

FILED  
February 7, 2024  
State of Nevada  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

CLARK COUNTY EDUCATION  
ASSOCIATION,

Petitioner,

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No. 2023-010  
(Consolidated with Cases  
2023-014, 2023-018 and 2023-021)

**NOTICE OF ENTRY OF ORDER**

**PANEL C**

**ITEM NO. 892**

TO: Complainant and its representative, Alexandria Shelton, Clark County Education Association;  
and

TO: Respondent and its attorneys, Crystal J. Herrera, Esq. and Betty Foley, Esq., and the Office of the  
General Counsel for the Clark County School District.

PLEASE TAKE NOTICE that the **DECLARATORY ORDER, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER** was entered in the above-entitled matter on February 7,  
2024.

A copy of said order is attached hereto.

DATED this 7th day of February 2024.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY Isabel Franco  
ISABEL FRANCO  
Administrative Assistant II

1  
2 CERTIFICATE OF MAILING

3 I hereby certify that I am an employee of the Government Employee-Management Relations  
4 Board, and that on the 7th day of February 2024, I served a copy of the foregoing **NOTICE OF ENTRY**  
5 **OF ORDER** by mailing a copy thereof, postage prepaid to:

6 Alexandria Shelton  
7 Clark County Education Association  
8 4230 McLeod Drive  
9 Las Vegas, Nevada 89121

10 Crystal J. Herrera, Esq.  
11 Betty Foley, Esq.  
12 Clark County School District  
13 Office of the General Counsel  
14 5100 West Sahara Avenue  
15 Las Vegas, NV 89146

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18 ISABEL FRANCO  
19 Administrative Assistant II  
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**DECLARATORY ORDER, FINDINGS  
OF FACT, CONCLUSIONS OF LAW  
AND ORDER**

**PANEL C**

**ITEM NO. 892**

On November 7 and 8, 2023, this matter came before the State of Nevada, Government Employee-Management Relations Board (the “Board”) for a hearing on several claims between the parties pursuant to the provision of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 233B, and NAC Chapter 288.

**I. BACKGROUND**

During the hearing on November 8, 2023, the parties agreed to settle all their claims with one exception. The exception was that the parties both agreed that the issue of whether the terms and conditions of incentive payments using weighted funding under NRS 387.1214 and NRS 387.12445 are subject to mandatory collective bargaining under NRS 288.150 and that this issue should be converted into a Petition for Declaratory Order for the Board to decide. A Stipulation and Settlement to this effect was filed on November 30, 2023 and approved by the Board on December 14, 2023. Following the submission of briefs by the parties, the Board met on January 10, 2024, to deliberate on the Petition for Declaratory Order. This case turns entirely on whether the incentives provided for under NRS 387.12445

1 are subject to the mandatory bargaining provisions of NRS 288.150 or whether the incentives are exempt  
2 from NRS 288.150 as a “carve out.” This was not an easy issue for the Board to decide and the briefs  
3 filed by both parties were helpful.<sup>1</sup>

## 5 II. DISCUSSION

6 Preliminarily, NAC 288.380 provides that any employee organization or local government  
7 employer “may petition the Board for a declaratory order regarding the applicability or interpretation of  
8 any statutory provision or of any regulation or decision of the Board.” The purpose of a Petition for  
9 Declaratory Order is to address the applicability of a statutory provision or order or rule of the agency in  
10 particular circumstances. *City of Reno v. Reno Firefighters Local 731, International Association of*  
11 *Firefighters*, Case No. A1-046049, Item 777A at 3 (EMRB, March 16, 2012). This case involves the  
12 Board’s interpretation of the EMRA over which the Board has jurisdiction. *Clark County School Dist.*  
13 *v. Local Govt. Employee-Mgmt. Rel. Board*, 90 Nev. 442, 446 (1974).

14 The Nevada Legislature enacted sections 387.1214 and 387.12445 via Senate Bill 543 during the  
15 2019 Legislative Session. SB 543 provided for weighted funding for each child enrolled in a District  
16 who was an English language learner (“ELL”), an at risk-pupil or a gifted and talented pupil.

17 NRS 387.1214 states in relevant part:

18 \* \* \*

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

24 \* \* \*

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

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<sup>1</sup> The parties agreed that CCEA would be the Petitioner and Clark County School District would be the Respondent even though both parties jointly agreed to file briefs on the subject.

- (1) An English learner;
- (2) An at-risk pupil; or
- (3) A gifted and talented pupil.

5. The weighted funding appropriated pursuant to paragraph (e) of subsection 2 must be established separately for each category of pupils identified in that paragraph and expressed as a multiplier to be applied to the statewide base per pupil funding amount determined pursuant to subsection 1. A pupil who belongs to more than one category of pupils or for whom a school district, charter school or university school for profoundly gifted pupils is eligible to receive the statewide multiplier pursuant to NRS 387.122 must receive only the weighted funding for the single category to which the pupil belongs which has the largest multiplier or the statewide multiplier, whichever is larger. **It is the intent of the Legislature that, to the extent practicable:**

(a) The multiplier for each category of pupils for any fiscal year be not less than the multiplier for the immediately preceding fiscal year unless:

(1) The amount of money contained in the State Education Fund, excluding the Education Stabilization Account, decreases from the preceding fiscal year, in which event it is the intent of the Legislature that a proportional reduction be made in both the statewide base per pupil funding amount and the weighted funding appropriated pursuant to paragraph (e) of subsection 2; or

(2) The amount of money contained in the State Education Fund, excluding the Education Stabilization Account, increases from the preceding fiscal year but in an amount which, after funding the appropriations required by paragraphs (a) to (d), inclusive, of subsection 2, is insufficient to fund the multiplier for each category of pupils, in which event it is the intent of the Legislature that the remaining money in the State Education Fund be used to provide a multiplier for each category of pupils which is as close as practicable to the multiplier for the preceding fiscal year;

(b) The recommendations of the Commission for the multiplier for each category of pupils be considered and the multiplier for one category of pupils may be changed by an amount that is not proportional to the change in the multiplier for one or more other categories of pupils if the Legislature determines that a disproportionate need to serve the pupils in the affected category exists; and

(c) If the multipliers for all categories of pupils in a fiscal year are increased from the multipliers in the immediately preceding fiscal year, a proportional increase is considered for the statewide base per pupil funding amount.

\* \* \*

7. The weighted funding appropriated pursuant to paragraph (e) of subsection 2:

(a) May not be used to settle or arbitrate disputes between a recognized

1 organization representing employees of a school district or the  
2 governing body of a charter school and the school district or governing  
3 body or to settle any negotiations; and

(b) May not be used to adjust the district-wide schedules of salaries and  
4 benefits of the employees of a school district.

5 NRS 387.12445 states in relevant part:

6 1. Except as otherwise provided in subsection 2, each school district shall  
7 ensure that all adjusted base per pupil funding received by the school district  
8 pursuant to paragraph (c) of subsection 2 of NRS 387.1214 is accounted for  
9 separately and, after a deduction for the administrative expenses of the  
10 school district in an amount which does not exceed the amount prescribed  
11 by the Department by regulation for each school district, be distributed and  
12 used as described in this subsection. The adjusted base per pupil funding  
13 provided to each school district must:

(a) Be distributed by each school district to its public schools in a  
14 manner that ensures each pupil in the school district receives a  
15 reasonably equal educational opportunity.

16 \* \* \*

17 3. Each school district shall ensure that all weighted funding received by  
18 the school district pursuant to paragraph (e) of subsection 2 of NRS  
19 387.1214 is accounted for separately and distributed directly to each school  
20 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  
23 pupils must use that weighted funding only to provide Victory services and,  
24 if one or more at-risk pupils for whom the school received weighted funding  
25 in the at-risk pupil category also belong to one or more other categories of  
26 pupils who receive weighted funding, the additional services for each such  
27 at-risk pupil which are appropriate for each category to which the at-risk  
28 pupil belongs.

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

\* \* \*

10. As used in this section:

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

\* \* \*

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

1 \* \* \*

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

3 \* \* \*

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

6 Petitioner argues that the limitations set out in NRS 387.1214(7) do not change whether the  
7 incentives are subject to the mandatory bargaining requirements under NRS 288.150. The Respondent  
8 asserts that the plain language of the statutes and the legislative history of SB 543 shows the Legislature's  
9 express intent to exempt the weighted funds from collective bargaining entirely.

10 The current language found in NRS 288.150 predated the passing of SB 543 which took place in  
11 2019. Thus, the Legislature was certainly aware of the existence of NRS 288.150 when it passed  
12 SB 543 and is presumed to have acted with full knowledge of existing statutes. *City of Boulder City v.*  
13 *General Sales Drives and Helpers, Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and*  
14 *Helpers of America, Local 14*, 101 Nev. 117, 119 (1985) (It is presumed that in enacting a statute that the  
15 Legislature acts with the full knowledge of existing statutes relating to the same subject). Specifically,  
16 NRS 288.150(2)(a) provides that "[s]alary or wage rates or other forms of direct monetary compensation"  
17 are a subject of mandatory bargaining.

18 There is no doubt that the incentives provided in NRS 387.12445(10)(a)(5) and (10)(b)(4)  
19 constitute "direct monetary compensation" under NRS 288.150(2)(a). *See City of Sparks v. International*  
20 *Association of Firefighters, Local 1265 and Sparks Police Protective Association, No. A1-045279*, Item  
21 No. 42 (EMRB, Aug. 19, 1975) (Board determined that merit increases are a form of direct monetary  
22 compensation); *International Association of Firefighters, Local 1908 v. County of Clark, State of*  
23 *Nevada; Clark County Fire Department*, No. A1-045824, Item No. 622 (EMRB May 2, 2006) (Board  
24 found that although overtime allocation is not specifically mentioned as a mandatory subject of  
25 bargaining, it is a form of wage rate or other form of monetary compensation, or in the alternative, it is  
26 significantly related to those subjects mentioned therein, and therefore is a subject of mandatory  
27 bargaining); *Washoe County School District v. Washoe County Education Association and Washoe*  
28 *Education Support Professionals*, No. A1-045878, Item No. 626C (EMRB Nov. 18, 2009) (Board found

1 that direct deposit and pay card system is significantly related to salary or wages or other forms of direct  
2 monetary compensation under NRS 288.150(2)(a)).

3 **A. Legislative Intent.**

4 The only remaining task is to determine the intent of the Legislature relative to SB 543 and its  
5 impact on NRS 288.150. In interpreting statutes, the primary consideration is the Legislature’s intent.  
6 *Cleghorn v. Hess*, 109 Nev. 544, 548 (1993). The Nevada Supreme Court has stated that to determine  
7 legislative intent, the court first looks at the plain language of the statute. *Allstate ins. Co. v. Packett*,  
8 *125 Nev. 132, 138 (2009)*. A Court will only look beyond the plain language of a statute if it is ambiguous  
9 or silent on the issue in question. *Id.* “When a statute is clear and unambiguous [a court] will give effect  
10 to the plain and ordinary meaning of the words and does not resort to the rules of construction.” *Orion*  
11 *Portfolio Services 2 LLC v. County of Clark ex rel. Univ. Medical Ctr. Of Southern Nev.*, 126 Nev. 397,  
12 402 (2010). If, however, a statute is susceptible of another reasonable interpretation, courts will not give  
13 the statute a meaning that will nullify its operation, and they look to policy and reason for  
14 guidance. *Leven v. Frey*, 123 Nev. 399, 405 (2007). Furthermore, a court has a duty to construe statutes  
15 as a whole so that all provisions are considered together and, to the extent practicable, reconciled and  
16 harmonized. *Id.* Finally, statutes are to be read in a manner that avoids unreasonable or absurd results.  
17 *Allstate* at 138.

18 1. Plain Language Analysis.

19 SB 543 included language which stated: “Section 4 generally prohibits the use of additional  
20 weighted funding for collective bargaining.” The Board must take the Legislature at its word when it  
21 states that weighted funds are exempt from collective bargaining.

22 Both Petitioner and Respondent cite to NRS 387.1214(7) in support of their respective positions.  
23 The focus of the dispute is on the language in NRS 387.1214(7)(1) which states:

24 7. The weighted funding appropriated pursuant to paragraph (e) of  
25 subsection 2:

26 (a) May not be used to settle or arbitrate disputes between a recognized  
27 organization representing employees of a school district or the  
28 governing body of a charter school and the school district or governing  
body or to settle any negotiations; and



1           There are two instances when the word “settle” is used within NRS 387.1214(a). The first use of  
2 the word “settle” is in the phrase “settle or arbitrate disputes...” The second use of the word is found in  
3 the phrase “settle any negotiations.” Thus, given the multiple uses, the phrase “settle any negotiations”  
4 must relate to something other than “settle or arbitrate disputes...” *Berkson v. LePome*, 126 Nev. 492,  
5 497 (2010) (a statute will be construed in order to give meaning to its entirety and courts will read each  
6 sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation)  
7 (citations omitted).

8           The Petitioner suggests that the term “settle” in NRS 387.1214(7) only applies to situations where  
9 weighted funds are being used to determine the ability of the school to pay during the mediation of a  
10 contract proposal. Petitioner’s Brief Regarding Petition for Clark County Education Association’s  
11 Petition for Declaratory Order at p. 7, lines 12-18 (hereafter “Petitioner’s Brief”). Petitioner’s  
12 interpretation cannot be correct because mediation is not the only form of “dispute” or “negotiation” that  
13 exists in the realm of collective bargaining. Furthermore, Petitioner only examined the word “settle” in  
14 a very broad sense despite the two distinct uses of the word in the same sentence. If the Board read the  
15 statute the way Petitioner argues it would have the effect of reading one of the uses of “settle” out of  
16 existence which would lead to an absurd result. *Allstate, supra*, at 138. A more reasonable reading of  
17 the phrase “settle any negotiations” means using the funds for collective bargaining negotiations,  
18 including the mandatory subjects of negotiation in NRS 288.150(2).

19           Importantly, there is no limiting language in NRS 387.1214(7) and the language “settle any  
20 negotiations” is very broad. There are plenty of restrictions in SB 543 regarding the use of weighted  
21 funds and it is reasonable to conclude that Legislature felt that all the restrictions in SB 543 would prevent  
22 any abuses by the districts to the detriment of the employees and students alike. The Board’s reading of  
23 SB 543 regarding weighted funding indicates that the Legislature intended to provide flexibility to  
24 districts with conditions in place that ensured the goals of the weighted fund program could be met.

25           Considering the above discussion, the only interpretation that makes sense is to read the language  
26 in NRS 387.1214(7) literally and plainly as written, i.e., the word “all” means all with respect to  
27 negotiations. If the Board ascribes the plain meaning of the words “settle any negotiations,” then the use  
28 of the weighted funds appropriated via SB 543 are indeed exempt from collective bargaining

1 negotiations, including the subjections of mandatory negotiations covered under NRS 288.150. This  
2 interpretation fits with the evidence presented to the Board.

3 2. Beyond the Plain Language.

4 If a statute is susceptible to another reasonable interpretation, a Court must not give the statute a  
5 meaning that will nullify its operation, and a court will look to policy and reason for guidance. Leven v.  
6 Frey, 123 Nev. 399, 405 (2007). Further, a court has a duty to construe statutes as a whole, so that all  
7 provisions are considered together and, to the extent practicable, reconciled and harmonized. Id. The  
8 question here is what policy and reason have to say about SB 543.

9 The policy behind SB 543 relative to weighted funding requires an examination of the text of SB 543.  
10 The first page of the Legislative Digest for SB states in part:

11 \* \* \*

12 In addition to the basic support guarantee per pupil, state financial aid to  
13 public education is provided through various programs, commonly known  
14 as “categorical funding,” that target specific purposes or populations of  
15 pupils for additional support. Such programs include, without limitation, the  
16 Account for the New Nevada Education Funding Plan, Zoom schools and  
Victory schools. (NRS 387.129-387.139; section 1 of chapter 544, Statutes  
of Nevada 2017, p. 3768; section 2 of chapter 389, Statutes of Nevada 2015,  
p. 2199)

17 The Zoom and Victory services (i.e., categorical funding”) provided in NRS 387.12445 impose  
18 clear restrictions on schools to ensure that the weighted funding is being spent on the pupils that it was  
19 designed for. Petitioner admits as much. Petitioner’s Brief at p. 4, lines 4-8.

20 In examining the record, we note that Respondent provided ample evidence that the intent of the  
21 Legislature was to carve out an exemption of all weighted funding from the collective bargaining  
22 process.<sup>2</sup> Respondent’s Brief on Petition for Declaratory Order at pp. 4-7. Conversely there is ample  
23 evidence that “base funding” is not exempt from collective bargaining. *Id.*, see also SB 543. Since NRS  
24 288.150 predated SB 543 by quite some time, it is reasonable to conclude that the Legislature knew of  
25 the existence the of mandatory bargaining requirements set out in NRS 288.150.

26 It is also reasonable to conclude the Legislature intended to carve out an exception to mandatory

27 <sup>2</sup> The Board did not find the Affidavit of Moises Denis that was Attached to Petitioner’s Brief as  
28 Exhibit A helpful when making its decision as it was not clear or unequivocal.

1 subjects of bargaining because it has done so previously on more than one occasion. *See e.g.*, NRS  
2 288.150(8) – (10) (essentially stating that collective bargaining agreements which conflict with these  
3 subsections are null and void); NRS 288.151 (“notwithstanding the provisions of any collective  
4 bargaining agreement or contract of employment to the contrary...”). Indeed, NRS 288.500(2)(a)  
5 specifically states that subjects of mandatory bargaining under NRS 288.150(2) are applicable to state  
6 employees “except paragraph (f) of that subsection.” We do not know why the Legislature did not choose  
7 a more direct route to exempt weighted funding from collective bargaining in SB 543 and this Board will  
8 not speculate why they chose to use the language they did.

9         Moreover, even if there is some sort of irreconcilable conflict between the language in SB543 and  
10 NRS 288.150, the language which is most recently enacted controls the provisions of the earlier  
11 enactment. *Marschall v. City of Carson*, 86 Nev. 107, 115, 464 P.2d 494, 500 (1970) (citation omitted);  
12 *See also City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 404, (2017). In this instance, SB 543  
13 was enacted long after the language in NRS 288.150(2) which means that if the Legislature had intended  
14 to directly amend NRS 288.150(2) it could have done so. One reason the Legislature may not have done  
15 so is because they must have thought the language in Section 4, *supra*, and the language in NRS  
16 387.2414(7) was sufficient to telegraph their intent. Another reason may be that the appropriation was a  
17 one-time appropriation to be distributed to schools and it would not be proper to amend a statute for a  
18 one-time occurrence.<sup>3</sup>

19         The Board thus finds that it is reasonable the Legislature intended to carve out an exception to the  
20 use of weighted funding given the conditions imposed on the use of these funds. Standardization with  
21 some limited flexibility is the hallmark of SB 543 and it is reasonable to conclude that as a matter of  
22 policy the Legislature did not want labor organizations and school districts negotiating in a way that  
23 could alter the clear intent of SB 543. In addition, the evidence presented to this Board, along with the  
24 fact that the Legislature has previously carved out exceptions to NRS 288.150(2), makes it is reasonable  
25 to conclude that the Legislature intended to carve out another exception in this case.

26         3.         The Result is not Absurd.

27 \_\_\_\_\_  
28         <sup>3</sup> A subsequent Legislature may appropriate funds for the same purpose again, but that is pure speculation at this point and may require some analysis as to whether the program was successful.

1 An absurd result is on “so gross as to shock the general moral or common  
2 sense.” *Home Warranty Administrator of Nevada, Inc. v. Department of Business and Industry*,  
3 137 Nev. 43, 47 (2021).

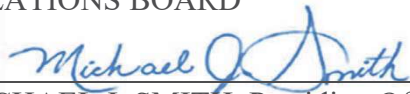
4 Petitioner argues that Respondent’s interpretation leads to an absurd result. Petitioner’s Brief at  
5 pp. 8-10. The basis for its position is that NRS 387.1214 could be used to circumvent the collective  
6 bargaining process. Unfortunately given the plain language analysis set forth above, the carve out  
7 exception to NRS 288.150(2) appears to be exactly what the legislature intended. It is not unreasonable  
8 or absurd to conclude that the Legislature wanted to provide schools with flexibility in retaining teachers  
9 for the pupils identified in NRS 387.1214(2)(e). The Board does not find anything “gross” or “shocking”  
10 in having the Legislature carve out exceptions to NRS 288.150, especially since it has done so in the past  
11 as noted above. The entire collective bargaining process is a creature of statute and can be modified by  
12 the Legislature as they see fit. Finally, a result is not absurd simply because one party does not like the  
13 outcome. Thus, there is nothing so gross as to shock the general moral or common sense in the  
14 Legislature exempting weighted funds from the mandatory bargaining provisions of  
15 NRS 288.150(2).

16 **III. ORDERS**

17 Based on the foregoing, it is hereby **ORDERED** that Clark County Education Association’s  
18 Petition for Declaratory Order is hereby **DENIED** and the Board concurs with Clark County School  
19 District’s position regarding this matter for the reasons set forth herein.

20 DATED this 7th day of February, 2024.

21 GOVERNMENT EMPLOYEE-MANAGEMENT  
22 RELATIONS BOARD

23 By:   
24 MICHAEL J. SMITH, Presiding Officer

25 By:   
26 SANDRA MASTERS, Board Member

27 By:   
28 MICHAEL A. URBAN, Board Member