

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

CLARK COUNTY SCHOOL DISTRICT,  
Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,  
Respondent

No. 73525

Electronically Filed  
Aug 11 2017 08:51 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVI  
County Clark Judge Timothy C. Williams  
District Ct. Case No. A-17-750151-W

**2. Attorney filing this docketing statement:**

Attorney Adam Honey Telephone (702) 799-5373  
Firm Office of General Counsel, Clark County School District  
Address 5100 West Sahara Avenue  
Las Vegas, NV 89146

Client(s) Clark County School District

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Margaret McLetchie Telephone (702) 728-5300  
Firm McLetchie Shell, LLC  
Address 701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101

Client(s) Las Vegas Review-Journal

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim  |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____  |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                  |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>Writ of Mandamus</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This matter involves important public policy concerns regarding the right of public employees to raise concerns to their employer of all forms of sexual harassment and discriminatory conduct without the loss of confidentiality and without the fear of being exposed to retaliation in any form. These issues are presented in the context of a public records request made to CCSD by the LVRJ under the provisions of NRS Chapter 239.

On July 11, 2017, the Honorable Timothy C. Williams, District Judge, filed an Order Granting Writ of Mandamus as to Withheld Records. CCSD is appealing the July 11, 2017, Order that requires disclosure of the "withheld documents" which consist of the "investigative file" of CCSD's Office of Diversity and Affirmative Action regarding its investigation of alleged discrimination of CCSD employees by Trustee Kevin Child. In particular, the District Court's Order requires the release of notes, drafts, memoranda, and chronological summary of the investigation conducted by CCSD's Office of Diversity and Affirmative Action.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See Attachment A.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None that this counsel is aware of.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

There is uncertainty with regard to the definition of public records and whether a confidential/privileged investigative file related to the investigation of a member of the Clark County School District Board of Trustees should be disclosed. The issues on appeal involve unprecedented and novel issues, and have implications that reach beyond the present case.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(13) as it raises as a principal issue a question of first impression and under NRAP 17(a)(14) as it raises as a principal issue a question of statewide public importance.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** July 11, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** July 12, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** July 12, 2017

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1)                                       | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)  | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3)                                       | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 21 (in the alternative)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court's July 11, 2017 decision is appealable under NRAP 3A(b)(1) as a final judgment. If the Supreme Court determines it is not a final judgment, the LVRJ requested declaratory and injunctive relief in its Petition for Writ of Mandamus, therefore the District Court's July 11, 2017 decision requiring disclosure of the investigative file is an injunction (or injunctive relief) and there is a right to appeal under NRAP 3A(b)(3). In the alternative, if the Supreme Court determines the decision is not a final judgment or an injunction, then Appellant CCSD reserves the right to file a Petition for Writ of Mandamus or Prohibition under NRAP 21.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Las Vegas Review-Journal, Petitioner below.

Clark County School District, Respondent below.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

On January 26, 2017, the LVRJ filed a Public Records Act Application Pursuant to NRS 239.011 / Petition for Writ of Mandamus. On March 3, 2017, the LVRJ filed an amended application/petition. LVRJ seeks production of documents under the Nevada Public Records Act.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

The District Court judge has also ordered the deposition of two school district employees in regard to issues that are unrelated to the investigatory file.

(b) Specify the parties remaining below:

Las Vegas Review-Journal, Petitioner below.

Clark County School District, Respondent below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Order is independently appealable under NRAP 3A(b)(1) or NRAP 3A(b)(3).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

CLARK COUNTY SCHOOL DISTRICT

Name of appellant

August 10, 2017

Date

Clark County, Nevada

State and county where signed

Adam D. Honey

Name of counsel of record

Adam D. Honey

Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 10th day of August, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Margaret McLetchie  
701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Attorney for Respondent  
(also served via email)

Dated this 10th day of August, 2017

Christa Reeves

Signature

**Supreme Court Case No. 73525**

**Clark County School District vs. Las Vegas Review-Journal**

**DOCKETING STATEMENT**

**ATTACHMENT A**

No 9. Issues on Appeal:

Whether the District Court erred in holding that the investigative file of CCSD's Office of Diversity and Affirmative Action related to the investigation of Trustee Kevin Child should be disclosed under the Nevada Public Records Law when the documents in the file are confidential and/or privileged.

Whether the District Court erred in holding that only the names of "direct victims of sexual harassment or alleged sexual harassment, students, and support staff" may be redacted from the investigative file of CCSD's Office of Diversity and Affirmative Action related to the investigation of Trustee Kevin Child.

Whether the District Court erred when it ordered the release of the investigative file of CCSD's Office of Diversity and Affirmative Action related to the investigation of Trustee Kevin Child, thereby exposing employees to potential retaliatory action or contravention of the law including agency guidance issued by the U.S. Equal Employment Opportunity Commission.

Whether the District Court committed errors in its conclusions of fact and law in the July 11, 2017 Order.

No 27. Attached are copies of the (1) Amended Public Records Act Application pursuant to NRS 239.011/Petition for Writ of Mandamus (2) Order granting Writ of Mandamus as to withheld records (3) Notice of Entry of Order.

AMENDED PUBLIC RECORDS ACT APPLICATION  
PURSUANT TO NRS 239.011/PETITION FOR  
WRIT OF MANDAMUS

  
CLERK OF THE COURT

1 **APET**  
2 MARGARET A. MCLETCHIE, Nevada Bar No. 10931  
3 ALINA M. SHELL, Nevada Bar No. 11711  
4 MCLETCHIE SHELL LLC  
5 701 East Bridger Avenue, Suite. 520  
6 Las Vegas, NV 89101  
7 Telephone: (702)-728-5300  
8 Email: maggie@nvlitigation.com  
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.

**AMENDED PUBLIC RECORDS**  
**ACT APPLICATION PURSUANT**  
**TO NRS § 239.001/ PETITION**  
**FOR WRIT OF MANDAMUS**

12 CLARK COUNTY SCHOOL DISTRICT,

13 Respondent.

**EXPEDITED MATTER**  
**PURSUANT TO NEV. REV.**  
**STAT. § 239.011**

14  
15  
16  
17  
18 COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"),  
19 by and through its undersigned counsel, and hereby submits this Amended Nevada Public  
20 Records Act Application and Petition for Writ of Mandamus for declaratory and injunctive  
21 relief, ordering the Clark County School District to provide Petitioner access to public  
22 records. Petitioner also requests an award for all fees and costs associated with its efforts to  
23 obtain withheld public records as provided for by Nev. Rev. Stat. § 239.011(2). The Review-  
24 Journal also respectfully asks that this matter be expedited pursuant to Nev. Rev. Stat. §  
25 239.011(2).

26 ///

27 ///

28 ///

**MCLETCHIE SHELL**  
ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702)728-5300 (T) / (702)423-8220 (F)  
WWW.NVLITIGATION.COM

Petitioner hereby alleges as follows:

### **NATURE OF ACTION**

1. Petitioner brings this application for relief pursuant to Nev. Rev. Stat. § 239.011. *See also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630, n.4 (2011).

2. The Review Journal's application and petition to this court is the proper means to secure Respondent Clark County School District's compliance with the Nevada Public Records Act ("NPRA"). *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630 n.4 (2011); *see also DR Partners v. Bd. Of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (a writ of mandamus is the appropriate procedural remedy to compel compliance with the NPRA).

3. **Petitioner is entitled to an expedited hearing on this matter pursuant to Nev. Rev. Stat. § 239.011(2), which mandates that "the court shall give this matter priority over other civil matters to which priority is not given by other statutes."**

### **PARTIES**

4. Petitioner, the Review-Journal, a daily newspaper, is the largest newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada 89125.

5. Respondent Clark County School District ("CCSD") is a political subdivision of the State of Nevada that is authorized to operate the public school system in Clark County, Nevada.

6. CCSD is subject to the Nevada State Public Records Act pursuant to Nev. Rev. Stat. § 239.005(b).

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction pursuant to Nev. Rev. Stat. § 239.011, as the court of Clark County is where all relevant public records sought are held.

8. Further, this Court has jurisdiction to issue writs of mandamus pursuant to Article 6, Section 6 of the Nevada Constitution and Nevada Revised Statutes § 34.160.

9. Venue is proper in the Eighth Judicial District Court of Nevada pursuant to Nev. Rev. Stat. § 239.011. All parties and all relevant actions to this matter were and are in Clark County, Nevada.

### STANDING

10. Petitioner has standing to pursue this expedited action pursuant to Nev. Rev. Stat. § 239.010 because the public records it has requested from CCSD have been unjustifiably withheld and CCSD has failed to meaningfully respond to its request, which is not permitted by law.

### FACTS

#### The Initial Records Requests

11. Almost three months ago, on or around 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"). (*See* Exhibit ("Exh.") 1 to January 26, 2017 Petition.<sup>1</sup>)

12. The Request asked CCSD to produce:

- All incident reports filed by CCSD staff, CCSD police or any other CCSD officials that involve grief counselors and Trustee Kevin Child;
- All emails from CCSD staff, CCSD police or CCSD officials regarding school visits conducted by Kevin Child; and
- All emails and correspondence relating to the guidelines issued to CCSD staff on December 5, 2016 regarding Trustee Kevin Child's visits to schools and interaction with staff.

(*Id.*)

13. On behalf of CCSD's Office of Community and Government Relations, Cynthia Smith-Johnson confirmed receipt on December 9, 2016. (Exh. 2.)

<sup>1</sup> In its January 26, 2017 Petition, the Review-Journal included Exhibits 1 through 15 to support its claims. To avoid unnecessary redundancy, the Review-Journal has not included Exhibit 1-15 in this Amended Petition.



14. As detailed below, despite repeated promises to respond and provide information and despite numerous efforts by the Review-Journal to get information about the status and to resolve any possible concerns, CCSD failed to comply with the NPRA.

15. The Reporter supplemented the Request on December 9, 2016 ("Supplemental Request"). (Exh. 3.) The Supplemental Request asked CCSD to produce "any written complaints the Clark County School District has received regarding Trustee Kevin Child."

16. On December 13, 2015, Ms. Smith-Johnson responded to the Reporter's December 9, 2016 email, indicating that CCSD was "unable to provide the information within 5 days" but that "[w]e anticipate a further response by close of business day on December 16, 2016, if not before." (Exh. 4.)

17. The Reporter wrote to Ms. Smith-Johnson on December 15, 2016 to check on the status of her Request and Supplemental Request (the "Requests"). (Exh. 5.)

18. Despite having promised to do so, CCSD failed to respond on or before December 16, 2016.

19. Not having received documents or any other information, on December 19, 2016, the Reporter again inquired about the status and requested "an updated timeline of when I might receive these records." (Exh. 6.)

20. Ms. Smith-Johnson responded to the Reporter's December 19, 2016 email the same day, stating she "expect[ed] to get back to you [with] something" within a few days, by Wednesday, December 21, 2016, at the latest." (Exh. 7.)

21. The Reporter followed up again on December 20, 2016 to check on the status of the Requests and let Ms. Smith-Johnson know she could call "if there are any obstacles." (Exh. 8.)

22. The Reporter emailed again on Wednesday, December 21, 2016, the date CCSD had promised to provide information. (Exh. 9.)

23. Ms. Smith-Johnson responded to the December 21, 2016 email, apologized for the delay, and promised to get back to the Reporter the next day. (Exh. 10.)

24. Ms. Smith-Johnson did get back to the Reporter on December 22, 2016, but failed to provide records or any meaningful information. (Exh. 11.) Without any explanation, Ms. Smith-Johnson stated that “[a]dditional time is needed regarding the information requested[,]” but promised the Reporter that she would follow up “on January 9, 2017, if not before.” (*Id.*)

25. On January 4 2017, the Reporter followed up again and again provided her phone number. (Exh. 12.)

26. Ms. Smith-Johnson responded on January 9, 2017. (Exh. 13.) However, again no documents or meaningful information was provided. (*Id.*) Instead, without explanation for the continued delays, Ms. Smith-Johnson said “I anticipate a further response on January 13, 2017.” (*Id.*)

27. The Reporter responded to Ms. Smith-Johnson’s email on the same day, noting that it had been over a month since the Requests were made, expressing confusion, and asking for a call if there were any issues with regard to the Requests. (Exh. 14.)

28. CCSD did not respond to the Reporter’s concerns or offer to address any issues. Instead, despite having extended its deadline numerous times, failed to meet its promised deadline of January 13, 2017.

29. On January 16, 2017, the Reporter again requested information from CCSD regarding the status of the Requests. (Exh. 15.)

30. On January 20, 2017, counsel for the Review-Journal wrote to Carlos McDade, CCSD’s General Counsel, to express concerns regarding this protracted and delayed history, and CCSD’s violations of the NPRA. In the January 20, 2017 letter, the Review-Journal asked for immediate compliance due to the stale nature of the Requests and because CCSD had failed to provide information despite having repeatedly promised do so.

31. On January 24, 2017, counsel for the Review-Journal called the office of Mr. McDade to follow up about the Requests and left a message but has not received a return call.

///

**The Review-Journal Files Suit Against CCSD to Obtain the Requested Records**

32. After the Review-Journal's efforts to obtain a response to the Requests failed, it filed a Public Records Act Application/Petition for Writ of Mandamus with this Court on January 26, 2017. (*See* Petition, on file with this Court.)

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

34. On February 8, 2017, CCSD produced the Redacted Records, as well as an unredacted corresponding set of records, to the Court.

35. Later that same day, CCSD provided a copy of the Redacted Records to the Review-Journal.

36. On February 10, 2017, CCSD provided the Redacted Records with fewer redactions to both the Court and the Review-Journal.

37. On February 13, 2017, CCSD provided a further version of the Redacted Records to the Court and the Review-Journal, along with a log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110.

38. On February 13, 2017, CCSD also provided ten additional pages not previously identified (the "Additional Redacted Records").

39. CCSD also provided a new log (the "revised Log") including the Additional Redacted Records and additionally asserting the following bases for the redactions:

- a. The "safety and well-being of employees (fear of retaliation) and inherent chilling effect if names of individual employees are released;" and
- b. The "inherent chilling effect if names of . . . general public are released."

40. Finally, CCSD provided an unredacted version of the Additional Redacted Records to the Court.

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

42. On February 14, 2017, the Court heard oral argument on the Review-Journal's Petition.

43. 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.)

44. In the Order, this Court found that, with regard to CCSD's proposed redactions of the names of schools, teachers, administrators, and program administrators, CCSD had failed to meet its burden of demonstrating the existence of any applicable privilege. (Order at p. 6, ¶ 28.)

45. In reaching this finding, the Court first noted that CCSD had failed to assert any claim of confidentiality within five (5) days as mandated by Nev. Rev. Stat. § 239.0107(d). (*Id.* at ¶ 29.)

46. Second, the Court found that CCSD's Revised Log did not sufficiently articulate that the information CCSD had redacted was protected by confidentiality. (*Id.* at pp. 6-7, ¶ 30.)

47. Third, the Court found that even if CCSD had met its burden of asserting an applicable privilege by a preponderance of the evidence, it had failed to articulate how the privilege applied to each piece of information it sought to redact, and therefore failed to meet its burden of establishing that the records were privileged or confidential. (*Id.* at p. 7, ¶¶ 31-32.)

48. Finally, the Court found that even if CCSD had met its burden of establishing the existence of an applicable privilege, it had failed to demonstrate that the interests in secrecy outweighed the interests in disclosure. (*Id.* at ¶ 33.)

49. Given these findings, 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.)

50. The Court further specified that "CCSD may not make any other

1 redactions” and must unredact the names of schools, teachers, and all administrative-level  
2 employees. (*Id* at p. 8, ¶ 35) (emphasis in original).

3 51. The Court directed CCSD to comply with the Order with two day. (*Id* at ¶  
4 36.)

5 **CCSD Produces Records to the Review-Journal and the Court**

6 52. On February 24, 2017, CCSD produced new versions of the Redacted  
7 Records and Additional Redacted Records to the Review-Journal. (*See* Exh. 16.)

8 53. On February 24, 2017, after reviewing the Revised Records, counsel for  
9 the Review-Journal notified CCSD that it had improperly redacted the name of a school  
10 administrator in the redacted sexual harassment complaint. (Exh. 17.)

11 54. Later that same day, CCSD notified the Review-Journal that it would  
12 provide a revised version of the sexual harassment complaint by February 27, 2017. (Exh.  
13 18.)

14 55. On February 27, 2017, CCSD produced a revised version of the sexual  
15 harassment complaint to the Review Journal and the Court. (Exh. 19.)

16 **The Review-Journal Submits a New Records Request to CCSD**

17 56. On February 10, 2017, the Review Journal submitted a new records request  
18 to CCSD for records pertaining to Mr. Child (the “February Request”). (Exh. 20.)

19 57. The February Request asked CCSD to produce:

- 20 • Records that pertain to, discuss, or reference any inappropriate sexual  
21 comments Mr. Child is alleged to have made to female CCSD employees  
22 or any appropriate sexual behavior Mr. Child is alleged to have engaged  
23 in;
- 24 • Records that pertain to, discuss, or reference any complaints (formal and  
25 informal) submitted by female CCSD employees about Mr. Child’s  
26 behavior;
- 27 • Records that pertain to, discuss, or reference Concerns about female  
28 employees’ concerns about being alone with Mr. Child;

- Records that pertain to, discuss, or reference concerns about Mr. Child having (or wanted to have) romantic relationships with female CCSD employees;
- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;
- Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;
- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;
- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in
- inappropriate behavior at the Magnet Schools of America Conference that took place in
- Miami, Florida in May of 2016;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;

- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at KidsVentions events;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior while visiting any CCSD school during any instructional day; and
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at the CCSD administrative building.

(*Id.* at pp. 1-2.)

58. The February Request specifically asked CCSD to provide records on a rolling basis as they became available. (*Id.* at p. 3.)

59. On February 15, 2017, counsel for the Review-Journal contacted CCSD to discuss the February request. (Exh. 21.)

60. 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). (Exh. 22.)

61. CCSD indicated that it "anticipates a further response" by March 3, 2017. (*Id.*)

62. In that same correspondence, CCSD set forth a series of boilerplate objections to the February Request. (*Id.*)

63. Those objections were as follows:

The public records law does not require the release of confidential employee personnel information. See NRS 239.010; NRS 386.350; NAC 284.718; NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); People for Ethical Treatment of Animals v. Bobby Berosini Ltd., 111 Nev. 615, 629 (Nev. 1995); El Dorado Savings & Loan Assoc. v. Superior Court of Sacramento County, 190 Cal. App. 3d 342 (1987).

Further, to the extent documents are received or gathered by the District in the course of investigating an alleged unlawful discriminatory practice those documents are confidential. See CCSD Regulation 4110(X). Also, to the extent records include personally identifiable student information they are confidential under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029. Other

documents may be subject to the deliberative process privilege. See DR Partners v. Board of County Commissioners of Clark County, 116 Nev. 616, 621 (2000).

The United States Equal Employment Opportunity Commission has stated that employers are obligated to investigate and address instances of harassment, including sexual harassment. The EEOC also states that employees who are subjected to harassment frequently do not complain to management due to fear of retaliation. See Faragher, 118 S. Ct. 2275, 2292 (1998) (defense established if plaintiff unreasonably failed to avail herself of "a proven, effective mechanism for reporting and resolving complaints of sexual harassment, available to the employee without undue risk or expense"). See also Restatement (Second) of Torts § 918, comment (tort victim "is not barred from full recovery by the fact that it would have been reasonable for him to make expenditures or subject himself to pain or risk; it is only when he is unreasonable in refusing or failing to take action to prevent further loss that his damages are curtailed").

Regarding confidentiality of an investigation, EEOC states that "[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis."

EEOC Notice No. 915.002, date 6/18/99, *in effect until rescinded or superceded* [sic].

"To assure employees that such a fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment." As Trustee Child is a corporate officer and not subject to internal employer corrective action, the only manner in which the District may act to protect against potential retaliation is to withhold the identity of the employees. Therefore, the records of the investigation should be kept confidential under EEOC guidance.

The District and public have an interest in a strong system to address complaints of harassment that encourages reporting without fear of retaliation. A balancing of the interests weighs in favor of confidentiality and non-disclosure. See NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).



(*Id.*)

64. The objections provided by CCSD do not specify which requests they pertain to.

65. Further, CCSD's February 17 correspondence indicated it may assert additional privileges, and may not produce the requested records. (*Id.* (noting that CCSD "reserves the right to assert any additional privileges, if necessary, at the time of production, if any").

66. The Review-Journal has followed up numerous times regarding the February Request to attempt to get information about a specific production date, and to offer assistance resolving issues.

67. For example, on February 17, 2017, and February 21, 2017, counsel for the Review-Journal spoke to counsel for CCSD regarding the February Request and CCSD's February 17 response. (Exh. 23 at p. 1.)

68. CCSD explained during those calls that the objections in its February 17 letter were placeholder objections. (*Id.*)

69. CCSD indicated that the documents requested in the February Request were under review. (*Id.*)

70. CCSD also indicated it would try to comply with the Review-Journal's request to provide documents on a rolling basis. (*Id.*)

71. On February 21, 2017, counsel for the Review-Journal wrote CCSD a letter regarding the February 17 and February 21 calls. (*Id.*)

72. In that letter, the Review-Journal reiterated its request that CCSD provide the records outlined in the February request on a rolling basis, and reiterated its request that CCSD provide a log. (*Id.*)

73. CCSD did not respond to that letter.

74. The Review-Journal reached out to CCSD again by both email and telephone on February 24, 2017. (Exh. 16.)

75. CCSD did not respond to these communications.

76. The Review-Journal contacted CCSD again on February 27, 2017. (Exh. 24.)

77. CCSD did not respond to the Review-Journal's February 27 email.

78. On March 1, 2017, counsel for the Review-Journal called counsel CCSD. (Declaration of Margaret A. McLetchie ("McLetchie Decl.") at ¶ 6.)

79. During that call, counsel for CCSD indicated that he did not believe any of the Review-Journal's correspondence regarding the February Request required a response. (McLetchie Decl. at ¶ 8.)

80. Counsel for CCSD also indicated that CCSD did not intend to produce the records subject to the February Request on a rolling basis, and that CCSD "hoped" to provide records by March 3, 2017. (McLetchie Decl. at ¶ 9; *see also* Exh. 25.)

81. Finally, counsel for CCSD indicated that he did not believe CCSD would provide a log, but indicated that the Review-Journal should follow up with Carlos McDade, General Counsel for CCSD. (McLetchie Decl. at ¶ 10; *see also* Exh. 25.)

82. Following that conversation, counsel for the Review-Journal emailed CCSD's General Counsel and again requested that CCSD provide a firm date for its response to the February Request. (Exh. 25.)

83. To date, CCSD has not provided the requested records to the Review-Journal.

84. To date, CCSD has not indicated when it intends to provide the records outlined in the February Request.

85. CCSD has failed to comply with both the spirit and the letter of the NPRA.

### **LEGAL AUTHORITY**

86. The NPRA reflects that records of governmental entities belong to the public in Nevada. Nev. Rev. Stat. § 239.010(1) mandates that, unless a record is confidential, "all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied..." The NPRA reflects specific legislative findings and declarations that "[its purpose is to foster

1 democratic principles by providing members of the public with access to inspect and copy  
2 public books and records to the extent permitted by law” and that it provisions “must be  
3 construed liberally to carry out this important purpose.”

4 87. The NPRA provides that a governmental entity must provide timely and  
5 specific notice if it is denying a request because the entity determines the documents sought  
6 are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days  
7 of receiving a request,

8 [i]f the governmental entity must deny the person’s request because the  
9 public book or record, or a part thereof, is confidential, provide to the  
10 person, in writing: (1) Notice of that fact; and (2) A citation to the specific  
11 statute or other legal authority that makes the public book or record, or a  
part thereof, confidential.

12 88. More generally, the NPRA dictates that a meaningful response be provided  
13 within five (5) days of a request. Nev. Rev. Stat. § 239.0107(1).

14 89. A governmental entity seeking to withhold or redact records on some basis  
15 other than a specifically delineated statutory privilege must prove—by a preponderance of  
16 the evidence—that the records are confidential or privileged *and* that the interest in  
17 nondisclosure outweighs the strong presumption in favor of access. *See, e.g., Reno*  
18 *Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 628 (2011).

19 90. Moreover, at every step of this analysis, privileges and limitations on  
20 disclosure must be construed narrowly. *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*,  
21 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (“It is well settled that privileges, whether  
22 creatures of statute or the common law, should be interpreted and applied the NPRA “must  
23 be construed liberally” to ensure the presumption of openness and explicitly declares that  
24 any restriction on disclosure “must be construed narrowly.” *See also* Nev. Rev. Stat. §  
25 239.001 (3) (requiring that any limitation on the public’s access to public records “must be  
26 construed narrowly”).

27 91. Further, if a public record contains confidential or privileged information  
28 only in part, in response to a request for access to the record, a governmental entity shall

1 redact the confidential information and produce the record in redacted form. Nev. Rev. Stat.  
2 § 239.010 (3).

3 92. A governmental entity cannot meet its applicable “burden by voicing non-  
4 particularized hypothetical concerns[.]” *DR Partners v. Board of County Comm’rs*, 116  
5 Nev. 616, 628, 6 P.3d 465, 472-73 (2000).

6 93. “[C]oncerns [that are] merely hypothetical and speculative,” do not  
7 “outweigh the public interest in access to . . . records.” *PERS v. Reno Newspapers, Inc.*, 129  
8 Nev. Adv. Op. 88, 313 P.3d 221, 225 (2013) citing *Reno Newspapers v. Haley*, 126 Nev.  
9 211, 219, 234 P.3d 922, 927 (2010).

#### 10 CLAIM FOR RELIEF

11 94. Petitioner re-alleges and incorporates by reference each and every  
12 allegation contained in paragraphs 1-93 with the same force and effect as if fully set forth  
13 herein.

14 95. The Review-Journal should be provided with the records set forth in the  
15 February Request, and should be provided with a log.

16 96. The records listed in the February Request are subject to disclosure, and  
17 Respondent has failed to meet its burden of establishing otherwise, and indeed has failed to  
18 provide any basis for withholding records within five (5) business days as required by the  
19 NPRA. Nev. Rev. Stat. § 239.0107(1)(d).

20 97. A writ of mandamus is necessary to compel Respondent’s compliance with  
21 the NPRA.

22 98. Respondent has violated the letter and the spirit of Nev. Rev. Stat. §  
23 239.010 by refusing to meaningfully respond within five (5) days, delaying, and failing to  
24 provide the records.

25 WHEREFORE, the Petitioner prays for the following relief:

26 1. That the court handle this matter on an expedited basis as mandated by  
27 NRS 239.011;

28 2. Injunctive relief ordering CCSD to immediately make available complete

1 copies of all records requested;

2 3. Reasonable costs and attorney's fees; and

3 4. Any further relief the Court deems appropriate.

4  
5 DATED this the 1<sup>st</sup> day of March, 2017.

6 Respectfully submitted,

7  
8 /s/ Margaret A. McLetchie

9 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

10 ALINA M. SHELL, Nevada Bar No. 11711

11 MCLETCHIE SHELL LLC

12 701 East Bridger Avenue, Suite. 520

13 Las Vegas, NV 89101

14 Telephone: (702)-728-5300

15 Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)

16 *Counsel for Petitioner*

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MCLEITCHIE SHELL  
ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (TX) (702) 415-8220 (F)  
[WWW.NVLITIGATION.COM](http://WWW.NVLITIGATION.COM)



**DECL**

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
MCLEITCHIE 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

**DECLARATION OF MARGARET A. MCLEITCHIE**

I, MARGARET A. MCLEITCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330,  
as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a  
witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada.

3. I am partner at the law firm of McLetchie Shell, LLC, and I am counsel for  
the Las Vegas Review-Journal in the above-entitled matter.

4. I am making this declaration to authenticate documents attached as exhibits  
to Petitioner's Amended Public Records Act Application Pursuant To NRS § 239.001/  
Petition For Writ Of Mandamus, and to verify factual representations contained therein.

5. I have personal knowledge of the matters contained herein and am  
competent to testify hereto.

6. On March 1, 2017, I called Adam Honey, counsel for the Clark County  
School District ("CCSD") to discuss the public records request the Review-Journal submitted

1 to CCSD on February 10, 2017 (the "February Request") and other communications from  
2 me.

3 7. During that call, I asked Mr. Honey if CCSD intended to respond to the  
4 letter I sent on February 21, 2017 regarding CCSD's February 17, 2017 email regarding the  
5 February Request.

6 8. Mr. Honey stated he did not believe any correspondence I sent regarding  
7 the February Request required a response.

8 9. Mr. Honey also indicated that CCSD did not intend to produce the records  
9 outlined in the February Request on a rolling basis, and that CCSD "hoped" to provide  
10 records by March 3, 2017.

11 10. Mr. Honey further indicated that he did not believe CCSD would provide a  
12 log to the Review-Journal, but indicated I should follow up with Carlos McDade, General  
13 Counsel for CCSD.

14 11. I did email Mr. McDade on March 1, 2017. (*See* Exh. 25.)

15 12. Exhibit 16 is a true and correct copy of an email I sent to CCSD on February  
16 24, 2017.

17 13. Exhibit 17 is a true and correct copy of an email I sent to CCSD on February  
18 24, 2017.

19 14. Exhibit 18 is a true and correct copy of an email I received from the Office  
20 of the General Counsel for CCSD on February 24, 2017.

21 15. Exhibit 19 is a true and correct copy of an email and attached  
22 correspondence I received from the Office of the General Counsel on February 27, 2017.

23 16. Exhibit 20 is a true and correct copy of the public records request I sent to  
24 CCSD on February 10, 2017.

25 17. Exhibit 21 is a true and correct copy of an email I sent to CCSD on February  
26 15, 2017.

27 18. Exhibit 22 is a true and correct copy of a response I received from CCSD  
28 on February 17, 2017 regarding the February Request.



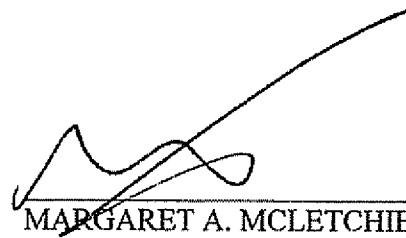
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19. Exhibit 23 is a true and correct copy of a letter I sent to CCSD on February 21, 2017.

20. Exhibit 24 is a true and correct copy of an email I sent to CCSD in February 27, 2017.

21. Exhibit 25 is a true and correct copy of an email I sent on March 1, 2017 to Carlos McDade, General Counsel for CCSD.

I certify and declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas, Nevada, the 1<sup>st</sup> day of March, 2017.



MARGARET A. MCLEITCHIE

# EXHIBIT 16

**Alina**

---

**From:** maggie  
**Sent:** Friday, February 24, 2017 1:18 PM  
**To:** Adam Honey  
**Cc:** pharan@nvlitigation.com; clmcddade@interact.ccsd.net  
**Subject:** RJ v CCSO

Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance.

Regards,

Maggie



ATTORNEYS AT LAW

701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702) 728-5300 (T) / (702) 425-8220 (F)  
[www.nvlitigation.com](http://www.nvlitigation.com)

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# EXHIBIT 17

**pharan@nvlitigation.com**

---

**From:** maggie  
**Sent:** Friday, February 24, 2017 1:31 PM  
**To:** Adam Honey  
**Cc:** pharan@nvlitigation.com; clmcddade@interact.ccsd.net  
**Subject:** RE: RJ v CCSD

Adam and Carlos-

Sorry for the multiple emails but I just reviewed the redactions quickly and wanted to alert you to an issue right away. It appears that the redactions on the first page violate the Court's Order. For example, the name of the principal has been redacted.

We can discuss that issue as well when you call. Thank you in advance for your prompt attention to these matters.



ATTORNEYS AT LAW  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
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**From:** maggie  
**Sent:** Friday, February 24, 2017 1:18 PM  
**To:** 'Adam Honey' <ahoney@interact.ccsd.net>  
**Cc:** pharan@nvlitigation.com; clmcddade@interact.ccsd.net  
**Subject:** RJ v CCSD

Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance

Regards,

Maggie



**ATTORNEYS AT LAW**

701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
[www.nvllitigation.com](http://www.nvllitigation.com)

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# EXHIBIT 18

**pharan@nvlitigation.com**

---

**From:** Susan Gerace <sgerace@interactccsd.net>  
**Sent:** Friday, February 24, 2017 4:19 PM  
**To:** maggie; pharan@nvlitigation.com  
**Cc:** Carlos L. McDade; Adam Honey  
**Subject:** LVRJ v. CCSD - Case No. A-17-750151-W

Dear Ms. McLetchie:

On behalf of Carlos McDade, our office is in receipt of your e-mail today. On Monday morning, we will provide you with a new version of page 1.

Susan Gerace  
Office of the General Counsel  
Clark County School District  
5100 West Sahara Avenue, 3rd Floor  
Las Vegas, NV 89146  
Phone: (702) 799-5373  
Fax: (702) 799-5505



# EXHIBIT 19

**pharan@nvlitigation.com**

---

**From:** Susan Gerace <sgerace@interact.ccsd.net>  
**Sent:** Monday, February 27, 2017 8:48 AM  
**To:** maggie; pharan@nvlitigation.com  
**Cc:** Carlos L. McDade; Adam Honey  
**Subject:** LVRJ v CCSD - Case No. A-17-750151-W  
**Attachments:** 02.27.17 Letter to Judge Williams re page 1 revised.pdf

Dear Ms. McLetchie:

On behalf of Carlos McDade, attached for your review is correspondence to Judge Timothy Williams regarding the above referenced matter.

Susan Gerace  
Office of the General Counsel  
Clark County School District  
5100 West Sahara Avenue, 3rd Floor  
Las Vegas, NV 89146  
Phone: (702) 799-5373  
Fax: (702) 799-5505

OFFICE OF THE GENERAL COUNSEL

5100 WEST SAHARA AVENUE • LAS VEGAS, NV 89146 • (702) 799-5373 • FAX (702) 799-5505



CLARK COUNTY  
SCHOOL DISTRICT

BOARD OF SCHOOL TRUSTEES

Deanna L. Wright, President  
Dr. Linda E. Young, Vice President  
Carolyn Edwards, Clerk  
Lola Brooks, Member  
Kevin L. Child, Member  
Erin E. Cranor, Member  
Chris Garvey, Member

Pat Skorkowsky, Superintendent

February 27, 2017

Via Hand-Delivery

The Honorable Timothy C. Williams  
Eighth Judicial District Court, Department 16  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

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

Dear Judge Williams:

Pursuant to the Court's Order issued in Case No. A-17-750151-W, dated February 22, 2017, enclosed is a copy of Bates labeled page 001 that has been revised as ordered by the Court. The only redaction is the name of a victim or alleged victim of sexual harassment, which the Court expressly allowed in the Order. See Order p. 6-8.

The December 5, 2016 public records request by the LVRJ (which was supplemented on December 9) is the only request subject to the Writ of Mandate. Because these documents satisfy the Order of the Court, we request that the status check set for March 2, 2017, be vacated.

Sincerely,

Carlos L. McDade  
General Counsel

CLM  
Enclosure

cc: Maggie McLetchie, via e-mail

Date: September 13, 2016

Re: Incident Report (Trustee Kevin Child)

Time: approximately 11:27 am (after 1st lunch)

After 1<sup>st</sup> lunch on Tuesday, September 13, 2016, I was on duty by the 300/400 hallway. As I was clearing the hallway, I saw Mr. Kevin Child walking towards me, and as he approached me, he asked me if I was a monitor. I replied, "No, Sir. I am one of the assistant principals." As I responded to his question, I noticed that he looked at me from head to toe and back which made me uncomfortable. He acknowledged me by saying, "Oh you are one of the assistant principals" but as he spoke he continued to look at me from head to toe and back. This made me so uncomfortable. He continued to converse with me about the school, and I responded by telling him how I love the school and I also said that our principal, Ms. Esparza, is so awesome. Mr. Child continued to look at me from head to toe and back which made me very uncomfortable. I noticed that he repeated the words that I said about Ms. Esparza and Valley HS, but as he spoke to me, he looked at me from head to toe and back. When he walked away, another assistant principal, Ms. Ramona Fricke, was walking towards me so I approached her and told her what just transpired. I told Ms. Fricke that it made me so uncomfortable. She remarked, "Ewww, he checked you out? That's disgusting." As I walked towards the top of the ramp, I saw my principal, Ms. Ramona Esparza, and I told her what just transpired, and again, I told her that it made me really very uncomfortable.



Assistant Principal  
Valley High School

# EXHIBIT 20

VIA U.S. MAIL AND E-MAIL

February 10, 2017

Adam Honey, Assistant General Counsel  
**Clark County School District**  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
Email: ahoney@interact.ccsd.net

Dear Mr. Honey:

Pursuant to Nevada's Public Records Act (Nevada Revised Statutes § 239.010 et. seq.) and on behalf of the Las Vegas Review-Journal, I hereby request the Clark County School District ("CCSD") documents listed below.

**Documents requested:**

Please provide any and all records (including but not limited to investigative memos, notes, reports, summaries, interviews (written or recorded), emails, correspondence, and communications to or from CCSD staff and police)<sup>1</sup> that have not previously been provided to the Las Vegas Review-Journal and that pertain to, discuss, or reference concerns about the actions and behavior of Trustee Kevin Child. Please include, but do not limit your production, to the following

- Records that pertain to, discuss, or reference any inappropriate sexual comments Mr. Child is alleged to have made to female CCSD employees or any appropriate sexual behavior Mr. Child is alleged to have engaged in;
- Records that pertain to, discuss, or reference any complaints (formal and informal) submitted by female CCSD employees about Mr. Child's behavior;
- Records that pertain to, discuss, or reference Concerns about female employees' concerns about being alone with Mr. Child;
- Records that pertain to, discuss, or reference concerns about Mr. Child having (or wanted to have) romantic relationships with female CCSD employees;

---

<sup>1</sup> Unless specifically limited below, please interpret "record" broadly to include hard copy records as well as electronically stored information ("ESI"). The NPRA provides broad public access to public records, requires that its terms be construed liberally, and mandates that any exception be construed narrowly. NRS 239.010(1); NRS § 239.001(2), (3); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).

- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;
- Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;
- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;
- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;
- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in inappropriate behavior at the Magnet Schools of America Conference that took place in Miami, Florida in May of 2016;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at KidsVentions events;
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior while visiting any CCSD school during any instructional day; and
- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at the CCSD administrative building.

***Instructions for Production; Minimizing Burdens***

Please provide copies of all responsive records. I imagine that a search for "Kevin Child" would yield appropriate records. However, should any searches yield too many hits or otherwise be too cumbersome, please contact me so we can minimize any burden or any nonresponsive documents being produced. As we discussed by phone today, I am happy to work with you on ways to locate records and narrow searches if necessary. My aim is to avoid any unnecessary burden or the need for extraordinary resources while quickly obtaining documents for the Review-Journal. To that

end, and in light of the number of topics below, perhaps we can sequence the work so that I can receive documents on an ongoing basis, and at least some records as soon as possible.

For electronic records, please provide the records in their original electronic form attached to an email, or downloaded to an electronic medium. I am happy to provide the electronic medium and to pick up the records. For hard copy records, please feel free to attach copies to an email as a .pdf. I am also happy to arrange of pick- up of copies.

I will also gladly take information as it becomes available; **please do not wait to fill the entire request, but send each part or contact me as it becomes available.**

### *Fees and Costs*

If you intend to charge any fees for obtaining copies of these records, please contact me immediately (no later than 5 days from today) if the cost will exceed \$50.00. In any case, I would like to request a waiver of any fees for copies because this is a media request, and the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of CCSD. In any case, I can inspect the records in person. No fees can be charged for a request to inspect records (Nev. Rev. Stat. § 239.010 mandates that "all public books and public records of a government entity must be open at all times during office hours to inspection by any person...").

### *Claims of Confidentiality*

If you deny access to any of the records requested in whole or in part, please explain your basis for doing so, citing the specific statutory provision or other legal authority you rely upon to deny access. NRS § 239.011(1)(d). Please err on the side of fully providing records. Nevada's Public Records Act requires that its terms be construed liberally and mandates that any exception be construed narrowly. NRS § 239.001(2), (3). Further, please also keep in mind that the responding governmental entity has the burden of showing that the record is confidential. NRS § 239.0113; *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) ("The public official or agency bears the burden of establishing the existence of privilege based upon confidentiality. It is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly.")

Please also redact or separate out the information that you contend is confidential rather than withholding records in their entirety, as required by Nev. Rev. Stat. § 239.010(3). Again, please cite the statutory provision you rely upon to redact or withhold part of a record.

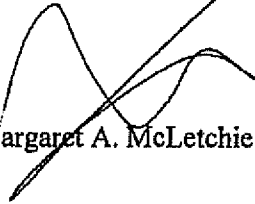
If you deny access to any of the records requested in whole or in part, you are required to provide your legal basis for doing so in writing within five (5) days. NRS § 239.011(1)(d). **However, in light of the urgent nature of this request, please do not wait to provide documents that you are willing to provide in order to provide a log. We will be happy to cooperate with you on timing.**



Please provide the records within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to [efile@nvlitigation.com](mailto:efile@nvlitigation.com) rather than U.S. Mail so I can review as quickly as possible.

Thank you in advance for your cooperation with my request. Please contact me with any questions whatsoever. In addition to email, you can reach me by phone at 702-728-5300.

Sincerely,



Margaret A. McLetchie

MCLETCHEE I SHELL  
701 E. Bridger Avenue, Suite 520  
Las Vegas NV 89101



**MAILED**  
*2/10/17*

Adam Heney, Assistant General Counsel  
Clark County School District  
5100 W. Sahara Avenue  
Las Vegas, NV 89146

**\$0.46**  
US POSTAGE  
FIRST-CLASS  
06250008250957  
89101  
B50148.10



**pharan@nvlitigation.com**

---

**From:** pharan@nvlitigation.com  
**Sent:** Friday, February 10, 2017 4:03 PM  
**To:** 'ahoney@interact.ccsd.net'  
**Cc:** maggie  
**Subject:** Public Records Act request  
**Attachments:** CCSD - 2017.02.10 PRA.pdf

Good afternoon, Mr. Honey.

I am writing on behalf of Ms. McLetchie. Attached please find her correspondence dated today. A copy has also been sent by mail. Should there be questions or concerns, please contact the office.

Thank you,

Pharan Burchfield

Paralegal



ATTORNEYS AT LAW  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
[www.nvlitigation.com](http://www.nvlitigation.com)

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# EXHIBIT 21

**Alina**

---

**From:** maggie  
**Sent:** Wednesday, February 15, 2017 1:08 PM  
**To:** Adam Honey  
**Cc:** pharan@nvlitigation.com; Carlos L. McDade  
**Subject:** RE: RJ v CCSD - Draft ORDER

Adam – Moving on to the response due Friday- please let me know when you are available to discuss. Since you are out the rest of today, could we please set a time for tomorrow?



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701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
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**From:** Adam Honey [mailto:ahoney@interact.ccsd.net]  
**Sent:** Wednesday, February 15, 2017 12:43 PM  
**To:** maggie <maggie@nvlitigation.com>  
**Cc:** pharan@nvlitigation.com; Carlos L. McDade <clmcdade@interact.ccsd.net>  
**Subject:** Re: RJ v CCSD - Draft ORDER

Hey Maggie,

I am sure it is no surprise to you, but I disagree. Your proposed order is still greatly over reaching and goes far beyond what is contained in the minutes. As such, attached please find CCSD's proposed order limited to the findings and order contained in the aforementioned minutes. If you are still in disagreement, we will need to submit the proposed orders to Dept 16 and let Judge Williams decide.

As a heads up, I am out of the office after about 1:30 p.m. today so if you try to reach me after 1:30, I won't be able to respond until Thursday a.m.

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:  
Adam –

I haven't appeared before Judge Williams before but in my experience in other PRA matters, the courts want to address the legal and factual bases for a ruling (even if they don't use the language you note below in open court) -- and I do think this accurately reflects the judge's reasoning with regard to the law and his legal findings (5 day deadline, burden, and the failure to demonstrate confidentiality by CCSD, etc.).

I agree that the Court did not provide a specific timeframe but, based on our conversations, I thought that 24 hours would work. In any case, I have changed it on the attached to 2 days. Please let me know if you would suggest a different timeframe and why. Even though it wasn't explicitly addressed today, the Court did set a short deadline in the previous order in this matter (2 days) and I do not think an open-ended order is appropriate.

I disagree with your summary below re what needs to be redacted vs unredacted in that I think we need to start with what can be redacted, which the Court made clear was very limited, and then make clear what you must unredact to comply, if that makes sense. The items listed are just examples of what may need to be un-redacted. Further, the Court only indicated that the names of victims can be redacted – your language below is too broad I believe. In any case, I have made some edit in the attached in light of your notes below.

I am happy to discuss this further but do not want further delays (especially in light of your view that CCSD should not have a deadline to comply) and it appears from the below that you intend to provide your own proposed order rather than edits to my draft. I respectfully contend that the Judge instructed me to prepare an order and we do not appear to be on the same page as to what an order should contain. Accordingly, I will touch base with you in the morning but with all due respect, unless it appears we can agree on the form the order should take, I intend to submit my own order (as revised) without delay – and without relitigating this matter.

I will speak with you tomorrow.

Regards,

Maggie

image001

**Attorneys at Law**  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
[www.nvlitigation.com](http://www.nvlitigation.com)

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From: Adam Honey [mailto:ahoney@interact.ccsd.net]  
Sent: Tuesday, February 14, 2017 4:48 PM  
To: maggie <maggie@nvlitigation.com>  
Cc: Carlos L. McDade <clmcdade@interact.ccsd.net>; pharan@nvlitigation.com  
Subject: Re: RJ v CCSD - Draft ORDER

Maggie,

With all due respect, I believe your Order greatly over reaches the content of Judge Williams' Order today. Additionally, he did not make findings of fact.. There was no, "I hereby find ...." The order was strictly as to what information needed to be unredacted as that was the lone topic of today's hearing. I believe the Order was to the following affect: CCSD shall un-redact the names of all schools and administrators to include principals, assistant principals, deans, counselors, coordinators and teachers but not support staff, students or any persons complaining or reporting sexual harassment. Please note that in our view, we include "program administrators" in with administrators. We will not be splitting hairs so to speak as to the administrators. In an abundance of caution, I will wait for the minutes to ensure accuracy before I provide our proposed order. Finally, I do not recall the Judge ordering the District to un-redact the information within 24 hours or any time period for that matter. That being said, complying with the Order probably will be done within quickly, once the Order is made more accurate, as it is my intent to move this along.

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:  
Carlos and Adam,

Attached please find the R-J's proposed order. Please let me know if you have any comments or proposed edits. In light of the fact that CCSD will require an order before providing the documents without redactions (and my client's continued interest in getting documents), I would really appreciate it if you would get back to me at your earliest convenience so we can submit this to the Court without delay. As ever, I am happy to discuss this matter with you. I also look forward to working with you, Adam, on resolving any issues with regard to the most recent request.

Best Regards,

Maggie McLetchie

image001

**Attorneys at Law**

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

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# EXHIBIT 22

**From:** Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>  
**Sent:** Friday, February 17, 2017 4:06 PM  
**To:** pharan@nvlitigation.com  
**Subject:** Fwd: Public Records Act request  
**Attachments:** CCSD - 2017.02.10 PRA.pdf

Ms. McLetchie,

We are in receipt of the attached request, dated February 10, 2017, for additional records regarding Kevin Child. Pursuant to NRS 239.0107, we are unable to provide the information to you within 5 business days. The District anticipates a further response by the close of the business day on, March 3, 2017.

If some records become available before that date, we will attempt, but do not make any guarantee, to provide the same on an ongoing as requested in your correspondence.

In order to ensure that CCSD does not waive any privileges by way of this responsive correspondence, CCSD hereby asserts the following privileges but reserves the right to assert additional privileges, if necessary, at the time of production, if any:

The public records law does not require the release of confidential employee personnel information. See NRS 239.010; NRS 386.350; NAC 284.718; NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); People for Ethical Treatment of Animals v. Bobby Berosini Ltd., 111 Nev. 615, 629 (Nev. 1995); El Dorado Savings & Loan Assoc. v. Superior Court of Sacramento County, 190 Cal. App. 3d 342 (1987).

Further, to the extent documents are received or gathered by the District in the course of investigating an alleged unlawful discriminatory practice those documents are confidential. See CCSD Regulation 4110(X). Also, to the extent records include personally identifiable student information they are confidential under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029. Other documents may be subject to the deliberative process privilege. See DR Partners v. Board of County Commissioners of Clark County, 116 Nev. 616, 621 (2000).

The United States Equal Employment Opportunity Commission has stated that employers are obligated to investigate and address instances of harassment, including sexual harassment. The EEOC also states that employees who are subjected to harassment frequently do not complain to management due to fear of retaliation. *See Faragher*, 118 S. Ct. 2275, 2292 (1998) (defense established if plaintiff unreasonably failed to avail herself of "a proven, effective mechanism for reporting and resolving complaints of sexual harassment, available to the employee without undue risk or expense"). *See also* Restatement (Second) of Torts § 918, comment (tort victim "is not barred from full recovery by the fact that it would have been reasonable for him to make expenditures or subject himself to pain or risk; it is only when he is unreasonable in refusing or failing to take action to prevent further loss that his damages are curtailed").

Regarding confidentiality of an investigation, EEOC states that "[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis."

EEOC Notice No. 915.002, date 6/18/99, *in effect until rescinded or superceded*.

"To assure employees that such a fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment." As Trustee Child is a corporate officer and not subject to internal employer corrective action, the only manner in which the District may act to protect against potential retaliation is to withhold the identity of the employees. Therefore, the records of the investigation should be kept confidential under EEOC guidance.

The District and public have an interest in a strong system to address complaints of harassment that encourages reporting without fear of retaliation. A balancing of the interests weighs in favor of confidentiality and non-disclosure. See NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

Thank you.

Cindy Smith-Johnson

Public Records Request  
Office of Community and Government Relations  
[publicrecordrequest@interact.ccsd.net](mailto:publicrecordrequest@interact.ccsd.net)  
702-799-5865  
00155503

# EXHIBIT 23

VIA U.S. MAIL AND E-MAIL

February 21, 2017

Adam Honey, Assistant General Counsel  
Clark County School District  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
Email: ahoney@interact.ccsd.net

Dear Mr. Honey:

Just following up to memorialize our calls of today and Friday and to partially respond to your letter dated February 17, 2017 (responding in turn to the Review-Journal's February 10, 2017).

*Order; Timely Compliance*

You re-affirmed that you do not plan to begin un-redacting documents until a notice of entry is filed. Should the Court leave filing the order to you, please be sure to do so quickly. While you would not agree to a due date for compliance, you did indicate you would try to turn around the documents as soon as possible (same day or next day) when we receive an order. Thank you for your consideration and recognition of my client's desire to obtain unredacted documents as quickly as possible.

*February 10, 2017 Request*

I am in receipt of your February 17, 2017 response, as you know. We discussed the fact that you have simply provided "place-holder" objections so you do not waive any claims of confidentiality while you are waiting to receive and review documents. I will address those claims once I have more information (I hope to see at least some responsive document soon). You also noted that you would provide specifics regarding the documents you are withholding (or redacting) and why at a later date. Thank you. Again, as indicated in the February 10, 2017 request, please do not wait to provide documents while you are preparing a log.

Finally, you noted that you would try to comply with my request to provide documents on a rolling basis. On Friday, you indicated to me that you hoped to receive the documents today, but you had not received them (as of 4:15 pm or so). As you know, in addition to requiring timely assertion of claims of confidentiality, Nevada's Public Records Act also requires governmental entities to provide a date regarding when documents will actually be available. I look forward to that information from you once you receive responsive documents for review.

We also discussed the process for searching for and locating responsive documents. I asked what sources were being searched, and how searches were being conducted. You indicated that the search was being conducted by a completely separate department (IT) and that you were not

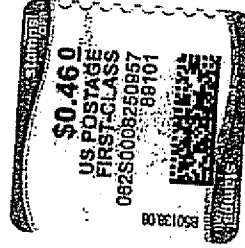
I continue to look forward to resolving the issues at hand with you as quickly as possible, and thank you for your continued attention to these matters. I understand that you aren't usually tasked with NPRA matters and I appreciate the efforts to resolve the matters we can.

Margaret A. McLetchie

cc: file; Carlos McDade (via email only)

MCLEATCHIE I SHELL

701 E. Bridger Avenue, Suite 520  
Las Vegas NV 89101



Adam Honey, Assistant General Counsel  
Clark County School District  
5100 W. Sahara Avenue  
Las Vegas, NV 89146



**pharan@nvlitigation.com**

---

**From:** pharan@nvlitigation.com  
**Sent:** Tuesday, February 21, 2017 5:50 PM  
**To:** 'Adam Honey'  
**Cc:** maggie; 'clmcdade@interact.ccsd.net'  
**Subject:** Public Records Act request  
**Attachments:** CCSD - 2017 02 21 PRA.pdf

Good afternoon, Mr. Honey.

I am writing on behalf of Ms. McLetchie. Attached please find her correspondence dated today. A copy has also been sent by mail. Should there be questions or concerns, please contact the office.

Thank you,

**Pharan Burchfield**

Paralegal



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Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
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# EXHIBIT 24

**Alina**

---

**From:** maggie  
**Sent:** Monday, February 27, 2017 6:10 PM  
**To:** Adam Honey  
**Cc:** pharan@nvlitigation.com; clmcddade@interact.ccsd.net  
**Subject:** RE: RJ v CCSD

Adam,

Following up again on the documents currently under review. As it currently stands, we have a hearing 3/2 and I am hoping for an update in advance of the hearing (and, again, am here to help resolve any over-breadth issues and to make suggestions on narrowing searches if you are able to obtain that information.) Thanks in advance.

Maggie



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Las Vegas, NV 89101  
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**From:** maggie  
**Sent:** Friday, February 24, 2017 1:18 PM  
**To:** 'Adam Honey' <ahoney@interact.ccsd.net>  
**Cc:** pharan@nvlitigation.com; clmcddade@interact.ccsd.net  
**Subject:** RJ v CCSD

Adam,

Just left you a message. I was calling to let you know that we received the un-redacted documents. Thank you very much.

On the subsequent request for records, I had hoped to hear from you once you received responsive documents for review. Please let me know what the status is, and give me a call back when you get the chance.

Regards,

Maggie



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# EXHIBIT 25

[pharan@nvlitigation.com](mailto:pharan@nvlitigation.com)

---

**From:** maggie  
**Sent:** Wednesday, March 01, 2017 10:04 AM  
**To:** clmcdade@interact.ccsd.net  
**Cc:** Alina; Adam Honey; sgerace@ccsd.net; pharan@nvlitigation.com  
**Subject:** RJ v. CCSD

Carlos:

Because my messages and letters requesting information have been ignored, I just called and spoke to Adam about the RJ's 2/10 request. He and I had previously spoken about providing documents as they were reviewed and available but I have not received any and he just indicated that this was now not possible. He also indicated that CCCSD "hoped" to have records available by 3/3 – could you please provide a date certain? Also, while CCSD previously asserted some "placeholder" objections, to the extent that CCSD does in fact withhold documents, the RJ will need more specific information. However, from speaking with Adam, it does not sound like a log or document with similar information will be provided. He indicated that you might be the appropriate person to discuss these matters with since he is not the decision-maker. Would you please get back to me at your earliest convenience about these matters? The RJ is in the process of amending its petition but I am hoping we can resolve as many matters as possible in advance of tomorrow.

Thank you for your consideration.

Maggie



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Las Vegas, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
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ORDER GRANTING WRIT OF MANDAMUS AS TO  
WITHHELD RECORDS AND REQUIRING  
DEPOSITIONS

*Steven D. Grierson*

1 **ORDR**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite. 520

6 Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: maggie@nvlitigation.com

*Counsel for Petitioner*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

10  
11 Petitioner,

Dept. No.: XVI

12 vs.

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

13  
14 CLARK COUNTY SCHOOL DISTRICT,

15  
16 Respondent.

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

26 ///

27 ///

28 ///

06:23898P57-68-PH1



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.

***Redacted 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.

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

3           9.       On February 14, 2017, the Court heard oral argument on the Review-  
4 Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order  
5 granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23,  
6 2017 Notice of Entry of Order.)

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

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

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

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

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

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

27           15.      In that same correspondence, CCSD set forth objections to the February  
28 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."

24 ///

25 ///

26 ///

27 ///

28 ///

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"

1 under NAC 239.051. (*Id.*)

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

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

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

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

10 58. At that hearing, CCSD asserted for the first time that in addition to the  
11 privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which  
12 provides for the creation and regulation of the Nevada Equal Rights Commission—applied  
13 to investigations conducted by CCSD's Office of Diversity and Affirmative Action.  
14 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
15 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
16 233.190.

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

19 **II.**

20 **ORDER**

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

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

28 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)).

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

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

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

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

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

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

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

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

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

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

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

***Nonrecords***

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

83. CCSD’s argument that the documents may be withheld pursuant NAC 239.705 is likewise unavailing. NAC 239.705 is an administrative regulation defining official state records subject to retention (and nonrecords exempt from retention) that couples with Nev. Rev. Stat. § 239.080, a statute pertaining to the retention and disposition of state records. (*See Op. Br.*, pp. 21:24-22:11.) Moreover, NAC 239.705 applies only to records maintained by a governmental entity “as evidence of the organization’s functions, policies, decisions, 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 12<sup>th</sup> 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.)

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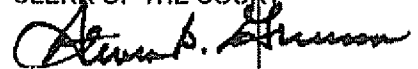
IT IS SO ORDERED this 5<sup>th</sup> day of July, 2017.

Respectfully submitted,

Margaret A. McLetchie, Nevada State Bar No. 10931  
Alina M. Shell, Nevada State Bar No. 11711  
MCLETCHE SHELL, LLC  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Telephone: (702) 728-5300  
Fax: (702) 425-8220  
Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
*Counsel for Petitioner, Las Vegas Review-Journal*



## NOTICE OF ENTRY OF ORDER



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

**NOTICE OF ENTRY OF ORDER**

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

17 **NOTICE OF ENTRY OF ORDER**

18 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:

19 PLEASE TAKE NOTICE that on the 11<sup>th</sup> day of July, 2017, an Order Granting  
20 Writ of Mandamus as to Withheld Records and Requiring Depositions was entered in the  
above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

21 DATED this 12<sup>th</sup> day of July, 2017.

22 */s/ Margaret A. McLetchie*

23 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

24 ALINA M. SHELL, Nevada Bar No. 11711

25 **MCLEATCHIE SHELL LLC**

26 701 East Bridger Avenue, Suite 520

27 Las Vegas, Nevada 89101

28 *Counsel for Petitioner*

MCLEATCHIE SHELL

ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702)728-5300 (T) / (702)425-8220 (F)  
WWW.NVLITIGATION.COM

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 12<sup>th</sup> 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 12<sup>th</sup> 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 MCLETCHIE SHELL LLC

# EXHIBIT 1



1 **ORDR**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite. 520

6 Las Vegas, NV 89101

7 Telephone: (702)-728-5300

8 Email: maggie@nvlitigation.com

9 *Counsel for Petitioner*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

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

15 CLARK COUNTY SCHOOL DISTRICT,

16 Respondent.

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

26 ///

27 ///

28 ///

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.

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

3           9.     On February 14, 2017, the Court heard oral argument on the Review-  
4 Journal's Petition. Following that hearing, on February 22, 2017, the Court entered an Order  
5 granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23,  
6 2017 Notice of Entry of Order.)

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

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

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

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

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

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

27           15.    In that same correspondence, CCSD set forth objections to the February  
28 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

over the Review-Journal's Amended Petition.

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

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

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

34. Additionally, the Court ordered CCSD to provide the Court with a certification by June 6, 2017 attesting to the accuracy of the searches conducted and evidencing that CCSD had fully searched the sources set forth in Paragraph 45 for records 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."

24 ///

25 ///

26 ///

27 ///

28 ///

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

- 4           • CCSD 034-060; and
- 5           • CCSD 0159-0233.

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

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

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

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

13           All information gathered by the District in the course of its investigation of  
14 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.

15 (*Id.* at LVRJ022.)

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

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

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

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

1 under NAC 239.051. (*Id.*)

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

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

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

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

10 58. At that hearing, CCSD asserted for the first time that in addition to the  
11 privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which  
12 provides for the creation and regulation of the Nevada Equal Rights Commission—applied  
13 to investigations conducted by CCSD's Office of Diversity and Affirmative Action.  
14 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
15 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
16 233.190.

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

19 **II.**

20 **ORDER**

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

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

28 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)).

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

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

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

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

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

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

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

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

***Deliberative Process Privilege***

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

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

78. The Nevada Supreme Court has also explained that the deliberative process  
privilege is conditional. *DR Partners*, 116 Nev. at 626, 6 P.3d at 471. Once a governmental  
entity establishes that a document is privileged, the burden shifts to the party seeking  
disclosure to "demonstrate that its need for the information outweighs the regulatory interest  
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 12<sup>th</sup> 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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IT IS SO ORDERED this 5<sup>th</sup> day of July, 2017.

Respectfully submitted,

**MCLEACH**  
ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (T) / (702) 423-8220 (F)  
WWW.NVLITIGATION.COM