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Testimony re SB252-April 21, 2003
Senate Finance Committee
Washoe County School District
Dr. Dotty Merrill, Senior Director
Public Policy, Accountability & Assessment

Good morning, Chairman Raggio, members of the Committee, and staff--for the record, my name is Dotty Merrill. Thank you for the opportunity to testify on behalf of the Washoe County School District Board of Trustees and Superintendent in limited support of and strong opposition to Senate Bill 252.

In five different places, this bill addresses one of the issues about which the school district has previously testified before this Legislature regarding charter schools. Section 1 of this bill, on page 2, lines 11-17, proposes to enact an important requirement now missing from statute. In these lines, a charter school will be required to pay all costs connected with re-administration of proficiency or achievement examinations in cases of test irregularity or breaches of test security. The same language also appears in Section 14, subsection 1, on page 17, lines 8-13, again later on this page in subsection 2, lines 34-39, and elsewhere in Section 14 on pages 18 and 19. We strongly support the inclusion of this language in existing statute(s) as appropriate.

Section 5 of this bill on page 4 in subsections 2 and 3, lines 13-18, proposes that the State Board of Education shall serve as the sole sponsor of charter schools in the State of Nevada. On March 18, 2003, in a regularly scheduled meeting held in accordance with NRS 241, the WCSD Board of Trustees discussed this proposal. The Trustees then voted to support having the State Board of Education sponsor all charter schools in the State with two stipulations.

First, that the State Board assume all responsibility for monitoring compliance, annual reviews, and make up the unfunded mandate portion of the DSA apportionment. We do not find, however, specific language within this bill that requires the State Board to assume specific responsibilities for monitoring compliance, annual reviews, and assuming the unfunded mandate portion of the DSA apportionment. So, although the WCSD Board

of Trustees supports having the State Board sponsor all charter schools--that support is contingent upon the State Board accepting all of the other responsibilities that now fall to school districts regarding charter schools.

There is a second stipulation to our Trustees' qualified support of having the State Board sponsor Nevada charter schools. Our Trustees propose that if the State Board does take sole control of sponsoring charter schools, that a 10% charter school cap be established for each school district based upon the number of schools in that district. In other words, for example, WCSD has a total of 86 schools excluding charter schools. The Trustees currently sponsor 8 operational charter schools with another subsection 4 charter school approved to become operational in the 2003-2004 school year. That's a total of 9 charter schools. This is clearly more than 10% of the schools in the WCSD. An amendment with proposed language has been provided to achieve this goal.

If, however, this Legislature does not name the State Board to take sole sponsorship of charter schools, the WCSD Trustees propose that each school district have the opportunity to establish its own cap for the number of charter schools in that school district--regardless of the population to be served by the charter school. An amendment with proposed language has been provided to achieve this goal.

From the school district perspective, the most troubling proposal of this bill appears in Sections 2 and 10. We strongly oppose Section 2, when read with Section 10, of the bill. These provisions set forth an overly time-consuming process riddled with procedural flaws that would require taxpayers to incur substantial and clearly unnecessary expenses and attorney fees. At a time when there are numerous bills before this Legislature about curtailing or decreasing litigation costs and abuses in important industries such as health care and construction, this proposal would result in the anomaly of a multi-leveled process requiring the State Board of Education, the school district, and the charter school to incur substantial attorneys' fees and costs at each level. Moreover, at a time when all Nevada

school districts face budget deficits, this proposal rises in defiance of sound and prudent fiscal management.

Most importantly, this time consuming process would result in a severe detriment to school children. At a time when this Legislature is considering numerous bills of school reform for the benefit of children, this proposal could irreparably harm the educational opportunities of innocent children enrolled in failing charter schools. Effective charter schools provide valuable educational opportunities for school children. However, under this proposal, ineffective charter schools would be entitled to a drawn-out process that could potentially exceed an entire school year. During this time period, students who continue to be enrolled at the ineffective charter school would lose valuable instructional time that could otherwise be spent in a more effective setting. Such lost educational time simply cannot be recovered.

The process as set forth in Section 2 and Section 10 of the bill would potentially consist of eleven (11) steps.

1. Section 10 proposes to amend NRS 386.535 regarding the revocation of the school charters. Under NRS 386.535, the process begins when the sponsor issues a written notice of its intention to revoke the charter. This notice must be issued at least 90 days before actual revocation.
2. The next step under NRS 386.535 is a time period of 30 days allowed for the charter school to correct the deficiencies.
3. Under Section 10, the sponsor would have to issue a second written notice that the deficiencies have not been corrected at least 30 days before revocation. At the earliest, the second notice would be issued on the 60th day after the first notice.
4. Under Section 10, within 15 days of the second notice, or before the 75th day after the first notice, the charter school would be allowed to submit to the State Board of Education a request for a hearing.

5. Under Section 2, subsection 1, the State Board will be required to request a nonbinding arbitration from the American Arbitration Association. Because the Board does not necessarily meet every month, there is likely to be a significant delay in requesting arbitration.
6. Under Section 2, subsection 1, the State board and the charter school shall alternatively strike names to select an arbitrator. It must be emphasized that the State Board is currently comprised of ten members and a student ex-officio representative. Who from this group will be empowered to strike names on behalf of the State Board? This process of arbitrator selection would result in additional delays. It should be emphasized that the sponsoring school district is excluded from this process of selecting arbitrators. This is inherently unfair since the sponsoring school district is required to bear one half the arbitrator's costs. In addition, there is no guarantee that the arbitrator be versed in complicated educational issues.
7. Under Section 2, subsection 2, the arbitrator must hold a hearing within 30 days after being selected. Our experience in arbitration hearings is, however, that the 30-day deadline is often extended by mutual agreement due to the need to coordinate the calendars of witnesses and attorney's for each party and the arbitrator.
8. Under Section 2, subsection 2, a decision by the arbitrator must be issued within 15 after the hearing. Nonetheless, this decision is **non-binding**.
9. Under Section 2, subsection 3, the State Board may accept or reject the arbitrator's decisions. There will necessarily be a delay in the State Board's decision. More alarming, because there are no standards in determining reasons for accepting or rejecting the decision, there exists the strong possibility that the State Board will act arbitrarily or capriciously, or substitute its judgment for the arbitrator's when no State Board members were even present at the arbitration to observe and determine credibility of witnesses.

10. Under Section 2, subsection 3, only the charter school, not the sponsoring school district, may appeal the State Board's decision to District Court under the judicial review process set forth in NRS 233B.130. This is another inherently unfair and one-sided component to the process.
11. A final level of appeal of the judicial review would be available through the Nevada Supreme Court.

This 11-step process would be a disservice to taxpayers and school children. It would only result in attorneys benefitting from a drawn out dispute between two or three taxpayer-funded entities. To provide an example of this process in the context of a school year, suppose the initial notice in Step 1 is issued on September 1. The 30-day period to cure under Step 2 would be October 1. At day 60, October 31, the sponsor would issue the second notice under Step 3. The request for hearing under Step 4 at day 75 would occur November 15.

There is no statutory requirement for the State Board to request an arbitration under Step 5. It is reasonable to assume approximately 45 days, or December 30. The process of selecting the arbitrator (without input from the sponsoring school district) under Step 6 could take another 30 days, or around January 29 of the following year.

Under Step 7, the arbitrator would hold a hearing by February 28. This assumes no delay based on scheduling issues. The arbitrator's nonbinding decision under Step 8 would occur March 15. Under Step 9, the State Board would have to meet to decide whether to accept or reject the decision. Again, there is no statutory deadline, and it is reasonable to assume approximately 45 days, or until April 30.

Under Step 10, judicial review must be requested within 30 days, or approximately May 30. The process of briefing and holding a hearing could take approximately six (6) months or more, or through November 30. Thus, a child starting the 9th grade during Step 1 will be more than half way into the first semester of her 10th grade by the time this process is completed.

If an appeal to the Nevada Supreme Court occurs under Step 11, we can assume approximately another 2-3 more years. Therefore, that child may have graduated by the time the Nevada Supreme Court renders a decision.

The above example is not unrealistic. Effective charter schools can provide alternative educational opportunities to school children and are made effective if the system follows an "entrepreneurial" approach akin to starting a business. We have been repeatedly told that charter schools should be able to be created quickly, and if ineffective, dismantled quickly. The proposed drawn out process defeats this entrepreneurial spirit that drives the charter school movement. Businesses are created easily, and if they fail, they simply go out of business. The public should not expect a failing business to be afforded procedures exceeding one year at taxpayer expense. Nor should it afford failing charter schools such a long, drawn out and one-sided process.

What is happening in the interim of the prolonged revocation proceedings? If the deficiencies noticed at the outset of the process have not been corrected during this period, things continue to run amok at the charter school--whatever those things are. Taxpayer dollars may continue to be misappropriated. Nevada's academic and content standards may continue to be ignored. Nevada's accountability requirements may continue to be unmet. Potentially years of educational opportunities of school children could be mismanaged and wasted by noncomplying charter schools during this process, with no ability for the children themselves to recover such lost opportunities.

The Washoe County School District Board of Trustees and Superintendent strongly oppose this process as long as charter schools are sponsored by local school districts. From the school district perspective, it is plainly the intent of this section that no charter can ever be revoked in a timely way--regardless of the deficiencies noticed by the sponsor. In the meantime, regardless of who is right, children are being educated for a full year by a charter school whose educational and management practices are questionable.

Mr. Chair, thank you again for the opportunity to testify today on behalf of the Washoe County School District. I'd be glad to answer any questions from you or the Committee.

Proposed Amendments, Senate Bill 252
Presented by the Washoe County School District
April 21, 2003

Section 4, page 3, beginning line 26 and continuing to the end of line 45, all language as included in SB 252 is amended out

New Proposed Language if the State Board sponsors all charter schools

NRS 386.510 is hereby amended to read as follows:

1. In each school district, charter schools shall not exceed in number 10% of the total number of schools in that school district, regardless of whether the charter schools are dedicated to providing educational programs and opportunities for pupils who are at risk.

Section 4, page 3, beginning line 26 and continuing to the end of line 45, all language as included in SB 252 is amended out

New Proposed Language if the Sponsorship of Charter Schools Remains with School Districts

NRS 386.510 is hereby amended to read as follows:

1. Each school district board of trustees shall establish a maximum number of charter schools to be sponsored by that school district, if the trustees have applied to the Department for authorization to sponsor charter schools within that school district.