

FILED
January 2, 2024
State of Nevada
E.M.R.B.
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3 Las Vegas, NV 89121

4 *Attorney for Petitioner*

5 **STATE OF NEVADA**
6 **GOVERNMENT EMPLOYEE-MANAGEMENT**
7 **RELATIONS BOARD**

8 CLARK COUNTY EDUCATION ASSOCIATION,
9 Petitioner,
10 vs.
11 CLARK COUNTY SCHOOL DISTRICT,
12 Respondent.

Case No.: 2023-010

**BRIEF REGARDING PETITION FOR CLARK
COUNTY EDUCATION ASSOCIATION'S
PETITION FOR DECLARATORY ORDER**

13
14 COMES NOW Petitioner, Clark County Education Association (“CCEA”), by and through its undersigned
15 counsel, and hereby files its Brief Regarding Petition for Declaratory Order regarding whether the terms and
16 conditions of incentive payments under NRS 387.1214 and NRS 387.12445 are subject to collective bargaining
17 under NRS 288.150.

18 **I. ISSUE**

19 Are the terms and conditions of incentive payments under NRS 387.1214 and NRS 387.12445 subject to
20 collective bargaining under NRS 288.150?

21 **II. INTRODUCTION**

22 The issue before this Board is a simple one. NRS 288.150 clearly makes compensation a mandatory subject of
23 bargaining. Incentive payments are indisputably a form of compensation. Nothing in SB 543 curtailed the right of a
24 labor organization to bargain the terms and conditions of mandatory subjects of bargaining and the legislative intent
25 of the statute clearly preserves collective bargaining rights. In fact SB 543 did not amend nor reference NRS 288 in
26 any way.

1 The interpretation offered by the Clark County School District (“CCSD”) that the statute intended to create a
2 slush fund for the schools and school districts to circumvent the collective bargaining rights of its employees would
3 create a result that was both absurd and out of harmony with laws of Nevada.

4 Contrary to what CCSD would have you believe, the lists of Zoom and Victory services found in NRS
5 387.12445 were not created by the Nevada Legislature to give schools and school districts a list of ways to
6 circumvent collective bargaining. The lists were created as a restriction on the schools and the school districts to
7 ensure that the weighted funding was spent on the pupils that it was designated for, specifically English language
8 learners (“ELL”) and at-risk students.

9 Similarly, the restriction that the weighted funds were not to be used to settle or arbitrate disputes with labor
10 organizations, settle negotiations with labor organizations, or to adjust the district wide schedule of salaries and
11 benefits served the same purpose. This restriction was to ensure that the weighted funding was used for ELL and at-
12 risk students, not to keep a labor organization from performing its duty to represent employees with regards to their
13 working conditions. The restriction as written prevents a labor organization from bargaining that the weighted
14 funding be used for health insurance, or for coaches stipends, or for to recoup adjustments to PERS as those uses
15 would not fall within the prescribed list of Zoom or Victory services and would not necessarily be for the direct
16 benefit of the ELL and at-risk students. The restriction would not prohibit a labor organization from bargaining the
17 terms and conditions of additional minutes, additional days, or incentive payments if the schools and/or district
18 chose to use the money for those purposes as those could all fall within the prescribed list of Zoom or Victory
19 services.

20 When looking at NRS 387 in its entirety its intent becomes clear. NRS 387 intended to tie money to students at
21 the school level while providing additional resources to those students with the highest need. To the extent that
22 collective bargaining was touched on in the statute, it is only to ensure that the money remains with the students it
23 was intended for. Nothing in the statute would lead to a conclusion that the legislature intended to create a massive
24 loop-hole for schools to skirt collective bargaining rights of employee organizations. As every school within CCSD
25 has either at-risk or ELL students, that is exactly what would happen if CCSD’s interpretation were to be adopted.
26 The legislature would not have curtailed collective bargaining rights in such a massive way without being clear and
27 without amending the statute from which those collective bargaining rights are derived. That is why this Board must
28

1 find that the incentive payments permitted in NRS 387.12445 are a form of compensation subject to collective
2 bargaining under NRS 288.

3 **III. FACTS**

4 In the 2019 legislative session the Nevada Legislature, with co-authors Senator Moises Denis and Joyce
5 Woodhouse, enacted Senate Bill 543 (“SB 543”) which changed the method of funding for public schools within
6 Nevada to a pupil centered funding model. Under the new model, funding was provided to schools at a base rate per
7 pupil. In addition to the base rate per pupil, additional weighted funding was provided for English language learners
8 (“ELL”) and at-risk students.

9 Prior to the pupil centered funding model, schools with high levels of ELL students or high levels of at-risk
10 students were given special designations as a “Zoom Schools” or “Victory Schools” respectively. Schools with the
11 Zoom and Victory designations were provided grant money which could be used in prescriptive ways to raise the
12 achievement level of their school.

13 Although the designation of Zoom and Victory schools were discontinued when SB 543 was passed, the
14 legislature chose to continue providing additional funds to ELL and at-risk students. Under the pupil centered
15 funding model additional funds were provided to schools for the benefit of ELL and at-risk students in the form of
16 weighted funding per student instead of as a grant for the school. This meant that for every ELL or at-risk student
17 that a school had, the school would receive additional money. These additional monies were only permitted to be
18 spent in the ways that Zoom or Victory Schools had previously been allowed to use their grant monies. These Zoom
19 and Victory services were codified in NRS 387.12445 and included incentive payments among other services (i.e.
20 additional minutes, summer programs, reading center, etc.).

21 In addition to being prescriptive in their use, the weighted funds were also restricted. Unlike the base funding,
22 the weighted funding was not permitted to be used to settle or arbitrate disputes with labor organizations, settle
23 negotiations with labor organizations, or to adjust the district wide schedule of salaries and benefits. This restriction
24 kept the money at the schools and with the students for which it was intended to benefit.

25 SB 543 did not amend nor refer to NRS 288.

26 **IV. LEGAL AUTHORITY**

27 NRS 288.150 states, in relevant part:
28

1 “1. Except as otherwise provided in subsection 6 and NRS 354.6241, every local government employer shall
2 negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects
3 of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization,
4 if any, for each appropriate bargaining unit among its employees. If either party so requests, agreements reached
5 must be reduced to writing.

6 2. The scope of mandatory bargaining is limited to:

7 (a) Salary or wage rates or other forms of direct monetary compensation.....”

8 NRS 387.12445 states in relevant part:

9 “7. A public school that receives weighted funding for one or more at-risk pupils must use that weighted
10 funding only to provide Victory services and, if one or more at-risk pupils for whom the school received weighted
11 funding in the at-risk pupil category also belong to one or more other categories of pupils who receive weighted
12 funding, the additional services for each such at-risk pupil which are appropriate for each category to which the at-
13 risk pupil belongs.

14 8. A public school that receives weighted funding for one or more pupils who are English learners must
15 use that weighted funding only to provide Zoom services and, if one or more English learners for whom the school
16 received weighted funding in the English learner category also belong to one or more other categories of pupils who
17 receive weighted funding, the additional services for each such English learner which are appropriate for each category
18 to which the English learner belongs.....

19 ...10. As used in this section:

20 (a) “Victory services” means any one or more of the following services:....

21 ...(5) Incentives for hiring and retaining teachers and other licensed educational personnel who provide
22 Victory services.....

23 ...(b) “Zoom services” means any one or more of the following services:...

24 ...(4) Incentives for hiring and retaining teachers and other licensed educational personnel who provide
25 Zoom services....”

26 **V. ARGUMENTS**

27 **A. Legislative intent was to preserve collective bargaining.**

28 CCSD has made the claim that the legislative intent was to completely restrict the funds from collective

1 bargaining. As demonstrated by the affidavit attached as **EXHIBIT A**, this interpretation is completely inaccurate.
2 Senator Denis, who was a co-author on the SB 543, clearly states that the intent was not to alleviate a school
3 district's duty to bargain over mandatory subjects of bargaining if a school or school district chooses to use the funds
4 in a way that implicates collective bargaining. There can be no clearer statement of the intent of the legislature and
5 this interpretation is supported by the overall text of the statute and the bill.

6 CCSD's evidence in this matter is unpersuasive. CCSD ignores the plain language of the text of the bill which
7 states that the weighted funds are "generally" restricted from collective bargaining. It does not completely restrict
8 collective bargaining and never asserts to do so.

9 CCSD relies on statements made by Senator Joyce Woodhouse at the legislative hearings which likened the
10 weighted funds to the restricted portion of ending fund balance. This reliance is also misplaced as the legislature did
11 not take the same steps, i.e. amending NRS 288, with respect to SB 543 as it did with the statutes related to ending
12 fund balance. Senator Woodhouse was clearly referring to the restriction of the weighted funds from the ability to
13 pay calculation made in impasse and from general bargaining of a contract. Her statements could not and should not
14 be taken to mean that when mandatory subjects of bargaining are implicated that a district is alleviated from its duty
15 to bargain those subject.

16 **B. The incentive payments contained in NRS 387.12445 are a form of direct compensation under**
17 **NRS 288 and Board precedent.**

18 Collective bargaining under NRS 288 creates an obligation on an employer to bargain in good faith with a
19 labor organization with respect to "salary or wage rates or other forms of direct monetary compensation". See NRS
20 288.150(1) and 2(a).

21 NRS 387.12445 sections 10(a) and 10(b) provides a list of Victory and Zoom services for which the
22 weighted funding may be used. Incentives for the recruitment and retention of teachers are found under both Victory
23 and Zoom services in section 10(a)(5) and 10(b)(4) respectively.

24 Incentive payments are clearly a form of direct monetary compensation. This Board found in Las Vegas
25 Fire Fighter Local 1285, International Association of Fire Fighters vs. City of Las Vegas, Nevada Item No. 176
26 (2013) that a gain sharing program which consisted of a direct payment to employees fell under NRS 288.150(2)(a)
27 and was required to be bargained. This mirrors the National Labor Relations Board's ("NLRB") finding that
28 "bonuses constitute an integral part of the earnings of an employee and are a matter which are generally the subject

1 of collective bargaining.” *Singer Manufacturing Co.*, 24 NLRB 444 at 470, 471 (1940), modified on other grounds
2 and enforced, 119 F. 2d 131 (7th Cir. 1941).¹ The Nevada Supreme Court has indicated that it is appropriate to look
3 to NLRB case law for guidance in interpreting NRS 288. See *Truckee Meadows v. Int’l Firefighters*, 109 Nev. 367,
4 375, 849 P 2d 343 (1993)

5 Not only has the precedent established that bonuses, or incentives, are a form of compensation, but the
6 relevant precedent finds them to be an “integral part of the earnings of an employee.” *Singer*. To take something that
7 is an integral part of the earnings of an employee out of the purview of collective bargaining should necessitate a
8 clear intent by the legislature. There is no language at all found in NRS 288 that the incentives, or any other category
9 of Zoom and Victory service contained in NRS 387, are exempted from collective bargaining, therefore such an
10 intent cannot be established.

11 **C. The terms and conditions of incentive payments are not exempt from bargaining.**

12 Despite incentive payments clearly being a form of compensation and therefore falling under NRS 288.150
13 as a mandatory subject of bargaining, CCSD has argued that the terms and conditions of the incentives utilizing the
14 weighted funding contained in NRS 387 are, in fact, exempted from collective bargaining. CCSD relies on NRS
15 387.1214 (7)(a) which states that the weighted funds “(m)ay not be used to settle or arbitrate disputes between a
16 recognized organization representing employees of a school district or the governing body of a charter school and
17 the school district or a governing body or to settle any negotiations.”

18 NRS 288 was not amended upon the enactment of NRS 387.1214 (7)(a) to exclude from mandatory subjects
19 any use of the funds allocated under NRS 387.121 and the legislature did not foreclose the possibility of a scenario
20 where use of the funds would need to be collectively bargained. When the legislature wishes to exempt something
21 from collective bargaining which would have ordinarily fallen within a mandatory subject it does so explicitly. See
22 NRS 288.150(9) (allowing for the transfer and reassignment of teachers at the discretion of a principal of a
23 turnaround school).

24 Here the legislature specifically exempts the funds from use to “settle or arbitrate disputes” or “to settle any
25

26
27
28 ¹ The term “generally” was used because gifts were not necessarily considered to fall under mandatory subjects of bargaining, however that part of the decision would not be implicated in the current matter as there is no statutory authority to give gifts out of ELL/At-Risk funds and CCSD has not argued that they were gifts.

1 negotiations.” Neither of those provisions provide the blanket exemption from collective bargaining that CCSD has
2 argued exists. Looking at the overall statute of NRS 387 it is clear that the intent of the pupil centered funding plan
3 was to ensure that money followed the students and that the weighted funding would follow the students with the
4 highest needs. It makes sense that the legislature wanted to ensure that the money could not be bargained for a use
5 that did not benefit the students for which the money had been allocated and that is what was done with the language
6 of 387.1214(7). The money is not to be considered when settling a grievance or arbitration, when determining a
7 school district’s ability to pay, i.e. to settle a negotiation, or to raise overall salaries. Nothing in this provision should
8 be interpreted to strip an employee of their right to be represented by their employee organization with respect to a
9 mandatory subject of bargaining. Once a school elects to use the weighted funds for a purpose which implicates a
10 mandatory subject of bargaining, such as compensation, then the terms and conditions of how that would effect a
11 member of the bargaining unit’s working conditions would still need to be negotiated.

12 The word “settle” in NRS 387.1214(7)(a) is key to understanding the intent of this provision. “Settle” is
13 only used in the context of collective bargaining in NRS 288 with relation to the mediation of a contract negotiation.
14 The legislature chose this wording in NRS 387 carefully in order to mirror the language of NRS 288 in order to
15 demonstrate that the weighted funds should not be considered by a mediator or arbitrator when determining the
16 ability of a school district to pay for a contract proposal. Since the weighted funding must be used to service a
17 specific population of students, this restriction makes sense. It would make no sense to exempt the money entirely
18 from collective bargaining, which is why the legislature did not make such a blanket statement in the statute or
19 amend NRS 288. There would have been no reason to specify that the money could not be used to settle a
20 negotiation or to adjust the salary schedule if the intent was to restrict it from collective bargaining in its entirety.
21 Much simpler language stating that the money was exempted from all collective bargaining would have sufficed and
22 NRS 288 could have been amended to state this.

23 In Nevada statutes are to be read harmoniously and are to be read to avoid unreasonable or absurd results.
24 See *Clark County Education Association and Davita Carpenter v. Clark County School District*, EMRB Case No.
25 2020-008, Item No. 869 citing *Allstate Ins. Co. v. Packett*, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009) (“We read
26 statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result.”);
27 *Williams v. Clark County Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543 (2002) (“In determining the
28 legislature’s intent, we should consider what reason and public policy indicate was intended, and we should avoid

1 reaching absurd results. We are obliged to construe statutory provisions so that they are compatible, provided that in
2 doing so, we do not violate the legislature’s intent.”); *Berkson v. LePome*, 126 Nev. 492, 497, 245 P.3d 560, 563-64
3 (2010) (“a statute will be construed in order to give meaning to its entirety, and this court ‘will read each sentence,
4 phrase, and word to render it meaningful within the context of the purpose of the legislation.”); *Zahavi v. State*, 131
5 Nev. Adv. Op. 7, 343 P.3d 595, 600 (2015) (“When construing various statutory provisions, which are part of a
6 ‘scheme,’ this court must interpret them ‘harmoniously’ and ‘in accordance with [their] general purpose.”); *Double*
7 *Diamond v. Second Jud. Dist. Ct.*, 131 Nev. 557, 562, 354 P.3d 641, 644 (2015) (“[t]he [L]egislature is presumed to
8 have intended a logical result, rather than an absurd or unreasonable one.”); *Union Plaza Hotel v. Jackson*, 101 Nev.
9 733, 736, 709 P.2d 1020, 1022 (1985) (“We are not empowered to go beyond the face of the statute to lend it a
10 construction contrary to its clear meaning.”) The most harmonious reading of NRS 288 and NRS 387.1214 would be
11 that the terms of conditions of an expenditure of the weighted funds must be bargained to the extent that expenditure
12 relates to a mandatory subject of bargaining under NRS 288. Otherwise, NRS 387.1214 could be used to circumvent
13 collective bargaining in numerous ways clearly not intended by the legislature.

14 Take for example an extended school day which is included in the list of Zoom and Victory services. The
15 pay rate and the amount of minutes of an extended school day is subject to bargaining regardless of the source of the
16 funding. This has never been disputed, but an interpretation which restricted an employee organization from
17 bargaining over terms and condition when weighted funding is being utilized could allow a school or school district
18 to extend the work day and assign the rate of pay for those additional minutes. This would be in contrast to other
19 schools in the same district where the pay rate and number of minutes in the day are determined by bargaining. Such
20 an outcome would be unreasonable and absurd.

21 Another example would be summer programs paid for utilizing the weighted funds. Summer programs are
22 additional days of work. The amount of days, the pay rate for those days, the prep period within those days, and all
23 other terms of employment for the additional days has always been subject to collective bargaining regardless of the
24 source of the funding. A ruling that the weighted funds were not subject to any sort of collective bargaining would
25 create a two tiered system where schools with large amounts of weighted funds could extend the school year, choose
26 the rate of pay for the additional days, and eliminate employee rights such as preparation periods, all without being
27 subject to the scrutiny of collective bargaining. This is clearly not the intent of the legislature in enacting SB 543.

28 With respect to incentive payments for recruitment and retention, the analysis is similar. There is no

1 argument against a school or the school district deciding that they want to spend the weighted funds on incentive
2 payments to recruit and retain teachers just as there is no argument that a school can have a summer program or add
3 additional minute utilizing the process which has been collectively bargained. However, eligibility for incentive
4 payments, the amounts of the payments, whether discipline effects the ability of a teacher to receive the payment,
5 whether a teacher who has transferred will receive the payment, whether a teacher who has taken leave receives the
6 payment, whether a payment will be pro-rated based on the start date of the teacher, whether extra duties are
7 necessary for a teacher to receive the payment are all terms and conditions of the payments which would be subject
8 to bargaining. Otherwise, because every school has some level of weighted funding, schools and the school district
9 could use the weighted funding to circumvent the right to transfer, minutes of work, discipline, and compensation
10 which are all mandatory subjects of bargaining. It is inconceivable that the legislature intended this outcome without
11 amending NRS 288.

12 It is not hypothetical that the District would try to use the weighted funds to impact rights that are subject to
13 collective bargaining, it already happened. Looking at Joint Exhibit 21 CCSD restricted the amount of the payments,
14 restricted the payments based on a teacher's evaluation (which is affected by discipline), only applied the incentive
15 to teachers who were at the school the entire year implicating the right of teachers to be reassigned, and assigned the
16 payments to be paid in a lump sum on a date after the school year was over affecting a teacher's right to retire during
17 the school year. All of these conditions should be subject to negotiation with an employee organization.

18 The compensation amounts for each of the activities mentioned above and the conditions under which they
19 are implemented has always been subject to terms negotiated with an employee organization regardless of the
20 funding source. As shown in the hearing, CCSD has negotiated over the terms of the incentives at issue in this
21 matter (see Joint Exhibit 13) and as evidenced by the attached waiver application, CCSD schools follow the
22 collectively bargained process for extending school days even when using Zoom funds. (See **EXHIBIT B** attached
23 and for the contract terms applicable to waivers see Joint Exhibit 9 page 71 Article 38) While CCSD's
24 understanding that minutes paid through waiver funds (and at one point terms of incentive payments) are subject to
25 negotiation does not necessarily demonstrate the proper interpretation of the statute, it certainly goes to show that a
26 school district could, and does, interpret the statute in the same way that CCEA is arguing it to be interpreted.

27 Even more concerning is that any program deemed appropriate by the Superintendent of Public Instruction
28 is a permissible use of weighted funds. This provision would essentially put no limit on the ability to circumvent

1 collective bargaining using the weighted funds. Every school could run an approved program with pay rates set by
2 the school, hours set by the school, and working condition set by the school all without the employee organization
3 having the ability to bargain. It is unfathomable to believe that the legislature intended to permit every school in the
4 state the blanket ability to circumvent collective bargaining rights without amending NRS 288 to indicate this
5 intention.

6 **D. A large school district has the statutory authority to negotiate conditions of employment for**
7 **teachers**

8 CCSD may argue that because the weighted funds flow directly to the schools that it lacks the authority to
9 negotiate over them. However, NRS 388G.610(3)(a) clearly states that “(n)egotiating the salaries, benefits and other
10 conditions of employment of administrators, teachers and other staff necessary for the operation of a local school
11 precinct” is the responsibility of the school district. Even in the more decentralized model of a large school district,
12 bargaining authority is retained by the district and not transferred to the school sites. As discussed above, incentives
13 fall squarely within the definition of compensation and is therefore subject to bargaining.

14 **E. The Attorney General’s Opinion with regards to NRS 388G is unpersuasive and inapplicable**

15 To support its claim that incentives paid out of weighted funding could have been exempted by the
16 legislature from collective bargaining without the legislature amending NRS 288 CCSD strangely relies on the
17 Attorney General’s opinion regarding AB 469 and 388G. In that opinion the Attorney General made the case that
18 because schools must observe certain holidays, safety minimums exist for all workers regardless of bargaining, and
19 that the obligation to pay certain compensation exists regardless of bargaining, that the legislature could narrow the
20 scope of collective bargaining without amending NRS 288. Setting aside that this opinion was found to be
21 unpersuasive by both the EMRB and the Nevada Supreme Court with relation to NRS 388G, this opinion ignores
22 two crucial facts. First, the benefits conferred are applicable to all workers, not just unionized ones. The intent of
23 those statutes was not to limit collective bargaining. The intent was to confer a benefit on all workers who fell under
24 the statute.

25 Second, none of those statutes referenced by the attorney general discuss collective bargaining at all. It
26 makes sense that NRS 288 was not amended upon the passage of the statutes referenced by the attorney general
27 because the legislature did not include a reference to collective bargaining in any of the statutes (it also wouldn’t
28 make sense because each of these statutes confer a minimum set of benefits universally applicable to all employees

1 and a labor organization would have no reason to negotiate below these minimums). This is contrasted with NRS
2 387, where the legislature specifically discussed collective bargaining and then chose not to amend NRS 288. The
3 legislature was clearly contemplating the interplay of collective bargaining with respect to the weighted funding and
4 chose not to amend the statute which confers collective bargaining rights to public employees. The intent was
5 clearly to ensure that the weighted funds remained for the benefit of the students for which they were intended, but
6 not encumber collective bargaining beyond what was necessary to achieve that aim.

7 **VI. CONCLUSION**

8 The law is clear that an employer is obligated to bargain over mandatory subjects of bargaining. Nothing under
9 the law gives a school district or a school the authority to circumvent this obligation when using weighted funding
10 and this interpretation is not supported by the legislative intent as discussed by Senator Denis. The clear intent of
11 NRS 387 is to ensure that the weighted funds remain for the benefit of the pupils for which they are allocated. The
12 intent cannot and should not be read to confer a right onto a school or school district to circumvent its employees
13 collective bargaining rights.

14 For the reasons stated above this Board should find that when an expenditure of weighted funds under NRS 387
15 implicates a mandatory subject of bargaining, the terms and conditions of that expenditure is subject to bargaining.
16

17 Dated this 2nd Day of January, 2024

18 **CLARK COUNTY EDUCATION ASSOCIATION**

19 /s/ Steve Sorensen

20 Steve Sorensen, Nevada Bar No. 15472
21 General Counsel
22 Clark County Education Association
23 4230 McLeod Drive
24 Las Vegas, NV 89121
25
26
27
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 2nd day of January, 2024, I electronically sent and correct copy of the forgoing **BRIEF REGARDING PETITION FOR DECLARATORY ORDER** via email, addressed as follows:

Crystal Herrera, Esq.
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
herrec4@nv.ccsd.net

Attorney for the Respondent

/s/ Alex Shelton
An employee of CCEA

EXHIBIT A

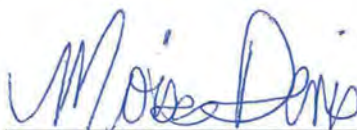
1 AFFIDAVIT OF MOISES DENIS

2 STATE OF NEVADA)
3) ss.
4 COUNTY OF CLARK)


5 Moises Denis being first duly sworn and under penalty of perjury does say and depose the
6 following:

7 As a primary sponsor of Senate Bill 543 in the 80th Legislative Session which occurred in
8 2019, I can attest that to my knowledge it was never the intent of the Nevada Legislature that Senate
9 Bill 543 would alleviate a schools district's duty to bargain over mandatory subjects of bargaining as
10 enumerated in NRS 288. While an employee organization cannot compel the use of the weighted
11 funding contained within SB 543, if a school or school district chooses to use the funds in a way which
12 implicates a mandatory subject of bargaining under NRS 288 (i.e. the payment of direct compensation,
13 total hours of work, or the total number of days worked, etc.) then the terms and conditions of that
14 expenditure are mandatory subjects of bargaining per NRS 288 and must be consistent with the terms
15 of any applicable collective bargaining agreement or is subject to negotiation.

16 FURTHER YOUR AFFIANT SAYETH NAUGHT.

17 
18 _____
19 Moises Denis

20 SUBSCRIBED and SWORN to before
21 me this 2nd Day of January, 2023.

22 
23 _____
24 NOTARY PUBLIC in and for said
CLARK COUNTY and NEVADA

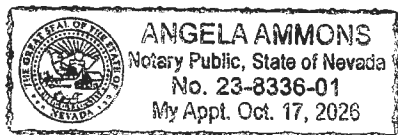


EXHIBIT B

Clark County School District WAIVER ROUTING

Beckley Elementary School/524 (Zoom)

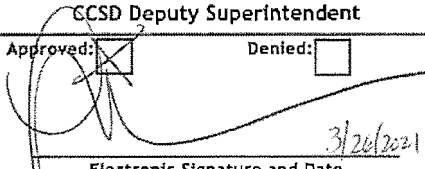

School Name

SECTION THREE

1. WAIVER REQUEST RECEIVED/APPROVED

EMR	Date Reviewed: 3/19/2021
Licensed Signatures Verified by EMR Director - INITIALS: CG % of Votes: 75%	

Employee-Management Relations (EMR) sends to Deputy Superintendent for Review. After signature, Deputy Superintendent remits back to EMR. EMR delivers contract waiver to CCEA.

CCSD Deputy SuperIntendent	CCEA President
Approved: <input checked="" type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input checked="" type="checkbox"/> Denied: <input type="checkbox"/>
 Electronic Signature and Date 3/26/2021	 Electronic Signature and Date

2. VOTING

Date of Vote	
Name(s) of CCSD Administrators who conducted the vote.	
Name(s) of CCEA Representatives who conducted the vote.	
Number of licensed personnel who voted.	
Voting Result (including number and percentage of votes cast in favor of the waiver)	

3. FINAL APPROVAL

CCEA President	CCSD Superintendent
Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>
_____ Electronic Signature and Date	_____ Electronic Signature and Date

Email Waiver Routing Form to
Employee-Management Relations (EMR)
for Distribution.

Email to: greatcf@nv.ccsd.net

Phone: 799-0210

Clark County School District

WAIVER REQUEST

Waiver of Contractual Provisions

Will Beckley ES 524

Shannon Brown

702-799-7700

Contact Information

SECTION ONE

**DESCRIPTION OF SPECIFIC CHANGES TO AGREEMENT
(SCHOOL IMPROVEMENT ACTIVITIES THAT IMPROVE STUDENT LEARNING)**

This contract waiver will only go into effect if CCSD receives funding (ZOOM Schools Grant money) to pay for the additional 19 minutes from the Nevada Legislature for the 2021-2022 school year. If CCSD does not receive the funding, this waiver will not go into effect.

The Zoom Extended Day Program provides an additional 19 minutes of instruction. The additional instructional time is focused on teaching content and language simultaneously and differentiating instruction for English language learners (ELLs), newcomer ELLs, and long-term English language learners.

SPECIFIC CONTRACTUAL TERMS/ARTICLES WAIVED

Article 22-1- waived

Classroom teachers covered by this Agreement shall be required to work at the school premises a regular workday of seven (7) hours and eleven (11) minutes including the duty-free lunch period provided below (the workday). This is not applicable to teachers whose work year is less than one hundred eighty-four (184) days as provided for in Article 21-1. The daily starting and departure time for classroom teachers shall be set in each school by the principal, subject to any limitations due to transportation, enrollment or other aspects of the student day. Except in cases of temporary changes necessitated by emergencies, the principal shall seek the advice of the Teacher Advisory Council regarding any revision in the daily schedule. The principal shall seek the advice of the Teacher Advisory Council regarding any revision to the daily starting and departure times for teachers once they have been set. Individual teacher schedules, within the established starting and departure times, may be revised by the principal without seeking the advice of the Teacher Advisory Council.

Specifically, with this waiver, full-time licensed teachers will work an additional nineteen (19) minutes, resulting in teachers working seven (7) hours and thirty (30) minutes during the school year.

**LENGTH OF TIME THE WAIVER WILL BE IN FORCE
(SPECIFIC DATES)**

The waiver will be in force for the 2021-2022 school year, August 4, 2021 - May 26, 2022.

TOTAL NUMBER OF LICENSED PERSONNEL AT SITE, INCLUDING ITINERANT SPECIALISTS	53
--	-----------

A waiver request of a contractual provision must be signed by 25 percent of the licensed staff at that site.	X .25
--	--------------

TOTAL NUMBER OF SIGNATURES REQUIRED FROM LICENSED STAFF ON WAIVER REQUEST	14
--	-----------

Attach "Licensed Staff Signature" page (Section 2), which includes each licensed personnel name, signature, and title.

Shannon C. Brown <small>Digitally signed by Shannon C. Brown Date: 2021.03.17 14:13:00 -07'00'</small>	DATE
PRINCIPAL ELECTRONIC SIGNATURE	

ONCE THE WAIVER REQUEST IS COMPLETED, FORWARD TO APPROPRIATE SCHOOL REGION SUPERINTENDENT FOR APPROVAL.

Debbie Brockett <small>Digitally signed by Debbie Brockett Date: 2021.03.17 14:58:58 -07'00'</small>	3/17/2021
REGION SUPERINTENDENT ELECTRONIC SIGNATURE	DATE

IF APPROVED, THE REGION SUPERINTENDENT FORWARDS ORIGINAL DOCUMENTS WITH ELECTRONIC SIGNATURES TO

SEND TO	Employee-Management Relations Chris Greathouse Email document to greatcf@nv.ccsd.net
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Clark County School District WAIVER ROUTING

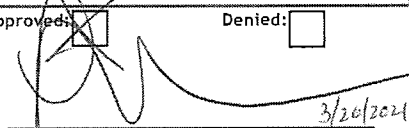
Brinley Middle School/433 (Zoom)
School Name

SECTION THREE

1. WAIVER REQUEST RECEIVED/APPROVED

EMR	Date Reviewed: 3/17/2021
Licensed Signatures Verified by EMR Director - INITIALS: CG % of Votes: 75%	

Employee-Management Relations (EMR) sends to Deputy Superintendent for Review. After signature, Deputy Superintendent remits back to EMR. EMR delivers contract waiver to CCEA.

CCSD Deputy Superintendent	CCEA President
Approved: <input checked="" type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>
 Electronic Signature and Date 3/20/2021	Electronic Signature and Date

2. VOTING

Date of Vote	
Name(s) of CCSD Administrators who conducted the vote.	
Name(s) of CCEA Representatives who conducted the vote.	
Number of licensed personnel who voted.	
Voting Result (including number and percentage of votes cast in favor of the waiver)	

3. FINAL APPROVAL

CCEA President	CCSD Superintendent
Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>
Electronic Signature and Date	Electronic Signature and Date



Email Waiver Routing Form to
Employee-Management Relations (EMR)
for Distribution.
Email to: greatcf@nv.ccsd.net
Phone: 799-0210



Clark County School District WAIVER REQUEST

Waiver of Contractual Provisions

Brinley MS/433
Andrea Womack
702-799-4550

Contact Information

SECTION ONE	
DESCRIPTION OF SPECIFIC CHANGES TO AGREEMENT (SCHOOL IMPROVEMENT ACTIVITIES THAT IMPROVE STUDENT LEARNING)	
<p>This contract waiver will only go into effect if CCSD receives funding (ZOOM Schools Grant money) to pay for the additional 15 minutes. At this time, CCSD is working with the Nevada Department of Education related to the ability for CCSD to maintain Zoom funding for the 2022 year, but we do not yet have resolution. If CCSD does not receive the funding, this waiver will not go into effect.</p> <p>The Zoom Extended Day Program provides an additional 15 minutes of instruction. The additional instructional time is focused on teaching content and language simultaneously and differentiating instruction for English language learners (ELLs), newcomer ELLs, and long-term English language learners.</p>	
SPECIFIC CONTRACTUAL TERMS/ARTICLES WAIVED	
<p>Article 22-1- waived Classroom teachers covered by this Agreement shall be required to work at the school premises a regular workday of seven (7) hours and eleven (11) minutes including the duty-free lunch period provided below (the workday). This is not applicable to teachers whose work year is less than one hundred eighty-four (184) days as provided for in Article 21-1. The daily starting and departure time for classroom teachers shall be set in each school by the principal, subject to any limitations due to transportation, enrollment or other aspects of the student day. Except in cases of temporary changes necessitated by emergencies, the principal shall seek the advice of the Teacher Advisory Council regarding any revision in the daily schedule. The principal shall seek the advice of the Teacher Advisory Council regarding any revision to the daily starting and departure times for teachers once they have been set. Individual teacher schedules, within the established starting and departure times, may be revised by the principal without seeking the advice of the Teacher Advisory Council.</p> <p>Specifically, with this waiver, full-time licensed teachers will work an additional fifteen (15) minutes, resulting in teachers working seven (7) hours and twenty-six (26) minutes during the school year.</p>	
LENGTH OF TIME THE WAIVER WILL BE IN FORCE (SPECIFIC DATES)	
The waiver will be in force for the 2021-2022 school year, August 4, 2021 - May 26, 2022.	
TOTAL NUMBER OF LICENSED PERSONNEL AT SITE, INCLUDING ITINERANT SPECIALISTS	53
A waiver request of a contractual provision must be signed by 25 percent of the licensed staff at that site.	X .25
TOTAL NUMBER OF SIGNATURES REQUIRED FROM LICENSED STAFF ON WAIVER REQUEST	13.25
Attach "Licensed Staff Signature" page (Section 2), which includes each licensed personnel name, signature, and title.	
<p style="text-align: center;">Andrea Womack</p> <hr style="width: 80%; margin: auto;"/> <p style="text-align: center;"><small>Digitally signed by Andrea Womack DN: cn=Andrea Womack, o=CCSD, email=womacka@nv.ccsd.net, c=US Date: 2021.03.03 12:29:41 -0800</small></p> <p style="text-align: center;">PRINCIPAL ELECTRONIC SIGNATURE</p>	<p>3/3/2021</p> <p>DATE</p>
ONCE THE WAIVER REQUEST IS COMPLETED, FORWARD TO APPROPRIATE SCHOOL REGION SUPERINTENDENT FOR APPROVAL.	
<p style="text-align: center;">Dustin Mancil</p> <hr style="width: 80%; margin: auto;"/> <p style="text-align: center;"><small>Digitally signed by Dustin Mancil DN: cn=Dustin Mancil, o=CCSD, ou=Region 1, email=mancild@nv.ccsd.net, c=US Date: 2021.03.17 14:28:05 -0700</small></p> <p style="text-align: center;">REGION SUPERINTENDENT ELECTRONIC SIGNATURE</p>	<p>3/17/2021</p> <p>DATE</p>
IF APPROVED, THE REGION SUPERINTENDENT FORWARDS ORIGINAL DOCUMENTS WITH ELECTRONIC SIGNATURES TO	
SEND TO	<p>Employee-Management Relations Chris Greathouse Email document to greatcf@nv.ccsd.net</p>

Clark County School District WAIVER ROUTING

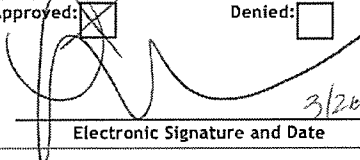
Crestwood Elementary School/211 (Zoom)
School Name

SECTION THREE

1. WAIVER REQUEST RECEIVED/APPROVED

EMR	Date Reviewed: 3/18/2021
Licensed Signatures Verified by EMR Director - INITIALS: CG % of Votes: 73%	

Employee-Management Relations (EMR) sends to Deputy Superintendent for Review. After signature, Deputy Superintendent remits back to EMR. EMR delivers contract waiver to CCEA.

CCSD Deputy Superintendent	CCEA President
Approved: <input checked="" type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>
 3/26/2021 Electronic Signature and Date	_____ Electronic Signature and Date

2. VOTING

Date of Vote	
Name(s) of CCSD Administrators who conducted the vote.	
Name(s) of CCEA Representatives who conducted the vote.	
Number of licensed personnel who voted.	
Voting Result (including number and percentage of votes cast in favor of the waiver)	

3. FINAL APPROVAL

CCEA President	CCSD Superintendent
Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>	Approved: <input type="checkbox"/> Denied: <input type="checkbox"/>
_____ Electronic Signature and Date	_____ Electronic Signature and Date

Email Waiver Routing Form to
Employee-Management Relations (EMR)
for Distribution.

Email to: greatcf@nv.ccsd.net

Phone: 799-0210

Clark County School District

WAIVER REQUEST

Waiver of Contractual Provisions

Crestwood ES #211

Karin Kip

702-799-7890

Contact Information

SECTION ONE	
DESCRIPTION OF SPECIFIC CHANGES TO AGREEMENT (SCHOOL IMPROVEMENT ACTIVITIES THAT IMPROVE STUDENT LEARNING)	
<p>This contract waiver will only go into effect if CCSD receives funding (ZOOM Schools Grant money) to pay for the additional 19 minutes. At this time, CCSD is working with the Nevada Department of Education related to the ability for CCSD to maintain Zoom funding for the 2022 year, but we do not yet have resolution. If CCSD does not receive the funding, this waiver will not go into effect.</p> <p>The Zoom Extended Day Program provides an additional 19 minutes of instruction. The additional instructional time is focused on teaching content and language simultaneously and differentiating instruction for English language learners (ELLs), newcomer ELLs, and long-term English language learners.</p>	
SPECIFIC CONTRACTUAL TERMS/ARTICLES WAIVED	
<p>Article 22-1- waived Classroom teachers covered by this Agreement shall be required to work at the school premises a regular workday of seven (7) hours and eleven (11) minutes including the duty-free lunch period provided below (the workday). This is not applicable to teachers whose work year is less than one hundred eighty-four (184) days as provided for in Article 21-1. The day starting and departure time for classroom teachers shall be set in each school by the principal, subject to any variations due to transportation, enrollment or other aspects of the student day. Except in cases of temporary changes necessitated by emergencies, the principal shall seek the advice of the Teacher Advisory Council regarding any revision in the daily schedule. The principal shall seek the advice of the Teacher Advisory Council regarding any revision to the daily starting and departure times for teachers once they have been set. Individual teacher schedules, within the established starting and departure times, may be revised by the principal without seeking the advice of the Teacher Advisory Council.</p> <p>Specifically, with this waiver, full-time licensed teachers will work an additional nineteen (19) minutes, resulting in teachers working seven (7) hours and thirty (30) minutes during the school year.</p>	
LENGTH OF TIME THE WAIVER WILL BE IN FORCE (SPECIFIC DATES)	
The waiver will be in force for the 2021-2022 school year, August 4, 2021 - May 26, 2022.	
TOTAL NUMBER OF LICENSED PERSONNEL AT SITE, INCLUDING ITINERANT SPECIALISTS	55
A waiver request of a contractual provision must be signed by 25 percent of the licensed staff at that site.	X .25
TOTAL NUMBER OF SIGNATURES REQUIRED FROM LICENSED STAFF ON WAIVER REQUEST	13.75
Attach "Licensed Staff Signature" page (Section 2), which includes each licensed personnel name, signature, and title.	
Dr. Karin Kip <small>Digitally signed by Dr. Karin Kip Date: 2021.03.11 11:23:24 -08'00'</small> _____ PRINCIPAL ELECTRONIC SIGNATURE	3/11/2021 DATE
ONCE THE WAIVER REQUEST IS COMPLETED, FORWARD TO APPROPRIATE SCHOOL REGION SUPERINTENDENT FOR APPROVAL.	
Debbie Brockett <small>Digitally signed by Debbie Brockett Date: 2021.03.17 14:58:18 -07'00'</small> _____ REGION SUPERINTENDENT ELECTRONIC SIGNATURE	3/17/2021 DATE
IF APPROVED, THE REGION SUPERINTENDENT FORWARDS ORIGINAL DOCUMENTS WITH ELECTRONIC SIGNATURES TO:	
SEND TO	Employee-Management Relations Chris Greathouse Email document to greatcf@nv.ccsd.net

1 OFFICE OF THE GENERAL COUNSEL
2 CLARK COUNTY SCHOOL DISTRICT
3 CRYSTAL J. HERRERA, ESQ. (NV Bar No. 12396)
4 5100 West Sahara Avenue
5 Las Vegas, Nevada 89146
6 Phone: (702) 799-5373
7 herrec4@nv.ccsd.net
8 *Attorney for Respondent,*
9 *Clark County School District*

FILED
January 2, 2024
State of Nevada
E.M.R.B.
12:22 p.m.

7 **STATE OF NEVADA**
8 **GOVERNMENT EMPLOYEE-MANAGEMENT**
9 **RELATIONS BOARD**

10 CLARK COUNTY EDUCATION
11 ASSOCIATION,

12 Petitioner,

13 v.

14 CLARK COUNTY SCHOOL DISTRICT,

15 Respondent.

CASE NO.: 2023-010

CLARK COUNTY SCHOOL
DISTRICT'S BRIEF ON PETITION
FOR DECLARATORY ORDER

16 COMES NOW, Respondent Clark County School District ("CCSD" / "District"), by and
17 through its attorneys, and pursuant to NAC 288.350 submits the following Brief on the Petition
18 for Declaratory Order in this action before the Local Government Employee-Management
19 Relations Board ("Board" or "EMR").

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 I.

2 **STATEMENT OF THE ISSUES**

3 Whether the terms and conditions of incentive payments under NRS 387.1214 and NRS
4 387.12445 are subject to collective bargaining under NRS 288.150(2)?

5 II.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. INTRODUCTION**

8 The Petitioner Clark County Education Association (“CCEA”) initiated this action
9 against the District based on incentive payments that certain schools made to individual teachers
10 pursuant to the authority provided in NRS 387.12445. The Nevada Legislature enacted NRS
11 387.1214 and 387.12445 via Senate Bill 543 in the 2019 Legislative Session. SB 543 allocated
12 weighted funding to public schools for each pupil enrolled in the District who is an English
13 language learner or at-risk pupil. The statutes provide that the weighted funding may not “be
14 used to settle or arbitrate disputes between a recognized organization representing employees of
15 a school district or the governing body of a charter school and the school district or governing
16 body or to settle any negotiations.” The statutes further provide that schools may use the
17 weighted funding to provide incentives for hiring and retaining teachers and other licensed
18 educational personnel who provide Victory and Zoom services, as defined in the statutes.

19 CCEA has taken the position that even though the statute exempted this money from
20 bargaining, the District was required to bargain with CCEA regarding the “terms and conditions”
21 of incentives pursuant to NRS 288.150. CCEA’s position is contrary to the plain language of the
22 statutes and the legislature’s express intent to exempt the weighted funds from collective
23 bargaining entirely.

24 **B. RELEVANT AUTHORITY**

25 NRS 387.1214 states, in relevant part:

26 2. After a direct legislative appropriation is made to the State Education Fund from the
27 State General Fund pursuant to NRS 387.1212, the money in the State Education Fund,
28 excluding any amount of money in the Education Stabilization Account, must be appropriated as
established by law for each fiscal year of the biennium for the following purposes:

1
2 (e) To each school district...for profoundly gifted pupils, an amount of money
3 determined to be sufficient by the Legislature, when combined with any other
4 resources available for this purpose, to provide additional weighted funding for
5 each pupil estimated to be enrolled in the school district, charter school or
6 university school for profoundly gifted pupils who is:

- 7 (1) An English learner;
- 8 (2) An at-risk pupil;

9 ...

10 7. The weighted funding appropriated pursuant to paragraph (e) of subsection 2:
11 (a) May not be used to *settle or arbitrate disputes* between a recognized
12 organization representing employees of a school district or the government
13 body of a charter school and the school district or governing body *or to settle*
14 *any negotiations*; and
15 (b) May not be used *to adjust the district wide schedules of salaries and*
16 *benefits* of the employees of a school district. (Emphasis added).

17 NRS 387.12445 provides in relevant part:

18 3. Each school district *shall* ensure that all weighted funding received by the school
19 district pursuant to paragraph (e) of subsection 2 of NRS 387.1214 is accounted for separately
20 and *distributed directly to each school* in which the relevant pupils are estimated to be enrolled.

21 ...

22 7. A public school that receives weighted funding for one or more at-risk pupils must use
23 that weighted funding only to provide Victory services...

24 8. A public school that receives weighted funding for one or more pupils who are English
25 learners must use that weighted funding only to provide Zoom services...

26 10. As used in this section:

27 (a) "Victory services" means any one or more of the following services:

28 ...

- (5) Incentives for hiring and retaining teachers and other licensed
educational personnel who provide Victory services.

...

(b) "Zoom services" means any one or more of the following services:

...

- (4) Incentives for hiring and retaining teachers and other licensed
educational personnel who provide Zoom services. (Emphasis added).

26 C. RELEVANT FACTS

27 NRS 387.1214 and NRS 387.12445 were passed by the Nevada Legislature in 2019 as
28 under the Pupil-Centered Funding Plan, Senate Bill 543. As introduced, Senate Bill 543, Section

1 4 included language that “generally prohibits the use of additional weighted funding for collective
2 bargaining.” CCSD Exhibit 1, p. 2:63-64. The language of SB 543 as introduced, stating that
3 “The weighted funding appropriated pursuant to paragraph (e) of subsection 2: (a) May not be
4 used to settle or arbitrate disputes between a recognized organization representing employees of a
5 school district or the government body of a charter school and the school district or governing
6 body or to settle any negotiations; and (b) May not be used to adjust the district wide schedules of
7 salaries and benefits of the employees of a school district” was unchanged between introduction
8 and passage of the bill. *See* CCSD Exhibit 1, Joint Exhibit 2.

9 Prior to its passage, Jeremy Aguero, the principal analyst of Applied Analysis who
10 worked on SB 543, gave a general overview of the bill in front of the Senate Committee on
11 Finance on May 21, 2019. CCSD Exhibit 2, p. 14. Mr. Aguero explained Section 4, subsection 6
12 indicates “base funding is available for collective bargaining while weighted funding is not.”
13 CCSD Exhibit 2, p. 24 and 26. Senator Joyce Woodhouse, the co-sponsor of SB 543, specifically
14 stated during session 115 on May 29, 2019 that the weighted funds were excluded from collective
15 bargaining. Joint Exhibit 3, p. 005. Senator Woodhouse remarked, “The bill ... *excludes*
16 *additional weighted funding* and up to 16.6 percent of a school district’s ending fund balance
17 *from collective bargaining.*” Joint Exhibit 3, p. 005 (emphasis added). Senator Woodhouse also
18 explained that the bill “requires each public school to account separate for the adjusted base per
19 pupil funding and each category of weighted funding the school received; requires weighted
20 funding to be used for each relevant pupil to supplement the adjusted base per-pupil funding for
21 the pupil and provide such educational programs, services or support as are necessary to provide
22 the pupil a reasonably equal educational opportunity; and limits the use of weighted funding for
23 at-risk pupils and English learners to certain services.” Joint Exhibit 3, p. 005.

24 Jason Goudie, Chief Financial Officer for the District, reached out to the Legislative
25 Counsel Bureau (“LCB”) for their interpretation of NRS 387.1214 and NRS 387.12445. Joint
26 Exhibit 14. LCB Chief Deputy Legislative Counsel Asher Killian explained that NRS
27 387.12445 authorized schools to utilize the weighted funds and implement the programs listed in
28 NRS 387.12445(10). *Id.* LCB Counsel stated, “The intent is for the services identified in sub. 10

1 to be, effectively, a menu of potential uses for the money; while all weighted money must be
2 used on these services, not all of these services must be provided, and it's up to each school to
3 determine which services best suit its pupils." Joint Exhibit 14, p. 003. LCB Counsel also later
4 provided, "[] while base funding can be used for collective bargaining purposes, weighted
5 funding is prohibited from being used in collective bargaining pursuant to NRS 387.1214(7). To
6 the extent that this question concerns any attempt by an employee organization to compel the
7 district to require or prohibit certain uses of weighted funding in a collective bargaining context,
8 such an effort is prohibited by law, as weighted funding is specifically excluded from collective
9 bargaining." Joint Exhibit 14, p. 006.

10 According to the plain language of the statute, which was unchanged between
11 introduction and passage of the senate bill, the legislative history of the SB 543, and the LCB
12 interpretation of the statute, the weighted funds allocated to schools pursuant to NRS 387.1214
13 and NRS 387.12445 are not subject to collective bargaining in their entirety. Therefore, the
14 District cannot be required to bargain regarding the terms and conditions on incentive payments
15 that individual schools utilized under NRS 387.1214 and NRS 387.12445.

16 **D. ARGUMENT**

17 NRS 387.1214 and NRS 387.12445 gives schools the discretion to utilize weighted
18 funds, that were specifically and separately allocated by the Nevada Legislature under the Pupil-
19 Centered Funding Plan, through several delineated options provided in the statute. Additionally,
20 NRS 387.1214 plainly prohibits negotiating with an employee organization over these funds.
21 The District's interpretation of the statutes is correct under the theories of statutory construction
22 and according to the legislative intent, as endorsed by the Legislative Counsel Bureau. *See*
23 *Cable v. State ex. rel. Emp'rs Ins. Co. of Nev.*, 122 Nev. 120, 126-127, 127 P.3d 528, 532-533
24 (2006) (recognizing LCB interpretations in the analysis).

25 ...

26 ...

27 ...

28 ...

1 **1. The Weighted Funding Allocated to Schools under Chapter 387 of NRS is**
2 **Statutorily Not Subject to Collective Bargaining.**

3 **a. NRS 387.1214 and NRS 387.12445's Plain Meaning**

4 The District maintains that NRS 387.1214 and NRS 387.12445 on their face are clear
5 and unambiguous and dictate that weighted funding is not subject to collective bargaining.
6 “When a statute is clear and unambiguous, [a court] will give effect to the plain and ordinary
7 meaning of the words and does not resort to the rules of construction.” *Orion Portfolio Servs. 2,*
8 *LLC v. County of Clark ex rel. Univ. Med. Ctr. Of S. Nev.*, 126 Nev. 397, 402 (2010). The plain
9 language of NRS 387.1214 prohibits the weighted funds allocated to certain pupils from being
10 used “to settle or arbitrate disputes between an organization representing employees of a school
11 district...and the school district... or to settle negotiations,” or from being used “to adjust
12 district-wide schedules of salaries and benefits of the employees of a school district.” NRS
13 387.1214(7). “When Congress does not define a term, we interpret the words consistent with
14 their ordinary meaning at the time Congress enacted the statute.” *Chacon v. Wilkinson*, 988 F.3d
15 1131, 1134 (2021). CCEA has argued that “settle negotiations” in NRS 387.1214 “was clearly
16 referring to the mediation process found within NRS 288.” JX 22. However, CCEA’s
17 interpretation couches its meaning in a narrow, self-serving interpretation of the term and does
18 not examine the ordinary meaning of the term.

19 The term “settle negotiations” is not defined within Chapter 387 of NRS. However, the
20 ordinary meaning of “settle” may be determined by examining the dictionary definition and
21 legislative history of NRS 387. See *White v. Cont’l Ins. Co.*, 119 Nev. 114 (2003) (“It is well
22 settled in Nevada that words in a statute should be given their plain meaning unless this violates
23 the spirit of the act”). *Black’s Law Dictionary* includes several definitions of “settle,” so the
24 context is important in determining which definition is accurate. In the context of NRS
25 387.1214(7) referring to negotiations, “settle” means, “To decide on (a course of action); to
26 resolve what one is going to do, esp. so that one can make definite arrangements.” *Black’s Law*
27 *Dictionary* (11th ed. 2019). Using this definition of the word “settle” is bolstered by the
28 legislative history of the statute. On May 29, 2019, during session number 115 of the Nevada

1 Senate, Senator Joyce Woodhouse, who co-authored Senate Bill 543, entered remarks on the
2 record, which included, “The bill ... *excludes additional weighted funding* and up to 16.6
3 percent of a school district’s ending fund balance *from collective bargaining.*” JX 3, p. 005
4 (Emphasis added). The ordinary meaning of “settle negotiations” is collective bargaining, given
5 that the parties work together to decide on a course of action, work to resolve disputes over
6 subjects of mandatory bargaining, and make definite arrangements through negotiations.

7 The interpretation taken by CCEA that “settle negotiations” in NRS 387.1214 “was
8 clearly referring to the mediation process found within NRS 288,” ignores the plain meaning of
9 the term. It also seemingly leads to the befuddling result that terms and conditions of the
10 weighted funding are subject to negotiation, but not the processes available under NRS 288 to
11 resolve disputes or impasses concerning the same (*i.e.* NRS 288.190 and NRS 288.217).

12 Additionally, reading NRS 387.1214, NRS 387.12445 and NRS 288.150(2) together, it is
13 evident that the Nevada Legislature intended to carve out these allocated funds from the
14 negotiation and bargaining process and did not seek to curtail the employee organization’s
15 ability to negotiate over other means of compensation. “Statutory provisions should, whenever
16 possible, be read in harmony provided that doing so does not violate the ascertained spirit and
17 intent of the legislature.” *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886,
18 892 (1989); *see also Williams v. Clark Cnty. Dist. Att’y*, 118 Nev. 473, 484-85 (2002) (“We are
19 obliged to construe statutory provisions so that they are compatible, provided that in doing so,
20 we do not violate the legislature’s intent. Additionally, we should not render any part of a statute
21 ineffective if such consequence can be avoided.”). “When interpreting a statute, this court will
22 look to the policy and spirit of the law and will seek to avoid an interpretation that leads to an
23 absurd result.” *City Plan Development, Inc. v. Officer of Labor Com’r.*, 121 Nev. 419, 435
24 (2005). The Nevada Legislature deliberately prohibited the utilization of the weighted funds in
25 instances that are considered subjects of mandatory bargaining under NRS 288.150(2): disputes
26 between the recognized employee organization and the school district, negotiations, and
27 adjusting district-wide salaries. *See* NRS 387.1214(7) and NRS 288.150(1), (2)(a) and (2)(o).
28 Prohibiting negotiations over these specific funds certainly does not restrict an employee

1 organizations' ability to collectively bargain over wages and compensation under NRS
2 288.150(2)(a). Rather, it is the weighted funds that the Nevada Legislature carved-out of
3 bargaining and identified the manner in which they could be utilized by schools.

4 It is not uncommon that subjects of mandatory bargaining listed in NRS 288.150 are
5 subject to other state or federal laws that narrow the permissible scope of negotiations
6 concerning employee rights. As researched and explained by the Attorney General in Attorney
7 General Opinion No. 2017-13 evaluating NRS 388G.610, "...while safety of the employee must
8 be bargained, Chapter 618 of the NRS establishes significant health and safety minimums that
9 apply to local government employers. NRS 288.150(2)(r), 618.095. Additionally, while holidays
10 must be collectively bargained, certain holidays must be taken by public schools in Nevada.
11 NRS 288.150(2)(d), 236.015." *Id.* In the same way, "[t]he obligation to pay compensation
12 benefits and the right to receive them exist as a matter of statute independent of any right
13 established by contract." *Id.* (citing *MGM Grand Hotel-Reno, Inc. v. Insley*, 102 Nev. 513, 518
14 (1986)). Restricting the ability to bargain over the weighted funds specifically allocated under
15 Chapter 387 of NRS does not conflict with NRS 288.150 because the ability to collectively
16 bargain over other wages and forms of compensation remains.

17 Further, since the statutes at issue only prohibit bargaining over weighted funds, they
18 differ from NRS 388G.610 which was recently analyzed by the Board and the Nevada Supreme
19 Court, in light of NRS 288. First, NRS 388.610(3) specifically preserved the District's
20 responsibility to negotiate the conditions of employment of teachers. Second, NRS 388G.610(2)
21 required that the superintendent transfer only the authority the superintendent had to school
22 administration for selecting teachers. In the case of NRS 388G.610, the language indicated that
23 NRS 388G.610 would be subject to NRS 288. Conversely, the language in NRS 387 shows the
24 Nevada Legislature intended that the weighted funds not be subject to bargaining negotiations.

25 Contrary to CCEA's opinion and belief, there is no qualifying language in the statute that
26 suggests that the terms and conditions of how the weighted funds are spent must still be
27 negotiated with an employee organization. Indeed, based on the ordinary meaning of the clear
28 language in NRS 387.1214 and NRS 387.12445, the District is required to permit schools to

1 determine how to spend the weighted funds, within the parameters set by statute, and without
2 subjecting the matter to negotiations with an employee organization like CCEA.

3 **b. Other Canons of Construction Applicable to NRS 387.1214 and**
4 **NRS 387.12445**

5 If this Board finds that NRS 387.1214, NRS 387.12445 and NRS 288.150(a) conflict
6 with one other, NRS 387.1214 and NRS 387.12445 would control in this situation. There are
7 several canons of construction courts use to interpret statutes. One such canon finds that when
8 statutes are in conflict, the one more recent in time controls over the provisions of an earlier
9 enactment. *See Marschall v. City of Carson*, 86 Nev. 107, 115 (1970). NRS 387.1214 and NRS
10 387.12445 were codified in 2019, more recently than NRS 288.150(2)(a), which section was
11 codified in its current version in 1975. As the more recent statute, NRS 387 would control.

12 Additionally, there is the “General/Specific Canon.” “[I]t is an accepted rule of statutory
13 construction that a provision which specifically applies to a given situation will take precedence
14 over one that applies only generally.” *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364 (1999)
15 (citing *Western Realty Co. v. City of Reno*, 63 Nev. 330, 337 (1946)). NRS 288.150(2)(a) states
16 that the scope of mandatory bargaining is limited to certain subjects, which includes generally,
17 “salary or wage rates or other forms of direct monetary compensation.” In contrast, NRS
18 387.1214 and NRS 387.12445 allocate a certain amount of weighted funds to defined schools for
19 specific uses, and specifically excludes those funds from the mandatory bargaining process.
20 Given the specific language carving out those weighted funds, NRS 387.1214 and NRS
21 387.12445 take precedence over the employee organization’s ability to bargain regarding general
22 “direct forms of monetary compensation” in NRS 288.150.

23 **2. The Legislative History supports that the Weighted Funding Provided under**
24 **Chapter 387 of NRS is Not Subject to Collective Bargaining.**

25 The legislative history supports the District’s interpretation of NRS 387.1214 and
26 387.12445. As outlined *supra* in Sec. C. Relevant Facts, Jeremy Aguero, the principal analyst of
27 Applied Analysis who worked on SB 543, explained “Section 4, subsection 6 indicates base
28 funding is available for collective bargaining while weighted funding is not.” CCSD Exhibit 2,

1 p. 26. Co-author of SB 543 Senator Joyce Woodhouse entered remarks on the record during the
2 legislative session, stating, “The bill ... *excludes additional weighted* funding and up to 16.6
3 percent of a school district’s ending fund balance *from collective bargaining.*” Joint Exhibit 3, p.
4 005 (Emphasis added); *see also Stockmeier v. Psychological Review Panel*, 122 Nev. 534, 135
5 P.3d 807 (2006) (“if the statutory language is capable of more than one meaning, it is ambiguous
6 and the plain meaning rule is inapplicable and the drafter’s intent controls”) (citation omitted).
7 Senator Woodhouse also stated that the bill “requires each public school to account separate for
8 the adjusted base per pupil funding and each category of weighted funding the school received;
9 requires weighted funding to be used for each relevant pupil to supplement the adjusted base per-
10 pupil funding for the pupil and provide such educational programs, services or support as are
11 necessary to provide the pupil a reasonably equal educational opportunity; and limits the use of
12 weighted funding for at-risk pupils and English learners to certain services.” Joint Exhibit 3, p.
13 005. The bill intended to allocate the funds directly to the schools and give schools the authority
14 to determine how to spend the money within very specific parameters, with the ultimate goal of
15 ensuring that the weighted funds were spent on resources to support At-Risk and ELL children.
16 The District is statutorily obligated to permit schools to utilize the allocated weighted funds for
17 incentive payments to teachers who provide services to ELL and/or At-Risk students. This
18 interpretation was supported by LCB Counsel, who also interpreted that NRS 387.1214 and NRS
19 387.12445 provided weighted funds were to be used by the schools on specific services, and that
20 “weighted funding is prohibited from being used in collective bargaining pursuant to NRS
21 387.1214(7).” Joint Exhibit 14, p. 003 and 006. To argue that the terms and condition of the
22 funding are subject to bargaining could lead to a situation where a local government employer,
23 like CCSD, and an employee organization, like CCEA, cannot agree to terms and conditions
24 with the end result being schools being precluded or limited in utilizing the weighted funding.
25 Such an interpretation is contrary to the stated language and intent.

26 Since the funding was intended to be used by the schools for a specific student benefit
27 and be exempt from collective bargaining, it would be contrary to the intent of the Legislature to
28 mandate if and how those funds are to be used through negotiations.

1 **3. There is Ample Support for the Board to Declare that the Weighted Funds**
2 **Are Exempt From Collective Bargaining, and the Board May Not Interpret**
3 **the Statute Contrary to the Clear Construction.**

4 The Board has examined other statutes that affect subjects of mandatory bargaining and
5 has found that the Nevada Legislature must specifically express prohibition of negotiation over a
6 subject. In *Washoe County Deputies Ass'n, et al. v. International Ass'n of Firefighters, Local*
7 *2487*, Case No. A1-045479, Item No. 271 (1991) the Board examined whether negotiability of
8 retirement benefits was preempted by NRS 286 and 287. NRS 286 provides a statutory
9 retirement system for state and local government employees in Nevada. *Washoe County*, p. 8.
10 NRS 287 provides, in pertinent part, to group health and medical insurance for state and local
11 government employees. *Id.* The Board found, “No provision of either statute expressly states that
12 “the negotiation of the insurance benefits for employees pursuant to NRS 288.150(2)(f) appears
13 to be fully compatible with and not in contravention to” specific subsections of NRS 287 that
14 mandated how the local government may adopt systems for insurance, hospital services, and
15 contract with Public Employees’ Benefits Program, etc. *Id.* at 9. The Board also stated, “where a
16 mandatory subject of bargaining is ***not prescribed or controlled by other statutes***, and where
17 negotiations regarding said subject ***will not contravene public policies or specific prohibitions***
18 ***contained in other statutes***, such negotiations are permissible...” *Id.* The Board stated,
19 “Certainly, if the statute(s) contemplate(d) that a local government employer has the discretion
20 to establish, amend, and/or discontinue an insurance program for retirees, and the subject
21 program is not statutorily funded, then any conclusion to the effect that negotiations with respect
22 to said program are statutorily preempted will require more evidence than has been proffered...It
23 will require ***evidence of the existence of a specific, expressed statutory prohibition...***” *Id.* at 11.
24 The specific provisions and legislative history of NRS 387.1214 and NRS 287.12445 that
25 removed weighted funds from collective bargaining are certainly the strong evidence that was
26 contemplated by the Board in *Washoe County*.

27 It is presumed that CCEA may argue that removing these funds from bargaining would
28 mean that the statutes are not being interpreted harmoniously and/or would produce absurd

1 results as it would extinguish the right to collectively bargain regarding terms and conditions of
2 employment. However, the direction to allocate specific weighted funds directly to schools to
3 assist ELL and At-Risk students does not completely prevent collective bargaining over *all*
4 wages or terms and conditions of employment, and does not produce an absurd result. Compare
5 the case of *Clark County Education Ass'n, et al. v. Clark County School District*, Case No.
6 2020-008, Item No. 869 (2020), where the Board analyzed the language of NRS 388G.610(2),
7 which mandated the superintendent to transfer to each school precinct the authority to carry out
8 certain responsibilities, including the ability to select employees. Importantly, the Board found
9 that there was no specific language in NRS 388G that restricted the right of an employee
10 organization to bargain over the selection of employees. *Id.* at 4. The Board stated, "Should the
11 Legislature want to create a specific exception or carve out, they are free to do so..." *Id.* The
12 statutory provisions in NRS 387 exempting the weighted funds from bargaining are
13 distinguishable from the statute examined in *Clark County Education Ass'n*. NRS 387 is not an
14 overarching exemption for the District to avoid bargaining over the wages and terms and
15 conditions of employment; it is a specific allocation that the Nevada Legislature deemed schools
16 could utilize, from a set of delineated services, to assist and benefit ELL and At-Risk students.
17 Further, the Nevada Legislature intentionally created "a specific exception or carve out" that
18 exempted the funding from collective bargaining. NRS 387 clearly meant to remove these funds
19 from bargaining, so the Board should declare that there is no duty to negotiate with CCEA over
20 the use of these funds.

21 To declare that the District is required to bargain over these funds would be equivalent to
22 interpreting the statute in contravention to the clear and unambiguous intent prescribed by the
23 Nevada Legislature. The Nevada Supreme Court has held that the Board may not fill in gaps
24 where the statute is plain and unambiguous. In *Loc. Gov't Emp.-Mgmt. Rels. Bd. v. Educ. Support*
25 *Emps. Ass'n*, 134 Nev. 716, 721, 429 P.3d 658, 662–63 (2018), regarding the elections held in
26 attempt to settle the dispute between the Education Support Employees Association and
27 Teamsters Local 14, the Nevada Supreme Court determined that the Board exceeded its statutory
28 authority when it determined that a "majority of the votes cast," as opposed to the statutorily

1 mandated “majority of the employees within the particular bargaining unit,” was sufficient to
2 infer support and establish the bargaining agent for employees within a bargaining unit. The
3 Nevada Supreme Court found no ambiguity in the statute that would allow the Board to infer that
4 a majority of the votes cast meant that an employee organization has met the requirements to
5 become the exclusive bargaining agent. *Id.*

6 But it is well settled “that where the language of a statute is plain and
7 unambiguous and its meaning clear and unmistakable, there is no room for
8 construction.” *State Farm Mut. Auto. Ins. Co. v. Comm’r of Ins.*, 114 Nev. 535,
9 540, 958 P.2d 733, 736 (1998) (alteration and internal quotation marks omitted);
10 *see also Rondono v. CUNA Mut. Ins. Grp.*, 106 Nev. 371, 374, 793 P.2d 1324,
11 1326 (1990) (“[W]here there is no ambiguity ... there is no opportunity for ...
12 construction and the law must be followed regardless of result.”). This is true
13 “even if the statute is impractical.” *Id.* As the rules of statutory construction also
14 apply to regulations, *see Silver State Elec.*, 123 Nev. at 85, 157 P.3d at 713, and
15 as we have concluded that the language is plain and unambiguous, there were no
16 gaps for the Board to fill. The Board must adhere to the clear language,
17 irrespective of the outcome.

18 *Loc. Gov’t Emp.-Mgmt. Rels. Bd. v. Educ. Support Emps. Ass’n*, 134 Nev. 716, 721, 429 P.3d
19 658, 662–63 (2018). In this matter, the statutory language is clear that the weighted funds were
20 meant to be specifically allocated to the schools for use in specific delineated services to benefit
21 ELL and At-Risk pupils, and that these funds were not subject to negotiations. To find that the
22 District must bargain over the funds with the CCEA would be equivalent to “filling in the gaps”
23 in order to produce a specific result that is contrary to the Nevada Legislature’s intent.

24 Also, compare the funds allocated by the Nevada Legislature in NRS 387 to those
25 “monetary compensation” issues in the EMRB case cited by CCEA in their prehearing statement.
26 In *Las Vegas Fire Fighters Local 1285 v. City of Las Vegas*, Case No. A1-046074, Item No. 786
27 (2013), the City intended to establish a gain sharing program, which the association did not
28 initially agree to, and the City then distributed the bonuses to all employees but those covered by
the association. The EMRB ruled that those monies were subject to collective bargaining,
however, the City did not make a unilateral change of terms and conditions of employment
because it was simply a bonus payment that the association did not agree to. *Id.* Similarly, the
case cited in *Las Vegas Firefighters, Singer Mfg. Co.*, 24 NLRB 44, 459-60, 119 F.2d 131 (1940)
found that the payment of yearly bonuses was an integral part of the earnings and working

1 conditions of employees. The weighted funds in the instant matter are different from the bonuses
2 and gain sharing program addressed in *Las Vegas Firefighters* and *Singer*: these are funds that
3 were allocated to schools to be used for specific services and are clearly exempted from
4 negotiations pursuant to NRS 387. While the weighted funds are certainly a form of
5 compensation, they are not the same as bonuses in general and they have been intentionally
6 removed from collective bargaining. The District has no duty to negotiate regarding these funds
7 under NRS 288.150.

8 Because there is clear evidence in the statutory language and legislative history, the
9 Board should declare that the weighted funds allocated under NRS 387.1214 and NRS
10 387.12445 are exempt from collective bargaining, which would be consistent with the Board's
11 prior orders requiring specific Legislative exceptions and would follow the clear construction of
12 the statute as required by the Nevada Supreme Court.

13 **E. CONCLUSION**

14 For the reasons stated herein, the District requests that the Board declare that the terms
15 and conditions of incentive payments under NRS 387.1214 and NRS 387.12445 are not subject
16 to collective bargaining under NRS 288.150(2).

17 DATED this 2nd day of January, 2024.

18 CLARK COUNTY SCHOOL DISTRICT
19 OFFICE OF THE GENERAL COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2024, I sent via email, a true and correct copy of the foregoing **CLARK COUNTY SCHOOL DISTRICT'S BRIEF ON PETITION FOR DECLARATORY ORDER**, addressed to the following:

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