

# PROPOSED REGULATION OF THE STATE PUBLIC CHARTER SCHOOL AUTHORITY

## LCB File No. R088-16

AUTHORITY FOR REGULATION: NRS 388A.229(4)

9 AM Workshop:

Topics:

Definitions of key contractual and performance framework terms, including indicators, metrics, and measurements; Clarification of the interaction between contractual charter documents and regulations of general applicability; Accountability requirements for multi-campus schools for the purposes of reporting and evaluation, including whether school will be classified as multi-campus for the purposes of transparency and accountability and the possible conversion from multi to single campus and vice versa; Policy for appointing a new governing body of a charter school which is reconstituted in accordance with NRS 386.535 and SB509; Policy, procedures, and criteria for reconstitution, restart, and revocation/termination decisions;

Any policy or requirement incorporated into or applying to a charter contract is not considered a rule of general applicability and is not subject to the Administrative Procedures Act.

### *Definitions:*

#### *Charter School*

*A charter school is an political subdivision that holds a charter contract or written charter with a sponsor. It may operate an elementary, middle, or high school program or a special school program or any combination of these elements.*

*A charter school is overseen by a governing body, which generally hires a Chief Executive Officer, Executive Director, Head of School, or equivalent, to run the school and/or contracts with a management company. A school may either operate a single campus or multiple campuses. A charter school has a unique identifier from the Department of Education.*

#### *Single-Campus School*

*A single-campus school operates a distinct grade range with a single school leader responsible for the academic program for the entire grade span of the campus. A single-campus school has distinct goals to measure progress and attainment based on the performance framework for the charter school. Students matriculate from one grade to the next in a clear progression that does not require internal lotteries. A single-campus may have a distinct grade-span, such as early childhood, elementary, middle, high school, adult education, or it may include a combination of the above (e.g. prekindergarten through 8th). A single-campus school may operate in multiple facilities, especially during times of transition and growth. A single-campus school will have an identifier and a grade level identifiers assigned to it by NDE.*

### ***Multi-Campus School***

***A multi-campus school operates two or more campuses under one charter and each campus has at least one unique campus identifier assigned to it by NDE. A multi-campus school may operate multiple campuses that each offers the same grade span. It may also operate multiple campuses each with different grade spans, whether in the same or different facilities.***

### ***Facility***

***A facility is a building that houses a part of a campus, an entire campus, or multiple campuses. It may be temporary or permanent. A school may operate a single-campus among multiple facilities, or a school may operate multiple campuses in one facility.***

***The SPCSA performance framework comprises indicators, measures, and metrics in the areas of academics, finance, and organization. This structure has been adapted from a report by the National Consensus Panel on Charter School Academic Quality.***

- Indicators are defined as “general dimensions of quality or achievement.”***
- Measures are defined as “general instruments or means to assess performance in each area defined by an indicator.”***
- Metrics are defined as “the calculation method or formula for a given measure.”***

***Any updates to the SPCSA PFs, including changes in state assessments, performance indicators, floors, targets, and formulas will be automatically updated and accepted by the school without requiring a charter amendment. The Board has the Authority to adopt and mandate parallel assessments for schools at its sole discretion. To the extent possible, PCSA PMF updates will be vetted by an advisory task force that comprises school leaders, charter advocates, and SPCSA staff. Membership in such task forces will be limited to charter schools which have been in good standing under the current SPCSA PMFs for at least two consecutive years. The SPCSA Board, at its discretion, may forgo assembling such task forces in the event that an NDE or SBOE policy, change in law or regulation, or an unforeseen circumstance necessitates an immediate change in the interest of public transparency and accountability and the fulfillment of the Authority’s statutory obligations. In such a circumstance, the SPCSA may, at its discretion, convene an advisory task force to recommend permanent changes to a PF. All PF updates will be made by the SPCSA board in a public vote. Charter schools with mission-specific goals are encouraged to include these as supplemental goals and academic achievement expectations which must supplement and not supplant the SPCSA PMFs. All such mission-specific goals must be measurable and feasible to assess objectively by either SPCSA staff or a third-party evaluator contracted with the SPCSA.***

***Pursuant to SB509 (and aligned language in SB92), schools are low-performing if they do not meet any one of a number of academic performance thresholds defined in law and regulation. To ensure alignment with SB509, schools which currently fail to meet any academic performance threshold set forth in statute or regulation are subject to a Notice of Closure***

*under the Authority intervention process and subject to reconstitution or revocation/termination followed by possible restart.*

#### *Aggregation and Disaggregation Policy*

*A Charter school will have a unique identification number and EACH campus it runs will have a distinct and unique campus identification number. Each campus must have separate performance, attendance, and discipline data that it reports under its distinct and unique identification number to the sponsor and on federal and state reports. Accordingly, each campus will be evaluated against specific goals and academic achievement expectations as detailed in the school's performance framework. Additionally, each sponsor will evaluate a school in its entirety based on a weighted average of the academic performance of each campus and grade level configuration.*

*Each campus must have a distinct academic leader who reports to the head of school and is responsible for its staff. Students from one campus may matriculate to another campus of the same school automatically with priority over new applicants. If there are insufficient spaces, a campus may hold, prior to an external lottery, an internal school lottery for students from another or other campus(es). New students apply to each campus through a separate application and lottery process.*

#### *Applying For Multi-Campus Status*

*A public charter school may apply to a sponsor to operate multiple campuses if each campus meets the criteria above. A sponsor may also require the school to operate as multiple campuses at its discretion. Once a school is considered a multi-campus school, the charter contract must be amended to include the campus name, grade levels served (or to be served at full capacity), and its location. It shall also be amended to allow the sponsor to close just one campus or assign it to a new operator based on the academic performance of the campus or a reported grade level configuration at the campus.*

#### *Applying to Convert from Multi-Campus to Single Campus Status*

*If a multi-campus school changes its operating structure to meet the definition of a single campus school, it may apply to the sponsor for single-campus status. However, if a school has received federal startup funding for a campus within the most recent five years, it cannot combine the campus with another campus that has never received federal startup funding.*

*The Authority will issue separate Academic Frameworks for each grade level configuration identified in the current statewide system of accountability (e.g. elementary/middle/high school) at each campus, as well as an aggregated framework score for each campus, for all students in the school within a grade level configuration, and for the school as a whole.*

*For the purposes of auto-closure at a single campus status school, the Authority will consider 1 star ratings at any grade level or combination of grade levels as grounds for automatic closure. For the purposes of auto-closure at a multi-campus status school, the Authority will consider 1 star ratings at any grade level or combination of grade levels at a single campus as grounds for automatic closure of that campus. The authority may assign the campus to a new operator under the reconstitution provision at its discretion.*

***Definitions: Educational and Charter School Terminology and Authorizer Actions***

***The Elementary and Secondary Education Act (ESEA): One of several civil rights era laws related to education, the ESEA provides for federal funding to support schools in serving certain high needs populations, including students living in poverty (i.e. Title I of the ESEA). Most recently reauthorized by Congress as the No Child Left Behind Act of 2001 (NCLB). NCLB built on the prior reauthorization, the Improving America's Schools Act (IASA), by requiring each state to adopt a statewide testing system in grades 3-8 and in high school which was aligned to the standards adopted by states pursuant to IASA and George H.W. Bush's Goals 2000 initiative. For the first time, public schools were required to disaggregate student achievement data by subgroup, including but not limited to by race, ethnicity, poverty status, and disability status. Schools were expected to make "Adequate Yearly Progress" both as a whole and across each subgroup to meet a set of proficiency goals and there were a variety of sanctions and interventions required for schools which did not meet their targets.***

***Individuals with Disabilities Education Act (IDEA): A second major education rights law, IDEA provides for students with disabilities to receive a Free and Appropriate Public Education (FAPE). IDEA is the primary federal law requiring special education services.***

***Section 504 of the Rehabilitation Act: A third major education rights law, Section 504 requires that entities receiving federal funds, including public school systems, cannot discriminate against students with disabilities. The definition of disability is significantly broader in Section 504 than in IDEA and includes temporary or permanent physical disabilities and other disabilities that do not necessarily require special education services.***

***Local Education Agency (LEA): As defined in ESEA, a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools. All of Nevada's county school districts are deemed local education agencies based on state tradition.<sup>1</sup>***

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<sup>1</sup> Based on a keyword search of the Nevada Revised Statutes, the only reference to Local Education Agencies in Nevada law lies in three places: the section of NRS 386 related to the SPCSA; 2015's AB448, which created the Achievement School District; and a section of NRS 392C dealing with the Interstate Compact on Educational Opportunity for Military Children that clearly mirrors language from model legislation from other states. Following a similar search, the term does not appear to exist anywhere in the Nevada Administrative Code. Unless the term Local Education Agency was recently amended out of statute or regulation, it would appear that the only restriction on charter schools serving as their own LEAs and being treated as district equivalents prior to 2011 was NDE tradition and a staff or SBOE decision to restrict the definition of LEA to county school districts in the state's applications for ESEA funding.

*Nevada State Board of Education (SBOE): the statewide decision-making body for most K-12 policies, including testing and eligibility for status as an alternative school and the framework for alternative schools. The SBOE has authority to adopt some regulations and policies which impact charter schools and the SPCSA in its authorizer and LEA roles.*

*Nevada Department of Education (NDE): Nevada's state education agency, which is headed by the State Superintendent of Public Instruction, one of Nevada's constitutional officers. The State Superintendent is appointed by the Governor. NDE has authority to adopt some regulations and policies which impact charter schools and the SPCSA in its authorizer and LEA roles.*

*Charter school authorizer: an entity which is empowered by law to approve, oversee, and close charter schools. Also termed a "sponsor."*

*State Public Charter School Authority (SPCSA): A statewide charter school authorizer created in the 2011 Legislative Session. The SPCSA earned authority to adopt regulations related to its internal processes and policies, including school accountability, in the 2015 Legislative Session. It took over authority for some regulations and duties previously held by the SBOE and it can adopt parallel regulations which differ in varying degrees from those of the SBOE and NDE in key areas, including applicant approval, oversight, and school accountability. Pursuant to NRS 386.513, the SPCSA serves as the Local Education Agency for the purpose of distributing federal funds to its charter schools and to any charter school which may be authorized by a Nevada System of Higher Education (NSHE) institution in the future. Both based on the federal definition and on the specific limits of its LEA role in NRS 386.513, the SPCSA is neither a school district nor a district equivalent. In the Nevada context, the SPCSA's role as an independent state agency, an LEA, and a portfolio authorizer is sui generis.*

*Achievement School District (ASD): A statewide charter school authorizer created in the 2015 Legislative Session. The ASD is an independent division of NDE which has the authority to convert low-performing traditional public schools to achievement charter schools. While the ASD is nominally a school district, the charter schools it sponsors will be their own LEAs and will be able to access federal funding directly from NDE.*

*Charter Contract: a legal agreement between a charter school and its authorizer. Created by NRS 386.527 (AB205 of the 2013 Session). A charter contract is required of all charter schools which open or are renewed after July 1, 2013. SB509 of the 2015 Legislative Session permits an authorizer to require that a charter school agree to an amended and restated charter contract if it seeks to amend its written charter or charter contract.*

*Written Charter: an agreement between a charter school and its authorizer consisting of the text of the original charter application and all subsequent amendments. The written charter is a legacy legal concept which will cease to exist on or before December 31, 2019 as charter*

*schools which operate under written charters will either cease to operate due to closure, amendment and restatement, or approval by a charter school authorizer to operate under a charter contract via a transfer to another authorizer or approval of a renewal application.*

*ESEA Waiver: A policy of the current US Department of Education to waive key provisions of NCLB for states which agreed to comply with a series of conditions imposed by the federal government. The state currently operates under an ESEA waiver, which has been amended several times.*

*Nevada School Performance Framework (NSPF): The statewide system of accountability adopted in parallel with the ESEA waiver, the NSPF, aka the “star system,” ranks schools into five tiers of performance based on both student growth and the overall percentage of students meeting standards. The NSPF has been paused for the 2014-15 school year due to changes in testing and will likely be paused again in 2015-16 as a result of the statewide testing irregularity in the spring of 2015. This second pause in the NSPF will also require approval from the USDOE and an amendment to our current ESEA waiver. The NSPF is currently being revised to what has been dubbed NSPF 2.0 by NDE with input from an advisory group which includes representation from the SPCSA and NSHE. Pursuant to SB460, the NSPF will be expanded to include a parallel framework for alternative schools. That parallel framework is described herein as the TBD Alternative NSPF.*

*Charter School Performance Framework: NRS 386.528, a section of AB205 of the 2013 Legislative Session, requires that each charter school authorizer develop a performance framework in the areas of academic, financial, and organizational performance for all schools in its portfolio. The framework must be incorporated into the charter contract. The SPCSA adopted the State Public Charter School Authority Performance Framework (SPCSA Performance Framework or SPCSAPF) in 2013. The current SPCSAPF includes an academic framework, a financial framework, and an organizational framework. The SPCSA academic framework is considered a national model by many observers and is viewed as more rigorous, nuanced, and comprehensive than the current NSPF. Due to multi-year data issues with the statewide system of accountability which informs some elements of the SPCSAPF, the Authority is currently consulting with counsel, NDE, and NACSA on technical revisions to ensure the enforceability of the academic framework in subsequent years. While an authorizer has the authority to develop custom performance frameworks for each school, budgetary limitations have necessitated the introduction of a single framework for all schools with some opportunities for schools to request and for the Authority to accept, reject, or modify rigorous, valid, and reliable mission-specific goals which complement or supplement, but do not supplant, those in the standard framework. Due to the comprehensive nature of the existing Authority framework and the high quality bar set for such goals, no school has requested adding additional mission-specific goals to date.*

*Intervention Ladder: the hierarchy of interventions that the SPCSA has the discretion and authority to take based on school performance. With the exception of those schools which are issued a Formal Notice in their charter contract at the time of renewal, all schools enter the Intervention Ladder in Good Standing. Schools typically enter the intervention ladder via a Notice of Concern. From a contractual perspective, a Formal Notice in the charter contract is also deemed to be a Notice of Concern. This is an initial warning related to the school's performance in the domains of academics, finance, and organizational performance. Schools which persist in having academic, financial, or performance issues or those that commit a serious violation or are found to have multiple violations in a particular domain are served with a Notice of Breach. Schools with further violations or those who commit such severe initial or ongoing violations that statute or policy demands immediate action will be served with a Notice of Closure.*

	<i>Traditional SPCSA Performance Framework Intervention</i>	<i>SPCSA Contractual Intervention As Condition of Renewal</i>
<i>Level 1: First Offense OR Contractual Formal Notice of Prior Non-Performance</i>	<i>Notice of Concern</i>	<i>Formal Notice → Notice of Concern</i>
<i>Level 2: 2nd Offense OR Serious/Multiple First Violation</i>	<i>Notice of Breach</i>	<i>Notice of Breach</i>
<i>Level 3/3rd Offense OR Severe First Violation</i>	<i>Notice of Closure</i>	<i>Notice of Closure</i>

*A school which improves its performance to the satisfaction of the Authority exits the Intervention Ladder and returns to Good Standing.*

***Definitions of Recent Statutory and Contractual Innovations:***

*Existing law and SB509 and SB460 provide for several accountability actions by authorizers due to academic, organizational, or financial performance issues for schools under written charters or charter contracts:*

*Non-Renewal: The authorizer decision to end a written charter or charter contract at the end of a six year charter term following the evaluation of an Application to Convert a Written Charter to a Charter Contract or an Application to Renew a Charter Contract.*

*Revocation/Termination: The revocation of a written charter or the termination of a charter contract resulting in the closure of a school and the dissolution of the legal entity. Revocation of a written charter or termination of a charter contract is based on a vote cast by the Authority Board following the issuance of a Notice of Closure by staff based on delegated authority pursuant to policy or based on a direct board vote. For a school with persistent or serious performance issues which the SPCSA deems merit closure, the Authority may issue a Notice of Closure and vote to close the school during or at the end of the academic year without accepting or reviewing an application for renewal.<sup>2</sup> The issuance of a Notice of Closure triggers a 30 day statutory Cure Period during which a school may make efforts to improve its performance. The Authority has no legal obligation to provide a school with guidance as to what actions may result in a decision to allow ongoing operation. Pursuant to statute, a school and an authorizer can negotiate a shorter or longer cure period, but the authorizer has no obligation to give a school additional time to take corrective actions.*

*Auto-Closure: Pursuant to AB205 (2013), SB460, and SB509, an authorizer is required to revoke a written charter or terminate a charter contract after a school has performed at the 1 Star level in any three years out of a five year period beginning in 2013-14 and excluding the 2014-15 school year. Due to the requirements of current law and the status of the statewide system of accountability, it is unlikely that any school will be eligible for auto-closure until the end of the 2017-18 school year. Initially, auto-closure was termed the 3 strikes rule as it was originally approved by the governor as a provision requiring closure in the event of three consecutive years of 1 star performance. Auto-closure is mandatory for schools that perform at such low levels. SB509 also provides that an authorizer may aggregate star rating calculations across school levels (elementary/middle/high school) or look at the performance of different school levels over the five year period in making a determination of persistent underperformance for the purposes of invoking the auto-closure provision or otherwise making a closure decision.*

*Restart: a school which has its written charter revoked or its charter contract terminated may be restarted by an authorizer. This permits students to re-enroll in a new school which has no legal ties to the previous school. Burdensome contracts and leases cease to exist.<sup>3</sup> If the authorizer determines there are multiple high quality operators which are qualified and interested in operating the school, parents may be asked to cast an advisory vote to recommend their preferred operator, which will give preference to students previously enrolled.*

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<sup>3</sup> Created in SB460, restart is a new policy which is subject to regulation by NDE to provide, among other things, for students from the closed school to have first preference to enroll in a restarted school serving the same grade levels.

*Alternately, the revocation or termination may result in a situation where another operator elects to negotiate directly with the landlord or lienholder to assume the lease or deed and operate a new charter school or charter school campus with an entirely new student body. Under circumstances where the new operator does not offer a program at the grade levels served by the closed charter school, the Authority would oversee the transfer of those students to other schools by the governing body of the closed charter school.*

*Reconstitution: The authorizer-imposed restructuring of the governance of a charter school. This may include either the replacement of all or almost all of a board's membership with a new board members or the replacement of the full governing board with the governing board of another school which would operate that school as an additional campus or campuses. Contracts and leases typically continue, except for those which are required to end based on statute or regulation or those a governing board elects to terminate in accordance with the terms. If the sponsor determines there are multiple high quality operators which are qualified and interested in operating the school, parents may be asked to cast an advisory vote to recommend their preferred operator. After a school is reconstituted and the governing body is replaced by the governing body of another school, the new governing body can petition the authorizer to amend its written charter or charter contract to consolidate the operations of the reconstituted school into those of the surviving school.*

#### *Contractual Provisions:*

*While the broader set of authorizer actions defined in statute pertain to both schools under written charters and those under charter contracts, the innovation of the charter contract has introduced additional authorizer actions and options which may be implemented when they do not conflict with a statutorily mandated action, such as auto-closure. Most notably, the SPCSA pioneered the innovation of the High Stakes Review, a provision which typically blends both a formal notice at the time of renewal or amendment and restatement with an accelerated timeline for review and the issuance of a high stakes decision which is subject to the provisions of contract law instead of the broader set of statutes and regulations that govern actions which are driven by statute instead of the contract. Under such circumstances, the school explicitly agrees to abide by the decision of the authorizer with regard to revocation/termination or renewal.*

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*Within some statutory limits, the SPCSA Board has and should retain broad discretion regarding whether to reconstitute or to revoke/terminate a school and then subsequently restart it or not. To inform the SPCSA Board of all appropriate options, ensure that the process is effective at improving the overall performance of Authority schools, and that all SPCSA students have access to a high quality public school choice, as defined by state law and the SPCSA performance framework, staff recommends the following supporting policies and processes:*

*Contractual Disclosure and Reconstitution Limitation Policy: All schools which are scheduled for renewal or have received a Notice of Concern, Breach, or Closure will be required to submit a list of all contracts in excess of \$25,000. The submission will identify the contracting parties, the reason for the contract (including if it is a contract with an EMO), the annual amount, the expiration date of the contract, and any exit or termination clause. Staff recommends that any school which the Authority determines has a management contract which does not comply with the SB509 termination requirement in the event of reconstitution be ineligible for reconstitution. This is a critical component of both the Closure Decision-making Process and the Reconstitution and Restart Review Cycle.*

*Policy Providing for Notice of Closure to Trigger Reconstitution RFP Process: To maximize the opportunity for current Nevada schools and out-of-state CMOs to provide a seamless transition for students and families, staff recommends that the SPCSA Board authorize staff to begin a Reconstitution RFP process immediately following a staff determination that a school must be served with a Notice of Closure pursuant to law, regulation, or policy as well as immediately following any Board action to exercise its own authority to serve a school with a Notice of Closure absent staff action, e.g. in the event that the Board votes to revoke or terminate as a result of a high stakes review identified in a charter contract. In the event that the policy preventing reconstitution in the case of non-compliant management agreement ultimately precludes reconstitution, SPCSA staff will work with respondents to the RFP to determine if restart under a new lease in the same building or a nearby facility is a viable*

*option which it can recommend to the SPCSA Board. This is a critical component of both the Closure Decision-making Process and the Reconstitution and Restart Review Cycle.*

*Policy Providing for Rescission of a Vote to Revoke or Terminate in Favor of Reconstitution with a The Board of a New School or a CMO and for Rescission of a Vote to Reconstitute in Favor of a Vote to Revoke or Terminate: In the event that the SPCSA Board determines that a viable, high quality operator is able to take over a school before it ceases operation or in the event that a previously identified operator is unable to follow through on a reconstitution, the SPCSA Board must reserve the right to rescind its previous vote and replace it with the alternate high stakes intervention. This is a critical component of the Reconstitution and Restart Review Cycle.*