

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CLARK COUNTY SCHOOL  
DISTRICT

Appellant,

vs.

THE LAS VEGAS REVIEW-  
JOURNAL,

Respondent.

Electronically Filed  
Nov 07 2018 03:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.: 75534

**RESPONDENT'S APPENDIX – VOLUME I**

Appeal from Eighth Judicial District Court, Clark County

The Honorable Timothy C. Williams, District Judge

District Court Case No. A-17-750151-W

Margaret A. McLetchie, Nevada Bar No. 10931

Alina M. Shell, Nevada Bar No. 11711

MCLECHIE LAW

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

*Counsel for The Las Vegas Review-Journal*

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENT'S APPENDIX – VOLUME I was filed electronically with the Nevada Supreme Court on the 7th day of November, 2018. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

/s/ Pharan Burchfield  
Employee of McLetchie Law

# EXHIBIT 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Amelia Pak-Harvey <apak-harvey@reviewjournal.com>  
Date: Mon, Dec 5, 2016 at 6:10 PM  
Subject: Records request  
To: Michelle Booth - Communications <mbooth@interact.ccsd.net>, Michelle Booth <alejandrabooth@gmail.com>, Melinda Malone <mmalone@ccsd.net>

Hello,

I'd like to formally request the following:

--All incident reports filed by CCSD staff, CCSD police or any CCSD official 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.

--All emails and correspondence relating to the guidelines issued to CCSD staff on December 5, 2016 regarding Kevin Child's visits to schools and interaction with staff.

Thanks for your time,  
Amelia

--  
Amelia Pak-Harvey  
Education Reporter  
Las Vegas Review Journal  
o: 702-383-4630  
c: 919-619-8258  
@AmeliaPakHarvey

--  
Amelia Pak-Harvey  
Education Reporter  
Las Vegas Review Journal  
o: 702-383-4630  
c: 919-619-8258

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)>  
Date: Thu, Dec 8, 2016 at 1:53 PM  
Subject: Re: Records request  
To: Michelle Booth - Communications <[mbooth@interact.ccsd.net](mailto:mbooth@interact.ccsd.net)>, Michelle Booth  
<[alejandrabooth@gmail.com](mailto:alejandrabooth@gmail.com)>, Melinda Malone <[mmalone@ccsd.net](mailto:mmalone@ccsd.net)>, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>

Hello,  
Just wanted to confirm receipt of this request and CC'd it to Cynthia Smith-Johnson as well.

On Mon, Dec 5, 2016 at 6:10 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:  
Hello,

I'd like to formally request the following:

--All incident reports filed by CCSD staff, CCSD police or any CCSD official 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.

--All emails and correspondence relating to the guidelines issued to CCSD staff on December 5, 2016 regarding Kevin Child's visits to schools and interaction with staff.

Thanks for your time,  
Amelia

--  
Amelia Pak-Harvey  
Education Reporter  
Las Vegas Review Journal  
o: [702-383-4630](tel:702-383-4630)  
c: [919-619-8258](tel:919-619-8258)  
[@AmeliaPakHarvey](mailto:@AmeliaPakHarvey)

# EXHIBIT 2

**From:** Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
**Date:** Fri, Dec 9, 2016 at 7:15 AM  
**Subject:** Re: Records request  
**To:** [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)  
**Cc:** [mbooth@interact.ccsd.net](mailto:mbooth@interact.ccsd.net), [alejandrabooth@gmail.com](mailto:alejandrabooth@gmail.com), [mmalone@ccsd.net](mailto:mmalone@ccsd.net)

Good morning,

**Yes, your request has been received and is being processed.**

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

**Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:  
Hello,  
Just wanted to confirm receipt of this request and CC'd it to Cynthia Smith-Johnson as well.

On Mon, Dec 5, 2016 at 6:10 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

Hello,

**I'd like to formally request the following:**

**--All incident reports filed by CCSD staff, CCSD police or any CCSD official that involve grief counselors and Trustee Kevin Child.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Fri, Dec 9, 2016 at 7:17 AM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

I have received your request and am processing it.

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](tel:702-799-5865)  
00155503

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:

Hello,

Just wanted to confirm receipt of this request and CC'd it to Cynthia Smith-Johnson as well.

On Mon, Dec 5, 2016 at 6:10 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

Hello,

I'd like to formally request the following:

--All incident reports filed by CCSD staff, CCSD police or any CCSD official that involve grief counselors and Trustee Kevin Child.

# EXHIBIT 3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Amelia Pak-Harvey <apak-harvey@reviewjournal.com>  
Date: Fri, Dec 9, 2016 at 2:41 PM  
Subject: Re: Records request  
To: Michelle Booth - Communications <mbooth@interact.ccsd.net>, Michelle Booth <alejandrabooth@gmail.com>, Melinda Malone <mmalone@ccsd.net>, Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>

Hello,  
Thanks for the response.  
I'd like to add to this request: any written complaints the Clark County School District has received regarding Trustee Kevin Child.

Best,  
Amelia

On Thu, Dec 8, 2016 at 1:53 PM, Amelia Pak-Harvey <apak-harvey@reviewjournal.com> wrote:  
Hello,  
Just wanted to confirm receipt of this request and CC'd it to Cynthia Smith-Johnson as well.

On Mon, Dec 5, 2016 at 6:10 PM, Amelia Pak-Harvey <apak-harvey@reviewjournal.com> wrote:  
Hello,

I'd like to formally request the following:

--All incident reports filed by CCSD staff, CCSD police or any CCSD official 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.

--All emails and correspondence relating to the guidelines issued to CCSD staff on December 5, 2016 regarding Kevin Child's visits to schools and interaction with staff.

Thanks for your time,  
Amelia

--  
Amelia Pak-Harvey

# EXHIBIT 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Tue, Dec 13, 2016 at 3:05 PM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

Pursuant to NRS 239.0107, we are unable to provide the information to you within 5 business days. We anticipate a further response by close of business day on December 16, 2016, if not before.

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](tel:702-799-5865)  
00155503

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:

Hello,

Thanks for the response.

I'd like to add to this request: any written complaints the Clark County School District has received regarding Trustee Kevin Child.

Best,  
Amelia

On Thu, Dec 8, 2016 at 1:53 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

# EXHIBIT 5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)>  
Date: Thu, Dec 15, 2016 at 3:27 PM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>

Hello Cynthia,

Thank you for reaching out with this update. I wanted to check in on the status and also wanted to see if this would include my recent addendum to this request, which is: "any written complaints the Clark County School District has received regarding Trustee Kevin Child."

Thanks for the time,  
Amelia

On Tue, Dec 13, 2016 at 3:05 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:  
Ms. Pak-Harvey,

Pursuant to NRS 239.0107, we are unable to provide the information to you within 5 business days. We anticipate a further response by close of business day on December 16, 2016, if not before.

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](tel:702-799-5865)  
00155503

**Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:

Hello,

Thanks for the response.

I'd like to add to this request: any written complaints the Clark County School District has received regarding Trustee Kevin Child.

# EXHIBIT 6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Amelia Pak-Harvey <apak-harvey@reviewjournal.com>  
Date: Mon, Dec 19, 2016 at 2:36 PM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>, Michelle Booth - Communications <mbooth@interact.ccsd.net>, Michelle Booth <alejandrabooth@gmail.com>

Hello Cynthia,  
I'm just writing to check in on the status of this request and if possible an updated timeline of when I might receive these records.

Feel free to reach out at 702-383-4630 any time.

Thanks for the time,  
Amelia

On Thu, Dec 15, 2016 at 3:27 PM, Amelia Pak-Harvey <apak-harvey@reviewjournal.com> wrote:  
Hello Cynthia,  
Thank you for reaching out with this update. I wanted to check in on the status and also wanted to see if this would include my recent addendum to this request, which is: "any written complaints the Clark County School District has received regarding Trustee Kevin Child."

Thanks for the time,  
Amelia

On Tue, Dec 13, 2016 at 3:05 PM, Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net> wrote:  
Ms. Pak-Harvey,

Pursuant to NRS 239.0107, we are unable to provide the information to you within 5 business days. We anticipate a further response by close of business day on December 16, 2016, if not before.

Thank you.

Cindy Smith-Johnson  
Public Records Request  
Office of Community and Government Relations  
publicrecordrequest@interact.ccsd.net

# EXHIBIT 7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Cynthia Smith-Johnson** <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Mon, Dec 19, 2016 at 4:09 PM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

I expect to get back to you w/something tomorrow or Wednesday. I will get back to you either way.

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](tel:702-799-5865)  
00155503

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:

Hello Cynthia,

I'm just writing to check in on the status of this request and if possible an updated timeline of when I might receive these records.

Feel free to reach out at [702-383-4630](tel:702-383-4630) any time.

Thanks for the time,  
Amelia

On Thu, Dec 15, 2016 at 3:27 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

Hello Cynthia,

# EXHIBIT 8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)>  
Date: Tue, Dec 20, 2016 at 3:59 PM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>

Hi Cynthia,  
Thanks. Just checking in again. Feel free to call me if there are any obstacles.

Best,  
Amelia

On Mon, Dec 19, 2016 at 4:09 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:  
Ms. Pak-Harvey,

I expect to get back to you w/something tomorrow or Wednesday. I will get back to you either way.

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](tel:702-799-5865)  
00155503

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Hello Cynthia,  
I'm just writing to check in on the status of this request and if possible an updated timeline of when I might receive these records.

Feel free to reach out at [702-383-4630](tel:702-383-4630) any time.

Thanks for the time,

# EXHIBIT 9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Amelia Pak-Harvey <apak-harvey@reviewjournal.com>  
Date: Wed, Dec 21, 2016 at 10:52 AM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>, Michelle Booth - Communications <mbooth@interact.ccsd.net>, Michelle Booth <alejandrabooth@gmail.com>

Hello,  
This is Amelia with the Review-Journal just checking in again to see if it's possible to receive these records today.  
As my deadline is today and we do plan to write something on the matter by today, whatever I receive will be reflected in tomorrow's story.

If I don't end up getting these today, I'll mention that we did put in a records request but it has not yet been answered.

Feel free to call me at 702-383-4630 with anything.

Thanks again for your time,  
Amelia

On Tue, Dec 20, 2016 at 3:59 PM, Amelia Pak-Harvey <apak-harvey@reviewjournal.com> wrote:  
Hi Cynthia,  
Thanks. Just checking in again. Feel free to call me if there are any obstacles.

Best,  
Amelia

On Mon, Dec 19, 2016 at 4:09 PM, Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net> wrote:  
Ms. Pak-Harvey,

I expect to get back to you w/something tomorrow or Wednesday. I will get back to you either way.

Thank you.

Cindy Smith-Johnson  
Public Records Request  
Office of Community and Government Relations

# EXHIBIT 10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Cynthia Smith-Johnson** <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Wed, Dec 21, 2016 at 3:06 PM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

I apologize for the delay I will get back to you tomorrow.

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

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:

Hello,

This is Amelia with the Review-Journal just checking in again to see if it's possible to receive these records today.

As my deadline is today and we do plan to write something on the matter by today, whatever I receive will be reflected in tomorrow's story.

If I don't end up getting these today, I'll mention that we did put in a records request but it has not yet been answered.

Feel free to call me at 702-383-4630 with anything.

Thanks again for your time,  
Amelia

On Tue, Dec 20, 2016 at 3:59 PM, Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

# EXHIBIT 11

[REDACTED]

From: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Thu, Dec 22, 2016 at 2:29 PM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

Additional time is needed regarding the information requested. I will follow up w/you after the Holidays on January 9, 2017, if not before.

Happy Holidays!

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

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:  
Hi Cynthia,  
Thanks. Just checking in again. Feel free to call me if there are any obstacles.

Best,  
Amelia

On Mon, Dec 19, 2016 at 4:09 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:

Ms. Pak-Harvey,

I expect to get back to you w/something tomorrow or Wednesday. I will get back to you either way.

Thank you.

# EXHIBIT 12

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)>  
Date: Wed, Jan 4, 2017 at 8:56 AM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>

Hello Cynthia,

I'm just checking in on this request. Feel free to give me a call at 702-383-4630 if needed.

Thanks for your time,  
Amelia

On Thu, Dec 22, 2016 at 2:29 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:  
Ms. Pak-Harvey,

Additional time is needed regarding the information requested. I will follow up w/you after the Holidays on January 9, 2017, if not before.

Happy Holidays!

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

**Amelia Pak-Harvey** <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:  
Hi Cynthia,  
Thanks. Just checking in again. Feel free to call me if there are any obstacles.

Best,  
Amelia

On Mon, Dec 19, 2016 at 4:09 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:

# EXHIBIT 13

[REDACTED]

---

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

From: **Cynthia Smith-Johnson** <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>  
Date: Mon, Jan 9, 2017 at 3:58 PM  
Subject: Re: Records request  
To: [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)

Ms. Pak-Harvey,

I apologize for the delay. I anticipate a further response on January 13, 2017.

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

Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> writes:  
Hello Cynthia,

I'm just checking in on this request. Feel free to give me a call at 702-383-4630 if needed.

Thanks for your time,  
Amelia

On Thu, Dec 22, 2016 at 2:29 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:

Ms. Pak-Harvey,

Additional time is needed regarding the information requested. I will follow up w/you after the Holidays on January 9, 2017, if not before.

# EXHIBIT 14

[REDACTED]

From: Amelia Pak-Harvey <apak-harvey@reviewjournal.com>

Date: Mon, Jan 9, 2017 at 5:01 PM

Subject: Re: Records request

To: Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net>, Michelle Booth - Communications <mbooth@interact.ccsd.net>, Michelle Booth <alejandrabooth@gmail.com>

Thank you Cindy.

At this point, over a month after my original request, I'm having trouble understanding the reasons for this delay. I believe we've followed all the proper protocols in requesting this information. If there are issues can you please give me a call at 702-383-4630?

Thanks and I will follow up shortly,  
Amelia

On Mon, Jan 9, 2017 at 3:58 PM, Cynthia Smith-Johnson <csmith-johnson@interact.ccsd.net> wrote:  
Ms. Pak-Harvey,

I apologize for the delay. I anticipate a further response on January 13, 2017.

Thank you.

Cindy Smith-Johnson  
Public Records Request  
Office of Community and Government Relations  
publicrecordrequest@interact.ccsd.net  
702-799-5865  
00155503

Amelia Pak-Harvey <apak-harvey@reviewjournal.com> writes:  
Hello Cynthia,

I'm just checking in on this request. Feel free to give me a call at 702-383-4630 if needed.

Thanks for your time,

# EXHIBIT 15

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)>  
Date: Mon, Jan 16, 2017 at 5:41 PM  
Subject: Re: Records request  
To: Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)>, Michelle Booth  
<[alejandrabooth@gmail.com](mailto:alejandrabooth@gmail.com)>, Michelle Booth - Communications <[mbooth@interact.ccsd.net](mailto:mbooth@interact.ccsd.net)>

Hi Cindy and Michelle,  
Just checking in on the status of this request.

Thanks for your time,  
Amelia

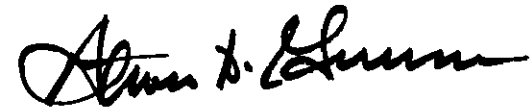
On Mon, Jan 9, 2017 at 5:01 PM Amelia Pak-Harvey <[apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com)> wrote:

Thank you Cindy.

At this point, over a month after my original request, I'm having trouble understanding the reasons for this delay. I believe we've followed all the proper protocols in requesting this information. If there are issues can you please give me a call at 702-383-4630?

Thanks and I will follow up shortly,  
Amelia

On Mon, Jan 9, 2017 at 3:58 PM, Cynthia Smith-Johnson <[csmith-johnson@interact.ccsd.net](mailto:csmith-johnson@interact.ccsd.net)> wrote:



CLERK OF THE COURT

NEOJ

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETCHIE 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

**NOTICE OF ENTRY OF ORDER**

**NOTICE OF ENTRY OF ORDER**

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

PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of February, 2017, an Order Granting Writ of Mandate was entered in the above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

DATED this 23<sup>rd</sup> day of February, 2017.

/s/ Margaret A. McLetchie

MARGARET A MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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**CERTIFICATE OF SERVICE**

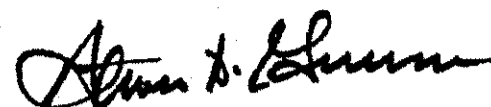
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 23<sup>rd</sup> day of February, 2017, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Wiznet Electronic Service system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B), I further hereby certify that on the 23<sup>rd</sup> day of February, 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



CLERK OF THE COURT

**ORDR**

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,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

**ORDER GRANTING WRIT OF**

CLARK COUNTY SCHOOL DISTRICT,

**MANDATE**

Respondent.

The Las Vegas Review-Journal's Petition for Writ of Mandamus having come on for hearing on February 14, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorneys, MARGARET A. MCLEITCHIE and ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("District Attorney"), appearing by and through his attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby grants the Petition and makes the following findings of fact and conclusions of law:

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I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

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 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.

2. On behalf of CCSD’s Office of Community and Government Relations, Cynthia Smith-Johnson confirmed receipt on December 9, 2016.

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

4. 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.

5. CCSD subsequently produced thirty six (36) pages of documents but asserted that there were twenty-three (23) additional pages that required redactions (the “Redacted Records”). After informal efforts to set a briefing schedule and/or obtain copies the Redacted Records sought failed, the Review-Journal submitted an *ex parte* motion for order shortening time and requesting an expedited hearing on February 8, 2017.

1           6.       On February 8, 2017, this Court ordered that CCSD either fully produce  
2 all requested records (in unredacted form) by 12 p.m. on Friday, February 14, 2017 or that  
3 the matter would proceed to hearing.

4           7.       On February 8, 2017, CCSD provided the Redacted Records, as well as an  
5 unredacted corresponding set of records, to the Court. It did not provide a copy of the  
6 Redacted Records to the Review-Journal.

7           8.       Then, later on February 8, 2017, in response to the February 8, 2017 Order,  
8 CCSD provided a copy of the Redacted Records to the Review-Journal.

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

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

14          11.      On February 13, 2017, CCSD also provided ten (10) additional pages not  
15 previously identified (the "Additional Redacted Records"). CCSD also provided a new log  
16 ("Revised Log") including the Additional Redacted Records and additionally asserting the  
17 following bases for the redactions:

18                   a)     "safety and well-being of employees (fear of retaliation)  
19 and inherent chilling effect if names of individual employees are  
20 released;" and

21                   b)     "inherent chilling effect if names of . . . general public are  
22 released."

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

25          12.      Nev. Rev. Stat § 239.010 " does not explicitly provide that the records are  
26 confidential, and provides that, unless expressly provided for in the NPRA or other listed  
27 statutes, Nev. Rev. Stat § 239.010, or "unless otherwise declared by law to be confidential,"  
28

1 all public books and public records of a governmental entity must be open  
2 at all times during office hours to inspection by any person, and may be  
3 fully copied or an abstract or memorandum may be prepared from those  
4 public books and public records. Any such copies, abstracts or memoranda  
5 may be used to supply the general public with copies, abstracts or  
6 memoranda of the records or may be used in any other way to the advantage  
7 of the governmental entity or of the general public. This section does not  
8 supersede or in any manner affect the federal laws governing copyrights or  
9 enlarge, diminish or affect in any other manner the rights of a person in any  
10 written book or record which is copyrighted pursuant to federal law.

11 13. Nev. Rev. Stat § 386.230 ("General powers; exceptions") provides:

12 Each board of trustees is hereby given such reasonable and necessary  
13 powers, not conflicting with the Constitution and the laws of the State of  
14 Nevada, as may be requisite to attain the ends for which the public schools,  
15 excluding charter schools and university schools for profoundly gifted  
16 pupils, are established and to promote the welfare of school children,  
17 including the establishment and operation of schools and classes deemed  
18 necessary and desirable.

19 14. CCSD Regulation 1212 ("CONFIDENTIAL INFORMATION: ALL  
20 EMPLOYEES") provides that "Confidential information concerning all personnel will be  
21 safeguarded.

22 15. CCSD Regulation 4110 pertains to "EMPLOYMENT  
23 DISCRIMINATION, HARASSMENT, AND SEXUAL HARASSMENT: ALL  
24 EMPLOYEES."

25 16. The Redacted Records and Additional Records consist of various records  
26 regarding Trustee Child.

27 17. On February 14, 2017, the Court heard oral arguments on the Review-  
28 Journal's Petition for Writ of Mandamus.

18 18. The Court has also performed an in-camera review of the Redacted  
19 Records, the Additional Redacted Records, and the unredacted version of both sets of  
20 records.

21 ///

22 ///

## II.

ORDER

19. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). To that end, the NPRA must be construed liberally, and any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

20. Unless explicitly confidential, public records are to be made available to the public for inspection or copying. NRS 239.010(1); *Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Rep. 79, 12 266 P.3d 623, 628 (2011). If a statute explicitly makes a record confidential or privileged, the public entity need not produce it. *Id.* “

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

22. A petition for Writ of Mandamus is the appropriate vehicle by which to pursue production under the NPRA, where a governmental entity has refused it. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, n.4, 266 P.3d 623, 630, n.4 (2011); *citing DR Partners v. Board of County Comm’rs*, 116 Nev. 616, 620, 6 P.3d 465, 468, *citing* NRS 34.160.

23. A governmental entity seeking to withhold or redact records must prove by a preponderance of evidence that the records are confidential or privileged. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citations omitted).

24. “[I]n the absence of a statutory provision that explicitly declares a record to be confidential, any limitations on disclosure must be based upon a broad balancing of the interests involved, . . . and the state entity bears the burden to prove that its interest in

1 nondisclosure clearly outweighs the public's interest in access" *Id.* (citing *DR Partners*, 116  
2 Nev. at 622, 6 P.3d at 468).

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

6 26. In *Reno Newspapers, Inc. v. Gibbons*, the Nevada Supreme Court held that  
7 a Vaughn index is not required when the party that requested the documents has enough  
8 information to fully argue for the inclusion of documents. 127 Nev. 873, 881-82 (Nev. 2011).  
9 The Nevada Supreme Court has also held that if a party has enough facts to present "a full  
10 legal argument," a Vaughn index is not needed. *Id.* at 882. However, the Nevada Supreme  
11 Court held that a party requesting documents under NPRA is entitled to a log, unless the state  
12 entity demonstrates that the requesting party has enough facts to argue the claims of  
13 confidentiality. *Id.* at 883. A log provided by a governmental entity should contain a general  
14 factual description of each record and a specific explanation for nondisclosure. *Id.* In a  
15 footnote, the Nevada Supreme Court notes that a log should provide as much detail as  
16 possible, without compromising the alleged secrecy of the documents. *Id.* at n. 3. Finally,  
17 attaching a string cite to a boilerplate denial is not sufficient under the NPRA. *Id.* at 885.

18 27. The Review-Journal does not contest redacting the names of direct victims  
19 of sexual harassment or alleged sexual harassment, or the name of students and staff persons  
20 that are not administrators being redacted.

21 28. With regard to CCSD's other proposed redactions, which include the names  
22 of schools, teachers, administrators, and program administrators, the Court finds that CCSD  
23 failed to meet its burden in demonstrating the existence of an applicable privilege.  
24

25 29. First, CCSD failed to assert any claim of confidentiality within five (5) days  
26 as required by Nev. Rev. Stat. § 239.0107(d).  
27

28 30. Second, the Revised Log does not sufficiently articulate that the information

1 redacted by CCSD is protected by confidentiality. CCSD Regulation 1212 pertains to  
2 personnel records, and the parties agree that the records produced are not personnel records.  
3 CCSD Regulation 4110 pertains to protections from sexual harassment. To the extent that it  
4 is applicable, the parties have agreed that the names of victims of sexual harassment, or  
5 alleged sexual harassment, shall be redacted. This also addresses any chilling effect that may  
6 occur. Nev. Rev. Stat. § 239.010 and § 386.230 do not provide that the records are  
7 confidential.

8  
9 31. Third, even if CCSD did assert an applicable privilege by a preponderance  
10 of the evidence, it failed to articulate the application to each piece of information it sought  
11 to redact. *Gibbons*, 127 Nev. at 883, 266 P.3d at 629.

12 32. Thus, CCSD failed to prove by a preponderance of evidence that the records  
13 are confidential or privileged. *Gibbons*, 127 Nev. at 880, 266 P.3d at 628.

14 33. Fourth, even if it met its burden of establishing the existence of an  
15 applicable privilege, CCSD has failed to establish that the interests in secrecy outweigh the  
16 interests in disclosure. *See, e.g., Gibbons*, 127 Nev. at Adv. Rep. at 881, 66 P.3d at 628.  
17 (citing *DR Partners*, 116 Nev. at 622, 6 P.3d at 468). “[I]n the absence of a statutory  
18 provision that explicitly declares a record to be confidential, any limitations on disclosure  
19 must be based upon a broad balancing of the interests involved, . . . and the state entity bears  
20 the burden to prove that its interest in nondisclosure clearly outweighs the public’s interest  
21 in access”

22 34. Accordingly, both because CCSD did not timely assert any claim of  
23 confidentiality and because it still has not met its burden in redacting public records, the  
24 Court orders CCSD to provide the Review-Journal with new versions of the Redacted  
25 Records and Additional Redacted Records, with only the following redactions: *the names of*  
26 *direct victims of sexual harassment or alleged sexual harassment, students, and support*  
27 *staff.*  
28

1           35.     CCSD may not make any other redactions, and must unredact the names  
2 of schools, all administrative-level employees, including but not limited to deans, principals,  
3 assistant principals, program coordinators), and teachers.

4           36.     CCSD must comply with this Order within two (2) days.

5  
6 IT IS SO ORDERED this 22<sup>nd</sup> day of February, 2017.  
7  
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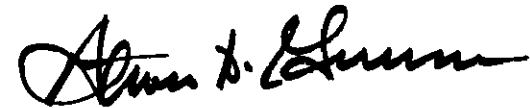
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12 HONORABLE JUDGE TIMOTHY C. WILLIAMS  
13 

14 Respectfully submitted,  
15  
16 

17 \_\_\_\_\_  
18 Margaret A. McLetchie, Nevada State Bar No. 10931  
19 Alina M. Shell, Nevada State Bar No. 11711  
20 MCLETCHE SHELL, LLC  
21 701 E. Bridger Avenue, Suite 520  
22 Las Vegas, NV 89101  
23 *Counsel for Petitioner, Las Vegas Review-Journal*  
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MCLETCHE SHELL

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CLERK OF THE COURT

**PTOB**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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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

**OPENING BRIEF IN SUPPORT  
OF AMENDED PUBLIC  
RECORDS ACT APPLICATION  
PURSUANT TO NEV. REV.  
STAT. § 239.001/ PETITION FOR  
WRIT OF MANDAMUS**

**Hearing Date: May 9, 2017**

**Hearing Time: 9:00 a.m.**

COMES NOW Petitioner the Las Vegas Review-Journal (the "Review-Journal"), by and through its undersigned counsel, and hereby submits this Opening Brief in Support of its Amended Nevada Public Records Act Application and Petition for Writ of Mandamus. This Opening Brief is supported by the points and authorities below, any attached exhibits, any attached exhibits, and the pleadings and papers on file with this Court.

DATED this the 29<sup>th</sup> day of March, 2017.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

*Counsel for Petitioner*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Since December 2016, the Review-Journal has made multiple requests to CCSD pursuant to the Nevada Public Records Act (“NPRA”) for documents pertaining to the alleged misbehavior of School Board Trustee Kevin Child. Trustee Child is an elected official overseeing the operation of one of the largest school districts in the United States. Given the seriousness of the allegations against Trustee Child, and the importance these allegations have for thousands of members of the community—including students, parents, teachers, and CCSD staff—the Review-Journal has made repeated efforts to work with CCSD to obtain records about this important issue, and has attempted to resolve as many issues as possible without court intervention. CCSD, however, has taken an obstructionist tack in responding (or refusing to respond) to the paper’s public records requests.

This all started because, back in December, CCSD refused to meaningfully respond to requests made by a Review-Journal reporter for documents pertaining to Trustee Child, necessitating filing suit. Having concerns regarding the fact that it did not seem like CCSD made a full search, the Review-Journal subsequently issued an additional request for documents pertaining to Trustee Child on February 10, 2017. Despite numerous requests for information and attempts to address search issues collaboratively by the Review-Journal, CCSD initially refused to provide and then delayed providing information regarding what sources it searched for responsive documents. Indeed, CCSD has even taken the absurd position in open court that such information is somehow privileged.

On March 13, CCSD finally just revealed that it had unilaterally limited the requests and searched very limited sources for documents in response to requests. This is not permitted under the NPRA. While CCSD has recently begrudgingly agreed to search a few additional custodians’ email boxes, it is still refusing to search all the sources the Review-Journal has proposed and will not search for documents other than emails. Moreover, it has not even provided a timeframe for the searches it did agree to.

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Even more problematic is the fact that CCSD continues to withhold documents that are subject to the NPRA. It has asserted frivolous privilege objections that do not even make sense, as detailed below. With regard to the report about Mr. Child prepared by CCSD's Executive Manager of Diversity and Affirmative Action, Cedric Cole (the "Cole Report")—a document CCSD has finally admitted exists and withholding—CCSD has not met its burden in establishing that any claim of confidentiality exists, let alone that such interest outweighs the heavy presumption in favor of public access.

Generally, CCSD has resisted producing documents about Trustee Child unless forced to do so—either by the persistence of the Review-Journal or in response to an order from this Court. CCSD's obstructionist behavior violates both the letter and the spirit of the NPRA, which requires that a government entity make public records available on request. Unfortunately, it will have taken four months of effort by the Review-Journal and another court order to make CCSD comply.

## II. FACTS AND PROCEDURAL HISTORY

### A. The Review-Journal's Initial Records Request and Related Matters

#### 1. The Review-Journal's Initial Records Request.

As detailed in the Amended Petition, 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.") G; CCSD-COM 001.) 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.*) The Review-Journal supplemented this Request on December 9 to include:

- Any written complaints the Clark County School District has received regarding Trustee Kevin Child.

(Exh. H; CCSD-COM 002.) (The December 5, 2016 request, as supplemented on December 9, 2016 is referred to herein as the “December Request”).

As detailed in the Review-Journal’s Amended Petition, the Reporter made multiple efforts over the course of seven weeks to get information about the status of the December Request and to resolve any possible concerns. (*See generally* Amended Petition at pp. 4-5, ¶¶ 15-31.) CCSD repeatedly told the Review-Journal that it needed additional time to produce the requested records (*see* Amended Petition at ¶¶ 16, 20, 23-24, 26.) However, CCSD never indicated in its correspondence with the Reporter that it limited the request, which custodians it was limiting their records search to, how it was conducting the search, or whether it anticipated withholding or redacting any of the records. (*See, generally* Exhibits 1-15 to January 26, 2017 Petition on file in this matter (communications between the Review-Journal and CCSD regarding the December requests).)

## **2. The Review-Journal Files Suit Against CCSD.**

After the Review-Journal’s extensive 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.) Eight weeks after the December Request—and only after the Review-Journal filed suit—CCSD produced one batch of responsive records on February 3, 2017. (“Initial Production,” attached hereto as Exh. A (CCSD A 001-036).) These documents were largely noncontroversial (indeed, it is perplexing how and why CCSD ever withheld them) and CCSD provided them in unredacted form. *Id.*

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### 3. The Redacted Records and Logs.

While it finally produced at least a few records after the Review-Journal filed suit, CCSD withheld additional records responsive to the December Request (the “Redacted Records”). (See, e.g. Amended Petition at ¶ 38.) It did not initially provide any privilege log indicating what it was keeping secret and why. CCSD also did not indicate that it had limited the December Requests, let alone whose records they searched in responding to the December Request.

On February 8, 2017, the Court ordered CCSD to either fully produce all of the records it was withholding in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. (Amended Petition at ¶ 33.) CCSD did not do so. However, CCSD made various partial productions of the Redacted Records with changed and various redactions between February 8, 2017 and February 13, and then again after Court order with fewer redactions on February 24 and February 27, 2017. (Amended Petition at ¶¶ 34-40; 52-55.) Exhibit B (CCSD B 0001-0033) reflects the final version of the “Redacted Records” responsive to the December Request.

CCSD did not voluntarily indicate that it had limited the December Requests, whose records it had searched, what terms it used in searching for responsive records, or which records it was withholding. CCSD did, however, produce its first log on February 13, 2017 listing the following bases for the redactions: Nev. Rev. Stat. § 386.230, and CCSD Regulations 1212 and 4110.<sup>1</sup> (Amended Petition at ¶ 37.)

On February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition (“February Order”). (See February 22, 2017 Order, *see also* February 23, 2017 Notice of Entry of Order.) In the Order, this Court found that, regarding CCSD’s proposed broad redactions of the names of schools, teachers, administrators, and program administrators, CCSD had failed to meet its burden of demonstrating the existence

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<sup>1</sup> On this date, CCSD also provided ten additional pages not previously identified. (Amended Petition at ¶ 38.)

of any applicable privilege. (Order at p. 6, ¶ 28.) The Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only “the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff” redacted. (*Id.* at ¶ 34.) The Court further specified that “**CCSD may not make any other redactions**” and must unredact the names of schools, teachers, and all administrative-level employees. (*Id.* at p. 8, ¶ 35) (emphasis in original). The Court directed CCSD to comply with the Order with two days. (*Id.* at ¶ 36.)

After the Court order, as indicated above, CCSD revised the redactions. It also provided a new log (the “Revised Log”) on March 24, 2017 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.”

Finally, CCSD provided an unredacted version of the Additional Redacted Records to the Court. The Court conducted an *in camera* review of the Redacted Records, the Additional Redacted Records, and the unredacted versions of both sets of records. (Amended Petition at ¶ 41.) CCSD also produced a Supplemental Privilege Log. (Exh. E; CCSD-LOG-2 001-004.) CCSD’s Supplemental Log did not, however, indicate that CCSD had limited the searches to specific custodians; CCSD also provided the Review-Journal with no information about whose records had been searched, or how any searches had been conducted. (*Id.*)

## **B. February 10, 2017 Request and Related Matters**

### **1. Concerns About CCSD’s Failure to Produce Records.**

The Review-Journal was concerned that CCSD had failed to make a full production and disclosure of responsive documents. For example, it has published portions of a document that CCSD never produced or disclosed on a log. On December 23, 2016, the Review-Journal published an article about an investigation of Trustee Child by CCSD’s Office of Diversity and Affirmative Action, attaching portions of the Cole Report discussed

1 above. (The article and partial Cole Report is attached hereto as Exhibit F; MEMO 001-  
 2 009.) According to the Cole Report, the Office of Diversity and Affirmative Action found  
 3 Mr. Child had created a hostile and intimidating work environment (*id.* at MEMO 006), and  
 4 had held impromptu “suicide counseling sessions” with young children during school visits.  
 5 (*Id.* at MEMO 001; *see also id.* at MEMO 008.) The investigation also concluded that  
 6 Trustee Child had caused anxiety among female CCSD employees by making inappropriate  
 7 comments and engaging in behavior the female employees described as “creepy.” (*Id.* at  
 8 MEMO 001; MEMO 006-007.) As reported by the Review-Journal, the investigation noted  
 9 that the concerns regarding Trustee Child’s behavior led to the adoption of “Trustee Child  
 10 Protocols” to protect staff when Trustee Child visited the CCSD administration building.  
 11 (*Id.* at MEMO 007 (describing protocols)). Superintendent Skorkowsky also implemented  
 12 guidelines specifically banning Trustee Child from visiting CCSD schools without written  
 13 permission. (*Id.* at MEMO 002; *see also id.* at MEMO 009 (recommendation in Cole Report  
 14 that Trustee Child “no longer be allowed in any school throughout the instructional day and  
 15 that he no longer attend any events outside of formal events or functions needed to perform  
 16 his duties as a Trustee and Representative of District D).)

17 More generally, considering the extreme step that CCSD took in excluding Child  
 18 from campus and curtailing his ability to visit schools uninvited, the Review-Journal  
 19 suspected additional documents existed that had not been produced but should have been in  
 20 response to the December requests.

21 **2. Review-Journal Issues February 10, 2017 Request.**

22 To be sure it had all documents, the Review-Journal issued a broader request on  
 23 February 10, 2017, and the Review Journal submitted a new records request to CCSD for  
 24 records pertaining to Trustee Child (the February Request”). (Exh. I; CCSD-COM 003-006.)  
 25 The February Request asked CCSD to produce several categories of documents:

- 26 • Records that pertain to, discuss, or reference any inappropriate sexual  
 27 comments Mr. Child is alleged to have made to female CCSD employees  
 28 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;
- 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 CCSD-COM 003-004.) The Review-Journal requested that CCSD provide investigative memos, notes, reports, summaries, interviews (written or recorded), emails, correspondence, and communications to or from CCSD staff and police. (*Id.* at p. 1.)

The February Request specifically asked CCSD to provide records on a rolling basis as they became available. (*Id.* at CCSD-COM 005.) The Review-Journal also offered

1 to work with CCSD to “minimize any burden or any nonresponsive documents being  
2 produced.” (*Id.* at CCSD-COM 004.) The Review-Journal also expressed its willingness to  
3 work with CCSD on ways to locate documents and narrow searches in a way that avoided  
4 any unnecessary burdens for CCSD. (*Id.* at CCSD-COM 004.)

### 5 **3. CCSD’s Preliminary “Response.”**

6 On February 15, 2017, counsel for the Review-Journal contacted CCSD to discuss  
7 the February request. (Exh. J; CCSD-COM 007.)

8 On February 17, 2017, CCSD notified the Review-Journal via email that it was  
9 unable to provide the records listed in the February Request within the five days mandated  
10 by Nev. Rev. Stat. § 239.0107(d). (Exh. K; CCSD-COM 011-013.) CCSD indicated that it  
11 “anticipates a further response” by March 3, 2017. (*Id.* at CCSD-COM 011.) In that same  
12 correspondence, CCSD set forth a series of boilerplate objections to the February Request.  
13 (*See generally* CCSD-COM 011-012; *see also* Amended Petition at pp. 10:20-11:28.)  
14 Further, CCSD’s February 17 correspondence indicated it may assert additional privileges,  
15 and may not produce the requested records. (*Id.* at CCSD-COM 011 (noting that CCSD  
16 “reserves the right to assert any additional privileges, if necessary, at the time of production,  
17 *if any*”) (emphasis added).) In the interim, CCSD asserted that the requested records were  
18 confidential employee personnel information, and were confidential pursuant to CCSD  
19 Regulation 4110(X) and FERPA. (*Id.* at CCSD-COM 011-012.) CCSD also asserted that its  
20 investigation was confidential pursuant to EEOC guidance. (*Id.* at CCSD-COM 012.)

### 21 **4. Review Journal’s Efforts to Obtain Search Information and** 22 **Information About What CCSD Was Withholding.**

23 The Review-Journal spoke to counsel for CCSD on February 17 and February 21,  
24 2017 regarding the February Request and CCSD’s response. (Exh. L; CCSD-COM 014-  
25 015.) During those calls, CCSD indicated it would provide specific information regarding  
26 responsive documents it was withholding or redacting, and also indicated it would try to  
27 comply with the Review-Journal’s request to provide responsive documents on a rolling  
28 basis. (*Id.* at CCSD-COM 014.)

In response to the Review-Journal's inquiry regarding CCSD's process for searching for and locating responsive documents, counsel for CCSD stated that the search was being conducted by CCSD's IT department, and that CCSD counsel was not involved in the search process. (*Id.* at CCSD-COM 014-015.) Counsel for the Review-Journal offered to work with CCSD's counsel and the IT department to narrow searches for responsive records, and offered to work with CCSD counsel to resolve any matters. (*Id.* at CCSD-COM 015.)

**5. The Review-Journal Amends Its Petition.**

The Review-Journal followed up numerous times regarding the February Request to attempt to get information about a specific production date, and to offer assistance resolving issues. (*See generally* Exh. M (CCSD-COM 016-017); Exh. N (CCSD-COM 018); Exh. O (CCSD-COM 019-021); Exh. P (CCSD-COM 022-23).) On March 1, 2017, the Review-Journal contacted CCSD counsel Adam Honey. (Exh. N; CCSD-COM 018.) During that call, Mr. Honey stated that—contrary to his representations during the February 17 and 21 phone calls—CCSD would not provide the requested documents as they were reviewed. (*Id.*) Mr. Honey also indicated CCSD would not be providing a privilege log, and stated that he could not provide any additional information about a log because he was not the decisionmaker. (*Id.*) The Review-Journal then contacted CCSD General Counsel Mr. McDade via email to offer to work with CCSD to resolve these disputes. (*Id.*) However, after its efforts to resolve the disputes over the February Request failed, the Review-Journal filed an Amended Petition on March 1, 2017.

On March 2, 2017, after the Review-Journal had attempted to contact Mr. McDade to resolve the disputes over the February Request, an assistant to Ms. McDade responded via email that “Mr. McDade has asked me to inform you that Mr. Honey is lead counsel in this matter, and that you should direct your correspondence to him.” (Exh. O; CCSD-COM 019-021.)

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1                   6.       **CCSD Finally Produces Some Documents, Reiterates Claimed**  
2                   **Privileges.**

3               On March 3, 2017—three weeks after the Review-Journal’s request—CCSD  
4 provided documents in response to the February Request. (*See* Exh. C; CCSD-C 001-027.)  
5 In a letter to counsel, CCSD stated it had redacted information pertaining to the names of  
6 individuals who reported a complaint or concern about Trustee Child, information including  
7 potentially identifying information about students, and personal phone numbers. (Exh. Q;  
8 CCSD-COM 024-027; *see also id.* at CCSD-COM 025 (identifying redactions).) CCSD’s  
9 letter also included several assertions of privileges. (*Id.* at CCSD-COM 025-027.)

10                   7.       **Review-Journal Continues to Seek Information.**

11               Counsel for the Review-Journal responded to CCSD’s letter via email that same  
12 day. (Exh. R at CCSD-COM 028.) In that email, the Review-Journal noted that CCSD’s  
13 response to the February Request—as with the District’s other records request responses—  
14 did not identify what additional documents CCSD was withholding, and did not identify the  
15 bases for withholding. (*Id.*) The Review-Journal reiterated its request that CCSD provide a  
16 log of withheld documents, and requested CCSD provide it with search information. (*Id.*)

17                   8.       **CCSD Finally Admits What it is Withholding and That it Limited**  
18                   **the December Request and February Request Unilaterally.**

19               CCSD responded to these requests via letter on March 13, 2017. (Exh V; CCSD-  
20 COM 037-044.) Although CCSD argued that is not required under the NPRA to provide  
21 information about the way it searched for responsive records, CCSD indicated it had  
22 unilaterally decided to search for the terms “Kevin Child” and “Trustee Child” in the  
23 Interact<sup>2</sup> email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike  
24 Barton, and each of the school principals in Trustee Child’s district. (*Id.* at CCSD-COM  
25 038.) According to CCSD, it believed those email boxes were “the most likely location for  
26 the responsive documents and that it has complied with the Nevada public records law in  
27

28 <sup>2</sup> Interact is CCSD’s email system. *See* <https://www.ccsd.net/departments/internet-interact-operations>.

1 this respect.” (*Id.* at CCSD-COM 038-039.)

2 In response to the Review-Journal’s inquiry regarding what documents were being  
3 withheld, CCSD asserted that “the only information that has not been provided is internal  
4 information received or gathered by the District in the court of its investigation of an alleged  
5 practice of unlawful practice of discrimination, harassment, or hostile work environment  
6 which is confidential and not required to be disclosed under the public records law.” (*Id.* at  
7 CCSD-COM 039.) Later that day, in response to an inquiry from the Review-Journal, CCSD  
8 admitted it was withholding one document—the Cole Report. (Exh. W; CCSD-COM 045-  
9 046.)

10 **9. Review-Journal Attempts One last time to Resolve Disputes.**

11 The Review-Journal responded to CCSD by letter on March 21, 2017. (Exh. X;  
12 CCSD-COM 047-051.) In that letter, the Review-Journal requested CCSD conduct  
13 additional searches for responsive records from additional custodians, including:

- 14 • All principals (not just those in District D);
- 15 • All trustees (including but not limited to Kevin Child);
- 16 • Cedric Cole and all other Diversity and Affirmative Action Programs staff; and
- 17 • The email addresses for every person who has sent or received responsive documents (including as cc) that have already been produced in response to the December Requests or the February Requests.

18 (*Id.* at CCSD-COM 048.) The Review-Journal requested that CCSD search those records  
19 for documents pertaining to the topics outlined in the February Request. (*Id.* at CCSD-COM  
20 048-049.) Further, the Review-Journal requested CCSD search the private emails and cell  
21 phone text messages of all CCSD trustees and Superintendent Skorkowsky for records  
22 responsive to the February Request. (*Id.* at CCSD-COM 049.) The Review-Journal also  
23 requested CCSD produce pertinent hard copy records from the Diversity and Affirmative  
24 Action Program’s hard copy file on Trustee Child, as well as any hard copy file CCSD  
25 maintains on Trustee Child. (*Id.*) The Review-Journal reiterated its continuing willingness  
26 to work with CCSD to narrow or sequence searches for the requested documents. (*Id.* at  
27 CCSD-COM 050.) The Review-Journal also explained the deficits in CCSD’s argument that  
28 the Cole report was protected from disclosure. (*Id.*)

CCSD declined to change its position regarding the withheld record (the Cole Report). (Exh. AA; CCSD-COM 065-066); *see also* Exh. BB (CCSD-COM 067-069).) CCSD did agree to search trustees' Interact emails, but did not provide any specific timeframe for when it would produce any responsive records. (Exh. AA at CCSD-COM 065; Exh. BB at CCSD-COM 067 (noting that CCSD "will offer an estimate of how long it will take to search the trustees [sic] email as soon as we can.").)

### III. ARGUMENT

#### A. CCSD Does Not Have Discretion To Pick and Choose Which Public Records To Produce.

In the December Request, the Review-Journal sought "incident reports," "[a]ll emails from CCSD staff, CCSD police or CCSD officials regarding school visits conducted by Kevin Child," and "[a]ll emails from emails from CCSD staff, CCSD police or CCSD officials regarding the [guidelines issued on December 5, 2016]." (Exh. G.) The Review-Journal then also asked for "any written complaints" about Trustee Child. (Exh. H.) Then, in the February Request, the Review-Journal asked for "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)" not previously produced that pertained to or referenced the actions or behavior of Trustee Child. (Exh. I.) In the February Request, the Review-Journal also specifically instructed CCSD as follows:

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. ...

(*Id.*)

Despite the language in the December Request and February Request seeking broader information and despite the Review-Journal's specific instruction in the February Request to define "record" broadly, CCSD unilaterally limited the scope of both requests. Worse, it dragged its heels about even telling the Review-Journal it did so, despite numerous

1 requests by the Review-Journal and despite the Review-Journal's oft-repeated offer to  
2 discuss matters such as search terms, described at length above (II. ("Facts and Procedural  
3 History").)

4 This is illegal on two levels. First, as the Review-Journal told CCSD, not only does  
5 the NPRA broadly mandate that its terms are to be interpreted broadly, but "record" itself  
6 is defined broadly. *See* Nev. Rev. Stat. § 239.010(1); Nev. Rev. Stat § 239.001(2), (3); *see*  
7 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. Adv. Op. 79, 266 P.3d 623, 626 (2011).  
8 As the Nevada Supreme Court has explicitly held:

9 The Nevada Public Records Act considers all records to be public  
10 documents available for inspection unless otherwise explicitly made  
11 confidential by statute or by a balancing of public interests against privacy  
or law enforcement justification for nondisclosure.

12 *Reno Newspapers v. Sheriff*, 126 Nev. 211, 212, 234 P.3d 922, 923 (2010). In short, there is  
13 nothing in the NPRA that limits "records" to those records CCSD decides are more likely  
14 to be responsive. (*See* Exh. V (at CCSD-COMM 038).)

15 Second, CCSD's position—that it is not only entitled to decide which custodians  
16 to search but that it can do so unilaterally and secretly—violates the NPRA. As CCSD  
17 should now finally be aware, the NPRA requires it to specifically tell a requester if it will  
18 produce documents requested. Nev. Rev. Stat. § 239.0107(1) requires CCSD to tell the  
19 Review-Journal if it could not (Nev. Rev. Stat. § 239.0107(1) (c)) or would not (Nev. Rev.  
20 Stat. § 239.0107(1)(d)) make the records available within 5 business days. Rather than do  
21 so, CCSD hid the fact that it was only searching emails—and only certain custodians—until  
22 March 13, 2017. (*See* Exh. V (at CCSD-COMM 038).)

23 Thus, CCSD violated the NPRA by limiting the "records" it searched and  
24 ultimately produced—and again by keeping this fact secret until receiving numerous  
25 demands from the Review-Journal.

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**B. CCSD Has Not Met Its Buren of Establishing The Application of Any Confidentiality Claim, Let Alone One That Outweighs the Interests In Disclosure.**

**1. The NPRA Starts From the Presumption That Public Records Must Be Open; CCSD Bears a Heavy Burden In Overcoming That Presumption.**

The NPRA sets forth that public records are to be made available to the public for inspection or copying. Nev. Rev. Stat. § 239.010(1); *Reno Newspapers*, 266 P.3d at 628. The purpose of the NPRA is to “foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]” Nev. Rev. Stat. § 239.001(1). To that end, the NPRA must be construed liberally, government records are presumed public records subject to the act, and any limitation on the public’s access to public records must be construed narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

As the Nevada Supreme Court noted in *Reno Newspapers, Inc. v. Gibbons*, “the provisions of the NPRA place *an unmistakable emphasis on disclosure.*” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011) (emphasis added). Pursuant to Nev. Rev. Stat. § 239.001(2)-(3), the provision of the NPRA “must be construed liberally” to ensure the presumption of openness and explicitly declares that any restriction on disclosure “must be construed narrowly.” Nev. Rev. Stat. § 239.001 (2)-(3).

As noted above, the NPRA provides that a governmental entity must provide timely and specific notice if it is denying a request because the entity determines the documents sought are confidential. It dictates that the state entity must provide a meaningful response within five (5) days of a request.<sup>3</sup> If a governmental entity refuses to provide part or all of a request on the grounds that it is confidential, the NPRA states that, within five (5) business days of receiving a request, the governmental entity must:

... provide to the person, in writing: (1) Notice of that fact; and (2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

Nev. Rev. Stat. § 239.0107 (1)(d).

<sup>3</sup> See Nev. Rev. Stat. § 239.0107 (1)(a)-(d).

1 If a statute explicitly makes a record confidential or privileged, the public entity need  
2 not produce it. Nev. Rev. Stat. § 239.010(1). A governmental entity seeking to withhold or  
3 redact records on some other basis, however, has a heavy burden. It must prove—by a  
4 preponderance of evidence—that the records are confidential or privileged *and* that the  
5 interest in nondisclosure outweighs the strong presumption in favor of public access. *See*,  
6 *e.g.*, *Gibbons*, 127 Nev. at 880, 266 P.3d at 628. In the *Gibbons* case, the Supreme Court  
7 analyzed the NPRA, surveyed its prior cases, and set forth the applicable steps and burdens  
8 a withholding entity must satisfy to withhold records:

9 First, we begin with the presumption that all government-generated records  
10 are open to disclosure. [] The state entity therefore bears the burden of  
11 overcoming this presumption by proving, by a preponderance of the  
12 evidence, that the requested records are confidential. [] Next, in the absence  
13 of a statutory provision that explicitly declares a record to be confidential,  
14 any limitations on disclosure must be based upon a broad balancing of the  
interests involved, [], and the state entity bears the burden to prove that its  
interest in nondisclosure clearly outweighs the public's interest in access. []

15 *Gibbons*, 127 Nev. at 880, 266 P.3d at 628 (citations omitted)<sup>4</sup>. Thus, as noted above, in  
16 addition to first establishing by a preponderance of the evidence that the records are  
17 confidential, CCSD also bears the burden in this case of establishing that the interest in  
18 withholding documents outweighs the interest in disclosure pursuant to the balancing test  
19 first articulated in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990);<sup>5</sup> *see*  
20 *also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468  
21 (2000) (“Unless a statute provides an absolute privilege against disclosure, the burden of  
22 establishing the application of a privilege based upon confidentiality can only be satisfied  
23 pursuant to a balancing of interests.”)<sup>6</sup>

24 <sup>4</sup> In *Gibbons*, the Supreme Court ordered disclosure of email log from Governor Jim  
25 Gibbons to specific individuals. 127 Nev. at 884, 266 P.3d at 630 (2011).

26 <sup>5</sup> Ordering disclosure of records pertaining to a criminal investigation of dismissal of  
27 charges against a suspect. 106 Nev. 636, 798 P.2d 148 (1990).

28 <sup>6</sup> Ordering disclosure of records documenting the use of county provided cell phones. 116  
Nev. at 628-629, 6 P.3d at 473 (2000).

And, in applying the *Donrey* balancing test, the burden remains squarely on the governmental entity:

In balancing the interests . . . , the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference . . . The citizen’s predominant interest may be expressed in terms of the burden of proof which is applicable in this class of cases; the burden is cast upon the agency to explain why the records should not be furnished.

*Id.* (quoting *MacEwan v. Holm*, 226 Or. 27, 46, 359 P.2d 413, 422 (Or. 1961)<sup>7</sup> and citing *Bradshaw*, 106 Nev. at 635–36, 798 P.2d at 147–48). Moreover, at every step of this analysis, privileges and limitations on disclosure must be construed narrowly. *DR Partners.*, 116 Nev. at 621, 6 P.3d at 468 (“It is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly.”); *see also* Nev. Rev. Stat. § 239.001(3) (requiring that any limitation on the public’s access to public records “must be construed narrowly”). Further, if a public record contains confidential or privileged information only in part, in response to a request for access to the record, a governmental entity shall redact the confidential information and produce the record in redacted form. Nev. Rev. Stat. § 239.010 (3).

## 2. The Public Interest in Information Relating to Wrongdoing By Trustee Child Outweighs CCSD’s Assertions of Confidentiality.

As discussed below, none of the privileges asserted by CCSD are applicable, nor do they outweigh the interest in full disclosure. Under the *Donrey* balancing test, the public interest in accessing information about allegations—and findings—of wrongdoing by Trustee Child outweighs any assertion of confidentiality, subject to the limitations set forth in the Court’s February 23, 2017 Order. While the Nevada Supreme Court has not addressed this specific issue, other courts have found that records pertaining to school districts’ investigations and findings of sexual harassment are public records. *See, e.g., Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 136 Cal. Rptr. 3d 395 (Cal. 2012) (finding that release of an investigation report and disciplinary record of a sexually

<sup>7</sup> Oregon Supreme Court ordering production of records regarding nuclear radiation sources. 226 Or. at 49, 359 P.2d at 423 (1961).

1 harassing teacher was warranted under California’s public records act due to the public’s  
2 right to know, even where an explicit privacy statute was also implicated); *Deseret News*  
3 *Pub. Co. v. Salt Lake County*, 182 P.3d 372, 27 IER Cases 1099 (Utah 2008) (holding that a  
4 sexual harassment investigation report should be produced because the report “provides a  
5 window . . . into the conduct of public officials.”).

6 *Marken* is particularly instructive here. In that case, a “reverse” public records action,  
7 a teacher challenged a school district’s planned disclosure concerning an investigation and  
8 finding that a teacher violated the district’s policy regarding sexual harassment. The  
9 documents at issue were remarkably similar to those that CCSD is withholding in this case:  
10 a report finding sexual harassment and related documents. Specifically, a UCLA professor  
11 had requested “copies of all public records ... concerning the investigation of Santa Monica  
12 High School teacher Mr. Ari Marken and the resulting decision to place him on leave in  
13 December 2008 for sexually harassing a thirteen-year-old girl, in violation of [district  
14 policy].” *Id.* at 400. The professor also sought records “regarding any substantial complaints  
15 about Marken’s improper behavior toward students.” *Id.* at 401.

16 As in this case, the school district in the *Marken* case had found that sexual  
17 harassment had occurred and took corrective action. *Id.* at 400-401. The lower court ordered  
18 that the records be released, and the teacher appealed. The appellate court applied a balancing  
19 test to evaluate whether the public interest in disclosure outweighed the privacy interest the  
20 teacher claimed weighed against disclosure, and concluded that the public interest prevailed:

21 ... release of the investigation report and disciplinary record (redacted as  
22 directed by the superior court) is required under the CPRA. Under  
23 governing case law, summarized above, the public’s interest in disclosure  
24 of this information—the public’s right to know—outweighs Marken’s  
privacy interest in shielding the information from disclosure.

25 *Id.* at 416-417.<sup>8</sup>

26 ///

27 <sup>8</sup> Just like this Court did in its February Order, the lower court in *Marken* had ordered that  
28 the documents be redacted to protect certain information; the redactions were not challenged  
on appeal. *Id.* at 1273, 414, footnote 19.

In this case, just as in *Marken*, the public interest in disclosure likewise outweighs any interest in keeping the records secret. Notably, In *Marken*, the teacher had a statutorily-protected interest in privacy that the court had to evaluate. In contrast, here, there is no statute directly on point. Thus, the argument that the report and related documents must be kept secret fails. CCSD’s own regulations do not trump the NPRA.

### 3. The Requested Records Are Not “Personnel Information.”

As discussed above, CCSD asserts in its March 13 letter that the requested records are “personnel information,” and then cites to a string of Revised Statutes and Nevada Administrative Codes, as well as an internal CCSD policy. (Exh. V at CCSD-COM 042-44.) Those citations, however, do not support CCSD’s unfounded assertion that the requested records are confidential personnel information. For example, CCSD cites Nev. Rev. Stat. § 239.010. (*Id.* at CCSD-COM 0043.) However, that statute—which is part of the NPRA—mandates that except as otherwise provided by specific statutory authority, all public records must be open to inspection. CCSD also cites Nev. Rev. Stat. § 386.350, a statute granting general powers to school board trustees to “attain the ends for which the public schools . . . are established and to promote the welfare of school children, including the establishment and operation of schools and classes deemed necessary and desirable.” It is unclear how this statute is applicable to CCSD’s assertion that the records are protected personnel information.

It certainly is not the case that internal CCSD policies can be created that trump the NPRA; Nevada statutory law is of course supreme. As the Nevada Supreme Court has explained, “[w]henver a legislature sees fit to adopt a general scheme for the regulation of particular subject, local control over the same subject, through legislation, ceases.” *Lamb v. Mirin*, 90 Nev. 329, 332, 526 P.2d 80, 82 (1974); accord *Crowley v. Duffrin*, 109 Nev. 597, 605, 855 P.2d 536, 541 (1993). This “plenary authority of a legislature operates to restrict and limit the exercise of all municipal powers.” *Lamb*, 90 Nev. 329, 333, 526 P.2d 80, 82 (citation omitted). Thus, once the legislature has adopted a scheme to regulate a particular subject—in this case, a general scheme for accessing public records—“[i]n no event may a

1 county enforce regulations which are in conflict with the clear mandate of the legislature.”  
2 *Lamb*, 90 Nev. at 333, 526 P.2d at 82 (citing *Mabank Corporation v. Board of Zoning*  
3 *Appeals*, 143 Conn. 132, 120 A.2d 149 (Conn. 1956)).

4 CCSD’s reliance on certain sections of Administrative Code is equally unavailing.  
5 For example, NAC 284.718 identifies specific personnel records as presumptively  
6 confidential. *See generally* NAC 284.718. The documents sought by the Review-Journal in  
7 the February Request, however, do not fall within any of those categories. Although CCSD  
8 has not provided specific assertions, it may be asserting that the documents fall within NAC  
9 284.718(5). Chapter 284 deals with the state of Nevada’s personnel system. Although CCSD  
10 does not specify which provision in NAC 284.718 it is relying on, one might assume that  
11 CCSD is relying on NAC 284.718(5). That subsection designates as confidential “[a]ny  
12 notes, records, recordings or findings of an investigation conducted by the Division of  
13 Human Resource Management relating to sexual harassment or discrimination, or both, and  
14 any findings of such an investigation that are provided to an appointing authority are  
15 confidential.”

16 This may be a tempting legal hook for CCSD. However, NAC 284.718(5) specifies  
17 only that notes, records, recordings, or findings pertaining to a claim against government  
18 personnel that “are provided to an appointing authority” are confidential. NAC 284.718(5).  
19 NAC 284.022 defines “appointing authority” as “an official, board or commission having the  
20 legal authority to make appointments to positions in the state service, or a person to whom  
21 the authority has been delegated by the official, board or commission.” By CCSD’s  
22 admission, Trustee Child is not a CCSD employee. (March 13 letter at p. 5.) Thus, any  
23 records pertaining to CCSD’s investigation of a non-employee do not fall within the ambit  
24 of NAC 284.718. Likewise, because Trustee Child is not a CCSD employee and therefore  
25 not “personnel,” NAC 285.726—another provision of the Administration Code CCSD cited  
26 in its March 13 letter—does not protect or limit access to the records requested by the  
27 Review-Journal.

28 ///

**4. The Deliberative Process Privilege Does Not Apply to the Requested Records.**

As for CCSD’s claim that the deliberative process privilege applies, that privilege protects high-level decision-making—not the information considered, as CCSD argues. *See, e.g., D.R. Partners*, 116 Nev.at 623, 6 P.3d at 469 (holding that documents excluded under the deliberative process privilege must be “predecisional and deliberative.”). In *DR Partners*, the Nevada Supreme Court explained that the deliberative process privilege allows governmental entities to conceal public records only if the entity can prove that the relevant public records were part of a predecisional and deliberative process that led to a specific decision or policy. 116 Nev. 616, 623, 6 P.3d 465, 469 (2000). “To establish that [the requested records] are ‘predecisional,’ the [governmental entity] must identify an agency decision or policy to which the documents contributed.” *Id.* (citation omitted). To determine whether a document is predecisional, a court “must be able to pinpoint an agency decision or policy to which these documents contributed. The agency bears the burden of establishing the character of the decision, the deliberative process involved, and the role played by the documents in the course of that process.” *Id.* (quoting *Paisley v. C.I.A.*, 712 F.2d 686, 698 (D.C.Cir.1983)).

**5. The Requested Records Are Not “Nonrecords.”**

Additionally, there is no valid argument that the formal October Report and its component parts are “informal notes” or other materials which constitute “nonrecords” as asserted by CCSD. Indeed, a consideration of the plain language of NAC 239.705—the provision cited in CCSD’s March 13 letter—shows that the requested records are not “nonrecords”:

**NAC 239.705 “Official state record” and “record” interpreted.**

1. For the purposes of NRS 239.080 and as used in NAC 239.570 to 239.750, inclusive, “official state record” or “record” means information created or received by a state agency under authority of law, regulation or other legal mandate or in connection with the transaction of public business that is maintained by the state agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the state agency, including, without limitation, all papers,

maps, photographs, financial statements, statistical tabulations, recorded media and other documentary materials, regardless of physical form or characteristics.

2. Nonrecord materials include, without limitation, published materials printed by a governmental printer, informal notes, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a state agency.

The statute that this regulation defining official state records subject to retention (and non-records exempt from retention) couples with is Nev. Rev. Stat. § 239.080. Nev. Rev. Stat. § 239.080 in turn pertains to “State records: Schedules for retention and disposition,” the statute does not pertain to the provisions of Chapter 239 that address records for “public records.”

On its face, rather than limiting the NPRA as CCSD dreams it does, NAC 239.705 only applies to records maintained by a state entity “as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the state agency.” *Id.* The code then provides an enumerated list of documents that are “records”—all of which are functional or ministerial in nature. The plain language of this section of the Nevada Administrative Code demonstrates that it does not exempt the Cole Report, nor any other documents related to the alleged misdeeds. Rather, Section 239.705 applies only to ministerial documents. *See Great Basic Water Network v. State Eng’r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) (The Court “will not go beyond a statute’s plain language if the statute is facially clear.”) (internal citations omitted); *cf. Simonoff v. Expedia, Inc.*, 643 F.3d 1202, 1209, n.5 (9th Cir. 2011) (“Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.”) (citations omitted).

Of course, as set forth above (§ III, A (“CCSD Does Not Have Discretion to Pick and Choose Which Records to Produce.”)) the reach of the NPRA is much broader than “ministerial documents.” And, narrowing the scope of the NPRA in the manner CCSD argues is at odds with its broad scope and reach discussed above. Finally, it notable that CCSD cited the inapplicable NAC 239.705 but ignored the following more broadly applicable

administrative code provision, NAC 239.101:

“Record of a local governmental entity” or “record” means information that is created or received pursuant to a law or ordinance, or in connection with the transaction of the official business of any office or department of a local governmental entity, including, without limitation, all documents, papers, letters, bound ledger volumes, maps, charts, blueprints, drawings, photographs, films, newspapers received pursuant to NRS 247.070, recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic.

This definition, of course, is much broader than that cited by CCSD. And it is the applicable one.

#### **6. FERPA Does Not Require Non-Disclosure.**

CCSD also claims that FERPA supports its efforts to keep records secret. The Family Educational and Privacy Rights Act (“FERPA,” 20 U.S.C. S 1232g) protects “student records” that contain “personally identifiable information.” However, this does not mean that all documents mentioning a student are protected. FERPA does prohibit the release of funding to an educational institution “which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein....).” 20 U.S.C. § 1232g(b)(1). However, the regulations implementing FERPA make clear that “education records” are limited as follows:

(a) The term means those records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3, definition of “education records.” A review of Exhibit F (at MEMO 006-009) shows that the Cole Report in fact has nothing to do with “student records.” FERPA just doesn’t apply.

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Moreover, any need to protect student names can be properly addressed by redactions consistent with this Court's February Order. As that order properly reflects, the NPRA requires redaction rather than full withholding wherever feasible:

A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

Nev. Rev. Stat. § 239.010(3). Thus, while there is no valid argument that FERPA applies, even if did, redactions could satisfactorily protect student names.

#### IV. CONCLUSION

For all these reasons, CCSD should be ordered to:

**(1) Conduct full searches for documents responsive to both the December Request and the February Requests, including:**

(a) Email searches of the following additional custodians:

- *All principals (not just those in District D);*
- *All trustees (including but not limited to Kevin Child);*
- *Cedric Cole and all other Diversity and Affirmative Action Programs staff; and*
- *The email addresses for every person who has sent or received responsive documents (including as cc) that have already been produced in response to the December Requests or the February Requests.*

(b) Besides email searches, conduct searches of sources including but not limited to hard copy records such as the Diversity and Affirmative Action Programs hard copy file on Kevin Child, any hard copy file CCSD maintains regarding Trustee Child. This search should result in the production of any and all documents pertaining to the investigation of Kevin Child, and the documents pertaining to the Cole Report and the Cole Report itself (a complete copy with notes).

1 (2) Produce all records that are responsive to the December Request and the  
2 February Request, including but not limited to the Cole Report;

3 (3) Limit any redactions made on documents responsive to either the  
4 December Request or the February Request to those that are consistent with the  
5 February Order (including by revising the redactions on the documents produced in  
6 response to the February Request to comply).

7 (4) Further, subject to a subsequent application for fees and costs, the Review-  
8 Journal is entitled to its fees and costs accrued in this matter. Nev. Rev. Stat. §  
9 239.011(2).

10  
11 DATED this the 29<sup>th</sup> day of March, 2017.

12 Respectfully submitted,

13 /s/ Margaret A. McLetchie

14 MARGARET A. MCLETCHE, Nevada Bar No. 10931

15 ALINA M. SHELL, Nevada Bar No. 11711

16 MCLETCHE SHELL LLC

17 701 East Bridger Avenue, Suite. 520

18 Las Vegas, NV 89101

19 Telephone: (702)-728-5300

20 Email: maggie@nvlitigation.com

21 *Counsel for Petitioner*



**EXHIBITS TO REVIEW-JOURNAL'S OPENING BRIEF IN  
LAS VEGAS REVIEW-JOURNAL V. CLARK COUNTY SCHOOL DISTRICT  
(Case No. A-17-750151-W)**

**DOCUMENTS PRODUCED BY CCSD**

***DOCUMENTS PRODUCED IN RESPONSE TO DECEMBER REQUEST (AS SUPPLEMENTED)***

<b>Exhibit</b>	<b>Bates Number</b>	<b>Description</b>
<b>Exh. A</b>	<b>CCSD A 001-036</b>	<b>Documents provided by CCSD on February 3, 2017.<sup>1</sup></b>
<b>Exh. B</b>	<b>CCSD B 001-033</b>	<b>Final version of documents provided by CCSD on February 24-27, 2017 (previously provided by CCSD in parts and with various redactions, revised redactions on February 10, 2017, February 13, 2017, February 24, 2017 and February 27, 2017).</b>

***DOCUMENTS PRODUCED IN RESPONSE TO FEBRUARY REQUEST***

<b>Exh. C</b>	<b>CCSD C 001-027</b>	<b>Documents provided by CCSD on March 3, 2017.</b>
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**PRIVILEGE LOGS PROVIDED BY CCSD**

<b>Exhibit</b>	<b>Bates Number</b>	<b>Description</b>
<b>Exh. D</b>	<b>CCSD-LOG-1 001-003</b>	<b>Privilege log provided by CCSD on February 13, 2017 for production of documents responsive to the December Request.</b>
<b>Exh. E</b>	<b>CCSD-LOG-2 001-004</b>	<b>Supplemental privilege log provided by CCSD on March 24, 2017 for production of documents responsive to the December Request.</b>

**ARTICLE AND MEMO**

<b>Exhibit</b>	<b>Bates Number</b>	<b>Description</b>
<b>Exh. F</b>	<b>MEMO 001-009</b>	<b>December 23, 2016 Las Vegas Review-Journal Article "CCSD Investigation Say Trustee Kevin Child Created Hostile, Intimidating Environment" With Memo Attached.</b>

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<sup>1</sup> CCSD used duplicative numbers and did not number some documents produced so the Review-Journal has assigned new Bates numbers with various prefixes to differentiate the productions for ease of review.

<b>COMMUNICATIONS BETWEEN REVIEW-JOURNAL AND CCSD</b>		
<b>Exhibit</b>	<b>Bates Number</b>	<b>Description</b>
Exh. G	CCSD-COM 001	<b>December 5, 2016 Public Records Act request</b> from Ms. Pak-Harvey of the Las Vegas Review-Journal to CCSD.
Exh. H	CCSD-COM 002	<b>December 8, 2016 Supplement</b> to December 8, 2016 Public Records Act request from Ms. Pak-Harvey of the Las Vegas Review-Journal to CCSD.
Exh. I	CCSD-COM 003-006	<b>February 10, 2017 Public Records Act request</b> from Ms. McLetchie to CCSD.
Exh. J	CCSD-COM 007-010	<b>February 15, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. K	CCSD-COM 011-013	<b>February 17, 2017</b> Email from Ms. Smith-Johnson in response to Ms. McLetchie's February 10, 2017 request.
Exh. L	CCSD-COM 014-0015	<b>February 21, 2017</b> Letter from Ms. McLetchie to Mr. Honey regarding her February 10, 2017 request.
Exh. M	CCSD-COM 016-017	<b>February 27, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. N	CCSD-COM 018	<b>March 1, 2017</b> Email from Ms. McLetchie to Mr. McDade.
Exh. O	CCSD-COM 019-021	<b>March 2, 2017</b> Email communications between Ms. McLetchie and Ms. Gerace.
Exh. P	CCSD-COM 022-023	<b>March 3, 2017</b> Email from Ms. McLetchie to Mr. McDade and Mr. Honey.
Exh. Q	CCSD-COM 024-027	<b>March 3, 2017 Response Letter</b> from Mr. McDade to Ms. McLetchie regarding her February 10, 2017 request.
Exh. R	CCSD-COM 028-29	<b>March 3, 2017</b> Email from Ms. McLetchie to Mr. McDade and Mr. Honey.
Exh. S	CCSD-COM 030-033	<b>March 10, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. T	CCSD-COM 034	<b>March 10, 2017</b> Email from Mr. Honey to Ms. McLetchie.
Exh. U	CCSD-COM 035-036	<b>March 13, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. V	CCSD-COM 037-044	<b>March 13, 2017</b> Letter from Mr. McDade to Ms. McLetchie in response to her March 3, 2017 email.
Exh. W	CCSD-COM 045-046	<b>March 13, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. X	CCSD-COM 047-051	<b>March 21, 2017</b> Letter from Ms. McLetchie to Mr. McDade.
Exh. Y	CCSD-COM 052-063	<b>March 24, 2017</b> Email from Mr. Honey to Ms. McLetchie.
Exh. Z	CCSD-COM 064	<b>March 24, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. AA	CCSD-COM 065-066	<b>March 27, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. BB	CCSD-COM 067-069	<b>March 27, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.
Exh. CC	CCSD-COM 070-072	<b>March 28, 2017</b> Email communications between Ms. McLetchie and Mr. Honey.

# EXHIBIT N

**pharan@nvlitigation.com**

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**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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# EXHIBIT V

**pharan@nvlitigation.com**

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**From:** Susan Gerace <sgerace@interact.ccsd.net>  
**Sent:** Monday, March 13, 2017 4:09 PM  
**To:** maggie; pharan@nvlitigation.com  
**Cc:** Carlos L. McDade; Adam Honey  
**Subject:** LVRJ v. CCSD  
**Attachments:** 03.13.17 Letter to McLetchie.pdf

Dear Ms. McLetchie:

On behalf of Carlos McDade and Adam Honey, please see attached correspondence 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

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Chris Garvey, Member

Pat Skorkowsky, Superintendent

March 13, 2017

Via U.S. Mail and E-mail

Maggie McLetchie, Esq.  
McLetchie Shell  
Attorneys at Law  
701 East Bridger Avenue, Suite 520  
Las Vegas, NV 89101

Re: LVRJ Public Records Requests re Trustee Kevin Child

Dear Ms. McLetchie:

This letter responds to your recent email correspondence dated March 3, 2017.

**A. Documents Already Provided**

With regard to the public records request from the Las Vegas Review Journal dated December 5, 2016 (supplemented on December 9), CCSD has provided responsive documents. On February 3, 2017 the District provided you with initial documents Bates labeled 001 to 036. On February 8, 2017, the District provided you with more documents Bates labeled 001 to 023 (which were later revised to include less redactions on February 10 and again on February 13). The District also produced additional documents Bates labeled 024 to 033 and a privilege log on February 13. Finally, pursuant to the Court's Order, on February 24, 2017 the District provided you with revised redacted documents Bates labeled 001 to 033 (and a revised page 1 on February 27).

With regard to the subsequent public records request from the Las Vegas Review Journal dated February 10, 2017, CCSD provided 27 pages of responsive documents on March 3, 2017. Along with the documents, the District provided a letter that set forth privileges and claims of confidentiality.

**B. Search Information**

In your March 3 letter, you have requested that CCSD provide you with "search information." This is not required by the Nevada public records law. However, as a good faith attempt to help resolve this dispute, and without waiving the right to object to any subsequent requests for information regarding CCSD's search process, CCSD has searched for the terms "Kevin Child" and "Trustee Child" in the following Interact email boxes: Superintendent Patrick Skorkowsky; Dr. Mike Barton (Chief Academic Officer); each of the School Associate Superintendents; and each of the school principals in Trustee Kevin Child's District (which is "District D"). Given that the District employs over 40,000 employees and does not have a global search engine/ability, the District searched each of the above-identified employee's email accounts individually. The District believes that the extensive individual searches already performed are

Ltr to Ms. McLetchie  
Page 2  
March 13, 2017

the most likely location for responsive documents and that it has complied with the Nevada public records law in this respect.

**C. Remaining Information**

You have also asked CCSD to disclose what additional documents are being withheld and why. To the best of our knowledge, the only information remaining that has not been provided is internal information received or gathered by the District in the course of its investigation of an alleged unlawful practice of discrimination, harassment, or hostile work environment which is confidential and not required to be disclosed under the public records law.

CCSD hereby asserts the following privileges and claims of confidentiality with regard to that remaining information. CCSD reserves the right to assert additional privileges or claims of confidentiality, if necessary, at a later date.

Pursuant to NRS 239.010, public records must be available to inspection unless there is a statutory exception or “unless otherwise declared by law to be confidential.”

**1. Discrimination and Harassment Under Federal Law**

Internal information received or gathered by the District in the course of its investigation of an alleged unlawful practice of discrimination or harassment is confidential and not required to be disclosed under the public records law. Federal statutes concerning discrimination and harassment as well as the regulations and case law interpreting those statutes provide ample authority for this proposition.

**(a) Legal Standard for Discrimination and Harassment**

It is an unlawful employment practice for an employer to discriminate against an individual with regard to the terms and conditions of that employment on the basis of the employee's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). In Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), the Supreme Court held that sexual harassment constitutes sex discrimination in violation of Title VII. Courts have recognized different forms of sexual harassment. In “quid pro quo” cases, employers condition employment benefits on sexual favors. In “hostile work environment” cases, employees work in offensive or abusive environments. Ellison v. Brady, 924 F.2d 872, 875 (9<sup>th</sup> Cir. 1991).

The standard for employer liability for hostile work environment harassment depends typically on whether or not the harasser is the victim's supervisor. An employer is vicariously liable for a hostile work environment created by a supervisor. In Vance v. Ball State University, 133 S. Ct. 2434 (2013), the Supreme Court rejected in part the EEOC's definition of “supervisor.” The Court held that an employee is a “supervisor” if the employer has empowered that employee “to take tangible employment actions against the victim, *i.e.*, to effect a ‘significant change in employment status, such as hiring, firing,

failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” The Court stated that an employer is liable for hostile work environment harassment by employees who are not supervisors if the employer was “negligent in failing to prevent harassment from taking place.” In assessing such negligence, the Court explained, “the nature and degree of authority wielded by the harasser is an important factor to be considered in determining whether the employer was negligent.” Also relevant is “[e]vidence that an employer did not monitor the workplace, failed to respond to complaints, failed to provide a system for registering complaints, or effectively discouraged complaints from being filed.”

“[A] hostile environment exists when an employee can show (1) that he or she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, (2) that this conduct was unwelcome, and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” Ellison, 924 F.2d at 875-76.

“[E]mployers are liable for failing to remedy or prevent a hostile or offensive work environment of which management-level employees knew, or in the exercise of reasonable care should have known.” Dawson v. Entek Int’l, 630 F.3d 928, 940 (9th Cir. 2011) (alteration in original) (quoting Ellison v. Brady, 924 F.2d 872, 881 (9th Cir. 1991)).

It is well-established that “notice of the sexually harassing conduct triggers an employer’s duty to take prompt corrective action that is reasonably calculated to end the harassment.” Swenson v. Potter, 271 F.3d 1184, 1192 (9th Cir. 2001) (internal quotation marks omitted). Once an employer is on notice of a sexual harassment complaint, it must conduct an investigation. Id. at 1193.

“Employers should impose sufficient penalties to assure a workplace free from sexual harassment. In essence, then . . . the reasonableness of an employer’s remedy will depend on its ability to stop harassment by the person who engaged in harassment.” Ellison, 924 F.2d at 882. Employers therefore have a duty to undertake a remedy that is likely to be effective. Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995). “In evaluating the adequacy of the remedy, the court may also take into account the remedy’s ability to persuade potential harassers to refrain from unlawful conduct.” Ellison, 924 F.2d at 882.

**(b) Liability for the Conduct of Non-Employees**

The Ninth Circuit has also held that an employer may be held liable for sexual harassment on the part of a private individual, such as the casino patron, where the employer either ratifies or acquiesces in the harassment by not taking immediate and/or corrective actions when it knew or should have known of the conduct. Folkerson v. Circus Circus Enterprises, Inc., 107 F.3d 754, 756 (9th Cir. 1997); see also Trent v. Valley Electric Ass’n, Inc., 41 F.3d 524, 526 (9th Cir. 1994) (where employer hires outside trainer to train its employees, a function often carried out by company supervisors, and outside trainer harasses employees, company may be liable under Title VII); Powell v. Las Vegas Hilton Corp., 841 F. Supp. 1024, 1028 (D. Nev. 1992) (where employer egregiously mishandled employees repeated complaints about harassment from casino customers, employer either ratified or was complicitous in the harassment);

Ltr to Ms. McLetchie

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29 C.F.R. § 1604.11(e) (employers may be liable for sexual harassment perpetrated by nonemployees "in the workplace, where the employer . . . knows or should have known of the conduct, and fails to take immediate and appropriate corrective action.").

(c) **Investigation Duties and Confidentiality**

United States Equal Employment Opportunity Commission ("EEOC") 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 U.S., Equal Employment Opportunity Commission, EEOC Notice No. 915.002, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, at § V(D)(1) re Failure to Complain (dated 6/18/99, in effect until rescinded or superseded); see also Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998).

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." See EEOC Notice No. 915.002, at § V(C)(1) re Confidentiality (emphasis added).

"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." See EEOC Notice No. 915.002, at § V(D)(1) re Failure to Complain.

In a case involving the Freedom of Information Act, the Ninth Circuit recognized that FOIA Exemption 6, 5 U.S.C.S. § 552(b)(6), permits the redaction of information that could be used to identify the authors of communications sent to a federal agency complaining about violations of law. Prudential Locations LLC v. United States Dep't of Housing and Urban Dev., 739 F.3d 424, 429-34 (9<sup>th</sup> Cir. 2013). The Ninth Circuit found that the authors had a cognizable personal privacy interest under Exemption 6 (and relevant factors included the agency's confidentiality policy). The court also found that the authors faced a significant risk of harassment, retaliation, stigma, or embarrassment if their identities were revealed; and there was no cognizable public policy interest that would have been served by revealing their identities, so revealing their identities would have constituted a clearly unwarranted invasion of personal privacy under Exemption 6. Id.; see also Cameranesi v. United States Dep't of Defense, 839 F.3d 751 (9<sup>th</sup> Cir. 2016) (the names of foreign students and instructors were exempt from disclosure under FOIA, 5 U.S.C.S. § 552(b)(6), because the disclosure of those names would constitute a clearly unwarranted invasion of personal privacy; the evidence demonstrated that disclosure of the identities of the foreign students and instructors could give rise to harassment, stigma, or violence as a result of their association with the United States, exactly the sort of risks that courts have recognized as nontrivial).

(d) Application of Law to the Facts

Here, 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 fulfill its obligation to protect its employees against potential retaliation is to withhold the identity of the employees and withhold the internal information received or gathered by the District in the course of its investigation of an alleged unlawful practice of discrimination or harassment. The District and public have an interest in a strong system to address complaints of discrimination and harassment that encourages reporting without fear of retaliation. Based upon the above federal law and EEOC guidance related to discrimination and harassment, and a balancing of the interests in this case, the investigatory information should remain confidential. See also NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

2. CCSD Policy and Regulation 4110

CCSD Policy and Regulation 4110 sets forth the procedures and requirements related to CCSD employment discrimination, harassment, and sexual harassment of employees. These procedures are based upon the federal authorities described above.

Of particular note, CCSD Regulation 4110(X) states: "All information gathered by the District in the course of its investigation of an allegedly unlawful discriminatory practices will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law."

The CCSD Board of Trustees are allowed to promulgate reasonable and necessary regulations in support of its mission. See NRS 386.350 ("Each board of trustees is hereby given such reasonable and necessary powers, not conflicting with the Constitution and the laws of the State of Nevada, as may be requisite to attain the ends for which the public schools . . . are established and to promote the welfare of school children, including the establishment and operation of schools and classes deemed necessary and desirable.")

Therefore, the internal information received or gathered by the District in the course of investigating the alleged discriminatory conduct of Trustee Child should be confidential under CCSD Regulation 4110.

3. Deliberative Process Privilege

The information is also not required to be disclosed because it is protected under the deliberative process privileged. DR Partners v. Board of County Commissioners of Clark County, 116 Nev. 616, 621 (2000).

The Nevada Supreme Court has recognized an "executive privilege" in Nevada in determining whether public records are "confidential by law." "The deliberative process or 'executive' privilege is one of the traditional mechanisms that provide protection to the deliberative and decision-making processes of the executive branch of government. . . ." DR Partners, 116 Nev. at 622. This privilege "shields from mandatory disclosure 'inter-agency or intra-agency memorandums or letters which would not be available

Ltr to Ms. McLetchie  
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March 13, 2017

by law to a party other than an agency in litigation with the agency[.]” *Id.* citing *Paisley v. C.I.A.*, 712 F.2d 686, 697 (D.C. Cir. 1983). It also permits “agency decision-makers to engage in that frank exchange of opinions and recommendations necessary to the formulation of policy without being inhibited by fear of later public disclosure,” 712 F.2d at 698, and, thus, protects materials or records that reflect a government official’s deliberative or decision-making process.” *Id.* at 623 citing *EPA v. Mink*, 410 U.S. 73, 89 (1973). “To qualify for non-disclosure under this privilege, the requested documents must be both predecisional and deliberative.” *DR Partners*, 116 Nev. at 623 citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151-54 (1975) and *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

Here, the internal information obtained in the investigation of alleged discrimination or harassment was used as part of the deliberative and decision-making process of District executives. It was both predecisional and deliberative in that it was used to help determine what, if any, actions would be taken with regard to Trustee Child. The information was used as part of the basis for the December 5, 2016 “Guidelines for Trustee Visit” memorandum. As such, the public records law should not require disclosure of that information.

#### 4. Nonrecord Materials

NAC 239.051 provides that certain materials of a local government entity are “nonrecord materials.” Those materials are not public records and are not required to be disclosed. Nonrecord materials “means published materials printed by a governmental printer, worksheets, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a local governmental entity.” NAC 239.051 (emphasis added).

A similar definition is applied to state agencies under NAC 239.705. The phrase official state record and record “does not include nonrecord materials. Nonrecord materials include, without limitation, published materials printed by a governmental printer, informal notes, unused blank forms except ballots, brochures, newsletters, magazines, catalogs, price lists, drafts, convenience copies, ad hoc reports, reference materials not relating to a specific project and any other documentation that does not serve as the record of an official action of a state agency.” NAC 239.705(2) (emphasis added).

To the extent that any remaining information constitutes worksheets, drafts, informal notes, or ad hoc reports, it falls within the definition of “nonrecord materials” it is not required to be produced. These NAC provisions are found in Chapter 239 which pertains to public records, and should be applied in this case.

#### 5. Employee Personnel Information

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).

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Of particular note, NAC 284.718 and NAC 284.726 explicitly protects the employment personnel files of state agencies. Local government entities are entitled to the same level of protection.

6. **Personally Identifiable Student Information**

To the extent that the documents contain personally identifiable student information it is 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.

7. **Personal Information**

Any personal information in the remaining documents is also not a public record. See NRS 239.010; NAC 239.051; NAC 239.101; NRS 239B.030(2); NRS 239B.040(1); NRS 603.070; NRS 603A.210; Donrey of Nevada, Inc. v. Bradshaw, 106 Nev. 630 (1990).

8. **Donrey Balancing Test**

Finally, the Supreme Court of Nevada has recognized that “any limitation on the general disclosure requirements of NRS 239.010 must be based upon a balancing or ‘weighing’ of the interests of non-disclosure against the general policy in favor of open government.” DR Partners v. Board of County Comm’rs, 116 Nev. 616, 622 (2000) citing Donrey, 106 Nev. at 635-36. A government entity cannot meet its burden by “voicing non-particularized hypothetical concerns.” DR Partners, 116 Nev. at 628.

Here, CCSD’s interest in investigating employees’ reports of , and protecting them from, a hostile work environment, intimidation, and retaliation clearly outweighs the public’s interest in obtaining access to internal investigatory information regarding the alleged conduct of Trustee Kevin Child. Revealing the internal investigatory information would be detrimental to the work environment and well-being of employees and create a chilling effect on future reporting. The fears of hostile work environment, intimidation, and retaliation are not hypothetical or speculative. The fears are stated expressly by some employees.

The purpose of the public record law is to foster democratic principles. CCSD believes the public’s interest in access to documents is to examine the functions of a public agency, and while this is an important interest, it may be accomplished with the documents that have already been provided. The public’s interest in reading internal investigation files is outweighed under Donrey by the District’s need to meet its statutory duty to have a confidential system for internal investigation of alleged employment issues, enabling it to discover and correct problems in the workplace, while protecting employees who report allegations of unwelcome conduct.

Sincerely,



Carlos L. McDade  
General Counsel

# EXHIBIT W

**pharan@nvlitigation.com**

---

**From:** Adam Honey <ahoney@interact.ccsd.net>  
**Sent:** Monday, March 13, 2017 4:48 PM  
**To:** maggie  
**Cc:** Susan Gerace; pharan@nvlitigation.com; Carlos L. McDade  
**Subject:** Re: LVRJ v. CCSD

Maggie,

It is a single document. An investigative report concerning allegations of harassment and discrimination by Trustee Child prepared by Cedric Cole of the Diversity and Affirmative Action Programs. It consists of 15 pages, which includes an 8 page report and 7 pages of notes.

Adam

maggie <maggie@nvlitigation.com> writes:

Thank you for detailing the privileges you are claiming, Adam and Carlos. Is a log listing the documents withheld forthcoming?

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:** Susan Gerace [<mailto:sgerace@interact.ccsd.net>]  
**Sent:** Monday, March 13, 2017 4:09 PM  
**To:** maggie <maggie@nvlitigation.com>; pharan@nvlitigation.com  
**Cc:** Carlos L. McDade <clmcdade@interact.ccsd.net>; Adam Honey <ahoney@interact.ccsd.net>  
**Subject:** LVRJ v. CCSD

Dear Ms. McLetchie:

On behalf of Carlos McDade and Adam Honey, please see attached correspondence 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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

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

---

**May 09, 2017****9:00 AM****Hearing****HEARD BY:** Williams, Timothy C.**COURTROOM:** RJC Courtroom 12D**COURT CLERK:** Louisa Garcia**PARTIES**

<b>PRESENT:</b>	Honey, Adam	Attorney
	McLetchie, Margaret A.	Attorney

**JOURNAL ENTRIES**

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

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



1 CASE NO. A-17-750151-W

2 DOCKET U

3 DEPT. 16

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DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9

LAS VEGAS REVIEW JOURNAL, )

10

Plaintiff, )

11

vs. )

12

CLARK COUNTY SCHOOL DISTRICT, )

13

Defendant. )

14

15

REPORTER'S TRANSCRIPT

16

OF  
HEARING: SEARCH PARAMETERS

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, MAY 9, 2017

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

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11 FOR THE DEFENDANT:

12 OFFICE OF THE GENERAL COUNSEL  
13 CLARK COUNTY SCHOOL DISTRICT  
14 BY: ADAM D. HONEY, ESQ.  
15 5100 WEST SAHARA AVENUE  
16 LAS VEGAS, NV 89146  
17 (702) 799-5373  
18 AHONEY@INTERACT.CCSD.NET

19 \* \* \* \* \*

1 LAS VEGAS, NEVADA; TUESDAY, MAY 9, 2017

2 9:11 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

09:01:06 5

6 THE COURT: Okay. We're going to move on to  
7 the contested calendar. Next up page 9. Las Vegas  
8 Review Journal versus Clark County School District.

09:12:05 10

9 MR. HONEY: Good morning. Adam Honey for  
10 Clark County School District.

11 MS. McLETCHE: Good morning, your Honor.  
12 Maggie McLetchie for Las Vegas Review Journal.

09:12:22 15

13 THE COURT: All right. Good morning to  
14 everyone. And let's see here. And this is a hearing  
15 regarding search parameters, is that correct, ma'am?

09:12:37 20

16 MS. McLETCHE: It's a little bit broader than  
17 that, your Honor. The legal issues that we have to  
18 address today are whether the Court has jurisdiction  
19 over the amended petition. Secondly, whether CCSD  
20 improperly limited responsive documents by limiting the  
21 searches. But more importantly, the sources it was  
22 searching.

09:12:53 25

23 And then, finally, whether or not the  
24 documents that CCSD is acknowledging it's withholding  
25 merit protection, your Honor.

09:12:54 1 THE COURT: All right. You have the floor,  
2 ma'am.

3 MS. McLETCHE: Thank you, your Honor. Your  
4 Honor, first in this matter, CCSD delayed. Then they  
09:13:02 5 played a game of hide the ball by refusing to tell the  
6 RJ how and where it was conducting searches. And now,  
7 as a final effort to avoid producing all responsive  
8 public records the RJ has asked for, it argues that  
9 this Court has no jurisdiction. This Court does have  
09:13:17 10 jurisdiction, your Honor.

11 First, the February request was a follow up to  
12 the December request. The Review Journal suspected  
13 what ended up being true that CCSD was not performing  
14 full searches of all appropriate sources. And in many  
09:13:33 15 aspects, the February request that was issued  
16 overlapped with the December request.

17 Second, your Honor, CCSD delayed providing  
18 responsive records and telling the Review Journal  
19 whether or not it was withholding records and how it  
09:13:49 20 was conducting searches. Now, it's relying on its own  
21 delay to argue no jurisdiction.

22 Third, your Honor, in responding to the  
23 February request, CCSD did not comply with  
24 NRS 239.0107. With regard to productions of documents,  
09:14:06 25 it said, we anticipate a further response. But a

09:14:10 1 further response is not the same as what subsection C  
2 of 239.0107 requires, which is a date certain for  
3 production, your Honor.

09:14:25 4 And, your Honor, the CCSD, in its initial  
5 response for the February 10th letter, did assert  
6 privileges indicating it was going to withhold  
7 documents. Indeed, it subsequently produced a  
8 privilege log indicating it has withheld documents.

09:14:42 9 Further, as it turns out, while CCSD never  
10 provided the Review Journal notice until probably --  
11 ten may be an underestimate on my part -- ten requests  
12 for information from myself. While CCSD never provided  
13 notice until March 13th, 2017, it was also withholding  
14 records because it was secretly limiting the sources it  
09:15:02 15 was searching for responsive records to both the  
16 February request and to the December request.

17 Your Honor, while CCSD has been playing hide  
18 the ball in this way, it was always clear that there  
19 was a live dispute between the parties when the RJ  
09:15:17 20 amended its petition, and it is clear now.

21 Further, judicial efficiency, obviously,  
22 argues in favor of this Court having jurisdiction. Its  
23 argument would allow public entities to delay  
24 meaningfully responding to public records requests to  
09:15:33 25 avoid judicial review. This is inconsistent with the

09:15:37 1 expedited treatment of NPRA matters, which is required  
2 by law in the Nevada Public Records Act, your Honor.

3 I just want to make clear at this stage  
4 because CCSD has produced some additional documents. I  
09:15:50 5 want to make clear that while there's a long history  
6 here, mostly involving me and the RJ trying to get  
7 documents and information, what we're asking for today  
8 is actually relatively straightforward. First, we're  
9 asking that CCSD produce documents consistent with the  
09:16:06 10 approach set forth in the February order.

11 While CCSD claims that the order isn't  
12 applicable to the outstanding issues in this case, it  
13 is for two reasons. The first, the February request,  
14 like I said, is in many aspects duplicative of the  
09:16:22 15 December request, which it turns out, again, CCSD also  
16 limited its searches for responsive documents in  
17 response to.

18 Second, while CCSD waived claims of  
19 confidentiality with regard to the December request,  
09:16:34 20 this Court did still consider claims of confidentiality  
21 and properly and appropriately balanced disclosures  
22 with confidentiality and properly applied the Nevada  
23 Public Records law.

24 To be clear, the Review Journal, while it  
09:16:51 25 broadly asked for documents, all records, all emails,

09:16:55 1 all records, and all emails in hard copy and electronic  
2 form, and broadly sought records, today we're not  
3 seeking all emails or all hard copy records responsive  
4 to the December or February requests. In an effort to  
09:17:11 5 limit disputes, this is what the RJ is currently  
6 seeking:

7           It is asking that CCSD conduct additional  
8 searches of emails including principals, not just those  
9 in District D. Trustee Child's misbehavior and alleged  
09:17:27 10 wrongdoing was widespread and not necessarily limited  
11 to those schools in his district.

12           The other emails that we want to be searched  
13 are those of Cedric Cole and other diversity and  
14 affirmative action program staff. CCSD has never  
09:17:42 15 searched either the hard copy or electronic documents  
16 of the diversity program staff.

17           With regard to hard copies, what we're asking  
18 for -- and, again, according to their March 13th  
19 letter, no searches for hard copies were ever  
09:17:58 20 performed. We're asking for hard copy records from  
21 diversity and action, the diversity and affirmative  
22 action programs, and any hard copy file that may exist  
23 on Trustee Child.

24           Again, we're shooting in the dark because they  
09:18:11 25 unilaterally limited how they searched. We don't know

09:18:14 1 what they're actually -- what's actually not being  
2 produced.

3 At this stage, we'd also request that CCSD  
4 provide a certificate from the custodian of records.

09:18:23 5 THE COURT: Well, you know, I actually thought  
6 about this. And I think it's important to make a  
7 couple of points on the record. No. 1, if you look at  
8 the statutory scheme as far as the application of the  
9 public records in general, the legislature spoke. And  
09:18:40 10 they felt that this chapter should be liberally  
11 construed. No. 1.

12 MS. McLETCHE: Correct, your Honor.

13 THE COURT: Secondly, and this is a very, very  
14 important issue because I thought about this yesterday.  
09:18:50 15 I was just looking for this exact provision from the  
16 NRS. But it's important to point out, and this  
17 actually goes to the jurisdictional issue in my  
18 opinion, because the average member of our public that  
19 might make a records request typically doesn't have the  
09:19:14 20 ability to hire a lawyer. And just as important, too,  
21 they are -- they might not be sophisticated. They  
22 don't conduct discovery. They might have a fairly  
23 general request to make.

24 And so one of the issues that jumped out at me  
09:19:31 25 as far as the provision is concerned, if you take a

09:19:33 1 look at NRS 239.0107(2), it says:

2           The provisions of this section must not be  
3           construed to prohibit an oral request to  
4           inspect or copy a public book or record.

09:19:47 5           And the reason why that's important, and I  
6           think the legislature contemplated that, you know what,  
7           the average citizen should be able to make a request  
8           because we have transparency in government, which is an  
9           important issue. It really and truly is.

09:20:02 10           Because we can't overlook the fact that  
11           whether you're a district court judge, or you're an  
12           administrator for the Clark County School District,  
13           you're a public servant and employee; right? You are.

14           And so that's an important issue, I think.

09:20:17 15           And so they understand that you don't have to be  
16           sophisticated and able to hire counsel. You should be  
17           able to make a request.

18           Secondly, and this is something you touched  
19           on, but I think it's actually more important because I  
09:20:30 20           read the entire record in this case. And I think  
21           Mr. Honey indicated that he's not the decision maker;  
22           right? And I get that. And I respect that. But we  
23           need to know who the decision maker is. Who's making  
24           these decisions.

09:20:42 25           And the reason for it is, I don't want to get

09:20:44 1 to the point where you have to do this, but if my  
2 orders aren't being complied with, pursuant to the  
3 statutory scheme, I have to make some tough calls;  
4 right? I do.

09:20:54 5 And the reason why I want to point everybody  
6 to NRS 239.012. And that's immunity for good faith  
7 disclosures or refusal to disclose information. Now,  
8 in order for me to determine whether or not there's a  
9 good-faith failure to disclose or refusal to disclose,

09:21:13 10 I need to know, No. 1, who's making the decision;  
11 right? You can't just say, I'm not the decision maker  
12 on this. Somebody -- the rubber meets the road with  
13 somebody.

14 Somebody is making the decision, Mr. Honey. I  
09:21:24 15 know it's not you. That's what you said, right? And  
16 that's okay. I'm not going to throw you under the bus  
17 at all. Trust me, sir. But somebody is making the  
18 decision, right? Is it the superintendent? Is it the  
19 assistant superintendent? Is it an administrator?  
09:21:36 20 Who's making the decision? I need to know that.

21 And the reason for it is, and this is  
22 specifically set forth in the statute. It says:

23 A public officer or employee who acts in  
24 good faith in disclosing or refusing to  
09:21:50 25 disclose information and the employer of the

09:21:54 1 public officer or employee, they're immune from  
2 liability for damages either to the requester  
3 or to the person to whom the information  
4 concerns.

09:22:04 5 So that tells me there's a good-faith  
6 requirement to do this, to produce the information.

7 Now, and there's immunity as a result of the  
8 good-faith; right? But what if the Court -- what if I  
9 decide that, you know what, these documents are not  
09:22:19 10 being produced in good faith. Right? Then if I make  
11 that factual determination under the statutory scheme,  
12 that person can be essentially assessed monetary  
13 damages, right, under the statute.

14 MS. McLETCHE: Correct, your Honor. And just  
09:22:37 15 to be clear, that's a separate provision from the  
16 provision that deals with fees and costs.

17 THE COURT: Right.

18 MS. McLETCHE: So that is a separate issue.

19 THE COURT: Right. It's a separate issue.

09:22:45 20 MS. McLETCHE: Yes. Absolutely.

21 THE COURT: So I need to know who the decision  
22 maker is because I think once we find out who the  
23 decision maker is, I think it might change things a  
24 little bit.

09:22:54 25 Now, you said, Well, Judge, we need to have a

09:22:56 1 custodian of records. I don't necessarily think that's  
2 what we need. I think we need to have someone  
3 designated as a managing-speaking agent on behalf of  
4 the school district. That individual who is making the  
09:23:06 5 decision. Right?

6 Because it's easy to say, Look, I'm not making  
7 the decision. And I believe Mr. Honey. I mean, he's  
8 the lawyer. I have no problem with that. But somebody  
9 is. And I need to know that, you know. And so I'm  
09:23:22 10 looking at it from that perspective.

11 From a jurisdictional perspective -- and  
12 understand, this whole statutory scheme is to be  
13 broadly applied, right? And so that tells me I have  
14 jurisdiction regarding the essence of what the initial  
09:23:37 15 complaint was or the initial request.

16 And I read the letter. I guess, it goes back  
17 to the December 5, 2016, initial letter or request.  
18 And the reason why I bring that up is essentially this:  
19 It's my recollection that that letter was -- and let me  
09:23:58 20 see if I can find it real quick. That was, I think,  
21 Exhibit G.

22 MR. HONEY: Yes, your Honor.

23 THE COURT: And let me see if I can find that.  
24 I have this all tabbed. Let me --

09:24:09 25 MS. McLEITCHIE: There are a lot of exhibits,

09:24:11 1 your Honor.

2 THE COURT: Yeah. Let me see if I can find  
3 your Exhibit G.

4 MS. McLEITCHIE: Are you looking for the  
09:24:15 5 December requests?

6 MR. HONEY: Yes.

7 THE COURT: Yes.

8 MR. HONEY: Petitioner's opening brief,  
9 Exhibit G.

09:24:20 10 THE COURT: Yeah. Let me see if I have it.  
11 And then it was Exhibit G was followed up with a  
12 supplementation, like, four days later.

13 MS. McLEITCHIE: That was Exhibit H, your  
14 Honor.

09:24:41 15 THE COURT: Right.

16 MS. McLEITCHIE: Right.

17 THE COURT: And so, in essence, you know, if I  
18 look at the request, and you have to -- and the reason  
19 why I think it's important to really point this out,  
09:24:52 20 because the statute says this is to be broadly  
21 construed, right? It really and truly is a request.

22 And No. 2, I think the statutory scheme  
23 contemplates it's not -- you know, this shouldn't be  
24 done by lawyers. Members of the public could make the  
09:25:08 25 request. I understand that reporters -- and I think

09:25:10 1 this was the educational reporter for the RJ, it's not  
2 a lawyer. I get that. They just want information.

3 And so I look at the request and thrust of the  
4 request for essentially this on December 5th: All  
09:25:22 5 incident reports filed by the Clark County School  
6 District staff and Clark County police, or any Clark  
7 County School District officials that involve grief  
8 counselors and Trustee Kevin Childs.

9 Secondly, all emails from the Clark County  
09:25:40 10 School District's staff, Clark County School District  
11 police, or Clark County officials regarding school  
12 visits conducted by Kevin Childs.

13 The next was, All emails and correspondence  
14 relating to the guidelines issued to Clark County  
09:26:01 15 School District staff on December 5th, 2016, regarding  
16 Trustee Kevin Child's visits to schools and interaction  
17 with staff. Okay. That's pretty broad. It really is.  
18 And that can encompass a lot. But I think the thrust  
19 of it was really focusing on the actions of Mr. Childs  
09:26:20 20 at the Clark County School District.

21 And then, further, it was just followed up  
22 four days later: Any written complaints the Clark  
23 County School District has received regarding Trustee  
24 Kevin Childs. And that's pretty broad.

09:26:33 25 And the way I interpret the subsequent

09:26:37 1 requests were just a narrowing the focus on that broad  
2 initial request as it relates to Mr. Childs. That's  
3 how I see that.

4 MS. McLEITCHIE: That's correct, your Honor.  
09:26:48 5 And I think there were also -- I'm not sure if you  
6 mentioned it, but there was also in the original  
7 request, there was also emails and correspondence.

8 THE COURT: Correct.

9 MS. McLEITCHIE: Regarding guidelines issued to  
09:26:55 10 the CCSD staff on December 5th. They were trying to  
11 figure out why this all happened. Why did it come  
12 about that Trustee Child was kicked off school.

13 THE COURT: Now, this is important to point  
14 out. And understand this, and I think this is also  
09:27:10 15 contemplated in the statutory scheme when you take a  
16 look at the Reno Newspaper Inc. versus Gibbons case,  
17 right? And so that case reversed a trial judge who  
18 denied a request as to a writ of mandamus seeking  
19 access to emails between a former governor and ten  
09:27:35 20 individuals, or in the alternative receive a detailed  
21 log, right?

22 And so, once again, we're kind of getting to  
23 the issue as it relates to how do you respond to these  
24 requests? And either you produce the documents and  
09:27:51 25 that's one avenue. You produce everything. But if you

09:27:54 1 have legitimate concerns of whether specific documents  
2 might be privileged, it's incumbent upon the school  
3 district to log each one, identify the document, and  
4 assert the basis for the privilege.

09:28:09 5 And when that happens, I can say, you know  
6 what, it appears that the governmental entity, even if  
7 they assert a privilege that might not have merit,  
8 that's okay. Because I'll make that call whether it  
9 has merit or not. But you got to comply. Right?

09:28:27 10 MS. McLETCHE: And you have to give the  
11 requester enough information so they can ascertain -- a  
12 log isn't necessarily required prelitigation, but you  
13 still have to provide specific authority --

14 THE COURT: Yeah.

09:28:37 15 MS. McLETCHE: -- detailing which records  
16 you're withholding and why. And the whole point is so  
17 that the requester isn't in the dark, which we were  
18 until March 13th, your Honor, about the fact that they  
19 had decided, even though, as you said, the Public  
09:28:50 20 Records Act is to be interpreted broadly, Ms.-- the  
21 reporter's requests were very broad, as you say. And  
22 the Nevada Public Records Act clearly says:

23 All public books and public records of a  
24 governmental entity must be open at all times  
09:29:03 25 during office hours to inspection by any person

09:29:06 1 and may be fully copied or an abstract or  
2 memorandum may be prepared from those public  
3 books and records.

4 All public books and records. Nowhere does it  
09:29:14 5 say, your Honor, that a public entity needs to just do  
6 what it determines, and CCSD has called, a good-faith  
7 effort to locate the sources it thinks are most likely  
8 to provide responsive documents.

9 The Review Journal is entitled to all the  
09:29:29 10 records it requests unless CCSD establishes by a  
11 preponderance of the evidence, your Honor --

12 THE COURT: I understand.

13 MS. McLEITCHIE: -- that the documents are  
14 confidential, and that that interest outweighs the  
09:29:40 15 interest in disclosure.

16 I'm sorry, your Honor.

17 THE COURT: No, I understand. I do.

18 MS. McLEITCHIE: So, your Honor, with regard to  
19 the good-faith issue, I did want to point out, and the  
09:29:51 20 certificate from the custodian of records, there are  
21 two issues there. Mr. Honey was saying he wasn't the  
22 decision maker. I've contacted Mr. McDade, and his  
23 office would tell me, contact Mr. Honey. So I was  
24 getting this sort of scarecrow, Talk to this person;  
09:30:03 25 talk to that person.

09:30:05 1 And I think Mr. Honey has also indicated that  
2 he didn't personally work on the searches. I don't  
3 know if it was the IT department or the public  
4 information office.

09:30:14 5 He's also contended that their email server  
6 has limits and that you have to search the entire --  
7 you can't search the entire email server database. We  
8 don't have evidence that that's the case. We have  
9 limited our requests, as I earlier discussed, in order  
09:30:30 10 to address their purported limits of their server.

11 But I will say, your Honor, a public entity  
12 should organize its information consistent with its  
13 duties and obligations under the Public Records Act.  
14 And it should not set up a server so you can't search  
09:30:47 15 emails very easily, and you have to go into each  
16 custodian. So I think that's an also -- that's also an  
17 issue here.

18 And, your Honor, with regard to the good-faith  
19 issue, I'll also -- I will also say --

09:30:57 20 THE COURT: See, one of the things I can't do,  
21 I can't order the school district as to how they should  
22 set up their IT department. I mean, that's going  
23 beyond the scope of what I'm here for.

24 MR. HONEY: You can't order the legislature to  
09:31:08 25 give us money to have an adequate IT department?

09:31:10 1 THE COURT: Yeah.

2 MR. HONEY: Okay.

3 THE COURT: Yeah. I mean, I can't do that.

4 MR. HONEY: Understandably.

09:31:13 5 MS. McLETCHE: Your Honor, I understand. But

6 throughout this litigation, frankly, I've been shooting

7 in the dark trying to go figure out where they searched

8 and how. And I think some actual evidence about -- an

9 actual document explaining these are -- this is what we

09:31:27 10 searched, and this is how we searched, and this is why

11 we couldn't search all the email database would be

12 appropriate at this juncture.

13 With regard to the limit of production of

14 responsive documents that we've been talking about a

09:31:40 15 little bit, I will point out that, your Honor, weekly,

16 if not more frequently, I talk to public entities about

17 public records requests. Many times I get on the call

18 with either the public information officer or the

19 attorney for the agency and their IT department. And

09:31:56 20 we're able to collaboratively work on two things.

21 First, where do you store your information? And how do

22 we make this easy for you to search for what we're

23 looking for? And second, how should we craft our

24 searches.

09:32:08 25 CCSD has taken the position that it never --

09:32:11 1 not only that it didn't have to give me that  
2 information, but that can it could, essentially,  
3 secretly withhold records by not providing information  
4 about how it was limiting searches, your Honor.

09:32:23 5 With regard to the issues about meriting  
6 protection, the briefing is extensive. Your Honor has  
7 read the case law and the Chapter 239 extensively. The  
8 Gibbons case that you mentioned, obviously, it starts  
9 with a presumption. And CCSD's burden isn't just to

09:32:43 10 come up with hypothetical concerns or to give me a  
11 five -- a letter within five days listing some  
12 boilerplate confidentiality claims. It's to come  
13 forward with a preponderance of the evidence to  
14 establish: First, that there's a valid claim of  
09:32:58 15 confidentiality; and second, even if there's a valid  
16 claim of confidentiality, they're not done.

17 They have to establish that that interest in  
18 that confidentiality is -- that outweighs the heavy  
19 presumption in favor of access. They haven't done that  
09:33:14 20 here, your Honor.

21 The public interest in disclosure is great.  
22 There's wide-ranging concerns with Trustee Child's  
23 behavior. One of those concerns, as CCSD has itself  
24 conceded, is his sexual harassment of employees and  
09:33:29 25 inappropriate sexual behavior. This is a systemic

09:33:31 1 concern with regard to CCSD from janitors to teachers,  
2 and now a trustee. Everyday that I open the newspaper,  
3 it seems that the reports of sexual harassment and  
4 abuse at CCSD only grow. And they raise grave  
09:33:45 5 concerns.

6 The public has a right to evaluate what  
7 Trustee Child did and how CCSD handled it. Public  
8 access is especially important in this case. I cited a  
9 case from California that dealt with sexual harassment  
09:33:59 10 by a teacher. But we're talking about a trustee, so  
11 the interest in this case is especially great. First,  
12 parents entrust their kids to a school district. They  
13 have the right to know how their kids are being kept  
14 safe.

09:34:11 15 Further, Title 7 is a federal law that  
16 furthers a broad public policy, the right of employees  
17 to be free from illegal discrimination and harassment.  
18 The public has a right to evaluate CCSD's compliance  
19 with Title 7. They want to keep their Title 7 process  
09:34:27 20 in a black box, and that does not promote the interests  
21 behind Title 7.

22 THE COURT: Does Title 7 -- I mean, because  
23 this is a very unique case because, typically, you see  
24 Title 7 cases involving employees; right?

09:34:40 25 MS. McLEITCHIE: Correct, your Honor.

09:34:41 1 THE COURT: And so Trustee Child is not an  
2 employee of the Clark County School District; right?

3 MS. McLEITCHIE: That is correct, your Honor.

4 THE COURT: So how does -- what application,  
09:34:51 5 if any, does it have to this case? Because I was  
6 thinking about your discussion. And it's my  
7 recollection there was an investigation done by  
8 diversity; is that correct?

9 MS. McLEITCHIE: That is correct, your Honor.

09:35:00 10 THE COURT: Okay. And that -- is that still  
11 an issue as far as that report is concerned?

12 MS. McLEITCHIE: Yes, your Honor. Not only do  
13 we want a full copy of the report and accompanying  
14 notes, we want a full search of the diversity  
09:35:10 15 department's emails and hard copy files about Kevin  
16 Child and about this matter.

17 But with regard to Title 7, you can sometimes  
18 be liable for -- an employer can sometimes be liable  
19 for the actions of -- they are strictly liable for the  
09:35:26 20 actions of a supervisor. Whether or not Trustee Child  
21 would fall into that category, I'm not sure. But you  
22 can even be responsible for subjecting your employees  
23 to a hostile work environment.

24 THE COURT: No. I understand that as far as  
09:35:38 25 potential liability. But I'm talking about any

09:35:40 1 privileges as far as the investigation is concerned  
2 because he's not an employee. He's a --

3 MS. McLEITCHIE: That -- I understand. Thank  
4 you for that clarification, your Honor.

09:35:48 5 Yes. They cite -- CCSD cites personnel  
6 records as a reason to withhold some of these records.  
7 And even if you were an employee, I don't think that  
8 those -- that those -- the internal guidance, for  
9 example, the internal policy would trump the Public  
09:36:03 10 Records Act.

11 But more --

12 THE COURT: I think there's always  
13 protections. I can redact certain issues like name and  
14 so on; right?

09:36:11 15 MS. McLEITCHIE: Absolutely, your Honor. And  
16 Kevin Child, as you point out, he's not an employee  
17 entitled to any of the protections that employees are  
18 entitled to with respect to some, but not all,  
19 personnel records.

09:36:25 20 And, your Honor, they rely on some EEOC  
21 guidelines that really have nothing to do with this  
22 case. Those guidelines -- they're under the Burlington  
23 Faragher --

24 (Court Reporter interrupts)

09:36:39 25 THE COURT: Slow down.

09:36:39 1 MS. McLETCHE: Burlington Faragher,  
2 F-A-R-A-G-H-E-R. Thank you.

3 Under that line of cases and under EEOC  
4 guidelines, employers do have a duty to prevent and  
09:36:54 5 address sexual harassment. But the guidelines that  
6 they rely on aren't talking about stamping those  
7 documents with finality with a seal that says never to  
8 be produced to anybody for any reason under any  
9 circumstances.

09:37:07 10 What they rely on is really about, while  
11 you're conducting an investigation -- and this  
12 investigation is over by all accounts. While you're  
13 conducting an investigation, your Honor, you are not  
14 supposed to -- for obvious reasons, you're not supposed  
09:37:23 15 to discuss the fact of the investigation, and you're  
16 supposed to keep the interviews confidential.

17 Now, at the end of an investigation, employers  
18 are actually encouraged to announce the outcome of  
19 their investigation. But the guidelines that they're  
09:37:36 20 relying on don't place any kind of blanket  
21 confidentiality. I've never seen, for example, in  
22 Title 7 litigation anybody say, Well, our investigation  
23 of this complaint is entirely -- should be filed under  
24 seal and can never be seen by anybody in the public.

09:37:51 25 And I think we have to look at Title 7 and,

09:37:54 1 again, the policies that its designed to protect, which  
2 is making sure that employers protect and -- protect  
3 employees and prevent sexual harassment.

4 Here CCSD works for the public. The public  
09:38:08 5 has a right to know what the school district did with  
6 regard to Trustee Child. Furthermore, Trustee Child is  
7 elected by the voters, and he works for them. They  
8 have a right to know and evaluate his actions and the  
9 actions of the CCSD officials who also work for the  
09:38:23 10 public, your Honor.

11 Thank you.

12 THE COURT: All right.

13 Mr. Honey, sir.

14 MR. HONEY: Thank you, your Honor. The  
09:38:30 15 December records request were fully dealt with by a  
16 writ filed in January and heard before this Court on  
17 February 14. Petitioner drafted approximately 6- or  
18 8-page order that this Court entered in regards to  
19 that.

09:38:48 20 The January writ and that order did not  
21 address the February 10th records request for a  
22 multitude of reasons. First of all, because in January  
23 the February records request didn't exist. And on  
24 February 14, the school district's initial 5-day period  
09:39:05 25 to respond to the February 10th request, which was a

09:39:09 1 Friday, had not even passed.

2 Now, petitioner wants you to apply an order  
3 that didn't even have the February 10th request as part  
4 of it. It wasn't part of the consideration. It wasn't  
09:39:27 5 part of the writ.

6 Furthermore, we have, in regards to the  
7 February 10th request, asserted privileges, and we  
8 asserted those privileges timely, unlike the original  
9 request.

09:39:40 10 We came to the Court on February 14. We had a  
11 very high burden to cross because we hadn't made timely  
12 privileges in regard to the December request consistent  
13 with Chapter 239. In regards to the February request,  
14 we certainly have.

09:39:58 15 Now, throughout her -- throughout petitioner's  
16 opening brief and reply, they keep talking about the  
17 Cole report, the Cole report. The Cole report has been  
18 improperly withheld. What they --

19 THE COURT: For the record, explain that  
09:40:11 20 report. What is that?

21 MR. HONEY: The Cole report has been produced  
22 by the petitioner, was the subject of a December 23  
23 article, and, therefore, has been in their possession  
24 since at least --

09:40:22 25 THE COURT: No. But, I mean, as far as the

09:40:25 1 Cole report, specifically what is that.

2 MR. HONEY: Yeah. I'm getting to that, your  
3 Honor. Just trying to make my record.

4 THE COURT: All right.

09:40:30 5 MR. HONEY: Thank you. So they've been in  
6 possession of this since at least December 23rd,  
7 despite their arguments apparently contrary to that.

8 The Cole report is the final report and  
9 recommendations. I think this is important because  
09:40:43 10 this goes to the due -- this goes to the deliberative  
11 process privilege, the recommendations from the Office  
12 of Diversity and Affirmative Action to the  
13 superintendent. Which then the superintendent based  
14 his December, I'm going to say, 5th or 9th guidelines  
09:41:01 15 memo for the visits of Trustee Child.

16 So when petitioner says we need to know what  
17 the district did, they do know what we did. Our Office  
18 of Diversity and Affirmative Action performed an  
19 investigation, conducted interviews, came up with a  
09:41:23 20 report, 4-page report with recommendations to the  
21 superintendent. That the superintendent then used to  
22 base his action of guidelines for Trustee Child's  
23 visits.

24 These guidelines were sent to all of the  
09:41:40 25 principals in Trustee Child's district, District D, and

09:41:46 1 other administrative personnel. That is -- I believe,  
2 that is respondent's answering brief, Exhibit 9, the  
3 guidelines, and it shows you exactly who all that went  
4 to.

09:42:01 5 Now, that report talks about the alleged  
6 conduct of Mr. Childs. I believe it has a conclusion  
7 that his actions would be -- could be construed as in  
8 violation of Title 7. It talks about how employees  
9 characterized their interpretation of his behavior and  
09:42:27 10 such.

11 That report, I didn't reproduce it. But I  
12 believe it was maybe Exhibit E, if I remember right;  
13 maybe F. It's Exhibit F. And that report is dated  
14 October -- excuse me, October 19, 2016, to  
09:42:53 15 superintendent, from Cedric Cole, executive manager,  
16 Diversity and Affirmative Action Program/ADA  
17 coordinator.

18 Now, at some point in -- I believe it was the  
19 reply brief, they indicate that they didn't get the  
09:43:06 20 full report. They have the full report. Okay. The  
21 report ends with the recommendations.

22 The privilege log that we provided on or about  
23 March 24 in regards to the February 10 request  
24 indicates a 4-page report was withheld from Cedric Cole  
09:43:23 25 to the superintendent. It's clearly this document.

09:43:29 1 THE COURT: And for the record, that's the  
2 Clark County School District superintendent's Office of  
3 Diversity and Affirmative Action, Clark County School  
4 District, dated October 19, 2016, is that correct?

09:43:44 5 MR. HONEY: Correct. So those were the  
6 recommendations provided to the superintendent, which  
7 then ended up with his guidelines for the trustee's  
8 visits.

9 Now, going back to the December 5th and  
09:43:57 10 December 9th request. The December 5th request, All  
11 incident reports filed by -- that involved grief  
12 counselors and Trustee Kevin Child. That does not ask  
13 for an investigative report from the Office of  
14 Diversity and Affirmative Action. Certainly doesn't  
09:44:17 15 ask for their investigative notes and any draft  
16 memorandums as well, short of the final report already  
17 in the petitioner's possession.

18 All emails from CC staff regarding school  
19 visits conducted by Kevin Child. Again, does not  
09:44:31 20 include investigative report, notes, memorandum,  
21 whether draft or final. And then all emails and  
22 correspondence relating to the guidelines issued to  
23 CCSD staff on December 5. Again, this is not  
24 investigative report, notes from the Office of  
09:44:50 25 Diversity and Affirmative Action's executive director.

09:44:57 1           The follow up, I'd like to add to this request  
2 any written complaints received regarding Trustee  
3 Child. That's not notes. That's not investigative  
4 report. That's not the memorandum that went to Trustee  
09:45:09 5 Child.

6           Now, I'm not disputing that they did -- that  
7 they didn't seek this in February 10. They did seek it  
8 on February 10th. And I'm certainly not saying that  
9 they aren't entitled to consider all the documents  
09:45:22 10 they've received by December 10 and say, you know what,  
11 there may be some things that we can reword or  
12 additional documents we need to ask. And that's really  
13 clear in their February 10th request. It's three pages  
14 long, and they literally named documents the same way  
09:45:37 15 they're named in the records previously produced. And  
16 that's fine. For example, they want all the records  
17 with regard to Kevin Child and the payback programs  
18 because they received records from us in regards for  
19 the payback program.

09:45:50 20           Okay. But that February 10th request is  
21 entirely different. Now, in regards to the February  
22 10th request, the statute says we have five days to  
23 notify them.

24           THE COURT: And, Mr. Honey, understand this, I  
09:46:02 25 realize the statute has specific timelines. I do

09:46:06 1 understand potentially it might be difficult to respond  
2 within a time period.

3 MR. HONEY: Sure.

4 THE COURT: I realize there were attempts made  
09:46:13 5 to at least talk and the like. At the end of the day,  
6 and this is what -- this -- you have to understand what  
7 my role is in this regard. I have to make a  
8 determination: No. 1, have the specific documents  
9 request for public records been complied with? And so  
09:46:30 10 what's the best way for me to make that determination  
11 as a trial judge? And the reason why I say that is  
12 this, Why wouldn't a list of all documents produced  
13 and, hypothetically, for its privileges, you know, just  
14 like a traditional privilege log? Because that makes  
09:46:52 15 my job a lot easier. And also as far as the specific  
16 confidentiality, if there's issues regarding in camera  
17 and the like, so I can take a look at it.

18 Because at the end of the day, this is how I  
19 see it, Whether there is a privilege applicable to  
09:47:14 20 certain documents or not, that ultimate decision is not  
21 made by the school district. It's made by the trial  
22 courts. Secondly, if the trial courts err in that  
23 regard then, of course, there's an appeal. I mean, I  
24 get that.

09:47:28 25 And so that's why I've proceeded somewhat

09:47:31 1 cautiously with this issue. But at the end of the day,  
2 we have to get there. If you understand where I'm  
3 going.

4 MR. HONEY: I understand. Okay. So the only  
09:47:39 5 thing that we have withheld has been the investigative  
6 report and the investigative materials from the Office  
7 of Diversity and Affirmative Action. These claims that  
8 somehow we've --

9 THE COURT: Now, my question is, Have I  
09:47:52 10 overlooked that? Or have those been logged and  
11 identified?

12 MR. HONEY: Correct. It's Exhibit E from the  
13 petitioner's opening brief. It's in black bold. The  
14 first page indicates six pages of internal draft.

09:48:12 15 THE COURT: Okay.

16 MR. HONEY: It has all the dates on it. Now,  
17 it does say, Basis for withholding, see attached  
18 correspondence dated March 13, 2017, for basis of  
19 withholding. But we actually put our basis of  
09:48:31 20 withholding the investigative materials in the  
21 March 3rd letter.

22 Ms. McLetchie responded to our March 3rd  
23 production on the same day by email wanting further  
24 explanation of the withholdings of documents. I think  
09:48:47 25 she asked for a privilege log at that time too.

09:48:49 1 We responded to that email on March 13th, and  
2 then produced the privilege log. It does say  
3 March 21st at the bottom, but if I believe right, it  
4 was provided to Ms. McLetchie or petitioner, if you  
09:49:01 5 will, on March 24th.

6 MS. McLETCHE: Hold on one second. Yes.  
7 It's Exhibit Y to our opening brief. It was attached  
8 on March 24th.

9 MR. HONEY: And that's the email?

09:49:17 10 MS. McLETCHE: Email attaching the log, I  
11 believe.

12 THE COURT: And Exhibit Y and Exhibit I think  
13 it's E, are those the same exhibits except for the  
14 email?

09:49:36 15 MR. HONEY: If you'd like Ms. McLetchie and I  
16 to approach the bench, I have Exhibit E here. We can  
17 compare it. I'm not sure for Exhibit Y. Is that what  
18 Exhibit E is?

19 THE COURT: It appears to be.

09:49:49 20 MR. HONEY: Does it have -- on the privilege  
21 log portion, your Honor, does it have March 21, 2017,  
22 at the bottom?

23 THE COURT: Yes.

24 MR. HONEY: Yes. Those are the same privilege  
09:49:57 25 log. And that identifies what we withheld. This idea

09:50:01 1 that somehow we haven't provided a hard file on Kevin  
2 Child, there is no hard file on Kevin Child. If  
3 there's a hard file and we withheld it, it would be in  
4 our privilege log. If the petitioner is aware of some  
09:50:13 5 hard file that we aren't, we'd ask that she tell us  
6 about it.

7 THE COURT: And we'll get back on the record.  
8 It's my understanding Exhibit E to plaintiff's opening  
9 brief is the privilege log that was produced in this  
09:51:26 10 matter by the Clark County School District.

11 MR. HONEY: One of several. We supplemented  
12 many times. That's why you see some highlighted. The  
13 highlighted stuff is things that were supplemented  
14 later.

09:51:34 15 THE COURT: Okay.

16 MR. HONEY: This was our --

17 MS. McLETCHE: This --

18 MR. HONEY: I think our last or most recent.

19 MS. McLETCHE: Mr. Honey, I don't want to  
09:51:40 20 interrupt --

21 MR. HONEY: That's fine.

22 MS. McLETCHE: -- but just to be clear, the  
23 prior logs were in response to the December request.  
24 This bold -- these bold items are the -- in response  
09:51:48 25 purportedly to the February request; correct?

09:51:50 1 MR. HONEY: Ms. McLetchie is absolutely  
2 correct on that. That's a fair representation.  
3 Accurate.

4 Now, in regards to our searches, petitioner  
09:52:00 5 keeps asking to -- who we searched? How we searched?  
6 Where we searched. There's nowhere in the statute that  
7 that's provided for.

8 We have 350,000 students. We have over 40,000  
9 employees. Our primary purpose is educating the  
09:52:12 10 children of Clark County, Nevada. We have ten  
11 attorneys for over 350 school campuses not including  
12 all of our other administrative locations.

13 The searches that we've done in regards to the  
14 records request, in addition to looking for any hard  
09:52:39 15 files or documents that she's asked for, they've asked  
16 for a lot of emails.

17 We believe we are in the best position to  
18 determine which documents -- which persons or employees  
19 need to be searched to logically find information in  
09:52:56 20 regards to alleged misconduct of Trustee Child. To  
21 that end, we have searched approximately 85 people  
22 starting at the top of the organization, if you will.  
23 We have searched all seven trustees.

24 THE COURT: Was that information given to the  
09:53:15 25 petitioner, as far as all the searches?

09:53:18 1 MS. McLEITCHIE: Not in very clear form, your  
2 Honor. So I'm taking notes.

3 MR. HONEY: Well, she asked for all the  
4 trustee's emails, and we provided them. She knows she  
09:53:26 5 has those. So I don't know if she can take notes on  
6 that. She knows she's been provided -- If I can  
7 continue on my pyramid down, the superintendent has  
8 been searched.

9 The chief instruction officer of the district,  
09:53:38 10 Mike Barton, has been searched.

11 In her March 21 letter that is not a records  
12 request, she asked that we search all of the to's,  
13 from's, and cc's from any document that had ever been  
14 produced, whether it was relative to the December  
09:53:55 15 records request or the February records request.

16 We did it for the February request because we  
17 believe that's the only request at issue. The December  
18 requests were and the records produced in regards to  
19 those, was resolved when petitioner drafted,  
09:54:09 20 executed -- the Court executed, and she filed with a  
21 notice of entry of order, the order in regards to the  
22 December request and the January writ. So she  
23 identified 18 more people on the to's, from's, cc's for  
24 February 10.

09:54:25 25 Twelve of them had already been searched. The

09:54:28 1 additional six included a couple of secretaries, and  
2 additional administrative people, including people from  
3 the instruction unit, which would be people that work  
4 directly under Mike Barton, the chief instruction  
09:54:41 5 officer, at our administrative offices, high ranking  
6 officials.

7 We then searched or previously had searched  
8 already all 17 school associate superintendents. These  
9 superintendents are the direct bosses, the next chain  
09:54:56 10 of command, for all the principals of the entire  
11 district. Covers all of them. Not just District D but  
12 the entire district.

13 If a principal were to receive a complaint, a  
14 concern, an email, their chain of command is to  
09:55:14 15 logically provide that to their direct superior, which  
16 is the school assistant superintendents. Again, we  
17 searched all 17 of those.

18 We then searched all 53 principals in Kevin  
19 Child's district, District D, and provided records in  
09:55:37 20 regards to those.

21 This comes up with a total of, I believe, 85  
22 persons whose records have been searched in regards to  
23 these emails. We believe these logically will lead to  
24 any complaints, any concerns, in regards to the  
09:55:55 25 trustee. We don't think we need to search all 40,000

09:55:58 1 employees. And, of course, I'll concede that  
2 petitioner has not asked us to search 40,000 employees.  
3 But for the first time on December 21, not in any  
4 record request, not in any amended writ, but just by  
09:56:14 5 correspondence she says, you know what, now, I want you  
6 to also search all the principals in the whole district  
7 wide. Just because I want you to. Because there might  
8 be something in there.

9 I don't know if that -- I don't know if that  
09:56:30 10 logically passes muster. She basically wants us to  
11 quadruple the size of our prior searches with employees  
12 that are at the low end of the totem pole, so to speak,  
13 of what we've already searched. Meaning they're lower  
14 level employers than the school associate  
09:56:49 15 superintendents, the superintendent, the chief  
16 instruction officer, and the trustees.

17 Now, so the idea then that we have withheld  
18 documents since December I don't believe is accurate  
19 given the record request that was provided to us in  
09:57:20 20 December.

21 And I'm not quite sure why petitioner wants to  
22 use the Court's time to argue over the Cole report when  
23 they disclosed in their opening brief they've had it  
24 since at least December 23rd. If they had any doubts  
09:57:39 25 whether or not that was the full report, I don't know,

09:57:41 1 maybe they thought the recommendations on page 4 isn't  
2 a logical conclusion to the report. That would have  
3 been clarified when we gave them the privilege log,  
4 Exhibit E, on March 24.

09:57:54 5 And they certainly never asked us, Hey, is  
6 that the full Cole report? Which kind of leads us to  
7 all their disingenuous offers to help, offers to  
8 assist. There's never been a single substantive offer  
9 to help.

09:58:10 10 I wrote that portion of my brief about how  
11 disingenuous it was before I even got their opening  
12 brief because I knew all of those silly emails were  
13 going to end up in the brief.

14 We offered to help ten times, she told us  
09:58:24 15 today. There was no offer to help. You don't  
16 substantively tell us what you want, how you're going  
17 to help.

18 A perfect example of this is, despite all of  
19 these complaints of the searches we performed, the  
09:58:40 20 March 21st letter asks us to search these three --  
21 approximately 300 additional principals using the  
22 search terms Kevin Child, Trustee Kevin Child. Those  
23 are the search terms we used originally.

24 Now, in her reply brief she says no, no, no.  
09:58:57 25 We never agreed that those were the same. But then in

09:59:00 1 her reply brief, she doesn't tell us what search terms  
2 she wants us to use. So despite all these offers to  
3 help, it's still apparently double secret probation of  
4 what terms she actually wants us to use.

09:59:21 5 And their reply brief --

6 THE COURT: Here's my -- I have a question for  
7 you because I don't understand what happens from an IT  
8 perspective because I don't work for the school  
9 district.

09:59:34 10 MR. HONEY: Sure. It's -- Let me tell you,  
11 it's confusing, your Honor.

12 THE COURT: I understand. When I'm taking a  
13 look, and I think this is from page 24 --

14 MR. HONEY: Of what document, your Honor?

09:59:46 15 THE COURT: Of the opening brief. And it's a  
16 bullet at line 17.

17 MR. HONEY: Yes, sir.

18 THE COURT: Which provides all principals (not  
19 just those in District D) --

10:00:05 20 MR. HONEY: So --

21 THE COURT: How do those -- how do you search  
22 the principals? I'm just curious.

23 MR. HONEY: Yeah.

24 THE COURT: I have no idea.

10:00:11 25 MR. HONEY: Sure. So the IT department, as I

10:00:13 1 stated before, our technology is not particularly  
2 advanced. We are -- you know, we're allotted money to  
3 educate the students of the district, and we have to  
4 spend it accordingly, as we see fit. We find it see  
10:00:26 5 fit to try to keep class sizes down, something that we  
6 aren't always successful at, and in order to employ  
7 teachers to fill those classrooms. So IT, when they  
8 search these, if it's two terms, such as Kevin Childs  
9 and Trustee Childs, for every person they search, they  
10:00:42 10 have to manually search each person. So one principal  
11 is two searches.

12 THE COURT: So when you say manually, can they  
13 search it from, I guess, the IT department?

14 MR. HONEY: Yes, yes. And what we -- what we  
10:00:55 15 generally do, the head of our IT department conducts  
16 the search. And the reason we do that is we don't want  
17 to lay something off as important as a response to a  
18 records request on lower level employees. We want to  
19 have the expert of the IT department conduct these  
10:01:12 20 searches.

21 Now, I do think in setting -- I do think in  
22 setting these up, I do think that they can -- and I  
23 just learned this recently. They can spend several  
24 hours setting a search up, and then it runs. But then  
10:01:30 25 they have to monitor the run. So in full disclosure,

10:01:34 1 if you were to order us today to search the 300  
2 additional principles, kind of as a way of getting to  
3 the end of this, that would proximately take, I think,  
4 eight to ten hours of the head of our IT department.

10:01:51 5 THE COURT: And primarily, that would be  
6 because they have to monitor the search?

7 MR. HONEY: Correct. Oh, and also too, is  
8 because our system crashed, they have to do this on the  
9 weekend or after hours. Our system can't withstand  
10:02:04 10 those types of searches during the regular work day.

11 THE COURT: But for the record, all of the  
12 principals in District D, the same district upon which  
13 Kevin Childs is a trustee, those have all been  
14 searched?

10:02:17 15 MR. HONEY: Correct. And I'll point out that  
16 when the superintendent put out his memo and the  
17 guidelines of the visits, considering that he would  
18 have had all the information involved in the situation  
19 and the allegations against Trustee Child, he in  
10:02:29 20 December when he put out that memo saw fit to send it  
21 to the high level administrators and the principals of  
22 District D only.

23 So I don't want it to -- because I think they  
24 might be used in one of their briefs that cherry picked  
10:02:41 25 who we're searching. I don't think we cherry picked at

10:02:43 1 all. We chose those persons that would logically lead  
2 to the information that was sought.

3 Now, if the Court feels that we should do 300  
4 additional searches, then sobeit. We will obey the  
10:02:57 5 Court's order. But I don't think there's anything  
6 nefarious, and I don't think there's anything cherry  
7 picking in searching the trustees, the superintendents,  
8 the chief instruction officer, all of the school  
9 associate superintendents, and all the principals of  
10:03:11 10 District D.

11 THE COURT: So I want to make sure I  
12 understand this. Have all -- I think you said this,  
13 but all trustees, their emails have been searched?

14 MR. HONEY: Correct.

10:03:22 15 THE COURT: Okay.

16 MR. HONEY: Non-district employees, as she  
17 likes to point out. The Trustee Child isn't an  
18 employee.

19 THE COURT: Okay. What about Mr. Cole and all  
10:03:31 20 other diversity --

21 MR. HONEY: No.

22 THE COURT: -- and affirmative action  
23 programs.

24 MR. HONEY: No. We have not searched the  
10:03:37 25 Office of Diversity and Affirmative Action, which is

10:03:40 1 consistent with his affidavit is the equivalent of the  
2 Nevada Equal Rights Commission or the Federal EEOC  
3 Office. We're such a big employer. We have, you know,  
4 over 40,000 employees that we have a whole office to  
10:03:53 5 deal with discrimination, harassment, and complaints of  
6 the nature that involved in this matter.

7 THE COURT: How many employees are in that  
8 office?

9 MR. HONEY: That I don't know. If you -- if  
10:04:05 10 you counted support staff, I would say six to ten, but  
11 I'm not certain.

12 THE COURT: Six to ten.

13 MR. HONEY: But one of the things that I'm  
14 concerned about is you indicated about redacting names.

10:04:20 15 THE COURT: Yes.

16 MR. HONEY: And I'm all for redacting names,  
17 your Honor, and we've done this before. The problem is  
18 just redacting names doesn't keep the alleged trustee  
19 from identifying who complained against him. I'll give  
10:04:38 20 you an example.

21 One of the documents that we produced in this  
22 case was in regards to an Aloha Dance. And the only  
23 thing we were allowed to redact was the principal's  
24 name. Now, I may be mistaken on this, but I don't  
10:04:51 25 think we even were allowed to redact the school. Okay.

10:04:54 1

THE COURT: Right.

2

MR. HONEY: So the worst-case scenario,

3

Trustee Child knows that somebody from school X

4

complained about him for Aloha Dance. Well, how many

10:05:07 5

Aloha Dances are in school X or any darn school in the

6

school district? He's going to know who it is.

7

THE COURT: But how is that problematic?

8

Really.

9

MR. HONEY: It's problematic because just like

10:05:18 10

the EEOC guidelines and the emails that we've attached

11

where people have vocalized their concerns of

12

retaliation, or being harassed, or being addressed by

13

Kevin Childs about their complaint about his behavior,

14

or the allegation about his behavior, that it doesn't

10:05:37 15

protect them. It doesn't let them be anonymous.

16

Now, petitioner talked about, Well, during an

17

investigation, let's keep it anonymous. If the message

18

to our 40,000 employees is, yes, we have an Office of

19

Diversity and Affirmative Action. If you have

10:05:55 20

complaints of sexual harassment or discrimination, it's

21

going to be protected during the investigation period

22

only. So the investigation lasts two weeks;

23

thereafter, it's free rein.

24

Anyone in the public including the newspaper,

10:06:11 25

whomever, can request that information. There's

10:06:15 1 nothing private in this office other than during the  
2 time of the investigation.

3 And, I guess, my -- I guess, what it comes  
4 down to is what democratic principle is furthered by  
10:06:25 5 that? Because we can't look at this case in a  
6 vacuum -- or maybe we should look at it in a vacuum;  
7 maybe I have that backwards, in that, in this matter  
8 they already have the report. They already have the  
9 school district guidelines. They already have, I don't  
10:06:40 10 know, approximately 150 pages of emails from all the  
11 different individuals that I've already identified.

12 So what further democratic principle is  
13 furthered by giving them the draft memo, and the notes,  
14 and now emails from the Office of Diversity and  
10:06:59 15 Affirmative Action? It's a huge signal to all the  
16 employees saying, don't go there. Don't complain to  
17 them. Because its -- it's not private. It's not  
18 anonymous.

19 Now, this would be a different thing if it was  
10:07:11 20 a law enforcement agency investigating a crime, that  
21 the allegations were so serious that they were criminal  
22 in nature. Sure. Law enforcement, I think everybody  
23 understands if they make complaints like that to one of  
24 those types of, you know, NERF, or EEOC, or Office of  
10:07:28 25 Diversity and Affirmative Action that there's a

10:07:32 1 criminal investigation, that that stuff may come out.

2 THE COURT: Here's my question. And I think  
3 this is an important distinction. Isn't there a  
4 difference between investigations conducted as it  
10:07:41 5 relates to employees of the Clark County School  
6 District potentially involved in discrimination and the  
7 like versus an elected official?

8 MR. HONEY: If I understand you right --

9 THE COURT: And the reason why I bring that up  
10:08:01 10 because you focused on, Well, what democratic  
11 principles are we fostering. And I think what's unique  
12 about this case is essentially this, and remember this  
13 is the first paragraph of the legislature's findings  
14 and declarations.

10:08:25 15 And the legislature hereby finds and  
16 declares that the purpose of this chapter is to  
17 foster democratic principles by providing  
18 members of the public with access to inspect  
19 and copy public books and records to the extent  
10:08:38 20 permitted by law.

21 Now, I think the cornerstone to democratic  
22 principles would be knowing and reviewing the actions  
23 of elected officials.

24 MR. HONEY: Correct.

10:08:52 25 THE COURT: Right. That's different. That is

10:08:53 1 a different --

2 MR. HONEY: Correct.

3 THE COURT: -- animal.

4 MR. HONEY: And I agree with everything you  
10:08:56 5 just said, your Honor. But under the facts of this  
6 case where petitioner admits they already have that  
7 office's report, they already have the guidelines that  
8 were derived from that report, they know what the  
9 district did. Here's our investigative report. They  
10:09:12 10 have it. Here's what we did. We sent guidelines for  
11 the trustee's visits.

12 Because you asked me about the difference  
13 between an investigation of an employee and a  
14 nonemployee, specifically elected official, yeah,  
10:09:25 15 there's a huge difference.

16 THE COURT: Huge difference.

17 MR. HONEY: Because an elected official, we  
18 can't discipline them.

19 THE COURT: Right.

10:09:32 20 MR. HONEY: So the only thing we can -- we've  
21 done the only thing that we can do. And where would we  
22 be if we didn't investigate this? A year from now, two  
23 years from now --

24 THE COURT: I don't think anybody --

10:09:47 25 MR. HONEY: -- we have a lawsuit for not

10:09:48 1 investigating it.

2 THE COURT: I don't think anybody is  
3 criticizing the investigation in and of itself.

4 MR. HONEY: Sure.

10:09:53 5 THE COURT: But the focus and thrust is the  
6 access to records and documents as it relates to the  
7 "investigation."

8 MR. HONEY: And I will point out --

9 I got a lot more. Sorry, Maggie.

10:10:06 10 I will point out that all of the prior Nevada  
11 cases that have been cited in this case, for example,  
12 Don Ray, they wanted a criminal investigation report.  
13 They didn't ask for notes. They didn't ask for  
14 internal drafts. They didn't ask for all the emails  
10:10:24 15 from the investigation office, the law enforcement's  
16 office. We don't want all the emails from the  
17 secretaries, from the secretary for the officers that  
18 did the investigation.

19 It's unprecedented what they're asking for.

10:10:40 20 THE COURT: But what about didn't they ask for  
21 the emails in the Reno Newspaper Inc. versus Gibbons?  
22 They asked specifically for his emails. And we're  
23 talking about a former governor, right? Elected  
24 official. And that was emails between the former  
10:10:54 25 governor and ten individuals.

10:10:55 1 MR. HONEY: Yeah. And I'm talking about Don  
2 Ray, for example, when they wanted an investigative  
3 report. Because investigative report is really what's  
4 at issue here.

10:11:03 5 THE COURT: Well, I think criminal clearly is  
6 different. There's no question about that. I mean,  
7 and rightfully so.

8 I mean, hypothetically, there could be a  
9 criminal investigation that ends up being meritless.  
10:11:14 10 And that can have a significant impact on someones'  
11 career and standing in the community. I get that. But  
12 here, we're not talking about that. We're talking  
13 about actions of a public official. And I think that  
14 clearly -- I think if there's a case that comes under  
10:11:31 15 fostering democratic principles, I think this would be  
16 the case in that regard. Because we're not talking  
17 about an employee. We're talking about an elected  
18 official.

19 MR. HONEY: And my position, for the record,  
10:11:42 20 is that those democratic principles have already been  
21 met by the fact that they already have the  
22 investigative report and they already have the  
23 memorandum which demonstrates the action of the  
24 district's highest ranking employee, the  
10:11:57 25 superintendent.

10:11:58 1 THE COURT: And I have one more question for  
2 you. Because I'm just looking at the email searches  
3 being requested. The next appears to be the email  
4 addresses for every person who has sent or received  
10:12:09 5 responsive documents including as cc's that have  
6 already been produced in response to the December  
7 request or the February request. What is -- what is  
8 that about?

9 MR. HONEY: So they requested the emails as  
10:12:26 10 they have. And when they got the responses from us,  
11 they're like, Oh, Jane Doe was cc'd on this. Now we  
12 want Jane Doe's email searched. Oh, John Doe was on  
13 the chain of people this was sent to. Now, we want him  
14 searched.

10:12:43 15 And we've done that for the February records  
16 we produced. It's our position, the Court hasn't  
17 really discussed or shown any indication of where  
18 they're leaning on this, is that the February -- the  
19 December requests were done when the order was filed.

10:12:58 20 You know, she -- the petitioner states in  
21 their reply, In February, we had concerns that we  
22 didn't have all the records. Because of those  
23 concerns, we did this additional request.

24 I think this starts on page 5 of the reply  
10:13:09 25 brief. And going on to page 6, it then leads into the

10:13:14 1 December 10 request. But they have such --

2 THE COURT: You know, what I think it is. And  
3 counsel on behalf of the petition can correct me if I'm  
4 wrong or not. I think what -- it appears to me the  
10:13:24 5 reason for that is essentially this, the thrust and  
6 focus of the records request would be essentially this:  
7 It appears that the petitioner just wants to make sure  
8 that there were no complaints out there that were  
9 overlooked.

10:13:37 10 MS. McLEITCHIE: That's correct, your Honor.

11 And we certainly -- and we didn't know. At that point  
12 we didn't know until March 13th that they had limited  
13 searches. And I certainly did make clear that we would  
14 be seeking a follow-up request to the December request  
10:13:49 15 because of my concerns about the December -- the  
16 responses to the December request. We spoke about it  
17 here in court. We set a briefing schedule. So the  
18 idea that these are somehow totally dislinked, the  
19 December request and the February request, is  
10:14:04 20 incorrect, your Honor.

21 THE COURT: And I should say concerns or  
22 complains that were overlooked. And I understand that.

23 But go ahead, Mr. Honey.

24 MR. HONEY: Yeah. And I have no problem with  
10:14:11 25 them doing their due diligence and making a February

10:14:12 1 10th request. But that doesn't -- that doesn't take  
2 away the fact that the February 10th request -- or I'm  
3 sorry, the December requests were part of a writ filed  
4 in January, ruled on in court on February 14, and an  
10:14:26 5 order prepared by petitioner filed on, I believe,  
6 February 23.

7 And so on March 20 -- the 23rd letter, from  
8 counsel when they say, Oh now, they want all the cc's,  
9 to's, and from's for all the records produced, even if  
10:14:46 10 they were produced in regards to the December request.  
11 That ship has sailed. She drafted that order. She  
12 filed that order.

13 If she had a problem with the order that she  
14 filed with the Court and the notice of entry she filed,  
10:14:56 15 her appeal clock was ticking. And to somehow by  
16 letter, by correspondence a month later request it,  
17 that doesn't seem lawful to me.

18 Now, I understand judicial efficiency, and I  
19 think petitioner raised --

10:15:18 20 THE COURT: I would love to be efficient and  
21 wrap this up. And not see you again and have all the  
22 documents produced, and everybody's confident, and we  
23 can go home.

24 MR. HONEY: I think --

10:15:29 25 THE COURT: I don't mind having you in court.

10:15:30 1 I don't. But I would love to be very efficient and get  
2 this done without any more work. But ...

3 MR. HONEY: I think all -- I think both  
4 parties probably agree with that as well. Although, I  
10:15:41 5 won't speak for Maggie.

6 Petitioner raised the issue of judicial  
7 efficiency in regards to jurisdiction. Judicial  
8 efficiency shouldn't come at the cost of following the  
9 law. She doesn't cite a single case or even  
10:15:59 10 distinguish the cases cited by respondent in regards to  
11 our jurisdiction argument. She states that, Oh, well,  
12 apparently it became moot because things were filed  
13 later, and here we are. We briefed it.

14 But the case law doesn't say it's mute. And  
10:16:17 15 Chapter 239 is clear. When you file a written request,  
16 you can inquire in regards to the response to that  
17 request once a reply date has passed.

18 Now, they want to hang their hat on the fact  
19 that I used the language we anticipate -- anticipate or  
10:16:36 20 likely anticipate a response by March 3rd. That  
21 doesn't change the fact that March 3rd was the date we  
22 gave, and March 3rd was the date we responded.

23 The statute 239 also requires that they can  
24 file an application once it's been affirmatively  
10:16:54 25 denied. Their February 10th request was not

10:16:58 1 affirmatively denied on March 1st. It was never  
2 affirmatively denied.

3           The reason I bring this up is because when we  
4 had our original hearing on the December requests, the  
10:17:08 5 Court made it very clear that, you know, that they were  
6 going to take strict adherence to the statute. That it  
7 says here in the statute, Mr. Honey, where in the  
8 statute does it say that these records are

9 confidential? And, of course, we hadn't asserted any  
10:17:22 10 privileges in regards to December, so we didn't really  
11 give the Court -- we didn't give ourself much of a  
12 chance back then.

13           THE COURT: But I mean, really.

14           MR. HONEY: But now, it seems like we're kind  
10:17:30 15 of going loosey-goosey on the statute.

16           THE COURT: Well, no. There's two provisions  
17 under the statute. First and foremost, the legislature  
18 has spoken and said, Look, this is -- the provisions of  
19 this chapter must be construed liberally to carry out  
10:17:44 20 this important purpose. And so there's liberal  
21 construction as far as the application of the statute  
22 is concerned.

23           If there's going to be an assertion of  
24 privilege, the privilege assertion should be asserted  
10:17:58 25 with particularity. That's essentially what I'm

10:18:02 1 talking about there. So if you're asserting a  
2 privilege, No. 1, I have to have the document  
3 identified. And you've done that.

4 But, No. 2, I have to have the statutory basis  
10:18:11 5 for the -- case law basis for the privilege. And  
6 that's what I'm talking about. Because that makes my  
7 job a lot easier.

8 MR. HONEY: Sure. And I believe we've done  
9 that in our March 3rd response to her. We say why  
10:18:23 10 investigative materials are privileged. I believe  
11 after she inquired questioning our asserted privileges,  
12 we further responded on March 13th and then, of course,  
13 in our answering brief as well.

14 THE COURT: And there's a reason why I  
10:18:37 15 interpret the statute that way because that's what the  
16 statute provides; right?

17 MR. HONEY: Correct. And, but the statute  
18 isn't going to be interpreted in such a manner that  
19 every records request, no matter what, must be complied  
10:18:48 20 with or is required to be complied with.

21 THE COURT: No. I understand that.

22 MR. HONEY: Okay.

23 THE COURT: There's limitations. But that's  
24 one of the reasons why I'm asking you specifically,  
10:18:56 25 questions as to what would be the mechanics of certain

10:19:02 1 search requests. But, nonetheless, that's not  
2 necessarily a defense. But I want to make sure I  
3 understand what's going on because, you know, if you  
4 read the statute itself, when it talks about, for  
10:19:12 5 example, here's paragraph 3:

6 Any exemptions, exceptions, or balancing of  
7 interests which limits or restricts access to  
8 public records -- public books and records, by  
9 members of public must be construed narrowly.

10:19:31 10 Right? And so there's two things there our  
11 legislature is saying: No. 1, you got to apply this  
12 broadly as to any public records request.

13 But, No. 2, if a position is taken that, you  
14 know what, we shouldn't produce these documents, I have  
10:19:43 15 to narrowly construe that. That's how I read that.

16 MR. HONEY: Yes, your Honor.

17 Now, aside from the jurisdiction, one of the  
18 other arguments that we have that hasn't been addressed  
19 yet today is the regulations of CCSD. Now, it's clear  
10:20:02 20 that the legislature, in its wisdom, provided the  
21 school board statutory authority under -- I think it's  
22 386350, if I'm not mistaken, the right to create  
23 regulations.

24 And in our answering brief, we've cited the US  
10:20:21 25 Supreme Court that broadly interprets that a regulation

10:20:27 1 is a law. When the legislature creates a law, they use  
2 language for a specific purpose. When they use the  
3 word "law", instead of the word "statute" they clearly  
4 mean the more broad meaning of law, meaning ordinances,  
10:20:45 5 regulations, code type of things created by city  
6 counsels, county commissions, and school boards such as  
7 here.

8 Now, I've even cited case law where the Nevada  
9 Supreme Court considers the legality of a regulation.  
10:21:08 10 Not whether it was legal for them to create this  
11 regulation, but whether or not the regulation itself is  
12 lawful. That -- statutes get decided by courts to be  
13 lawful or not as well. That doesn't mean that  
14 regulations aren't laws. It means that that particular  
10:21:26 15 regulation made it all the way to the Nevada Supreme  
16 Court for the legality of it.

17 Now, if you go to our website, the CCSD web --

18 THE COURT: Here's my question --

19 MR. HONEY: Um-hum.

10:21:38 20 THE COURT: -- as far as regulations are  
21 concerned, Wouldn't you agree that the -- whatever  
22 regulations that are enacted by the school board, they  
23 can't be contrary to the laws and acts of the Nevada  
24 legislature; right?

10:21:52 25 MR. HONEY: Correct. And in 239, 239

10:21:55 1 specifically provides for confidentiality consistent  
2 with any other laws.

3 Now, it seems almost inconceivable to me that  
4 the Nevada Administrative Code created by state  
10:22:17 5 employees are apparently given more credence by  
6 petitioner, and maybe the Court, I don't know, than the  
7 regulations created by the elected body, Clark Count  
8 Board of Trustees.

9 Over 2 million people in the county. Seven  
10:22:37 10 elected officials. Somehow their regulations should be  
11 given less weight than administrative code created by  
12 some committee at the DMV that decides that, you know,  
13 if you've had a felony within the last four years you  
14 can't sell cars. We're not going to give you a car  
10:22:52 15 salesmen license.

16 That code or regulation is going to be  
17 enforceable law but the regulations of the school  
18 district are not? Now --

19 THE COURT: I guess, it really comes down to,  
10:23:03 20 is it contrary to the statutes of the Nevada  
21 legislature?

22 And secondly, there could be issues regarding  
23 constitutionality. But that's not really the issue  
24 here. I mean, because based upon my interpretation of  
10:23:15 25 Chapter 239, it appears that the Nevada legislature has

10:23:21 1 spoken. And they say clearly that the application of  
2 this statute must be construed liberally to carry out  
3 this important purpose. And that's access by members  
4 of the public to inspect and copy the public books and  
10:23:39 5 records.

6 MR. HONEY: And in 239.010, after it lists all  
7 of the statutes which deems certain records  
8 confidential, it also says something to the effect -- I  
9 don't have it right in front of me.

10:23:57 10 THE COURT: That's okay.

11 MR. HONEY: The records deemed confidential  
12 otherwise by law. So my position is completely  
13 consistent with 239. It's picking another part of the  
14 statute in order to nullify 239.010 that lists all the  
10:24:16 15 confidentiality.

16  
17 (Pause in proceedings while unrelated  
18 matters were heard.)

19 THE COURT: Sorry about that.

10:24:38 20 MR. HONEY: Perfectly fine, your Honor.

21 And so the portion of Chapter 239.010 that  
22 talks about confidentiality specifically says other  
23 laws -- or other records deemed confidential by law.

24 So it's not contradicting the statute. It's  
10:24:58 25 completely consistent with the statute. If the

10:25:00 1 legislature meant something else, they could have said  
2 something else. It's a clear, plain meaning of the  
3 text of the legislation. And, furthermore --

4 THE COURT: So if I follow that argument, if  
10:25:11 5 the Clark County School District came up with  
6 regulations that all records of the Clark County School  
7 District are confidential.

8 MR. HONEY: I bet you it would be challenged  
9 in court as being overbroad.

10:25:25 10 THE COURT: And probably beyond the powers  
11 that were granted to the Clark County School District  
12 by the Nevada legislature.

13 MR. HONEY: And you can let a party make that  
14 challenge as opposed to making that law decision from  
10:25:42 15 your position. And this is one thing I want to point  
16 out, too, your Honor, is the protections gather --  
17 provided by the regulation --

18 THE COURT: Because, I mean, really and truly  
19 when you look at it from this perspective, the Clark  
10:25:57 20 County School District vis-à-vis through its trustees  
21 are essentially there for one purpose. And that's to  
22 run the Clark County School District and to educate the  
23 children of Clark County; right? We can all agree to  
24 that.

10:26:08 25 When it comes to issues regarding privilege,

10:26:10 1 access to public records, and the like, that's not  
2 really what they're there for.

3 MR. HONEY: Well, when we have over 40,000  
4 employees, I kind of have to respectfully disagree that  
10:26:21 5 they also have massive obligations in regards to  
6 protecting employees from harassment, discrimination --

7 THE COURT: But we're not talking about --

8 MR. HONEY: Retaliation.

9 THE COURT: But once -- I was real clear at  
10:26:31 10 the very beginning, we're not talking about employees.  
11 We're talking about actions of an electric official,  
12 which is different.

13 MR. HONEY: I'm so glad you brought that up  
14 because the people that are in these records are  
10:26:40 15 employees. We keep looking at personnel only in  
16 regards to the trustee. What about the personnel  
17 status of these employees that are listed in these  
18 records? That their names are identified?

19 THE COURT: It's my understanding there was no  
10:26:54 20 action taken against these employees for complaining;  
21 right?

22 MR. HONEY: None that I'm aware of.

23 THE COURT: Okay.

24 MR. HONEY: But whether or not, but whether or  
10:27:04 25 not the trustee --

10:27:07 1 THE COURT: And I'm going to weigh and balance  
2 that. But I don't mind saying this. I think the  
3 public has a right to know.

4 MR. HONEY: And they already do know. Now,  
10:27:18 5 the regulation enacted lawfully by the school board  
6 does not grant any further protections to the state  
7 employees again under the NAC. It's done far more  
8 concisely instead of doing it in a regulation with, you  
9 know, A through Z subparts. It's done much more  
10:27:37 10 quickly.

11 I'm not -- quite -- don't quite understand  
12 where the idea that a school district employee, a  
13 political subdivision of the state, should be afforded  
14 less rights than a state employee.

10:27:50 15 Now, petitioner indicates in their reply brief  
16 this example of this, you know, 62 year old, I don't  
17 know, golden age card for getting into sporting events  
18 or activities, saying, Well, that's a regulation, and  
19 that's just ridiculous if that's a law.

10:28:08 20 If you go to CCSD's website for our  
21 regulations, I think there's seven or eight pages.  
22 There's probably 300, 350 regulations. I'm estimating  
23 there. I don't know how many regulations there are.  
24 And she picks out one regulation.

10:28:23 25 Okay. With that being said, if the school

10:28:28 1 district doesn't follow that regulation, sure somebody  
2 can file a lawsuit. They can file for an injunction.  
3 They can file a writ. But to say that all the  
4 regulations are null, or none of the regulations are  
10:28:41 5 law because, oh, well, this one seems silly. If that's  
6 the case, then City of Henderson, you know, they have  
7 ordinances against strip clubs being next door to  
8 schools.

9 Well, that's not a law. It's just an  
10:28:54 10 ordinance made by a city commission. Go ahead. Open  
11 your strip club. Let's put a gun store, a liquor  
12 store, a bar, and a gentleman's club all right on the  
13 corner next to Green Valley High School because the  
14 Courts decided that these ordinances aren't laws.

10:29:11 15 THE COURT: I don't think any courts ever  
16 decided that.

17 MR. HONEY: But you understand my point.

18 THE COURT: No, I understand.

19 MR. HONEY: It is to say that the school  
10:29:16 20 district's regulations lawfully enacted through  
21 authority granted by the state legislature somehow  
22 aren't laws, but and then a city commission --

23 THE COURT: I think they have different  
24 standing then an ordinance versus a regulation. Those  
10:29:32 25 are different animals. But go ahead. I understand.

10:29:34 1 MR. HONEY: But there won't -- I think the  
2 courts of this land, the Supreme Court has determined  
3 that they all fall under the larger umbrella of law,  
4 which is contained in 239.010. I'll move on, your  
10:29:45 5 Honor.

6 THE COURT: Yeah.

7 MR. HONEY: And I really thank you for your  
8 patience.

9 Now, the Court, when Ms. McLetchie was making  
10:29:55 10 her statements, made a reference to 01072, I believe,  
11 about an oral request for records. If I --

12 THE COURT: The reason, I don't mind  
13 clarifying that, to me, and this is how I interpret  
14 that, because -- and we'll be real specific here as far  
10:30:15 15 as the language of the statute. In taking a look at  
16 NRS 239.0107, as it relates to the request for  
17 inspection or copying of public books or records action  
18 by government entities, paragraph 2 provides as  
19 follows:

10:30:34 20 The provision of this section must be  
21 construed to prohibit -- not to -- must be --  
22 must not be construed to prohibit an oral  
23 request to inspect or copy public records or  
24 documents.

10:30:48 25 The reason why I brought that up is this:

10:30:53 1 That tells me that once the request is made, it doesn't  
2 even have to be memorialized in writing. You can make  
3 a verbal request for public records, and behind that  
4 would be the idea that, you know what, you don't have  
10:31:09 5 to be a newspaper to request public records, but the  
6 public has a right to know.

7 And so someone walks into the public  
8 information officer for any public agency. They said,  
9 Look, I want these records. And so the response could  
10:31:24 10 be, Well, put it in writing first. No. The  
11 legislature has spoken and said, Look, they get -- a  
12 verbal request is as good as a written request. That  
13 tells me that the request -- that the purpose of the  
14 statute as it relates to requests for public documents  
10:31:41 15 and records is very broad.

16 MR. HONEY: And what I would say to that is an  
17 oral request isn't at issue in this case.

18 THE COURT: I understand.

19 MR. HONEY: No. I know you know that, your  
10:31:50 20 Honor.

21 THE COURT: Yeah.

22 MR. HONEY: And also a layperson requesting  
23 records is not at issue here. A newspaper reporter  
24 that supposedly makes multiple newspaper or public  
10:31:59 25 records requests, first made requests in December and

10:32:02 1 then a 3-page request by counsel for the Review Journal  
2 made a request. So laypeople, oral, I understand -- I  
3 understand what you're saying about the openness of  
4 records and such.

10:32:14 5 THE COURT: No. I guess, what I'm saying is  
6 this, I mean, the reporter making a request would be no  
7 different than a layperson, right, because they're not  
8 lawyers. Lawyers can be very specific.

9 And so the bottom line is this, and I think  
10:32:25 10 that kind of goes to the jurisdictional issue. I mean,  
11 once those requests are made regarding the actions of  
12 an elected employee here in the state of Nevada, and  
13 the appropriate petitions filed, I -- it's going to be  
14 my decision that I have jurisdiction, I do, to bring  
10:32:46 15 this whole issue regarding the initial public request  
16 and subsequent follow ups and fine tuning by counsel  
17 versus laypeople. It's in front of me. And hopefully,  
18 I'll finalize it up. That's really what I'm getting  
19 to.

10:33:02 20 MR. HONEY: Sure. Let's see.

21 THE COURT: Because at the end of the day we  
22 shouldn't have to have lawyers involved; right? That's  
23 how I look at it.

24 MR. HONEY: Well, when you're dealing with the  
10:33:19 25 school district, and we have FERPA rights of students,

10:33:21 1 our records get peppered with confidential information  
2 at times by federal law. It's almost inevitable.

3 THE COURT: But we're not asking for academic  
4 records of students and the like, right?

10:33:33 5 MR. HONEY: No, no. But you'd be surprised  
6 how often they end up being in what you would think  
7 would be a request that it wouldn't come through, and  
8 then there, lo and behold, Johnny and his Student No.  
9 and his English grade is, you know, buried in, you  
10:33:47 10 know, page 5 of 500 pages. And so we have to take our  
11 diligence and go through every single page --

12 THE COURT: I appreciate that.

13 MR. HONEY: -- to do that. We take our  
14 students' privacy rights very seriously --

10:33:58 15 THE COURT: All right.

16 MR. HONEY: -- as we do the protection of our  
17 employees from harassment.

18 Now, we haven't addressed the due process  
19 privilege. And in this case, you have the affidavit of  
10:34:13 20 the Office of Diversity and Affirmative Action stating  
21 that he was directed by the superintendent to  
22 investigate the alleged misconduct of the trustee.

23 He conducted that investigation and created a  
24 report already in petitioner's possession which  
10:34:36 25 included recommendations for further action. That

10:34:40 1 report was addressed to the superintendent. The  
2 superintendent then uses that report, those  
3 recommendations in part, to come up with these  
4 guidelines for the trustee's visits.

10:34:55 5 The superintendent is the highest level  
6 executive employee of the school district. This falls  
7 directly within the deliberative process privilege.  
8 Clearly, we're taking a deliberative process to  
9 determine how are we going to deal with these alleged  
10:35:12 10 actions? How are we going to determine whether or not  
11 the trustee's actions violated anyone's rights? And  
12 how are we going to protect these employees from  
13 further similar alleged acts given the fact that this  
14 is a -- this is a nonemployee doing this to whom which  
10:35:33 15 we can't otherwise discipline?

16 Couldn't be any clearer under the deliberative  
17 process privilege. In fact, I'm surprised that it  
18 hadn't been addressed yet during the time here. I  
19 certainly hope that this -- this argument of privilege  
10:35:53 20 isn't just -- isn't just glossed over.

21 I don't know what else the highest level of  
22 employee of the school district can do to deliberate,  
23 consider the allegations, get a report, find out what's  
24 going on, and then make a policy or conduct an action  
10:36:16 25 in regards to it. It's not like he just -- it's not

10:36:19 1 like he just got the Cole report and did nothing.  
2 Because then there really -- the process kind of ended.  
3 He didn't really follow through.

4 But here, you have the full process ending  
10:36:27 5 with a guideline of the trustee's -- how he's supposed  
6 to behave or how his visits are supposed to be  
7 conducted that went out to, you know, 60 people  
8 roughly, 80 people roughly to ensure that the guideline  
9 is carried out.

10:37:04 10 And hopefully finally, petitioner doesn't  
11 demonstrate a single case where investigative report of  
12 discrimination or harassment was ordered to be produced  
13 under the NPRA, which really are breaking new ground  
14 here. And the personnel of the school district, the  
10:37:26 15 alleged victims of this misconduct, they will be  
16 compromised if we give out the notes that the Office of  
17 Diversity took in regards to their interviews of them.

18 And so it's not a matter of the trustee  
19 personnel, which everybody seems to be focusing on.  
10:37:49 20 This is about the victims, which seem to be maybe a  
21 little bit overlooked here. Or the alleged victims, I  
22 should say.

23 And, again, I want to reiterate based on the  
24 information they already have --

10:38:00 25 THE COURT: It did appear, we produced some of

10:38:03 1 those; right?

2 MR. HONEY: Yes. In regards to the February  
3 order of the Court, your Honor.

4 THE COURT: Yeah.

10:38:07 5 MR. HONEY: We have redacted stuff, and did  
6 the redactions exactly as you had requested. There was  
7 one page that --

8 THE COURT: Because I remember some -- there  
9 were reports. I read them all. But there were reports  
10:38:18 10 regarding allegations as to specific conduct and the  
11 like. And those were produced, it's my understanding.  
12 Is that --

13 MR. HONEY: Yes. And then further unredacted  
14 at the order of the Court.

10:38:33 15 THE COURT: Yeah. Okay.

16 MR. HONEY: To the point that we feel that the  
17 trustee is able to identify who these people are  
18 because he was there when the alleged misconduct  
19 occurred.

10:38:46 20 You know, when we have middle school Bob  
21 Smith, and we just delete the word principal, or delete  
22 just their name and leave the word principal, there's  
23 only one principal on a given date at that school.  
24 He's going to know who it is. Or there's only a  
10:39:03 25 handful of assistant vice principals. So if it's a

10:39:06 1 vice principal, then he could figure out pretty easily  
2 who it is. And that puts these people in harm's way.  
3 And we don't want further people --

4 THE COURT: How does that put them in harm's  
10:39:15 5 way?

6 MR. HONEY: Because he can identify who's  
7 claiming against him.

8 THE COURT: Okay. But other than the  
9 identification, there's no specific action he can take  
10:39:25 10 from a retaliation standpoint is there?

11 MR. HONEY: I don't know. He's part of a  
12 seven-member political elected officials that, you  
13 know, need to get each other's votes to pass things.

14 THE COURT: But.

10:39:40 15 MR. HONEY: I'm not sure what he can and can't  
16 do.

17 THE COURT: But, I mean, he's not involved in  
18 the day-to-day hiring and firing of employees for Clark  
19 County School District, right?

10:39:52 20 MR. HONEY: Day to day, no.

21 THE COURT: He's not involved in the decision  
22 as it relates to promotion of employees in the Clark  
23 County School District, right?

24 MR. HONEY: Well, he would vote on those.

10:40:03 25 THE COURT: Well, I'm talking about would he

10:40:05 1 vote on whether a person is appointed, newly appointed  
2 as a vice principal at a specific school?

3 MR. HONEY: Those go in front of the board for  
4 their vote.

10:40:14 5 THE COURT: Okay. At what level -- so I  
6 understand how the school district works. At what  
7 level are the trustee's involved with promotions for  
8 employees?

9 MR. HONEY: They don't make the decision of  
10 who's brought to them for a promotion. And now, I've  
11 never attended a school board meeting, but I do believe  
12 that there is, like, a consent agenda, which -- I don't  
13 know the best way to describe it. But I think they do.  
14 They vote on what's a consent agenda, which would be  
15 somebody changing from, like, a teacher to a vice  
16 principal position. But there's -- do they  
17 specifically get in there and hire somebody? No. They  
18 aren't the human resources department.

19 THE COURT: I understand.

10:41:01 20 MR. HONEY: But as the trustees of the school  
21 district, they have a great amount of influence. I  
22 mean, come on. They're the trustees of the school  
23 district. I think it's kind of coy to pretend like  
24 that they don't have influence on these matters if they  
10:41:15 25 so chose to in some type of fashion that maybe most, if

10:41:19 1 not all of us, would think potentially would be  
2 inappropriate. I don't know. I don't know what people  
3 are capable of.

4 THE COURT: No. I understand that. I do.

10:41:26 5 MR. HONEY: And that's the difficulty here  
6 because he's not an employee; right? We're doing our  
7 best to protect our employees from alleged misconduct,  
8 serious alleged misconduct. It's all we're trying to  
9 accomplish here.

10:41:41 10 Again, I just want to reiterate the democratic  
11 principles have been met. They have the Cole report.  
12 How much more do they need? They have the report.  
13 They have the action that we did in regards to that.  
14 No other case has --

10:41:54 15 THE COURT: But, I understand what you're  
16 saying, they have what they need. But, ultimately,  
17 that isn't the decision of the Clark County School  
18 District as to --

19 MR. HONEY: Correct.

10:42:01 20 THE COURT: -- whether they have --

21 MR. HONEY: Correct. Yeah. And that's -- I'm  
22 arguing this to you most certainly, Judge Williams, for  
23 sure.

24 THE COURT: But it's not their determination.  
10:42:08 25 I mean, at the end of the day, I think they have all

10:42:11 1 that they need if there's assurance that that is all  
2 there is. Right? That's when they have all that they  
3 need.

4 MR. HONEY: And we've told them all that there  
10:42:19 5 is. We've given them a privilege log. Where there was  
6 an issue here is the notes from the executive manager  
7 of the Office of Diversity, the internal memorandum  
8 that then became his official memorandum that went to  
9 the -- went to the superintendent.

10:42:51 10 You asked earlier about -- maybe this note  
11 isn't written down correctly, about nonemployees. You  
12 asked Maggie about it. And just to make sure that  
13 we're clear, and I know this from our brief. So, for  
14 example, casinos have been held liable for the actions  
10:43:07 15 of nonemployees. Harassing, you know, dealers and  
16 stuff like that, or cocktail waitresses when a employer  
17 knew about it and did nothing about it. I think it is  
18 generally, the few times that it's come up, I think  
19 it's when they have whales, as we call them in Clark  
10:43:23 20 County. And I don't know if that addresses the  
21 question that you asked earlier in regards to employees  
22 and nonemployees.

23 But the point being is if the district doesn't  
24 take action, potentially, we could be liable.

10:43:40 25 You don't have anything to respond to that; do

10:43:48 1 you, Maggie?

2 MS. McLEITCHIE: I do. I'll be brief.

3 THE COURT: All right.

4 MS. McLEITCHIE: The last few words.

10:43:51 5 MR. HONEY: Yes. And, your Honor, thank you  
6 for your patience today. I do really appreciate it.

7 THE COURT: You're welcome, sir.

8 MS. McLEITCHIE: Your Honor, under the Public  
9 Records Act, we don't have to establish relevance. A  
10:44:01 10 few times I've heard today they don't need anything  
11 else. This isn't even relevant to anything.

12 We also don't have the burden; although, I  
13 think we have sufficiently explained why. And I think  
14 your Honor understands why. We don't have the burden  
10:44:13 15 of explaining to them the democratic principles apply.  
16 They have the burden today, your Honor.

17 And what the Public Records Act says is if --  
18 you get to give a requester enough records. If it's --  
19 if there's a democratic principle at issue, you must  
10:44:30 20 produce public records. The Public Records Act says  
21 all records of a public entity are to be available for  
22 inspection or copying.

23 And so there's this idea that we have to show  
24 relevance. And they're turning it on its head, your  
10:44:44 25 Honor. And the idea, for example, that I need to have

10:44:46 1 an exact parallel case from the Nevada Supreme Court  
2 that deals with this exact issue in order to establish  
3 my access to the records, I will say, your Honor, even  
4 in the Don Ray case that establishes that even if it's  
10:44:57 5 not declared law to the confidential, a public entity  
6 can assert another claim of confidentiality. In that  
7 case, they ordered disclosure. Even when they were  
8 talking about a criminal investigation report, they  
9 ordered disclosure. And in applying to the law to the  
10:45:12 10 facts of this case, disclosure must be ordered.

11 Your Honor has already pointed out that you're  
12 going to find that you have jurisdiction. But I did  
13 just want to say, your Honor, they delayed telling me  
14 what searches they conducted in response to either  
10:45:28 15 request. So to say things like, The ship has sailed,  
16 and that this Court doesn't have jurisdiction, that I  
17 can't raise issues is just not -- not appropriate. And  
18 I will say, your Honor, they kept delaying information  
19 until after they knew I had deadlines, your Honor.

10:45:43 20 Again, I work for a newspaper, reporters.  
21 We're trying to get information to the public, to the  
22 taxpayers, to the citizens of Nevada. And public  
23 records matters are supposed to be handled  
24 expeditiously.

10:45:55 25 With regard to this idea that they fully

10:45:57 1 handled the December request, they didn't. They  
2 secretly withheld a whole swath of documents without  
3 telling me.

4 And it's not really relevant in any case  
10:46:07 5 because the February request, written by me, includes,  
6 basically overlaps, with so many of those requests.  
7 And this Court has indicated the February request is  
8 also properly before this Court.

9 And I want to explain, even though we don't  
10:46:19 10 have the burden of doing so, and you can imagine the  
11 strange position it would put reporters in if they had  
12 to contact a public entity and say, Hey, here's why I  
13 need more. You're saying, good enough, like Mr. Honey  
14 has said. Good enough. You had enough. I've given  
10:46:31 15 you what I think are the most responsive records.  
16 Again, there is no relevance or most-responsive  
17 requirement in the NPRA.

18 But the reason we want more is because we have  
19 a right to look at the underlying documents and  
10:46:45 20 ascertain whether or not the Cole report's conclusions,  
21 which we have part of, but as he pointed out --  
22 Mr. Honey pointed out the log, there's other documents.  
23 And what doesn't appear on the log -- besides the  
24 additional documents that are listed on the log, what  
10:46:59 25 doesn't appear on the log are the hard copy documents

1 and the emails that they are still refusing to search.

2           The idea, by the way, of justiciability is  
3 also just -- it's really -- what they're really arguing  
4 is that my amended petition wasn't ripe because they  
5 delayed telling me what they were or weren't doing. It  
6 doesn't matter because we are here, and we have a clear  
7 controversy. Mr. Honey just argued for quite some time  
8 making clear that we do have a justiciable controversy  
9 here before us today.

10           With regard to the idea that there's some sort  
11 of -- that their policy can trump the Public Records  
12 Act, it's -- we've briefed this extensively. I'm not  
13 going to belabor these issues. They're in our brief.  
14 But the -- you're supposed to, as the Court has said  
15 today, you have to interpret exceptions narrowly to the  
16 Public Records Act. And the way that CCSD described  
17 its own policies and regulations is: The purpose of  
18 these policies and regulations is to provide directions  
19 regarding the details of district operations. Policies  
20 are more general principles, while regulations contain  
21 specific details and procedures.

22           They're details and procedures and guiding  
23 principles for their own operations. Certainly, that  
24 can't be found to trump the Public Records Act because,  
25 as your Honor has pointed out, that would lead to the

10:48:17 1 ridiculous conclusion that any public entity could say,  
2 Hey, I'm going to pass an administrative code or  
3 Ordinance or regulation saying my records aren't  
4 public.

10:48:27 5 With regard to the idea that deliberative  
6 process applies here, first of all, the decision maker  
7 was a superintendent. Interestingly, there's no  
8 documents on the privilege log that reflect the  
9 superintendent engaged in any deliberative process.

10:48:43 10 What that privilege is supposed to protect against  
11 isn't documents that somebody looks at in making a  
12 decision, but the actual machinations of decision  
13 making. And that report is not that.

10:48:58 14 Further, that privilege is not absolute. Not  
10:48:58 15 only do they have a heavy burden in establishing that  
16 it exists, that it applies to this case, they also must  
17 demonstrate that its need -- that the need for the  
18 information outweighs the regulatory interest, the  
19 burden shifts to the party -- this is just in a  
10:49:12 20 standard deliberative process case. The burden shifts  
21 to the parties seeking disclosure. This assumes the  
22 deliberative process even applies. Then the public --  
23 the person seeking information can demonstrate that the  
24 need outweighs the regulatory interest in preventing  
10:49:25 25 disclosure.

10:49:25 1 Here, we've, obviously, explained the great  
2 public interest in getting this information, and,  
3 especially, in looking at the deliberative process  
4 privilege in the context of the Public Records Act,  
10:49:37 5 they have not met their burden.

6 The idea that they're going to be in harm's  
7 way, this is just one trustee. He can't unilaterally  
8 make any decisions. And they haven't pointed -- the  
9 Nevada Supreme Court has said you can't just point to  
10:49:51 10 hypothetical or speculative harms. And any of their  
11 concerns, frankly, could be met by redactions to the  
12 extent they're valid concerns.

13 And they say, Well, there might be additional  
14 information that would need to be redacted. That's,  
10:50:05 15 again, not an argument for what they're doing, which is  
16 wholesale withholding.

17 A few times today we've heard about how much  
18 they have to do, how many requests we made, how we're  
19 requesting all these documents, and how hard it is to  
10:50:18 20 search documents. A lot of that is of their own doing  
21 of how they organize information. But I want to point  
22 out responding to public records request is not  
23 peripheral to any public entity's duties.

24 They work for the taxpayers. They work for  
10:50:30 25 the public. They would for the voters. They work for

10:50:32 1 the parents and kids at the schools. People have a  
2 right to access documents.

3 They're just -- this idea that, well, we  
4 shouldn't have to keep giving them information because,  
10:50:40 5 you know, Ms. McLetchie has just asked us for so much,  
6 and we've given them enough. That's just not -- that's  
7 just not consistent with Public Records Act.

8 The idea that I've been disingenuous in  
9 offering help is just incorrect, your Honor. I can't  
10:50:53 10 help in a vacuum. I didn't get information. I'm not  
11 going to get into any of the kind of back and forth  
12 that Mr. Honey and I have had in this case, which has  
13 been extensive, but I kept asking for information.  
14 Kept asking for information.

10:51:07 15 And I can't help craft searches, or say, Okay,  
16 well, maybe those email boxes, we don't want to search.  
17 Let's talk to your IT guy and see how we do this. I  
18 can't do that when I'm kept in the dark, which I was  
19 until March 13th.

10:51:22 20 They didn't put any of those documents they  
21 withheld on any log. And to the extent that they're  
22 saying the February -- the December request is over,  
23 they're in violation of the December order because they  
24 didn't make full production of those documents  
10:51:32 25 initially.

10:51:36 1 The idea that FERPA might apply, this is a  
2 minor issue, but they assert FERPA. They -- it's  
3 just -- it just doesn't apply, and they haven't met the  
4 burden of showing that it applies to these records.

10:51:49 5 More importantly, that raises a bigger picture issue  
6 which is, he mentioned an instance of where it might be  
7 buried in a document, and, therefore, you have to be  
8 really careful, and Public Records Act requests are so  
9 hard to respond to. Again, CCSD should organize its  
10:52:02 10 records in a way that maintains confidentiality,  
11 protects student records, but still allows access.

12 And allowing things to get mixed up like that,  
13 I litigated another case years ago, and  
14 Judge Susan Johnson said the same thing. CCSD needs to  
10:52:16 15 organize its records in a way that allows access and  
16 doesn't just allow the school district to keep saying  
17 it's too hard to produce records, and we have  
18 confidential information mixed in, and it's just too  
19 hard.

10:52:26 20 That's all I have, your Honor. Thank you.

21 THE COURT: All right. And I just want to go  
22 through the request to make sure I understand what's  
23 being requested. I'm looking at page 24 of the  
24 petition, and, I guess, it starts out at line 15 as it  
10:52:46 25 relates to email searches.

10:52:48 1 MR. HONEY: Just a moment, your Honor.

2 THE COURT: Yes.

3 MR. HONEY: You said this is the petition

4 itself?

10:52:54 5 THE COURT: I think. Let me see. It might be

6 the opening brief.

7 MS. McLEITCHIE: It might be his opening brief,

8 your Honor.

9 THE COURT: Opening brief.

10:52:59 10 MR. HONEY: Okay.

11 MS. McLEITCHIE: Yeah.

12 MR. HONEY: And you said page 24, your Honor?

13 THE COURT: Yeah.

14 MR. HONEY: Thank you.

10:53:03 15 THE COURT: Because I think in the conclusion

16 isn't that, in essence, what's being requested, ma'am?

17 MS. McLEITCHIE: Yes, your Honor. All

18 trustees -- part of the reason I do want that

19 certificate, your Honor, is the trustee production is

10:53:19 20 strange because it doesn't -- if they produced it from

21 all the trustees, you should see the same document in

22 different forms.

23 THE COURT: And I want to make sure I

24 understand that. When you say, No. 1, I see all

10:53:30 25 principals, not just those in District D.

10:53:32 1

MS. McLETCHE: Correct.

2

THE COURT: And why all principals?

3

MS. McLETCHE: Because, your Honor, there

4

have been complaints about Kevin Child's behavior at  
other schools.

10:53:38 5

6

THE COURT: I thought I read that in the

7

complaints that were produced. Because not all the  
complaints were in District D; is that correct?

8

MS. McLETCHE: Correct. Correct.

10:53:44 10

THE COURT: Okay. I understand.

11

MS. McLETCHE: And then with regard to all

12

trustees, they have indicated they've produced these.

13

I would like to be make sure that they're -- they

14

actually have produced these. I have some concerns

10:53:54 15

about the production because, typically, if, for

16

example, in a discovery matter, you produce a document

17

twice if it's in two different custodians documents.

18

Sometimes somebody appears at "to" or the "from". And

19

some documents only appear once. And it's -- most

10:54:09 20

documents seem to only appear once. So I do think we

21

still need an order about the trustee email. And

22

Cedric Cole and other diversity affirmative action

23

program staff, we think those emails should be searched

24

because, again, we want to assess how valid and proper

10:54:25 25

that investigation was.

10:54:26 1           The email addresses for every person who is  
2 said to receive responsive documents including a cc  
3 that have already been produced in response to the  
4 December request or the February request, they say that  
10:54:35 5 they've done that. Again, I think -- I have some of  
6 the same concerns I had with the trustees' emails. If  
7 they've actually produced everything, it shouldn't be  
8 an issue.

9           And then finally --

10:54:45 10           THE COURT: How do they respond to this? And  
11 at the end of the day this is a very important point.  
12 Mr. Honey, I think, in some of the correspondence  
13 indicated that he wasn't the decision maker. Who  
14 responds to this document request? Because don't I  
10:55:05 15 have to make a determination, No. 1, as to whether or  
16 not the document request has been fulfilled, right?  
17 And if not, don't I have to make other decisions,  
18 right?

19           MS. McLETCHE: Yes. And you have to order  
10:55:21 20 further production -- further production.

21           THE COURT: Right.

22           MS. McLETCHE: Yes.

23           THE COURT: So, but I have to order somebody.  
24 And Mr. Honey is not making the decision, so I can't  
10:55:27 25 order him.

10:55:28 1 MS. McLETCHE: Well, you can -- you can  
2 certainly order the school district --

3 THE COURT: Yes. And so is that the  
4 superintendent, Mr. Honey?

10:55:34 5 MR. HONEY: Okay. We have an employee by the  
6 name of Cindy Smith Johnson, that her full-time job is  
7 records requests.

8 THE COURT: Okay.

9 MR. HONEY: Sometime -- let me finish, your  
10:55:45 10 Honor. She's not a lawyer.

11 THE COURT: I understand.

12 MR. HONEY: Yeah, yeah. So then what happens,  
13 so a lot of times she'll be -- maybe the -- and it  
14 varies from request to request. But she may go out  
10:55:56 15 from the various locations of many throughout our large  
16 district and gather documents responsive to the  
17 request. You know, you know, emails. Because, hey, we  
18 need -- we have a records request. They're requesting  
19 this. Send us what you have that's responsive to this.

10:56:11 20 She might have to do this to multiple people  
21 depending on the breadth of the request. Those come to  
22 her. They get reviewed by the legal department. Make  
23 sure that no confidentiality -- student confidentiality  
24 is violated. FERPA I mentioned earlier and such forth.

10:56:29 25 In regards to this particular case, the

10:56:31 1 final -- the final decision -- the final decision maker  
2 is someone above me. My boss is Carlos McDade, the  
3 general counsel. I would let him answer in regards to  
4 who he speaks with.

10:56:43 5 THE COURT: But, I mean, who -- somebody is  
6 the decision maker. And, for example, if I look at the  
7 documents, and there might be a valid assertion of a  
8 privilege; right?

9 MR. HONEY: Sure.

10:56:56 10 THE COURT: But I need to know who's making  
11 that assertion on behalf of the Clark County School  
12 District.

13 MR. HONEY: The legal office.

14 THE COURT: Okay. So it's being made by the  
10:57:06 15 legal office, not by, I guess, any of the  
16 administrators; is that correct?

17 MR. HONEY: I believe that's correct.

18 THE COURT: Okay.

19 MR. HONEY: I mean, it's a legal question  
10:57:14 20 whether or not there's a, you know, a privilege.

21 THE COURT: All right.

22 MR. HONEY: Multiple --

23 THE COURT: What about the efforts to perform  
24 the searches for public documents? Is that Ms. Cindy  
10:57:27 25 Smith Johnson?

10:57:29 1 MR. HONEY: In part. And she works closely  
2 with the head of our IT, particularly when they're, you  
3 know, requests for emails. But sometimes it's -- you  
4 know, if it's a human resources thing, we might just  
10:57:39 5 reach out to the head of human resources, Andre Long.

6 THE COURT: Okay.

7 MR. HONEY: And we have another attorney that  
8 generally handles open meeting law. I'm not quite sure  
9 how I ended up here with Maggie.

10:57:54 10 MS. McLEITCHIE: Mr. Greenberg?

11 MR. HONEY: No.

12 THE COURT: Okay. Continue on, ma'am.

13 MS. McLEITCHIE: Your Honor, I think -- I think  
14 we did just summarize what we're requesting. And what  
10:58:04 15 I would ask is that Mr. McDade prepare a declaration  
16 that details what was searched by whom and when and  
17 what responsive documents were yielded.

18 You know, should this Court order further  
19 production, which I hope it will, then he can explain  
10:58:26 20 that if the documents were previously produced or not.  
21 I mean, this is pretty standard practice.

22 THE COURT: Well, that's where I'm going.

23 MS. McLEITCHIE: Yeah.

24 THE COURT: Somebody has to respond to this.

10:58:34 25 MR. HONEY: But where in the law does it say

10:58:35 1 we have to tell them what we searched, who we searched,  
2 where we searched. I don't see that in 239. And I  
3 don't see that in the case law.

4 THE COURT: But don't you think it's  
10:58:44 5 broadly -- I mean, if you look at it, it's implicit  
6 that it could be broadly construed. Now,  
7 hypothetically, a public entity could sit back and not  
8 conduct the appropriate searches. And as a result,  
9 documents aren't disclosed, right?

10:58:59 10 MS. McLEITCHIE: Right. And I think this is --  
11 this argument is a red hearing.

12 THE COURT: It's not --

13 MS. McLEITCHIE: Because they have to produce  
14 all public records.

10:59:04 15 THE COURT: Yeah.

16 MS. McLEITCHIE: I'm supposed to be able to go  
17 over to CCSD and go look at whatever public records I  
18 want to. So the idea that instead Mr. Honey can say  
19 I'm going to go think about what I think Maggie really  
10:59:15 20 wants. Just give her those. I don't need to tell her  
21 what I'm not giving her. It's just -- that's nowhere  
22 in the public record.

23 MR. HONEY: I think that so misconstrues  
24 anything that was said here or any briefing whatsoever.

10:59:25 25 THE COURT: I'm not necessarily agreeing with

10:59:26 1 that either. But, see, here's the thing, Mr. Honey. I  
2 don't mind telling you this.

3 MR. HONEY: That's fine, your Honor.

4 THE COURT: And it has nothing to do  
10:59:32 5 specifically with the Clark County School District. I  
6 think it's with government in general.

7 MR. HONEY: One of which you work for.

8 THE COURT: Yeah. But what I'm really  
9 focusing on is this, there's terms of art that  
10:59:44 10 governments use to even classify documents, and how  
11 documents are stored, and the like, and how they --  
12 their computer systems and their IT and so on. And so  
13 in this case, and I think it's a great example, There  
14 were certain documents that the newspaper didn't even  
11:00:07 15 have a clue as to their identity. And it's not until  
16 you start getting documents in do you begin to realize,  
17 okay. We have this document here. And this means  
18 something, so I want more of this, you know. And so I  
19 want to expand my searches because I never knew this  
11:00:26 20 type of document existed by this committee or this  
21 agency, or whatever. And I think that's kind of what  
22 it is.

23 MR. HONEY: Correct. And I think that's why I  
24 indicated earlier that I understood their due diligence  
11:00:36 25 in making a new request on February 10th that was based

11:00:42 1 on the records that they got -- that they received  
2 previously. I get that.

3 THE COURT: Yeah.

4 MS. McLEITCHIE: Your Honor.

11:00:47 5 MR. HONEY: I think everybody does.

6 MS. McLEITCHIE: With regard to the idea that  
7 it's not -- doesn't say anywhere in the Public Records  
8 Act that you have to say what searches you provide, you  
9 have to say what documents you're withholding. I don't  
11:00:57 10 mean to belabor that point, but I want to be clear  
11 about it.

12 Secondly, we're now in litigation, and should  
13 this Court order CCSD to comply, I think it's certainly  
14 within the Court's purview to say I need a declaration  
11:01:09 15 from somebody with authority because Mr. Honey and  
16 Mr. McDade have both taken the position they don't have  
17 authority. Somebody with authority --

18 THE COURT: Somebody has authority.

19 MS. McLEITCHIE: -- that will explain how this  
11:01:18 20 order has been complied with. I'm tired, your Honor.  
21 I've asked --

22 THE COURT: The rubber meets the road.

23 MS. McLEITCHIE: We -- I'm tired of fighting  
24 for information from them. We just need to know what  
11:01:27 25 they did and how they did it. That's all, your Honor.

11:01:29 1 MR. HONEY: We provided a privilege that said  
2 what's withheld.

3 THE COURT: Okay.

4 MS. McLEITCHIE: It didn't list -- I don't want  
11:01:34 5 to keep -- your Honor, I will stop.

6 MR. HONEY: What other secret documents are  
7 you talking about, though, I guess, is my question.

8 THE COURT: Here's the thing. We don't know;  
9 right?

11:01:41 10 MR. HONEY: Because there aren't any other  
11 secret documents. There is -- we don't keep a dossier  
12 an all of our trustees like the CIA, which they seem to  
13 think.

14 THE COURT: Here's my question. But nobody is  
11:01:51 15 saying that. For example, all principals, not just  
16 those included in District D, how do we know that a  
17 principal at another school district -- I mean, at  
18 another school within the Clark County School District  
19 lodged a complaint against the trustee?

11:02:06 20 MR. HONEY: Because we -- again, if the Court  
21 directs us to search 300 additional principals, of  
22 course, we're going to comply with that, your Honor.

23 THE COURT: Yeah. But --

24 MR. HONEY: But here's the deal. We searched  
11:02:15 25 their direct supervisor, and we searched that person's

11:02:19 1 direct supervisor, and we searched that person's seven  
2 supervisors, the trustees. That's why. And that's why  
3 we thought it was reasonable to search --

4 THE COURT: Nobody is saying -- understand  
11:02:26 5 this. No one is saying it was necessarily  
6 unreasonable. I'm not --

7 MR. HONEY: Very good.

8 THE COURT: -- making that judgment there.  
9 But I'm saying, hypothetically, based upon what you're  
11:02:35 10 saying, there's probably nothing there. But we don't  
11 know until the search is conducted, right?

12 MR. HONEY: Correct.

13 MS. McLEITCHIE: Right. Their argument, your  
14 Honor. Their argument assumes that every principal  
11:02:42 15 necessarily forwards on a report. There may be an  
16 issue that a principal got a report in a complaint and  
17 didn't properly address it and didn't forward it on.

18 THE COURT: I mean --

19 MS. McLEITCHIE: And --

11:02:52 20 THE COURT: -- there's another example, too.  
21 There could be a scenario where a complaint was  
22 forwarded to someone that wasn't acted upon.

23 MS. McLEITCHIE: That is correct, your Honor.  
24 We may have a principal that didn't act on something.

11:03:02 25 And this idea that --

11:03:03 1 THE COURT: I'm not saying whether it's good  
2 or bad. But human nature comes up. But they might  
3 have looked at it as being a benign complaint that's  
4 not worthy of action.

11:03:10 5 MS. McLETCHE: Right.

6 THE COURT: And nothing was done.

7 MS. McLETCHE: Right.

8 THE COURT: I understand.

9 MS. McLETCHE: And it's up to the public to  
11:03:14 10 be able to get access to that information, assess  
11 whether or not there was a mistake made.

12 And, your Honor, this idea about whether or  
13 not what they did was reasonable isn't the issue. This  
14 isn't discovery where you're trying to find relevant  
11:03:26 15 documents that are responsive to discovery requests.

16 THE COURT: It's actually much different than  
17 that. Reasonable has nothing -- I'm not -- I'm not  
18 judging at this point the actions of the Clark County  
19 School District. And the only time I would judge that  
11:03:40 20 would be this, and this is why I want a  
21 managing-speaking agent, someone who's going to make  
22 sure that the good-faith disclosure pursuant to the  
23 statute is followed. Because there's a reason why at  
24 the very beginning I gave the parameters here.

11:03:56 25 NRS 239.012, immunity for good-faith disclosures or

11:04:01 1 refusal to disclose information. Somebody -- a public  
2 officer employer has to act in good faith. This is  
3 where it meets -- the rubber meets the road. We have  
4 to have that. And that's all I'm saying.

11:04:13 5 MS. McLETCHE: Understood, your Honor.

6 THE COURT: Somebody has to do that.

7 MS. McLETCHE: Understood.

8 THE COURT: Now, I would anticipate as long as  
9 my orders are complied with, that specific individual  
11:04:24 10 would be complying in good faith. No. 1.

11 No. 2, refusing to disclose information as  
12 long as it's logged, and a specific privilege is  
13 asserted, probably good faith is met too; right?

14 MR. HONEY: Correct.

11:04:39 15 THE COURT: But you got to disclose it. And  
16 then at the end of the day, I'll make a determination  
17 as to whether or not that information should be  
18 given -- right? -- pursuant to the request. That's  
19 all.

11:04:49 20 It's just -- and that's all the democratic  
21 principles we focus on that are the basis for this  
22 statute, and that's why they have to be followed.

23 MS. McLETCHE: Your Honor, I would actually  
24 argue that there's already evidence of a lack of good  
11:05:02 25 faith. Not because the way he conducted searches was

11:05:04 1 unreasonable. But because Mr. Honey opted to do it in  
2 a vacuum. And this is after the delays and responses  
3 to the December request.

4 Whether or not his approach was reasonable, I  
11:05:13 5 work with public entities all the time and have them  
6 structured like, hey, let's start with certain  
7 custodians, then we'll follow up with as needed.

8 The problem here --

9 THE COURT: But it's not reasonable. It's  
11:05:22 10 good faith. That's a different animal.

11 MR. HONEY: Correct.

12 THE COURT: But go ahead, ma'am.

13 MS. McLEITCHIE: I don't think it was good  
14 faith because I think NRS 239.0107 requires them to  
11:05:30 15 identify what they're withholding and why. And by  
16 making his decisions about where and when and how to  
17 search without consultation without us and without  
18 disclosing that he was not searching, for example, a  
19 hot bed of responsive documents Cedric Cole in the  
11:05:47 20 diversity office in my opinion is not good faith.

21 It may be a reasonable way to approach  
22 staggering searches. We can agree right now that  
23 we're -- that we're going to fight about those  
24 documents later. Let's do other searches. But it was  
11:05:55 25 not good faith, your Honor.

11:05:57 1 MR. HONEY: Your Honor.

2 MS. McLETCHE: Thank you.

3 MR. HONEY: Your Honor.

4 THE COURT: Mr. Honey, I'm not making that

11:06:01 5 decision today.

6 MR. HONEY: I know. I know. But I just

7 wanted to point one thing out.

8 THE COURT: Yes.

9 MR. HONEY: Is because I'm not sure where

11:06:07 10 you -- where you're standing on the point of --

11 THE COURT: I never stand. I always make a

12 decision. That's all.

13 MR. HONEY: Thank you. Thank you. Of where

14 you -- where you are on the idea that the December

11:06:16 15 request requested investigative materials and

16 investigative report. Because this is such a

17 after-the-fact position --

18 THE COURT: Well, it asks for all complaints;

19 right?

11:06:27 20 MR. HONEY: If petitioner --

21 THE COURT: This was very broad. It asked for

22 all complaints; right?

23 MR. HONEY: If petitioner believed that her

24 December requests were for the investigative report and

11:06:37 25 investigative materials, she would have raised it in

11:06:40 1 the order she prepared in regards to the writ in  
2 January.

3 Her order that she prepared didn't say  
4 anything about, And, your Honor, order them to provide  
11:06:51 5 the Cole report, and provide all the investigative  
6 materials, and all of the notes because I requested  
7 that in December. She didn't say that. She didn't ask  
8 for that because she never asked for it.

9 And this is all after the fact now saying,  
11:07:02 10 like, oh, yeah, yeah. Those December requests, oh,  
11 yeah, they meant the investigative report. There's  
12 nothing in there that says the investigative report.  
13 And it's not the district playing coy. It's they chose  
14 the words that they wrote.

11:07:14 15 THE COURT: I'm not making the -- what did I  
16 say a little earlier?

17 MR. HONEY: I know. I know. Thank you, your  
18 Honor.

19 THE COURT: Okay.

11:07:19 20 MS. McLEITCHIE: Your Honor, in the interests  
21 of speeding this along, I'm going do let Mr. Honey have  
22 the last word. Otherwise, we might be here all day.

23 THE COURT: All right.

24 MR. HONEY: I think, your Honor, you have all  
11:07:26 25 the information you need.

11:07:27 1 THE COURT: Yeah. No. 1, I'm going to -- it's  
2 going to be my determination I have jurisdiction over  
3 this matter. And it's based upon the fact that the  
4 initial petition was filed in this department. And  
11:07:40 5 specifically it was a public information request as it  
6 pertains to Trustee Child.

7 And along the way, the petitioner has, as a  
8 result of obtaining information as a result of its  
9 initial request, it's essentially fine tuned the  
11:08:03 10 request for specific documents that are -- that clearly  
11 come up the purview of the law.

12 Secondly, regarding the full searches in the  
13 conclusion, I'm going to grant that request. I'm going  
14 to -- and this is how we're going to do it. First and  
11:08:27 15 foremost, the email searches, I will grant those.

16 And I thought the case involving former  
17 governor was pretty insightful there as far as emails  
18 are pretty much under the public records. And so I'm  
19 going to grant that.

11:08:49 20 Also all trustees. I understand that that  
21 potentially has been done already. If it has, you can  
22 respond accordingly; right?

23 MR. HONEY: Correct.

24 THE COURT: Regarding Cedric Cole and all  
11:09:04 25 other diversity and affirmative action program staff,

11:09:07 1 I'm going to permit that. It's my understanding it's  
2 six to ten. Potentially, there could have been  
3 complaints made regarding the trustee that were never  
4 addressed. And I think that's the thrust and purpose  
11:09:19 5 of that. I'm going to allow that.

6 Now, understand this, if there's any specific  
7 privileges that might apply, assert the appropriate  
8 proof. Please identify the document. Just as  
9 important, too, if it comes to this, I'm going to  
11:09:35 10 review all the documents in camera so I can make the  
11 ultimate determination.

12 The next one regarding email addresses for  
13 everyone who has been sent or received responsive  
14 documents, are you simply requesting that those email  
11:09:55 15 addresses be searched?

16 MS. McLETCHE: Yes. That might have been  
17 typo. I meant to search the emails of anyone who had  
18 been involved in some of the documents we had  
19 previously gotten, your Honor.

11:10:04 20 THE COURT: And it doesn't appear to me that  
21 that's a significant request because there appear to be  
22 not many people cc'd. But I'm going to permit that  
23 one.

24 MR. HONEY: And, your Honor, I would just add,  
11:10:16 25 we've already done it for February, the production in

11:10:18 1 regards to the February request. And our position was  
2 simply that the December request, if she wanted that,  
3 she should have asked for that in her February order.

4 THE COURT: I understand.

11:10:27 5 MR. HONEY: Okay.

6 THE COURT: I do. And then as far as request  
7 B, I'm going to permit that.

8 You know what I want you to do, Mr. Honey, and  
9 I realize this will take time. That's why I do realize  
11:10:41 10 that under normal circumstances, it would be very easy  
11 for a public entity to respond to requests for  
12 documents, but this is not a normal scenario. And what  
13 I mean by that is this, it might take some time. But  
14 there's two things I want you to do and -- really three  
11:10:56 15 things.

16 No. 1, I want a finalized log of all documents  
17 that have been produced, No. 1, so I can look at it in  
18 one log.

19 Secondly, if there's any claims of privilege,  
11:11:17 20 and the documents aren't produced, I want the document  
21 adequately described. I want -- I want a privilege --  
22 I want the privilege log to include those documents for  
23 inspection by me, so I can determine whether or not  
24 it's an appropriate privilege, right?

11:11:34 25 MR. HONEY: Okay. But you don't mean

11:11:36 1 documents that aren't responsive to the request? If we  
2 search myself, and we get --

3 THE COURT: Yeah.

4 MR. HONEY: -- a thousand pages of emails, and  
11:11:43 5 900 -- you don't want the -- 990 aren't responsive to  
6 what she sought, we don't put the 990.

7 THE COURT: No.

8 MR. HONEY: Okay.

9 THE COURT: You're not requesting that; are  
11:11:50 10 you?

11 MS. McLEITCHIE: No, your Honor.

12 THE COURT: Okay.

13 MR. HONEY: I didn't think so either. I was  
14 being clear. Thank you.

11:11:55 15 THE COURT: And last, but not least, I want  
16 some form of certification or someone to attest to the  
17 accuracy of the documents and searches that were  
18 conducted.

19 MR. HONEY: Can you repeat that? Accuracy of  
11:12:15 20 what? Searches or documents?

21 THE COURT: Both.

22 MR. HONEY: Both. Okay, thank you.

23 THE COURT: Something so I know that, Okay,  
24 somebody has to produce this. And maybe it's Cindy  
11:12:24 25 Smith Johnson. I'm not sure.

11:12:30 1 And, ma'am, can you prepare an order?

2 MS. McLEITCHIE: Absolutely, your Honor. One

3 follow-up question. When you say search for responsive

4 documents, I don't actually think that there's anything

11:12:40 5 that the February request doesn't cover that's in the

6 December request. But just so we're clear, either the

7 December request or the February request, responsive

8 documents to any of those requests; correct, your

9 Honor?

11:12:50 10 THE COURT: Correct.

11 MS. McLEITCHIE: Thank you, your Honor.

12 THE COURT: As they've been fine tuned.

13 MS. McLEITCHIE: And is your Honor going to

14 address whether or not the Cole report and the

11:12:57 15 associated documents that are currently on the log fall

16 within any valid claim of confidentiality today, your

17 Honor?

18 MR. HONEY: I'm sorry, Maggie. Can you repeat

19 that?

11:13:06 20 THE COURT: I wasn't requested to do that, was

21 I?

22 MR. HONEY: I'm sorry. Will you repeat that?

23 I apologize.

24 MS. McLEITCHIE: I was asking whether or not --

11:13:11 25 so you're going to order -- you are ordering -- are you

11:13:14 1 ordering production of the documents that are currently  
2 on the privilege log with regard to the Cole report and  
3 associated documents?

4 THE COURT: What do you mean by that, ma'am?

11:13:24 5 MS. McLEITCHIE: So on the privilege log, it  
6 sounds like they have -- they have a deadline they're  
7 going to have to produce documents and produce a log.  
8 And I'm sorry if I missed this, your Honor. And  
9 they're supposed -- they're supposed to conduct  
11:13:35 10 searches. But you've told them that if there's a  
11 specific privilege, they can ID the document and put it  
12 on the log --

13 THE COURT: Right.

14 MS. McLEITCHIE: -- with regard to the Cole  
11:13:42 15 report, and the -- and some associated reports.  
16 They've already done that. And I'm wondering if you're  
17 going to order production of those documents that are  
18 currently on the log, the one that we were going over  
19 earlier, your Honor.

11:13:54 20 MR. HONEY: It was Petitioner's Exhibit E, our  
21 privilege log with the date --

22 THE COURT: I assume that had been produced;  
23 right?

24 MS. McLEITCHIE: No. The Cole report has not  
11:14:01 25 been produced. None of these items that currently

11:14:04 1 appear on the privilege log that -- is it Exhibit E?

2 Thank you, Mr. Honey.

3 MR. HONEY: Yes.

4 MS. McLEITCHIE: But --

11:14:11 5 MR. HONEY: If I can go through it. So pages  
6 34 to 41. Have you found the exhibit, your Honor?

7 THE COURT: I think. Yeah, I have it.

8 MR. HONEY: Okay. See highlighted Bates No.  
9 pages 034 to 041?

11:14:22 10 THE COURT: Yes.

11 MR. HONEY: Okay. That's an internal draft  
12 memorandum. You know, has questions marks on it. It's  
13 a draft. We withheld that for the privileges that  
14 we've asserted in this case. And I think Maggie is  
11:14:35 15 asking whether or not you're going to order us to  
16 produce that. Or if you want us to assert privileges  
17 in regards to that.

18 MS. McLEITCHIE: Not just that one. It's 34  
19 through 41 and the ones that appear on the next page as  
11:14:46 20 well.

21 MR. HONEY: Correct.

22 MS. McLEITCHIE: All the way to 62.

23 MR. HONEY: Though, I would say --

24 THE COURT: Is this it right there?

11:14:49 25 MS. McLEITCHIE: Yes. Correct, your Honor.

11:14:51 1 May we both approach?

2 MR. HONEY: We better.

3 THE COURT: Yes. We're still on the record.

4 Now, I look at this document.

11:15:05 5 MS. McLEITCHIE: It's Exhibit E. And it's the  
6 privilege log that says March 21, 2017, at the bottom.  
7 And it's Bates Stamp CCSD-CM0053.

8 THE COURT: All right.

9 MR. HONEY: So I think what Maggie's question  
11:15:23 10 is is whether or not you were going to order us to  
11 produce this internal draft memo that CCSD has  
12 identified. It's pages 34 to 41 that has been  
13 withheld.

14 THE COURT: Do I have it?

11:15:35 15 MR. HONEY: You have not seen that. No.

16 THE COURT: Okay.

17 MS. McLEITCHIE: So the plan is, your Honor --  
18 we'll go back to counsel table.

19 THE COURT: Okay. I understand.

11:15:41 20 MS. McLEITCHIE: Now, I think I understand what  
21 you're -- what you're -- what you'd like in this order.  
22 You are going to -- all the documents that appear on  
23 the privilege log, including on this privilege log, are  
24 to then be submitted in camera. And you're going to  
11:15:55 25 review them with the revised privilege log that's one

11:15:58 1 omnibus complete privilege log?

2 THE COURT: Yeah. Because it makes it easier  
3 for me to review.

4 MS. McLEITCHIE: Understood. And so at this  
11:16:04 5 time you're not ordering production of any documents  
6 that have been withheld. You're ordering additional  
7 searches, a log, and then your Honor will do an  
8 in camera review.

9 THE COURT: Right.

11:16:13 10 MS. McLEITCHIE: Thank you, your Honor.

11 THE COURT: And more importantly, and because  
12 we haven't really addressed this. We'll -- I think  
13 what's important to do is how long do -- how long do  
14 you think it will take to prepare the final log and  
11:16:29 15 conduct the new searches or additional searches?

16 Because I want to get all this done at one time. And  
17 what I mean by that is this, I don't want to -- because  
18 we haven't discussed these documents individually and  
19 what you anticipate they are. And I haven't had a  
11:16:45 20 chance to review them.

21 So, hypothetically, I might look at them and  
22 say, Look, we can redact something. Or I might just  
23 say, Look, they should be produced. Or I might say  
24 there is a privilege log that applies. But I don't  
11:16:59 25 know yet because I haven't seen the documents yet.

11:17:01 1 MS. McLETCHE: Understood, your Honor.

2 THE COURT: So I want to have another time to  
3 meet and review the asserted privileges as it relates  
4 to specific documents.

11:17:11 5 MS. McLETCHE: Understood, your Honor. And,  
6 obviously, we need to hear from Mr. Honey about when it  
7 will happen. I will point out, again, that we've  
8 been -- we've been trying to get this information since  
9 December. And we are required to expedite this  
11:17:22 10 litigation.

11 THE COURT: I understand.

12 MR. HONEY: I would ask for a minimum of three  
13 weeks. There's a lot of moving parts involved. The  
14 legislative session as well. The reorganization.  
11:17:33 15 Sometimes it's hard to get to higher level people,  
16 whether or not they're even in the county on any given  
17 day.

18 MS. McLETCHE: So three weeks from today,  
19 your Honor? I would request a shorter time period,  
11:17:43 20 but ...

21 THE COURT: Sir. Can you get it done, and we  
22 can have a status check in three -- and in two weeks I  
23 need to get the documents to review in camera.

24 MR. HONEY: If you schedule the hearing for  
11:17:57 25 four weeks, I can get the records to you in three

11:18:01 1 weeks.

2 MS. McLETCHE: Your Honor, I would ask two  
3 weeks, and a week after that.

4 THE COURT: Realistically.

11:18:08 5 MR. HONEY: I'm being realistic on my time.

6 THE COURT: You're getting the searches,  
7 ma'am. I want to make sure --

8 MS. McLETCHE: I appreciate that, your Honor.

9 THE COURT: Okay. This is what we'll do.

11:18:19 10 Ma'am, prepare an order.

11 MS. McLETCHE: Yes, ma'am -- yes, sir.

12 THE COURT: Okay. And, No. 1, I granted your  
13 request. No. 2, the request shall be complied with  
14 within three weeks from today.

11:18:31 15 And we're going to have -- as part of the  
16 order, too, any documents where there's a claim of  
17 privilege, along with the final privilege log those  
18 documents should be submitted in written form for my  
19 review. And then in four weeks, we're going to have a  
11:18:52 20 hearing. And I'm going to make a determination as to  
21 whether those documents are produced or not. You got  
22 all that?

23 MS. McLETCHE: I do, your Honor.

24 THE COURT: Okay.

11:19:02 25 MS. McLETCHE: If time permits, three days

11:19:04 1 before the hearing, may I provide a response to their  
2 privilege log?

3 THE COURT: Absolutely, absolutely.

4 MS. McLEITCHIE: Sure.

11:19:09 5 THE COURT: Absolutely. And I'll read it,  
6 ma'am.

7 Even if you get it to me the day before and  
8 you let me know, and you drop a courtesy copy, I  
9 promise I'll read it for you.

11:19:19 10 MS. McLEITCHIE: Thank you, your Honor. I  
11 appreciate that very much.

12 THE COURT: All right.

13 MS. McLEITCHIE: I guess, it depends how long  
14 this log is.

11:19:23 15 THE COURT: I understand. And it might not be  
16 much different than what we have right now. We just  
17 don't know.

18 MR. HONEY: I agree.

19 THE COURT: Prepare an order, ma'am.

11:19:30 20 THE COURT CLERK: 30-day continuance?

21 THE COURT: Yes.

22 THE COURT CLERK: June 6 at 9:00 a.m.

23 THE COURT: You got that?

24 MS. McLEITCHIE: Yes.

11:19:38 25 THE COURT: Everyone, enjoy your day.

11:19:39 1 MS. McLETCHE: Thank you very much, your  
2 Honor.

3 MR. HONEY: You too.

4 MS. McLETCHE: I appreciate it.

11:19:42 5 MR. HONEY: You too, your Honor. Thank you.

6 THE COURT: Okay.

7

8

9 (Proceedings were concluded.)

11:53:18 10

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## REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE  
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT  
AND UNDER MY DIRECTION AND SUPERVISION AND THE  
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND  
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF  
NEVADA.

\_\_\_\_\_  
PEGGY ISOM, RMR, CCR 541

<p><b>MR. HONEY: [173]</b></p> <p><b>MS. McLEITCHIE: [100]</b> 3/10 3/15 4/2 8/11 11/13 11/17 11/19 12/24 13/3 13/12 13/15 15/3 15/8 16/9 16/14 17/12 17/17 19/4 21/24 22/2 22/8 22/11 23/2 23/14 23/25 33/5 33/9 34/16 34/18 34/21 35/25 52/9 76/1 76/3 76/7 84/6 84/10 84/16 84/25 85/2 85/8 85/10 86/18 86/21 86/25 89/9 89/12 89/22 90/9 90/12 90/15 92/3 92/5 92/18 92/22 93/3 94/12 94/18 94/22 95/4 95/6 95/8 96/4 96/6 96/22 97/12 98/1 99/19 101/15 103/10 104/1 104/10 104/12 104/23 105/4 105/13 105/23 106/3 106/17 106/21 106/24 107/4 107/16 107/19 108/3 108/9 108/25 109/4 109/17 110/1 110/7 110/10 110/22 110/24 111/3 111/9 111/12 111/23 111/25 112/3 <b>THE COURT</b> <b>CLERK: [2]</b> 111/19 111/21 <b>THE COURT: [232]</b></p>	<p>30/20 30/22 53/1 53/2 54/25 91/25 <b>13 [1]</b> 32/18 <b>13th [7]</b> 5/13 7/18 16/18 33/1 52/12 56/12 82/19 <b>14 [4]</b> 25/17 25/24 26/10 53/4 <b>15 [1]</b> 83/24 <b>150 [1]</b> 46/10 <b>16 [1]</b> 1/3 <b>17 [3]</b> 37/8 37/17 40/16 <b>18 [1]</b> 36/23 <b>19 [2]</b> 28/14 29/4 <b>1st [1]</b> 55/1</p> <p><b>2</b></p> <p><b>2 million [1]</b> 59/9 <b>20 [1]</b> 53/7 <b>2016 [4]</b> 12/17 14/15 28/14 29/4 <b>2017 [6]</b> 1/21 3/1 5/13 32/18 33/21 107/6 <b>21 [4]</b> 33/21 36/11 38/3 107/6 <b>21st [2]</b> 33/3 39/20 <b>23 [2]</b> 26/22 53/6 <b>239 [9]</b> 20/7 26/13 54/15 54/23 58/25 58/25 59/25 60/13 90/2 <b>239.010 [4]</b> 60/6 60/14 60/21 65/4 <b>239.0107 [5]</b> 4/24 5/2 9/1 65/16 97/14 <b>239.012 [2]</b> 10/6 95/25 <b>23rd [3]</b> 27/6 38/24 53/7 <b>24 [5]</b> 28/23 39/4 40/13 83/23 84/12 <b>24th [2]</b> 33/5 33/8</p> <p><b>3</b></p> <p><b>3-page [1]</b> 67/1 <b>30-day [1]</b> 111/20 <b>300 [5]</b> 39/21 42/1 43/3 63/22 93/21 <b>34 [3]</b> 106/6 106/18 107/12 <b>350 [2]</b> 35/11 63/22 <b>350,000 [1]</b> 35/8 <b>386350 [1]</b> 57/22 <b>3rd [6]</b> 32/21 32/22 54/20 54/21 54/22 56/9</p>	<p><b>4</b></p> <p><b>4-page [2]</b> 27/20 28/24 <b>40,000 [6]</b> 35/8 37/25 38/2 44/4 45/18 62/3 <b>41 [3]</b> 106/6 106/19 107/12 <b>425-8220 [1]</b> 2/6</p> <p><b>5</b></p> <p><b>5-day [1]</b> 25/24 <b>500 [1]</b> 68/10 <b>5100 [1]</b> 2/12 <b>520 [1]</b> 2/4 <b>53 [1]</b> 37/18 <b>5300 [1]</b> 2/5 <b>5373 [1]</b> 2/13 <b>541 [2]</b> 1/24 113/17 <b>5th [6]</b> 14/4 14/15 15/10 27/14 29/9 29/10</p> <p><b>6</b></p> <p><b>60 [1]</b> 70/7 <b>62 [2]</b> 63/16 106/22</p> <p><b>7</b></p> <p><b>701 [1]</b> 2/4 <b>702 [3]</b> 2/5 2/6 2/13 <b>728-5300 [1]</b> 2/5 <b>799-5373 [1]</b> 2/13</p> <p><b>8</b></p> <p><b>8-page [1]</b> 25/18 <b>80 [1]</b> 70/8 <b>8220 [1]</b> 2/6 <b>85 [2]</b> 35/21 37/21 <b>89101 [1]</b> 2/5 <b>89146 [1]</b> 2/13</p> <p><b>9</b></p> <p><b>900 [1]</b> 103/5 <b>990 [2]</b> 103/5 103/6 <b>9:00 a.m [1]</b> 111/22 <b>9:11 [1]</b> 3/2 <b>9th [2]</b> 27/14 29/10</p> <p><b>:</b></p> <p><b>:SS [1]</b> 113/2</p> <p><b>A</b></p> <p><b>A-17-750151-W [1]</b> 1/1</p>	<p><b>a.m [2]</b> 3/2 111/22 <b>ability [2]</b> 8/20 113/11 <b>able [7]</b> 9/7 9/16 9/17 19/20 71/17 90/16 95/10 <b>about [75]</b> 8/6 8/14 15/12 16/18 19/8 19/14 19/16 20/4 20/5 21/10 22/6 22/15 22/16 22/25 24/6 24/10 26/16 28/5 28/8 28/22 34/6 39/10 43/19 44/14 44/14 45/4 45/13 45/13 45/14 45/16 47/12 48/12 49/20 49/23 50/1 50/6 50/12 50/13 50/17 50/17 51/8 52/15 52/16 56/1 56/6 57/4 60/19 60/22 62/7 62/10 62/11 62/16 65/11 67/3 70/20 72/25 75/10 75/11 75/12 75/17 75/17 77/8 81/17 85/4 85/15 85/21 88/23 90/19 92/11 93/7 95/12 97/16 97/23 99/4 109/6 <b>above [1]</b> 88/2 <b>absolute [1]</b> 80/14 <b>absolutely [7]</b> 11/20 23/15 35/1 104/2 111/3 111/3 111/5 <b>abstract [1]</b> 17/1 <b>abuse [1]</b> 21/4 <b>academic [1]</b> 68/3 <b>access [13]</b> 15/19 20/19 21/8 47/18 49/6 57/7 60/3 62/1 77/3 82/2 83/11 83/15 95/10 <b>accompanying [1]</b> 22/13 <b>accomplish [1]</b> 74/9 <b>according [1]</b> 7/18 <b>accordingly [2]</b> 41/4 100/22 <b>accounts [1]</b> 24/12 <b>accuracy [2]</b> 103/17 103/19 <b>accurate [3]</b> 35/3 38/18 113/11</p>	<p><b>acknowledging [1]</b> 3/24 <b>act [17]</b> 6/2 16/20 16/22 18/13 23/10 76/9 76/17 76/20 79/12 79/16 79/24 81/4 82/7 83/8 92/8 94/24 96/2 <b>acted [1]</b> 94/22 <b>action [27]</b> 7/14 7/21 7/22 27/12 27/18 27/22 28/16 29/3 29/14 32/7 43/22 43/25 45/19 46/15 46/25 50/23 62/20 65/17 68/20 68/25 69/24 72/9 74/13 75/24 85/22 95/4 100/25 <b>Action's [1]</b> 29/25 <b>actions [14]</b> 14/19 22/19 22/20 25/8 25/9 28/7 47/22 50/13 62/11 67/11 69/10 69/11 75/14 95/18 <b>activities [1]</b> 63/18 <b>acts [3]</b> 10/23 58/23 69/13 <b>actual [3]</b> 19/8 19/9 80/12 <b>actually [14]</b> 6/8 8/1 8/1 8/5 8/17 9/19 24/18 32/19 40/4 85/14 86/7 95/16 96/23 104/4 <b>ADA [1]</b> 28/16 <b>ADAM [2]</b> 2/12 3/9 <b>add [2]</b> 30/1 101/24 <b>addition [1]</b> 35/14 <b>additional [14]</b> 6/4 7/7 30/12 37/1 37/2 39/21 42/2 43/4 51/23 78/24 81/13 93/21 108/6 108/15 <b>address [6]</b> 3/18 18/10 24/5 25/21 94/17 104/14 <b>addressed [7]</b> 45/12 57/18 68/18 69/1 69/18 101/4 108/12 <b>addresses [5]</b> 51/4 75/20 86/1 101/12 101/15 <b>adequate [1]</b> 18/25</p>
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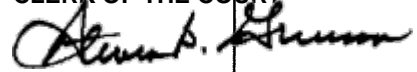
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19/5 22/24 23/3	<b>ups [1]</b> 67/16	<b>vote [4]</b> 72/24 73/1	54/25 55/1 58/10	109/13 109/18
30/24 31/1 31/6	<b>us [26]</b> 18/25	73/4 73/14	62/9 62/19 65/9	109/22 109/25
32/2 32/4 40/7	30/18 34/5 38/2	<b>voters [2]</b> 25/7	68/21 69/1 70/12	110/1 110/3 110/14
40/12 43/12 47/8	38/10 38/19 39/5	81/25	71/6 71/18 75/5	110/19
52/22 53/18 56/21	39/6 39/14 39/16	<b>votes [1]</b> 72/13	80/7 82/18 85/25	<b>weigh [1]</b> 63/1
57/3 63/11 64/17	39/20 40/1 40/2	<b>W</b>	89/16 90/24 91/25	<b>weight [1]</b> 59/11
64/18 64/25 66/18	40/4 42/1 51/10	<b>waitresses [1]</b>	94/3 94/5 94/21	<b>welcome [1]</b> 76/7
67/2 67/3 73/6	57/24 74/1 79/9	75/16	95/6 95/11 95/13	<b>well [30]</b> 8/5 11/25
73/19 74/4 74/15	82/5 87/19 93/21	<b>waived [1]</b> 6/18	96/25 97/4 97/13	24/22 29/16 36/3
83/22 84/24 85/10	97/17 106/15	<b>walks [1]</b> 66/7	97/18 97/24 98/21	45/4 45/16 47/10
87/11 94/4 95/8	106/16 107/10	<b>want [59]</b> 6/3 6/5	100/4 100/5 100/17	50/5 54/4 54/11
100/20 101/6 102/4	<b>use [6]</b> 38/22 40/2	7/12 9/25 10/5 14/2	102/1 103/13	55/16 56/13 58/13
107/19 107/20	40/4 58/1 58/2	17/19 21/19 22/13	104/20 104/24	62/3 63/18 64/5
109/11 111/15	91/10	22/14 30/16 34/19	105/20	64/9 66/10 67/24
<b>Understandably</b>	<b>used [4]</b> 27/21	38/5 38/7 39/16	<b>wasn't [7]</b> 17/21	72/24 72/25 81/13
<b>[1]</b> 19/4	39/23 42/24 54/19	41/16 41/18 42/23	26/4 26/4 79/4	82/3 82/16 87/1
<b>understanding [4]</b>	<b>uses [1]</b> 69/2	43/11 49/16 51/12	86/13 94/22 104/20	89/22 98/18 106/20
34/8 62/19 71/11	<b>using [1]</b> 39/21	51/13 53/8 54/18	<b>way [19]</b> 5/18	109/14
101/1	<b>V</b>	57/2 61/15 66/9	14/25 30/14 31/10	<b>went [5]</b> 28/3 30/4
<b>understands [2]</b>	<b>vacuum [4]</b> 46/6	70/23 72/3 74/10	42/2 56/15 58/15	70/7 75/8 75/9
46/23 76/14	46/6 82/10 97/2	77/13 78/9 78/18	72/2 72/5 73/13	<b>were [50]</b> 7/19
<b>understood [6]</b>	<b>valid [6]</b> 20/14	81/21 82/16 83/21	79/2 79/16 81/7	15/1 15/5 15/10
91/24 96/5 96/7	20/15 81/12 85/24	84/18 84/23 85/24	83/10 83/15 96/25	16/17 16/21 23/7
108/4 109/1 109/5	88/7 104/16	90/18 91/18 91/19	97/21 100/7 106/22	25/15 27/24 29/5
<b>unilaterally [2]</b>	<b>Valley [1]</b> 64/13	92/10 93/4 95/20	<b>we [216]</b>	31/4 34/13 34/23
7/25 81/7	<b>varies [1]</b> 87/14	102/8 102/14	<b>we'd [2]</b> 8/3 34/5	36/18 37/13 39/12
<b>unique [2]</b> 21/23	<b>various [1]</b> 87/15	102/16 102/20	<b>we'll [6]</b> 34/7	39/25 42/1 44/23
	<b>VEGAS [6]</b> 1/9 2/5	102/21 102/21	65/14 97/7 107/18	44/25 46/21 46/21

<p><b>W</b></p> <p><b>were... [28]</b> 48/8 51/19 52/8 52/8 52/22 53/3 53/10 54/12 55/5 60/18 61/11 71/9 71/9 71/11 77/7 79/5 85/7 85/8 89/17 89/20 91/14 98/24 101/3 103/17 105/18 107/10 112/9 113/8 <b>weren't [1]</b> 79/5 <b>WEST [1]</b> 2/12 <b>whales [1]</b> 75/19 <b>what [117]</b> <b>what's [11]</b> 8/1 31/10 47/11 50/3 57/3 69/23 73/14 83/22 84/16 93/2 108/13 <b>whatever [3]</b> 58/21 90/17 91/21 <b>whatsoever [1]</b> 90/24 <b>when [39]</b> 5/19 15/15 16/5 27/16 36/19 38/22 39/3 40/12 41/7 41/12 42/16 42/20 50/2 51/10 51/19 53/8 54/15 55/3 57/4 58/1 58/2 61/19 61/25 62/3 65/9 67/24 71/18 71/20 75/2 75/16 75/19 77/7 82/18 84/24 89/2 89/16 97/16 104/3 109/6 <b>where [28]</b> 4/6 10/1 19/7 19/21 32/2 35/6 45/11 48/6 48/21 51/17 55/7 58/8 63/12 70/11 75/5 83/6 89/22 89/25 90/2 94/21 95/14 96/3 97/16 98/9 98/10 98/13 98/14 110/16 <b>WHEREOF [1]</b> 113/13 <b>whether [35]</b> 3/18 3/19 3/23 4/19 9/11 10/8 16/1 16/8 22/20 29/21 31/19 36/14 38/25 58/10 58/11 62/24 62/24 69/10 73/1 74/20</p>	<p>78/20 86/15 88/20 95/1 95/11 95/12 96/17 97/4 102/23 104/14 104/24 106/15 107/10 109/16 110/21 <b>which [38]</b> 5/2 6/1 6/15 9/8 16/15 16/17 25/1 25/25 27/13 29/6 35/18 35/18 37/3 37/15 39/6 40/18 42/12 43/25 50/23 57/7 60/7 62/12 65/4 68/24 69/14 70/13 70/19 70/20 73/12 73/14 78/21 81/15 82/12 82/18 83/6 89/19 91/7 93/12 <b>while [11]</b> 5/9 5/12 5/17 6/5 6/11 6/18 6/24 24/10 24/12 60/17 79/20 <b>who [23]</b> 9/23 10/23 11/21 11/22 12/4 15/17 25/9 28/3 35/5 42/25 44/19 45/6 51/4 71/17 71/24 72/2 86/1 86/13 88/4 88/5 90/1 101/13 101/17 <b>who's [7]</b> 9/23 10/10 10/20 72/6 73/10 88/10 95/21 <b>whole [6]</b> 12/12 16/16 38/6 44/4 67/15 78/2 <b>wholesale [1]</b> 81/16 <b>whom [3]</b> 11/3 69/14 89/16 <b>whomever [1]</b> 45/25 <b>whose [1]</b> 37/22 <b>why [30]</b> 9/5 10/5 12/18 13/19 15/11 15/11 16/16 19/10 31/11 31/12 31/25 34/12 38/21 47/9 56/9 56/14 56/24 65/25 76/13 76/14 78/12 85/2 91/23 94/2 94/2 95/20 95/23 96/22 97/15 102/9 <b>wide [2]</b> 20/22 38/7</p>	<p><b>wide-ranging [1]</b> 20/22 <b>widespread [1]</b> 7/10 <b>will [22]</b> 18/11 18/19 19/15 33/5 35/22 37/23 43/4 49/8 49/10 70/15 77/3 77/18 89/19 92/19 93/5 100/15 102/9 104/22 108/7 108/14 109/7 109/7 <b>WILLIAMS [2]</b> 1/18 74/22 <b>wisdom [1]</b> 57/20 <b>withheld [13]</b> 5/8 26/18 28/24 32/5 33/25 34/3 38/17 78/2 82/21 93/2 106/13 107/13 108/6 <b>withhold [3]</b> 5/6 20/3 23/6 <b>withholding [10]</b> 3/24 4/19 5/13 16/16 32/17 32/19 32/20 81/16 92/9 97/15 <b>withholdings [1]</b> 32/24 <b>within [8]</b> 20/11 31/2 59/13 69/7 92/14 93/18 104/16 110/14 <b>without [5]</b> 54/2 78/2 97/17 97/17 97/17 <b>withstand [1]</b> 42/9 <b>WITNESS [1]</b> 113/13 <b>won't [2]</b> 54/5 65/1 <b>wondering [1]</b> 105/16 <b>word [5]</b> 58/3 58/3 71/21 71/22 99/22 <b>words [2]</b> 76/4 99/14 <b>work [14]</b> 18/2 19/20 22/23 25/9 37/3 40/8 42/10 54/2 77/20 81/24 81/24 81/25 91/7 97/5 <b>works [4]</b> 25/4 25/7 73/6 89/1 <b>worst [1]</b> 45/2 <b>worst-case [1]</b></p>	<p>45/2 <b>worthy [1]</b> 95/4 <b>would [53]</b> 5/23 17/23 19/11 22/21 23/9 28/7 34/3 37/3 39/2 42/3 42/5 42/17 43/1 44/10 46/19 47/22 48/21 50/15 52/6 52/13 53/20 54/1 56/25 61/8 66/4 66/16 67/6 68/6 68/7 72/24 72/25 73/14 74/1 74/1 78/11 79/25 81/14 81/25 85/13 88/3 89/15 95/19 95/20 96/8 96/10 96/23 98/25 101/24 102/10 106/23 109/12 109/19 110/2 <b>wouldn't [3]</b> 31/12 58/21 68/7 <b>wrap [1]</b> 53/21 <b>writ [9]</b> 15/18 25/16 25/20 26/5 36/22 38/4 53/3 64/3 99/1 <b>writing [2]</b> 66/2 66/10 <b>written [7]</b> 14/22 30/2 54/15 66/12 75/11 78/5 110/18 <b>wrong [1]</b> 52/4 <b>wrongdoing [1]</b> 7/10 <b>wrote [2]</b> 39/10 99/14</p> <p><b>Y</b></p> <p><b>yeah [31]</b> 13/2 13/10 16/14 19/1 19/3 27/2 40/23 48/14 50/1 52/24 65/6 66/21 71/4 71/15 74/21 84/11 84/13 87/12 87/12 89/23 90/15 91/8 92/3 93/23 99/10 99/10 99/11 100/1 103/3 106/7 108/2 <b>year [2]</b> 48/22 63/16 <b>years [3]</b> 48/23 59/13 83/13 <b>yes [33]</b> 11/20 12/22 13/6 13/7 22/12 23/5 33/6 33/23 33/24 40/17</p>	<p>41/14 41/14 44/15 45/18 57/16 71/2 71/13 76/5 84/2 84/17 86/19 86/22 87/3 98/8 101/16 106/3 106/10 106/25 107/3 110/11 110/11 111/21 111/24 <b>yesterday [1]</b> 8/14 <b>yet [4]</b> 57/19 69/18 108/25 108/25 <b>yielded [1]</b> 89/17 <b>you [225]</b> <b>you'd [3]</b> 33/15 68/5 107/21 <b>you're [31]</b> 9/11 9/11 9/13 16/16 24/11 24/12 24/14 24/15 39/16 56/1 67/3 67/24 74/15 76/7 77/11 78/13 79/14 92/9 94/9 95/14 98/10 103/9 104/25 105/16 106/15 107/21 107/21 107/24 108/5 108/6 110/6 <b>you've [3]</b> 56/3 59/13 105/10 <b>your [129]</b></p>
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1 **NEOJ**  
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3 ALINA M. SHELL, Nevada Bar No. 11711  
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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.

**NOTICE OF ENTRY OF ORDER**

12 CLARK COUNTY SCHOOL DISTRICT,

13 Respondent.  
14

15 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:  
16 PLEASE TAKE NOTICE that on the 6<sup>th</sup> day of June, 2017, an Order Granting Writ  
17 of Mandamus as to Jurisdiction and Search Parameters was entered in the above-captioned  
18 action. A copy of the Order is attached hereto as Exhibit 1.

19 DATED this 6<sup>th</sup> day of June, 2017.

21 /s/ Margaret A. McLetchie

22 MARGARET A MCLEITCHIE, Nevada Bar No. 10931  
23 ALINA M. SHELL, Nevada Bar No. 11711  
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Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 6<sup>th</sup> day of June, 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  
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9 *Counsel for Petitioner*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,  
10  
11

12 Petitioner,  
13

14 vs.  
15

16 CLARK COUNTY SCHOOL DISTRICT,  
17  
18

19 Respondent.  
20  
21

Case No.: A-17-750151-W

Dept. No.: XVI

**ORDER GRANTING WRIT OF**  
**MANDAMUS AS TO**  
**JURISDICTION AND SEARCH**  
**PARAMETERS**

22 The Las Vegas Review-Journal's Amended Petition for Writ of Mandamus having  
23 come on for hearing on May 9, 2017 and for a status check on June 6, 2017, the Honorable  
24 Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-  
25 Journal") appearing by and through its attorneys, MARGARET A. MCLEATCHIE and  
26 ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("District  
27 Attorney"), appearing by and through his attorneys, CARLOS M. MCDADE and ADAM  
28 HONEY, and the Court having read and considered all of the papers and pleadings on file  
and being fully advised, and good cause appearing therefor, the Court hereby finds it has  
jurisdiction over the Amended Petition, grants the Amended Petition as to the additional  
searches requested by the Review-Journal and makes the following findings of fact and  
conclusions of law:

///

I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT**

**Facts Pertinent to the Review-Journal's Original 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 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.

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

3. 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.

4. 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.

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

6. Later that same day, CCSD provided a copy of the Redacted Records to

1 the Review-Journal.

2 7. On February 10, 2017, CCSD provided the Redacted Records with fewer  
3 redactions to both the Court and the Review-Journal. On February 13, 2017, CCSD provided  
4 a further version of the Redacted Records to the Court and the Review-Journal, along with  
5 an initial log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and  
6 CCSD Regulations 1212 and 4110. On February 13, 2017, CCSD also provided ten  
7 additional pages not previously identified (the "Additional Redacted Records"). On  
8 February 13, 2017, CCSD also provided a revised version of the log (the "2/13/17 Log")  
9 including the Additional Redacted Records and asserting additional based for redactions.  
10 Finally, CCSD provided an unredacted version of the Additional Redacted Records to the  
11 Court.

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

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

16 10. Following that hearing, on February 22, 2017, the Court entered an Order  
17 granting the Review-Journal's Petition. (*See* February 22, 2017 Order, *see also* February 23,  
18 2017 Notice of Entry of Order.)

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

25 12. The Court directed CCSD to comply with the Order within two days. (*Id.*  
26 at ¶ 36.) On February 24, 2017, CCSD produced new versions of the Redacted Records and  
27 Additional Redacted Records to the Review-Journal.

28 ///

1 **Facts Relevant to the Review-Journal's Amended Petition**

2 13. On February 10, 2017, the Review Journal submitted a new records request  
3 to CCSD for records pertaining to Mr. Child (the "February Request").

4 14. The February Request asked CCSD to produce:

- 5 • Records that pertain to, discuss, or reference any inappropriate sexual  
6 comments Mr. Child is alleged to have made to female CCSD employees  
7 or any appropriate sexual behavior Mr. Child is alleged to have engaged  
8 in;
- 9 • Records that pertain to, discuss, or reference any complaints (formal and  
10 informal) submitted by female CCSD employees about Mr. Child's  
11 behavior;
- 12 • Records that pertain to, discuss, or reference Concerns about female  
13 employees' concerns about being alone with Mr. Child;
- 14 • Records that pertain to, discuss, or reference concerns about Mr. Child  
15 having (or wanted to have) romantic relationships with female CCSD  
16 employees;
- 17 • Records that pertain to, discuss, or reference concerns that Mr. Child's  
18 behavior and/or statements have created a hostile work environment;
- 19 • • Records that pertain to, discuss, or reference the factual bases for CCSD's  
20 determination that Mr. Child has violated Title VII of the Civil Rights Act  
21 of 1964;
- 22 • Records that pertain to, discuss, or reference concerns that Mr. Child has  
23 made inappropriate statements to CCSD employees regarding their  
24 appearance;
- 25 • Records that pertain to, discuss, or reference concerns that Mr. Child has  
26 made inappropriate statements to CCSD employees regarding sexual  
27 orientation;
- 28 • 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.

15. The February Request specifically asked CCSD to provide records on a rolling basis as they became available.

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

17. 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).

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

19. On March 3, 2017, CCSD provided documents in response to the February Request.

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

21. That same day, the Review-Journal requested CCSD provide a log of withheld documents, and asked CCSD to provide it with search information.

22. CCSD responded to these requests via letter on March 13, 2017. In its letter, CCSD indicated it had searched for the terms "Kevin Child" and "Trustee Child" in the Interact email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike Barton, each School Associate Superintendent and each of the school principals in Trustee Child's district.

23. CCSD did not inform the Review-Journal that it had limited the sources or custodians it had searched. Instead, in response to the Review-Journal's inquiry regarding what documents were being withheld, CCSD asserted that "the only information that has

not been provided is internal information received or gathered by the District in the court of its investigation of an alleged practice of unlawful practice of discrimination, harassment, or hostile work environment which is confidential and not required to be disclosed under the public records law.”

24. By email on March 13, 2017, CCSD also stated it was withholding one document—a report 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”). The Review-Journal responded to CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD conduct additional email searches for responsive records from additional custodians, including:

- All principals (not just those in District D);
- All trustees (including but not limited to Kevin Child);
- Cedric Cole and all other Diversity and Affirmative Action Programs staff; and
- The email addresses for every person who has sent or received responsive documents (including as cc) that have already been produced in response to the December Request or the February Request.

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

26. 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.

27. 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 (“3/24/2017 Log”). This 3/24/2017 Log (the last log produced) reflects 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.

28. 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.

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

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

## II.

### ORDER

31. A petition for Writ of Mandamus is the appropriate vehicle by which to pursue production under the NPRA, where a governmental entity has refused it. *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, n.4, 266 P.3d 623, 630, n.4 (2011); *citing DR Partners v. Board of County Comm'rs*, 116 Nev. 616, 620, 6 P.3d 465, 468, citing NRS 34.160.

32. The Court hereby finds it has jurisdiction over the Review-Journal's Amended Petition because the initial Petition was filed with this Court and was specifically a public information request as it pertained to Trustee Child.

33. The purpose of the NPRA is to "foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]" Nev. Rev. Stat. § 239.001(1). To that end, the NPRA must be construed

1 liberally, and any limitation on the public's access to public records must be construed  
2 narrowly. Nev. Rev. Stat. § 239.001(2) and § 239.001(3).

3 34. Unless explicitly confidential, public records are to be made available to  
4 the public for inspection or copying. NRS 239.010(1); *Newspapers, Inc. v. Gibbons*, 127  
5 Nev. Adv. Rep. 79, 12 266 P.3d 623, 628 (2011). If a statute explicitly makes a record  
6 confidential or privileged, the public entity need not produce it. *Id.*

7 35. If a public record contains confidential or privileged information only in  
8 part, in response to a request for access to the record, a governmental entity shall redact the  
9 confidential information and produce the record in redacted form. Nev. Rev. Stat. § NRS  
10 239.010(3)

11 36. A governmental entity seeking to withhold or redact records must prove by  
12 a preponderance of evidence that the records are confidential or privileged. *Gibbons*, 127  
13 Nev. at 880, 266 P.3d at 628 (citations omitted).

14 37. The term "record" as used in the NPRA is to be interpreted broadly. *See*  
15 Nev. Rev. Stat. § 239.001(2); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 183,  
16 878, 266 P.3d 623, 626 (2011) (noting that the Nevada legislature intended the provisions  
17 of the NPRA to be "liberally construed to maximize the public's right of access").

18 38. As the Nevada Supreme Court has explained, the NPRA "considers all  
19 records to be public documents available for inspection unless otherwise explicitly made  
20 confidential by statute or by a balancing of public interests against privacy or law  
21 enforcement justification for nondisclosure." *Reno Newspapers v. Sheriff*, 126 Nev.  
22 211,212,234 P.3d 922, 923 (2010).

23 39. There is nothing in the NPRA that limits "records" to those records CCSD  
24 decides are more likely to be responsive.

25 40. Further, the NPRA requires governmental entities to specifically tell a  
26 requester whether it will produce requested public records. *See* Nev. Rev. Stat. §  
27 239.0107(1).

28 41. Pursuant to Nev. Rev. Stat. § 239.0107(1)(c), if the governmental entity is

unable to produce requested records by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, the entity must provide to the person (1) written notice of that fact, and e of that fact; and (2) date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person.

42. If the governmental entity intends to deny a records request, it must provide the requester written notice of that facts and a “citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.” Nev. Rev. Stat. § 239.0101(1)(d).

43. Rather than provide such notice in response to either sets of requests as required by Nev. Rev. Stat. § 239.0107(1)(d), CCSD failed to inform the Review-Journal that it was only searching email—and only emails for certain custodians—until March 13, 2017. Moreover, the privilege logs CCSD provided the Review-Journal did not indicate that CCSD had unilaterally limited the December Requests, whose records it had searched, what terms it used in searching for responsive records, or which records it was withholding.

44. Thus, CCSD violated the NPRA by limiting the “records” it searched and ultimately produced, and also violated the NPRA by failing to timely inform the Review-Journal of its unilateral decision to limit its search for responsive records.

45. Accordingly, the Court hereby grants 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 following additional custodians:

- All principals (not just those in District D);
- All trustees (including but not limited to Kevin Child); Cedric Cole and all other Diversity and Affirmative Action Programs staff; and
- The email addresses for every person who has sent or received responsive documents (including as cc) that have already been produced in response to the December Requests or the February Requests.

- 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 are responsive to the December and February Requests.

46. CCSD must complete this search and produce all responsive records it does not contend are confidential to the Las Vegas Review-Journal by June 6, 2017.

47. Further, with regard to any documents CCSD has 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 must create a single log that numbers and identifies 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 log must provide sufficient information to the Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted. The final privilege log must be provided to the Court by May 30, 2017 along with all redacted documents and documents being withheld for an *in camera* review. A copy of the privilege log must also be provided to the Las Vegas Review-Journal.

48. CCSD must also provide the Court with a certification by June 6, 2017 attesting the accuracy of the searches conducted and evidencing that CCSD has fully searched the sources set forth in Paragraph 45 for records responsive to the December Requests and February Request by detailing the sources searched, date searches were conducted, and the search terms used to locate responsive documents. CCSD shall also provide a copy of the updated privilege log and the certification to the Las Vegas Review-Journal by June 6, 2017.

49. The Las Vegas Review-Journal may submit a responsive brief (addressing the claims of confidentiality) before the hearing on this matter.

50. The Court will review all responsive documents submitted *in camera* for

1 final determination of which records CCSD may keep confidential.

2 51. The Court shall conduct a further hearing on this matter on June 15, 2017.

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

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9 HONORABLE JUDGE TIMOTHY C. WILLIAMS

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11 Respectfully submitted,

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