

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN SCHWARTZ, in his official
capacity as Treasurer of the State
of Nevada,

Appellant,

v.

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., and
SARAH SOLOMON AND BRIAN
SOLOMON, individually and on behalf
of their minor children, D.S. and K.S.,

Respondents.

Supreme Court No. 69611

Electronically Filed
Mar 04 2016 04:34 p.m.
District Court No. 15-OC-00207-1B
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

BATES AA 000001 through AA 000209

Adam Paul Laxalt (Bar No. 12426)

Attorney General

Lawrence VanDyke (Bar No. 13643C)

Solicitor General

Ketan Bhirud (Bar No. 10515)

General Counsel

Joseph Tartakovsky (Bar No. 13796C)

Deputy Solicitor General

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street

Carson City, NV 89701

(775) 684-1100

Paul D. Clement

BANCROFT PLLC

500 New Jersey Avenue, NW

Seventh Floor

Washington, D.C. 20001

(202) 234-0090

Counsel for Appellant Dan Schwartz

INDEX

1. **Acceptance of Service of Summons and Complaint..... AA 20-21**
[Filed in First JD 09/21/15]
2. **Complaint AA 01-19**
[Filed in First JD 09/09/15]
3. **Declaration of Steve Canavero AA 23-27**
[Filed in First JD as attachment to Opposition to Motion for Preliminary Injunction and Countermotion to Dismiss 11/05/15]
4. **Defendant’s Notice of Appeal AA 73-75**
[Filed in First JD 01/15/16]
5. **Distributive School Account – Summary for 2015-17 Biennium
.....AA 22**
[Filed in First JD as attachment to Opposition to Motion for Preliminary Injunction and Countermotion to Dismiss 11/05/15]
6. **Notice of Entry of Order Granting Motion for Preliminary Injunction
.....AA 53-72**
[Filed in First JD 01/12/16]
7. **Order Denying Defendant’s Motion to Dismiss..... AA 32-34**
[Filed in First JD 12/24/15]
8. **Order for Findings of Fact and Conclusions of Law AA 35-36**
[Filed in First JD and 12/24/15]
9. **Order Granting Motion for Preliminary Injunction AA 37-52**
[Filed in First JD 01/11/16]
10. **Senate Bill No. 302 AA 76-107**
11. **Senate Bill 302 Fiscal Note..... AA 28-31**
[Filed in First JD as attachment to Opposition to Motion for Preliminary Injunction and Countermotion to Dismiss 11/05/15]
12. **Senate Bill No. 515 AA 108-139**
13. **Transcript of January 6, 2016 Hearing on Preliminary Injunction
.....AA 140-209**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 4, 2016.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

DON SPRINGMEYER, ESQ.
JUSTIN C. JONES, ESQ.
BRADLEY S. SCHRAGER, ESQ.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 E. RUSSELL ROAD, SECOND FLOOR
LAS VEGAS, NEVADA 89120

DAVID G. SCIARRA, ESQ.
AMANDA MORGAN, ESQ.
EDUCATION LAW CENTER
60 PARK PLACE, SUITE 300
NEWARK, NEW JERSEY 07102

TAMERLIN J. GODLEY, ESQ.
THOMAS PAUL CLANCY, ESQ.
LAURA E. MATHE, ESQ.
SAMUEL T. BOYD, ESQ.
MUNGER, TOLLES & OLSON, LLP
355 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560

MATTHEW T. DUSHOFF, ESQ.
LISA J. ZASTROW, ESQ.
KOLESAR & LEATHAM
400 SOUTH RAMPART BOULEVARD, SUITE 400
LAS VEGAS, NEVADA 89145

///

TIMOTHY D. KELLER
INSTITUTE FOR JUSTICE
398 S. MILL AVENUE, SUITE 301
TEMPE, ARIZONA 85281

MARK A. HUTCHINSON, ESQ.
JACOB A. REYNOLDS, ESQ.
ROBERT T. STEWART, ESQ.
HUGHCHINSON & STEFFEN, LLC
10080 W. ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145

s/ Sandra L. Geyer

Sandra L. Geyer, an employee of the office
of the Nevada Attorney General

REC'D & FILED
2015 SEP -9 PM 2:01
SUSAN MERRIWETHER
CLERK
BY
DEPUTY

1 Don Springmeyer (Nevada Bar No. 1021)
Justin C. Jones (Nevada Bar No. 8519)
2 Bradley S. Schrager (Nevada Bar No. 10217)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3 3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
4 (702) 341-5200/Fax: (702) 341-5300
dspringmeyer@wrslawyers.com
5 bschrager@wrslawyers.com
jjones@wrslawyers.com
6 *Attorneys for Plaintiffs*
(Additional counsel appear on signature page)

8
9 **FIRST JUDICIAL DISTRICT COURT**
10 **IN AND FOR CARSON CITY, NEVADA**

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

18 Plaintiffs,

19 vs.

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

22 Defendant.

Case No.: 150C002071B

Dept. No: II

COMPLAINT

23 Plaintiffs, parents of children attending Nevada public schools, allege as follows:
24
25
26
27
28

1 **I. INTRODUCTION**

2 1. In the last biennium session, the Nevada Legislature established the most expansive
3 voucher program ever instituted in the United States. The new statute, Senate Bill 302, directs the
4 State Treasurer to deposit funds appropriated by the Legislature for the operation of the Nevada
5 public schools into private accounts to pay for private school tuition, online classes, home-based
6 curriculums and related expenses, tutoring, transportation to and from private schools, and other
7 private expenses. The Education Article of the Nevada Constitution expressly prohibits the use of
8 public school funds for anything other than the operation of Nevada's public schools. The
9 voucher statute plainly violates this and other provisions of the Nevada Constitution and will have
10 serious deleterious effects on Nevada and its children.

11 2. Under the voucher statute, every child in any private school (including on-line
12 programs), and every child taught at home, will be entitled to receive over \$5,000 a year in state
13 public school funds after attending 100 days in a public school (part time or full time) once in their
14 academic career. This requirement is easily met. Simply enrolling a student in 100 days of public
15 kindergarten at the outset of their education will entitle them to collect over \$5,000 a year for the
16 rest of their K-12 education. Under the regulations proposed by the State Treasurer, students
17 already in private school or educated at home can also readily qualify by taking a single public
18 school class for 100 days.

19 3. There are currently just over 20,000 students enrolled in private schools in Nevada.
20 The yearly cost to Nevada's public schools of subsidizing their private school education under the
21 voucher statute would be over \$102 million. This hefty sum does not include payments for
22 students who are educated at home or on-line because the Nevada Department of Education does
23 not track how many children in Nevada are so educated. It also does not include any child
24 attending public school who decides to leave their school and attend a private school with a
25 voucher subsidy. The voucher statute will thus drain Nevada's public schools of the funds
26 provided by the Legislature essential for their operation and divert those funds to private use in
27 violation of the Nevada Constitution.
28

1 4. The voucher statute will also provide a windfall to those who can already afford to
2 send their children to private school. The ~\$5,000 voucher subsidy is not enough to cover the full
3 tuition at all but a handful of existing private schools in Nevada. Only those families with the
4 means to make up the significant difference will be able to use the voucher subsidy. Diverting
5 precious Nevada taxpayer revenues to subsidize private school education for families that can
6 already afford it is not only inappropriate but is also an unconstitutional use of tax dollars. In
7 addition, very few of Nevada's private schools are in the urban core of Nevada's two largest cities,
8 accessible to students in those neighborhoods. The voucher statute will consign Nevada's most
9 vulnerable and at-risk children to public schools that will have even less funding—isolated by
10 socioeconomic status, disability and academic need.

11 5. The voucher statute further violates the Legislature's constitutional obligation to
12 establish and maintain a "uniform system" of public schools. Private schools attended by students
13 receiving a voucher subsidy do not have to meet the same requirements as public schools. For
14 example, students do not have to take the same tests or show mastery of the same rigorous
15 standards. Nor do teachers in these schools have to be certified. The voucher statute will also
16 encourage subpar private institutions to spring up to take advantage of the State Treasurer's yearly
17 deposits of over \$5,000 per child, without any real concern for educating students, to the detriment
18 of the students and families involved.

19 6. Likewise, the voucher statute does not require private schools receiving voucher
20 subsidies to be open to all students as are the public schools. They can refuse admission based on
21 religious beliefs, ability to pay, and academic performance. The drafters of the Nevada
22 Constitution understood the importance of establishing a "uniform system" of "common" or
23 public schools sufficiently funded to prepare all Nevada children to become engaged, productive
24 and contributing citizens; schools that all Nevadan children can attend regardless of beliefs, wealth
25 or ability. SB 302's diversion of public school funds to private schools and other entities not open
26 to all, with virtually no accountability to the taxpayers, does not maintain—indeed, undermines—
27 the uniform system of public schools mandated by the Nevada Constitution.

1 7. From its original drafting through the most recent amendment of the Education
2 Article, the Nevada Constitution has enshrined public education as the state's highest priority.
3 Consistent with that priority, the Nevada Constitution commands that the Nevada Legislature
4 establish a uniform system of public schools. It mandates that the Legislature maintain and
5 support those schools by appropriating the funding it deems sufficient for their operation. It
6 expressly bars those funds from being used for anything other than the operation of the public
7 schools. Without question, the voucher statute on its face violates these provisions of the Nevada
8 Constitution. The State Treasurer must be enjoined from implementing this unconstitutional law.

9 **II. PARTIES**

10 8. Plaintiffs are parents of students enrolled in Nevada public schools and are Nevada
11 taxpayers.

12 9. Plaintiff Hellen Quan Lopez is a resident of Las Vegas, Nevada. Her minor child,
13 C.Q., is in fourth grade in the Clark County School District. C.Q. is a native Spanish speaker and
14 goes to after-school programs at her public school, including drama club and French club, which
15 are provided by the school for an extra fee. Hellen also buys workbooks for C.Q. for work over
16 the summer. Hellen is a taxpayer whose tax dollars support the Nevada public schools. She has a
17 direct stake in ensuring public funds are only used to support public schools.

18 10. Plaintiff Michelle Gorelow is a resident of Las Vegas, Nevada, whose children,
19 A.G. and H.G., have attended public schools in the Clark County School District since
20 kindergarten and are now in fourth grade and sixth grade, respectively. A.G. and H.G. both have
21 received speech therapy from the school district pursuant to their individualized education plans
22 ("IEPs"). Michelle has seen first-hand the challenges her kids' schools face due to limited
23 funding, and has supplemented her kids' public education with weekly private tutoring and
24 workbooks. Michelle is also a taxpayer whose tax dollars support Nevada's public schools. She
25 has a direct stake in preventing the use of public funds for private schools and other private
26 educational expenditures that will divert tax dollars from her children's public schools and
27 decrease the already limited funding available to those schools.

1 11. Plaintiff Electra Skryzdzewski is a resident of Las Vegas, Nevada, whose daughter,
2 L.M., is a sixth-grader in Clark County School District in the Gifted and Talented Education
3 (GATE) program. Through the hard work of her teachers and parents, L.M. has done quite well in
4 school. However, her schools have struggled to keep class sizes small and to serve all students
5 with limited resources. Electra is a Nevada taxpayer whose tax dollars support the public schools.
6 She has a direct stake in making sure the public schools have the funds to provide an outstanding,
7 high-quality education for every student and that those funds are not used for children enrolled in
8 private schools.

9 12. Plaintiff Jennifer Carr is a resident of Las Vegas, Nevada. Her minor children,
10 W.C., A.C., and E.C., all attend public magnet and charter schools in Clark County. A.C., who is
11 in third grade, has received occupational and speech therapy services in his public school pursuant
12 to his IEP. Although the school does provide occupational and speech therapy, these services
13 have been limited. As a result, A.C. now attends private occupational therapy. Jennifer is also a
14 Nevada taxpayer whose tax dollars support the public schools. She has a direct stake in
15 preventing the transfer of funds from the public schools into private hands.

16 13. Plaintiff Linda Johnson resides in Las Vegas, Nevada. Her daughter, K.J., attends
17 high school in Clark County. K.J. is an honors student who takes advanced placement courses and
18 participates on the student council. K.J. has had great teachers in her Clark County schools, but
19 her school has struggled to serve its students while receiving limited funding. Her school had to
20 eliminate block scheduling because of the expense, and K.J.'s course offerings are not as broad as
21 they otherwise would be as a result. Linda is also a Nevada taxpayer whose tax dollars support the
22 public schools. She has a direct stake in preventing the use of public school funding for private
23 schools that are not accountable to the public and do not have to serve English language learners,
24 students in need of special education services, or low-income families.

25 14. Plaintiffs Sarah and Brian Solomon are residents of Reno, Nevada, whose children,
26 D.S. and K.S., have attended Washoe County public schools since kindergarten and are now in
27 third grade and second grade, respectively. Sarah and Brian believe that parents should have the
28 choice to send their children to private schools, but object to the use of funds appropriated

1 specifically for public schools to subsidize private education. Sarah and Brian are also taxpayers
2 who have a direct stake in preventing the diversion of taxpayer funds to private schools.

3 15. Defendant Dan Schwartz is named herein in his official capacity as the duly elected
4 Treasurer of Nevada. Dan Schwartz, acting in his official capacity as State Treasurer, is charged
5 under Senate Bill 302 with the enforcement and/or administration of the unconstitutional voucher
6 program. The State Treasurer has offices in Carson City and Las Vegas, Nevada.

7 **III. JURISDICTION AND VENUE**

8 16. This Court has subject matter jurisdiction pursuant to Article VI of the Nevada
9 Constitution, which vests the judicial power of the State herein.

10 17. This Court has personal jurisdiction over Defendant pursuant to Nev. Rev. Stat.
11 (“NRS”) 14.065 because Defendant is a resident of the state of Nevada.

12 18. Venue is proper in this Court, pursuant to NRS 13.020. The present cause of action
13 arises in Carson City, and Defendant is a public officer whose office is required to be kept in
14 Carson City pursuant to NRS 226.030. Plaintiffs are students who attend Nevada public schools
15 and their parents are Nevada residents and taxpayers. Plaintiffs have a direct and immediate
16 interest in the diversion of tax dollars from the operation and support of the public schools under
17 the voucher statute and will suffer harm if the voucher statute is not enjoined from
18 implementation.

19 **IV. FACTS**

20 **A. The Voucher Statute**

21 19. On May 29, 2015, the Legislature enacted Senate Bill 302 (“SB 302”), which
22 authorizes the State Treasurer to transfer funding appropriated by the Legislature for the operation
23 of Nevada public schools from those schools into private “education savings accounts” (“ESAs”)
24 to pay for a wide variety of non-public education services. SB 302 was signed into law by the
25 Governor on June 2, 2015.

26 20. SB 302 imposes only one requirement for eligibility: enrollment in a public school
27 for 100 consecutive school days. Children can satisfy the 100 day public school enrollment
28 requirement once at any point in their academic career in order to obtain the funding every year

1 through the end of their K-12 education. Under the regulations implementing SB 302 proposed by
2 the State Treasurer, the 100 day requirement can be met by full or part time enrollment. These
3 proposed regulations would therefore allow the requirement to be met by enrollment in public
4 school kindergarten at the outset of a child's education; by a single public school class taken by a
5 child enrolled in private school now; or by attendance in 2014-15, the school year prior to
6 enactment of the statute.

7 21. When an ESA is established, SB 302 requires the State Treasurer to deposit into
8 each ESA an amount equal to 90 percent of the statewide average basic support per public school
9 pupil, or \$5,139 per pupil for the 2015-16 school year. For children with disabilities and children
10 in a household with an income of less than 185 percent of the Federal poverty level, the State
11 Treasurer must transfer 100 percent of the statewide average basic support per public school pupil,
12 or \$5,710 per pupil for 2015-16. SB 302 § 8(2).

13 22. The basic support per pupil funding is provided to school districts each year
14 through the Nevada Plan, the Legislature's funding formula. The basic support per pupil funding
15 consists of local revenue and state aid appropriated by the Legislature for the maintenance and
16 support of Nevada's uniform system of public schools. It is guaranteed by the Legislature and is
17 the primary funding appropriated to school districts to fund the operation of the public schools,
18 kindergarten through grade 12, from year-to-year.

19 23. SB 302 requires the State Treasurer to transfer funds into ESAs from the basic
20 support per pupil funding appropriated by the Legislature for the operation of the school district in
21 which the eligible child was previously enrolled. Specifically, the statute directs the State
22 Treasurer to deduct "all the funds deposited in education savings accounts established on behalf of
23 children who reside in the county" from the school district's "apportionment" of the legislatively
24 appropriated funding "computed on a yearly basis." SB 302 § 16.1. As the Legislative Counsel's
25 Digest on SB 302 explains, "the amount of the [ESA] must be deducted from the total
26 apportionment to the resident school district of the child on whose behalf the grant is made."

27 24. SB 302 directs the State Treasurer to divert the school district's apportionment of
28 appropriated funding, on a per pupil basis, from the State Distributive School Account ("DSA") to

1 ESAs established by the State Treasurer. SB 302 § 15.9. The DSA is comprised primarily of
2 money derived from interest on the State Permanent School Fund pursuant to Article XI, Section 3
3 of the Nevada Constitution and the appropriations of state and local revenue made by the
4 Legislature for the operation of Nevada's public schools pursuant to Article XI, Section 6 of the
5 Nevada Constitution. NRS 387.030.

6 25. SB 302 does not impose any cap on the amount of public school funding that can
7 be transferred from the DSA and Nevada public school districts to ESAs in any school year, nor
8 does the statute impose any limit on the number of children who can receive per pupil payments to
9 an ESA. The statute also authorizes the State Treasurer to establish an ESA for all children who
10 satisfy the 100 day public school enrollment requirement without any limit on household income
11 and without regard to financial or academic need.

12 26. SB 302 authorizes the public school funds deposited by the State Treasurer into an
13 ESA to be used to pay for a wide variety of private education expenses. The statute allows
14 payments to any "participating entity", which is defined as:

15 (a) A private school licensed pursuant to chapter 394 of NRS or exempt from such
16 licensing pursuant to NRS 394.211;

17 (b) An eligible institution—defined by SB 302§ 3.5 as:

- 18 ■ A university, state college or community college within the Nevada
System of Higher Education; or
- 19 ■ Any other college or university that:
 - 20 • Was originally established in, and is organized under the laws of,
21 this State;
 - 22 • Is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and
 - 23 • Is accredited by a regional accrediting agency recognized by the
United States Department of Education.

24 (c) A program of distance education that is not operated by a public school or the
25 Department;

26 (d) A tutor or tutoring facility that is accredited by a state, regional or national
accrediting organization; or

27 (e) The parent of a child.

28 SB 302 § 11.1.

1 27. Further, SB 302 authorizes the public school funding deposited into an ESA to pay
2 for any of the following private education services and expenditures:

- 3 (a) Tuition and fees at a school that is a participating entity in which the child is
4 enrolled;
- 5 (b) Textbooks required for a child who enrolls in a school that is a participating
6 entity;
- 7 (c) Tutoring or other teaching services provided by a tutor or tutoring facility that
8 is a participating entity;
- 9 (d) Tuition and fees for a program of distance education that is a participating
10 entity;
- 11 (e) Fees for any national norm-referenced achievement examination, advanced
12 placement or similar examination or standardized examination required for
13 admission to a college or university;
- 14 (f) If the child is a pupil with a disability, as that term is defined in NRS 388.440,
15 fees for any special instruction or special services provided to the child;
- 16 (g) Tuition and fees at an eligible institution that is a participating entity;
- 17 (h) Textbooks required for the child at an eligible institution that is a participating
18 entity or to receive instruction from any other participating entity;
- 19 (i) Fees for the management of the education savings account, as described in
20 section 10 of this act [which provides that the Treasurer may deduct up to 3
21 percent of the ESA's amount for management];
- 22 (j) Transportation required for the child to travel to and from a participating entity
23 or any combination of participating entities up to but not to exceed \$750 per
24 school year; or
- 25 (k) Purchasing a curriculum or any supplemental materials required to administer
26 the curriculum.

27 SB 302 § 9.1.

28 28. SB 302 thus explicitly permits public school funding deposited into an ESA to pay
for private school tuition, tutoring, online schooling, home-based education curriculum and other
related expenses, and private school and home-based education transportation. SB 302 also allows
payments from ESAs for the SAT, AP and other commercial fee-based tests, as well as private
tutoring services for those tests, services not generally paid for by public dollars for public school
students.

1 29. SB 302 provides little check on the expenditure of public school funds deposited
2 into ESAs for private expenditures. SB 302 only requires the State Treasurer to verify
3 expenditures to “participating entities” through random audits of ESAs.

4 30. SB 302 authorizes the payment of public school funds deposited into ESAs to be
5 used for private schools and entities that are not open to all students, as are the Nevada public
6 schools. Private schools that accept payments of public school funds from an ESA can refuse to
7 admit and serve all students and can restrict admission on the basis of religious beliefs, ability to
8 pay, and academic ability.

9 31. SB 302 does not require “participating entities” accepting payment of public school
10 funds from ESAs to meet the same educational standards and performance benchmarks required
11 by the Legislature for public schools. Private schools can operate in Nevada whether they are
12 licensed by the state or not; approximately half of the private schools in the state are not licensed
13 by the state. Public school funding from ESAs can be used at non-licensed schools. SB 302
14 § 11(1)(a). Private schools and other participating entities are also not required to use a
15 curriculum based on state-adopted curriculum content standards. The only requirement for
16 participating entities is that they administer a norm-referenced achievement assessment in
17 mathematics and English/language arts each year. SB 302 § 12(1)(a).

18 32. In addition to diverting public school funding from the operation of the public
19 schools, the voucher statute will increase financial uncertainty and instability for public schools.
20 School funding is based on “average daily enrollment” taken on a quarterly basis. When a student
21 qualifies for an ESA, the district’s quarterly enrollment will be recalculated and its funding from
22 the state will be reduced accordingly on a quarterly basis. As the State Treasurer establishes
23 additional ESAs throughout the year, the districts will experience a reduction in their DSA funding
24 levels from quarter to quarter, necessitating budgetary adjustments, including cuts to teachers,
25 support staff, programs and other expenditures during the school year.

26 33. The State Treasurer has already begun to pre-register children for ESAs. The
27 Treasurer will begin accepting formal applications for the ESAs in January 2016. The State
28

1 Treasurer has also announced that he will begin depositing public school funds into ESAs in April
2 2016.

3 **B. The Voucher Statute Violates the Education Article of the Nevada Constitution**

4 34. The Nevada Constitution places a high priority on the value of public education, as
5 memorialized in the Education Article. Nev. Const. Art. XI. As one of the drafters stated in the
6 1864 Constitutional debate, “[t]ime will not permit, nor is it necessary that I should recapitulate
7 the arguments which have already been urged to show that among the first and the highest duties
8 of the State, is the duty of educating the rising generation.” OFFICIAL REPORT OF THE DEBATES
9 AND PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEVADA 587-88, 591-
10 93 (1864) (hereinafter, “DEBATES AND PROCEEDINGS”).

11 35. Consistent with this duty, the Nevada Constitution mandates that the Legislature:
12 (1) make appropriations, as a first priority in the biennium budget, to be used only for the
13 maintenance and support of the public schools; (2) appropriate funds that, when combined with
14 available local revenue, it deems sufficient for the operation of the public schools; and (3) provide
15 for a “uniform system” of public schools throughout the state. The voucher statute violates each
16 of these Constitutional mandates.

17 **1. The Voucher Statute Diverts Funds Appropriated For the Operation of**
18 **the Public Schools to Private Uses**

19 36. Article XI of the Nevada Constitution contains specific directives to the Legislature
20 for funding the operation of Nevada’s uniform system of public schools. First, Article XI directs
21 that all proceeds derived from federal land grants and property bequeathed to the state for
22 educational purposes be deposited into the State Permanent School Fund and that these funds
23 “must not be transferred to other funds for other uses.” NEV. CONST. art. XI, § 3. In addition, the
24 interest earned on the State Permanent School Fund “must be apportioned by the legislature
25 among the several counties for educational purposes.” *Id.*

26 37. Article XI also requires the Legislature to “provide for the[] support and
27 maintenance [of the common schools] by direct legislative appropriation from the general fund.”
28 NEV. CONST. art. XI, § 6.1. Further, the funds appropriated by the Legislature for the support and

1 maintenance of the public schools must be used to “fund the operation of the public schools.”

2 NEV. CONST. art. XI, § 6.2.

3 38. The framers of the Nevada Constitution repeatedly expressed their intent that funds
4 appropriated by the Legislature pursuant to Article XI, §§6.1 and 6.2 be used only for the support
5 and maintenance of public, not private, education institutions. Delegates to the 1864
6 Constitutional Convention explained that Article XI makes reference “only to public schools, and
7 to the appropriation of the public funds. . . so that it has a direct reference to the public schools,
8 and clearly cannot refer to anything else.” DEBATES AND PROCEEDINGS at 568. Further, the
9 delegates stated clearly that funds appropriated pursuant to Article XI were for “the support of
10 good common schools . . . the support and encouragement of public instruction.” *Id.* at 594.

11 39. The Legislature has also codified its obligation under Article XI, §§ 6.1 and 6.2 to
12 appropriate funding to be used only for the operation of the public schools. NRS 387.045. This
13 statute explicitly provides that “[n]o portion of the public school funds or of the money specially
14 appropriated for the purpose of public schools shall be devoted to any other object or purpose.”

15 40. The voucher statute purports to exempt ESAs from the requirement, as codified in
16 NRS 387.045, that funds appropriated by the Legislature for the operation of the public schools
17 cannot be used for any other purpose. SB 302 § 15.9. However, NRS 387.045 is a statutory
18 codification of the mandate in Article XI, §§ 6.1 and 6.2 restricting the use of Legislative
19 appropriations for the maintenance and support of the public schools to fund the operation of those
20 schools. The Legislature cannot exempt itself from this constitutional mandate by statute and,
21 therefore, SB 302’s exemption from that mandate is null and void.

22 41. The express language of Article XI, §§ 6.1 and 6.2, and the implementing statute,
23 make plain that the Legislature’s appropriations for the maintenance and support of Nevada’s
24 uniform system of public schools must be used to fund the operation of the public schools, and the
25 public schools alone.

26 42. SB 302, by transferring public school funding to ESAs, diverts appropriations made
27 by the Legislature for the maintenance and support of public schools to pay for private schools and
28

1 a wide variety of other private education expenses, in contravention of the express language,
2 meaning and intent of Article XI, §§ 6.1 and 6.2 of the Nevada Constitution.

3 **2. The Voucher Statute Reduces the Appropriations Deemed Sufficient by**
4 **the Legislature for the Operation of the Public Schools**

5 43. The Education Article of the Nevada Constitution requires the Legislature to enact
6 “one or more appropriations” for the next biennium that the Legislature “deems to be sufficient,
7 when combined with the local money reasonably available for this purpose, to fund the operation
8 of the public schools in the State for kindergarten through grade 12.” NEV. CONST. art. XI, § 6.2.
9 Because the provision for public education has the highest priority in the Nevada Constitution, the
10 Education Article mandates that the Legislature appropriate the funds it deems sufficient to
11 operate the public schools first “before any other appropriation.” *Id.*

12 44. Studies commissioned by the Legislature in 2006 and 2012 recommended that
13 funding for Nevada’s public schools be substantially increased above current levels, especially for
14 the state’s growing population of low income students, English language learners, and students
15 with special needs. The level of public school funding currently provided by the Legislature
16 through the Nevada plan formula is far below most other states and among the lowest in the
17 nation.

18 45. SB 302, by transferring the basic support per pupil guaranteed for the operation of
19 the public schools to ESAs, and by directing the State Treasurer to deduct those transfers from the
20 DSA and school district budgets, reduces the Legislature’s appropriations for the maintenance and
21 support of Nevada’s uniform system of public schools below the level deemed sufficient by the
22 Legislature for the operation of those public schools, in contravention of the express language,
23 plain meaning and intent of Article XI, § 6.2 of the Nevada Constitution.

24 **3. The Voucher Statute Diverts Funding Appropriated to Maintain the**
25 **Uniform System of Public Schools to Fund Private, Non-Uniform**
26 **Schools and Education Services**

27 46. Article XI of the Nevada Constitution mandates that the Legislature “provide for a
28 uniform system of common schools” across the state. NEV. CONST. art. XI, § 2. To ensure the
public schools operate uniformly, Article XI further authorizes the Legislature to “pass such laws

1 as will tend to secure a general attendance of the children in each school district upon said public
2 schools”; to establish and maintain a public school “in each school district” open to all, NEV.
3 CONST. art. XI, § 2; and to “provide for a superintendent of public instruction” to supervise the
4 uniform public school system. NEV. CONST. art. XI, § 1.

5 47. The Legislature is obligated under Article XI to establish and maintain a system of
6 public schools that provides uniform, high quality education to children across the state and that
7 benefits all Nevadans by preparing those children for citizenship and to be productive participants
8 in Nevada’s economy.

9 48. In recent years, the Legislature has exercised its constitutional obligation to
10 maintain Nevada’s system of public education by establishing uniform, rigorous education and
11 accountability standards that all public schools must meet to give every child the opportunity to
12 achieve and graduate from high school prepared for college and career and ready for active
13 citizenship. These uniform education and accountability standards include, but are not limited to:
14 curriculum content standards, assessments, teacher qualifications, and class size limits. All public
15 schools must adhere to these uniform standards.

16 49. SB 302 diverts legislative appropriations for the maintenance and support of
17 Nevada’s uniform system of public schools to pay for private schools and a wide variety of other
18 private education services. SB 302 does not require the private schools, online schools and other
19 entities that receive payment from public school funds deposited to an ESA to adhere to any of the
20 education and accountability standards established by the Legislature and applicable to public
21 schools.

22 50. In addition to uniform education standards, the Legislature has also mandated non-
23 discrimination in the public schools. Nevada public schools must serve all children regardless of
24 need and be open to all without regard to characteristics such as race, disability, income level, or
25 academic ability.

26 51. SB 302 does not require the private schools, online schools and other entities
27 receiving public school funds through an ESA to be free and open to all children; to admit and
28 serve all children without regard to race, religion, sex, disability, sexual orientation and gender

1 identity or expression; or to admit children with special educational needs, including English
2 language learners, at-risk children, homeless children and children with disabilities requiring
3 special education services.

4 52. Thus, SB 302 transfers public school funding to private schools that are not free
5 and open to all students. These schools can refuse to serve students who do not meet selective
6 admission requirements; who have disabilities, are academically at-risk, or need to learn English;
7 or who are low income and cannot afford to pay the full cost of private school tuition, books, fees,
8 transportation and other expenses. Conversely, SB 302 will increase the concentration in the
9 public schools of students who are low income, English language learners, immigrants, homeless,
10 transient, and otherwise at-risk and in need of additional educational programs, services and
11 interventions. SB 302 will also increase the concentration in the public schools of students with
12 disabilities in need of special education services. At the same time, SB 302 reduces the funding
13 available to provide the teachers, staff and programs needed to give those students the opportunity
14 to meet Nevada's uniform, rigorous standards.

15 53. Because SB 302 allows for the funding of private schools, online schools and other
16 participating entities not required to meet any of the uniform education and accountability
17 standards or the non-discrimination and open access requirements established by the Legislature
18 for Nevada's public schools, it results in the use of public school funding to support private
19 schools separate from the uniform system of public schools, in contravention to Article XI, § 2 of
20 the Constitution.

21 **FIRST CAUSE OF ACTION**

22 (Violation of Article XI, Sections 3 and 6 of the Nevada
23 Constitution – Prohibiting Diversion of Public School Funds)

24 54. The allegations in the preceding paragraphs are realleged and incorporated herein
25 by reference.

26 55. Article XI, Section 3 of the Nevada Constitution provides that proceeds derived
27 from federal land grants, which were given to Nevada "for the support of common schools,"
28 Nevada Enabling Act, ch. 36 § 7, 13 Stat. 30, 32 (1864), and property bequeathed to the state for
educational purposes, must be deposited into the State Permanent School Fund for the operation of

1 the public schools, and “must not be transferred to other funds for other uses.” NEV. CONST. art.
2 XI, § 3.

3 56. Likewise, the Nevada Constitution requires the Legislature to “provide for the[]
4 support and maintenance [of the common schools] by direct legislative appropriation from the
5 general fund.” NEV. CONST. art. XI, § 6.1.

6 57. The Nevada Constitution mandates that the “direct legislative appropriation from
7 the general fund” be used only to “fund the operation of the public schools.” NEV. CONST. art. XI,
8 §§ 6.1 and 6.2.

9 58. SB 302 violates Article XI, Sections 3 and 6 of the Nevada Constitution because it
10 diverts legislative appropriations for the support and maintenance of Nevada public schools to pay
11 for private schools and a wide variety of other private educational services.

12 SECOND CAUSE OF ACTION

13 (Violation of Article XI, Section 6 of the Nevada Constitution –
14 Reducing the Funds Deemed Sufficient to Operate the Public Schools)

15 59. The allegations in the preceding paragraphs are realleged and incorporated herein
16 by reference.

17 60. The Nevada Constitution provides that “[d]uring a regular session of the
18 Legislature, before any other appropriation is enacted to fund a portion of the state budget for the
19 next ensuing biennium, the Legislature shall enact one or more appropriations to provide the
20 money the Legislature deems to be sufficient, when combined with the local money reasonably
21 available for this purpose, to fund the operation of the public schools in the State for kindergarten
22 through grade 12 for the next ensuing biennium for the population reasonably estimated for that
23 biennium.” NEV. CONST. art. XI, § 6.2.

24 61. SB 302 violates Article XI, Section 6 of the Nevada Constitution because it
25 reduces, without limitation, the appropriations for the maintenance and support of the public
26 schools below the level deemed sufficient by the Legislature to fund the operation of those
27 schools.
28

1 **THIRD CAUSE OF ACTION**

2 (Violation of Article XI, Section 2 of the Nevada Constitution –
3 Mandating a Uniform System of Common Schools)

4 62. The allegations in the preceding paragraphs are realleged and incorporated herein
5 by reference.

6 63. Article XI, § 2 of the Nevada Constitution provides that the “legislature shall
7 provide for a uniform system of common schools.” NEV. CONST. art. XI, § 2.

8 64. Pursuant to this constitutional obligation, the Legislature has established uniform
9 education and accountability standards that govern all public schools across the state, and has
10 established uniform standards requiring all public schools to be open, free, and serve all children,
11 without regard to race, gender, disability or sexual orientation, and to provide education services
12 to all students, including ELLs, at-risk and homeless children, and children with disabilities in
13 need of special education.

14 65. SB 302 violates Article XI, § 2 of the Nevada Constitution because it authorizes the
15 State Treasurer to divert legislative appropriations for the maintenance and support of Nevada
16 public schools to pay for private schools and other private entities that are not governed by the
17 legislatively established, uniform education and accountability standards applicable to Nevada
18 public schools, and that are not free, or open or required to serve all Nevada children, thereby
19 funding non-uniform private schools and other private education services.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15
16
17
18
19
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

18
19
20
21
22
23
24
25
26
27
28

19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

23
24
25
26
27
28

24
25
26
27
28

25
26
27
28

26
27
28

27
28

28

1 4. For such other and further relief as this Court deems just and proper.

2 DATED: September 9, 2015

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

3
4 By: 
5 Don Springmeyer

6 DON SPRINGMEYER (Nevada Bar No. 1021)
7 JUSTIN C. JONES (Nevada Bar No. 8519)
8 BRADLEY S. SCHRAGER (Nevada Bar No. 10217)
9 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
10 RABKIN, LLP

3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120

Telephone: (702) 341-5200

Facsimile: (702) 341-5300

dspringmeyer@wrslawyers.com

bschrager@wrslawyers.com

jjones@wrslawyers.com

13 TAMERLIN J. GODLEY (pro hac vice to be submitted)
14 THOMAS PAUL CLANCY (pro hac vice to be submitted)
15 LAURA E. MATHE (pro hac vice to be submitted)
16 SAMUEL T. BOYD (pro hac vice to be submitted)
MUNGER, TOLLES & OLSON LLP

355 South Grand Avenue, Thirty-Fifth Floor

Los Angeles, California 90071-1560

Telephone: (213) 683-9100

Facsimile: (213) 687-3702

19 DAVID G. SCIARRA (pro hac vice to be submitted)

AMANDA MORGAN (Nevada Bar No. 13200)

20 EDUCATION LAW CENTER

60 Park Place, Suite 300

21 Newark, NJ 07102

Telephone: (973) 624-4618

22 Facsimile: (973) 624-7339

23 *Attorneys for Plaintiffs*
24
25
26
27
28

1 Don Springmeyer (Nevada Bar No. 1021)
Justin C. Jones (Nevada Bar No. 8519)
2 Bradley S. Schrager (Nevada Bar No. 10217)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3 3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
4 (702) 341-5200/Fax: (702) 341-5300
dspringmeyer@wrslawyers.com
5 bschrager@wrslawyers.com
jjones@wrslawyers.com
6 Attorneys for Plaintiffs
(Additional counsel appear on signature page)

8 **FIRST JUDICIAL DISTRICT COURT**

9 **IN AND FOR CARSON CITY, NEVADA**

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

16 Plaintiffs,

17 vs.

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

20 Defendant.

Case No.: 15 OC 002071 B

Dept. No: 11

**ACCEPTANCE OF SERVICE OF
SUMMONS AND COMPLAINT**

22 I, Ketan D. Bhirud, Esq., counsel for Defendant DAN SCHWARTZ, IN HIS OFFICIAL
23 CAPACITY AS TREASURER OF THE STATE OF NEVADA, hereby accept service of

24 ///

25 ///

26 ///

27 ///

28 ///

1 Summons and Complaint on behalf of said Defendants.

2 DATED this 21 day of September, 2015.

3
4 By: K.D. Bhirud

5 ADAM PAUL LAXALT

6 ATTORNEY GENERAL

7 KETAN D. BHIRUD, ESQ. NV Bar No. 10515

8 Deputy Attorney General

9 100 North Carson Street

10 Carson City, NV 89701

11 *Attorneys for Defendants*

DISTRIBUTIVE SCHOOL ACCOUNT - SUMMARY FOR 2015-17 BIENNium						
	2014		2015		2016	2017
	Legislatively Approved	2014 Actual	Legislatively Approved	2015 Estimated	Legislatively Approved	Legislatively Approved
WEIGHTED ENROLLMENT	432,346.00	435,522.00	434,023.00	443,123.80	449,505	455,124
ADDITIONAL ENROLLMENT FOR HOLD HARMLESS	0	1,468.70	0	3,029.20	0	0
TOTAL ENROLLMENT *	432,346.00	436,990.70	434,023.00	446,153.00	449,505	455,124
BASIC SUPPORT	\$ 5,590	\$ 5,592	\$ 5,676	\$ 5,676	\$ 5,710	\$ 5,774
TOTAL REGULAR BASIC SUPPORT **	\$ 2,417,007,180	\$ 2,443,787,084	\$ 2,463,498,518	\$ 2,532,364,428	\$ 2,566,646,043	\$ 2,628,011,292
CATEGORICAL FUNDING:						
SPECIAL EDUCATION ***	126,862,792	126,862,792	130,329,505	130,329,505	138,591,298	168,125,519
CLASS-SIZE REDUCTION	159,936,204	159,936,204	164,661,271	164,661,271	151,066,029	155,210,241
CLASS-SIZE REDUCTION - AT-RISK KINDERGARTEN	1,768,669	1,768,669	1,806,665	1,806,665	0	0
SPECIAL UNITS/GIFTED & TALENTED	169,616	169,616	174,243	174,243	0	0
SCHOOL LUNCH PROGRAM STATE MATCH	588,732	588,732	588,732	588,732	588,732	588,732
SPECIAL TRANSPORTATION	128,541	128,541	128,541	128,541	128,541	128,541
TOTAL REQUIRED STATE SUPPORT	\$ 2,706,461,734	\$ 2,733,241,638	\$ 2,761,187,475	\$ 2,830,053,385	\$ 2,857,020,643	\$ 2,952,064,325
LESS						
LOCAL SCHOOL SUPPORT TAX - 2.60%	(1,095,455,672)	(1,098,543,712)	(1,155,705,575)	(1,171,027,000)	(1,239,007,000)	(1,306,988,000)
1/3 PUBLIC SCHOOLS OPERATING PROPERTY TAX	(193,681,840)	(201,492,754)	(201,117,251)	(199,742,000)	(206,203,000)	(213,380,000)
ADJUSTMENT FOR EUREKA AND LANDER REVENUE	0	11,700,910	0	3,900,000	0	0
TOTAL STATE SHARE	\$ 1,417,324,222	\$ 1,444,906,082	\$ 1,404,364,649	\$ 1,463,184,385	\$ 1,411,810,643	\$ 1,431,696,325
STATE SHARE ELEMENTS						
GENERAL FUND	\$ 1,134,528,570	\$ 1,134,528,570	\$ 1,110,133,915	\$ 1,110,133,915	\$ 1,093,556,243	\$ 1,101,624,225
MEDICAL MARIJUANA EXCISE TAX (75%)	0			0	494,000	1,057,900
DSA SHARE OF SLOT TAX	31,658,547	30,453,730	32,305,032	29,787,800	29,237,400	29,168,200
PERMANENT SCHOOL FUND	1,000,000	1,628,282	1,000,000	2,000,000	2,000,000	2,000,000
FEDERAL MINERAL LEASE REVENUE	7,874,977	7,285,801	7,874,977	6,000,000	7,000,000	7,000,000
OUT OF STATE LSST - 2.60%	110,329,328	114,029,109	116,397,425	117,940,000	124,787,000	131,634,000
IP1 (2009) ROOM TAX REVENUE TRANSFER	131,932,800	141,236,516	136,653,300	151,040,000	154,736,000	159,212,000
GENERAL FUND SUPPLEMENTAL APPROPRIATION	0	0	0	62,026,744	0	0
BALANCE FORWARD TO NEXT FISCAL YEAR	0	15,744,074	0	(15,744,074)	0	0
TOTAL SHARE STATE ELEMENTS	\$ 1,417,324,222	\$ 1,444,906,082	\$ 1,404,364,649	\$ 1,463,184,385	\$ 1,411,810,643	\$ 1,431,696,325
*** Special Education Units						
	No. of Units	\$ per Unit	No. of Units	\$ per Unit		
	2013-2014	3,049	41,608.00	2015-2016	3,049	45,455
	2014-2015	3,049	42,745.00	2016-2017	3,049	55,141

** Totals May Not Balance Due to Rounding

*** Special Education Unit funded separately from Basic Support

Highlighting Added

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,

v.

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

Defendant.

CASE NO. 150C002071B

Dept. No: II

DECLARATION OF STEVE CANAVERO

I, STEVE CANAVERO, being first duly sworn, state under penalty of perjury that the
following is true:

1. I am the Interim Superintendent of Public Instruction for the State of Nevada,
and have been serving the State in that capacity since September 4, 2015.

2. As Interim Superintendent of Public Instruction for the State of Nevada, I am the
educational leader for the system of K-12 public education in this state and am required by
Nevada Revised Statutes (NRS) Section 385.175 to execute, direct, or supervise all
administrative technical and procedural activities of the Department of Education
(Department), including the calculation and funding of the Distributive School Account (DSA)
in accordance with NRS 387.030 and other relevant sections of the Nevada Revised Statutes.

1 3. Also within my required duties as prescribed by the Nevada Revised Statutes is
2 oversight of the Department's obligations under Senate Bill (SB) 302 establishing the
3 Education Savings Account (ESA) program in Nevada, as well as the Department's
4 obligations under SB 515 establishing a Basic Support Guarantee for all Nevada Public
5 School Pupils.

6 4. As Interim Superintendent of Public Instruction for the State of Nevada, I have
7 personal knowledge of the Department's annual budgets and DSA calculations. I have also
8 read SB 302 and oversaw meetings regarding its lawful implementation.

9 5. In enacting SB 515, the legislature determined the Basic Support Guarantee for
10 all pupils in Nevada. SB 515 established the Basic Support Guarantee as a "per-pupil"
11 amount, meaning that School Districts are guaranteed a certain amount of funding for each
12 pupil who attends a public school in that district, which varies between School Districts in
13 accordance with the historical cost of educating a child in each District. The establishment of
14 a per-pupil Basic Support Guarantee in 2015 is the same method that the legislature has
15 historically used to determine funding for each of Nevada's School Districts and Charter
16 Schools.

17 6. Prior to the enactment of SB 302 School Districts were funded on a per-pupil
18 basis. Nothing in SB 302 changed the per-pupil Basic Support Guarantee; Districts will
19 continue to be funded based on the number of pupils enrolled. Any decrease in student
20 enrollment because one or more students left a public school to participate in the ESA
21 program will have no different effect on School District funding than if one or more students
22 left a public school for any other reason whatsoever, including because their family moved
23 out-of-state or to a different school district, they left to attend a private school or homeschool
24 without participating in the ESA program, or they simply dropped out of public school. Before
25 ESAs, public school districts received funding based on their enrollment multiplied by the per-
26 pupil Basic Support Guarantee. After ESAs, public school districts continue to receive funding
27 based on their enrollment multiplied by the per-pupil Basic Support Guarantee.

1 7. The per-pupil Basic Support Guarantee as established by the legislature has the
2 advantage of protecting School Districts or Charter Schools that experience unexpected
3 increases in enrollment by providing additional funding on a per-pupil basis. Thus the per-
4 pupil method of calculating a basic support guarantee has no funding ceiling limiting the
5 amount of funding that a District or Charter School may receive.

6 8. School Districts and Charter Schools are also protected by Nevada's Hold
7 Harmless provision contained in NRS 387.1233 from an unexpected, significant loss in
8 funding due to decreases in enrollment. The Hold Harmless provision entitles any School
9 District or Charter School that experiences more than a five percent (5%) reduction in
10 enrollment to receive funding based on its prior year's enrollment. Thus Nevada's Hold
11 Harmless provision establishes a funding floor of ninety-five percent (95%) of the prior year's
12 enrollment. As with Nevada's per-pupil funding system, Nevada's Hold Harmless provision is
13 unaffected by the ESA program. Before ESAs, Nevada's Hold Harmless provision guaranteed
14 public school districts a minimum level of funding. After ESAs, the same provision continues
15 to guarantee public schools a minimum level of funding: ninety-five percent of the prior year's
16 enrollment.

17 9. I have read the declaration of Paul Johnson attached to Plaintiff's Motion for a
18 Preliminary Injunction, including the assumptions made and the funding hypotheticals that are
19 contained in paragraph 5(a) and (b).

20 10. The assumptions contained in paragraphs 5(a) and (b) of Mr. Johnson's
21 declaration are not correct. Neither of the speculative scenarios described in Mr. Johnson's
22 declaration could come to pass given how the Department is actually implementing SB 302.

23 11. The Department's implementation of SB 302 will preserve the per-pupil Basic
24 Support Guarantee established by the legislature in SB 515 and ensure that no School District
25 receives less than the per-pupil Basic Support Guarantee as a result of the ESA program.
26 The Department's current plan to implement SB 302 will treat children whose parents enter
27 into an Education Savings Account Agreement with the State Treasurer simply as if they are
28 not enrolled in a School District, no differently than if that student moved out of state or left to

1 attend a private or home school without participating in the ESA program. Thus, funding for
2 ESAs and funding to School Districts will be calculated and distributed independently. A child
3 whose parents choose to enter into an ESA Agreement with the State Treasurer will not be
4 counted as enrolled in a School District, and whichever School District the child was formerly
5 enrolled in will see their enrollment drop just as if that student had left the School District
6 because he or she had dropped out of school, chosen to be home schooled, enrolled in a
7 private school, relocated to a new District or State, or for any other reason.

8 12. The Department currently has no plan to track the District of residence of
9 children whose parents enter into an ESA contract with the State Treasurer and would be
10 unable to implement either of the hypothetical scenarios that are described in Mr. Johnson
11 declaration.

12 13. To the extent that children do enroll in public school for the first 100 days of a
13 school year and then leave (as Mr. Johnson speculates in paragraph 6 of his declaration),
14 those students will increase the funding 'floor' established by Nevada's Hold Harmless
15 provision, providing increased funding to the School District not only for the time they are
16 enrolled in public school, but also raising the ninety-five percent Hold Harmless floor for the
17 following year.

18 14. In addition to funding from the DSA, School Districts and Charter Schools also
19 receive funding from other sources, including local funds described in NRS 387.195, 387.328,
20 and NRS 482.181. These funds are not reduced by students whose parents enter into an
21 ESA contract with the State Treasurer. So, every student who leaves a School District or
22 Charter School because their parents enter into an ESA contract increases the per-pupil local
23 funding amount for pupils remaining the in School District or Charter School.

24 15. The Department's implementation of SB 302 will preserve the per-pupil Basic
25 Support Guarantee for each child who attends a Nevada Public School. To the extent that
26 enrollment in some School Districts or Charter Schools decreases as a result of additional
27 education options contained in SB 302, the School Districts and Charter Schools will be
28 protected from excessive decreases in absolute DSA funding the same way they were before

1 the ESA program—by Nevada's Hold Harmless provision.

2 I declare under penalty of Perjury under the laws of Nevada that the foregoing is true
3 and correct.

4 DATED this 5 day of November, 2015



STEVE CANVERO PhD.,
Interim Superintendent of Public
Instruction.

LOCAL GOVERNMENT
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 30, 2015

Agency Submitting: Local Government

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

Explanation

(Use Additional Sheets of Attachments, if required)

See attached.

Name Michael Nakamoto

Title Deputy Fiscal Analyst

The following responses from local governments were compiled by the Fiscal Analysis Division. The Fiscal Analysis Division can neither verify nor comment on the figures provided by the individual local governments.

Local Government Responses
S.B. 302 / BDR 34 - 567

School District: Carson City School District Approved by: Andrew J Feuling, Director of Fiscal Services Comment: Every student lost to a private school would be a loss of per pupil revenue (\$6,630), and if handled like charter schools, a loss of "outside revenues" per pupil (\$1,007) as well. We are not currently receiving monies for the students attending private schools, so this would directly reduce general fund monies we receive, solely based on the kids that do attend Carson City School District. We believe there are approximately 300 resident children that attend private schools. This would reduce our general fund revenues by \$2,000,000 if it is only the per pupil amount, by \$2,300,000 if the "outside revenues" were considered as well. We would have to reduce staffing dramatically, with no change in our current enrollment. With current Class-Size Reduction laws, that would mean class sizes of 40 kids in the middle and high schools.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	\$0	(\$2,000,000)	(\$2,000,000)	(\$2,000,000)

School District: Clark County School District Approved by: Nikki Thorn, Deputy CFO Comment: CCSD expects effect in the amount of \$5,520 per pupil plus associated local funds per student that chooses a private school.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	\$0	\$0	\$0	\$0

School District: Lincoln County School District Approved by: Steve Hansen, Superintendent Comment: All licensed private schools in Lincoln County are on-line. But we do have about 10 students who attend those on-line schools. If they are already enrolled in those on-line schools then Lincoln CSD currently does not get those funds. If grant money was awarded to those individuals but they are not enrolled in Lincoln CSD, then the money should not be deducted from the school district. Only if they are enrolled students on count day of the school district and funding was received to the school district, then they are approved for a grant to choose another school, should the money be deducted from the total apportionment to the school district. Under section 16 of this bill, the amount of the grant must be deducted from the total apportionment to the resident school district of the child on whose behalf the grant is made doesn't make sense if the student is not enrolled in the local school district because the local SD didn't get the money in the first place.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	\$0	\$100,000	\$100,000	\$100,000

School District: Lyon County School District Approved by: Philip Cowee, Director of Finance Comment: The impacts of BDR 34-567 will have significant impact depending on the number of students that will enroll in a private school. This voucher program will continue to take resources from the DSA fund that is already not sufficient to fund the current operations of the district.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	\$0	\$0	\$0	\$0

School District: Nye County School District Approved by: Kerry Paniagua, Executive Secretary Comment: Any loss in DSA due to lower student numbers will result in the loss of teachers & staff in addition to an increased staff to student ratio. Impact will depend on the number of student losses. Unable to determine impact.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

School District: Pershing County School District Approved by: Dan Fox, Superintendent Comment: This has the potential of reducing the district's overall revenue, but it cannot be determined as to how much since the number of students who might participate in it is unknown.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

School District: Storey County School District Approved by: Robert Slaby , Superintendent Comment: Reductions in DSA.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	\$0	\$0	\$0	\$0

School District: Washoe County School District Approved by: Lindsay E. Anderson, Director of Government Affairs Comment: Washoe County School District cannot determine the cost to our district as we cannot anticipate how many children would take advantage of this program.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

School District: White Pine County School District Approved by: Paul Johnson, CFO Comment: There are no private schools at this time in White Pine County so there would be no impact at this time. However, the impact would be similar to the opening of a charter school.				
Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
No Impact	\$0	\$0	\$0	\$0

The following school district did not provide a response: Churchill County School District, Douglas County School District, Esmeralda County School District, Elko County School District, Eureka County School District, Humboldt County School District, Lander County School District, and Mineral County School District.

REC'D & FILED

2015 DEC 24 PM 1:50

SUSAN HERRIWEATHER
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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, K.J.; SARAH and BRIAN SOLOMON,
individually and on behalf of their minor
children, D.D. and K.S.,

CASE NO: 15 OC 000207 1B

Dept. No.: 2

Petitioner,

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

v.

DAN SCHWARZ, in his official capacity as
Treasurer of the State of Nevada,

Respondents.

Dan Schwartz filed a Countermotion to Dismiss under NRCP 12(b)(5).

On a 12(b)(5) motion the court must accept all factual allegations in a complaint as true and draw all inferences in the plaintiff's favor.¹ A "complaint should be dismissed only if it appears beyond a doubt that [the pleader] could prove no set of facts, which, if true, would entitle [him] to relief."²

Mr. Swartz did not argue the complaint does not contain sufficient factual allegations, rather he alleged facts and argued his facts demonstrate SB 302 is

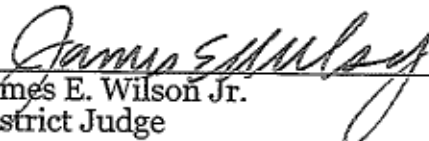
¹Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228 (2008).

²Id.

1 constitutional.

2 Mr. Swartz has not demonstrated that the allegations in the complaint, which the
3 court must accept as true at this juncture on an NRCP 12(b)(5) motion, fail to state a
4 claim for relief. Therefore the motion to dismiss is denied.

5 December 24, 2015.

6
7 
8 James E. Wilson Jr.
District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

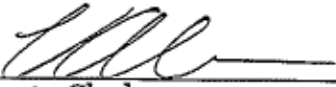
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I certify that on December 24, 2015 I placed a copy of the foregoing order in the United States Mail postage prepaid, addressed as follows:

Don Springmeyer, Esq.
Justin C. Jones, Esq.
Bradley S. Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin, LLP
3556 East Russell Road, Second Floor
Las Vegas, NV 89120

Attorney General Adam Paul Laxalt
Solicitor General Lawrence Vandyke
Deputy Solicitor General Joseph
Tartakovsky
Senior Deputy Attorney General Ketan
D. Bhirud, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

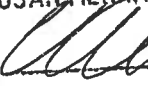


Deputy Clerk

REC'D & FILED

2015 DEC 24 AM 11:42

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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, K.J.; SARAH and BRIAN SOLOMON,
individually and on behalf of their minor
children, D.D. and K.S.,

CASE NO: 15 OC 000207 1B

Dept. No.: 2

Petitioner,

v.

ORDER FOR PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

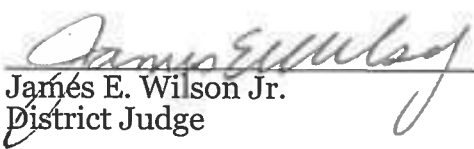
DAN SCHWARZ, in his official capacity as
Treasurer of the State of Nevada,

Respondents.

IT IS ORDERED:

Plaintiffs and defendant each submit, by December 31, 2015, proposed findings of
fact and conclusions of law consistent with their respective points and authorities on the
plaintiffs' Motion for Preliminary Injunction, and on the defendant's Countermotion to
Dismiss. FJDCR 15(7).

December 24, 2015.


James E. Wilson Jr.
District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I certify that on December 24, 2015 I placed a copy of the foregoing order in the United States Mail postage prepaid, addressed as follows:

Don Springmeyer, Esq.
Justin C. Jones, Esq.
Bradley S. Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin, LLP
3556 East Russell Road, Second Floor
Las Vegas, NV 89120

Attorney General Adam Paul Laxalt
Solicitor General Lawrence Vandyke
Deputy Solicitor General Joseph
Tartakovsky
Senior Deputy Attorney General Ketan
D. Bhirud, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701


Rand Greenburg
Law Clerk

REC'D & FILED

2016 JAN 11 PM 2:33

SUSAN MERRIWETHER
CLERK

BY SN DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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.,

CASE NO: 15 OC 00207 1B

DEPT.: 2

Plaintiffs,

vs.

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION

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

Defendant.

PROCEDURAL BACKGROUND

Before the Court is Plaintiffs' Motion for a Preliminary Injunction. Plaintiffs are parents whose children attend Nevada public schools. Plaintiff Parents seek an injunction to stop the State Treasurer from implementing Senate Bill 302 ("SB 302") which authorizes educational savings accounts. Plaintiff Parents alleged SB 302 violates certain sections of Article 11 of the Nevada Constitution. State Treasurer Dan Schwartz

1 opposed the motion. The court authorized the filing of several amicus briefs, and denied
2 a motion to intervene. The court held a hearing on the motion.

4 **ISSUES AND CONCLUSIONS**

5 As a preliminary matter, the court emphasizes that the issues before it do not
6 include the educational or public policy merits of the education savings account
7 provisions of SB 302. The educational and public policy issues were debated and voted
8 upon by the legislature and approved by the governor. Courts have no super-veto power,
9 based upon public policy grounds, over legislative enactments. Therefore, this court
10 cannot consider whether the SB 302 provisions for education savings accounts are wise,
11 workable, or worthwhile.

12 Plaintiff Parents argued SB 302 violates the Nevada Constitution in three ways:

13 First, it violates Article 11, Section 3 and Sections 6.1 and 6.2 because those
14 sections prohibit the transfer of funds appropriated for the operation of the
15 public schools to any other use.

16 Second, it violates Article 11, Section 6.2 because it removes from the
17 public school system a portion of the funds the Legislature has "deemed
18 sufficient" to maintain and operate the public schools.

19 Third, it violates Article 11, Section 2 because it creates a non-uniform
20 system of schools, and uses public funds to create the non-uniform system of
21 schools.

22 Having examined the submissions the parties and the amicus briefs, and having
23 heard oral argument by the parties, this court concludes Plaintiff Parents have failed to
24 carry their burden of proof that SB 302 violates Article 11, Sections 2 or 3 of the Nevada
25 Constitution, but that Plaintiff Parents have carried their burden of proof that SB 302
26 violates Article 11, Sections 6.1 and 6.2, and that irreparable harm will result if an
27 injunction is not entered. Therefore an injunction will issue to enjoin Treasurer
28 Schwartz from implementing SB 302.

FINDINGS OF FACT

Public School Funding

The Nevada Constitution requires the legislature to support and maintain public schools by direct legislative appropriation from the general fund, and to provide the money the legislature deems to be sufficient, when combined with the local money, to fund the public schools for the next biennium. To fulfill its constitutional obligation to fund education, the legislature created the Nevada Plan, statutes which establish the process by which the legislature determines the biennial funding for education. Under the Nevada Plan the legislature establishes basic support guarantees for all school districts.

The basic support guarantee is the amount of money each school district is guaranteed to fund its operations. The amount for each school district is determined by the number of pupils in that school district. After the legislature determines how much money each local school district can contribute, the legislature makes up the difference between the district's contribution and the amount of the basic support guarantee.

Under NRS 387.1233(3), the so-called "hold harmless" provision, a school district must be funded based on the prior year's enrollment figure if the school district experiences a reduction in enrollment of five percent or more.

Funds appropriated by the legislature from the general fund sufficient to satisfy each district's basic support guarantee are deposited into the State Distributive School Account ("DSA"), which is an account within the state general fund.

The DSA, in addition to receiving such appropriations from the general fund, also receives money from other sources, including the Permanent School Fund ("PSF"). The legislature created the PSF to implement Article 11, Section 3 of the Nevada Constitution, which provides that specified property, including lands granted by Congress to Nevada for educational purposes and the proceeds derived from these sources, are pledged for educational purposes and the money therefrom must not be

1 transferred to other funds for other uses. Section 3 money is kept in the PSF, and
2 interest on Section 3 money is transferred to the DSA.

3 The interest on the PSF constitutes a small portion of the funds in the DSA. In
4 2014, of the \$1.4 billion in the DSA that came from the State Government, \$1.1 billion,
5 or 78 percent, came from the general fund, and \$1.6 million, or 0.14%, came from the
6 PSF.¹

7 In June 2015, the legislature enacted Senate Bill 515 ("SB 515") to ensure
8 sufficient funding for K-12 public education for the 2015-2017 biennium. The legislature
9 established an estimated weighted average basic support guarantee of \$5,710 per pupil
10 for FY 2015-16 and \$5,774 per pupil for FY 2016-17.² The legislature appropriated \$1.1
11 billion from the general fund for the DSA for FY 2015-16 and more than \$933 million for
12 FY 2016-17, for a total of more than \$2 billion for the biennium.

14 **Senate Bill 302**

15 As part of the education reform measures enacted in 2015, the legislature passed
16 and the governor signed SB 302 which authorized the State Treasurer to use public
17 school funds to create private accounts called education saving accounts ("ESAs"). The
18 money in these accounts may only be used to pay for non-public education expenses,
19 including but not limited to private school tuition, tutoring, home-based education
20 curricula, and transportation.

21 Under SB 302 the State Treasurer may enter into written agreements with a
22 parent of a school aged child who has been enrolled in a Nevada public school for not
23 less than 100 consecutive school days. If a written agreement is entered into, the parent
24 must establish an ESA on behalf of the child, and the treasurer must deposit the grant
25 money into the ESA. For a child with a disability, or a child who lives in a low income

27 ¹See [http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf)
28 [DSA-SummaryForBiennium.pdf](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf).

²Id. Section 7.

1 household, the amount of the grant is 100% of the statewide average basic support per
2 pupil; for all other children the amount of the grant is 90% of the statewide average
3 basic support per pupil. For the 2015-16 school year the grant amounts will be \$5,710
4 per disabled or low income pupil, and \$5,139 for all other pupils. Funds deposited into
5 ESAs are subtracted from the legislative appropriation to fund the school district in
6 which the child who is receiving the ESA grant resides.

7 Under SB 302 general fund money appropriated to fund the operation of the
8 public schools will be used to fund education savings accounts.

9 SB 302 does not limit the number of ESAs that can be established, cap the
10 amount of public school funding that can be transferred to ESAs, or impose any
11 household income limitations on eligibility.

12 13 **PRINCIPLES OF LAW**

14 **Judicial Deference**

15 Judicial deference to duly enacted legislation is derived from three “first
16 principles” of state constitutional jurisprudence.³

17 First, all political power originates with the people.⁴

18 Second, unlike the Constitution of the United States which granted specific
19 powers to the federal government and retained all other powers in the people, the
20 Nevada Constitution granted all of the people’s political power to the government of
21 Nevada except as limited in the Nevada Constitution.⁵ The Nevada government consists
22 of three branches, the legislative, executive, and judicial. The public officials the people
23 elect to the constitutional offices in each branch exercise all of the people’s political
24

25 ³*Gibson v. Mason*, 5 Nev. 283, 291-99, 1869 Nev. LEXIS 46 (1869); *King v.*
26 *Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948). See *Bush v. Holmes*, 919
27 So.2d 392, 414 (FL 2006) Bell, J. Dissent.

28 ⁴*Gibson* at 291.

⁵*Id.*

1 power except for those powers expressly denied by the Nevada Constitution.⁶ Each
2 branch is endowed with and confined to the execution of powers peculiar to itself, and
3 each branch is supreme within its respective sphere.⁷ Thus, the legislature is supreme in
4 its field of making the law so long as it does not contravene some express or necessarily
5 implied limitation appearing in the constitution itself.⁸ The people's grant of powers
6 upon the legislature was general in terms with specified restrictions.⁹ The legislature has
7 general legislative or policy-making power over such issues as the education of Nevada's
8 children except as those powers are specifically limited by an express or necessarily
9 implied provision in the Nevada Constitution or the U.S. Constitution.¹⁰

10 Third, because general legislative or policy-making power is vested in the
11 legislature, the power of judicial review over legislative enactments is strictly limited.
12 "Statutes are presumed to be valid, and the challenger bears the burden of showing that
13 a statute is unconstitutional."¹¹ "When making a facial challenge to a statute, the
14 challenger generally bears the burden of demonstrating that there is no set of
15 circumstances under which the statute would be valid."¹² "In case of doubt, every
16 possible presumption will be made in favor of the constitutionality of a statute, and
17 courts will interfere only when the Constitution is clearly violated."¹³ "Further, the

18
19 ⁶*Id.* at 291-92.

20 ⁷*Id.* at 292.

21 ⁸*Gibson* at 292; *King* at 542.

22 ⁹*Gibson* at 292.

23 ¹⁰*King* at 542.

24 ¹¹*Busefink v. State*, 128 Nev. A.O. 49, 286 P.3d 599, 602, (2012), citing *Flamingo*
25 *Paradise Gaming v. Att'y General*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009)
(quoting *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

26 ¹²*Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep't of Taxation*, 130 Nev. A.O.
27 73, 334 P.3d 392, 398 (2014).

28 ¹³*List v. Whisler*, 99 Nev. 133, 137-138, 660 P.2d 104, 106 (1983), citing *City of*
Reno v. County of Washoe, 94 Nev. 327, 333-334, 580 P.2d 460 (1978);

1 presumption of constitutional validity places upon those attacking a statute the burden
2 of making a clear showing that the statute is unconstitutional.”¹⁴ The Nevada Supreme
3 Court has “concede[d] the elasticity of the [Nevada] constitution, as a living thing, to be
4 interpreted in the light of new and changing conditions,” and that the Supreme Court
5 “may not condemn legislation simply because the object or purpose is new (no matter
6 how astonishing or revolutionary) so long as a constitutional limitation is not
7 violated....”¹⁵

9 **Preliminary Injunction**

10 A preliminary injunction may issue “upon a showing that the party seeking it
11 enjoys a reasonable probability of success on the merits and that the defendant’s
12 conduct, if allowed to continue, will result in irreparable harm for which compensatory
13 damage is an inadequate remedy.”

15 **ANALYSIS**

16 Plaintiff Parents have made a facial challenge to SB 302. Using the above
17 principles of law the court must decide whether Plaintiff Parents have made a clear
18 showing that SB 302 violates one or more specified sections of Article 11 of the Nevada
19 Constitution, and that the plaintiffs will suffer irreparable harm.

24 *Mengelkamp v. List*, 88 Nev. 542, 545, 501 P.2d 1032 (1972); *State of Nevada v.*
25 *Irwin*, 5 Nev. 111 (1869).

26 ¹⁴*List v. Whisler* at 138, citing *Ottenheimer v. Real Estate Division*, 97 Nev. 314,
315-316, 629 P.2d 1203 (1981); *Damus v. County of Clark*, 93 Nev. 512, 516, 569
27 P.2d 933 (1977); *Koscot Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530
28 P.2d 108 (1974).

¹⁵*King* at 543.

1 **Reasonable Probability of Success on the Merits**

2
3 *Plaintiff Parents have not clearly shown that SB 302 violates Article 11, Section 3.*

4
5 Plaintiff Parents pointed out that Article 11, Section 3 provides that funds from
6 sources specified in Section 3 are “pledged for educational purposes and the money
7 therefrom must not be transferred to other funds for other uses.” They cited *State ex rel.*
8 *Keith v. Westerfield*¹⁶ for the proposition that funds appropriated for the public schools
9 under Article 11 can only be used for the support of the public schools and no portion of
10 those funds can be used for non-public school expenditures “without disregarding the
11 mandates of the constitution.”¹⁷ Plaintiff Parents argued that because SB 302, Section
12 16.1 directs the State Treasurer to transfer into ESAs the basic support guarantee per-
13 pupil funding appropriated by the legislature for the operation of the school district in
14 which the ESA-eligible child resides, SB 302, Section 16.1 violates Article 11, Section 3.

15 The Treasurer countered that SB 302 does not mandate the use of Section 3
16 money for the ESA program, and the Distributive School Account has sufficient money
17 to fund the ESA program without using Section 3 money. The Treasurer argued that
18 based upon these facts the Plaintiff Parents have not met their burden of proof.

19 The court concludes the Treasurer’s argument is correct. Because SB 302 does
20 not require the use of Section 3 money for the ESA program, the ESA program can be
21 funded without Section 3 money, and therefore Plaintiff Parents have not met their
22 burden of clearly proving that there is no set of circumstances under which the statute
23 would be valid, and therefore Plaintiff Parents have failed to show a reasonable
24 likelihood of success on the merits on the Article 11, Section 3 issue.

25 The Treasurer also argued that the ESA program was created for and serves
26 educational purposes. The court concludes this argument lacks merit because the

27
28 ¹⁶23 Nev. 468 (1897).

¹⁷*Id.* at 121.

1 Nevada Supreme Court held in *State ex rel. Keith v. Westerfield* that the legislature is
2 prohibited from using Article 11 Section 3 funds for any purpose except that immediately
3 connected with the public school system.

4 The court concludes the other arguments made by the Treasure on the Article 11,
5 Section 3 issue also lack merit.

6
7 *Plaintiff Parents have clearly shown that SB 302 violates Article 11, Sections 6.1 and*
8 *6.2.*

9 Plaintiff Parents argued SB 302, Section 16(1) violates Article 11, Sections 6.1 and
10 6.2 because general funds appropriated to fund the operation of the public schools must
11 only be used to fund the operation of the public schools, but under SB 302 some amount
12 of general funds appropriated to fund the operation of the public schools will be diverted
13 to fund education saving accounts.

14 Under SB 302 general fund money appropriated to fund the operation of the
15 public schools will be used to fund education savings accounts. The legislature
16 recognized that general fund money appropriated to fund the operation of public schools
17 would be used to fund education savings accounts. This is evidenced by the legislature's
18 amendment of NRS 387.045 which provides:

- 19 1. No portion of the public school funds or of the money specially
20 appropriated for the purpose of public schools shall be devoted to any
21 other object or purpose.
22 2. No portion of the public school funds shall in any way be segregated,
divided or set apart for the use or benefit of any sectarian or secular society
or association.

23 The legislature amended that statute to make an exception so funds appropriated for
24 public schools can be used to pay the education savings account grants established by SB
25 302.

26 Sections 6.1 and 6.2 require the legislature to support public schools by direct
27 legislative appropriation from the general fund before any other appropriation is
28 enacted. Those sections do not expressly say that the general funds appropriated to fund

1 the operation of the public schools must only be used to fund the operation of the public
2 schools. Sections 6.1 and 6.2 do however necessarily imply that the legislature must use
3 the general funds appropriated to fund the operation of the public schools only to fund
4 the operation of the public schools.

5 Sections 6.1 and 6.2 mandate that the legislature make appropriations to fund the
6 operation of the public schools. An "appropriation" is "the act of appropriating to ... a
7 particular use;" or "something that has been appropriated; *specif*: a sum of money set
8 aside or allotted by official or formal action for a specific use (as from public revenue by
9 a legislative body that stipulates the amount, manner, and purpose of items of
10 expenditure)...."¹⁸ To "appropriate" means "to set apart for or assign to a particular
11 purpose or use in exclusion of all others."¹⁹ Therefore, Sections 6.1 and 6.2 require the
12 legislature to set apart or assign money to be used to fund the operation of the public
13 schools, to the exclusion of all other purposes. Because some amount of general funds
14 appropriated to fund the operation of the public schools will be diverted to fund
15 education saving accounts under SB 302, that statute violates Sections 6.1 and 6.2 of
16 Article 11.

17 Plaintiff Parents have met their burden of clearly proving that there is no set of
18 circumstances under which the statute would be valid, and therefore Plaintiff Parents
19 have shown a reasonable likelihood of success on the merits on the Article 11, Sections
20 6.1 and 6.2 issue.

21
22 *Plaintiff Parents have clearly shown that SB 302 violates Article 11, Section 6.2.*

23 Plaintiff Parents argued SB 302 violates Article 11, Section 6.2 because: "The
24 direct legislative appropriation can only be used 'to fund the operation of the public
25
26

27 ¹⁸Webster's Third New International Dictionary 106 (2002).

28 ¹⁹*Id.*

1 schools..., ”²⁰ but SB 302 diverts funds from the DSA thereby reducing the amount
2 deemed sufficient by the legislature to fund public education.²¹

3 The Treasurer argued the legislature complied with Section 6.2 when it passed SB
4 515 which guarantees a minimum fixed amount of funding through the hold harmless
5 guarantee and a minimum per-pupil amount of funding with no upper limit, i.e., the
6 per-pupil basic support guarantee. The Treasurer pointed out that the legislature passed
7 SB 515 just three days after it passed SB 302, and that “when the legislature enacts a
8 statute, [the Nevada Supreme Court] presumes that it does so ‘with full knowledge of
9 existing statutes relating to the same subject.’”²²

10 The court concludes Plaintiff Parents’ argument is correct. Under Sections 6.1
11 and 6.2 the legislature must appropriate from the general fund an amount for the
12 operation of the public schools. The legislature appears to have appropriated money
13 from the general fund into one account to fund the operation of the public schools and
14 to fund ESAs. Because Section 6.2 requires the legislature to appropriate money to fund
15 the operation of the public schools, it is necessarily implied that the money appropriated
16 to fund the operation of the public schools will be used to fund the operation of the
17 public schools and not for other purposes. SB 302’s diversion of funds from the Section
18 6 direct legislative appropriation from the general fund to fund the operation of the
19 public schools reduces the amount deemed sufficient by the legislature to fund public
20 education and therefore violates Article 11, Section 6.2.

21 Plaintiff Parents have met their burden of clearly proving that there is no set of
22 circumstances under which SB 302 would be valid, and therefore Plaintiff Parents have
23

24 ²⁰Pls.’ Mot. For Prelim. Inj. p. 11.

25 ²¹Pls.’ Reply on Its Mot. For Prelim. Inj. p. 1.

26 ²²*Division of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d
27 482, 486 (2000) citing *City of Boulder v. General Sales Drivers*, 101 Nev. 117,
28 118-19, 694 P.2d 498, 500 (1985).

1 shown a reasonable likelihood of success on the merits on the Article 11, Sections 6.2
2 issue.

3
4 *SB 302 does not create a non-uniform system of schools, or use public funds to create a*
5 *system of education other than the type mandated in Article 11 Section 2.*

6 Article 11 Section 2 requires the legislature establish and maintain a “uniform
7 system of common schools.” Plaintiff Parents argued the Legislature has enacted an
8 extensive framework of requirements to ensure the public schools are open to all
9 children and meet performance and accountability standards. They argued SB 302
10 allows public school funds to pay for private schools and other entities that are not
11 subject to the requirements applied to public schools, are unregulated, and not uniform.
12 For example, they argue, the private schools, online programs and parents receiving
13 public school funds under SB 302 do not have to use the state adopted curriculum
14 taught in public schools; meet public school teaching requirements; comply with other
15 educational standards and accountability requirements established for public schools;
16 and they do not have to accept all students so they may discriminate based on a
17 student’s religion or lack thereof, academic achievement, English language learner
18 status, disability, homelessness or transiency, gender, gender identity and sexual
19 orientation.

20 Plaintiffs also alleged that in mandating the establishment of a public school
21 system, the Nevada Constitution has, in the same breath, forbidden the Legislature from
22 establishing a separate, publicly-funded alternative to Nevada’s uniform system of
23 public schools. They cited *State v. Javier C.*²³ for the proposition that “Nevada follows
24 the maxim ‘*expressio unius est exclusio alterius*,’ the expression of one thing is the
25 exclusion of another”; and *King v. Bd. of Regents of Univ. of Nev.*²⁴ for the proposition
26 that “[t]his rule applies as forcibly to the construction of written Constitutions as other

27
28 ²³128 Nev. A.O. 50, 289 P.3d 1194, 1197 (2012).

²⁴65 Nev. 533, 556, 200 P.2d 221 (1948).

instruments.” Plaintiff Parents argued that under this principle, the legislature may not enact statutes that achieve constitutional goals by means different from those explicitly provided for in the Constitution. The Nevada Supreme Court held that “[e]very positive direction” in the Nevada Constitution “contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision.”²⁵

Plaintiff Parents have failed to show that the ESA program is contrary to or would frustrate or disappoint the Article 11, Section 2 mandate that the legislature provide a uniform system of common schools. SB 302 does not do away with public schools. Therefore the *expressio unius est exclusio alterius* maxim does not prohibit the legislature from providing students with options not available in the public schools.

Article 11, Section 1 requires the legislature to encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements. Plaintiff Parents’ argument would limit the legislature and stunt the “encourage by all suitable means” provision of section 2.

The court concludes that Plaintiff Parents have failed to show that Article 11, Section 2 prohibits the legislature from enacting SB 302. Therefore, Plaintiff Parents have failed to show a likelihood of success on the merits on this issue.

Irreparable Harm

Plaintiff Parents argued the irreparable injury element for a preliminary injunction is met because SB 302 violates the Nevada Constitution, and cited several cases in support of their argument.²⁶

The Treasurer argued the court must weigh the potential hardship to the relative parties and others, and the public interest, and cited cases in support of this proposition.

²⁵*Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (citation omitted).

²⁶*City of Sparks v. Sparks Mun. Court*, 129 Nev. A.O. 38, 302 P.3d 1118, 1124 (2013); *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997); *Eaves Bd. Of Clark Cnty Comm’rs*, 96 Nev. 921, 924-25, 620 P.2d 1248 (1980).

The court concludes that the diversion of any funds in violation of Article 11, Section 6 will cause irreparable harm to students in Nevada. The court concludes Plaintiff Parents have demonstrated irreparable harm and that on balance the potential hardship to Plaintiff Parents' children outweighs the interests of the Treasurer and others.

CONCLUSION

Having examined the submissions of the parties and the amicus briefs, and having heard oral argument by the parties, this court concludes Plaintiff Parents have failed to carry their burden of proof that SB 302 violates Article 11, Sections 2 or 3 of the Nevada Constitution, but that Plaintiff Parents have carried their burden of proof that SB 302 violates Article 11, Sections 6.1 and 6.2 and that irreparable harm will result if an injunction is not entered.

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

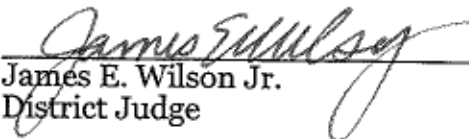
IT IS ORDERED:

Plaintiff Parents' Motion for Preliminary Injunction is granted.

State Treasurer Dan Schwartz will be preliminarily enjoined from implementing the provisions of SB 302.

The parties confer and by January 18, 2016 arrange with the court's judicial assistant to set a hearing on the issue of security and to set the trial on the merits. The parties may appear by telephone if no evidence will be offered at the hearing on the issue of security.

January 11, 2016.


James E. Wilson Jr.
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and I certify that on January 11, 2016, I deposited for mailing at Carson City, Nevada, and emailed, a true and correct copy of the foregoing Order and addressed to the following:

Don Springmeyer, Esq.
Justin Jones, Esq.
Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin LLP
3556 E. Russell Road, Second Floor
Las Vegas, NV 89120
Dspringmeyer@wrslawyers.com

Tamerlin Godley, Esq.
Thomas Clancy, Esq.
Laura Mathe, Esq.
Samuel Boyd, Esq.
Munger, Tolles & Olson, LLP
355 S. Grand Avenue, Thirty-fifth floor
Los Angeles, CA 90071

David Sciarra, Esq.
Amanda Morgan, Esq.
Education Law Center
60 Park Place, Ste 300
Newark NJ 07102

Francis Flaherty, Esq.
Casey Gillham, Esq.
2805 Mountain Street
Carson City, NV 89703

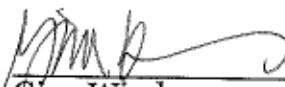
Robert L. Eisenberg, Esq.
Lemons Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, NV 89519

Adam Laxalt, Esq.
Lawrence VanDyke, Esq.
Joseph Tartakovsky, Esq.
Ketan Bhirud, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
LvanDyke@ag.nv.gov

Jeffrey Barr, Esq.
Ashcraft & Barr, LLP
2300 W. Sahara Avenue, Ste 800
Las Vegas, NV 89102

Eric Rassbach, Esq.
Lori Windham, Esq.
Diana Verm, Esq.
1200 New Hampshire Ave, NW, Ste 700
Washington DC 20036

John Sande, Esq.
Brian Morris, Esq.
Sande Law Group
6077 S. Fort Apache Rd, Ste 130
Las Vegas, NV 89148


Gina Winder
Judicial Assistant

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

REC'D & FILED

2016 JAN 12 PM 3:45

SUSAN MEARIWEATHER
CLERK
BY **C. GRIBBLE**
CITY

Case No. 15 0C 00207 1B

Dept. No.: II

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.

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
PRELIMINARY INJUNCTION**

DON SPRINGMEYER
(Nevada Bar No. 1021)
JUSTIN C. JONES
(Nevada Bar No. 8519)
BRADLEY S. SCHRAGER
(Nevada Bar No. 10217)
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN,
LLP
3556 E. Russell Road,
Second Floor
Las Vegas, Nevada 89120
Telephone: (702) 341-5200
dspringmeyer@wrslawyers.com
bschrager@wrslawyers.com
jjones@wrslawyers.com

TAMERLIN J. GODLEY
(pro hac vice forthcoming)
THOMAS PAUL CLANCY
(pro hac vice forthcoming)
LAURA E. MATHE
(pro hac vice forthcoming)
SAMUEL T. BOYD
(pro hac vice forthcoming)
MUNGER, TOLLES &
OLSON LLP
355 South Grand Avenue,
Thirty-Fifth Floor
Los Angeles, California
90071-1560
Telephone: (213) 683-9100

DAVID G. SCIARRA
(pro hac vice forthcoming)
AMANDA MORGAN
(Nevada Bar No. 13200)
EDUCATION LAW
CENTER
60 Park Place, Suite 300
Newark, NJ 07102
Telephone: (973) 624-4618

Attorneys for Plaintiffs

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the **ORDER GRANTING MOTION FOR**
3 **PRELIMINARY INJUNCTION** was filed with the First Judicial District Court on the 11th day
4 of January 2016, a true and correct copy of which is attached hereto.
5

6 Dated this 12th day of January, 2016.

7 By:  (Nev. #10085)

8 **WOLF RIFKIN SHAPIRO SCHULMAN &**
9 **RABKIN LLP**

10 DON SPRINGMEYER (Nevada Bar No. 1021)

11 dspringmeyer@wrslawyers.com

12 JUSTIN C. JONES (Nevada Bar No. 8519)

13 jjones@wrslawyers.com

14 BRADLEY S. SCHRAGER (Nevada Bar No. 10217)

15 bschrager@wrslawyers.com

16 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
17 RABKIN, LLP

18 3556 E. Russell Road, Second Floor

19 Las Vegas, Nevada 89120

20 Telephone: (702) 341-5200

21 Facsimile: (702) 341-5300

22 **MUNGER TOLLES & OLSON LLP**

23 TAMERLIN J. GODLEY (pro hac vice forthcoming)

24 THOMAS PAUL CLANCY (pro hac vice
25 forthcoming)

26 LAURA E. MATHE (pro hac vice forthcoming)

27 SAMUEL T. BOYD (pro hac vice forthcoming)

28 355 South Grand Avenue, Thirty-Fifth Floor

Los Angeles, California 90071-1560

Telephone: (213) 683-9100

Facsimile: (213) 687-3702

EDUCATION LAW CENTER

DAVID G. SCIARRA (pro hac vice forthcoming)

AMANDA MORGAN (Nevada Bar No. 13200)

60 Park Place, Suite 300

Newark, NJ 07102

Telephone: (973) 624-4618

Facsimile: (973) 624-7339

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12th day of January, 2016, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION** was
4 placed in an envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail
5 before 4:00 p.m. at WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has
6 established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day
7 by an employee and deposited in a U.S. Mail box.

8 Adam Paul Laxalt
9 Attorney General
10 Lawrence VanDyke, Esq.
11 Ketan D. Bhirud, Esq.
12 Deputy Attorney General
13 Grant Sawyer Building
14 555 E. Washington Avenue, Suite 3900
15 Las Vegas, NV 89101
16 Telephone: 702-486-3420
17 Fax: 702-486-3768
18 *Attorneys for Defendants*

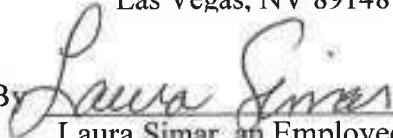
Frances Flaherty, Esq.
Casey Gillham, Esq.
2805 Mountain Street
Carson City, NV 89703

15 Robert L. Eisenberg, Esq.
16 Lemons Grundy & Eisenberg
17 6005 Plumas Street, Third Floor
18 Reno, NV 89519

Jeffrey Barr, Esq.
Ashcraft & Barr, LLP
2300 W. Sahara Avenue, Ste. 800
Las Vegas, NV 89102

17 Eric Rassbach, Esq.
18 Lori Windham, Esq.
19 Diana Verm, Esq.
20 1200 New Hampshire Ave., NW, Ste. 700
21 Washington DC 20036

John Sande, Esq.
Brian Morris, Esq.
Sande Law Group
6077 S. Fort Apache Rd., Ste. 130
Las Vegas, NV 89148

21 By 
22 Laura Simar, an Employee of
23 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
24 RABKIN, LLP
25
26
27
28

REC'D & FILED

2016 JAN 11 PM 2:33

SUSAN MERRIWETHER
CLERK

BY SN DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

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: 15 OC 00207 1B

DEPT.: 2

ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION

PROCEDURAL BACKGROUND

Before the Court is Plaintiffs' Motion for a Preliminary Injunction. Plaintiffs are parents whose children attend Nevada public schools. Plaintiff Parents seek an injunction to stop the State Treasurer from implementing Senate Bill 302 ("SB 302") which authorizes educational savings accounts. Plaintiff Parents alleged SB 302 violates certain sections of Article 11 of the Nevada Constitution. State Treasurer Dan Schwartz

1 opposed the motion. The court authorized the filing of several amicus briefs, and denied
2 a motion to intervene. The court held a hearing on the motion.

3 4 **ISSUES AND CONCLUSIONS**

5 As a preliminary matter, the court emphasizes that the issues before it do not
6 include the educational or public policy merits of the education savings account
7 provisions of SB 302. The educational and public policy issues were debated and voted
8 upon by the legislature and approved by the governor. Courts have no super-veto power,
9 based upon public policy grounds, over legislative enactments. Therefore, this court
10 cannot consider whether the SB 302 provisions for education savings accounts are wise,
11 workable, or worthwhile.

12 Plaintiff Parents argued SB 302 violates the Nevada Constitution in three ways:

13 First, it violates Article 11, Section 3 and Sections 6.1 and 6.2 because those
14 sections prohibit the transfer of funds appropriated for the operation of the
15 public schools to any other use.

16 Second, it violates Article 11, Section 6.2 because it removes from the
17 public school system a portion of the funds the Legislature has "deemed
18 sufficient" to maintain and operate the public schools.

19 Third, it violates Article 11, Section 2 because it creates a non-uniform
20 system of schools, and uses public funds to create the non-uniform system of
21 schools.

22 Having examined the submissions the parties and the amicus briefs, and having
23 heard oral argument by the parties, this court concludes Plaintiff Parents have failed to
24 carry their burden of proof that SB 302 violates Article 11, Sections 2 or 3 of the Nevada
25 Constitution, but that Plaintiff Parents have carried their burden of proof that SB 302
26 violates Article 11, Sections 6.1 and 6.2, and that irreparable harm will result if an
27 injunction is not entered. Therefore an injunction will issue to enjoin Treasurer
28 Schwartz from implementing SB 302.

FINDINGS OF FACT

Public School Funding

The Nevada Constitution requires the legislature to support and maintain public schools by direct legislative appropriation from the general fund, and to provide the money the legislature deems to be sufficient, when combined with the local money, to fund the public schools for the next biennium. To fulfill its constitutional obligation to fund education, the legislature created the Nevada Plan, statutes which establish the process by which the legislature determines the biennial funding for education. Under the Nevada Plan the legislature establishes basic support guarantees for all school districts.

The basic support guarantee is the amount of money each school district is guaranteed to fund its operations. The amount for each school district is determined by the number of pupils in that school district. After the legislature determines how much money each local school district can contribute, the legislature makes up the difference between the district's contribution and the amount of the basic support guarantee.

Under NRS 387.1233(3), the so-called "hold harmless" provision, a school district must be funded based on the prior year's enrollment figure if the school district experiences a reduction in enrollment of five percent or more.

Funds appropriated by the legislature from the general fund sufficient to satisfy each district's basic support guarantee are deposited into the State Distributive School Account ("DSA"), which is an account within the state general fund.

The DSA, in addition to receiving such appropriations from the general fund, also receives money from other sources, including the Permanent School Fund ("PSF"). The legislature created the PSF to implement Article 11, Section 3 of the Nevada Constitution, which provides that specified property, including lands granted by Congress to Nevada for educational purposes and the proceeds derived from these sources, are pledged for educational purposes and the money therefrom must not be

1 transferred to other funds for other uses. Section 3 money is kept in the PSF, and
2 interest on Section 3 money is transferred to the DSA.

3 The interest on the PSF constitutes a small portion of the funds in the DSA. In
4 2014, of the \$1.4 billion in the DSA that came from the State Government, \$1.1 billion,
5 or 78 percent, came from the general fund, and \$1.6 million, or 0.14%, came from the
6 PSF.¹

7 In June 2015, the legislature enacted Senate Bill 515 (“SB 515”) to ensure
8 sufficient funding for K-12 public education for the 2015-2017 biennium. The legislature
9 established an estimated weighted average basic support guarantee of \$5,710 per pupil
10 for FY 2015-16 and \$5,774 per pupil for FY 2016-17.² The legislature appropriated \$1.1
11 billion from the general fund for the DSA for FY 2015-16 and more than \$933 million for
12 FY 2016-17, for a total of more than \$2 billion for the biennium.

13 14 **Senate Bill 302**

15 As part of the education reform measures enacted in 2015, the legislature passed
16 and the governor signed SB 302 which authorized the State Treasurer to use public
17 school funds to create private accounts called education saving accounts (“ESAs”). The
18 money in these accounts may only be used to pay for non-public education expenses,
19 including but not limited to private school tuition, tutoring, home-based education
20 curricula, and transportation.

21 Under SB 302 the State Treasurer may enter into written agreements with a
22 parent of a school aged child who has been enrolled in a Nevada public school for not
23 less than 100 consecutive school days. If a written agreement is entered into, the parent
24 must establish an ESA on behalf of the child, and the treasurer must deposit the grant
25 money into the ESA. For a child with a disability, or a child who lives in a low income

26
27 ¹See [http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf)
28 [DSA-SummaryForBiennium.pdf](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf).

²Id. Section 7.

1 household, the amount of the grant is 100% of the statewide average basic support per
2 pupil; for all other children the amount of the grant is 90% of the statewide average
3 basic support per pupil. For the 2015-16 school year the grant amounts will be \$5,710
4 per disabled or low income pupil, and \$5,139 for all other pupils. Funds deposited into
5 ESAs are subtracted from the legislative appropriation to fund the school district in
6 which the child who is receiving the ESA grant resides.

7 Under SB 302 general fund money appropriated to fund the operation of the
8 public schools will be used to fund education savings accounts.

9 SB 302 does not limit the number of ESAs that can be established, cap the
10 amount of public school funding that can be transferred to ESAs, or impose any
11 household income limitations on eligibility.

12 13 **PRINCIPLES OF LAW**

14 **Judicial Deference**

15 Judicial deference to duly enacted legislation is derived from three “first
16 principles” of state constitutional jurisprudence.³

17 First, all political power originates with the people.⁴

18 Second, unlike the Constitution of the United States which granted specific
19 powers to the federal government and retained all other powers in the people, the
20 Nevada Constitution granted all of the people’s political power to the government of
21 Nevada except as limited in the Nevada Constitution.⁵ The Nevada government consists
22 of three branches, the legislative, executive, and judicial. The public officials the people
23 elect to the constitutional offices in each branch exercise all of the people’s political

24
25 ³*Gibson v. Mason*, 5 Nev. 283, 291-99, 1869 Nev. LEXIS 46 (1869); *King v.*
26 *Board of Regents*, 65 Nev. 533, 200 P.2d 221 (1948). See *Bush v. Holmes*, 919
27 So.2d 392, 414 (FL 2006) Bell, J. Dissent.

28 ⁴*Gibson* at 291.

⁵*Id.*

1 power except for those powers expressly denied by the Nevada Constitution.⁶ Each
2 branch is endowed with and confined to the execution of powers peculiar to itself, and
3 each branch is supreme within its respective sphere.⁷ Thus, the legislature is supreme in
4 its field of making the law so long as it does not contravene some express or necessarily
5 implied limitation appearing in the constitution itself.⁸ The people's grant of powers
6 upon the legislature was general in terms with specified restrictions.⁹ The legislature has
7 general legislative or policy-making power over such issues as the education of Nevada's
8 children except as those powers are specifically limited by an express or necessarily
9 implied provision in the Nevada Constitution or the U.S. Constitution.¹⁰

10 Third, because general legislative or policy-making power is vested in the
11 legislature, the power of judicial review over legislative enactments is strictly limited.
12 "Statutes are presumed to be valid, and the challenger bears the burden of showing that
13 a statute is unconstitutional."¹¹ "When making a facial challenge to a statute, the
14 challenger generally bears the burden of demonstrating that there is no set of
15 circumstances under which the statute would be valid."¹² "In case of doubt, every
16 possible presumption will be made in favor of the constitutionality of a statute, and
17 courts will interfere only when the Constitution is clearly violated."¹³ "Further, the

18
19 ⁶*Id.* at 291-92.

20 ⁷*Id.* at 292.

21 ⁸*Gibson* at 292; *King* at 542.

22 ⁹*Gibson* at 292.

23 ¹⁰*King* at 542.

24 ¹¹*Busefink v. State*, 128 Nev. A.O. 49, 286 P.3d 599, 602,(2012), citing *Flamingo*
25 *Paradise Gaming v. Att'y General*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009)
(quoting *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

26 ¹²*Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep't of Taxation*, 130 Nev. A.O.
27 73, 334 P.3d 392, 398 (2014).

28 ¹³*List v. Whisler*, 99 Nev. 133, 137-138, 660 P.2d 104, 106 (1983), citing *City of*
Reno v. County of Washoe, 94 Nev. 327, 333-334, 580 P.2d 460 (1978);

1 presumption of constitutional validity places upon those attacking a statute the burden
2 of making a clear showing that the statute is unconstitutional.”¹⁴ The Nevada Supreme
3 Court has “concede[d] the elasticity of the [Nevada] constitution, as a living thing, to be
4 interpreted in the light of new and changing conditions,” and that the Supreme Court
5 “may not condemn legislation simply because the object or purpose is new (no matter
6 how astonishing or revolutionary) so long as a constitutional limitation is not
7 violated....”¹⁵

9 **Preliminary Injunction**

10 A preliminary injunction may issue “upon a showing that the party seeking it
11 enjoys a reasonable probability of success on the merits and that the defendant’s
12 conduct, if allowed to continue, will result in irreparable harm for which compensatory
13 damage is an inadequate remedy.”

15 **ANALYSIS**

16 Plaintiff Parents have made a facial challenge to SB 302. Using the above
17 principles of law the court must decide whether Plaintiff Parents have made a clear
18 showing that SB 302 violates one or more specified sections of Article 11 of the Nevada
19 Constitution, and that the plaintiffs will suffer irreparable harm.

24 *Mengelkamp v. List*, 88 Nev. 542, 545, 501 P.2d 1032 (1972); *State of Nevada v.*
25 *Irwin*, 5 Nev. 111 (1869).

26 ¹⁴*List v. Whisler* at 138, citing *Ottenheimer v. Real Estate Division*, 97 Nev. 314,
315-316, 629 P.2d 1203 (1981); *Damus v. County of Clark*, 93 Nev. 512, 516, 569
27 P.2d 933 (1977); *Koscot Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530
28 P.2d 108 (1974).

¹⁵*King* at 543.

1 **Reasonable Probability of Success on the Merits**

2
3 *Plaintiff Parents have not clearly shown that SB 302 violates Article 11, Section 3.*

4
5 Plaintiff Parents pointed out that Article 11, Section 3 provides that funds from
6 sources specified in Section 3 are “pledged for educational purposes and the money
7 therefrom must not be transferred to other funds for other uses.” They cited *State ex rel.*
8 *Keith v. Westerfield*¹⁶ for the proposition that funds appropriated for the public schools
9 under Article 11 can only be used for the support of the public schools and no portion of
10 those funds can be used for non-public school expenditures “without disregarding the
11 mandates of the constitution.”¹⁷ Plaintiff Parents argued that because SB 302, Section
12 16.1 directs the State Treasurer to transfer into ESAs the basic support guarantee per-
13 pupil funding appropriated by the legislature for the operation of the school district in
14 which the ESA-eligible child resides, SB 302, Section 16.1 violates Article 11, Section 3.

15 The Treasurer countered that SB 302 does not mandate the use of Section 3
16 money for the ESA program, and the Distributive School Account has sufficient money
17 to fund the ESA program without using Section 3 money. The Treasurer argued that
18 based upon these facts the Plaintiff Parents have not met their burden of proof.

19 The court concludes the Treasurer’s argument is correct. Because SB 302 does
20 not require the use of Section 3 money for the ESA program, the ESA program can be
21 funded without Section 3 money, and therefore Plaintiff Parents have not met their
22 burden of clearly proving that there is no set of circumstances under which the statute
23 would be valid, and therefore Plaintiff Parents have failed to show a reasonable
24 likelihood of success on the merits on the Article 11, Section 3 issue.

25 The Treasurer also argued that the ESA program was created for and serves
26 educational purposes. The court concludes this argument lacks merit because the

27
28 ¹⁶23 Nev. 468 (1897).

¹⁷*Id.* at 121.

1 Nevada Supreme Court held in *State ex rel. Keith v. Westerfield* that the legislature is
2 prohibited from using Article 11 Section 3 funds for any purpose except that immediately
3 connected with the public school system.

4 The court concludes the other arguments made by the Treasure on the Article 11,
5 Section 3 issue also lack merit.

6
7 *Plaintiff Parents have clearly shown that SB 302 violates Article 11, Sections 6.1 and*
8 *6.2.*

9 Plaintiff Parents argued SB 302, Section 16(1) violates Article 11, Sections 6.1 and
10 6.2 because general funds appropriated to fund the operation of the public schools must
11 only be used to fund the operation of the public schools, but under SB 302 some amount
12 of general funds appropriated to fund the operation of the public schools will be diverted
13 to fund education saving accounts.

14 Under SB 302 general fund money appropriated to fund the operation of the
15 public schools will be used to fund education savings accounts. The legislature
16 recognized that general fund money appropriated to fund the operation of public schools
17 would be used to fund education savings accounts. This is evidenced by the legislature's
18 amendment of NRS 387.045 which provides:

19 1. No portion of the public school funds or of the money specially
20 appropriated for the purpose of public schools shall be devoted to any
other object or purpose.

21 2. No portion of the public school funds shall in any way be segregated,
22 divided or set apart for the use or benefit of any sectarian or secular society
or association.

23 The legislature amended that statute to make an exception so funds appropriated for
24 public schools can be used to pay the education savings account grants established by SB
25 302.

26 Sections 6.1 and 6.2 require the legislature to support public schools by direct
27 legislative appropriation from the general fund before any other appropriation is
28 enacted. Those sections do not expressly say that the general funds appropriated to fund

1 the operation of the public schools must only be used to fund the operation of the public
2 schools. Sections 6.1 and 6.2 do however necessarily imply that the legislature must use
3 the general funds appropriated to fund the operation of the public schools only to fund
4 the operation of the public schools.

5 Sections 6.1 and 6.2 mandate that the legislature make appropriations to fund the
6 operation of the public schools. An “appropriation” is “the act of appropriating to ... a
7 particular use;” or “something that has been appropriated; *specif*: a sum of money set
8 aside or allotted by official or formal action for a specific use (as from public revenue by
9 a legislative body that stipulates the amount, manner, and purpose of items of
10 expenditure)....”¹⁸ To “appropriate” means “to set apart for or assign to a particular
11 purpose or use in exclusion of all others.”¹⁹ Therefore, Sections 6.1 and 6.2 require the
12 legislature to set apart or assign money to be used to fund the operation of the public
13 schools, to the exclusion of all other purposes. Because some amount of general funds
14 appropriated to fund the operation of the public schools will be diverted to fund
15 education saving accounts under SB 302, that statute violates Sections 6.1 and 6.2 of
16 Article 11.

17 Plaintiff Parents have met their burden of clearly proving that there is no set of
18 circumstances under which the statute would be valid, and therefore Plaintiff Parents
19 have shown a reasonable likelihood of success on the merits on the Article 11, Sections
20 6.1 and 6.2 issue.

21
22 *Plaintiff Parents have clearly shown that SB 302 violates Article 11, Section 6.2.*

23 Plaintiff Parents argued SB 302 violates Article 11, Section 6.2 because: “The
24 direct legislative appropriation can only be used ‘to fund the operation of the public
25
26

27 ¹⁸Webster’s Third New International Dictionary 106 (2002).

28 ¹⁹Id.

1 schools..., ”²⁰ but SB 302 diverts funds from the DSA thereby reducing the amount
2 deemed sufficient by the legislature to fund public education.²¹

3 The Treasurer argued the legislature complied with Section 6.2 when it passed SB
4 515 which guarantees a minimum fixed amount of funding through the hold harmless
5 guarantee and a minimum per-pupil amount of funding with no upper limit, i.e., the
6 per-pupil basic support guarantee. The Treasurer pointed out that the legislature passed
7 SB 515 just three days after it passed SB 302, and that “when the legislature enacts a
8 statute, [the Nevada Supreme Court] presumes that it does so ‘with full knowledge of
9 existing statutes relating to the same subject.’ ”²²

10 The court concludes Plaintiff Parents’ argument is correct. Under Sections 6.1
11 and 6.2 the legislature must appropriate from the general fund an amount for the
12 operation of the public schools. The legislature appears to have appropriated money
13 from the general fund into one account to fund the operation of the public schools and
14 to fund ESAs. Because Section 6.2 requires the legislature to appropriate money to fund
15 the operation of the public schools, it is necessarily implied that the money appropriated
16 to fund the operation of the public schools will be used to fund the operation of the
17 public schools and not for other purposes. SB 302’s diversion of funds from the Section
18 6 direct legislative appropriation from the general fund to fund the operation of the
19 public schools reduces the amount deemed sufficient by the legislature to fund public
20 education and therefore violates Article 11, Section 6.2.

21 Plaintiff Parents have met their burden of clearly proving that there is no set of
22 circumstances under which SB 302 would be valid, and therefore Plaintiff Parents have
23

24 ²⁰Pls.’ Mot. For Prelim. Inj. p. 11.

25 ²¹Pls.’ Reply on Its Mot. For Prelim. Inj. p. 1.

26 ²²*Division of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d
27 482, 486 (2000) citing *City of Boulder v. General Sales Drivers*, 101 Nev. 117,
28 118-19, 694 P.2d 498, 500 (1985).

1 shown a reasonable likelihood of success on the merits on the Article 11, Sections 6.2
2 issue.

3
4 *SB 302 does not create a non-uniform system of schools, or use public funds to create a*
5 *system of education other than the type mandated in Article 11 Section 2.*

6 Article 11 Section 2 requires the legislature establish and maintain a “uniform
7 system of common schools.” Plaintiff Parents argued the Legislature has enacted an
8 extensive framework of requirements to ensure the public schools are open to all
9 children and meet performance and accountability standards. They argued SB 302
10 allows public school funds to pay for private schools and other entities that are not
11 subject to the requirements applied to public schools, are unregulated, and not uniform.
12 For example, they argue, the private schools, online programs and parents receiving
13 public school funds under SB 302 do not have to use the state adopted curriculum
14 taught in public schools; meet public school teaching requirements; comply with other
15 educational standards and accountability requirements established for public schools;
16 and they do not have to accept all students so they may discriminate based on a
17 student’s religion or lack thereof, academic achievement, English language learner
18 status, disability, homelessness or transiency, gender, gender identity and sexual
19 orientation.

20 Plaintiffs also alleged that in mandating the establishment of a public school
21 system, the Nevada Constitution has, in the same breath, forbidden the Legislature from
22 establishing a separate, publicly-funded alternative to Nevada’s uniform system of
23 public schools. They cited *State v. Javier C.*²³ for the proposition that “Nevada follows
24 the maxim ‘*expressio unius est exclusio alterius*,’ the expression of one thing is the
25 exclusion of another”; and *King v. Bd. of Regents of Univ. of Nev.*²⁴ for the proposition
26 that “[t]his rule applies as forcibly to the construction of written Constitutions as other

27
28 ²³128 Nev. A.O. 50, 289 P.3d 1194, 1197 (2012).

²⁴65 Nev. 533, 556, 200 P.2d 221 (1948).

1 instruments.” Plaintiff Parents argued that under this principle, the legislature may not
2 enact statutes that achieve constitutional goals by means different from those explicitly
3 provided for in the Constitution. The Nevada Supreme Court held that “[e]very positive
4 direction” in the Nevada Constitution “contains an implication against anything
5 contrary to it which would frustrate or disappoint the purpose of that provision.”²⁵

6 Plaintiff Parents have failed to show that the ESA program is contrary to or would
7 frustrate or disappoint the Article 11, Section 2 mandate that the legislature provide a
8 uniform system of common schools. SB 302 does not do away with public schools.
9 Therefore the *expressio unius est exclusio alterius* maxim does not prohibit the
10 legislature from providing students with options not available in the public schools.

11 Article 11, Section 1 requires the legislature to encourage by all suitable means the
12 promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and
13 moral improvements. Plaintiff Parents’ argument would limit the legislature and stunt
14 the “encourage by all suitable means” provision of section 2.

15 The court concludes that Plaintiff Parents have failed to show that Article 11,
16 Section 2 prohibits the legislature from enacting SB 302. Therefore, Plaintiff Parents
17 have failed to show a likelihood of success on the merits on this issue.

18 19 **Irreparable Harm**

20 Plaintiff Parents argued the irreparable injury element for a preliminary
21 injunction is met because SB 302 violates the Nevada Constitution, and cited several
22 cases in support of their argument.²⁶

23 The Treasurer argued the court must weigh the potential hardship to the relative
24 parties and others, and the public interest, and cited cases in support of this proposition.

25
26 ²⁵*Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (citation
omitted).

27
28 ²⁶*City of Sparks v. Sparks Mun. Court*, 129 Nev. A.O. 38, 302 P.3d 1118, 1124
v. (2013); *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997); *Eaves*
Bd. Of Clark Cnty Comm’rs, 96 Nev. 921, 924-25, 620 P.2d 1248 (1980).

The court concludes that the diversion of any funds in violation of Article 11, Section 6 will cause irreparable harm to students in Nevada. The court concludes Plaintiff Parents have demonstrated irreparable harm and that on balance the potential hardship to Plaintiff Parents' children outweighs the interests of the Treasurer and others.

CONCLUSION

Having examined the submissions of the parties and the amicus briefs, and having heard oral argument by the parties, this court concludes Plaintiff Parents have failed to carry their burden of proof that SB 302 violates Article 11, Sections 2 or 3 of the Nevada Constitution, but that Plaintiff Parents have carried their burden of proof that SB 302 violates Article 11, Sections 6.1 and 6.2 and that irreparable harm will result if an injunction is not entered.

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

1
2
3 **ORDER**

4 **IT IS ORDERED:**

5 Plaintiff Parents' Motion for Preliminary Injunction is granted.

6 State Treasurer Dan Schwartz will be preliminarily enjoined from implementing
7 the provisions of SB 302.

8 The parties confer and by January 18, 2016 arrange with the court's judicial
9 assistant to set a hearing on the issue of security and to set the trial on the merits. The
10 parties may appear by telephone if no evidence will be offered at the hearing on the issue
11 of security.

12 January 11, 2016.

13 
14 James E. Wilson Jr.
15 District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and I certify that on January 11, 2016, I deposited for mailing at Carson City, Nevada, and emailed, a true and correct copy of the foregoing Order and addressed to the following:

Don Springmeyer, Esq.
Justin Jones, Esq.
Bradley Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin LLP
3556 E. Russell Road, Second Floor
Las Vegas, NV 89120
Dspringmeyer@wrslawyers.com

Tamerlin Godley, Esq.
Thomas Clancy, Esq.
Laura Mathe, Esq.
Samuel Boyd, Esq.
Munger, Tolles & Olson, LLP
355 S. Grand Avenue, Thirty-fifth floor
Los Angeles. CA 90071

David Sciarra, Esq.
Amanda Morgan, Esq.
Education Law Center
60 Park Place, Ste 300
Newark NJ 07102

Francis Flaherty, Esq.
Casey Gillham, Esq.
2805 Mountain Street
Carson City, NV 89703

Robert L. Eisenberg, Esq.
Lemons Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, NV 89519

Adam Laxalt, Esq.
Lawrence VanDyke, Esq.
Joseph Tartakovsky, Esq.
Ketan Bhirud, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701
LvanDyke@ag.nv.gov

Jeffrey Barr, Esq.
Ashcraft & Barr, LLP
2300 W. Sahara Avenue, Ste 800
Las Vegas, NV 89102

Eric Rassbach, Esq.
Lori Windham, Esq.
Diana Verm, Esq.
1200 New Hampshire Ave, NW, Ste 700
Washington DC 20036

John Sande, Esq.
Brian Morris, Esq.
Sande Law Group
6077 S. Fort Apache Rd, Ste 130
Las Vegas, NV 89148


Gina Winder
Judicial Assistant

ADAM PAUL LAXALT
Attorney General
LAWRENCE VANDYKE (Nev. Bar No. 13643C)
Solicitor General
JOSEPH TARTAKOVSKY (Nev. Bar No. 13796C)
Deputy Solicitor General
KETAN D. BHIRUD (Nev. Bar No. 10515)
Head of Complex Litigation
Office of the Attorney General
100 N. Carson St.
Carson City, Nevada 89701
(775) 684-1100
LVanDyke@ag.nv.gov
JTartakovsky@ag.nv.gov
KBhirud@ag.nv.gov

PAUL D. CLEMENT (D.C. Bar No. 433215)*
Bancroft PLLC
500 New Jersey Ave., NW
Seventh Floor
Washington, DC 20001
(202) 234-0090
pclement@bancroftpllc.com
*Motion for admission *pro hac vice* pending

Attorneys for Defendant

REC'D & FILED

2016 JAN 15 PM 3:46

SUSAN MERRIWETHER
C. GRIBBLE CLERK
BY _____ DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

HELLEN QUAN LOPEZ, et al.,

Plaintiffs,

v.

DAN SCHWARTZ, in his official capacity as
Treasurer of the State of Nevada,

Defendant.

Case No. 15-OC-00207-1B

Dept. No. II

DEFENDANT'S NOTICE OF APPEAL

Notice is hereby given that DAN SCHWARTZ, defendant above named, hereby
appeals to the Supreme Court of Nevada from the Order Granting Motion for Preliminary
Injunction entered in this action on the 11th day of January, 2016.

///

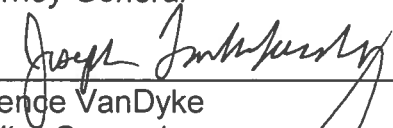
///

1 The Nevada Supreme Court has jurisdiction to hear this appeal, as an order granting
2 an injunction is appealable under Nevada Rule of Appellate Procedure 3A(b)(3).

3 DATED this 15th day of January, 2016.

4 Respectfully submitted,

5 Adam Paul Laxalt
6 *Attorney General*

7 By: 

8 Lawrence VanDyke
9 *Solicitor General*

10 Joseph Tartakovsky
11 *Deputy Solicitor General*

12 Ketan Bhirud

13 *Head of Complex Litigation*

14 OFFICE OF THE ATTORNEY GENERAL

15 100 North Carson Street

16 Carson City, NV 89701-4717

17 (775) 684-1100

18 LVanDyke@ag.nv.gov

19 JTartakovsky@ag.nv.gov

20 KBhirud@ag.nv.gov

21 Paul D. Clement*

22 BANCROFT PLLC

23 500 New Jersey Avenue, NW

24 Seventh Floor

25 Washington, DC 20001

26 (202) 234-0090

27 pclement@bancroftpllc.com

28 *Motion for admission *pro hac vice* forthcoming

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 15th day of January, I deposited for mailing at Carson City, Nevada, a true and correct copy of the foregoing NOTICE OF APPEAL, addressed to:

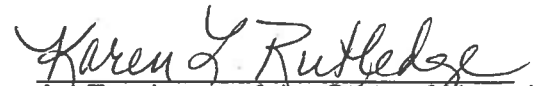
DON SPRINGMEYER, ESQ.
JUSTIN C. JONES, ESQ.
BRADLEY S. SCHRAGER, ESQ.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 E. RUSSELL ROAD, SECOND FLOOR
LAS VEGAS, NEVADA 89120

DAVID G. SCIARRA, ESQ.
AMANDA MORGAN, ESQ.
EDUCATION LAW CENTER
60 PARK PLACE, SUITE 300
NEWARK, NEW JERSEY 07102

TAMERLIN J. GODLEY, ESQ.
THOMAS PAUL CLANCY, ESQ.
LAURA E. MATHE, ESQ.
SAMUEL T. BOYD, ESQ.
MUNGER, TOLLES & OLSON, LLP
355 SOUTH GRAND AVENUE, 35TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560

MATTHEW T. DUSHOFF, ESQ.
LISA J. ZASTROW, ESQ.
KOLESAR & LEATHAM
400 SOUTH RAMPART BOULEVARD, SUITE 400
LAS VEGAS, NEVADA 89145

TIMOTHY D. KELLER
INSTITUTE FOR JUSTICE
398 S. MILL AVENUE, SUITE 301
TEMPE, ARIZONA 85281


An Employee of the State of Nevada

CHAPTER.....

AN ACT relating to education; establishing a program by which a child who receives instruction from a certain entity rather than from a public school may receive a grant of money in an amount equal to the statewide average basic support per-pupil; providing for the amount of each grant to be deducted from the total apportionment to the school district; providing a child who receives a grant and is not enrolled in a private school with certain rights and responsibilities; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires each child between the ages of 7 and 18 years to attend a public school of the State, attend a private school or be homeschooled. (NRS 392.040, 392.070) Existing law also provides for each school district to receive certain funding from local sources and to receive from the State an apportionment per pupil of basic support for the schools in the school district. (NRS 387.1235, 387.124) This bill establishes a program by which a child enrolled in a private school may receive a grant of money in an amount equal to 90 percent, or, if the child is a pupil with a disability or has a household income that is less than 185 percent of the federally designated level signifying poverty, 100 percent, of the statewide average basic support per pupil. **Sections 7 and 8** of this bill allow a child to enroll part-time in a public school while receiving part of his or her instruction from an entity that participates in the program to receive a partial grant. Money from the grant may be used only for specified purposes.

Section 7 of this bill authorizes the parent of a child who is required to attend school and who has attended a public school for 100 consecutive school days to enter into an agreement with the State Treasurer, according to which the child will receive instruction from certain entities and receive the grant. Each agreement is valid for 1 school year but may be terminated early and may be renewed for any subsequent school year. Not entering into or renewing an agreement for any given school year does not preclude the parent from entering into or renewing an agreement for any subsequent year.

If such an agreement is entered into, an education savings account must be opened by the parent on behalf of the child. Under **section 8** of this bill, for any school year for which the agreement is entered into or renewed, the State Treasurer must deposit the amount of the grant into the education savings account. Under **section 16** of this bill, the amount of the grant must be deducted from the total apportionment to the resident school district of the child on whose behalf the grant is made. **Section 8** provides that the State Treasurer may deduct from the amount of the grant not more than 3 percent for the administrative costs of implementing the provisions of this bill.

Section 9 of this bill lists the authorized uses of grant money deposited in an education savings account. **Section 9** also prohibits certain refunds, rebates or sharing of payments made from money in an education savings account.

Under **section 10** of this bill, the State Treasurer may qualify private financial management firms to manage the education savings accounts. The State Treasurer must establish reasonable fees for the management of the education savings



accounts. Those fees may be paid from the money deposited in an education savings account.

Section 11 of this bill provides requirements for a private school, college or university, program of distance education, accredited tutor or tutoring facility or the parent of a child to participate in the grant program established by this bill by providing instruction to children on whose behalf the grants are made. The State Treasurer may refuse to allow such an entity to continue to participate in the program if the State Treasurer finds that the entity fails to comply with applicable provisions of law or has failed to provide educational services to a child who is participating in the program. **Section 16.2** of this bill authorizes a child who is participating in the program to enroll in a program of distance education if the child is only receiving a portion of his or her instruction from a participating entity.

Under **section 12** of this bill, each child on whose behalf a grant is made must take certain standardized examinations in mathematics and English language arts. Subject to applicable federal privacy laws, a participating entity must provide those test results to the Department of Education, which must aggregate the results and publish data on the results and on the academic progress of children on behalf of whom grants are made. Under **section 13** of this bill, the State Treasurer must make available a list of all entities who are participating in the grant program, other than a parent of a child. **Section 13** also requires the Department to require resident school districts to provide certain academic records to participating entities.

Sections 15.1 and 16.4 of this bill provide that a child who participates in the program but who does not enroll in a private school is an opt-in child. **Section 16.4** requires the parent or guardian of such a child to notify the school district where the child would otherwise attend or the charter school in which the child was previously enrolled, as applicable.

Existing law requires the parent of a homeschooled child who wishes to participate in activities at a public school, including a charter school, through a school district or through the Nevada Interscholastic Activities Association to file a notice of intent to participate with the school district in which the child resides. (NRS 386.430, 386.580, 392.705) **Section 16.5** of this bill enacts similar requirements for the parents of an opt-in child who wishes to participate with the school district. **Sections 15.2 and 15.3** of this bill authorize an opt-in child to participate in the Nevada Youth Legislature. **Sections 15.4-15.8 and 16.7** of this bill authorize an opt-in child to participate in activities at a public school, through a school district or through the Nevada Interscholastic Activities Association if the parent files a notice of intent to participate. **Section 16.6** of this bill requires an opt-in child who wishes to enroll in a public high school to provide proof demonstrating competency in courses required for promotion to high school similar to that required of a homeschooled child who wishes to enroll in a public high school.

Section 14 of this bill provides that the provisions of this bill may not be deemed to infringe on the independence or autonomy of any private school or to make the actions of a private school the actions of the government of this State. **Section 15.9** of this bill exempts grants deposited in an education savings account from a prohibition on the use of public school funds for other purposes.

Existing law requires children who are suspended or expelled from a public school for certain reasons to enroll in a private school or program of independent study or be homeschooled. (NRS 392.466) **Section 16.8** of this bill authorizes such a child to be an opt-in child.



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

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. *As used in sections 2 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Education savings account” means an account established for a child pursuant to section 7 of this act.*

Sec. 3.5. *“Eligible institution” means:*

1. A university, state college or community college within the Nevada System of Higher Education; or

2. Any other college or university that:

(a) Was originally established in, and is organized under the laws of, this State;

(b) Is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and

(c) Is accredited by a regional accrediting agency recognized by the United States Department of Education.

Sec. 4. *“Parent” means the parent, custodial parent, legal guardian or other person in this State who has control or charge of a child and the legal right to direct the education of the child.*

Sec. 5. *“Participating entity” means a private school that is licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211, an eligible institution, a program of distance education that is not offered by a public school or the Department, a tutor or tutoring agency or a parent that has provided to the State Treasurer the application described in subsection 1 of section 11 of this act.*

Sec. 5.5. *“Program of distance education” has the meaning ascribed to it in NRS 388.829.*

Sec. 6. *“Resident school district” means the school district in which a child would be enrolled based on his or her residence.*

Sec. 7. *1. Except as otherwise provided in subsection 10, the parent of any child required by NRS 392.040 to attend a public school who has been enrolled in a public school in this State during the period immediately preceding the establishment of an education savings account pursuant to this section for not less*



than 100 school days without interruption may establish an education savings account for the child by entering into a written agreement with the State Treasurer, in a manner and on a form provided by the State Treasurer. The agreement must provide that:

(a) The child will receive instruction in this State from a participating entity for the school year for which the agreement applies;

(b) The child will receive a grant, in the form of money deposited pursuant to section 8 of this act in the education savings account established for the child pursuant to subsection 2;

(c) The money in the education savings account established for the child must be expended only as authorized by section 9 of this act; and

(d) The State Treasurer will freeze money in the education savings account during any break in the school year, including any break between school years.

2. If an agreement is entered into pursuant to subsection 1, an education savings account must be established by the parent on behalf of the child. The account must be maintained with a financial management firm qualified by the State Treasurer pursuant to section 10 of this act.

3. The failure to enter into an agreement pursuant to subsection 1 for any school year for which a child is required by NRS 392.040 to attend a public school does not preclude the parent of the child from entering into an agreement for a subsequent school year.

4. An agreement entered into pursuant to subsection 1 is valid for 1 school year but may be terminated early. If the agreement is terminated early, the child may not receive instruction from a public school in this State until the end of the period for which the last deposit was made into the education savings account pursuant to section 8 of this act, except to the extent the pupil was allowed to receive instruction from a public school under the agreement.

5. An agreement terminates automatically if the child no longer resides in this State. In such a case, any money remaining in the education savings account of the child reverts to the State General Fund.

6. An agreement may be renewed for any school year for which the child is required by NRS 392.040 to attend a public school. The failure to renew an agreement for any school year does not preclude the parent of the child from renewing the agreement for any subsequent school year.



7. *A parent may enter into a separate agreement pursuant to subsection 1 for each child of the parent. Not more than one education savings account may be established for a child.*

8. *Except as otherwise provided in subsection 10, the State Treasurer shall enter into or renew an agreement pursuant to this section with any parent of a child required by NRS 392.040 to attend a public school who applies to the State Treasurer in the manner provided by the State Treasurer. The State Treasurer shall make the application available on the Internet website of the State Treasurer.*

9. *Upon entering into or renewing an agreement pursuant to this section, the State Treasurer shall provide to the parent who enters into or renews the agreement a written explanation of the authorized uses, pursuant to section 9 of this act, of the money in an education savings account and the responsibilities of the parent and the State Treasurer pursuant to the agreement and sections 2 to 15, inclusive, of this act.*

10. *A parent may not establish an education savings account for a child who will be homeschooled, who will receive instruction outside this State or who will remain enrolled full-time in a public school, regardless of whether such a child receives instruction from a participating entity. A parent may establish an education savings account for a child who receives a portion of his or her instruction from a public school and a portion of his or her instruction from a participating entity.*

Sec. 8. 1. *If a parent enters into or renews an agreement pursuant to section 7 of this act, a grant of money on behalf of the child must be deposited in the education savings account of the child.*

2. *Except as otherwise provided in subsections 3 and 4, the grant required by subsection 1 must, for the school year for which the grant is made, be in an amount equal to:*

(a) *For a child who is a pupil with a disability, as defined in NRS 388.440, or a child with a household income that is less than 185 percent of the federally designated level signifying poverty, 100 percent of the statewide average basic support per pupil; and*

(b) *For all other children, 90 percent of the statewide average basic support per pupil.*

3. *If a child receives a portion of his or her instruction from a participating entity and a portion of his or her instruction from a public school, for the school year for which the grant is made, the grant required by subsection 1 must be in a pro rata based on amount the percentage of the total instruction provided to the*



child by the participating entity in proportion to the total instruction provided to the child.

4. The State Treasurer may deduct not more than 3 percent of each grant for the administrative costs of implementing the provisions of sections 2 to 15, inclusive, of this act.

5. The State Treasurer shall deposit the money for each grant in quarterly installments pursuant to a schedule determined by the State Treasurer.

6. Any money remaining in an education savings account:

(a) At the end of a school year may be carried forward to the next school year if the agreement entered into pursuant to section 7 of this act is renewed.

(b) When an agreement entered into pursuant to section 7 of this act is not renewed or is terminated, because the child for whom the account was established graduates from high school or for any other reason, reverts to the State General Fund at the end of the last day of the agreement.

Sec. 9. 1. Money deposited in an education savings account must be used only to pay for:

(a) Tuition and fees at a school that is a participating entity in which the child is enrolled;

(b) Textbooks required for a child who enrolls in a school that is a participating entity;

(c) Tutoring or other teaching services provided by a tutor or tutoring facility that is a participating entity;

(d) Tuition and fees for a program of distance education that is a participating entity;

(e) Fees for any national norm-referenced achievement examination, advanced placement or similar examination or standardized examination required for admission to a college or university;

(f) If the child is a pupil with a disability, as that term is defined in NRS 388.440, fees for any special instruction or special services provided to the child;

(g) Tuition and fees at an eligible institution that is a participating entity;

(h) Textbooks required for the child at an eligible institution that is a participating entity or to receive instruction from any other participating entity;

(i) Fees for the management of the education savings account, as described in section 10 of this act;

(j) Transportation required for the child to travel to and from a participating entity or any combination of participating entities up to but not to exceed \$750 per school year; or



(k) Purchasing a curriculum or any supplemental materials required to administer the curriculum.

2. A participating entity that receives a payment authorized by subsection 1 shall not:

(a) Refund any portion of the payment to the parent who made the payment, unless the refund is for an item that is being returned or an item or service that has not been provided; or

(b) Rebate or otherwise share any portion of the payment with the parent who made the payment.

3. A parent who receives a refund pursuant to subsection 2 shall deposit the refund in the education savings account from which the money refunded was paid.

4. Nothing in this section shall be deemed to prohibit a parent or child from making a payment for any tuition, fee, service or product described in subsection 1 from a source other than the education savings account of the child.

Sec. 10. *1. The State Treasurer shall qualify one or more private financial management firms to manage education savings accounts and shall establish reasonable fees, based on market rates, for the management of education savings accounts.*

2. An education savings account must be audited randomly each year by a certified or licensed public accountant. The State Treasurer may provide for additional audits of an education savings account as it determines necessary.

3. If the State Treasurer determines that there has been substantial misuse of the money in an education savings account, the State Treasurer may:

(a) Freeze or dissolve the account, subject to any regulations adopted by the State Treasurer providing for notice of such action and opportunity to respond to the notice; and

(b) Give notice of his or her determination to the Attorney General or the district attorney of the county in which the parent resides.

Sec. 11. *1. The following persons may become a participating entity by submitting an application demonstrating that the person is:*

(a) A private school licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211;

(b) An eligible institution;

(c) A program of distance education that is not operated by a public school or the Department;

(d) A tutor or tutoring facility that is accredited by a state, regional or national accrediting organization; or

(e) The parent of a child.



2. The State Treasurer shall approve an application submitted pursuant to subsection 1 or request additional information to demonstrate that the person meets the criteria to serve as a participating entity. If the applicant is unable to provide such additional information, the State Treasurer may deny the application.

3. If it is reasonably expected that a participating entity will receive, from payments made from education savings accounts, more than \$50,000 during any school year, the participating entity shall annually, on or before the date prescribed by the State Treasurer by regulation:

(a) Post a surety bond in an amount equal to the amount reasonably expected to be paid to the participating entity from education savings accounts during the school year; or

(b) Provide evidence satisfactory to the State Treasurer that the participating entity otherwise has unencumbered assets sufficient to pay to the State Treasurer an amount equal to the amount described in paragraph (a).

4. Each participating entity that accepts payments made from education savings accounts shall provide a receipt for each such payment to the parent who makes the payment.

5. The State Treasurer may refuse to allow an entity described in subsection 1 to continue to participate in the grant program provided for in sections 2 to 15, inclusive, of this act if the State Treasurer determines that the entity:

(a) Has routinely failed to comply with the provisions of sections 2 to 15, inclusive, of this act; or

(b) Has failed to provide any educational services required by law to a child receiving instruction from the entity if the entity is accepting payments made from the education savings account of the child.

6. If the State Treasurer takes an action described in subsection 5 against an entity described in subsection 1, the State Treasurer shall provide immediate notice of the action to each parent of a child receiving instruction from the entity who has entered into or renewed an agreement pursuant to section 7 of this act and on behalf of whose child a grant of money has been deposited pursuant to section 8 of this act.

Sec. 12. 1. Each participating entity that accepts payments for tuition and fees made from education savings accounts shall:

(a) Ensure that each child on whose behalf a grant of money has been deposited pursuant to section 8 of this act and who is receiving instruction from the participating entity takes:



(1) Any examinations in mathematics and English language arts required for pupils of the same grade pursuant to chapter 389 of NRS; or

(2) Norm-referenced achievement examinations in mathematics and English language arts each school year;

(b) Provide for value-added assessments of the results of the examinations described in paragraph (a); and

(c) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, provide the results of the examinations described in paragraph (a) to the Department or an organization designated by the Department pursuant to subsection 4.

2. The Department shall:

(a) Aggregate the examination results provided pursuant to subsection 1 according to the grade level, gender, race and family income level of each child whose examination results are provided; and

(b) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, make available on the Internet website of the Department:

(1) The aggregated results and any associated learning gains; and

(2) After 3 school years for which examination data has been collected, the graduation rates, as applicable, of children whose examination results are provided.

3. The State Treasurer shall administer an annual survey of parents who enter into or renew an agreement pursuant to section 7 of this act. The survey must ask each parent to indicate the number of years the parent has entered into or renewed such an agreement and to express:

(a) The relative satisfaction of the parent with the grant program established pursuant to sections 2 to 15, inclusive, of this act; and

(b) The opinions of the parent regarding any topics, items or issues that the State Treasurer determines may aid the State Treasurer in evaluating and improving the effectiveness of the grant program established pursuant to sections 2 to 15, inclusive, of this act.

4. The Department may arrange for a third-party organization to perform the duties of the Department prescribed by this section.

Sec. 13. *1. The State Treasurer shall annually make available a list of participating entities, other than any parent of a child.*



2. Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, the Department shall annually require the resident school district of each child on whose behalf a grant of money is made pursuant to section 8 of this act to provide to the participating entity any educational records of the child.

Sec. 14. *Except as otherwise provided in sections 2 to 15, inclusive, of this act, nothing in the provisions of sections 2 to 15, inclusive, of this act, shall be deemed to limit the independence or autonomy of a participating entity or to make the actions of a participating entity the actions of the State Government.*

Sec. 15. *The State Treasurer shall adopt any regulations necessary or convenient to carry out the provisions of sections 2 to 15, inclusive, of this act.*

Sec. 15.1. NRS 385.007 is hereby amended to read as follows:

385.007 As used in this title, unless the context otherwise requires:

1. "Charter school" means a public school that is formed pursuant to the provisions of NRS 386.490 to 386.649, inclusive.

2. "Department" means the Department of Education.

3. "Homeschooled child" means a child who receives instruction at home and who is exempt from compulsory attendance pursuant to NRS 392.070 ~~1~~, *but does not include an opt-in child.*

4. "Limited English proficient" has the meaning ascribed to it in 20 U.S.C. § 7801(25).

5. *"Opt-in child" means a child for whom an education savings account has been established pursuant to section 7 of this act, who is not enrolled full-time in a public or private school and who receives all or a portion of his or her instruction from a participating entity, as defined in section 5 of this act.*

6. "Public schools" means all kindergartens and elementary schools, junior high schools and middle schools, high schools, charter schools and any other schools, classes and educational programs which receive their support through public taxation and, except for charter schools, whose textbooks and courses of study are under the control of the State Board.

~~16.1~~ 7. "State Board" means the State Board of Education.

~~17.1~~ 8. "University school for profoundly gifted pupils" has the meaning ascribed to it in NRS 392A.040.

Sec. 15.2. NRS 385.525 is hereby amended to read as follows:

385.525 1. To be eligible to serve on the Youth Legislature, a person:

(a) Must be:



(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child *or opt-in child* who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Except as otherwise provided in subsection 3 of NRS 385.535, must be:

(1) Enrolled in a public school or private school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; or

(2) A homeschooled child *or opt-in child* who is otherwise eligible to enroll in a public school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection 4 to the Senator of the senatorial district in which the person resides, is enrolled in a public school or private school or, if the person is a homeschooled child ~~H~~ *or opt-in child*, the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

4. The Board shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child ~~H~~ *or opt-in child*, the signature of a member of the community in which the applicant resides other than a relative of the applicant.

Sec. 15.3. NRS 385.535 is hereby amended to read as follows:

385.535 1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.



(b) The absence of a member for any reason from:

(1) Two meetings of the Youth Legislature, including, without limitation, meetings conducted in person, meetings conducted by teleconference, meetings conducted by videoconference and meetings conducted by other electronic means;

(2) Two activities of the Youth Legislature;

(3) Two event days of the Youth Legislature; or

(4) Any combination of absences from meetings, activities or event days of the Youth Legislature, if the combination of absences therefrom equals two or more,

➡ unless the absences are, as applicable, excused by the Chair or Vice Chair of the Board.

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. In addition to the provisions of subsection 1, a position on the Youth Legislature becomes vacant if:

(a) A member of the Youth Legislature graduates from high school or otherwise ceases to attend public school or private school for any reason other than to become a homeschooled child ~~§~~ *or opt-in child*; or

(b) A member of the Youth Legislature who is a homeschooled child *or opt-in child* completes an educational plan of instruction for grade 12 or otherwise ceases to be a homeschooled child *or opt-in child* for any reason other than to enroll in a public school or private school.

3. A vacancy on the Youth Legislature must be filled:

(a) For the remainder of the unexpired term in the same manner as the original appointment, except that, if the remainder of the unexpired term is less than 1 year, the member of the Senate who made the original appointment may appoint a person who:

(1) Is enrolled in a public school or private school in this State in grade 12 or who is a homeschooled child *or opt-in child* who is otherwise eligible to enroll in a public school in this State in grade 12; and

(2) Satisfies the qualifications set forth in paragraphs (a) and (c) of subsection 1 of NRS 385.525.

(b) Insofar as is practicable, within 30 days after the date on which the vacancy occurs.

4. As used in this section, “event day” means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.



Sec. 15.4. NRS 386.430 is hereby amended to read as follows:

386.430 1. The Nevada Interscholastic Activities Association shall adopt rules and regulations in the manner provided for state agencies by chapter 233B of NRS as may be necessary to carry out the provisions of NRS 386.420 to 386.470, inclusive. The regulations must include provisions governing the eligibility and participation of homeschooled children *and opt-in children* in interscholastic activities and events. In addition to the regulations governing eligibility ~~1, a~~:

(a) *A* homeschooled child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of a homeschooled child to participate in programs and activities pursuant to NRS 392.705.

(b) *An opt-in child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of an opt-in child to participate in programs and activities pursuant to section 16.5 of this act.*

2. The Nevada Interscholastic Activities Association shall adopt regulations setting forth:

(a) The standards of safety for each event, competition or other activity engaged in by a spirit squad of a school that is a member of the Nevada Interscholastic Activities Association, which must substantially comply with the spirit rules of the National Federation of State High School Associations, or its successor organization; and

(b) The qualifications required for a person to become a coach of a spirit squad.

3. If the Nevada Interscholastic Activities Association intends to adopt, repeal or amend a policy, rule or regulation concerning or affecting homeschooled children, the Association shall consult with the Northern Nevada Homeschool Advisory Council and the Southern Nevada Homeschool Advisory Council, or their successor organizations, to provide those Councils with a reasonable opportunity to submit data, opinions or arguments, orally or in writing, concerning the proposal or change. The Association shall consider all written and oral submissions respecting the proposal or change before taking final action.

4. As used in this section, “spirit squad” means any team or other group of persons that is formed for the purpose of:

(a) Leading cheers or rallies to encourage support for a team that participates in a sport that is sanctioned by the Nevada Interscholastic Activities Association; or



(b) Participating in a competition against another team or other group of persons to determine the ability of each team or group of persons to engage in an activity specified in paragraph (a).

Sec. 15.5. NRS 386.462 is hereby amended to read as follows:

386.462 1. A homeschooled child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 386.430 if a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 392.705.

2. *An opt-in child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 386.430 if a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 16.5 of this act.*

3. The provisions of NRS 386.420 to 386.470, inclusive, and the regulations adopted pursuant thereto that apply to pupils enrolled in public schools who participate in interscholastic activities and events apply in the same manner to homeschooled children *and opt-in children* who participate in interscholastic activities and events, including, without limitation, provisions governing:

- (a) Eligibility and qualifications for participation;
- (b) Fees for participation;
- (c) Insurance;
- (d) Transportation;
- (e) Requirements of physical examination;
- (f) Responsibilities of participants;
- (g) Schedules of events;
- (h) Safety and welfare of participants;
- (i) Eligibility for awards, trophies and medals;
- (j) Conduct of behavior and performance of participants; and
- (k) Disciplinary procedures.

Sec. 15.6. NRS 386.463 is hereby amended to read as follows:

386.463 No challenge may be brought by the Nevada Interscholastic Activities Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or private school, or any other entity or person claiming that an interscholastic activity or event is invalid because homeschooled children *or opt-in children* are allowed to participate in the interscholastic activity or event.



Sec. 15.7. NRS 386.464 is hereby amended to read as follows:

386.464 A school district, public school or private school shall not prescribe any regulations, rules, policies, procedures or requirements governing the:

1. Eligibility of homeschooled children *or opt-in children* to participate in interscholastic activities and events pursuant to NRS 386.420 to 386.470, inclusive; or

2. Participation of homeschooled children *or opt-in children* in interscholastic activities and events pursuant to NRS 386.420 to 386.470, inclusive,

↳ that are more restrictive than the provisions governing eligibility and participation prescribed by the Nevada Interscholastic Activities Association pursuant to NRS 386.430.

Sec. 15.8. NRS 386.580 is hereby amended to read as follows:

386.580 1. An application for enrollment in a charter school may be submitted to the governing body of the charter school by the parent or legal guardian of any child who resides in this State. Except as otherwise provided in this subsection and subsection 2, a charter school shall enroll pupils who are eligible for enrollment in the order in which the applications are received. If the board of trustees of the school district in which the charter school is located has established zones of attendance pursuant to NRS 388.040, the charter school shall, if practicable, ensure that the racial composition of pupils enrolled in the charter school does not differ by more than 10 percent from the racial composition of pupils who attend public schools in the zone in which the charter school is located. If a charter school is sponsored by the board of trustees of a school district located in a county whose population is 100,000 or more, except for a program of distance education provided by the charter school, the charter school shall enroll pupils who are eligible for enrollment who reside in the school district in which the charter school is located before enrolling pupils who reside outside the school district. Except as otherwise provided in subsection 2, if more pupils who are eligible for enrollment apply for enrollment in the charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

2. Before a charter school enrolls pupils who are eligible for enrollment, a charter school may enroll a child who:

(a) Is a sibling of a pupil who is currently enrolled in the charter school;

(b) Was enrolled, free of charge and on the basis of a lottery system, in a prekindergarten program at the charter school or any



other early childhood educational program affiliated with the charter school;

(c) Is a child of a person who is:

- (1) Employed by the charter school;
- (2) A member of the committee to form the charter school; or
- (3) A member of the governing body of the charter school;

(d) Is in a particular category of at-risk pupils and the child meets the eligibility for enrollment prescribed by the charter school for that particular category; or

(e) Resides within the school district and within 2 miles of the charter school if the charter school is located in an area that the sponsor of the charter school determines includes a high percentage of children who are at risk. If space is available after the charter school enrolls pupils pursuant to this paragraph, the charter school may enroll children who reside outside the school district but within 2 miles of the charter school if the charter school is located within an area that the sponsor determines includes a high percentage of children who are at risk.

↪ If more pupils described in this subsection who are eligible apply for enrollment than the number of spaces available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

3. Except as otherwise provided in subsection 8, a charter school shall not accept applications for enrollment in the charter school or otherwise discriminate based on the:

- (a) Race;
- (b) Gender;
- (c) Religion;
- (d) Ethnicity; or
- (e) Disability,

↪ of a pupil.

4. If the governing body of a charter school determines that the charter school is unable to provide an appropriate special education program and related services for a particular disability of a pupil who is enrolled in the charter school, the governing body may request that the board of trustees of the school district of the county in which the pupil resides transfer that pupil to an appropriate school.

5. Except as otherwise provided in this subsection, upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child ~~H~~ *or opt-in child*, the governing body of the charter school shall authorize the child to participate in a class that is not otherwise available to the child at his



or her school , ~~for~~ homeschool *or from his or her participating entity, as defined in section 5 of this act*, or participate in an extracurricular activity at the charter school if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the governing body that the child is qualified to participate in the class or extracurricular activity; and

(c) The child is ~~for~~ :

(1) *A* homeschooled child and a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 392.705 ~~for~~ ; or

(2) *An opt-in child and a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 16.5 of this act.*

→ If the governing body of a charter school authorizes a child to participate in a class or extracurricular activity pursuant to this subsection, the governing body is not required to provide transportation for the child to attend the class or activity. A charter school shall not authorize such a child to participate in a class or activity through a program of distance education provided by the charter school pursuant to NRS 388.820 to 388.874, inclusive.

6. The governing body of a charter school may revoke its approval for a child to participate in a class or extracurricular activity at a charter school pursuant to subsection 5 if the governing body determines that the child has failed to comply with applicable statutes, or applicable rules and regulations. If the governing body so revokes its approval, neither the governing body nor the charter school is liable for any damages relating to the denial of services to the child.

7. The governing body of a charter school may, before authorizing a homeschooled child *or opt-in child* to participate in a class or extracurricular activity pursuant to subsection 5, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

8. This section does not preclude the formation of a charter school that is dedicated to provide educational services exclusively to pupils:

(a) With disabilities;

(b) Who pose such severe disciplinary problems that they warrant a specific educational program, including, without



limitation, a charter school specifically designed to serve a single gender that emphasizes personal responsibility and rehabilitation; or

(c) Who are at risk.

➡ If more eligible pupils apply for enrollment in such a charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

Sec. 15.9. NRS 387.045 is hereby amended to read as follows:

387.045 *Except as otherwise provided in sections 2 to 15, inclusive, of this act:*

1. No portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose.

2. No portion of the public school funds shall in any way be segregated, divided or set apart for the use or benefit of any sectarian or secular society or association.

Sec. 15.95. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. Except as otherwise provided in subsection 2, 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, 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, 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.

(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 *or receiving a portion of his or her instruction from a participating entity, as defined in section 5 of this act*, on the last day of the first school month of the school district for the school year, 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 *or receiving a portion of his or her instruction from a participating entity, as defined in section 5 of this act*, on the last day of the first school month of the school district for the school year, 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, 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 month of the school district for the school year.

(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.

(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, 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. 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 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.

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 or 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. 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. 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. 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. 16. 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 ~~and~~ *and all the funds deposited in education savings accounts established on behalf of children who reside in the county pursuant to sections 2 to 15, inclusive, of this act.* 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 1 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 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. 16.2. NRS 388.850 is hereby amended to read as follows:

388.850 1. A pupil may enroll in a program of distance education unless:

(a) Pursuant to this section or other specific statute, the pupil is not eligible for enrollment or the pupil's enrollment is otherwise prohibited;

(b) The pupil fails to satisfy the qualifications and conditions for enrollment adopted by the State Board pursuant to NRS 388.874; or

(c) The pupil fails to satisfy the requirements of the program of distance education.

2. A child who is exempt from compulsory attendance and is enrolled in a private school pursuant to chapter 394 of NRS or is being homeschooled is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1.

3. *An opt-in child who is exempt from compulsory attendance is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1, unless the opt-in child receives only a portion of his or her instruction from a participating entity as authorized pursuant to section 7 of this act.*

4. If a pupil who is prohibited from attending public school pursuant to NRS 392.264 enrolls in a program of distance education, the enrollment and attendance of that pupil must comply with all



requirements of NRS 62F.100 to 62F.150, inclusive, and 392.251 to 392.271, inclusive.

Sec. 16.3. Chapter 392 of NRS is hereby amended by adding thereto the provisions set forth as sections 16.35, 16.4 and 16.5 of this act.

Sec. 16.35. *As used in this section and sections 16.4 and 16.5 of this act, unless the context otherwise requires, "parent" has the meaning ascribed to it in section 4 of this act.*

Sec. 16.4. *1. The parent of an opt-in child shall provide notice to the school district where the child would otherwise attend or the charter school in which the child was previously enrolled, as applicable, that the child is an opt-in child as soon as practicable after entering into an agreement to establish an education savings account pursuant to section 7 of this act. Such notice must also include:*

- (a) The full name, age and gender of the child; and*
- (b) The name and address of each parent of the child.*

2. The superintendent of schools of a school district or the governing body of a charter school, as applicable, shall accept a notice provided pursuant to subsection 1 and shall not require any additional assurances from the parent who filed the notice.

3. The school district or the charter school, as applicable, shall provide to a parent who files a notice pursuant to subsection 1, a written acknowledgement which clearly indicates that the parent has provided the notification required by law and that the child is an opt-in child. The written acknowledgment shall be deemed proof of compliance with Nevada's compulsory school attendance law.

4. The superintendent of schools of a school district or the governing body of a charter school, as applicable, shall process a written request for a copy of the records of the school district or charter school, as applicable, or any information contained therein, relating to an opt-in child not later than 5 days after receiving the request. The superintendent of schools or governing body of a charter school may only release such records or information:

(a) To the Department, the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau for use in preparing the biennial budget;

(b) To a person or entity specified by the parent of the child, or by the child if the child is at least 18 years of age, upon suitable proof of identity of the parent or child; or

(c) If required by specific statute.



5. If an opt-in child seeks admittance or entrance to any public school in this State, the school may use only commonly used practices in determining the academic ability, placement or eligibility of the child. If the child enrolls in a charter school, the charter school shall, to the extent practicable, notify the board of trustees of the resident school district of the child's enrollment in the charter school. Regardless of whether the charter school provides such notification to the board of trustees, the charter school may count the child who is enrolled for the purposes of the calculation of basic support pursuant to NRS 387.1233. An opt-in child seeking admittance to public high school must comply with NRS 392.033.

6. A school shall not discriminate in any manner against an opt-in child or a child who was formerly an opt-in child.

7. Each school district shall allow an opt-in child to participate in all college entrance examinations offered in this State, including, without limitation, the SAT, the ACT, the Preliminary SAT and the National Merit Scholarship Qualifying Test. Each school district shall upon request, provide information to the parent of an opt-in child who resides in the school district has adequate notice of the availability of information concerning such examinations on the Internet website of the school district maintained pursuant to NRS 389.004.

Sec. 16.5. *1. The Department shall develop a standard form for the notice of intent of an opt-in child to participate in programs and activities. The board of trustees of each school district shall, in a timely manner, make only the form developed by the Department available to parents of opt-in children.*

2. If an opt-in child wishes to participate in classes, activities, programs, sports or interscholastic activities and events at a public school or through a school district, or through the Nevada Interscholastic Activities Association, the parent of the child must file a current notice of intent to participate with the resident school district.

Sec. 16.6. NRS 392.033 is hereby amended to read as follows:

392.033 1. The State Board shall adopt regulations which prescribe the courses of study required for promotion to high school, including, without limitation, English, mathematics, science and social studies. The regulations may include the credits to be earned in each course.

2. Except as otherwise provided in subsection 4, the board of trustees of a school district shall not promote a pupil to high school if the pupil does not complete the course of study or credits required for promotion. The board of trustees of the school district in which



the pupil is enrolled may provide programs of remedial study to complete the courses of study required for promotion to high school.

3. The board of trustees of each school district shall adopt a procedure for evaluating the course of study or credits completed by a pupil who transfers to a junior high or middle school from a junior high or middle school in this State or from a school outside of this State.

4. The board of trustees of each school district shall adopt a policy that allows a pupil who has not completed the courses of study or credits required for promotion to high school to be placed on academic probation and to enroll in high school. A pupil who is on academic probation pursuant to this subsection shall complete appropriate remediation in the subject areas that the pupil failed to pass. The policy must include the criteria for eligibility of a pupil to be placed on academic probation. A parent or guardian may elect not to place his or her child on academic probation but to remain in grade 8.

5. A homeschooled child *or opt-in child* who enrolls in a public high school shall, upon initial enrollment:

(a) Provide documentation sufficient to prove that the child has successfully completed the courses of study required for promotion to high school through an accredited program of homeschool study recognized by the board of trustees of the school district ~~or~~ *or from a participating entity, as applicable;*

(b) Demonstrate proficiency in the courses of study required for promotion to high school through an examination prescribed by the board of trustees of the school district; or

(c) Provide other proof satisfactory to the board of trustees of the school district demonstrating competency in the courses of study required for promotion to high school.

6. As used in this section, "participating entity" has the meaning ascribed to it in section 5 of this act.

Sec. 16.7. NRS 392.070 is hereby amended to read as follows:

392.070 1. Attendance of a child required by the provisions of NRS 392.040 must be excused when:

(a) The child is enrolled in a private school pursuant to chapter 394 of NRS; ~~for~~

(b) A parent of the child chooses to provide education to the child and files a notice of intent to homeschool the child with the superintendent of schools of the school district in which the child resides in accordance with NRS 392.700 ~~or~~ *;* or

(c) The child is an opt-in child and notice of such has been provided to the school district in which the child resides or the



charter school in which the child was previously enrolled, as applicable, in accordance with section 16.4 of this act.

2. The board of trustees of each school district shall provide programs of special education and related services for homeschooled children. The programs of special education and related services required by this section must be made available:

(a) Only if a child would otherwise be eligible for participation in programs of special education and related services pursuant to NRS 388.440 to 388.520, inclusive;

(b) In the same manner that the board of trustees provides, as required by 20 U.S.C. § 1412, for the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians; and

(c) In accordance with the same requirements set forth in 20 U.S.C. § 1412 which relate to the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians.

3. Except as otherwise provided in subsection 2 for programs of special education and related services, upon the request of a parent or legal guardian of a child who is enrolled in a private school or a parent or legal guardian of a homeschooled child ~~§~~ *or opt-in child*, the board of trustees of the school district in which the child resides shall authorize the child to participate in any classes and extracurricular activities, excluding sports, at a public school within the school district if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the board of trustees that the child is qualified to participate in the class or extracurricular activity; and

(c) If the child is ~~§~~:

(1) *A* homeschooled child, a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 392.705 ~~§~~; *or*

(2) *An opt-in child, a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to section 16.5 of this act.*

↪ If the board of trustees of a school district authorizes a child to participate in a class or extracurricular activity, excluding sports, pursuant to this subsection, the board of trustees is not required to provide transportation for the child to attend the class or activity. A homeschooled child *or opt-in child* must be allowed to participate in



interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, and interscholastic activities and events, including sports, pursuant to subsection 5.

4. The board of trustees of a school district may revoke its approval for a pupil to participate in a class or extracurricular activity at a public school pursuant to subsection 3 if the board of trustees or the public school determines that the pupil has failed to comply with applicable statutes, or applicable rules and regulations of the board of trustees. If the board of trustees revokes its approval, neither the board of trustees nor the public school is liable for any damages relating to the denial of services to the pupil.

5. In addition to those interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, a homeschooled child *or opt-in child* must be allowed to participate in interscholastic activities and events, including sports, if a notice of intent of a homeschooled child *or opt-in child* to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 392.705 ~~H~~ *or section 16.5 of this act, as applicable*. A homeschooled child *or opt-in child* who participates in interscholastic activities and events at a public school pursuant to this subsection must participate within the school district of the child's residence through the public school which the child is otherwise zoned to attend. Any rules or regulations that apply to pupils enrolled in public schools who participate in interscholastic activities and events, including sports, apply in the same manner to homeschooled children *and opt-in children* who participate in interscholastic activities and events, including, without limitation, provisions governing:

- (a) Eligibility and qualifications for participation;
- (b) Fees for participation;
- (c) Insurance;
- (d) Transportation;
- (e) Requirements of physical examination;
- (f) Responsibilities of participants;
- (g) Schedules of events;
- (h) Safety and welfare of participants;
- (i) Eligibility for awards, trophies and medals;
- (j) Conduct of behavior and performance of participants; and
- (k) Disciplinary procedures.

6. If a homeschooled child *or opt-in child* participates in interscholastic activities and events pursuant to subsection 5:



(a) No challenge may be brought by the Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or a private school, or any other entity or person claiming that an interscholastic activity or event is invalid because the homeschooled child *or opt-in child* is allowed to participate.

(b) Neither the school district nor a public school may prescribe any regulations, rules, policies, procedures or requirements governing the eligibility or participation of the homeschooled child *or opt-in child* that are more restrictive than the provisions governing the eligibility and participation of pupils enrolled in public schools.

7. The programs of special education and related services required by subsection 2 may be offered at a public school or another location that is appropriate.

8. The board of trustees of a school district:

(a) May, before providing programs of special education and related services to a homeschooled child *or opt-in child* pursuant to subsection 2, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(b) May, before authorizing a homeschooled child *or opt-in child* to participate in a class or extracurricular activity, excluding sports, pursuant to subsection 3, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(c) Shall, before allowing a homeschooled child *or opt-in child* to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, and interscholastic activities and events pursuant to subsection 5, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

9. The Department shall adopt such regulations as are necessary for the boards of trustees of school districts to provide the programs of special education and related services required by subsection 2.

10. As used in this section ~~the~~ *“related”* :

(a) *“Participating entity” has the meaning ascribed to it in section 5 of this act.*

(b) *“Related services”* has the meaning ascribed to it in 20 U.S.C. § 1401.



Sec. 16.8. NRS 392.466 is hereby amended to read as follows:

392.466 1. Except as otherwise provided in this section, any pupil who commits a battery which results in the bodily injury of an employee of the school or who sells or distributes any controlled substance while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be suspended or expelled from that school, although the pupil may be placed in another kind of school, for at least a period equal to one semester for that school. For a second occurrence, the pupil must be permanently expelled from that school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS , *become an opt-in child* or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

2. Except as otherwise provided in this section, any pupil who is found in possession of a firearm or a dangerous weapon while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be expelled from the school for a period of not less than 1 year, although the pupil may be placed in another kind of school for a period not to exceed the period of the expulsion. For a second occurrence, the pupil must be permanently expelled from the school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS , *become an opt-in child* or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

➔ The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the expulsion requirement of this subsection if such modification is set forth in writing.

3. Except as otherwise provided in this section, if a pupil is deemed a habitual disciplinary problem pursuant to NRS 392.4655, the pupil must be suspended or expelled from the school for a period equal to at least one semester for that school. For the period of the pupil's suspension or expulsion, the pupil must:



(a) Enroll in a private school pursuant to chapter 394 of NRS , *become an opt-in child* or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

4. This section does not prohibit a pupil from having in his or her possession a knife or firearm with the approval of the principal of the school. A principal may grant such approval only in accordance with the policies or regulations adopted by the board of trustees of the school district.

5. Any pupil in grades 1 to 6, inclusive, except a pupil who has been found to have possessed a firearm in violation of subsection 2, may be suspended from school or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and approved this action in accordance with the procedural policy adopted by the board for such issues.

6. A pupil who is participating in a program of special education pursuant to NRS 388.520, other than a pupil who is gifted and talented or who receives early intervening services, may, in accordance with the procedural policy adopted by the board of trustees of the school district for such matters, be:

(a) Suspended from school pursuant to this section for not more than 10 days. Such a suspension may be imposed pursuant to this paragraph for each occurrence of conduct proscribed by subsection 1.

(b) Suspended from school for more than 10 days or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

7. As used in this section:

(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(b) "Dangerous weapon" includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku, switchblade knife or trefoil, as defined in NRS 202.350, a butterfly knife or any other knife described in NRS 202.350, or any other object which is used, or threatened to be used,



in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.

(c) “Firearm” includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included within the definition of a “firearm” in 18 U.S.C. § 921, as that section existed on July 1, 1995.

8. The provisions of this section do not prohibit a pupil who is suspended or expelled from enrolling in a charter school that is designed exclusively for the enrollment of pupils with disciplinary problems if the pupil is accepted for enrollment by the charter school pursuant to NRS 386.580. Upon request, the governing body of a charter school must be provided with access to the records of the pupil relating to the pupil’s suspension or expulsion in accordance with applicable federal and state law before the governing body makes a decision concerning the enrollment of the pupil.

Sec. 17. This act becomes effective on:

1. July 1, 2015, for the purposes of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and
2. January 1, 2016, for all other purposes.



Senate Bill No. 515–Committee on Finance

CHAPTER.....

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.

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

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

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

Carson City	\$6,908
Churchill	\$6,720
Clark	\$5,512
Douglas	\$5,980
Elko	\$7,532
Esmeralda	\$24,331
Eureka	\$9,633
Humboldt	\$6,476
Lander	\$4,374
Lincoln	\$10,534
Lyon	\$7,246
Mineral	\$8,980
Nye	\$7,766
Pershing	\$9,229
Storey	\$8,111
Washoe	\$5,612
White Pine	\$7,799



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

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

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

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

<u>School District</u>	<u>Basic Support Guarantee Before Adjustment</u>	<u>Estimated Ad Valorem Adjustment</u>	<u>Estimated Basic Support Guarantee as Adjusted</u>
Carson City	\$6,212	\$784	\$6,996
Churchill	\$5,962	\$851	\$6,813
Clark	\$4,717	\$856	\$5,573
Douglas	\$4,031	\$2,047	\$6,078
Elko	\$6,655	\$945	\$7,600
Esmeralda	\$21,801	\$3,024	\$24,825
Eureka	(\$19,214)	\$29,827	\$10,613
Humboldt	\$4,755	\$1,909	\$6,664
Lander	(\$1,152)	\$5,620	\$4,468
Lincoln	\$9,474	\$1,177	\$10,651
Lyon	\$6,649	\$694	\$7,343
Mineral	\$7,916	\$1,273	\$9,189
Nye	\$6,580	\$1,214	\$7,794
Pershing	\$7,767	\$1,604	\$9,371
Storey	\$1,973	\$6,121	\$8,094
Washoe	\$4,672	\$997	\$5,669
White Pine	\$6,767	\$1,081	\$7,848

5. The ad valorem adjustment may be made only to take into account the difference in the ad valorem taxes to be received and the estimated enrollment of the school district between the amount



estimated as of March 1, 2015, and the amount estimated as of March 1, 2016, for Fiscal Year 2016-2017. The estimates received from the Department of Taxation on or before March 15 pursuant to subsection 3 must be taken into consideration in determining the adjustment.

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

Sec. 3. 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 \$45,455 in Fiscal Year 2015-2016, 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 2015-2016 are:

Allocation of Special Education Units
2015-2016

<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



Allocation of Special Education Units
2015-2016

<u>DISTRICT</u>	<u>Units</u>	<u>Amount</u>
Pershing County	16	\$ 727,275
Storey County	8	\$ 363,637
Washoe County	567	\$ 25,772,798
White Pine County	16	\$ 727,275
Subtotal	3,009	\$ 136,773,101
Reserved by State Board of Education	40	\$ 1,818,197
TOTAL	<u>3,049</u>	<u>\$ 138,591,298</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:

Allocation of Special Education Units
2016-2017

<u>DISTRICT</u>	<u>Units</u>	<u>Amount</u>
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



Allocation of Special Education Units
2015-2016

<u>DISTRICT</u>	<u>Units</u>	<u>Amount</u>
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
TOTAL	<u>3,049</u>	<u>\$ 168,125,519</u>

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:

For the Fiscal Year 2015-2016 \$1,093,556,243

For the Fiscal Year 2016-2017 \$1,101,624,225

2. The money appropriated by subsection 1 must be:

(a) Expended in accordance with NRS 353.150 to 353.246, inclusive, concerning the allotment, transfer, work program and budget; and

(b) Work-programmed for the 2 separate fiscal years of the 2015-2017 biennium, as required by NRS 353.215. Work programs may be revised with the approval of the Governor upon the



recommendation of the Director of the Office of Finance in the Office of the Governor.

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

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

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

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

Sec. 7. 1. There is hereby appropriated from the State General Fund to the State Distributive School Account created by NRS 387.030:

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

2. The money appropriated by subsection 1 must be:

(a) Expended in accordance with NRS 353.150 to 353.246, inclusive, concerning the allotment, transfer, work program and budget; and

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

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



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

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

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

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

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

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

4. The money authorized to be expended by subsections 1 and 2 must be expended in accordance with NRS 353.150 to 353.246, inclusive, concerning the allotment, transfer, work program and budget. Transfers to and allotments from must be allowed and made in accordance with NRS 353.215 to 353.225, inclusive, after separate consideration of the merits of each request.

5. The Director of the Office of Finance in the Office of the Governor may, with the approval of the Governor, authorize the augmentation of the amounts authorized for expenditure by the Department of Education in subsections 1 and 2, for the purpose of



meeting obligations of the State incurred under chapter 387 of NRS with amounts from any other state agency, from any agency of local government, from any agency of the Federal Government or from any other source that he or she determines is in excess of the amount taken into consideration by this act. The Director of the Office of Finance shall reduce any authorization whenever he or she determines that money to be received will be less than the amount authorized in subsections 1 and 2.

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

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

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

For the Fiscal Year 2015-2016 \$128,541

For the Fiscal Year 2016-2017 \$128,541

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

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

Sec. 12. 1. The Department of Education shall transfer from the State Distributive School Account to the school districts the following sums for the National School Lunch Program state match requirement pursuant to NRS 387.105 to reimburse school districts for the costs of providing meals pursuant to 42 U.S.C. §§ 1751 et seq.:



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

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

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

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

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

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

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

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

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

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

7. School districts are encouraged, to the extent possible, to further reduce the pupil-teacher ratio in each classroom in the



district for grades 1, 2 and 3 for which additional funding is provided.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

For the Fiscal Year 2015-2016 \$65,906,998

For the Fiscal Year 2016-2017 \$65,243,789

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

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

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

5. The money appropriated by subsection 1 to finance specific programs as outlined in this subsection are available for both Fiscal



Year 2015-2016 and Fiscal Year 2016-2017 and may be transferred from one fiscal year to the other with the approval of the Interim Finance Committee upon the recommendation of the Governor as follows:

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

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

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

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

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

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

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

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

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



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

7. Except as otherwise provided in subsections 4 and 6, unencumbered balances of the appropriations made by this section for Fiscal Year 2015-2016 and Fiscal Year 2016-2017 must not be committed for expenditure after June 30 of each fiscal year. Except as otherwise provided in subsections 4 and 6, unencumbered balances of these appropriations revert to the State General Fund on or before September 16, 2016, and September 15, 2017, for each fiscal year respectively.

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

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

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

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

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

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

3. To receive a grant of money pursuant to subsection 2, school districts and community-based organizations must submit a



comprehensive plan to the Department of Education that includes, without limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The number of grants awarded;



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

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

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

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

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

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

(f) Any recommendations for legislation.

8. The money transferred by this section:

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

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

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

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

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

For the Fiscal Year 2015-2016 \$3,000,000

For the Fiscal Year 2016-2017 \$5,000,000

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

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

(b) Create a competitive science, technology, engineering and mathematics grant program for pupils enrolled in middle schools



and high schools, including, without limitation, charter schools, to assist those pupils in becoming college and career ready.

3. The money transferred by subsection 1:

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

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

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

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

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

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

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

- (a) Licensed Clinical Social Worker;
- (b) Social Worker;
- (c) Social Worker Intern with Supervision;
- (d) Clinical Psychologist;
- (e) Psychologist Intern with Supervision;
- (f) Marriage and Family Therapist;
- (g) Mental Health Counselor;
- (h) Community Health Worker;
- (i) School-Based Health Centers; and
- (j) Licensed Nurse.

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



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

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

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

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

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

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

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

3. The money transferred pursuant to subsection 1:

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

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



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

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

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

For the Fiscal Year 2015-2016 \$5,000,000

For the Fiscal Year 2016-2017 \$5,000,000

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

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

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

For the Fiscal Year 2015-2016 \$4,879,489

For the Fiscal Year 2016-2017 \$22,250,574

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

3. Any balance of the money appropriated by subsection 1 remaining at the end of the respective fiscal years must not be



committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2016, and September 15, 2017, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2016, and September 15, 2017, respectively.

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

For the Fiscal Year 2015-2016 \$49,950,000

For the Fiscal Year 2016-2017 \$49,950,000

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

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

<u>School District:</u>	<u>2015-2016</u>	<u>2016-2017</u>
Clark County School District	\$39,350,342	\$39,350,342
Washoe County School District	\$6,985,838	\$6,985,838

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

5. Any remaining balance of the transfers made by subsection 3 for Fiscal Year 2015-2016 must be added to the money transferred



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

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

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

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

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

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

3. Any remaining balance of the transfers made to carry out the provisions of Senate Bill No. 432 of this session for Fiscal Year 2015-2016 must be added to the money transferred for Fiscal Year 2016-2017 and may be expended as that money is expended. Any remaining balance of the transfers made to carry out the provisions of Senate Bill No. 432 of this session for Fiscal Year 2016-2017,



including any money added from the previous fiscal year, must not be committed for expenditure after June 30, 2017, and must be reverted to the State General Fund on or before September 15, 2017.

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

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

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

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

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

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

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

6. The Director of the Office of Finance in the Office of the Governor may, with the approval of the Governor, authorize the



augmentation of the amounts authorized for expenditure by the Department of Education in subsection 3, for the purpose of meeting obligations of the State incurred under chapter 387 of NRS with amounts from any other state agency, from any agency of local government, from any agency of the Federal Government or from any other source that he or she determines is in excess of the amount taken into consideration by this act. The Director of the Office of Finance shall reduce any authorization whenever he or she determines that money to be received will be less than the amount authorized in subsection 3.

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

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

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

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

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

5. A parent or legal guardian of a pupil who is otherwise zoned to attend a public school that provides full-day kindergarten pursuant to this section may request that the pupil not be enrolled in



full-day kindergarten. The school district in which the pupil is enrolled shall grant the request and ensure that the pupil is allowed to attend kindergarten, whether at the zoned school or another school, for less than a full day.

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

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

2. Notwithstanding the provisions of NRS 388.700 to the contrary, a school district that receives an allocation of money pursuant to subsection 1 may not request a variance from the State Board of Education to exceed the pupil-teacher ratio prescribed by subsection 1. A principal of a school may submit a request to the superintendent of schools of the school district for the school to exceed the pupil-teacher ratio prescribed by subsection 1 by not more than 20 percent or 25 pupils. A principal of a charter school may submit a request to the governing body of the charter school for the charter school to exceed the pupil-teacher ratio prescribed by subsection 1 by not more than 20 percent or 25 pupils. If the superintendent or governing body grants such a request, the superintendent or governing body shall provide written notice to the Department of Education. Each request and approval to exceed the ratio must be made on an individual school basis and not a school-district wide basis. A remote and rural school, as determined by the State Board of Education, may submit a request to the superintendent of schools of the school district in which the school is located or the governing body of a charter school, as applicable, for transmittal to the State Board of Education with a proposed plan of corrective action in instances where the maximum pupil-teacher ratio exceeds 25 pupils to 1 teacher.

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

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



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

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

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

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

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

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

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

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

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

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

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

For the Fiscal Year 2015-2016 \$5,000,000

For the Fiscal Year 2016-2017 \$5,000,000

2. On or before August 31, 2015, the board of trustees of a school district may apply to the State Board of Education for a grant of money from the money appropriated pursuant to subsection 1 to provide financial incentives to newly hired teachers as described in



subsection 3. Each application submitted pursuant to this section must include the number of teachers to whom the board of trustees intends to provide such incentives. On or before October 31, 2015, the State Board shall distribute the money to each board of trustees of a school district that submits an application in proportion to the number of teachers to whom the board of trustees plans to provide incentives.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

2. The Statewide Council shall use the money:

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



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

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

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

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

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

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

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

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

For the Fiscal Year 2015-2016 \$4,886,433

For the Fiscal Year 2016-2017 \$4,866,478

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

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

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

Sec. 39. 1. There is hereby appropriated from the State General Fund to the Grant Fund for Incentives for Licensed



Educational Personnel created by NRS 391.166 to purchase one-fifth of a year of retirement service credit pursuant to section 5 of chapter 8, Statutes of Nevada 2007, 23rd Special Session, at page 18:

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

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

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

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

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

Sec. 41. 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,~~ **2017**, 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,~~ 2018, 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 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 of the school district for the school year. This determination governs the distribution of money pursuant to this subsection until the next annual 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,~~ 2018, 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. 42. Section 8 of chapter 4, Statutes of Nevada 2009, as last amended by section 28 of chapter 382, Statutes of Nevada 2013, at page 2069, is hereby amended to read as follows:

Sec. 8. Transitory provision.

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

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

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

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

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

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

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

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



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

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

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

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

20 ~~~~~ 15



1 FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR CARSON CITY

3 BEFORE THE HONORABLE JAMES E. WILSON, JR.

4 DISTRICT COURT JUDGE

REC'D & FILED
2016 JAN 22 PM 4:44
SUSAN HENRIKSEN
CLERK

BY C. C. DEPUTY

5 -oOo-

6 HELLEN QUAN LOPEZ, individually Case No. 15-OC-00207-1B
and on behalf of her minor
7 child, C.Q.; MICHELLE GORELOW, Dept. No. II
individually and on behalf of
8 her minor children, A.G. and
H.G.; ELECTRA SKRYZDLEWSKI,
9 individually and on behalf of
her minor child, L.M.; JENNIFER
10 CARR, individually and on behalf
of her minor children, W.C.,
11 A.C., and E.C.; LINDA JOHNSON,
individually and on behalf of her
12 minor child; K.J.; SARAH and
BRIAN SOLOMON, individually and
13 on behalf of their minor children,
D.S. and K.S.,

14 Plaintiffs,

15 v.

16 DAN SCHWARTZ, in his official
capacity as Treasurer of the
17 State of Nevada,

CERTIFIED COPY

18 Defendant.

19 =====
20 TRANSCRIPT OF HEARING

21 Wednesday, January 6, 2016
22 Carson City, Nevada

23 TRANSCRIPT PREPARED BY:

24 SHANNON L. TAYLOR, CCR, CSR, RMR, NEVADA CCR #322
Certified Court/Shorthand and Registered Merit Reporter
25 (775) 887-0472

SHANNON L. TAYLOR, CCR, CSR, RMR
(775) 887-0472

Appellant Appendix 000140

A P P E A R A N C E S

For the Plaintiffs:

Don Springmeyer, Esq.
Justin C. Jones, Esq.
Bradley S. Schrager, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3556 E. Russell Rd., 2nd Floor
Las Vegas, Nevada 89120

Tamerlin J. Godley, Esq.
Thomas Paul Clancy, Esq.
Laura E. Mathe, Esq.
Munger, Tolles & Olson, LLP
355 S. Grand Ave., 35th Floor
Los Angeles, California 90071

David G. Sciarra, Esq.
Education Law Center
60 Park Place, Ste. 300
Newark, New Jersey 07102

For the Defendants:

Lawrence VanDyke, Esq.
Solicitor General
Joseph Tartakovsky, Esq.
Special Assistant
Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701

Dan Schwartz
Nevada State Treasurer

TRANSCRIPT OF HEARING, 01-06-2016

1 WEDNESDAY, JANUARY 6, 2016, 1:29 P.M.

2 -000-

3 THE BAILIFF: Department II is now in session,
4 the Honorable James E. Wilson, Jr., presiding.

5 THE COURT: Please be seated.

6 15-0C-207, Lopez and others versus Schwartz.
7 This is the time set for a hearing on a motion for
8 preliminary injunction.

9 Counsel, I'm going to have you, starting from
10 the left in the front, state your appearances for me.

11 MR. SPRINGMEYER: Good afternoon, Your Honor.
12 Don Springmeyer of Wolf, Rifkin for the plaintiffs. To
13 my immediate left, Mr. David Sciarra of the Education
14 Law Center. To my far left, Tamerlin Godley of Munger,
15 Tolles. Ms. Godley will be our lead presenter.

16 THE COURT: Who will?

17 MR. SPRINGMEYER: Ms. Godley.

18 THE COURT: Thank you.

19 MR. VANDYKE: Good afternoon, Your Honor.
20 Lawrence VanDyke from the Attorney General's Office.
21 And I'll be presenting. And with me today at counsel's
22 table is Joseph Tartakovsky with the Attorney General's
23 Office, as well as Nevada Treasurer Dan Schwartz.

24 THE COURT: And who else do you have on this
25 side of the bar? Go ahead, from the left.

SHANNON L. TAYLOR, CCR, CSR, RMR
(775) 887-0472

1 MR. SCHRAGER: Your Honor, Bradley Schrager
2 with Wolf, Rifkin.

3 MR. JONES: Your Honor, Justin Jones on behalf
4 of plaintiffs.

5 MS. MATHE: Laura Mathe with Munger, Tolles.

6 MR. CLANCY: And Thomas Clancy with Munger,
7 Tolles.

8 THE COURT: Did -- were you thinking on
9 presenting any evidence, or just oral argument?

10 MR. SPRINGMEYER: Just oral argument, Your
11 Honor.

12 THE COURT: Same?

13 MR. VANDYKE: Same, Your Honor.

14 THE COURT: All right. I assumed. But I get
15 in trouble when I assume, so.

16 The Court has considered the briefs. I'm
17 familiar with them. I'm familiar with the cases. I've
18 read the amicus briefs, and I'm familiar with those. I
19 really don't need you to restate what's in the briefs.
20 I've got it. If there's something that you want to
21 emphasize, and I might have some questions for you, but
22 I really don't need you to just go through the briefs
23 again, or the information that's in the briefs.

24 So, are you ready?

25 MS. GODLEY: I'm ready, Your Honor.

1 THE COURT: All right.

2 MS. GODLEY: Your Honor, Tamerlin Godley on
3 behalf of the plaintiffs, parents of children of Nevada
4 public schools.

5 We start with the premise today that everyone
6 in this room is deeply committed to the education of
7 Nevada children and, two, the importance of education to
8 the State of Nevada. We're not here to talk about
9 motives, and we're not here to talk about education
10 policy.

11 We're here to determine whether SB 302 violates
12 Article 11, the education article of the Nevada
13 Constitution. And it does in three separate ways.

14 It violates articles 3 -- Article 11, sections
15 3 and 6, that prohibit the use of public school funds
16 for nonpublic school uses, for private uses.

17 It violates Article 6 as well, because SB 302
18 takes the amount that the Legislature deemed sufficient
19 for public education and reduces that amount below what
20 they have already deemed is sufficient.

21 And it violates Section 2, which mandates that
22 the Legislature create, maintain and fund a uniform
23 system of public schools.

24 Let's start with the violation of Section 3 and
25 6. And I just want to focus the Court's attention on

1 Section 3, that says that the monies, the Section 3
2 monies are hereby pledged for educational purposes only,
3 and the money therefrom must not be transferred to other
4 funds for other uses.

5 So we cannot use, and we know we cannot use,
6 under the Nevada Constitution, any Section 3 monies for
7 private expenditures.

8 Then we get to Section 6. And Section 6, there
9 has always been a Section 6 in the Nevada Constitution,
10 setting aside the monies for public education. It
11 started with a special tax. It was then changed to a
12 legislative apportionment, that they were required to
13 apportion money for public schools. And then, after a
14 crisis in 2003, when the Legislature did not fund
15 education, teachers could not be hired, schools could
16 not open.

17 In 2006, the State of Nevada said that we want
18 to make sure that public education is consistently and
19 sufficiently funded first, before anything else. We
20 have monies we need to divide up in our budget. We have
21 to fund education first. We put that in a lockbox. We
22 save it. It is for public education.

23 They can play politics with the rest of the
24 budget, what else that may go to, but we fund education
25 first.

TRANSCRIPT OF HEARING, 01-06-2016

1 And those funds, if we look at the bottom of
2 the -- the highlighted portion, 6.2, are to fund the
3 operation of the public schools, nothing else. And any
4 apportionment under Section 6, that is enacted in
5 violation of this, is void.

6 So we know our Section 3 funds have to be used
7 for public schools, and we know that our Section 6 funds
8 have to be used for public schools.

9 The education-first amendment, as I
10 discussed -- it was in the ballot booklet -- talked
11 about, and the people of Nevada said, yes, we want to
12 make sure we have a stable environment for our students
13 and teachers. We have consistent funding. We confirm
14 what the founders of and the framers of the Nevada
15 Constitution believed, the importance of public
16 education for this state.

17 We know, as early as 1897, that the Supreme
18 Court of Nevada said that "educational purposes" is only
19 public education. The Constitution does not include the
20 education of nonpublic school children in the term
21 "educational purposes."

22 And we also have a statute in Nevada, NRS
23 387.045, that says "No portion of the public school
24 funds or of the money specially appropriated for the
25 purpose of public schools shall be devoted to any other

SHANNON L. TAYLOR, CCR, CSR, RMR
(775) 887-0472

1 object or purpose."

2 So it is within this framework that we come --
3 oh, wait, one more thing. We also have the
4 constitutional debates, where in passing Article 11,
5 they said this refers only to the public schools, to the
6 appropriation of public funds for the public schools.
7 So it has a direct reference to their public schools and
8 clearly cannot refer to anything else.

9 What Article 11 was about was setting up the
10 public schools. They were concerned that in the future,
11 the Legislature would have deep pressure not to fund
12 those schools with sufficient funds. So they set about
13 to make sure that there was a commitment to fund public
14 education, of the limited resources of the State of
15 Nevada, that education would be funded, public education
16 would be funded.

17 So it's within this backdrop, where public
18 school funds can only be used for public schools, that
19 we have SB 302, a statute that on its face uses public
20 school funds for private expenditures, uses them for
21 ESAs. So its face, it says that the amounts for these
22 ESA grants are to be deducted from the total
23 apportionment to the school district. No ambiguity
24 here. Monies that would have gone to the schools, that
25 were dedicated to the public schools, are going to be

1 going to the ESAs for private expenditures.

2 From the Legislative Council's Digest, under
3 Section 16, the amount of the grant must be deducted
4 from the total apportionment to the resident school
5 district of the child on whose behalf the grant is made.
6 You live in Clark County, Clark County's going to get
7 \$5,100 less or \$5,700 less, depending on the amount
8 that's deposited in the ESA, for private expenditures.

9 Then we look at the text of the statute as
10 well. And you see that what a school district is going
11 to get is their apportionment, and you go down to the
12 lower blue part, minus all the funds deposited in the
13 Education Savings Accounts established on behalf of
14 children who reside in that county, under SB 302.

15 So we clearly have a situation where these
16 funds are set aside and must only be used for public
17 schools, and they are going, diverted to going to the
18 ESAs for private expenditures.

19 And on this basis alone, the SB 302 is
20 unconstitutional and should be enjoined.

21 It also violates Section 6 in an additional
22 way. The Legislature is tasked with funding public
23 education first. And then that money can only be used
24 for public education. We can't set up mechanisms where
25 that is reduced.

1 They not only misfunded, though. They didn't
2 just say, okay, pass an appropriation for education and
3 move on. They have to fund it at a level that is
4 sufficient, that the Legislature deemed sufficient to
5 fund public education.

6 And so here we have that is exactly what the
7 Legislature did in SB 515. They, using -- as even
8 defendant's own declarant, the interim superintendent of
9 public instruction says they used the Nevada Plan and
10 the calculations that they have used in the last
11 bienniums, looking at the needs of the different school
12 districts, fixed costs, population, the cost of special
13 needs students. They came up with an amount that they
14 deem sufficient to educate Nevada's public school
15 children, and they passed that amount.

16 Now, defendant says that, no, but we passed 302
17 first and then 515. So, in terms of timing, that's
18 fine. But that's not fine for two different reasons.

19 One is that you cannot have a mechanism --
20 imagine if we have a mechanism that said, okay, we're
21 going to fund the appropriation for education first, but
22 we're going to have a mechanism that says that for every
23 road in Clark County, we're going to get \$5,000 for
24 maintenance and support of that road. So we pass the
25 appropriation, but actually a part of that goes to road

1 construction.

2 They can't do that. And just because this goes
3 to ESAs that can be used for private educational
4 expenditures, it's no different.

5 They have created a mechanism. And whether
6 that mechanism was put in place before, at the same
7 time, or after, it deducts from the funds that the
8 Legislature has deemed sufficient.

9 But it's also wrong factually and was
10 impossible for them to do. So if they say, well, they
11 accounted for SB 302 in passing 515, there's no mention
12 of 302 in the statute. There's no mention of 302 in the
13 legislative history. There was no change to the
14 calculations under the Nevada Plan. None of this
15 occurred.

16 So we know that they factually didn't take it
17 into account. Nor was it possible to do so. They had
18 no idea how many students would use SB 302, would use
19 ESA. So they had no basis for estimating or providing
20 for it.

21 And there's nothing in the statute that says
22 that here's what we deem is sufficient, and here's the
23 additional monies that we've provided for SB 302.

24 So we have the monies that the Legislature
25 deemed sufficient, and then we have a mechanism that

1 they've passed that reduces that for private
2 expenditures. And that they cannot do.

3 Defendants also talk about that it's just the
4 same as though a child moved to California. We had a
5 child in our public schools. They moved to California.
6 It's just the same thing for that district.

7 Well, it's not the same thing for two different
8 reasons. First is that the state does not provide the
9 whole basic support guarantee. There's local funding,
10 and then there's state funding.

11 So if we look at Clark County, and if you look
12 at this chart, in 2014 it was just over \$2,000 that the
13 state provided to a school district, to Clark County
14 School District, for the funding of a child. So if a
15 child left, and that child got counted in their
16 enrollment, they get \$2,000 less.

17 But under the express language of SB 302, the
18 district gets 5,100 less or 5,700 less. That has to be
19 deducted from their apportionment.

20 So if we have -- right now, the last count that
21 I saw, there were 3,479 applications for ESAs from Clark
22 County. That's going to be at least a \$17.7 million
23 reduction in the funds that would otherwise go to Clark
24 County.

25 If we just had 3,479 kids leave the district,

1 we would have a \$7.6 million hit. So it's a different
2 hit. It's not just like kids moving. But it's also
3 different in a bigger, more important way.

4 When a child moves to California, we still have
5 Nevada funds that have been set aside for public
6 education and are available for the students, for public
7 students in Nevada. When a child gets an ESA, \$5,100 or
8 \$5,700 is paid for private expenditures. That money is
9 gone.

10 So not only we have this amount, the child uses
11 ESA, we're paying out money from the Distributed Schools
12 Account, money set aside for public schools.

13 So public schools are worse off both at the
14 district level and on a more macro level. It's not the
15 same thing as if a kid moves out of the district.

16 We also know that even the Treasurer's Office
17 has said that if we took into account, if every single
18 home-schooled child and every single private school
19 child, is it would be at least \$200 million. And we
20 know this is what it is. There's the home-schooled
21 children and private school children are going to take
22 up the subsidy. Over time, we are going to have this
23 money that is going to be going out to nonpublic school
24 uses.

25 And we know that this, the limited resources

1 within Nevada, that this itself is taking away from what
2 has been budgeted for public school kids and can only be
3 used for public school kids.

4 So then we get to Section 2, which provides
5 that because SB 302 uses public monies to fund a
6 nonuniform system of schools. Section 2, that's what it
7 says, is a uniform system of common schools, the
8 Legislature shall provide for a uniform system of common
9 schools. And that's what they were about.

10 So we know SB 302 violates this. And that even
11 was part of what the Legislature wanted to establish, a
12 school choice system, another system, a nonuniform
13 system.

14 We have -- these are going to schools that
15 aren't subject to the same teacher training
16 requirements, teacher certification requirements,
17 curriculum requirements, any of the number of things
18 that the State of Nevada has passed, the uniform
19 standards for its public schools.

20 We also know that these schools aren't open to
21 all. They have various faith requirements. They can
22 turn people away if they can't pay the full amounts.

23 So we know these are going to -- the money will
24 be used for a nonuniform set of schools.

25 And this money is not -- we're not just taking

1 this money and saying, okay, you know, there were 10
2 kids in the school, and we -- now one of them's going
3 over here, so we're now paying for nine kids instead of
4 10. We're talking about, as well, subsidizing all of
5 the private and home-schooling students in the state.
6 So we're taking the money back we set aside for our
7 uniform set of schools to pay for those 10 kids. And
8 now we're paying for 11, and 12, and indeed all of these
9 other students.

10 That will have a huge impact. In the first
11 quarter alone, we have 4,100 preapplications, so
12 \$21 million coming out of our funds for public
13 education, which will only grow and balloon over time.

14 So the answer to this from defendant is
15 Section 1, that Section 1 allows them, despite the other
16 parts of the Constitution, despite Section 3, Section 6,
17 Section 2, that they can use all suitable means, and
18 this is a suitable mean, and so they can fund and
19 subsidize home-schooling and private school education
20 with public dollars, with public school dollars.

21 But that is not consistent with the evidence
22 that is before the Court. Let's look -- and it's also
23 not consistent with the way that the Constitution should
24 be read.

25 The only evidence in the record is that the

1 founders intended Article 11, including Section 1, to
2 pertain only to public schools. We have the declaration
3 of Michael Green that puts us all in the context.

4 But we also, when we look at the way that
5 Section 1 -- if you have the chance to look through the
6 history, when the debaters were, the framers were
7 approving the Constitution, the chairman said "The
8 question is on the adoption of Section 1." And one of
9 the framers of the Constitution said, "For my own
10 information, in order that I may be able to vote
11 intelligibly, I will ask that Section 2 of this article
12 be read."

13 So we understood that they were looking at
14 Section 1 and 2 together, that Section 1 was going to be
15 implemented through the public education system, through
16 the funding of a uniform system of common schools open
17 to all.

18 We also know that when they -- when they
19 discussed suitable means, they were focusing in that
20 debate about being able to teach morality in the schools
21 and whether there were suitable means to do that. And
22 so there's a discussion of the suitable means for
23 teaching morality in the public schools.

24 There is no support for a 2015, 2016 now,
25 interpretation by the defendant that, oh, no, this meant

1 something else, this meant a free card, to use public
2 money in whatever way that the Legislature thought
3 appropriate. No.

4 The other thing, too, is we have to look at all
5 suitable means. "All suitable means" means that it has
6 to be consistent with the Constitution. And the
7 Constitution requires that Section -- that public school
8 funds, under Section 3 and Section 6, should be only to
9 operate the public schools, be used only to operate the
10 public schools, and also a suitable means, that it
11 doesn't take the Section 6 appropriation below what the
12 Legislature deemed sufficient.

13 And so, with that, Your Honor, I'll ask if you
14 have any questions.

15 THE COURT: Is Section 1 or Section 2
16 ambiguous?

17 MS. GODLEY: So Section 1 is informed by the
18 history. I think, it's fair to say what they meant
19 in -- when the Constitution was framed. We are served
20 by looking at the history of it. I don't think, on its
21 face you can say, oh, so it means, this is what they
22 meant in this preparatory statement. I think, it is we
23 are informed by the legislative history of the framers
24 of the Constitution at the time.

25 THE COURT: When you were talking about the

1 evidence about SB 515, I think what I heard you say was
2 plaintiffs win because there's no evidence in the record
3 that the legislators considered 302 when they voted on
4 515?

5 MS. GODLEY: So the first part, we win on the
6 first part, is that on its face it is using school funds
7 for nonpublic school expenditures.

8 On -- in terms of taking it below what we have,
9 the only evidence in the record is that 515 is the
10 amount that the Legislature has set aside as sufficient.
11 And this mechanism takes it below that. This, they put
12 in place a mechanism that deducts from the Section 6
13 appropriation.

14 And so, even regardless of what they did or
15 what they intended or didn't intend in 515, we know that
16 they didn't here, but we also --

17 THE COURT: Didn't?

18 MS. GODLEY: We know that they didn't take it
19 into account.

20 THE COURT: Because it's not mentioned in the
21 record?

22 MS. GODLEY: Because it's not mentioned.
23 There's no change in the calculations. But you can't
24 have a mechanism that deducts from what you're setting
25 aside under Section 6 as sacrosanct, as the lockbox for

1 education funds. You can't have a mechanism that
2 automatically deducts from that to pay for private
3 expenditures.

4 THE COURT: So let me ask it a different way.
5 What evidence is there that the Legislature did not
6 consider 302 when it voted on 515?

7 MS. GODLEY: So, I think, there's a number of
8 things, in addition to no mention of it at all. So
9 we -- there is no basis for saying that they have in
10 515, okay, here's the funds that are sufficient, and
11 here is the money that we've set aside for 302. We
12 don't have that.

13 But what we also have is a process. And even
14 the interim superintendent of school says they used the
15 same process, under the Nevada Plan, to determine the
16 amounts that were sufficient. And that didn't change.
17 What was appropriated under the Nevada Plan didn't
18 change because of SB 302.

19 And so that evidence is also before the Court.

20 THE COURT: So what -- and I -- I just want to
21 hear it one more time. What does Article 1 mean?

22 MS. GODLEY: So Article 1 is, first,
23 preparatory language, starting out "We're establishing
24 public schools." And what it means is that within the
25 public school system, that we're setting up in this

1 whole article, that this is the first sentence of, they
2 can use all suitable means to accomplish these
3 different -- moral education is what they focused on in
4 the debate. But these other intellectual, literary,
5 mining, whatever, they can use the suitable means within
6 the public education system.

7 Now, it's certainly, I do want --

8 THE COURT: Why, why didn't they just say that,
9 then? Why didn't they say you can use any suitable
10 means in the public school system?

11 MS. GODLEY: Well, I think, they were focused
12 solely on the public schools in all their debates. So
13 when they talk about this, the question is raised. In
14 fact, one of the -- one of the persons says, you know,
15 this is solely about public education, that what this
16 article is about is about public education, and the
17 reference to it here is public education.

18 We have, also, in the Westerfield case saying
19 that their reference to education here is about public
20 education.

21 That's what they were about in this endeavor.
22 There's nothing in the debate that says, you know, and
23 then they can also use public funds for, you know, any
24 number of things. This is about setting up a public
25 education system and making sure that it's funded.

1 So I don't think they even thought that there
2 was a need to make that focus. And it doesn't even say
3 "education" actually. The defendant keeps putting it in
4 brackets in their brief that this says "all suitable
5 means to support education." Indeed it does not say
6 that. It says "all suitable means" to support these
7 different areas.

8 But in the debates, you can see; they ask to
9 have them read together, that we wanted to see, well,
10 what were we voting for. All suitable means. Okay.
11 This is going to be public education, a system of common
12 schools. They were to be read together as part of the
13 same Article 11, public education.

14 And I want to be clear, one thing the defendant
15 has said is that under our position, that this would
16 make, you know, home-schooling and private schools
17 illegal. But of course not. We're not talking about
18 any of then the funding. There are limited resources to
19 fund priorities within Nevada. And the Constitutional
20 framers said public education we will publicly fund.

21 This is about funding, not about whether
22 parents can choose home-schooling or chose private
23 school, whether it be home-schooling or be private. Of
24 course not. This is about where are our very scant
25 resources, what are we going to use them for? And the

1 Constitution said we're going to use them for public
2 education.

3 THE COURT: Thank you.

4 Mr. VanDyke.

5 MR. VANDYKE: Your Honor, especially in light
6 of your saying that, you know, you're very familiar with
7 the briefs, and there's obviously a lot of issues in
8 this case, I think, I'd like to -- this is how I'd like
9 to progress. And, obviously, you let me know if you'd
10 like me to go some other.

11 But, I think, what I'd like to do is start by
12 sort of clearing the air and trying to explain as well
13 as I can how the public schools are funded in Nevada
14 under the Nevada Plan and then how ESAs are funded and
15 how, if any way, they relate to each other. Because
16 that, that whole -- I think, there's been a lot said and
17 a lot written that is not correct, in our view.

18 THE COURT: Okay.

19 MR. VANDYKE: And then what I'd like to do is
20 step back a little bit, once I've done that, and instead
21 of talking in-depth about each section, 1, 2, 3 and 6, I
22 really would like to contrast the plaintiffs' view of
23 what it says and our view. Because they're very
24 different. And, I think, it's important for the Court
25 to see exactly how they're different.

1 And then, and then what I'd like to do is talk
2 about two very important standards, the facial standard
3 and then the -- what I call the thumb on the scale in
4 favor of constitutionality standard, but the presumption
5 of constitutionality standard, that are both very clear.
6 And, I think, especially talking about that after we've
7 compared the plaintiffs' legal theories of sections 1,
8 2, 3 and 6 and ours, I think, it'll be very
9 enlightening.

10 And then, and then there are a few things that
11 I plan to talk about to sort of wrap up on Section 2 and
12 6, as well as irreparable harm. I would like to touch
13 on irreparable harm. But, I think, I'll ask you at that
14 point whether or not you have any questions about those
15 sections. Just I don't want to say stuff that you
16 already know.

17 So starting with how the system works, Your
18 Honor, public schools, you know, long before there was
19 ESAs, under the Nevada Plan, public schools kind of get
20 their money from three pots, so to speak. Two of those
21 pots are what you call the local funds.

22 There's a local amount of money that public
23 schools get that is not taken into account when the
24 Legislature -- you know, if you looked at SB 515, that
25 very first section, for each school, is it sets out a

1 number for each school, per-pupil amount. There's
2 another pot of local funds that is not considered with
3 regard to that per-pupil amount. So that pot of local
4 funds school districts get regardless of what that
5 amount is.

6 Then there's another. Then the second pot of
7 local funds is used in figuring out -- if you look at
8 Section 6.1 -- 6.2 of the Constitution, of Article 11,
9 it says that the Legislature has to figure out how much
10 it deems to be suitable in conjunction with the local
11 funds. That's talking about those local funds.

12 So if there's -- first, there's a section of
13 local funds they get regardless. Then there's a section
14 of local funds that are used in figuring out how much
15 the state has to give in to make up the per-pupil
16 amount.

17 And that's where, I think, opposing counsel
18 talked about how, you know -- I think, and I don't know
19 if this number is correct, but I assume it is, that like
20 Clark County, even though their number is, on SB 515 is
21 5,500, it's an amount less than that they get from the
22 state. The rest of that's made up with their local
23 funds.

24 So there's local funds that are not counted as
25 part of the -- of this per-pupil amount. There's local

1 funds that go into that. And then there's the state
2 that makes up so that they get that per-pupil amount.

3 What the Legislature has done under the Nevada
4 Plan, what it did before and the exact same thing it's
5 done in SB 515, and it does this because of Section 6.1
6 and 6.2 of the Constitution, the Legislature figures out
7 the amount that it deems to be sufficient. And that is,
8 it's very important that that is, that's something
9 that's left to the sole discretion of the Legislature.
10 In fact, I don't think the plaintiffs in this case have
11 really tried to say that the Legislature's -- that what
12 the Legislature deems to be sufficient can be
13 second-guessed by a court or anybody else. In other
14 words, that's -- I think, that's a nonjudiciable
15 question.

16 And what they're trying to say, though, is that
17 the amount that the Legislature deemed sufficient, their
18 Section 6 argument said, it's trying to say that if you
19 look in SB 515, there's the per-pupil amount that's laid
20 out in Section 1, but then in Section 7 there's this two
21 billion plus dollars.

22 And what they were trying -- they don't ever
23 really say this explicitly. What they're trying to say
24 is that -- you know, you heard it many, many times this
25 afternoon, and that is, it's got -- that's the public

1 school money. That's the public.

2 So that, the Legislature, in SB 515, just like
3 it has always done with the Nevada Plan, sets aside --
4 it says there's a per-pupil amount that you are
5 guaranteed, as the public schools, that you're going to
6 get.

7 And then it sets aside a huge bucket of money
8 for the biennium. And that's where that money is going
9 to come out of. But it's really important to recognize,
10 and it's very obvious from the structure of SB 515, that
11 huge bucket of money was never the amount, the Section 6
12 money that the Legislature deemed sufficient. It was
13 never the, quote, unquote, public school money
14 guaranteed to the schools.

15 Because if you look at Section 7.2 of SB 515,
16 what happens to money left in that bucket -- well, first
17 of all, the Legislature's only guaranteeing the schools
18 a per-pupil amount. If you've got a hundred students,
19 you're going to get a hundred times that amount.

20 What happens if once that's all paid out to all
21 the various schools, if there's money left in that
22 bucket? Because after all, the Legislature's not ever
23 going to get those numbers to match up exactly. So if
24 their estimate is high, and there's money left in that
25 bucket, it's very obvious, under 7.2, where that money

1 goes, the same place it always did, back into the
2 General Fund, Your Honor.

3 If plaintiffs were right that the Section 6
4 money was that two billion dollars, and so therefore you
5 can't take any money out of that two billion plus
6 dollars, then it would be unconstitutional to have
7 happen what's always happened, and that is, any money
8 left in the DSA at the end of the biennium reverts back
9 to the General Fund where it's spent for any and
10 everything, Your Honor.

11 So their theory -- the Section 6 money has to
12 be the per-pupil amount that's laid out times the number
13 of pupils, obviously. That's the amount that's
14 guaranteed. That's the amount the Legislature has
15 deemed sufficient before and after ESAs. It's the exact
16 same process, Your Honor.

17 And the other thing, too, I want to add to
18 that, under Section 9 of SB 515, you'll note that if the
19 opposite happened. You know, plaintiffs talk about, oh,
20 no, what if every public -- what if every home-school
21 and private school student went and got an ESA? We'd
22 have a large, a big shortfall. Now this two billion,
23 two plus billion wouldn't be enough to cover it.

24 That could happen whether there was ESAs or
25 not. In fact, my understanding is that that did happen

1 actually the last biennium. The amount of money that
2 was put in the DSA was not enough to cover what the
3 public schools ended up requiring with the per-pupil
4 amount.

5 But that's why Section 515 has a provision,
6 Section 9, that says -- or SB 515 has a provision,
7 Section 9, that says, if there's not enough money, if it
8 ends up being a shortfall, the comptroller is directed
9 to take money from the -- from the General Fund and put
10 it in the Distributive School Account.

11 So this, all of this handwringing and the sky
12 is going to fall about, you know, ESAs are somehow to
13 run the DSA out of money, the DSA, the lump-sum two plus
14 billion dollars is not the public school money. That's,
15 that's Section 1 of 515. That's the amount that's
16 funded first, is Section 1 of 515, the per-pupil amount.

17 And that's the second thing I want to get to,
18 Your Honor, is that ESAs don't affect that in the least.
19 Now, plaintiffs had a slide here that talked about
20 how -- the way they're reading it is they're saying --
21 they're saying that the students -- I guess, the way
22 they're reading it is the students are counted in to the
23 public -- the ESA students are counted in to the public
24 school system. And then the school district counts them
25 out. And they count them in at the \$2,000. The way

1 they end up with this large shortfall, they said they
2 count them in, to use Clark County, at the \$2,000
3 per-pupil state amount, and then they're counted out at
4 the 5,100.

5 Well, that's not actually the way the law is
6 going to be applied. The way that the law is planning
7 to, is planned to be applied -- and keep in mind, this
8 is a facial challenge, Your Honor. And I'll talk about
9 that more in a little bit.

10 But plaintiffs have to be able to demonstrate,
11 if they want this law struck down in its entirety,
12 before it's ever even been applied, before a penny's
13 ever been spent to an ESA, if they want that, they have
14 to demonstrate that this is unconstitutional and that it
15 could not be applied constitutionally.

16 And the way it's planning to be applied is
17 that, is that the students, the way the students are
18 going to be subtracted out, under Section 16.1 of
19 SB 302, so the way the students are subtracted out of
20 the school district, the way, they're just planning to
21 subtract them out up front, the same way that a student
22 is subtracted out of a school district count when the
23 student moves away.

24 So plaintiffs -- I can't emphasize enough,
25 plaintiffs are just wrong about the way. And when they

1 say it's no -- it is very different than when a student
2 leaves. Well, if you do it the way they want it, they
3 want to do it. But they're not in the driver's seat
4 here. The education, the government is -- has decided
5 to interpret it, so that you count the students out up
6 front. You count the students out up front.

7 And then it's no different. And part of the
8 reason they're doing that is to avoid this sort of
9 pass-through concern that plaintiffs have.

10 So that's the way they're interpreting the
11 statute. That's an interpretation, A, Your Honor,
12 that's an interpretation that, I think, is due deference
13 as an agency interpretation of a statute that they're
14 supposed to promulgate.

15 It's also due -- to the extent that
16 plaintiffs -- to the extent that the Court was concerned
17 about constitutional problems with plaintiffs'
18 interpretation, it would also be an interpretation that
19 was -- that this Court should reach because of the canon
20 of constitutional avoidance.

21 And, lastly, if plaintiffs don't like that
22 interpretation, Your Honor, the only reason they don't
23 like it is because it avoids any constitutional
24 problems. They don't really have standing to even raise
25 concerns about that interpretation.

1 So their whole concern -- so just to be clear,
2 money is set aside under SB 515. The very first section
3 sets aside a per-pupil amount. School districts will
4 get that per-pupil amount.

5 And the only way that a school district is
6 affected, the only way they're affected is, if a student
7 drops out of the public school and gets an ESA, then a
8 school district gets that much less money, you know,
9 whatever. So in the case of Clark County, they would
10 get that \$2,000 less.

11 In fact, the actual per-pupil amount the school
12 gets goes up with every student that comes out, because
13 it's got these three buckets of money, and the only one
14 they get less is the state amount. So, actually, the
15 per-pupil amount goes up. They actually get a benefit
16 on a per-pupil basis.

17 But they might end up with slightly less money
18 if a student leaves, say, the Clark County School
19 District, to get an ESA. But, of course, as we say in
20 our briefs, that, that always happens, that that could
21 happen because a student drops out of school. That
22 could happen because a student moves away, out of state.
23 That will happen if a student transfers, you know, moves
24 in-state to a different school district, Your Honor.
25 So.

1 So I want to make sure, because there's been a
2 lot of misstatements, and I want to make sure of a
3 couple things. One is that Your Honor is comfortable
4 and understands how this -- you know, these important
5 issues as to how the funding system works.

6 And the other thing I want to make clear is,
7 you know, we've got a preliminary injunction motion, and
8 we have got the motion to dismiss. At the motion to
9 dismiss stage, Your Honor, you have -- obviously, you
10 take -- you give them the benefit of the doubt as far as
11 facts.

12 THE COURT: We entered an order on the motion
13 to dismiss. It was denied.

14 MR. VANDYKE: Oh, are --

15 THE COURT: You may not have gotten that, but.

16 MR. VANDYKE: Oh, we haven't received it yet.
17 I'm sorry, Your Honor. Well, bummer. Okay. Well,
18 then, I'll --

19 THE COURT: Sorry to ruin your day.

20 MR. VANDYKE: Yeah. Okay. Well, that's,
21 that's good to know.

22 I'll -- so. So we're only talking about the
23 preliminary injunction. I'll recalibrate, Your Honor.

24 I guess, it -- so if all we're talking about is
25 the preliminary injunction, obviously, you don't need to

1 take their facts at face value.

2 But I do think, I think, even asked of those
3 facts -- and I'll talk about this more in a little bit,
4 more. But the facial standard, Your Honor, really comes
5 to bear even in the preliminary injunction. Because
6 they can't just allege some facts that would show that
7 something would be unconstitutional if, if the
8 government applied this system the way they -- their
9 parade of horrors says it could be applied. They have
10 to be able to demonstrate facts even at the PI stage.
11 If they want a PI, they have to be able to show that
12 they're likely to succeed on the merits.

13 And to succeed on the merits on a facial
14 challenge, they have to be able to show that it would be
15 unconstitutional in every way that it could be applied,
16 Your Honor. So.

17 THE COURT: Where, where in the record is your
18 explanation about the pupils being subtracted out at the
19 outset?

20 MR. VANDYKE: It's in actually -- it's in
21 actually the declaration. If you look at the
22 declaration that they talked about, that from the state
23 superintendent of education. He says that in it. And I
24 can try to find it real quick in it. But it's in his
25 dec. It's not that long. And it's in there where he

1 talked about that it won't affect and that they will be
2 subtracted out up front, Your Honor.

3 So there won't -- so this is really important.
4 Because, I think, you know, thinking through this, the
5 only way that ESAs -- you know, they have all these ways
6 they say ESAs could impact. The only way, I think, that
7 ESAs, in reality, will impact the public school system
8 is the same way that the state moving a bunch of jobs
9 from Carson City to Reno, to Reno, or from Carson
10 City -- or from Reno to Las Vegas could impact. And
11 that is, it could cause students to leave. And when
12 students are not in the school district, they don't get
13 counted for the per-pupil amount.

14 But, of course, Your Honor, that's an issue.
15 That's a -- that's something that predated ESAs. I mean
16 school -- really that's an attack on the Nevada Plan.

17 The Nevada Plan -- and this is what I want to
18 emphasize. Under Section 6, we have to figure out what
19 is the amount that the Legislature has deemed to be
20 sufficient under Section 6. I think, that can only be
21 one amount, and that's the per-pupil funding amount.

22 And, arguably, you could say that because the
23 per-pupil funding amount was passed against the backdrop
24 of the already existing hold harmless guarantee -- are
25 you, are you familiar, Your Honor, with how the hold

1 harmless works? So.

2 THE COURT: Yes.

3 MR. VANDYKE: So you could say that in -- the
4 per-pupil funding amount, plus that minimum lump-sum
5 amount that's guaranteed by the hold harmless guarantee,
6 are, basically, the two amounts that the Legislature's
7 deemed sufficient.

8 So if you want to find amounts that the
9 Legislature can't dip into once they deem it -- because
10 that's what, I think, Section 6 does. It does say you
11 got to fund education first. So you set those amounts.
12 And then the Legislature can't dip into it.

13 The Legislature hasn't done that, Your Honor.
14 It hasn't done it.

15 Plaintiffs' argument ends up devolving into
16 there's this DSA account over here, and they want us to
17 pretend like that DSA account is the public school
18 funds.

19 But there's nothing -- it's critically
20 important. There's nothing in the Constitution that
21 says that the DSA account is the public school funds and
22 that it's only for the public. This is something of
23 their own making. They try to get there through Keith,
24 because they try to, basically, say the DSA is the same
25 as the general school fund that's addressed in Keith.

1 But, I think, we made this clear in our briefs,
 2 Your Honor. But I just want to make abundantly clear,
 3 that's not the -- the modern Section 6 is nothing like
 4 the section -- the old general school funding, Keith,
 5 had money in it from two sources. It had money from the
 6 permanent school fund, the Section 3 money, which is
 7 earmarked only for educational purposes. And plaintiffs
 8 want to say that's public schools. But let's assume for
 9 a second even if that's true. And the other was, like
 10 as plaintiff said, a special tax that was earmarked for
 11 the public schools.

12 That money was all put into a fund called the
 13 general school fund. Of course, that money could only
 14 be used for the public school system.

15 That's nothing like today. Today the vast
 16 majority of money in the DSA comes from the General
 17 Fund. The very same money that the court in the latter
 18 part of the Keith decision not only said was okay, but
 19 actually directed a nonpublic school educational payment
 20 to be made out of.

21 Which, Your Honor, I think, I want to make the
 22 point here that if plaintiffs are right about their
 23 interpretation of Section 1, if they were right about
 24 that, then what power did the court in Keith have for
 25 allowing the Legislature to make a nonpublic school

1 payment?

2 Remember, in Keith, the court says, you can't
3 make it out of this fund or the general school fund, but
4 you got to make it out of this fund.

5 That's the Section 1 power, Your Honor. That's
6 the only power. Plaintiffs' reading of Section 1 out of
7 the Constitution means that the second part of Keith
8 makes no sense, Your Honor.

9 So if you have any more questions about -- I
10 definitely, one of the main things I wanted to do this
11 afternoon was make sure, especially given the amount of
12 speculation and, frankly, mischaracterization of how the
13 funding works, I wanted to make sure Your Honor is very
14 aware that the DSA is not the public school money, that
15 the Section 6.2 sufficient funds are that Section 1 of
16 SB 515. It's got to be the per-pupil amount. That's
17 all the public schools are ever guaranteed.

18 A public school that thought it was going to
19 have a thousand kids, before there was ever ESAs, a
20 public school that thought it was going to have a
21 thousand kids, but only ended up with 975, only got paid
22 for 975 kids. So it can't be that the lump-sum amount
23 is the per-pupil -- is the Section 6 sufficient funds,
24 Your Honor.

25 So with all that, if you have any questions

1 about that, I want to address them.

2 But with all that, I want to step back a little
3 bit and simply compare the plaintiffs' theories of
4 Section 1, 2, 3 and 6 and the state's theories of
5 sections 1, 3, 2 and 6.

6 And so, starting with Section 1, Your Honor,
7 so, as you know, Section 1 says that the Legislature
8 shall encourage education by all suitable means.

9 And I want to emphasize here they say it
10 doesn't say "encourage education." But the title says
11 "encourage education." So it's pretty clear that that
12 long list of things, that the framers thought was
13 encouraging education, Your Honor.

14 So when we put "encourage education" in
15 quotes -- which was my call. There was a little bit of
16 a controversy in our office, but I thought it could be
17 put in quotes because it's in the title of that.

18 So it says "The Legislature shall encourage
19 education by all suitable means." And you heard again
20 this afternoon, plaintiffs, essentially, think, say the
21 Court should read Section 1 as a hortatory, superfluous
22 provision, Your Honor. I think, they said "precatory"
23 this afternoon. It doesn't really give the Legislature
24 any authority.

25 Now, so that's their argument. Our argument is

1 that Section 1 is -- not only gives the Legislature
2 authority, but gives it broad discretionary authority.

3 And I want to emphasize, the state's
4 interpretation is, first of all -- you know, this goes,
5 I think, to your question about whether or not there's
6 ambiguity. The plain text, I don't think there's
7 ambiguity, Your Honor. It says that the Legislature
8 shall encourage education by all suitable means. And so
9 the plain text supports that interpretation.

10 And, secondly, as we note in our brief, and I
11 don't think plaintiffs have provided any response to,
12 all of the courts that have considered any similar
13 language in other state constitutions. And here the
14 most similar one is the Indiana court, which has very
15 similar language. But, also, we pointed out the Rhode
16 Island Supreme Court interpreting more similar, you
17 know, somewhat similar language, Your Honor.

18 They've all said that that kind of language
19 gives broad authority, that, basically, you have a
20 common school system, and it sets a floor, and the
21 Legislature has all kinds of discretion to do more than
22 that.

23 But not only that, as I've already noted, Your
24 Honor, it's not just other courts. Our own Supreme
25 Court, in the Keith decision, the only way you can make

1 sense of what the court did in the second part of Keith,
2 is if it was -- if it was assuming that the Legislature
3 had authority to fund education outside the public
4 school system. And so Keith itself supports that.

5 And then, lastly, I want to emphasize, just
6 because plaintiffs brought up the Green -- the Greens'
7 declaration. I think, we did a pretty good job in our
8 reply, Your Honor, of showing that Professor Green sort
9 of left some things out in his analysis of the
10 constitutional debates. And those are located in our
11 reply on pages three through six.

12 Especially the fact that, after quite a bit of
13 argument -- this is sort of the -- made a point, I
14 think, and that is, a debate, they were trying to decide
15 whether they should try to limit the Legislature or
16 whether they should, basically, leave education to the
17 discretion of the Legislature. And they decided to
18 leave it to the discretion of the Legislature.

19 So, Your Honor, these are not even close calls,
20 I don't think. I don't. You know, these are not close
21 interpretations. These aren't nuance differences. And
22 I'll get to why I think that makes a difference when I
23 talk about these two twin standards that, I think,
24 apply, Your Honor.

25 But I'm going to turn to Section 2. So

1 plaintiffs read Section 2 as, basically, saying that the
2 only way that the state -- excuse me -- that the
3 Legislature can encourage education is through the
4 public school system. We heard it here again today,
5 this afternoon, Your Honor. So they want, they want to
6 read Section 2 as, basically, subsuming Section 1.

7 We argue that sections 1 and 2 should be read
8 harmoniously, so that -- and, basically, that Section 1
9 provides as broad authority for the Legislature to
10 encourage education by all suitable means. And then,
11 but, it gives discretion to the Legislature to pick
12 which ones it wants to do.

13 And then Section 2 says, but here's one you
14 have to do. Here's one you have to do. You have to
15 encourage education by this means. And that is, a
16 uniform common school system.

17 And, again, Your Honor, if you compare those
18 two very different interpretations, the state's
19 interpretation is supported by the well-settled canons
20 against a -- however you say it, surplusage. So, you
21 know, it actually gives meaning to the very first
22 section of our education article.

23 It also is supported by the canon for reading
24 provisions harmoniously instead of in conflict.

25 It's also supported, Your Honor. Even more

1 courts have considered the question of whether these
2 common schools provisions, basically, set the ceiling.
3 And all of the courts outside of Nevada that have
4 considered this question, with any kind of provision
5 similar to Nevada's -- and here, it's, again, the
6 Indiana Supreme Court, the North Carolina and Wisconsin
7 courts. All of those courts have reached the
8 conclusion, the very commonsense conclusion, I think,
9 that, yes, you have to create a common system of
10 public -- a uniform system of common schools.

11 But then that's a floor. I think, courts have
12 used the word. That's a floor. And the Legislature's
13 free to do other things.

14 And plaintiffs would like this Court to -- you
15 know, they didn't talk about it this afternoon. But
16 they rely heavily on the Florida Bush case, for obvious
17 reasons, because it's the only court that's interpreted
18 common schools language the way that they would like.

19 But I hope the courts -- I think, it should --
20 I can definitely explain it further. But the language
21 in the Bush case is very different from Nevada's. But
22 not only that, you don't have to rely on us saying that.
23 The Bush court itself, when it said here's how we're
24 going to rule, it didn't say, you know, the Wisconsin
25 court has reached a different conclusion, and they're

1 just wrong. They said the Wisconsin court's reached its
2 conclusion, but it has very different language.

3 And then the Indiana court came along and said,
4 you know how Bush distinguished Wisconsin court. We're
5 distinguishing Bush that way.

6 So you can read all of the cases consistently.
7 You don't have to disagree with the Bush court. You
8 just have to apply the Bush court's reasoning according
9 to its terms. And that is very different language in
10 the Florida, in the Florida Constitution, where the
11 Florida court says, you know, the constitution says you
12 need to -- well, I can get to that in a little bit, if
13 you want to, Your Honor. But, I think, you know, I
14 think, we make it pretty clear how the language works.

15 But I'd love to, I'd be happy to address it if
16 you think it's unclear.

17 So, again here, Your Honor, I think that
18 plaintiffs have a very different, very different reading
19 of Section 2. We read Section 2 as something the
20 Legislature has to do. It does create, the Legislature
21 has to create a common system of public schools, but
22 that that's not the only way that the Legislature can
23 encourage education.

24 Section 3, Your Honor, is a little bit odd in
25 that plaintiffs are, essentially, arguing that even

1 though the amount of Section 3 money -- so the way it
2 works is there's this permanent school fund. And the
3 interest in the permanent school fund gets kind of
4 automatically siphoned off into the DSA on occasion. I
5 wasn't actually able to figure out how often this
6 happens. But it happens on -- sort of automatically.

7 And then, so the amount that -- in 2014, the
8 amount of the total money in the DSA was, I think,
9 point zero -- or .14 percent. So less, well below one
10 percent of the money in the DSA came from the, what you
11 call, Section 3 money.

12 And so even if -- first of all, Section 3 money
13 is limited to -- Section 3 money has to be spent for
14 educational purposes.

15 Plaintiffs, it was interesting, they cited to,
16 in one of their slides they cited to a section in Keith
17 where it talks about that money. And Keith said --
18 Keith said -- they wrote -- I don't know if you noticed,
19 but they put little brackets, and they said nonpublic
20 school children don't have the -- they said "The
21 Constitution does not include the education of"; and
22 they put a bracket that said "nonpublic school
23 children."

24 But, of course, that's not what it says. The
25 bracket is added. What it says is "these children."

1 who are "these children"? "These children" are orphans.
2 And in the old, in the previous case -- I think, it was
3 the Dovey case -- the court had said "These children do
4 not have a right to"; it's not just that they're not
5 attending a public school, they don't have the right to
6 attend a public school.

7 That's what the Keith case said, is it said
8 that Section 3 money could not be used to fund the
9 education of children who do not have the right to
10 attend a public school.

11 Of course, the children that are getting ESAs
12 clearly have the right to attend a public school. In
13 fact, they have to have attended a public school in
14 order to be eligible.

15 So they clearly have the right, Your Honor.

16 So that's a very -- that's one way, I think,
17 that Keith just doesn't apply. But even assuming, Your
18 Honor, that you were to say, you know, I think, I read
19 Keith to say that Section 3 money can only be used for
20 the public schools, you still would have to, I think,
21 effectively apply a sort of a noncommingling here. I
22 guess, that's what you have to do. You have to apply a
23 noncommingling requirement, say that if there's a drop
24 of Section 3 money in a massive bucket of DSA money,
25 that somehow taints all of the DSA money.

1 Well, Your Honor, I think, that's a pretty
2 extreme reading. And I'll get to, in a little while,
3 why I think the standards don't -- that's not the way
4 that -- the Court shouldn't be, obviously, stretching to
5 find unconstitutionality. The Court, if anything,
6 should be stretching or putting a thumb on the scale to
7 find a statute constitutional.

8 So there's no reason to assume
9 unconstitutionality, that the Section 3 money is being
10 spent when it's less than one percent and the vast
11 majority of the money in the DSA is being used for
12 public schools, Your Honor.

13 So the last thing, Section 6. This is a very
14 interesting argument. Because, essentially, what
15 plaintiffs are asking this Court, the argument they're
16 wanting the Court to adopt, is that in the very same
17 act, 515, the Court -- I think, they recognize that the
18 Court isn't going to say the Legislature -- I get to
19 second-guess what the Legislature deems to be the
20 sufficient amount.

21 So, instead, what they're saying is, in the
22 very same act, the Legislature set aside an amount that
23 it deemed to be sufficient, and in that very same act,
24 somehow dipped into that and diverted, or whatever word
25 they want to use, to take money out of that.

1 That is a very odd reading of what the
2 Legislature did. It seems to me that's applying a very
3 strong presumption of unconstitutionality. Instead of
4 reading something terribly and saying, what are -- even
5 if the Legislature was to have set aside a pool of money
6 and then dipped into it at the same time, that the
7 Legislature -- that whatever amount is the net amount of
8 that is the amount that the Legislature deemed to be
9 sufficient under Section 6.

10 So their reading requires a real, I think, set
11 of mental gymnastics to assume that the Legislature both
12 complied with Section 6 and then somehow violated it in
13 the very same act.

14 The only way all -- if you put aside all of
15 their sort of false assumptions about how this works,
16 the only way that they have a Section 6 claim, I think,
17 Your Honor, or a Section 2 claim, is by saying that when
18 a student leaves the public school system to get an ESA,
19 that has somehow violated Section 2 or Section 6.

20 That is a very -- it seems to me that that kind
21 of argument proves way too much, Your Honor. There's
22 lots of reasons students leave. Long before there were
23 ESAs, schools were never guaranteed a certain
24 enrollment. Schools were never guaranteed a certain
25 lump-sum amount of money, other than that minimum hold

1 harmless amount, that they're still guaranteed exactly
2 that amount, Your Honor.

3 Schools were only ever guaranteed the same
4 thing they're guaranteed today. And that is that, that
5 per-pupil guarantee, which is the exact same thing that
6 they get today.

7 If you have any questions about 1, 2, 3 or 6,
8 what I'd like to do -- I want to address them.
9 Otherwise, I'm going to turn to what, I think, in light
10 of these very different views of these sections that we
11 have, the two standards that, I think, make the
12 Court's -- my job is to make your job easy, Your Honor.

13 And, I think, there's two standards that -- I
14 mean really presumptions are meant to make it -- to help
15 judges decide, when issues are difficult. I actually
16 don't think the legal arguments are difficult here.
17 But, I think, your decision is very easy because of
18 these two, of these two standards, Your Honor.

19 So I'll turn to that.

20 THE COURT: Go ahead.

21 MR. VANDYKE: And you, I'm sure, are aware of
22 them, because we stressed them in our briefs.

23 But the first is the facial standard that I've
24 already talked about. And that is, it's important to
25 recognize that plaintiffs have to -- it's not sufficient

1 for them to come in here and lay out, as they do. You
2 know, in the Johnson declaration, he talks about
3 possible ways that ESAs, quote, may be implemented.
4 Their PI motion, on 20, says school districts may have
5 to halt necessary services. Page 21, school districts
6 may have to begin seriously considering closing schools.

7 Their briefing is speculation piled on
8 speculation piled on speculation. That is not enough,
9 Your Honor, to meet the standard that the -- the
10 standard for facial challenges. Which, as the U.S.
11 Supreme Court has said, as we note in the motion to
12 dismiss on page 7, is the, quote, most difficult
13 challenge to mount successfully.

14 The Nevada Supreme Court, citing to that
15 Salerno case that I just quoted from, said that the
16 standard that plaintiffs have is, essentially -- and
17 this is my wording, but they have to prove a negative,
18 Your Honor. They have to show that there's no set of
19 circumstances under which a statute would be valid.

20 Now, I've spent a significant part of my career
21 defending state statutes from constitutional attack. In
22 my experience, what ends up happening, plaintiffs come
23 in, they're chomping at the bit to get a law struck
24 down, so they file a lawsuit right away, often, usually
25 before it's even been implemented. Then they run up

1 against this very, very difficult facial standard, Your
2 Honor. And, inevitably, they say, well -- they either
3 say, it's not a facial standard, it's an as-applied
4 challenge, or they say it's both.

5 And I don't know whether they'll do that here.
6 I think, it would be very difficult for them to do that.
7 Because in their briefing and their PI, for instance, on
8 page -- their PI motion, on page two, they repeatedly
9 say, and they say with regard to every single one of
10 their claims, that the Nevada statute "on its face."
11 They quote "on its face."

12 And the reason they say that, I think, is --
13 there's a reason they say that. And that is, plaintiffs
14 don't want this Court to just strike down some
15 hypothetical application, to just, basically, write an
16 advisory opinion and say -- and it wouldn't be proper
17 for this Court to do it anyway. But they don't want you
18 to just write an advisory opinion that says you can't do
19 it this way, you can't do it this way, and you can't do
20 it this way.

21 They want this Court to strike the statute down
22 in its entirety. That's what they want. And they want
23 this Court to do it before it's ever even had a chance
24 to be implemented, which is why they rushed to file
25 their PI.

1 That is the facial challenge, Your Honor. And
2 I don't know whether they're going to try to say it's an
3 as -- you know, try to get away from this difficult
4 standard by saying it's an as-applied challenge. But I
5 don't think there's any way you can say that a statute
6 that's never been applied, that plaintiffs are seeking
7 to strike down in its entirety, without regard to how
8 it's applied, is anything but a facial challenge.

9 And for that facial challenge, it's not enough
10 for them to throw out some speculative facts and say, if
11 it gets applied this way, then it may -- you know, this
12 may happen, and it would be unconstitutional.

13 You know, we don't know, Your Honor.
14 Ultimately, we don't know if or how this program will
15 affect the public schools. Plaintiffs have a lot of
16 parade of horrors. We call it Chicken Little,
17 predictions, whatever you want to call it. But they're
18 pure speculation as to how this will affect.

19 That, Your Honor, is not enough to prevail at
20 a -- on a facial challenge, Your Honor.

21 So that's the first. And, of course, just to
22 be clear, the reason that matters at a PI, for a PI,
23 Your Honor, is because, in order to prevail on a
24 preliminary injunction, you have to be able to show that
25 you're likely to succeed on the merits. And so this

1 Court has to look at what standard they'll have to meet
2 on the merits. And that standard is the facial
3 challenge standard.

4 The second, and just as important, I think,
5 just as dispositive standard, Your Honor, is that when
6 you're dealing with constitutional -- and this goes to
7 the legal side. When you're dealing with constitutional
8 arguments, and they're making one constitutional
9 argument, that's why I wanted to lay, kind of compare.
10 And we're making another one, the state's making another
11 one. It's not a fair battle. It's not set up that way.
12 Because statutes are presumed to be constitutional, Your
13 Honor.

14 And this is where I -- you know, on page seven
15 of our brief, we cite the Sheriff case, and we say, the
16 judiciary has a long recognized strong presumption, a
17 strong presumption that the statute to be enacted by the
18 Legislature is constitutional.

19 And then, in the SM case, it says, because of
20 that presumption, plaintiffs bear, quote, the burden of
21 clearly showing a challenged statute is
22 unconstitutional.

23 And the way I -- the way I picture that, Your
24 Honor, is there is a judicial thumb on the scale. Just
25 like in a motion to dismiss, the Court may put a thumb

1 on the scale, puts a thumb on the scale with regard to
2 the facts and says I'm not going to interpret these
3 facts against the nonmoving party.

4 And in a constitutional challenge, if the Court
5 is presented with constitutional arguments, like
6 plaintiffs' argument that Section 1 doesn't, doesn't
7 mean, doesn't mean what it says, that Section 2, you
8 know, that Section 2, basically, says that the only way
9 the state can encourage education is the public school
10 system.

11 Especially in light of the fact that every
12 other state court, Supreme Court that's ever heard these
13 kind of arguments has disagreed with these kind, with
14 this type of provision, as we know, you know.

15 It seems to me it's -- that makes this case
16 very easy, Your Honor. They haven't shown that it's
17 clearly unconstitutional. I think, the presumption does
18 a lot of work for Your Honor. I think, it does.

19 And so, again, this matters for their PI,
20 because this goes right to whether or not they've shown
21 a likelihood of success on the merits, Your Honor.

22 So with that, I definitely want to answer any
23 questions. There's more I could say about Section 6 and
24 Section 3, but I don't want to -- or not Section 3, but
25 Section 2.

1 I do want to talk a little bit about
2 irreparable harm, Your Honor. And I'll go straight to
3 that, unless you have more, more questions about it.

4 THE COURT: Go ahead.

5 MR. VANDYKE: So I mean part of what I talked
6 about, it won't surprise the Court that what I just
7 talked about with regard to the facial challenge is --
8 applies equally to the irreparable harm analysis. And
9 that is, plaintiffs speculate at length about how --
10 about the harm that they'll experience.

11 Now, they say, they are very emphatic about the
12 fact that we're not talking about speculative harm. But
13 looking past their rhetoric, it's difficult for me to
14 see what actual real harm they've actually pointed to
15 that will for sure come to pass, or even is likely to
16 come to pass, Your Honor.

17 It's important to recognize that they -- a
18 chain of -- for them to even experience any harm --
19 because, remember, they're not the schools. They're the
20 parents of students. Right? For them to experience any
21 harm, a certain number of students will have to get
22 ESAs. But it can't be too many students getting ESAs.
23 Because if too many students get ESAs, then the hold
24 harmless is going to kick in, and you're going to get
25 the same amount of money. So there won't even be a

1 lump-sum amount less.

2 And then, so whatever amount of money the
3 school gets less, keep in mind the schools are used to
4 getting less money, because schools have never been
5 guaranteed a lump-sum amount. They've always known that
6 their funding would fluctuate based on enrollment.

7 So whatever amount they get less, based on
8 whatever drop in enrollment ESAs might cause, that
9 amount has to translate into real educational
10 difference, you know, having less of a class, or
11 something like that.

12 And, again, the reason that's so speculative is
13 because it's not like schools don't have that same sort
14 of -- don't know that that could happen long before
15 there was ever ESAs.

16 And then, not only that, but another chain in
17 the speculative link is that they have -- another link
18 in the speculative chain is that they have to show that
19 their particular -- the plaintiffs in this case will
20 actually be affected, you know, that they'll actually be
21 in the math class that gets supposedly cancelled
22 because.

23 It's just a very long speculative chain, Your
24 Honor. In fact, you know, looking, thinking about this,
25 before Your Honor, it's hard for me. I mean this is the

1 kind of thing that you'd have in a law school class as a
2 hypothetical. It's like what is really super
3 speculative, and what's not speculative? This is the
4 kind of thing that would be a hypothetical of something
5 very speculative.

6 And as the states and as the cases have pointed
7 out, and we cite in our opposition on page 25,
8 speculative injury does not constitute irreparable
9 injury. The Nevada cases are clear on that.

10 Now, the way plaintiffs try to get around that
11 is they got that, they've got a Nevada Supreme Court
12 case that says sometimes constitutional harm may be, may
13 be irreparable injury. They try to avoid the fact that
14 it says "may" be irreparable injury.

15 And, of course, it's not -- the "may" is very
16 important, I think, Your Honor. It's not surprising
17 that sometimes, that sometimes constitutional harm is
18 irreparable. If I get prior restraint, if my speech is
19 squelched through prior restraint, that's, obviously,
20 irreparable harm. No amount of money can fix that. If
21 I get my Fourth Amendment seize, you know, right to not
22 be seized violated, that's irreparable harm.

23 So that statement by the Nevada Supreme Court
24 makes a lot of sense. But if that "may" is to mean
25 anything, what kind of constitutional harm would not be

1 irreparable harm? Well, I think, it's got to be
2 monetary constitutional harm.

3 And that's what, that's all that they've
4 alleged here. Now, they've tried to -- they've tried to
5 ratchet their monetary, this supposed monetary harm,
6 which is speculative in itself, but they've tried to
7 ratchet that into some other kind of educational harm.
8 But, again, that's only through a long speculative
9 chain, chain of -- speculative chain. And so.

10 And so, it's really -- I think, if that "may"
11 means anything in the decision that says that, in the
12 Supreme Court decision that says that constitutional
13 violation "may" constitute irreparable harm, I think,
14 the exception to that or the kind of harm that would --
15 constitutional harm that would not be irreparable harm,
16 would be monetary harm, Your Honor.

17 I think, there the Court has to look and see,
18 is there actually going to be any harm?

19 And the last thing I'd like to point out, Your
20 Honor, because I think this is important, I want to
21 point out the stark disparity between the very
22 speculative harm that plaintiffs allege if they don't
23 get a preliminary injunction, versus the very real, very
24 concrete harm that thousands of Nevada students and
25 their families will get if this Court grants the

1 preliminary injunction.

2 Because, I think, that's very important. I
3 mean we're talking about, you know, their speculative
4 harm is this long chain of events may happen, and we
5 could be harmed if this program that the Legislature
6 enacted is allowed to go forward.

7 On the other hand, if you enjoin this, there
8 are thousands of parents lined up who have already
9 applied that are planning and expecting to get this
10 money, Your Honor. So there will be real irreparable
11 harm if that PI is granted, as opposed to the
12 speculative harm that they have pointed out.

13 So with that, Your Honor, if you have any more
14 questions, I'd be -- I definitely want to address them.

15 THE COURT: I don't.

16 MR. VANDYKE: All right. Thank you, Your
17 Honor.

18 THE COURT: Thank you.

19 Because it's plaintiffs' motion, you are going
20 to get to go again. But we're going to take a recess
21 before.

22 We'll come back in at 10 till by this clock.

23 Will be in recess until then.

24 * * * * *

25 (A recess was taken, 2:35 to 2:49 p.m.)

* * * * *

THE COURT: Please be seated.

Ms. Godley.

MS. GODLEY: Thank you, Your Honor.

So we do have a facial challenge here. And what we know with SB 302, on its face, that it diverts public school funds to private expenditures.

And we know that from the Texas -- I want to remind I have up on the screen the statute that prohibits the use of public school funds for nonpublic school expenditure.

And in SB 302, Section 15.9, the Legislature exempted SB 302 spending from this statute, because it was using public school funds on its face.

We go to the act itself. And we have that it provides for the amount of each grant to be deducted from the apportionment to the school district.

We go to the Digest. Again, it says that the amounts that will be deducted out will be deducted from the apportionment.

The statute, again, says that the apportionment to a school district shall be computed on a yearly basis equal to the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds deposited in the Education Savings

1 Account established on behalf of children who reside in
2 the county.

3 So we know, on its face, that SB 302 uses
4 public school funds for nonpublic school expenditures.
5 Indeed the Legislature had to exempt itself from its
6 statute that said otherwise so that it thought it could
7 do it. But it can't exempt itself from the
8 constitutional requirement.

9 And that alone dooms SB 302.

10 He talked about a Section 9 that says, at the
11 end of the biennium, if there's any money left in what
12 was appropriated to the public schools, it can come back
13 in the General Fund. And that's the case in a wonderful
14 world where too much was appropriated, okay, there's a
15 mechanism for it to go back to the General Fund. That
16 means it's not in the General Fund. It can't be used
17 for other expenditures. It can go back at the end if
18 there's something left.

19 There's also a provision that says if the
20 Legislature got it wrong, and it wasn't sufficient, that
21 funds can be added in.

22 But what the Legislature can't do is create a
23 mechanism that deducts from that lockbox amount on
24 purpose.

25 So there are things that happen that may not be

1 accounted for. But this isn't one of them. This is
2 SB 302, the Legislature specifically determining that
3 we're going to take money out of the Section 6 lockbox
4 and use it for private expenditures.

5 And we can't do that. That was the point of
6 Section 6, to protect that money from other spending.

7 He talks about how the interim superintendent
8 of public instruction has said that they're going to
9 take the funds out in the beginning, whatever that
10 means. But let's look at what the statute says again.
11 It's going to come from the district. This money, the
12 \$5,100 and \$5,700 has to come from somewhere. It has to
13 be paid out. It is not just a kid leaving. There is
14 money that is set aside for public schools that is now
15 going to be paid out from private expenditures.

16 And Mr. VanDyke says we're not even going to
17 track that, oh, forget that darn bill, we're not
18 actually going to do it that way.

19 There's two things wrong with that. One is
20 that you cannot -- an administrative agency's
21 interpretation of a regulation or statute does not
22 control if the alternative reading is compelled by the
23 plain language of the provision. And the provision says
24 that it's coming out of the disbursements to the county,
25 to the county schools.

1 But, also, whether or not -- whatever mechanism
2 they use, it's coming out of the money that the state
3 Legislature set aside specifically for public schools
4 under Section 6. And that is safeguarded. And that
5 money has to be paid out.

6 For some reason, in listening to defendant's
7 counsel, it's like, you know, they keep saying, it's
8 just like if a kid, you know, moved districts, or we
9 moved a bunch of jobs to Carson City. No. All of that
10 money is still in the funds that were set aside by the
11 Legislature for public schools, but not with SB 302.

12 We're going to write checks for \$5,100 and 57,
13 and we're going to hand it out, and it's gone. Coming
14 April, when this, this Treasurer says he wants to start
15 handing out money, \$20 million gone. Gone.

16 So that is not the same thing as just someone
17 moving and we don't hand it to that particular district.
18 Because the money is still in the monies that are
19 safeguarded.

20 He talks about Keith v. Westerfield. First of
21 all, he said, you know, that is consistent with
22 Section 1. The court there said, yeah, you can do. No,
23 no, no. There's no mention of Section 1 in that at all.
24 And there was a reason for that.

25 This was a state-funded orphanage institution.

1 The state was already funding it. What the court was
2 saying was that you can't use public school funds for
3 this other state expenditure, but you can use general
4 funds. This is a state expenditure. It has nothing to
5 do with whether or not under Section 1 we could do
6 whatever we'd like. It has to do, this is a state
7 enterprise, you can use state funds for it. You can't
8 use public school funds for it, but you can use state
9 funds for it.

10 On "all suitable means," we don't, on
11 Section 1 -- and let's take a look at Section 1 again,
12 if I can get there.

13 Okay. So this, the Legislature shall encourage
14 by all suitable means the promotion of intellectual,
15 literary, scientific, mining, mechanical, agriculture
16 and moral improvements and provide for a superintendent
17 of public instruction.

18 So we're saying at the beginning here that,
19 look, we're going -- we want to create an office for
20 public education. And they can use, our public
21 education system, use all suitable means to promote
22 these things.

23 But we don't even get to their interpretation
24 of it, because this isn't a suitable means. Because
25 we're using public school funds for private expenditure,

1 it's not a suitable means. Even if we took their
2 version of it, which is not correct, it's not a suitable
3 means, even on the face of the Section 1 itself.

4 Defendant would want us to believe that we're
5 just like Indiana, or we're just like Wisconsin, or
6 we're just like some of these other states. But we're
7 not. And it's important to understand that we're not.

8 We have a unique set of constitutional
9 provisions that work together with Section 3 and 6 and
10 2. We have a unique statute before us, SB 302, broadly
11 written, available to anyone who applies, this certain
12 amount for their entire education. You can start out in
13 kindergarten, get 5,000 a year for your entire years in
14 private school or home-schooling. Totally different
15 statute, different history, different constitution.

16 Indiana did not have even the issue of whether
17 public school monies were used. That wasn't at issue
18 there. And they were interpreting a different "all
19 suitable means." While it used that statement phrase,
20 it was part of a different provision than the one that
21 we have before us.

22 The statute there only applied to students with
23 families at or below 150 percent of the poverty level.
24 So it was limited. And there were accountability
25 standards on the institutions receiving the funds. They

1 had to meet certain curriculum requirements and other
2 requirements. And they had to meet certain openness
3 requirements.

4 Same with Wisconsin. In Wisconsin, it was a
5 City of Milwaukee experimental voucher program. And it
6 says that throughout, throughout the opinion. And the
7 use of public funds, again, was not at issue in that
8 case, use of public school funds. It was applicable
9 only to families below 175 percent of the poverty level.
10 And the participating schools had to meet certain
11 curriculum and teaching standards and testing and -- and
12 openness requirements that are not present here.

13 Same with North Carolina. No use of public
14 funds are at issue there, public school funds,
15 applicable to 130 percent of the poverty level. The
16 private schools had to meet certain criteria.

17 And it's critical that the court held this does
18 not create an alternate system of publicly funded
19 private schools. Rather, this legislation provides
20 modest scholarships to low-income students for use at
21 nonpublic schools. Smaller program, not talking about
22 using public school funds, different. Different
23 situation. Different outcome.

24 He talks about irreparable harm and when a
25 constitution violation may be irreparable harm. I can't

1 think of a situation. We're talking about the
2 fundamental right to education and whether or not a
3 statute violates and implicates that constitutional
4 right to education of our children, something that is
5 more likely to be an irreparable harm if it's a
6 constitutional violation.

7 This is exactly what the court was saying.
8 When there are these types of harms, when we're about to
9 implement a statute that is unconstitutional and that
10 implicates the very basic fundamental right to education
11 for our children, that's an irreparable harm when no
12 further showing is made.

13 But we also have irreparable harm here. We
14 know, and they talk about it as though, gosh, so what,
15 you know, so if Clark County gets \$17.7 million less
16 this year. School districts have to balance their
17 budget. When they don't have money, they can't provide
18 services. They cannot do the things that they need to
19 do for their students.

20 It matters. Every dollar matters, especially
21 in tight times. When you have a first grader that's
22 learning to read, and there's not -- there's too many
23 kids in that class, there's not a skilled teacher, that
24 not learning to read ripples out throughout that child's
25 education.

1 This is exactly what irreparable harm is. You
2 can't, you can't down the road, at fifth grade, say,
3 yeah, we'll throw some more money at it.

4 What didn't happen in first grade matters.
5 When we go to fourth grade, and a student goes from
6 learning to read to reading to learn, we need to make
7 sure we can support that with the service and the
8 expertise necessary and without having -- and with
9 having a cut in our budgets and not able to do that,
10 that's irreparable.

11 An eighth grade math student learning algebra,
12 not grasping those concepts, not having the services
13 about, that's irreparable harm. It's hard to think of a
14 situation that is more unlikely or less able to be
15 remedied by money damages.

16 THE COURT: His argument was what evidence is
17 there that any of these plaintiffs are going to suffer
18 any of those harms.

19 MS. GODLEY: So we have plaintiffs from Clark
20 County, and we have plaintiffs from Washoe County, I
21 think, from Washoe County. We have applicants with ESAs
22 from all -- from those two counties.

23 We know, based on the face, and their post-talk
24 rationalizations of how they kind of want to make this
25 not be a problem for all the schools, we have to go with

1 what the statute says. That's what we're talking about
2 here is the statute.

3 We know that under this, that we will have --
4 that Clark County will have 17.7 million less that they
5 will have to figure out. And we know that Washoe will
6 have their percentage, which I haven't calculated.

7 So we know there's going to be less, and we
8 know there's going to be an impact. Students suffer
9 when there are budget cuts. We know that to be the
10 case.

11 THE COURT: So how does that impact any
12 particular plaintiff?

13 MS. GODLEY: So what we know is that each of
14 these individual students -- and to -- for on its face,
15 for us to make that, you know, connection, we have to
16 know and we have to believe that when there is a budget
17 cut in a particular district, that hurts the students in
18 that district. We have to be able to make that step, to
19 go over and say, you know, that this child on this day,
20 we have to be able to make the jump that when a district
21 has less money, that it can provide less services, which
22 will impact the children, of which these are among those
23 children that will be impacted.

24 THE COURT: Go ahead.

25 MS. GODLEY: And with that, Your Honor, I

1 will -- unless you have any other questions, I will end
2 there.

3 THE COURT: I don't.

4 Thank you both. Thank you all. It has been
5 helpful to have the oral argument.

6 There are a couple of things, based upon the
7 argument, that I'm going to need to spend a little more
8 time on.

9 So the Court -- we recognize that you need to
10 go through us in order to get to the Supreme Court. So
11 we'll get an order out as quickly as we can. But it's
12 not going to happen today.

13 So the Court is taking it under submission.

14 And we'll be adjourned.

15 Thank you again.

16 MS. GODLEY: Thank you, Your Honor.

17 * * * * *

18 (The Hearing adjourned at 3:03 p.m.)

19 -000-

20

21

22

23

24

25

TRANSCRIBER'S CERTIFICATE

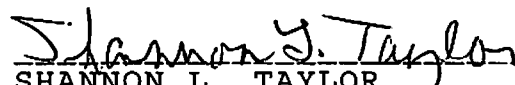
I, SHANNON L. TAYLOR, a Nevada Certified Court Reporter, Nevada CCR #322, do hereby certify:

That I was provided by the State of Nevada, Office of the Attorney General, with a CD containing a Hearing held on Wednesday, January 6, 2016, in the First Judicial District Court of the State of Nevada, in and for Carson City, regarding Case No. 15-OC-00207-1B, and that I thereafter transcribed, to the very best of my ability, the contents of said Hearing on said CD;

That the within transcript, consisting of pages 1 through 70, is the transcription of said Hearing;

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

DATED at Carson City, Nevada, this 22nd day of January, 2016.


SHANNON L. TAYLOR
Nevada CCR #322, RMR

CERTIFIED COPY