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CASE NO: A-20-822704-P  
Department 8

*Attorneys for Clark County Association of  
School Administrators and Professional-technical  
Employees*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CLARK COUNTY ASSOCIATION OF  
SCHOOL ADMINISTRATORS AND  
PROFESSIONAL-TECHNICAL  
EMPLOYEES,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT;  
and DR. JESUS JARA, in his capacity as  
Superintendent of Clark County School  
District,

Respondents.

Case No.:  
Dept No.:

**PETITION FOR WRIT OF  
PROHIBITION, OR IN THE  
ALTERNATIVE, WRIT OF  
MANDAMUS**

**Arbitration Exemption Requested—  
Action Seeking Extraordinary Relief and  
Presenting Issues of Significant Public  
Policy**

**HEARING REQUESTED**

Petitioner Clark County Association of School Administrators and Professional-technical Employees (“CCASAPE”) respectfully submits this Petition for Writ of Prohibition, or in the Alternative, Writ of Mandamus (the “Petition”) against Defendants Clark County School District (the “CCSD”) and Dr. Jesus Jara, in his capacity as Superintendent of Clark County School District (“Superintendent Jara”).

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This Petition is brought pursuant to NRS Chapter 34, NRS Chapter 388G and is based on the following Memorandum of Points and Authorities and exhibits and declarations attached to CCASAPE’s A Appendix of Exhibits, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 8th of October, 2020.

/s/ Christopher M. Humes  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Introduction.**

In 2015, the Nevada Legislature began the historic and revolutionary process of reforming and reorganizing the Clark County School District into an autonomous site-based model of operation. In furtherance of this goal, the Legislature commanded that the CCSD Superintendent transfer many of his powers from CCSD directly to the individual schools. A cornerstone of the Legislature’s plan was that individual schools would possess the right to independently staff their own school to best support their unique plans of operation and deliver the highest quality of education to the students of Clark County.

CCSD, in its own words, summarizes the Legislature’s command:

The District cannot assign a teacher (and other applicable personnel), whether by assignment, reassignment, transfer, surplus, or a reduction-in-force, to a local school precinct without the consent of a local school precinct and the inability to place a teacher (and other applicable personnel), based on the foregoing, *renders the status of the personnel as unassigned.*

**Exhibit “1”** (CCSD’s Reply in Support of Counterpetition for Declaratory Order in EMRB Action, *Carpenter v. Clark Cty. Sch. Dist.*, EMRB Case No. 2020-08 (Feb. 12, 2020)), at 3 (emphasis added).

Unfortunately, as the saying goes, talk is cheap. While CCSD’s own words may correctly characterize the law, CCSD has only paid lip service to it, while it has instead spent the last five years mired in inaction and illegal conduct. The Nevada State Superintendent of Instruction, the individual tasked with ensuring school reorganization occurs, has repeatedly and expressly warned CCSD that it is operating in an illegal fashion by unilaterally assigning teachers and staff without the consent of the local school precinct. To date, CCSD still has not complied.

The forward-thinking mandate from the Nevada Legislature calls for the complete transfer of powers from CCSD to the local schools. Contrary to this legislative requirement, CCSD has illegally invented a teacher “lottery” for schools where the lucky “winners” are schools that are forcibly staffed with subpar teachers they did not select. In short, CCSD has done exactly what

1 the law prohibits by foisting bad teachers on schools that do not want them. CCSD cannot be  
2 permitted to continue to ignore the law. This has to stop.

3 CCSD attempts to justify its illegal overreach by contending it may unilaterally place  
4 teachers whenever a substitute is employed at a school. The Court will easily see below that  
5 CCSD’s attempted unilateral rewrite of a Nevada statute is utterly without merit. *The law says no*  
6 *such thing*. Rather, CCSD has engaged in pretextual statutory interpretation in an attempt to  
7 completely disregard the legislative intent and statutory text. *See* NRS 388G.500(1)(d) (“it is  
8 necessary and essential to transfer and redirect more funding from the control of central services  
9 *to the control of the site-based administrators. . . .*”) (emphasis added).

10 The Nevada Legislature’s command to transfer powers from CCSD to the schools flows  
11 only one way. Nothing in the law allows CCSD to reclaim the express right of teacher selection  
12 from the schools, including when a substitute is placed at a school. Moreover, a substantial  
13 reduction in teacher positions is about to occur due to the Coronavirus pandemic, and CCSD’s  
14 forced placement of teachers will likely increase dramatically as a result. CCASAPE therefore  
15 respectfully requests that the Court prohibit CCSD and Superintendent Jara from selecting  
16 teachers for local school precincts. In the alternative, CCASAPE requests the Court mandate  
17 CCSD and Superintendent Jara to fully transfer the power of teacher selection to the local  
18 schools.

19 **II. Statement of Facts.**

20 **A. CCSD is an extremely large school district.**

21 CCSD is a behemoth and bloated government agency, with a \$2.45 *billion* annual  
22 operation. **Exhibit “2”** (2018-2019 CCSD Fast Facts), at 2. In 2018-19, CCSD contained 360  
23 individual schools, which were staffed by over 1,300 administrators, 18,000 teachers and 12,000  
24 support professionals. *See id.* CCSD educates seventy-five percent of the children in Nevada. *See*  
25 *id.* “As the fifth largest district in the United States, Clark County School District serves more  
26 than 320,000 students in a variety of urban and rural settings in the most populous region of  
27 Nevada.” *About Clark County School District*, [https://teachvegas.ccsd.net/our-district/about-](https://teachvegas.ccsd.net/our-district/about-clark-county-school-district/)  
28 [clark-county-school-district/](https://teachvegas.ccsd.net/our-district/about-clark-county-school-district/) (last visited Sep. 18, 2020).

1 In other words, CCSD fits squarely in the definition of “large school district” set forth in  
2 NRS 388G.530. In fact, CCSD is the only “large school district” in Nevada.

3 **B. The Nevada Legislature reorganized CCSD to provide local school autonomy**  
4 **and transferred specific powers from CCSD to local school precincts.**

5 As the Nevada Legislature concluded, “large school districts are prone to develop large,  
6 complex and potentially inefficient, cumbersome and unresponsive bureaucracies that tend to  
7 become too dependent upon a centralized operational model where most decision-making is made  
8 by central services.” NRS 388G.500(1)(a). Governor Sandoval signed Assembly Bill (“A.B.”)  
9 394 on June 11, 2015, which had the purpose of “creating an advisory committee and technical  
10 advisory committee for the purpose of developing a plan to reorganize the Clark County School  
11 District into certain local school precincts.” A.B. 394, 78th Leg. Sess. (Nev. 2015), at 1. The  
12 advisory committees consisted of a wide range of individuals, representing a variety of  
13 viewpoints, and were commanded to evaluate numerous different reforms, including those  
14 concerning “[s]taffing, including, without limitation, the transfer, reassignment or hiring of  
15 personnel.” *Id.* at § 27(12).

16 The advisory committees met multiple times between 2015 and 2017, and enlisted a  
17 consultant, Michael Strembitsky, to assist in providing a detailed reorganization plan. *See Exhibit*  
18 **“3”** (Strembitzky Plan to Reorganize the Clark County School District). Relying on Mr.  
19 Strembitsky’s plan, the Advisory Committee proposed regulations that were accepted and adopted  
20 by the State Board of Education. *See Adopted Regulation of the State Board of Education, LCB*  
21 *File No. R142-16, (codified at NAC Chapter 388G) (Sept. 9, 2016).* The Nevada Legislature then  
22 codified the regulations into statute, giving rise to an amended Chapter 388G.

23 Throughout the entire process, one of the main goals was that “the reorganization of the  
24 school district must facilitate the operation of the schools within the district *as autonomous*  
25 *schools . . .*” Ex. 3, at 1 (emphasis added). The statute itself states that the law seeks to create an  
26 “autonomous site-based operational model” because it “encourages decision-making that is more  
27 innovative, proactive and responsive to the particularized, specialized or localized circumstances,  
28 needs and concerns of each local school precinct.” NRS 388G.500(d); NRS 388G.500(c).

1 Another concern, however, was prohibiting local school precincts from taking financial  
2 advantage of the difference in cost to employ a long-term substitute versus a licensed teacher. In  
3 legislative subcommittee meetings, Pat Skorkowsky, CCSD’s then Superintendent, stated “one of  
4 the things we will have to work on is a clever principal who decides to hire all substitutes to get  
5 more money and not have licensed teachers within their classroom.” **Exhibit “4”** (Advisory  
6 Committee to Develop a Plan to Reorganize the Clark County School District, at 42 (July 1,  
7 2016)). “We are going to need to be potentially a little more specific in that subsection to say that  
8 the goal is to fill every position with a licensed teacher, with the understanding that substitutes  
9 may need to be made. I think that is an important designation.” *Id.* (emphasis added).

10 John Villerdita, Executive Director of the Clark County Education Association (the  
11 “CCEA”), similarly pointed out the issue regarding use of long-term substitutes. “The school year  
12 just ended, with 25,000 kids starting the year and ending that year with a substitute teacher.”  
13 **Exhibit “5”** (Advisory Committee to Develop a Plan to Reorganize the Clark County School  
14 District, at 27 (June 16, 2016)). Mr. Villerdita also demonstrated how the financial incentive of  
15 using long-term substitute teachers creates motivation to routinely employ substitutes as opposed  
16 to licensed teachers. “A substitute teacher costs about \$20,000 a year . . . and even if you take the  
17 average starting salary of a teacher . . . that is \$64,000. That is a difference of \$44,000 and if you  
18 multiply that by 750 positions, it is anywhere from \$35 million to \$40 million.” *See* **Exhibit “6”**  
19 (Advisory Committee to Develop a Plan to Reorganize the Clark County School District, at 78  
20 (Nov. 23, 2015)).

21 In line with the stated goal of creating school autonomy, the Nevada Legislature ordered  
22 the CCSD Superintendent to transfer certain powers to local school precincts. One power is the  
23 individual school’s authority to “[s]elect for the local school precinct the: (1) Teachers; (2)  
24 Administrators other than the principal; and (3) Other staff who work under the direct supervision  
25 of the principal.” NRS 388G.610(2)(a). The statute provides, in pertinent part, as follows:

- 26 1. Except as otherwise provided in this section, the superintendent shall  
27 transfer authority to each local school precinct to carry out responsibilities  
28 in accordance with this section and the plan of operation approved for the  
local school precinct.



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2. The superintendent shall transfer to each local school precinct the authority to carry out the following responsibilities:
  - (a) Select for the local school precinct the:
    - (1) Teachers;
    - (2) Administrators other than the principal; and
    - (3) Other staff who work under the direct supervision of the principal.
  - (b) Direct the supervision of the staff of the local school precinct, including, without limitation, taking any necessary disciplinary action which does not involve a violation of law or which does not require an investigation to comply with the law.
  - (c) Procure such equipment, services and supplies as the local school precinct deems necessary or advisable to carry out the plan of operation for the local school precinct. Equipment, services and supplies may be procured from the large school district in which the local school precinct is located or elsewhere, but such procurement must be carried out in accordance with the applicable policies of the large school district.
  - (d) Develop a balanced budget for the local school precinct for the use of the money allocated to the local school precinct, which must include, without limitation, the manner in which to expend any money not used for the purposes described in paragraphs (a), (b) and (c).
  - (e) Any other responsibility for which authority is transferred pursuant to subsection 7.

Additionally, the same statute contains a directive to the local school precincts, stating:

*To the greatest extent possible*, the principal of a local school precinct shall select teachers who are licensed and in good standing before selecting substitutes to teach at the local school precinct. The principal, in consultation with the organizational team, shall make every effort to ensure that *effective* licensed teachers are employed at the local school precinct.

NRS 388G.610(4) (emphasis added). Thus, Section 388G.610(4) creates a good faith requirement (“[t]o the greatest extent possible”) precluding schools from gaming the system by using substitutes in place of licensed teachers, while at the same time leaving in place the ability of the schools to reject licensed teachers they deem are not “effective.”

1           **C.       CCSD delayed implementation of the reorganization mandated by the Nevada**  
2                               **Legislature forcing the State Superintendent to issue direction.**

3           The CCSD reorganization was supposed to have gone into effect in September 2016 with  
4 the passage of the Advisory Committee’s proposed regulations. **Exhibit “7”** (Adopted Regulation  
5 of the State Board of Education, LCB File No. R142-16, (codified at NAC Chapter 388G) (Sept.  
6 9, 2016)). However, CCSD failed to carry out the regulations’ directives in a timely fashion.  
7 TSC2, a consultant for CCSD, published a series of reports that “[d]etailed the ways in which  
8 CCSD is not implementing the statutory requirements . . .” **Exhibit “8”** (Consultant TSC2’s Final  
9 Report), at 4. In its final report, issued a year after the law went into effect, the consultant stated  
10 “To date CCSD has yet to meaningfully transfer the budget and site-based decision-making  
11 authority to local schools, as required by law.” *Id.* (emphasis in original).

12           Superintendent of Public Instruction, Dr. Steve Canavero, then sent multiple  
13 correspondences to CCSD, beginning in October 2017, with Dr. Canavero addressing the need for  
14 CCSD to complete the transfer of powers to local school precincts as required by statute:

15                               AB 469 clearly states that the principal of a local school precinct  
16                               has authority over the selection of teachers, other administrators,  
17                               and other staff under the direct supervision of the principal, as well  
18                               as input on the placement of central service staff assigned to their  
19                               school (e.g., Sec. 24 (2); Sec. 16 (2) (4) (6)).<sup>1</sup>

20           **Exhibit “9”** (Declaration of Stephen Augspurger) at ¶ 2; **Exhibit “10”** (Canavero Dec. 8, 2017  
21 Letter), at 2 (emphasis added). Superintendent Canavero ultimately requested an implementation  
22 plan from CCSD to address various topics regarding school autonomy, specifically including a  
23 school’s ability to select its own teachers. Ex. 8 at ¶ 3; **Exhibit “11”** (Canavero Feb. 2, 2018  
24 Letter), at 2.

25           In March 2018, CCSD published its “2018 Plan for the Implementation of Actions to  
26 Finalize Compliance with Assembly Bill 469.” *See* Exhibit 7 at ¶ 4; **Exhibit “12”** (CCSD  
27 Implementation Plan). CCSD worked in conjunction with all three labor organization parties—  
28

1 CCEA, CCASAPE, and Education Support Employees Association (the “ESEA”)—to create a  
2 plan to operate within the law. In its Implementation Plan, CCSD recognized the opinion of the  
3 State Superintendent, and stated CCSD cannot allow “for *the placement of an employee* into the  
4 school, under the supervision of the principal, without the principal having selected that  
5 employee.” *Id.* at 9 (emphasis added).

6 **D. CCSD institutes a lottery to forcibly place the Unselected Teachers.**

7 Despite warnings from the State Superintendent and in complete contradiction to its own  
8 Implementation Plan, CCSD did not take steps to guarantee that all teachers would be selected by  
9 school principals in compliance with Nevada law. Instead, CCSD’s apathy and inaction caused a  
10 situation where certain teachers employed by CCSD were not selected by any local school  
11 precinct (the “Unselected Teachers”). In other words, after all the local school precincts have  
12 selected their desired teachers, the Unselected Teachers are the ones that have not been chosen by  
13 any school despite being given an opportunity to be selected.

14 CCSD attempted to solve its self-inflicted dilemma by unilaterally instituting a lottery (the  
15 “Teacher Lottery”) to impose placement of the Unselected Teachers against the will of schools.  
16 CCSD’s only criteria for placing an Unselected Teacher at a local school precinct was “the  
17 teacher meets all the requirements for the position and is not subject to any type of disciplinary  
18 probation.” *See* Ex. 9 at ¶ 8; **Exhibit “13”** (CCSD Teacher Lottery Memo).

19 To justify this pretextual action upon local school precincts, CCSD erroneously relied on  
20 Subsection 4 of NRS Chapter 388G.610, which states as follows:

21 To the greatest extent possible, the principal of a local school  
22 precinct shall select teachers who are licensed and in good standing  
23 before selecting substitutes to teach at the local school precinct.  
24 The principal, in consultation with the organizational team, shall  
25 make every effort to ensure that effective licensed teachers are  
26 employed at the local school precinct.

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27 <sup>1</sup> The Superintendent of Public Instruction is responsible for “tak[ing] such actions as deemed necessary  
28 and appropriate to ensure that each large school district carries out the reorganization of the school  
district . . . .” NRS 388G.580(1).

1 Notably, this subsection of the statute does not empower or authorize the CCSD to do anything.  
2 As mentioned previously, it is simply a “good faith” requirement for principals to “make every  
3 effort” to hire licensed teachers over substitutes. It does **not** require principals to accept  
4 substandard teachers. It does **not** require principals to turn a blind eye to the quality of education  
5 in schools.

6 Yet, CCSD concluded that Subsection 4 is somehow a grant of authority for it to create a  
7 lottery to unilaterally place the Unselected Teachers in any instance when a school principal has  
8 an opening, no matter the circumstance.

9 **E. CCSD unilaterally places teachers and staff at local school precincts.**

10 Recently, CCSD relied on Subsection 4 to impose the placement of several teachers and  
11 one counselor through the Teacher Lottery. On August 4, 2020, one day before teachers reported  
12 for the 2020-21 school year, CCSD notified certain administrators that their schools were forced  
13 to accept Unselected Teachers and abandon whatever plans they had for the position at issue. *See*  
14 Ex. 13. Below are summaries of the circumstances surrounding instances in which CCSD  
15 unilaterally and illegally assigned a teacher to a local school precinct. These summaries highlight  
16 how CCSD’s failure to comply with NRS 388G.610 rewards poor performance and inhibits  
17 innovative and practical solutions in the schools.

18 **1. Cimarron-Memorial High School was forced to break a promise to an**  
19 **attorney obtaining her teaching license.**

20 Ms. Lori Sarabyn is the principal of Cimarron-Memorial High School. **Exhibit “14”**  
21 (Sarabyn Dec’1.) at ¶ 1. Prior to the 2020-21 school year, Ms. Sarabyn had been recruiting a  
22 licensed and practicing attorney for a teaching position at Cimarron-Memorial who was on the  
23 path to obtaining her teaching license. *See id.* at ¶ 2. The attorney was eligible to obtain her  
24 teaching license and only needed to complete the application process. *See id.* at ¶ 3. This is a  
25 normal routine that occurs every school year. *See id.* CCSD previously assured Ms. Sarabyn that  
26 she could hire the attorney to start as a substitute, and then transition her into a teacher position  
27 after three weeks once the licensing process was completed. *See id.* at ¶ 4. Ms. Sarabyn promised  
28 the attorney that Ms. Sarabyn would employ her at her high school. *See id.*

1           However, CCSD quickly changed its position. CCSD recanted its earlier authorization to  
2 Ms. Sarabyn to hire the attorney and directed her to place a certain Unselected Teacher instead.  
3 *See id.* at ¶ 5. CCSD attempted to justify this direction because Ms. Sarabyn would be required to  
4 start the attorney-turned-teacher as a substitute teacher, and therefore CCSD reasoned it had the  
5 right to place its Unselected Teacher in the attorney’s place through its illegal Teacher Lottery.  
6 *See id.*

7           To make matters worse, the Unselected Teacher thrust upon Cimarron-Memorial had  
8 several unsatisfactory reviews containing admonishments instructing him not to degrade students,  
9 not to put his hands on, push, or grab students, and to treat students with respect. *See id.* at ¶ 6.  
10 The Unselected Teacher also has problematic incidents interacting with parents. *See id.* at ¶ 7.  
11 While the Unselected Teacher may receive a satisfactory review every few years, he also had a  
12 pattern and practice of engaging in violent and inappropriate conduct, including a previous  
13 suspension for such conduct. *Id.* at ¶ 8.

14           As a result of CCSD’s forced placement of the Unselected Teacher, Ms. Sarabyn was  
15 required to abandon her plans to hire the attorney. *See id.* at ¶ 9.

16                           **2. Gibson Middle School was forced to break a promise made to an up-**  
17                           **and-coming education student.**

18           Jennifer Jaeger is the principal of Gibson Middle School. **Exhibit “15”** (Jaeger Dec’1.), at  
19 ¶ 1. In 2018, a teacher coming off medical leave was scheduled to start at Gibson Middle School.  
20 *See id.* at ¶ 2. When the school year began, however, the teacher’s husband notified CCSD that  
21 the teacher would require an extended leave of absence. *See id.* at ¶ 3. For the last two years, Ms.  
22 Jaeger consistently filled the vacancy with a university education student obtaining her master’s  
23 degree (the “Student Teacher”). *See id.* at ¶ 4. The Student Teacher had become integrated in  
24 the school community, and Ms. Jaeger communicated to the Student Teacher that she would be  
25 placed permanently in the position after completing her student teaching during the 2020-2021  
26 school year. *See id.*

27           CCSD recently instructed Ms. Jaeger, however, that she must place the original teacher  
28 returning from her extended leave of absence and the university student could not retain her

1 employment at Gibson Middle School. *See id.* at 1 ¶ 5. CCSD stated that the original teacher must  
2 be placed because the Student Teacher was a substitute teacher. *See id.* at 1 ¶ 6. The original  
3 teacher was last rated “minimally effective” 2017. *See id.* This is not the first time Ms. Jaeger has  
4 received a forced placement. *See id.* at 1 ¶ 7. CCSD has unilaterally placed teachers at Gibson  
5 Middle School after the enactment of Nevada’s school reorganization laws on other occasions.  
6 *See id.* Ms. Jaeger usually does not complain about the forced placements, but in this instance, the  
7 staff at Gibson Middle School worked very hard to mentor the Student Teacher, helping her along  
8 her educational road by providing real world experience to the soon-to-be teacher. *See id.* at 1 ¶ 8.  
9 CCSD disregarded Ms. Jaeger’s and Gibson Middle School’s investment in the Student Teacher  
10 and dictated that an established member of the school community be displaced. *See id.* at 1 ¶ 9.

11 In the end, Ms. Jaeger was required to break her promise to the Student Teacher, and  
12 employed the returning “minimally effective” teacher at CCSD’s direction. *See id.* at 2 ¶ 10.

13 **3. Western High School was not given an adequate opportunity to fill a**  
14 **teacher opening.**

15 Antonio Rael (“Rael”) is the principal of Western High School. **Exhibit “16”** (Rael  
16 Dec’1), at ¶ 1. Mr. Rael took over as principal in mid-June 2020, amid the Coronavirus pandemic.  
17 *See id.* When he arrived, Mr. Rael discovered that Western High School had thirty-six vacancies,  
18 twenty of which were teachers. *See id.* at 1 ¶ 2. When the other administrators returned on July  
19 22, 2020, they worked to quickly fill the majority of the various openings. *See id.* at ¶ 3. One  
20 position, a social studies teaching vacancy, had twenty-seven qualified CCSD applicants. *See id.*  
21 at ¶ 4. While reviewing the candidates, Mr. Rael planned to use a short-term substitute until he  
22 made a selection. *See id.*

23 However, on August 4, 2020, CCSD notified Mr. Rael that an Unselected Teacher would  
24 be unilaterally placed in the open social studies position. *See id.* at ¶ 5. CCSD did not permit Rael  
25 any time to interview the twenty-seven outside applicants qualified for the position. *See id.* at ¶ 6.  
26 CCSD forced a placement of an Unselected Teacher on Western High School because the  
27 opening would initially require hiring a substitute teacher. *See id.* at ¶ 7.

1 The Unselected Teacher forcibly placed by CCSD is demonstrably substandard, and does  
2 not satisfy the requirements of “effective” and “in good standing.” She consistently receives  
3 substandard scores on her evaluations and demonstrates problematic violent behavior with the  
4 students, such as hitting a student with a stack of papers, slamming fists on desks, and screaming  
5 at students. *See id.* at 1 ¶ 8. When Mr. Rael protested the assignment, CCSD coldly responded: “It  
6 is the District’s expectation that you will treat [the Unselected Teacher] professionally; welcome  
7 her to your team; and set her up for success, as you would all your team members.” *See id.* at 1 ¶¶  
8 8-9; **Exhibit “17”** (Aug. 4, 2020, CCSD Human Resources Email). Of course, implicit in the  
9 statement was a threat to the principal to go along with CCSD’s unlawful scheme.

10 **4. Green Valley High School was also not given an adequate opportunity**  
11 **to fill a teacher opening.**

12 Kent Roberts (“Roberts”) is the principal of Green Valley High School. **Exhibit “18”**  
13 (Roberts Dec’1) at ¶ 1. Mr. Roberts had a vacancy open up for an English teacher immediately  
14 prior to the start of the 2020-2021 school year. *See id.* at ¶ 2. Due to the late notice, Mr. Roberts  
15 planned to employ a temporary substitute teacher until he could quickly fill the vacancy. *See id.*  
16 After the Teacher Lottery, CCSD contacted Mr. Roberts and instructed him that an Unselected  
17 Teacher would be placed in the position. *See id.* at ¶ 3.

18 Mr. Roberts initially agreed to the forced placement despite not being afforded time to  
19 select his own candidate, but then reconsidered after investigating. *See id.* at 1 ¶ 4. The  
20 Unselected Teacher had been employed by twelve schools in twenty-nine years and is widely  
21 viewed as an inefficient teacher. *See id.* at 1 ¶ 5. The Chair of Green Valley High School’s  
22 English Department had a prior problematic experience working with the Unselected Teacher. *See*  
23 *id.* at 1 ¶ 6. The Unselected Teacher would likely create a toxic and unproductive environment in  
24 the English Department at Green Valley High School because of the existing conflicts between  
25 personnel. *See id.* at 1 ¶ 7.

26 Mr. Roberts objected to the placement of the Unselected Teacher to CCSD for all the  
27 reasons above, and asked CCSD to reconsider giving him the appropriate amount of time to fill  
28 the teaching position. *See id.* at 1 ¶ 8. CCSD instructed Mr. Roberts to accept the placement,

1 which he did. *See id.* at 1 ¶ 9. The Unselected Teacher then retired the day before school began.  
2 *See id.*

3 **5. Spring Valley High School was forced to fund an additional position**  
4 **from its own strategic budget.**

5 Tam Larnerd (“Larnerd”) is the principal of Spring Valley High School. **Exhibit “19”**  
6 (Larnerd Dec’l.), at 1 ¶ 1. Like every other year, Mr. Larnerd recruited personnel and directed  
7 certain new employees to complete the licensing process with CCSD. *See id.* at 1 ¶ 2. This school  
8 year, Mr. Larnerd elected to employ a counselor from outside of CCSD (the “Preferred  
9 Counselor”) to work at Spring Valley High School. *See id.* at 1 ¶ 3. The Preferred Counselor  
10 began the process to obtain her counselor license, which takes approximately three weeks. *See id.*  
11 In the event the licensure process was not completed by the beginning of the school year, Mr.  
12 Larnerd planned to designate the Preferred Counselor as a short-term substitute until she received  
13 her license. *See id.*

14 On July 28, 2020, CCSD contacted Mr. Larnerd and informed him that a counselor not  
15 selected by any other school (the “Unselected Counselor”) would be assigned to the position that  
16 Mr. Larnerd intended to fill with the Preferred Counselor. *See id.* at ¶ 4. While Mr. Larnerd did  
17 not agree to the assignment, he offered to interview the Unselected Counselor. *See id.* When Mr.  
18 Larnerd reviewed the Unselected Counselor’s record, he discovered it consisted of admonitions  
19 and suspensions in past years. *See id.*

20 Spring Valley High School’s entire administrative team and the chair of the counseling  
21 department interviewed the Unselected Counselor at 10:00 a.m. on Wednesday, July 29, 2020.  
22 *See id.* at ¶ 5. The entire team did not feel the Unselected Counselor would be a good fit for  
23 Spring Valley based on the fact that the Unselected Counselor openly stated he was  
24 uncomfortable using technology (a must during these unprecedented times of COVID-19) and  
25 that he did very little direct counseling at his previous school. *See id.* He further openly admitted  
26 that his last primary job responsibilities were to manage the College & Career Center and  
27 complete NCAA eligibility for student athletes. *See id.* After the interview, Mr. Larnerd invoked  
28



1 the local school autonomy rights secured under NRS Chapter 388G and rejected the placement.

2 *See id.*

3 CCSD then conducted its “lottery” and forcibly placed the previously interviewed  
4 Unselected Counselor at Spring Valley High School. *See id.* at ¶ 6. Mr. Larnerd attempted to  
5 explain to CCSD that Spring Valley High School had a concrete plan to hire the Preferred  
6 Counselor and all that needed to occur was for the candidate to obtain her licensure – a simple  
7 three week process. *See id.* CCSD stated that since Spring Valley High School was going to be  
8 required to start the Preferred Counselor as a substitute, CCSD had the right to unilaterally place  
9 the Unselected Counselor and refused any other outcome. *See id.* at ¶ 8.

10 Ultimately, Spring Valley High School allocated an additional \$88,205 from its Strategic  
11 Budget and funded a second counselor position to retain the Preferred Counselor. *See id.* at ¶ 9.

12 **F. CCSD has stated it will continue to “assign” teachers to schools.**

13 In a statement made on Facebook, CCSD reported that “CCSD is currently approximately  
14 ten thousand students below projected enrollment numbers for the 2020-21 school year.” **Exhibit**  
15 **“20”** (Sept. 23, 2020, CCSD Facebook Post). CCSD noted that budget decisions will be made at  
16 the various schools, and the “process might require some teachers to be reassigned to new grade  
17 levels or schools based on the budget decisions at each school.” *Id.* CCEA also recognized the  
18 uniqueness of the upcoming reduction of teacher positions. “Although this happens annually, due  
19 to much lower than expected enrollment, this year will likely be very different from previous  
20 years.” **Exhibit “21”** (CCEA Sep. 21, 2020, Email). With the pandemic reducing availability of  
21 teacher positions, CCSD affirmed that “[w]ith approximately 400 licensed personnel vacancies  
22 within CCSD, we expect *staff will have the opportunity to be assigned to another school-site to*  
23 *fill a vacant position.*” Ex. 21 (emphasis added).

24 **III. Legal Argument.**

25 **A. A writ of prohibition, or in the alternative, a writ of mandamus is appropriate**  
26 **relief here.**

27 A writ shall issue “in all cases where there is not a plain, speedy and adequate remedy in  
28 the ordinary course of law.” NRS 34.170; NRS 34.330. “A writ of prohibition is appropriate when

1 a district court acts without or in excess of its jurisdiction.” *Cote v. District Ct.*, 124 Nev. 36, 39,  
2 175 P.3d 906, 907 (2008) (citing NRS 34.320; *State v. District Ct. (Anzalone)*, 118 Nev. 140,  
3 146–47, 42 P.3d 233, 237 (2002)). A writ of mandamus is available ‘to compel the performance  
4 of an act which the law . . . [requires] as a duty resulting from an office, trust or station.’ *Id.*, 124  
5 Nev. at 39, 175 P.3d at 907-08 (quoting NRS 34.160), or to control a manifest abuse or an  
6 arbitrary or capricious exercise of discretion. *Id.* (citing *Round Hill Gen. Imp. Dist. v. Newman*,  
7 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981)). “Because both writs of prohibition and writs of  
8 mandamus are extraordinary remedies, we have complete discretion to determine whether to  
9 consider them.” *Id.*, 124 Nev. at 39, 175 P.3d at 908 (citing *Smith v. District Ct.*, 107 Nev. 674,  
10 818 P.2d 849 (1991)).

11 Even when an “arguable adequate remedy exists, this court may exercise its discretion to  
12 entertain a petition for mandamus under circumstances of urgency or strong necessity, or when an  
13 important issue of law needs clarification and sound judicial economy and administration favor  
14 the granting of the petition.” *State v. District Ct.*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002)  
15 (citations omitted).

16 CCASAPE is the labor organization which represents school administrators, including  
17 principals. Superintendent Jara is both refusing to transfer powers to the local school precinct as  
18 required under Nevada law, as well as acting in an arbitrary and capricious manner by conducting  
19 a made-up Teacher Lottery and unilaterally assigning teachers with no statutory authority. As  
20 shown below, the principals have a strong interest in this case, as they enjoy the statutory right of  
21 staff selection at their own schools. Principals are also judged on the success of their students  
22 while CCSD’s Teacher Lottery erodes the principals’ ability to ensure quality instruction is being  
23 provided. The Teacher Lottery ultimately affects a principal’s ability to succeed in his or her  
24 career because CCSD is undermining the student achievement that is used as a metric for  
25 principal evaluation. Moreover, no adequate remedy exists for CCASAPE to seek relief other than  
26 to request the Court’s assistance by way of a Petition for a Writ of Prohibition or Writ of  
27 Mandamus.  
28

1 Since the law’s creation, CCSD has insistently refused to follow it, pushing back at every  
2 turn and in many instances, acting in a blatant illegal manner. CCASAPE respectfully requests  
3 that this Court order CCSD to stop its noncompliance and provide local school precincts with the  
4 autonomy that they were granted by the Legislature five years ago.

5 **B. CCSD is not permitted to unilaterally place teachers at local school precincts.**

6 CCSD has routinely met the law’s requirement with inaction since its inception five years  
7 ago despite numerous warnings from the State Superintendent of Instruction. Now, CCSD is  
8 taking the brash next step and outright violating Nevada law with its Teacher Lottery and the  
9 resulting forced assignments of teachers over the objections of the local school precincts.

10 CCSD’s reading of NRS Chapter 388G is borne out of nothing but a necessity to remedy  
11 its pool of Unselected Teachers. CCSD ushers in a facially incorrect, overly broad reading of  
12 Nevada law. CCSD claims that Subsection 4 authorizes it to reclaim the power of teacher  
13 selection for local school precincts, but the law says nothing of the sort. Teacher selection is a  
14 power enjoyed solely at the local school precinct level. A plain reading of the statute  
15 demonstrates that CCSD is incorrectly interpreting Subsection 4, as the law was meant to address  
16 misuse of long-term substitutes, not to erode the school autonomy created by the very same  
17 statute.

18 The Nevada Legislature never intended for CCSD to forcibly place Unselected Teachers  
19 whenever a school utilizes a substitute teacher. Such a draconian result is nowhere to be found in  
20 the statute itself or its legislative history. NRS Chapter 388G is an innovative and progressive  
21 law, not one that seeks to handcuff the principals’ ability to manage their own schools. Instead of  
22 promoting the quality of instruction, CCSD’s actions are ultimately harming the education  
23 provided to the students of Clark County. By instituting the Teacher Lottery, CCSD created a  
24 process that does not permit the natural consequences of being unselected to occur. The byproduct  
25 is that inefficient teachers are continually awarded new teaching positions at the sacrifice of local  
26 schools’ good faith plans to hire the best possible candidates. The goal of Subsection 4 was to  
27 ensure effective teachers would be placed at the local schools, *not to protect substandard*  
28 *employees from being unassigned.*

1           Moreover, the Coronavirus pandemic has exacerbated the issue, as CCSD has experienced  
2 a sharp drop in enrollment since distance learning began. As a result, many more teacher positions  
3 are going to be cut by schools very soon, which invariably will substantially increase the number  
4 of Unselected Teachers. CCSD has no legal basis to place these Unselected Teachers at local  
5 school precincts, whether under Subsection 4 or any other law. The statute commands the transfer  
6 of power of teacher selection to the local school precinct, and CCASAPE respectfully requests  
7 that the Court issue a writ to prohibit the Superintendent from reclaiming that statutory right for  
8 CCSD.

9                           **1.       The Legislature never authorized CCSD to take back the power of**  
10                           **teacher selection from local school precincts.**

11           CCSD’s claimed basis for its Teacher Lottery derives from a deeply flawed reading of  
12 Nevada law. CCSD reasons that NRS 388G.610(4) authorizes CCSD to select whatever teacher  
13 they see fit any time a substitute is placed at a school, for any reason, regardless of circumstance.  
14 The glaring flaw in this argument is that *Subsection 4 says no such thing.*

15           Again, subsection 4 reads as follows:

16                           *To the greatest extent possible*, the principal of a local  
17 school precinct shall select teachers who are licensed and in  
18 good standing before selecting substitutes to teach at the  
19 local school precinct. The principal, in consultation with  
20 the organizational team, shall make every effort to ensure  
21 that *effective* licensed teachers are employed at the local  
22 school precinct.

23           NRS 388G.610(4) (emphasis added).

24           “[O]ur inquiry begins with the statutory text and ends there, if the text is unambiguous.” *In*  
25 *re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 23, 272 P.3d 126, 132 (2012) “Where the  
26 language of the statute is plain and unambiguous, *a court should not add to or alter the language*  
27 to accomplish a purpose not on the face of the statute or apparent from permissible extrinsic aids  
28 such as legislative history or committee reports.” *City of Reno v. Yturbide*, 135 Nev. 113, 115–16,  
440 P.3d 32, 35 (2019) (emphasis added). Moreover, “the basic rule of statutory interpretation  
that holds that statutes must be construed as a whole . . . .” *Blackburn v. State*, 129 Nev. 92, 97,

1 294 P.3d 422, 426 (2013) (quotations omitted). “[T]he whole-text canon . . . calls on the judicial  
2 interpreter to consider the entire text, in view of its structure and of the physical and logical  
3 relation of its many parts.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE*  
4 *INTERPRETATION OF LEGAL TEXTS* 167 (2012). Nevada courts are instructed to reject  
5 interpretations where an “exception would swallow the rule.” *See e.g., Iliescu v. Steppan*, 133  
6 Nev. 182, 188, 394 P.3d 930, 935 (2017).

7         Despite CCSD’s claims to the contrary, the law does not provide permission for CCSD to  
8 wrest away the power of teacher selection when a substitute teacher is employed. *See* NRS  
9 388G.610(4). Nothing in the statutory text comes close to supporting such a conclusion. In fact,  
10 Subsection 4 does not permit CCSD to do *anything*. The statute is merely a good faith  
11 requirement for principals and local school precincts to select an “effective” teacher in good  
12 standing prior to hiring a substitute teacher. The statute vests *no authority* in CCSD, and therefore  
13 any action taken by CCSD relying on Subsection 4 exceeds its statutory authority. As Nevada  
14 courts have repeatedly held, an action taken by a governmental body in excess of its statutory  
15 authority is void. *See e.g., Vill. League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 9, 388  
16 P.3d 218, 224 (2017). Hence, the Teacher Lottery is void on its face and the Court should order  
17 CCSD to discontinue its illegal practice.

18         Subsection 4 also never mentions a “large school district,” the statutorily defined term  
19 synonymous with CCSD. If the Legislature intended CCSD to gain any rights or powers as a  
20 result of a local school precinct employing substitutes, the Legislature surely would have used the  
21 term “large school district” somewhere in the language of Subsection 4. It does not.

22         The absence of any grant of power to CCSD in Subsection 4 is especially striking in the  
23 face of Subsection 2, which specifically commands the Superintendent to transfer the power of  
24 teacher selection to the local school precincts. *See* NRS 388G.610(2)(a)(1). Applying the canon  
25 of statutory construction *expressio unius est exclusio alterius* (that which is not stated is  
26 excluded), Subsection 2’s specific grant of power of teacher selection to the local schools  
27 contrasted with the complete absence of any reference regarding CCSD selecting teachers in  
28

1 Subsection 4 confirms that the Legislature did not intend to disrupt local school autonomy and  
2 strip away the principals' ability to effectively staff their own schools.

3 The language of Subsection 4 itself also belies CCSD's self-serving made-up  
4 interpretation. While the statute makes no mention of CCSD having the right to select teachers  
5 and substitutes, Subsection 4 does clearly state "*The principal, in consultation with the*  
6 *organizational team*, shall make every effort to ensure that effective licensed teachers are  
7 employed at the local school precinct." NRS 388G.610(4) (emphasis added). The Legislature  
8 specifically commands individuals at the local school level to perform the selecting of teachers,  
9 *not CCSD*.

10 Moreover, "[*t*]he principal of the local school precinct shall select staff for the local  
11 school precinct as necessary to carry out the plan of operation from a list provided by the  
12 superintendent." NRS 388G.700(2). The law clearly vests the power to make staffing decisions  
13 with the principals. The Nevada Legislature never takes that right away at any time. CCSD has no  
14 authority to hijack the selection process as it clearly has. The school principals are the ones who  
15 should be making the decisions of when to hire a substitute and when to hire a teacher, while  
16 always with the aim to comply with Subsection 4 to the greatest extent possible. Tellingly, the  
17 Teacher Lottery system has not revealed any instances where administrators are out of  
18 compliance with the law. The principals were either exercising their autonomy in recruitment and  
19 staffing efforts or they were not provided ample time to fill a vacancy. All of the principals had  
20 thought out, well-reasoned plans, many already preapproved by CCSD, but were forced to accept  
21 an Unselected Teacher over his or her objections.

22 Lastly, the Teacher Lottery is a textbook example of an asserted exception swallowing the  
23 rule. The Legislature sought to reform the Clark County School District by transferring powers to  
24 the local school precinct level. CCSD's interpretation that the good faith requirement of  
25 Subsection 4 reverses the law's explicit grant of power promotes exactly the opposite of what the  
26 Nevada Legislature intended. *See* NRS 388G.500. Canons of statutory interpretation do not  
27 support such a reading when it contrasts so sharply with legislative objectives.

1           CCSD’s Teacher Lottery is premised on a grant of power that simply does not exist. While  
2 Subsection 4 instructs local school precincts on whether teachers or substitutes should be placed  
3 first, the law never alters who possesses the power to choose those teachers or substitutes. Nor  
4 does subsection 4 require local school precincts to accept substandard teachers, as they retain the  
5 ability to have the final call on whether a licensed teacher is “effective” enough for that precinct.  
6 Subsection 4 is not a grant of authority to CCSD, but is only a good faith requirement placed on  
7 principals. The Court should therefore conclude that the Teacher Lottery is an illegal practice  
8 because the statute unambiguously does not provide CCSD with additional rights of teacher  
9 selection if a substitute is placed at a local school precinct.

10                           **2.       The Legislature created NRS Chapter 388G to establish local school**  
11                           **precinct autonomy, not restrict a school’s ability to select its teachers.**

12           Subsection 4 unambiguously does not strip the right of teacher selection from a local  
13 school precinct and transfer it to CCSD. If the Court requires more support to hold that the  
14 Teacher Lottery is an illegal act, the Court can easily determine that CCSD’s reading of  
15 Subsection 4 does not comport with the Legislature’s intent behind NRS Chapter 388G as a  
16 whole.

17           “When a statute does not address the issue at hand, we look to reason and public policy to  
18 determine what the Legislature intended.” *Manuela H. v. District Ct.*, 132 Nev. 1, 7, 365 P.3d  
19 497, 501 (2016). “The leading rule is to ascertain the legislature’s intent, and to accomplish that  
20 goal we may examine the context and spirit of the statute in question, together with the subject  
21 matter and policy involved.” *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599–600, 959 P.2d  
22 519, 521 (1998).

23           The Court needs to look no further than the plain words of the statute itself to determine  
24 the express intent of the Nevada Legislature. NRS 388G.500, entitled “Legislative findings and  
25 declaration,” provides a detailed explanation of the Legislature’s reasoning and intent behind  
26 creating local school precinct autonomy within CCSD.

27           “[L]arge school districts are prone to develop large, complex and potentially inefficient,  
28 cumbersome and unresponsive bureaucracies . . . .” NRS. 388G.500(1)(a). The Legislature

1 recognized that “the operational structure and culture may result in an entrenched and inflexible  
2 operational paradigm where decisions are made . . . without regular, consistent or adequate  
3 examination, exploration and *consideration of the particularized, specialized or localized*  
4 *circumstances, needs and concerns of each local school precinct.*” NRS 388G.500(1)(b)  
5 (emphasis added).

6 “A *site-based operational model* encourages decision-making that is more innovative,  
7 proactive and responsive to the particularized, specialized or localized circumstances, needs and  
8 concerns of each local school precinct.” NRS 388G.500(1)(c) (emphasis added). The Nevada  
9 Legislature therefore determined that “it is necessary and essential to transfer and redirect more  
10 funding from the control of central services *to the control of the site-based administrators,*  
11 *teachers and other staff and the parents and legal guardians of pupils in each local school*  
12 *precinct.*” NRS 388G.500(1)(d) (emphasis added).

13 CCSD’s illegal Teacher Lottery plainly does not promote the legislative purpose codified  
14 in the statute. The Teacher Lottery’s placing of the Unselected Teachers is not about legal  
15 compliance; its sole purpose is to remedy an existing pool of Unselected Teachers. CCSD seeks  
16 to limit the autonomy of local school precincts, not expand it as the Legislature intended. CCSD’s  
17 unilateral placement of the Unselected Teachers undermines an autonomous site-based model of  
18 operations, whether or not a principal must address the appropriateness of certain substitutes  
19 placed at a school pursuant to Subsection 4.

20 Turning specifically to substitute teachers, legislative history demonstrates that the  
21 primary concern related to substitutes was a scenario where a principal engages in budgetary  
22 gamesmanship by routinely employing long-term substitutes over licensed teachers. CCEA’s  
23 Executive Director explained “[a] substitute teacher costs about \$20,000 a year . . . and even if  
24 you take the average starting salary of a teacher . . . that is \$64,000. That is a difference of  
25 \$44,000 . . .” Ex. 5, at 78.

26 In 2016, CCSD’s then Superintendent, Pat Skorkowsky, expressed the possibility of “a  
27 clever principal who decides to hire all substitutes to get more money and not have licensed  
28 teachers within their classroom.” Ex. 4, at 42. While Skorkowsky recognized “the goal is to fill



1 every position with a licensed teacher,” the CCSD Superintendent expressly recognized any  
2 statute must be drafted “*with the understanding that substitutes may need to be made. I think that*  
3 *is an important designation.*” *Id.* (emphasis added).

4 CCSD’s Teacher Lottery has absolutely no correlation to inappropriate use of long-term  
5 substitutes. In fact, just the opposite. Each and every principal that was unilaterally saddled with  
6 an Unselected Teacher had a concrete plan regarding the vacancy. In some instances, schools  
7 were only using the “substitute” designation because their preferred candidates were progressing  
8 through the fingerprinting and background checks required to obtain proper licensure. *See* Ex. 14  
9 at ¶ 3; Ex. 19 at ¶ 3. In others, newly appointed principals or those with recent vacancies were  
10 simply not given adequate time to implement a reasonably short selection process. *See* Ex. 16 at ¶  
11 4; Ex. 18 at ¶ 3.

12 More egregious, some local school precincts had viable plans in place where they made  
13 commitments to individuals joining the teacher ranks. As a result of CCSD’s illegal Teacher  
14 Lottery, Gibson Middle School was forced to abandon an established member of the school  
15 community who was obtaining a master’s degree. *See* Ex. 15 at ¶ 6. The master’s candidate only  
16 needed to complete student teaching during the 2020-2021 school year and she would achieve  
17 licensure and be permitted to permanently fill the teacher opening. *See id.* at 1 ¶ 4. Instead of  
18 completing the mentoring process and celebrating the student teacher’s accomplishment, Gibson  
19 Middle School was forced to ask the candidate to seek employment elsewhere. *See id.* at 1 ¶ 9.

20 In similar stories, Cimarron-Memorial High School spent considerable effort recruiting a  
21 practicing attorney, but had to break its commitment to hire her. *See* 14 at ¶ 2. CCSD claimed that  
22 because the attorney must technically be a substitute while waiting for the licensure process to be  
23 completed, CCSD was permitted to disregard Cimarron High School’s autonomy and place  
24 whichever teacher CCSD desired into the position. *See id.* at ¶ 5. Likewise, Spring Valley High  
25 School spent over \$88,000 from its Strategic Budget to create another counseling position to keep  
26 a commitment to a recruit. Ex. 19 at ¶ 9.

27 These principals sought to add new members and talent to the CCSD teacher ranks in a  
28 time when CCSD is plagued with increasing teacher vacancies. CCSD’s Teacher Lottery is not

1 about ensuring that teachers are employed prior to substitutes. The “substitutes” described above  
2 were actually teachers simply waiting for their licensure. CCSD’s pretextual reading of  
3 Subsection 4 flies in the face of the statute and should be rejected.

4 CCSD’s true motivation is clear. CCSD is not trying to adhere to the law. It is not  
5 promoting school autonomy, and certainly is not attempting to address the use of long-term  
6 substitutes. Not one “substitute” replaced by the Unselected Teachers was a long-term substitute  
7 except a student teacher preparing to obtain her licensure that had been mentored for years by the  
8 school community. CCSD was not concerned with improving individual situations at the local  
9 school level, but clearly was focused on the pool of Unselected Teachers and the problem it  
10 created. CCSD, angry at losing any shred of power and autonomy, simply refuses to comply with  
11 this law.

12 CCSD should be forced to address its employment issues without degrading school  
13 independence, the very purpose behind the enactment of NRS Chapter 388G. The Teacher Lottery  
14 does nothing to forward the Nevada Legislature’s goal of providing schools with the right of  
15 teacher selection and protecting against the overuse of long-term substitutes. The Teacher Lottery  
16 only illegally transfers the right of selection back to CCSD using a twisted interpretation of the  
17 law as support.

18 **3. The Nevada Legislature never intended for every substitute placement**  
19 **to be an illegal act.**

20 CCSD construes Subsection 4 to transfer the power of teacher selection back to CCSD in  
21 any instance a substitute is placed at a local school precinct. First, the statute never speaks to a  
22 transfer of power, so the Court should disregard this argument outright. Moreover, the law does  
23 not read so strictly. The statute and the legislative history demonstrate that the Nevada Legislature  
24 did not intend for Subsection 4 to apply in each and every situation involving a substitute. The  
25 Nevada Legislature was careful to specifically require adherence to Subsection 4 only “[t]o the  
26 greatest extent possible . . . .” NRS 388G.610(4).

27 “This court generally avoids statutory interpretation that renders language meaningless or  
28 superfluous.” *In re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 24, 272 P.3d 126, 132–33

1 (2012) (citing *Karcher Firestopping v. Meadow Valley Contr.*, 125 Nev. 111, 113, 204 P.3d 1262,  
2 1263 (2009)). Courts must give effect, if possible, to every clause of a statute. *See Duncan v.*  
3 *Walker*, 533 U.S. 167, 174 (2001). “[W]e must not render it nugatory or a mere surplusage.” *In re*  
4 *Estate of Melton*, 128 Nev. 34, 47, 272 P.3d 668, 676 (2012).

5 As the School Reorganization Law was drafted, legislative history explains that  
6 Subsection 4 merely establishes a good faith requirement that principals and school organizational  
7 teams try to place licensed and effective teachers in good standing before substitute teachers.  
8 Previous CCSD Superintendent Skorkowsky specifically recognized that “*substitutes may need to*  
9 *be made*” and that fact “*is an important designation.*” Ex. 4, at 42. As a result, Subsection 4 does  
10 not state that every single time a substitute is needed, a principal must replace that substitute with  
11 a teacher.

12 The very first words of the statute command that compliance is only required “[t]o the  
13 greatest extent possible.” NRS 388G.610(4). For instance, if a school had worked to recruit  
14 additional teachers, but the teachers were still required to complete the licensure process prior to  
15 being technically placed as a teacher, that would not, *ipso facto*, be a violation of the law by the  
16 school principal. In fact, principals engaging in a three-week process required by CCSD, and  
17 implementing the common practice of labeling a teacher a “substitute” for a short period while the  
18 teacher candidate achieves licensure, is exactly in line with the Legislature’s intent. *See* NRS  
19 388G.610(4) (“make every effort to ensure that effective licensed teachers are employed at the  
20 local school precinct”). Surely, this is a scenario where a rational person would construe the local  
21 school precinct is in compliance with Subsection 4 “to the greatest extent possible.”

22 Another example is if a vacancy occurs and an administrator is not provided with ample  
23 time to engage in the selection process. The local school precinct is statutorily granted the right to  
24 select its teachers. Employing the use of a short-term substitute in those instances is not a  
25 violation of the law. Again, a reasonable person would view the practice of employing a substitute  
26 in that instance as compliance with Subsection 4 “[t]o the greatest extent possible.”

27 The above examples are *exactly* what have occurred here. *See* Exhibits 14-19. CCSD  
28 implausibly characterizes these uses of substitute teachers as somehow illegal under its results-

1 driven interpretation of the statute. If CCSD truly cared about specific compliance with  
2 Subsection 4, CCSD could have worked with the local schools and determined if inappropriate  
3 long-term substitute teacher use was occurring. CCSD did nothing of the sort, but only created the  
4 Teacher Lottery to unilaterally place teachers, many of which are substandard, at local school  
5 precincts. CCSD had Unselected Teachers that were not picked by any school despite being given  
6 every opportunity to do so, and CCSD was determined to place those teachers whether the  
7 schools consented or not.

8 Subsection 4 requires that the principal “shall make every effort to ensure that effective  
9 licensed teachers are employed at the local school precinct,” and that is exactly what the  
10 principals here were doing. NRS 388.610(4). Some through recruitment, some through taking a  
11 reasonable amount of time to engage in a good faith selection process, but all the principals were  
12 working towards the goal of ultimately placing effective licensed teachers at their individual  
13 schools. Subsection 4 does not allow CCSD to pounce on a vacancy the minute it arises, but  
14 requires that the overall intent of the statute to create school autonomy be honored and  
15 incorporated into the statutory interpretation.

16 CCSD is not permitted to reclaim the power of teacher selection from the local school  
17 precincts, but even if it was, the principals here have done nothing wrong. CCSD is simply  
18 resolving a self-made employment issue under the guise of legal compliance. The Court should  
19 see through this ruse, and prohibit CCSD from placing teachers at local school precincts without  
20 their consent.

21 **4. The Unselected Teachers are not effective teachers in good standing.**

22 Subsection 4 states in part that a teacher that is placed prior to a substitute must be “in  
23 good standing.” NRS 388G.610. Significantly, the statute additionally requires the principal to  
24 place “effective” teachers at local school. This language, in fact, expressly allows principals to  
25 reject teachers they deem to be ineffective.

26 Yet, CCSD has posited that Subsection 4 is a “warm body” rule. It contends that anyone  
27 with a teacher’s license, no matter how ineffective, must be imposed upon a school whenever an  
28 opening is available. Wrong. “Good standing” and “effective” are not one and the same, even if

1 quality does not matter to CCSD. *See* Ex. 12. CCSD’s nonsensical approach effectively rewrites  
2 the statute to replace “effective” with “licensed.” Nevada courts do not allow such a gaudy  
3 interpretation of a statute. *See State v. Second Judicial Dist. Court in & for Cty. of Washoe*, 136  
4 Nev. Adv. Op. 23, 462 P.3d 671, 674 (2020) (quoting *Butler v. State*, 120 Nev. 879, 893, 102  
5 P.3d 71, 81 (2004)) (“Every word, phrase, and provision of a statute is presumed to have  
6 meaning.”).

7 CCSD sets the bar far too low, as evidenced by the Unselected Teachers that CCSD chose  
8 to place at the various schools. The Unselected Teachers were replete with past admonishments,  
9 suspensions, ineffective reviews and problematic conduct. *See* Ex. 14 at ¶¶ 6-7; Ex. 15 at ¶ 8; Ex.  
10 16 at ¶ 6; Ex. 18 at ¶ 4. One Unselected Teacher had documented incidents regarding  
11 inappropriate interaction with parents. *See* Ex. 14 at ¶ 7. Multiple Unselected Teachers have  
12 repeated documented incidents regarding violent behavior towards students. *See* Ex. 14 at ¶¶ 6-7;  
13 Ex. 15 at ¶ 8; Ex. 18 at ¶ 6; Ex. 19 at ¶ 4.

14 These Unselected Teachers are not “effective” in the eyes of the local school precincts.  
15 And CCSD is apparently not interested in “ensur[ing] that effective licensed teachers are  
16 employed at the local school precinct” as the law it relies on requires. NRS 388.610(4). CCSD’s  
17 actions are not promoting quality education, but instead are establishing a rogue procedure where  
18 substandard employees are continuously passed from one school to the next without the consent  
19 of a local school precinct. This process is not new, and is known by a variety of less than  
20 flattering names. *See e.g.*, Peter Schweizer, *The Dance of the Lemons*, HOOVER DIGEST, Jan.  
21 1999, <https://www.hoover.org/research/dance-lemons>; Sherman Frederick, ‘*Passing the Trash in*  
22 *Public Schools*’, LAS VEGAS REVIEW-JOURNAL (Mar. 13, 2011, 3:04 a.m.),  
23 <https://www.reviewjournal.com/opinion/passing-the-trash-in-public-schools/>.

24 CCSD’s Teacher Lottery is a new spin on an old problem. Instead of permitting principals  
25 to select the best possible candidates for their individual schools, the Teacher Lottery ensures that  
26 one school or another will be forced to select a subpar teacher that they otherwise would never  
27 have chosen. School autonomy elevates the level of public education, not drag it down by forcing  
28 substandard education on schools.

1 All CCSD had to do to avoid this predicament was to be proactive and adhere to the  
2 statutory requirements of NRS Chapter 388G. Like a proverbial ostrich, however, CCSD has  
3 buried its head in the sand. CCSD’s apathy and unwillingness to take the required actions to  
4 implement the statute’s innovative autonomous site-based model caused its predicament with the  
5 Unselected Teachers. Instead of resolving its own self-created problem, CCSD is asking school  
6 principals to ignore Nevada law.

7 Moreover, the principals who are forced to accept CCSD’s unilateral placements are  
8 nevertheless evaluated by their students’ performance. *See* Ex. 14 at ¶ 10; Ex. 15 at ¶ 11; Ex. 16  
9 at ¶ 11; Ex. 19 at ¶ 9. The Teacher Lottery is inherently unfair to principals because it forces them  
10 to accept a substandard teacher that will likely harm student achievement, but then CCSD  
11 proceeds to judge that principal on the same student performance CCSD is actively working to  
12 undermine.

13 The education of Clark County’s children should not suffer from CCSD’s five years of  
14 inaction. Local school precincts should not be robbed of their legal right to create the most  
15 efficient and effective educational model for their individual schools. CCASAPE  
16 requests that the Court not permit such blatant illegal actions to continue and prohibit CCSD from  
17 unilaterally placing teachers, inefficient or otherwise, at local school precincts without their  
18 consent.  
19

20 **5. The pandemic will magnify CCSD’s illegal conduct as many more**  
21 **Unselected Teachers are expected to be “assigned.”**

22 CCASAPE urges this Court to issue a Writ of Prohibition, or in the alternative, a Writ of  
23 Mandamus because this problem is about to become magnified and CCSD is undoubtedly  
24 planning on conducting another Teacher Lottery in the near future. The Coronavirus pandemic  
25 and the resulting need to transition to distance learning have caused approximately ten thousand  
26 students to leave CCSD. As a result, less teacher positions will be required and local school  
27 precincts, in conjunction with their school organizational teams, will have to make reductions in  
28 line with their budgetary priorities and plans of operations.

1 CCSD has explained as much in a recent public statement release on Facebook. “CCSD is  
2 currently approximately 10,000 students below projected enrollment numbers for the 2020-21  
3 school year.” Ex. 20. CCSD did predict, however, that teacher assignment will occur in the event  
4 of vacant positions. “With approximately 400 licensed personnel vacancies within CCSD, we  
5 expect *staff will have the opportunity to be assigned to another school-site to fill a vacant*  
6 *position.*” *Id.* (emphasis added). CCEA also recognizes the gravity of the upcoming teacher  
7 reduction. “Although this happens annually, due to much lower than expected enrollment, this  
8 year will likely be very different from previous years.” Ex. 21.

9 While the first Teacher Lottery affected a relatively small group of individual schools, all  
10 involved agree that a much more substantial selection process is about to occur. With such an  
11 increase in teachers needing placement, CCSD’s problem regarding its Unselected Teachers is  
12 only going to multiply. CCSD publically stated that it intends to continue its illegal lottery in the  
13 future. Ex. 13 (“Until a permanent resolution is implemented, this process will apply to . . . future  
14 surplus situations as well.”) If gone unchecked, CCSD will continue to flout the law’s mandate  
15 that the local school precincts are to select teachers, not CCSD.

16 The issue is relevant, pressing, and ripe for immediate Court intervention. The  
17 Coronavirus pandemic will cause a rise in Unselected Teachers. CCSD continues to refuse to  
18 fully recognize the local school precinct’s authority to select its own staff, no matter the  
19 circumstance. CCSD’s long-running, habitual inaction will cause the same problem to occur over  
20 and over again during every future surplus period. CCASAPE therefore requests that the Court  
21 prohibit unilateral teacher placements at local school precincts in accordance with CCASAPE’s  
22 requested relief below, or in the alternative, mandate that Superintendent Jara finally and  
23 completely transfer the power to select teachers to the local schools as Nevada law requires.

24 **C. CCASAPE’s requested relief.**

25 CCASAPE requests that the Court find Superintendent Jara and CCSD are acting in  
26 contradiction to Nevada law, and grant a Writ of Prohibition ordering the following:

- 27 1. CCSD’s Teacher Lottery is an illegal practice pursuant to NRS 388G.610;

1 2. CCSD shall undo each instance it unilaterally selected a teacher without the  
2 consent of the local school precinct during the 2020-2021 school year (including but not limited  
3 to the instances listed in the instant Petition), whether the placement occurred by way of the  
4 Teacher Lottery or otherwise; and

5 3. CCSD shall cease to place teachers, administrators or staff in the future without the  
6 local school precinct's affirmative consent as to each placement.

7 **IV. Conclusion.**

8 The Teacher Lottery and CCSD's resulting forced placements of the Unselected Teachers  
9 at local school precincts are not permitted under the law. CCSD's motivation is clearly to address  
10 an employment issue and not remotely related to legal compliance. The statutory text is clear.  
11 Nowhere does the law provide CCSD with the power to select teachers for local schools without  
12 the school's consent, *under any circumstances*.

13 For the foregoing reasons, CCASAPE therefore respectfully requests that the Court  
14 prohibit Superintendent Jara from causing CCSD to assign teachers to a local school precinct  
15 without the school's consent, as outlined in CCASAPE's requested relief above. In the  
16 alternative, CCASAPE requests that the Court mandate that Superintendent Jara transfer the  
17 power to select teachers (and all other staff) to the local school precincts.

18 DATED this 8th of October, 2020.

19  
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