

CARLOS MCDADE, Nevada Bar No. 11205
ADAM D. HONEY, Nevada Bar No. 9588
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
5100 W. Sahara Avenue
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Counsel for Respondent

Electronically Filed
Jul 21 2017 02:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

CLARK COUNTY SCHOOL DISTRICT,

NOTICE OF APPEAL

Respondent.

NOTICE OF APPEAL

Notice is hereby given that Respondent CLARK COUNTY SCHOOL DISTRICT hereby appeals to the Supreme Court of the State of Nevada from the Order Granting Writ of Mandamus as to Withheld Records issued by the Honorable Timothy C. Williams, District Judge, entered in this action on the 12th day of July, 2017.

Respectfully submitted, this 12th day of July, 2017.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL



Carlos McDade, Nevada State Bar No. 11205

Adam Honey, Nevada State Bar No. 9588

Clark County School District

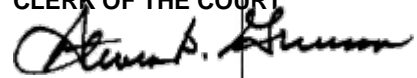
Office of General Counsel

Counsel for Respondent, Clark County School District

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Margaret A. McLetchie, Esq.
MCLECHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101

2



CARLOS MCDADE, Nevada Bar No. 11205
ADAM D. HONEY, Nevada Bar No. 9588
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

CLARK COUNTY SCHOOL DISTRICT,

CASE APPEAL STATEMENT

Respondent.

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f)(3), Appellant Clark County School District respectfully submits for consideration its Case Appeal Statement in the above referenced matter:

(A) District Court Case Number and Caption:

Case No. A-17-750151-W; Las Vegas Review Journal v. Clark County School District.

(B) Name of Judge who entered the orders or judgment being appealed:

(1) Honorable Judge Timothy C. Williams

- 07/12/2017 Notice of Entry of Order on an Order Granting Writ of Mandamus as to Withheld Records.

1 **(C) Name of each appellant and name and address of counsel for each**
2 **appellant:**

3 (1) The Clark County School District, a political subdivision of the State
4 of Nevada, is the Appellant.

5 (2) Carlos McDade and Adam Honey, with the Office of General
6 Counsel for the Clark County School District, located at 5100 West Sahara
7 Avenue, Las Vegas, Nevada, 89146, are the attorneys representing the
8 Appellant.

9 **(D) Name of each respondent and the name and address of appellate**
10 **counsel, in known, or if not, name and address of trial counsel:**

11 (1) Las Vegas Review Journal is the Respondent.

12 (2) Margaret A. McLetchie, whose office is located at 701 East Bridger
13 Avenue, Suite 520, Las Vegas, NV 89101, is counsel for
14 Respondent.

15 **(E) All attorneys identified herein are licensed to practice law in Nevada.**

16 (1) Counsel for Appellant: Carlos McDade's Nevada Bar number is
17 11205; Adam Honey's Nevada Bar number is 9588.

18 (2) Counsel for Respondent: Margaret McLetchie's Nevada Bar number is
19 10931.

20 **(F) Whether Appellant was represented by appointed counsel in the**
21 **district court; whether Appellant is represented by appointed**
22 **counsel on appeal:**

23 (1) No.

24 (2) No.

1 (G) Whether the district court granted Appellant leave to proceed in
2 forma pauperis:

3 No.

4 (H) Date the proceedings commenced in the district court:

5 Petitioner's Public Records Act Application Pursuant to NRS

6 239.001/Petition for Writ of Mandamus was filed on January 26, 2017.

7 (I) Brief description of the nature of the action and result in district
8 court, including the type of judgment or order being appealed and
9 the relief granted by the district court:

10 This matter involves important public policy concerns regarding the right of
11 public employees to raise concerns of all forms of sexual harassment and
12 discriminatory conduct without fear of retaliation from the accused and without
13 the loss of confidentiality. These issues are presented in the context of a public
14 records request made to the Clark County School District ("CCSD") by the Las
15 Vegas Review-Journal ("LVRJ") under the provisions of NRS Chapter 239.

16 On July 11, 2017, the Honorable Judge Timothy C. Williams, District Court
17 Judge, filed an Order Granting Writ of Mandamus as to Withheld Records. LVRJ
18 served a Notice of Entry of Order on July 12, 2017. In its Order, the Court stated:
19 "the Court hereby orders CCSD to produce withheld documents to the Court by
20 June 30, 2017. Pursuant to the Court's February 23, 2017 Order, CCSD may
21 redact the names of direct victims of sexual harassment or alleged sexual
22 harassment, students, and support staff. The Court will then provide the
23 documents to the Review-Journal."
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1 CCSD is appealing the Order of the Honorable Judge Timothy C.
2 Williams, District Court Judge, entered on July 12, 2017, that requires disclosure
3 of the "withheld documents" which consist of the "investigative file" of CCSD's
4 Office of Diversity and Affirmative Action regarding its investigation of alleged
5 discrimination of CCSD employees by Trustee Kevin Child. In particular, the
6 Court's Order requires the release of notes, drafts, memoranda, and
7 chronological summary of the investigation conducted by Cedric Cole, Director of
8 CCSD, Office of Diversity and Affirmative Action.
9

10 The District Court's decision will result in irreparable injury to CCSD
11 employees and may also discourage future reporting of alleged discrimination.
12 The investigative file should be protected.

13 **(J) This case has NOT been the subject of a previous appeal or writ**
14 **proceeding before any Nevada appellate Court.**

15 **(K) This case does NOT involve child custody or visitation.**

16 **(L) Whether this case involves the possibility of settlement:**

17 Although settlement is not inconceivable, in Appellant's view the
18 probability that this case can be settled appears unlikely.
19

20 Respectfully submitted, this 12th day of July, 2017.

21 CLARK COUNTY SCHOOL DISTRICT
22 OFFICE OF THE GENERAL COUNSEL

23 

24 Carlos McDade, Nevada State Bar No. 11205
25 Adam Honey, Nevada State Bar No. 9588
26 Clark County School District
27 Office of General Counsel
28 *Counsel for Respondent, Clark County School District*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2017, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** via electronic filing and electronic service through the EFP Vendor System to all registered parties pursuant to the order for electronic filing and service.

Margaret A. McLetchie, Esq.
MCLECHIE SHELL LLC
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101

/s/Christina M. Reeves
AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD

DEPARTMENT 16
CASE SUMMARY
CASE NO. A-17-750151-W

Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

§
§
§
§
§

Location: **Department 16**
Judicial Officer: **Williams, Timothy C.**
Filed on: **01/26/2017**
Cross-Reference Case Number: **A750151**

CASE INFORMATION

Case Type: **Writ of Mandamus**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-17-750151-W
Court Department 16
Date Assigned 01/26/2017
Judicial Officer Williams, Timothy C.

PARTY INFORMATION

Plaintiff

Las Vegas Review-Journal

Lead Attorneys
McLetchie, Margaret A.
Retained
702-728-5300(W)

Defendant

Clark County School District

McDade, Carlos L
Retained
702-869-8801(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

01/26/2017



Petition

Filed by: Plaintiff Las Vegas Review-Journal
Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

01/26/2017



Initial Appearance Fee Disclosure

Filed By: Plaintiff Las Vegas Review-Journal
Initial Appearance Fee Disclosure (NRS Chapter)

02/02/2017



Affidavit of Service

Filed By: Plaintiff Las Vegas Review-Journal
Affidavit of Service

02/08/2017



Ex Parte Motion

Filed By: Plaintiff Las Vegas Review-Journal
Ex Parte Motion for Order Shortening Time and Request for Expedited Hearing

02/08/2017



Notice of Entry of Order

Filed By: Plaintiff Las Vegas Review-Journal
Notice of Entry of Order











02/08/2017













Order

Order Setting Hearing on Writ of Mandate

DEPARTMENT 16
CASE SUMMARY
CASE NO. A-17-750151-W

02/14/2017	 Hearing (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Hearing: Writ of Mandate</i>
02/22/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandate</i>
02/23/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/01/2017	 Amended Petition Filed By: Plaintiff Las Vegas Review-Journal <i>Amended Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
03/02/2017	 Status Check (9:00 AM) (Judicial Officer: Williams, Timothy C.) 03/02/2017, 03/14/2017
03/16/2017	 Stipulation and Order Filed by: Plaintiff Las Vegas Review-Journal <i>Stipulation and Order</i>
03/20/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/27/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Regarding Briefing Schedule</i>
03/27/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
03/29/2017	 Petitioners Opening Brief Filed by: Plaintiff Las Vegas Review-Journal <i>Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus</i>
04/13/2017	 Answering Brief Filed By: Defendant Clark County School District <i>Respondent's Answering Brief to Petitioner's Amended Public Records Act Application/Petition of Writ of Mandamus</i>
04/24/2017	 Reply Filed by: Plaintiff Las Vegas Review-Journal <i>Reply Brief To Respondent's Answering Rbief To Petitioner's Opening Brief And Public Records Act Application / Petition For Writ Of Mandamus</i>
04/25/2017	 Amended Certificate of Service Party: Plaintiff Las Vegas Review-Journal <i>Amended Certificate of Service for Reply Brief</i>

DEPARTMENT 16
CASE SUMMARY
CASE NO. A-17-750151-W

05/09/2017	 Hearing (9:00 AM) (Judicial Officer: Williams, Timothy C.) 05/09/2017, 06/15/2017, 06/27/2017 <i>Hearing: Search Parameters</i>
06/06/2017	 Status Check (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Status Check: Hearing (5/9/17)</i>
06/06/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters</i>
06/06/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
06/13/2017	 Memorandum Filed By: Plaintiff Las Vegas Review-Journal <i>Memorandum Regarding CCSD's Privilege and Certifications</i>
07/11/2017	 Order Filed By: Plaintiff Las Vegas Review-Journal <i>Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions</i>
07/12/2017	 Notice of Entry of Order Filed By: Plaintiff Las Vegas Review-Journal <i>Notice of Entry of Order</i>
07/12/2017	 Motion to Stay Filed By: Defendant Clark County School District <i>Respondent's Motion to Stay Enforcement of order granting writ of mandamus as to withheld records pursuant to nrcp 62(c), (d) & e pending appeal on order shortening time</i>
07/12/2017	 Case Appeal Statement Filed By: Defendant Clark County School District <i>Case Appeal Statement</i>
07/12/2017	 Notice of Appeal Filed By: Defendant Clark County School District <i>Notice of Appeal</i>
07/27/2017	Motion to Stay (9:00 AM) (Judicial Officer: Williams, Timothy C.) <i>Respondent's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62 (c), (d) 7 (e) Pending Appeal on Order Shortening Time</i>

DATE	FINANCIAL INFORMATION
	Defendant Clark County School District Total Charges 24.00 Total Payments and Credits 24.00 Balance Due as of 7/17/2017 0.00
	Plaintiff Las Vegas Review-Journal Total Charges 270.00 Total Payments and Credits 270.00 Balance Due as of 7/17/2017 0.00

DEPARTMENT 16
CASE SUMMARY
CASE No. A-17-750151-W

DISTRICT COURT CIVIL COVER SHEET

XVI

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): The Las Vegas Review-Journal c/o McLetchie Shell LLC 701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101 (702) 728-5300	Defendant(s) (name/address/phone): Clark County School District Legal Department 5100 West Sahara Avenue; Las Vegas, NV 89146
Attorney (name/address/phone): Margaret A. McLetchie and Alina M. Shell McLetchie Shell LLC 701 East Bridger Avenue, Suite 520; Las Vegas, NV 89101 (702) 728-5300	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input checked="" type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

01/26/2017

Date

Signature of initiating party or representative

See other side for family-related case filings.



ORDR

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE SHELL LLC
701 East Bridger Avenue, Suite. 520
Las Vegas, NV 89101
Telephone: (702)-728-5300
Email: maggie@nvlitigation.com
Counsel for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

**ORDER GRANTING WRIT OF
MANDAMUS AS TO WITHHELD
RECORDS AND REQUIRING
DEPOSITIONS**

The Las Vegas Review-Journal's Amended Petition for Writ of Mandamus having come on for an additional hearing on June 27, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorneys, MARGARET A. MCLEATCHIE and ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("CCSD"), appearing by and through its attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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06:23898P57-68-PMI

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Original NPRA Request and Petition

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”). The request sought certain documents pertaining to CCSD Trustee Kevin Child (the “Request”). The Reporter supplemented the Request on December 9, 2016 (“Supplemental Request”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing.

Reacted Records, Withheld Records, and Order on Redactions

4. CCSD did not produce the records in unredacted form. Instead, on February 8, 2017, CCSD produced the redacted records (“Redacted Records”)—as well as an unredacted corresponding set of records—to the Court and, later that day, provided a copy of the Redacted Records to the Review-Journal. It provided other versions of the Redacted Records (with fewer redactions) on February 10 and 13, 2017 and produced additional pages not previously identified (the “Additional Redacted Records”) on February 13, 2017.

5. CCSD also withheld records responsive to the December Requests.

6. On February 13, 2017, CCSD provided the Court and the Review-Journal an initial log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110.

7. On February 13, 2017, CCSD also provided a revised version of the log including the Additional Redacted Records and asserting additional based for redactions.

8. The Court conducted an *in camera* review of the Redacted Records, the Additional Redacted Records, and the unredacted versions of both sets of records.

9. On February 14, 2017, the Court heard oral argument on the Review-Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23, 2017 Notice of Entry of Order).)

10. The Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only "the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff" redacted. (*Id.* at ¶ 34.) The Court further specified that "CCSD may not make any other redactions" and must unredact the names of schools, teachers, and all administrative-level employees. (*Id.* at ¶ 35.)

11. The Court directed CCSD to comply with the Order within two days. (*Id.* at ¶ 36.) On February 24, 2017, CCSD produced new versions of the Redacted Records and Additional Redacted Records to the Review-Journal; these new versions of the Redacted Records totaled thirty-three (33) pages.

February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information

12. On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches.

13. On February 15, 2017, counsel for the Review-Journal contacted CCSD to discuss the February request.

14. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107(d).

15. In that same correspondence, CCSD set forth objections to the February Request.

1 16. On March 3, 2017, CCSD provided some documents in response to the
2 February Request.

3 17. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted
4 information pertaining to the names of individuals who reported a complaint or concern
5 about Trustee Child, information including potentially identifying information about
6 students, and personal phone numbers.

7 18. That same day, the Review-Journal requested CCSD provide a log of
8 withheld documents that were responsive to the February Request. The Review-Journal also
9 asked CCSD to provide it with search information.

10 19. CCSD responded to these requests via letter on March 13, 2017. In its letter,
11 CCSD indicated it had searched for the terms “Kevin Child” and “Trustee Child” in the
12 Interact email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike
13 Barton, each School Associate Superintendent and each of the school principals in Trustee
14 Child’s district. Despite previous requests from the Review-Journal, that was the first time
15 CCSD provided any search term information.

16 20. CCSD did not inform the Review-Journal that it had limited the sources or
17 custodians it had searched. Instead, in response to the Review-Journal’s inquiry regarding
18 what documents were being withheld, CCSD asserted that “the only information that has not
19 been provided is internal information received or gathered by the District in the court of its
20 investigation of an alleged practice of unlawful practice of discrimination, harassment, or
21 hostile work environment which is confidential and not required to be disclosed under the
22 public records law.”

23 21. By email on March 13, 2017, CCSD also stated it was withholding one
24 document—a report prepared by Cedric Cole, CCSD’s Executive Manager of Diversity and
25 Affirmative Action, regarding an investigation his office had conducted into hostile work
26 environment allegations against Trustee Child (the “Cole Report”). The Review-Journal
27 responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested
28 CCSD conduct additional email searches for responsive records from additional custodians.

22. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests.

23. The Review-Journal also requested CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy file CCSD maintains on Trustee Child that were responsive to the December and February Requests.

24. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

(See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

25. By email on March 27, 2017, CCSD agreed to search school board trustees' email addresses. In its Answering Brief, CCSD also agreed to search emails of persons who sent or received, or were copies on, emails already produced, including cc's.

26. CCSD produced some emails of persons who sent or received prior responsive documents it indicated were responsive to the February Request on April 28, 2017, and produced some trustee emails it indicated were responsive to the February Request on May 3, 2017.

Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters

27. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus.

28. On June 6, 2017, the Court entered an Order finding that it has jurisdiction

1 over the Review-Journal's Amended Petition.

2 29. The Court also granted the Review-Journal's Amended Petition as to the
3 request that CCSD conduct email searches responsive to the December Requests and the
4 February Requests for the additional custodians requested by the Review-Journal.
5 Specifically, the Court ordered CCSD to conduct email searches responsive to the Review-
6 Journal's December and February Requests of the additional custodians. (June 6, 2017 Order
7 at ¶ 45.)

8 32. The Court directed CCSD to complete this search and produce all
9 responsive records it does not contend are confidential to the Las Vegas Review-Journal by
10 June 6, 2017. (June 6, 2017 Order at ¶ 46.)

11 33. Further, the Court ordered that with regard to any documents CCSD had
12 withheld and/or redacted to date and any additional responsive documents it identifies in
13 response to the additional email and hard copy searches it is required to perform but contends
14 are confidential and/or privileged, CCSD was to create a single log numbering and
15 identifying each document withheld or redacted (in response to either the December Requests
16 or the February Request) by providing a factual description of each record withheld (by
17 listing to, from, date, and general subject) as well as a specific explanation for non-disclosure
18 for each document withheld or redacted (including confidentiality being claimed, and basis
19 for claim). The Court further ordered that the log must provide sufficient information to the
20 Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.
21 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,
22 along with all redacted documents and documents being withheld for an *in camera* review.
23 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas
24 Review-Journal. (June 6, 2017 Order at ¶ 47.)

25 34. Additionally, the Court ordered CCSD to provide the Court with a
26 certification by June 6, 2017 attesting to the accuracy of the searches conducted and
27 evidencing that CCSD had fully searched the sources set forth in Paragraph 45 for records
28 responsive to the December Requests and February Request by detailing the sources

1 searched, date searches were conducted, and the search terms used to locate responsive
2 documents. The Court ordered CCSD to provide a copy of the updated privilege log and the
3 certification to the Las Vegas Review-Journal by June 6, 2017. (June 6, 2017 Order at ¶ 48.)

4 ***Further Facts Pertinent to CCSD's Certifications and Withheld Records***

5 35. On May 30, 2017, CCSD submitted the redacted and withheld documents
6 to the Court for *in camera* review. It additionally provided the Court with two certifications
7 to meet the certification requirement and a privilege log. ("Final Log")

8 36. Unbeknownst to the Court, and despite its representation to the undersigned,
9 CCSD counsel did not provide a copy of either of these documents to the Review-Journal at
10 that time.

11 37. On June 5, 2017 CCSD provided an additional thirty-eight pages of
12 documents that it located after conducting the additional searches ordered by this Court.

13 38. At a hearing held on June 6, 2017 the Court made clear it has expected
14 CCSD to engage in the routine practice of providing privilege logs and certifications to
15 opposing counsel in conjunction with *in camera* submissions. At the hearing, CCSD counsel
16 did finally provide a copy of the Final Log and, later that day, provided copies of the
17 certifications it had provided to the Court a week earlier.

18 39. One certification submitted by CCSD was from Dan Wray, CCSD's Chief
19 Technology Officer. Mr. Wray's certification states that he conducted several searches "of
20 email boxes" between December 9, 2016 and May 15, 2017.

21 40. CCSD also provided a second certification from Public Information Officer
22 Cynthia Smith-Johnson. It explains that "I have personally reviewed 11,907 emails provided
23 by Dan Wray."

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41. In the Final Log, CCSD stated it is withholding the following documents in their entirety on the basis of the privileges it describes as “Office of Diversity and Affirmative Action Privileges:”

- CCSD 034-060; and
- CCSD 0159-0233.

In the Final Log, CCSD has summarized these documents as follows:

To the best of CCSD’s knowledge, the only information that has not been provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at LVRJ007.)

49. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at LVRJ022.)

50. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at LVRJ023.)

51. In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission (“EEOC”). (*Id.* at LVRJ019-LVRJ021.)

52. CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information “was used as part of the deliberative and decision-making process of District executives” in crafting the Cole Memorandum. (*Id.* at LVRJ023.)

53. CCSD asserts that any withheld information which might constitute “worksheets, drafts, informal notes, or ad hoc reports,” it qualifies as “nonrecord material”

under NAC 239.051. (*Id.*)

54. The Review-Journal submitted a Memorandum responding to CCSD's Final Log on June 13, 2017.

55. Subsequently, on June 19, 2017 CCSD provided a two-page letter dated May 31, 2017 from Superintendent Skorkowsky to Trustee Child.

56. Additionally, on June 26, 2017, CCSD provided an additional three pages of documents responsive to the Review-Journal's December and February Requests.

57. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

58. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD's Office of Diversity and Affirmative Action. Specifically, CCSD asserted at the hearing that information pertaining to investigation of allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. § 233.190.

59. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, some of which have been redacted, and has withheld 102 pages.

II.

ORDER

60. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). Thus, the NPRA reflects and embodies the public's right to know and scrutinize the conduct of governmental entities and officials,

61. To fulfill these purposes, the NPRA must be construed liberally, and any limitation on the public's access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

62. The Nevada Legislature has made it clear that—unless they are explicitly

1 confidential—public records must be made available to the public for inspection or copying.
2 Nev. Rev. Stat. § 239.010(1); *see also* *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
3 266 P.3d 623, 627 (2011).

4 63. The term “record” as used in the NPRA is to be interpreted broadly. *See*
5 Nev. Rev. Stat. § 239.001(2); *see also* *Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting
6 that the Nevada legislature intended the provisions of the NPRA to be “liberally construed
7 to maximize the public’s right of access”).

8 64. The NPRA “considers all records to be public documents available for
9 inspection unless otherwise explicitly made confidential by statute or by a balancing of
10 public interests against privacy or law enforcement justification for nondisclosure.” *Reno*
11 *Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

12 65. If a statute explicitly makes a record confidential or privileged, the public
13 entity need not produce it. *Id.*

14 66. If a public record contains confidential or privileged information only in
15 part, in response to a request for access to the record, a governmental entity shall redact the
16 confidential information and produce the record in redacted form. Nev. Rev. Stat. §
17 239.010(3)

18 67. If a governmental entity seeks to withhold a document that is not explicitly
19 made confidential by statute, it must prove by a preponderance of the evidence that the
20 records are confidential or privileged, and must also prove by a preponderance of the
21 evidence that the interest in nondisclosure outweighs the strong presumption in favor public
22 access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also* *Donrey of Nevada, Inc.*
23 *v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

24 68. In balancing those interests, “the scales must reflect the fundamental right
25 of a citizen to have access to the public records as contrasted with the incidental right of the
26 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*
27 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
28 27, 359 P.2d 413, 421–22 (1961)).

1 69. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
2 hereby finds that the privileges cited by CCSD do not justify withholding the requested
3 records from the Review-Journal. CCSD has not proven by a preponderance of the evidence
4 that the withheld records are confidential or privileged such that withholding the records in
5 their entirety is justified, nor has it proven by a preponderance of the evidence that any
6 interest in nondisclosure outweighs the strong presumption in favor public access.

7 70. In addition, rather than explain how each document on its Final Log was
8 privileged, CCSD instead analyzed them all together. (Exh. GG to June 13, 2017 Review-
9 Journal Memorandum at LVRJ001-LVRJ005.) Accordingly, CCSD did not meet its burden
10 of showing how each document it was withholding was confidential or privileged.

11 ***CCSD Regulation 4110(X)***

12 71. Turning first to CCSD's reliance on CCSD Regulation 4110(X), the Court
13 finds that CCSD's internal regulations do not carry the force of law such that they could
14 render a public record confidential. Rather, as set forth in CCSD Policy 0101, CCSD
15 Regulations are meant to provide "details and procedures" for CCSD operations.

16 72. The Court additionally finds that CCSD Regulation 4110(X) only provides
17 for the confidentiality of "information gathered by the District in the course of an
18 investigation of an alleged unlawful discriminatory practice." Thus, it does not apply to
19 investigations of harassment or sexual harassment.

20 73. Even if CCSD Regulation 4110(X) applied to the withheld documents and
21 could be relied on in an NPRA matter, the disclosure of documents regarding CCSD's
22 investigation of harassment allegations against Trustee Child is necessary to "serve other
23 significant needs" as contemplated by the Regulation. Specifically, the disclosure of withheld
24 documents serves the significant need of providing the public information about the alleged
25 misconduct of an elected official and CCSD's handling of the related investigation.

26 74. Moreover, disclosure of the documents is necessary to "comply with law"
27 as contemplated by CCSD Regulation 4110(X). Specifically, disclosure is necessary to
28 comply with the NPRA.

1 75. Finally, even if CCSD Regulation 4110(X) did not contain the
2 aforementioned exceptions, the Court cannot apply the Regulation in a manner that conflicts
3 with the NPRA's mandates that the NPRA must be "construed liberally," Nev. Rev. Stat. §
4 239.001(2), and that "[a]ny exemption, exception or balancing of interests which limits or
5 restricts access to public books and records by members of the public must be construed
6 narrowly." Nev. Rev. Stat. § 239.001(3); *see also Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d
7 80, 82 (1974) ("Whenever a legislature sees fit to adopt a general scheme for the regulation
8 of particular subject, local control over the same subject, through legislation, ceases.").

9 ***Deliberative Process Privilege***

10 76. The Court further finds that the deliberative process privilege does not
11 justify withholding the requested documents. The deliberative process privilege protects
12 high-level decision-making—not the information relied on in the decision-making process.
13 *DR Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 623, 6 P.3d 465,
14 469 (2000).

15 77. As the Nevada Supreme Court explained in *DR Partners*, "[t]o qualify as
16 part of 'deliberative' process, the materials requested must consist of *opinions*,
17 *recommendations, or advice about agency policies.*" *Id.* (emphasis added). To qualify as part
18 of the deliberative process, "the documents must be 'pre-decisional,' *i.e.*, they must be
19 generated antecedent to the adoption of agency policy." *Paisley v. C.I.A.*, 712 F.2d 686, 698
20 (D.C. Cir. 1983), *vacated in part on other grounds by* 724 F.2d 201 (D.C. Cir. 1984) (citation
21 and quotation omitted). Additionally, "the documents must be 'deliberative' in nature,
22 reflecting the 'give-and-take' of the deliberative process and containing opinions,
23 recommendations, or advice about agency policies." *Id.* (citations omitted).

24 78. The Nevada Supreme Court has also explained that the deliberative process
25 privilege is conditional. *DR Partners*, 116 Nev. at 626, 6 P.3d at 471. Once a governmental
26 entity establishes that a document is privileged, the burden shifts to the party seeking
27 disclosure to "demonstrate that its need for the information outweighs the regulatory interest
28 in preventing disclosure." *Id.*

1 79. Further, in a case involving the NPRA, after the party seeking disclosure
2 has made that showing, a court must still “engag[e] in the weighing process mandated by
3 *Bradshaw*.” *Id.*

4 80. CCSD has not met its burden of proving that this privilege applies, let alone
5 that it outweighs disclosure. In contrast, the Review-Journal has established that its need for
6 the information outweighs any interest in preventing disclosure, sufficient to overcome any
7 deliberative process privilege. Even if CCSD had established that the deliberative process
8 privilege applies to any of the withheld documents, it has not established that its interest in
9 secrecy outweighs the public’s compelling interest in knowing about the alleged actions of
10 an elected official.

11 ***Chapter 233 of the Nevada Revised Statutes***

12 81. The Court further finds that Chapter 233 of the Nevada Revised Statutes
13 does not apply to CCSD’s Office of Diversity and Affirmative Action, as that office is not a
14 federal governmental entity, nor is it a state agency. Even if it did, Nev. Rev. Stat. § 233.190
15 does not pertain to closed investigations.

16 ***Nonrecords***

17 82. The Court also finds the withheld documents are not “non-records” under
18 NAC 239.051. Contrary to CCSD’s assertions, drafts and informal notes pertaining to its
19 investigation plainly serves as the record of an official action by CCSD—to wit, enacting a
20 policy to protect members of the CCSD community from the alleged misbehavior of Trustee
21 Child.

22 83. CCSD’s argument that the documents may be withheld pursuant NAC
23 239.705 is likewise unavailing. NAC 239.705 is an administrative regulation defining official
24 state records subject to retention (and nonrecords exempt from retention) that couples with
25 Nev. Rev. Stat. § 239.080, a statute pertaining to the retention and disposition of state records.
26 (*See Op. Br.*, pp. 21:24-22:11.) Moreover, NAC 239.705 applies only to records maintained
27 by a governmental entity “as evidence of the organization’s functions, policies, decisions,
28 procedures, operation or other activities.” NAC 239.705. Accordingly, none of the records

1 withheld by CCSD qualify as “non-records” under this section of the Nevada Administrative
2 Code.

3 *Title VII*

4 84. The Court finds that CCSD’s duties under Title VII to promptly investigate
5 sexual harassment claims and provide appropriate relief does not establish that it is entitled
6 to withhold documents pertaining to Kevin Child from the public.

7 85. There is no absolute confidentiality or privilege regarding sexual
8 harassment investigations conducted by a non-employer. While the Nevada Supreme Court
9 has not addressed this specific issue, other courts have found that records pertaining to school
10 districts’ investigations and findings of sexual harassment are public records. *See, e.g.,*
11 *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 136 Cal. Rptr.
12 3d 395 (Cal.2012) (finding that release of an investigation report and disciplinary record of
13 a sexually harassing teacher was warranted under California’s public records act due to the
14 public’s right to know, even where an explicit privacy statute was also implicated); *see also*
15 *Deseret News Pub. Co. v. Salt Lake County*, 182 P.3d 372, 27 IER Cases 1099 (Utah 2008)
16 (holding that a sexual harassment investigation report should be produced because the report
17 “provides a window ... into the conduct of public officials.”). Moreover, any concern
18 regarding confidentiality can be addressed through redaction, consistent with Nev. Rev. Stat.
19 § 239.010(3).

20 86. In addition to the general presumption of access to public records, there are
21 three reasons why—even if a valid claim of confidentiality applied that was not met by
22 redaction—the interest in disclosure would outweigh the interest in confidentiality. First, the
23 records pertain to the conduct of a government official. Second, the interest in access to such
24 information is especially great in this case because the government official is an elected
25 school board trustee. Third, the information sought pertains to the conduct of a governmental
26 entity. In this case, the records provide a window into the government’s investigation of
27 allegations of sexual and other misconduct of a government official. *Deseret News*, 182 P.3d
28 at 383 (“the investigative report provides a window, opaque as that window may be, into the

1 conduct of public officials that is not available by other means”). Each of these reasons weigh
2 strongly in favor of disclosure.

3 ***Other Privileges***

4 87. With regard to the other privileges asserted by CCSD, including the
5 attorney-client privilege asserted as to the document Bates labeled 0189-0195, the Court
6 finds CCSD has not met its burden of establishing these privileges apply to the withheld
7 documents, nor has it established that any of those privileges outweigh the public’s right of
8 access to those records.

9 88. Accordingly, the Court hereby orders CCSD to produce withheld
10 documents to the Court by June 30, 2017. Pursuant to the Court’s February 23, 2017 Order,
11 CCSD may redact the names of direct victims of sexual harassment or alleged sexual
12 harassment, students, and support staff. The Court will then provide the documents to the
13 Review-Journal.

14 ***CCSD’s Certifications***

15 89. As to CCSD’s certifications regarding its searches for responsive
16 documents, the Review-Journal raises valid concerns regarding CCSD’s searches for and
17 production of the requested records. The Review-Journal also raises valid concerns that the
18 certifications do not establish the accuracy or completeness of CCSD’s searches for
19 responsive documents. For example, neither the Wray Certification nor the Smith-Johnson
20 Certification address the hard copy searches CCSD was required to conduct pursuant to
21 Paragraph 45 of this Court’s June 6, 2017 Order.

22 90. The Wray Certification does not make clear what was done with the results
23 of the searches. Mr. Wray further stated that “[t]o the best of my knowledge, between May
24 12th and May 15, 2017, I conducted 530 searches resulting in 11,907 emails being identified.”
25 Mr. Wray explains that the results of the searches conducted between May 12 and 15, 2017—
26 the 11,907 emails—were provided to CCSD Public Information Officer Cynthia Smith-
27 Johnson for her review. Nothing in the Wray Certification explains what happened to the
28 searches conducted before May 12.

1 91. Further, while Mr. Wray states that he searched “email boxes,” his
2 Certification fails to explain what “email boxes” means—or to explain whether all emails
3 sent or received (including via cc or bcc) were searched, let alone whether CCSD counsel’s
4 assertion to this Court that it is not possible to search for emails other than via individual
5 custodians is accurate. Mr. Wray’s Certification also fails to identify the date ranges he used
6 when searching the identified email boxes.

7 92. As with the Wray Certification, the Smith-Johnson Certification does not
8 make clear what occurred with prior searches, including those conducted on Pat
9 Skorkowsky’s inbox.

10 93. Ms. Smith-Johnson’s certification states that she “identified 43 pages that
11 [she] believed may be responsive to the record requests...” It is unclear what protocol Ms.
12 Smith-Johnson used to decide if a record should be produced. Similarly, it is unclear what
13 Ms. Smith-Johnson did despite her attestation that she reviewed the emails diligently.
14 Further, while there is no certification from CCSD counsel, Ms. Smith-Johnson’s
15 certification states that CCSD counsel made the final determination about what to produce.

16 94. Neither the Wray or Smith-Johnson Certifications indicate whether CCSD
17 conducted searches of hard copy records it was required to conduct pursuant to Paragraph 45
18 of the Court’s June 6, 2017 Order.

19 95. At best, taken together, the Certifications only “link up” and properly certify
20 43 pages produced after May 2017. This does not comply with this Court’s mandate for
21 evidence “that CCSD has fully searched the sources ... for records responsive to the
22 December Requests and February Request.” (June 6, 2017 Order, ¶ 48.)

23 ///

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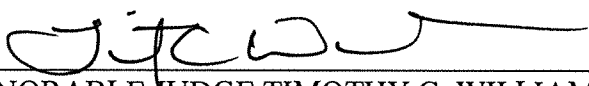

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96. Accordingly, the Court hereby orders CCSD to make Mr. Wray and Ms. Smith-Johnson available to be deposed by the Review-Journal as to their efforts to search for, collect, and produce the requested records. The depositions of Mr. Wray and Ms. Smith-Johnson shall each be limited to two hours of questioning by the Review-Journal.

IT IS SO ORDERED this 5th day of July, 2017.


HONORABLE JUDGE TIMOTHY C. WILLIAMS


Respectfully submitted,


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9 *Counsel for Petitioner*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

10 Petitioner,

Dept. No.: XVI

11 vs.

12 **NOTICE OF ENTRY OF ORDER**

13 CLARK COUNTY SCHOOL DISTRICT,

14 Respondent.

15 **NOTICE OF ENTRY OF ORDER**

16
17 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:
18 PLEASE TAKE NOTICE that on the 11th day of July, 2017, an Order Granting
19 Writ of Mandamus as to Withheld Records and Requiring Depositions was entered in the
20 above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

21 DATED this 12th day of July, 2017.

22
23 /s/ Margaret A. McLetchie

24 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

25 ALINA M. SHELL, Nevada Bar No. 11711

26 **MCLEATCHIE SHELL LLC**

27 701 East Bridger Avenue, Suite 520

28 Las Vegas, Nevada 89101

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 12th day of July, 2017, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 12th day of July, 2017, I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC

EXHIBIT 1



ORDR

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

**ORDER GRANTING WRIT OF
MANDAMUS AS TO WITHHELD
RECORDS AND REQUIRING
DEPOSITIONS**

The Las Vegas Review-Journal's Amended Petition for Writ of Mandamus having come on for an additional hearing on June 27, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorneys, MARGARET A. MCLEATCHIE and ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("CCSD"), appearing by and through its attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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06:23898P57-68-PMI

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Original NPRA Request and Petition

1. On December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the “Reporter”) sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the “NPRA”). The request sought certain documents pertaining to CCSD Trustee Kevin Child (the “Request”). The Reporter supplemented the Request on December 9, 2016 (“Supplemental Request”).

2. After CCSD failed to provide documents or assert any claim of confidentiality pursuant to Nev. Rev. Stat. § 239.0107, the Review-Journal initiated this action on January 26, 2017, requesting expedited consideration pursuant to Nev. Rev. Stat. § 239.011.

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing.

Reacted Records, Withheld Records, and Order on Redactions

4. CCSD did not produce the records in unredacted form. Instead, on February 8, 2017, CCSD produced the redacted records (“Redacted Records”)—as well as an unredacted corresponding set of records—to the Court and, later that day, provided a copy of the Redacted Records to the Review-Journal. It provided other versions of the Redacted Records (with fewer redactions) on February 10 and 13, 2017 and produced additional pages not previously identified (the “Additional Redacted Records”) on February 13, 2017.

5. CCSD also withheld records responsive to the December Requests.

6. On February 13, 2017, CCSD provided the Court and the Review-Journal an initial log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110.

7. On February 13, 2017, CCSD also provided a revised version of the log including the Additional Redacted Records and asserting additional based for redactions.

8. The Court conducted an *in camera* review of the Redacted Records, the Additional Redacted Records, and the unredacted versions of both sets of records.

9. On February 14, 2017, the Court heard oral argument on the Review-Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23, 2017 Notice of Entry of Order.)

10. The Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only "the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff" redacted. (*Id.* at ¶ 34.) The Court further specified that "CCSD may not make any other redactions" and must unredact the names of schools, teachers, and all administrative-level employees. (*Id.* at ¶ 35.)

11. The Court directed CCSD to comply with the Order within two days. (*Id.* at ¶ 36.) On February 24, 2017, CCSD produced new versions of the Redacted Records and Additional Redacted Records to the Review-Journal; these new versions of the Redacted Records totaled thirty-three (33) pages.

February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search Information

12. On February 10, 2017, the Review-Journal submitted a new records request to CCSD for certain records pertaining to Mr. Child (the "February Request"). The Review-Journal also offered to work with CCSD to develop searches.

13. On February 15, 2017, counsel for the Review-Journal contacted CCSD to discuss the February request.

14. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107(d).

15. In that same correspondence, CCSD set forth objections to the February Request.

1 16. On March 3, 2017, CCSD provided some documents in response to the
2 February Request.

3 17. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted
4 information pertaining to the names of individuals who reported a complaint or concern
5 about Trustee Child, information including potentially identifying information about
6 students, and personal phone numbers.

7 18. That same day, the Review-Journal requested CCSD provide a log of
8 withheld documents that were responsive to the February Request. The Review-Journal also
9 asked CCSD to provide it with search information.

10 19. CCSD responded to these requests via letter on March 13, 2017. In its letter,
11 CCSD indicated it had searched for the terms “Kevin Child” and “Trustee Child” in the
12 Interact email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike
13 Barton, each School Associate Superintendent and each of the school principals in Trustee
14 Child’s district. Despite previous requests from the Review-Journal, that was the first time
15 CCSD provided any search term information.

16 20. CCSD did not inform the Review-Journal that it had limited the sources or
17 custodians it had searched. Instead, in response to the Review-Journal’s inquiry regarding
18 what documents were being withheld, CCSD asserted that “the only information that has not
19 been provided is internal information received or gathered by the District in the court of its
20 investigation of an alleged practice of unlawful practice of discrimination, harassment, or
21 hostile work environment which is confidential and not required to be disclosed under the
22 public records law.”

23 21. By email on March 13, 2017, CCSD also stated it was withholding one
24 document—a report prepared by Cedric Cole, CCSD’s Executive Manager of Diversity and
25 Affirmative Action, regarding an investigation his office had conducted into hostile work
26 environment allegations against Trustee Child (the “Cole Report”). The Review-Journal
27 responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested
28 CCSD conduct additional email searches for responsive records from additional custodians.

22. The Review-Journal requested that CCSD search those records for documents pertaining to the topics outlined in the December and February Requests.

23. The Review-Journal also requested CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy file CCSD maintains on Trustee Child that were responsive to the December and February Requests.

24. CCSD declined to produce the Cole Report and other documents created by the Office of Diversity and Affirmative Action Programs; on March 24, 2017, CCSD supplemented its privilege log to reflect that it was withholding records in addition to the records it had previously identified ("3/24/2017 Log"). This 3/24/2017 Log reflected that, in total, CCSD withheld only the following from documents produced in response to the December Requests and the February Request:

Investigative memoranda prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative Action, regarding an investigation his office had conducted into hostile work environment allegations against Trustee Child (the "Cole Report") and Mr. Cole's investigative notes.

(See Exhibit E to March 29, 2017 Opening Brief in support of Amended Petition for Writ of Mandamus.)

25. By email on March 27, 2017, CCSD agreed to search school board trustees' email addresses. In its Answering Brief, CCSD also agreed to search emails of persons who sent or received, or were copies on, emails already produced, including cc's.

26. CCSD produced some emails of persons who sent or received prior responsive documents it indicated were responsive to the February Request on April 28, 2017, and produced some trustee emails it indicated were responsive to the February Request on May 3, 2017.

Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters

27. On May 9, 2017, the Court heard oral arguments on the Review-Journal's Amended Petition for Writ of Mandamus.

28. On June 6, 2017, the Court entered an Order finding that it has jurisdiction

1 over the Review-Journal's Amended Petition.

2 29. The Court also granted the Review-Journal's Amended Petition as to the
3 request that CCSD conduct email searches responsive to the December Requests and the
4 February Requests for the additional custodians requested by the Review-Journal.
5 Specifically, the Court ordered CCSD to conduct email searches responsive to the Review-
6 Journal's December and February Requests of the additional custodians. (June 6, 2017 Order
7 at ¶ 45.)

8 32. The Court directed CCSD to complete this search and produce all
9 responsive records it does not contend are confidential to the Las Vegas Review-Journal by
10 June 6, 2017. (June 6, 2017 Order at ¶ 46.)

11 33. Further, the Court ordered that with regard to any documents CCSD had
12 withheld and/or redacted to date and any additional responsive documents it identifies in
13 response to the additional email and hard copy searches it is required to perform but contends
14 are confidential and/or privileged, CCSD was to create a single log numbering and
15 identifying each document withheld or redacted (in response to either the December Requests
16 or the February Request) by providing a factual description of each record withheld (by
17 listing to, from, date, and general subject) as well as a specific explanation for non-disclosure
18 for each document withheld or redacted (including confidentiality being claimed, and basis
19 for claim). The Court further ordered that the log must provide sufficient information to the
20 Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.
21 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,
22 along with all redacted documents and documents being withheld for an *in camera* review.
23 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas
24 Review-Journal. (June 6, 2017 Order at ¶ 47.)

25 34. Additionally, the Court ordered CCSD to provide the Court with a
26 certification by June 6, 2017 attesting to the accuracy of the searches conducted and
27 evidencing that CCSD had fully searched the sources set forth in Paragraph 45 for records
28 responsive to the December Requests and February Request by detailing the sources

1 searched, date searches were conducted, and the search terms used to locate responsive
2 documents. The Court ordered CCSD to provide a copy of the updated privilege log and the
3 certification to the Las Vegas Review-Journal by June 6, 2017. (June 6, 2017 Order at ¶ 48.)

4 ***Further Facts Pertinent to CCSD's Certifications and Withheld Records***

5 35. On May 30, 2017, CCSD submitted the redacted and withheld documents
6 to the Court for *in camera* review. It additionally provided the Court with two certifications
7 to meet the certification requirement and a privilege log. ("Final Log")

8 36. Unbeknownst to the Court, and despite its representation to the undersigned,
9 CCSD counsel did not provide a copy of either of these documents to the Review-Journal at
10 that time.

11 37. On June 5, 2017 CCSD provided an additional thirty-eight pages of
12 documents that it located after conducting the additional searches ordered by this Court.

13 38. At a hearing held on June 6, 2017 the Court made clear it has expected
14 CCSD to engage in the routine practice of providing privilege logs and certifications to
15 opposing counsel in conjunction with *in camera* submissions. At the hearing, CCSD counsel
16 did finally provide a copy of the Final Log and, later that day, provided copies of the
17 certifications it had provided to the Court a week earlier.

18 39. One certification submitted by CCSD was from Dan Wray, CCSD's Chief
19 Technology Officer. Mr. Wray's certification states that he conducted several searches "of
20 email boxes" between December 9, 2016 and May 15, 2017.

21 40. CCSD also provided a second certification from Public Information Officer
22 Cynthia Smith-Johnson. It explains that "I have personally reviewed 11,907 emails provided
23 by Dan Wray."

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41. In the Final Log, CCSD stated it is withholding the following documents in their entirety on the basis of the privileges it describes as “Office of Diversity and Affirmative Action Privileges:”

- CCSD 034-060; and
- CCSD 0159-0233.

In the Final Log, CCSD has summarized these documents as follows:

To the best of CCSD’s knowledge, the only information that has not been provided to Petitioner is internal information received or gathered by Cedric Cole, Executive Director, Office of Diversity and Affirmative Action, in the course of his investigation regarding Trustee Child ...

(Exh. GG to June 13, 2017 Review-Journal Memorandum at LVRJ007.)

49. The Final Log also cites CCSD Regulation 4110(X) to justify non-disclosure of the 102 pages of documents it is withholding. That Regulation states that

All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

(*Id.* at LVRJ022.)

50. CCSD also claims that the NPRA does not require the release of confidential employee personnel information. (*Id.* at LVRJ023.)

51. In addition, CCSD claims in its Final Log that the records of its investigation of Trustee Child should be kept confidential pursuant to Title VII and guidance from the Equal Opportunity Employment Commission (“EEOC”). (*Id.* at LVRJ019-LVRJ021.)

52. CCSD also claims that withheld internal information it obtained during its investigation of allegations of discrimination or harassment by Trustee Child is subject to the deliberative process privilege because the information “was used as part of the deliberative and decision-making process of District executives” in crafting the Cole Memorandum. (*Id.* at LVRJ023.)

53. CCSD asserts that any withheld information which might constitute “worksheets, drafts, informal notes, or ad hoc reports,” it qualifies as “nonrecord material”

under NAC 239.051. (*Id.*)

54. The Review-Journal submitted a Memorandum responding to CCSD's Final Log on June 13, 2017.

55. Subsequently, on June 19, 2017 CCSD provided a two-page letter dated May 31, 2017 from Superintendent Skorkowsky to Trustee Child.

56. Additionally, on June 26, 2017, CCSD provided an additional three pages of documents responsive to the Review-Journal's December and February Requests.

57. This Court held a hearing on CCSD's Final Log and May 30, 2017 *in camera* submission on June 27, 2017.

58. At that hearing, CCSD asserted for the first time that in addition to the privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which provides for the creation and regulation of the Nevada Equal Rights Commission—applied to investigations conducted by CCSD's Office of Diversity and Affirmative Action. Specifically, CCSD asserted at the hearing that information pertaining to investigation of allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. § 233.190.

59. To date, CCSD has disclosed 174 pages of documents to the Review-Journal, some of which have been redacted, and has withheld 102 pages.

II.

ORDER

60. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). Thus, the NPRA reflects and embodies the public's right to know and scrutinize the conduct of governmental entities and officials,

61. To fulfill these purposes, the NPRA must be construed liberally, and any limitation on the public's access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

62. The Nevada Legislature has made it clear that—unless they are explicitly

1 confidential—public records must be made available to the public for inspection or copying.
2 Nev. Rev. Stat. § 239.010(1); *see also* *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879-80,
3 266 P.3d 623, 627 (2011).

4 63. The term “record” as used in the NPRA is to be interpreted broadly. *See*
5 Nev. Rev. Stat. § 239.001(2); *see also* *Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (noting
6 that the Nevada legislature intended the provisions of the NPRA to be “liberally construed
7 to maximize the public’s right of access”).

8 64. The NPRA “considers all records to be public documents available for
9 inspection unless otherwise explicitly made confidential by statute or by a balancing of
10 public interests against privacy or law enforcement justification for nondisclosure.” *Reno*
11 *Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010).

12 65. If a statute explicitly makes a record confidential or privileged, the public
13 entity need not produce it. *Id.*

14 66. If a public record contains confidential or privileged information only in
15 part, in response to a request for access to the record, a governmental entity shall redact the
16 confidential information and produce the record in redacted form. Nev. Rev. Stat. §
17 239.010(3)

18 67. If a governmental entity seeks to withhold a document that is not explicitly
19 made confidential by statute, it must prove by a preponderance of the evidence that the
20 records are confidential or privileged, and must also prove by a preponderance of the
21 evidence that the interest in nondisclosure outweighs the strong presumption in favor public
22 access. *See, e.g., Gibbons*, 127 Nev. at 880, 266 P.3d at 628; *see also* *Donrey of Nevada, Inc.*
23 *v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990).

24 68. In balancing those interests, “the scales must reflect the fundamental right
25 of a citizen to have access to the public records as contrasted with the incidental right of the
26 agency to be free from unreasonable interference.” *DR Partners v. Bd. of Cty. Comm’rs of*
27 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or.
28 27, 359 P.2d 413, 421–22 (1961)).

1 69. Pursuant to the NPRA and Nevada Supreme Court precedent, the Court
2 hereby finds that the privileges cited by CCSD do not justify withholding the requested
3 records from the Review-Journal. CCSD has not proven by a preponderance of the evidence
4 that the withheld records are confidential or privileged such that withholding the records in
5 their entirety is justified, nor has it proven by a preponderance of the evidence that any
6 interest in nondisclosure outweighs the strong presumption in favor public access.

7 70. In addition, rather than explain how each document on its Final Log was
8 privileged, CCSD instead analyzed them all together. (Exh. GG to June 13, 2017 Review-
9 Journal Memorandum at LVRJ001-LVRJ005.) Accordingly, CCSD did not meet its burden
10 of showing how each document it was withholding was confidential or privileged.

11 ***CCSD Regulation 4110(X)***

12 71. Turning first to CCSD's reliance on CCSD Regulation 4110(X), the Court
13 finds that CCSD's internal regulations do not carry the force of law such that they could
14 render a public record confidential. Rather, as set forth in CCSD Policy 0101, CCSD
15 Regulations are meant to provide "details and procedures" for CCSD operations.

16 72. The Court additionally finds that CCSD Regulation 4110(X) only provides
17 for the confidentiality of "information gathered by the District in the course of an
18 investigation of an alleged unlawful discriminatory practice." Thus, it does not apply to
19 investigations of harassment or sexual harassment.

20 73. Even if CCSD Regulation 4110(X) applied to the withheld documents and
21 could be relied on in an NPRA matter, the disclosure of documents regarding CCSD's
22 investigation of harassment allegations against Trustee Child is necessary to "serve other
23 significant needs" as contemplated by the Regulation. Specifically, the disclosure of withheld
24 documents serves the significant need of providing the public information about the alleged
25 misconduct of an elected official and CCSD's handling of the related investigation.

26 74. Moreover, disclosure of the documents is necessary to "comply with law"
27 as contemplated by CCSD Regulation 4110(X). Specifically, disclosure is necessary to
28 comply with the NPRA.

1 75. Finally, even if CCSD Regulation 4110(X) did not contain the
2 aforementioned exceptions, the Court cannot apply the Regulation in a manner that conflicts
3 with the NPRA's mandates that the NPRA must be "construed liberally," Nev. Rev. Stat. §
4 239.001(2), and that "[a]ny exemption, exception or balancing of interests which limits or
5 restricts access to public books and records by members of the public must be construed
6 narrowly." Nev. Rev. Stat. § 239.001(3); *see also Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d
7 80, 82 (1974) ("Whenever a legislature sees fit to adopt a general scheme for the regulation
8 of particular subject, local control over the same subject, through legislation, ceases.").

9 ***Deliberative Process Privilege***

10 76. The Court further finds that the deliberative process privilege does not
11 justify withholding the requested documents. The deliberative process privilege protects
12 high-level decision-making—not the information relied on in the decision-making process.
13 *DR Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 623, 6 P.3d 465,
14 469 (2000).

15 77. As the Nevada Supreme Court explained in *DR Partners*, "[t]o qualify as
16 part of 'deliberative' process, the materials requested must consist of *opinions*,
17 *recommendations, or advice about agency policies.*" *Id.* (emphasis added). To qualify as part
18 of the deliberative process, "the documents must be 'pre-decisional,' *i.e.*, they must be
19 generated antecedent to the adoption of agency policy." *Paisley v. C.I.A.*, 712 F.2d 686, 698
20 (D.C. Cir. 1983), *vacated in part on other grounds by* 724 F.2d 201 (D.C. Cir. 1984) (citation
21 and quotation omitted). Additionally, "the documents must be 'deliberative' in nature,
22 reflecting the 'give-and-take' of the deliberative process and containing opinions,
23 recommendations, or advice about agency policies." *Id.* (citations omitted).

24 78. The Nevada Supreme Court has also explained that the deliberative process
25 privilege is conditional. *DR Partners*, 116 Nev. at 626, 6 P.3d at 471. Once a governmental
26 entity establishes that a document is privileged, the burden shifts to the party seeking
27 disclosure to "demonstrate that its need for the information outweighs the regulatory interest
28 in preventing disclosure." *Id.*

1 79. Further, in a case involving the NPRA, after the party seeking disclosure
2 has made that showing, a court must still “engag[e] in the weighing process mandated by
3 *Bradshaw*.” *Id.*

4 80. CCSD has not met its burden of proving that this privilege applies, let alone
5 that it outweighs disclosure. In contrast, the Review-Journal has established that its need for
6 the information outweighs any interest in preventing disclosure, sufficient to overcome any
7 deliberative process privilege. Even if CCSD had established that the deliberative process
8 privilege applies to any of the withheld documents, it has not established that its interest in
9 secrecy outweighs the public’s compelling interest in knowing about the alleged actions of
10 an elected official.

11 ***Chapter 233 of the Nevada Revised Statutes***

12 81. The Court further finds that Chapter 233 of the Nevada Revised Statutes
13 does not apply to CCSD’s Office of Diversity and Affirmative Action, as that office is not a
14 federal governmental entity, nor is it a state agency. Even if it did, Nev. Rev. Stat. § 233.190
15 does not pertain to closed investigations.

16 ***Nonrecords***

17 82. The Court also finds the withheld documents are not “non-records” under
18 NAC 239.051. Contrary to CCSD’s assertions, drafts and informal notes pertaining to its
19 investigation plainly serves as the record of an official action by CCSD—to wit, enacting a
20 policy to protect members of the CCSD community from the alleged misbehavior of Trustee
21 Child.

22 83. CCSD’s argument that the documents may be withheld pursuant NAC
23 239.705 is likewise unavailing. NAC 239.705 is an administrative regulation defining official
24 state records subject to retention (and nonrecords exempt from retention) that couples with
25 Nev. Rev. Stat. § 239.080, a statute pertaining to the retention and disposition of state records.
26 (*See Op. Br.*, pp. 21:24-22:11.) Moreover, NAC 239.705 applies only to records maintained
27 by a governmental entity “as evidence of the organization’s functions, policies, decisions,
28 procedures, operation or other activities.” NAC 239.705. Accordingly, none of the records

1 withheld by CCSD qualify as “non-records” under this section of the Nevada Administrative
2 Code.

3 *Title VII*

4 84. The Court finds that CCSD’s duties under Title VII to promptly investigate
5 sexual harassment claims and provide appropriate relief does not establish that it is entitled
6 to withhold documents pertaining to Kevin Child from the public.

7 85. There is no absolute confidentiality or privilege regarding sexual
8 harassment investigations conducted by a non-employer. While the Nevada Supreme Court
9 has not addressed this specific issue, other courts have found that records pertaining to school
10 districts’ investigations and findings of sexual harassment are public records. *See, e.g.,*
11 *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 136 Cal. Rptr.
12 3d 395 (Cal.2012) (finding that release of an investigation report and disciplinary record of
13 a sexually harassing teacher was warranted under California’s public records act due to the
14 public’s right to know, even where an explicit privacy statute was also implicated); *see also*
15 *Deseret News Pub. Co. v. Salt Lake County*, 182 P.3d 372, 27 IER Cases 1099 (Utah 2008)
16 (holding that a sexual harassment investigation report should be produced because the report
17 “provides a window ... into the conduct of public officials.”). Moreover, any concern
18 regarding confidentiality can be addressed through redaction, consistent with Nev. Rev. Stat.
19 § 239.010(3).

20 86. In addition to the general presumption of access to public records, there are
21 three reasons why—even if a valid claim of confidentiality applied that was not met by
22 redaction—the interest in disclosure would outweigh the interest in confidentiality. First, the
23 records pertain to the conduct of a government official. Second, the interest in access to such
24 information is especially great in this case because the government official is an elected
25 school board trustee. Third, the information sought pertains to the conduct of a governmental
26 entity. In this case, the records provide a window into the government’s investigation of
27 allegations of sexual and other misconduct of a government official. *Deseret News*, 182 P.3d
28 at 383 (“the investigative report provides a window, opaque as that window may be, into the

conduct of public officials that is not available by other means”). Each of these reasons weigh strongly in favor of disclosure.

Other Privileges

87. With regard to the other privileges asserted by CCSD, including the attorney-client privilege asserted as to the document Bates labeled 0189-0195, the Court finds CCSD has not met its burden of establishing these privileges apply to the withheld documents, nor has it established that any of those privileges outweigh the public’s right of access to those records.

88. Accordingly, the Court hereby orders CCSD to produce withheld documents to the Court by June 30, 2017. Pursuant to the Court’s February 23, 2017 Order, CCSD may redact the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff. The Court will then provide the documents to the Review-Journal.

CCSD’s Certifications

89. As to CCSD’s certifications regarding its searches for responsive documents, the Review-Journal raises valid concerns regarding CCSD’s searches for and production of the requested records. The Review-Journal also raises valid concerns that the certifications do not establish the accuracy or completeness of CCSD’s searches for responsive documents. For example, neither the Wray Certification nor the Smith-Johnson Certification address the hard copy searches CCSD was required to conduct pursuant to Paragraph 45 of this Court’s June 6, 2017 Order.

90. The Wray Certification does not make clear what was done with the results of the searches. Mr. Wray further stated that “[t]o the best of my knowledge, between May 12th and May 15, 2017, I conducted 530 searches resulting in 11,907 emails being identified.” Mr. Wray explains that the results of the searches conducted between May 12 and 15, 2017—the 11,907 emails—were provided to CCSD Public Information Officer Cynthia Smith-Johnson for her review. Nothing in the Wray Certification explains what happened to the searches conducted before May 12.

1 91. Further, while Mr. Wray states that he searched “email boxes,” his
2 Certification fails to explain what “email boxes” means—or to explain whether all emails
3 sent or received (including via cc or bcc) were searched, let alone whether CCSD counsel’s
4 assertion to this Court that it is not possible to search for emails other than via individual
5 custodians is accurate. Mr. Wray’s Certification also fails to identify the date ranges he used
6 when searching the identified email boxes.

7 92. As with the Wray Certification, the Smith-Johnson Certification does not
8 make clear what occurred with prior searches, including those conducted on Pat
9 Skorkowsky’s inbox.

10 93. Ms. Smith-Johnson’s certification states that she “identified 43 pages that
11 [she] believed may be responsive to the record requests...” It is unclear what protocol Ms.
12 Smith-Johnson used to decide if a record should be produced. Similarly, it is unclear what
13 Ms. Smith-Johnson did despite her attestation that she reviewed the emails diligently.
14 Further, while there is no certification from CCSD counsel, Ms. Smith-Johnson’s
15 certification states that CCSD counsel made the final determination about what to produce.

16 94. Neither the Wray or Smith-Johnson Certifications indicate whether CCSD
17 conducted searches of hard copy records it was required to conduct pursuant to Paragraph 45
18 of the Court’s June 6, 2017 Order.

19 95. At best, taken together, the Certifications only “link up” and properly certify
20 43 pages produced after May 2017. This does not comply with this Court’s mandate for
21 evidence “that CCSD has fully searched the sources ... for records responsive to the
22 December Requests and February Request.” (June 6, 2017 Order, ¶ 48.)

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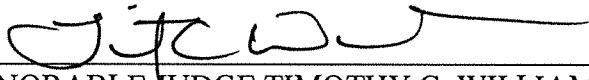

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96. Accordingly, the Court hereby orders CCSD to make Mr. Wray and Ms. Smith-Johnson available to be deposed by the Review-Journal as to their efforts to search for, collect, and produce the requested records. The depositions of Mr. Wray and Ms. Smith-Johnson shall each be limited to two hours of questioning by the Review-Journal.

IT IS SO ORDERED this 5th day of July, 2017.


HONORABLE JUDGE TIMOTHY C. WILLIAMS


Respectfully submitted,


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Counsel for Petitioner, Las Vegas Review-Journal

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

February 14, 2017

A-17-750151-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

February 14, 2017 9:00 AM Hearing

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Honey, Adam Attorney
 McDade, Carlos L Attorney
 McLetchie, Margaret A. Attorney

JOURNAL ENTRIES

- - Ms. McLetchie argued regarding the scope of the redactions, that Clark County was subject to public record, that confidentiality must outweigh the right for public disclosure by a preponderance of evidence, and that Clark County must disclose within five days. Mr. Honey argued they produced redacted documents pursuant to the narrow request of the Review Journal (RJ), that information was redacted to protect the identities of parties, and that NRS 239.010 controlled what public records must be produced. Ms. McLetchie stated the privilege log didn't include any children. Court stated he was not given much discretion, that a public agency had a certain period of time to respond, and that the public agency must indicate why the information was confidential. Mr. Honey argued NRS 386.350 gave the trustees broad powers regarding requests for employee information and the information could be deemed confidential under that law. Mr. Honey argued release of the information would cause a chilling effect on employees of all levels when it came to reporting inappropriate actions. Ms. McLetchie argued Def. s waived privilege by not responding within the proper time frame. Further arguments by counsel regarding the short time frame to respond to requests, the whistleblower statute, additional requests for information, and NRS 239. COURT FINDS pursuant to NRS 239.0107 (1)(d)(1) and (2) certain things must happen within a time period, that the request was responded to however not in a meaningful way, and that there was no adequate showing. COURT THEREFORE

ORDERED, the identity of the school shall be disclosed, the identity of any administrators shall be disclosed, no students shall be identified and nothing regarding sexual harassment shall be identified. Upon request of counsel, COURT CLARIFIED administrators would include any administrative level employee including a principal, assistant principal, dean, program coordinator, or teacher; however no support staff shall be identified as they do not have as much protection, and no direct victims shall be identified. COURT FURTHER ORDERED, Status Check SET.

03/02/17 9:00 AM STATUS CHECK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****March 02, 2017**

A-17-750151-W Las Vegas Review-Journal, Plaintiff(s)
 vs.
 Clark County School District, Defendant(s)

March 02, 2017 9:00 AM Status Check

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Honey, Adam Attorney
 McLetchie, Margaret A. Attorney

JOURNAL ENTRIES

- Ms. McLetchie stated the matter was not yet resolved, that documents had been produced in a redacted form; however a number of documents were missing. Ms. McLetchie further argued she wanted to be sure the Pltf.'s were getting all the requested information regarding Trustee Childs and that she was trying to get the documents on a rolling basis; however the Deft.'s indicated they wouldn't produce them until tomorrow, after this hearing. Ms. McLetchie argued the February request was still missing documentation, that she would like a date certain indicating when the documents would be produced, that she would like a production log from Deft.'s and a date for the log to be produced. Mr. Honey argued the original request was by e-mail to the School District, not his law office causing delays, that the December request was not a supplement rather it was a new request, and that he'd informed Pltf.'s the information would be forwarded to them by May. Mr. Honey argued that every request by Pltf.'s, no matter when made, shouldn't refer back to the December request. Mr. Honey stated this status check was just to determine if he'd responded to the December request. Ms. McLetchie argued she'd supplemented the request and it was discussed at the last hearing and that the request was still in regards to Trustee Childs and the School District's decision to ban him from the property. Following further arguments by counsel, **COURT ORDERED**, Status Check **CONTINUED** to allow counsel one last chance to work this out and if not resolved, counsel must explain why and the court will set the matter for a briefing schedule.

CONTINUED TO: 03/14/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

March 14, 2017

A-17-750151-W	Las Vegas Review-Journal, Plaintiff(s) vs. Clark County School District, Defendant(s)
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March 14, 2017 9:00 AM Status Check

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT:	Honey, Adam Attorney McLetchie, Margaret A. Attorney
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JOURNAL ENTRIES

- Ms. McLetchie stated she'd just received a letter detailing the information the school district had been withholding and noted she had concerns regarding the search terms used. Ms. McLetchie argued the Deft.'s limited the searches to custodians and that there was nothing regarding any sexual harassment claims. Ms. McLetchie requested a briefing schedule be set and further stipulated to extend the due dates for the Pltf.'s Motion for Attorney's Fees. Mr. Honey stipulated to the extension of time and agreed to a briefing schedule. COURT ORDERED, Briefing Schedule SET, Opening Brief due March 29, 2017, Response due April 13, 2017, Reply due April 24, 2017, Hearing Set.

05/09/17 9:00 AM HEARING RE: SEARCH PARAMETERS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****May 09, 2017**

A-17-750151-W Las Vegas Review-Journal, Plaintiff(s)
 vs.
 Clark County School District, Defendant(s)

May 09, 2017 9:00 AM Hearing

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

PARTIES

PRESENT: Honey, Adam Attorney
 McLetchie, Margaret A. Attorney

JOURNAL ENTRIES

- Arguments by counsel whether the Court has jurisdiction over the Amended Petition and whether Clark County School District (CCSD) improperly limited responsive documents by limiting their searches and sources, and whether the documents that CCSD is acknowledging it is withholding merit protection. Court advised it needs to know who the decision maker is. If orders are not being complied with it has to make a decision and, if the Court makes a factual determination that documents are not being produced in good faith, it could access monetary damages. Following arguments by counsel, COURT FINDS it has jurisdiction over this matter, based upon the fact the initial petition was filed in this Department and specifically was a public information request as it pertained to Trustee Child. FURTHER, COURT ORDERED, as to full searches, the request is GRANTED as to e-mail searches, all trustees, Cedric Cole and Diversity and Affirmative action staff. Court advised if there were any specific privileges that might apply, the document must be identified. Court will review all the documents in camera for final determination. Court advised it wants a finalized log of everything that is being produced and if there are any claims of privilege, it wants the documents described and provided for in camera review. Additionally, counsel to provide some form of certification to attest to the accuracy of the searches and documents. Court advised the request shall be complied within three weeks from today; final privilege log shall be submitted in writing for the Court s review and it will then make determination if those documents should be

provided. Ms. McLetchie to prepare the Order. COURT ORDERED, matter SET for status check.

6/6/17 STATUS CHECK: HEARING (5/9/17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

June 06, 2017

A-17-750151-W	Las Vegas Review-Journal, Plaintiff(s) vs. Clark County School District, Defendant(s)
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June 06, 2017	9:00 AM	Status Check
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HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Marwanda Knight

RECORDER:

REPORTER: Peggy Isom

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Margaret McLetchie, Esq., appeared on behalf of Pltf
Adam Honey, Esq., appeared on behalf of Deft

Colloquy between the Court and counsel regarding the items the Court received for in camera review. The Court queried Ms. McLetchie as to what she had received. In response, McLetchie advised she was not aware of items received by the Court, noting the competing orders from the last hearing and that counsel could not agree whether or not the order should require Pltfs receive the certification and a copy of the privilege log. Mr. Honey queried the submission of the orders, which resulted in colloquy between the Court and counsel regarding the same. Further, Mr. Honey noted being reluctant to do things without having an order in place; additional colloquy.

Following the discussion and comments made by the Court as to the submission of documents, COURT ORDERED Defts provide Pltfs with the certifications and privilege logs.

Court noted its review of the proposed orders, noting Pltf's order conformed with the Court's decisions. Order SIGNED IN OPEN COURT and returned to counsel for processing.

COURT FURTHER ORDERED hearing regarding search parameters SET June 15, 2017 at 10:00 am.

COURT FURTHER ORDERED Pltf's response due by June 13, 2017 for the Court's review.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

June 15, 2017

A-17-750151-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

June 15, 2017 10:00 AM Hearing

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Denise Duron

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Honey, Adam Attorney
 McLetchie, Margaret A. Attorney

JOURNAL ENTRIES

- Mr. Honey requested a continuance due to time constraints. Ms. McLetchie had no opposition.
Colloquy between counsel regarding availability. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 06/27/17 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

June 27, 2017

A-17-750151-W Las Vegas Review-Journal, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

June 27, 2017	10:30 AM	Hearing	Hearing: Search Parameters
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HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: April Watkins

RECORDER:

REPORTER: Peggy Isom

PARTIES

PRESENT: Honey, Adam Attorney
McLetchie, Margaret A. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, Court stated it's important to point out that when you take a look at the statute, under Nevada law, The Court focused, more specifically on NRS 239.010, and that would be the public books, public records are open to inspection. It appears to the Court to be fairly clear that what the Nevada legislature wanted to do was to make sure public records of our governments are open to inspection. And there's a very simple reason for that when it comes to public records, public decision, decisions made by those in government elected officials, the public has a right to know when it's all said and done. And so that's the first consideration. Secondly, the Court has taken a look at Nevada Chapter 233. That is the NERC or Nevada Equal Rights Commission, and EEOC from the federal side. And it's the decision by the Court that Chapter 233 has no application to the diversity to the school district, a diversity department. Because that's not a governmental agency. It's not a state agency. It's not the federal government. So that doesn't apply. The Court took a look at the derivative process privilege being applied here. And for the record, once again, it's not an absolute privilege. And so, ultimately, and this is one of the reasons why the Court is going to make the decision the Court is going to make regarding what should happen. And, specifically, we have competing interests regarding the statutory interest of disclosure versus the interest of secrecy regarding the acts of the Clark County School District. The Court stated it's

important to point out we can't overlook this one fact that the focus of the interests of disclosure is not really focusing on the conduct of an employee, but the conduct of an elected official. And the Court feels that is significant. And that's on for a couple of reasons. Number one, not only does the public have a right to know, but anyone that wants to participate in the election process has a right to know because they're an elected official. Then we have an interest of secrecy. The Court understands that. But it appears to the Court that the actions of an elected official is very compelling to know exactly what happened, and the public has a right to know that. Regarding the regulation, the Court thinks that is 4110. And for the record I did have a chance to look at that, and I think that's Roman Numeral X, which provides as follows: All information gathered by the district in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with the law. It is the Court's decision that the information gathered by the district in this case serves a significant need because it focuses on the acts of an elected official. And, consequently, this will serve as an exception to the confidentiality requirement under the regulation. And also, if the Court was to make a decision that there's a conflict between the regulation and Chapter 239.010, the next provision "or to comply with the law" would take care of that too. So because at the end of the day there's an overwhelming mandate from the Nevada legislature regarding the public's right to access governmental records. COURT ORDERED, regarding the documents, the Court is going to require them to be disclosed but redacted in accordance with my prior decision where applicable. Before those are turned over, counsel can submit them to the Court with the redactions, and then the Court will review them, and then the Court will submit them to counsel. FURTHER ORDERED, documents to be provided to the Court by Friday, June 30, 2017.

Ms. McLetchie to prepare the order.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

CARLOS MCDADE
5100 W. SAHARA AVE.
LAS VEGAS, NV 89146

DATE: July 17, 2017
CASE: A-17-750151-W

RE CASE: LAS VEGAS REVIEW-JOURNAL vs. CLARK COUNTY SCHOOL DISTRICT

NOTICE OF APPEAL FILED: July 12, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING WRIT OF MANDAMUS AS TO WITHHELD RECORDS AND REQUIRING DEPOSITIONS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

LAS VEGAS REVIEW-JOURNAL,

Petitioner(s),

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent(s),

Case No: A-17-750151-W

Dept No: XVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 17 day of July 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk