

CODE: 2515

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WASHOE COUNTY SCHOOL DISTRICT

P.O. Box 30425

Reno, NV 89520-3425

Telephone: 775-348-0300

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Attorneys for Respondent

Washoe County School District

Electronically Filed
Dec 16 2015 02:58 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF ARBITRATION
BETWEEN:

CASE NO.: CV15-00572

KARA WHITE & WASHOE SCHOOL
PRINCIPALS' ASSOCIATION

DEPT NO.: 9

Petitioners,

and

WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Involving the dismissal appeal of Kara White,
Grievant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that WASHOE COUNTY SCHOOL DISTRICT, Respondent
above named, hereby appeals to the Supreme Court of Nevada from the Order Granting Motion
to Vacate Arbitration Award filed in this action on the 10th day of November, 2015. Notice of
entry of this Order was filed on November 12, 2015.

AFFIRMATION PURSUANT TO NRS 239B.030: The undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 11th day of December, 2015.

WASHOE COUNTY SCHOOL DISTRICT

By: /s/Christopher B. Reich, Esq.

CHRISTOPHER B. REICH, ESQ.

Nevada Bar No. 10198

General Counsel

NEIL A. ROMBARDO, ESQ.

Nevada Bar No. 6800

Chief General Counsel

SARA K. ALMO, ESQ.

Nevada Bar No. 11899

Associate General Counsel

Washoe County School District

P.O. Box 30425

Reno, NV 89520-3425

Attorney for Respondent

WASHOE COUNTY SCHOOL DISTRICT

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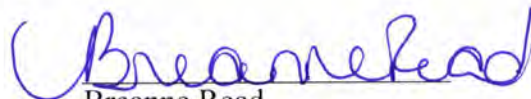
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WASHOE COUNTY SCHOOL DISTRICT and that on this date I served a true and correct copy of the preceding document addressed to the following:

Jason D. Guinasso, Esq.
Reese Kintz Guinasso, LLC
190 W Huffaker Lane, Suite 402
Reno, NV 89511
Attorney for Kara White and Washoe School Principals' Association

by electronically filing the foregoing document with the Clerk of the Court which served Mr. Guinasso electronically.

DATED this 11th day of December, 2015.


Breanne Read

CODE: 1310

Christopher B. Reich, Esq., Nev. Bar No. 10198

Neil A. Rombardo, Esq., Nev. Bar No. 6800

Sara K. Almo, Esq., Nev. Bar No. 11899

WASHOE COUNTY SCHOOL DISTRICT

P.O. Box 30425

Reno, NV 89520-3425

Telephone: 775-348-0300

Fax: 775-333-6010

Attorneys for Respondent

Washoe County School District

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF ARBITRATION

BETWEEN:

CASE NO.: CV15-00572

KARA WHITE & WASHOE SCHOOL

PRINCIPALS' ASSOCIATION

DEPT NO.: 9

Petitioners,

and

WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Involving the dismissal appeal of Kara White,
Grievant.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Washoe County School District

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Scott Freeman

1 **3.** Identify each appellant and the name and address of counsel for each appellant:

2 Appellant: Washoe County School District

3 Counsel: Christopher B. Reich, Esq., General Counsel

4 Neil A. Rombardo, Esq., Chief General Counsel

5 Sara K. Almo, Esq., Associate General Counsel

6 Office of the General Counsel

7 425 E. 9th Street

8 Reno, Nevada 89520-3425

9 **4.** Identify each respondent and the name and address of appellate counsel, if known,

10 for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as

11 much and provide the name and address of that respondent's trial counsel):

12 Respondents: Kara White & Washoe School Principals' Association

13 Respondents' appellate counsel is unknown, but trial counsel was:

14 Jason D. Guinasso, Esq.

15 Reese Kintz Guinasso, LLC

16 190 W Huffaker Lane, Suite 402

17 Reno, Nevada 89511

18 **5.** Indicate whether any attorney identified above in response to question 3 or 4 is

19 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney

20 permission to appear under SCR 42 (attach a copy of any district court order granting such

21 permission):

22 Not applicable. All attorneys identified in the responses to questions 3 and 4,

23 above, are licensed to practice law in the state of Nevada.

24 **6.** Indicate whether appellant was represented by appointed or retained counsel in

25 the district court:

26 Appellant, Washoe County School District, was represented in the district court

27 by its retained in-house counsel.

28 **7.** Indicate whether appellant is represented by appointed or retained counsel on

29 appeal:

30 Appellant, Washoe County School District, will be represented on appeal by its

31 retained in-house counsel.

32 ///

1 **8.** Indicate whether appellant was granted leave to proceed in forma pauperis, and
2 the date of entry of the district court order granting such leave:

3 Not applicable. Appellant Washoe County School District did not seek leave to
4 proceed in forma pauperis.

5 **9.** Indicate the date the proceedings commenced in the district court (e.g., date
6 complaint, indictment, information, or petition was filed):

7 Petitioner's Motion to Vacate Arbitration Award was filed on March 30, 2015.

8 **10.** Provide a brief description of the nature of the action and result in the district
9 court, including the type of judgment or order being appealed and the relief granted by the district
10 court:

11 This matter is an application for judicial relief pursuant to Nevada Revised
12 Statutes 38.218. The Court has jurisdiction to review 'binding arbitration' Awards in accordance
13 with NRS 38.206 to 38.248, also known as the Uniform Arbitration Act of 2000. On November
14 10, 2015, the District Court granted Petitioner's motion to vacate the Arbitrator's Opinion and
15 Award dated December 29, 2014 and issued by Arbitrator Alexander Cohn in Napa, California.

16 **11.** Indicate whether the case has previously been the subject of an appeal to or
17 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
18 number of the prior proceeding:

19 This case has not previously been the subject of an appeal to or original writ
20 proceeding in the Supreme Court.

21 **12.** Indicate whether this appeal involves child custody or visitation:

22 This case does not involve child custody or visitation.

23 **13.** If this is a civil case, indicate whether this appeal involves the possibility of
settlement:

 Appellants are open to entering into settlement discussions.

AFFIRMATION PURSUANT TO NRS 239B.030: The undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 11th day of December, 2015.

WASHOE COUNTY SCHOOL DISTRICT

By: /s/Christopher B. Reich, Esq.

CHRISTOPHER B. REICH, ESQ.

Nevada Bar No. 10198

General Counsel

NEIL A. ROMBARDO, ESQ.

Nevada Bar No. 6800

Chief General Counsel

SARA K. ALMO, ESQ.

Nevada Bar No. 11899

Associate General Counsel

Washoe County School District

P.O. Box 30425

Reno, NV 89520-3425

Attorney for Respondent

WASHOE COUNTY SCHOOL DISTRICT

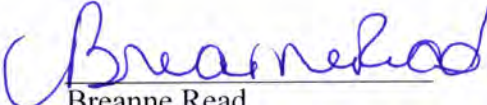
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the WASHOE COUNTY
3 SCHOOL DISTRICT and that on this date I served a true and correct copy of the preceding
4 document addressed to the following:

5 Jason D. Guinasso, Esq.
6 Reese Kintz Guinasso, LLC
7 190 W Huffaker Lane, Suite 402
8 Reno, NV 89511
9 Attorney for Kara White and Washoe School Principals' Association

10 by electronically filing the foregoing document with the Clerk of the Court which served Mr.
11 Guinasso electronically.

12 DATED this 11th day of December, 2015.

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14 Breanne Read
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SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV15-00572****Case Description: KARA WHITE ET AL V WASHOE COUNTY SCHOOL DISTRICT**

Case Number: CV15-00572 Case Type: APPEAL FROM LOWER COURT - Initially Filed On: 3/30/2015

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - SCOTT N. FREEMAN - D9	Active
ATTY - Sara K. Almo, Esq. - 11899	Active
ATTY - Jason D. Guinasso, Esq. - 8478	Active
ATTY - Neil A. Rombardo, Esq. - 6800	Active
ATTY - Randy A. Drake, Esq. - 5287	Party ended on: 5/6/2015 12:00:00AM
ATTY - Christopher B. Reich, Esq. - 10198	Active
PETR - KARA WHITE - @1274002	Active
PETR - WASHOE COUNTY PRINCIPALS' ASSOCIATION - @1274003	Active
RESP - WASHOE COUNTY SCHOOL DISTRICT - @1169458	Active

Disposed Hearings

- 1 Department: D9 -- Event: Request for Submission -- Scheduled Date & Time: 6/8/2015 at 10:07:00
Extra Event Text: REQUEST FOR SUBMISSION OF PETITIONER'S MOTION TO VACATE ARBITRATION AWARD
Event Disposition: S200 - 8/3/2015
- 2 Department: D9 -- Event: Request for Submission -- Scheduled Date & Time: 10/27/2015 at 17:00:00
Extra Event Text: PETITIONERS' MOTION TO VACATE ARBITRATION AWARD TAKEN UNDER ADVISEMENT
Event Disposition: S200 - 11/10/2015
- 3 Department: D9 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 10/27/2015 at 15:00:00

Event Disposition: D840 - 10/27/2015

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--|
| 1 | 3/30/2015 | - | \$1425 - \$Complaint - Civil
Additional Text: CODE UTILIZED FOR FILING FEES ONLY - IMAGE MOVED TO VACATE ARBITRATION AWARD - CS |
| 2 | 3/30/2015 | - | 2490 - Motion ...
Additional Text: MOTION TO VACATE ARBITRATION AWARD - Transaction 4883187 - Approved By: CSULEZIC : 03-30-2015:14:13:58 |
| 3 | 3/30/2015 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC494438. |
| 4 | 3/30/2015 | - | 2490 - Motion ...
Additional Text: MOTION TO VACATE ARBITRATION AWARD - Transaction 4883617 - Approved By: CSULEZIC : 03-30-2015:15:48:36 |
| 5 | 3/30/2015 | - | 2490 - Motion ...
Additional Text: MOTION TO VACATE ARBITRATION AWARD - Transaction 4883694 - Approved By: CSULEZIC : 03-30-2015:15:54:28 |

- 6 3/30/2015 - 2490 - Motion ...
Additional Text: MOTION TO VACATE ARBITRATION AWARD - Transaction 4883706 - Approved By: CSULEZIC : 03-30-2015:15:58:09
- 7 3/30/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4884022 - Approved By: NOREVIEW : 03-30-2015:15:50:06
- 8 3/30/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4884064 - Approved By: NOREVIEW : 03-30-2015:15:55:58
- 9 3/30/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4884093 - Approved By: NOREVIEW : 03-30-2015:15:59:28
- 10 3/31/2015 - 2520 - Notice of Appearance
Additional Text: CJROSTPPHER REICH, ESQ - RANDY DRAKE, ESQ - SARA ALMO, ESQ OBO WASHOE COUNTY SCHOOL DISTRICT - Transaction 4886023 - Approved By: MELWOOD : 04-01-2015:10:59:33
- 11 4/1/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4887251 - Approved By: NOREVIEW : 04-01-2015:11:00:35
- 12 5/5/2015 - 2610 - Notice ...
Additional Text: NOTICE OF DISASSOCIATION OF COUNSEL - Transaction 4939082 - Approved By: YLLOYD : 05-06-2015:08:59:39
- 13 5/6/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4939543 - Approved By: NOREVIEW : 05-06-2015:09:00:41
- 14 5/8/2015 - 2645 - Opposition to Mtn ...
Additional Text: RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION TO VACATE ARBITRATION AWARD - Transaction 4945533 - Approved By: MCHOLICO : 05-08-2015:15:46:09
- 15 5/8/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4945575 - Approved By: NOREVIEW : 05-08-2015:15:47:29
- 16 5/8/2015 - 2645 - Opposition to Mtn ...
Additional Text: RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION TO VACATE ARBITRATION AWARD - Transaction 4945626 - Approved By: MCHOLICO : 05-08-2015:16:19:18
- 17 5/8/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4945662 - Approved By: NOREVIEW : 05-08-2015:16:20:15
- 18 6/8/2015 - 3795 - Reply...
Additional Text: PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION TO VACATE ARBITRATION AWARD - Transaction 4987396 - Approved By: CSULEZIC : 06-08-2015:09:43:39
- 19 6/8/2015 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION OF PETITIONER'S MOTION TO VACATE ARBITRATION AWARD - Transaction 4987400 - Approved By: CSULEZIC : 06-08-2015:09:44:41
PARTY SUBMITTING: JASON GUINASSO, ESQ
DATE SUBMITTED: 6/08/15
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 20 6/8/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4987445 - Approved By: NOREVIEW : 06-08-2015:09:44:32
- 21 6/8/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4987452 - Approved By: NOREVIEW : 06-08-2015:09:45:44

- 22 8/3/2015 - 3347 - Ord to Set
Additional Text: Transaction 5075411 - Approved By: NOREVIEW : 08-03-2015:16:10:20
- 23 8/3/2015 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 24 8/3/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5075414 - Approved By: NOREVIEW : 08-03-2015:16:11:13
- 25 8/25/2015 - 2550 - Notice of Hearing
Additional Text: OCTOBER 27, 2015 FROM 10:00 TO 12:00 P.M DEP 9 - Transaction 5109693 - Approved By: MTORRES : 08-25-2015:11:11:18
- 26 8/25/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5110081 - Approved By: NOREVIEW : 08-25-2015:11:12:09
- 27 10/27/2015 - MIN - ***Minutes
Additional Text: 10/27/15 - ORAL ARGUMENTS - Transaction 5208940 - Approved By: NOREVIEW : 10-27-2015:16:14:07
- 28 10/27/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5208951 - Approved By: NOREVIEW : 10-27-2015:16:15:07
- 29 11/6/2015 - 1290 - Association of Counsel
Additional Text: NEIL ROMBARDO, ESQ. / WASHOE COUNTY SCHOOL DISTRICT OFFICE - Transaction 5223554 - Approved By: MCHOLICO : 11-06-2015:10:01:02
- 30 11/6/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5223675 - Approved By: NOREVIEW : 11-06-2015:10:01:58
- 31 11/10/2015 - 3060 - Ord Granting Mtn ...
Additional Text: ORDER GRANTING MOTION TO VACATE ARBITRATION AWARD - Transaction 5229050 - Approved By: NOREVIEW : 11-10-2015:13:33:43
- 32 11/10/2015 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 33 11/10/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5229054 - Approved By: NOREVIEW : 11-10-2015:13:34:34
- 34 11/12/2015 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 5230988 - Approved By: NOREVIEW : 11-12-2015:09:43:35
- 35 11/12/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5231006 - Approved By: NOREVIEW : 11-12-2015:09:45:19
- 36 12/10/2015 - 4185 - Transcript
Additional Text: 10-27-15 Oral Argument - Transaction 5272838 - Approved By: NOREVIEW : 12-10-2015:11:46:23
- 37 12/10/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5272850 - Approved By: NOREVIEW : 12-10-2015:11:47:27
- 38 12/11/2015 - 2515 - Notice of Appeal Supreme Court
Additional Text: Transaction 5274958 - Approved By: YVILORIA : 12-11-2015:11:25:44
- 39 12/11/2015 - 1310 - Case Appeal Statement
Additional Text: Transaction 5274958 - Approved By: YVILORIA : 12-11-2015:11:25:44

40 12/11/2015 - NEF - Proof of Electronic Service

Additional Text: Transaction 5275064 - Approved By: NOREVIEW : 12-11-2015:11:26:41

41 12/11/2015 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5275284 - Approved By: NOREVIEW : 12-11-2015:13:05:32

42 12/11/2015 - NEF - Proof of Electronic Service

Additional Text: Transaction 5275290 - Approved By: NOREVIEW : 12-11-2015:13:06:32

1 CODE: 3370

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5

6 IN THE MATTER OF THE ARBITRATION
7 BETWEEN:

Case No. CV15-00572
Dept. No. 9

8 KARA WHITE & WASHOE SCHOOL
9 PRINCIPALS' ASSOCIATION,

10 Petitioners.

11 and

12 WASHOE COUNTY SCHOOL DISTRICT,

13 Respondent.

14 Involving the dismissal appeal of Kara White,
15 Grievant.

16 /

17 ORDER GRANTING MOTION TO VACATE ARBITRATION AWARD

18 This case came on regularly for hearing on October 27, 2015. The Court was in receipt of
19 KARA WHITE and WASHOE SCHOOL PRINCIPALS' ASSOCIATION's (hereinafter
20 "Petitioner", "Principal White", or "WSPA") *Motion to Vacate Arbitration Award* filed on March
21 20, 2015. On May 8, 2015, WASHOE COUNTY SCHOOL DISTRICT (hereinafter "WCSD") filed
22 an *Opposition to Petitioner's Motion to Vacate Arbitration Award*. On June 8, 2015, Petitioner filed
23 a *Reply to Respondent's Opposition to Petitioner's Motion to Vacate Arbitration Award*.

24 For the reasons set forth below, and upon careful review of the motions, exhibits, and oral
25 arguments, the Court GRANTS Petitioner's *Motion to Vacate Arbitration Award*.

26 FACTUAL AND PROCEDURAL BACKGROUND

27 Principal White has been employed with WCSD in since 1999, and most recently, for four
28 and a half years as principal of Lemon Valley Elementary School ("LVES"). She was terminated in
2013. In her capacity as principal of LVES, Principal White helped improve the performance of the
school which resulted in multiple awards and recognitions, including a "Gold Star School" award.

1 In 2009, LVES was audited. The auditing committee brought approximately six issues with
2 recommendations to Principal White's attention. One issue raised by the auditing committee
3 included a statement that giving gift cards to teachers and staff could expose WCSD to IRS fines and
4 penalties. In 2013, a school counselor reported Principal White to a Labor Relations Manager
5 expressing concern about Principal White's use of Student Activity Funds ("SAF's"). The school
6 counselor reported that Principal White had purchased the counselor a \$149 necklace as a gift and
7 that Principal White had bought lunch for the entire school staff.

8 In July of 2012, Principal White sent an email to the teachers of her school requiring them to
9 participate in Guided Language Acquisition Design ("GLAD") training, which was offered at
10 various times during the year. Some of the teachers used personal and sick days to participate in the
11 training. Those that used personal and sick days had those days restored to them. A teacher reported
12 Principal White to a Labor Relations Manager regarding the mandatory GLAD training on February
13 27, 2013.

14 On February 4, 2013, before Principal White was reported on the GLAD training issue,
15 Principal White was given Notice of Administrative Leave with Pay pending allegations of
16 misconduct regarding use of SAF's. Investigatory due process meetings were held on both March 7,
17 2013 and March 27, 2013 to review her performance under NRS 391.312(c). On April 29, 2013,
18 Principal White was given a Notice of Recommended Dismissal. Douglass Parry, area
19 superintendent, found "[d]uring the 2011-12 and 2013-13 school years [Grievant] authorized
20 excessive and inappropriate expenditures." 15 line 24. Arbitrator's Opinion and Award. Mr. Parry
21 also pointed out in the Notice of Administrative Leave that her responses to questions were "less
22 than credible and dishonest;" Principal White could not recall receiving training on use of SAF's nor
23 specific provisions in a manual regarding use of SAF's. *Id.* at 16-17.

24 Principal White was placed on administrative leave without pay on April 29, 2013. After a
25 grievance hearing was held on May 21, 2013, Principal White's dismissal was sustained. On June
26 13, 2013, WSPA gave notice that it was appealing Principal White's termination to arbitration.

27 Arbitration proceedings were conducted in front of Arbitrator Anna D. Smith on February
28 25-28, 2014 who heard witnesses for both WCSD and WSPA. Arbitrator Smith stated she would
return a decision within sixty days of the hearing. However, Arbitrator Smith became ill rendering
her unable to provide a decision on Principal White's case. Arbitrator Alexander Cohn was then

1 selected and provided post-hearing briefs and the arbitration record. Based on the briefs and record,
2 Arbitrator Cohn found, in his December 29, 2014 decision, WCSSD had just cause to terminate
3 Principal White based solely on a finding of dishonesty.

4 STANDARD OF REVIEW

5 Under the Uniform Arbitration Act of 2000, codified in Nevada Revised Statutes
6 38.206 to 38.248, the District Court may review an arbitration award, and may, under NRS 38.241,
7 vacate the award.¹ An arbitration award may be vacated if it is arbitrary, capricious, or unsupported
8 by the agreement or when an arbitrator has manifestly disregarded the law. *Bohlmann v. Byron John*
9 *Printz and Ash, Inc.*, 120 Nev. 543, 96 P.3d 1155 (2004). In determining whether an arbitrator's
10 award is arbitrary or capricious the District Court considers whether the arbitrator's findings were
11 supported by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev.
12 337, 344, 131 P.3d 5, 9 (2006).

13 Parties moving to vacate an award on the ground that an arbitrator exceeded his or her
14 authority have the burden of demonstrating by clear and convincing evidence how the arbitrator

15
16 ¹ NRS 38.241 provides

17 1. Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in an arbitral
18 proceeding if:

19 (a) The award was procured by corruption, fraud or other undue means;

20 (b) There was:

21 (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

22 (2) Corruption by an arbitrator; or

23 (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;

24 (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider
25 evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231, so as to prejudice
26 substantially the rights of a party to the arbitral proceeding;

27 (d) An arbitrator exceeded his or her powers;

28 (e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the
objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as
to prejudice substantially the rights of a party to the arbitral proceeding.

2. A motion under this section must be made within 90 days after the movant receives notice of the award pursuant to
NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS
38.237, unless the movant alleges that the award was procured by partiality, corruption, fraud or other undue means, in
which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care
would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in paragraph (e) of subsection 1, it may order a
rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection 1, the rehearing must be before
a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection 1, the rehearing may
be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the
rehearing within the same time as that provided in subsection 2 of NRS 38.236 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the
award is pending.

1 exceeded that authority. *Health Plan of Nevada, Inc. v. Rainbow Medical LLC*, 120 Nev. 689, 100
2 P.3d 172 (2004). Further,

3 Arbitrators exceed their powers when they address issues or make awards outside the
4 scope of the governing contract. The broader the arbitration clause in a contract, the
5 greater the scope of an arbitrator's powers. However, allegations that an arbitrator
6 misinterpreted the agreement or made factual or legal errors do not support vacating an
7 award as being in excess of the arbitrator's powers. Arbitrators do not exceed their
8 powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
9 the agreement. THE QUESTION IS WHETHER [sic] the arbitrator had the authority under
10 the agreement to decide an issue, not whether the issue was correctly decided. REVIEW
UNDER EXCESS-of-authority grounds [sic] is limited and only granted in very unusual
circumstances. An award should be enforced so long as the arbitrator is arguably
construing or applying the contract. If there is a colorable justification for the outcome,
the award should be confirmed.

11 *Id.* (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170, 172 (S.C.Ct.App. 1990); *SIGNAL Corp.*
12 *v. Keane Federal Systems*, 265 Va. 38, 574 S.E.2d 253, 257 (2003); *Main State Emp. Ass'n v. State*,
13 *Etc.*, 436 A.2d 394, 397 (Me.1981); *National Ave. Bldg. Co. v. Stewart*, 910 S.W.2d 334, 349
14 (Mo.Ct.App.1995); *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 448 (Tenn.1996)).

15 DISCUSSION

16 **A. Whether Arbitrator Cohn Exhibited Evident Partiality in Violation of NRS 38.241(1)(b)(1)**

17 As a preliminary matter, the Court first addresses whether Arbitrator Cohn exhibited evident
18 partiality in violation of NRS 38.241(1)(b)(1). The Court does not find Petitioner provided sufficient
19 evidence to determine Arbitrator Cohn exhibited evident partiality towards WCSD. The Court finds
20 "[t]he appearance of impropriety, standing alone, is insufficient to establish evident partiality in
21 actual bias cases" persuasive. *Woods v. Saturn Distribution Corp.*, 78 F.3d 424, 427 (9th Cir. 1996).
22 Here, Petitioners did not even provide sufficient evidence suggesting an appearance of impropriety,
23 let alone specific facts to lead to a determination of actual bias. Therefore, the Court does not find a
24 violation of NRS 38.241(1)(b)(1) as grounds to vacate the arbitration award.
25

26 ///

27 ///

1 **B. Whether Arbitrator Cohn Exceeded his Authority and Manifestly Disregarded NRS**
2 **391.3116²**

3 However, the Court does find grounds to vacate the arbitration award based on the
4 determination that Arbitrator Cohn exceeded his authority and manifestly disregarded NRS
5 391.3116.

6 Respondent argues that Arbitrator Cohn did not exceed his authority; the standard for
7 determining whether an arbitrator exceeded his authority is “well articulated in Nevada.” (Opp’n
8 Mot. Vac., 6). Additionally, Respondent argues Arbitrator Cohn did not manifestly disregard NRS
9 391.3116: “Petitioners conclude . . . because the language in the CBA says ‘in accordance with NRS
10 391,’ NRS 391.3116 applies, so then NRS 391.311 to 391.3197 do not apply and the arbitrator must
11 only use the language of Article 18.1!” *Id.* at 14. Respondents assert that the argument presented by
12 Petitioners is an incorrect interpretation of the CBA article and the NRS provisions. *Id.*

13 However, the Court finds Arbitrator Cohn exceeded his authority. “An arbitrator’s award
14 ‘must be based on the collective bargaining agreement’ . . . [and] is legitimate only so long as it
15 ‘draws its essence from the collective bargaining agreement.’” *Int’l Ass’n of Firefighters, Local 1285*
16 *v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). An arbitrator is accorded
17 deference when interpreting a contract. *Id.* However, the deference “is not limitless; he is not free to
18 contradict the express language of the contract . . . Where a labor contract expressly prescribes
19 particular discipline for specified offenses, an arbitration award overturning or modifying that
20 discipline does not ‘draw its essence’ from the contract and is in excess of the arbitrator’s authority.”
21 *Id.*

22 In this case, Arbitrator Cohn did not draw his award from the essence of the CBA. Arbitrator
23 Cohn contradicted the express language of the CBA Article 18.1 which explicitly prescribes a
24 particular discipline for a specified offense:

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28 ² Under NRS 391.3116, “Excluding the provisions of NRS 391.3129, and sections 1.9 and 1.95 of this act, the provisions of NRS 391.311 to 391.3197, inclusive, do not apply to a teacher or other licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board’s right to dismiss or refuse to reemploy the employee.”

ARTICLE 18
DISMISSAL AND DISCIPLINARY PROCEDURES

18.1 Disciplinary actions, *including but not limited to, demotion, suspension, dismissal, and non-renewal actions* taken against post-probationary unit members (in accordance with NRS 391), *shall be progressive* in nature and related to the nature of the infraction. Unit members *shall be given reasonable opportunity for improvement*.

The School District *shall not* discharge, demote, suspend or take any other disciplinary action against a post probationary bargaining unit member of this unit *without just cause*.

(Emphasis added) (Opp'n Mot. Vac., Ex. 1: *Negotiated Agreement Between WCSD and WSPA*, 20 ¶18.1 (2011-2013)).

Based on a plain language reading of CBA Article 18.1, the Court finds there are three mandatory provisions regarding dismissal and disciplinary procedures: an individual (1) *shall* be given progressive discipline, (2) *shall* be given a reasonable opportunity to improve, and (3) *shall* not be discharged without just cause. No ambiguity exists in Article 18.1 and the requirements are clear-cut.

In this case, Principal White was not afforded progressive discipline or a reasonable opportunity to improve. Arbitrator Cohn stated in his Arbitrator's Opinion and Award

Therefore, on the record presented, any inclination to reverse Grievant's discharge and substitute progressive discipline such as a lengthy suspension, last chance return, demotion, an opportunity to improve, etc., in light of her length of service and competency, is washed away by the dishonesty finding. More specifically, whether the "just cause" standard is viewed under the NRS or the Agreement, given the totality of her performance errors and misconduct, summary discharge is warranted.

(Arb. Op. Awd., 60 ¶24). Based on the above statement, it is clear Arbitrator Cohn did not find progressive discipline or a reasonable opportunity for improvement essential elements of Article 18.1. Further, the Court agrees with Petitioner's assertion that Arbitrator Cohn "looked to the words of the contract . . . and looked to the conduct of the District . . . but then rendered an award wholly contradictory to the express language in the CBA." (Mot. Vac., 9 ¶3). The Court takes issue with the fact that Arbitrator Cohn found that mandatory requirements of progressive discipline and a reasonable opportunity to improve were "washed away" because of his finding of dishonesty. The Court finds that Arbitrator Cohn exceeded his authority by not looking to the express terms of the

1 CBA and determining such provisions did not apply to Principal White's case. Arbitrator Cohn
2 cannot merely "wash away" contractual provisions agreed upon by WCSD and WSPA. "Washing
3 away" two mandatory collective bargaining terms does not rise to the level of dismissal based on just
4 cause.

5 Further, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116. "An
6 arbitrator manifestly disregards the law when he or she recognizes that the law *absolutely requires* a
7 given result and nonetheless *refuses* to apply the law correctly." *Bohlmann v. Byron John Printz and*
8 *Ash, Inc.*, 120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004) (emphasis in original). In this case, while
9 Arbitrator Cohn referenced NRS 391.3116, he did not apply the law correctly.

10 First, Arbitrator Cohn specifically referenced NRS 391.3116 thus recognizing that the statute
11 required a given result. He cited in bold and underlined the following: "**NRS 391.3116 Contract**
12 **negotiated by collective bargaining may supersede provisions of NRS 391.311 to 391.397,**
13 **inclusive; exception for certain employees deemed probationary.**" (Arb. Op. Awd., 4 ¶22). The
14 Court agrees with Petitioner's assertion that Arbitrator Cohn "correctly conclude[ed] that NRS
15 391.3116 is applicable" to this case. (Mot. Vac., 11 ¶17).

16 Moreover, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116 as he did
17 not apply the statute correctly. The statute expressly states that the provisions of NRS 391.311 to
18 391.3197 *do not apply* if a collective bargaining agreement contains a *separate provision* regarding
19 employee dismissal. Here, Article 18.1 provides the separate provision specifically referenced in
20 NRS 391.3197; Article 18.1 is a separate provision governing employee dismissal and termination.
21 Moreover, the article is specifically titled **Dismissal and Disciplinary Procedures**. Therefore, NRS
22 391.3116 does not apply to the dismissal procedures in this case because dismissal procedures are
23 specifically provided for in Article 18.1. As stated above, dismissal procedures *must* consist of (1)
24 progressive discipline and (2) a reasonable opportunity for improvement. A dismissal that does not
25 include progressive discipline and a reasonable opportunity to improve is not a dismissal based on
26 just cause.

27 Therefore, the Court finds Arbitrator Cohn exceeded his authority by not applying the
28 specific and clear provisions of Article 18.1. Principal White was not afforded progressive
discipline or a reasonable opportunity for improvement. Second, the Court finds Arbitrator Cohn
manifestly disregarded NRS 391.3116 as Article 18.1 provides a separate provision regarding

1 employee dismissal. As Arbitrator Cohn did not follow the separate provision outlined in Article
2 18.1, he manifestly disregarded NRS 391.3116.

3 **C. Whether the Award was Arbitrary and Capricious**

4 The Court finds Arbitrator Cohn's award was arbitrary and capricious based on lack of
5 substantial evidence of Principal White's dishonesty. In determining whether an arbitrator's award is
6 arbitrary or capricious the District Court considers whether the arbitrator's findings were supported
7 by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev. 337, 344,
8 131 P.3d 5, 9 (2006). Arbitrator Cohn's award was based on a finding of dishonesty pursuant to NRS
9 391.31297(1)(p), which provides,

10 1. A teacher may be suspended, dismissed or not reemployed and an administrator may
11 be demoted, suspended, dismissed or not reemployed for the following reasons:

12 . . .

(p) Dishonesty.

13 First, the Court points out that before reaching a finding of dishonesty pursuant to NRS
14 391.31297(1)(p), Principal White still should have been afforded progressive discipline and a
15 reasonable opportunity for improvement based on the Court's above findings pursuant to Article
16 18.1 of the CBA. Even had Principal White been afforded progressive discipline and a reasonable
17 opportunity for improvement, the record still does not indicate she was dishonest.

18 Respondent WCSD argues that as the entire arbitration record was submitted as evidence,
19 "[t]he arbitrator in this matter had substantial evidence to support his Award, including: verbatim
20 transcripts of four days of arbitration testimony referencing the numerous documents entered into
21 evidence." (Opp'n Mot. Vac., 18 ¶18). However, the Court does not find that merely because the
22 arbitration record was voluminous, Arbitrator Cohn relied on *substantial* evidence. Rather, the Court
23 finds the award was arbitrary and capricious insofar as a careful review of the record does not turn
24 up substantial evidence of dishonesty.

25 The Court concurs with Petitioner's oral arguments in that dishonesty requires an element of
26 intent. The evidence does not support a finding of intentional dishonesty in Principal White's case.
27 For example, in regards to mandatory GLAD training, Arbitrator Cohn found

28 The record demonstrates that, while Grievant recommended that they take the training
during the summer where pay would not be problematic, it was not possible for everyone
to do so. Whether or not Grievant herself (directly) instructed teachers to use sick leave

1 for the mandatory training, somehow this was transmitted to them . . . and they filled out
2 sick leave forms for training days, which Grievant was responsible for approving.

3 (Arb. Op. Awd., 59 ¶7). Yet, during the arbitration proceeding, Principal White stated

4 I visited the GLAD training happening. No one says anything. I'm communicating to
5 teachers on a regular basis about when they're attending. No communication about a
6 concern, a question about their days about let me clarify, do you actually mean you're
7 making it mandatory for me to use my sick days, personal days, there was never even a
8 question about this whole thing.

9 (Tr., *Arbitration re: Kara White*, Vol. 4, 690 ¶11-17). The Court finds there is no indication of
10 intentional dishonesty regarding GLAD training. There is abundant evidence of miscommunication
11 between teachers and Principal White, but not evidence of Principal White being dishonest.
12 However, there is no indication of intentional dishonesty on Principal White's part.

13 Moreover, the record indicates Principal White was taken aback by certain teacher
14 accusations that she was requiring teachers to use personal and sick days to attend GLAD training.
15 Principal White's testimony does not demonstrate she was intentionally dishonest in making GLAD
16 training mandatory or that she was dishonest about such facts during the arbitration proceeding.
17 Rather, the record merely shows she was surprised that teachers had not communicated with her and
18 had gone directly to the Labor Relations Manager on this issue. Evidence of surprise does not equal
19 a substantial evidence of intentional dishonesty.

20 Additionally, substantial evidence does not support a finding of intentional dishonesty in
21 regards to Principal White's alleged misuse of SAF's to purchase lunches, dinners, gift cards, and a
22 necklace for staff members. Arbitrator Cohn found

23 Grievant's fundamental and steadfast defense, in summary, is that she had no knowledge
24 of how to use SAF funds, had never been trained on the Manual . . . Put simply,
25 persuasive evidence demonstrates that she mishandled the funds by using them for
26 purposes other than those for which they were restricted, contrary to clear and
27 unambiguous District Policies . . . Grievant incredibly testified that she did not know she
28 was improperly spending SAF monies and was unaware of the existence of the Manual.

29 (Arb. Op. Awd., 54-55). The Court takes issue with Arbitrator Cohn's findings that Principal
30 White's lack of knowledge about how to use SAF monies constitutes a conclusion that Principal
31 White intended to deprive the District of funds. The Court finds Principal White did not know she
32 was misusing SAF funds. As stated by Petitioner during oral arguments before this Court, dishonesty
33 requires intent. In Principal White's case, she was not intentionally dishonest. Principal White
34 believed she was using the funds to encourage and congratulate her teachers and to foster a sense of

1 community and pride. Principal White had no intention to disregard WCSD policies. Based on a
2 careful review of the entire record, substantial evidence does not support a finding of dishonesty in
3 regards to use of SAF monies.

4 Therefore, the Court vacates Arbitrator Cohn's award based on the fact that the decision was
5 arbitrary and capricious.

6 **D. Whether Arbitration Proceedings Were Fair and Expeditious in Violation of NRS 38.231(1)**

7 As stated on the record during oral arguments before this Court, the Court takes issue with
8 the length of time that passed in these proceedings. Under NRS 38.231(1), "an arbitrator may
9 conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and
10 expeditious disposition of the proceeding." While the Court does not vacate the arbitration award on
11 these grounds, the Court still finds it concerning that Principal White has waited so long to find out
12 whether she would be permanently dismissed from a career she has dedicated her entire life to. Her
13 livelihood and reputation have been on the line for far too long. Principal White deserved much
14 more than the long drawn out procedure she was afforded.

15 Based on the above, and good cause appearing, the Court HEREBY GRANTS Petitioner's
16 *Motion to Vacate Arbitration Award.*

17 DATED this 10 day of November, 2015.

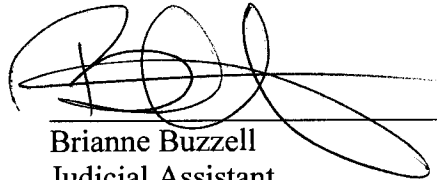
18 
19 _____
20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 10th day of November, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHRISTOPHER REICH, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
JASON GUINASSO, ESQ. for WASHOE COUNTY PRINCIPALS' ASSOCIATION et al
NEIL ROMBARDO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
SARA ALMO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT



Brianne Buzzell
Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF ARBITRATION
BETWEEN:

KARA WHITE & WASHOE SCHOOL
PRINCIPALS' ASSOCIATION

Petitioners,

and

WASHOE COUNTY SCHOOL DISTRICT

Respondent.

Involving the dismissal appeal of Kara White,
Grievant.

Case No.: CV15-000572

Dept. No.: 9

NOTICE OF ENTRY OF ORDER

ATTORNEYS FOR THE PETITIONER

Jason D. Guinasso, Esq.
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190 W Huffaker Lane, Suite 402
Reno, NV 89511
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Attorney for Kara White

ATTORNEY FOR THE RESPONDENT

Christopher Reich, Esq.
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Washoe County School District
PO Box 30425
Reno, NV 89520



Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
(775) 853-8746

1 PLEASE TAKE NOTICE that, on November 10, 2015 at 1:33 p.m., the Court in the
2 above titled matter entered its Order Granting Motion to Vacate Arbitration Award. A copy
3 of the order is attached hereto.
4

5 **AFFIRMATION**

6 The undersigned does hereby affirm that the foregoing document filed in this matter
7 does not contain the social security number of any person.

8 DATED this 12th day of November, 2015
9

10 
11 Jason D. Guinasso, Esq.
12 Attorney for Kara White
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Reese Kintz,
Guinasso
190 W. Thacker Ln.
Suite 402
Reno, NV 89511
(775) 853-8746

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party
3 to the within action. My business address is 190 W. Huffaker Lane, Suite 402, Reno,
4 Nevada, 89511.

5 On November 12th 2015, I served the following:

6 **NOTICE OF ENTRY OF ORDER**

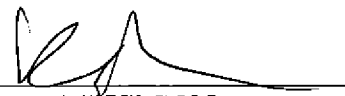
7 on the following in said cause as indicated below:

8

9 KARA WHITE 601 W D STREET SOUTH DIXON, CA 95620 (VIA U.S. MAIL)	RON DREHER PO BOX 40502 RENO, NV 89504 (VIA U.S. MAIL)
10 VIRGNIA DORAN 425 E. 9TH STREET RENO, NV 89504 (VIA U.S. MAIL)	CHRISTOPHER REICH, ESQ. PO BOX 30425 RENO, NV 89520 (VIA U.S. MAIL)

11
12

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 12th 2015, at Reno, Nevada.

15 
16 KATRINA HUDSON



23 Reese Kintz,
Guinasso
190 W Huffaker Ln
Suite 402
Reno, NV 89511
24 (775) 853-8746

EXHIBIT 1

EXHIBIT 1

1 CODE: 3370

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5
6 IN THE MATTER OF THE ARBITRATION
7 BETWEEN:

Case No. CV15-00572
Dept. No. 9

8 KARA WHITE & WASHOE SCHOOL
9 PRINCIPALS' ASSOCIATION,

10 Petitioners.

11 and

12 WASHOE COUNTY SCHOOL DISTRICT,

13 Respondent.

14 Involving the dismissal appeal of Kara White,
15 Grievant.

16
17 ORDER GRANTING MOTION TO VACATE ARBITRATION AWARD

18 This case came on regularly for hearing on October 27, 2015. The Court was in receipt of
19 KARA WHITE and WASHOE SCHOOL PRINCIPALS' ASSOCIATION's (hereinafter
20 "Petitioner", "Principal White", or "WSPA") *Motion to Vacate Arbitration Award* filed on March
21 20, 2015. On May 8, 2015, WASHOE COUNTY SCHOOL DISTRICT (hereinafter "WCSD") filed
22 an *Opposition to Petitioner's Motion to Vacate Arbitration Award*. On June 8, 2015, Petitioner filed
23 a *Reply to Respondent's Opposition to Petitioner's Motion to Vacate Arbitration Award*.

24 For the reasons set forth below, and upon careful review of the motions, exhibits, and oral
25 arguments, the Court GRANTS Petitioner's *Motion to Vacate Arbitration Award*.

26 FACTUAL AND PROCEDURAL BACKGROUND

27 Principal White has been employed with WCSD in since 1999, and most recently, for four
28 and a half years as principal of Lemon Valley Elementary School ("LVES"). She was terminated in
2013. In her capacity as principal of LVES, Principal White helped improve the performance of the
school which resulted in multiple awards and recognitions, including a "Gold Star School" award.

1 In 2009, LVES was audited. The auditing committee brought approximately six issues with
2 recommendations to Principal White's attention. One issue raised by the auditing committee
3 included a statement that giving gift cards to teachers and staff could expose WCSD to IRS fines and
4 penalties. In 2013, a school counselor reported Principal White to a Labor Relations Manager
5 expressing concern about Principal White's use of Student Activity Funds ("SAF's"). The school
6 counselor reported that Principal White had purchased the counselor a \$149 necklace as a gift and
7 that Principal White had bought lunch for the entire school staff.

8 In July of 2012, Principal White sent an email to the teachers of her school requiring them to
9 participate in Guided Language Acquisition Design ("GLAD") training, which was offered at
10 various times during the year. Some of the teachers used personal and sick days to participate in the
11 training. Those that used personal and sick days had those days restored to them. A teacher reported
12 Principal White to a Labor Relations Manager regarding the mandatory GLAD training on February
13 27, 2013.

14 On February 4, 2013, before Principal White was reported on the GLAD training issue,
15 Principal White was given Notice of Administrative Leave with Pay pending allegations of
16 misconduct regarding use of SAF's. Investigatory due process meetings were held on both March 7,
17 2013 and March 27, 2013 to review her performance under NRS 391.312(c). On April 29, 2013,
18 Principal White was given a Notice of Recommended Dismissal. Douglass Parry, area
19 superintendent, found "[d]uring the 2011-12 and 2013-13 school years [Grievant] authorized
20 excessive and inappropriate expenditures." 15 line 24. Arbitrator's Opinion and Award. Mr. Parry
21 also pointed out in the Notice of Administrative Leave that her responses to questions were "less
22 than credible and dishonest;" Principal White could not recall receiving training on use of SAF's nor
23 specific provisions in a manual regarding use of SAF's. *Id.* at 16-17.

24 Principal White was placed on administrative leave without pay on April 29, 2013. After a
25 grievance hearing was held on May 21, 2013, Principal White's dismissal was sustained. On June
26 13, 2013, WSPA gave notice that it was appealing Principal White's termination to arbitration.

27 Arbitration proceedings were conducted in front of Arbitrator Anna D. Smith on February
28 25-28, 2014 who heard witnesses for both WCSD and WSPA. Arbitrator Smith stated she would
return a decision within sixty days of the hearing. However, Arbitrator Smith became ill rendering
her unable to provide a decision on Principal White's case. Arbitrator Alexander Cohn was then

1 selected and provided post-hearing briefs and the arbitration record. Based on the briefs and record,
2 Arbitrator Cohn found, in his December 29, 2014 decision, WCSD had just cause to terminate
3 Principal White based solely on a finding of dishonesty.

4 STANDARD OF REVIEW

5 Under the Uniform Arbitration Act of 2000, codified in Nevada Revised Statutes
6 38.206 to 38.248, the District Court may review an arbitration award, and may, under NRS 38.241,
7 vacate the award.¹ An arbitration award may be vacated if it is arbitrary, capricious, or unsupported
8 by the agreement or when an arbitrator has manifestly disregarded the law. *Bohlmann v. Byron John*
9 *Printz and Ash, Inc.*, 120 Nev. 543, 96 P.3d 1155 (2004). In determining whether an arbitrator's
10 award is arbitrary or capricious the District Court considers whether the arbitrator's findings were
11 supported by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev.
12 337, 344, 131 P.3d 5, 9 (2006).

13 Parties moving to vacate an award on the ground that an arbitrator exceeded his or her
14 authority have the burden of demonstrating by clear and convincing evidence how the arbitrator

15
16 ¹ NRS 38.241 provides

17 1. Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in an arbitral
18 proceeding if:

19 (a) The award was procured by corruption, fraud or other undue means;

20 (b) There was:

21 (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

22 (2) Corruption by an arbitrator; or

23 (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;

24 (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider
25 evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231, so as to prejudice
26 substantially the rights of a party to the arbitral proceeding;

27 (d) An arbitrator exceeded his or her powers;

28 (e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the
objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as
to prejudice substantially the rights of a party to the arbitral proceeding.

2. A motion under this section must be made within 90 days after the movant receives notice of the award pursuant to
NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS
38.237, unless the movant alleges that the award was procured by partiality, corruption, fraud or other undue means, in
which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care
would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in paragraph (c) of subsection 1, it may order a
rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection 1, the rehearing must be before
a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection 1, the rehearing may
be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the
rehearing within the same time as that provided in subsection 2 of NRS 38.236 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the
award is pending.

1 exceeded that authority. *Health Plan of Nevada, Inc. v. Rainbow Medical LLC*, 120 Nev. 689, 100
2 P.3d 172 (2004). Further,

3 Arbitrators exceed their powers when they address issues or make awards outside the
4 scope of the governing contract. The broader the arbitration clause in a contract, the
5 greater the scope of an arbitrator's powers. However, allegations that an arbitrator
6 misinterpreted the agreement or made factual or legal errors do not support vacating an
7 award as being in excess of the arbitrator's powers. Arbitrators do not exceed their
8 powers if their interpretation of an agreement, even if erroneous, is rationally grounded in
9 the agreement. THE QUESTION IS WHETHER [sic] the arbitrator had the authority under
10 the agreement to decide an issue, not whether the issue was correctly decided. REVIEW
UNDER EXCESS-of-authority grounds [sic] is limited and only granted in very unusual
circumstances. An award should be enforced so long as the arbitrator is arguably
construing or applying the contract. If there is a colorable justification for the outcome,
the award should be confirmed.

11 *Id.* (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170, 172 (S.C.Ct.App. 1990); *SIGNAL Corp.*
12 *v. Keane Federal Systems*, 265 Va. 38, 574 S.E.2d 253, 257 (2003); *Main State Emp. Ass'n v. State,*
13 *Etc.*, 436 A.2d 394, 397 (Me.1981); *National Ave. Bldg. Co. v. Stewart*, 910 S.W.2d 334, 349
14 (Mo.Ct.App.1995); *Arnold v. Morgan Keegan & Co., Inc.*, 914 S.W.2d 445, 448 (Tenn.1996)).

15 DISCUSSION

16 **A. Whether Arbitrator Cohn Exhibited Evident Partiality in Violation of NRS 38.241(1)(b)(1)**

17 As a preliminary matter, the Court first addresses whether Arbitrator Cohn exhibited evident
18 partiality in violation of NRS 38.241(1)(b)(1). The Court does not find Petitioner provided sufficient
19 evidence to determine Arbitrator Cohn exhibited evident partiality towards WCSD. The Court finds
20 "[t]he appearance of impropriety, standing alone, is insufficient to establish evident partiality in
21 actual bias cases" persuasive. *Woods v. Saturn Distribution Corp.*, 78 F.3d 424, 427 (9th Cir. 1996).
22 Here, Petitioners did not even provide sufficient evidence suggesting an appearance of impropriety,
23 let alone specific facts to lead to a determination of actual bias. Therefore, the Court does not find a
24 violation of NRS 38.241(1)(b)(1) as grounds to vacate the arbitration award.
25

26 ///

27 ///

1 **B. Whether Arbitrator Cohn Exceeded his Authority and Manifestly Disregarded NRS**
2 **391.3116²**

3 However, the Court does find grounds to vacate the arbitration award based on the
4 determination that Arbitrator Cohn exceeded his authority and manifestly disregarded NRS
5 391.3116.

6 Respondent argues that Arbitrator Cohn did not exceed his authority; the standard for
7 determining whether an arbitrator exceeded his authority is "well articulated in Nevada." (Opp'n
8 Mot. Vac., 6). Additionally, Respondent argues Arbitrator Cohn did not manifestly disregard NRS
9 391.3116: "Petitioners conclude . . . because the language in the CBA says 'in accordance with NRS
10 391,' NRS 391.3116 applies, so then NRS 391.311 to 391.3197 do not apply and the arbitrator must
11 only use the language of Article 18.1!" *Id.* at 14. Respondents assert that the argument presented by
12 Petitioners is an incorrect interpretation of the CBA article and the NRS provisions. *Id.*

13 However, the Court finds Arbitrator Cohn exceeded his authority. "An arbitrator's award
14 'must be based on the collective bargaining agreement' . . . [and] is legitimate only so long as it
15 'draws its essence from the collective bargaining agreement.'" *Int'l Ass'n of Firefighters, Local 1285*
16 *v. City of Las Vegas*, 107 Nev. 906, 910, 823 P.2d 877, 879 (1991). An arbitrator is accorded
17 deference when interpreting a contract. *Id.* However, the deference "is not limitless; he is not free to
18 contradict the express language of the contract . . . Where a labor contract expressly prescribes
19 particular discipline for specified offenses, an arbitration award overturning or modifying that
20 discipline does not 'draw its essence' from the contract and is in excess of the arbitrator's authority."
21 *Id.*

22 In this case, Arbitrator Cohn did not draw his award from the essence of the CBA. Arbitrator
23 Cohn contradicted the express language of the CBA Article 18.1 which explicitly prescribes a
24 particular discipline for a specified offense:

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² Under NRS 391.3116, "Excluding the provisions of NRS 391.3129, and sections 1.9 and 1.95 of this act, the provisions of NRS 391.311 to 391.3197, inclusive, do not apply to a teacher or other licensed employee who has entered into a contract with the board negotiated pursuant to chapter 288 of NRS if the contract contains separate provisions relating to the board's right to dismiss or refuse to reemploy the employee."

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ARTICLE 18
DISMISSAL AND DISCIPLINARY PROCEDURES

18.1 Disciplinary actions, *including but not limited to, demotion, suspension, dismissal, and non-renewal actions* taken against post-probationary unit members (in accordance with NRS 391), *shall be progressive* in nature and related to the nature of the infraction. Unit members *shall be given reasonable opportunity for improvement*.

The School District *shall not* discharge, demote, suspend or take any other disciplinary action against a post probationary bargaining unit member of this unit *without just cause*.

(Emphasis added) (Opp'n Mot. Vac., Ex. 1: *Negotiated Agreement Between WCSD and WSPA*, 2011-2013).

Based on a plain language reading of CBA Article 18.1, the Court finds there are three mandatory provisions regarding dismissal and disciplinary procedures: an individual (1) *shall be given progressive discipline*, (2) *shall be given a reasonable opportunity to improve*, and (3) *shall not be discharged without just cause*. No ambiguity exists in Article 18.1 and the requirements are clear-cut.

In this case, Principal White was not afforded progressive discipline or a reasonable opportunity to improve. Arbitrator Cohn stated in his Arbitrator's Opinion and Award

Therefore, on the record presented, any inclination to reverse Grievant's discharge and substitute progressive discipline such as a lengthy suspension, last chance return, demotion, an opportunity to improve, etc., in light of her length of service and competency, is washed away by the dishonesty finding. More specifically, whether the "just cause" standard is viewed under the NRS or the Agreement, given the totality of her performance errors and misconduct, summary discharge is warranted.

(Arb. Op. Awd., 60 ¶24). Based on the above statement, it is clear Arbitrator Cohn did not find progressive discipline or a reasonable opportunity for improvement essential elements of Article 18.1. Further, the Court agrees with Petitioner's assertion that Arbitrator Cohn "looked to the words of the contract . . . and looked to the conduct of the District . . . but then rendered an award wholly contradictory to the express language in the CBA." (Mot. Vac., 9 ¶3). The Court takes issue with the fact that Arbitrator Cohn found that mandatory requirements of progressive discipline and a reasonable opportunity to improve were "washed away" because of his finding of dishonesty. The Court finds that Arbitrator Cohn exceeded his authority by not looking to the express terms of the

1 CBA and determining such provisions did not apply to Principal White's case. Arbitrator Cohn
2 cannot merely "wash away" contractual provisions agreed upon by WCSD and WSPA. "Washing
3 away" two mandatory collective bargaining terms does not rise to the level of dismissal based on just
4 cause.

5 Further, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116. "An
6 arbitrator manifestly disregards the law when he or she recognizes that the law *absolutely requires* a
7 given result and nonetheless *refuses* to apply the law correctly." *Bohlmann v. Byron John Printz and*
8 *Ash, Inc.*, 120 Nev. 543, 545, 96 P.3d 1155, 1156 (2004) (emphasis in original). In this case, while
9 Arbitrator Cohn referenced NRS 391.3116, he did not apply the law correctly.

10 First, Arbitrator Cohn specifically referenced NRS 391.3116 thus recognizing that the statute
11 required a given result. He cited in bold and underlined the following: "**NRS 391.3116 Contract**
12 **negotiated by collective bargaining may supersede provisions of NRS 391.311 to 391.397,**
13 **inclusive; exception for certain employees deemed probationary.**" (Arb. Op. Awd., 4 ¶22). The
14 Court agrees with Petitioner's assertion that Arbitrator Cohn "correctly conclude[d] that NRS
15 391.3116 is applicable" to this case. (Mot. Vac., 11 ¶17).

16 Moreover, the Court finds Arbitrator Cohn manifestly disregarded NRS 391.3116 as he did
17 not apply the statute correctly. The statute expressly states that the provisions of NRS 391.311 to
18 391.3197 *do not apply* if a collective bargaining agreement contains a *separate provision* regarding
19 employee dismissal. Here, Article 18.1 provides the separate provision specifically referenced in
20 NRS 391.3197; Article 18.1 is a separate provision governing employee dismissal and termination.
21 Moreover, the article is specifically titled **Dismissal and Disciplinary Procedures**. Therefore, NRS
22 391.3116 does not apply to the dismissal procedures in this case because dismissal procedures are
23 specifically provided for in Article 18.1. As stated above, dismissal procedures *must* consist of (1)
24 progressive discipline and (2) a reasonable opportunity for improvement. A dismissal that does not
25 include progressive discipline and a reasonable opportunity to improve is not a dismissal based on
26 just cause.

27 Therefore, the Court finds Arbitrator Cohn exceeded his authority by not applying the
28 specific and clear provisions of Article 18.1. Principal White was not afforded progressive
discipline or a reasonable opportunity for improvement. Second, the Court finds Arbitrator Cohn
manifestly disregarded NRS 391.3116 as Article 18.1 provides a separate provision regarding

1 employee dismissal. As Arbitrator Cohn did not follow the separate provision outlined in Article
2 18.1, he manifestly disregarded NRS 391.3116.

3 **C. Whether the Award was Arbitrary and Capricious**

4 The Court finds Arbitrator Cohn's award was arbitrary and capricious based on lack of
5 substantial evidence of Principal White's dishonesty. In determining whether an arbitrator's award is
6 arbitrary or capricious the District Court considers whether the arbitrator's findings were supported
7 by substantial evidence. *Clark County Educ. Ass'n v. Clark County Sch. Dist.*, 122 Nev. 337, 344,
8 131 P.3d 5, 9 (2006). Arbitrator Cohn's award was based on a finding of dishonesty pursuant to NRS
9 391.31297(1)(p), which provides,

10 1. A teacher may be suspended, dismissed or not reemployed and an administrator may
11 be demoted, suspended, dismissed or not reemployed for the following reasons:

12 . . .

13 (p) Dishonesty.

14 First, the Court points out that before reaching a finding of dishonesty pursuant to NRS
15 391.31297(1)(p), Principal White still should have been afforded progressive discipline and a
16 reasonable opportunity for improvement based on the Court's above findings pursuant to Article
17 18.1 of the CBA. Even had Principal White been afforded progressive discipline and a reasonable
18 opportunity for improvement, the record still does not indicate she was dishonest.

19 Respondent WCSD argues that as the entire arbitration record was submitted as evidence,
20 "[t]he arbitrator in this matter had substantial evidence to support his Award, including: verbatim
21 transcripts of four days of arbitration testimony referencing the numerous documents entered into
22 evidence." (Opp'n Mot. Vac., 18 ¶18). However, the Court does not find that merely because the
23 arbitration record was voluminous, Arbitrator Cohn relied on *substantial* evidence. Rather, the Court
24 finds the award was arbitrary and capricious insofar as a careful review of the record does not turn
25 up substantial evidence of dishonesty.

26 The Court concurs with Petitioner's oral arguments in that dishonesty requires an element of
27 intent. The evidence does not support a finding of intentional dishonesty in Principal White's case.
28 For example, in regards to mandatory GLAD training, Arbitrator Cohn found

The record demonstrates that, while Grievant recommended that they take the training
during the summer where pay would not be problematic, it was not possible for everyone
to do so. Whether or not Grievant herself (directly) instructed teachers to use sick leave

1 for the mandatory training, somehow this was transmitted to them . . . and they filled out
2 sick leave forms for training days, which Grievant was responsible for approving.

3 (Arb. Op. Awd., 59 ¶7). Yet, during the arbitration proceeding, Principal White stated

4 I visited the GLAD training happening. No one says anything. I'm communicating to
5 teachers on a regular basis about when they're attending. No communication about a
6 concern, a question about their days about let me clarify, do you actually mean you're
7 making it mandatory for me to use my sick days, personal days, there was never even a
8 question about this whole thing.

9 (Tr., *Arbitration re: Kara White*, Vol. 4, 690 ¶11-17). The Court finds there is no indication of
10 intentional dishonesty regarding GLAD training. There is abundant evidence of miscommunication
11 between teachers and Principal White, but not evidence of Principal White being dishonest.
12 However, there is no indication of intentional dishonesty on Principal White's part.

13 Moreover, the record indicates Principal White was taken aback by certain teacher
14 accusations that she was requiring teachers to use personal and sick days to attend GLAD training.
15 Principal White's testimony does not demonstrate she was intentionally dishonest in making GLAD
16 training mandatory or that she was dishonest about such facts during the arbitration proceeding.
17 Rather, the record merely shows she was surprised that teachers had not communicated with her and
18 had gone directly to the Labor Relations Manager on this issue. Evidence of surprise does not equal
19 a substantial evidence of intentional dishonesty.

20 Additionally, substantial evidence does not support a finding of intentional dishonesty in
21 regards to Principal White's alleged misuse of SAF's to purchase lunches, dinners, gift cards, and a
22 necklace for staff members. Arbitrator Cohn found

23 Grievant's fundamental and steadfast defense, in summary, is that she had no knowledge
24 of how to use SAF funds, had never been trained on the Manual . . . Put simply,
25 persuasive evidence demonstrates that she mishandled the funds by using them for
26 purposes other than those for which they were restricted, contrary to clear and
27 unambiguous District Policies . . . Grievant incredibly testified that she did not know she
28 was improperly spending SAF monies and was unaware of the existence of the Manual.

29 (Arb. Op. Awd., 54-55). The Court takes issue with Arbitrator Cohn's findings that Principal
30 White's lack of knowledge about how to use SAF monies constitutes a conclusion that Principal
31 White intended to deprive the District of funds. The Court finds Principal White did not know she
32 was misusing SAF funds. As stated by Petitioner during oral arguments before this Court, dishonesty
33 requires intent. In Principal White's case, she was not intentionally dishonest. Principal White
34 believed she was using the funds to encourage and congratulate her teachers and to foster a sense of

1 community and pride. Principal White had no intention to disregard WCSD policies. Based on a
2 careful review of the entire record, substantial evidence does not support a finding of dishonesty in
3 regards to use of SAF monies.

4 Therefore, the Court vacates Arbitrator Cohn's award based on the fact that the decision was
5 arbitrary and capricious.

6 **D. Whether Arbitration Proceedings Were Fair and Expeditious in Violation of NRS 38.231(1)**

7 As stated on the record during oral arguments before this Court, the Court takes issue with
8 the length of time that passed in these proceedings. Under NRS 38.231(1), "an arbitrator may
9 conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and
10 expeditious disposition of the proceeding." While the Court does not vacate the arbitration award on
11 these grounds, the Court still finds it concerning that Principal White has waited so long to find out
12 whether she would be permanently dismissed from a career she has dedicated her entire life to. Her
13 livelihood and reputation have been on the line for far too long. Principal White deserved much
14 more than the long drawn out procedure she was afforded.

15 Based on the above, and good cause appearing, the Court HEREBY GRANTS Petitioner's
16 *Motion to Vacate Arbitration Award.*

17 DATED this 10 day of November, 2015.

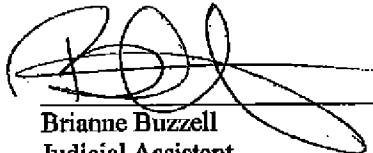
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19 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of _____, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 10th day of November, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

CHRISTOPHER REICH, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
JASON GUINASSO, ESQ. for WASHOE COUNTY PRINCIPALS' ASSOCIATION et al
NEIL ROMBARDO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT
SARA ALMO, ESQ. for WASHOE COUNTY SCHOOL DISTRICT



Brianne Buzzell
Judicial Assistant

CASE NO. CV15-00572

KARA WHITE, ET AL. VS. WASHOE COUNTY SCHOOL DISTRICT

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

10/27/15
HON. SCOTT N.
FREEMAN
DEPT. NO. 9
L. Sabo
(Clerk)
S. Kiger
(Reporter)
P. Sewell
(Bailliff)

ORAL ARGUMENTS

Petitioner Kara White was present with counsel, Devon Reese.
Petitioner Washoe County Principals' Association was being represented by Ron Dreher, who was present with counsel, Devon Reese.
Respondent Washoe County School District was being represented by Labor Relations Specialist Anthony Spotts, who was present with counsel, Christopher Reich.
The Court confirmed review of all pertinent pleadings and documents on file and noted that this matter was before the Court on Petitioners' Motion to Vacate Arbitration Award. The Court directed counsel to proceed with their presentations. Counsel Reese addressed the Court and provided a background of this case; counsel Reese presented argument in support of Petitioners' Motion to Vacate Arbitration Award and, further, responded to the questions and comments of the Court.
Counsel Reich addressed the Court and presented argument in opposition to Petitioners' Motion to Vacate; counsel Reich further responded to the Court's questions and comments.
Counsel Reese presented final arguments in support of Petitioners' Motion and submitted the matter to the Court for decision.
COURT ORDERED: Matter taken under advisement.

1 **Code 1350**

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4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6
7 **IN THE MATTER OF THE ARBITRATION BETWEEN:**

Case No. CV15-00572

8 **KARA WHITE & WASHOE SCHOOL PRINCIPALS'**
9 **ASSOCIATION,**

Dept. No. 9

10 **Petitioners,**

11 **and**

12 **WASHOE COUNTY SCHOOL DISTRICT,**

13 **Respondent.**

14 **Involving the dismissal appeal of Kara White,**
15 **Grievant.**

16 _____/
17 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

18 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
19 County of Washoe; that on the 11th day of December, 2015, I electronically filed the Notice of
20 Appeal in the above entitled matter to the Nevada Supreme Court.

21 I further certify that the transmitted record is a true and correct copy of the original
22 pleadings on file with the Second Judicial District Court.

23 Dated this 11th day of December, 2015

24 Jacqueline Bryant
25 Clerk of the Court

26 By /s/ Yvonne Viloria
27 Yvonne Viloria
28 Deputy Clerk