SENATE EDUCATION COMMITTEE

April 3, 1973

Sixteenth Meeting

Committee members present: Chairman Foley
Senator Neal
Senator Walker
Senator Young
Senator Bryan
Senator Raggio
Senator Hecht

List of interested citizens present is marked Exhibit "A" and attached hereto.

Chairman Foley called the meeting to order at 3:20 p.m.

S.C.R. 16: Directs board of regents of University of Nevada System to extend certain privileges to Viet Nam veterans.

Chairman Foley read Senator Swobe's amendment to the committee members. Senator Raggio commented that he did not understand what we are trying to do for the veterans; the bill is too general to be meaningful.
Upon unanimous decision of the committee, the wording "and develop policy with respect thereto" be added to Senator Swobe's amendment.

Senator Bryan moved "Do Pass", as amended, seconded by Senator Raggio, unanimously carried.

S.B. 429: Changes designation of teacher to certified employee and revises procedures for demotion, dismissal and refusal to reemploy.

S.B. 552: Creates hearing officer panel and revises procedures on teacher dismissals and non-reemployment.

Mr. Dick Morgan, drafter of S.B. 552, and Mr. Bob Petroni, drafter of S.B. 429, recommended adoption of the bill as shown on Exhibit "B" attached hereto. They would like to streamline the present dismissal precedure. This covers

everyone under the bill and protects the certificated person. A teacher can be suspended for two days without pay after an administrative hearing. A hearing officer would be chosen from a list of attorneys from the Nevada Trial Lawyers Association. A hearing officer must be an attorney, and may include district judges. Dr. Marvin Picollo submitted a copy of their amendments. It was also proposed that any procedure adopted by the Board shall be filed with the State Department of Education.

Senator Bryan moved "Do Pass", as amended, seconded by Seantor Raggio, unanimously carried.

A.B. 444: Directs board of regents to allocate funds for completion of Clark County community college facility.

Senator Raggio commented that this is a measure the Senate Finance Committee has had discussions on. Senator Raggio further stated that he feels it is a measure that should be considered in light of the overall executive budget. Senator Foley stated that this bill has not come before the Senate Education Committee; therefore, it evidently has gone directly to the Finance Committee.

A.B. 495: Authorizes county school districts to participate in the Nevada interscholastic activities association for the control and regulation of high school interscholastic activities.

Dr. Marvin Picollo stated that this is prompted by the school trustees in conjunction with the administrators, and it would make legal that which they have been doing for many years. Allows the State to incorporate as a non-profit organization. Incorporates rules and regulations under the scope of this law.
Mr. Bob Petroni commented that many students are contesting the rules and regulations. Has the full support of the administrators and scholl trustees.

Senator Bryan moved "Do Pass", seconded by Senator Young, Senator Neal voted "No".

S.B. 243: Provides alternate qualifications for superintendents of schools.

Upon unanimous decision, it was agreed that the bill, in it's present form is poorly drafted.

Senator Raggio moved "Do Hold", seconded by Senator Bryan, unanimously carried.

S.B. 585: Designates state department of education "educational institution" for certain purposes and allows extended school year.

Mr. John Gamble stated that Section 1, Lines 3,4 & 5 would allow custodians, clerical and maintenance employees to be categorized as "un-classified" personnel.
Bob Best commented that they would like the same flexibility with the state staff as has been granted to the local school districts. It is easier to hire personnel for above mentioned positions if they are un-classified.
John Gamble suggested the following amendment: Section 2, Page 2, Lines 14 through 17 shall read: "2. After notification by the state department of education that an extended school year program will be operated, any county school district may request extension of the school year beyond the last day of June for each year of such program."

Senator Young moved that the new language in Section 1 be deleted and "Do Pass", as amended, seconded by Senator Raggio, unanimously carried.

Being no further business, Chairman Foley adjourned the meeting at 4:15 p.m.

Respectfully submitted,

Sharon W. Maher, Secretary

John Foley, Chairman

*See Exhibit "C" for memo from Chairman regarding S.B. 329 and correspondence from Richard Sheffield, Deputy Legislative Counsel regarding S.B. 225.

PLEASE PRINT

NAME	REPRESENTING	TESTIFY YES	TESTIFY NO	ADDRESS
JICK WRIGHT	WCSD		X	425 E 9th STREET RENO
Harvey Sanders	Clark County SD		X	2832 E Flamingo
MARVIN Picollo	W. C. S. District	X		425 E 9th Reno
Jan Kennedy	R. E. Gazette		X	E. Second St Reno
J. Shields			X	Carson
Ken Creighton			X	Reno
Edmund M. Pratt	NSEA		X	Reno
Rick Morgan	St. Education			
Corey Coon	Classroom Teachers			
John Gamble				
Sapphire Mo. Co.				

EXHIBIT "A"

DISMISSALS AND REFUSAL TO REEMPLOY

391.311 DEFINITIONS

The following terms, whenever used or referred to in NRS 391.312 to 391._____ inclusive, have the following meaning unless a different meaning clearly appears in the context:

1. "Administrator" means a certificated employee the majority of whose working time is devoted to service as a superintendent, supervisor, principal or vice-principal.
2. "Board" means the board of trustees of the school district wherein a teacher affected by NRS 391.311 to 391._____ inclusive is employed.
3. "Superintendent" means the superintendent of a school district or the person acting as such.
4. "Teacher" means a certificated employee the majority of whose working time is devoted to the rendering of direct educational service to students of a school district.
5. "Probationary Teacher" means a teacher in the first three consecutive contract years of employment in a school district including any authorized leave of absence during that period.
6. "Post Probationary Teacher" means a teacher who has completed three consecutive probationary teacher contracts in a Nevada school district and is employed for a fourth consecutive year.
7. Demotion as used in this act shall apply to administrators only.

391.3115 provisions of NRS 391.311 to 391._____. Inapplicable to substitute or adult education teachers.

391.3115 The demotion, dismissal and non-reemployment provisions of NRS 391.311 to 391._____ inclusive do not apply to:

1. Substitute teacher
2. Adult education teacher
3. Certificated employees who are employed in positions fully funded by a federal or private categorical grant. Such certificated employee shall be employed only for the duration of the grant; however, during such period of employment, the employee shall receive credit toward his post probationary status, and shall not be suspended or demoted except as provided in this act.

4. DISMISSED, OTHERWISE

391.312 Grounds for demotion, suspension, dismissal, or refusal to reemploy certificated employee.

1. A teacher may be suspended, dismissed, or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:
   (a) Inefficiency;
   (b) Immorality;
   (c) Unprofessional conduct;
   (d) Insubordination;
   (e) Neglect of duty;
   (f) Physical or mental incapacity;
   (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
   (h) Conviction of a felony or of a crime involving moral turpitude;
   (i) Inadequate performance;
   (j) Evident unfitness for service;
   (k) Failure to comply with such reasonable requirements as a board may prescribe;
   (l) Failure to show normal improvement and evidence of professional training and growth;

EXHIBIT "B"

(m) Advocating overthrow of the government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
(n) Any cause which constitutes grounds for the revocation of a teacher's state certificate;
(o) Willful neglect or failure to observe and carry out the requirements of this title; or
(p) Dishonesty.

2. In determining whether the professional performance of a certificated employee is inadequate, consideration shall be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

391.313 EVALUATION OF TEACHERS --

1. It is the intent of the legislature that a uniform system be developed for objective evaluation of teacher personnel in each school district.

2. Each board of school trustee, following consultation and involvement of elected representatives of teacher personnel or their designees, shall develop an objective evaluation policy which may include self, student, administrative or peer evaluation or any combination thereof.

3. The probationary teacher shall be evaluated in writing at least twice each year. The first evaluation shall take place no later than 60 school days after entering service under the contract. If necessary, the evaluation shall include recommendations for improvement of teaching performance. A reasonable effort shall be made to assist the teacher to correct deficiencies noted in the evaluation report. The teacher shall receive a copy of an evaluation within 15 days after the evaluation.The evaluation and teacher's response shall become a permanent attachment to the teacher's personnel file. The second evaluation shall take place no later than March 1.

4. The post probationary teacher shall be evaluated at least once each year. If necessary, the evaluation shall include recommendations for improvement in teaching performance. A reasonable effort shall be made to assist the teacher to correct teaching deficiencies noted in the evaluation. The teacher shall receive a copy of any evaluation not later than 15 days after the evaluation. A copy of the evaluation and the teacher's response shall become a permanent attachment to the teacher's personnel file.

391.3131 EVALUATION OF ADMINISTRATORS --

Each board of school trustees, following consultation and involvement of elected representatives of administrative personnel or their designated representatives, shall develop an objective evaluation policy which may include self, student, administrative or peer evaluation or any combination thereof.

391.314 ADMONITION OF CERTIFICATED EMPLOYEE

1. Whenever an administrator charged with the supervision of a certificated employee believes it is necessary to admonish a certificated employee for a reason he believes may lead to demotion, dismissal, or cause the certificated employee not to be reemployed under the provisions of NRS 391.312, he shall:

(a) Bring the matter to the attention of the certificated employee involved in writing and make a reasonable effort to assist the certificated employee to correct whatever appears to be the cause for potential dismissal or failure to reemploy, and

(b) Except as provided in NRS 391.3115, allow reasonable time for improvement which shall not exceed three months for the first admonishment.

2. A certificated employee may be subject to immediate dismissal or non-reemployment according to the procedures provided herein without the admonishment required by this section on grounds contained in paragraphs (f), (g), (h), and (p) of Subjection 1, of NRS 391.312.

391.315 SUSPENSION OF CERTIFICATED EMPLOYEE --

1. Whenever a superintendent has reason to believe that cause exists for the dismissal of a certificated employee and when he is of the opinion that the immediate suspension of the certificated employee is necessary in the best interests of the children of the district, the superintendent may suspend the certificated employee without notice and without a hearing. Notwithstanding the provisions of NRS 391.312, a superintendent shall automatically suspend a certificated employee that has been officially charged but not yet convicted of a felony or a crime involving moral turpitude. If the charge is dismissed or if the certificated employee is found not guilty, he shall be reinstated with back pay and normal seniority. The superintendent shall notify the certificated employee in writing of the suspension.

2. Within 10 days after such suspension becomes effective, the superintendent shall begin proceedings pursuant to the provisions of NRS 391.312 to 391.3195 inclusive, to effect the certificated employee's dismissal.

3. If sufficient grounds for dismissal do not exist, the certificated employee shall be reinstated without loss of compensation.

4. A superintendent may discipline a certificated employee by suspending the employee for up to two days with loss of pay at any time after a due process hearing has been held. The grounds for suspension are the same as the grounds contained in NRS 391.312. The suspension provisions provided herein may be invoked not more than once during the certificated employees contract year.

391.316 RECOMMENDATIONS FOR DEMOTION, DISMISSAL, AGAINST REEMPLOYMENT --

1. A superintendent may recommend that a teacher be dismissed or not reemployed.

2. A superintendent may recommend that an administrator be demoted, dismissed, or not reemployed.

3. The board may recommend that a superintendent be demoted, dismissed, or not reemployed.

4. In the event the board recommends that a superintendent be demoted, dismissed, or not reemployed it may request the appointment of a hearing officer or hearing commission depending upon the grounds for such recommendation.

391.317 NOTICE OF INTENT TO RECOMMEND DISMISSAL OR NON_RENEWAL

1. At least 15 days before recommending to a board that it demote, dismiss or not reemploy a certificated employee, the superintendent shall give written notice to the employee, by registered or certified mail, of his intention to make such recommendation.

2. Such notice shall:

(a) Inform the certificated employee of the grounds for the recommendation.

(b) Inform the employee that, if a written request therefor is directed to the superintendent within 10 days after receipt of the notice, the employee is entitled to a hearing before a hearing officer or hearing commission depending upon the grounds for the recommendation.

(c) Refer to Chapter 391 of NRS.

391.318 REQUEST FOR HEARING --

1. If a request for a hearing is not made within the time period allowed, the superintendent shall file his recommendation with the board. The board may, by resoluation, act on the recommendation as it sees fit.

2. If a request for a hearing is made, the superintendent shall not file his recommendation with the board until a report of the hearing officer or hearing commission is filed with him.

391.319 HEARING OFFICER, COMMISSION

1. There is hereby created a hearing officer list which shall consist of not less than 50 Nevada resident attorneys at law. Hearing officers on the list shall be appointed by the State Board of Education following nomination by the Nevada Bar Association and Nevada Trail Lawyer Association. Retired District Court or Supreme Court judges may be nominated and included on the list.

2. Hearing officers shall be appointed for a term of two years or until resignation or removal for cause by the State Board of Education. Vacancies shall be filled as necessary following the procedure set fourth in 391.319, Subsection 1.

3. A hearing officer shall conduct hearings in cases of demotion, dismissal, or non-reemployment based on grounds contained in paragraphs (b), (f), (g), (h), (m), and (p) of Subsection 1 of NRS 391.312.

4. A hearing commission composed of three members shall hear and make recommendations in cases of demotion, dismissal or non-reemployment based on grounds contained in paragraphs (a), (c), (d), (e), (i), (j), (k), (l), (n), and (o) of Subsection 1 of NRS 391.312.

(a) The two education members shall be selected as needed to hear individual cases as set forth in this section.

(b) One member of such commission shall be selected by the board, one member shall be selected by the certificated employee, and the third member who shall act as chairman shall be selected by the Superintendent of Public Instruction from the State Department of Education hearing officer list.

(c) The members appointed respectively by the board and certificated employee shall have at least four years experience in the field of education.

5. If a request is made to the State Superintendent of Public Instruction for appointment of a hearing officer, the State Superintendent, within 10 days from receipt of such request, shall designate seven attorneys on the hearing list.

391.3191 The certificated employee and the superintendent may each challenge not more than five members of the hearing officer list, and the Superintendent of Public Instruction shall not appoint any challenged person.

391.3195 PEREMPTORY CHALLENGE

1. After appointment of the list, the certificated employee and superintendent are entitled:

(a) To challenge peremptorily one of the list at a time, alternately, until only one remains, who shall serve as hearing officer for the hearing. The superintendent and certificated employee shall draw lots to determine first choice to challenge a member of the list.

(b) To challenge peremptorily the hearing officer appointed to a hearing commission when such commission is required, in which case:

(1) The superintendent and certificated employee shall each have two peremptory challenges.

(2) The superintendent and certificated employee may exercise their two challenges until they have exhausted their right to challenge or waive their rights to such challenge.

2. The State Department of Education shall prepare a procedure for exercising challenges to the hearing officer and hearing commission chairman and set time limits in which the challenges may be exercised by the certificated employee and superintendent.

391.3192 HEARING PROCEDURE --

1. As soon as possible after the time of his or its designation, the hearing officer or hearing commission shall hold a hearing to determine whether the grounds for the recommendation are substantiated.

2. The State Department of Education shall furnish the hearing officer or hearing commission with any assistance which is reasonably required to conduct the hearing, and the hearing officer or hearing commission may require witnesses to give testimony under oath and produce evidence relevant to its investigation.

3. The certificated employee and superintendent are entitled to be heard, to be represented by counsel and to call witnesses in their behalf.

4. The hearing officer shall be reimbursed reasonable actual expenses and not more than $150 per day for actual time served. If requested by the hearing officer, an official transcript shall be made.

5. The school board and certificated employee shall be equally responsible for the expense and salary of the hearing officer and the official transcript when requested by the hearing officer.

6. The appointed commission members shall not forfeit any salary or employment benefits for performing their duties as a commission member.

7. The State Board of Education shall develop a set of uniform standards and procedures to be used in such a hearing. The technical rules of evidence shall not apply.

391.3193 HEARING REPORT --

1. Except as provided in Subsection 3, within 30 days from the time of the designation, the hearing officer or hearing commission shall complete the hearing and shall prepare and file a written report with the superintendent and the certificated employee involved.

2. The report shall contain an outline of the scope of the hearing findings of fact, conclusions of law, and recommend a course of action to be taken by the board.

3. If it appears that the report cannot be prepared within 30 days, the certificated employee and the superintendent shall be so notified prior to the end of such period, and the hearing officer or hearing commission may take the time necessary not exceeding 40 days from the time of the designation to file the written report and recommendation.

4. The certificated employee and superintendent or his designee may mutually agree to waive any of the time limits applicable to the hearing procedure of this act.

391.3194 HEARING REPORT APPEAL --

1. Within five days after the superintendent receives the report of the hearing officer or hearing panel he shall either withdraw the recommendation to demote, dismiss or not reemploy the certificated employee or file his recommendation with the board.

2. At the next meeting after the receipt of the superintendent's recommendation, the board shall either accept or reject the hearing officer's or hearing commission's recommendation and notify the teacher in writing of it's decision.

3. The board, may, prior to making a decision refer the report back to the hearing officer or commission for further evidence and recommendations. The hearing officer or hearing commission shall have 15 days to complete the report and file it with the board and mail a copy to the superintendent and certificated employee.

4. The certificated employee or board may appeal the decision to a district court within the time limits and as provided in NRS 233B.130, NRS 233B.140, and NRS233B.150.

391.3195 REEMPLOYMENT --

1. On or before April 1 of each year, the board of trustees shall notify certificated employees in writing, by certified mail, or by delivery of a certificated employee's contract to the certificated employee's in their employ, concerning their reemployment for the ensuing year. If the board, or it's designee, fails to notify a certificated

employee who has been employed by a school district of his status for the ensuing year, the certificated employee shall be deemed to be reemployed for the ensuing year.

2. This section does not apply to any certificated employee who has been recommended to be demoted, dismissed, or not reemployed if such proceedings have commenced and no final decision has been made by the board.

3. Any certificated employee who is reemployed pursuant to Subsection 1, shall by April 10, notify the board in writing of his acceptance of employment. Failure on the part of the certificated employee to notify the board of acceptance within the specified time limit shall be conclusive evidence of the certificated employee's rejection of the contract.

4. If certificated employees are represented by a recognized employee organization pursuant to Chapter 288 of NRS, and negotiation has been commenced pursuant to NRS 288.180, then the provisions of Subsections 1, 2, and 3 shall not apply except for non-reemployment procedures and prior to April 10 of each year the employees shall notify the board in writing, on forms provided by the board, of their intention to accept reemployment. Any agreement negotiated by the recognized employee organization and the board shall become a part of the contract of employment between the board and the employee. The board of trustees shall mail contracts by certified mail with return receipts requested, to each employee to be reemployed at his last known address or shall deliver such contract in person to each employee obtaining a receipt therefor. Failure on the part of the employee to notify the board of acceptance within 10 days after receipt of such contract shall be conclusive evidence of the employee's rejection of the contract.

391.321 DEMOTION, DISMISSAL, AND NON_REEMPLOYMENT OF PROBATIONARY TEACHERS

1. Teachers employed by a board of trustees shall be on probation annually for the first three consecutive contract years of employment unless on an approved leave of absence, provided their services are satisfactory, or they may be dismissed at any time at the discretion of the board.

2. Prior to dismissal or non-renewal, the teacher may obtain a due process hearing before the board, or, at the discretion of the board, a hearing before a hearing offier or commission as set out in this act. The appeal provision of NRS 233B does not apply for a probationary teacher.

391.323 LENGTH OF PROBATION

Any certificated employee who has achieved post probationary status in a Nevada school district and is contracted in a second or subsequent school district shall have a probationary period not to exceed two consecutive contract years of employment in that district.

391.324 ALTERNATE PROVISIONS FOR DISMISSAL OR NON-RENEWAL

1. The provisions of NRS 391.311 to 391.3197, inclusive, are not applicable to a teacher who has entered into a contract with the board as a result of the Local Government Employee-Management Relations Act and such contract provides separate provisions relating to the board's right to dismiss or refuse to reemploy such teacher.

* * * *

Senator Hecht

March 30, 1973

A meeting was held on S.B. 329, and Senator Foley advised the committee that Mr. Richard Morgan and Mr. Robert Petroni had agreed on amendments.

It was moved, seconded and resolved that the amendments be adopted, and the bill upon reprint, be rereferred to the Education Committee.

/s/ John Foley

John Foley, Chairman
Senate Education Committee

EXHIBIT "C"

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
CARSON CITY, NEVADA 89701

LEGISLATIVE COMMISSION
CLIFF YOUNG, Senator, *Chairman*

ARTHUR J. PALMER, *Director*

CLINTON E. WOOSTER, *Legislative Counsel*
EARL T. OLIVER, C.P.A., *Fiscal Analyst*
ARTHUR J. PALMER, *Research Director*

March 31, 1973

Senator John P. Foley
770 East Sahara
Suite 401
Las Vegas, Nevada 89105

Re: S.B. 225 of 1973

Dear Senator Foley:

You have asked whether Senate Bill 225 is unconstitutional. It states:

> Except to obtain the greatest possible use of all available school facilities, as determined by the board of trustees, no board of trustees of a school district or the state board of education shall assign or require the assignment of any pupil to a particular public school on account of race, sex, color, religion or national origin.

On its face, the bill appears not to say anything unconstitutional but rather to express the constitutional concept of equal protection.

The U.S. Supreme Court has, however, declared:

> All things being equal, with no history of discrimination, it might be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. (Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267, 1282, 1971.)

In the eyes of the U.S. Supreme Court, compensating measures are sometimes needed to offset such factors as the location

of school facilities in a pattern that contributes to racial inequality, the composition of teaching staffs having the same effect, and the inherent disadvantage in educational psychology of any clustered minority.

Language similar to S.B. 225 was contained in a 1969 North Carolina statute, as follows:

> No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary busing of students in contravention of this article is prohibited, and public funds shall not be used for any such busing. (N.C. General Statutes secs. 115-176.1.)

The North Carolina statute was soon challenged before a three-judge federal district court. (312 F.Supp. 503, 1970.) The court enjoined enforcement of the statute.

The following year the U.S. Supreme Court examined the validity of the statute in N.C. State Board of Education v. Swann, 402 U.S. 43, 91 S.Ct. 1284 (1971). In essence, the U.S. Supreme Court declared that:

1. As to the part of the statute barring any racially motivated assignments:
   (a) The language "exploits an apparently neutral form."
   (b) Forbidding racial assignments deprives school authorities of the one tool absolutely essential for fulfilling their constitutional duty to end dual school systems.
2. As to the part of the statute about busing:
   (a) Since the ban is absolute with respect to racial assignments, it will "hamper the ability of local authorities to effectively remedy constitutional problems."

(b) Without busing "it is unlikely that a truly effective remedy could be devised."

The U.S. Supreme Court added: A state statute "must fall" if it impedes the disestablishment of a dual school system. A state policy must give way when it operates "to hinder vindication" of federal constitutional guarantees.

The U.S. Supreme Court omitted calling the North Carolina statute "unconstitutional." On the other hand, the Court saw the statute as an attempted interference with the powers available for use by the federal judiciary.

In Swann v. Charlotte-Mecklenburg Board of Education, the U.S. Supreme Court observed that several methods could be employed to reach the Court's goal of unitary school systems. Obviously the Court wanted all methods to remain available and would not allow the loss of any one of these methods, especially not the one most likely to succeed if all others were to fail, namely, racial assignments with busing. The Court regarded this most effective method as being within the normal, historical power of the federal courts to frame equitable remedies.

The U.S. Supreme Court did acknowledge that its jurisdiction to exercise such power arises only when a state (or its political subdivision) is responsible, at least in part, for the existence of a dual system of educating the races.

The federal courts have assumed jurisdiction over the school district in Clark County, Nevada. The prerequisite finding that the county had contributed to the existence of a racially segregated system was made by the U.S. District Court for the District of Nevada. An appeal related to that finding was presented to the U.S. Circuit Court of Appeals for the Ninth Circuit in Kelly v. Guinn, 456 Fed. 2d 100 (1972). The Ninth Circuit Court held that there was enough evidence of segregation to support the lower federal court's finding.

The Ninth Circuit Court did not directly order a racial assignment of pupils to correct the situation in Clark County. The Court did endorse the lower federal court's decree. By the terms of that decree, the numbers of the minority race which may be enrolled in any grade or class may not exceed 50 percent (456 Fed. 2d at 109). The decree implies that school authorities must enroll a sufficient number of pupils of the majority race to make up at least 50 percent of the classes in schools located where the minority race predominates. The method of carrying out the necessary enrollments is, doubtless, compulsory racial transfers with busing.

Previously, the Clark County School District had adopted a "freedom of choice" plan. This plan rested on the concept that the district's constitutional duty was only to refrain from excluding any pupil from any school because of race. S.B. 225 is in harmony with the concept. The Ninth Circuit Court in Kelly v. Guinn rejected the concept, declaring that such a "freedom of choice" plan burdens children and their parents with a responsibility for integration which "parents and children are either unable or unwilling to carry." (456 Fed. 2d at 108.)

The present plan for involuntary racial transfers entails compulsion, present or potential, on the part of the federal courts. S.B. 225 prohibits compliance. Under the federal supremacy doctrine, S.B. 225 will be struck down the first time it comes before a federal court.

It does not seem likely that the Nevada Supreme Court will be called upon to adjudge the validity of S.B. 225. In the case of Clark County School District v. Jones, 88 Nev. Adv. Op. 147, 502 P.2d 110 (1972), the Nevada Supreme Court was asked to review an injunction which a state district court had used to try to stop the school board from executing a federal court order on desegregation. The Nevada Supreme Court merely held that the state lower court had acted without jurisdiction.

The U.S. Supreme Court is aware of possible burdens to result from forced racial assignments and busing. The Court said in Swann:

> The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems. (402 U.S. at 27; 91 S.Ct. at 1282.)

The Court noted that, in the Charlotte-Mecklenburg School District, fifth and sixth grade children of the majority race in outlying areas must be bused into the minority area (91 S.Ct. at 1273); the district would have to employ 138 more buses than previously operated (91 S.Ct. at 1283); attendance zones "may be on opposite ends of the city" (91 S.Ct. at 1281-1282); if minority pupils desire to transfer, space must be made available in the schools to which they desire to move (ibid.); and to break up the dual school system, federal courts have used "a frank--and sometimes drastic--gerrymandering of school districts and attendance zones" (ibid.).

Thus far, the U.S. Supreme Court has not regarded the burdens of compulsory racial assignments as rising to a denial of equal protection under the 14th amendment but only as inconveniences to be borne during a transition process to a normally blended racial situation in the composition of schools.

S.B. 225 may have been designed to anticipate a shift in the Supreme Court's position. There is no evidence in any of the Court's opinions, however, to show such a trend. Litigation on S.B. 225, if enacted, can be expected to follow along previously charted paths.

In 1972 the United States Congress enacted the Education Amendments Act (Public Law 92-318, 20 U.S.C. secs. 1652-1656), declaring that:

1. No funds for programs under the act may be used to bus students to overcome racial imbalance except when requested by the school officials.
2. No officer of a federal agency may require busing of students to a school where educational "opportunities" are inferior to those where they would otherwise attend under a racially nondiscriminatory system.
3. Court orders to bus for the purpose of racial balance are postponed until all appeals are exhausted.

In addition, Congress stated that nothing in the Emergency School Aid chapter "shall be construed as requiring any local educational agency which assigns students to schools on the basis of geographic attendance areas drawn on a racially nondiscriminatory basis to adopt any other method of student assignment." (sec. 1618.)

None of these provisions made any substantial inroad on the power of the federal judiciary to use compulsory racial assignments.

In sum, S.B. 225, if enacted, will be invalid because the sweep of its provisions tend to restrict and thwart the full use of equitable, remedial powers by the federal judiciary in its determined program to achieve the racial integration of schools.

Very truly yours,

CLINTON E. WOOSTER
Legislative Counsel

By _____
Richard A. Sheffield
Deputy Legislative Counsel

RAS:jll