but inexplicable desire to  
18 close NCA or reconstitute its governing board based solely on a single data point – the four year  
19 cohort graduation rate – without regard to why that rate is so low (i.e. – that NCA is serving a  
20 large population of students who came to NCA credit deficient and who are economically  
21 disadvantaged) and despite the evidence that demonstrates the school is performing well in every  
22 other identifiable measure of academic performance.

23 Nevada law establishes that a school shall have the opportunity to cure even when the  
24 notice of closure is based on the high school graduation rate – yet to date, the only acceptable  
25 cure agreeable to Authority Staff is a contract forcing NCA to waive important rights to judicial

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27 <sup>2</sup> As NCA notes in its prehearing brief, the Authority Staff has failed to fulfill its obligations  
28 under this subsection. *See* NCA Prehearing Brief, at 9 n.15. This could be cured with  
appropriate direction from the Authority Board that Staff comply with the statute.

1 review. NCA has presented numerous substantively viable proposals to address the single data  
2 point of concern the Authority identifies – always attempting to address the issues that Staff has  
3 raised – but instead of working toward solutions, Staff simply rejects the proposed cure ideas.  
4 The Authority is statutorily obligated to assist NCA in understanding what Staff would require in  
5 an acceptable cure in light of closure proceedings against NCA. As a state-sponsored charter  
6 school, NCA turns to the Authority, and, by extension, Authority Staff, for guidance and  
7 assistance with its needs, which the Authority is statutorily obligated to provide. The Authority’s  
8 previous lack of cooperation with NCA, despite NCA’s good faith requests for feedback  
9 regarding what might constitute a sufficient cure, is in disregard of the needs of a charter school  
10 which the Authority sponsors – and the Authority’s statutory obligations as a sponsor. The  
11 Authority’s refusal to provide reasonable assistance to NCA in NCA’s attempt to cure its  
12 deficiencies violates NRS 388A.119 and NRS 388A.226(1)(a)-(b). Further, as the Authority has  
13 not complied with its duties to adopt a policy for reappointing a new governing board of a  
14 charter school under NRS 388A.223(1)(h), and a policy for maintaining oversight of the charter  
15 school which takes into account the school’s needs under NRS 388A.223(2)(f), NCA has no  
16 meaningful Authority-issued guidance to rely upon in its efforts to draft a cure. Nor does NCA  
17 have the benefit of the back and forth required through the intervention ladder this Authority  
18 adopted in the State Performance Framework – because unlike other schools, NCA was never  
19 provided a Notice of Concern, Notice of Breach or any other meaningful notice of collaboration  
20 before being put on an agenda for closure with no notice or communication. Finally, the  
21 Authority’s lack of cooperation fails to foster an environment in which NCA or other schools can  
22 be expected to improve, let alone “flourish,” subverting the Authority’s statutory purpose under  
23 NRS 388A.150(3).

24 **B. The Authority is Required by its Performance Framework to Cooperate with**  
25 **NCA in Drafting a Proposed Cure, and to Permit NCA Adequate Time to**  
26 **Implement the Steps Required to Cure the Breach**

27 As NCA has argued in previous filings, the Authority is obligated by its own Charter  
28 School Performance Framework to outline actions NCA may take to cure its graduation rate

1 deficiency, and allow the school adequate time to implement the actions required to cure the  
2 breach. *See* Exhibit D to Prehearing Brief (as filed March 24, 2017). The Performance  
3 Framework relates directly to the responsibilities that the Authority has assumed pursuant to  
4 NRS 388A.270(1)(a), which requires that the Authority incorporate the Performance Framework  
5 into a school’s written charter, rendering the Authority’s breach of its Performance Framework a  
6 statutory violation. *See* NCA Prehearing Brief, at 3.

7 The SPCSA’s Performance Framework outlines a rigid “Intervention Ladder” for charter  
8 schools at risk of closure. *See* Exhibit D to Prehearing Brief, at 6 (as filed March 24, 2017). “All  
9 schools begin outside of the intervention ladder and are considered to be in Good Standing,” but  
10 schools can enter “level 1” of the intervention ladder if concerns arise. *See id.* The Authority is  
11 required to first issue a notice of concern at “level 1,” a notice of breach at “level 2,” and finally  
12 a notice of intent to revoke charter or reconstitute board at “level 3.” *See id.* The notice of  
13 breach issued at level 2 **must outline the actions necessary to cure the breach**, and “[o]nce a  
14 notice of breach is issued, the Authority monitors the school’s implementation of the steps  
15 required to cure the breach.” *See id.* If the school does not cure after implementation of the  
16 steps outlined in level 2, then the Authority may conduct “**additional visits to the school** or an  
17 **in-depth audit** to assess financial and organizational health” as part of the level 3 issuance of a  
18 notice of intent to revoke or reconstitute. *See id.* This intervention ladder appropriately and  
19 clearly sets forth the detailed involvement, collaboration and review that is required by the  
20 Authority before it takes the high stakes action to issue a notice of intent to revoke. But, none of  
21 this occurred here.

22 The Authority has violated the Intervention Ladder outlined in its Performance  
23 Framework by bypassing crucial levels 1 and 2 and simply issuing NCA a notice of closure—  
24 with the first notice of closure issued in September 2016, and a second notice of closure issued in  
25 February 2017.<sup>3</sup> The Authority never issued a notice of concern or a notice of breach pursuant to  
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28 <sup>3</sup> Moreover, this was **after** the Authority board rejected Staff’s request in March 2016 to issue a  
notice of closure and instead directed NCA to prepare a Graduation Rate Improvement Plan,

1 levels 1 and 2. The last notice NCA received from the Authority prior to placing NCA on its  
2 February 22, 2016 agenda for a notice of closure (during the initial attempted closure  
3 proceedings) was a notice of good standing. *See* Exhibit C to Prehearing Brief (as filed March  
4 24, 2017). This procedural violation is both unexplained and inexcusable, and has resulted in  
5 NCA lacking guidance on the steps necessary to cure breach and assurance that it would have  
6 time to implement those steps—both of which are required as part of level 2. Moreover, the only  
7 direction NCA received – directly from this Board in March 2016 to prepare a graduation rate  
8 improvement plan – it followed with glowing approval and applause of the plan by this Board in  
9 May 2016.

11 Despite doing everything the Board and Staff have requested – other than agreeing to a  
12 contract that waives important rights to judicial review – NCA still is facing closure with Staff’s  
13 sole response being that they’re not statutorily obligated to assist the school in identifying an  
14 acceptable cure and with no substantive reason to close the K-12 school or concerns with school  
15 performance other than a single data point that evidence demonstrates does not reflect poor  
16 performance by NCA.

18 As a result, this harm is substantive in addition to procedural, as the Authority has  
19 refused to cooperate with NCA regarding what might constitute an acceptable cure, and has  
20 refused to allow NCA time to adequately implement NCA’s Graduation Rate Improvement Plan  
21 (“the Plan”), which it drafted and presented to the Authority in May 2016 following its March  
22 2016 decision to halt closure proceedings. *See* NCA Prehearing Brief, at 5-6. Despite progress  
23 evidenced by the early stages of implementation of the Plan and the Authority’s rave reviews of  
24 the Plan, the Authority has moved forward with closure proceedings—leaving NCA

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27 which NCA did and which, in May 2016 the Authority Board applauded – and NCA has  
28 successfully been implementing showing substantial improvement (which Staff refuses to  
consider).

1 dumbfounded with regard to what might constitute an acceptable cure, given that a notice of  
2 breach outlining actions regarding the same was never issued, and Authority Staff has rebuffed  
3 NCA's attempts to request guidance regarding the same. *See* Exhibit 1, Proposed Cure.  
4 Moreover, NCA notes that the SPCSA has not conducted NCA site visits pursuant to level 3,  
5 despite the gravity of closure for families and NCA staff. According to the plan, such visits  
6 "afford a sponsor with an opportunity to appreciate a qualitative aspect of the school not directly  
7 measured in ways other than observation or personal interaction"—a nuanced approach that the  
8 Authority has not taken here. *See* Exhibit D to Prehearing Brief, at 5.

10 The Performance Framework's stated objective is to "provide charter school boards and  
11 leaders with clear expectations, fact-based oversight, and timely feedback while ensuring charter  
12 autonomy." *See id.* at 1. Moreover, in addition to establishing performance criteria for charter  
13 schools, the Performance Framework aims to ensure that the Authority is accountable to charter  
14 schools for implementing a rigorous and fair oversight process that respects the autonomy that is  
15 vital to charter school success. *Id.* at 2. The same is echoed in the SPCSA's stated obligations to  
16 charter schools, adding that the Authority will place "[e]mphasis on student outcomes rather than  
17 compliance and process" and will "[p]rovide feedback to schools and communities indicating  
18 where schools stand relative to performance framework standards and expectations." *Id.* The  
19 SPCSA notes that any high-stakes decision, such as school closure, will involve "the collective  
20 record of a school's academic, financial, organizational and mission[-]specific performance." *Id.*  
21 at 7. Further, the SPCSA Performance Framework follows an annual timeline with the goal of  
22 setting "clear expectations for the Authority interaction with schools; while . . . standardizing the  
23 oversight process." *Id.* at 8. Additionally, the Performance Framework specifies that "[s]chools  
24 should contact the Authority at any time for additional support on and information about any of  
25 the Performance Framework components." *Id.* NCA has done so and consistently been told by  
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1 Staff's counsel that the Authority has no obligation to help the school identify an acceptable cure  
2 – other than to provide feedback which has simply been flat out rejection of all ideas without any  
3 effort to identify acceptable alternatives, other than a contract that waives the school's right to  
4 judicial review.

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6 Here, the SPCSA's conduct throughout NCA closure proceedings violates the spirit and  
7 purpose of the SPCSA's Performance Framework, which is replete with language obligating the  
8 Authority to cooperate with NCA on a mutually-acceptable cure that will allow the school a  
9 chance to succeed regardless of a single data point. The intervention ladder violations of the  
10 Performance Framework have neither set clear expectations for NCA, nor standardized the  
11 oversight process, as the Authority has complied with the Performance Framework when  
12 addressing concerns with other schools. NCA has also attempted to contact the Authority with  
13 questions regarding what might constitute a cure, as encouraged in the Performance Framework,  
14 and has been largely ignored. *See* Exhibit 1, Proposed Cure, at 1 (explaining that NCA reached  
15 out to the Authority's counsel, Greg Ott, immediately following the notice of closure issued in  
16 September 2016, received no response, and, upon follow-up emails, told NCA that he did not  
17 believe the Authority was obligated to "tell the schools how the deficiency may be cured" and,  
18 later, that Director Gavin refused to speak with NCA about the cure during the cure period.).  
19 Most recently, the Authority Staff's position has been that in order to fully engage in discussions  
20 about an acceptable cure NCA would be required to enter into a rigid confidentiality agreement  
21 that would prevent NCA from discussing any documents, discussions or options with anyone –  
22 as opposed to the typical provisions of inadmissibility under NRS 48.105 which NCA freely  
23 offered. Finally, the Authority is not fulfilling its obligation to emphasize student outcomes  
24 rather than compliance and process—as NCA has demonstrated success in educating at-risk and  
25 credit-deficient students who have dropped out of other academic institutions and turned to NCA  
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1 as their last hope. See **Exhibits 3 & 4**, Parent and Student Declarations & Garza Validation  
2 Reports. A thorough and fair evaluation of NCA— rather than focusing simply on a graduation  
3 rate calculated with no regard to Nevada law—would yield the conclusion that NCA is not  
4 underserving its students. Instead, it provides a necessary, innovative, and unmatched  
5 framework that allows these students to graduate in the face of adversity.  
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7 Lastly, NCA finds it worthy to note that Appendix A to the Performance Framework  
8 provides detailed academic performance indicator descriptions—breaking out expectations for a  
9 school based on its status as an elementary, middle, or high school—and offering entirely  
10 different expectations for the latter. *Id.* at Appendix A.

11 NCA has argued that the Authority may not institute closure proceedings for a single K-  
12 12 charter based solely on the performance of the high school's four-year cohort. See, e.g., NCA  
13 Prehearing Brief, at 11. The SPCSA's different expectations and different treatment of  
14 elementary, middle, and high schools as documented in the Performance Framework reinforces  
15 the validity of NCA's argument.  
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17 Going forward, NCA asks that the Authority and Authority Staff cooperate with NCA on  
18 a proposed cure, per its statutory obligation to do so.

## 19 **II. The Authority's February Notice Violates Nevada Open Meeting Law**

20 The Authority violated Nevada's Open Meeting Law in issuing its notice of intent to  
21 reconstitute NCA's board on February 10, 2017.<sup>4</sup>  
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23 The Nevada Open Meeting Law requires that all meetings of a public body such as the  
24 SPSCA be open and public and "written notice of all meetings," including an agenda listing all  
25 items on which action may be taken, "must be given at least 3 working days before the meeting."  
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27 <sup>4</sup> The instant Open Meeting Law violation comes on the heels of a previous open meeting law  
28 violation associated with the SPCSA's September 30, 2016, notice of closure. See Prehearing  
Brief, at 15.

1 NRS 241.020(1)-(2). Action of any public body, such as the SPSCA, "taken in violation of any  
2 provision" of the Nevada Open Meeting Law "is void." NRS 241.036.

3 On February 10, 2017 (amended February 14, 2017), the SPCSA issued a notice of intent  
4 to revoke NCA's written charter or reconstitute NCA governing body—the latter of which could  
5 be effective immediately upon the Authority's decision following a public hearing. See Exhibit  
6 SS to NCA's Disclosure of Exhibits (submitted May, 25, 2017). Therein, the SPCSA states that:

8 At the January 27, 2017 meeting of the State Public Charter School Authority  
9 Board, the Authority Board received information regarding the 2015-2016  
10 graduation rate of Nevada Connections Academy. The Authority Board then  
11 directed staff to issue this Notice pursuant to NRS 388A.330(1)(e) ("Notice of  
12 Intent") based on having a graduation rate for the preceding school year that is  
13 less than sixty (60) percent. This Notice of Intent is issued pursuant to NRS  
14 388A.330(2).

15 See *id.* However, the January 27, 2017 SPCSA agenda referenced only potential closure of  
16 NCA, not reconstitution of NCA's governing body. See **Exhibit 2**. Therefore, NCA had no  
17 proper notice of potential reconstitution as required under Nevada Open Meeting Law, and the  
18 Authority's issuance of the February 10, 2017 notice is therefore void as it relates to potential  
19 board reconstitution.

20 Respectfully submitted this 18<sup>th</sup> day of May, 2017.

21 DAVIS GRAHAM & STUBBS LLP

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**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Davis Graham & Stubbs LLP and not a party to, nor interested in, the within action; that on May 18, 2017, a true and correct copy of the foregoing document was served as listed below:

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