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Elizabeth A. Brown  
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## IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY SCHOOL DISTRICT,  
A political subdivision of the State of Nevada,

Appellant,

No. 83713

Vs.

CAIDYN EDLUND,

Respondent.

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### PETITION FOR REHEARING

For the following reasons, the Respondent CAIDYN EDLUND petitions this Court, pursuant to Nevada Rule of Appellate Procedure (“NRAP”) 40 to rehear its August 11, 2022 Order Affirming in Part and Reversing in Part (“Order”):

1. The Order overlooked a material fact that the arbitrator in Edlund’s case was made aware of the statutory requirement for back pay, but ignored it; and

2. The Order misapprehended the importance of the facts surrounding Edlund's termination.

### **Standard of Review**

Under NRAP 40(c), rehearing is warranted where this Court either overlooked or misapprehended a material fact in the record or a material question of law, or where the Court overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling on a dispositive issue in the case.

### **Argument**

#### ***A. The arbitrator in Edlund's case was aware of and manifestly disregarded the statutory basis for Edlund's claim for backpay***

The Order held that the record does not demonstrate that the Arbitrator Harris knowingly disregarded clearly controlling law in reaching the conclusion that Edlund was not entitled to backpay, citing *News+Media Cap. Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev., Adv. Op. 45, 495 P.3d 108, 118 (2021). See Order at 3.

The District Court's Order ruled that:

Arbitrator Harris' award includes an extensive discussion of Arbitrator Crost's prior award in this case, which Arbitrator Harris received into evidence, and which contains a discussion of the

statutory requirement for and an award of backpay in favor of Mr. Edlund.

JA at 626

In Edlund's April 11, 2022 Answering Brief, the issue of whether Arbitrator Harris manifestly disregarded the law is discussed. See Answering Brief at pages 16 to 19.

Viewing the record in this matter as a whole, Arbitrator's Harris' decision to disregard the requirement for backpay is manifest. The matter came before Arbitrator Harris as a result of the District Court's reversal of an earlier arbitration proceeding before Arbitrator Crost, in which previous Arbitrator Crost awarded Edlund back pay under NRS 391.760(3). See Crost Opinion and Award at JA0484. Arbitrator Crost's award was expressly received into evidence by Arbitrator Harris. See Harris Opinion and Award at JA0140.

Even if this Court is not persuaded that Arbitrator Harris was aware of and disregarded the provisions of NRS 391.760, in its Order, it is acknowledged that Arbitrator Harris concluded that Edlund acting recklessly was the basis for the decision that Edlund was not entitled to back pay. See Order at 2. As such, because this

Court upheld the District Court's reversal of Arbitrator Harris' conclusion that Edlund acted recklessly, it should also reverse her decision to deny Edlund back pay, which was derived from the conclusion that Edlund was reckless.

***2.) The Court misapprehended the importance of the facts surrounding Edlund's dismissal***

Nothing in the record states that Edlund was dismissed by Washoe County School District ("WCSD") via some sort of official process that was ratified by the Superintendent - rather, as argued by Edlund, he was simply "effectively" dismissed because his pay was cut off while arbitration to resolve the underlying dispute was pending. See Answering Brief at page 5. As explained below, the fact that the Superintendent of WCSD never ratified his suspension and dismissal should not undermine Edlund's rights under NRS 391.760.

In footnote 2 of the Order this Court held that the terms of NRS 391.760 only apply when the superintendent suspends an employee. As a practical matter, the superintendent of a large school district is not directly involved in the day-to-day discipline of teachers. Washoe County School

District has thousands of employees and is one of the largest employers in the State of Nevada.

In the same way that Federal Legislation refers to the executive branch as “The President,<sup>1</sup>” and “The Crown” generally refers to the executive branch of the British government, “the Superintendent” in the statutory scheme in NRS 391 refers to the administration of a school district as a whole.

Under the provisions of NRS 391.110 *et seq*, a superintendent is vested with the executive power of running a school district, with duties including determination of salaries (NRS 391.1605), supervision of the licensing of personnel (NRS 391.230), evaluations of personnel (NRS 391.675 *et seq.*), and disciplinary action. NRS 391.750 *et seq.* Given the broad duties of a superintendent, it is unlikely that the legislature intended that a superintendent act completely alone without delegation.

Interpreting NRS 391.760 to require an express action of the superintendent to be effective creates troubling results. For example, a school district that wishes to suspend an employee but to avoid the potential for liability should the suspension later be found to be

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<sup>1</sup> See 3 U.S.C.A. Section 301.

unwarranted, such as in Mr. Edlund's case could simply have the action of the suspension be carried out by some other person within the district. Statutes should be interpreted to effectuate the intent of the legislature in enacting them. *Las Vegas Sun v. District Court*, 104 Nev. 508 (1988) overruled on other grounds by *Aspen Fin. Services, Inc. v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 129 Nev. 878 (2013). "[I]ntent, when ascertained will prevail over the literal sense." *Department of Ins. v. Humana Health Ins., Inc.*, 112 Nev. 356, 360 (Nev. 1996) citing *Moody v. Manny's Auto Repair*, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994), (quoting *Welfare Div. v. Washoe Co. Welfare Dep't*, 88 Nev. 635, 637-38, 503 P.2d 457, 458-59 (1972)).

In the Notice of Recommended Dismissal dated October 23, 2018 at Vol. 2 at JA0393, Edlund was informed by Galena High School Principal Tom Brown that Edlund was being placed on administrative leave and that he was being suspended - the notice states that:

Be advised that pursuant to NRS 391.775 and the Washoe County School District (District) Superintendent's authority to make all employee separation decisions as delegated by the District Board of Trustees on February 14, 2006, I recommend to the Superintendent that you be dismissed from service with the District.

The notice further stated that Edlund was recommended to be dismissed from the Washoe County School District for possession of a firearm on school property in violation of Administrative Regulation 4675 and that his dismissal was effective November 19, 2018 - despite the fact that the letter also states that it was just a “recommendation” for a dismissal. *Id.* WCSD stipulated that Edlund timely appealed his dismissal. JA0432. In WCSD’s Opening Brief, it states, “The dismissal was effective November 19, 2018. (JA0388-JA0389, vol. 2)” However, Vol. 2 JA 388-389 is a September 20, 2018 letter from Galena Principal Tom Brown, entitled, “RE: Notice of Investigatory/Due Process Meeting and Right to Representation.” Nothing in Vol. 2 JA 388-389 refers to Edlund’s dismissal.

In his October 23, 2018 letter Brown stated that Edlund’s, “...omission of not removing the handgun from your vehicle prior to coming on to the property is reckless and in deliberate disregard of the interests of our students, Galena High School and the District.” Vol. 2 at JA394. These facts show that Edlund was told he was suspended, was told he was to be fired, his pay was cut off, and that Edlund timely appealed the determination for arbitration, which ultimately resulted in this Court’s Order

finding that there was nothing in the record to support the charge made by Mr. Brown that Edlund was “reckless.”

If this Court’s Order stands, it results in the type of pyrrhic victory that NRS 391.760(3) was created to prevent - *Ubi jus ibi remedium* - where after two arbitrations and years of legal wrangling, Edlund is vindicated in only in principle. WCSD lacked just cause and should not have fired Mr. Edlund, but he is still forced to bear the cost of years of lost work.

WHEREFORE, Mr. Edlund petitions this Court to rehear this matter.

Respectfully submitted:

By: /s/ Luke Busby, Esq.

Dated: 8/26/2022

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Google Docs in Helvetica 14 point font.

2. I further certify that this petition for rehearing complies with the page or type-volume limitations of NRAP 40 or 40A because it does not exceed 4,667 words. This Petition contains 1,624 words.

Respectfully submitted:

|   |                         |
|---|-------------------------|
| By: <u>          Luke Busby, Esq.          </u>   | Dated: <u>8/26/2022</u> |
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## CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document upon the following parties by U.S. Mail and/or Electronic Service and/or hand delivery to:

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