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FIRST JUDICIAL DISTRICT COURT  
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.;  
MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.;  
ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.;  
JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.;  
LINDA JOHNSON, individually and on behalf of her minor child, K.J.;  
SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

PLAINTIFFS' REPLY ON ITS MOTION FOR A PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant’s brief waxes eloquent about “sweeping education reform” and all of the  
4 purported benefits Nevada will realize from using public school funds to subsidize private school  
5 tuitions and home schooling expenditures. But rhetoric and posturing aside, SB 302 simply does  
6 not pass constitutional muster. Plaintiff public school parents established in their motion for a  
7 preliminary injunction that SB 302 violates the Nevada Constitution on three separate grounds.  
8 Defendant’s brief fails to refute Plaintiffs’ showing.

9 First, Plaintiffs demonstrated that SB 302 is unconstitutional because it diverts to a  
10 private voucher program—Education Savings Accounts (“ESAs”)—funds appropriated by the  
11 Legislature solely for the operation of the public schools under Article XI, Sections 3 and 6.  
12 Defendant has no answer for this nor can he. Defendant concedes that SB 302 on its face funds  
13 the private ESAs authorized by SB 302 from the Distributive School Account (“DSA”)—the  
14 Section 3 and 6 funds. These funds cannot be used for private expenditures by express mandate of  
15 the Nevada Constitution. The statute fails on this ground alone regardless of any other argument  
16 raised by Defendant.

17 Second, Plaintiffs established that SB 302, by diverting funds from the DSA,  
18 reduces the amounts deemed sufficient by the Legislature to fund public education in violation of  
19 Section 6. In response, Defendant argues that the Legislature anticipated SB 302’s diversion of  
20 funds when it appropriated money for public education so the amount left in the DSA after  
21 implementation of SB 302 is sufficient. This is both factually wrong and practically impossible.  
22 Defendant does not dispute that the Legislature provided no additional funds—beyond the  
23 appropriations for the public schools—to pay for private ESAs authorized under SB302. Indeed,  
24 the Legislature could not have determined the amounts sufficient to fund both public education  
25 and ESAs over the biennium. SB 302 has no cap and is not limited to any particular criteria of  
26 students. There is no way to predict how many ESAs will siphon off money from the DSA.  
27 Accordingly, it is impossible for the Legislature to uphold its constitutional duty to sufficiently  
28

1 fund the public schools first before any other appropriation when SB 302 will divert an unlimited  
2 amount of funds out of that appropriation to ESAs.

3 Third, Plaintiffs showed that SB 302 violates the Legislature’s constitutional  
4 obligation to maintain a uniform system of public schools under Article XI, Section 2. Defendant  
5 does not dispute that the ESA funds—the diverted public school funds—will support non-uniform  
6 private schools in violation of Section 2. Instead, Defendant argues that ESAs are not subject to  
7 Section 2 at all but are permissible under Section 1’s general aspiration that the Legislature shall  
8 “encourage by all suitable means the promotion of intellectual, literary, scientific mining,  
9 mechanical, agricultural, and moral improvements.” This contention, however, is unsupported by  
10 anything in the history or drafting of Article XI and directly conflicts with the intent of the framers  
11 of the Nevada Constitution. It also goes against well-established canons of constitutional  
12 construction: namely, specific terms govern the general, the Constitution must be read as a whole  
13 and clear affirmative expressions exclude the contrary. While Section 1’s introductory statements  
14 exhort the Legislature to promote intellectual, literary and scientific development, Sections 2, 3  
15 and 6 set forth the clear directives for the manner in which the Legislature must do so for K-12  
16 students: the establishment, maintenance and support of a uniform system of public schools. The  
17 laudatory language in Section 1 cannot be read to allow funds appropriated to maintain the  
18 uniform system of public schools to be used to support non-uniform private schools and other non-  
19 uniform private education expenditures.

20 For these reasons and as discussed below, Defendant’s brief fails on all counts to  
21 provide support for the constitutionality of SB 302. Plaintiffs, thus, have shown that they are  
22 likely to succeed on their claims that SB 302 is unconstitutional on its face. Unconstitutional  
23 statutes are alone sufficient harm to justify an injunction without a further showing but there is  
24 ample evidence in the record that SB 302 will cause irreparable harm. SB 302 must be  
25 preliminarily enjoined.

1 **II. ARGUMENT**

2 **A. Plaintiffs Are Likely To Prevail On The Merits And, Thus, Have Also Stated**  
3 **Valid Claims Defeating A Motion to Dismiss**

4 Defendant's brief both opposes Plaintiffs' motion for preliminary injunction and  
5 supports Defendant's separate motion to dismiss Plaintiffs' complaint (hereinafter referred to  
6 jointly as "Defendant's Brief" or "Def. Br."). Because Plaintiffs are likely to prevail on their  
7 motion seeking to preliminarily enjoin SB302's implementation, Defendant's motion to dismiss  
8 must also be denied.

9 **1. Defendant Does Not, And Cannot, Refute SB 302's Diversion Of Public**  
10 **School Funds To Private Purposes In Violation Of Article XI, Section 3**  
11 **And Section 6, Of The Nevada Constitution**

12 Plaintiffs' Motion for Preliminary Injunction (hereinafter "Plaintiffs' Motion" or  
13 "Pl. Mot.") demonstrates that, under the Education Article of the Nevada Constitution, funds  
14 specifically allocated to public schools by the Legislature in the biennium budget for public  
15 schools have a singular purpose: to provide for the support, maintenance and operation of  
16 Nevada's public schools. Article XI establishes two sources of such funds—those set aside under  
17 Section 3 and those appropriated under Section 6. By the plain terms of the Nevada Constitution,  
18 neither of these sources of funds may be diverted to private schools or other non-public school  
19 expenditures. *See, e.g., State ex rel. Keith v. Westerfield*, 23 Nev. 468 (1897) (Section 3 and  
20 Section 6 funds "constitute the general school fund" which cannot be diverted away from the  
21 public school system "without disregarding the mandates of the constitution"); *see also* Pl. Mot. at  
22 13 (discussing relevant authority). SB 302 violates these provisions by specifically authorizing  
23 the use of Article XI funds for private purposes.

24 Defendant does not directly address SB 302's unconstitutional diversion of funds  
25 appropriated for the public schools under Section 6. Instead, Defendant attempts to recast  
26 Plaintiffs' position as pertaining only to Section 3 and then asserts that the diversion of Section 3  
27 funds to ESAs is allowable because (1) Section 3 funds comprise a small portion of the Article XI  
28 funds; and (2) Section 3 funds may be used for any "educational purpose"—public or private.  
Def. Br. at 15-17. Neither argument cures SB 302's constitutional defects. Further, Defendant's



1 failure to directly address the diversion of Section 6 public school funding under SB 302 is a tacit  
2 admission of the law’s violation of the express constitutional prohibition on using public school  
3 funding for anything other than the operation of Nevada’s public schools.<sup>1</sup>

4 **(a) Defendant Fails To Directly Address The Unconstitutional**  
5 **Diversion Of Public School Funding Under Article XI, Section 6**  
6 **Of The Nevada Constitution**

7 Defendant does not address nor refute Plaintiffs’ claim that SB 302 diverts funds  
8 appropriated by the Legislature “for the support and maintenance of . . . [the] common schools”  
9 under Section 6 to private purposes. Nev. Const. art. XI, § 6.1. By its plain terms, funds  
10 appropriated under Section 6 must be used “to fund the *operation of the public schools* in the State  
11 for kindergarten through grade 12” *Id.*, § 6.2 (emphasis added). As Defendant readily concedes,  
12 the funds appropriated by legislation in the biennium State budget (SB 515) pursuant to Section 6  
13 comprise the vast majority of the funds allocated to the DSA, the State account from which  
14 payments to public school districts are made during the school year. *See* Def. Br. at 16 (funds  
15 appropriated pursuant to Section 6 comprised 78 percent of the DSA in 2015); *see also* Boyd  
16 Decl., Ex. 1.

17 Defendant does not deny, nor can he, that SB 302 by its plain terms diverts funds  
18 appropriated by the Legislature for the operation of the public schools under Section 6 to ESAs for  
19 private expenditures. *See* SB 302 § 16.1(school districts are entitled to their apportioned Section 6  
20 funds “minus . . . all the funds deposited in education savings accounts established on behalf of  
21 children who reside in the county”); *see also* SB 302, Legislative Counsel’s Digest (“the amount  
22 of the [ESA] must be deducted from the total apportionment to the resident school district of the  
23 child on whose behalf the [ESA] is made”). That ends the analysis. Section 6 funds are

---

24 <sup>1</sup> Defendant suggests that, under *Keith*, funding of ESAs from the money appropriated pursuant to  
25 SB 515 is not unconstitutional because those are “general fund monies.” Def. Br. at 19. Yet *Keith*  
26 provides no support for Defendant’s position. In *Keith*, the Court specifically stated that the  
27 disputed payment could not be paid from the “general school fund,” comprised of Section 3 and  
28 Section 6 funds. 49 P. at 121. The express and clear purpose of Section 6—to “provide[] for the  
support and maintenance of said University and common schools”—has remained the same since  
the Constitution’s founding. Thus, the diversion of funds appropriated pursuant to Section 6 is  
unconstitutional, just like it was in 1897.

1 appropriated and must be used solely for the operation of the public schools, and SB 302's  
2 diversion of those funds for private purposes is unconstitutional.

3 (b) **Article XI, Section 3, Prohibits The Use Of The Permanent**  
4 **School Fund For Private Schools And Other Private**  
5 **Educational Programs**

6 While ignoring Section 6 funds, Defendant contends that funds established under  
7 Section 3 can be used for any "educational purpose," not just for the public schools, and therefore,  
8 SB 302 does not violate that provision. Def. Br. at 17-18. This reading is belied by "the history,  
9 public policy, and reason for the provision," *Landreth v. Malik*, 251 P.3d 163, 166 (2011), as well  
10 as the Nevada Supreme Court's precedent interpreting this provision.

11 Section 3 was drafted and established to ensure sources of funding for public  
12 education in addition to direct legislative appropriations, primarily revenue from federal land  
13 grants made by Congress. *See* Nevada Enabling Act, Pub. L. No. 38-30, 13 Stat. 30, 32 (1864);  
14 *see also Heydenfeldt v. Daney Gold & Silver Min. Co.*, 10 Nev. 290 (1875) *aff'd sub nom.*  
15 *Heydenfeldt v. Daney Gold & Silver Mining Co.*, 93 U.S. 634, 23 L. Ed. 995 (1876). Nevada's  
16 Enabling Act expressly states that the federal land grants were "granted to said state *for the*  
17 *support of common schools.*" Nevada Enabling Act, Pub. L. No. 38-30, 13 Stat. at 32 (emphasis  
18 added). Consistent with the terms of the Nevada Enabling Act, the framers of the Nevada  
19 Constitution in their debates underscored that Section 3 was explicitly intended to establish a  
20 "public school fund" that would be used to support "the common school system of the State."  
21 Clancy Decl. in Support of Mot. for Preliminary Injunction ("Clancy Decl.") Ex. 2, OFFICIAL  
22 REPORT OF THE DEBATES AND PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE  
23 OF NEVADA ("DEBATES AND PROCEEDINGS") at 579.

24 While Defendant asserts Plaintiffs cherry picked choice excerpts from the framers'  
25 constitutional debates (Def. Br. at 18 n.11), Defendant fails to cite *any* statement by the framers of  
26 the Nevada Constitution indicating an intent to authorize the use of Section 3 for anything other  
27 than to support Nevada's K-12 public schools and the State University. In fact, the history of the  
28 drafting of Article XI and the debates about it are to the contrary. *See generally* Declaration of  
Michael Green ("Green Decl.") at ¶¶ 8-21.

1           It is also well established that the term “educational purposes” in Section 3 refers  
2 only to the public K-12 schools and the State University. As the Nevada Supreme Court has long  
3 held the term “educational purposes” in Section 3 refers specifically to the educational system of  
4 the state, comprised of the State University and the public schools. *Keith*, 49 P. at 120. The  
5 plaintiff in *Keith* raised—and the court rejected—the very same argument Defendant asserts in his  
6 opposition. Def. Br. at 17-18. Specifically, the plaintiff argued that because Section 3 pledged  
7 moneys “for educational purposes,” those funds could be used for the payment of teachers outside  
8 of the common or public school system. *Keith*, 49 P. at 120. The court flatly rejected that  
9 argument, holding that funds appropriated under Section 3 were only for the support of “the  
10 educational system of this state,” comprised of the K-12 public schools and the State University.  
11 *Id.* Further, the court emphasized that institutions “foreign to the educational system of the state”  
12 had “no interest in [Section 3] moneys.” *Id.*

13           Defendant cites the court’s statement in *Keith* “that ‘moneys . . . appropriated’ for  
14 educating children not in public school is ‘applying [that money] to educational purposes,” Def.  
15 Br. at 18. But Defendant fails to note that, *in the very same sentence*, the court went on to  
16 expressly state that, nevertheless, “the constitution does not include the education of these [non-  
17 public school] children in the term ‘educational purposes.’” *Keith*, 49 P. at 121. Defendant  
18 cannot circumvent the clear holding of *Keith*. *See also State ex rel. Wright v. Dovey*, 19 Nev. 396,  
19 12 P. 910, 912 (1887) (the framers of the Constitution did not “intend[] to allow public-school  
20 moneys [to be paid] to any county for persons not entitled to attend the public schools therein . . .  
21 .”); *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 346-47 (1872) (“certain funds are pledged and  
22 certain taxation allowed for the support of common schools, which are public and open to be  
23 enjoyed by all resident children between the ages of six and eighteen years”).

24           Finally, Defendant contends that SB 302 is constitutional because it does not  
25 require the use of Section 3 funds for ESAs. Def. Br. at 16-17. By so arguing, Defendant  
26 concedes that funds set aside by Section 3 must be used for the public schools, implying that the  
27 funds for ESAs can come from Section 6 appropriations. But, as Plaintiffs have established,  
28

1 Section 6 funds cannot constitutionally be used for anything other than the public schools either.  
2 Any diversion of Section 3 and 6 funds to ESAs is unconstitutional.

3 **2. Defendant Cannot Refute That SB 302 Reduces Public School Funding**  
4 **Below The Level Deemed Sufficient By The Legislature In Violation Of**  
5 **Article XI, Section 6 Of The Nevada Constitution**

6 SB 302 also violates Section 6’s mandate that the Legislature appropriate *first* the funds it  
7 “deems to be sufficient” to fund the operation of Nevada’s public schools for the next biennium.  
8 Defendant contends that SB 302 does not violate this provision because: (a) the Legislature took  
9 ESAs into account when enacting SB 515—the appropriation for public education for the 2015-17  
10 biennium—by including funds to cover the funds diverted to ESAs; and (b) even if SB 302  
11 reduces the monies deemed sufficient, separate and unrelated legislation mitigates any  
12 unconstitutional impact SB 302 may have on the public schools. Both of these contentions are  
13 erroneous and should be rejected.

14 **(a) The Fact That SB 302 Was Passed Before SB 515 Does Not Cure**  
15 **Its Constitutional Defects**

16 Defendant argues that SB 302 is constitutional because the Legislature, after enacting SB  
17 302, approved appropriations for the public schools in the biennium State Budget that accounted  
18 for the funds to be diverted to private schools and other private expenditures through ESAs. Def.  
19 Br. at 21. There is no basis for this position in the legislative record, either on SB 302, the  
20 voucher law, or SB 515, the biennium State Budget.

21 Defendant’s assertion that the Legislature took ESAs into account when enacting  
22 appropriations for the public schools in SB 515 is based solely on timing. Defendant argues that  
23 the appropriations in SB 515 accounted for ESAs because SB 515 was passed three days after SB  
24 302. Def. Br. at 21. But the minutes of the various meetings regarding SB 515 never mention SB  
25 302, and Defendant’s own Exhibit 2 demonstrates that SB 302 was not considered when  
26 determining the level of funding sufficient to fund the public schools or in calculating that  
27 appropriation for the DSA. *See* Minutes of the Senate Committee on Finance, May 30, 2015 and  
28 May 31, 2015, and Minutes of the Assembly Ways and Means Committee, June 1, 2015, at 7-8  
(all online at

1 <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?BillName=SB515>); Def. Br.  
2 Ex. 2, Distributive School Account – Summary for 2015-17 Biennium (“DSA Summary 2015-  
3 2017”).

4 Further, in enacting SB 515, the Legislature followed the exact same process and funding  
5 formula used in prior biennium budgets to determine the sufficiency of public school  
6 appropriations for the DSA. *See* Declaration of Samuel T. Boyd (“Boyd Decl.”) Ex. 2 Legislative  
7 Counsel Bureau, Fiscal Analysis Division, *The Nevada Plan for School Finance: An Overview at*  
8 10-14 (2015) (“Nevada Plan”). First, it calculated the Basic Support Guarantee under the Nevada  
9 Plan for each district and multiplied it by the number of students it anticipated attending public  
10 schools. Next, it added categorical funds not provided on a per-pupil basis and outside the Nevada  
11 Plan, to identify the total state support for the public schools, known as the “Total Required State  
12 Support.” Each of these obligations is set out in SB 515 and none of them includes funding for  
13 ESAs.<sup>2</sup>

14 From this figure, the Legislature deducted the local funds that flow directly to local schools  
15 within the Nevada Plan to arrive at the “Total State Share” to fund the Basic Support Guarantee.  
16 It also deducted sources of funds available to the DSA other than the state general fund, including  
17 a portion of the slot machine tax, certain mineral taxes, and like revenues. It is this figure that is  
18 appropriated by Section 7 of SB 515. This is the same formula the Legislature used for the 2013-  
19 2015 biennium, and it did not change in 2015-17. Further, in no way did this formula, or the  
20 Legislative appropriations, take into account the loss of funds under SB 302. *Compare* Nevada  
21 Plan (laying out the manner in which education is funded in a typical biennium) *with* DSA  
22 Summary 2015-2017 (showing that the Legislature followed the same steps in 2015).

23 Defendant’s claim that the Legislature considered the impact of ESAs on the biennial  
24 appropriation to public schools is also belied by the legislative debates on SB 302. Contrary to  
25 Defendant’s post hoc assertion in his brief, the Legislature appears to have believed that SB 302

26

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27 <sup>2</sup> Categorical funding includes funding for special education (sections 3-4), class size reduction  
28 (sections 15-16), school lunches (section 12), and transportation (section 11). SB 515 also  
contains other categorical funding not funded through the DSA.

1 would not result in *any impact* on the DSA so long as the 100 days requirement resulted in  
2 participation only by students who would otherwise have been attending public school. *See* Boyd  
3 Decl. Ex. 3, Minutes of the Senate Committee on Finance, Seventy-Eight Session, May 14, 2015  
4 at 10-11 (“the 100-day provision helps to make this fiscally neutral”). Yet this understanding of  
5 how SB 302 operates is plainly incorrect. Because students currently in private school and home  
6 schooled can also readily qualify for ESAs, the diversion of funds into ESAs extends well beyond  
7 students accounted for in the Legislature’s public school appropriation.

8           But even assuming—incorrectly—that only current public school students obtain ESAs,  
9 the public schools will still experience a diminution of the appropriations necessary for their  
10 operation. This occurs because, as Defendant fails to acknowledge, Legislative appropriations  
11 from the DSA only support a *fraction* of the per-pupil Basic Support Guarantee to school districts.  
12 For example, in fiscal year 2014, the per-pupil Basic Support Guarantee for Clark County was  
13 \$5,393. *See* Boyd Decl. Ex. 4, Guinn Center, Nevada K-12 Education Finance Fact Sheet (Feb.  
14 2015) (“K-12 Fact Sheet”) at 8. Of that, the State’s share was only \$2,213. *Id.* For the 2015-2017  
15 biennium, the per-pupil Basic Support Guarantee for Clark County is \$5,512, of which the State  
16 DSA portion is only a fraction. Yet, for students obtaining ESAs, the State must pay the full  
17 \$5,139 or \$5,710 per pupil directly out of the DSA. *Cf.* Def. Br., Ex. 3, Canavero Decl. at ¶¶ 11-  
18 12. The Legislature provided no additional funding for ESAs in SB 515, nor did it budget for the  
19 increased demand on the DSA resulting from ESAs for students currently enrolled in the public  
20 schools or for students already enrolled in private schools or home-schooled.

21           Indeed, it was *not possible* for the Legislature to have taken into account, let alone  
22 provided extra funding, to address the public school funding depleted by SB 302 when passing the  
23 public school appropriations in SB 515. The Legislature did not know, and still does not know,  
24 how many students will obtain ESAs and how much funding will be depleted from the DSA in the  
25 2015-17 biennium. SB 302 does not limit the number of ESAs that can be authorized or the  
26 amount of funding that can be diverted from the public schools. The Department of Education  
27 specifically told the Legislature this was the case when it submitted its “fiscal note” on SB 302:

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1 The Department is unable to quantify the fiscal impact of this measure. However,  
2 the Department believes there will be a fiscal impact to the State due to the  
redistribution of State and local funding from school districts to other entities. . . .

3 Boyd Decl. Ex. 5, Department of Education Unsolicited Fiscal Note on SB 302 (May 25, 2015).

4 Contrary to Defendant's assertions, the Legislature could not have accounted for SB 302's  
5 unknown and uncapped impact such that the funds appropriated for public school funds could  
6 remain at the levels deemed sufficient by the Legislature under Section 6.<sup>3</sup>

7 **(b) SB 508 Does Not Render SB 302 Constitutional**

8 Acknowledging as he must that SB 302 will divert funds appropriated for the public  
9 schools to ESAs (Def. Br. at 19, 21), Defendant nonetheless contends that the impact of SB 302's  
10 diversion is ameliorated by another statute, SB 508. Def. Br. at 20. This statute limits the impact  
11 on a school district's revenue from large demographic swings. Specifically, it limits a school  
12 district's total decrease in funding to no more than what would be due the district from a decrease  
13 of 5 percent of the district's student population from the same quarter in the prior year. Boyd  
14 Decl., Ex. 6.

15 This provision fails to cure SB 302's constitutional defects. As a first point, there is  
16 nothing in SB 302 that applies this provision to the reduction in a districts' funding resulting from  
17 the diversion of funds to ESAs. SB 302 plainly requires the prescribed Basic Support Guarantee  
18 per pupil amounts be diverted from district budgets for every ESA established by Defendant,  
19 without limit or exception. SB 302, therefore, on its face, triggers diversion of public school  
20 funding irrespective of the provisions in SB 508.

21 Moreover, reductions resulting from a drop of five percent or less of the student population  
22 are still significant. For example, five percent of Clark County's student population is ~16,000  
23 students. If just less than 16,000 students applied for ESAs this would be a reduction in at least  
24 \$30 million from Clark County schools. To the extent the Legislature's appropriations are

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27 <sup>3</sup> Defendant also asserts that enjoining SB 302 is not the proper remedy for a violation of Section  
28 6; Plaintiff should seek to enjoin SB 515. Def. Br. at 24. But, SB 515 by itself is not at issue on  
Plaintiff's Motion. It is SB 302's diversion of SB 515 public school funds that is unconstitutional  
and must be enjoined.

1 reduced below those deemed sufficient by SB 302, it is unconstitutional whether that decrease is  
2 more or less than 5 percent.

3 **(c) Defendant’s Interpretation Of Section 6.2 Defeats The Purpose**  
4 **For Which The “Education First Amendment” Was Passed**

5 The requirement in Section 6 that public school appropriations be made first and that they  
6 be sufficient was added to the Nevada Constitution by proposition in 2006. The “Education First  
7 Amendment” was a response to the budget crisis in the 2003 legislative session. In that year, the  
8 Legislature and the Governor could not agree on how much to appropriate for the public schools.  
9 Clancy Decl. Ex. 11, at 4-5. As a result of this deadlock, havoc ensued such that schools did not  
10 open on time and teacher hiring was delayed. In response, the voters passed Sections 6.2 through  
11 6.6, which require, *inter alia*, the Legislature to fund education first before any other  
12 appropriations in the biennium budget.

13 Simply requiring the Legislature to pass *some* appropriation for education before any other  
14 appropriation, would not, however, have achieved the Amendment’s purpose. Thus Section 6.2  
15 also required the Legislature to appropriate the monies “the Legislature deems to be sufficient ...  
16 to fund the operation of the public schools.” This provision prevents the Legislature from simply  
17 appropriating some nominal or insufficient amount for education, turn to other appropriations, and  
18 then take up education funding last. The drafters of the Education First Amendment, therefore,  
19 required the Legislature to complete its appropriations for public education before turning to any  
20 other appropriations, required those appropriations be sufficient to operate the public schools, and  
21 prevented it from later undoing those appropriations by re-allocating those funds to other uses.  
22 Nev. Const. art. XI, § 6.5.

23 Defendant’s arguments would allow the Legislature to evade the requirements of the  
24 Education First Amendment in precisely the manner the “deems sufficient” clause was intended to  
25 prevent. So long as the Legislature made the public education funding the “first appropriation,”  
26 according to Defendant, legislation—such as SB 302—that reduces the funds appropriated would  
27 pass constitutional muster, a result that is plainly contrary to the text and purpose of the  
28 Amendment as approved by the voters.



1 Likewise, as discussed *supra* at 9,<sup>4</sup> because the draw on the DSA from ESA payments is  
2 greater than the draw on the DSA for a student enrolled in public school, even a small number of  
3 participants in the voucher program will reduce the funds in the DSA below the level deemed by  
4 the Legislature to be sufficient under Section 6.2. And, indications are that the number will not be  
5 small. As of the last public report, over 3500 have already pre-registered for the program. Clancy  
6 Decl. Ex. 10. As a result, SB 302, if permitted to stand, will cause a shortfall in the DSA over the  
7 course of the biennium and the Legislature will, therefore, end up funding education *last*, contrary  
8 to the Education First Amendment. This is precisely the situation Section 6 sought to avoid—  
9 funds necessary for the operation of the public schools being appropriated after all of the State’s  
10 tax revenue is spoken for, with the prospect of dire consequences to public school students if an  
11 agreement cannot be reached.

12 (d) **Plaintiffs Do Not Challenge Here The Legislature’s**  
13 **Determination Of The Amount Sufficient To Fund Public**  
14 **Education**

15 Finally, Defendant attempts to recast Plaintiffs’ Section 6 claim as a purportedly non-  
16 justiciable challenge to the Legislature’s judgment on the amount appropriated for public  
17 education. Def. Br. at 23. This argument is a straw man. Plaintiffs do not in this case challenge  
18 the amount or sufficiency of the Legislature’s appropriations under SB 515 for the public schools.  
19 Rather, they challenge the Legislature’s enactment of SB 302, which reduces the funds *the*  
20 *Legislature deemed sufficient for the public schools* by diverting some of those funds to ESAs for  
21 private expenditures. This is an unconstitutional attempt to siphon funds away from the public  
22 schools on the back-end in contravention of the plain language and intent of Section 6.  
23 Defendant’s arguments concerning justiciability are beside the point.

24 The Nevada courts have the responsibility and the obligation to ensure that newly enacted  
25 statutes are constitutional. *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Comm’rs*, 129 Nev.  
26 Adv. Op. 72, 310 P.3d 583, 589 (2013). As the Nevada Supreme Court has explained, the judicial

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27 <sup>4</sup> As discussed above, only a portion of the Basic Support Guarantee funds actually comes from  
28 the state. *See Nevada Plan* at 10-11. The remainder goes directly to districts from various local  
sources that are within the Nevada Plan. *Id.* at 13.

1 branch “has no authority to levy taxes or make appropriations,” but it “must exercise its judicial  
2 function of interpreting the Constitution[.]” Where a statute conflicts with the “[L]egislature's  
3 constitutional obligation to fund public education” it must be struck down. *Guinn v. Legislature of*  
4 *State of Nev. (Guinn I)*, 119 Nev. 277, 285-88, 71 P.3d 1269, 1274-76 (2003), *decision clarified*  
5 *on denial of reh'g sub nom. Guinn v. Legislature of State of Nev.*, 119 Nev. 460, 76 P.3d 22 (2003)  
6 *overruled on other grounds by Nevadans for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006).  
7 SB 302 is such a provision.

8                   **3. SB 302 Violates The Constitutional Mandate To Establish And**  
9                   **Maintain A Uniform System Of Common Schools In Violation Of Art.**  
10                   **XI, Section 2, Of The Nevada Constitution**

11                   **(a) Defendant Concedes That Participating Entities Receiving**  
12                   **Funds Under SB 302 Are Not Part Of The Uniform System Of**  
13                   **Common Schools.**

14 Defendant does not contest that Article XI, Section 2, mandates that the Legislature  
15 establish and maintain a uniform system of common schools. Defendant also does not contest that  
16 SB 302 allows funds appropriated for Nevada’s uniform system of public schools to be used by  
17 private schools and other private entities outside that uniform system. *See* Declaration of  
18 Christopher Lubienski In Support of Pl. Mot. (“Lubienski Decl. to Pl. Mot.”) at ¶ 13. As Plaintiffs  
19 have demonstrated, Pl. Mot. at 16-17, SB 302 does not require private schools and other  
20 participating entities receiving voucher funds to adhere to the education standards and  
21 accountability measures that are the hallmark of Nevada’s public schools. These include teacher  
22 licensure requirements; open and non-discriminatory admissions; and assessment benchmarks to  
23 evaluate school performance. *Id.*; *see also* Lubienski Decl. to Pl. Mot. at 16.

24                   **(b) Article XI, Section 1. Of The Nevada Constitution Does Not**  
25                   **Authorize The Legislature To Divert Funds From Public**  
26                   **Education To Private Uses**

27 Instead, Defendant argues that SB 302 is permissible under Article XI, Section 1’s, general  
28 aspiration “to encourage by all suitable means the promotion of intellectual, literary, scientific. . .  
and moral improvements.” Def. Br. at 7. Even if that were the case—which it is not—SB 302  
violates the constitutional provisions prohibiting the diversion of public school funds to private  
purposes under Sections 3 and 6, and the Legislature’s obligation to first and sufficiently fund the

1 public schools under Section 2 and 6. Thus, SB 302 is unconstitutional on these grounds standing  
2 alone and regardless of Section 1.

3 Section 1, however, does not authorize enactment of SB 302.<sup>5</sup> The Education Article is  
4 comprised of ten sections. The first, Section 1, is a hortatory introductory provision. Beyond this  
5 clause, sections 2, 3, 5, 6, 9 and 10 address, in specific terms, the establishment, maintenance and  
6 funding of Nevada’s K-12 public education system (the remaining sections address the State  
7 University). Defendant’s interpretation of Section 1 as conferring “broad, discretionary power” on  
8 the Legislature to promote the education of Nevada’s children in whatever manner it sees fit, Def.  
9 Br. at 8, is contrary to the express terms of that provision, the intent of the framers of the  
10 Constitution, and well established canons of constitutional interpretation.

11 (i) **Defendant’s Interpretation Is Contrary To The Plain  
12 Meaning Of Section 1**

13 On its face, the phrase all “suitable means” cannot include means that are unconstitutional.  
14 *See Williams v. Rhodes*, 393 U.S. 23, 29, 89 S. Ct. 5, 9, 21 L. Ed. 2d 24 (1968) (holding that while  
15 the federal constitution grants Congress or states “specific power to legislate in certain areas,”  
16 these granted powers “are always subject to the limitation that they may not be exercised in a way  
17 that violates other specific provisions of the Constitution”) (footnotes omitted). Thus, even if  
18 Section 1 were something other than an introductory encouragement, which it is not, because SB  
19 302 violates Article XI, Sections 2, 3, and 6 of the Nevada Constitution, it is not a “suitable  
20 means.”

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23 <sup>5</sup> It should also be noted that SB 302 does not actually provide the “encouragement” to education  
24 that Defendant suggests. The empirical studies that were quoted to the Nevada Legislature during  
25 the discussion of SB 302, and repeated by Defendant in his brief, do not accurately capture the  
26 research consensus on the effects of vouchers. *See generally* Declaration of Professor Christopher  
27 Lubienski Declaration in support of Reply on Motion for Preliminary Injunction and Opposition to  
28 Motion to Dismiss; *id.* at ¶ 4. Defendant relies on bodies of partisan research that are not  
considered credible by experts in the field. *Id.* at ¶ 22. In contrast to the claims made by  
Defendant, in actuality, non-partisan scholars agree that the research on the academic effects of  
vouchers is inconclusive at best. *Id.* at ¶ 33. Research does reveal conclusively, however, that  
vouchers tend to increase segregation in public schools. *Id.* at ¶ 19; *see also* Lubienski Decl. to Pl.  
Mot. at ¶ 19.

1 (ii) **Defendant’s Argument Is Not Supported By The Intent**  
2 **Of The Framers Of The Nevada Constitution**

3 Section 1 was also never intended to allow the Legislature to fund non-public educational  
4 expenditures.<sup>6</sup> As Nevada historian, Michael Green, explains in his declaration, the delegates’  
5 clear intent in passing Article XI as a whole was to provide for a system of *public* education.  
6 Green Decl. at ¶¶ 8-21. In both the 1863 and 1864 debates, the delegates agreed that the  
7 Legislature had to provide for a system of public education and that this was the appropriate  
8 method of educating Nevada school children. *Id.* at ¶¶ 8-15. While there was disagreement about  
9 whether to make attendance at public schools compulsory, the delegates agreed that the public  
10 schools should be amply funded. *Id.* at ¶¶ 8, 10, 13-14.

11 Professor Green explains that “[t]here is no evidence from the debates that in passing this  
12 version of Article XI, Section 1, the delegates intended to confer power on the legislature to fund  
13 non-public educational systems.” *Id.* at ¶ 25. In fact, Article XI, Section 1 was drafted and  
14 discussed in conjunction with the entire Education Article, particularly Section 2, which requires  
15 the Legislature to maintain a uniform system of common schools. *See, e.g., id.* at ¶ 26. Further,  
16 “the idea that the delegates meant to empower the Legislature to fund both the public schools and  
17 other means of educating Nevada’s children is inconsistent with the delegates’ pronounced  
18 concerns that there would not be enough funds to provide for both common schools and higher  
19 education.” *Id.* at ¶ 27. The delegates actually considered and rejected giving the Legislature  
20 discretion whether to pass a special tax to fund public education because of the fear that the  
21 Legislature would not adequately fund the public education system. *Id.* Delegate Collins, whose  
22 view prevailed, expressly noted “I do not believe that the Legislature is likely to be as earnest in  
23 this matter of education as gentlemen appear to anticipate.” *Id.* (citing DEBATES AND  
24 PROCEEDINGS at 588).

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27 <sup>6</sup> *See generally* Boyd Decl., Ex. 7, DEBATES AND PROCEEDINGS at 565-588 (discussing Education  
28 Article and necessity of funding public schools, with no discussion of providing funds for non-  
public schools).

1 Not only is there no evidence that the delegates intended to give the Legislature sweeping  
2 power to provide for an alternative mechanism of education, such a view runs contrary to the  
3 general aims of the delegates at the convention, which was to greatly limit the power of the  
4 Legislature. *Id.* at ¶¶ 23-31. It is plainly inconsistent with the historical understanding of the 1863  
5 or 1864 debates on the Constitution to conclude that the delegates intended to both mandate the  
6 Legislature establish a system of public school and also allow the Legislature to take boundless  
7 other actions to educate Nevada’s children. *Id.* at ¶¶ 28-31.

8 (iii) **Defendant’s Argument Is Contrary To Well-Established**  
9 **Principles Of Interpretation**

10 Defendant’s interpretation of Section 1 also violates the well-established canons of  
11 construction that the specific takes precedence over the general, and the Constitution must be read  
12 as a whole. *See, e.g., Gaines v. State*, 116 Nev. 359, 365, 998 P.2d 166, 169-70 (2000)  
13 (reaffirming the principles that multiple legislative provisions must “be construed as a whole”;  
14 where possible, “a statute should be read to give plain meaning to all of its parts;” and specific  
15 statutes “take precedence” over general statutes.); *Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d  
16 1164, 1167 (2005) (holding that where a specific statute is “in conflict with a general one, the  
17 specific statute will take precedence”).

18 Although Defendant urges that the Constitution’s specific mandates to establish and  
19 maintain a system of uniform schools give way to the general exhortation to encourage intellectual  
20 improvements, *e.g.* Def. Br. at 9, 11-12, the opposite is true. To the extent that there is a conflict  
21 between legislation enacted under Section 1’s broad, aspirational goal and the detailed and specific  
22 mandates of Sections 2, 3 and 6, those specific mandates take precedence over the general.

23 Such is the precise holding in *Louisiana Federation of Teachers v. State*, 118 So. 3d 1033,  
24 1051-53 (2013), where the Louisiana Supreme Court declared a voucher program an  
25 unconstitutional diversion of public school funds, expressly holding that the Louisiana  
26 Constitution’s general exhortation that the Legislature “provide for the education of the people”  
27 does not authorize a voucher law that clearly violates the more specific mandate to “maintain a  
28 public educational system.” *Id.* Similarly, the Nevada Constitution’s general goal of encouraging

1 education in Section 1 in no way stands as a wholly separate and independent basis for a statute  
2 such as SB 302, which clearly violates the specific mandates for maintaining Nevada’s uniform  
3 system of public schools under Sections 2, 3 and 6.

4 **(c) The Legislature May Not Maintain And Fund A Separate**  
5 **Mechanism For K-12 Education Outside Of The Public Schools**

6 Plaintiffs’ Motion further established that the Nevada Constitution, in mandating the  
7 establishment and maintenance of a uniform public school system, simultaneously forbade the  
8 Nevada Legislature from establishing and maintaining a separate alternative system to Nevada’s  
9 uniform public schools. “Nevada follows the maxim ‘expressio unius est exclusio alterius,’ the  
10 expression of one thing is the exclusion of the other,” *State v. Javier C.*, 128 Nev. Adv. Op. 50,  
11 289 P.3d 1194, 1197 (2012) and “[t]his rule applies as forcibly to the construction of the written  
12 Constitutions as other instruments.” *King v. Bd. of Regents of Univ. of Nev.*, 65 Nev. 533, 556,  
13 200 P.2d 221 (1948); *see also* Pl. Mot. at 18-19.

14 Defendant asserts, without any support, that Plaintiffs’ interpretation would render private  
15 schools and home schooling unconstitutional. Def. Br. at 11. This contention rests upon a plain  
16 mischaracterization of Plaintiffs’ claims. Plaintiffs argue that the Legislature may not maintain and  
17 *fund* a mechanism that provides for the education of children outside of the uniform system of  
18 public schools. Plaintiffs’ Complaint raises no issue regarding the right of parents to enroll their  
19 children in private school or to home school their children. No matter what the outcome of this  
20 litigation, parents will continue to be able to choose private and home schooling to educate their  
21 children.

22 **(d) The Cases Cited by Defendant Do Not Change The Analysis**

23 Finally, to support its argument that SB 302 is authorized by Section 1 and outside Section  
24 2’s uniformity mandate, Defendant points to a handful of rulings in other states allowing limited  
25 voucher programs. Def. Br. at 12-13. As a foundational point, these decisions rely upon  
26 Education Articles with different textual provisions and mandates, and unique histories, from the  
27 provisions and history of the Education Article of the Nevada Constitution. Most importantly, the  
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1 limited voucher programs upheld by other states did not violate a constitutional bar on the use of  
2 public school funding for private expenditures.

3 Defendant relies heavily on *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013). In this case,  
4 the Indiana Supreme Court considered the constitutionality of a targeted voucher program that was  
5 not funded by public school appropriations, applied only to students at or below 150 percent of the  
6 poverty level, and required institutions receiving the public funds to meet accountability standards.  
7 As the court explained, to participate in the program “a nonpublic school must meet several  
8 criteria, including accreditation from the Indiana State Board of Education (“Board of Education”)  
9 or other recognized accreditation agency . . .” *Id.* at 1219. Eligible institutions were required to  
10 provide “instruction in Indiana and United States history and government, social studies, language  
11 arts, mathematics, sciences, fine arts, and health.” *Id.* Further, “[a]n eligible school may not  
12 discriminate on the basis of race, color, or national origin.” *Id.* at 1220 (citing Ind. Code § 20–51–  
13 4–3(a), (b)). The Indiana Supreme Court’s approval of *general fund* monies for a targeted,  
14 regulated program for at-risk students distinguishes it from SB 302’s expenditure of public school  
15 funds, without limit, for wholly unregulated private institutions and individuals.<sup>7</sup> *See also Davis*  
16 *v. Grover*, 480 N.W.2d 460 (Wis. 1992) (upholding limited, regulated voucher program for  
17 Milwaukee low income students in an opinion that did not take up issues of public school funding  
18 for private expenditures); *Hart v. State*, 774 S.E.2d 281 (N.C. 2015) (upholding a “modest,”  
19 regulated voucher program for low income families paid for by the general fund).

20 Defendant’s attempts to distinguish cases that have struck down voucher programs are  
21 unconvincing. Def. Br. at 14-15. Most notably, in *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006), the  
22 court interpreted the state’s constitutional provision requiring the Florida Legislature to create and  
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24 <sup>7</sup> The Indiana Supreme Court’s decision is also distinguishable because it was heavily dependent  
25 on the development of the Indiana Constitution, which originally provided that the Legislature was  
26 to provide for a “general system of education” “as soon as circumstances will permit.” *Meredith*  
27 *v. Pence*, 984 N.E.2d at 1222. The Indiana Court relied on the notion that the Indiana framers did  
28 not unequivocally require the establishment of public schools to support their analysis that the  
Legislature could also provide for non-public systems of education. *Id.* Nevada’s constitutional  
history is in stark contrast—it is clear that the delegates viewed the establishment of a public  
education system as an unequivocal duty of the Legislature. Green Decl. at ¶¶ 8-21.

1 maintain “a uniform, efficient, safe, secure, and high quality system of free public schools,” Fla.  
2 Const. art. IX § 1, to forbid vouchers because “providing a free education . . . by paying tuition to  
3 attend private schools is a ‘substantially different manner’ of providing a publicly funded  
4 education than . . . the one prescribed by the Constitution.” *Holmes*, 919 So.2d at 407.

5 Defendant argues that *Bush v. Holmes* is distinguishable because it relied on a clause  
6 stating that “it is a paramount duty of the state to make adequate provision for the education of all  
7 children residing in its borders,” and that Nevada’s Constitution lacks such a clause. Def. Br. at  
8 14. Defendant further argues that because Indiana and Wisconsin’s constitutions also lack a  
9 similar clause, those decisions are more persuasive here. *Id.* at 14-15. However, Defendant is  
10 wrong that Nevada lacks a clause making it the “paramount duty” to “make adequate provision”  
11 for the education of Nevada’s children. Article XI, Section 6—the Education First article—  
12 requires that Nevada fund public school education “before any other appropriation” in a  
13 “sufficient” amount. This amendment was passed to ensure that “education is first” in Nevada and  
14 to “that the funding of education in Nevada will be given the status intended by the framers of our  
15 Constitution.” Clancy Decl. Ex. 11, at 4-5. Wisconsin and Indiana lack such a provision requiring  
16 that education be “first” or “paramount.” Thus, contrary to Defendant’s own assertions, the  
17 commitment to education under Nevada’s Education Article is just as strong, if not stronger, than  
18 the Florida constitutional provisions under which the Florida voucher law was declared  
19 unconstitutional.

20 \* \* \* \* \*

21 Defendant’s arguments on the various constitutional Sections also conflict and undermine  
22 each other. On the one hand, Defendant argues that the Legislature appropriated money for the  
23 ESAs when the Legislature, as a first priority, appropriated the funds sufficient for the public  
24 schools under Section 6. Def. Br. at 21. But, if the ESAs are to be funded under Section 6—  
25 which clearly and unequivocally addresses only the funding for the public schools—then they  
26 need to be part of the uniform system, which they are not and which constitutes a constitutional  
27 violation. On the other hand, Defendant argues that ESAs have nothing to do with the uniform  
28 system. Def. Br. at 9. If that is the case, they cannot be funded through the use of Section 6



1 funds. Defendant cannot have it both ways. Either way, SB 302 is unconstitutional and should be  
2 preliminarily enjoined.

3 **B. Defendant Cannot Refute The Irreparable Harm SB 302 Will Cause Or That**  
4 **The Balance Of Hardships Tips Toward Plaintiffs**

5 As established in Plaintiffs' Motion, because SB 302 violates the Nevada Constitution, the  
6 irreparable harm standard is presumptively met. Pl. Mot. at 19-20. (citing *City of Sparks v.*  
7 *Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013); *see also Stormans, Inc. v.*  
8 *Selecky*, 586 F.3d 1109, 1138 (9th Cir.2009) (same); *Rivero v. McDaniel*, No. 3:08-CV-286-  
9 ECR(RAM), 2009 WL 2834958, at \*2 (D. Nev. July 17, 2009) (same). Defendant does not  
10 contest this blackletter law in his briefing.

11 Regardless, in their Motion, Plaintiffs demonstrated that the loss of funding to public  
12 schools from SB 302 will cause irreparable harm to Plaintiffs and other Nevada public school  
13 children. Larger class sizes, lack of instructional materials, inadequate maintenance, and other  
14 deficits in essential education resources will impact students and result in harm to the educational  
15 opportunities guaranteed them under the Nevada Constitution. *See Guinn*, 119 Nev. at 286  
16 (“education is a basic constitutional right in Nevada.”).

17 Unable to credibly refute the irreparable harm resulting from SB 302, Defendant attempts a  
18 deflection, arguing that such harms will impact school districts and not Plaintiff students and their  
19 peers. Def. Br. at 24-25. SB 302 will without question impact public school districts by reducing  
20 the funding in their budgets and the resources in their schools. These cuts will have a direct impact  
21 on the quality of curriculum, instruction, support and other services the district can make available  
22 to Plaintiffs and all other Nevada school children. Defendant's suggestion that districts somehow  
23 exist independently of the students they are obligated to serve is wrong. Public school districts  
24 exist only to serve the needs of their students; they are not a for-profit venture. By forcing  
25 districts to continually adjust budgets and reduce staff, programs and services over the course of  
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1 the school year, the harm to districts and their schools *is* harm to the students attending those  
2 schools.<sup>8</sup>

3 Defendant also argues that the harm from SB 302 is only “financial” and not irreparable  
4 harm. Def. Br. at 25. But Plaintiffs’ complaint is not about financial harm that can be remedied  
5 by money damages. Rather, deductions of funding when ESAs are established reduce district  
6 budgets and, consequently, the staff and instructional resources they can provide to students in  
7 schools and classrooms. This reduction in resources, in turn, directly diminishes the opportunities  
8 for students to master reading, think deeply, problem solve, understand scientific reasoning and  
9 otherwise obtain the skills needed for college, career, citizenship and productive employment.  
10 Paying the money back to the school districts at a later date will not remedy the loss to the  
11 students at the time when the funds were unavailable. These are not financial, but life altering,  
12 irreparable harms.<sup>9</sup>

13 Defendant further argues that the harms are speculative. But, less money to public schools  
14 indisputably means less money spent on instruction, teacher training, supplies, maintenance,  
15 school leadership, curriculum, professional development, or some other expenditure. These are  
16 not speculative harms—they are certain. School districts have limited budgets that they have to

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17  
18 <sup>8</sup> Defendant also takes issue with the declaration of Paul Johnson, the CFO of White Pine County,  
19 claiming he has taken inconsistent positions in a previous statement on the harm created by SB  
20 302. But, that is not the case. Defendant fails to quote Mr. Johnson’s full statement. When asked  
21 for comment on what he understood to be the proposed legislation, Mr. Johnson said: “There are  
22 no private schools at this time in White Pine county so there would be no impact at this time.”  
23 Mr. Johnson thought that SB 302 only allowed use of ESAs for brick and mortar private schools  
24 when he made this statement and he was considering the impact on White Pine, a County that  
25 currently has no private schools. Now that the bill has been passed he knows it applies to home  
26 schooling and distance learning as well as private schools, which will have a negative impact on  
27 his district. Johnson Reply Decl. ¶ 4. Moreover, the harms that Mr. Johnson describes are harms  
28 that will occur for all school districts for which funding is diverted to ESAs; Mr. Johnson provides  
his testimony regarding harm based on his years of experience in school finance and not just on  
the harms expected for his current district.

<sup>9</sup> Defendant’s references to *Church of Scientology v. United States*, 920 F.2d 1481 (9th Cir. 1990)  
and *Elias v. Connett*, 908 F.2d 521 (9th Cir. 1990) are irrelevant to Plaintiffs’ claims. Both cases  
involve disputes with the IRS over taxes. In those cases, the Ninth Circuit denied injunctive relief  
on the ground that plaintiffs had an adequate remedy at law, *i.e.*, a separate action for a tax refund,  
based on a long line of cases holding that disputes over tax levies do not create irreparable harm  
and cannot form the basis for a preliminary injunction.

1 maintain. That the exact reductions in services and resources cannot be named is obvious—the  
2 reductions will be determined by local school boards and administrators. That cuts will be made  
3 and students' education impacted when less funds are distributed to districts, however, is certain.<sup>10</sup>

4 Finally, Defendant argues that the balance of hardships tips in his favor. Granting a  
5 preliminary injunction, he argues, would deny Nevada children choice. Def. Br. at 27. However,  
6 the ESA amounts are not enough to cover tuition at most Nevada private schools. Pl. Mot. at 8.  
7 Only those who can use SB 302 as a subsidy for costs they can otherwise afford will benefit. As  
8 the preliminary data shows, those families who have pre-registered for ESAs reside in wealthier  
9 neighborhoods. Boyd Decl., Exh. 8. Very few are from poorer neighborhoods. *Id.*

10 If SB 302 is not enjoined, those who can already choose private schooling stand to benefit,  
11 while Plaintiffs and other public school children, many of whom are at-risk, vulnerable and  
12 disadvantaged, will attend schools with less resources to provide them with the educational  
13 services they need and deserve. At bottom, enjoining SB 302 will not impair the right of parents  
14 to enroll their child in a private school, as Defendant asserts. Rather, the issue in this case is  
15 concise and narrow: whether funding appropriated for the public schools can be diverted to  
16 subsidize those decisions. Under Nevada's Constitution, it cannot.

### 17 **III. CONCLUSION**

18 Wherefore, Plaintiffs respectfully request that this Court issue a preliminary injunction  
19 enjoining Defendant from implementing SB 302 and its regulations and deny Defendant's motion  
20 to dismiss.

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24 <sup>10</sup> Defendant relies on *Flick Theater, Inc. v. Las Vegas*, 104 Nev. 87, 752 P.2d 235, 238 n.4 (1984)  
25 and *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466 (9th Cir. 1984) for his position that  
26 Plaintiffs' harm is speculative and "mere conjecture." Def. Br. at 25. But, the Nevada Supreme  
27 Court and Ninth Circuit respectively denied preliminary injunctions because of a complete  
28 absence of a record of harm to protected speech by adult business operators and, in the *Goldie's*  
case, to the good will and reputation of an adult book store owner. The certain harm to public  
school children from decreased funding is not akin to the unsupported harm alleged by adult  
business proprietors.

1 November 24, 2015

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23

24

25

26

27

28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 24<sup>th</sup> day of November, 2015, a true and correct copy  
3 of **PLAINTIFFS' REPLY ON ITS MOTION FOR A PRELIMINARY INJUNCTION AND**  
4 **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** was placed in an envelope,  
5 postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at  
6 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established  
7 procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an  
8 employee and deposited in a U.S. Mail box.

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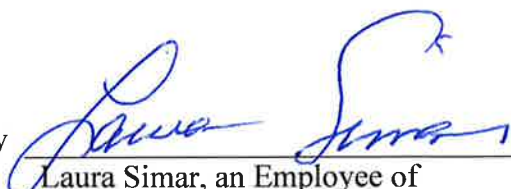
21 By   
22 Laura Simar, an Employee of  
23 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
24 RABKIN, LLP  
25  
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EXHIBIT A

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FIRST JUDICIAL DISTRICT COURT  
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,  
  
Plaintiffs,  
  
vs.  
  
DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,  
  
Defendant.

Case No. 150C002071B  
Dept. No.: II  
DECLARATION OF SAMUEL T. BOYD IN SUPPORT OF PLAINTIFFS' REPLY ON ITS MOTION FOR A PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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1 **DECLARATION OF SAMUEL T. BOYD**

2 I, SAMUEL T. BOYD, declare as follows:

3 1. I am over the age of 18 and legally competent to make this declaration.

4 2. I am an attorney at the law firm of Munger, Tolles & Olson LLP and counsel for  
5 Plaintiffs in the above-captioned matter. I have personal knowledge of the facts set forth in this  
6 declaration, and, if called as a witness, I could and would testify competently to the matters set  
7 forth herein.

8 3. Attached as Exhibit 1 is a true and correct copy of Senate Bill 515.

9 4. Attached as Exhibit 2 is a true and correct copy of a document entitled “The Nevada  
10 Plan for School Finance: An Overview” published by the Fiscal Analysis Division of the  
11 Legislative Counsel Bureau of the Nevada Legislature for the 2015 Legislative Session. This  
12 document is also available online at: [https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan](https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan.pdf)  
13 [/Nevada\\_Plan.pdf](https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan.pdf).

14 5. Attached as Exhibit 3 is a true and correct copy of an excerpt from the Minutes of  
15 the Senate Committee on Finance, Seventy-Eight Session, May 14, 2015. This document is also  
16 available online at [https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/FIN/Final](https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/FIN/Final/1242.pdf)  
17 [/1242.pdf](https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/FIN/Final/1242.pdf).

18 6. Attached as Exhibit 4 is a true and correct copy of a document entitled “Nevada K-  
19 12 Education Finance Fact Sheet” published by the Guinn Center for Policy Priorities in February  
20 2015.

21 7. Attached as Exhibit 5 is a true and correct copy of a document entitled “Unsolicited  
22 Executive Agency Fiscal Note” prepared on May 25, 2015 and submitted to the Nevada  
23 Legislature by the Nevada Department of Education.

24 8. Attached as Exhibit 6 is a true and correct copy of SB 508.

25 9. Attached as Exhibit 7 is a true and correct copy of an excerpt from the Official  
26 Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada,  
27 dated 1866.

28





# EXHIBIT 1

**S.B. 515**

---

SENATE BILL NO. 515—COMMITTEE ON FINANCE

MAY 31, 2015

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Referred to Committee on Finance

**SUMMARY**—Ensures sufficient funding for K-12 public education for the 2015-2017 biennium. (BDR 34-1284)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: Contains Appropriation included in Executive Budget.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

---

AN ACT relating to education; ensuring sufficient funding for K-12 public education for the 2015-2017 biennium; apportioning the State Distributive School Account in the State General Fund for the 2015-2017 biennium; authorizing certain expenditures; making appropriations for purposes relating to basic support, class-size reduction and other educational purposes; making contingent appropriations for certain educational programs and services; temporarily diverting the money from the State Supplemental School Support Account to the State Distributive School Account for use in funding operating costs and other expenditures of school districts; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     **Section 1.** The basic support guarantee for school districts for  
2 operating purposes for Fiscal Year 2015-2016 is an estimated  
3 weighted average of \$5,710 per pupil. For each respective school  
4 district, the basic support guarantee per pupil for Fiscal Year  
5 2015-2016 is:

6		
7	Carson City	\$6,908
8	Churchill	\$6,720
9	Clark	\$5,512

---

EXHIBIT 1



# EXHIBIT 1

- 2 -

1	Douglas	\$5,980
2	Elko	\$7,532
3	Esmeralda	\$24,331
4	Eureka	\$9,633
5	Humboldt	\$6,476
6	Lander	\$4,374
7	Lincoln	\$10,534
8	Lyon	\$7,246
9	Mineral	\$8,980
10	Nye	\$7,766
11	Pershing	\$9,229
12	Storey	\$8,111
13	Washoe	\$5,612
14	White Pine	\$7,799

15 **Sec. 2.** 1. The basic support guarantee for school districts for  
16 operating purposes for Fiscal Year 2016-2017 is an estimated  
17 weighted average of \$5,774 per pupil.

18 2. On or before April 1, 2016, the Executive Director of the  
19 Department of Taxation shall provide to the Superintendent of  
20 Public Instruction the certified total of the amount of ad valorem  
21 taxes to be received by each school district for Fiscal Year  
22 2016-2017 pursuant to the levy imposed under subsection 1 of NRS  
23 387.195 and credited to the county's school district fund pursuant to  
24 subsection 4 of that section.

25 3. Pursuant to NRS 362.115, on or before March 15 of each  
26 year, the Department of Taxation shall provide the estimates  
27 required by that section.

28 4. For the purposes of establishing the basic support guarantee,  
29 the estimated basic support guarantee per pupil for each school  
30 district for Fiscal Year 2016-2017 for operating purposes are:

31	Basic	Estimated	Estimated	
32	Support	Ad Valorem	Basic	
33	Guarantee	Adjustment	Support	
34	Before	Adjustment	Guarantee	
35	Adjustment	Adjustment	as Adjusted	
36	<u>School District</u>			
37	Carson City	\$6,212	\$784	\$6,996
38	Churchill	\$5,962	\$851	\$6,813
39	Clark	\$4,717	\$856	\$5,573
40	Douglas	\$4,031	\$2,047	\$6,078
41	Elko	\$6,655	\$945	\$7,600
42	Esmeralda	\$21,801	\$3,024	\$24,825
43	Eureka	(\$19,214)	\$29,827	\$10,613
44	Humboldt	\$4,755	\$1,909	\$6,664
45	Lander	(\$1,152)	\$5,620	\$4,468

EXHIBIT 1



# EXHIBIT 1

- 3 -

	Basic Support Guarantee Before Adjustment	Estimated Ad Valorem Adjustment	Estimated Basic Support Guarantee as Adjusted
5 <u>School District</u>			
6 Lincoln	\$9,474	\$1,177	\$10,651
7 Lyon	\$6,649	\$694	\$7,343
8 Mineral	\$7,916	\$1,273	\$9,189
9 Nye	\$6,580	\$1,214	\$7,794
10 Pershing	\$7,767	\$1,604	\$9,371
11 Storey	\$1,973	\$6,121	\$8,094
12 Washoe	\$4,672	\$997	\$5,669
13 White Pine	\$6,767	\$1,081	\$7,848

14  
15 5. The ad valorem adjustment may be made only to take into  
16 account the difference in the ad valorem taxes to be received and the  
17 estimated enrollment of the school district between the amount  
18 estimated as of March 1, 2015, and the amount estimated as of  
19 March 1, 2016, for Fiscal Year 2016-2017. The estimates received  
20 from the Department of Taxation on or before March 15 pursuant to  
21 subsection 3 must be taken into consideration in determining the  
22 adjustment.

23 6. Upon receipt of the certified total of ad valorem taxes to be  
24 received by each school district for Fiscal Year 2016-2017 pursuant  
25 to subsection 2, the Superintendent of Public Instruction shall  
26 recalculate the ad valorem adjustment and the tentative basic  
27 support guarantee for operating purposes for each school district for  
28 Fiscal Year 2016-2017 based on the certified total of ad valorem  
29 taxes provided by the Executive Director of the Department of  
30 Taxation pursuant to subsection 2. The final basic support guarantee  
31 for each school district for Fiscal Year 2016-2017 is the amount  
32 which is recalculated for Fiscal Year 2016-2017 pursuant to this  
33 section, taking into consideration the estimates received from the  
34 Department of Taxation pursuant to NRS 362.115 on or before  
35 March 15, 2016. The basic support guarantee recalculated pursuant  
36 to this section must be calculated on or before May 31, 2016.

37 **Sec. 3.** 1. The basic support guarantee for each special  
38 education program unit that is maintained and operated for at least 9  
39 months of a school year is \$45,455 in Fiscal Year 2015-2016, except  
40 as limited by subsection 2.

41 2. The maximum number of units and amount of basic support  
42 for special education program units within each of the school  
43 districts, before any reallocation pursuant to NRS 387.1221, for  
44 Fiscal Year 2015-2016 are:

—  
EXHIBIT 1



EXHIBIT 1

	<u>Allocation of Special Education Units</u>	
	<u>2015-2016</u>	
<u>DISTRICT</u>	<u>Units</u>	<u>Amount</u>
Carson City	81	\$ 3,681,828
Churchill County	47	\$ 2,136,369
Clark County	1,925	\$ 87,500,240
Douglas County	70	\$ 3,181,827
Elko County	84	\$ 3,818,192
Esmeralda County	1	\$ 45,455
Eureka County	3	\$ 136,364
Humboldt County	32	\$ 1,454,549
Lander County	12	\$ 545,456
Lincoln County	18	\$ 818,184
Lyon County	63	\$ 2,863,644
Mineral County	8	\$ 363,637
Nye County	58	\$ 2,636,371
Pershing County	16	\$ 727,275
Storey County	8	\$ 363,637
Washoe County	567	\$ 25,772,798
White Pine County	16	\$ 727,275
Subtotal	<u>3,009</u>	<u>\$ 136,773,101</u>
Reserved by State Board of Education	<u>40</u>	<u>\$ 1,818,197</u>
<b>TOTAL</b>	<u><u>3,049</u></u>	<u><u>\$ 138,591,298</u></u>

3. The State Board of Education shall reserve 40 special education program units in Fiscal Year 2015-2016 to be allocated to school districts by the State Board of Education to meet additional needs that cannot be met by the allocations provided in subsection 2 to school districts for that Fiscal Year. In addition, charter schools in this State are authorized to apply directly to the Department of Education for the reserved special education program units, which may be allocated upon approval of the State Board of Education.

**Sec. 4.** 1. The basic support guarantee for each special education program unit that is maintained and operated for at least 9 months of a school year is \$55,141 in Fiscal Year 2016-2017, except as limited by subsection 2.

2. The maximum number of units and amount of basic support for special education program units within each of the school districts, before any reallocation pursuant to NRS 387.1221, for Fiscal Year 2016-2017 are:

—

EXHIBIT 1



EXHIBIT 1

Allocation of Special Education Units  
2016-2017

DISTRICT	Units	Amount
Carson City	81	\$ 4,466,437
Churchill County	47	\$ 2,591,636
Clark County	1,925	\$ 106,146,810
Douglas County	70	\$ 3,859,884
Elko County	84	\$ 4,631,861
Esmeralda County	1	\$ 55,141
Eureka County	3	\$ 165,424
Humboldt County	32	\$ 1,764,518
Lander County	12	\$ 661,694
Lincoln County	18	\$ 992,542
Lyon County	63	\$ 3,473,896
Mineral County	8	\$ 441,130
Nye County	58	\$ 3,198,190
Pershing County	16	\$ 882,259
Storey County	8	\$ 441,130
Washoe County	567	\$ 31,265,060
White Pine County	16	\$ 882,259
Subtotal	3,009	\$ 165,919,871
Reserved by State Board of Education	40	\$ 2,205,648
<b>TOTAL</b>	<b>3,049</b>	<b>\$ 168,125,519</b>

3. The State Board of Education shall reserve 40 special education program units in Fiscal Year 2016-2017, to be allocated to school districts by the State Board of Education to meet additional needs that cannot be met by the allocations provided in subsection 2 to school districts for that Fiscal Year. In addition, charter schools in this State are authorized to apply directly to the Department of Education for the reserved special education program units, which may be allocated upon approval of the State Board of Education.

**Sec. 5.** 1. There is hereby appropriated from the State General Fund to the State Distributive School Account created by NRS 387.030 for Fiscal Year 2016-2017, the sum of \$168,125,519.

2. The money appropriated by subsection 1 must be used only to fund the school districts and charter schools for the enrollment of pupils with disabilities in accordance with the funding multiplier calculated by the Department of Education pursuant to section 29 of Senate Bill No. 508 of this session.

**Sec. 6.** 1. There is hereby appropriated from the State General Fund to the State Distributive School Account created by NRS 387.030:



EXHIBIT 1

1	For the Fiscal Year 2015-2016.....	\$1,093,556,243
2	For the Fiscal Year 2016-2017.....	\$1,101,624,225

3 2. The money appropriated by subsection 1 must be:

4 (a) Expended in accordance with NRS 353.150 to 353.246,

5 inclusive, concerning the allotment, transfer, work program and

6 budget; and

7 (b) Work-programmed for the 2 separate fiscal years of the

8 2015-2017 biennium, as required by NRS 353.215. Work programs

9 may be revised with the approval of the Governor upon the

10 recommendation of the Director of the Office of Finance in the

11 Office of the Governor.

12 3. Transfers to and allotments from must be allowed and made

13 in accordance with NRS 353.215 to 353.225, inclusive, after

14 separate consideration of the merits of each request.

15 4. The money appropriated by subsection 1 is available for

16 either fiscal year or may be transferred to Fiscal Year 2014-2015.

17 Money may be transferred from one fiscal year to another with the

18 approval of the Governor upon the recommendation of the Director

19 of the Office of Finance in the Office of the Governor. If any

20 money appropriated by subsection 1 is transferred to Fiscal Year

21 2014-2015, any remaining funds in the State Distributive School

22 Account after all obligations have been met that are not subject to

23 reversion to the State General Fund must be transferred back to

24 Fiscal Year 2015-2016. Any amount transferred back to Fiscal Year

25 2015-2016 must not exceed the amount originally transferred to

26 Fiscal Year 2014-2015.

27 5. Any remaining balance of the appropriation made by

28 subsection 1 for Fiscal Year 2015-2016 must be transferred and

29 added to the money appropriated for Fiscal Year 2016-2017 and

30 may be expended as that money is expended.

31 6. Any remaining balance of the appropriation made by

32 subsection 1 for Fiscal Year 2016-2017, including any money added

33 thereto pursuant to the provisions of subsections 3 and 5, must not

34 be committed for expenditure after June 30, 2017, and must be

35 reverted to the State General Fund on or before September 15, 2017.

36 **Sec. 7.** 1. There is hereby appropriated from the State

37 General Fund to the State Distributive School Account created by

38 NRS 387.030:

39	For the Fiscal Year 2015-2016.....	\$1,093,556,243
40	For the Fiscal Year 2016-2017.....	\$933,498,706

41 2. The money appropriated by subsection 1 must be:

42 (a) Expended in accordance with NRS 353.150 to 353.246,

43 inclusive, concerning the allotment, transfer, work program and

44 budget; and

—

EXHIBIT 1



# EXHIBIT 1

- 7 -

1 (b) Work-programmed for the 2 separate fiscal years of the  
2 2015-2017 biennium, as required by NRS 353.215. Work programs  
3 may be revised with the approval of the Governor upon the  
4 recommendation of the Director of the Office of Finance in the  
5 Office of the Governor.

6 3. Transfers to and allotments from must be allowed and made  
7 in accordance with NRS 353.215 to 353.225, inclusive, after  
8 separate consideration of the merits of each request.

9 4. The money appropriated by subsection 1 is available for  
10 either fiscal year or may be transferred to Fiscal Year 2014-2015.  
11 Money may be transferred from one fiscal year to another with the  
12 approval of the Governor upon the recommendation of the Director  
13 of the Office of Finance in the Office of the Governor. If any  
14 money appropriated by subsection 1 is transferred to Fiscal Year  
15 2014-2015, any remaining funds in the State Distributive School  
16 Account after all obligations have been met that are not subject to  
17 reversion to the State General Fund must be transferred back to  
18 Fiscal Year 2015-2016. Any amount transferred back to Fiscal Year  
19 2015-2016 must not exceed the amount originally transferred to  
20 Fiscal Year 2014-2015.

21 5. Any remaining balance of the appropriation made by  
22 subsection 1 for Fiscal Year 2015-2016 must be transferred and  
23 added to the money appropriated for Fiscal Year 2016-2017 and  
24 may be expended as that money is expended.

25 6. Any remaining balance of the appropriation made by  
26 subsection 1 for Fiscal Year 2016-2017, including any money added  
27 thereto pursuant to the provisions of subsections 3 and 5, must not  
28 be committed for expenditure after June 30, 2017, and must be  
29 reverted to the State General Fund on or before September 15, 2017.

30 **Sec. 8.** 1. Expenditure of \$318,254,400 by the Department of  
31 Education from money in the State Distributive School Account that  
32 was not appropriated from the State General Fund is hereby  
33 authorized during Fiscal Year 2015-2016.

34 2. Expenditure of \$330,072,100 by the Department of  
35 Education from money in the State Distributive School Account that  
36 was not appropriated from the State General Fund is hereby  
37 authorized during Fiscal Year 2016-2017.

38 3. For the purposes of accounting and reporting, the sums  
39 authorized for expenditure by subsections 1 and 2 are considered to  
40 be expended before any appropriation is made to the State  
41 Distributive School Account from the State General Fund.

42 4. The money authorized to be expended by subsections 1 and  
43 2 must be expended in accordance with NRS 353.150 to 353.246,  
44 inclusive, concerning the allotment, transfer, work program and  
45 budget. Transfers to and allotments from must be allowed and made

— EXHIBIT 1



\* S B 5 1 5 \*



# EXHIBIT 1

1 in accordance with NRS 353.215 to 353.225, inclusive, after  
2 separate consideration of the merits of each request.

3 5. The Director of the Office of Finance in the Office of  
4 the Governor may, with the approval of the Governor, authorize the  
5 augmentation of the amounts authorized for expenditure by the  
6 Department of Education in subsections 1 and 2, for the purpose of  
7 meeting obligations of the State incurred under chapter 387 of NRS  
8 with amounts from any other state agency, from any agency of local  
9 government, from any agency of the Federal Government or from  
10 any other source that he or she determines is in excess of the amount  
11 taken into consideration by this act. The Director of the Office of  
12 Finance shall reduce any authorization whenever he or she  
13 determines that money to be received will be less than the amount  
14 authorized in subsections 1 and 2.

15 **Sec. 9.** During each fiscal year of the 2015-2017 biennium,  
16 whenever the State Controller finds that current claims against the  
17 State Distributive School Account exceed the amount available in  
18 the Account to pay those claims, the State Controller may advance  
19 temporarily from the State General Fund to the State Distributive  
20 School Account the amount required to pay the claims, but not more  
21 than the amount expected to be received in the current fiscal year  
22 from any source authorized for the State Distributive School  
23 Account. No amount may be transferred unless requested by the  
24 Director of the Office of Finance in the Office of the Governor.

25 **Sec. 10.** The amounts of the guarantees set forth in sections 1  
26 and 2 of this act may be reduced to effectuate a reserve required  
27 pursuant to NRS 353.225.

28 **Sec. 11.** 1. The Department of Education shall transfer from  
29 the State Distributive School Account the following sums for  
30 special transportation costs to school districts:

31 For the Fiscal Year 2015-2016..... \$128,541  
32 For the Fiscal Year 2016-2017..... \$128,541

33 2. Pursuant to NRS 392.015, the Department of Education shall  
34 use the money transferred in subsection 1 to reimburse school  
35 districts for the additional costs of transportation for any pupil to a  
36 school outside the school district in which his or her residence is  
37 located.

38 3. Any remaining balance of the sums transferred by  
39 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017  
40 must not be committed for expenditure after June 30 of each fiscal  
41 year and must be reverted to the State General Fund on or before  
42 September 16, 2016, and September 15, 2017, for each fiscal year  
43 respectively.

44 **Sec. 12.** 1. The Department of Education shall transfer from  
45 the State Distributive School Account to the school districts the



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1 following sums for the National School Lunch Program state match  
2 requirement pursuant to NRS 387.105 to reimburse school districts  
3 for the costs of providing meals pursuant to 42 U.S.C. §§ 1751 et  
4 seq.:

5 For the Fiscal Year 2015-2016..... \$588,732  
6 For the Fiscal Year 2016-2017..... \$588,732

7 2. Any remaining balance of the sums transferred by  
8 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017  
9 must not be committed for expenditure after June 30 of each fiscal  
10 year and must be reverted to the State General Fund on or before  
11 September 16, 2016, and September 15, 2017, for each fiscal year  
12 respectively.

13 **Sec. 13.** Each school district shall expend the revenue made  
14 available through this act, as well as other revenue from state, local  
15 and federal sources, in a manner which is consistent with NRS  
16 288.150 and which is designed to attain the goals of the Legislature  
17 regarding educational reform in this State, especially with regard to  
18 assisting pupils in need of remediation and pupils who are not  
19 proficient in the English language. Materials and supplies for  
20 classrooms are subject to negotiation by employers with recognized  
21 employee organizations.

22 **Sec. 14.** The Legislature hereby finds and declares that:

23 1. Available money is estimated to provide a sufficient number  
24 of teachers to achieve in each school district pupil-teacher ratios of  
25 17 pupils per teacher in grades 1 and 2 in Fiscal Year 2015-2016  
26 and Fiscal Year 2016-2017, and to achieve a pupil-teacher ratio of  
27 20 pupils per teacher in grade 3 in Fiscal Year 2015-2016 and Fiscal  
28 Year 2016-2017.

29 2. Certain school districts do not have a sufficient number of  
30 classrooms available to permit an average class size of 20 pupils per  
31 teacher in grade 3.

32 3. It is unreasonable to assign 2 teachers to classrooms of 40  
33 pupils to attain a district-wide pupil-teacher ratio of 20 pupils per  
34 teacher in grade 3.

35 4. School districts may, instead, attain the desired pupil-teacher  
36 ratio in classes where core curriculum is taught by using alternative  
37 methods of reducing the ratio, such as employing teachers to  
38 provide remedial instruction.

39 5. School districts may wish to use money for class-size  
40 reduction to carry out programs that have been found to be effective  
41 in improving academic achievement.

42 6. The Legislature has specifically designed the laws relating to  
43 class-size reduction to allow the local school districts the necessary  
44 discretion to effectuate the reduction in the manner appropriate in  
45 their respective districts.

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1 7. School districts are encouraged, to the extent possible, to  
2 further reduce the pupil-teacher ratio in each classroom in the  
3 district for grades 1, 2 and 3 for which additional funding is  
4 provided.

5 8. The Legislature intends to continue the reduced pupil-  
6 teacher ratio for grades 1, 2 and 3 throughout the State.

7 **Sec. 15.** 1. The Department of Education shall transfer from  
8 the State Distributive School Account the sum of \$151,066,029 for  
9 distribution by the Superintendent of Public Instruction to the  
10 county school districts for Fiscal Year 2015-2016 which must,  
11 except as otherwise provided in section 17 of this act, be used to  
12 employ teachers to comply with the required ratio of pupils to  
13 teachers in grades 1, 2 and 3, as set forth in subsection 1 of section  
14 14 of this act. Expenditures for the class-size reduction program  
15 must be accounted for in a separate category of expenditure in the  
16 State Distributive School Account.

17 2. Except as otherwise provided in section 17 of this act, the  
18 money transferred by subsection 1 must be used to pay the salaries  
19 and benefits of not less than 1,950 teachers employed by school  
20 districts to meet the required pupil-teacher ratios in the 2015-2016  
21 school year.

22 3. Any remaining balance of the money transferred by  
23 subsection 1 must not be committed for expenditure after June 30,  
24 2016, and must be transferred and added to the money appropriated  
25 to the State Distributive School Account pursuant to section 6 or 7  
26 of this act, whichever becomes effective, for Fiscal Year 2016-2017,  
27 and may be expended as the money in section 16 of this act is  
28 expended.

29 **Sec. 16.** 1. The Department of Education shall transfer from  
30 the State Distributive School Account the sum of \$155,210,241 for  
31 distribution by the Superintendent of Public Instruction to the  
32 county school districts for Fiscal Year 2016-2017 which must,  
33 except as otherwise provided in section 17 of this act, be used to  
34 employ teachers to comply with the required ratio of pupils to  
35 teachers in grades 1, 2 and 3, as set forth in subsection 1 of section  
36 14 of this act. Expenditures for the class-size reduction program  
37 must be accounted for in a separate category of expenditure in the  
38 State Distributive School Account.

39 2. Except as otherwise provided in section 17 of this act, the  
40 money transferred by subsection 1 must be used to pay the salaries  
41 and benefits of not less than 1,974 teachers employed by school  
42 districts to meet the required pupil-teacher ratios in the 2016-2017  
43 school year.

44 3. Any remaining balance of the money transferred by  
45 subsection 1, including any money added thereto pursuant to

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1 section 15 of this act, must not be committed for expenditure after  
2 June 30, 2017, and must be reverted to the State General Fund on or  
3 before September 15, 2017.

4 **Sec. 17.** 1. The board of trustees of each school district:

5 (a) Shall file a plan with the Superintendent of Public Instruction  
6 describing how the money transferred pursuant to sections 15 and  
7 16 of this act will be used to comply with the required ratio of pupils  
8 to teachers in grades 1, 2 and 3; and

9 (b) May, after receiving approval of the plan from the  
10 Superintendent of Public Instruction, use the money transferred  
11 pursuant to sections 15 and 16 of this act to carry out:

12 (1) An alternative program for reducing the ratio of pupils  
13 per teacher, including, without limitation, any legislatively approved  
14 program of flexibility; or

15 (2) Programs of remedial education that have been found to  
16 be effective in improving pupil achievement in grades 1, 2 and 3, so  
17 long as the combined ratio of pupils per teacher in the aggregate of  
18 kindergarten and grades 1, 2 and 3 of the school district does not  
19 exceed the combined ratio of pupils per teacher in the aggregate of  
20 kindergarten and grades 1, 2 and 3 of the school district in the  
21 2004-2005 school year.

22 ↪ The plan approved by the Superintendent of Public Instruction  
23 must describe the method to be used by the school district to  
24 evaluate the effectiveness of the alternative program or remedial  
25 education programs in improving pupil achievement.

26 2. In no event must the provisions of this section be construed  
27 to authorize the board of trustees of a school district in a county  
28 whose population is 100,000 or more to develop an alternative plan  
29 for the reduction of pupil-teacher ratios pursuant to subsection 2 of  
30 NRS 388.720.

31 **Sec. 18.** 1. The money transferred for class-size reduction  
32 pursuant to sections 15 and 16 of this act:

33 (a) May be applied first to pupils considered most at risk of  
34 failure.

35 (b) Must not be used to settle or arbitrate disputes between a  
36 recognized organization representing employees of a school district  
37 and the school district, or to settle any negotiations.

38 (c) Must not be used to adjust the district-wide schedules of  
39 salaries and benefits of the employees of a school district.

40 2. The money transferred for class-size reduction pursuant to  
41 sections 15 and 16 of this act must not be distributed to a school  
42 district unless that school district has:

43 (a) Filed with the Department of Education a plan required by  
44 NRS 388.720 for achieving the required ratio set forth in NRS  
45 388.700; and



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1 (b) Demonstrated that, from resources of the school district  
2 other than allocations received from the State Distributive School  
3 Account for class-size reduction, a sufficient number of classroom  
4 teachers have been employed to maintain the average pupil-teacher  
5 ratio that existed for each grade for grades 1, 2 and 3, in that school  
6 district for the 3 school years immediately preceding the start of the  
7 class-size reduction program in the 1990-1991 school year.

8 **Sec. 19.** 1. There is hereby appropriated from the State  
9 General Fund to the Other State Education Programs Account in the  
10 State General Fund the following sums:

11 For the Fiscal Year 2015-2016..... \$65,906,998  
12 For the Fiscal Year 2016-2017..... \$65,243,789

13 2. The money appropriated by subsection 1 must be expended  
14 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
15 the allotment, transfer, work program and budget. Transfers to and  
16 allotments from must be allowed and made in accordance with NRS  
17 353.215 to 353.225, inclusive, after separate consideration of the  
18 merits of each request.

19 3. The Department of Education is hereby authorized to expend  
20 from the Other State Education Programs Account the sum of  
21 \$18,260,398 for both Fiscal Year 2015-2016 and Fiscal Year  
22 2016-2017 for the support of courses which are approved by the  
23 Department of Education as meeting the course of study for an adult  
24 standard high school diploma as approved by the State Board of  
25 Education. In each fiscal year of the 2015-2017 biennium, the sum  
26 authorized must be allocated among the various school districts in  
27 accordance with a plan or formula developed by the Department of  
28 Education to ensure that the money is distributed equitably and in a  
29 manner that permits accounting for the expenditures of school  
30 districts.

31 4. Any remaining balance of the allocations made by  
32 subsection 3 for Fiscal Year 2015-2016 must be added to the money  
33 received by the school districts for Fiscal Year 2016-2017 and may  
34 be expended as that money is expended. Any remaining balance of  
35 the allocations made by subsection 3 for Fiscal Year 2016-2017,  
36 including any such money added from the previous fiscal year, must  
37 not be committed for expenditure after June 30, 2017, and must be  
38 reverted to the State General Fund on or before September 15, 2017.

39 5. The money appropriated by subsection 1 to finance specific  
40 programs as outlined in this subsection are available for both Fiscal  
41 Year 2015-2016 and Fiscal Year 2016-2017 and may be transferred  
42 from one fiscal year to the other with the approval of the Interim  
43 Finance Committee upon the recommendation of the Governor as  
44 follows:

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1 (a) A total of \$49,285 in both Fiscal Year 2015-2016 and Fiscal  
2 Year 2016-2017 for successful completion of the National Board  
3 Teacher Certification Program.

4 (b) A total of \$668,741 in both Fiscal Year 2015-2016 and  
5 Fiscal Year 2016-2017 for Counselor National Board Certification.

6 (c) A total of \$449,142 in both Fiscal Year 2015-2016 and  
7 Fiscal Year 2016-2017 for LEA library books.

8 (d) A total of \$10,000,000 in both Fiscal Year 2015-2016 and  
9 Fiscal Year 2016-2017 to be distributed by the Commission on  
10 Educational Technology created by NRS 388.790 to establish a  
11 Nevada Ready 21 Technology competitive grant program for  
12 statewide one-to-one pupil computing in certain middle schools to  
13 provide pupils and teachers with 24-hour access to their own  
14 personal, portable, technology device connected wirelessly to the  
15 Internet.

16 (e) A total of \$1,000,000 in both Fiscal Year 2015-2016 and  
17 Fiscal Year 2016-2017 to establish an incentive grant program to be  
18 distributed by the Commission on Educational Technology created  
19 by NRS 388.790 to assist schools with broadband and Wide Area  
20 Network (WAN) access and improvements. The incentive grant  
21 program must contain a match requirement as established by the  
22 Commission on Educational Technology.

23 (f) A total of \$10,443,822 in Fiscal Year 2015-2016 and a total  
24 of \$12,543,822 in Fiscal Year 2016-2017 for the award of grants for  
25 career and technical education pursuant to NRS 388.393 and,  
26 notwithstanding the provisions of subsections 1, 2 and 3 of NRS  
27 388.392, not for the use of leadership and training activities and  
28 pupil organizations.

29 (g) A total of \$2,500,000 in Fiscal Year 2015-2016 and a total of  
30 \$3,586,645 in Fiscal Year 2016-2017 for the Jobs for America's  
31 Graduates Program.

32 (h) A total of \$850,000, with a maximum of \$50,000 to each of  
33 the 17 school districts, in both Fiscal Year 2015-2016 and Fiscal  
34 Year 2016-2017 to support special counseling services for  
35 elementary school pupils at risk of failure.

36 (i) A total of \$18,798 in both Fiscal Year 2015-2016 and Fiscal  
37 Year 2016-2017 to pay the increase of salaries of professional  
38 school library media specialists required by NRS 391.160.

39 6. The sums transferred by subsection 5 are available for either  
40 fiscal year. Any remaining balance of those sums must not be  
41 committed for expenditure after June 30, 2017, and must be reverted  
42 to the State General Fund on or before September 15, 2017.

43 7. Except as otherwise provided in subsections 4 and 6,  
44 unencumbered balances of the appropriations made by this section  
45 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017 must not be

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1 committed for expenditure after June 30 of each fiscal year. Except  
2 as otherwise provided in subsections 4 and 6, unencumbered  
3 balances of these appropriations revert to the State General Fund on  
4 or before September 16, 2016, and September 15, 2017, for each  
5 fiscal year respectively.

6 **Sec. 20.** 1. The Department of Education shall transfer from  
7 the Other State Education Programs Account the sum of \$5,174,243  
8 in both Fiscal Year 2015-2016 and Fiscal Year 2016-2017 for pupils  
9 enrolled in school districts and charter schools who qualify for  
10 gifted and talented education programs.

11 2. The money transferred by subsection 1 must be distributed  
12 on a per pupil basis to pupils who have been identified as gifted and  
13 talented through a state-approved assessment or procedure, or both.  
14 The Department of Education shall calculate an amount of funding  
15 for each pupil identified as gifted and talented for both Fiscal Year  
16 2015-2016 and Fiscal Year 2016-2017 by dividing the total final  
17 count of such pupils in the immediately preceding fiscal year by the  
18 money appropriated by the Legislature for such pupils in Fiscal  
19 Year 2015-2016 and in Fiscal Year 2016-2017.

20 3. Any remaining balance of the sums transferred by  
21 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017  
22 must not be committed for expenditure after June 30 of each fiscal  
23 year and must be reverted to the State General Fund on or before  
24 September 16, 2016, and September 15, 2017, for each fiscal year  
25 respectively.

26 **Sec. 21.** 1. The Department of Education shall transfer from  
27 the Other State Education Programs Account the following sums for  
28 early childhood education:

29 For the Fiscal Year 2015-2016..... \$3,338,875  
30 For the Fiscal Year 2016-2017..... \$3,338,875

31 2. The money transferred by subsection 1 must be used by the  
32 Department of Education for competitive state grants to school  
33 districts and community-based organizations for early childhood  
34 education programs.

35 3. To receive a grant of money pursuant to subsection 2, school  
36 districts and community-based organizations must submit a  
37 comprehensive plan to the Department of Education that includes,  
38 without limitation:

39 (a) A detailed description of the proposed early childhood  
40 education program; and

41 (b) A description of the manner in which the money will be  
42 used, which must supplement and not replace the money that would  
43 otherwise be expended for early childhood education programs.

44 4. A school district or community-based organization that  
45 receives a grant of money pursuant to this section shall:

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1 (a) Use the money to establish or expand prekindergarten  
2 education programs.

3 (b) Use the money to supplement and not replace the money that  
4 the school district or community-based organization would  
5 otherwise expend for early childhood education programs, as  
6 described in this section.

7 (c) Use the money to pay for the salaries and other items directly  
8 related to the instruction of pupils in the classroom.

9 ↪ The money must not be used to remodel classrooms or facilities  
10 or for playground equipment.

11 5. The Department of Education shall develop statewide  
12 performance and outcome indicators to measure the effectiveness of  
13 the early childhood education programs for which grants of money  
14 are awarded pursuant to this section. In developing the indicators,  
15 the Department shall establish minimum performance levels and  
16 increase the expected performance rates on a yearly basis, based  
17 upon the performance results of the participants. The indicators  
18 must include, without limitation:

19 (a) Longitudinal measures of the developmental progress of  
20 children before and after their completion of the program;

21 (b) Longitudinal measures of parental involvement in the  
22 program before and after completion of the program; and

23 (c) The percentage of participants who drop out of the program  
24 before completion.

25 6. The Department of Education shall conduct a longitudinal  
26 study of the early childhood education programs of each school  
27 district and community-based organization.

28 7. The Department of Education shall, on a biennial basis,  
29 provide a written report to the Governor, the Legislative Committee  
30 on Education and the Director of the Legislative Counsel Bureau  
31 regarding the effectiveness of the early childhood education  
32 programs for which grants of money were received. The report must  
33 include, without limitation:

34 (a) The number of grants awarded;

35 (b) An identification of each school district and community-  
36 based organization that received a grant of money and the amount of  
37 each grant awarded;

38 (c) For each school district and community-based organization  
39 that received a grant of money:

40 (1) The number of children who received services through a  
41 program funded by the grant for each year that the program received  
42 funding from the State for early childhood education programs; and

43 (2) The average expenditure per child for the program for  
44 each year the program received funding from the State for early  
45 childhood education programs;

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1 (d) A description of the programs in this State that are the most  
2 effective;

3 (e) Based upon the performance of children in the program on  
4 established performance and outcome indicators, a description of  
5 revised performance and outcome indicators, including any revised  
6 minimum performance levels and performance rates; and

7 (f) Any recommendations for legislation.

8 8. The money transferred by this section:

9 (a) Must be accounted for separately from any other money  
10 received by the school districts and charter schools of this State and  
11 used only for the purposes specified in this section.

12 (b) May not be used to settle or arbitrate disputes between a  
13 recognized organization representing employees of a school district  
14 and the school district, or to settle any negotiations.

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

17 9. The sums transferred by subsection 1 are available for either  
18 fiscal year. Any remaining balance of those sums must not be  
19 committed for expenditure after June 30, 2017, and must be reverted  
20 to the State General Fund on or before September 15, 2017.

21 **Sec. 22.** 1. The Department of Education shall transfer from  
22 the Other State Education Programs Account the following sums for  
23 a college and career readiness grant program:

24	For the Fiscal Year 2015-2016.....	\$3,000,000
25	For the Fiscal Year 2016-2017.....	\$5,000,000

26 2. The money transferred by subsection 1 must be used by the  
27 Department of Education for competitive grants to:

28 (a) Support dual enrollment for pupils enrolled in high schools,  
29 including, without limitation, charter schools, and simultaneously  
30 enrolled in college courses; and

31 (b) Create a competitive science, technology, engineering and  
32 mathematics grant program for pupils enrolled in middle schools  
33 and high schools, including, without limitation, charter schools, to  
34 assist those pupils in becoming college and career ready.

35 3. The money transferred by subsection 1:

36 (a) Must be accounted for separately from any other money  
37 received by the school districts and charter schools of this State and  
38 used only for the purposes specified in this section.

39 (b) May not be used to settle or arbitrate disputes between a  
40 recognized organization representing employees of a school district  
41 and the school district, or to settle any negotiations.

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

44 4. Any remaining balance of the sums transferred by  
45 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017

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1 must not be committed for expenditure after June 30 of each fiscal  
2 year and must be reverted to the State General Fund on or before  
3 September 16, 2016, and September 15, 2017, for each fiscal year  
4 respectively.

5 **Sec. 23.** 1. The Department of Education shall transfer from  
6 the Other State Education Programs Account for the social worker  
7 or other licensed mental health worker grant program, the sum of  
8 \$5,594,400 for the Fiscal Year 2015-2016.

9 2. The money transferred by subsection 1 must be used by the  
10 Department of Education for a block grant program to school  
11 districts and charter schools to provide for contract social workers or  
12 other licensed mental health workers in schools with identified  
13 needs.

14 3. For purposes of the allocations of sums for the block grant  
15 program described in subsection 2, eligible licensed social or other  
16 mental health workers are defined as the following:

- 17 (a) Licensed Clinical Social Worker;
- 18 (b) Social Worker;
- 19 (c) Social Worker Intern with Supervision;
- 20 (d) Clinical Psychologist;
- 21 (e) Psychologist Intern with Supervision;
- 22 (f) Marriage and Family Therapist;
- 23 (g) Mental Health Counselor;
- 24 (h) Community Health Worker;
- 25 (i) School-Based Health Centers; and
- 26 (j) Licensed Nurse.

27 4. In addition to the transfer made by subsection 1, there is  
28 hereby appropriated from the State General Fund to the Interim  
29 Finance Committee the sum of \$11,188,800 for the Fiscal Year  
30 2016-2017.

31 5. The Department of Education may request a work program  
32 revision pursuant to NRS 353.220 of not more than \$11,188,800  
33 from the Contingency Account of the Interim Finance Committee  
34 for a block grant program to school districts and charter schools to  
35 provide for contract social workers or other licensed mental health  
36 workers in schools with identified needs.

37 6. On or before June 30, 2016, the Department of Education  
38 shall report to the Interim Finance Committee the number of  
39 licensed professionals for which each school district or charter  
40 school has contracted for the Fiscal Year 2015-2016 and the  
41 efficacy of the program. The Interim Finance Committee shall  
42 determine the amount of money to transfer based on the results of  
43 the status report, as reported by the Department of Education.

44 7. Any remaining balance of the sums transferred by  
45 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017

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1 must not be committed for expenditure after June 30 of each fiscal  
2 year and must be reverted to the State General Fund on or before  
3 September 16, 2016, and September 15, 2017, for each fiscal year  
4 respectively.

5 8. Any remaining balance of the appropriation made by  
6 subsection 4 for Fiscal Year 2016-2017, must not be committed for  
7 expenditure after June 30, 2017, and must be reverted to the State  
8 General Fund on or before September 15, 2017.

9 **Sec. 24.** 1. The Department of Education shall transfer from  
10 the Other State Education Programs Account the following sums for  
11 underperforming schools:

12	For the Fiscal Year 2015-2016.....	\$2,500,000
13	For the Fiscal Year 2016-2017.....	\$2,500,000

14 2. The money transferred by subsection 1 must be used by the  
15 Department of Education to provide grants and other financial  
16 support, within the limits of legislative appropriation, to public  
17 schools receiving the lowest two ratings based on the statewide  
18 system of accountability to assist those public schools with carrying  
19 out their plans to improve the achievement of pupils required by  
20 NRS 385.357.

21 3. The money transferred pursuant to subsection 1:

22 (a) Must be accounted for separately from any other money  
23 received by the school districts and charter schools of this State and  
24 used only for the purposes specified in subsection 2.

25 (b) May not be used to settle or arbitrate disputes between a  
26 recognized organization representing employees of a school district  
27 and the school district, or to settle any negotiations.

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

30 4. Any remaining balance of the sums transferred by  
31 subsection 1 for Fiscal Year 2015-2016 and Fiscal Year 2016-2017  
32 must not be committed for expenditure after June 30 of each fiscal  
33 year and must be reverted to the State General Fund on or before  
34 September 16, 2016, and September 15, 2017, for each fiscal year  
35 respectively.

36 **Sec. 25.** 1. There is hereby appropriated from the State  
37 General Fund to the Other State Education Programs Account in the  
38 State General Fund the following sums which must be used only to  
39 carry out the provisions of Senate Bill No. 491 of this session:

40	For the Fiscal Year 2015-2016.....	\$5,000,000
41	For the Fiscal Year 2016-2017.....	\$5,000,000

42 2. The money appropriated by subsection 1 must be expended  
43 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
44 the allotment, transfer, work program and budget. Transfers to and  
45 allotments from must be allowed and made in accordance with

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1 NRS 353.215 to 353.225, inclusive, after separate consideration of  
2 the merits of each request.

3 3. The money appropriated by subsection 1 is available for  
4 either fiscal year. Any remaining balance of those sums must not be  
5 committed for expenditure after June 30, 2019, by the entity to  
6 which money from the appropriation is granted or otherwise  
7 transferred in any manner, and any portion of the appropriated  
8 money remaining must not be spent for any purpose after  
9 September 20, 2019, by either the entity to which the money was  
10 subsequently granted or transferred, and must be reverted to the  
11 State General Fund on or before September 20, 2019.

12 **Sec. 26.** 1. There is hereby appropriated from the State  
13 General Fund to the Other State Education Programs Account in the  
14 State General Fund the following sums which must be used only to  
15 carry out the provisions of Senate Bill No. 391 of this session:

16 For the Fiscal Year 2015-2016..... \$4,879,489  
17 For the Fiscal Year 2016-2017..... \$22,250,574

18 2. The money appropriated by subsection 1 must be expended  
19 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
20 the allotment, transfer, work program and budget. Transfers to and  
21 allotments from must be allowed and made in accordance with NRS  
22 353.215 to 353.225, inclusive, after separate consideration of the  
23 merits of each request.

24 3. Any balance of the money appropriated by subsection 1  
25 remaining at the end of the respective fiscal years must not be  
26 committed for expenditure after June 30 of the respective fiscal  
27 years by the entity to which the appropriation is made or any entity  
28 to which money from the appropriation is granted or otherwise  
29 transferred in any manner, and any portion of the appropriated  
30 money remaining must not be spent for any purpose after  
31 September 16, 2016, and September 15, 2017, respectively, by  
32 either the entity to which the money was appropriated or the entity  
33 to which the money was subsequently granted or transferred, and  
34 must be reverted to the State General Fund on or before  
35 September 16, 2016, and September 15, 2017, respectively.

36 **Sec. 27.** 1. There is hereby appropriated from the State  
37 General Fund to the Account for Programs for Innovation and the  
38 Prevention of Remediation created by NRS 387.031 the following  
39 sums which must be used only to carry out the provisions of Senate  
40 Bill No. 405 of this session:

41 For the Fiscal Year 2015-2016..... \$49,950,000  
42 For the Fiscal Year 2016-2017..... \$49,950,000

43 2. The money appropriated by subsection 1 must be expended  
44 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
45 the allotment, transfer, work program and budget. Transfers to and

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1 allotments from must be allowed and made in accordance with NRS  
2 353.215 to 353.225, inclusive, after separate consideration of the  
3 merits of each request.

4 3. The Department shall transfer from the appropriation made  
5 by subsection 1 to the school districts specified in this subsection  
6 the following sums which must be used only to carry out the  
7 provisions of Senate Bill No. 405 of this session for Fiscal Year  
8 2015-2016 and Fiscal Year 2016-2017, respectively:

9 School District:	2015-2016	2016-2017
10 Clark County School District	\$39,350,342	\$39,350,342
11 Washoe County School District	\$6,985,838	\$6,985,838

12 4. Of the sums appropriated by subsection 1, the Department of  
13 Education shall use not more than \$3,613,820 in Fiscal Year  
14 2015-2016 and \$3,613,820 in Fiscal Year 2016-2017 which must be  
15 used only to carry out the provisions of Senate Bill No. 405 of this  
16 session to provide grants of money to the State Public Charter  
17 School Authority and the school districts, other than the Clark  
18 County School District or the Washoe County School District. The  
19 board of trustees of a school district and the State Public Charter  
20 School Authority may submit an application to the Department on a  
21 form prescribed by the Department.

22 5. Any remaining balance of the transfers made by subsection  
23 3 for Fiscal Year 2015-2016 must be added to the money transferred  
24 for Fiscal Year 2016-2017 and may be expended as that money is  
25 expended. Any remaining balance of the transfers made by  
26 subsection 3 for Fiscal Year 2016-2017, including any money added  
27 from the previous fiscal year, must not be committed for  
28 expenditure after June 30, 2017, and must be reverted to the State  
29 General Fund on or before September 15, 2017.

30 6. Any remaining balance of the allocations made by  
31 subsection 4 for Fiscal Year 2015-2016 must be added to the  
32 allocations for Fiscal Year 2016-2017 and may be expended as that  
33 money is expended. Any remaining balance of the allocations made  
34 pursuant to subsection 4 for Fiscal Year 2016-2017, including any  
35 money added from the previous fiscal year, must not be committed  
36 for expenditure after June 30, 2017, and must be reverted to the  
37 State General Fund on or before September 15, 2017.

38 7. Any remaining balance of the appropriation made by  
39 subsection 1 must not be committed for expenditure after June 30,  
40 2017, by the entity to which the appropriation is made or any entity  
41 to which money from the appropriation is granted or otherwise  
42 transferred in any manner, and any portion of the appropriated  
43 money remaining must not be spent for any purpose after  
44 September 15, 2017, by either the entity to which the money was  
45 appropriated or the entity to which the money was subsequently



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1 granted or transferred, and must be reverted to the State General  
2 Fund on or before September 15, 2017.

3 **Sec. 28.** 1. There is hereby appropriated from the State  
4 General Fund to the Account for Programs for Innovation and the  
5 Prevention of Remediation created by NRS 387.031 the following  
6 sums which must be used only to carry out the provisions of Senate  
7 Bill No. 432 of this session:

8 For the Fiscal Year 2015-2016..... \$24,850,000  
9 For the Fiscal Year 2016-2017..... \$25,000,000

10 2. The money appropriated by subsection 1 must be expended  
11 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
12 the allotment, transfer, work program and budget. Transfers to and  
13 allotments from must be allowed and made in accordance with NRS  
14 353.215 to 353.225, inclusive, after separate consideration of the  
15 merits of each request.

16 3. Any remaining balance of the transfers made to carry out the  
17 provisions of Senate Bill No. 432 of this session for Fiscal Year  
18 2015-2016 must be added to the money transferred for Fiscal Year  
19 2016-2017 and may be expended as that money is expended. Any  
20 remaining balance of the transfers made to carry out the provisions  
21 of Senate Bill No. 432 of this session for Fiscal Year 2016-2017,  
22 including any money added from the previous fiscal year, must not  
23 be committed for expenditure after June 30, 2017, and must be  
24 reverted to the State General Fund on or before September 15, 2017.

25 4. Any remaining balance of the appropriation made by  
26 subsection 1 must not be committed for expenditure after June 30,  
27 2017, by the entity to which the appropriation is made or any entity  
28 to which money from the appropriation is granted or otherwise  
29 transferred in any manner, and any portion of the appropriated  
30 money remaining must not be spent for any purpose after  
31 September 15, 2017, by either the entity to which the money was  
32 appropriated or the entity to which the money was subsequently  
33 granted or transferred, and must be reverted to the State General  
34 Fund on or before September 15, 2017.

35 **Sec. 29.** 1. There is hereby appropriated from the State  
36 General Fund to the Account for Programs for Innovation and the  
37 Prevention of Remediation created by NRS 387.031 the following  
38 sums:

39 For the Fiscal Year 2015-2016..... \$76,073,244  
40 For the Fiscal Year 2016-2017..... \$97,381,674

41 2. The money appropriated by subsection 1 must be expended  
42 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
43 the allotment, transfer, work program and budget. Transfers to and  
44 allotments from must be allowed and made in accordance with



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1 NRS 353.215 to 353.225, inclusive, after separate consideration of  
2 the merits of each request.

3 3. Expenditure of \$56,018 in both Fiscal Year 2015-2016 and  
4 Fiscal Year 2016-2017 from money in the Account for Programs for  
5 Innovation and the Prevention of Remediation that was not  
6 appropriated from the State General Fund is hereby authorized for  
7 the full-day kindergarten program.

8 4. For the purposes of accounting and reporting, the sum  
9 authorized for expenditure by subsection 3 is considered to be  
10 expended before any appropriation is made to the Account for  
11 Programs for Innovation and the Prevention of Remediation from  
12 the State General Fund.

13 5. The money authorized to be expended by subsection 3 must  
14 be expended in accordance with NRS 353.150 to 353.246, inclusive,  
15 concerning the allotment, transfer, work program and budget.  
16 Transfers to and allotments from must be allowed and made in  
17 accordance with NRS 353.215 to 353.225, inclusive, after separate  
18 consideration of the merits of each request.

19 6. The Director of the Office of Finance in the Office of  
20 the Governor may, with the approval of the Governor, authorize the  
21 augmentation of the amounts authorized for expenditure by the  
22 Department of Education in subsection 3, for the purpose of meeting  
23 obligations of the State incurred under chapter 387 of NRS with  
24 amounts from any other state agency, from any agency of local  
25 government, from any agency of the Federal Government or from  
26 any other source that he or she determines is in excess of the amount  
27 taken into consideration by this act. The Director of the Office of  
28 Finance shall reduce any authorization whenever he or she  
29 determines that money to be received will be less than the amount  
30 authorized in subsection 3.

31 **Sec. 30.** 1. Of the sums appropriated by subsection 1 of  
32 section 29 of this act, the following sums must be allocated to the  
33 school districts and charter schools for a full-day kindergarten  
34 program:

35	For the Fiscal Year 2015-2016.....	\$75,073,244
36	For the Fiscal Year 2016-2017.....	\$96,381,674

37 2. The sums allocated by subsection 1 must be distributed by  
38 the Department of Education to the school districts and charter  
39 schools that elect to provide full-day kindergarten. In no event is a  
40 school district or charter school required to provide full-day  
41 kindergarten.

42 3. Except as otherwise provided in subsection 4, a school  
43 district or charter school that elects to receive an allocation of  
44 money pursuant to this section shall use the money to provide full-  
45 day kindergarten in each school within the school district that is

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1 prioritized for full-day kindergarten and in each such charter school.  
2 A school district shall allocate the money by assigning first priority  
3 to those schools within the school district that have the highest  
4 percentage of pupils who are eligible for free or reduced price  
5 lunches. If a school within a school district or charter school that is  
6 required to provide full-day kindergarten pursuant to this section  
7 currently provides full-day kindergarten with money that it receives  
8 from the Federal Government or other funding allocations, the  
9 school may redirect that money, to the extent authorized by  
10 applicable federal law, for other programs of remediation at the  
11 school and use the money provided by the Department of Education  
12 from the allocation to provide full-day kindergarten.

13 4. A school that is otherwise required to provide full-day  
14 kindergarten pursuant to subsection 3 may opt out of providing full-  
15 day kindergarten.

16 5. A parent or legal guardian of a pupil who is otherwise zoned  
17 to attend a public school that provides full-day kindergarten  
18 pursuant to this section may request that the pupil not be enrolled in  
19 full-day kindergarten. The school district in which the pupil is  
20 enrolled shall grant the request and ensure that the pupil is allowed  
21 to attend kindergarten, whether at the zoned school or another  
22 school, for less than a full day.

23 **Sec. 31.** Of the sums appropriated by subsection 1 of section  
24 29 of this act, the sum of \$1,000,000 in both Fiscal Year 2015-2016  
25 and Fiscal Year 2016-2017 may be distributed by the Department of  
26 Education to assist school districts which receive an allocation  
27 pursuant to section 30 of this act with the purchase of portable  
28 classrooms for the provision of full-day kindergarten.

29 **Sec. 32.** 1. The Department of Education shall allocate the  
30 appropriation made by subsection 1 of section 29 of this act to  
31 school districts and charter schools that elect to provide full-day  
32 kindergarten and any remaining half-day kindergarten programs in  
33 the 2015-2016 Fiscal Year and the 2016-2017 Fiscal Year at a ratio  
34 of 21 pupils per teacher.

35 2. Notwithstanding the provisions of NRS 388.700 to the  
36 contrary, a school district that receives an allocation of money  
37 pursuant to subsection 1 may not request a variance from the State  
38 Board of Education to exceed the pupil-teacher ratio prescribed by  
39 subsection 1. A principal of a school may submit a request to the  
40 superintendent of schools of the school district for the school to  
41 exceed the pupil-teacher ratio prescribed by subsection 1 by not  
42 more than 20 percent or 25 pupils. A principal of a charter school  
43 may submit a request to the governing body of the charter school for  
44 the charter school to exceed the pupil-teacher ratio prescribed by  
45 subsection 1 by not more than 20 percent or 25 pupils. If the

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1 superintendent or governing body grants such a request, the  
2 superintendent or governing body shall provide written notice to the  
3 Department of Education. Each request and approval to exceed  
4 the ratio must be made on an individual school basis and not a  
5 school-district wide basis. A remote and rural school, as determined  
6 by the State Board of Education, may submit a request to the  
7 superintendent of schools of the school district in which the school  
8 is located or the governing body of a charter school, as applicable,  
9 for transmittal to the State Board of Education with a proposed plan  
10 of corrective action in instances where the maximum pupil-teacher  
11 ratio exceeds 25 pupils to 1 teacher.

12 3. The money appropriated by subsection 1 of section 29 of  
13 this act:

14 (a) Must be accounted for separately from any other money  
15 received by the school districts and charter schools of this State and  
16 used only for the purposes specified in this section.

17 (b) May not be used to settle or arbitrate disputes between a  
18 recognized organization representing employees of a school district  
19 and the school district, or to settle any negotiations.

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

22 (d) May not be used to attain the pupil-teacher ratios for which a  
23 school district receives an allocation pursuant to sections 14 to 18,  
24 inclusive, of this act.

25 4. A school district and charter school that receives an  
26 allocation of money pursuant to subsection 1 shall provide a report  
27 to the Department of Education on or before August 1, November 1,  
28 February 1 and May 1 that includes:

29 (a) The number of teachers employed for kindergarten in order  
30 to attain the ratio required by subsection 1;

31 (b) The average daily attendance of pupils and the ratio of pupils  
32 per licensed teacher for kindergarten;

33 (c) The number of schools for which approval was granted by  
34 the superintendent of schools of the school district or the governing  
35 body of the charter school to exceed the ratio prescribed by  
36 subsection 1 by not more than 20 percent or 25 pupils; and

37 (d) The number of remote and rural schools for which a  
38 proposed plan of corrective action was transmitted to the State  
39 Board of Education.

40 ↪ The report must be made for each school at which one or more  
41 teachers were employed to attain the ratio required by subsection 1  
42 and must not be made on a school-district wide average.

43 5. Any remaining balance of the allocations made by  
44 subsection 1 for Fiscal Year 2015-2016 must be added to the money  
45 received by the school districts for Fiscal Year 2016-2017 and may

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1 be expended as that money is expended. Any remaining balance of  
2 the allocations made by subsection 1 for Fiscal Year 2016-2017,  
3 including any such money added from the previous fiscal year, does  
4 not revert to the State General Fund.

5 **Sec. 33.** 1. There is hereby appropriated from the State  
6 General Fund to the Account for Programs for Innovation and the  
7 Prevention of Remediation created by NRS 387.031 the following  
8 sums:

9 For the Fiscal Year 2015-2016..... \$5,000,000  
10 For the Fiscal Year 2016-2017..... \$5,000,000

11 2. On or before August 31, 2015, the board of trustees of a  
12 school district may apply to the State Board of Education for a grant  
13 of money from the money appropriated pursuant to subsection 1 to  
14 provide financial incentives to newly hired teachers as described in  
15 subsection 3. Each application submitted pursuant to this section  
16 must include the number of teachers to whom the board of trustees  
17 intends to provide such incentives. On or before October 31, 2015,  
18 the State Board shall distribute the money to each board of trustees  
19 of a school district that submits an application in proportion to the  
20 number of teachers to whom the board of trustees plans to provide  
21 incentives.

22 3. Each board of trustees of a school district that receives a  
23 grant of money pursuant to subsection 2 must use the money to pay  
24 for incentives to newly hired teachers through the program of  
25 performance pay and enhanced compensation for the recruitment  
26 and retention of licensed teachers and administrators established by  
27 the board of trustees pursuant to NRS 391.168. A board of trustees  
28 of a school district may only use such money to provide incentives  
29 to licensed teachers who:

30 (a) Were not employed by the board of trustees during the  
31 2014-2015 school year; and

32 (b) Are employed full-time to teach in a school that:

33 (1) Is a Title I school as defined in NRS 385.3467; or

34 (2) Received one of the two lowest possible ratings  
35 indicating underperformance of a public school, as determined by  
36 the Department of Education pursuant to the statewide system of  
37 accountability for public schools, for the 2015-2016 school year.

38 4. An incentive provided pursuant to subsection 3 may be used  
39 to increase the base salary of a teacher for the 2015-2016 and  
40 2016-2017 school years in an amount not to exceed \$5,000 per  
41 school year. A teacher who receives such an incentive is not entitled  
42 to continue to receive such an incentive after the 2016-2017 school  
43 year, and the board of trustees of a school district is not required to  
44 pay such an incentive after that school year.

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1 5. The board of trustees of a school district that provides an  
2 incentive pursuant to subsection 3 shall provide professional  
3 development to each teacher who receives such an incentive for  
4 each school year for which the teacher receives the incentive.

5 6. Any remaining balance of the appropriation made by  
6 subsection 1 for Fiscal Year 2015-2016 must be added to the money  
7 received by the school districts for Fiscal Year 2016-2017 and may  
8 be expended as that money is expended. Any remaining balance of  
9 the appropriation made by subsection 1 for Fiscal Year 2016-2017,  
10 including any such money added from the previous fiscal year, does  
11 not revert to the State General Fund.

12 **Sec. 34.** 1. There is hereby appropriated from the State  
13 General Fund to the Professional Development Programs Account:

14	For the Fiscal Year 2015-2016.....	\$7,560,948
15	For the Fiscal Year 2016-2017.....	\$7,560,948

16 2. The money appropriated by subsection 1 must be expended  
17 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
18 the allotment, transfer, work program and budget. Transfers to and  
19 allotments from must be allowed and made in accordance with NRS  
20 353.215 to 353.225, inclusive, after separate consideration of the  
21 merits of each request.

22 **Sec. 35.** 1. Of the sums appropriated by subsection 1 of  
23 section 34 of this act, the Department of Education shall transfer the  
24 following sums for Fiscal Year 2015-2016 and Fiscal Year  
25 2016-2017:

26	<u>School District</u>	<u>2015-2016</u>	<u>2016-2017</u>
27	Clark County School District	\$3,983,356	\$3,983,356
28	Elko County School District	\$1,243,736	\$1,243,736
29	Washoe County School District	<u>\$2,233,856</u>	<u>\$2,233,856</u>
30	TOTAL:	\$7,460,948	\$7,460,948

31 2. A school district that receives an allocation pursuant to  
32 subsection 1 shall serve as fiscal agent for the respective regional  
33 training program for the professional development of teachers and  
34 administrators. As fiscal agent, each school district is responsible for  
35 the payment, collection and holding of all money received from this  
36 State for the maintenance and support of the regional training  
37 program for the professional development of teachers and  
38 administrators and the Nevada Early Literacy Intervention Program  
39 established and operated by the applicable governing body.

40 3. Any remaining balance of the transfers made by subsection  
41 1 for Fiscal Year 2015-2016 must be added to the money received  
42 by the school districts for Fiscal Year 2016-2017 and may be  
43 expended as that money is expended. Any remaining balance of the  
44 transfers made by subsection 1 for Fiscal Year 2016-2017, including  
45 any money added from the transfer for the previous fiscal year, must

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1 not be committed for expenditure after June 30, 2017, and must be  
2 reverted to the State General Fund on or before September 15, 2017.

3 **Sec. 36.** 1. Of the sums appropriated by subsection 1 of  
4 section 34 of this act, the Department of Education shall transfer to  
5 the Statewide Council for the Coordination of the Regional Training  
6 Programs created by NRS 391.516 the sum of \$100,000 in both  
7 Fiscal Year 2015-2016 and Fiscal Year 2016-2017 for additional  
8 training opportunities for educational administrators in Nevada.

9 2. The Statewide Council shall use the money:

10 (a) To disseminate research-based knowledge related to  
11 effective educational leadership behaviors and skills.

12 (b) To develop, support and maintain ongoing activities,  
13 programs, training and networking opportunities.

14 (c) For the purposes of providing additional training for  
15 educational administrators, including, without limitation, to pay:

16 (1) Travel expenses of administrators who attend the training  
17 program;

18 (2) Travel and per diem expenses for any consultants  
19 contracted to provide additional training; and

20 (3) Any charges to obtain a conference room for the  
21 provision of the additional training.

22 (d) To supplement and not replace the money that the school  
23 district or the regional training program would otherwise expend for  
24 the training of administrators as described in this section.

25 3. Any remaining balance of the transfers made by subsection  
26 1 for Fiscal Year 2015-2016 must be added to the money received  
27 by the Statewide Council for Fiscal Year 2016-2017 and may be  
28 expended as that money is expended. Any remaining balance of the  
29 transfers made by subsection 1 for Fiscal Year 2016-2017, including  
30 any money added from the transfer for the previous fiscal year, must  
31 not be committed for expenditure after June 30, 2017, and must be  
32 reverted to the State General Fund on or before September 15, 2017.

33 **Sec. 37.** 1. There is hereby appropriated from the State  
34 General Fund to the Great Teaching and Leading Fund created by  
35 Senate Bill No. 474 of this session the following sums which must  
36 be used only to carry out the provisions of Senate Bill No. 474 of  
37 this session:

38	For the Fiscal Year 2015-2016.....	\$4,886,433
39	For the Fiscal Year 2016-2017.....	\$4,866,478

40 2. The money appropriated by subsection 1 must be expended  
41 in accordance with NRS 353.150 to 353.246, inclusive, concerning  
42 the allotment, transfer, work program and budget. Transfers to and  
43 allotments from must be allowed and made in accordance with NRS  
44 353.215 to 353.225, inclusive, after separate consideration of the  
45 merits of each request.

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1 **Sec. 38.** 1. There is hereby appropriated from the State  
2 General Fund to the Contingency Account for Special Education  
3 Services created by Senate Bill No. 508 of this session for Fiscal  
4 Year 2016-2017, the sum of \$5,000,000.

5 2. The money appropriated by subsection 1 must be used only  
6 to carry out the provisions of Senate Bill No. 508 of this session  
7 relating to the Contingency Account for Special Education Services.

8 **Sec. 39.** 1. There is hereby appropriated from the State  
9 General Fund to the Grant Fund for Incentives for Licensed  
10 Educational Personnel created by NRS 391.166 to purchase one-  
11 fifth of a year of retirement service credit pursuant to section 5 of  
12 chapter 8, Statutes of Nevada 2007, 23rd Special Session, at page  
13 18:

14	For the Fiscal Year 2015-2016.....	\$2,000,000
15	For the Fiscal Year 2016-2017.....	\$2,000,000

16 2. The money appropriated by subsection 1 is available for  
17 either fiscal year. Any remaining balance of those sums must not be  
18 committed for expenditure after June 30, 2017, and must be reverted  
19 to the State General Fund on or before September 15, 2017.

20 **Sec. 40.** 1. Expenditure of the following sums not  
21 appropriated from the State General Fund or the State Highway  
22 Fund is hereby authorized during Fiscal Year 2015-2016 and Fiscal  
23 Year 2016-2017 by the Department of Education for the State  
24 Supplemental School Support Account created by NRS 387.191:

25	For the Fiscal Year 2015-2016.....	\$154,736,000
26	For the Fiscal Year 2016-2017.....	\$159,212,000

27 2. The Superintendent of Public Instruction shall transfer all  
28 money credited to the State Supplemental School Support Account  
29 on and after July 1, 2015, through June 30, 2017, to the State  
30 Distributive School Account.

31 **Sec. 41.** NRS 387.191 is hereby amended to read as follows:

32 387.191 1. Except as otherwise provided in this subsection,  
33 the proceeds of the tax imposed pursuant to NRS 244.33561 and any  
34 applicable penalty or interest must be paid by the county treasurer to  
35 the State Treasurer for credit to the State Supplemental School  
36 Support Account, which is hereby created in the State General Fund.  
37 The county treasurer may retain from the proceeds an amount  
38 sufficient to reimburse the county for the actual cost of collecting  
39 and administering the tax, to the extent that the county incurs any  
40 cost it would not have incurred but for the enactment of this section  
41 or NRS 244.33561, but in no case exceeding the amount authorized  
42 by statute for this purpose. Any interest or other income earned on  
43 the money in the State Supplemental School Support Account must  
44 be credited to the Account.

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1 2. On and after July 1, ~~2015,~~ 2017, the money in the State  
2 Supplemental School Support Account is hereby appropriated for  
3 the operation of the school districts and charter schools of the state,  
4 as provided in this section. The money so appropriated is intended  
5 to supplement and not replace any other money appropriated,  
6 approved or authorized for expenditure to fund the operation of the  
7 public schools for kindergarten through grade 12. Any money that  
8 remains in the State Supplemental School Support Account at the  
9 end of the fiscal year does not revert to the State General Fund, and  
10 the balance in the State Supplemental School Support Account must  
11 be carried forward to the next fiscal year.

12 3. On or before February 1, May 1, August 1 and November 1  
13 of ~~2016,~~ 2018, and on those dates each year thereafter, the  
14 Superintendent of Public Instruction shall transfer from the State  
15 Supplemental School Support Account all the proceeds of the tax  
16 imposed pursuant to NRS 244.33561, including any interest or other  
17 income earned thereon, and distribute the proceeds proportionally  
18 among the school districts and charter schools of the state. The  
19 proportionate amount of money distributed to each school district or  
20 charter school must be determined by dividing the number of  
21 students enrolled in the school district or charter school by the  
22 number of students enrolled in all the school districts and charter  
23 schools of the state. For the purposes of this subsection, the  
24 enrollment in each school district and the number of students who  
25 reside in the district and are enrolled in a charter school must be  
26 determined as of the last day of the first school month of the school  
27 district for the school year. This determination governs the  
28 distribution of money pursuant to this subsection until the next  
29 annual determination of enrollment is made. The Superintendent  
30 may retain from the proceeds of the tax an amount sufficient to  
31 reimburse the Superintendent for the actual cost of administering the  
32 provisions of this section, to the extent that the Superintendent  
33 incurs any cost the Superintendent would not have incurred but for  
34 the enactment of this section, but in no case exceeding the amount  
35 authorized by statute for this purpose.

36 4. The money received by a school district or charter school  
37 from the State Supplemental School Support Account pursuant to  
38 this section must be used to improve the achievement of students  
39 and for the payment of salaries to attract and retain qualified  
40 teachers and other employees, except administrative employees, of  
41 the school district or charter school. Nothing contained in this  
42 section shall be deemed to impair or restrict the right of employees  
43 of the school district or charter school to engage in collective  
44 bargaining as provided by chapter 288 of NRS.

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1 5. On or before November 10 of ~~[2016.]~~ 2018, and on that date  
2 each year thereafter, the board of trustees of each school district and  
3 the governing body of each charter school shall prepare a report  
4 to the Superintendent of Public Instruction, in the form prescribed  
5 by the Superintendent. The report must provide an accounting of the  
6 expenditures by the school district or charter school of the money it  
7 received from the State Supplemental School Support Account  
8 during the preceding fiscal year.

9 6. As used in this section, "administrative employee" means  
10 any person who holds a license as an administrator, issued by the  
11 Superintendent of Public Instruction, and is employed in that  
12 capacity by a school district or charter school.

13 **Sec. 42.** Section 8 of chapter 4, Statutes of Nevada 2009, as  
14 last amended by section 28 of chapter 382, Statutes of Nevada 2013,  
15 at page 2069, is hereby amended to read as follows:

16 Sec. 8. Transitory provision.

17 1. Notwithstanding the expiration of section 4 of this  
18 measure on June 30, 2011, any tax and any interest or penalty  
19 owing and unpaid as of that date and collected on or before  
20 October 1, 2011, must be paid, deposited and credited to the  
21 State General Fund as provided in that section.

22 2. The Superintendent of Public Instruction shall make  
23 the initial transfer from the State Supplemental School  
24 Support Account, as required by section 6 of this measure, on  
25 or before February 1, ~~[2016.]~~ 2018.

26 3. The board of trustees of each school district and  
27 the governing body of each charter school shall prepare their  
28 initial reports to the Superintendent of Public Instruction,  
29 as required by section 6 of this measure, on or before  
30 November 10, ~~[2016.]~~ 2018.

31 **Sec. 43.** If Assembly Bill No. 469 of this session does not  
32 become effective, any reference in this act to the Office of Finance  
33 in the Office of the Governor shall be deemed to refer to the Budget  
34 Division of the Department of Administration and any reference to  
35 the Director of the Office shall be deemed to refer to the Chief of  
36 the Budget Division.

37 **Sec. 44.** 1. This section and sections 1, 2, 3, 8 to 24,  
38 inclusive, 29 to 36, inclusive, and 39 to 43, inclusive, become  
39 effective on July 1, 2015.

40 2. Sections 4 and 6 of this act become effective on July 1,  
41 2015, if and only if Senate Bill No. 508 of this session is not enacted  
42 by the Legislature and approved by the Governor.

43 3. Sections 5, 7 and 38 of this act become effective on July 1,  
44 2015, if and only if Senate Bill No. 508 of this session is enacted by  
45 the Legislature and approved by the Governor.

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EXHIBIT 1



# EXHIBIT 1

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1 4. Section 25 of this act becomes effective on July 1, 2015, if  
2 and only if Senate Bill No. 491 of this session is enacted by the  
3 Legislature and approved by the Governor.

4 5. Section 26 of this act becomes effective on July 1, 2015, if  
5 and only if Senate Bill No. 391 of this session is enacted by the  
6 Legislature and approved by the Governor.

7 6. Section 27 of this act becomes effective on July 1, 2015, if  
8 and only if Senate Bill No. 405 of this session is enacted by the  
9 Legislature and approved by the Governor.

10 7. Section 28 of this act becomes effective on July 1, 2015, if  
11 and only if Senate Bill No. 432 of this session is enacted by the  
12 Legislature and approved by the Governor.

13 8. Section 37 of this act becomes effective on July 1, 2015, if  
14 and only if Senate Bill No. 474 of this session is enacted by the  
15 Legislature and approved by the Governor.

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EXHIBIT 1





# The *NEVADA PLAN* For School Finance An Overview



**Fiscal Analysis Division  
Legislative Counsel Bureau**

**2015 Legislative Session**



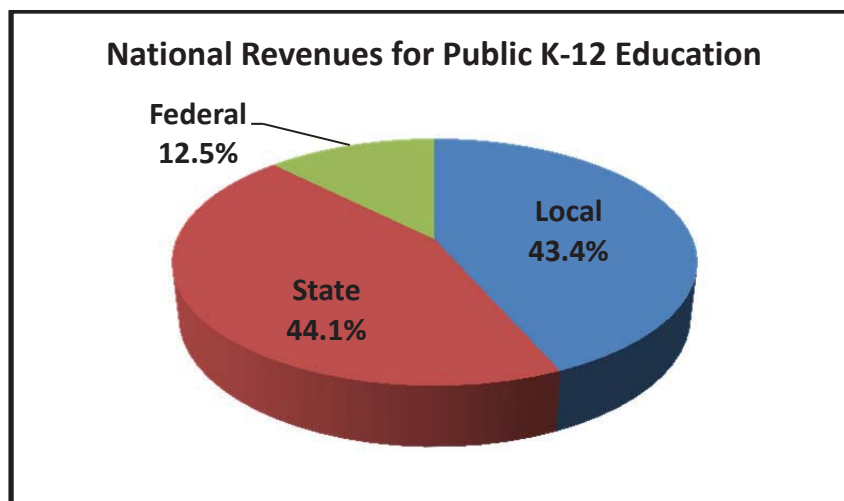


## Nevada Plan for School Finance

### I. Overview of Public K-12 Education Finance

#### National Overview

The National Center for Education Statistics (NCES) reports that approximately \$604.3 billion was collected in revenues for public elementary and secondary education in the United States in FY 2011 (the most recent year for which data is available). These revenues are used to support the operations of schools, as well as capital construction, equipment costs, and debt financing, and come from a combination of local, state, and federal sources. The greatest percentage of revenues came from state and local governments, which together provided \$528.8 billion, or approximately 87.5 percent of all revenues; the federal government's contribution was \$75.5 billion, or approximately 12.5 percent of all revenues.



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," FY 2011, preliminary Version 1a.

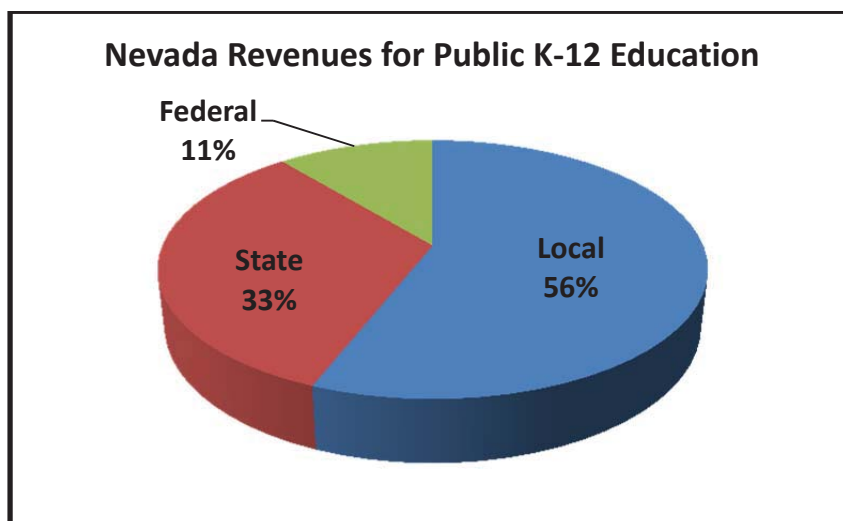
Between FY 2005 and FY 2011, total revenues for public elementary and secondary education in the United States have increased by 23.9 percent, from \$487.8 billion in FY 2005 to \$604.3 billion in FY 2011. However, not all revenue sources have increased at the same rate. The largest percentage increase has occurred in revenue provided by the federal government, which has increased from \$44.8 billion in FY 2005 to \$75.5 billion in FY 2011, a 68.5 percent increase. Over the same time period, local revenue for public K-12 education increased from \$214.4 billion to \$262.0 billion and state revenue increased from \$228.6 billion to \$266.8 billion, a 22.2 percent and 16.7 percent increase, respectively. See Appendix A for a chart showing changes in national revenues for public elementary and secondary education between FY 2005 and FY 2011.

Due to the differing financing mechanisms utilized in each of the states, there are tremendous differences between the revenue mix used to fund public elementary and secondary education. For example, among states with more than one school district, local contributions to the public K-12 education funding mix in FY 2011 varied from 7.6 percent in Vermont to 57.2 percent in Illinois. Similarly, state contributions to public K-12 education in FY 2011 varied from 29.1 percent in South Dakota to 81.7 in Vermont. As a result of these differences in funding mixes, meaningful comparisons across states of public elementary and secondary education revenue is difficult.

**Nevada Overview**

According to NCES, revenues in support of Nevada’s public K-12 schools for FY 2011 were approximately \$4.21 billion. This represents a decrease of 5.2 percent from FY 2009 when revenues totaled \$4.44 billion. However, when compared to the FY 2005 total revenue of \$3.40 billion, revenue for public elementary and secondary education in Nevada has increased by 23.8 percent between FY 2005 and FY 2011. This percentage increase in K-12 public education revenue is nearly identical to the national increase of 23.9 percent over the same time period. See Appendix B for a chart showing changes in Nevada revenues for public elementary and secondary education between FY 2005 and FY 2011.

Like the nationwide support for education, financial support of Nevada’s public elementary and secondary schools is a shared responsibility. In FY 2011 the local share of public K-12 education revenue totaled 56 percent (\$2.4 billion), while revenue from the state totaled 33 percent (\$1.4 billion). Total revenue for public elementary and secondary schools in Nevada in FY 2011 was rounded out by an 11 percent (\$0.5 billion) contribution from the federal government, which was below the national average of 12.5 percent.



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), “National Public Education Financial Survey (NPEFS),” FY 2011, preliminary Version 1a.

It should be noted that a large portion of the local funding in Nevada is derived from the state-mandated Local School Support Tax (LSST) and Ad Valorem Property/Mining Tax (property tax). As a result, the local share of public K-12 education revenue in Nevada

## EXHIBIT 2

has historically been one of the highest in the nation. However, the Great Recession impacted the amount of local revenue collected for public elementary and secondary education, which caused a higher percentage of state funding to flow toward education. In FY 2006, the local share of K-12 public education revenue in Nevada topped out at 66.9 percent, the highest in the nation at that time (excluding the District of Columbia). By FY 2011, the local revenue share had dropped to 56 percent, the sixth highest percentage nationally (excluding the District of Columbia). Over the same time period, the state share of public elementary and secondary education revenue in Nevada increased from 25.9 percent to 33 percent. See Appendix C for a chart showing the percentage distribution of revenues for public elementary and secondary education in Nevada and the United States between FY 2005 and FY 2011.

Just as there are differences between the national averages and Nevada's sources of revenue for public education, there are differences between Nevada's averages and what might be found in any given Nevada school district. For example, due to the wealth created by the mining industry in Eureka County, approximately 2 percent of total revenue in the Eureka County School District came from state aid in FY 2014. On the other hand, the Lincoln County School District received approximately 71.3 percent of its total revenue from state aid in FY 2014. It is important to note that the funding percentage distribution varies between the Nevada school districts as a result of an equity allocation process, which factors in wealth and operating and transportation costs to determine the amount of state support for each school district.

<b>Nevada K-12 Public Education Revenues and Percentage Distribution – FY 2014</b>							
District	Revenues* (Millions of \$)				Percentage Distribution		
	Local	State	Federal	Total	Local	State	Federal
Carson City	37.9	37.2	9.2	84.3	45.0%	44.1%	10.9%
Churchill	16.0	20.2	3.9	40.1	39.9%	50.4%	9.7%
Clark	1761.6	955.2	282.6	2999.4	58.7%	31.8%	9.4%
Douglas	39.2	20.5	5.0	64.7	60.6%	31.7%	7.7%
Elko	71.3	31.6	6.5	109.4	65.2%	28.9%	5.9%
Esmeralda	1.2	0.9	0.1	2.2	54.5%	40.9%	4.5%
Eureka	9.3	0.2	0.4	9.9	93.9%	2.0%	4.0%
Humboldt	26.0	3.3	2.6	31.9	81.5%	10.3%	8.2%
Lander	10.3	0.7	0.8	11.8	87.3%	5.9%	6.8%
Lincoln	3.0	10.2	1.1	14.3	21.0%	71.3%	7.7%
Lyon	26.9	50.4	8.4	85.7	31.4%	58.8%	9.8%
Mineral	2.3	4.9	1.1	8.3	27.7%	59.0%	13.3%
Nye	19.3	29.0	6.7	55.0	35.1%	52.7%	12.2%
Pershing	4.1	6.9	0.8	11.8	34.7%	58.5%	6.8%
Storey	5.6	1.5	0.4	7.5	74.7%	20.0%	5.3%
Washoe	325.2	210.6	65.0	600.8	54.1%	35.1%	10.8%
White Pine	8.1	8.8	1.0	17.90	45.3%	49.2%	5.6%
State Sponsored Charter Schools	11.8	167.5	6.3	185.6	6.4%	90.2%	3.4%
<b>Statewide</b>	<b>2,379.1</b>	<b>1,559.6</b>	<b>401.9</b>	<b>4,340.6</b>	<b>54.8%</b>	<b>35.9%</b>	<b>9.3%</b>

Source: NRS 387.303 Report, Major Funds tab, FY 2014 (unaudited)

\*Revenues exclude bond proceeds, fund transfers, opening fund balance, and all other revenue not categorized as local, state, or federal.

## **II. History of Public K-12 Education Funding in Nevada**

For nearly 50 years, changes in Nevada's tax policy have impacted the share of revenue each level of government contributes to fund our schools. This section includes a brief overview and discussion of some of the major tax policy and other changes that have impacted public elementary and secondary education funding in Nevada. Please note, this section should not be read as an exhaustive history of public K-12 education funding changes, but rather a brief introduction to the major adjustments, reforms, and revisions to education funding in Nevada.

- **1967** – The Legislature approves the creation of the Local School Support Tax (LSST), which is added to the sales and use tax at a rate of 1 percent.
- **1979** – To provide relief to taxpayers, the Legislature approves a reduction in the property tax rate for the support of schools from \$1.50 (70 cents mandatory and 80 cents optional) to 50 cents per \$100 of assessed valuation. General Fund appropriations to the state's Distributive School Account (DSA) were increased to offset the effects of reducing property tax and removing sales tax on food (see the next bullet concerning the food exemption from the sales and use tax).
- **1979** – Voters amend the sales and use tax to provide for the exemption of food for home consumption.
- **1981** – To reduce the cost of K-12 public education on the State General Fund, the LSST increases from 1 percent to 1.5 percent.
- **1983** – As a result of the 1981 "Tax Shift," which changed the primary revenue source of local governments from the property tax to the sales and use tax, local governments are hit hard when the national recession causes sales and use tax revenues to fall short of estimates. In response, the Legislature increases the property tax rate by 25 cents (from 50 cents to 75 cents) and places the extra 25 cents inside the *Nevada Plan* formula to offset state General Fund appropriations for K-12 public education.
- **1991** – The LSST rate increases from 1.5 percent to 2.25 percent, which reduces the need for state General Fund appropriations for K-12 public education.
- **1999** – The Legislature combines the Class-Size Reduction (CSR) program with the DSA. Historically, the CSR program had been funded as a categorical grant with revenues from estate taxes and state General Fund appropriations.
- **2001** – As a result of the passage of the federal Economic Growth and Tax Relief Reconciliation Act of 2001, estate tax revenues in the DSA begin to decline. Nevada's allowable "pick-up tax" credit is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004, and repealed in 2005. During the same time period Nevada also realizes a reduction in revenue from the estate tax because of changes to the exemption threshold, which increased from \$675,000 in 2001 to \$1 million in 2002, and to \$1.5 million in 2004.

## EXHIBIT 2

- **2009** – Due to the Great Recession, the Legislature temporarily increases the LSST rate by 0.35 percentage points (from 2.25 percent to 2.60 percent) for the period beginning July 1, 2009, through June 30, 2011.
- **2009** – Initiative Petition (IP) 1, though not signed by the Governor, becomes law pursuant to Article 4, Section 35, of the Nevada Constitution. The initiative imposes an additional tax on the gross receipts from the rental of transient lodging in certain counties. Pursuant to the language of the initiative, the proceeds from this tax are credited to the state General Fund between July 1, 2009, and June 30, 2011.
- **2011** – The Legislature votes to maintain the LSST rate at 2.60 percent and extend the sunset to June 30, 2013, at which time the rate would revert back to 2.25 percent.
- **2011** – Pursuant to the language of IP 1, beginning July 1, 2011, the proceeds of the transient lodging tax are supposed to be credited to the State Supplemental School Support Account to be distributed proportionally among all school districts and charter schools in the state to improve student achievement and to retain qualified teachers and non-administrative employees. However, the Legislature approves the transfer of all IP 1 revenue over the 2011-13 biennium (FY 2012 and FY 2013) from the State Supplemental School Support Account to the DSA.
- **2011** – The Legislature approves Senate Bill 11, which instructs the Legislative Commission to appoint a committee (known as the Committee to Study a New Method for Funding Public Schools) to conduct an interim study concerning the development of a new method for funding public schools in Nevada. After contracting with a consultant to assist with the study, the committee makes various recommendations, including, but not limited to, a bill draft request to include the definition of the data modules of the school finance formula and the basis for the allocation of special education funding in statute; a recommendation that the state consider moving to a weighted-funding formula that considers individual needs and characteristics of student populations; and a recommendation that the state consider alternatives to the single count day approach for determining enrollment for apportionment purposes.
- **2013** – The Legislature again votes to maintain the LSST rate at 2.60 percent and extend the sunset to June 30, 2015, at which time the rate would revert back to 2.25 percent.
- **2013** – The Legislature again votes to transfer all IP 1 revenue from the State Supplemental Support Account to the DSA for the 2013-15 biennium (FY 2014 and FY 2015).
- 
- **2013** – The Legislature approves Senate Bill 500, which creates the Task Force on K-12 Public Education Funding to conduct a review of the consultant's report to the Committee to Study a New Method for Funding Public Schools; survey the weighted

pupil public education funding formulas used in other states; and develop a plan for revising and implementing the state’s public education funding formula in a manner that equitably accounts for the needs of, and the costs to educate, students based upon their individual educational needs and demographic characteristics, including students from low-income families, students with disabilities, and students who have limited proficiency in the English language. Recommendations from the Task Force on K-12 Public Education funding include, but are not limited to, implementing a weighted student funding model that would apply a weight of not less than 1.5 for students identified as English Language Learners (ELLs) or at-risk of low academic achievement and replacing the current unit-funding methodology for students with disabilities with a weighted student-funding model that would apply a 2.0 weight to all students with disabilities.

- **2014** – Ballot Question 3, known as The Education Initiative, appears on the statewide general election ballot. The initiative asks voters to approve the creation of a 2 percent tax on a margin of the gross revenues of Nevada businesses with total revenue exceeding \$1 million, with the proceeds being allocated to the DSA. The ballot question is defeated by the voters 79 percent to 21 percent.
- **2015-17 Biennium** - The Governor recommends the continuation of the transfer of the IP 1 revenues as a revenue source in the DSA budget for the 2015-17 biennium and the LSST rate permanently remain at the 2.60 percent rate and not revert back to the 2.25 percent rate.

### **III. The Nevada Plan**

The 1967 Legislature approved Senate Bill 15 (*Statutes of Nevada, 889*), which revised the method the state uses to finance elementary and secondary education in the state’s public schools and created the *Nevada Plan*. In creating the *Nevada Plan*, the Legislature declared “that the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity.”

● ● ●  
“The Legislature declares that the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity.”  
NRS 387.121  
● ● ●

The *Nevada Plan* is a statewide, formula-based funding mechanism for public K-12 education. Stated as a formula, the *Nevada Plan* calls for state financial aid to school districts to equal the difference between school district basic support guarantee and local available funds produced by mandatory taxes minus all the local funds attributable to pupils who reside in the county but attend a charter school or a university school for profoundly gifted pupils (NRS 387.121).

The *Nevada Plan* has not been markedly changed in approximately 40 years, and it does not include targeted, formula-based funding for individual student differences. However, some student-specific state categorical funding is provided outside the *Nevada Plan*, such as Class-Size Reduction, Full-Day Kindergarten, Career and



Technical Education programs, Adult High School Diploma and Special Education programs.

**How the Nevada Plan Works**

Under the *Nevada Plan*, the state develops a guaranteed amount of funding for each of the local school districts and charter schools. The revenue, which provides the guaranteed funding, is derived both from state and local sources. On average, this guaranteed funding contributes approximately 75 to 80 percent of school districts' and charter schools' general fund resources. *Nevada Plan* funding for school districts and charter schools consists of state support received through the DSA and locally collected revenues from the LSST and one-third of the proceeds from the 75-cent property tax imposed pursuant to NRS 387.195.

To determine the level of guaranteed funding for each school district and charter school, a basic per-pupil support amount for each district is established in law each legislative session. The amount is determined by a formula that considers the demographic characteristics of each school district. Average operating and transportation costs, as well as a wealth adjustment, are also considered to determine the basic per-pupil support amount for each school district. The wealth adjustment is based on a district's ability to generate revenues in addition to the guaranteed funding. It should be noted that the basic per-pupil support amount for charter schools varies and is determined by the school district of origin for each student. For example, a virtual charter school that enrolls students from multiple Nevada school districts will receive differing basic per-pupil support amounts for each student depending on the home school district of each student.

The corresponding basic per-pupil support amount is then multiplied by a school district's or charter school's weighted apportionment enrollment. The official enrollment count for apportionment purposes is taken on the last day of the first school month (count day) for each district and charter school. The number of kindergarten children and disabled three- and four-year-olds is multiplied by 0.6 percent and added to the total number of all other children enrolled, net of transfers, to derive the total weighted apportionment enrollment.

**Special Provisions Related to Enrollment Changes**

To protect school districts and charter schools during times of declining enrollment, the *Nevada Plan* contains a hold-harmless provision (NRS 387.1233). Pursuant to statute, if a school district or charter school enrollment is less than the prior year's enrollment, funding from the DSA is apportioned to the school district or charter school based on enrollment from the immediately preceding school year. In cases of significant enrollment decrease (when school district or charter school enrollment is less than or equal to 95 percent of the prior year's enrollment), the highest enrollment number from the immediately preceding two school years must be used for purposes of apportioning funding from the DSA. It should be noted that the hold-harmless provision does not apply to school districts or charter schools that deliberately cause a decline in the enrollment by eliminating grade levels, moving into smaller facilities, or other means.

An additional provision of the *Nevada Plan* assists school districts and charter schools that experience significant growth in enrollment within a school year (NRS 387.1243). If enrollment at a school district or charter school grows by at least 3 percent or more but less than 6 percent after the second month of school, a growth increment consisting of an additional 2 percent of basic support is added to the guaranteed level of funding for the school district or charter school. If enrollment at a school district or charter school grows by 6 percent or more after the second month of school, the total growth increment applied is 4 percent of basic support.

Special Education is funded on a “unit” basis, with the amount per unit established by the Legislature. These units provide funding for licensed personnel providing a program of instruction in accordance with minimum standards prescribed by the State Board of Education. Special Education unit funding is provided in addition to the basic per-pupil support amount.

### **Determining State Aid**

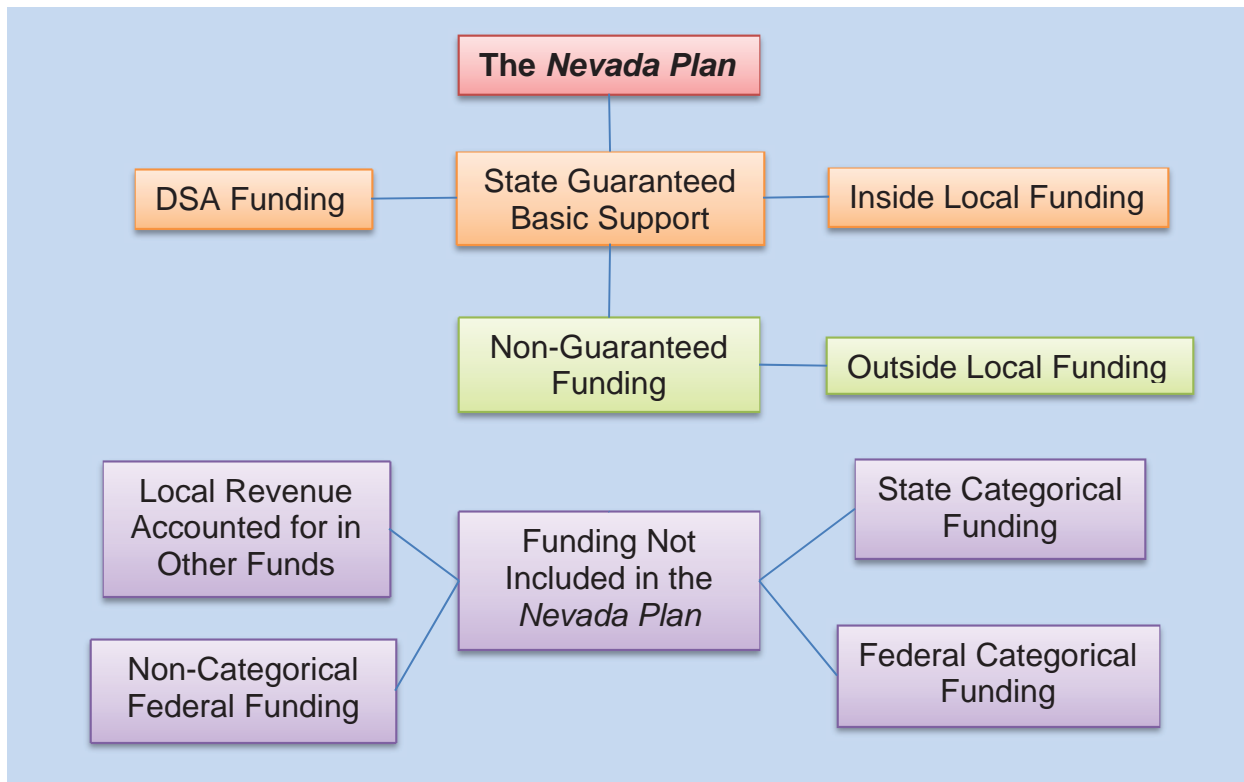
The difference between the total guaranteed support (as approved by the Legislature) and local resources is state aid, which is funded through the DSA. Revenue received by the school district from the LSST derived from in-state sales and from one-third of the proceeds from the 75-cent property tax is deducted from the school district’s or charter school’s total basic support guarantee to determine the amount of state aid the district or charter school will receive. If local revenues from these two sources are less than anticipated, state aid is increased to cover the shortfall in total guaranteed support. Conversely, if these two local revenues exceed projected levels, state aid is reduced.

In addition to revenue guaranteed through the *Nevada Plan*, school districts receive other local revenues considered “outside” the *Nevada Plan* that are not built into the state guarantee. Local revenues outside the *Nevada Plan* include two-thirds of the proceeds from the 75-cent property tax; the share of basic government services tax distributed to school districts; franchise tax revenue; interest income; tuition revenue; unrestricted federal revenue, and other local revenues. Because these other local revenues are not guaranteed, state aid is not increased or decreased based on actual realized revenue from local revenue sources outside the *Nevada Plan*. Again, it should be noted that charter schools are allocated outside revenues proportionally by the district in which a charter school is located.

In addition to revenues both “inside” and “outside” the *Nevada Plan*, school districts and charter schools may receive “categorical” funds from the state, federal government, and private organizations that may only be expended for designated purposes. Examples include the state-funded Class-Size Reduction program, Early Childhood Education, Career and Technical Education, and Education Technology. Examples of federally-funded programs include the Title I program for disadvantaged pupils, No Child Left Behind Act, the National School Lunch program, and Individuals with Disabilities Education Act (IDEA). Categorical funds must be accounted for separately in special revenue funds. Funding for capital projects, which may come from the sale of general obligation bonds, “pay-as-you-go” tax levies, or fees imposed on the construction of new residential units, are also accounted for in separate funds (Capital Projects Fund, Debt Service Fund).

#### **IV. Components of the Nevada Plan**

The *Nevada Plan* is made up of various funding components. The following chart illustrates the combination of funding components that make up the *Nevada Plan*, as well as other K-12 education funding sources that are not part of the *Nevada Plan*:



The list below outlines the various revenue components:

##### DSA Funding

- State General Fund
- A share of the annual slot tax
- Investment income from the permanent school fund
- Federal mineral land lease receipts
- Out-of-state LSST revenue that cannot be attributed to a particular county
- Medical marijuana excise tax (75 percent)
- Transfers of IP 1 (2009) room tax revenues

##### “Inside” Local Funding

- LSST
- One-third of the proceeds from the 75-cent property tax

##### “Outside” Local Funding

- Two-thirds of the proceeds from the 75-cent property tax
- Share of basic government services tax distributed to school districts
- Franchise taxes

“Outside” Local Funding - continued

- Interest income
- Tuition
- Rent
- Opening General Fund balance

Non-Categorical Federal Funding

- Impact received in lieu of taxes for federally impacted areas
- Forest reserves

Federal Categorical Funding

- Nutrition Education (e.g., National School Lunch Program)
- Title I Program
- Special Education Programs
- Vocational Education Programs
- Other School Improvement Programs, including programs under the No Child Left Behind Act of 2001

Other Funding

- Capital Projects – General Obligation Bonds
- “Pay as You Go” Debt Service

**V. Biennial DSA Budget Preparation**

To prepare a biennial budget for Nevada’s public schools, estimated General Fund and Special Education expenditures for charter schools and each of the 17 school districts funded by state or local revenues are combined into a single, statewide budget for each year of the upcoming biennium.

It is important to recognize that the DSA budget does not include the entire funding for K-12 public education, but rather includes only the state’s portion of the school district and charter school operating funds that provide the basic support guarantee and other state-supported programs. Federal categorical funds, such as those received through Title I or IDEA, as well as most state categorical funds, are not included in this budget of General Fund expenditures, but do contribute significantly to the total amount of funding available to local schools.

Schools’ opening fund balances and projected local revenues considered outside the funding formula, are then deducted from the total statewide operating expenditures. Because outside local revenues are deducted from the funding formula at this point, they are not built into the state guarantee.

Next, the costs of programs which are not allocated to schools on the basis of enrollment, such as the costs of special education program units, are subtracted to yield statewide basic support which, in turn, is divided by the estimated (weighted) enrollment for the year to determine the guaranteed statewide average basic support per pupil for each fiscal year in the coming biennium. In summary, the estimated need, minus local

## EXHIBIT 2

revenues “outside” the *Nevada Plan*, is divided by the number of pupils to determine a statewide average basic support per pupil that will be guaranteed by the combination of state DSA funding and local revenues “inside” the *Nevada Plan*.

From the statewide average basic support per pupil, the State Department of Education calculates a separate basic support per pupil figure for each school district, using a formula that considers the economic and geographic characteristics of each school district. The dollar amount of basic support differs across school districts due to variations in the cost of living, differences in the costs of providing education as a result of school size, and the cost per pupil of administration and support services. The funding formula also recognizes each school district’s transportation costs by including 85 percent of actual, historical costs adjusted for inflation using the Consumer Price Index (CPI). A wealth adjustment, based on each district’s ability to generate revenue in addition to the guaranteed level of funding, is also included in the funding formula.

Since funding through the *Nevada Plan* is based on a guaranteed amount of basic support per pupil set forth in law during each legislative session, the only way to increase the total amount to be received through the *Nevada Plan* is if enrollment increases. If, on the other hand, enrollment fails to meet projections, schools will receive less money than expected, because a given dollar amount per pupil is guaranteed only for those pupils enrolled.

The funding for additional programs that are not allocated to schools on the basis of enrollment (e.g., Class-Size Reduction programs) is then added to the total regular basic support guarantee amount to arrive at the total required support. This figure represents the amount of funding, through a combination of inside local revenues, state General Fund appropriations, and other non-General Fund state revenues, that the school districts and charter schools will receive.

To determine the state’s share of the total guaranteed support, projected local revenues considered inside the funding formula are deducted. The remaining amount is the state’s share, and after subtracting the amount of projected revenues from the slot tax and other non-General Fund state funding sources, the state’s General Fund obligation is established. Because the total guaranteed support is made up of both inside local revenues and state General Fund appropriations, if actual realized inside local revenues are higher than projected, state General Fund appropriations are reduced. Similarly, if actual realized inside local revenues are less than projected, state General Fund appropriations are increased to meet the guaranteed support amount.

The chart on the following page illustrates the steps that are taken to prepare the DSA budget and determine the state’s General Fund obligation:

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Total Operating Expenditures, Including Salaries and Benefits

**Minus**

Projected Outside Local Revenue

**Minus**

Non-Basic Support Programs (e.g., Special Education)

**Equals**

**Guaranteed Regular Basic Support**

**Plus**

Cost of Additional Programs (e.g., Class-Size Reduction)

**Equals**

**Total Required Support**

**Minus**

Projected Inside Local Revenue

**Equals**

**Total State Share**

**Minus**

Miscellaneous State Revenues (e.g., Slot Tax)

**Equals**

**State's General Fund Obligation**

### **VI. The Nevada Plan – An Example**

To better understand how the *Nevada Plan* works, a step-by-step summary is provided below. The bolded number(s) at the end of each step corresponds to step(s) of a numerical example of a hypothetical school district that is presented following the step-by-step summary.

1. **Enrollment** – The count of pupils for apportionment purposes is the number of children enrolled in grades 1 through 12 on the last day of the first school month in regular or

## EXHIBIT 2

special education programs Children enrolled in kindergarten, as well as disabled or gifted and talented children under the age of five, are counted (weighted) as six-tenths of a pupil. In instances of declining enrollment, the hold harmless provision described in NRS 387.1233 is applied **(1)**.

2. Guaranteed Regular Basic Support – The weighted enrollment total is multiplied by the legislatively approved per-pupil support guarantee for the school district to determine the school district's guaranteed basic support **(2 and 3)**.
3. Special Education Allocation – The number of special education units allocated to the district is multiplied by the per-unit amount established by the Legislature, and the product is added to the guaranteed basic support to obtain the school district's total guaranteed support. This sum is the amount of total funding guaranteed to the school district from a combination of state and local funds **(4 and 5)**.
4. Inside Local Resources – Revenue received by the school district from the LSST and one-third of the proceeds from the 75-cent property tax is deducted from the school district's total guaranteed basic support to determine the amount of state aid the district will receive. If actual realized local revenues from these two sources are less than projected, state aid is increased to cover the total basic support guarantee. On the other hand, if revenues come in higher than projected, state aid is reduced. The difference between the total guaranteed support and local resources is state aid, which is funded through the DSA **(6 and 7)**.
5. Other State-Funded Programs – An amount for any specific programs funded by the Legislature through the DSA, such as the Class-Size Reduction program, is added to the school district's total state aid to determine the total amount of revenue the school district will receive from the DSA **(8 and 9)**.
6. Outside Local and Federal Resources – Sources of revenue outside the funding formula, such as two-thirds of the proceeds from the 75-cent property tax and unrestricted federal funding, are added to the total guaranteed support and the amount provided for other legislatively-approved programs to determine the school district's total available resources **(10 through 16)**.

The following numerical example illustrates the guaranteed funding process based on the revenue of a hypothetical school district and, in addition, shows other revenue outside of the guarantee, making up the total resources included in a school district's operating budget.

## EXHIBIT 2

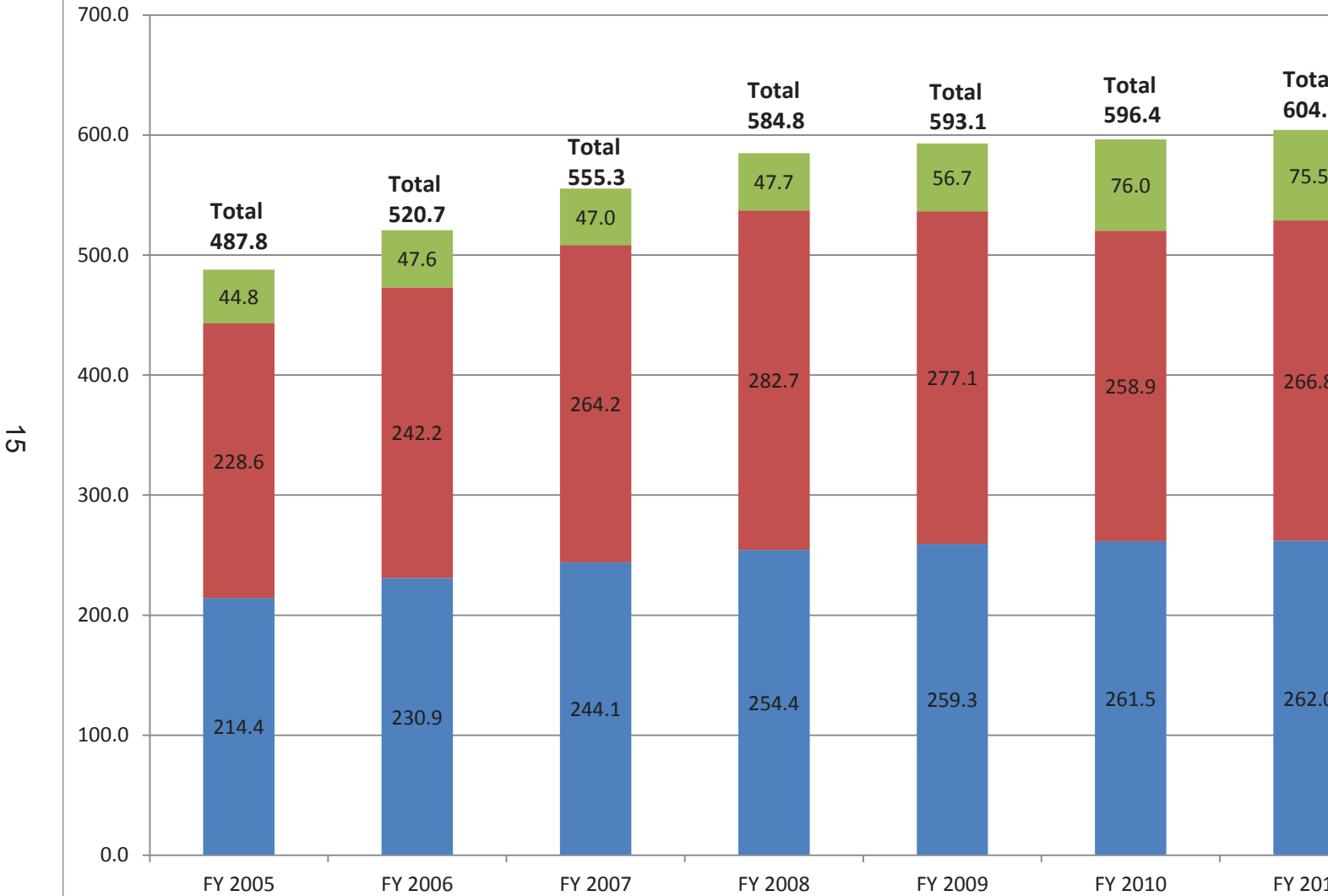
<b>Basic Support Guarantee</b>		
1	Number of Pupils (Weighted Apportionment Enrollment*)	8,000
2	X Basic Support Per Pupil	<u>\$ 4,700</u>
3	= Guaranteed Basic Support	\$ 37,600,000
4	+ Special Education Allocation (40 units @ \$32,000 per unit)	<u>\$ 1,280,000</u>
5	= Total Guaranteed Support	\$ 38,880,000
	– Local Resources	
6	2.60 percent LSST** 1/3 of the proceeds from 75-cent property tax	(\$ 15,540,000) <u>(\$ 4,600,000)</u>
7	= State Responsibility	\$ 18,740,000
8	+ Other State Programs funded through the DSA (e.g., Class-Size Reduction Funding)	<u>\$ 35,000</u>
9	= Total Revenue from Distributive School Account (DSA)	\$ 18,775,000
<b>Resources in Addition to Basic Support</b>		
10	2/3 of the proceeds from 75-cent property tax	\$ 9,200,000
11	Government Services Tax (GST)	\$ 1,700,000
12	Federal Revenues (Unrestricted)	\$ 150,000
13	Miscellaneous Revenues	\$ 10,000
14	Opening Fund Balance	<u>\$ 2,000,000</u>
15	Total Resources in Addition to Basic Support	<u>\$ 13,060,000</u>
16	Total Resources Available (Add lines 5, 8, and 15)	<b>\$ 51,975,000</b>

\*Weighted apportionment enrollment includes six-tenths of the count of pupils enrolled in kindergarten, six-tenths of the count of 3- and 4-year-olds who are receiving special education, a full count of pupils enrolled in grades 1 through 12, and a full count of disabled minors age 5 and over receiving special education (NRS 387.1233)

\*\*The Local School Support Tax (LSST) rate of 2.60 percent reverts back to 2.25 percent on July 1, 2015 (NRS 374.111). However, the Governor's budget for the 2015-17 biennium recommends the continuation of the 2.60 percent LSST rate permanently.



### United States Revenues for Public Elementary and Secondary Education (Billion \$, by Source, FY 2005 - FY 2011)

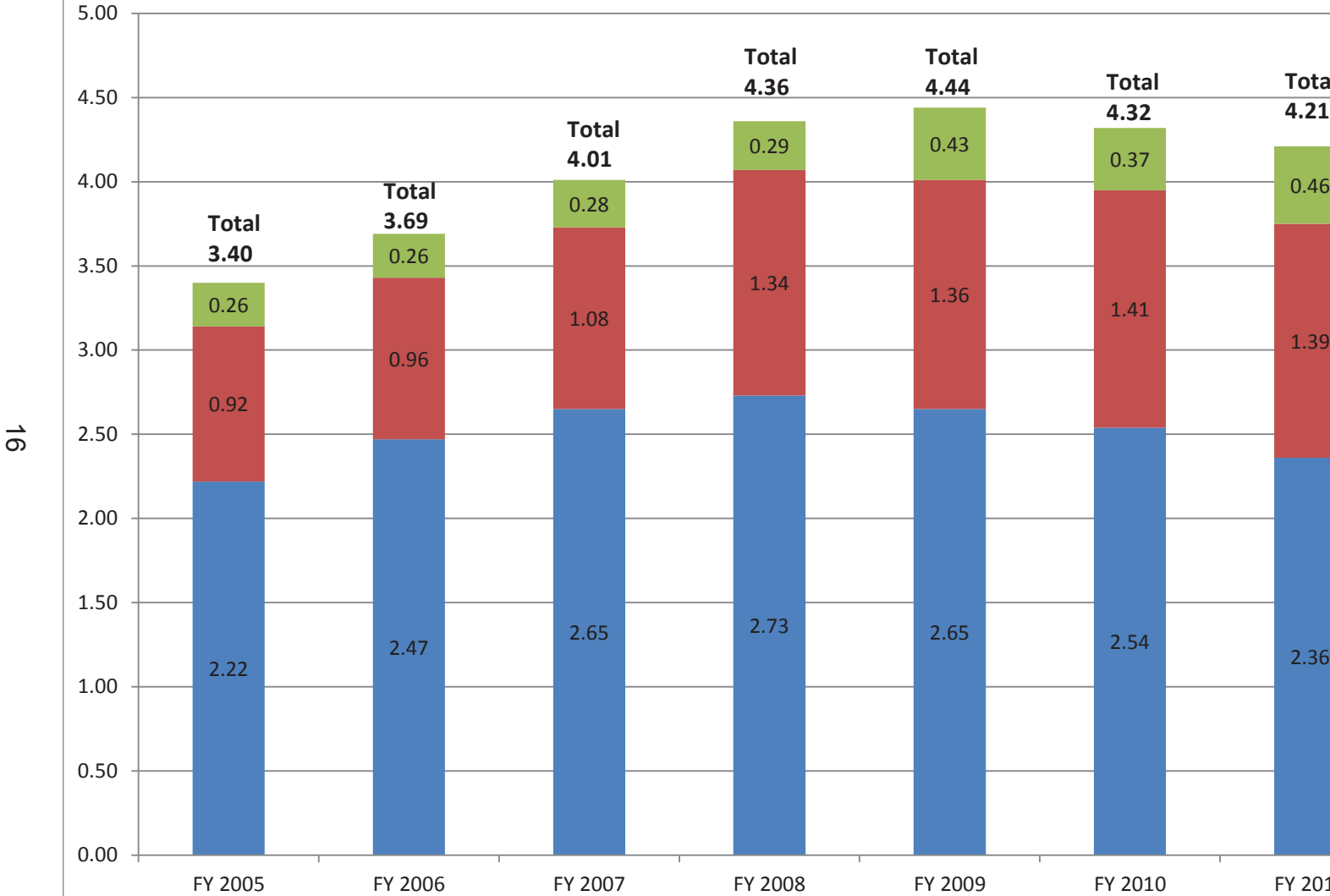


Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," Fiscal Years 2005-2011

EXHIBIT 2

EXHIBIT 2

### Nevada Revenues for Public Elementary and Secondary Education (Billion \$, by Source, FY 2005 - FY 2011)

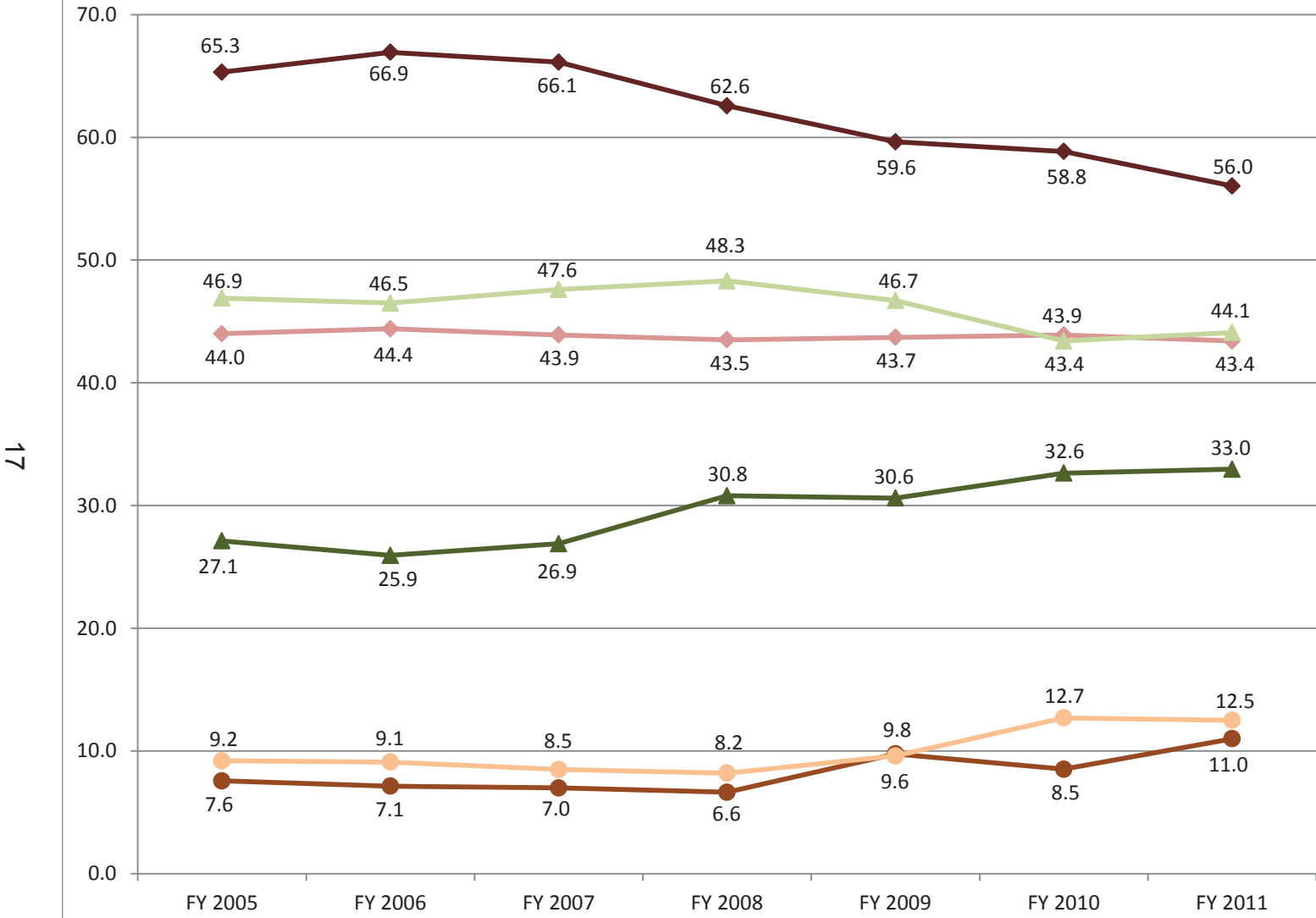


Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," Fiscal Years 2005-2011

EXHIBIT 2

EXHIBIT 2

**Percentage Distribution of Revenues for Public Elementary and Secondary Education  
(%, by Source, FY 2005 - FY 2011)**



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," Fiscal Years 2005-2011

EXHIBIT 2

EXHIBIT 2

# EXHIBIT 3

## MINUTES OF THE SENATE COMMITTEE ON FINANCE

Seventy-Eighth Session  
May 14, 2015

The Senate Committee on Finance was called to order by Chair Ben Kieckhefer at 6:47 p.m. on Thursday, May 14, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

### **COMMITTEE MEMBERS PRESENT:**

Senator Ben Kieckhefer, Chair  
Senator Michael Roberson, Vice Chair  
Senator Pete Goicoechea  
Senator Mark A. Lipparelli  
Senator David R. Parks  
Senator Joyce Woodhouse

### **COMMITTEE MEMBERS ABSENT:**

Senator Debbie Smith (Excused)

### **GUEST LEGISLATORS PRESENT:**

Senator James A. Settlemeyer, Senatorial District No. 17  
Senator Scott Hammond, Senatorial District No. 18  
Senator Becky Harris, Senatorial District No. 9

### **STAFF MEMBERS PRESENT:**

Mark Krmpotic, Senate Fiscal Analyst  
Alex Haartz, Principal Deputy Fiscal Analyst  
Emily Cervi, Committee Assistant  
Lona Domenici, Committee Manager  
Trish O'Flinn, Committee Secretary

## EXHIBIT 3

### **OTHERS PRESENT:**

Constance Brooks, Ph.D., Vice Chancellor, Nevada System of Higher Education

Chester O. Burton, Interim President, Western Nevada College

Adam Peshek, Policy Director of School Choice, Foundation for Excellence in Education

Frank Schnorbus, Nevada Homeschool Network; ParentalRights.org

Janine Hansen, President, Nevada Families for Freedom

Victor Joecks, Nevada Policy Research Institute

Lesley Pittman, American Federation for Children

Mary-Sarah Kinner, Las Vegas Sands

Leslie Hiner, Friedman Foundation for Educational Choice

Lynn Chapman, Independent American Party

Joyce Haldeman, Clark County School District

Lindsay Anderson, Washoe County School District

Jessica Ferrato, Nevada Association of School Boards

Mary Pierczynski, Ed.D., Nevada Association of School Superintendents

Barbara Dragon

Dale A.R. Erquiaga, Superintendent of Public Instruction, Department of Education

Nicole Rourke, Clark County School District

Patrick Gavin, Director, State Public Charter School Authority

Elissa Wahl, Vice Chair, State Public Charter School Authority

Craig Stevens, Clark County School District

Renee Olson, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation

Jeannine M. Warner, M.B.A., Director, Nevada Office, Western Interstate Commission for Higher Education

Melinda (Mindy) Martini, Deputy Superintendent for Business and Support Services, Department of Education

Andrew Diss, StudentsFirst

Seth Rau, Nevada Succeeds

Victoria Carreón, Guinn Center for Policy Priorities

Sylvia Lazos, Latino Leadership Council

### **Chair Kieckhefer:**

We will deviate a bit from the agenda and start with Senate Bill (S.B.) 414.



## EXHIBIT 3

**Chair Kieckhefer:**

There are different definitions for a homeschooled child and an opt-in child, but they appear to overlap. A parent is identified as eligible to be a participating entity. How is that different from homeschooling?

**Senator Hammond:**

This definition was created because many homeschooling parents do not want any funding from the State or federal government that would have requirements or limitations. However, a parent who wishes to provide education at home may opt in to the program if they are amenable to the parameters of the program.

**Chair Kieckhefer:**

Would an opt-in child still be eligible for an ESA?

**Senator Hammond:**

Yes.

**Chair Kieckhefer:**

Do you have an estimate of the total amount that would be deposited into an ESA annually for the upcoming biennium? The State share of the DSA is approximately \$5,700.

**Senator Hammond:**

The amount would be 90 percent of the DSA, less 3 percent of administrative costs allowed to the Treasurer's Office.

**Chair Kieckhefer:**

Nationally, about 2 percent of children are home-schooled. Is that percentage the same in Nevada?

**Senator Hammond:**

I do not know.

**Chair Kieckhefer:**

Some of the national homeschool Web sites give that percentage. They do not currently receive a DSA allotment. If the students who are currently homeschooled become opt-in students, using the basic per-pupil support of \$5,700, multiplied by 2 percent of 450,000 students, the State would incur a

## EXHIBIT 3

\$50 million liability. Why would a parent not choose to opt-in if these funds are available to purchase a college savings plan?

**Senator Hammond:**

One of the provisions of S.B. 302 is that the student must attend public school 100 days prior to establishing an ESA. Many of those families who are homeschooling do not want to be part of the public school system whatsoever.

**Mr. Peshek:**

The 100-day provision helps to make this fiscally neutral. Eligibility is restricted to those students who have already been receiving education support through the DSA.

**Senator Goicoechea:**

If a student has been attending public school for at least 100 days, she or he can then opt to attend a private school, or a home school. Are the DSA and local school support deposited into the ESA?

**Senator Hammond:**

These students will not be homeschooled. They will be involved in a hybrid program. But, yes, those students who have been attending public school, whose parents decide their children are not receiving the education they need, can participate in this program. The money in the ESA must be spent on education of some sort; the students must pass tests every year. It cannot only be spent on college savings.

**Senator Goicoechea:**

Can a student move from a public school to home school? Must they enroll in an educational facility of some kind?

**Mr. Peshek:**

That is the Legislative intent. It is analogous to a Health Savings Account (HSA). Funds in an HSA may only be spent on medical care expenses. Funds in an ESA may only be spent on educational expenses. For example, 80 percent of the money may be spent on private school tuition, 10 percent could be put into the Nevada Prepaid College Fund and the remaining 10 percent on tutoring or industry certification training and exams. It is not merely school choice, it is educational choice. Funds could be used for



# Nevada K-12 Education Finance

## Executive Summary

Nevada's system for funding K-12 education is complex and has not been substantially revised since it was created in 1967. It has been criticized for not providing sufficient funding to adequately educate students and for not fully recognizing the additional investment needed to educate specific populations such as low-income students, English Language Learners, and special education students.

The primary funding mechanism for K-12 education is called the Nevada Plan, which includes State and local revenue. Each school district has its own basic support guarantee per pupil, which varies substantially throughout Nevada. The guarantee is the sum of three separate calculations: basic support, the wealth factor, and the transportation factor. State aid is the difference between the basic support guarantee and local funds. School districts with local revenue exceeding the basic support guarantee are able to retain the additional funds. Districts also receive substantial tax revenue outside the Nevada Plan, which is not part of the basic support guarantee. These taxes vary significantly by district and have been volatile in recent years for districts that receive significant revenues from the Net Proceeds of Minerals tax. In addition, districts receive funds for special education as well as a variety of State and Federal grants.

Per-pupil funding for charter schools is based on the funding rate in the county of residence for each pupil. While charter schools receive general fund revenue comparable to school districts, charter schools receive substantially less funds per pupil than school districts for special education, State grants, and Federal grants.

There are several issues the Nevada State Legislature can consider in the 2015 Legislative Session:

1. Historic expenditures vs adequacy formula: Should Nevada move from a school financing system built on historic expenditures to a funding formula based on the cost to adequately educate students?
2. Differential funding for specific populations: Should the Nevada Plan be amended to include weights to account for the extra costs required to educate populations such as English Language Learners, low-income students, and special education students?
3. Categorical Funds: Should the State fold existing categorical programs into the main funding formula and make these monies flexible? Should the proposed weights be funded as categorical programs or should they be folded into the main funding formula? Should charter schools receive a direct allocation of State categorical funding to achieve parity with school districts?
4. Outside Tax Revenue: Should any tax revenues outside the Nevada Plan be incorporated into the funding guarantee? Should outside revenues be considered when calculating weights for special needs?
5. Enrollment: Should Nevada move from a single count day for enrollment to multiple count days?
6. Implementation: Given limited availability of State revenues, how should the State implement a new funding formula? Should it be phased in over time and should districts be held harmless?
7. Revenue: Should legislators increase revenue for K-12 education? What are the potential sources of increased revenues?



# Nevada K-12 Education Finance

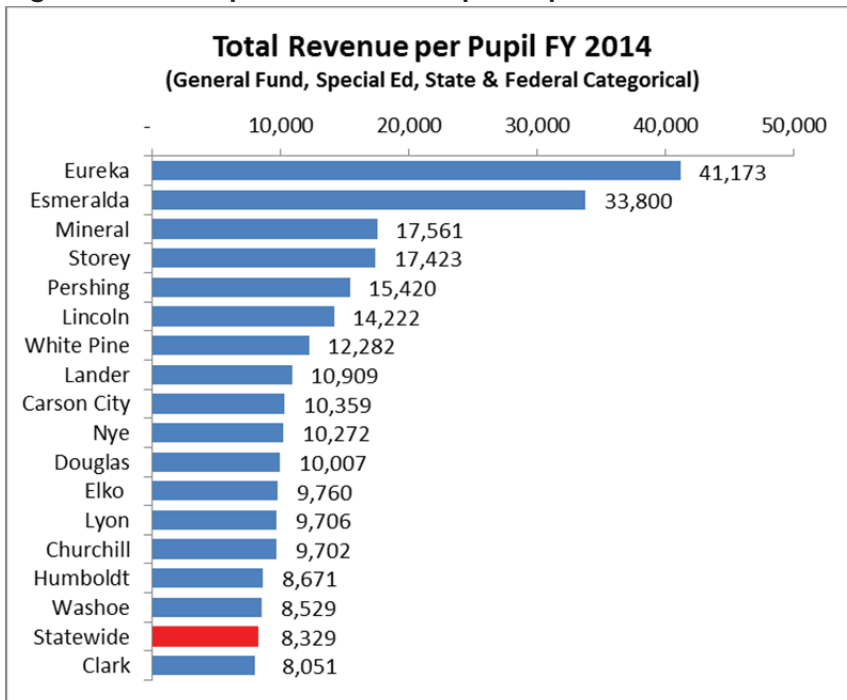
## Objective

This Fact Sheet describes how Nevada’s K-12 public schools are funded and identifies issues for the Nevada Legislature to consider during the 2015 Session.

### 1. How does per pupil funding from all revenue sources vary by district?

Nevada’s school districts receive operational funding from a variety of local, State, and Federal sources. To provide a broad overview of K-12 education funding, Figure 1 shows the per-pupil funding each school district received from all of these sources in FY 2014. The statewide average in FY 2014 was \$8,329 per pupil. While per pupil revenue for most school districts exceeded the average, these school districts represented only 11 percent of the State’s enrollment. In contrast, 84 percent of Nevada’s students were in Clark and Washoe Counties, which received the least funding per pupil at \$8,051 and \$8,529 respectively. (The large size of these districts brings down the statewide average.) The districts with the highest funding rates were Eureka and Esmeralda, which received over \$30,000 per pupil. Over 94 percent of Eureka’s funds came from local sources while Esmeralda received a mix of local (55 percent), State (39 percent), and Federal funds (6 percent).

**Figure 1: Total Operational Funds per Pupil: FY 2014**



Source: NRS 387-303 Report for FY 2014

## 2. What is the Nevada Plan?

The Silver State's primary funding mechanism for K-12 education is called the Nevada Plan, which was created by the Legislature in 1967 (NRS 387.121). Given wide local variations in wealth and costs per pupil, the Nevada Plan creates a mechanism to provide State aid to supplement local funding "to ensure each Nevada child a reasonably equal educational opportunity" (NRS 387.121).

The Nevada Plan establishes a basic support guarantee for each school district.<sup>1</sup> State aid is the difference between the basic support guarantee and local funds. If local revenues are higher or lower than projected, State aid is adjusted to cover the total guaranteed support. Districts with local revenue exceeding the basic support guarantee retain the additional funds.

While the Nevada Plan is the primary source of operational funding for school districts, it is only one component of total school district revenue. Funds from the Nevada Plan and local revenues outside the Nevada Plan are deposited in the school district general fund, which is the primary fund for school district operations. Revenues are also deposited in the following funds: special education fund, governmental funds, State categorical grant funds, and Federal categorical grant funds. Appendix A illustrates all the funding sources received by school districts.

## 3. How is the Basic Support Guarantee Calculated?

Under the Nevada Plan, each school district has its own basic support guarantee per pupil, which varies substantially throughout the State. The average statewide rate approved by the Legislature was \$5,590 in FY 2014 and \$5,676 in FY 2015 (Chapter 382, *Statutes of Nevada* 2013). For the next biennium, the Governor recommends a statewide rate of \$5,669 in FY 2016 and \$5,716 in FY 2017.<sup>2</sup>

The methodology for calculating the basic support guarantee is complex and is not delineated in statute, reflecting a lack of analytical rigor and transparency. It is based on historical expenditure data and does not include any adjustments associated with individual student needs and characteristics. The formula used in the 2013-2015 biennium was last updated by a committee of district superintendents and fiscal staff in 2004 and used expenditure data dating back to 2001. In 2014, the Nevada Department of Education convened a group of district superintendents, fiscal staff, and community members to update the data in the calculation. The Governor used these updated calculations in the proposed budget for the 2015-2017 biennium.

The basic support guarantee is the sum of three separate calculations: basic support, the wealth factor, and the transportation factor:<sup>3</sup>

- **Basic Support:** To calculate basic support, the formula groups districts together by size and density to calculate per-pupil averages of historical staff and operational costs. This data is used to calculate a basic support ratio for each district that is multiplied by the legislatively determined statewide basic support per pupil.
- **Wealth Factor:** The wealth factor takes into account other general fund revenue received outside of the formula (taxes and unrestricted Federal revenue). It calculates a statewide average of this outside revenue and then adds or subtracts revenue based on each district's difference from the statewide average.

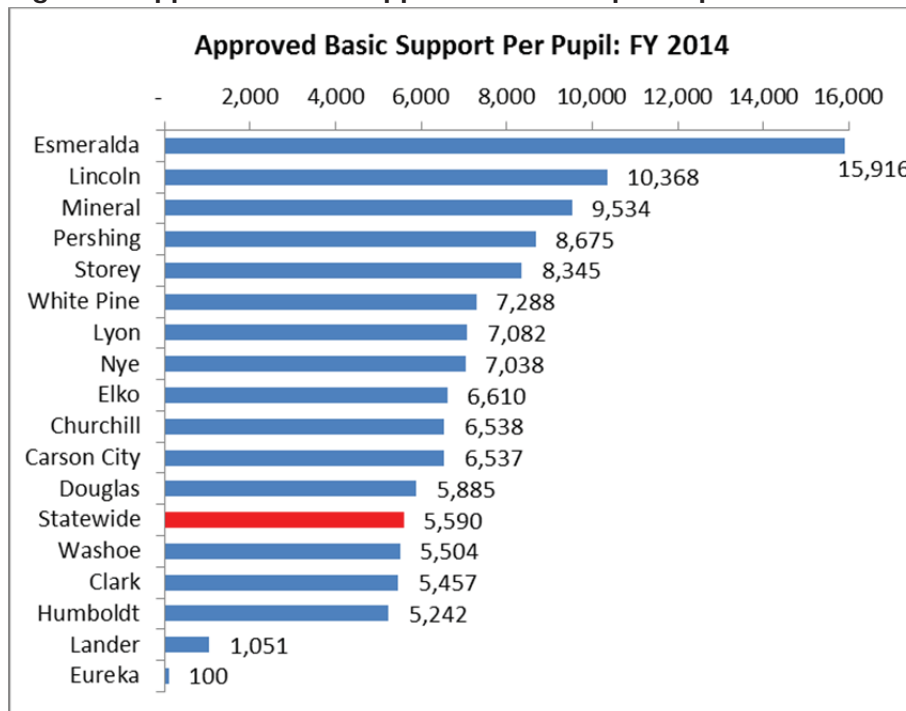
- Transportation Factor: The transportation factor is calculated based on 85 percent of a four year average of transportation costs in each school district.

$$\begin{aligned}
 &\textit{Basic Support Guarantee} = \\
 &\text{Basic Support (basic support ratio x statewide basic support per pupil)} \\
 &+ \text{Wealth Factor} + \text{Transportation Factor}
 \end{aligned}$$

To calculate the actual funding provided to each school district, the basic support guarantee per pupil is multiplied by actual weighted enrollment (NRS 387.1233). Enrollment is determined on “count day,” which is the last day of the first school month. Pre-kindergarten and kindergarten students receive a weight of 0.6, while all other students in grades 1 through 12 receive a weight of 1.0.<sup>4</sup>

The FY 2014 Basic Support Guarantee approved by the Nevada Legislature for each school district is shown in Figure 2. The districts with the largest basic support guarantee are small, rural school districts. In contrast, the largest districts, Clark and Washoe Counties, have basic support guarantees below the statewide average of \$5,590 per pupil. Eureka and Lander Counties have the lowest basic support guarantee due to the wealth factor calculation, which reduces the guarantee based on revenues received outside the formula. In practice, Eureka and Lander Counties receive more revenue than the basic support guarantee provides, because actual local revenues exceed the guarantee. In FY 2014, actual revenues per pupil inside the Nevada Plan were \$32,119 for Eureka County and \$7,068 for Lander County.

**Figure 2: Approved Basic Support Guarantee per Pupil: FY 2014**



Senate Bill 522 (Chapter 382, *Statutes of Nevada* 2013)

#### 4. What sources of funding do school districts receive inside the Nevada plan?

The Nevada Plan includes both State and local revenue. On a statewide basis, revenues inside the Nevada Plan provided 75 percent of school district general fund resources in FY 2014. Table 1 provides detail on the State and local funding sources included inside the Nevada Plan in the last biennial budget. Total basic support provided inside the Nevada Plan was \$2.42 billion in FY 2014 and \$2.46 billion in FY 2015, of which 46 percent was State funding and 54 percent was local funding (Table 1, Line O).

**Table 1: State and Local Funding Inside Nevada Plan: 2013-2015 Biennium**

State Funding (Distributive School Account)	FY 2014	FY 2015	Percent
A. General Fund	1,134,528,570	1,110,133,915	
B. Annual Slot Machine Tax	31,658,547	32,305,032	
C. Permanent School Fund	1,000,000	1,000,000	
D. Federal Mineral Lease Revenue	7,874,977	7,874,977	
E. Out of State Local School Support Tax- 2.6%	110,329,328	116,397,425	
F. Initiative Petition 1 Room Tax Revenue	131,932,800	136,653,300	
<b>G. Subtotal</b>	<b>1,417,324,222</b>	<b>1,404,364,649</b>	
H. Less Categorical Funding	(289,454,554)	(297,688,957)	
<b>I. State Funding for Basic Support</b>	<b>1,127,869,668</b>	<b>1,106,675,692</b>	<b>46%</b>
Local Funding	FY 2014	FY 2015	Percent
J. Local School Support Tax- 2.6%	1,095,455,672	1,155,705,575	
K. 1/3 of 75 cent ad valorem tax (Property & Net Proceeds of Minerals Taxes)	193,681,840	201,117,251	
<b>L. Total</b>	<b>1,289,137,512</b>	<b>1,356,822,826</b>	<b>54%</b>
<b>O. Total Basic Support</b>	<b>2,417,007,180</b>	<b>2,463,498,518</b>	

Source: Legislative Counsel Bureau Fiscal Division, 2013 Appropriations Report<sup>5</sup>

State funding is allocated to schools through the Distributive School Account (DSA). As shown on Table 1, Line A, the State General Fund is the primary funding source of the DSA, representing 80 percent of funding. The DSA is also funded by: a share of the annual slot machine tax (Table 1, Line B); investment income from the Permanent School Fund (Table 1, Line C); Federal mineral land lease receipts (Table 1, Line D); out of State sales tax revenue received through the Local School Support Tax (LSST) (Table 1, Line E); and the 3 percent Initiative Petition 1 room tax (Table 1, Line F). Beginning in FY 2015, 75 percent of the new 2 percent medical marijuana excise tax will also become a funding source for the DSA (NRS 372A.075).

Total revenue sources for the DSA are shown on Table 1, Line G. The funds in the DSA are allocated to both the Nevada Plan and certain categorical programs, such as Class Size Reduction. These categorical funds are subtracted out on Table 1, Line H because they are not part of the Nevada Plan. State funds provided for basic support through the Nevada Plan totaled \$1.13 billion in FY 2014 and \$1.10 in FY 2015 (Table 1, Line I).

Local funding inside the Nevada Plan includes the LSST (Table 1, Line J) and 1/3 of 75 cent ad valorem tax (Table 1, Line K). The ad valorem tax includes taxes collected from the Property Tax and the Net Proceeds of Minerals Tax. Local funds inside the Nevada Plan totaled \$1.29 billion in FY 2014 and \$1.36 billion in FY 2015 (Table 1, Line L).

Table 2 provides detail on actual funding distributed to school districts inside the Nevada Plan in FY 2014. As previously indicated, statewide, this represented only 75 percent of district general fund revenue. The figures in Table 2 differ from the budget because they reflect actual enrollment and revenues. State and local revenue received inside the Nevada Plan in FY 2014 totaled \$2.46 billion (Table 2, Column E), which

# EXHIBIT 4

is higher than the \$2.42 billion budgeted (Table 1, Line O). Table 2, Column A shows that actual DSA revenue totaled \$1.16 billion, which represents 47 percent of funding received inside the Nevada Plan. Columns B and C of Table 2 show the amount of local revenue received from ad valorem taxes and the LSST. The LSST was the largest local funding source inside the Nevada Plan at \$1.1 billion, which represents 45 percent of revenue. In contrast, ad valorem taxes totaled only \$203 million, which represents 8 percent of revenue inside the Nevada Plan. Together, the two local funding sources totaled \$1.3 billion, representing 53 percent of revenue inside the Nevada Plan.

**Table 2: Actual Revenue Received Inside Nevada Plan: FY 2014**

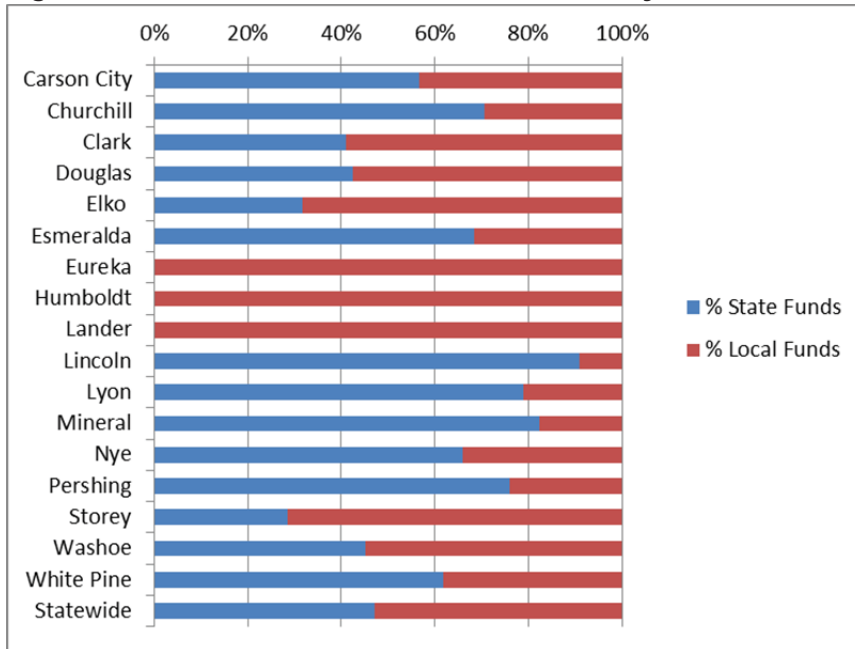
District	State Funds	Local Funds			Total
	A State DSA Revenue	B 1/3 of 75 cent ad valorem tax	C Local School Support Tax	D Sum of Local Funds inside Nevada Plan B+C	E Total State and Local A+D
Carson City	27,034,368	3,007,871	17,600,970	20,608,841	47,643,209
Churchill	16,313,799	1,677,784	5,130,124	6,807,908	23,121,707
Clark	671,657,851	132,350,310	832,511,729	964,862,039	1,636,519,890
Douglas	14,573,286	6,003,026	13,715,285	19,718,311	34,291,597
Elko	19,838,844	4,150,753	38,460,741	42,611,494	62,450,338
Esmeralda	689,080	199,705	118,340	318,045	1,007,125
Eureka	-	5,580,828	2,070,006	7,650,834	7,650,834
Humboldt	(285,948)	4,659,436	13,296,840	17,956,275	17,670,327
Lander	-	5,804,824	1,716,582	7,521,406	7,521,406
Lincoln	8,898,341	525,280	353,632	878,912	9,777,253
Lyon	43,406,064	2,832,516	8,774,339	11,606,855	55,012,919
Mineral	3,836,667	304,153	524,702	828,855	4,665,522
Nye	23,365,103	3,357,123	8,639,321	11,996,444	35,361,547
Pershing	4,477,763	877,079	536,982	1,414,062	5,891,825
Storey	933,732	1,177,147	1,160,309	2,337,455	3,271,187
Washoe	149,045,682	30,170,146	151,070,968	181,241,114	330,286,796
White Pine	6,109,577	856,046	2,902,842	3,758,888	9,868,465
Charter Schools	165,664,763	-	-	-	165,664,763
<b>Statewide</b>	<b>1,155,558,972</b>	<b>203,534,025</b>	<b>1,098,583,712</b>	<b>1,302,117,736</b>	<b>2,457,676,709</b>
<b>Percent of Total</b>	<b>47%</b>	<b>8%</b>	<b>45%</b>	<b>53%</b>	<b>100%</b>

Source: FY 2014 NRS 387-303 Report<sup>6</sup>

There is significant variation in the percentage of State vs. local revenue received by each school district inside the Nevada Plan (see Figure 3). This occurs because some school districts have high Net Proceeds of Minerals Taxes, which cause local funding to exceed the basic support guarantee. As shown in Figure 3, Eureka County, Lander County, and Humboldt County received 100 percent of the basic support guarantee from local funding in FY 2014 and received no State aid. In contrast, Lincoln County and Mineral County received more than 80 percent of their basic support funding from the State.



**Figure 3: Nevada Plan State vs Local Revenue by District: FY 2014**



Source: FY 2014 NRS 387-303 Report<sup>7</sup>

**5. What sources of general fund revenue do school districts receive outside the Nevada plan?**

Statewide, 25 percent of district general fund resources come from outside of the Nevada Plan. Unlike the revenues inside the Nevada Plan, these outside revenues are not guaranteed, meaning that the State does not make up for any shortfalls in projected revenues. The primary general fund revenues outside the Nevada Plan include:

- 2/3 of the 75 cent ad valorem tax (includes Property Tax and Net Proceeds of Minerals Tax)
- Government Services Tax
- Franchise Taxes
- Unrestricted Federal funds such as Impact Aid and Forest Reserve revenue
- Interest, tuition, other local revenue
- Beginning fund balance

School districts also receive funding outside of the general fund. As shown in Appendix A, major funds include special education, governmental funds, State grants, and Federal grants.

**6. How does actual general fund revenue inside and outside the Nevada Plan vary by district?**

There is substantial variation in per-pupil funding between school districts. To provide a complete picture of each district’s general fund, Table 3 shows actual FY 2014 funding inside and outside the Nevada Plan. Statewide, total revenue per pupil was \$6,831 but six districts received over \$10,000 per pupil (Table 3, Column H). This table reveals that Eureka County had the highest general fund per-pupil revenue in Nevada at \$39,170, followed by Esmeralda County at \$29,833. Eureka’s high funding rate is due to Net

Proceeds of Minerals Taxes while Esmeralda's funding rate is due to its small enrollment. The districts with the lowest general fund per-pupil revenue were Clark at \$6,549 and Washoe County at \$6,761.

**Table 3: Actual School District General Fund Revenue FY 2014**

A District	B Enrollment	Inside Nevada Plan			Outside Nevada Plan		H Total Revenue per pupil E+F+G
		C Local Funds per Pupil	D State Funds per Pupil	E Total Basic Support per Pupil C+D	F Outside taxes per pupil	G Outside other revenue per pupil	
Carson City	7,274	2,833	3,717	6,550	1,061	379	7,990
Churchill	3,539	1,924	4,610	6,534	1,201	244	7,979
Clark	303,447	3,180	2,213	5,393	1,050	106	6,549
Douglas	5,885	3,351	2,476	5,827	2,461	109	8,397
Elko	9,496	4,487	2,089	6,576	1,342	111	8,029
Esmeralda	65	4,893	10,601	15,494	10,072	4,267	29,833
Eureka	238	32,119	-	32,119	5,830	1,221	39,170
Humboldt	3,363	5,339	(85)	5,254	1,583	317	7,154
Lander	1,064	7,068	-	7,068	2,491	252	9,811
Lincoln	934	941	9,527	10,468	1,424	164	12,056
Lyon	7,812	1,486	5,556	7,042	926	35	8,003
Mineral	439	1,886	8,732	10,618	2,227	987	13,832
Nye	5,036	2,382	4,639	7,021	1,111	226	8,358
Pershing	681	2,075	6,571	8,646	2,175	137	10,958
Storey	385	6,074	2,427	8,501	6,470	19	14,990
Washoe	60,796	2,981	2,452	5,433	1,207	121	6,761
White Pine	1,303	2,884	4,687	7,571	1,866	328	9,765
Statewide	435,795	2,988	2,652	5,640	1,062	129	6,831

Source: FY 2014 NRS 387-303 Report

For districts with substantial amounts of Net Proceeds of Minerals Taxes, total General Fund revenue can be quite volatile from year to year. This Net Proceeds of Minerals Taxes allocated to local governments and school districts statewide tripled from 2008 to 2012 and then fell by 30 percent in 2013.<sup>8</sup> As a result, from FY 2011 to FY 2014, total General Fund revenue decreased by 60 percent in Eureka County, 50 percent in Lander County, and 18 percent in Humboldt County.

## 7. What other State and Federal grants do school districts receive?

School districts receive a variety of State and Federal grants to fund specific programs or to meet special student needs. These are commonly called categorical programs. The largest State categorical programs are class size reduction, full day kindergarten, Senate Bill 504 funds for English Language Learners, adult education, and Career Technical Education (CTE). The largest Federal programs include Title I of the Elementary and Secondary Education Act for at-risk students, Individuals with Disabilities Education Act (IDEA) for special education, and Perkins funds for CTE.

Table 4 provides detail on total State and Federal grants per pupil for each district in FY 2014. Statewide, school districts received \$668 per pupil in State grants (Table 4, Column D) and \$613 per pupil in Federal grants (Table 4, Column F) for a total of \$1,281 per pupil (Table 4, Column G). The districts with the highest per-pupil funding for all categorical grants were Esmeralda and Pershing, while the districts with the lowest per-pupil amounts were Lander and Douglas.

**Table 4: State and Federal Grant Funds for School Districts FY 2014**

A	B	C	D	E	F	G
District	Enrollment	Total State Categorical Funds	Total State per Pupil	Total Federal Categorical Funds	Total Federal per Pupil	Grand Total Categorical per Pupil
			C/B		E/B	D+F
Carson City	7,274	6,835,183	940	7,067,300	972	1,911
Churchill	3,539	1,877,683	531	2,122,781	600	1,130
Clark	303,447	201,992,135	666	172,925,622	570	1,236
Douglas	5,885	3,011,882	512	3,503,421	595	1,107
Elko	9,496	8,256,885	869	4,682,469	493	1,363
Esmeralda	65	105,987	1,631	89,481	1,377	3,007
Eureka	238	100,525	422	258,184	1,084	1,506
Humboldt	3,363	2,196,706	653	1,550,500	461	1,114
Lander	1,064	483,603	454	486,749	457	912
Lincoln	934	500,819	536	731,972	784	1,320
Lyon	7,812	4,394,120	562	6,269,939	803	1,365
Mineral	439	705,565	1,606	599,023	1,363	2,969
Nye	5,036	3,168,431	629	4,054,906	805	1,434
Pershing	681	1,819,532	2,670	575,368	844	3,515
Storey	385	311,392	809	354,189	920	1,730
Washoe	60,796	37,275,646	613	46,460,003	764	1,377
White Pine	1,303	2,029,268	1,557	560,570	430	1,987
<b>Total</b>	<b>411,759</b>	<b>275,065,362</b>	<b>668</b>	<b>252,292,477</b>	<b>613</b>	<b>1,281</b>

Source: NRS 387-303 Report for FY 2014

## 8. How is special education funded?

State funding for special education is allocated based on “units,” which provide funding for licensed personnel.<sup>9</sup> The funding units were initially designed to cover the cost of an average teacher salary for a specified number of special education pupils by disability. This methodology was established prior to requirements that students be placed in the least restrictive environment and does not reflect the current reality that many special education students are now mainstreamed in regular classrooms.

The number of units across all districts in Nevada has been fixed at 3,049 since 2009. The per-unit rates for the current biennium are \$41,608 for FY 2014 and \$42,745 for FY 2015. Although this funding rate was originally meant to cover the average teacher salary, the funding rate approved by the Legislature has not kept pace with the statewide average teacher salary plus benefits of \$75,756 in FY 2014 and \$77,384 in FY 2015.<sup>10</sup> Total State funding allocated for special education funding units in the biennium was \$126.8 million in FY 2014 and \$130.3 million in FY 2015.

Each school district has a special education fund, which primarily includes State-funded special education units as well as monies transferred from the district general fund to make up for any shortfall not covered by other funds. IDEA revenues total \$60 to \$70 million per year statewide but are accounted for in a Federal grants fund instead of the special education fund. Table 5 illustrates school district special education fund revenue per pupil in FY 2014. Each district received State funds, ranging from a low of \$186 per pupil in Lander County to \$960 per pupil in Eureka County (Table 5, Column C). There is also wide variation in the amount transferred from the general fund to the special education fund. If State funding is adequate, no transfer is necessary, but this is not the case for most districts. Transfers ranged from \$0 in Lincoln to \$1,259 per pupil in Eureka (Table 5, Column E). Statewide, total resources in the special education fund averaged \$1,170 per pupil (Table 5, Column F).

Table 5: School District Special Education Fund Revenue FY 2014

A District	B Enrollment	C State Funds per Pupil	D Local/ Federal Funds per Pupil	E Transfers in per Pupil	F Total Revenue per Pupil C+D+E
Carson City	7,274	458	-	734	1,192
Churchill	3,539	553	41	879	1,472
Clark	303,447	266	0	962	1,228
Douglas	5,885	503	0	775	1,278
Elko	9,496	368	-	243	611
Esmeralda	65	960	-	778	1,738
Eureka	238	497	-	1,259	1,757
Humboldt	3,363	401	3	557	960
Lander	1,064	186	-	712	899
Lincoln	934	846	-	-	846
Lyon	7,812	339	-	960	1,299
Mineral	439	760	-	467	1,226
Nye	5,036	479	-	1,044	1,523
Pershing	681	946	-	778	1,724
Storey	385	703	-	647	1,350
Washoe	60,796	391	-	507	898
White Pine	1,303	511	18	904	1,433
<b>TOTAL</b>	<b>411,759</b>	<b>305</b>	<b>0</b>	<b>865</b>	<b>1,170</b>

Source: NRS 387-303 Report for FY 2014

### 9. How are charter schools funded?

Charter schools also receive funding through the Nevada Plan. Because charter schools do not have access to local tax revenue, the entire basic support guarantee is funded by the State. The allocation is based on the per-pupil funding rate of revenues inside the Nevada Plan and taxes outside the Nevada Plan in the county where each pupil resides, minus a charter school sponsorship fee (NRS 387.124). For some charter schools, all pupils reside in one county and there is a single funding rate per pupil. For other charter schools, students reside in multiple counties and generate multiple funding rates. Table 6 shows the county where each charter school is located and the per-pupil funding provided under the Nevada Plan in FY 2014. Charter schools sponsored by the State Public Charter School Authority (SPCSA) are denoted with "SPCSA" after the county name. This table reveals that charter school funding rates are comparable to the total revenue per pupil for districts shown in Table 3.

#### Charter School Per-Pupil Funding Calculation for Each County Where Pupils Reside

Revenues inside Nevada Plan + Taxes Outside Nevada Plan

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Total Charter and District Enrollment in County

**Table 6: FY 2014 Charter School Funding through Nevada Plan**

A Charter School	B County	C Enrollment	D Nevada Plan Funding Per Pupil
100 Academy of Excellence	Clark	657	6,520
Academy for Career Education	Washoe	191	6,827
Alpine Academy	Washoe- SPCSA	80	9,298
Andre Agassi College Preparatory Academy	Clark	1,128	6,520
Bailey Charter Elementary School	Washoe	249	6,684
Beacon Academy of Nevada	Clark- SPCSA	804	6,627
Carson Montessori School	Carson	220	7,672
Coral Academy of Science-Las Vegas	Clark- SPCSA	1,337	6,520
Coral Academy of Science-Reno	Washoe	900	6,703
Davidson Academy of Nevada (University)	State School- Washoe	133	6,736
Delta Academy	Clark	226	6,777
Discovery Charter School	Clark- SPCSA	346	6,520
Doral Academy of Nevada (LV)	Clark- SPCSA	712	6,520
Elko Institute for Academic Achievement	Elko- SPCSA	154	8,174
Explore Knowledge Academy	Clark	755	6,520
High Desert Montessori School	Washoe	351	6,695
Honors Academy of Literature	Clark- SPCSA	187	6,698
I Can Do Anything Charter High School	Washoe	238	8,702
Imagine School at Mt. View	Clark- SPCSA	426	6,520
Innovations International	Clark	928	6,520
Learning Bridge Charter School	White Pine- SPCSA	109	9,225
Mariposa Academy of Language and Learning	Washoe	147	6,684
Nevada Connections Academy	Washoe- SPCSA	1,904	6,899
Nevada State High School	Clark- SPCSA	279	6,528
Nevada Virtual Academy	Clark- SPCSA	3,528	8,177
Oasis Academy	Churchill- SPCSA	173	7,738
Odyssey Charter Schools	Clark	1,759	6,520
Pinecrest Academy	Clark- SPCSA	847	6,520
Quest Academy Preparatory	Clark- SPCSA	836	7,324
Rainbow Dreams Academy	Clark	244	6,753
Rainshadow Community Charter High School	Washoe	127	6,987
Sierra Nevada Academy Charter	Washoe	263	7,081
Silver Sands Montessori Charter School	Clark- SPCSA	266	6,520
Silver State High School	Carson- SPCSA	429	8,093
Somerset Academy of Las Vegas	Clark- SPCSA	2,864	6,522

Source: NRS 387-303 Report for FY 2014

For categorical and special education funding, charter schools are supposed to receive funding comparable to school districts. Under NRS 386.570, "A charter school is entitled to receive its proportionate share of any other money available from Federal, State or local sources that the school or the pupils who are enrolled in the school are eligible to receive." In practice, charter schools have experienced limited accessibility to categorical and special education funds compared to school districts.

For State and Federal categorical funds, charter schools sometimes opt not to participate due to the small size of potential grants and/or compliance requirements. In other cases, charter schools are not eligible for funding. For example, charter schools are not eligible for class size reduction, which is the largest State categorical program (NRS 388.700[8]). Some charter schools are also not eligible for Federal Title I

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funding, which is only allocated to schools with a high percentage of low-income students. As shown in Table 7, average statewide categorical funding in FY 2014 for charter schools was \$13 per pupil for State funding and \$223 per pupil for Federal funding, for a total of \$236 per pupil (Columns D, F, and G). This is less than one-fifth of the school district average of \$1,281 per pupil (see Table 4, Column G).

**Table 7: State and Federal Grant Funds for Districts FY 2014**

A	B	C	D	E	F	G
Charter School	Enrollment	Total State Categorical Funds	Total State per pupil	Total Federal Categorical Funds	Total Federal per pupil	Grand Total Categorical per Pupil
			C/B		E/B	D+F
100 Academy of Excellence	657	0	0	231,559	352	352
Academy for Career Education	191	38,105	200	100,110	524	724
Alpine Academy	80	0	0	25,395	317	317
Andre Agassi College Preparatory Academy	1,128	2,948	3	237,732	211	213
Bailey Charter Elementary School	249	108,672	437	52,452	211	648
Beacon Academy of Nevada	804	0	0	130,000	162	162
Carson Montessori School	220	0	0	0	0	0
Coral Academy of Science-Las Vegas	1,337	0	0	73,232	55	55
Coral Academy of Science-Reno	900	0	0	0	0	0
Davidson Academy of Nevada (University)	133	0	0	0	0	0
Delta Academy	226	2,828	13	45,413	201	213
Discovery Charter School	346	0	0	36,932	107	107
Doral Academy of Nevada (LV)	712	0	0	46,717	66	66
Elko Institute for Academic Achievement	154	0	0	173,795	1,127	1,127
Explore Knowledge Academy	755	0	0	88,434	117	117
High Desert Montessori School	351	0	0	107,109	305	305
Honors Academy of Literature	187	2,317	12	52,313	279	292
I Can Do Anything Charter High School	238	1,540	6	0	0	6
Imagine School at Mt. View	426	5,015	12	212,111	497	509
Innovations International	928	5,077	5	199,586	215	221
Learning Bridge Charter School	109	0	0	57,299	526	526
Mariposa Academy of Language and Learning	147	108,672	737	3,840	26	763
Nevada Connections Academy	1,904	0	0	552,345	290	290
Nevada State High School	279	0	0	5,051	18	18
Nevada Virtual Academy	3,528	7,311	2	1,691,433	479	482
Oasis Academy	173	0	0	41,406	239	239
Odyssey Charter Schools	1,759	2,456	1	421,405	240	241
Pinecrest Academy	847	2,226	3	94,830	112	115
Quest Academy Preparatory	836	0	0	124,953	149	149
Rainbow Dreams Academy	244	0	0	33,768	139	139
Rainshadow Community Charter High School	127	0	0	45,521	358	358
Sierra Nevada Academy Charter	263	0	0	0	0	0
Silver Sands Montessori Charter School	266	606	2	31,515	118	121
Silver State High School	429	0	0	111,028	259	259
Somerset Academy of Las Vegas	2,864	21,159	7	273,990	96	103
<b>Total</b>	<b>23,798</b>	<b>308,932</b>	<b>13</b>	<b>5,301,272</b>	<b>223</b>	<b>236</b>

Source: NRS 387-303 Report for FY 2014

For special education, SPCSA-sponsored charter schools have access to a total of only 13 special education units while charter schools sponsored by school districts can receive special education funding through their sponsoring district.<sup>11</sup> In FY 2014, total per-pupil revenue for special education was much lower for charter schools (\$301) than for school districts (\$1,170) in FY 2014 (see Table 8, Column F and Table 5, Column F). Fourteen out of 35 charter schools did not receive any State special education funding (Table 8, Column C). Charter schools can also receive local and Federal funding for special

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education (Table 8, Column D). Five charter schools received local funds from their sponsoring district and three received Federal funds. In addition, twenty charter schools transferred money from their general fund to help pay for special education (Table 8, Column E).

**Table 8: Charter School Special Education Fund Revenue FY 2014**

A District	B Enrollment	C State Funds per Pupil	D Local/ Federal Funds per Pupil	E Transfers in per Pupil	F Total Revenue per Pupil C+D+E
100 Academy of Excellence	657	-	233	252	485
Academy for Career Education	191	-	379	-	379
Alpine Academy	80	520	-	203	723
Andre Agassi College Preparatory Academy	1,128	-	223	273	496
Bailey Charter Elementary School	249	-	-	41	41
Beacon Academy of Nevada	804	52	-	18	70
Carson Montessori School	220	-	371	-	371
Coral Academy of Science-Las Vegas	1,337	47	-	-	47
Coral Academy of Science-Reno	900	-	161	-	161
Davidson Academy of Nevada (University)	133	-	-	-	-
Delta Academy	226	-	388	289	677
Discovery Charter School	346	120	-	107	227
Doral Academy of Nevada (LV)	712	44	-	191	234
Elko Institute for Academic Achievement	154	135	-	-	135
Explore Knowledge Academy	755	143	-	377	520
High Desert Montessori School	351	118	-	-	118
Honors Academy of Literature	187	111	-	-	111
I Can Do Anything Charter High School	238	-	416	-	416
Imagine School at Mt. View	426	98	-	401	498
Innovations International	928	201	-	126	327
Learning Bridge Charter School	109	95	-	37	133
Mariposa Academy of Language and Learning	147	-	-	-	-
Nevada Connections Academy	1,904	33	-	-	33
Nevada State High School	279	-	-	-	-
Nevada Virtual Academy	3,528	29	-	260	289
Oasis Academy	173	241	-	182	422
Odyssey Charter Schools	1,759	260	-	586	846
Pinecrest Academy	847	49	-	110	159
Quest Academy Preparatory	836	75	-	303	377
Rainbow Dreams Academy	244	-	-	-	-
Rainshadow Community Charter High School	127	-	-	-	-
Sierra Nevada Academy Charter	263	-	-	220	220
Silver Sands Montessori Charter School	266	78	-	-	78
Silver State High School	429	242	-	777	1,019
Somerset Academy of Las Vegas	2,864	29	-	209	238
<b>TOTAL</b>	<b>23,798</b>	<b>68</b>	<b>37</b>	<b>195</b>	<b>301</b>

Source: NRS 387-303 Report for FY 2014

## 10. How do the “sunset taxes” affect K-12 funding?

Three of the funding sources for K-12 education are part of the package of temporary tax increases and tax shifts enacted by the State to address revenue shortfalls resulting from the Great Recession: the Local School Support Tax, the Initiative Petition 1 room tax, and prepayment of the Net Proceeds of Minerals Tax. These revenue sources represent approximately \$630 million in revenue in the 2013-2015 biennium and are scheduled to expire on June 30, 2015.

For the 2015-2017 biennium, these revenues represent a State impact of approximately \$700 million.<sup>12</sup> The Governor recommends making the Local School Support Tax permanent, making the Initiative Petition 1 transfer permanent, and extending the prepayment of Net Proceeds of Minerals Taxes for one year. The Legislature will need to decide whether to extend these sunsets, make them permanent, or substitute other taxes. Each tax is discussed in detail below.

- Local School Support Tax: This sales tax increased from 2.25 percent to 2.6 percent in 2009 and will revert to 2.25 percent on June 30, 2015 (NRS 374.110 & 374.111). The increased rate was budgeted to provide approximately \$333.6 million during the 2013-2015 biennium. The Governor recommends that this rate increase be made permanent beginning July 1, 2015, representing \$379.4 million for the 2015-2017 biennium.<sup>13</sup> Again, the LSST comprises approximately 45 percent of the total basic support provided by the Nevada Plan.
- Initiative Petition 1: This 3 percent room tax was originally designed to provide supplemental revenue to education beginning in 2011 but has instead been used as a funding source to the Distributive School Account (NRS 387.191) due to budget shortfalls. This tax shift was budgeted to provide approximately \$268.6 million during the 2013-2015 biennium. On June 30, 2015, this revenue source is scheduled to become a supplemental source for education as originally intended, which would necessitate backfilling from the State general fund. The Governor recommends making this funding shift permanent, which represents \$308.2 million in revenue in the 2015-2017 biennium.<sup>14</sup>
- Prepayment of Net Proceeds of Minerals: School districts receive Net Proceeds of Minerals Taxes as part of the 75 cent ad valorem tax rate. One-third of this revenue is inside the Nevada Plan and two-thirds is outside the Nevada Plan. The total impact to schools was approximately \$28 million during the 2013-2015 biennium, with 83 percent of the revenue going to Eureka, Humboldt, and Lander Counties.<sup>15</sup> The prepayment of these taxes is scheduled to sunset on June 30, 2015. The Governor recommends that this sunset be extended to June 30, 2016, which means that school districts would not receive any Net Proceeds of Minerals Taxes in FY 2017 but would begin receiving this revenue again in FY 2018. The portion of this revenue that is inside the Nevada Plan is guaranteed and would be made up by the general fund (\$12.6 million).<sup>16</sup> However, the portion outside the Nevada Plan is not guaranteed and would be unfunded for one year (approximately \$25 million). This would have a significant impact on school districts in which large mining operations are located.

## 11. What key issues should the Legislature consider in 2015?

Several studies and Legislative committees have identified the following key challenges and issues in the K-12 funding formula which can be considered during the 2015 Legislative Session.<sup>17</sup>

- Historic expenditures vs adequacy formula: Should Nevada move from a funding system built on historic expenditures to a funding formula based on the cost to adequately educate students? Some stakeholders argue that using historic expenditures perpetuates low funding levels and does not establish a goal for an adequate funding level. In addition, small districts with traditionally high fixed costs have the largest funding rates, while large districts receive the lowest funding per pupil. Using past expenditure data also makes it difficult for districts with historically low costs to change the status quo and increase per-pupil funding relative to other districts.



Over the past decade, the education finance consulting firm Augenblick, Palaich and Associates (APA) conducted two studies of the adequate cost to educate students in Nevada, one in 2006 and a second in 2015. The 2015 study recommends a base funding rate of \$8,251 per pupil plus adjustments for size.<sup>18</sup> The cost of implementing this higher base funding rate is approximately \$1.6 billion more than actual State, local, and Federal expenditures in FY 2013. Given the large price tag of a higher base funding rate, the Legislature may want to set a goal for per-pupil funding and develop a multi-year implementation plan.

- Differential funding for specific populations: Should the Nevada Plan be amended to include weights to account for the extra costs to educate populations such as English Language Learners, low-income students, and special education students? Nevada is one of only a few states that does not provide weighted funding and studies have shown that using weights increases fairness.<sup>19</sup> Several alternative recommendations have been made to the Legislature.
  - In June 2014, the Legislature's Task Force on K-12 Public Education Funding recommended implementing weights of not less than 1.5 for English Learners and Free and Reduced Lunch students, until such time as a cost (adequacy) study may be conducted.<sup>20</sup> For Special Education, the Task Force recommended a weight of 2.0 with a funding cap of 13 percent of enrollment.<sup>1</sup> The Task Force recommended that the base for applying weights would include all State and local funding but exclude all Federal and State categorical funding. To ensure accountability, the Task Force also recommended that the funding associated with these weights be initially allocated as a categorical program outside the funding formula and then transitioned into the formula at a future date.
  - In January 2015, the consulting firm APA released a cost (adequacy) study and recommended a base of \$8,251 per pupil plus weights of 1.35 for at-risk students, 1.42 for English Language Learners, and 2.1 for special education students.<sup>21</sup> While APA's weights for at-risk students and English Language Learners are lower than those recommended by the Task Force on K-12 Public Education Funding, they are calculated off of a higher base funding rate, resulting in higher overall funding levels. The Legislature could reconsider the base funding level and weights recommended by the Task Force on K-12 Public Education Funding in light of the new APA study.
  - The Governor's 2015-2017 Executive Budget includes a \$25 million increase in FY 2017 for special education to start the transition toward a weight of 2.0 as recommended by the Task Force on K-12 Public Education Funding. A timeline for achieving the weight of 2.0 is not specified in the Governor's budget. The proposed budget also includes a new \$5 million contingency fund for high cost special education students.

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<sup>1</sup> Here we note that Governor Brian Sandoval has proposed phasing in a weighted formula, beginning with Special Education. The Governor's biennium budget allocates an additional \$25 million in FY 2017, with the eventual goal of achieving a funding weight of 2.0.

- Categorical funds: There are three key questions Nevada should consider for categorical funds:
  - Should the State fold existing categorical programs into the main funding formula and make these monies flexible? State funds for specific populations and programs are currently allocated outside the basic support guarantee, such as special education, Senate Bill 504 funding for English Learners, class size reduction, and full day kindergarten. Funding these programs outside the funding formula limits school district flexibility and places emphasis on compliance instead of outcomes. It may not be possible to place all programs in the main funding formula. For example, special education has maintenance of effort requirements that are easier to monitor if expenditures are accounted for separately.<sup>2,22</sup>
  - Should the proposed weights be funded as categorical programs or should they be folded into the main funding formula? The Task Force on K-12 Public Education Funding recommended that the proposed weights be funded as categorical programs and then be transitioned into the funding formula at some future date. For 2015-2017, the Governor recommends providing \$100 million for Zoom Schools to serve English Language Learners and \$50 million for a new categorical program for at-risk students called Victory Schools. As an alternative, the Legislature could use this \$150 million to fund new weights inside the formula for English Language Learners and at-risk students. Doing so would enhance flexibility for school districts and could be accompanied by accountability measures that switch the focus from compliance to increased student achievement.
  - Should charter schools receive a direct allocation of State categorical funding? Under current law, charter schools are entitled to a proportionate share of State grants but in practice receive very limited funds. If categorical grants are folded into the funding formula, the Legislature could increase the per-pupil funding rate for charter schools to ensure parity with school districts. Alternatively, if the State chooses to keep categorical grants outside the formula, charter schools could receive a categorical block grant to ensure proportionate funding.
- Outside Tax Revenue: There are two key questions the Legislature should consider regarding tax revenue that school districts currently receive outside the Nevada Plan:
  - Should any tax revenues outside the Nevada Plan be incorporated into the funding guarantee? The tax revenues outside the Nevada Plan are significant in size, so incorporating them into the formula would increase transparency and provide a more accurate picture of the amount of funding schools receive. If the State increases the base funding guarantee, these revenues could be counted towards the new higher guarantee, thereby reducing the amount of new revenue the State would need to contribute. Moving outside taxes into the formula would also shift much of the risk for the volatility of the Net Proceeds of Minerals Tax from school districts to the State. Conversely, this action would increase stability and predictability of revenue for districts.

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<sup>2</sup> California is an example of a State that has consolidated categorical programs into the main funding formula in return for greater accountability from schools. In FY 2014, California folded most categorical programs into the main funding formula. In return for making these funds unrestricted, districts were tasked with crafting accountability plans that tie funding to outcomes for specific populations.

- Should outside revenues be taken into account when calculating weights for special needs? The Task Force for K-12 Public Education recommended that the base for applying weights include all State and local funding but exclude all Federal and State categorical funding. The Legislature's decision on this issue interacts with other determinations, such as the base funding rate and what funding sources should be included in the guarantee.
- Enrollment: Should Nevada move from a single count day for enrollment to multiple count days? A single count day does not take into account variation throughout the school year. Multiple count days would help growing districts receive additional revenue but would result in less revenue for districts that experience enrollment declines throughout the year. Alternatively, the State could base funding on average daily attendance. This incentivizes school districts to keep students in school. However, it would disadvantage high schools with significant drop-out rates where attendance decreases throughout the year. The State would need to take into account the cost implications of increased reporting for both the Department of Education and school districts.
- Implementation: Given limited availability of funds, how should Nevada implement a new funding formula? If a new formula is implemented using existing funds, monies would simply be reallocated and some districts could receive significantly less revenue. Conversely, the State could establish a per-pupil funding goal and create a multi-year plan to reach that objective. Nevada would need to consider how long it should hold districts harmless to avoid sharp decreases in revenue in rural areas.
- Revenue: Should legislators increase revenue for K-12 education and what revenue sources should be used? To help provide additional funding for education, the Governor recommends increasing cigarette taxes, increasing business taxes on mining, modifying the restricted slot machine tax, and restructuring the Business License Fee. These proposals would raise approximately \$569 million over the biennium. In addition, several funding sources used for K-12 education are part of the package of sunset taxes the Legislature will be considering during the 2015 Session. The State will need to decide whether to continue these taxes, replace them with other revenue sources, or develop new revenue sources.

## Conclusion

This fact sheet illustrates the breadth and complexity of the K-12 public school financing system. While the Nevada Plan is the primary source of funding for operations, schools also receive revenue from a variety of local, State, and Federal sources. There is significant variation in funding between school districts and there are funding disparities between school districts and charter schools. In addition, there is a high degree of volatility in some of the general fund tax revenue received outside the Nevada Plan.

As the Legislature begins the 2015 Session, it can draw on the recommendations made by several Legislative committees and outside experts to improve the K-12 finance system. Issues include whether the State should move to a formula based on the cost to adequately educate pupils, whether to implement funding weights for specific populations, how to treat categorical funds and outside tax revenue, how to count the number of students, how to phase in implementation of the formula, and what revenue sources should be used for a new funding formula.

## Appendix A: Funding of K-12 Public Schools in Nevada



## About the Kenny C. Guinn Center for Policy Priorities

The Kenny C. Guinn Center for Policy Priorities is a 501(c)(3) nonprofit, bipartisan, think-do tank focused on independent, fact-based, relevant, and well-reasoned analysis of critical policy issues facing Nevada and the Intermountain West. The Guinn Center engages policy-makers, experts, and the public with innovative, data-driven research and analysis to advance policy solutions, inform the public debate, and expand public engagement. The Guinn Center does not take institutional positions on policy issues.

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<sup>1</sup> For more information, see Fiscal Analysis Division, Legislative Counsel Bureau. The Nevada Plan for School Finance: An Overview (January 2015) [http://www.leg.state.nv.us/interim/77th2013/Committee/Interim/LegCommissionBudgetSubcomm/Other/20-January-2015/Nevada\\_Plan\\_web\\_version.pdf](http://www.leg.state.nv.us/interim/77th2013/Committee/Interim/LegCommissionBudgetSubcomm/Other/20-January-2015/Nevada_Plan_web_version.pdf) and 2013: [http://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada\\_Plan\\_2013.pdf](http://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan_2013.pdf)

<sup>2</sup> Nevada Department of Education. The Executive Budget - DSA & Related K-12 Budgets: 2015-2017 Biennium (January 20, 2015) <http://www.leg.state.nv.us/interim/77th2013/Committee/Interim/LegCommissionBudgetSubcomm/Other/20-January-2015/DSA.pdf>

<sup>3</sup> 2013-2014 Interim Task Force on K-12 Public Education Funding Technical Advisory Committee, Item VI- Simplified DSA Model Example- Mike Alastuey (April 21, 2014)

<http://www.leg.state.nv.us/interim/77th2013/Committee/Studies/K12FundingTAC/Other/21-April-2014/MeetingPage.cfm?ID=77&d=21-April-2014>

<sup>4</sup> There are special provisions to accommodate times when enrollment is increasing or decreasing. The guaranteed level of funding is based on the higher of current or prior year enrollment (NRS 387.1233). If a district's enrollment declines by more than 5 percent, funding is based on the higher count of the two previous years. Districts that experience enrollment increases during the school year can receive an increase in basic support of 2 to 4 percent (NRS 387.1243). If enrollment increases after the second school month by at least 3 percent, basic support will increase by 2 percent. If enrollment increases by 6 percent or more after the second school month, basic support will increase by 4 percent.

<sup>5</sup> Legislative Counsel Bureau, Fiscal Division, 2013 Appropriations Report. Education.

[http://www.leg.state.nv.us/Division/fiscal/Appropriation%20Reports/2013AppropriationsReport/6\\_Education.pdf](http://www.leg.state.nv.us/Division/fiscal/Appropriation%20Reports/2013AppropriationsReport/6_Education.pdf)

<sup>6</sup> Nevada Department of Education. State Reports, NRS 387-303 [http://www.doe.nv.gov/Business\\_Support\\_Services/Reports/](http://www.doe.nv.gov/Business_Support_Services/Reports/)

<sup>7</sup> Nevada Department of Education. State Reports, NRS 387-303 [http://www.doe.nv.gov/Business\\_Support\\_Services/Reports/](http://www.doe.nv.gov/Business_Support_Services/Reports/)

<sup>8</sup> Nevada Department of Taxation, 2013-2014 Net Proceeds of Minerals Bulletin

[http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net\\_Proceeds\\_of\\_Minerals/](http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net_Proceeds_of_Minerals/) and Nevada Department of Taxation: Local Government Finance: Property Taxes for Nevada Local Governments Fiscal Year 2013-2014.

<sup>9</sup> Nevada Department of Education, Nevada K-12 Funding: Special Education, SB 500 (2013) Task Force on K-12 Funding (March 31, 2014) <http://www.leg.state.nv.us/interim/77th2013/Committee/Studies/K12Funding/Other/31-March-2014/NDESpecialEducationFunding.pdf>

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Nevada Legislative Counsel Bureau, Fiscal Division. Table 1: General Fund Revenue for 2015-2017 Biennium: Economic Forum Forecast versus Governor Recommends Estimate. (February 1, 2015).

<https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument/8940/General%20Fund%20Revenue%20Comparison%20-%20EF%20Forecast%20vs%20Gov%20Rec.pdf>

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Nevada Department of Taxation, 2013-2014 Net Proceeds of Minerals Bulletin

[http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net\\_Proceeds\\_of\\_Minerals/](http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net_Proceeds_of_Minerals/) and Nevada Department of Taxation: Local Government Finance: Property Taxes for Nevada Local Governments Fiscal Year 2013-2014.

<http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Redbook/>

<sup>16</sup> Nevada Legislative Counsel Bureau, Fiscal Division. Table 1: General Fund Revenue for 2015-2017 Biennium: Economic Forum Forecast versus Governor Recommends Estimate. (February 1, 2015).

<https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument/8940/General%20Fund%20Revenue%20Comparison%20-%20EF%20Forecast%20vs%20Gov%20Rec.pdf>

<sup>17</sup> Augenblick, Palaich and Associates, Inc. Estimating the Cost of an Adequate Education in Nevada (August, 2006)

<http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2007/Bulletin07-07.pdf>, American Institutes for Research.

Study of a New Method for Funding Public Schools in Nevada (September, 2012)

<http://www.leg.state.nv.us/Interim/77th2013/Committee/Studies/K12Funding/Other/NVFundingStudyReportFINAL92812.pdf>, and

Baker, B., Sciarra, D. & Farrie, D. Education Law Center. Is School Funding Fair? A National Report Card (January 2014):

[http://www.edlawcenter.org/assets/files/pdfs/publications/National\\_Report\\_Card\\_2014.pdf](http://www.edlawcenter.org/assets/files/pdfs/publications/National_Report_Card_2014.pdf), and Augenblick, Palaich and Associates

Inc. 2015 Professional Judgment Study in Nevada. <http://www.unlv.edu/lincyinstitute/events>

<sup>18</sup> Augenblick, Palaich and Associates Inc. 2015 Professional Judgment Study in Nevada. <http://www.unlv.edu/lincyinstitute/events>

<sup>19</sup> American Institutes of Research. Study of a New Method for Funding Public Schools in Nevada (September, 2012)

<http://www.leg.state.nv.us/Interim/77th2013/Committee/Studies/K12Funding/Other/NVFundingStudyReportFINAL92812.pdf>

<sup>20</sup> Legislative Counsel Bureau. Task Force on Public Education Funding. Bulletin 15-5 (January 2015)

<https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2015/Bulletin15-05.pdf>

<sup>21</sup> Augenblick, Palaich and Associates Inc. 2015 Professional Judgment Study in Nevada.

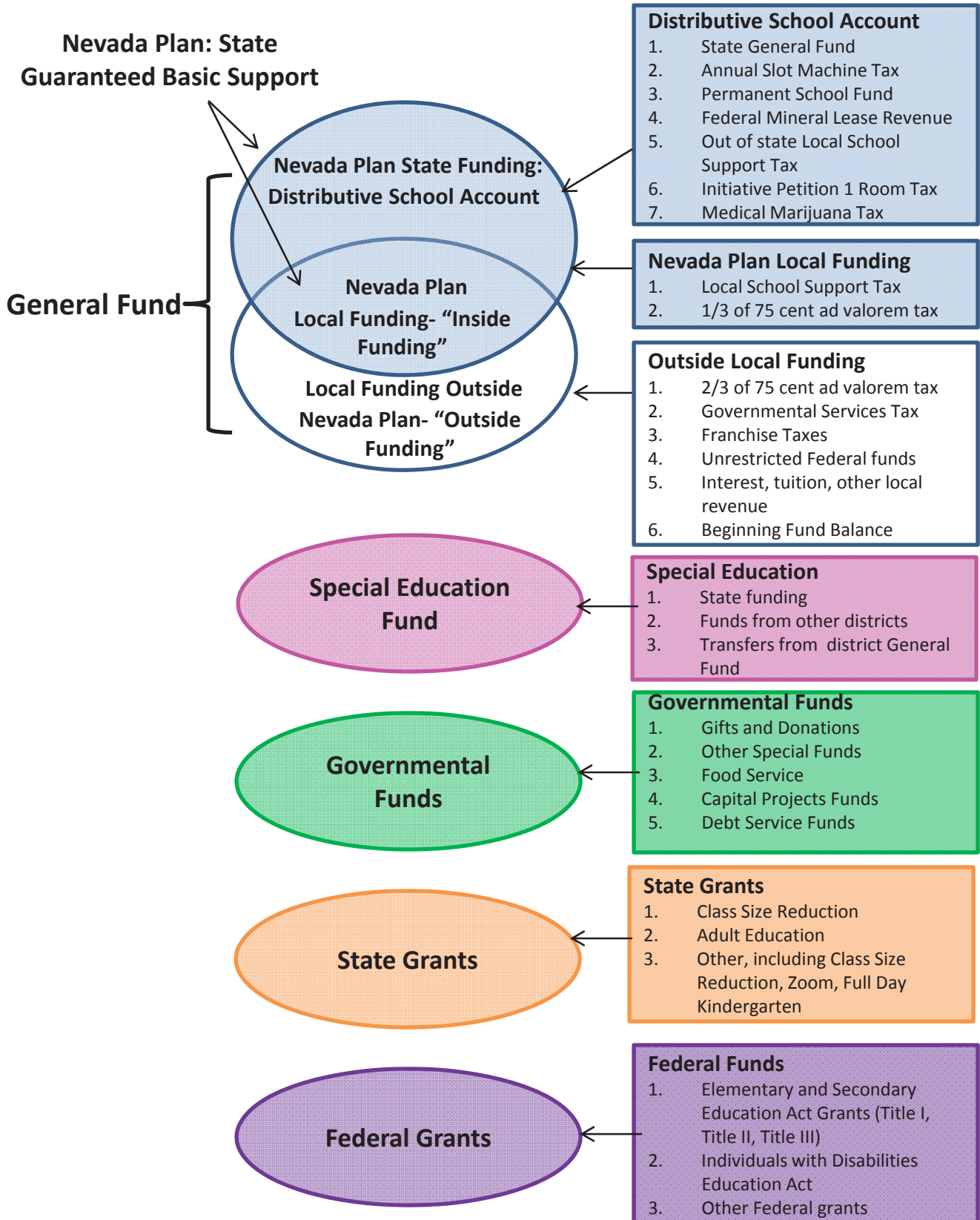
[http://www.unlv.edu/sites/default/files/page\\_files/27/Lincy-ProfessionalJudgmentStudySummary.pdf](http://www.unlv.edu/sites/default/files/page_files/27/Lincy-ProfessionalJudgmentStudySummary.pdf)

<sup>22</sup> California Department of Education. Local Control Funding Formula. <http://www.cde.ca.gov/fg/aa/lc/>

# EXHIBIT 4

## Appendix A

### Funding of K-12 Public Schools in Nevada



**UNSOLICITED  
EXECUTIVE AGENCY  
FISCAL NOTE**

AGENCY'S ESTIMATES

Date Prepared: May 25, 2015

Agency Submitting: Nevada Department of Education

<b>Items of Revenue or Expense, or Both</b>	<b>Fiscal Year 2014-15</b>	<b>Fiscal Year 2015-16</b>	<b>Fiscal Year 2016-17</b>	<b>Effect on Future Biennia</b>
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

Senate Bill 302, as amended, creates a voucher system in which an entity that educates a child may receive a grant of State and local per pupil funding in an amount equal to 90 percent, or 100 percent if the child has special needs or a household income less than 185 percent of the federally designated level signifying poverty. The Department is unable to quantify the fiscal impact of this measure. However, the Department believes there will be a fiscal impact to the State due to the redistribution of State and local funding from school districts to other entities, not representative of the school districts, as follows: 1) For the first time, the homeschool population will have access to State and local per pupil funding; and 2) It is anticipated that the redistribution of funding may negatively impact school district enrollment, which will increase the need for hold harmless funding.

Name Mindy MartiniTitle Deputy, Business & Support

# EXHIBIT 6

Senate Bill No. 508—Committee on Finance

## CHAPTER.....

AN ACT relating to education; revising provisions governing the Nevada Plan; removing the provisions requiring a single annual count of pupils enrolled in public schools and requiring school districts to make quarterly reports of average daily enrollment; prospectively removing the provision of funding through the use of special education program units and including a multiplier to the basic support guarantee for pupils with disabilities; revising provisions governing the inclusion of pupils enrolled in kindergarten; revising provisions governing the hold harmless provisions for school districts and charter schools; creating the Contingency Account for Special Education; revising provisions governing certain persons with disabilities; requiring the Department of Education to develop a plan for implementing a multiplier to the basic support guarantee for certain categories of pupils; and providing other matters properly relating thereto.

### **Legislative Counsel's Digest:**

Existing law establishes the Nevada Plan and declares that “the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity.” (NRS 387.121) To accomplish this objective, the Legislature establishes, during each legislative session and for each school year of the biennium, an estimated statewide average basic support guarantee per pupil for each school district and the basic support guarantee for each special education program unit. (NRS 387.122, 387.1221) The basic support guarantee for each school district is computed by multiplying the basic support guarantee per pupil that is established by law for the school district for each school year by pupil enrollment and adding funding for special education program units. (NRS 387.1221-387.1233; *see, e.g.*, chapter 382, Statutes of Nevada 2013, p. 2053) The calculation of basic support is based upon the count of pupils enrolled in public schools of the school district on the last day of the first school month of the school district, commonly referred to as “the count day.” Under existing law, pupils enrolled in kindergarten are counted as six-tenths the count of pupils who are enrolled in grades 1 to 12, inclusive. (NRS 387.1233)

**Section 4** of this bill expresses the intent of the Legislature, commencing with Fiscal Year 2016-2017, to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of certain categories of pupils, including, without limitation, pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. (NRS 387.121) **Section 9** of this bill removes “the count day” and instead requires the school districts to report to the Department of Education “average daily enrollment,” which is defined in **section 5** of this bill, on a quarterly basis. (NRS 387.1211) **Section 9** also requires the Department to prescribe a process to reconcile the quarterly reports of average daily enrollment to account for pupils who leave the school district or a public school during the school year. **Section 11** of this bill removes, effective July 1, 2017, the requirement that pupils enrolled in kindergarten be counted as six-tenths and instead includes those pupils

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in the regular reporting of average daily enrollment with the pupils enrolled in grades 1 to 12, inclusive.

**Section 30** of this bill repeals, effective July 1, 2016, the provision of funding for special education through special education program units and instead **section 7** of this bill requires that the basic support guarantee per pupil for each school district include a multiplier for pupils with disabilities. (NRS 387.1221, 387.122) **Section 24** of this bill creates the Contingency Account for Special Education Services and requires the State Board of Education to adopt regulations for the application, approval and disbursement of money to reimburse the school districts and charter schools for extraordinary program expenses and related services for pupils with significant disabilities.

Under existing law, if the enrollment of pupils in a school district or a charter school that is located in the school district on the count day is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school for the immediately preceding school year, the largest number from the immediately preceding 2 school years must be used for apportionment purposes to the school district or charter school, commonly referred to as the "hold harmless provision." (NRS 387.1233) **Section 9** of this bill revises this hold harmless provision so that if the enrollment of pupils in a school district or charter school based upon the average daily enrollment during the quarter is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school during the same quarter of the immediately preceding school year, the enrollment of pupils during the quarter in the immediately preceding school year must be used for purposes of apportioning money to the school district or charter school. Also under existing law, there is a hold harmless provision if a school district or a charter school has an enrollment of pupils on count day that is more than 95 percent of the enrollment of pupils in the same school district or charter school for the immediately preceding school year, the larger enrollment number from the current school year or the immediately preceding school year must be used for apportioning money to the school district or charter school. (NRS 387.1233) **Section 9** removes this hold harmless provision.

**Section 28** of this bill requires the Department of Education to develop a plan as soon as practicable to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. The plan must include: (1) the amount of the multiplier for each such category of pupils; and (2) the date by which the plan should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022. **Section 28** further requires the Department to submit the plan to the Legislative Committee on Education for its review and consideration during the 2015-2016 interim and requires the Committee to submit a report on the plan on or before October 1, 2016, to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature. **Section 28** also requires the Superintendent of Public Instruction to submit a report on or before October 1, 2016, to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature that includes: (1) the per pupil expenditures associated with legislative appropriations for pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils; and (2) any recommendations for legislation to address the unique needs of those pupils. **Section 29** of this bill provides for the allocation of funding for pupils with disabilities for Fiscal Year 2016-2017.

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EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 386.513 is hereby amended to read as follows:

386.513 1. The State Public Charter School Authority is hereby deemed a local educational agency for the purpose of directing the proportionate share of any money available from federal and state categorical grant programs to charter schools which are sponsored by the State Public Charter School Authority or a college or university within the Nevada System of Higher Education that are eligible to receive such money. A charter school that receives money pursuant to such a grant program shall comply with any applicable reporting requirements to receive the grant.

2. ~~If the charter school is eligible to receive special education program units, the Department shall pay the special education program units directly to the charter school.~~

~~3.]~~ As used in this section, "local educational agency" has the meaning ascribed to it in 20 U.S.C. § 7801(26)(A).

**Sec. 2.** NRS 386.570 is hereby amended to read as follows:

386.570 1. Each pupil who is enrolled in a charter school, including, without limitation, a pupil who is enrolled in a program of special education in a charter school, must be included in the count of pupils in the school district for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory attendance pursuant to NRS 392.070. A charter school is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive. If a charter school receives special education program units directly from this State, the amount of money for special education that the school district pays to the charter school may be reduced proportionately by the amount of money the charter school received from this State for that purpose. The State Board shall prescribe a process which ensures that all charter schools, regardless of the sponsor, have information about all sources of funding for the public schools provided through the Department, including local funds pursuant to NRS 387.1235.

2. All money received by the charter school from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in

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this State. The governing body of a charter school may negotiate with the board of trustees of the school district and the State Board for additional money to pay for services which the governing body wishes to offer.

3. Upon completion of each school quarter, the Superintendent of Public Instruction shall pay to the sponsor of a charter school one-quarter of the yearly sponsorship fee for the administrative costs associated with sponsorship for that school quarter, which must be deducted from the quarterly apportionment to the charter school made pursuant to NRS 387.124. Except as otherwise provided in subsection 4, the yearly sponsorship fee for the sponsor of a charter school must be in an amount of money not to exceed 2 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124.

4. If the governing body of a charter school satisfies the requirements of this subsection, the governing body may submit a request to the sponsor of the charter school for approval of a sponsorship fee in an amount that is less than 2 percent but at least 1 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124. The sponsor of the charter school shall approve such a request if the sponsor of the charter school determines that the charter school satisfies the requirements of this subsection. If the sponsor of the charter school approves such a request, the sponsor shall provide notice of the decision to the governing body of the charter school and the Superintendent of Public Instruction. If the sponsor of the charter school denies such a request, the governing body of the charter school may appeal the decision of the sponsor to the Superintendent of Public Instruction. Upon appeal, the sponsor of the charter school and the governing body of the charter school are entitled to present evidence. The decision of the Superintendent of Public Instruction on the appeal is final and is not subject to judicial review. The governing body of a charter school may submit a request for a reduction of the sponsorship fee pursuant to this subsection if:

(a) The charter school satisfies the requirements of subsection 1 of NRS 386.5515; and

(b) There has been a decrease in the duties of the sponsor of the charter school that justifies a decrease in the sponsorship fee.

5. To determine the amount of money for distribution to a charter school in its first year of operation, the count of pupils who are enrolled in the charter school must initially be determined 30 days before the beginning of the school year of the school district,

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based on the number of pupils whose applications for enrollment have been approved by the charter school. The count of pupils who are enrolled in the charter school must be revised ~~[on the last day of the first school month of the school district in which the charter school is located for the school year,]~~ *each quarter* based on the ~~[actual number]~~ *average daily enrollment* of pupils ~~[who are enrolled]~~ in the charter school ~~[.] that is reported for that quarter pursuant to NRS 387.1233.~~ Pursuant to subsection 5 of NRS 387.124, the governing body of a charter school may request that the apportionments made to the charter school in its first year of operation be paid to the charter school 30 days before the apportionments are otherwise required to be made.

6. If a charter school ceases to operate as a charter school during a school year, the remaining apportionments that would have been made to the charter school pursuant to NRS 387.124 for that year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the charter school reside.

7. The governing body of a charter school may solicit and accept donations, money, grants, property, loans, personal services or other assistance for purposes relating to education from members of the general public, corporations or agencies. The governing body may comply with applicable federal laws and regulations governing the provision of federal grants for charter schools. The State Public Charter School Authority may assist a charter school that operates exclusively for the enrollment of pupils who receive special education in identifying sources of money that may be available from the Federal Government or this State for the provision of educational programs and services to such pupils.

**Sec. 3.** NRS 386.570 is hereby amended to read as follows:

386.570 1. Each pupil who is enrolled in a charter school, including, without limitation, a pupil who is enrolled in a program of special education in a charter school, must be included in the count of pupils in the school district for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory attendance pursuant to NRS 392.070. A charter school is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive. ~~[If a charter school receives special education program units directly from this State, the amount of money for special education that the school district pays to the charter school may be reduced proportionately by the amount of money the charter~~

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~~school received from this State for that purpose.]~~ The State Board shall prescribe a process which ensures that all charter schools, regardless of the sponsor, have information about all sources of funding for the public schools provided through the Department, including local funds pursuant to NRS 387.1235.

2. All money received by the charter school from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in this State. The governing body of a charter school may negotiate with the board of trustees of the school district and the State Board for additional money to pay for services which the governing body wishes to offer.

3. Upon completion of each school quarter, the Superintendent of Public Instruction shall pay to the sponsor of a charter school one-quarter of the yearly sponsorship fee for the administrative costs associated with sponsorship for that school quarter, which must be deducted from the quarterly apportionment to the charter school made pursuant to NRS 387.124. Except as otherwise provided in subsection 4, the yearly sponsorship fee for the sponsor of a charter school must be in an amount of money not to exceed 2 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124.

4. If the governing body of a charter school satisfies the requirements of this subsection, the governing body may submit a request to the sponsor of the charter school for approval of a sponsorship fee in an amount that is less than 2 percent but at least 1 percent of the total amount of money apportioned to the charter school during the school year pursuant to NRS 387.124. The sponsor of the charter school shall approve such a request if the sponsor of the charter school determines that the charter school satisfies the requirements of this subsection. If the sponsor of the charter school approves such a request, the sponsor shall provide notice of the decision to the governing body of the charter school and the Superintendent of Public Instruction. If the sponsor of the charter school denies such a request, the governing body of the charter school may appeal the decision of the sponsor to the Superintendent of Public Instruction. Upon appeal, the sponsor of the charter school and the governing body of the charter school are entitled to present evidence. The decision of the Superintendent of Public Instruction on the appeal is final and is not subject to judicial review. The governing body of a charter school may submit a request for a reduction of the sponsorship fee pursuant to this subsection if:

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(a) The charter school satisfies the requirements of subsection 1 of NRS 386.5515; and

(b) There has been a decrease in the duties of the sponsor of the charter school that justifies a decrease in the sponsorship fee.

5. To determine the amount of money for distribution to a charter school in its first year of operation, the count of pupils who are enrolled in the charter school must initially be determined 30 days before the beginning of the school year of the school district, based on the number of pupils whose applications for enrollment have been approved by the charter school. The count of pupils who are enrolled in the charter school must be revised each quarter based on the average daily enrollment of pupils in the charter school that is reported pursuant to NRS 387.1233. Pursuant to subsection 5 of NRS 387.124, the governing body of a charter school may request that the apportionments made to the charter school in its first year of operation be paid to the charter school 30 days before the apportionments are otherwise required to be made.

6. If a charter school ceases to operate as a charter school during a school year, the remaining apportionments that would have been made to the charter school pursuant to NRS 387.124 for that year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the charter school reside.

7. The governing body of a charter school may solicit and accept donations, money, grants, property, loans, personal services or other assistance for purposes relating to education from members of the general public, corporations or agencies. The governing body may comply with applicable federal laws and regulations governing the provision of federal grants for charter schools. The State Public Charter School Authority may assist a charter school that operates exclusively for the enrollment of pupils who receive special education in identifying sources of money that may be available from the Federal Government or this State for the provision of educational programs and services to such pupils.

**Sec. 4.** NRS 387.121 is hereby amended to read as follows:

387.121 **1.** The Legislature declares that the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity. Recognizing wide local variations in wealth and costs per pupil, this State should supplement local financial ability to whatever extent necessary in each school district to provide programs of instruction in both compulsory and elective subjects that offer full opportunity for every Nevada child to receive the benefit of the purposes for which public schools are maintained. Therefore, the quintessence of the

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State's financial obligation for such programs can be expressed in a formula partially on a per pupil basis and partially on a per program basis as: State financial aid to school districts equals the difference between school district basic support guarantee and local available funds produced by mandatory taxes minus all the local funds attributable to pupils who reside in the county but attend a charter school or a university school for profoundly gifted pupils. This formula is designated the Nevada Plan.

*2. It is the intent of the Legislature, commencing with Fiscal Year 2016-2017, to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of certain categories of pupils, including, without limitation, pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. As used in this subsection, "pupils who are at risk" means pupils who are eligible for free or reduced-price lunch pursuant to 42 U.S.C. §§ 1751 et seq., or an alternative measure prescribed by the State Board of Education.*

**Sec. 5.** NRS 387.1211 is hereby amended to read as follows:

387.1211 As used in NRS 387.121 to 387.126, inclusive:

1. "Average daily attendance" means the total number of pupils attending a particular school each day during a period of reporting divided by the number of days school is in session during that period.

2. *"Average daily enrollment" means the total number of pupils enrolled in and scheduled to attend a public school in a specific school district during a period of reporting divided by the number of days school is in session during that period.*

3. "Enrollment" means the count of pupils enrolled in and scheduled to attend programs of instruction of a school district, charter school or university school for profoundly gifted pupils at a specified time during the school year.

~~3.~~ 4. "Special education program unit" means an organized unit of special education and related services which includes full-time services of persons licensed by the Superintendent of Public Instruction or other appropriate licensing body, providing a program of instruction in accordance with minimum standards prescribed by the State Board.

**Sec. 6.** NRS 387.1211 is hereby amended to read as follows:

387.1211 As used in NRS 387.121 to 387.126, inclusive:

1. "Average daily attendance" means the total number of pupils attending a particular school each day during a period of reporting

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divided by the number of days school is in session during that period.

2. "Average daily enrollment" means the total number of pupils enrolled in and scheduled to attend a public school in a specific school district during a period of reporting divided by the number of days school is in session during that period.

3. "Enrollment" means the count of pupils enrolled in and scheduled to attend programs of instruction of a school district, charter school or university school for profoundly gifted pupils at a specified time during the school year.

~~4. "Special education program unit" means an organized unit of special education and related services which includes full time services of persons licensed by the Superintendent of Public Instruction or other appropriate licensing body, providing a program of instruction in accordance with minimum standards prescribed by the State Board.]~~

**Sec. 7.** NRS 387.122 is hereby amended to read as follows:

387.122 *1.* For making the apportionments of the State Distributive School Account in the State General Fund required by the provisions of this title, the basic support guarantee per pupil for each school district and the basic support guarantee for each special education program unit maintained and operated during at least 9 months of a school year are established by law for each school year. *The formula for calculating the basic support guarantee may be expressed as an estimated weighted average per pupil, based on the total expenditures for public education in the immediately preceding even-numbered fiscal year, plus any legislative appropriations for the immediately succeeding biennium, minus those local funds not guaranteed by the State pursuant to NRS 387.1235.*

*2. The estimated weighted average per pupil for the State must be calculated as a basic support guarantee for each school district through an equity allocation model that incorporates:*

- (a) Factors relating to wealth in the school district;*
- (b) Salary costs;*
- (c) Transportation; and*

*(d) Any other factor determined by the Superintendent of Public Instruction after consultation with the school districts and the State Public Charter School Authority.*

*3. Not later than July 1 of each even-numbered year, the Superintendent of Public Instruction shall review and, if necessary, revise the factors used for the equity allocation model adopted for the previous biennium and present the review and any*



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*revisions at a meeting of the Legislative Committee on Education for consideration and recommendations by the Committee. After the meeting, the Superintendent of Public Instruction shall consider any recommendations of the Legislative Committee on Education, determine whether to include those recommendations in the equity allocation model and adopt the model. The Superintendent of Public Instruction shall submit the equity allocation model to the:*

*(a) Governor for inclusion in the proposed executive budget.*

*(b) Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature.*

*4. The Department shall make available updated information regarding the equity allocation model on the Internet website maintained by the Department.*

**Sec. 8.** NRS 387.122 is hereby amended to read as follows:

387.122 1. For making the apportionments of the State Distributive School Account in the State General Fund required by the provisions of this title, the basic support guarantee per pupil for each school district ~~[and the basic support guarantee for each special education program unit maintained and operated during at least 9 months of a school year are]~~ *is* established by law for each school year. The formula for calculating the basic support guarantee may be expressed as an estimated weighted average per pupil, based on the total expenditures for public education in the immediately preceding *even-numbered* fiscal year, plus any legislative appropriations for the immediately succeeding biennium, minus those local funds not guaranteed by the State pursuant to NRS 387.1235.

2. The estimated weighted average per pupil for the State must be calculated as a basic support guarantee for each school district through an equity allocation model that incorporates:

(a) Factors relating to wealth in the school district;

(b) Salary costs;

(c) Transportation; and

(d) Any other factor determined by the Superintendent of Public Instruction after consultation with the school districts and the State Public Charter School Authority.

3. *The basic support guarantee per pupil must include a multiplier for pupils with disabilities. Except as otherwise provided in this subsection, the funding provided to each school district and charter school through the multiplier for pupils with disabilities is limited to the actual number of pupils with disabilities enrolled in the school district or charter school, not to exceed 13 percent of*

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*total pupil enrollment for the school district or charter school. If a school district or charter school has reported an enrollment of pupils with disabilities equal to more than 13 percent of total pupil enrollment, the school district or charter school must receive an amount of money necessary to satisfy the requirements for maintenance of effort under federal law.*

4. Not later than July 1 of each even-numbered year, the Superintendent of Public Instruction shall *review and, if necessary*, revise the *factors used for the* equity allocation model adopted for the previous biennium and present the *review and any revisions* at a meeting of the Legislative Committee on Education for consideration and recommendations by the Committee. After the meeting, the Superintendent of Public Instruction shall *consider any recommendations of the Legislative Committee on Education, determine whether to include those recommendations in the equity allocation model and* adopt the *model*. *The Superintendent of Public Instruction shall submit the equity allocation model* to the :

(a) Governor for inclusion in the proposed executive budget.

(b) *Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature.*

5. The Department shall make available updated information regarding the *equity allocation model* on the Internet website maintained by the Department.

**Sec. 9.** NRS 387.1233 is hereby amended to read as follows:

387.1233 1. *On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.*

2. Except as otherwise provided in subsection ~~[2,]~~ 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department ~~[on the last day of the first school month of the school district for the school year,]~~, *based on the average daily enrollment of those pupils during the quarter*, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school . ~~[on the last day of the first school month of the school district for the school year.]~~

(2) The count of pupils enrolled in grades 1 to 12, inclusive, ~~[on the last day of the first school month of the school district for the school year,]~~, *based on the average daily enrollment of those*

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*pupils during the quarter*, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school ~~{on the last day of the first school month of the school district for the school year}~~ and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(3) The count of pupils not included under subparagraph (1) or (2) who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district ~~{on the last day of the first school month of the school district for the school year}~~, *based on the average daily enrollment of those pupils during the quarter*.

(4) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school ~~{on the last day of the first school month of the school district for the school year}~~, *based on the average daily enrollment of those pupils during the quarter and* expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school ~~{on the last day of the first school month of the school district for the school year}~~, *based on the average daily enrollment of those pupils during the quarter and* expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(5) The count of pupils not included under subparagraph (1), (2), (3) or (4), who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, ~~{on the last day of the first school month of the school district for the school year}~~ *based on the average daily enrollment of those pupils during the quarter and* excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475. ~~{on that day}~~

(6) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475 ~~{on the last day of the first school~~

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~~month of the school district for the school year.] , based on the average daily enrollment of those pupils during the quarter.~~

(7) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570 ~~[on the last day of the first school month of the school district for the school year.] , based on the average daily enrollment of those pupils during the quarter.~~

(8) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070, *based on the average daily enrollment of pupils during the quarter and* expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(b) Multiplying the number of special education program units maintained and operated by the amount per program established for that school year.

(c) Adding the amounts computed in paragraphs (a) and (b).

~~[2.]~~ 3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the ~~[largest number from among the]~~ immediately preceding ~~[2]~~ school ~~[years]~~ year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

~~[3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is more than 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the larger enrollment number from the current year or the immediately preceding school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.]~~

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4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2, ~~for 3,~~ including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. *The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.*

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

~~6.7~~ 7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

~~7.8~~ 8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

**Sec. 10.** NRS 387.1233 is hereby amended to read as follows:

387.1233 1. On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.

2. Except as otherwise provided in subsection 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school.

(2) The count of pupils enrolled in grades 1 to 12, inclusive, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school and the count of

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pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(3) The count of pupils not included under subparagraph (1) or (2) who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district, based on the average daily enrollment of those pupils during the quarter.

(4) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(5) The count of pupils not included under subparagraph (1), (2), (3) or (4), who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, based on the average daily enrollment of those pupils during the quarter and excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475.

(6) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475, based on the average daily enrollment of those pupils during the quarter.

(7) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570, based on the average daily enrollment of those pupils during the quarter.

(8) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070,

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based on the average daily enrollment of pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(b) ~~Multiplied the number of special education program units maintained and operated by the amount per program established for that school year.~~

~~(c)~~ Adding the amounts computed in ~~paragraphs~~ *paragraph* (a). ~~and (b).~~

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district ~~on the last day of the first school month of the school district for~~ *based on the average daily enrollment of pupils during the quarter of* the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school ~~on~~ *based on the average daily enrollment of pupils during* the ~~last day of the first school month of the school district for~~ *same quarter of* the immediately preceding school year, the *enrollment of pupils during the same quarter of the* immediately preceding school year must be used for purposes of ~~apportioning money~~ *making the quarterly apportionments* from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The

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average daily attendance for such pupils must be reported to the Department of Education.

8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

**Sec. 11.** NRS 387.1233 is hereby amended to read as follows:

387.1233 1. On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.

2. Except as otherwise provided in subsection 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) ~~[(Six tenths the count of pupils enrolled in the kindergarten department, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school.~~

~~—(2)]~~ (2) The count of pupils enrolled in *kindergarten and* grades 1 to 12, inclusive, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

~~[(3)]~~ (2) The count of pupils not included under subparagraph (1) ~~[(or (2))]~~ who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district, based on the average daily enrollment of those pupils during the quarter.

~~[(4)]~~ (3) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[(2)]~~ (1).

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(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school, based on the average daily enrollment of those pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[(2)]~~ (1).

~~[(5)]~~ (4) The count of pupils not included under subparagraph (1), (2) ~~[(1)]~~ or (3), ~~[(or (4))]~~ who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, based on the average daily enrollment of those pupils during the quarter and excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475.

~~[(6)]~~ (5) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475, based on the average daily enrollment of those pupils during the quarter.

~~[(7)]~~ (6) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570, based on the average daily enrollment of those pupils during the quarter.

~~[(8)]~~ (7) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070, based on the average daily enrollment of pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~[(2)]~~ (1).

(b) Adding the amounts computed in paragraph (a).

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district based on the average daily enrollment of pupils during the quarter of the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school based on the average daily enrollment of pupils during the same quarter of the immediately preceding school year, the enrollment of pupils during the same quarter of the immediately preceding school year must be used for purposes of making the quarterly apportionments from the State

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Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

**Sec. 12.** NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of

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distance education provided by another school district or a charter school and all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county. No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in subsection 3 and NRS 387.1244, the apportionment to a charter school, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides minus the sponsorship fee prescribed by NRS 386.570 and minus all the funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school. If the apportionment per pupil to a charter school is more than the amount to be apportioned to the school district in which a pupil who is enrolled in the charter school resides, the school district in which the pupil resides shall pay the difference directly to the charter school.

3. Except as otherwise provided in NRS 387.1244, the apportionment to a charter school that is sponsored by the State Public Charter School Authority or by a college or university within the Nevada System of Higher Education, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides, minus the sponsorship fee prescribed by NRS 386.570 and minus all funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school.

4. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, an apportionment must be made to a school district or charter school that provides a program of distance education for each pupil who is enrolled part-time in the program. The amount of the apportionment must be equal to the percentage of the total time services are provided to the pupil through the program of distance education per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2) of paragraph (a) of subsection ~~4~~ 2 of NRS 387.1233 for the school district in which the pupil resides.

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5. The governing body of a charter school may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the charter school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A charter school may receive all four apportionments in advance in its first year of operation.

6. Except as otherwise provided in NRS 387.1244, the apportionment to a university school for profoundly gifted pupils, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the university school is located plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the university school is located. If the apportionment per pupil to a university school for profoundly gifted pupils is more than the amount to be apportioned to the school district in which the university school is located, the school district shall pay the difference directly to the university school. The governing body of a university school for profoundly gifted pupils may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the university school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A university school for profoundly gifted pupils may receive all four apportionments in advance in its first year of operation.

7. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district's reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

8. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to

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the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

**Sec. 13.** NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of distance education provided by another school district or a charter school and all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county. No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in subsection 3 and NRS 387.1244, the apportionment to a charter school, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides minus the sponsorship fee prescribed by NRS 386.570 and minus all the funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school. If the apportionment per pupil to a charter school is more than the amount to be apportioned to the school district in which a pupil who is enrolled in the charter school resides, the school district in which the pupil resides shall pay the difference directly to the charter school.

3. Except as otherwise provided in NRS 387.1244, the apportionment to a charter school that is sponsored by the State Public Charter School Authority or by a college or university within the Nevada System of Higher Education, computed on a yearly

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basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides, minus the sponsorship fee prescribed by NRS 386.570 and minus all funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school.

4. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, an apportionment must be made to a school district or charter school that provides a program of distance education for each pupil who is enrolled part-time in the program. The amount of the apportionment must be equal to the percentage of the total time services are provided to the pupil through the program of distance education per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph ~~(2)~~ (1) of paragraph (a) of subsection 2 of NRS 387.1233 for the school district in which the pupil resides.

5. The governing body of a charter school may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the charter school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A charter school may receive all four apportionments in advance in its first year of operation.

6. Except as otherwise provided in NRS 387.1244, the apportionment to a university school for profoundly gifted pupils, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the university school is located plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the university school is located. If the apportionment per pupil to a university school for profoundly gifted pupils is more than the amount to be apportioned to the school district in which the university school is located, the school district shall pay the difference directly to the university school. The governing body of a university school for profoundly gifted pupils may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the university school, an apportionment 30 days before the apportionment is

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required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A university school for profoundly gifted pupils may receive all four apportionments in advance in its first year of operation.

7. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the “Nutrition State Match” pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district’s reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

8. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

**Sec. 14.** NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils and special education program units and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to

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NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

↪ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph (8) of paragraph (a) of subsection ~~1~~ 2 of NRS 387.1233 who completed at least one semester during the immediately preceding school year. ~~The count of pupils submitted to the Department must be included in the final adjustment computed pursuant to subsection 4.~~

~~4. A final adjustment for each school district, charter school and university school for profoundly gifted pupils must be computed as soon as practicable following the close of the school year, but not later than August 25. The final computation must be based upon the actual counts of pupils required to be made for the computation of basic support and the limits upon the support of special education programs, except that for any year when the total enrollment of pupils and children in a school district, a charter school located within the school district or a university school for profoundly gifted pupils located within the school district described in paragraphs (a), (b), (c) and (e) of subsection 1 of NRS 387.123 is greater on the last day of any school month of the school district after the second school month of the school district and the increase in enrollment shows at least:~~

~~(a) A 3 percent gain, basic support as computed from first-month enrollment for the school district, charter school or university school for profoundly gifted pupils must be increased by 2 percent.~~

~~(b) A 6 percent gain, basic support as computed from first-month enrollment for the school district, charter school or university school for profoundly gifted pupils must be increased by an additional 2 percent.~~

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~~5.]~~ 4. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

**Sec. 15.** NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils ~~{and special education program units}~~ and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

↪ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State

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General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph (8) of paragraph (a) of subsection 2 of NRS 387.1233 who completed at least one semester during the immediately preceding school year.

4. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

**Sec. 16.** NRS 387.1243 is hereby amended to read as follows:

387.1243 1. The first apportionment based on an estimated number of pupils and succeeding apportionments are subject to adjustment from time to time as the need therefor may appear, including, without limitation, an adjustment made for a pupil who is not properly enrolled in or attending a public school, as determined through an independent audit or other examination conducted pursuant to NRS 387.126 or through an annual audit of the count of pupils conducted pursuant to subsection 1 of NRS 387.304.

2. The apportionments to a school district may be adjusted during a fiscal year by the Department of Education, upon approval by the State Board of Examiners and the Interim Finance Committee, if the Department of Taxation and the county assessor in the county in which the school district is located certify to the Department of Education that the school district will not receive the tax levied pursuant to subsection 1 of NRS 387.195 on property of the Federal Government located within the county if:

(a) The leasehold interest, possessory interest, beneficial interest or beneficial use of the property is subject to taxation pursuant to

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NRS 361.157 and 361.159 and one or more lessees or users of the property are delinquent in paying the tax; and

(b) The total amount of tax owed but not paid for the fiscal year by any such lessees and users is at least 5 percent of the proceeds that the school district would have received from the tax levied pursuant to subsection 1 of NRS 387.195.

↪ If a lessee or user pays the tax owed after the school district's apportionment has been increased in accordance with the provisions of this subsection to compensate for the tax owed, the school district shall repay to the State Distributive School Account in the State General Fund an amount equal to the tax received from the lessee or user for the year in which the school district received an increased apportionment, not to exceed the increase in apportionments made to the school district pursuant to this subsection.

3. On or before August 1 of each year, the board of trustees of a school district shall provide to the Department, in a format prescribed by the Department, the count of pupils calculated pursuant to subparagraph ~~(8)~~ (7) of paragraph (a) of subsection 2 of NRS 387.1233 who completed at least one semester during the immediately preceding school year.

4. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils exceeds the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the additional amount due must be paid before September 1. If the final computation of apportionment for any school district, charter school or university school for profoundly gifted pupils is less than the actual amount paid to the school district, charter school or university school for profoundly gifted pupils during the school year, the difference must be repaid to the State Distributive School Account in the State General Fund by the school district, charter school or university school for profoundly gifted pupils before September 25.

**Sec. 16.5.** NRS 387.1244 is hereby amended to read as follows:

387.1244 1. The Superintendent of Public Instruction may deduct from an apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils pursuant to NRS 387.124 if the school district, charter school or university school:

(a) Fails to repay an amount due pursuant to subsection ~~(5)~~ 4 of NRS 387.1243. The amount of the deduction from the quarterly apportionment must correspond to the amount due.

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(b) Fails to repay an amount due the Department as a result of a determination that an expenditure was made which violates the terms of a grant administered by the Department. The amount of the deduction from the quarterly apportionment must correspond to the amount due.

(c) Pays a claim determined to be unearned, illegal or unreasonably excessive as a result of an investigation conducted pursuant to NRS 387.3037. The amount of the deduction from the quarterly apportionment must correspond to the amount of the claim which is determined to be unearned, illegal or unreasonably excessive.

↪ More than one deduction from a quarterly apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils may be made pursuant to this subsection if grounds exist for each such deduction.

2. The Superintendent of Public Instruction may authorize the withholding of the entire amount of an apportionment otherwise payable to a school district, charter school or university school for profoundly gifted pupils pursuant to NRS 387.124, or a portion thereof, if the school district, charter school or university school for profoundly gifted pupils fails to submit a report or other information that is required to be submitted to the Superintendent, State Board or Department pursuant to a statute. If a charter school fails to submit a report or other information that is required to be submitted to the Superintendent, State Board or Department through the sponsor of the charter school pursuant to a statute, the Superintendent may only authorize the withholding of the apportionment otherwise payable to the charter school and may not authorize the withholding of the apportionment otherwise payable to the sponsor of the charter school. Before authorizing a withholding pursuant to this subsection, the Superintendent of Public Instruction shall provide notice to the school district, charter school or university school for profoundly gifted pupils of the report or other information that is due and provide the school district, charter school or university school with an opportunity to comply with the statute. Any amount withheld pursuant to this subsection must be accounted for separately in the State Distributive School Account, does not revert to the State General Fund at the end of a fiscal year and must be carried forward to the next fiscal year.

3. If, after an amount is withheld pursuant to subsection 2, the school district, charter school or university school for profoundly gifted pupils subsequently submits the report or other information required by a statute for which the withholding was made, the

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Superintendent of Public Instruction shall immediately authorize the payment of the amount withheld to the school district, charter school or university school for profoundly gifted pupils.

4. A school district, charter school or university school for profoundly gifted pupils may appeal to the State Board a decision of the Superintendent of Public Instruction to deduct or withhold from a quarterly apportionment pursuant to this section. The Secretary of the State Board shall place the subject of the appeal on the agenda of the next meeting for consideration by the State Board.

**Sec. 17.** NRS 387.191 is hereby amended to read as follows:

387.191 1. Except as otherwise provided in this subsection, the proceeds of the tax imposed pursuant to NRS 244.33561 and any applicable penalty or interest must be paid by the county treasurer to the State Treasurer for credit to the State Supplemental School Support Account, which is hereby created in the State General Fund. The county treasurer may retain from the proceeds an amount sufficient to reimburse the county for the actual cost of collecting and administering the tax, to the extent that the county incurs any cost it would not have incurred but for the enactment of this section or NRS 244.33561, but in no case exceeding the amount authorized by statute for this purpose. Any interest or other income earned on the money in the State Supplemental School Support Account must be credited to the Account.

2. On and after July 1, 2015, the money in the State Supplemental School Support Account is hereby appropriated for the operation of the school districts and charter schools of the state, as provided in this section. The money so appropriated is intended to supplement and not replace any other money appropriated, approved or authorized for expenditure to fund the operation of the public schools for kindergarten through grade 12. Any money that remains in the State Supplemental School Support Account at the end of the fiscal year does not revert to the State General Fund, and the balance in the State Supplemental School Support Account must be carried forward to the next fiscal year.

3. On or before February 1, May 1, August 1 and November 1 of 2016, and on those dates each year thereafter, the Superintendent of Public Instruction shall transfer from the State Supplemental School Support Account all the proceeds of the tax imposed pursuant to NRS 244.33561, including any interest or other income earned thereon, and distribute the proceeds proportionally among the school districts and charter schools of the state. The proportionate amount of money distributed to each school district or charter school must be determined by dividing the number of

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students enrolled in the school district or charter school by the number of students enrolled in all the school districts and charter schools of the state. For the purposes of this subsection, the enrollment in each school district and the number of students who reside in the district and are enrolled in a charter school must be determined as of ~~the last day of the first school month~~ *each quarter* of the ~~school district for the~~ school year. This determination governs the distribution of money pursuant to this subsection until the next ~~annual~~ *quarterly* determination of enrollment is made. The Superintendent may retain from the proceeds of the tax an amount sufficient to reimburse the Superintendent for the actual cost of administering the provisions of this section, to the extent that the Superintendent incurs any cost the Superintendent would not have incurred but for the enactment of this section, but in no case exceeding the amount authorized by statute for this purpose.

4. The money received by a school district or charter school from the State Supplemental School Support Account pursuant to this section must be used to improve the achievement of students and for the payment of salaries to attract and retain qualified teachers and other employees, except administrative employees, of the school district or charter school. Nothing contained in this section shall be deemed to impair or restrict the right of employees of the school district or charter school to engage in collective bargaining as provided by chapter 288 of NRS.

5. On or before November 10 of 2016, and on that date each year thereafter, the board of trustees of each school district and the governing body of each charter school shall prepare a report to the Superintendent of Public Instruction, in the form prescribed by the Superintendent. The report must provide an accounting of the expenditures by the school district or charter school of the money it received from the State Supplemental School Support Account during the preceding fiscal year.

6. As used in this section, "administrative employee" means any person who holds a license as an administrator, issued by the Superintendent of Public Instruction, and is employed in that capacity by a school district or charter school.

**Sec. 18.** NRS 387.303 is hereby amended to read as follows:

387.303 1. Not later than November 1 of each year, the board of trustees of each school district shall submit to the Superintendent of Public Instruction and the Department of Taxation a report which includes the following information:

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(a) For each fund within the school district, including, without limitation, the school district's general fund and any special revenue fund which receives state money, the total number and salaries of licensed and nonlicensed persons whose salaries are paid from the fund and who are employed by the school district in full-time positions or in part-time positions added together to represent full-time positions. Information must be provided for the current school year based upon the school district's final budget, including any amendments and augmentations thereto, and for the preceding school year. An employee must be categorized as filling an instructional, administrative, instructional support or other position.

(b) The school district's actual expenditures in the fiscal year immediately preceding the report.

(c) The school district's proposed expenditures for the current fiscal year.

(d) The schedule of salaries for licensed employees in the current school year and a statement of whether the negotiations regarding salaries for the current school year have been completed. If the negotiations have not been completed at the time the schedule of salaries is submitted, the board of trustees shall submit a supplemental report to the Superintendent of Public Instruction upon completion of negotiations or the determination of an arbitrator concerning the negotiations that includes the schedule of salaries agreed to or required by the arbitrator.

(e) The number of employees who received an increase in salary pursuant to subsection 2, 3 or 4 of NRS 391.160 for the current and preceding fiscal years. If the board of trustees is required to pay an increase in salary retroactively pursuant to subsection 2 of NRS 391.160, the board of trustees shall submit a supplemental report to the Superintendent of Public Instruction not later than February 15 of the year in which the retroactive payment was made that includes the number of teachers to whom an increase in salary was paid retroactively.

(f) The number of employees eligible for health insurance within the school district for the current and preceding fiscal years and the amount paid for health insurance for each such employee during those years.

(g) The rates for fringe benefits, excluding health insurance, paid by the school district for its licensed employees in the preceding and current fiscal years.

(h) The amount paid for extra duties, supervision of extracurricular activities and supplemental pay and the number of

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employees receiving that pay in the preceding and current fiscal years.

(i) The expenditures from the account created pursuant to subsection 4 of NRS 179.1187. The report must indicate the total amount received by the district in the preceding fiscal year and the specific amount spent on books and computer hardware and software for each grade level in the district.

2. On or before November 25 of each year, the Superintendent of Public Instruction shall submit to the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau, in a format approved by the Director of the Department of Administration, a compilation of the reports made by each school district pursuant to subsection 1.

3. In preparing the agency biennial budget request for the State Distributive School Account for submission to the Department of Administration, the Superintendent of Public Instruction:

(a) Shall compile the information from the most recent compilation of reports submitted pursuant to subsection 2;

(b) May increase the line items of expenditures or revenues based on merit salary increases and cost of living adjustments or inflation, as deemed credible and reliable based upon published indexes and research relevant to the specific line item of expenditure or revenue;

(c) May adjust expenditures and revenues pursuant to paragraph (b) for any year remaining before the biennium for which the budget is being prepared and for the 2 years of the biennium covered by the biennial budget request to project the cost of expenditures or the receipt of revenues for the specific line items; *and*

(d) May consider the cost of enhancements to existing programs or the projected cost of proposed new educational programs, regardless of whether those enhancements or new programs are included in the per pupil basic support guarantee for inclusion in the biennial budget request to the Department of Administration. ~~[-and~~

~~— (e) Shall obtain approval from the State Board for any inflationary increase, enhancement to an existing program or addition of a new program included in the agency biennial budget request.]~~

4. The Superintendent of Public Instruction shall, in the compilation required by subsection 2, reconcile the revenues of the school districts with the apportionment received by those districts from the State Distributive School Account for the preceding year.

5. The request prepared pursuant to subsection 3 must:

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(a) Be presented by the Superintendent of Public Instruction to such standing committees of the Legislature as requested by the standing committees for the purposes of developing educational programs and providing appropriations for those programs; and

(b) Provide for a direct comparison of appropriations to the proposed budget of the Governor submitted pursuant to subsection 4 of NRS 353.230.

**Sec. 19.** NRS 387.304 is hereby amended to read as follows:

387.304 The Department shall:

1. Conduct an annual audit of the count of pupils for apportionment purposes reported *each quarter* by each school district pursuant to NRS 387.123 and the data reported by each school district pursuant to NRS 388.710 that is used to measure the effectiveness of the implementation of a plan developed by each school district to reduce the pupil-teacher ratio as required by NRS 388.720.

2. Review each school district's report of the annual audit conducted by a public accountant as required by NRS 354.624, and the annual report prepared by each district as required by NRS 387.303, and report the findings of the review to the State Board and the Legislative Committee on Education, with any recommendations for legislation, revisions to regulations or training needed by school district employees. The report by the Department must identify school districts which failed to comply with any statutes or administrative regulations of this State or which had any:

(a) Long-term obligations in excess of the general obligation debt limit;

(b) Deficit fund balances or retained earnings in any fund;

(c) Deficit cash balances in any fund;

(d) Variances of more than 10 percent between total general fund revenues and budgeted general fund revenues; or

(e) Variances of more than 10 percent between total actual general fund expenditures and budgeted total general fund expenditures.

3. In preparing its biennial budgetary request for the State Distributive School Account, consult with the superintendent of schools of each school district or a person designated by the superintendent.

4. Provide, in consultation with the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau, training to the financial officers of school districts in matters relating to financial accountability.

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**Sec. 20.** NRS 388.450 is hereby amended to read as follows:

388.450 1. The Legislature declares that ~~the basic support guarantee for each special education program unit established by law~~ *funding provided* for each school year establishes financial resources sufficient to ensure a reasonably equal educational opportunity to pupils with disabilities *residing in Nevada through the use of the multiplier to the basic support guarantee prescribed by NRS 387.122* and to gifted and talented pupils residing in Nevada.

2. Subject to the provisions of NRS 388.440 to 388.520, inclusive, the board of trustees of each school district shall make such special provisions as may be necessary for the education of pupils with disabilities and gifted and talented pupils.

3. The board of trustees of a school district in a county whose population is less than 700,000 may provide early intervening services. Such services must be provided in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and the regulations adopted pursuant thereto.

4. The board of trustees of a school district shall establish uniform criteria governing eligibility for instruction under the special education programs provided for by NRS 388.440 to 388.520, inclusive. The criteria must prohibit the placement of a pupil in a program for pupils with disabilities solely because the pupil is a disciplinary problem in school. The criteria are subject to such standards as may be prescribed by the State Board.

**Sec. 21.** NRS 388.700 is hereby amended to read as follows:

388.700 1. Except as otherwise provided in this section, for each school quarter of a school year, the ratio in each school district of pupils per licensed teacher designated to teach, on a full-time basis, in classes where core curriculum is taught:

(a) In kindergarten and grades 1 and 2, must not exceed 16 to 1, and in grade 3, must not exceed 18 to 1; or

(b) If a plan is approved pursuant to subsection 3 of NRS 388.720, must not exceed the ratio set forth in that plan for the grade levels specified in the plan.

↪ In determining this ratio, all licensed educational personnel who teach a grade level specified in paragraph (a) or a grade level specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable for the school district, must be counted except teachers of art, music, physical education or special education, teachers who teach one or two specific subject areas to more than one classroom of pupils, and counselors, librarians, administrators, deans and specialists.

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2. A school district may, within the limits of any plan adopted pursuant to NRS 388.720, assign a pupil whose enrollment in a grade occurs after the ~~[last day of the first month]~~ *end of a quarter during* the school year to any existing class regardless of the number of pupils in the class if the school district requests and is approved for a variance from the State Board pursuant to subsection 4.

3. Each school district that includes one or more elementary schools which exceed the ratio of pupils per class during any quarter of a school year, as reported to the Department pursuant to NRS 388.725:

(a) Set forth in subsection 1;

(b) Prescribed in conjunction with a legislative appropriation for the support of the class-size reduction program; or

(c) Defined by a legislatively approved alternative class-size reduction plan, if applicable to that school district,

↪ must request a variance for each such school for the next quarter of the current school year if a quarter remains in that school year or for the next quarter of the succeeding school year, as applicable, from the State Board by providing a written statement that includes the reasons for the request and the justification for exceeding the applicable prescribed ratio of pupils per class.

4. The State Board may grant to a school district a variance from the limitation on the number of pupils per class set forth in paragraph (a), (b) or (c) of subsection 3 for good cause, including the lack of available financial support specifically set aside for the reduction of pupil-teacher ratios.

5. The State Board shall, on a quarterly basis, submit a report to the Interim Finance Committee on each variance requested by a school district pursuant to subsection 4 during the preceding quarter and, if a variance was granted, an identification of each elementary school for which a variance was granted and the specific justification for the variance.

6. The State Board shall, on or before February 1 of each odd-numbered year, submit a report to the Legislature on:

(a) Each variance requested by a school district pursuant to subsection 4 during the preceding biennium and, if a variance was granted, an identification of each elementary school for which variance was granted and the specific justification for the variance.

(b) The data reported to it by the various school districts pursuant to subsection 2 of NRS 388.710, including an explanation of that data, and the current pupil-teacher ratios per class in the grade levels specified in paragraph (a) of subsection 1 or the grade

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levels specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable for the school district.

7. The Department shall, on or before November 15 of each year, report to the Chief of the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau:

(a) The number of teachers employed;  
(b) The number of teachers employed in order to attain the ratio required by subsection 1;

(c) The number of pupils enrolled; and

(d) The number of teachers assigned to teach in the same classroom with another teacher or in any other arrangement other than one teacher assigned to one classroom of pupils,

↳ during the current school year in the grade levels specified in paragraph (a) of subsection 1 or the grade levels specified in a plan that is approved pursuant to subsection 3 of NRS 388.720, as applicable, for each school district.

8. The provisions of this section do not apply to a charter school or to a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive.

**Sec. 22.** NRS 392A.083 is hereby amended to read as follows:

392A.083 1. Each pupil who is enrolled in a university school for profoundly gifted pupils, including, without limitation, a pupil who is enrolled in a program of special education in a university school for profoundly gifted pupils, must be included in the count of pupils in the school district in which the school is located for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory school attendance pursuant to NRS 392.070.

2. A university school for profoundly gifted pupils is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive.

3. If a university school for profoundly gifted pupils receives money for special education program units directly from this State, the amount of money for special education that the school district pays to the university school for profoundly gifted pupils may be reduced proportionately by the amount of money the university school received from this State for that purpose.

4. All money received by a university school for profoundly gifted pupils from this State or from the board of trustees of a school

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district must be deposited in an account with a bank, credit union or other financial institution in this State.

5. The governing body of a university school for profoundly gifted pupils may negotiate with the board of trustees of the school district in which the school is located or the State Board for additional money to pay for services that the governing body wishes to offer.

6. To determine the amount of money for distribution to a university school for profoundly gifted pupils in its first year of operation in which state funding is provided, the count of pupils who are enrolled in the university school must initially be determined 30 days before the beginning of the school year of the school district in which the university school is located, based upon the number of pupils whose applications for enrollment have been approved by the university school. The count of pupils who are enrolled in a university school for profoundly gifted pupils must be revised ~~on the last day of the first school month of the school district in which the university school is located for the school year,~~ *each quarter* based upon the ~~actual number~~ *average daily enrollment* of pupils ~~who are enrolled~~ in the university school ~~reported for the preceding quarter pursuant to subsection 1 of NRS 387.1233.~~

7. Pursuant to subsection 6 of NRS 387.124, the governing body of a university school for profoundly gifted pupils may request that the apportionments made to the university school in its first year of operation be paid to the university school 30 days before the apportionments are otherwise required to be made.

8. If a university school for profoundly gifted pupils ceases to operate pursuant to this chapter during a school year, the remaining apportionments that would have been made to the university school pursuant to NRS 387.124 for that school year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the university school reside.

9. If the governing body of a university school for profoundly gifted pupils uses money received from this State to purchase real property, buildings, equipment or facilities, the governing body of the university school shall assign a security interest in the property, buildings, equipment and facilities to the State of Nevada.

**Sec. 23.** NRS 392A.083 is hereby amended to read as follows:

392A.083 1. Each pupil who is enrolled in a university school for profoundly gifted pupils, including, without limitation, a pupil who is enrolled in a program of special education in a university school for profoundly gifted pupils, must be included in

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the count of pupils in the school district in which the school is located for the purposes of apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, unless the pupil is exempt from compulsory school attendance pursuant to NRS 392.070.

2. A university school for profoundly gifted pupils is entitled to receive its proportionate share of any other money available from federal, state or local sources that the school or the pupils who are enrolled in the school are eligible to receive.

3. ~~If a university school for profoundly gifted pupils receives money for special education program units directly from this State, the amount of money for special education that the school district pays to the university school for profoundly gifted pupils may be reduced proportionately by the amount of money the university school received from this State for that purpose.~~

~~4.]~~ All money received by a university school for profoundly gifted pupils from this State or from the board of trustees of a school district must be deposited in an account with a bank, credit union or other financial institution in this State.

~~5.]~~ 4. The governing body of a university school for profoundly gifted pupils may negotiate with the board of trustees of the school district in which the school is located or the State Board for additional money to pay for services that the governing body wishes to offer.

~~6.]~~ 5. To determine the amount of money for distribution to a university school for profoundly gifted pupils in its first year of operation in which state funding is provided, the count of pupils who are enrolled in the university school must initially be determined 30 days before the beginning of the school year of the school district in which the university school is located, based upon the number of pupils whose applications for enrollment have been approved by the university school. The count of pupils who are enrolled in a university school for profoundly gifted pupils must be revised each quarter based upon the average daily enrollment of pupils in the university school reported for the preceding quarter pursuant to subsection 1 of NRS 387.1233.

~~7.]~~ 6. Pursuant to subsection 6 of NRS 387.124, the governing body of a university school for profoundly gifted pupils may request that the apportionments made to the university school in its first year of operation be paid to the university school 30 days before the apportionments are otherwise required to be made.

~~8.]~~ 7. If a university school for profoundly gifted pupils ceases to operate pursuant to this chapter during a school year, the

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remaining apportionments that would have been made to the university school pursuant to NRS 387.124 for that school year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the university school reside.

~~19.1~~ 8. If the governing body of a university school for profoundly gifted pupils uses money received from this State to purchase real property, buildings, equipment or facilities, the governing body of the university school shall assign a security interest in the property, buildings, equipment and facilities to the State of Nevada.

**Sec. 24.** Chapter 395 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The Contingency Account for Special Education Services is hereby created in the State General Fund to be administered by the Superintendent of Public Instruction. The Superintendent of Public Instruction may accept gifts and grants of money from any source for deposit in the Account. Any money from gifts and grants may be expended in accordance with the terms and conditions of the gift or grant, or in accordance with this section.*

*2. The interest and income earned on the sum of:*

*(a) The money in the Account; and*

*(b) Unexpended appropriations made to the Account from the State General Fund,*

*↪ must be credited to the Account. Any money remaining in the Account at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward to the next fiscal year.*

*3. The money in the Account may only be used for public schools and public education, as authorized by the Legislature.*

*4. The State Board shall adopt regulations for the application, approval and disbursement of money commencing with the 2016-2017 school year to reimburse school districts and charter schools for extraordinary program expenses and related services which:*

*(a) Are not ordinarily present in the typical special education service and delivery system at a public school;*

*(b) Are associated with the implementation of the individualized education program of a pupil with significant disabilities, as defined by the State Board, to provide an appropriate education in the least restrictive environment; and*

*(c) The costs of which exceed the total funding available to the school district or charter school for the pupil.*

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**Sec. 25.** NRS 395.070 is hereby amended to read as follows:

395.070 1. The Interagency Panel is hereby created. The Panel is responsible for making recommendations concerning the placement of persons with disabilities who are eligible to receive benefits pursuant to this chapter. The Panel consists of:

- (a) The Administrator of the Division of Child and Family Services of the Department of Health and Human Services;
- (b) The Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services;
- (c) The Director of the Department of Health and Human Services; and
- (d) The Superintendent of Public Instruction.

2. A member of the Panel may designate a person to represent him or her at any meeting of the Panel. The person designated may exercise all the duties, rights and privileges of the member he or she represents.

3. The Panel shall ~~do~~:

~~— (a) Every time a person with a disability is to be placed pursuant to subsection 2 of NRS 395.010 in a foster home or residential facility, meet to determine the needs of the person and the availability of homes or facilities under the authority of the Department of Health and Human Services after a joint evaluation of that person is completed by the Department of Education and the Department of Health and Human Services;~~

~~— (b) Determine the appropriate placement of the person, giving priority to homes or facilities under the authority of the Department of Health and Human Services over any home or facility located outside of this State; and~~

~~— (c) Make a recommendation concerning the placement of the person.]~~ *perform such duties as prescribed by the State Board.*

**Sec. 26.** NRS 354.598005 is hereby amended to read as follows:

354.598005 1. If anticipated resources actually available during a budget period exceed those estimated, a local government may augment a budget in the following manner:

- (a) If it is desired to augment the appropriations of a fund to which ad valorem taxes are allocated as a source of revenue, the governing body shall, by majority vote of all members of the governing body, adopt a resolution reciting the appropriations to be augmented, and the nature of the unanticipated resources intended to be used for the augmentation. Before the adoption of the resolution, the governing body shall publish notice of its intention to act thereon in a newspaper of general circulation in the county for at

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least one publication. No vote may be taken upon the resolution until 3 days after the publication of the notice.

(b) If it is desired to augment the budget of any fund other than a fund described in paragraph (a) or an enterprise or internal service fund, the governing body shall adopt, by majority vote of all members of the governing body, a resolution providing therefor at a regular meeting of the body.

2. A budget augmentation becomes effective upon delivery to the Department of Taxation of an executed copy of the resolution providing therefor.

3. Nothing in NRS 354.470 to 354.626, inclusive, precludes the amendment of a budget by increasing the total appropriation for any fiscal year to include a grant-in-aid, gift or bequest to a local unit of government which is required to be used for a specific purpose as a condition of the grant. Acceptance of such a grant and agreement to the terms imposed by the granting agency or person constitutes an appropriation to the purpose specified.

4. A local government need not file an augmented budget for an enterprise or internal service fund with the Department of Taxation but shall include the budget augmentation in the next quarterly report.

5. Budget appropriations may be transferred between functions, funds or contingency accounts in the following manner, if such a transfer does not increase the total appropriation for any fiscal year and is not in conflict with other statutory provisions:

(a) The person designated to administer the budget for a local government may transfer appropriations within any function.

(b) The person designated to administer the budget may transfer appropriations between functions or programs within a fund, if:

(1) The governing body is advised of the action at the next regular meeting; and

(2) The action is recorded in the official minutes of the meeting.

(c) Upon recommendation of the person designated to administer the budget, the governing body may authorize the transfer of appropriations between funds or from the contingency account, if:

(1) The governing body announces the transfer of appropriations at a regularly scheduled meeting and sets forth the exact amounts to be transferred and the accounts, functions, programs and funds affected;

(2) The governing body sets forth its reasons for the transfer; and

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(3) The action is recorded in the official minutes of the meeting.

6. In any year in which the Legislature by law increases or decreases the revenues of a local government, and that increase or decrease was not included or anticipated in the local government's final budget as adopted pursuant to NRS 354.598, the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation increasing or decreasing its anticipated revenues and expenditures from that contained in its final budget to the extent of the actual increase or decrease of revenues resulting from the legislative action.

7. In any year in which the Legislature enacts a law requiring an increase or decrease in expenditures of a local government, which was not anticipated or included in its final budget as adopted pursuant to NRS 354.598, the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation providing for an increase or decrease in expenditures from that contained in its final budget to the extent of the actual amount made necessary by the legislative action.

8. An amended budget, as approved by the Department of Taxation, is the budget of the local government for the current fiscal year.

9. On or before January 1 of each school year, each school district shall adopt an amendment to its final budget after the ~~count~~ *average daily enrollment* of pupils is ~~completed~~ *reported for the preceding quarter* pursuant to subsection 1 of NRS 387.1233. The amendment must reflect any adjustments necessary as a result of the ~~completed count of pupils~~ *report*.

**Sec. 27.** NRS 701B.350 is hereby amended to read as follows:

701B.350 1. The Renewable Energy School Pilot Program is hereby created. The goal of the Program is to encourage the development of and determine the feasibility for the integration of renewable energy systems on school properties.

2. The Commission shall adopt regulations for the Program. Such regulations shall include, but not be limited to:

- (a) A time frame for implementation of the Program;
- (b) The allowed renewable energy systems and combinations of such renewable energy systems on school property;
- (c) The amount of capacity that may be installed at each school property that participates in the Program;

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(d) A process by which a school district may apply for participation in the Program;

(e) Requirements for participation by a school district;

(f) The type of transactions allowed between a renewable energy system generator, a school district and a utility;

(g) Incentives which may be provided to a school district or school property to encourage participation; and

(h) Such other parameters as determined by the Commission and are consistent with the development of renewable energy systems at school properties.

3. The Program shall be limited to 10 school properties. Not more than 6 school properties from any one school district may participate in the Program.

4. The Commission shall adopt the regulations necessary to implement the Program not later than March 1, 2008.

5. The Commission shall prepare a report detailing the results of the Program and shall submit the report to the Legislature by December 1, 2008.

6. As used in this section:

(a) “Commission” means the Public Utilities Commission of Nevada.

(b) “Owned, leased or occupied” includes, without limitation, any real property, building or facilities which are owned, leased or occupied under a deed, lease, contract, license, permit, grant, patent or any other type of legal authorization.

(c) “Renewable energy system” has the meaning ascribed to it in NRS 704.7815.

(d) “School district” ~~[has the meaning ascribed to it in NRS 395.0075.]~~ *means a county school district created pursuant to chapter 386 of NRS.*

(e) “School property” means any real property, building or facilities which are owned, leased or occupied by a public school as defined in NRS 385.007.

(f) “Utility” has the meaning ascribed to it in NRS 701B.180.

**Sec. 28.** 1. As soon as practicable after the effective date of this section, the Department of Education shall develop a plan to provide additional resources to the Nevada Plan expressed as a multiplier of the basic support guarantee to meet the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. In developing the plan, the Department of Education shall review and consider the recommendations made by the Task Force on K-12 Public

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Education Funding created by chapter 500, Statutes of Nevada 2013, at page 3181. The plan must include, without limitation:

(a) The amount of the multiplier to the basic support guarantee to be used for each such category of pupils; and

(b) The date by which the plan should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022.

2. The Department of Education shall submit the plan developed pursuant to subsection 1 to the Legislative Committee on Education for its review and consideration during the 2015-2016 interim. The Legislative Committee on Education shall:

(a) Review and consider the recommendations made by the Task Force on K-12 Public Education Funding created by chapter 500, Statutes of Nevada 2013, at page 3181;

(b) Consider the appropriateness and likely effectiveness of the plan developed pursuant to subsection 1 in meeting the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils; and

(c) On or before October 1, 2016, submit a report to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Legislature that includes, without limitation:

(1) Any provision of the plan developed pursuant to subsection 1 that should be implemented or phased in, with full implementation occurring not later than Fiscal Year 2021-2022;

(2) The amount of the multiplier to the basic support guarantee to be used for each category of pupils addressed by the plan; and

(3) Any recommendations for legislation.

3. On or before October 1, 2016, the Superintendent of Public Instruction shall submit to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature:

(a) A report of the per pupil expenditures associated with legislative appropriations for pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils.

(b) Any recommendations for legislation to address the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils.

4. During the 2017-2019 biennium and the 2019-2021 biennium, the Department of Education shall review and, if necessary, revise the plan developed pursuant to subsection 1 based

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upon data available on the costs and expenditures associated with meeting the unique needs of pupils with disabilities, pupils who are limited English proficient, pupils who are at risk and gifted and talented pupils. The Department shall submit any revisions to the plan after its review to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature following the 2017-2019 and 2019-2021 bienniums, respectively.

5. As used in this section, “pupils who are at risk” means a pupil who is eligible for free or reduced-price lunch pursuant to 42 U.S.C. §§ 1751 et seq., or an alternative measure prescribed by the State Board of Education.

**Sec. 29.** 1. Notwithstanding the provisions of NRS 387.122, as amended by section 8 of this act, the Department shall calculate an amount of funding for each pupil with a disability for Fiscal Year 2016-2017 by dividing the total count of such pupils by the money appropriated by the Legislature for such pupils in Fiscal Year 2016-2017. The Department shall report this multiplier to the basic support guarantee to the State Board of Education, the Interim Finance Committee and the Governor.

2. Except as otherwise provided in subsections 3 and 4, the funding provided to each school district and charter school pursuant to subsection 1 must not exceed 13 percent of total pupil enrollment for the school district or charter school.

3. If a school district or charter school has reported an enrollment of pupils with disabilities equal to more than 13 percent of total pupil enrollment, the school district or charter school is entitled to receive an amount of money equal to the amount necessary to satisfy requirements for maintenance of effort under federal law.

4. A school district or charter school may not receive less funding pursuant to subsection 1 for Fiscal Year 2016-2017 than the amount per pupil with a disability that the school district or charter school received from the State in Fiscal Year 2015-2016.

**Sec. 30.** NRS 387.1221, 395.001, 395.0065, 395.0075, 395.008, 395.010, 395.030, 395.040, 395.050 and 395.060 are hereby repealed.

**Sec. 31.** 1. This section and sections 2, 4, 5, 7, 9, 12, 14, 16.5, 17, 18, 19, 21, 22, 24 and 26 to 29, inclusive, of this act become effective upon passage and approval.

2. Sections 1, 3, 6, 8, 10, 15, 20, 23, 25 and 30 of this act become effective on July 1, 2016.

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3. Sections 11, 13 and 16 of this act become effective on July 1, 2017.

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NEVADA. CONSTITUTIONAL CONVENTION 1864

EXHIBIT 7  
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OF THE

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DEBATES AND PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

State of Nevada,

ASSEMBLED AT CARSON CITY, JULY 4TH, 1864,

TO

FORM A CONSTITUTION AND STATE GOVERNMENT.

ANDREW J. MARSH, OFFICIAL REPORTER.



LOS ANGELES COUNTY  
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SEC. 2. The Governor and other State and judicial officers, except Justices of the Peace, under this State Government, shall be liable to impeachment for misdemeanor or malfeasance in office; but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit, or trust under this State. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment, according to law.

SEC. 3. For any reasonable cause, to be entered on the journals of each House, which may or may not be sufficient grounds for impeachment, the Chief Justice and Associate Justices of the Supreme Court and Judges of the District and County Courts shall be removed from office on the vote of two-thirds of the members elected to each branch of the Legislature, and the Justice or Judge complained of shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person, or by counsel, in his defense; *provided*, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

SEC. 4. Provision shall be made by law for the removal from office of any civil officer, other than those in this article previously specified, for malfeasance or nonfeasance in the performance of his duties.

The question was taken by yeas and nays, and the vote was—yeas, 17; nays, 9—as follows:

*Yeas*—Messrs. Belden, Brady, Chapin, Collins, Crossman, Frizell, Folsom, Gibson, Hawley, Lockwood, Murdock, Nourse, Sturtevant, Tagliabue, Warwick, Wetherill, and Mr. President—17.

*Nays*—Messrs. Banks, Brosnan, DeLong, Dunne, Hovey, Kennedy, Mason, McClinton, and Proctor—9.

So the article was ordered to be engrossed for a third reading.

EDUCATION.

Mr. COLLINS, from the Committee on Education, submitted the following report:

*Mr. President*: Your Standing Committee on Education, to which was referred Article XII, entitled Education, beg leave to report, for the adoption of the Convention, the following article:

ARTICLE XII

EDUCATION.

SECTION 1. The State owes the children thereof substantial facilities for a substantial education, and is entitled to exact attendance therefrom in return upon such educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two years from the — day of January, 1865, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set

forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents.

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said Common Schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall, for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

SEC. 8. The Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said mining department, in such manner as to make it most effective and useful. *Provided*, that all the proceeds of the public lands donated by Act of Congress, approved July 2, A. D. 1862, for a college for the benefit of agriculture and mechanic arts, shall be invested by the Board of Regents in a separate fund to be appropriated exclusively for the benefit of the two first-named departments to the University, as set forth in Section 4, above. And the Legislature shall provide that, if through neglect or any other contingency, any portion of the fund so set apart shall be lost or misappropriated, the State of Nevada shall replace such amount so lost in said fund, so that the interest and principal of said fund shall remain forever undiminished.

All of which is respectfully submitted.

JOHN A. COLLINS, Chairman.



Thursday,] DUNNE—DELONG—CHAPIN—COLLINS—HAWLEY—JOHNSON—BROSNAN. [July 21.

Mr. DUNNE. I move that the article reported be taken up and considered now.

Mr. DELONG. I would prefer to see it printed first.

Mr. CHAPIN. Could it not be published in the Virginia papers of to-morrow morning?

Mr. DELONG. It can be printed here, I understand. It is too late to send it to Virginia, for publication to-morrow morning. The attention of the Convention has been turned with a very jealous eye towards matters of legislation, and I am apprehensive that if we consider the article now, we might adopt or incorporate in it some provisions which would not meet with our approval, if we had it before us in print. This matter of religious and sectarian influence in the public schools, is, of all things, most calculated to arouse suspicions and jealousies in the public mind, and if the enemies of the Constitution can see anything in our action on that subject to carp at, they will be sure to make the greatest possible amount of capital out of it.

Mr. COLLINS. I would ask if this article cannot be taken up just as well now, the sections being read carefully by the Secretary, one by one, discussed, and amended if necessary, as we come to them? It seems to me, if gentlemen will be attentive, it may be done—and I will state that one feature which has been regarded as obnoxious, has been removed by the committee.

Mr. DELONG. How is it in regard to the positive requirement to send all children to school so much time in each year?

Mr. COLLINS. The committee has removed that provision.

Mr. DELONG. I will withdraw my opposition.

The question was taken on Mr. Dunne's motion to consider the article at the present time, and it was agreed to.

Mr. HAWLEY. I move that the Convention resolve itself into Committee of the Whole—the President *pro tem.* remaining in the chair—for the consideration of this article.

The question was taken, and the motion was agreed to.

#### COMMITTEE OF THE WHOLE—EDUCATION.

The Convention accordingly resolved itself into Committee of the Whole, (Mr. CROSMAN in the chair.) and took up Article XII, entitled Education.

#### SUPERINTENDENT OF PUBLIC INSTRUCTION.

The SECRETARY read Section 1, as follows:

SECTION 1. The State owes the children thereof tutorial facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction, whose term of office shall be two

years from the — day of January, 1865, and until the election and the qualification of his successor, and whose duties shall be prescribed by law.

Mr. JOHNSON. I wish to inquire of the Chairman of the Judiciary Committee—I have not yet examined his report, and I admit that the fault is my own—whether it is contemplated to have a separate judicial election?

Mr. BROSNAN. There is no special election contemplated to be held for judicial officers; they are to be elected at the general election, at the same time as other officers.

Mr. JOHNSON. I made the inquiry with a view to proposing an amendment, if necessary; because I observe that the section as read provides for the election of Superintendent of Public Instruction at the general election.

Mr. DUNNE. I do not know that I understand altogether this enunciation of a doctrine in the first section. If I understand it correctly—and I will inquire of the chairman of the committee whether I am right or not—the doctrine enunciated is substantially this: that the State has a right to establish educational institutions, including therein moral instruction, and has a right to insist upon the attendance and reception of such moral instruction as the State may establish, or provide for in such institutions, on the part of all the children of the State.

Mr. COLLINS. That is, in the general sense of morality. It was the view of the chairman, and I think the committee generally agreed with him on that point, that the State may properly encourage the practice of morality, in contradistinction to sectarian doctrines. For instance, if a child insist on the practice of using profane language, I presume it should be made the duty of the School Superintendent, the teacher, or the Board of Education, to insist that he shall either refrain from such practice, or be expelled. There must be power somewhere to exact conformity to the general ideas of morality entertained by civilized communities.

The CHAIRMAN. The question is on the adoption of Section 1.

#### COMPULSORY ATTENDANCE ON SCHOOLS.

Mr. BROSNAN. For my own information, in order that I may be able to vote intelligibly, I will ask that Section 2 of this article be read.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. HAWLEY. I wish to call the especial attention of the gentleman from Storey to that provision. I wish also to call the attention of the Convention to the clause in this section, in

the old Constitution, which has been stricken out, reading as follows :

"The Legislature shall, within two years, pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

That clause has been stricken out by the committee, and in lieu thereof the language of the section just read is proposed, providing that the Legislature may pass such laws as will best tend to secure a general attendance of children, in each of the school districts, on the public schools.

Mr. DeLONG. I thought from the first reading the language was, "to require attendance."

Mr. HAWLEY. It is, "tend to secure a general attendance."

Mr. BROSNAN. I only desired to have the section read in order to be able to vote intelligently on the preceding section.

Mr. HAWLEY. I will suggest to the chairman whether it would not be better to strike out the first sentence of Section 1, which seems to be merely in the nature of a preamble. Will the Secretary read it?

The SECRETARY read, as follows :

"The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide."

Mr. HAWLEY. I know that the provision of the former Constitution, making it compulsory on parents to send their children to school, met with a great deal of opposition. And for myself I certainly consider it entirely at variance with the spirit of our institutions. Now inasmuch as the language of that portion of the section seems to assert the same doctrine, and inasmuch as it is in fact at variance with the provision contained in the second section, as reported, with all respect to the committee I will move to amend by striking out that clause, and also the word "therefore" in the succeeding clause, so that the section will commence—"The Legislature shall encourage by all suitable means," etc.

Mr. COLLINS. The chairman of the committee certainly has no objection to striking out that language, although, in his opinion, it only expresses the true doctrine.

Mr. DUNNE. Although I shall be in favor of striking out that preamble, yet it will not be for the reason which has been assigned, of discarding the idea of exacting the attendance of children on the schools. I believe that should be done, and I believe the provision should be substantially the same as in the former Constitution, but with some amendments, which are obviously necessary. In order to reach that end, I will make a motion that we pass over the section for the present.

Mr. COLLINS. I will state the reason for the insertion of that preamble. In the first

place, let me suggest to the Convention that it only declares the right of the Legislature to exact attendance upon school—some school. It does not say that children shall be compelled to attend the public school, but that the State has the right to exact attendance upon such educational advantages and facilities as may be provided. The Constitution framed last year, which forms the basis of our action, declared that all children should be required to attend school at least three months in each year, but that provision has been removed, and we propose instead to give the Legislature permission to make laws providing for and encouraging a general attendance at school. It seems to me that if the Legislature should have that right, then this preamble is correct, and if not, then the preamble has no business here. I am not tenacious about it, myself, however, though I really think there should be some provision by which the children of the State, growing up to be men and women, should have the privilege secured to them of attending school—that they should even be required to attend school somewhere. We have no right, and we cannot afford to allow children to grow up in ignorance. The public is interested in that matter, and it is one of too great importance to be neglected. Even if parents are too parsimonious to send their children to school, or for other reasons are indisposed to give them the educational advantages which the State has been at great expense to offer, I do not think the public can afford it. My opinion is, therefore, that it is the duty of the State to furnish the children the means of education, and then, as a corollary, if it is the duty of the State to furnish tuitional facilities, it is the duty of the children to attend upon them. There are many children who are daily squandering their time, and what is far worse, contracting habits which will ultimate in crime in some form, and if we shall adopt some provision by which the authorities can exact their attendance upon the schools, they may be saved from an evil destiny, and the State will certainly be the better for it.

The question was taken on the amendment offered by Mr. Hawley, and it was agreed to.

Mr. CHAPIN. The striking out of the word "therefore," follows, as a matter of course, I suppose?

The CHAIRMAN. It will be considered as a part of the amendment adopted.

TERM OF SUPERINTENDENT.

Mr. BROSNAN. I move to further amend the section by filling the blank in relation to the term of the office of the Superintendent of Public Instruction with the word "first," so as to read, "whose term of office shall be two years from the first day of January, 1865," etc.

Mr. JOHNSON. Perhaps it would be better to make it read the first Monday of January. Then it will correspond with the terms of the other officers of the Executive Department of the Government.

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Mr. BROSNAN. It will be necessary to use the words "commencing on."

Mr. JOHNSON. No; not "commencing on." The terms of the other officers commence on Tuesday; if you say "from the first Monday," the term will commence on Tuesday, like other officers.

Mr. BROSNAN. Very well; then let it read "from the first Monday in January."

The question was taken on the amendment as modified, and it was adopted.

The question was taken on the adoption of Section 1 as amended, and it was adopted.

#### SECTARIAN INSTRUCTION.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. WARWICK. Will the Chairman of the committee explain a little, as to what is meant here by "sectarian?" It says that any school district "which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund," etc. Does that mean that they have no right to maintain Catholic schools, for example?

Mr. COLLINS. This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.

Mr. WARWICK. That is entirely proper, but it seems to me that it might better be worded a little differently. It says, "which shall allow instruction of a sectarian character therein"—not in the school, but in the district. I do not suppose that is the intention.

Mr. COLLINS. You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to the public schools, and clearly cannot refer to anything else.

Mr. WARWICK. I would like to examine that a little more carefully.

Mr. McCLINTON. I think all the objection can be easily obviated, and leave the section substantially as it is, by making a very slight change. Suppose we say, "in the public schools of said district."

Mr. WARWICK. That is the idea, exactly. It seems to me, as it now reads—and the gentleman will correct me if I am wrong—that it is not in the school, but in the school district

that shall establish or allow instruction of a sectarian character, that this penalty is to be applied. It says:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived," etc.

The word "district" evidently governs the sentence, and that is where the change ought to be made, so that the prohibition of sectarian instruction may apply, not to the districts, but to the schools.

Mr. McCLINTON. I will make a motion to amend the section by striking out the word "therein," and inserting instead the words, "in the public schools of said district."

Mr. HAWLEY. I wish to inquire of the gentleman from Lander whether he imagines that the language of the section as it now stands would make any difference in regard to payments of the school-money, under the law, in a case, for instance, where, under the laws of the State, parties may have organized a Catholic school, entirely separate and distinct from the public schools? Does the gentleman think that the mere fact of the existence of that Catholic school in the district could have any possible influence in preventing the payment of the school-money under the law? In other words, I ask him whether he believes that any school district could be held responsible for the action of private parties, in organizing sectarian schools within such district?

Mr. WARWICK. No, sir; that would be manifestly unjust, and that is the reason why I want this amendment. I do not want the school district to lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school, and therefore I say the language should be such as will not be open to the slightest imputation of that construction.

Mr. HAWLEY. Very well; I will consent to the amendment, so far as I am concerned.

Mr. COLLINS. I wish to call the attention of the Convention one moment to the language of the section as it now stands. I desire to make any change that will be an improvement, but if the sentence is already clear, we should certainly take care to avoid tautology. Now I will read the section again, and emphasize the words as I think they ought to be, and gentlemen will see, I think, that a multiplication of those phrases is scarcely necessary, and certainly it would not sound very well. If we can secure the same sense, without a change of phraseology that would destroy the euphony of the sentence, we should certainly do so, in accordance with the laws of composition. Now let us see how it should read:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year."

The subject of the sentence is "common schools," and "a school" to be established "in each school district." These are the words

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which should receive the stress of the voice. Then follows :

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein—"

In what?

Mr. WARWICK. In the district.

Mr. COLLINS. No, sir; in "such a school." That is the only proper construction. If the word "therein" does not refer to "such a school," then I do not understand the English language.

Mr. WARWICK. If the "district" does not stand in the nominative case, then I am not able to parse the sentence.

Mr. COLLINS. But what effect can that have? It only goes to show that it is the district which is to be deprived of its proportion of the school fund, for "district" is the nominative governing the verb "deprived." I would not object to any change there with a view to perspicuity, but I really do not think this is necessary.

Mr. WARWICK. If the gentleman thinks it is correct, all right; I hope the amendment will be withdrawn.

Mr. McCLINTON. I will withdraw it. I merely offered it for the sake of obviating any possible objection of that nature that might be made.

#### COMPULSORY ATTENDANCE—AGAIN.

Mr. DUNNE. I stated at the time the amendment was proposed, which was subsequently adopted, to strike out a part of Section 1, that I believed it to be a right which the State has to exact attendance from the pupils. I believe, also, that the only objection of any considerable weight which was urged to that compulsory clause contained in the Constitution submitted to the people last year, was the fact that it made no distinction between children whose parents reside in populous places, where there are abundant facilities for sending them to the public schools, and those residing in out-of-the-way places where it would be very difficult and sometimes impossible. I think it would be a wise measure to insist, that in incorporated cities and towns, at least, children shall be compelled to attend school, and we ought certainly to insert a provision of that kind in this article. It is in such places that children grow up surrounded by temptations which are not to be found, to the same extent, at any rate, in the rural districts. Our cities are always the hot-beds of crime, and schools of vice for the rising generation. It is from the cities, and from the class of children in them which neglects to attend the public schools, that most of our criminals come, and I maintain that where facilities for attending school are afforded, it should be made compulsory upon parents to send their children. And the reason why I think so is this: Ours being a Democratic form of government, every person upon arriving at mature age who was born in the country

or has been naturalized according to law, who has not been convicted of crime, etc., has a voice in the administration of the public affairs of the country—in the making and administering of the laws—and I consider it only a fair proposition that he should not have that privilege unless he has some knowledge of the nature of the duties which devolve upon him. Therefore when the State has provided a system of public instruction, a means of obtaining education, it should also require that all who are to become its citizens, and take part in the formation of its laws, shall avail themselves of those means, or go so far at least as to know how to read and write.

Mr. HAWLEY. So far as towns and cities are concerned, I am not aware that I should very strenuously object to such a requirement, but there is one question which I have not heard satisfactorily answered, and that is, what are the means by which attendance is to be compelled?

Mr. DUNNE. That is a question which has received its solution in many countries.

Mr. HAWLEY. I know it has in Prussia, but where else?

Mr. DUNNE. In Scotland, also. Whether it has been done in any of the United States, I do not know; but I see no difficulty in the way of providing that between the ages of six and fourteen years, for example, all children shall attend school at least long enough to learn how to read and write. And I do not think that in a country like this any American citizen should be permitted to exercise the elective franchise unless he is able to read and write. That is my view of the subject, and for the purpose of testing the sense of the Convention, I will move, when it shall be in order, that a special committee of three be appointed to prepare and report an amendment providing that all children residing in incorporated cities and towns, between the ages of — years, shall attend the public schools for at least three months in each year.

Mr. HAWLEY. Will the gentleman allow me a word or two further in the way of a suggestion? In drawing up this article we have provided that the Legislature may pass such laws as are best calculated to secure the attendance of children. My idea on that subject is, or was this: that the most practicable method of securing attendance would be to pass a law providing that unless a certain proportion of the children in each district shall attend, the district shall be deprived of its proportion of the interest on the school-money. The result of that would be that parents would feel more interest in having a full attendance, and would take it upon themselves to visit those who are less careful, and urge them to send their children. By that means, I think the interests of education would be best subserved and promoted. And the query arises, in my own mind at all events, whether under that general provision authorizing the Legisla-

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ture to make such laws as are best calculated to secure attendance, it would not be authorized even to pass a law which should compel them to attend? It seems to me that if the word "may" is equivalent to the word "shall," and that point appears to be very generally conceded, then the Legislature already has all the power necessary. I am free to say, however, that I believe the incorporation of the provision as it stood in the former Constitution would be likely to array a large class of ignorant people against the Constitution, and against education. That is my own view of the matter. Still, I am perfectly content to leave it to the friends of education in the Convention, although I would submit to the gentleman from Humboldt, whether under the provisions of the section as it now stands, the Legislature would not have the power to compel attendance?

Mr. DUNNE. In regard to the power conferred upon the Legislature to secure general attendance, I like that provision, and so far as that is concerned, it is applicable all the year round. I have no doubt but that it would give power to temporarily suspend the attendance of children who may not be regular in their attendance, and that would be a great step towards preventing irregularity in that respect. A question has sometimes been raised as to the legality of the action of Boards of Education where they have attempted to compel scholars to be regular, and to that end have passed orders that if a scholar is absent a certain number of days or weeks in a month, he shall forfeit altogether his right to attend. There have been doubts as to the constitutional power of a Board of Education to make and enforce such an order, and I think this provision would go perhaps no further than to give power and force to an ordinance providing that unless a scholar is somewhat regular in his attendance, he may forfeit his right to remain in the school. But that is not the class which I wish to reach. I am aiming to reach that class which does not attend at all; to reach those parents who keep their children away for selfish motives, who take them away from school in order, perhaps, that they may earn a little money, and so deprive them of the advantages of education. I could not let this matter pass without bringing it to the attention of the Convention, and I propose merely to test the sense of the Convention as to the propriety of requiring all children between certain ages, to be specified, to attend school at least three months in each year.

Mr. COLLINS. I should dislike to have incorporated cities and towns designated in this article as the only places in the State where parents are unwilling to send their children to school, or to give them educational facilities. I admit that the evil is as prevalent in towns, possibly, as in the country, but in many country places there is very general neglect to provide good schools, and to induce children to attend

them. Outside of cities and towns there are many men who have themselves been reared without education, and who look upon it as having a tendency to disqualify or unfit young men and women for hard work. Seeing no prospect before their children but a life of labor like their own, they regard education as objectionable on that ground especially. There are also, perhaps, a good many who retain their children from school on account of indifference, or from mercenary motives. Many keep their children at hard work, or, worse than that, allow them to run about in idleness, when they ought to be at school. I think, therefore, that if the provision is to be adopted, it should be made to extend further than merely to embrace incorporated towns. I would have it apply all over the State, and I am in favor of every appliance that can properly and justly be brought to bear upon the whole community, to exact from them such obedience to the requirements of the laws of the State as shall give to every child in the State some kind of education. If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it, and the provision, of course, would not affect those cases; but where there is indisposition on the part of parents, whether resulting from their own ignorance, indifference, or avarice, the Board of Education should have some means of exacting the attendance of the children.

But I would not confine it to cities and towns. I would go out into the settlements—into your agricultural valleys, for example—where will be found the greatest amount of neglect and indifference. It is not in the large cities that you are most likely to encounter these evils. The best schools on the globe are found in the large cities of Europe and the United States. In the large towns is where schools always flourish, and they are supported and attended by all classes, more or less; but in the agricultural districts, in the remote and sparsely settled portions of the State, the influences which are most favorable for the promotion of the cause of education, are not so active, nor so much felt. There is not the same contact of mind with mind, men are not so much stimulated by ambition, and they do not so much value or appreciate the advantages of education, because they do not see so much of its influences upon the individual, the family, or the public at large. I was very reluctant, in committee yesterday, to accept the proposition to remove the clause requiring compulsory attendance of children on the schools, and I shall be perfectly willing to confer on the Legislature the power to exact attendance by law, at such times and in such places as may be deemed expedient. I know that in Virginia we suffer very much for the want of such a power, and if the Boards of Education had power to exact attendance for three months or six months in the year, it would be a great advantage to the

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Territory. I know of many instances where it would have an extremely beneficial influence, and I am in favor of extending it all over the State. Rather than confine it, however, to particular places, I would prefer to let the section remain as it is. Then if the Board of Education of Storey County asks for such power, the Legislature may grant it, and the good influence arising therefrom will shine and reflect upon other localities, until they in their turn seek to secure the same advantages.

Mr. WARWICK. I think there are some subjects which are justly and properly objects of legislation, and among them, one of the most worthy is that of education. But while we are legislating on that subject, do not let us forget that we are living in a Republic, that a man's house is his castle, and that in it he has a perfect right to exercise full authority and control over his children—to send them to school, or to keep them at home, just as he pleases. The very character of our free institutions forbids this proposed interference with the private rights of the citizen. No man desires to promote the general interests of education more than I do; no man is more anxious to have his own children educated than I am; but I really think we are forgetting the spirit of our institutions when we are seeking to compel our fellow-citizens to send their children to the public schools. The moment we invade the home of any man, telling him that he must do this, and must not do that, seeking to make men good according to our notions of goodness, we are traveling, in my opinion, out of the line of our duty, and departing from the fundamental principles of our Republican form of government. I repeat, that the very spirit of our American institutions is in opposition to this proposition. We are not living here under a Prussian monarchy.

Besides, it seems to me that such a measure is entirely unnecessary, because the spirit and temper of our people is quite sufficient for all that gentlemen are aiming at. Here and there a man may be found who would keep his children at home, and deny them the privileges of education, but these cases are the rare exceptions, so rare as scarcely ever to require being looked after by the law-maker. We are legislating here for general principles, not special or exceptional cases, and I sincerely trust that we shall not adopt any provision which will allow a little body of men, assembled here to legislate for the State, to undertake to compel men to do that which only one government in the world, and that a monarchy, ever has had the courage to compel.

Mr. COLLINS. Let me ask the gentleman a question. Suppose a boy brought up in ignorance, in consequence of such breeding, commits a felony. If he is convicted, his imprisonment of course involves a charge to the State. Now which is the better investment for the State, to instruct him or to imprison him?

Mr. WARWICK. To instruct him, by all

means. But Fagans are scarce. Men who train their children to crime, thank God, are not numerous. It may be that here and there a father or a mother may err in regard to the advantages of education, but that evil is not commensurate with the evil we should do by a palpable violation of the spirit of American free institutions. Let us not do evil that good may come. If this may be done, we may advance step by step in our encroachments, until by and by every right and privilege, now the pride of the American citizen, will be lost and destroyed. It is not by such means that morality, virtue, and religion are advanced in the world. They are encouraged and promoted by a wholly different process. Compulsory laws, enacted for the purpose of their advancement, never have been found to work well in practice, in any community, and ultimately, in the advancement of all those principles, the great apostles of reformation in every age and nation, after the trial of all other means, have been compelled to fall back on the great lever of moral suasion. You cannot enact laws to compel the education of the people, because the very spirit and foundation of our institutions are against it in principle. I should be sorry to see any article or section incorporated into the fundamental law of our new State, whereby any of these matters might be rendered compulsory upon the people. I have always looked with disfavor upon every description of sumptuary laws. Laws to enforce temperance, or compel virtue in any respect, are bad in principle, and bad in practice. You cannot legislate people into virtue. Other means have to be resorted to in the end, and they are found to be potent enough in our time to carry on all those great works of reformation and advancement. I sincerely trust the proposition suggested by the gentleman from Humboldt will not be incorporated into our Constitution.

[The PRESIDENT in the chair.]

Mr. McCLINTON. I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools than I have. I had the honor to graduate in the chimney corner, by the fire-light in my father's little, old log cabin, and I feel the want of a polite and classical education. I am willing, therefore, to do all I can to encourage common schools; all I can for the encouragement of every species of educational improvement, and morality; but I am not willing to carry my own desires so far as to bring them in conflict with what I consider one of the fundamental principles of our government. I cannot resist the conviction in my own mind, that the proposition to compel parents to send their children to our public schools, or to any other schools, is inimical to the spirit of our Republican institutions.

And I am opposed on other grounds, also, to the proposed amendment of the gentleman from Humboldt. If we say that in incorporated cities and towns we will compel parents to send

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their children to school, we certainly make an invidious distinction in favor of people residing in the country, and that would be a palpable violation of the broad principles which we intend to lay down and establish, or which, unquestionably, we ought to implant in our fundamental law. I believe that education is a proper subject of legislation, but we should merely mark out here a sort of outline of the course which we intend the Legislature to pursue on that subject, and then leave the rest to the wisdom, intelligence, and patriotism of those legislators, who, we may be permitted to presume, will be not only as wise, but as earnest and zealous in the cause of education as we ourselves. For these reasons, I hope that the gentleman's proposition to refer the subject to a special committee, with instructions to add such a provision, will not be adopted.

Mr. DUNNE. With the consent of the committee I will withdraw the motion I made, inasmuch as it is not competent for the Committee of the Whole to appoint a special committee, and instead I will offer an amendment, which I have prepared and sent up to the desk.

The SECRETARY read the amendment, as follows:

"Provided, That the Legislature shall have the power to pass such laws as shall make it compulsory with parents and guardians that all white children under their charge, between the ages of six and fourteen years, residing in incorporated cities or towns, shall receive educational instruction for at least three months in each year, unless physically or mentally incapacitated."

The CHAIRMAN. I hope the gentleman will leave out the word "incorporated." There are but two or three incorporated cities or towns in the Territory, I believe. This city is not incorporated.

Mr. WARWICK. I wish to make one inquiry. Does the gentleman mean to give to negroes larger liberty than he does to whites? It seems that white people are to be compelled to send their children to school, while the negroes are not.

Mr. DUNNE. I will reply that my object is to make such provision in regard to education that those who are entitled to vote, may vote intelligently; but I do not mean by any action of mine to allow negroes to vote.

Mr. BANKS. If we leave this clause out entirely, will not the Legislature still have the power, as a reserved right, to pass such a law? It seems to me they would have that power without our saying anything more about it, and therefore this amendment simply enables, not requires, the Legislature to do what I think they already have the right to do.

Before I sit down, I wish to suggest a slight verbal amendment in the section as reported. It reads—"tend to secure a general attendance." etc. It seems to me it should read "the general attendance," instead of "a." That would be in accordance with the rules of grammar, which we certainly ought not to ignore in this article.

Mr. McCLENTON. I believe the Legislature has already as much power, in relation to compelling the attendance of children in the schools, as this Convention ought to confer.

The CHAIRMAN. I understood the gentleman from Humboldt, last on the floor, to suggest an amendment to correct the grammar of the original section. It certainly would be a bad place to ignore the rules of grammar in the educational feature of our Constitution.

Mr. BANKS. I merely say I think the word "the" would be more appropriate there than "a."

Mr. DUNNE. In reply to my colleague's remarks, I have only to say that in my judgment, unless we delegate this power expressly to the Legislature, they will not have it, because all the rights and powers which are not granted are reserved to the people.

Mr. CHAPIN. I hope this amendment will not prevail, because without it the Legislature will undoubtedly have the right to enact such laws under the language already contained in the section. It says at the end of this section:

"And the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools."

That is ample to cover the whole ground. The Legislature has that right already, and I believe there is propriety in it; and I do not think it will be any trespass or infringement upon democratic rights, either, to exercise that power. I think we should leave the section just as it is, for the whole ground is amply covered.

Mr. LOCKWOOD. I wish to say a few words, merely to throw out a suggestion to the gentleman from Humboldt who proposes this amendment. I have had some little experience in schools in California, and I know there is a class of persons to whom such a provision would be extremely repugnant. I have seen persons so bigoted in their religious faith—as, for example, the Roman Catholics, although I do not mean to mention them invidiously—that they would claim that all the public schools were sectarian, and rather allow their children to grow up in ignorance than attend them. Now the question is, it seems to me, whether or not it is better for the State to violate the prejudices of this class of persons, even for what we believe to be their own good?

Mr. DUNNE. This amendment does not propose to compel attendance on the public schools at all; it proposes merely to require that all children shall receive educational instruction to a certain extent, each year, and the parents may send them to school wherever they please. The objection suggested by the gentleman from Ormsby, therefore, does not apply.

Mr. LOCKWOOD. I think we have cases in point right here in town. We have no sectarian schools, but there may be a Baptist, a Presbyterian, or a Catholic, perhaps, who conscientiously believes that it is better not to educate his children at all, than to place them in our

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public schools. Now the question is, shall we on account of such religious prejudices, suffer children to grow up in ignorance in our midst? The operation of our form of government, and the principles upon which it is based, have been referred to in connection with this subject, but I will say that I do not see in those matters any particular bar to this amendment. Every gentleman knows, who is at all acquainted with the operation of religious or sectarian schools in Europe, that the principal part of the teaching is in regard to matters of religious belief. I think about two-thirds of the time of such a school is ordinarily occupied by the priests, or those whom they regard as their spiritual advisers. They do not teach their children any of the essentials of literature or the arts, but they confine their instructions rather to blinding them, as some of us might regard it, or indoctrinating them in their religious creeds, forms, and ceremonies. Now, sir, I do not wish to do violence to the conscience of the humblest individual in the land, by any provision which we may adopt in the educational feature of our Constitution, yet there is an opposite extreme. I will merely suggest this, however, that while I believe it is a very good thing for an individual to attend church, and that if everybody went to church on Sunday very few crimes would be committed on that day; yet I think the gentleman from Humboldt will very readily agree with me that if it were proposed to adopt a proposition in our Constitution compelling everybody to attend church on the Sabbath, it would not be sanctioned by a vote of this body.

Mr. DUNNE. One word only, in regard to the Prussian system which has been spoken of, and the time which the gentleman from Ormsby (Mr. Lockwood) thinks is taken up in religious instruction in schools of the class he has referred to. This amendment has nothing to do with the Prussian system, but there, as I understand, the usual school instruction is kept entirely separate from religious instruction, and not allowed to conflict with it in any way. Every parent who wishes religious instruction for his children, is required to register his name and creed, and at certain hours each day, set apart for that purpose, each child is instructed in the religious tenets of that creed. It does not interfere at all with the secular branches of education taught in those schools.

Mr. FRIZELL. No man can more fully appreciate the excellent motives of gentlemen who advocate the amendment, than I do. It appears that this same object which they are now endeavoring to reach, has in past years been the subject of discussion very frequently in other States. Now, sir, writers on the subject of crime tell us, and others who are not writers are willing to admit it, that ignorance is the parent of crime. Therefore it follows that if we can by law establish any system that will either induce or compel parents to educate their children, it will do very much to-

wards preventing crime, and consequently will be a good thing for the State. But, not only various objections to the practicability of the measure proposed, but also the very spirit of our institutions, appear to stand in the way.

But what I wished to call the attention of the Convention to more especially, is the fact that there is another question which arises here, that has not been mentioned by any of the gentlemen who have occupied the floor on this subject. That question is the age at which children should be sent to school. You are perfectly well aware, Mr. President, and so is every gentleman here, that people differ widely in their views in regard to the physical education and mental training of their children. During the last fifteen years especial attention has been turned throughout the United States to the subject of the physical development of children. At the present time you will find no two parents out of three, perhaps, who would not be willing to send their children to school, even at the tender age of six years; and yet there are a great many who prefer at that age to let them play and exercise, and develop their physical systems, for a year or two longer, it may be, before going to school.

Now, sir, taking into consideration the many barriers that stand in the way of a proposition of this nature, I say that while I would be glad to go with these gentlemen, while I appreciate their motives and would approve of the object at which they are aiming, if we could only reach it, yet it seems to me entirely impracticable to make any provision compelling parents to send their children to school; and I object especially to that feature of the amendment which relates to the age of the children, because I know that many parents are not willing to allow their children to attend school at the age of six years.

Mr. COLLINS. I think the gentleman from Humboldt will find, upon a more careful examination, that the section already contains language which covers all the ground he desires. It says the Legislature "may pass such laws as will tend to secure a general attendance." There is something sufficiently elastic to cover everything which has been suggested during this discussion, to meet every changing condition of public feeling on the subject of education. If the Legislature shall hereafter deem it proper to enforce the attendance of all scholars of a certain age, it has the power to do so; or if the Legislature, coming up fresh from the people, shall be imbued with the idea that it is impracticable to make a general enactment of that kind, but the County of Storey, or Ormsby, or some other county, asks for the advantages of such a law, the Legislature has power to grant the request, and confer on such county the privileges solicited. The provision is elastic and comprehensive, and may be adapted to any want of any particular portion of the community, or any condition of progress of the public mind. On the other hand, this



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amendment proposed by my friend from Humboldt, is peremptory and inflexible; and while I agree with him in the general principle, and believe that his amendment only provides for carrying out a great truth, yet it appears to me that at the present time it would strike the public mind with a degree of alarm and disapprobation, and I am inclined to think it would be wiser to leave the Legislature, from year to year, to adapt its action to the progress of public sentiment.

Mr. DUNNE. But does not my amendment leave it also to the Legislature?

Mr. COLLINS. Yes; but at the same time it makes an exaction, requiring a certain course of action by the Legislature.

Mr. DUNNE. No, no! The language is, "that the Legislature shall have the power to pass such laws," etc.

Mr. COLLINS. Yes, sir; but it also mentions particular ages, and consequently forbids the enactment of any law specifying different ages, although the Legislature might desire to extend the limit from six to eight years. I remember that my first child went to school as soon as she could toddle—almost as soon as she could speak; and she learned her lessons—everything they undertook to teach her—things which she forgot about as readily as she learned them. My own observation and experience tend to the conclusion that education, such as is generally imparted in the common schools, is not adapted to the weak minds of young children, and I am strongly inclined to favor the plan of combining physical and mental training, something like the system of "object teaching." I think the time may come when the age of eight years will be generally regarded as sufficiently early to commence the severe system of our schools. I think the section as it now stands covers all the ground we want to cover, while my friend's amendment is altogether too definite and specific. That limits the Legislature to a certain course marked out in advance, whilst this is expansive in its nature, giving the Legislature all the power they may require, not only to-day, but perhaps a thousand years hence.

Mr. HAWLEY. I wish to suggest to the friends of this proposition, whether it does not occur to them that parents might, in some cases, appeal to the law, and create troublesome litigation on this subject. I believe that if a law were passed under such a constitutional provision, to compel parents to send their children to school, and if a child were taken from its parents under the provisions of such a law, the parents would have a right to apply for a writ of habeas corpus, and under that could secure the release of their child. That is one of the grounds upon which I base my opposition to this amendment. My experience is not perhaps very great, but judging from what I have observed, I honestly believe that more can be done to build up the public schools by one man who will devote a little

time to the subject—giving lectures on education, for example, through the country, and in that manner arousing the attention of men to the importance of educating their children—than ever would be accomplished by all the sumptuary laws that can be incorporated into any Constitution, or enacted by any Legislature or any Congress in the world. I desire, sir, without further occupying the time of the Convention, to enter my protest against the adoption of any such provision as is contained in this amendment.

Mr. BANKS. There is one further objection to this amendment which I wish to mention, and that is, that the Legislature would be inhibited, by clear implication, from compelling the attendance of children anywhere else than in incorporated cities and towns. I would urge this in addition to the fact that no such provision is necessary to give the Legislature ample power to enact whatever laws may be required, and I conceive that the last objection is a very strong one.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

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Mr. CROSMAN. I have an amendment which I wish to offer. It will probably come in best about the middle of the section. I will move to insert after the words "during such neglect or infraction," the following:

"Provided, That the Legislature may make provision for the distribution of the school fund to school districts during the first year of their organization, without reference to the time that a school has been held therein."

Mr. HAWLEY. I suggest to the gentleman that if this amendment is to come in at all, it would be more applicable in the following section, where provision is made for the apportionment of the interest from time to time among the several counties. I attempted yesterday to remove the doubts of certain members upon that subject, and at a proper time I will renew my efforts to do so.

The CHAIRMAN. I think the amendment is appropriate in Section 2, as proposed by the gentleman from Lyon.

Mr. CROSMAN. My impression is, that the amendment comes in properly here, in Section 2 of the article under consideration. I wish to call the attention of the Convention to one fact in connection with this subject. If I understand the reading of this section, as it has been presented before us, it might occur that a new district having had a school in operation, even for a period of ten or eleven months, would get none of the school fund. In the first place, I understand that the first school year will embrace portions of 1864 and 1865, beginning and ending probably the same as at present. Then this section provides that a school shall be maintained in the district at least six months in every year, and under my interpretation, it might so happen that a new district would be

obliged to have its school in operation for eleven months before it would receive any appropriation. I called up this same question in the committee, but other members thought differently, and no action was had upon it. Upon looking at the matter further, however, I am satisfied that it might occur in the manner I have indicated. Now I consider that it ought to be our policy to so frame our Constitution that the Legislature may encourage the organization of school districts; and if there ever is a time when they need assistance, when the State should foster the interests of education in a district, it is at the commencement. Let us leave the time to the Legislature, and allow it to provide in its discretion, so that the new district which shall have had two or three months of school may receive its portion of the school money, but let us not compel a school district to go along without aid, for nearly a year, in the outset. At least, do not leave it so that the Legislature cannot encourage school districts in their infancy.

Mr. HAWLEY. Allow me a few words of explanation, as to the manner in which the distribution of the school money is made under our present system: The Superintendent of Public Schools of each county is notified twice a year—I believe in May and November—by the General Superintendent, as to the amount appropriated to his county. At that time, when such notification is made to the County Superintendent, the latter refers to his list of the school districts in his county, and the census of the School Marshal, and thus ascertains how much, *pro rata*, of the whole amount drawn by the county is to be paid to each school. The amount to which each scholar is entitled, multiplied by the number of scholars in any district, of course, will give the amount which must be paid to such district. Now under that system, if a new district is organized, no matter if it is only ten days before drawing this fund from the State, it has been placed on the record of the County Superintendent, with the number of its scholars, and the district receives its proportion of the fund the same as the other districts. The only question is, as to the time when it is to be paid to the district. If it has been organized only ten days, under the Territorial law it cannot receive the money immediately, but is required to have school for three months before the amount appropriated can be paid over. Now it is proposed to require the districts to have school for six months. In the meantime, the money is not to be given to the old districts, but their *pro rata* proportion is retained for the new districts. I think it is not very material at present, however, what arrangement may be made in respect to newly organized districts, for I believe that in all probability every district has already been organized that will be for some time to come. But even supposing that a new district should be organized two months prior to the framing and passage of the school laws, to take effect under

the Constitution, when we become a State, I insisted yesterday in the committee, and I insist here to-day, that those two months will be accredited upon the first payment due to the district. I also contended yesterday, and still insist, that if we pay an equal proportion to those districts which have had school only three months, we thereby work an injustice and hardship to those which have maintained their schools perhaps nine months in the year, and in which the sums required for the payment of the teachers are, perhaps, more than two-thirds made up by private subscriptions. I candidly think that the more equitable plan is to require that, before any money is paid to a district, school shall have been taught therein for at least six months, and I think, still, that the gentleman from Lyon (Mr. Crosman) labors under a misapprehension as to the character of the requirement in regard to the length of time that school shall have been taught in a new district before it can receive its proportion of the school money. I insist that if a school shall have been maintained in a district two, three, or four months prior to the adoption of the Constitution, the district will be given credit for that length of time, and will receive its *pro rata* of the public money accordingly, and at the same time I am entirely opposed to allowing the money to be paid to any district before it shall have supported a public school for at least six months. I do not believe in compulsory education, and I think there is not in the Territory, and will not be in the State for a long time, any district in which a school will be maintained for a longer period, certainly, than nine months in a year.

Mr. CROSMAN. Allow me a word in reply. I may not, perhaps, differ materially from the gentleman from Douglas in regard to the term of six months, but I wish to have the language of the section so constructed that we can understand clearly that when a school has been maintained for six months, the district shall be entitled to the money. But this section says "every year." It requires that a common school shall be maintained "at least six months in every year," and it proceeds to provide that any district neglecting to establish and maintain such a school, may be deprived of its proportion of the interest of the public school fund during such neglect. Now, with regard to the time, I do not propose by my amendment to fix it definitely; I prefer to leave that to the Legislature. The gentleman tells us how the present school system operates, but he must remember that we shall have to be governed in the future by such rules as we fix and establish in this instrument, not by the practice under our Territorial laws. I think it is nothing but right for us to provide that any district organized within a few months of the close of the school year, when it has had school for six months—or I would prefer to say for three months—shall be entitled to receive its proportion of the school money.

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Mr. COLLINS. My excellent friend, the gentleman from Lyon, thinks he perceives a difficulty, which, after a good deal of thought and turning the matter over carefully in my own mind, (for the gentleman suggested it to the Committee on Education while the article was under consideration in that committee,) I have been, I confess, unable to appreciate. I think the difficulties which occur to his mind have no real basis, for the reason that this constitutional provision is merely an outline by which the Legislature is to be governed. It contemplates that the Legislature shall establish a school system, and that one of the requirements of that system shall be that each district, in order to obtain its proportion of the public money, shall maintain a school for at least six months in each year. Now it is not to be presumed that the Legislature, in framing a school law under that provision, will so frame it as to deprive a school district just organized, or organized within the last three, or the last six months of the school year, of its proportion of the school money. The language of the section does not necessarily imply, in my opinion, that there must be absolutely six months of school teaching before the district can receive any money whatever. It does not require six months of school teaching within the school year, but it may be, as I understand, three months of school at the end of one year, and three months at the beginning of the next year. If in any district a school has been in operation three months in the school year, and had been organized three months in the previous year, it is not to be presumed that a legislative body, organizing a school system under great difficulties, is going to make such provisions as will cut that district off, and prevent its receiving any of the school money. The constitutional provision simply lays down the general principle that in every district there must be a school for six months in each year, and the penalty is, that if a district does not maintain a school during that proportion of the time, it cannot be allowed to receive any portion of the public money.

Mr. HAWLEY. May I be allowed one moment to repeat a statement which I made yesterday in the committee, and which I think may have some bearing upon this very point? It is, that the appropriation is made in all cases, but a school must have been taught in the district for the period of time required, before the district can draw the money. I wish the gentleman from Lyon (Mr. Crosman) to understand this perfectly.

The CHAIRMAN. The gentleman from Douglas will please to take his seat one moment. I believe there is not a quorum present. Let the Secretary count the Convention.

The SECRETARY counted, and reported that eighteen members were present.

Three or four other members having come in from adjoining rooms, a quorum was found to be in attendance.

The CHAIRMAN. We have had but little more than a quorum during a considerable portion of this afternoon, and the Chair will suggest that it will be necessary for members to remain in the Convention, in order that we may not find ourselves without a quorum for business. The gentleman from Douglas will proceed.

Mr. HAWLEY. As I was saying, the appropriation is made including any district which may have been formed, say ten days, or any other time within three months, before the notification to the County Superintendent of the amount due to the county. That appropriation then becomes a part of the property of that school district. It is held in trust for the district by the Treasurer, and cannot, in any event, be diverted from the use of such district, until the close of the year from the time the appropriation was made. It must lie there for the entire year, in order that the Superintendent may ascertain at the end of the year whether or not the district has been entitled to receive it according to law. I know it is so in my own county. I have now an appropriation of about two hundred dollars belonging to a district which has not complied with the law, and that amount must remain in the treasury for twelve months before I can throw it out of the district fund into the general fund of the county, for distribution among the other districts which have complied with the law. Therefore, I say that the seeming hardship, to which the gentleman from Lyon refers, does not exist. If newly organized districts continue their school for the time required, the money cannot be diverted from them, and will not be by any honest Superintendent; but if for the space of a whole year they refuse or neglect to comply with the law, then the money is divided among the other districts. I think it is an excellent check upon the several districts, and I trust it will be continued.

Mr. COLLINS. It is to be presumed that the Legislature, in framing or drafting a school law under our Constitution, will frame it, not, perhaps, in exact accordance with the present system, but in such a manner as to harmonize with the requirements of the Constitution. Now almost any man, if disposed to be critical, might point out difficulties likely to arise in the workings of any new system which we can devise. But all that this body can do, or ought to attempt to do, is to lay down the outlines of a general system, presuming that the Legislature will be as much interested, and have as deeply at heart the cause of common schools, as the members of this Convention. The members of the Legislature will have to exercise their best judgment in devising the means of carrying out in detail these general provisions, and they will undoubtedly frame their law with a view to meet any and all such difficulties as that which has been suggested by the gentleman from Lyon.

Mr. CROSMAN. But what right will the

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Legislature have to frame a law providing for this difficulty, if in the Constitution we prohibit the Legislature from doing so?

Mr. COLLINS. I think there is no such prohibition, and I imagine it would be no particular trouble to me, if I had the time, to draft a law, under this provision, which should meet that very case. But even supposing that difficulty could not be met, still I maintain that it would be better to let the new districts suffer a little temporary hardship of that kind, than to have our whole educational system deranged. The great object is to stimulate the support of the public schools, and I wish it were possible to keep them going for twelve months in the year instead of six. We provide that the State shall offer a premium for the longer term of six months. We know that there are very few districts in which schools would not be kept from one to three or four months in the year, by the voluntary contributions of the citizens, even without the aid of the public money; and by offering this premium a stimulus is presented, inducing them to contribute such amounts as shall suffice, together with the public money, to carry on the schools for six months, at least; whereby they secure the advantage of the State aid, and are enabled to educate their children. The experience of all other States has shown the great advantages of such a system. I hope the gentleman from Lyon will withdraw his amendment, because I am satisfied that the difficulty which he apprehends does not exist in the section as it now stands before the Convention.

Mr. WARWICK. As it is nearly five o'clock, will the Chairman allow me to make a privileged motion to extend the time for the adjournment?

The CHAIRMAN. The gentleman will wait until the committee rises.

#### TIME OF MAINTAINING SCHOOLS.

Mr. BANKS. I prefer that we should simply require the Legislature to provide for schools for six months in a year, leaving all matters of detail for the Legislature to arrange, from time to time, as occasion may arise. I therefore move to amend by substituting these words, in place of the language now contained in the section:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district at least six months in every year."

The CHAIRMAN. The effect of that amendment would be, as the Chair understands, to adopt a substitute for Section 2.

Mr. COLLINS. I trust that amendment will not prevail. I hope that the Convention will be disposed to offer a premium to every school district in this State, which shall maintain a public school for six months in the year; and I also hope, most sincerely, that we shall provide in our Constitution for keeping out of our schools sectarian instruction. It will require

strong influences to exclude such instruction, and money is the great motor—one of the most powerful influences of civilization. Wherever its power is brought to bear, it always has potent sway. The gentleman from Humboldt who offers this amendment is almost always right, but it seems to me that he has been a little wrong in his investigations on this subject, and therefore I trust that the Convention will not sustain him. If we adopt his amendment there will be nothing left which will be adequate to keep out sectarianism, and no stimulus which can be relied upon to keep up the public schools for more than one, two, or three months in the year; and if the Legislature has only the public school money, and no power to support the schools by taxation, perhaps, in many districts, they will not be maintained more than one month in the year.

Mr. McCCLINTON. I suggest that the clause in the section as reported, prohibiting sectarianism, be incorporated into the amendment of the gentleman from Humboldt.

Mr. BANKS. I will accept that.

Mr. COLLINS. The gentleman from Humboldt may accept it, but I shall not.

Mr. BROSNAN. I desire to offer an amendment.

The CHAIRMAN. It is not now in order.

Mr. BROSNAN. I intend it as an amendment to the amendment proposed by the gentleman from Humboldt. It is to add to his amendment the following:

"But no sectarian instruction shall be allowed in any public school so established."

Mr. BANKS. I accept it.

Mr. HAWLEY. I do not wish to occupy the time of the Convention, but in my judgment the result of the removal of that section as reported, could not be anything but bad. Such action must necessarily have a pernicious influence. Sir, the object of the committee in framing Section 2, now under consideration, was to create a stimulus which would incite the different school districts to maintain their schools for longer periods than they otherwise would. But let the several districts have it in their power to put their hands upon the public funds, whenever a school has been taught in them for one, two, or three months, when they have taken up some straggling applicant for the position of teacher, and placed him in charge, to neglect his duties, as I know to have been sometimes the case in my own county, and it will bring forth no good results. What we want is a basis upon which to build the educational superstructure, by means of which we can afford every child a sufficient amount of instruction to enable it to go creditably through life. At the same time, we wish to make the people understand that with the limited resources of the State, and with the heavy expenses necessary to support the schools as they should be supported, they will be required to put their own shoulders to the wheel. Now, although I am a member of the committee which report-

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ed this article, I have no hesitation in saying that under its provisions, in my opinion, a law could be framed, and would require to be framed, which would accomplish these good results; and with all deference to the gentleman from Humboldt, I think that his amendment would result in the establishment of a system which would do but little good—which would contain no features calculated to sustain the interests of public education.

Mr. STURTEVANT. I move that the committee rise, report progress, and ask leave to sit again.

The question was taken, and the motion was agreed to.

## IN CONVENTION.

The SECRETARY reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

The report was accepted, and leave was granted accordingly.

Mr. WARWICK. In order to enable the Convention to finish the consideration of this article to-day, I move that the time for adjournment be extended until half-past five o'clock, and then I will move, inasmuch as the Committee on Schedule desires to hold a meeting to-night, that at that time the Convention adjourn until to-morrow morning at nine o'clock.

The question was taken on the motion to extend the time for adjournment until half-past five o'clock, and it was agreed to.

The question was next taken on the motion that when the Convention adjourn, it adjourn to meet to-morrow morning at nine o'clock, and it was agreed to.

## COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. STURTEVANT, the Convention again resolved itself into Committee of the Whole, (the President remaining in the chair,) and resumed consideration of Article XII, entitled Education.

## NEW SCHOOL DISTRICTS.

The CHAIRMAN stated the amendments pending to Section 2.

Mr. DUNNE. It seems to me there are four or five amendments; I think they cannot all be in order.

The CHAIRMAN. The Chair will again state the question. In the first place, the committee has under consideration Section 2, of Article XII, as reported by the Committee on Education. The gentleman from Lyon, (Mr. Crosman,) moves to amend the section by incorporating a proviso, and to that amendment the gentleman from Humboldt, (Mr. Banks,) offers an amendment which is of the nature of a substitute, and is in order as an amendment to an amendment. A further amendment, suggested by the gentleman from Storey, (Mr. Brosnan,) was accepted by the gentleman from Humboldt

and therefore becomes a part of his amendment. Hence, the first question before the committee, is the amendment proposed by the gentleman from Humboldt, (Mr. Banks,) as subsequently modified by him.

Mr. FRIZELL. Mr. President—

Mr. BANKS. I ask the gentleman from Storey to give way one moment, that I may make a suggestion. It appears to me that the better course would be to put the vote first on the amendment offered by the gentleman from Lyon, (Mr. Crosman,) which I understand is to perfect the section. Then the question will properly come upon my amendment, to strike out the whole section, and insert instead the language which I have proposed.

The CHAIRMAN. If there is no objection that course will be adopted.

Mr. FRIZELL. In the outset of the remarks which I propose to make on the questions now pending before the Convention, I desire to say, Mr. President, that I am sorry to be impelled to utter anything adverse to amendments, coming as these do from able and good men; yet I feel it my duty to state why I shall be compelled to vote against them. I think that when anything like a system of education comes from the hands of such a committee as that to which this article has been referred, the men composing it being able men, who have devoted their entire attention to the subject for many days, it is entitled to most respectful and careful consideration at our hands. Certainly, sir, there are no more competent gentlemen in this Territory than those who compose that committee, and the important subject which they have had under their consideration is a theme suited to the men constituting the committee. Therefore, it seems to me that when a report comes from that committee to this Convention, it comes as a whole—in all its beauty, in all its force, in all its harmony. Sitting here, as one humble member, I might possibly find fault with a single section, as I hear it read by the Secretary, but unless I can hear the whole, take in and understand the harmony of all the parts, and appreciate the beauty and force of the entire report, I think I am scarcely competent to offer an amendment to any part of that report. And I apprehend that no member, no matter what his qualifications may be, can really make any valuable addition or amendment to the report, unless he can see through the beauty and strength and harmony of the whole of it; and hence I fear that any proposed amendment would be more likely to mar than to improve that harmony and strength. For these reasons, I am unwilling, unless gentlemen can offer something which will be extremely well marked and plain in the way of an improvement, to undertake to make any change whatever in the report which has been made by our committee.

The SECRETARY again read the amendment proposed by Mr. Crosman, as follows:

“ Provided, That the Legislature may make provision

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for the distribution of the school fund to school districts, during the first year of their organization, without reference to the time that a school has been held therein."

The question was taken, and the amendment was not agreed to.

PENALTY FOR NEGLECT.

The question was next stated on the amendment offered by Mr. Banks, as subsequently modified, to strike out the whole of Section 2, and insert instead the following :

"SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district, at least six months in every year; but no sectarian instruction shall be allowed in any public school so established."

Mr. BROSNAN. Now, sir, I move to amend that amendment, as just read, by adding thereto the following words, which I find here in the section as reported by the Committee on Education :

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction."

Mr. BANKS. While I do not see any obvious necessity for that, I see no objection to it, and therefore I accept the amendment.

The question was taken on the amendment as thus modified, and it was not agreed to.

The question was taken on the adoption of Section 2 as reported, and it was adopted.

THE SCHOOL FUNDS.

Section 3 was read as follows :

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1811; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds, or the bonds of this State; provided, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

STATE UNIVERSITY.

Mr. DUNNE. I wish to speak to the last pro-

viso, which authorizes the appropriation of such portion of the interest on the public school fund as may be necessary for the support of a State University. I find that special provision is made in the next section for a State University, and in a subsequent section there is a provision for levying a special tax for its support. Now I am entirely in favor of taxing the State for a State University, whenever the State can afford it. I believe, however, in turning our undivided attention, in the first place, to the common school system of the State, and I do not think that the interest derived from the school fund should be taken from the common schools and applied to the purpose of building up a State University. Therefore, because there is special provision made elsewhere for a State University, and because we ought to endeavor, in the first place, to secure to our children the advantages of a good common school system, I move that this last proviso in Section 3 be stricken out.

Mr. HAWLEY. Allow me to call the gentleman's attention, and that of the Convention, to the language of that section. It only provides for the appropriation of "such portion of said interest as may be necessary."

Mr. DUNNE. I am aware of that.

The CHAIRMAN. The question is on the amendment to strike out the last proviso in the section.

Mr. HAWLEY. It does seem to me, Mr. Chairman, that this is a matter which should be left discretionary with the Legislature. I do not think there is any danger that a body of men, elected by the people, and convened here to legislate for the interests of the new State, are going so blindly to work as to appropriate at once, and exclusively, the entire sum received for interest on the public school fund to the support of a State University, leaving the common schools entirely unprovided for. The gentleman from Humboldt must be well aware that to create a State University, to build up its various departments, and fill it with professors, is a work of time. It will, of course, be the duty of the Legislature, first, to locate and rear the structure, and it does seem to me that the Legislature will, beyond any doubt or question, agree with the gentleman from Humboldt, and the rest of us, in realizing the paramount necessity of preparing the new State for a University before they build it—of placing both parents and children in such a position, in the first place, that they may be competent to avail themselves of the advantages of a University. Therefore, I trust that the amendment will not prevail.

I desire, further, to call the attention of the gentleman to another provision in Section 6—the section which authorizes the special tax, to which he has referred—a provision which he has evidently overlooked. The section prescribes that this special tax may be appropriated "for the support and maintenance of said University, and common schools." Now I submit

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to the consideration of the Convention, whether it would not be better to leave some little discretionary power on these subjects to the Legislature, and trust to its good sense in regard to appropriating such small proportion of the school funds as may be proper, towards laying the foundation of the material superstructure of the University. I have no doubt that they will devote a sufficient portion for the benefit of the common schools.

The question was taken on the amendment proposed by Mr. Dunne, and it was not agreed to.

Mr. BANKS. I call for the reading of so much of the section as relates to the sixteenth and thirty-sixth sections, donated by Congress for school purposes. I think there is a mistake as to the number of the sections.

The SECRETARY read that portion of the section.

Mr. TAGLIABUE. That is where the error is; it should be the thirty-sixth, instead of the thirty-second sections, according to the Enabling Act.

Mr. HAWLEY. It is a mere verbal error; I move that the Secretary be directed to make the necessary alteration.

By unanimous consent, the Secretary was instructed to make the correction, by substituting the word "thirty-sixth" for "thirty-second."

## PUBLIC LANDS—CONSENT OF CONGRESS.

Mr. FRIZELL. I rise for information. I see that this section includes, and devotes to educational purposes, the lands donated by Congress for internal improvements. I would like to hear some explanation of that.

Mr. COLLINS. Our chairman proposed to bring in an amendment relating to that subject, after the section was read, and at his suggestion I will offer it. Allow me to explain, in the first place, that this is the five hundred thousand acres appropriated by Congress to each of the States for internal improvements, but which has been by most of the States diverted to educational purposes instead. The chairman makes a suggestion, however, which strikes me as a very good one, namely: that probably, or at any rate possibly, we cannot divert the land donated in that manner, and enjoy the benefit of it, without the authority of an Act of Congress, inasmuch as we are still a Territory, and therefore he proposes to insert a clause appropriating the land to this purpose, provided the permission of Congress can be obtained for devoting it to such use and purpose. I will read the amendment he suggests for the information of the Convention.

Strike out all of the first four lines of the section as printed, and add after the word "State," in the seventh line, the following:

"And also the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841, provided that Congress makes provision for, or authorizes such diversion to be made for the purpose herein contained."

Let the Secretary read the section as it will stand with the amendment proposed by the chairman.

The SECRETARY read, as follows:

SEC. 3. All lands, including the sixteenth and thirty-sixth sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and representative in Congress; all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this State; and also the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841;—*provided*, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and provided further, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

The CHAIRMAN. I will state that the amendment presented, as I prepared it, makes no change in the section, except the transposition of the language and the addition of these words: "Provided, that Congress makes provision for, or authorizes such diversion to be made, for the purpose herein contained." I think that without the amendment a legal objection might exist to our making the provision absolutely, and incorporating it in our Constitution, without in any manner asking the consent of Congress.

The question was taken on the amendment offered by Mr. Collins, (in behalf of the chairman,) and it was agreed to.

The question was taken on the adoption of the section as amended, and it was adopted.

## STATE UNIVERSITY—FREE ADMISSION.

Section 4 was read, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanics arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents.

The CHAIRMAN. Without leaving the chair, by leave of the Convention, I would ask the Chairman of the Committee on Education to explain this section. I see that one of the essential features of the corresponding section in the former Constitution is omitted, namely,

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that which required that the parents or guardians of the pupils shall be residents of this State. Is it contemplated that the institution shall be made free to all pupils, although their parents may not be residents of the State?

Mr. COLLINS. The committee had that subject under consideration, and was of opinion that there may arise cases where, if this school shall obtain the reputation which it is hoped it may acquire, by reason of our large mining interest, and the peculiarities of our agricultural lands, a restriction of that nature would be inadvisable. There may be individuals from other States who would like to avail themselves of the advantages of such a school, and who would be able and willing to pay liberally for their tuition, and that would be a source of revenue to the institution, and an advantage not only to those individuals, but to the public also. That consideration was what influenced the committee to make the change to which the gentleman refers.

[Mr. McCLINTON in the chair.]

Mr. JOHNSON. I call the attention of the gentleman from Storey to the language of the section. I think it provides that instruction in the University shall be free to all pupils. If instruction is to be given free, I do not see how there can be any revenue.

Mr. COLLINS. If that is the construction to be placed upon the language of the section, the committee, I am sure, will be very anxious to change it. The University is to be placed under the care and direction of a Board of Regents, the members of which Board, it is presumed, will feel a strong interest in its prosperity; and as every such institution is languishing for want of money, it is hardly to be supposed that the Board will call in strangers to enjoy its facilities and advantages, unless the institution is to derive some benefit from them in return.

Mr. JOHNSON. This is the point I make: that when we declare that education shall be free in the institution, it is not within the province of the Board of Regents to prescribe regulations by which those pupils who come from abroad shall be compelled to make payment. I would prefer the language as we find it in the old Constitution. Whilst I would be in favor of making the University free for all pupils living within the State, I am unwilling to make it free also for those who come from abroad. The intention of the former Convention was, that free tuition should be given only to those whose parents or guardians might reside in the State, and as to those coming from abroad, the Regents would, of course, have the power to make such regulations as should be just and satisfactory.

Mr. COLLINS. I perceive the correctness of the criticism, and I think that some language should be added.

Mr. JOHNSON. I will move then to amend the section by adding the words as printed in

the former Constitution: "And whose parents or guardians are citizens of this State."

Mr. NOURSE. Does not the section then exclude pupils residing outside the State, on any terms?

Mr. JOHNSON. I think not. The language of this latter portion of the section applies only to those whose parents or guardians are citizens. It gives the benefit of free admission to those living in the State, but there is nothing to prevent the Board of Regents from allowing others to enter upon such terms as they shall see fit to prescribe.

Mr. WARWICK. Would it not be better to incorporate in the section the idea that the Regents may prescribe the terms of admission of pupils from abroad?

Mr. JOHNSON. I do not think it is at all necessary. We only declare here the one proposition that the institution shall be free to those who reside in the State. That declaration is expressed in unmistakable language in the section, but nothing is said, directly or by implication, in regard to pupils who reside without the limits of the State. The Board of Regents may therefore prescribe such terms as they please for their admission, and I do not think that anything further is needed on that subject.

Mr. COLLINS. I do not think that the word "free," as there used, has reference to money. It strikes me that it means, rather, that all white citizens shall be at liberty to come in, under such rules and regulations as may be prescribed. I do not think the pupils are to be free in the sense that it is to cost them nothing, but that the privileges of the institution are to be free to be availed of by all the children in the State.

Mr. JOHNSON. I will only say this, that such was the sense in which the word was understood by the Convention which framed and adopted this section last year—namely, that children whose parents reside in this State shall be admitted free of charge. If, however, that word is not sufficient to convey our meaning, let us use language that will. I had something to do with the preparation of this article in the other Convention, and I know that the sense in which the word was understood then, was that education in the institution should be free. Now I repeat, if the word does not mean that, and we intend it, then let us substitute other words that will express our intention; and if, on the other hand, such is not our intention, let us adopt such language as will clearly express what we do intend. I am unqualifiedly in favor of providing that the instruction imparted in the University, to the children of the State, shall be without cost, and we can use that expression if gentlemen consider it more definite. But the word "free," as employed in the section, does not refer to white or black; I, for one, did not intend it to have any application or reference to the individual.

Mr. COLLINS. I am in favor, to a certain



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extent, of free schools, and yet I do not believe it is the duty of the public, unless it has ample means, even to open the common schools without exacting some small compensation. If the State is pressed for money, limited in its resources, or overburdened with debt, it must require parents, even though they may be poor, to contribute something towards the expense of educating their children, although I would like to have all the schools free, in the most liberal sense of the word. I think that the word employed in this section should be changed, and I suggest that we say "open," instead of "free"—"which shall be open to all white pupils," etc., under such regulations as may be prescribed. I really never dreamed that it was proposed to make the institution perfectly free to everybody in the State, so that men might attend, if they pleased, up to the age of twenty-five, or over, at the expense of the State. I know there are many colleges having departments in which men up to the age of thirty, receive instructions adapted to the various walks of life, but they always exact compensation for such instructions. It seems to me that we ought only to provide that the University shall be open to all.

Mr. JOHNSON. That might be susceptible to the criticism that it would be very inconvenient to keep the door open, especially on a cold winter day. [Laughter.]

Mr. COLLINS. I use the word in the common acceptance of the term. As to the word "free," where it occurs in this section—I do not find it at this moment, the report has been so much disarranged and mixed up—

Mr. NOURSE. Allow me to make a remark while the gentleman is looking for that section. It seems to me that when we have gone so far as to provide for a Mining Department, we have said quite enough; all the rest, in regard to establishing rules and regulations, might better be left to the Legislature. As to making the institution free, I do not think it is practicable with the small amount of population in the country—

Mr. COLLINS. I have the floor, I believe. I find the word "free" in the fourth line of the section as reported. It says:

"The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils."

"Open to all white pupils," as I would prefer to say—

"Which shall be open to all white pupils possessing such qualifications as may be prescribed by the Board of Regents."

That, it seems to me, covers the whole ground, and we need go no farther. Under that section, you may let pupils in, if you please, from California, from Maine, from Georgia, or from Kamschatka.

Mr. WARWICK. The only objection I see, is that our State is rapidly increasing. It is well known that an institution of this kind will

be eagerly sought after by all classes; and if we admit the pupils free, I doubt whether we shall be able to build an institution large enough to contain all that will apply. There must be a limit established. It will be like the Girard College of Philadelphia, the Smithsonian Institute, founded by a benevolent foreigner, and other similar institutions, all of which have a limit. Therefore I think, as the gentleman from Washoe has said, that when we have provided that such an institution must be reared, all the rest may be left to the Legislature. I will move to strike out all that latter part of the section.

The CHAIRMAN. There is an amendment pending already, and consequently the gentleman's amendment is out of order.

Mr. JOHNSON. I will say but a single word further. I have referred to the action of the former Convention on this subject, and the sense in which that body used the word "free," in the original section, and I think the members of that Convention who are present in this will not disagree with me in respect to the meaning which was attached to the word when it was there employed. Although the Chairman of the Committee on Education seems to differ from me in regard to the sense in which the word now appears, in the section under consideration, yet I certainly conceive that what I have stated is the correct meaning and import of the expression, and hence I shall insist on my amendment to add the remaining portion of the original section—"and whose parents or guardians are citizens of this State." I insist upon this because I do not wish to throw open the institution without cost to everybody who may choose to apply for admission.

There seems to be some considerable difference of opinion on this subject in the Convention, and I would like an opportunity to make some estimates in regard to it, and to present some reasons why, in my judgment, this Convention should accord the special privilege which I propose to the children or wards of the citizens of the State, without cost in money. I think I can justify that policy, and show that there are ample compensating advantages to result to the State from making such a donation to the children of the State.

But, as there is not sufficient time before the hour of adjournment to give proper consideration to this important matter, I will now move that the committee rise, report progress, and ask leave to sit again, for the further consideration of this article.

The question was taken, and the motion was agreed to.

IN CONVENTION.

The PRESIDENT having resumed the chair, The CHAIRMAN reported that the Committee of the Whole had had under consideration Article XII, entitled Education, had made some progress therein, and had instructed him to ask leave to sit again.

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The report was accepted, and leave was granted accordingly.

On motion of Mr. CROSMAN, at twenty-five minutes past five o'clock, P. M., the Convention adjourned.

## SEVENTEENTH DAY.

CARSON, July 22, 1864.

The Convention met at nine o'clock A. M.

Mr. HAWLEY moved, in the temporary absence of the President, that Mr. Mason take the chair as President *pro tem*.

The SECRETARY put the question, and the motion was agreed to.

Mr. MASON declined to take the chair.

Mr. CROSMAN moved that Mr. Hawley take the chair as President *pro tem*.

The SECRETARY put the question, and the motion was agreed to.

Mr. HAWLEY accordingly took the chair, as President *pro tem*.

The roll was called, and all the members responded, except the following: Messrs. Ball, Collins, Crawford, DeLong, Earl, Fitch, Folsom, Haines, Hudson, Jones, Kinkead, McClinton, Morse, Nourse, Parker, Tozer, Wellington, Williams, and Mr. President. Present, 20; absent, 19.

Subsequently, Messrs. Collins, Nourse, and the President came in, and were recorded as present, on the roll-call.

Prayer was offered by the Rev. Mr. NIMS.

The journal of yesterday was read and approved.

## LEAVE OF ABSENCE.

Mr. HOVEY. I ask indefinite leave of absence for Mr. DeLong, on account of the ill health of his wife.

Mr. BROSNAN. We have but little over a quorum now, and if we go on granting indefinite leave of absence to members, we shall very soon find ourselves without a quorum.

Mr. HOVEY. I will ask, then, that he be granted leave of absence for one day.

The question was taken, and leave of absence was granted to Mr. DeLong for one day.

Mr. JOHNSON. I ask leave of absence for myself this forenoon, having business to attend to.

The question was taken, and leave of absence was granted to Mr. Johnson in accordance with his request.

Mr. WARWICK. Leave of absence was yesterday granted to Mr. Earl, for one day only, but with an understanding that the leave would be extended, if the necessities of the case should require it. I now ask that he have leave of absence for another day.

The question was taken, and leave of absence for to-day was granted to Mr. Earl.

Mr. BRADY asked leave of absence for Mr. Folsom for one day, which was granted.

Mr. MASON. My colleague, Mr. McClinton, obtained indefinite leave of absence the other

day, but under a late ruling of the Chair, I fear that it may not avail him, and therefore I ask leave of absence for him for to-day.

The question was taken, and leave of absence was granted to Mr. McClinton for one day.

Mr. KENNEDY asked leave of absence for Mr. Hudson for one day, which was granted.

## IMPEACHMENT AND REMOVAL.

Mr. CROSMAN, from the Committee on Engrossment, reported correctly engrossed Article VII, entitled Impeachment and Removal from Office.

The report was received, and the article ordered on file for its third reading.

## PHRASEOLOGY.

Mr. BANKS, from the Committee on Phraseology and Arrangement, submitted the following report:

The Standing Committee on Phraseology and Arrangement beg leave to report, that they have carefully examined the following articles, as engrossed and passed by the Convention:

Article VIII, entitled Municipal and other Corporations;

Article IX, entitled Finance and State Debt;

Article X, entitled Taxation;

Article XIII, entitled Militia;

Article XIV, entitled Public Institutions;

Article XV, entitled Boundary;

Article XVII, entitled Amendments.

And your committee recommend the following amendments:

In Article XIII, Section 1, line 2, before the word "organizing," strike out the word "the," so as to read—"The Legislature shall provide by law for organizing and disciplining the militia," etc.

In Article XVII, Section 2, strike out the last words "at such election," and insert the same after the word "cast," in the 24th line, so as to read—"Reference shall be had to the highest number of votes cast at such election for the candidates for any office, or on any question."

All of which is respectfully submitted.

JAMES A. BANKS, Chairman.

The PRESIDENT *pro tem*. The Chair understands that these amendments are only of a verbal character, the latter being merely a transposition.

Mr. BANKS. That is all.

The report was adopted, and the amendments agreed to by unanimous consent.

## STATE SEAL.

Mr. CHAPIN, from the Committee on State Seal, submitted the following report:

MR. PRESIDENT—Your Committee on State Seal recommend that the following prominent features be represented upon the State Seal, to wit:

In the foreground, two large mountains—at the base of which, on the right, there shall be located a quartz mill, and on the left a tunnel, penetrating the silver leads of the mountains, with a miner running out a car load of ore, and a team loaded with ore for the mill. Immediately in the foreground, there shall be emblems indicative of the agricultural resources of the State, as follows: a plough, a sheaf, and a sickle; in the middle ground, a train of railroad cars passing a mountain gorge—also a telegraph line extending along the line of the railroad; in the extreme background, a range of snow-clad mountains, with the rising sun in the east. Thirty-six stars to encircle the whole group. In an outer circle, the words "The Great Seal of the State of

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Nevada" to be engraven, with these words for the motto of our State, "All for Our Country."  
SAMUEL A. CHAPIN, Chairman.

The question was taken on the adoption of the report, and it was adopted.

Mr. JOHNSON. I suppose it is necessary that there should be a motion to discharge the committee.

The PRESIDENT *pro tem.* It may be desirable hereafter for the committee to take further action.

## SCHEDULE.

Mr. DUNNE. In the absence of the Chairman of the Committee on Schedule, I wish to say that we are not yet prepared to report in full, but we expect to present a partial report this afternoon or evening. There has been a meeting of the committee called for a quarter before one o'clock to-day, and it is very desirable that each county should be represented, if not by the regularly appointed member, then by some other member from the county, who may be admitted to participate in the deliberations, by vote of the committee. I hope there will be a full attendance.

## LIMITATION OF SPEECHES.

Mr. KENNEDY offered the following resolution :

*Resolved,* That no member be allowed to speak more than once, nor longer than five minutes upon any one subject, and if said time be consumed, he shall not be allowed to explain his vote.

Mr. BANKS. I move to strike out all of that resolution, except so much as limits the time. I am willing to confine gentlemen to a limited time of speaking in debate, but if a member wishes to explain his vote, he should have that privilege.

Mr. KENNEDY. I will state that it is not my desire to limit debate, at all, but we have got into such a position that it is absolutely necessary, in my opinion, if we intend to make any Constitution at all, that we should finish it by Saturday night. I know that some gentlemen expect to go home to-morrow morning, and I am apprehensive that we shall find ourselves left without a quorum. I think it is time for us to vote more and talk less. I will suggest further, that if there should be some cases arise where it is necessary for a member to speak longer than five minutes, he can do so by unanimous consent.

Mr. DUNNE. That should be inserted, then, for as it reads now, it requires only a majority vote to extend the time.

Mr. KENNEDY. I will accept the suggestion, and insert the words, "except by unanimous consent."

Mr. CHAPIN. I will suggest an amendment, that the five minutes limitation be made to apply only to any question before the Convention. Then a member can make short speeches as often as he pleases, so long as he does not consume altogether more than five minutes of the time of the Convention.

Mr. JOHNSON. Perhaps we should go a little further and have a time-keeper appointed, if each member's time is to be divided into fractions. I will suggest, however, that the number of times of speaking is not limited by the rule heretofore adopted for the government of the Convention. And another thing, if we are to have such a rule, it is quite as important that it should apply in Committee of the Whole as in the Convention.

Mr. KENNEDY. I intended it to apply to both.

Mr. WARWICK. The difficulty is that there is frequently a delicacy on the part of the presiding officer, about calling a member to order who has exceeded his time.

Mr. JOHNSON. In regard to that, I will say that the rule which has governed the Convention hitherto regarding the length of speeches, in my opinion, left it discretionary with the Chair to call a member to order or not, unless objections were made. If, however, a different rule shall be adopted, which is imperative in its character, absolutely limiting the time of speaking, without reference to objections being made or not, I should, while in the Chair, feel it my duty to enforce such rule.

Mr. WARWICK. Very well ; I hope the resolution will be adopted with that understanding.

Mr. CHAPIN. I hope it will be considered the bounden duty of the Chair to enforce the rule.

Mr. BANKS. I will withdraw my proposition to amend the resolution, because a member may make an explanation by consent of the Convention.

The PRESIDENT *pro tem.* Several other amendments have been accepted, I understand, by the mover of the resolution.

Mr. KENNEDY modified his resolution, so as to read as follows :

*Resolved,* That no member be allowed to speak longer than five minutes upon any one subject, either in Convention or in Committee of the Whole, and if said time be consumed, he shall not be allowed to explain his vote.

The question was taken upon the adoption of the resolution as modified, and it was adopted.

## THE FINAL ENROLLMENT.

Mr. BROSNAN. I would like to ask a question for information, and that is, at what time the Constitution will probably be enrolled and prepared for the signatures of members of the Convention. I make the inquiry, because I learn that some of the members desire to leave this week, and I do not see how, in that event, their signatures can be obtained.

The PRESIDENT *pro tem.* (Mr. Hawley.) I will state that the Enrolling Clerk assures us, that every portion which has been placed in his hands will be ready by to-morrow morning, and probably, if any more shall be handed in to-day, it will also be included. Nevertheless, I will state, from the best information I can ob-

tain, that it will be impossible to have the whole instrument enrolled by to-morrow night. The article on the Judicial Department, and the Schedule will be very long, and those are not yet in the hands of the Enrolling Committee.

Mr. BROSNAN. I made the inquiry mainly in order that members of the Convention may be apprized of the fact that their signatures to the document are necessary.

Mr. JOHNSON. How many signatures are necessary to give it validity?

Mr. BROSNAN. I do not know; but it is usual for each member of a Constitutional Convention to append his sign manual to the instrument which he has assisted in framing.

Mr. CHAPIN. I hope to see it enrolled by to-morrow evening, so that there may be no loss of time. I trust, therefore, that the committee will attend to the business, and have the work done without delay.

The PRESIDENT *pro tem*. It will be impossible, unless the articles on the Judiciary and the Schedule shall be finally acted upon.

Mr. CHAPIN. We are going to act upon them to-day, I hope.

Mr. DUNNE. I do not think it will be possible to have it enrolled before ten o'clock on Saturday night; but perhaps members can pursue the same plan which was adopted by the last Convention—that is, sign their names in blank.

COMMITTEE OF THE WHOLE—EDUCATION.

On motion of Mr. DUNNE, the Convention resolved itself into Committee of the Whole, (the President *pro tem*.—Mr. Hawley—remaining in the chair,) and resumed consideration of Article XII, entitled Education.

FREE ADMISSION TO STATE UNIVERSITY.

The question was stated on the amendment offered by Mr. Johnson to Section 4, to add thereto the words—"and whose parents or guardians are citizens of this State;" so that the section would read as follows:

Sec. 4. The Legislature shall provide for the establishment of a State University, embracing departments for agriculture, mechanic arts, and mining, which shall be free to all white pupils possessing such qualifications as may be prescribed by the Board of Regents, and whose parents or guardians are citizens of this State.

Mr. JOHNSON. There was another amendment offered in the form of a substitute for the section, either by the gentleman from Washoe, (Mr. Nourse,) or the gentleman from Humboldt, (Mr. Banks.)

Mr. BANKS. I think that was lost.

Mr. JOHNSON. No, sir. I wish to call the attention of those gentlemen to the facts. I am confident there was an amendment to Section 4—in its character, a substitute for the section—offered by one or the other of those gentlemen.

Mr. BANKS. My recollection is, that I offered an amendment, which was voted upon, pro-

viding that the Legislature should pass such laws as would secure the keeping open of the schools for six months in the year.

Mr. JOHNSON. That was in Section 2; the one I allude to was proposed to Section 4, now under consideration; or, if not offered, it was at least read for information. The effect of it was, to omit all after the first three lines, stopping at the words "mining department," in the section as printed in the old Constitution. I think there was an amendment pending of that purport.

Mr. NOURSE. I believe I made that suggestion, but I made no motion.

Mr. CROSMAN. I will move to strike out that latter portion, after the word "Regents." That will leave the matter entirely open for legislative action.

The CHAIRMAN. The Chair recollects that objection was made to the latter clause on the ground of certain privileges to which children, whose parents or guardians reside in this State, are entitled, and in view of that objection the Chair was about to propose an amendment. I will suggest to the gentleman from Ormsby (Mr. Johnson) to present that amendment, which I think will do away with all the objections urged against the section.

Mr. CROSMAN. There does not seem to be any motion at present before the Convention, and I will ask the Chair to put my motion, as it has been seconded. That will leave the whole matter to the Legislature, to determine whether the institution shall be free for all children, or free for all white children, or what shall be the terms of admission in any and all cases.

The CHAIRMAN. There is a motion pending, the amendment offered by the gentleman from Ormsby, (Mr. Johnson.)

Mr. JOHNSON. I will withdraw that amendment. I do not consider it necessary, unless we retain the other portions of the section.

Mr. COLLINS. In order to harmonize this matter, I will say that I have no particular objection, for my own part, to striking out all, except that portion which requires the establishment of the University. And here is an amendment which has been handed to me that seems to cover the entire ground. It is to strike out the latter clause, and substitute the following:

"And the Board of Regents shall prescribe the terms upon which pupils shall be entitled to the privileges of said University."

Mr. CROSMAN. Now I submit to the Chair and to the Convention, whether it would not be more explicit, and better in every way, to let the section provide simply for the University, and then for a Board of Regents, and leave all the rest to the Legislature.

Mr. COLLINS. I am satisfied with that. Here is something, handed me by the gentleman from Lyon, (Mr. Crosman,) that would be short and concise:

Friday,]

NOURSE—CROSMAN—BROSNAN—JOHNSON—COLLINS—CHAPIN—MASON.

[July 22.]

"The Legislature shall provide for the establishment of a State University, which shall be under the control of a Board of Regents."

Mr. NOURSE. I like the general idea of that very much, only I would suggest to add to it, "whose powers and duties shall be prescribed by the Legislature," and not leave it to be inferred, perhaps, that they have absolute control. I will vote for it with that addition.

Mr. CROSMAN. I will accept of that, although I think it would rather be inferred.

Mr. BROSNAN. I rise for information, and would like to get the attention of the gentleman from Ormsby (Mr. Johnson) for a moment. I suppose it is intended, in the establishment of this institution, to comply with the Act of Congress of 1862, granting lands to the several States for agricultural colleges, and that Act, I believe, provides that the institution shall possess various features. It is not to be devoted to agricultural purposes only, but the mechanic arts and military tactics are also to be taught.

The CHAIRMAN. Allow me a word of explanation on that subject. There is another section which provides for these matters, and the gentleman will observe that it is not left discretionary whether those branches shall be taught or not.

Mr. JOHNSON. I will further suggest that the section which has been reported by the committee, is more extended than the printed section, in the old Constitution. The chairman of the committee will be able to explain the objects intended to be gained by the section.

Mr. COLLINS. The law of 1862, which has been referred to by my learned colleague, (Mr. Brosnan,) makes it obligatory that the college established by aid of the fund provided for, shall be for the purpose of the benefit of agriculture and the mechanic arts; and in prescribing the details of such institution, in one portion of the Act, it designates military tactics as one of the branches in which pupils are to be instructed. It also provides that the fund arising from the sale of the thirty thousand acres of land donated to the State for each member of Congress, shall be set apart for these specific purposes. The subsequent section, as it will be seen, provides for the matter fully.

And here allow me to say to the gentleman from Lyon, (Mr. Crosman,) that if his amendment is to prevail, I hope he will modify it so as to include this language: "A State University, embracing departments for agriculture, mechanic arts, and mining." I desire that modification merely for the purpose of covering the entire ground.

Mr. CROSMAN. I will accept that.

Mr. COLLINS. I will say, further, that so far as I am concerned, I would rather have preferred to leave the whole matter to the Legislature, but in deference to the former Convention, the committee desired to retain as much of the language of the original section as possible.

Mr. NOURSE. I do not know that my amendment will be necessary, as the section is now

proposed to be modified, but it will undoubtedly cover the whole ground if we add "under such regulations as shall be provided by law."

Mr. CHAPIN. Allow me to suggest that we shall save time by having this whole article read through carefully, section by section.

Mr. COLLINS. Let me suggest to the gentleman from Lyon, (Mr. Crosman,) that the presumption is the Legislature would provide for a Board of Regents, even if there were no further provision on that subject.

Mr. MASON. I rise to a question of order, that we have not a quorum present.

The SECRETARY counted the Convention, and reported that nineteen members were present, being one less than a quorum.

Mr. CHAPIN. I will move that the committee rise, in order that we may have a call of the House.

The CHAIRMAN. I see that one member has come in since the count, making a quorum. I hope that members will bear in mind our attenuated condition, and remain in attendance as much and as long as possible.

Mr. CHAPIN. I withdraw the motion.

The SECRETARY, by direction of the Chairman, read through the entire article.

Mr. NOURSE. I find that Section 7 covers the whole ground, so that my amendment is not necessary.

Mr. COLLINS. The proviso in Section 8, I will state, was made in conformity with the requirements of the Act of Congress.

#### PRESERVATION OF SCHOOL FUNDS.

Mr. NOURSE. I see it is provided that the interest on the funds coming under the control of the Board of Regents, must be used.

Mr. COLLINS. Yes, sir. The law of Congress provides that if any portion of the fund invested shall, by any accident or contingency be lost, it shall be replaced by the State.

Mr. NOURSE. But this section provides that both principal and interest shall remain undiminished.

Mr. COLLINS. That refers to interest which may accumulate.

Mr. NOURSE. I understand that the interest must be used from year to year in carrying on the institution, and I think that portion relating to the interest had better be stricken out. You cannot apply the interest to the purposes of education, and have it, too.

Mr. COLLINS. I think very likely that the gentleman's criticism is just, and an amendment may be necessary there.

Mr. NOURSE. Suppose you use there the exact words of the Act of Congress?

Mr. COLLINS. By unanimous permission of the committee, I will amend that part of the section by striking out the words "interest and."

No objection being made, Section 8 was so amended.

#### ADMISSION TO UNIVERSITY—AGAIN.

The CHAIRMAN. Section 4 is now under

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CROSMAN—COLLINS—DUNNE—LOCKWOOD—FRIZELL—CHAPIN.

[July 22.]

consideration, and the Chair understood the gentleman from Lyon to offer a substitute. Does he withdraw it, or insist upon it?

Mr. CROSMAN. I do not know that I understand the purport of the amendment proposed by the gentleman from Storey, (Mr. Collins.) Is it different from the report of the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. The Chair will state that there appears to be only a little difference in the language, but no real difference in the meaning.

Mr. DUNNE. I wish to address a remark to the gentleman from Storey. The word "interest" having been stricken out by his amendment, leaves the word "principal" alone. Now would it not be better to use the word "capital"?

The CHAIRMAN. The gentleman is not in order. That amendment will not come up until the section is reached.

Mr. DUNNE. I understood the Chair to state the question on the amendment offered by the gentleman from Storey.

The CHAIRMAN. It is the amendment to Section 4. No other section is now under consideration.

Mr. COLLINS. I will state that my amendment is—although I am more than half inclined to leave the subject entirely to the Legislature—to provide that the Legislature shall appoint a Board of Regents, and said Board of Regents shall prescribe rules and regulations for the State University.

Mr. CROSMAN. Then I do not withdraw my motion. I think this amendment is much more concise and to the purpose, providing that the Legislature shall provide for the University and Mining Department. I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.

Mr. LOCKWOOD. I understand that the amendment of the gentleman from Storey (Mr. Collins) provides, in the first place, that the Board of Regents shall prescribe regulations for the University, and that then the section goes on to say, that pupils shall be admitted under the rules and regulations prescribed by that Board. If that is so, it looks to me like tautology.

Mr. DUNNE. It appears to me that this matter is getting very much mixed. I move that the committee rise, and recommend that the report be recommitted to the Committee on Education.

Mr. COLLINS. I think the amendment of the gentleman from Lyon (Mr. Crosman) is very complete, and all that is required. It is only a moment's work to agree upon it, so as to be satisfactory to all.

The CHAIRMAN. Does the gentleman from Humboldt insist on his motion?

Mr. DUNNE. Yes, sir.

Mr. FRIZELL. I hope it will not prevail. They can get the section perfected in a moment. The question was taken on the motion that the committee rise, and it was not agreed to.

Mr. COLLINS. This seems now to embrace all that is needed. I will read it:

SEC. 4. The Legislature shall provide for a State University, embracing departments for agriculture, mechanic arts, and mining, to be under the control of a Board of Regents, as may be provided for by law.

Mr. CROSMAN. I accept that.

Mr. LOCKWOOD. I desire to suggest to the gentleman to put in the first line there, the words "for the establishment of." It seems to infer that, as it is, but it will make the language clearer.

Mr. COLLINS. Very well; I will insert that, if there is no objection, and will make another slight correction.

The SECRETARY read the amendment as finally modified, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law."

The question was taken on the adoption of the amendment, as a substitute for the section originally reported by the Committee on Education, and it was adopted.

#### ESTABLISHMENT OF SCHOOLS.

Section 5 was read, as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

Mr. LOCKWOOD. I do not desire to delay action, but just to take the sense of the Convention, I move to strike out in the second line the words "normal schools." The Legislature is authorized to establish all grades of schools, and it is not necessary to mention normal schools specially.

The question was taken, and the amendment was not agreed to.

The question was taken on the adoption of the section as read, and it was adopted.

#### SPECIAL SCHOOL TAX.

Section 6 was read, as follows:

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; provided, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

Mr. CHAPIN. Before this section is adopted I would like to suggest whether it is not desirable to make one alteration. There seems to be a provision made in a previous part of the article

Friday,]

DUNNE—CHAPIN—COLLINS—FRIZELL—NOURSE.

[July 22.]

for a school fund, which may be entirely ample, and I would like to alter this language, where it says the Legislature shall provide a special tax of one-half of one mill on the dollar. I move to strike out the word "shall," and insert, "may in its discretion."

The question was taken, and the amendment was agreed to.

Mr. DUNNE. What is the use, now, of the proviso at the end of the section?

Mr. CHAPIN. I move to strike out the proviso also.

Mr. DUNNE. I want that word "shall" put in again, and I hope it will be.

Mr. COLLINS. I regret that it has been stricken out, for I am confident the Board of Regents will have great difficulty in getting funds. It is always the case that institutions of this character are embarrassed for the want of funds, and I hope the committee will reconsider that amendment.

Mr. FRIZELL. There is no doubt that if any funds shall be needed for the State University, or for the support of normal or other schools, they will be provided. There will be American citizens in the Legislature, and if the money is needed, and they may in their discretion appropriate it, the Legislature will vote the required amount of money. There can be no doubt about that. On the contrary, it appears that there is ample provision made by this article, both for the schools and the University, and consequently it may be that no special tax will be needed. Now which horn of the dilemma is it best for us to take? I say we had better leave it to the discretion of the Legislature, because it is certain that the tax will be levied, if it is needed.

Mr. CHAPIN. I hope my amendment will be adopted striking out the proviso. Every gentleman knows that the hearts of our people are set on the common schools; and who can doubt that the Legislature, representing such a people, will levy a tax if there shall be any occasion for it? But I do not believe in compelling the Legislature to burden us with a tax, unless it shall be really needed; therefore I trust that the proviso will be stricken out.

Mr. COLLINS. The committee had in view the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest. Now this section contemplates that the Board of Regents will set aside the proceeds of this tax of one half mill upon a dollar for the special purpose of creating a fund, to be allowed to accumulate until there shall be money sufficient to lay the foundation of an institution such as the wants of the State may demand. Having the proceeds of the thirty thousand acres for each member of Congress, which will be ninety thousand acres for this State, they may set that apart as a permanent fund for the support and maintenance of professors in the University. If this matter of

the special tax is left to the Legislature, what will be the result? That body will be under a pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year; whereas, if the tax were levied at once, a small tax that nobody would really feel, it would go on gradually accumulating into a fund of some magnitude, until five, ten, or twenty years hence, as the case may be, it will become sufficient in the aggregate to lay the foundation of an institution that will be a benefit and an honor to the State. I hope we shall not neglect to provide for an important matter like this, while we are still in an embryo state. I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate. The Legislature of last winter demonstrated the fact that it did not possess that degree of earnestness on the subject that I had hoped existed. I trust, therefore, that we shall make such provisions in our Constitution that men coming into our State may come with a full conviction and assurance that a proper foundation has been laid for affording the means of instruction to their children as they grow up, without the necessity of sending them to other States to be educated.

The question was taken on Mr. Chapin's amendment to strike out the proviso, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

#### THE BOARD OF REGENTS.

Section 7 was read, as follows:

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Mr. CHAPIN. I move that the section be adopted as read.

Mr. NOURSE. I suggest that the words "at the expiration of that time," do not come in at the right place. It seems to me that they should be inserted after the words, "Board of Regents," where they last occur, so as to read: "but the Legislature shall provide for the election of a Board of Regents at the expiration of that time, and define their duties." As it is now, it would seem to imply that the period for any action of the Legislature will not arrive until the expiration of that time.

The CHAIRMAN. Does the gentleman make any motion?

Mr. NOURSE. I will move that the language be transposed so that the words "at the expiration of that time," shall come next after the word "Regents," where it last occurs in the section.

The Secretary read the section as proposed to be amended.

## EXHIBIT 8

## ESA applications reveal wealth gap

By Steve Sebelius Las Vegas Review-Journal

November 1, 2015 - 12:07am

Nevada's education savings accounts were sold to the 2015 Legislature, in part, as a way to level the playing field between students from rich and poor backgrounds.

The program — which puts between 90 percent and 100 percent of state school funding into an account to be spent on anything from tutoring to tuition — was supposed to be a great equalizer: Students from poor areas with poorly performing public schools could escape to better schools, aided by state money.

Turns out, not so much.

As the Review-Journal's Neal Morton and Adelaide Chen reported last week, the majority of ESA applications have come from upper-middle-class or upper-class ZIP codes. Fully 50 percent of applications were filed by families with household income of nearly \$65,000 and up. Another 40 percent were from kids whose parents make between \$42,000 and \$65,000.

But just 10 percent come from poorer families with incomes up to \$24,000.

Surprising? It shouldn't be. People in the upper-middle and upper classes are much more able to bridge the gap between expensive private-school tuition and the amount of an ESA grant (between \$5,000 and \$5,700 annually, depending on family income). People at the lower end of that scale are far more hard-pressed to come up with the difference. And relying on grants, scholarships and other forms of charity doesn't fix the problem on a wide scale.

ESAs have a lot of problems. They appear to violate the state constitution's ban on spending education money for sectarian purposes. They represent a surrender on public schools at a time that we dare not withhold our strict demand for accountability and results.

But if this is the approach the state really wanted to use, there was a way to structure the program to primarily help poorer kids: Increase the amount of the grant, but taper it off with a sliding family-income means test.

Nevada didn't do that, by design. It should surprise no one that the program appears to be benefitting plenty of people who don't need it, while leaving those who do behind.

Speaking of kids, Nevada got a rare bit of good news last week. The Review-Journal's Yesenia Amaro reported nearly 35,000 more children now have access to health care insurance in 2014 than did in 2013.

That represents a 5.3 percentage-point drop, the largest of any state in the country, according to a report from the Georgetown Center for Children and Families.

There's still a long way to go: More than 63,000 children in Nevada still didn't have access to health insurance last year. That's down from nearly 100,000 kids without insurance in 2013. And Nevada still ranks among the states with the highest number of uninsured kids in the country.

What's behind the change? It has to do with Gov. Brian Sandoval's decision to expand the state's Medicaid program, an option that many of his fellow Republican governors rejected, even though the federal government picks up most of the tab for at least the first several years.

Sandoval had many pragmatic reasons behind his decision, not least of which is that healthy kids are better for society all around, and all taxpayers and residents benefit from that. But at bottom, the decision also has an

## EXHIBIT 8



## EXHIBIT 8

undeniable moral dimension: Sandoval had it within his power to spend money to eliminate human suffering, and he did so. The fact that he's received so much criticism for that decision is one of the things that make modern politics so disheartening, and Sandoval's decision so much more worthy of praise.

— Steve Sebelius is a Las Vegas Review-Journal political columnist and co-host of the show "PoliticsNOW," airing at 5:30 p.m. Sundays on 8NewsNow. Follow him on Twitter ([@SteveSebelius](#)) or reach him at 702-387-5276 or [ssebelius@reviewjournal.com](mailto:ssebelius@reviewjournal.com).

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FIRST JUDICIAL DISTRICT COURT  
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

DECLARATION OF PROFESSOR MICHAEL GREEN IN SUPPORT OF PLAINTIFFS' REPLY ON MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO MOTION TO DISMISS

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**DECLARATION OF PROFESSOR MICHAEL GREEN IN SUPPORT OF PLAINTIFFS’  
REPLY ON MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO  
MOTION TO DISMISS**

I, Michael Green, declare as follows:

1. My name is Michael Green. My permanent residence is at 3058 Downing Place, Las Vegas, Nevada, 89121. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

**I. Background and Introduction**

2. I am an associate professor of history at the University of Nevada, Las Vegas (UNLV), where I have been a full-time member of the faculty since 2014. Prior to that, I was a part-time instructor for the university’s history department and Honors College since 2005. From 1995 until joining UNLV full-time in 2014, I also taught full-time at the College of Southern Nevada (CSN). At UNLV, I have taught several sections of honors seminars on the history of Las Vegas and/or Nevada, and on the history of the United States Supreme Court, as well as on the life and times of Abraham Lincoln. At CSN, I taught the U.S. and Nevada history survey courses.

3. I earned my bachelor’s and master’s degrees from UNLV and my doctorate in history from Columbia University, where my specialty was nineteenth-century America. I have published half a dozen books on the history of Nevada and Las Vegas, including *Nevada: A History of the Silver State*, published by the University of Nevada Press in 2015, which is the first new, full-length history of the state in a quarter of a century, and which explores Nevada’s

constitutional history. In 2001, I published a primer on the Nevada Constitution for *Nevada in the New Millennium*, and in 2009, I published an article in the *Nevada Historical Society Quarterly*, the state's only historical journal for which I was also the lead editor, on the impact of Abraham Lincoln and the Civil War on Nevada, including on the founding of Nevada's Constitution. I have written a guide to the Nevada Constitution available for distribution and use in UNLV's history classes that satisfy the Nevada Constitution requirement. I have also published three books on the Civil War era.

4. I have written extensively about Nevada's politics and political institutions not only in these books, but also for popular and contemporary audiences. These have included a newsletter published in Washington, D.C., *Nevada's Washington Watch*; "Nevada Yesterdays," regular history features for Nevada Public Radio; and columns for a variety of publications, including, most recently, *Vegas Seven*, for which I have won several awards from the Nevada State Press Association.

5. In preparation for developing opinions in the matter of *Lopez v. Schwartz*, Case No. 150C0020171B, First District Court in and for Carson City, Nevada, I have reviewed the following documents and artifacts:

- a. The court filings in this case.
- b. The proposed Amicus Brief filed by the Becket Fund For Religious Liberty.
- c. Senate Bill 302, enacted by the Nevada legislature, May 29, 2015.
- d. The Nevada Constitution and scholarly works analyzing it.

e. Scholarly works on the history of Nevada and the historical era in which the Nevada Constitution was written.

f. Relevant scholarly works on the history of American education.

6. In forming the opinions presented in this report, I relied on my experience in researching the history of Nevada, the era in which the original Nevada Constitution was written, and the history of American law and jurisprudence.

## **II. Opinions Presented**

7. This declaration specifically examines the claim of Defendant that Article XI, section 1, would give the Legislature “broad, discretionary power” to encourage education by funding alternative systems of education, like SB 302. The declaration also examines the claim of the Becket Fund that Nevada’s Education Article is rooted in anti-Catholic animus. Given the information available to me at this time, I have formed three opinions, based on my knowledge, experience and training, that relate to these questions. These opinions are outlined in detail below and include:

a. Opinion 1: It is clear from the history the 1863 and 1864 constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada’s Constitution had a singular notion of how the Legislature should provide for the education of Nevada’s children, and that was through a uniform system of common schools.

b. Opinion 2: The drafting history of Article XI, section 1, the debates at the constitutional conventions, and the overall history of Nevada’s delegates demonstrate that the delegates did not intend to confer broad, discretionary power on the Legislature to encourage education through means other than the public schools.

c. **Opinion 3:** Nevada’s Education Article, and specifically the requirement that the legislature maintain a uniform system of common schools, was not passed due to anti-Catholic animus.

A. **Opinion 1:** It is clear from the history the 1863 and 1864 constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada’s Constitution had a singular notion of how the Legislature should provide for the education of Nevada’s children, and that was through a uniform system of common schools.

8. Nevada’s constitutional history is clear that the founders intended Article XI to ensure a well-funded system of public schools. The history of Article XI begins with the debates concerning the 1863 constitution. There, the delegates exalted the value of public education and considered mostly whether public education ought to be made compulsory. (See William C. Miller and Eleanore Bushnell, eds., *Reports of the 1863 Constitutional Convention of the Territory of Nevada* [Carson City: State of Nevada Legislative Counsel Bureau, 1972], Statement of Mr. North at 234-235.) In debating the terms of what was then Article XII, delegate J. Neely Johnson stated the Article intended that “the Legislature was required to make the most liberal provision for public schools, and would have ample funds for that purpose.” (Statement of Delegate Johnson at 235.) Thus, from the start it was clear the Education Article was aimed at securing the establishment of public schools.

9. Voters ultimately defeated the 1863 constitution due to reasons not related to the Education Article (disputes over mining taxes and elected officials being placed on the same ballot as the proposed constitution). However, when the delegates to the 1864 convention met, they voted to begin their discussions based on the 1863 draft of the constitution. (Andrew J. Marsh, *Official Report of the Debates and Proceedings of the Constitutional Convention of the State of Nevada, Assembled at Carson City, July 4th, 1864, to Form a Constitution and State Government* [San Francisco: Frank Eastman, 1866], 15.) Thus, the discussion of Article XI—Nevada’s Education Article—began with the text of 1863’s Article XII.

10. Similar to the 1863 delegates, the delegates to the 1864 convention firmly believed, without any vocalized dissent, in the necessity of mandating that the Legislature establish and amply fund public education. The delegates disagreed about issues related to public education, including how and whether to make public education compulsory, but did not

disagree on the necessity of amply funding public schools. The final version of Article XI, section 2, included a provision mandating that school districts would lose their proportion of the interest of the public school fund if they failed to maintain schools for at least six months out of every year or included sectarian instruction, and that the legislature could “pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.” (Eleanore Bushnell and Don W. Driggs, *The Nevada Constitution: Origins and Growth* [Fifth Edition, Reno: University of Nevada Press, 1980], 28-29; Marsh, 566-74.)

11. The statements from the delegates at the convention demonstrate that they were singularly concerned with establishing a system of common schools. John Collins, the convention delegate who chaired the education committee, summarized the purpose of the Education Article: “The great object is to stimulate the support of the public schools, and I wish it were possible to keep them going for twelve months in the year instead of six. We provide that the State shall offer a premium for the longer term of six months. We know that there are very few districts in which schools would not be kept from one to three or four months in the year, by the voluntary contributions of the citizens, even without the aid of the public money; and by offering this premium a stimulus is presented, inducing them to contribute such amounts as shall suffice, together with the public money, to carry on the schools for six months, at least; whereby they secure the advantage of the State aid, and are enabled to educate their children.” (Marsh, July 21, 577.) Here, Delegate Collins noted that resource constraints would not allow the ideal length of public school time, but felt that the Constitution should require that districts keep the schools open for at least six months, and that the education of children would occur through those public schools.

12. Delegate Collins also understood that in order to reap the benefits of public schools, it would be necessary for the Legislature to fund those schools. “I hope that the Convention will be disposed to offer a premium to every school district in this State, which shall maintain a public school for six months in the year; and I also hope, most sincerely, that we shall provide in our Constitution for keeping out of our schools sectarian instruction. It will require strong influences to exclude such instruction, and money is the great motor—one of the most powerful influences of civilization. Wherever its power is brought to bear, it always has potent sway.” Collins objected to proposed changes that would have eliminated the financial penalty



for districts that do not maintain public schools for at least six month out of the year, and his view prevailed. Thus, the intent of the delegates was to require that the state would make a considerable effort to fund public education, and it expected localities to do the same, and to do it according to the rules laid out by the Nevada Constitution. (Marsh, July 21, 577.)

13. While they debated exactly how to assure the existence and funding of public education, the other delegates were in agreement concerning the importance of establishing a system of public schools. Delegate E.F. Dunne of Humboldt County emphasized compulsory attendance for children living in cities and towns, but declared that “when the State has provided a system of public instruction, a means of obtaining education, it should also require that all who are to become its citizens, and take part in the formation of its laws, shall avail themselves of those means, or so far at least as to know how to read and write.” (Marsh, July 21, 569.) Delegate McClinton stated, “I do not believe there is any gentleman on this floor who has a higher appreciation of the benefits to be derived from a good system of common schools . . . .” (Marsh, July 21, 571.) Delegate Albert T. Hawley said that “the most practicable method of securing attendance would be to pass a law providing that unless a certain proportion of the children in each district shall attend, the district shall be deprived of its proportion of the interest on the school-money . . . . By that means, I think the interests of education would be best subserved and promoted.” (Marsh, July 21, 569.)

14. Delegate Collins, an advocate of compulsory education, contemplated that some children would attend non-public schools. He stated, “If a parent is disposed to send his children to other than a public school, or to bring a governess or tutor into his own house to instruct his children, I see no objection to it, and the [compulsory education] provision, of course, would not affect those cases.” Despite recognizing the ability of parents to choose non-public forms of education, neither Delegate Collins nor any other delegate argued that limited public funds should be spent on non-public means of education. The clear intent of the Education Article was to apply state funding, and the rules governing it, to public education and public education only. (Marsh, July 21, 570.)

15. Thus, based on a review of the 1863 and 1864 conventions, it is clear that the delegates intended that the Legislature fund and provide for education only through the public

education system. Although the delegates were clearly aware that not all children would participate in that system, there was no discussion of permitting or requiring the Legislature to fund non-public education.

16. The fact that the delegates intended to ensure that Nevada provided for the education of its children through public education, and not through other means, is reinforced by the background of the Nevada delegates and Nevada itself. Even before Nevada's constitutional conventions, the leaders of Nevada understood the importance of public education. James Warren Nye, the territorial governor of Nevada, made clear that public education was crucial to the territory's economic and moral vitality, and to the future of republican government. Addressing the first meeting of the territorial legislature in 1861, Nye declared that "the public have an interest in the instruction of every child within our borders, and as a matter of economy, I entertain no doubt that it is much cheaper to furnish school-houses and teachers than prisons and keepers." (*Journal of the Council of the First Legislative Assembly of the Territory of Nevada* [San Francisco: Commercial Steam Printing, 1862], October 2, 1861, 23.) Both Nye and Collins promoted the principle that public education was worth funding, and both believed that public education provided the moral, intellectual, and physical tools to improve society. (Marsh, July 21, 571.)

17. The delegates' concern with public education is also consistent with their political affiliation. The overwhelming majority of the framers of the Nevada Constitution belonged to what was known during the Civil War as the "Union Party," which evolved its name from the Republican Party in an effort to gain support for the Lincoln administration's efforts to fight and win the war, and to force anti-war Democrats into a political corner. Although the name changed, the platform of and legislation passed by the Union Party remained linked to (and often indistinguishable from) what the Republican Party had advocated and believed. (David Alan Johnson, *Founding the Far West: California, Oregon and Nevada, 1840-1890* [Berkeley: University of California Press, 1992], 190).

18. The administration and political party that had encouraged statehood for Nevada believed strongly in public education, and the authors of the Nevada Constitution and the legislation that followed in the session immediately after statehood in 1865 reflected this

commitment. Nevada's initial legislative acts including creating the Department of Education and Commission on Standards in Education. The first state legislature set up the common school system. Lawmakers originally based funding on the number of school-aged children living in the school district, but rural areas suffered in comparison with more urbanized parts of the state. In 1877 and in 1885, the legislature reworked its funding system to provide more money to rural districts that had fewer children; the 1885 session acted amid a significant decline in revenue from mining, which had recently entered a two-decade-long depression. (Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* [Cambridge: Harvard University Press, 1997]).

19. The delegates' emphasis on public education is also consistent with the views of other influential states at the time. The distinguished historian of American education Carl Kaestle, now the emeritus University Professor and Professor of Education, History, and Public Policy at Brown University, wrote, "During the three decades before the American Civil War, state governments in the North created common-school systems. They passed legislation for tax-supported elementary schools and appointed state school officers. Reform-minded legislators and educators urged higher local school expenditures, more schooling for children, and the beginnings of professional training for teachers. Their goal was an improved and unified school system." Kaestle explicitly distinguished common schools from private or other non-public schools: "By 'common school' I mean an elementary school intended to serve all the children in an area. An expensive independent school, obviously would not be a 'common school,' but neither would a charity school open only to the poor." (Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860* [New York: Hill and Wang, 1983], xi.)

20. In explaining the evolution of common schools and support for them, Kaestle distinguished between regions: "[B]y 1860 all the midwestern states had established state-regulated, tax-based school systems while few southern states had. In the Midwest, northeastern influences and models prevailed; in the South, they were resisted and rejected." The overwhelming majority of Nevada's constitutional framers was from or, by the third year of the Civil War, influenced by the northeastern and midwestern state constitutional systems, which included the belief in the need for government support for common schooling. (Kaestle, *Pillars of the Republic*, 215-17). That the delegates were aware of and influenced by other states'

provision of public education is made clear by Delegate Collins' comment in favor of public education: that "[t]he experience of all other States has shown the great advantages of such a system." (Kaestle, ix; Marsh, July 21, 577.)

21. In sum, it is clear from the history of the two constitutional conventions, the background of the delegates, the history of Nevada itself, and the history of other influential states, that the framers of Nevada's Constitution had a singular notion of how the Legislature should provide for the education of Nevada's children, and that was through a uniform system of common schools.

B. Opinion 2: The drafting history of Article XI, section 1, the debates at the constitutional conventions, and the overall history of Nevada's delegates demonstrate that the delegates did not intend to confer broad, discretionary power on the Legislature to encourage education through means other than the public schools.

22. The drafting history of Article XI, Section 1, shows that section 1 was intended to be read in harmony with the other sections, and not to authorize a separate educational system distinct from public education. The original draft of Article XI, Section 1 stated:

The State owes the children thereof tuitional facilities for a substantial education, and is entitled to extract attendance therefrom in return upon such education advantages as it may provide. The Legislature shall therefore encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction .... (Marsh, July 21, 566.)

23. At the convention, Delegate E.F. Dunne, a lawyer from Humboldt County who later served as the local district judge, asked about the meaning of Article XI, Section 1: "I do not know that I understand altogether this enunciation of a doctrine in the first section. If I understand correctly . . . the doctrine enunciated is substantially this: that the state has a right to establish educational institutions, including therein moral instruction as the State may establish or provide for in such institutions, on the part of all children of the State." (Marsh, July 21, 566.)

24. Delegate Collins explained that Delegate Dunne's reading was largely correct, and further explained the purpose of Article XI, Section 1: "It was the view of the chairman, and I think the committee generally agreed with him on that point, that the State may properly encourage the practice of morality, in contradistinction to sectarian doctrines. For instance if a

child insists on the practice of using profane language, I presume it should be made the duty of School Superintendent, the teacher, or the Board of Education, to insist that he shall either refrain from such practice or be expelled. There must be power somewhere to exact conformity to the general ideas of morality entertained by civilized communities.” (Marsh, July 21, 566.) Thus, it is clear that the delegates did not understand Article XI, section 1 to permit a different means of educating children other than the public school system, but rather, if anything beyond being merely laudatory, to authorize the instruction of certain topics—most notably here “moral improvement”—within the public schools.

25. The debate concerning Article XI, section 1, focused on the first sentence of the section, which read, “The State owes the children thereof tuitional facilities for a substantial education, and is entitled to exact attendance therefrom, in return, upon such educational advantages as it may provide, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction . . . .” (Marsh, July 21, 566.) Certain delegates were concerned that this compulsory education provision would prove too controversial and noted that it had met with opposition at the previous convention. (Marsh, July 21, 567.) As noted above, even though the debate regarding compulsory education recognized that children may be allowed to attend non-public schools, no delegate suggested that the state should also pay for those non-public schools. (Marsh, July 21, 570). The requirement of compulsory education, to which Collins was agreeable, was ultimately rejected in the final version of the Nevada Constitution that the convention passed. Delegate Hawley moved to amend Article XI, section 1 to delete the first clause requiring compulsory attendance. The word “therefore” was further struck from the second sentence, and the result was the Article XI, section 1 that was eventually passed. It reads: “The Legislature shall encourage by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvement, and also provide for the election by the people, at the general election, of a Superintendent of Public Instruction . . . .” There is no evidence from the debates that in passing this version of Article XI, section 1, the delegates intended to confer power on the legislature to fund non-public educational systems. (Marsh, July 21, 566-74; 845.)

26. Further, it is clear that Article XI, section 1 was meant to be read in harmony with the other sections of the Education Article, particularly section 2, which establishes the common

school system. Indeed, after Delegate Collins explained the meaning of Section 1, the Chairman moved for a vote; however, Delegate Cornelius Brosnan, a lawyer from Storey County, protested, stating, “For my own information, in order that I may be able to vote intelligibly, I will ask that Section 2 of this article be read.” Thereafter, the Secretary read section 2 and debate commenced. (Marsh, July 21, 566.) A statement from attorney Lloyd Frizell, a delegate from Storey County, provides further evidence that the Education Article was to be read as a whole. In opposing certain suggested amendments to the Education Article, delegate Frizell stated, “. . . I apprehend that no member, no matter what his qualifications may be, can really make any valuable addition or amendment to the report, unless he can see through the beauty and strength and harmony of the whole of it; and hence I fear that any proposed amendment would be more likely to mar than to improve that harmony and strength.” Frizell explained clearly that the Education Article was drafted in “harmony” and that the “whole of it” was to be interpreted (Marsh, July 21, 578.) As explained further in my first opinion, it is clear that the overriding goal of the delegates was to establish a system of public education. Reading Article XI, section 1, in “harmony” with the rest of the Education Article shows that the section was not meant to give the Legislature broad, discretionary powers to fund non-public means of education.

27. Further, the idea that the delegates meant to empower the Legislature to fund both the public schools and other means of educating Nevada’s children is inconsistent with the delegates’ pronounced concerns that there would not be enough funds to provide for both common schools and higher education. They debated Article XI, Section 6, which would levy a special tax to provide “for the support and maintenance of said university and common schools; *provided*, that at the end of ten years they may reduce said tax” by half. In debating this section, Delegate Collins advocated for the tax to be mandatory based on “the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest.” (Marsh, July 22, 588.) Delegate Collins argued against making the public school tax optional, noting pressures on the Legislature to postpone the tax: “[t]hat body will be under pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year . . . I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate.” (Marsh, July 22, 588.) Delegate Collins’ view won the day, and the delegates approved of a mandatory tax, which has since been amended multiple times. This debate makes clear that the delegates were concerned with

providing sufficient funding for the public schools and the University, and did not conceive that the Legislature would have funds for both the public schools and a non-public system of education. Further, rather than the “broad, discretionary power” that the Defendant has suggested, it is clear that the Delegates sought to constrain the Legislature’s discretion with respect to funding public education by imposing this mandatory tax.

28. A reading of Article XI, section 1, as giving the legislature broad, discretionary power to fund systems of education that were “alternatives” to the public education system is also contrary to the overall concerns of the delegates at the convention. The delegates to the Nevada Constitutional Convention were greatly concerned with protecting individual rights from legislative overreach. As one scholar of the Nevada Constitution has written, “Whereas protection of individual rights was excluded from the U.S. Constitution and only added later, the distrust of government power by the rugged individualists of the Nevada frontier—doubts sowed by the chaotic events of 1848 to 1864—is evident in the fact that the first article to the state constitution is the Declaration of Rights.” The delegates manifested this concern by listing a series of limitations on the powers of the legislature, distinguishing the Legislature’s powers from those of other branches, and, in the Declaration of Rights preceding all other articles, enumerating the rights of the people with which the legislature could not interfere. Clearly, the delegates to the constitutional convention had no intention of empowering the legislature to do whatever it wished on any subject beyond its internal operations, including the funding of education. (Marsh, 845; Michael W. Bowers, *The Nevada State Constitution* [Second edition, New York: Oxford University Press, 2014], 19-20.)

29. The delegates’ concerns with granting the legislature broad, discretionary power is further evidenced by other sections of the Nevada Constitution. Article IV, on legislative powers, includes a long list of sections delineating how the legislature functions and what it—and its members—may or may not do. The Nevada Constitution empowers the two houses of the legislature to judge the qualifications of their members and whether to punish them, up to and including expulsion. Section 19 stated, “No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the Legislature.” Section 20 includes a list of laws that the legislature may not

pass—“local or special laws in any of the following enumerated cases,” including regulating county and township business and the election of their officers. The framers of the Nevada Constitution also detailed spending regulations related to compensation for lawmakers. In Section 29, they wrote, “The first regular session of the Legislature, under this Constitution, may extend to ninety days, but no subsequent regular session shall exceed sixty days, nor any special session, convened by the Governor, exceed twenty days.” (Marsh, 836-39.)

30. During the debates of the constitutional convention, the delegates made clear that they wanted to impose limits on legislative action. Presiding officer J. Neely Johnson, a former governor of California, defended Article IV, Section 18, which he had written, “to prevent a great deal of unnecessary special legislation, and not only that, but to defeat the usual course of proceeding of outside operators,” by requiring a majority vote of the chamber’s membership rather than of those present; the amendment that he had opposed to change it to those “present” was easily defeated. Further demonstrating the general distrust of government that prevailed in Nevada, and the desire to limit legislative power, Delegate Dunne endorsed Johnson’s draft, saying, “It will prevent too much legislation. The fact is, that whenever the Legislature is in session, the people wait with fear and trembling for it to adjourn, and then they thank God that it is over.” (Marsh, July 8, 144; July 13, 280.)

31. Reading the debates and proceedings to the Nevada Constitutional Convention as a whole, it is clear that the delegates were opposed to granting the legislature excessive discretionary authority. A reading of Article XI, section 1, as granting the Legislature broad, discretionary authority to provide for education in manners other than that required by the delegates in the very next section of Article XI is inconsistent with the historical documents and statements at the time of the constitutional convention.

D. Opinion 3: Nevada’s Education Article, and specifically the requirement that the legislature maintain a uniform system of common schools, was not passed due to anti-Catholic animus.

32. First, it is clear from reading the debates and Nevada’s history that the motivation for establishing a uniform system of common schools was to ensure the moral, intellectual, and physical tools to improve society. As I discuss in my first opinion, the delegates were of the opinion that public education was necessary to ensure the proper upbringing of Nevada’s



children and future prosperity of Nevada. I am not aware of any evidence from the Nevada Constitutional Convention that indicates that the delegates sought to establish a uniform system of common schools in order to discriminate against Catholics.

33. Second, although the delegates sought to ensure that the State would not fund private and sectarian institutions, it is clear that that prohibition applied to all religious schools. An exchange between the delegates demonstrates the intent of Article XI, Section 2. Delegate J.H. Warwick, a lawyer from Lander County, asked, “Does that mean that they have no right to maintain Catholic schools, for example?” Collins replied, “This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.” Warwick replied, “That is entirely proper,” but discussed whether Collins meant funding of a school or a school district. Collins explained, “You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to public schools, and clearly cannot refer to anything else.” When Delegate Albert Hawley asked Warwick “whether he believes that any school district could be held responsible for the actions of private parties, in organizing sectarian schools within such district?” Warwick replied, “No, sir; that would be manifestly unjust .... I do not want the school district to *lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school* ....” [Emphasis added.] Thus, it is clear that the discussion of sectarian education was not limited to the Catholic Church. (Marsh, July 21, 568.)

34. Third, Nevada’s history does not share the same degree of anti-Catholic sentiment as other states. Ronald James, the leading historian of the Comstock Lode, wrote that the area’s “wealth attracted an international array of immigrants who enriched the district with their diversity.” Of these, he wrote, “Irish immigrants were by far the most numerous ethnic group in the mining district. In particular, they dominated Virginia City, where fully a third of the population claimed nativity or at least one parent from the Emerald Isle. The Irish came to North America by the millions, fleeing the oppression and starvation of their homeland. These exiles typically found prejudice and ill treatment by the Protestant-dominated hierarchy of the East

Coast .... A few Irish immigrants traveled west, where they rarely came across established societies that were prepared to discriminate against immigrants or Catholics, as occurred in the East. In many cases the Irish arrived in numbers that made them, if not a majority, at least a significant minority. Hundreds also came as skilled miners .... The experience of the Irish who came to the West consequently contrasted with that of their brethren on the Atlantic Coast. The Comstock, as one of the first western hard-rock mining districts, set the stage for Irish successes throughout the region.” (Ronald M. James, *The Roar and the Silence: A History of Virginia City and the Comstock Lode* [Reno: University of Nevada Press, 1998], 143-44). Those early successes included the Catholic Church sending a priest to the area not long after the Comstock Lode’s discovery in 1859; Father (later Bishop) Patrick Manogue, for whom a Reno high school is named, serving as Virginia City’s priest from 1862 to 1885 and earning a reputation that achieved “mythic proportions” (James, 201); and the arrival of John Mackay, who established an excellent reputation during the territorial period and, in the 1870s, became one of the owners of the largest mine in Virginia City, in addition to winning popularity for his fairness and charity. The delegates had several politically minded and ambitious men among their number who were conscious of the constituencies for whom they were designing this document, including their Catholic constituency. While some delegates to the constitutional convention expressed concern about how Catholicism might influence education, they worried about other religious influences in that area as well, and the text of the debates reveals a desire to separate sectarian instruction generally from the schools, not just Catholic instruction.

35. Fourth, it is not accurate that the movement for common schools was motivated primarily by the purpose of discriminating against Catholics, and many proponents of common schools were not motivated at all by anti-Catholic animus. Carl F. Kaestle published a history of common schools from the Revolutionary War to 1860. (Kaestle, 207.) I have read the quotations from the proposed amicus brief submitted by the Becket Foundation for Religious Liberty that quotes Kaestle as stating that common schools were designed to be anti-Catholic. This statement takes Kaestle’s larger work out of context. Kaestle described, and Nevada’s convention delegates realized, they lived in an evolving society. Kaestle noted, “Cultural conformity and educational uniformity went hand in hand,” and referred to Noah Webster’s dictionary, first published in 1828 after he had spent decades preparing it out of a desire to promote an “American” language and culture, and “textbooks to encourage standard American

pronunciation, hoping to mold the different sections into a unified nation. In the antebellum period, educators faced the much greater cultural diversity of new European immigrants, some of whom did not speak English at all. Immigration resulted in a national population whose diversity was unmatched in Western history.” (Kaestle, 71).


36. Public education played a part in these changes, reflected them, and was affected by them; some of the changes long predated the influx of immigrants and debates about the degree to which they would assimilate into American society. As Kaestle wrote, “During the early nineteenth century, the distinction between private and public schooling was still fuzzy. Many independent schools, including some church-affiliated schools, received government funds. The Catholic charity schools of New York City got aid until 1825, along with schools run by Methodists, Episcopalians, and other groups. Public funds were also granted to support Catholic schools in Lowell, Massachusetts, in the 1830s and 1840s, in Milwaukee, Wisconsin, in the 1840s, and in Hartford and Middletown, Connecticut, in the 1860s. In New Jersey the apportionment of public funds to denominational schools was not abolished until 1866. The idea of separation of church and state with regard to education did not spring full-blown from the United States Constitution. It was a public policy developed gradually and unevenly at the local level during the nineteenth century. The relevance of the federal constitution to the matter was asserted only in the twentieth century. The first impulse of state or city officials interested in subsidizing schooling for the poor was to give aid to existing institutions. In some cases this included religiously sponsored schools. In the antebellum period the idea of a unified public school system gained ground. Still, people could only accept the common-school plan if they agreed that moral education could be separated from doctrinal religion. As we have seen some Protestants as well as Catholics resisted this view. Eventually, most Protestant leaders acquiesced in the common-school concept, while many Catholics, especially the clergy, looked upon the public common schools as either godless or Protestant. If the schools were Protestant, they were a threat to Catholic children’s faith and culture, a slur on their parents, and an injustice to Catholic taxpayers. If the common schools were nonreligious, they could not carry on proper moral training, and it would be a sin to send a Catholic child to them.” Thus, it is clear from Kaestle’s history that the idea of public, non-sectarian education was not exclusively focused on one region or one religion or one immigrant group, but evolved through time and through waves of diverse people. (Kaestle, 167.)

### III. Conclusion

37. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this 24th day of November, 2015.

By:

  
Michael Green



**DECLARATION OF DR. CHRISTOPHER LUBIENSKI**  
**IN SUPPORT OF PLAINTIFFS' REPLY ON MOTION FOR PRELIMINARY**  
**INJUNCTION AND OPPOSITION TO MOTION TO DISMISS**

I, Prof. Christopher Lubienski, declare as follows:

1. My name is Christopher Lubienski, Ph.D. My permanent residence is at 705 W. Michigan Avenue, Urbana, Illinois, 61801. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

**I. Background and Introduction**

2. For a summary of my qualifications to make this declaration, I refer back to my earlier declaration of October 19, 2015. Additionally, with respect to the issues discussed in this declaration, I have additional specific experience. For the past four years my research has been funded by the independent and non-partisan William T. Grant Foundation to study the use and misuse of research evidence in advocacy for and against vouchers and similar policies. In that regard, I have developed expertise regarding the relative empirical strength of claims made about research evidence in education policy advocacy.

3. In preparation for developing these further opinions in the matter of *Lopez v. Schwartz*, Case No. 150C002071B, First District Court in and for Carson City Nevada, I have reviewed the following additional documents:

a. Motion to Dismiss Plaintiffs' Complaint and Opposition to Plaintiffs' Motion for a Preliminary Injunction by Defendant, Dan Schwartz, Treasurer of the State of Nevada (hereafter, the "Defendant's Motion").

b. The proposed amicus brief filed by The Friedman Foundation for Educational Choice, Inc.

I have also reviewed reports cited in Defendant's Motion, with which I was already familiar:

c. Butcher, J., & Bedrick, J. (2013). *Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts*. Indianapolis, IN: Friedman Foundation for Educational Choice.

d. Forster, G. (2009). *A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools*. Indianapolis, IN: Friedman Foundation for Educational Choice.

e. Forster, G. (2013). *A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition*. Indianapolis, IN: Friedman Foundation for Educational Choice.

f. Usher, A., & Kober, N. (2011). *Keeping Informed About School Vouchers: A Review of Major Developments and Research*. Washington, DC: Center on Education Policy.

## II. Opinions Presented

4. Based on my extensive research on the use of research evidence in education policy advocacy, and my previous familiarity with and recent review of the above-mentioned reports, I offer the following four observations:

a. Opinion 1: The Defendant's Motion does not accurately capture the main findings of the Center on Education Policy (CEP) report on which it relies.

b. Opinion 2: The claim that "students offered school choice programs graduate from high school at a higher rate than their public school counterparts" does not reflect a consensus in the research literature.

c. Opinion 3: The claim that voucher "parents are more satisfied with their child's school" is not supported by credible research.

d. Opinion 4: The claim that "in some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition" does not reflect a consensus, and is based on a selective reading of the research literature.

A. Opinion 1: *The Defendant's Motion does not accurately capture the main findings of the Center on Education Policy report on which it relies.*



5. The Defendant’s Motion quotes Senator Hammond, the sponsor of SB 302, summarizing the conclusions of a study from the nonpartisan Center on Education Policy (Defendant’s Motion at pages 2-3). Although neither Senator Hammond nor the Defendant’s Motion specify the CEP study to which they are referring, it is clear from the direct quotations and findings from Senator Hammond’s testimony that they have been taken from the 2011 CEP Study entitled *Keeping Informed About School Vouchers: A Review of Major Developments and Research*.<sup>1</sup>

6. Senator Hammond cites the 2011 CEP study to make three empirical claims:<sup>2</sup>

- a) “students offered school choice programs graduate from high school at a higher rate than their public school counterparts”
- b) “parents are more satisfied with their child’s school”
- c) “In some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition”

7. Senator Hammond’s statement does not accurately reflect the main findings of the CEP report, which is a review of the research literature concerning vouchers. That report does not purport to offer any original analysis of primary evidence regarding the effects of vouchers. The CEP

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<sup>1</sup> The most recent CEP study on this topic is Usher, A., & Kober, N. (2011). *Keeping Informed About School Vouchers: A Review of Major Developments and Research*. Washington, DC: Center on Education Policy. (Hereafter, “CEP, 2011”)

<sup>2</sup> In addition to these three claims, the Amicus Brief from the Friedman Foundation for Educational Choice includes others as well, regarding the “Academic outcomes for students who participate in school-choice programs;” and “The fiscal impact of school-choice on taxpayers” (Amicus Brief, p. 5). I briefly discuss each in later notes.

report distinguishes between “Tier 1” and “Tier 2” findings. A Tier 1 finding is one that “was supported by several studies done by various groups.” The CEP only lists one Tier 1 finding, that “Achievement gains for voucher students are similar to those of their public school peers.”<sup>3</sup> Despite what some voucher proponents — including the Friedman Foundation for Educational Choice, in their Amicus Brief of November 13, 2015 (hereafter, “Amicus Brief”) — suggest, this overall finding of a lack of relative impact is consistent with the conclusions of other independent researchers who have examined this issue. For instance, Princeton economist Cecilia Rouse conducted perhaps the most rigorous and respected study of the voucher program in Milwaukee. Rouse found some impact in mathematics for students using vouchers, but noted that those gains were smaller than for public school students in all subjects studied when public school students had class sizes similar to those of the voucher students. In a peer-reviewed analysis of voucher research, Rouse concluded that “The best research to date finds relatively small achievement gains for students offered education vouchers, most of which are not statistically different from zero,” and found that reduced class size was a more effective strategy for improving education quality.<sup>4</sup> Such findings from non-partisan, highly respected researchers are

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<sup>3</sup> CEP, 2011, p. 9.

<sup>4</sup> P. 37 in Rouse, C. E., & Barrow, L. (2009). School Vouchers and Student Achievement: Recent Evidence, Remaining Questions. *Annual Review of Economics*, 1, 17-42. See also:  
Rouse, C. E. (1997). Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program. Cambridge, MA: National Bureau of Economic Research.

in sharp contrast to the claims set out by the Friedman Foundation for Educational Choice, which are based largely on their own, non-peer-reviewed reports, and those of associated advocates.

8. In the non-partisan CEP report, “Tier 2” findings, on the other hand, are classified as such because they are, according to the CEP, “less conclusive than the tier 1 finding, either because they were supported by fewer studies, could not be clearly attributed to vouchers, or were based on self-reports. These Tier 2 findings are from studies sponsored by various organizations, including some with a clear pro-voucher position.”<sup>5</sup> The three claims made by Senator Hammond in the Defendant’s Motion are all “Tier 2” findings in the CEP report he references, meaning that the CEP has found substantial reason to doubt the validity of the findings in those reports.<sup>6</sup>

9. In drawing overall conclusions about the research on vouchers, the CEP report referenced by the Defendant’s Motion is much more measured and cautionary than excerpts cited in the Motion would suggest. The CEP listed four overall themes in its review of the recent research and advocacy on vouchers:

- “Additional research has demonstrated that vouchers do not have a strong effect on students’ academic achievement.”

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Rouse, C. E. (1998). *Schools and Student Achievement: More Evidence from the Milwaukee Parental Choice Program*: Princeton University and the National Bureau of Economic Research.

Rouse, C. E., & Barrow, L. (2006). *U.S. Elementary and Secondary Schools: Equalizing Opportunity or Replicating the Status Quo?* In S. McLanahan & I. Sawhill (Eds.), *The Future of Children: Fall 2006*. Washington, DC: Brookings Institution Press and the Woodrow Wilson School of Public and International Affairs at Princeton University.

<sup>5</sup> CEP, 2011, p. 10.

<sup>6</sup> CEP, 2011, pp. 10-12.

- “The rhetoric used to support voucher programs has shifted, with some proponents giving less emphasis to rationales based on achievement and more emphasis to arguments based on graduation rates, parent satisfaction, and the value of choice in itself.”
- “Voucher programs and proposals are moving beyond just serving low-income families in particular cities to reaching middle-income families in a broader geographic area.”
- “Many of the newer voucher studies have been conducted or sponsored by organizations that support vouchers.”<sup>7</sup>

10. Such more cautionary, tenuous, and tepid findings from the CEP report are not mentioned in the quotation from Senator Hammond. Because the CEP’s main findings and themes reflect their determination of reliable and valid findings in voucher research, and the “Tier 2” findings quoted by Senator Hammond actually reflect studies or conclusions the CEP did not find to be reliable, Senator Hammond’s statement to the Legislature did not accurately capture the conclusions of the CEP report. I discuss each Tier 2 finding cited in the Defendant’s Motion individually in the following sections.

B. Opinion 2: *The claim that “students offered school choice programs graduate from high school at a higher rate than their public school counterparts” does not reflect a consensus in the research literature.*

11. Senator Hammond refers to the CEP report for the assertion that “students offered school choice programs graduate from high school at a higher rate than their public school counterparts.”<sup>8</sup> However, the CEP found

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<sup>7</sup> CEP, 2011, pp. 3-6.

<sup>8</sup> Defendant’s Motion, p. 3.

reasons to doubt the validity of the studies undergirding that claim: “These studies had limitations, however, that may make their findings less than conclusive. In general, researchers were not able to determine whether the higher graduation rates were caused by practices in the voucher schools, and whether families who use vouchers differed from other families in ways that would lead to higher graduation rates.”<sup>9</sup>

12. The two main studies that have found a benefit to graduation rates supposedly caused by vouchers occurred in Washington, D.C. and Milwaukee are, as the CEP report notes, limited, and not reflective of any overall consensus in the voucher literature. The Milwaukee study, conducted by the pro-voucher School Choice Demonstration Project, has been questioned in independent review because substantial attrition from the voucher program, failure to account for other factors such as the role of charter schools, and lack of statistical significance rendered the conclusions questionable.<sup>10</sup> In fact, according to a peer-reviewed study of the program, fewer than half (44%) of the vouchers students enrolled in the program in 9<sup>th</sup> grade were still enrolled by 12<sup>th</sup> grade.<sup>11</sup>

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<sup>9</sup> CEP, 2011, p. 10.

<sup>10</sup> Belfield, C.R. (2011). Review of “The Comprehensive Longitudinal Evaluation of the Milwaukee Parental Choice Program: Summary of Fourth Year Reports” Boulder, CO: National Education Policy Center.

Cobb, C. D. (2012). Reviews of Reports 29, 30, & 32 of the “SCDP Milwaukee Evaluation.” Boulder, CO: National Education Policy Center.

<sup>11</sup> Cowen, J. M., Fleming, D. J., Witte, J. F., Wolf, P. J., & Kisida, B. (2013). School Vouchers and Student Attainment: Evidence from a State-Mandated Study of Milwaukee's Parental Choice Program. *Policy Studies Journal*, 41(1), 147-168.

13. The Washington, DC study, conducted by some of the same researchers, was also flawed.<sup>12</sup> There, graduation rates were only self-reported (rather than from official sources), and differences in graduation requirements in public and private schools were not accounted for in the study—even though there were real concerns regarding “voucher mills...often fly-by-night schools in poor neighborhoods that sprang up only after” the program was created, according to the Washington, DC Congressional Representative’s written testimony for the US Senate.<sup>13</sup> Thus, there is reason to suspect that some private schools had a lower graduation requirement than the public schools to which they were compared; this was not considered in the study. Even if we were to accept the claim that the voucher program helped boost high school graduation rates, over half the students given vouchers never even “made it to the 12<sup>th</sup> grade,” according to the *Washington Post*.<sup>14</sup>

14. The Milwaukee and Washington, DC studies are also tenuous because, as they were conducted by voucher advocates, they ascribe any differences in graduation rate only to the *offer* of a voucher. Such approaches

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<sup>12</sup> Wolf, P., Gutmann, B., Puma, M., Kisida, B., Rizzo, L., Eissa, N., & Carr, M. (2010). Evaluation of the Dc Opportunity Scholarship Program: Final Report. Washington, DC: US Department of Education.

<sup>13</sup> Holmes Norton, E. (2015). Written Testimony for the U.S. Senate Committee on Homeland Security and Governmental Affairs, on “The Value of Education Choices for Low-Income Families: Reauthorizing the D.C. Opportunity Scholarship Program,” Washington, DC, November 4. Available: <http://www.hsgac.senate.gov/download/?id=072B43B4-D685-48FC-AF6D-38F920535E2D>

<sup>14</sup> Strauss, V. (2013, November 16). Report Slams D.C.’S Federally Funded School Voucher Program. *Washington Post - Answer Sheet*. Retrieved from <https://www.washingtonpost.com/news/answer-sheet/wp/2013/11/16/report-slams-d-c-s-federally-funded-school-voucher-program/>

ignore other factors that could account for any difference, such as the “peer-effect” of gathering more motivated students in some schools through choice programs, while depleting that effect for students left behind.<sup>15</sup>

Furthermore, while not cited by the Friedman Foundation, subsequent peer-reviewed research on other measures of academic attainment,<sup>16</sup> looking at college enrollment, has found no overall advantage for students receiving vouchers.<sup>17</sup>

15. Thus, there is very little actual research on this question of graduation rates, and none that is particularly credible or compelling. If there is a consensus on the effect of voucher programs on graduation rates and other measures of attainment for public schools, the consensus is that the evidence is inconclusive, unlike the more established research on

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<sup>15</sup> Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics*, 122, 1-12.

<sup>16</sup> “Attainment” involves measures of academic advancement, such as a high school diploma, or college enrollment, and is often used in contrast to measures of academic “achievement” as typically determined in standardized tests.

<sup>17</sup> Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics*, 122, 1-12.

The Amicus Brief from the Friedman Foundation cites an earlier, non-peer-reviewed version of this study, conducted by one of the nation’s leading voucher proponents, as proof of a beneficial impact of vouchers on subsequent student college enrollment: Chingos, M. M., & Peterson, P. E. (2012). *The Effects of School Vouchers on College Enrollment: Experimental Evidence from New York City*. Washington, DC: Brookings Institution and Program on Education Policy and Governance. A more recent, peer-reviewed version of that report is available, having been published in a prestigious academic journal, although it is much more measured than the earlier version, finding no overall impact of vouchers on college enrollment. The contrast between the findings of these two studies — conducted by the same authors — highlights the importance of academic (double-blind) peer-review in vetting and confirming empirical analyses and claims. Many of the claims made by voucher advocates come from reports that are not peer-reviewed (such as the 2012 Chingos & Peterson study, or the many reports published by the Friedman Foundation for Educational Choice). Conclusions that stand up to the scholarly peer-review process tend to be much less positive regarding the impact of vouchers. It is poor scholarly practice on the part of the Friedman Foundation to cite the earlier, non-peer-reviewed version when a more recent, vetted version is available.

academic achievement in voucher programs, which finds little if any benefits from vouchers, according to the CEP report cited in the Defendant’s Motion.<sup>18</sup> However, this research — even if it were valid — only offers insights onto the question of how vouchers may impact the narrow, non-representative segment of students that have applied for these small-scale, local voucher programs,<sup>19</sup> and offers virtually no insights into how state-wide use of vouchers would impact graduation rates.

C. Opinion 3: *The claim that voucher “parents are more satisfied with their child’s school” is not supported by credible research.*

16. Senator Hammond makes the claim that voucher parents “are more satisfied with their child’s school.” However, the CEP did not find this statement to be backed by credible research.<sup>20</sup> The CEP also found that parents in “the public school group also generally gave their schools high marks” — a finding consistent with years of survey data showing that public school parents typically grade their schools quite highly — and that vouchers had no impact on students’ levels of satisfaction.<sup>21</sup>

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<sup>18</sup> CEP, 2011, p. 10.

<sup>19</sup> For instance, in Washington, DC, less than 3% of the 47,548 students enrolled in DC Public Schools in 2014 (1,371 students) applied for the DC voucher program in 2014. (Sources: DC Public Schools, and Senate Homeland Security and Governmental Affairs Committee, Majority Staff Memo on Hearing on the D.C. Opportunity Scholarship Program (November 2, 2015).) Previous research indicates that the types of students who apply for such programs are not representative of the larger population, but may have advantages — in terms of educated parents, home education resources, and intrinsic motivation, for instance — already associated with a higher likelihood of school success. See Witte, J. F. (2000). *The Market Approach to Education: An Analysis of America's First Voucher Program*. Princeton, NJ: Princeton University Press.

<sup>20</sup> CEP, 2011, pp. 11-12.

<sup>21</sup> CEP, 2011, p. 11. See also:



17. The CEP also notes that “parents who have been given the opportunity to choose their child’s school may be more satisfied than other parents precisely because they chose it, regardless of whether the school offers better instruction or contributes to higher achievement.”<sup>22</sup> Such an insight is in keeping with the research literature on consumer behavior that notes that people report higher levels of satisfaction when they simply have a choice, regardless of whether the quality of a good/service itself leads to greater satisfaction.<sup>23</sup>

18. However, the main problem with this type of claim made by Senator Hammond regarding program satisfaction is that, in general, it is based on very weak research. Polls of parental satisfaction typically survey only families with students in the program *at that time*, thus under-representing dissatisfied families, since they will have likely already left the program (and thus the study sample).

19. In this particular case, the problems with parental satisfaction surveys are exemplified by the 2013 “Cato Institute” study — which is actually a Friedman Foundation study — that Assemblyman David Gardner cited to the Nevada Legislature and that the Defendant’s Motion references.<sup>24</sup>

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Bushaw, W. J., & Calderon, V. (2014, September). The 46th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Towards the Public Schools. *Phi Delta Kappan*, 96 (1), 8-20.

<sup>22</sup> CEP, 2011, pp. 11-12.

<sup>23</sup> Gladwell, M. (2004, September 6). The Ketchup Conundrum. *The New Yorker*.

Reutskaja, E., & Hogarth, R. M. (2009). Satisfaction in Choice as a Function of the Number of Alternatives: When “Goods Siate”. *Psychology and Marketing*, 26(3), 197-203.

<sup>24</sup> Defendant’s Motion, p. 3. This was actually a study published by the Friedman Foundation for Educational Choice, but conducted by a researcher from the Cato Institute; see Butcher,

According to the Assemblyman Gardner, the Cato study found “[one] hundred percent of parents participating in [an ESA program in Arizona] are satisfied.”<sup>25</sup> However, nowhere near 100% of the parents who participated in the ESA program were actually surveyed. As indicated in the referenced study, the reported satisfaction rate is based on an email survey sent to a Yahoo! message board created by ESA families, which saw only a 37% response rate from this already self-selected and non-representative group. Even the authors of the report stated that the “results [of the report] cannot accurately be applied to all ESA families.”<sup>26</sup> Thus, it is not accurate to apply these findings as a reflection of overall parental satisfaction with ESA programs.

D. Opinion 4: *The claim that “in some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition” does not reflect a consensus, and is based on a selective reading of the research literature.*

20. Notably, the Defendant’s Motion does not cite any research for the proposition that voucher programs lead to higher achievement gains for students using a voucher.<sup>27</sup> Indeed, most independent reviews of that

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J., & Bedrick, J. (2013). *Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts*. Indianapolis, IN: Friedman Foundation for Educational Choice.

<sup>25</sup> Defendant’s Motion, p. 3 (parentheses in cited source).

<sup>26</sup> “Survey results should be interpreted with caution because families in the sample chose to join the message board and answer the survey; they were not randomly selected. This self-selection means the results cannot accurately be applied to all ESA families.” P. 1 in Butcher, J., & Bedrick, J. (2013). *Schooling Satisfaction: Arizona Parents' Opinions on Using Education Savings Accounts*. Indianapolis, IN: Friedman Foundation for Educational Choice.

<sup>27</sup> The Amicus Brief from the Friedman Foundation for Educational Choice does make claims about the impact of vouchers for students using them, based largely — as indicated by the CEP (2011) — on a partisan reading of the research. As I have noted above, (see note 4), the

question — including the CEP review referenced in the Defendant’s Motion — find any direct benefit from vouchers to be inconsistent, insignificant, and/or marginal, at best.<sup>28</sup> Instead of direct benefits, then, the Defendant’s Motion focuses on indirect benefits for non-choosers through the competitive effects assumed to be generated by vouchers. Yet this assertion is based on a highly selective reading of the literature, and does not actually address the issue of whether or not children were harmed.

21. The claim that competition with voucher schools increases education quality at public schools is contested and not settled in the research literature. Although Senator Hammond cites the CEP report for this conclusion, the CEP report actually concludes that:

[I]t is difficult, if not impossible to decisively attribute the causes of achievement gains [in public schools]... In many of the cities or states with voucher programs, a variety of reforms are underway to boost

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Friedman Foundation’s assertions do not reflect a scholarly consensus on the issue so much a (self-described) advocate’s review of the evidence.

<sup>28</sup> CEP, 2011; see also Rouse, C. E., & Barrow, L. (2009). School Vouchers and Student Achievement: Recent Evidence, Remaining Questions. *Annual Review of Economics*, 1, 17-42.

Voucher proponents like the Friedman Foundation for Educational Choice often cite randomized trials to support the contention that vouchers have direct benefits for choosers. However, randomized trials are limited in what they tell us. They differ substantially from medical trials on which they are based because of the lack of a placebo, do not serve representative samples of students, and are not generalizable; that is, such methods in school voucher research do not tell us if school vouchers “work,” but instead only offer some insights on their effectiveness with the types of students who are both eligible and apply for these small-scale programs. Thus, as even more nuanced voucher advocates have acknowledged, their results cannot be generalized to the broader population as when a program is extended to a whole state, as with SB 302. See Chingos, M. M., & Peterson, P. E. (2015). Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment. *Journal of Public Economics*, 122, 1-12: “the results from any experiment cannot be easily generalized to other settings. For example, scaling up voucher programs can be expected to change the social composition of private schools. To the extent that student learning is dependent on peer quality, the impacts reported here could easily change” (p. 10).

public school achievement, ranging from the strict accountability requirements of the No Child Left Behind Act to the expansion of charter schools. Often the public schools most affected by vouchers are the same ones targeted for intensive interventions due to consistently low performance.<sup>29</sup>

22. The Defendant’s Motion also notes that the Legislature received a report from the Friedman Foundation for Educational Choice that found that 22 out of 23 studies reviewed concluded that competition from voucher schools improves outcomes in public schools.<sup>30</sup>

23. This finding in the Friedman Foundation review (hereafter, “review”) is flawed for several reasons, including the limitations cited by the CEP regarding these types of studies — that there are often other factors involved that may be responsible for changes in public schools’ performance levels that cannot be captured by the types of studies cited by the Friedman

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<sup>29</sup> CEP, 2011, p. 11.

<sup>30</sup> In my professional experience, non-partisan scholars do not typically accept at face value research claims from advocacy organizations such as the Friedman Foundation for Educational Choice because (1) by their own admission, such organizations promote a particular agenda on vouchers, and thus have reason to be selective in the research that they cite; (2) they generally do not submit their work to be independently vetted through scholarly peer-review processes, as do university-based researchers; and (3) are not seen as credible sources within the research community, as evidenced by the extremely low number of citations to their reports in the research literature. For instance, despite the fact that there have been multiple editions of the “Win-Win” reports from the Friedman Foundation for Educational Choice mentioned in the Defendant’s Motion, as far back as 2009, none of them has been cited more than 17 times, according to the bibliometric tool Google Scholar; even then, there is an inordinate amount of self-citations to these reviews by other Friedman Foundation reports. Google Scholar shows only 44 total citations to all three versions of review, only six of which appear in the peer-reviewed literature. Of those six, two of the citing articles are by choice advocates, and another two are citing the Friedman Foundation reviews critically. Just as a point of comparison, Cecilia Rouse’s papers referenced in this document have been cited many more times: her 2009 paper was cited 144 times; her 2006 paper, 120 times; her 2007 paper, 149 times; her 1997 paper, 692 times. Simply stated, the work of the Friedman Foundation for Educational Choice remains on the periphery of the research community, which does not see that work as relevant.

Foundation.<sup>31</sup> In addition to that concern, the Friedman Foundation is employing an approach considered to be a relatively poor and potentially misleading research method for drawing conclusions in social science; and is presenting a selective and incomplete picture of the research literature that includes unsuitable studies and excludes other empirical studies that contradict the Friedman Foundation's claims on this issue.

24. First, the review's "vote-counting" of studies is typically considered by scholars to be an inappropriate approach to empirical analysis, compared to a meta-analysis that considers issues of research design, sample size, and effect size.<sup>32</sup> In particular, a concern is that any such "vote counting" might suffer from selection bias, as studies are chosen for

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<sup>31</sup> The studies referenced do not meet the Friedman Foundations' own criteria for high quality research design, since they cannot account for other factors that may be causing any discernable changes in student achievement identified in the study. As the CEP report has noted regarding these studies, "it is difficult, if not impossible to decisively attribute the causes of achievement gains." CEP, 2011, p. 11.

<sup>32</sup> The Friedman Foundation for Educational Choice erroneously or misleadingly refers to its reviews of voucher studies as "meta-studies" (Amicus Brief, p. 9), apparently to imply that these are what are known in the research community as "meta-analyses." Yet the reviews published by the Friedman Foundation are in no way meta-analyses, which are statistical methods for combining data from a set of previously published studies. The Friedman Foundation review is a simplistic vote-counting exercise, and any implication that it is a meta-study or analysis is incorrect. See:

Cooper, H. M., & Lindsay, J. J. (1998). Research Synthesis and Meta-Analysis. In L. Bickman & D. J. Rog (Eds.), *Handbook of Applied Social Research Methods* (pp. 325). Thousand Oaks, CA: Sage Publications.

Hedges, L. V., & Olkin, I. (1980). Vote-Counting Methods in Research Synthesis. *Psychological Bulletin*, 88(2), 359-369.

Hedges, L. V., & Olkin, I. (1985). *Statistical Methods for Meta-Analysis*. Orlando: Academic Press.

Higgins, J. P. T., & Green, S. (2008). *Cochrane Handbook for Systematic Reviews of Interventions*. Chichester, England ; Hoboken, NJ: Wiley-Blackwell.

Koricheva, J., & Gurevitch, J. (2013). Place of Meta-Analysis among Other Methods of Research Synthesis. In J. Koricheva, J. Gurevitch & K. Mengersen (Eds.), *Handbook of Meta-Analysis in Ecology and Evolution* (pp. 3-13). Princeton: Princeton University Press.

review based on their usefulness in supporting the reviewer's perspective.

This is a valid concern in this case.

25. Second, in that regard, the set of studies surveyed by the Friedman Foundation review for the claim that voucher competition improves public schools (as well as for its other claims) includes studies that are inappropriate for the question at hand, or misrepresents the researchers' conclusions. For example, the Friedman Foundation references one of its own non-peer reviewed reports, from 2002, regarding "town tuitioning" programs in Vermont and Maine, which allow some students to attend another public or secular-private school in or out of state.<sup>33</sup> However, these programs are not relevant for discussions of competitive effects in modern day voucher programs. They were created in the 1800s as a way for rural communities to take advantage of existing schools in areas where there were not enough students to justify the construction of a public school, and are thus meant to supplement, and not compete with, local public schools.

26. The Friedman Foundation review also cites a study from Carnoy *et al.* to support its claim that voucher competition improved Milwaukee public schools. In fact, the study from Stanford economic Martin Carnoy and associates found "essentially no evidence that students in those traditional public schools in Milwaukee facing more competition achieve

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<sup>33</sup> Additionally, the report makes the classic error of conflating correlation with causation, looking for associations between density of schools that can be chosen and academic performance, while then concluding that one factor has a casual influence on the other, without doing any testing of that assumption.

higher test score gains.”<sup>34</sup> Contrary to what the Friedman Foundation review that cites their study claims, the research from the Carnoy team found that any initial improvement in public schools exposed to competition dissipated as the program expanded: “This raises questions about whether traditional notions of competition among schools explain these increased scores in the two years immediately after the voucher plan was expanded.”<sup>35</sup>

27. In yet another example, the Friedman Foundation review referenced in the Defendant’s Motion includes multiple studies of the same programs, such as the 11 studies of Florida (almost half of the Friedman Foundation review’s set of 23 studies), in an attempt to demonstrate that vouchers have a beneficial competitive impact on public schools. The main voucher policy in Florida was part of a broader program that included

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<sup>34</sup> P. 2 in Carnoy, M., Adamson, F., Chudgar, A., Luschei, T. F., & Witte, J. F. (2007). *Vouchers and Public School Performance: A Case Study of the Milwaukee Parental Choice Program*. Washington, DC: Economic Policy Institute.

As the home of the nation’s oldest voucher program, after a quarter century, Milwaukee schools — including public, private and charter — are still among the worst in the state, if not the country, causing early proponents of that voucher program, such as David Dodenhoff of the pro-voucher Wisconsin Policy Research Institute, to conclude that: “Relying on public school choice and parental involvement to reclaim MPS [Milwaukee Public Schools] may be a distraction from the hard work of fixing the district’s schools. . . . The question is whether the district, its schools and its supporters in Madison are prepared to embrace reforms more radical than public school choice and parental involvement.” (See: Dodenhoff, D. (2007). *Fixing the Milwaukee Public Schools: The Limits of Parent-Driven Reform*. Thiensville, WI: Wisconsin Policy Research Institute.) In view of the general failure of vouchers to have an impact on voucher students or on the schools with which they are supposed to compete, other prominent pro-voucher advocates on the national level, such as Sol Stern of the Manhattan Institute, and Diane Ravitch of the Hoover Institute and the Brookings Institution, have changed their minds on these reforms as well. See:

Stern, S. (2008, Winter). *School Choice Isn’t Enough*. *City Journal*, 18, [http://www.city-journal.org/2008/2018\\_2001\\_instructional\\_reform.html](http://www.city-journal.org/2008/2018_2001_instructional_reform.html).

Ravitch, D. (2009). *The Death and Life of the Great American School System: How Testing and Choice Are Undermining Education*. New York: Basic Books.

Ravitch, D. (2013). *Reign of Error: The Hoax of the Privatization Movement and the Danger to America’s Public Schools*. New York: Random House.

<sup>35</sup> Page 2 in Carnoy, M., Adamson, F., Chudgar, A., Luschei, T. F., & Witte, J. F. (2007). *Vouchers and Public School Performance: A Case Study of the Milwaukee Parental Choice Program*. Washington, DC: Economic Policy Institute.

stigmatizing and increasing state oversight of underperforming schools, in addition to increasing competitive pressures on those schools by allowing students to use a voucher to leave the public schools — an element ruled unconstitutional in 2006.<sup>36</sup> Although the Friedman Foundation review includes some independent studies<sup>37</sup> of this case, it cites such research to indicate that competition from vouchers improves public schools, even though independent researchers clearly do not distinguish voucher competition from the other two other factors that may be responsible for any changes in public school performance: “stigmatizing” (shaming through publicly released letter grades) and increasing oversight of underperforming public schools. As the CEP review cited in the Defendant’s Motion made clear: “The study did not determine the extent to which competition from vouchers, in particular, contributed to this improvement.”<sup>38</sup>

28. Third, the review from the Friedman Foundation for Educational Choice cited in the Defendant’s Motion asserts that “[no] empirical study has ever found that choice had a negative impact on public schools,” yet fails to reference any of the many empirical studies that demonstrate that choice can have detrimental impacts for students remaining in public schools. For instance, in a peer-reviewed analysis of voucher research, economist Patrick McEwan found that vouchers

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<sup>36</sup> Rouse, C. E., Hannaway, J., Goldhaber, D., & Figlio, D. N. (2007). *Feeling the Florida Heat? How Low-Performing Schools Respond to Voucher and Accountability Pressure*: National Center for Analysis of Longitudinal Data in Education Research.

<sup>37</sup> “Independent studies” means those not performed by voucher advocates. As the 2011 CEP report cited in the Defendant’s Motion noted, “Many of the newer voucher studies have been conducted or sponsored by organizations that support vouchers” (p. 6).

<sup>38</sup> CEP, 2011, p. 36.



“encourage sorting that could lower the achievement of public school students. There is no compelling evidence that such losses are outweighed by competitive gains in public schools.”<sup>39</sup>

29. Indeed, the Friedman Foundation for Educational Choice review makes this claim about “school choice,” and not just voucher programs, which is understandable since the competitive dynamics would be similar regardless of the type of school that is competing with a public school for students. Yet the Friedman Foundation review ignores the voluminous research on the most prominent, popular, and widespread form of school choice, charter schools, even though charter schools are likely a better reference point because they are state-wide programs, like SB 302 but unlike some of the voucher programs referenced in the Friedman Foundation review.

30. In that regard, a peer-reviewed study of charter schools in North Carolina found an increase in racial isolation as well as in the Black-White achievement gap due to that school choice program.<sup>40</sup> Another peer-reviewed study, from Stanford economist Eric Bettinger, found competition in Michigan having no significant effect on students in public schools, although he found that it may harm the achievement of students in charter schools.<sup>41</sup> Other peer-reviewed research has found that competition impairs

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<sup>39</sup> McEwan, P. J. (2004). The Potential Impact of Vouchers. *Peabody Journal of Education*, 79(3), 57-80.

<sup>40</sup> Bifulco, R., & Ladd, H. F. (2006). School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program. *Journal of Policy Analysis and Management*, 26(1), 31-56.

<sup>41</sup> Bettinger, E. P. (2005). The Effect of Charter Schools on Charter Students and Public

academic performance in public schools.<sup>42</sup> Even a study by choice advocates (who have published work for the Friedman Foundation) has found a significant negative effect from competition on neighboring public schools.<sup>43</sup> Thus, it is simply factually incorrect for the Friedman Foundation for Educational Choice to state that “[no] empirical study has ever found that choice had a negative impact on public schools.”<sup>44</sup>

31. The reasons for these negligible or negative effects in school choice systems have to do with the Friedman Foundation for Educational Choice’s unsupported assumption, quoted on page 3 in the Defendant’s Motion, that “introducing healthy competition ... keeps schools mission-focused.”<sup>45</sup> This assumption is based on an interdependent series of speculations, each of which is difficult to demonstrate in the empirical data, including (a) that parents choose schools based on school quality, and (b) that schools will respond to these competitive pressures by improving academic quality. In fact, research clearly indicates that each of these is problematic:

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Schools. *Economics of Education Review*, 24(2), 133-147.

<sup>42</sup> Imberman, S. A. (2011). The Effect of Charter Schools on Achievement and Behavior of Public School Students. *Journal of Public Economics*, 95(7-8), 850-863.

Linick, M. A. (2014). Measuring Competition: Inconsistent Definitions, Inconsistent Results. *Education Policy Analysis Archives*, 22(16).

Ni, Y. (2009). The Impact of Charter Schools on the Efficiency of Traditional Public Schools: Evidence from Michigan. *Economics of Education Review*, 28(5), 571-584.

<sup>43</sup> Carr, M., & Ritter, G. W. (2007). Measuring the Competitive Effect of Charter Schools on Student Achievement in Ohio’s Traditional Public Schools. New York: National Center for the Study of Privatization in Education.

<sup>44</sup> Page 1 in Forster, G. (2013). A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition. Indianapolis, IN: Friedman Foundation for Educational Choice.

<sup>45</sup> Page 1 in Forster, G. (2013). A Win-Win Solution: The Empirical Evidence on How Vouchers Affect Public Schools, Third Edition. Indianapolis, IN: Friedman Foundation for Educational Choice.

- (a) Parents often choose schools for other reasons besides academic quality, including, for instance, convenience, marketing, or the social composition of the school.<sup>46</sup> As a case in point, voucher proponents studying the long-running voucher program in Milwaukee found that only 10% of all Milwaukee Public School parents make choices that consider more than a single school and take into account school academic performance in making a choice.<sup>47</sup> This is in keeping with a long-standing finding in the school choice literature: that parents often choose schools based on the demographic composition of a school, rather than on academic quality, even when that may mean sending their child to a less effective school.<sup>48</sup>
- (b) While the Defendant's Motion and the Friedman Foundation review assume that public schools will respond to competitive pressures by investing resources in academics, research indicates that they often recognize other more immediate ways of competing that may actually undercut efforts to improve

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<sup>46</sup> Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis*, 24(2), 133-144.

See also:

Henig, J. R., & MacDonald, J. A. (2002). Locational Decisions of Charter Schools: Probing the Market Metaphor. *Social Studies Quarterly*, 83(4), 962-980.

Kleitz, B., Weiher, G. R., Tedin, K., & Matland, R. (2000). Choice, Charter Schools, and Household Preferences. *Social Science Quarterly*, 81(3), 846-854.

<sup>47</sup> Dodenhoff, D. (2007). Fixing the Milwaukee Public Schools: The Limits of Parent-Driven Reform. Thiensville, WI: Wisconsin Policy Research Institute.

<sup>48</sup> Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis*, 24(2), 133-144.

Bifulco, R., & Ladd, H. F. (2006). School Choice, Racial Segregation, and Test-Score Gaps: Evidence from North Carolina's Charter School Program. *Journal of Policy Analysis and Management*, 26(1), 31-56.

academics. For instance, research — including my own peer-reviewed work — has shown that, schools often compete by improving the physical appearance and appeal of the school, or by putting resources into marketing, at the expense of instruction.<sup>49</sup> A peer-reviewed study of choice in Michigan found no evidence to support the theory that competition results in public schools focusing more on improving instruction, although the researchers did find that more competition translated into fiscal distress for districts — a finding echoed in the CEP report’s review of the impact of vouchers in Milwaukee, which found that “the program has adverse financial effects for Milwaukee taxpayers.”<sup>50</sup>

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<sup>49</sup> Fiske, E. B., & Ladd, H. F. (2000). *When Schools Compete: A Cautionary Tale*. Washington, DC: Brookings Institution Press.

Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. (1999). *Trading in Futures: Why Markets in Education Don't Work*. Buckingham, UK: Open University Press.

Lubienski, C. (2005). Public Schools in Marketized Environments: Shifting Incentives and Unintended Consequences of Competition-Based Educational Reforms. *American Journal of Education*, 111(4), 464-486.

<sup>50</sup> CEP, 2011, p. 42.

Arsen, D., & Ni, Y. (2011). The Effects of Charter School Competition on School District Resource Allocation. *Educational Administration Quarterly*, 48(1), 3-38.

In addition to the three empirical claims in the Defendant’s Motion, the Friedman Foundation review makes two additional assertions, one of which is that “Six empirical studies have examined school choice’s fiscal impact on taxpayers. All six find that school choice saves money for taxpayers” (p. 1). What the Friedman Foundation does not mention is that only two of those studies were conducted by authors not known to be advocates of school vouchers. Of those two, one report examines a program that is classified by the Friedman Foundation as a “Corporate Income Tax Credit Scholarship Program,” not a voucher or education savings account (ESA) program (<http://www.edchoice.org/school-choice/school-choice-in-america/>). The other report — which, by the Friedman Foundation’s own admission has “only a sparse supporting narrative explaining the method, which limits the reader’s ability to assess its methodological quality” (p. 17) — is not a report at all, but a line in a “Revenue Estimating Conference,” the complete citation from the Friedman Foundation being: “Revenue Estimating Conference,” Florida Legislative Office of Economic and Demographic Research, March 16, 2012, p. 456, line 55.” (the single line cited

32. Thus, by including inapplicable studies and excluding relevant studies on school choice, Friedman Foundation inaccurately states that there is a consensus in the research regarding the effect of school choice on public schools, and advances a simplistic set of assumptions.

33. Further, the Defendant's Motion and the Friedman Foundation review do not take into account other potentially negative effects of vouchers on academic achievement. As noted in my Declaration of October 19, research also indicates the potential for detrimental competitive impacts, particularly on quality, equity and access. In the US, research has demonstrated that parents, especially in less-regulated programs such as that proposed in SB 302, often make school choice decisions based not on academic quality (which is assumed to be the driver of school improvements), but on the demographic composition of schools, leading to higher levels of segregation.<sup>51</sup> At the same time, schools in such systems

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by the Friedman Foundation does not exist in the document it lists: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/impact0316.pdf>). Two of the studies were conducted by the Friedman Foundation for Educational Choice. Only one of the six was published in a peer-reviewed journal. In general, researchers who submit their work to peer-reviewed journals have been much more cautious than the Friedman Foundation for Educational Choice has been in drawing conclusions on this topic because of the many factors involved that may influence comparisons of spending patterns, but not be accounted for in the studies. For instance, public schools on average serve a higher proportion of students with special needs that are more costly. (See: Lubienski, C., & Lubienski, S. T. (2014). *The Public School Advantage: Why Public Schools Outperform Private Schools*. Chicago: University of Chicago Press.) Claims that expanding choice to all students would have to take into consideration that higher-cost students must then be served by private schools, when current estimates do not take those costs into account.

<sup>51</sup> See:

Schneider, M., & Buckley, J. (2002). What Do Parents Want from Schools? Evidence from the Internet. *Educational Evaluation And Policy Analysis*, 24(2), 133-144.

respond to competitive incentives by excluding more costly or difficult-to-educate students.<sup>52</sup> In fact, Milton Friedman, the founder of the Friedman Foundation and intellectual author of the modern voucher movement is cited in the Amicus Brief for his 1962 book, *Capitalism and Freedom*.<sup>53</sup> Yet his chapter on school vouchers in that book is based on his 1955 article that introduced the topic,<sup>54</sup> where he explicitly acknowledged that his voucher proposal would provide an avenue for further school segregation even as states were seeking to desegregate schools.<sup>55</sup>

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Rotberg, I. C. (2014, February). Charter Schools and the Risk of Increased Segregation. *Phi Delta Kappan*, 95, 26-30.

In addition to the three empirical claims made in the Defendant's Motion, the Friedman Foundation for Educational Choice review adds some additional claims, one of them that "school choice moves students from more segregated schools into less segregated schools... No empirical study has found that choice increases racial segregation." (p. 1) As with other claims from the Friedman Foundation review, this is simply incorrect. To support this claim, the Friedman Foundation cites 8 reports, all of which were authored by choice advocates, and none of which were peer-reviewed. Two were conducted by the Friedman Foundation, and five others were unpublished or self-published manuscripts written by choice advocacy organizations, while another was an unpublished conference paper (p. 30 of the Friedman Foundation review). Notably, the Friedman Foundation review rejects standard measures and approaches to analyzing the question in the peer-reviewed research (p. 19) in favor of citing the set of eight non-peer-reviewed papers by voucher advocates. Yet the scholarly literature on this topic represents a relatively strong consensus that school choice is linked to higher levels of segregation by race, social class, and academic ability. See, for example, Bifulco, R., Ladd, H. F., & Ross, S. (2009). The Effects of Public School Choice on Those Left Behind: Evidence from Durham, North Carolina. *Peabody Journal of Education*, 84(2). Hsieh, C.-T., & Urquiola, M. (2002). When Schools Compete, How Do They Compete? An Assessment of Chile's Nationwide School Voucher Program. New York: National Center for the Study of Privatization in Education.

Rotberg, I. C. (2014, February). Charter Schools and the Risk of Increased Segregation. *Phi Delta Kappan*, 95, 26-30.

<sup>52</sup> Lubienski, C., Gordon, L., & Lee, J. (2013). Self-Managing Schools and Access for Disadvantaged Students: Organisational Behavior and School Admissions. *New Zealand Journal of Educational Studies*, 48(1), 82-98.

Lubienski, C., Gulosino, C., & Weitzel, P. (2009). School Choice and Competitive Incentives: Mapping the Distribution of Educational Opportunities across Local Education Markets. *American Journal of Education*, 115(4), 601-647.

<sup>53</sup> Amicus Brief, p. 16.

<sup>54</sup> Friedman, M. (1955). The Role of Government in Education. In R. A. Solo (Ed.), *Economics and the Public Interest* (pp. 127-134). New Brunswick, NJ: Rutgers University Press.

<sup>55</sup> Friedman, M. (1955). The Role of Government in Education. In R. A. Solo (Ed.), *Economics and the Public Interest* (pp. 127-134). New Brunswick, NJ: Rutgers University Press.

34. While it may be tempting to reference only research from other voucher programs in the US, these are actually not particularly comparable to the SB 302 program in Nevada, which is anomalous in the US, since other US programs tend to be limited based on family income, school performance, or urban boundaries. Instead, more accurate comparisons are to be seen in other countries that adopted near-universal voucher or choice systems, such as in Sweden, Chile, or New Zealand. These cases all have longer track records than the smaller and more targeted US programs, allowing researchers to understand the long-term impacts of choice. In general, in these cases, the research evidence indicates that, since the introduction of choice: (1) academic achievement has not improved, and has substantially declined in at least one of these three cases; (2) school segregation has increased substantially in all cases; (3) the public school system, where it still exists, has seen significant declines, and has become the sector that serves largely students of poor families.

35. In the first instance, Swedish policymakers took a sudden turn away from a long tradition of public investment in public schools and adopted a system of vouchers in 1991. Yet, based on the standard international measure for comparing student performance, PISA

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See especially Note 2 (“Essentially this proposal — public financing but private operation of education — has recently been suggested in several southern states as a means of evading the Supreme Court ruling against segregation.... Yet, so long as the schools are publicly operated, the only choice is between forced nonsegregation and forced segregation; and if I must choose between these evils, I would choose the former as the lesser.... Under such a [voucher] system, there can develop exclusively white schools, exclusively colored schools, and mixed schools.”)

(Programme for International Student Assessment), “between 2000 and 2012 Sweden’s Pisa scores dropped more sharply than those of any other participating country, from close to average to significantly below average.... In the most recent Pisa assessment, in 2012, Sweden’s 15-year-olds ranked 28th out of 34 OECD (Organisation for Economic Co-operation and Development) countries in maths, and 27th in both reading and science”<sup>56</sup> At the same time, school segregation has emerged as a significant problem in the Swedish education system.<sup>57</sup>

36. New Zealand also moved rather abruptly to a system of universal choice with a voucher-like system in 1989. School segregation has been a chronic problem, as autonomous schools often use that autonomy in ways to avoid serving disadvantaged and minority students — for instance, by creating priority zones for admission that exclude more disadvantaged areas.<sup>58</sup>

37. Chile is probably the best case from which to observe the long-term impact of vouchers. Students of Milton Friedman took policymaking positions in Chile and embraced his proposal for universal vouchers in the

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<sup>56</sup> The US ranked higher in these subjects. See: Weale, S. (2015, June 10). 'It's a Political Failure': How Sweden's Celebrated Schools System Fell into Crisis. *The Guardian*. Retrieved from [http://www.theguardian.com/world/2015/jun/10/sweden-schools-crisis-political-failure-education?CMP=share\\_btn\\_tw](http://www.theguardian.com/world/2015/jun/10/sweden-schools-crisis-political-failure-education?CMP=share_btn_tw)

<sup>57</sup> Lindbom, A. (2010). School Choice in Sweden: Effects on Student Performance, School Costs, and Segregation. *Scandinavian Journal of Educational Research*, 54(6), 615-630.

<sup>58</sup> Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. (1999). *Trading in Futures: Why Markets in Education Don't Work*. Buckingham, UK: Open University Press.

Lubienski, C., Gordon, L., & Lee, J. (2013). Self-Managing Schools and Access for Disadvantaged Students: Organisational Behavior and School Admissions. *New Zealand Journal of Educational Studies*, 48(1), 82-98.



1980s. However, academic performance has remained flat, while Chile has now become the most segregated system in the region, and in the OECD. Again, research indicates that schools compete based on other strategies besides academic quality, often using marketing and other techniques to attract “better” students; the public school sector has seen substantial declines in particular, since more advantaged families have been successful in using the program to remove their children into private schools.<sup>59</sup>

38. In conclusion, the claim that “[s]chool choice programs provide greater educational opportunities by enhancing competition in the public education system” has simply not been demonstrated in the research literature. The evidence also suggests that schools forced to compete may do so in different ways, and not always as school choice proponents predict, including by excluding more costly students<sup>60</sup>; redirecting resources into marketing instead of instruction<sup>61</sup>; or adopting instructional programs that,

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<sup>59</sup> Adamson, F., Astrand, B., & Darling-Hammond, L. (Eds.). (2016). *Global Educational Reform: How Privatization and Public Investment Influence Education Outcomes*. New York: Routledge.

Carnoy, M. (1998). National Voucher Plans in Chile and Sweden: Did Privatization Reforms Make for Better Education? *Comparative Education Review*, 42(3), 309-338.

Gauri, V. (1998). *School Choice in Chile: Two Decades of Educational Reform*. Pittsburgh: University of Pittsburgh Press.

Hsieh, C.-T., & Urquiola, M. (2002). When Schools Compete, How Do They Compete? An Assessment of Chile's Nationwide School Voucher Program. New York: National Center for the Study of Privatization in Education.

Parry, T. R. (1997). How Will Schools Respond to the Incentives of Privatization? Evidence from Chile and Implications for the United States. *American Review of Public Administration*, 27(3), 248-269.

<sup>60</sup> Lacireno-Paquet, N., Holyoke, T. T., Moser, M., & Henig, J. R. (2002). Creaming Versus Cropping: Charter School Enrollment Practices in Response to Market Incentives. *Educational Evaluation And Policy Analysis*, 24(2), 145-158.

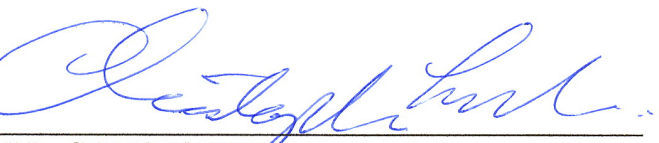
<sup>61</sup> Lubienski, C. (2005). Public Schools in Marketized Environments: Shifting Incentives and Unintended Consequences of Competition-Based Educational Reforms. *American Journal of Education*, 111(4), 464-486.

while they may be popular, are actually ineffective.<sup>62</sup> Moreover, there can also be detrimental impacts on non-choosing students, as their more affluent peers are more likely to embrace choice options, leaving behind a school that can accelerate in decline.<sup>63</sup>

### III. Conclusion

39. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this 23<sup>rd</sup> day of November, 2015.

By:   
DR. CHRISTOPHER LUBIENSKI

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<sup>62</sup> Lubienski, C., & Lubienski, S. T. (2014). *The Public School Advantage: Why Public Schools Outperform Private Schools*. Chicago: University of Chicago Press.

<sup>63</sup> Organisation for Economic Co-Operation and Development. (2014). *Pisa 2012 Results: What Makes Schools Successful (Volume IV)* (Vol. Paris): OECD Publishing.



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FIRST JUDICIAL DISTRICT COURT  
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

**REPLY DECLARATION OF PAUL JOHNSON**

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1 I, PAUL JOHNSON, declare as follows:

2 1. I am the Chief Financial Officer (“CFO”) of White Pine County School District  
3 (“White Pine”). I have been the CFO of White Pine for over 18 years and have served on a  
4 number of panels and task forces to evaluate the funding formula for the Nevada public school  
5 system. I make this declaration based on personal knowledge and experience. If called as a  
6 witness, I could and would competently testify to the facts set forth herein.

7 2. As CFO of White Pine, I have personal knowledge of the management of White  
8 Pine’s yearly budget. I have also read SB 302 and the proposed regulations and analyzed the  
9 potential impact of SB 302 on White Pine.

10 3. I have also read Defendant’s Opposition to Motion for Preliminary Injunction and  
11 Countermotion to Dismiss and the declaration of Steve Canavero attached thereto.

12 4. While SB 302 was under consideration by the Legislature, I submitted a fiscal note  
13 on behalf of White Pine. In that fiscal note, I stated that there would be no impact on White Pine  
14 because, at present, there are no private schools in White Pine County. However, at the time I  
15 wrote the fiscal note, I considered only whether ESAs would be used at a traditional, brick-and-  
16 mortar private school. Because there are no existing brick-and-mortar private schools presently  
17 operating in White Pine, I did not envision a fiscal impact. What I did not realize and take into  
18 consideration is the fact that SB 302 allows for ESA funds to be used not only at brick-and-mortar  
19 private schools, but also in a variety of other ways, including at virtual private schools, and for  
20 distance education, private tutoring, and curricular materials used in home schooling. White Pine  
21 does have a homeschool community whose members could easily apply for and obtain ESAs.  
22 Further, SB 302 creates an incentive to open a private school in White Pine and has spawned local  
23 discussions about reopening a local parochial school which, at present, provides only religious  
24 education. For these reasons, SB 302 will have a detrimental impact on students who remain in  
25 public school in White Pine.


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I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 24<sup>th</sup> day of November, 2015 in White Pine County, Nevada.

By:  \_\_\_\_\_  
PAUL JOHNSON