



September 18, 2020

VIA EMAIL ONLY (rebecca.feiden@spsca.nv.gov &  
publicinformation@spsca.nv.gov)

(775) 684-1601

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

Dear Director Feiden:

On March 14, 2020, you made a presentation to the board members of the Nevada State Public Charter School Authority regarding agenda item No. 4 during which you recommended that the board adopt the COVID-19 In-Person Learning Guidance to establish the conditions in which charter schools may provide in person instruction. After watching your presentation and reading the COVID-19 In-Person Learning Guidance as well as Governor Sisolak's *Road to Recovery: Moving to a New Normal*, it is my opinion that your presentation and recommendation was based on nothing more than your own irrational fear and nothing of actual substance. It is also my opinion that the board adopted the COVID-19 In-Person Learning Guidance without legal authority, and in a massive breach of public trust. It is the intent of this letter to expose the fraud you and the board have committed so that those affected by your actions may seek a repeal of the COVID-19 In-Person Learning Guidance so that the children enrolled in charter schools may be afforded a proper education.

Please accept this letter in accordance with NRS Chapter 239 as an Open Records Act Request.

**Please provide all records of communication that you had with Governor Sisolak's office regarding the *Road to Recovery: Moving to a New Normal* and/or the COVID-19 In-Person Learning Guidance. Please note that records of communication include, but is not limited to letters, facsimiles, emails, and notes or records of telephone calls.**

50 S. Jones Blvd., Suite 102, Las Vegas, Nevada 89107  
Telephone: (702) 514-0102, Fax: (702) 410-6396

You stated that your recommendation that in-person instruction be limited to “less than 25% of the school’s enrollment” based on Governor Sisolak’s *Road to Recovery: Moving to a New Normal*. Governor Sisolak’s *Road to Recovery: Moving to a New Normal* 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).” **Please provide records of anything you have in your possession or in your control (such as internet articles or anything else that you may have considered) that charter schools are “high-risk settings where face coverings may need to be removed (food establishment, pool, gym/fitness location, and bar).”**

According to Emergency Directive 028, “the Chief Medical Officer has reviewed the risk of transmission in Nevada and determined that schools may (sic) reopen subject to the conditions set forth in this Directive.” 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.” Interestingly, this section does not refer to Governor Sisolak’s *Road to Recovery: Moving to a New Normal*. In fact, Governor Sisolak’s *Road to Recovery: Moving to a New Normal* states that “Schools fall under a different criterion,” presumably referring to Emergency Directive 028. 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; a tracker that is supposed to be updated weekly but has not been made available to the public. **Please provide all records related to your compliance with Section 1 of Emergency Directive 028 prior to your August 14, 2020 recommendation that the Board adopt the COVID-19 In-Person Learning Guidance.**

Emergency Directive 028 Section 1 gives specific authority to “charter schools” with regard to “making determinations regarding delivering instruction through in-person, distance or hybrid learning models.” **Please provide any and all records that you have relied on in making your recommendation that the board usurp the authority granted to “charter schools” in “making determinations regarding delivering instruction through in-person, distance or hybrid learning models.”**

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 to you or to the State Public Charter School Authority. **Please provide records that you relied on that makes you think you or the board of directors of the State Public Charter School Authority are a "charter school leader."**

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*. Presumably, you have done extensive research regarding the viability of distance education as an alternative to hybrid or in-person education. **Please provide records that you relied on that makes you think that a distance education model will provide a proper education for every student that is enrolled in a charter school in Nevada.**

The COVID-19 In-Person Learning Guidance states that

The following criteria are established in the Road to Recovery: Moving to a New Normal as indicators of risk of elevated COVID-19 transmission.

1. Average number of tests per day (per 100,000) < 150
2. Case rate (per 100,000) > 200
3. Case rate (per 100,000) > 50 AND testing positivity > 7.0%

**As this criteria is the sole criteria that you intend to use to determine if hybrid or in person instruction is appropriate in any given location, please provide a record of the current numbers associated with each county in which a charter school is located.<sup>1</sup>**

Emergency Directive 028 Section 1 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." **Please provide records that correlate the criteria in the COVID-19 In-Person Learning Guidance with the recommendations of local public health officials.**

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<sup>1</sup> Governor Sisolak's *Road to Recovery: Moving to a New Normal* specifically states that "a collaboration between the Governor's Office, Department of Health and Human Services, and the Division of Emergency Management, have created a county tracker. This tracker will be updated at least weekly to monitor progress." The data from the tracker was last made available to the public on August 13, 2020.

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." According to OSHA (<https://www.osha.gov/as/opa/worker/danger.html>), 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. **Please provide records of the actual presence of COVID-19 in each of the schools for which you have mandated a distance learning model.**

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 of education models. I would be happy to review any documentation that you may have that suggests otherwise. **Please provide records that suggest that NRS 388A.397 or any other statute, rule, case, or anything else grants SPCSA authority to dictate what education model any particular charter school may use at any given time.**

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." This statute implies that the SPCSA 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<sup>th</sup> recommendation that the board adopt the COVID-19 In-Person Learning Guidance, you solicited and obtained reopening plans from each school pursuant to Emergency Directive 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. **Please provide records of the NOTICE that you provided to each school detailing the deficiencies in each reopening plan.**

If you deny any or this entire request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of appeal procedures available to me under the law.

You may comply with this request by emailing electronic copies of the requested documents to [jmaridon@maridonlaw.com](mailto:jmaridon@maridonlaw.com).

If you have any questions about this request, you may contact me by telephone at 702-514-0102 or email at [jmaridon@maridonlaw.com](mailto:jmaridon@maridonlaw.com).

Thank you for your consideration in this matter.

Sincerely,



Joseph R. Maridon, Jr.

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