

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

CLARK COUNTY SCHOOL  
DISTRICT

Appellant,

vs.

THE LAS VEGAS REVIEW-  
JOURNAL,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.: 75534

**RESPONDENT'S APPENDIX – VOLUME III**

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

MCLETCHIE 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 III 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 LL

Education (<https://www.reviewjournal.com/.//news/education/>) >>

## Sex misconduct in CCSD is a system-wide crisis of broken trust



A high number of arrests of teachers accused of sexual misconduct is in part because of a concept known as "passing the trash," where teachers move from school to school, and district to district, because there is no documentation of any accusations of sexual misconduct on their record. (Rachel Aston/Las Vegas Review-Journal)

By Amelia Pak-Harvey and Meghin Delaney Las Vegas Review-Journal  
May 23, 2017 - 5:59 am



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(mailto:?&subject=[Shared Post] Sex misconduct in CCSD is a system-wide crisis of broken trust&body=You may be interested in the following post:  
<https://www.reviewjournal.com/post/1083246>)

The Clark County School District didn't fire Dailey Elementary teacher John Stalmach (<https://www.reviewjournal.com/crime/courts/old-case-left-loophole-for-teacher-sex/>) when he was arrested in 2012 for having sex with a 16-year-old Basic High School student.

Instead, the district offered him a settlement: In exchange for his resignation, the incident wouldn't be documented in his personnel file.

It wasn't the first time Stalmach had faced allegations of inappropriate behavior.

RA481  
LVRJ215

An untold number of Clark County staff members have had their personnel files scrubbed of sexual misconduct allegations, creating a culture that allows sexual behavior between students and teachers to fester.

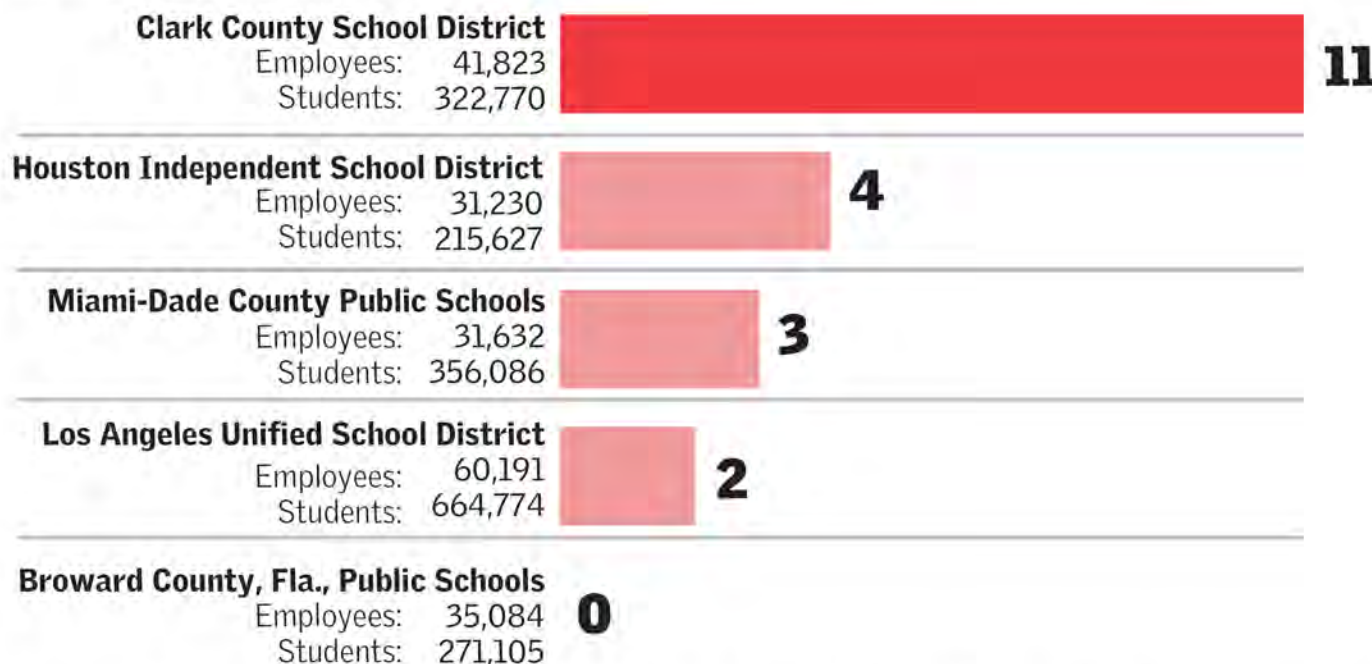
It's just one part of a system-wide crisis of **broken trust** that, according to lawyers and experts, stems predominantly from three issues: **the district's contract with the teachers' union, loopholes in background checks** and **insufficient employee training**.

Over the past three years, 31 staff members have been arrested on suspicion of sexual misconduct or inappropriate behavior with a student. Since July, there have been 11 arrests.

That's higher than the number of such arrests for the 2016-17 school year in some of the nation's largest districts. The Los Angeles Unified School District, the second largest system in the country, reported just two.

## School employee arrests around the nation

Eleven Clark County School District employees have been arrested so far in 2016-17 on suspicion of sexual misconduct with students. A look at how that compares with some of the 10 largest districts in the country.



Source: All figures provided by the school districts outside Nevada as of May 5

Las Vegas Review-Journal

Suspects in two of this school year's 11 arrests had a known history of inappropriate behavior, according to police records, but were allowed to remain in schools — a practice known as **"passing the trash."**

What's more, the district has faced at least five federal lawsuits over sexual misconduct between staff members and students in the past five years — three of which are ongoing. Two of those cases document clear instances of the system passing off problematic teachers from one school to another. All five initially claimed the district violated the rights of the victims under Title IX, although at least one has since dropped that claim.

And all of those cases originally argued the district knew or should have known about staff misconduct, but did little — if anything at all — to stop it.

"You have students who've been molested at 8 or 9 years old that will never trust their teachers again," said Robert Eglet, an attorney for a number of families in a passing-the-trash case involving former teacher Jeremiah Mazo.






### 'Safe haven' for pedophiles

This year, teacher Jeffrey Schultz and custodian Jesus Acosta are the latest examples of the district's failure to keep staff with known histories of misconduct away from children.

But the breakdown of whatever safeguards exist to protect students started long ago, in part because of the power of the unions that protect employees no matter the allegations against them, according to attorneys involved in the federal lawsuits.

# CCSD federal cases

The Clark County School District has been sued at least five times in the past five years over sexual misconduct between staff and students. The cases claim the district violated federal Title IX law.

CASE	 <b>Anonymous v. CCSD,</b> John Stalmach, Bambi Dewey	 <b>Joann Doe I and II v. Jeremiah Mazo,</b> CCSD, NSEA, CCEA et al.	 <b>Jane Doe v. Fausto Barraza-Balcazar,</b> CCSD et al.	 <b>Parent and John Doe v. CCSD,</b> teacher Erin Wing et al.	 <b>Jane Doe v. Franz Fajardo,</b> CCSD.
LAWSUIT SUMMARY	<b>Dec. 2013 - March 2017</b> Teachers Bambi Dewey and John Stalmach were accused of having a three-way sexual encounter with a 16-year-old who attended a school where they previously taught. Prosecutors later dropped charges because student was of legal age of consent. The case prompted legislators to change state law to forbid school staff from having sex with any student who is or was at an employee's school.	<b>February 2016 - ongoing</b> Teacher Jeremiah Mazo was first arrested in 2008 and charged with sexually molesting students. When criminal charges were dismissed, that history was erased from his personnel file. Mazo was allowed to continue teaching, and he later sexually abused multiple students while at Hayden Elementary. He was sentenced to up to 60 years in prison.	<b>June 2016 - ongoing</b> Fausto Barraza-Balcazar, a teacher's assistant at Mack Middle School, lured unidentified student Joann Doe – a severely autistic student – into a laundry room. He “tightly pressed the front of his body, from the chest area down to the thighs, against the rear of Joann Doe’s body.” He previously repeatedly harassed Joann Doe, but threatened her in order to keep his acts a secret.	<b>April 2015 - ongoing</b> An unidentified teacher at Foothill High lured student John Doe into an inappropriate relationship, which included the following “text” messages: “Baby...I want to straddle you,” “Baby...come kiss me like that again...” John Doe had anxiety and other emotional disorders. The teacher is not identified as a defendant in the lawsuit. Teacher Erin Wing, friends with the unnamed teacher, told student he put her best friend out of a job, causing him severe emotional distress. The student later attempted suicide in February 2014.	<b>March 2012 - October 2013</b> Saville Middle School counselor Franz Fajardo sexually seduced, harassed and assaulted student Jane Doe, sending her sexually graphic messages and giving her inappropriate gifts.
SETTLEMENT	<b>\$250,000</b> From CCSD, plus attorney's fees	<b>Pending</b> Requested amount not yet specified	<b>Over \$30,000</b> Requested in damages, plus attorneys' fees and other costs	<b>Over \$30,000</b> Requested in damages, plus attorneys' fees and other costs	<b>\$32,500</b> from CCSD <b>\$5,500</b> from Fajardo

Source: U.S. District Court for District of Nevada records

Severiano del Castillo Galvan, Las Vegas Review-Journal

If a teacher is cleared of a criminal or civil charge, “all written reports, comments or reprimands concerning actions which the courts found not to have occurred, shall be removed from the teacher’s personnel file,” according to the Clark County Education Association contract.

It’s that clause, Eglet says, that creates a “safe haven” for pedophile teachers in Clark County.

“You may as well put an ad ... that says, ‘Hey ... pedophile teachers, come to Las Vegas to teach, because unless you’re proven guilty beyond a reasonable doubt, your record will be sealed,’” Eglet said.

That’s exactly what happened in the case of Mazo, according to Eglet’s lawsuit. In 2008, Mazo was arrested on suspicion of sexually molesting students at Simmons Elementary.

But when the charges were dismissed, the allegations were removed from his personnel file and he continued teaching at other schools in Clark County, according to an amended complaint filed March 1.

Instead of firing Mazo or reassigning him to a job where he had no contact with children, the district transferred him to other schools, including Hayden Elementary, where he was again accused of sexually molesting students. Mazo pleaded guilty to three felony counts of attempted lewdness with a child in August 2015 and is serving up to 60 years in prison. (<https://www.reviewjournal.com/local/local-las-vegas/music-teacher-to-serve-up-to-60-years-for-sex-abuse-of-children/>)

The CCEA and the Nevada State Education Association are defendants in the lawsuit, which claims the unions assisted in the dismissal of Mazo’s 2008 charges.

“To not realize the consequences of this was beyond negligent — it’s gross negligence,” Eglet said. “The school district and the union both share responsibility for this happening.”

John Vellardita, the executive director of the Clark County Education Association, stands behind the clause in the contract.

“We represent 18,000 licensed professionals, and there’s 320,000 kids and there’s a lot of unfounded accusations that fly back and forth,” he said. “And without a due process that tries to essentially determine what’s fact from non-fact, anything that’s placed in anybody’s file that’s not based on any kind of findings of evidence shouldn’t be there.”

Vellardita stressed that the union does not condone or protect, in any way, any educator engaged in any criminal act.

“We don’t want folks that engage in criminal behavior in these classrooms or around kids, bottom line,” he said.

Still, the contract also allows teachers to request the removal of reports or reprimands from their personnel file that are beyond three years and one day old.

John George, the attorney for Mazo, said he has seen allegations of impropriety with children in his family law experience, noting that in parenting disputes or divorce, somebody can make an allegation that is completely unfounded.

“Generally, if an investigation is taking place and they find that these allegations are unfounded, then why would you allow these allegations to negatively impact somebody’s life?” he said. “Simply making an allegation like that can literally ruin somebody’s life.”

But he added that nothing is wrong with adding extra layers of protection in sexual misconduct cases.

He declined to comment on the Mazo case specifically.

## Litigation fears

RA483  
LVRJ217

When it comes to firing a problematic staff member — whether teacher, support staff or administrator — district leaders' fears of costly arbitration proceedings and wrongful termination lawsuits play a role in the problem.

"My sense of it is, that's a principle component in the manner in which these cases are not aggressively pursued," said attorney Don Campbell, who represented the victim in the Stalmach case. "That they feel that the unions have too much power or they have too much money or they'll throw too much shade at them through litigation."

Clark County School District Superintendent Pat Skorkowsky acknowledged that arbitration and litigation costs quickly add up.

"We have to make sure that we are handling it appropriately so that we would always prevail in those situations," he said.

Stalmach and another teacher, Bambi Dewey, were accused of having sex with a 16-year-old student in 2012. Yet the district had previously investigated Stalmach for inappropriate text messaging with a female student at his prior school, Basic High, around 2009.

After that 2009 investigation, both the Basic High principal and the director of employee management relations recommended Stalmach's termination over concerns with his behavior, Campbell's lawsuit uncovered.

"He absolutely cannot come back to my school," Principal David Bechtel told the district, according to the lawsuit.

But the district's general counsel did not fire Stalmach to avoid the arbitration that would have occurred if Stalmach appealed the decision, according to the lawsuit. Stalmach stayed in the district, and he was arrested after the encounter with the 16-year-old about three years later.

When prosecutors dropped the charges in that (<https://www.reviewjournal.com/news/teacherstudent-sex-allegations-lead-to-federal-lawsuit-against-ccsd/>) case (<https://www.reviewjournal.com/news/teacherstudent-sex-allegations-lead-to-federal-lawsuit-against-ccsd/>), the district approved the settlement agreement with Stalmach to get rid of him. Stalmach, who now lives in Colorado, still has a valid teaching license in Nevada that expires in July 2018, according to the state Department of Education. Dewey's license expired in 2013.

Skorkowsky said it's important to look at the union contract to see what can be done to strengthen the district's policies.

If there are situations that don't warrant any legal or disciplinary action, he said, then the district doesn't necessarily have control over what goes in that personnel file.

"We might have the best teacher in the world who has somebody who comes out and says that this happened, and there is nothing ever found in the investigation," he said. "So it is very difficult. It's a thin line trying to protect the teacher as well as to protect the students."

#### Present-day problems

It took one upset father and a phone call to the police to bring the prior history of Brown Academy teacher Jeffrey Schultz to light.

Chad Jensen said he wasn't happy with the answers he got from a school official after being told that his 13-year-old daughter reported an uncomfortable conversation with Schultz.

"She told me that she couldn't reveal any information, that they're going to be looking into it, that nothing's going to be done today about it," he said. "I said, 'Well, if you guys aren't going to do nothing about it, I am.'"

So he went outside and called police.

Jensen subsequently found out that Schultz had faced previous allegations of misconduct at Brown Academy and another school. Schultz now faces three counts of annoyance, molestation of, or indecency toward a minor younger than 18. He's on paid suspension from the district pending the superintendent's letter of dismissal.

About three months later, Jensen said he received another phone call from the school: His 11-year-old daughter reported that a substitute teacher touched her thigh. Henderson police confirmed the matter was being investigated, but no arrest had been made in the case as of Monday.

Jensen's older daughter, Kendra, said she and two friends felt uncomfortable after Schultz asked them what kind of underwear they wear beneath their leggings.

They filed a report in the front office later that day, she said, in part because they remembered that their friend previously switched out of Schultz's class. That friend felt uncomfortable when Schultz touched her shoulder.

"It was just going through our heads ... how he did that to her," she said, "that we didn't want anything further to happen to us."

Jesus Acosta, a custodian at Tarkanian Middle School, was warned to correct his behavior with students before he was arrested.

District police had previously investigated email and text conversations Acosta had with students in June 2016, according to police records. He was told to refrain from sharing personal contact information with students and keep his interactions with them professional. He kept his job at the school.

This year, three sixth-grade girls at the school reported that Acosta had hugged or kissed them and made inappropriate comments that left them uncomfortable. Acosta was arrested and charged with three counts of unlawful contact with a minor under 14 years of age.

At a School Board meeting in May, Kendra's grandmother, Rhoda Jensen, issued a plea to trustees.

"It's got to stop. These are 11-, 12- and 13-year-old students that now do not trust their teachers, their principals, their counselors," she said. "They're not sure who to trust."

#### Violation of federal Title IX law

The Clark County School District's acquiescence to an escape clause in its contract with the teachers' union has put the system in direct violation of Title IX, according to an attorney with expertise in the federal law.

"All the attention is around campus rape at the university level, but really K-12 is a much worse landscape than what we see in college campuses," said John Clune, a Colorado attorney who has litigated a number of high-profile Title IX cases across the country.

Passed in 1972, Title IX prohibits discrimination on the basis of sex in education programs that receive federal funding. The law also covers acts of sexual harassment and prohibited sexual conduct.

But the school district's contract with the Clark County Education Association stipulates that "all written reports, comments or reprimands concerning actions which the courts found not to have occurred, shall be removed from the teacher's personnel file."

# BROKEN TRUST



## SEXUAL MISCONDUCT IN OUR SCHOOLS

- 1 Tuesday, 5/23**  
**Passing the Trash:** Scrubbed personnel files and an escape clause in teacher contracts allow staff with sexual misconduct complaints to simply switch schools.
- 2 Wednesday, 5/24**  
**Flawed background checks:** School employees are fingerprinted and screened for criminal histories, but the Clark County School District does little beyond those limited background checks to uncover past sexual misconduct.
- 3 Thursday, 5/25**  
**Training failures:** The Clark County School District relies on a nine-minute video to train employees on sexual misconduct and lacks policies on appropriate employee behavior.

Clune said the clause in the contract clearly puts the district in violation of federal law.

"Schools have a contract with the federal government. ... Clauses in union contracts, none of that alleviates the school's responsibility under Title IX," Clune said.

Still, Superintendent Pat Skorkowsky believes the district must follow the language in the union contract. He said the clause doesn't conflict with Title IX.

"If there was not enough information for us to be able to see charges filed in a jurisdiction, then it's difficult for us to fire a teacher if no charges were filed," he said. "It makes it very difficult."

But Skorkowsky acknowledged that "it is time for us to revisit that and look at special circumstances, and that's something that'll have to be done through negotiations."

Clune called such scenarios a campus safety issue and suggested that public school systems ignore such clauses or stop negotiating them in the first place.

"The school has an obligation to do their own investigation," Clune said. "The Department of Education is very clear. Investigations have to be done independently. This has nothing to do with whether the case ends up going to court or not."

Title IX cases, Clune said, require "preponderance of evidence" as a burden of proof — lower than the "beyond a reasonable doubt" standard in the teachers' union contract. Each of the five federal lawsuits against the district in the past five years have claimed violations of Title IX; two have been settled, three remain ongoing.

"What happens in so many situations is that schools do not take the time and they don't want to spend the money to develop strong policies," Clune said. "And then they end up spending tenfold that on civil liability (for) lawsuits and their own kids getting hurt."

Schools found in violation of Title IX risk losing federal funding. But no K-12 school has ever had funding pulled due to violations, according to the U.S. Department of Education.

The district was previously found in violation of Title IX in December for its mishandling of a special education student's harassment complaints. The U.S. Department of Education's Office for Civil Rights ordered employees at the child's school to undergo Title IX training, among other corrective actions.

The law also requires that a qualified, full-time Title IX compliance officer clearly be designated. But the district's coordinator isn't easily identified.

Susan Smith, listed as an assistant superintendent in the district's administrative telephone directory, was designated the Title IX coordinator in December. Yet a district spokeswoman previously identified Interim Chief Instructional Services Officer Billie Rayford as the Title IX officer.

Online, the district's website still says the "chief educational opportunity officer" is the acting Title IX coordinator.

The district has had a Title IX coordinator since 2015, a spokeswoman said recently, and a staff member has been selected as the next coordinator. That employee is currently in training.

Contact Amelia Pak-Harvey at [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com) or 702-383-4630. Follow @AmeliaPakHarvey (<https://twitter.com/AmeliaPakHarvey>) on Twitter. Contact Meghan Delaney at [mdelaney@reviewjournal.com](mailto:mdelaney@reviewjournal.com) or 702-383-0281. Follow @MeghinDelaney (<https://twitter.com/MeghinDelaney>) on Twitter.

## TOP NEWS



RA485  
LVRJ219

**Nevada scholarship program benefits from political deadlock over ...** (<https://www.reviewjournal.com/news/education/nevada-scholarship-program-benefits-from-political-deadlock-over-esas/>)

By Meghin Delaney / RJ



**CCSD to pay \$900K to settle claims over restraint of autistic ...** (<https://www.reviewjournal.com/news/education/ccsd-to-pay-900k-to-settle-claims-over-restraint-of-autistic-student/>)

By Meghin Delaney / RJ





**Clark County School District gets \$17M to upgrade technology** (<https://www.reviewjournal.com/news/education/clark-county-school-district-gets-17m-to-upgrade-technology/>)

By Amelia Pak-Harvey / RJ

RA488  
LVRJ222

## News Headlines

**NATION AND WORLD** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//NEWS/NATION-AND-WORLD/](https://www.reviewjournal.com/.//NEWS/NATION-AND-WORLD/)) / Updated 8:05 am

**North Korea releases American student sentenced to prison** (<https://www.reviewjournal.com/news/nation-and-world/north-korea-releases-american-student-sentenced-to-prison/>)

By Matthew Lee The Associated Press

**CELEBRITY** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//ENTERTAINMENT/CELEBRITY/](https://www.reviewjournal.com/.//ENTERTAINMENT/CELEBRITY/))

**Diddy tops Forbes list; Taylor Swift drops to 49** (<https://www.reviewjournal.com/entertainment/celebrity/diddy-tops-forbes-list-taylor-swift-drops-to-49/>)

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**Patriots-Cowboys tops 255 other Super Bowl LII matchups** (<https://www.reviewjournal.com/sports/betting/patriots-cowboys-tops-255-other-super-bowl-lii-matchups/>)

By Todd Dewey / RJ

**ROBBERIES** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/ROBBERIES/](https://www.reviewjournal.com/.//CRIME/ROBBERIES/))

**Las Vegas police investigate robbery attempt at Dotty's** (<https://www.reviewjournal.com/crime/robberies/las-vegas-police-investigate-robbery-attempt-at-dottys/>)

By Mike Shoro / RJ

**NATION AND WORLD** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//NEWS/NATION-AND-WORLD/](https://www.reviewjournal.com/.//NEWS/NATION-AND-WORLD/)) / Updated 4:56 am

**Weekend boating accident at Lake Havasu leaves 1 dead, 1 missing** (<https://www.reviewjournal.com/news/nation-and-world/weekend-boating-accident-at-lake-havasu-leaves-1-dead-1-missing/>)

By Dave Hawkins Special / RJ

**SHOOTINGS** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//CRIME/SHOOTINGS/](https://www.reviewjournal.com/.//CRIME/SHOOTINGS/))

**2nd person arrested after central Las Vegas 7-Eleven shooting** (<https://www.reviewjournal.com/crime/shootings/2nd-person-arrested-after-central-las-vegas-7-eleven-shooting/>)

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**Foreclosure rate in Las Vegas drops sharply from 2016** (<https://www.reviewjournal.com/business/housing/foreclosure-rate-in-las-vegas-drops-sharply-from-2016/>)

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**BASKETBALL** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//SPORTS/BASKETBALL/](https://www.reviewjournal.com/.//SPORTS/BASKETBALL/))

**Durant, Curry lead Warriors to NBA title** (<https://www.reviewjournal.com/sports/basketball/durant-curry-lead-warriors-to-nba-title/>)

By Janie McCauley The Associated Press

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**Man charged with attempted murder following parking lot shooting** (<https://www.reviewjournal.com/crime/shootings/man-charged-with-attempted-murder-following-parking-lot-shooting/>)

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**Showdown looms in feisty Las Vegas city election** (<https://www.reviewjournal.com/news/politics-and-government/las-vegas/showdown-looms-in-feisty-las-vegas-city-election/>)

By Jamie Munks, Art Marroquin and Sandy Lopez / RJ

**GOLDEN KNIGHTS/NHL** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//SPORTS/GOLDEN-KNIGHTS-NHL/](https://www.reviewjournal.com/.//SPORTS/GOLDEN-KNIGHTS-NHL/))

**Vegas Golden Knights solidify final plans for expansion draft** (<https://www.reviewjournal.com/sports/golden-knights-nhl/vegas-golden-knights-solidify-final-plans-for-expansion-draft/>)

By Steve Carp / RJ

**EDUCATION** ([HTTPS://WWW.REVIEWJOURNAL.COM/.//NEWS/EDUCATION/](https://www.reviewjournal.com/.//NEWS/EDUCATION/)) >>

RA489  
LVRJ223

Education (<https://www.reviewjournal.com/.news/education/>) >>

Flawed Nevada, CCSD checks expose students to sexual predators



A second part of the problem of sexual misconduct involving teachers in Clark County School District is that background checks are limited in what they'll show state and district officials in the hiring process. (Rachel Aston/Las Vegas Review-Journal)



By Meghin Delaney and Amelia Pak-Harvey Las Vegas Review-Journal  
May 24, 2017 - 6:00 am

  
(<https://www.facebook.com/sharer/sharer.php?u=https%3A%2F%2Fwww.reviewjournal.com%2Fpost%2F1084392>)

  
(<https://twitter.com/intent/tweet?url=https%3A%2F%2Fwww.reviewjournal.com%2Fpost%2F1084392>)

  
(mailto:?&subject=[Shared Post] Flawed Nevada, CCSD checks expose students to sexual predators&body=You may be interested in the following post:  
<https://www.reviewjournal.com/post/1084392>)

People who work in Nevada's public schools are supposed to have clean records. They're fingerprinted and screened at the local, state and national levels for criminal histories.

But the process isn't foolproof.

In fact, the checks are largely repetitive: the state Department of Education and the Clark County School District each vet candidates using three different databases that generate essentially the same background reports, an investigation by the Las Vegas Review-Journal shows.

Background checks are limited in what they show state and district officials in the hiring process. Experts say predators can exploit loopholes in the process and continue working in schools even if they've previously been accused of sexual misconduct with (https://www.reviewjournal.com/news/education/sex-misconduct-in-ccsd-is-a-system-wide-crisis-of-broken-trust/) minors (https://www.reviewjournal.com/news/education/sex-misconduct-in-ccsd-is-a-system-wide-crisis-of-broken-trust/).

Anything below the level of an arrest — including police interrogations, school district investigations and previous complaints of sexual misconduct involving students — isn't captured in any of the criminal background checks performed by the Clark County School District or the state Department of Education.

The flawed background check process is a major contributor to an ongoing crisis in the school district, as employees with histories of sexual misconduct allegations can be hired because they don't have a criminal history.

Since July, 11 district employees have been arrested on charges relating to sexual misconduct with students. It's unclear whether expanded background checks would have prevented any of these 11 individuals from working in schools, but experts say school districts should be looking beyond arrests.

"It's a false sense of security because so many of these predatory teachers have been passed from jurisdiction to jurisdiction, school to school, district to district, state to state," said Terri Miller, president of Las Vegas-based Stop Educator Sexual Abuse Misconduct & Exploitation, which formed in 1996. "And because of that, they don't have a criminal history."

It's the kind of loophole that allows abusers to game the system, stay under the radar and preserve access to potential victims, according to experts who want reforms and additional protections before employees set foot in schools.

Take, for example, Melvyn (https://www.reviewjournal.com/crime/courts/ex-las-vegas-teacher-found-guilty-of-kidnapping-child-porn/) Sprowson (https://www.reviewjournal.com/crime/courts/ex-las-vegas-teacher-found-guilty-of-kidnapping-child-porn/), a former Clark County kindergarten teacher charged in 2013 with kidnapping a 16-year-old girl. Sprowson came to Nevada in 2012 from the Los Angeles Unified School District, where he faced a number of accusations of student sexual abuse.

In March, Sprowson was found guilty on four counts of unlawful use of a minor in the production of pornography, as well as one count each of first-degree kidnapping and child abuse or neglect. Sprowson appeared in court Wednesday to face sentencing, but errors in a pre-sentence investigation report prompted the judge to postpone until June 26.

Sprowson wound up in a Clark County classroom partially because none of the accusations in Los Angeles resulted in an arrest. The information about the accusations never made it into the hands of Clark County hiring officials, although Los Angeles school officials told the Review-Journal at the time that all Clark County had to do was ask.

Superintendent Pat Skorkowsky said that case prompted change in the district.

"It was when our school district police arrested Sprowson that we realized that we had to put in more stringent policies. We do have new procedures and practices in place where we contact the district directly."

Skorkowsky said the system's human resources department calls all references and former employers of applicants, but he blames a lack of transparency from districts nationwide in disclosing investigations involving sexual misconduct.

"Until there is a national policy on this, it limits what we can find out because we are not always going to get the truth from other districts and other employees," he said.

Skorkowsky said he did not know of any district policy that requires the screening of social media activity or Internet vetting of potential employees.

"We get so many applicants that would be a challenge," he said.

The Nevada Legislature is considering reforms to help prevent predators from getting into schools in the first place.

Assembly Bill 362, also called the "SESAME Law," after Miller's national nonprofit that advocates on the issue, would add a new layer to background checks, and Senate Bill 287 expands the mandated reporting requirements, by requiring districts to share and check all past employment records of applicants.

The bills are sponsored by Assemblywoman Jill Tolles, R-Reno, and Sen. Heidi Gansert, R-Reno, respectively.

#### Creating a 'new layer'

State Superintendent of Public Instruction Steve Canavero cautioned that the vetting process for licensed employees shouldn't end just because the state has issued a license. "Soft vetting," done by district human resources departments, can often help find information an application or background check may not show.

That includes an Internet search, he said, and thorough reference checks.

"Google is a wonderful way for us, and I hope for districts, to do some quick scanning of candidates, their references as well as previous jobs that are not listed that may raise some red flags," Canavero said.

Even then, there may be some individuals who are still under the radar, Canavero said.

Gansert and Tolles' legislative proposals are aimed at catching those who won't show up on criminal background checks.

"These address a different layer where you have investigations or individuals who have been investigated but that investigation did not lead to a criminal conviction," Canavero said.

Gansert's SB287 expands on the existing mandatory reporting laws, which right now only require school employees to report to law enforcement potential child abuse or neglect suspected to have been caused by a parent or guardian. Gansert wants to expand that and require employees to report on other employees, she said.

Telling law enforcement triggers the welfare agency, and if the report ends up being substantiated, it'd be added to the central registry.



1

### Passing the Trash

Scrubbed personnel files and an escape clause in teacher contracts allow staff with sexual misconduct complaints to simply switch schools.

2

### Flawed background checks

School employees are fingerprinted and screened for criminal histories, but the Clark County School District does little beyond those limited background checks to uncover past sexual misconduct.

3

### Training failures

CCSD relies on a 9-minute video to train employees on sexual misconduct and lacks policies on appropriate employee behavior.

## Legal solutions

### AB362 —

Sponsored by Assemblywoman Jill Tolles and referred to as the "SESAME Law," after a nonprofit that advocates on the issue.

- As of May 22, the bill was still being discussed by Assembly committees. It is exempt from passage deadlines.
- Requires applicants to allow the district to access any information on alleged sexual misconduct at previous employer.
- Requires districts to contact an applicant's former employers for information.
- Requires Nevada Department of Education to keep a list of names of people who have had their application for licensure denied because of a sexual offense with a minor.

**SB287 —** The bill is sponsored by Sen. Heidi Gansert and expands the state's mandatory reporting law.

- As of May 22, the bill had cleared the Senate and was being considered by the Assembly.
- Authorizes districts to access the state child welfare database to see if applicants have been investigated by the agency.
- Requires districts to perform background checks on employees at least once every five years.
- Requires all school district employees, not just licensed teachers, to call the state hotline to report suspected child abuse.

Las Vegas Review-Journal



**Gregory Beasley**  
White Middle School  
Teacher  
Arrested March 27  
*Preliminary hearing  
scheduled May 25*



**Jesus Acosta**  
Tarkanian Middle School  
Custodian  
Arrested April 15  
*Preliminary hearing  
scheduled June 13*

"One of my concerns was when you keep reports in house and it's handled as a personnel issue, that's a huge issue. The offender can be allowed to resign without any consequences," Gansert said. "Screening up front will help us not to inherit these individuals."

#### The SESAME Law

Tolles' AB362 requires applicants to disclose past allegations, if they left their job while there were pending allegations, and if they had a license suspended or revoked while there were pending allegations.

"We know that the vast majority of abusers would not show up [on a background check] because there hadn't been a conviction, but there could be a scenario where there's an accusation, an investigation and even awaiting trial and they might be dismissed from one school but they could go to another school even within the same district," Tolles said. "What this seeks to do is close that reporting and communication loophole."

RA492  
LVRJ226



**Ryan Davis**  
Legacy High School  
Substitute teacher/coach  
Arrested January 4  
*Calendar call scheduled  
July 6*



**Willie Bell**  
Eldorado High School  
Substitute teacher  
Arrested February 2  
*Calendar call scheduled  
June 19*



**Roger Brown**  
Arbor View High School  
Athletic director/teacher  
Arrested February 7  
*Preliminary hearing  
scheduled June 16*

Under the bill, applicants would be required to disclose all past employment where they had direct contact with children, contact information for those districts and a written statement describing whether the person had been investigated for alleged sexual misconduct.

Districts would be required to share information about sexual misconduct investigations. The bill prohibits districts from signing agreements to keep investigations under wraps.

Finally, her bill requires the state Department of Education to keep and distribute to districts a list of people who have been denied licenses because of sexual misconduct charges.

Both bills are still working through the legislative process. Assembly Bill 362 was heard by the Assembly Committee on Ways and Means but has not yet received a vote. Senate Bill 287 has passed the Senate and is awaiting a vote by the Assembly.

The state teacher's union, Nevada State Education Association, did not take a position on either bill. The local teacher's union, Clark County Education Association, supports both bills.

#### Beyond Nevada

Even with the potential new protections from lawmakers, there's only so much in Nevada's control. There are no mandated federal tracking or reporting requirements for teachers under investigation for sexual misconduct.



**Randall Minyard**  
Sandy Miller Elementary  
Magnet School  
Substitute teacher  
Arrested March 10  
*Preliminary hearing  
scheduled June 23*



**Michael Barnson**  
Cimmaron-Memorial  
High School  
Volunteer coach  
Arrested March 18  
*Status check July 18*



**Jeffrey Schultz**  
Brown Junior High  
School  
Teacher  
Arrested March 21  
*Trial set for July 11*

The National Association of State Directors of Teacher Education and Certification clearinghouse, called NASDTEC, is pointed to by experts as a resource, but it's an incomplete one. The database notes whether states have taken action against someone's license, such as a suspension or revocation.

Agencies can report action taken against employees and can run potential employees' names through the database. But reporting is voluntary and can often lag behind, Nevada licensing officials said. Nevada reports suspended or revoked licenses and also runs applicants from other states through the system.

"It's very manual," said Jason Deitrich, the director of educator licensure for the state Department of Education.

But it's not always updated in real time. An employee who flees one state to start over in Nevada may not show up in the database immediately, because officials in the previous state might be slow to upload their report.

NASDTEC said all 50 states now use the tool, but Phil Rogers, the executive director called it "simply an alert system."

"It's not meant to be used for research or anything like that," he said. "It's simply meant to allow that state to know that they need to contact the state where the person came from if they need more information."

Gansert said new protections are about restoring trust and safety.

"We all have the expectation when we send out children to school that it's a safe place. We trust the individuals who are there and when you think about children, they have a very high level of trust and respect, and that's what we teach our children," Gansert said. "They should be in an environment that is safe."

#### How current background checks work

The state Department of Education and the Clark County School District check job applicants against multiple databases. None of the databases will show misconduct below the level of an arrest, a loophole experts say allows predators to move from school to school. Here's how the current process works.



**Brian Theophil**  
Silverado High School  
Junior varsity assistant girls  
volleyball coach  
Arrested October 4  
*Arraignment scheduled  
May 26*



**Jordan Turner**  
Silverado High School  
Volunteer football coach  
Arrested October 14  
*Calendar call scheduled  
July 26*



**Ati Poni**  
Del Sol High School  
Campus security monitor/coach  
Arrested November 7  
*Sentencing scheduled  
May 30*

— For most applicants, the background check begins with the Nevada Department of Education, which grants licenses to certain school applicants, including teachers, administrators, psychologists, nurses, speech pathologists and others.

— As part of the licensing process, those individuals undergo both a state and federal criminal background check. The background checks are repeated when the individual applies to renew the license. Licenses are renewed on a three-, five- or eight-year rotation.

— Fingerprints are sent to the state Department of Safety and the FBI, a process that can take between four and six weeks — sometimes longer.

— The report generated by the background check will indicate no record for the individual or it will indicate arrests and convictions.

— In the past two years, the Department of Education has denied 120 people licenses because of background check issues. The state approved 25,000 new or renewed licenses in that same time frame.

— The Clark County School District also checks the background of every applicant, include those who already have completed and passed background checks from the state. Clark County conducts background checks on nonlicensed employees, too, including bus drivers, janitors and food service employees.

— The district again sends fingerprints to the FBI, which returns the same report generated by the state.

— For local checks, the district uses the Shared Computer Operations for Protection and Enforcement database. All local law enforcement entities, including the Metropolitan Police Department, feed information into the system.

— "SCOPE" reports again show arrests and convictions, but again won't show investigations.

— The district's human resources department reviews the reports to determine whether any charges would bar the applicant from being employed.

— All new teachers who started working in the district for the 2016-17 year had cleared the SCOPE report prior to being employed in the district, according to figures provided by the Clark County Schools District.

— Even so, 249 of the 1,509 — or 16.5 percent — new teachers began working before the federal background report was returned to the district, allowing applicants who possibly had criminal charges or convictions in other states to work with students. The district said all of the federal checks were approved when they were returned. Information about checks for other employees was not readily available.

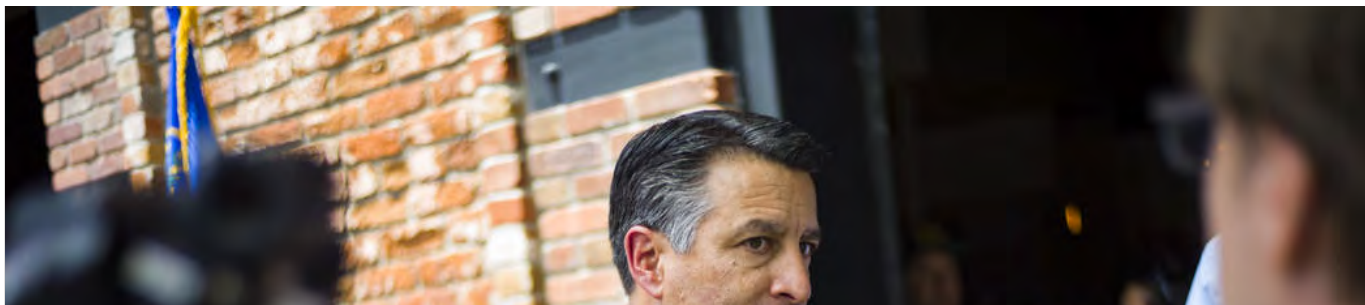
Contact Meghin Delaney at [mdelaney@reviewjournal.com](mailto:mdelaney@reviewjournal.com) or 702-383-0281 (tel:702-383-0281). Follow @MeghinDelaney (<https://twitter.com/MeghinDelaney>) on Twitter. Contact Amelia Pak-Harvey at [a-pakharvey@reviewjournal.com](mailto:a-pakharvey@reviewjournal.com) or 702-383-4630 (tel:702-383-4630). Follow @AmeliaPakHarvey (<https://twitter.com/AmeliaPakHarvey>) on Twitter.

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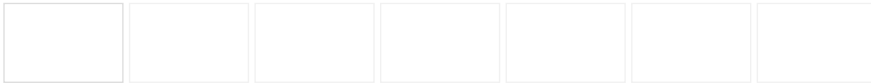
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## Training failures major cause of CCSD sexual misconduct crisis



A lack of proper employee training is another way experts say a culture of sexual misconduct permeates in schools across the nation and here in Clark County. (Rachel Aston/Las Vegas Review-Journal)



By Meghin Delaney and Amelia Pak-Harvey Las Vegas Review-Journal  
May 25, 2017 - 6:00 am



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<https://www.reviewjournal.com/post/1085157>)

Updated May 25, 2017 - 6:08 am

The Clark County School District has no social media or text-messaging policies for employee-student communications and heavily relies on a vague, outdated video to educate employees about sexual misconduct, a Review-Journal investigation has found.

Training failures are a major reason why the nation's fifth-largest school district is mired in a years-long sexual misconduct crisis that has seen 11 employees arrested since July, experts told the Review-Journal. And the district has not acted on a recommendation to expand its sexual misconduct training and create an Office of Educator Sexual Abuse Prevention.

Experts say juvenile victims of sexual abuse often are "groomed" through social media or text messaging by predators. Digital communication is used to gain a child's trust.

In Clark County, six of the 11 staff arrested since July fostered their inappropriate relationships with students through texting or social media, including Facebook and Snapchat, according to police records.

"Our school employees are not being trained properly," said Terri Miller, president of the Las Vegas nonprofit Stop Educator Sexual Abuse Misconduct and Exploitation. "I believe it should be a curriculum that they should have to complete before they get that degree to become a teacher. And that kind of curriculum is nonexistent."

Yet other large districts, including the New York City Department of Education and the Los Angeles Unified School District, have such policies that date back as far as 2012.

Neither New York nor Los Angeles prohibit employees from communicating with students through social media communication, but the policies strongly urge educators to keep personal and professional accounts separate.

New York's 14-page document includes a script employees can use if students engage with them on social media sites.

#### 'Vague,' outdated video

Every year the district's roughly 40,000 employees are required to watch a video that begins with a message from Superintendent Pat Skorkowsky.

It's not the stern statement on sexual misconduct that might be expected.

"We love when our employees make media headlines," Skorkowsky says. "Please make sure you're on the right side of those headlines."

Skorkowsky appears with district lawyers and law enforcement officials in the roughly nine-minute video, used by the system since 2015 to train employees how to act appropriately around children. The video continues to prove prescient — 31 staff members have been arrested on suspicion of sexual misconduct in the past three years.

"It doesn't give examples, it names a couple of things, but it doesn't give the see, scent, feel of it. The criteria they're giving about reporting an inappropriate relationship, it could start what people call a witch hunt because it's so vague," Mary Jo McGrath, a California-based lawyer who founded a company to help school districts train employees, said after reviewing the video at the request of the Review-Journal.

In addition to the video on inappropriate relationships with students, school district employees also must watch videos on sexual harassment, child abuse and neglect, and bullying.

But staff can watch it on their own time. They may be quizzed on some videos through an online system that verifies the completion of training, but there's no guarantee they watched them in their entirety.

Substitutes also watch the same videos, according to the district, and receive a substitute teacher's handbook that details prohibited sexual harassment against students or other staff.

The video reviews "red flags" and urges employees to immediately report any inappropriate behavior, but it doesn't clearly define what that looks like, McGrath said.

"I think the overarching concern is the use of the word 'inappropriate.' They keep using the word inappropriate without it being actually defined," McGrath said. "Doing this kind of shotgun approach, if you will, is just going to stir up more worry."

The video also cites outdated statutes.

It tells staff that school personnel older than 21 are prohibited from engaging in sexual conduct with students age 17 or younger who attend the same school. Yet current statute prohibits employees from having sexual relationships with any students they come in contact with through their jobs, regardless of which school a student attends and regardless of a student's age.

Two school district employees who were arrested this school year claimed they didn't know they were breaking the law.

When Silverado High School assistant junior varsity girls volleyball coach Brian Theophil was arrested in October on suspicion of having sex with a 12th-grader, he told police, "It's not technically illegal," according to the police report. "But I shouldn't do it." He also said he hadn't had any training.

Ryan Davis, a Legacy High School substitute teacher and football coach, was arrested in January on suspicion of having sex with a 12th-grader. "Davis said he thought, 'She's not going back to school, she's an 18 year old, can't get into trouble for that,'" the arrest report said.

"My own feeling is that the school district could probably do more, so there should be more education and more training," said Clark County District Attorney Steve Wolfson.

Wolfson's office began working with the district to update the video after a news conference in April, he told the Review-Journal. Skorkowsky confirmed the collaboration but said he wanted to wait until the legislative session ends June 6 in case new laws are passed.

"The training video is a good start," Wolfson said. "I know there are other people that are interested in providing education to the teachers and students."

#### A proposal ignored

For the past seven years, John Pacult has been trying to get the district to expand its sexual misconduct training.

Pacult, a Las Vegas licensed clinical social worker who has worked for state and county agencies, has spent years conducting risk assessments in sexual misconduct cases and is an expert witness on those matters in court.

"I knew this was happening, and it just continues to happen," he said. "I saw an opportunity to really help the district fix this problem."

Pacult's plan calls for a separate Office of Educator Sexual Abuse Prevention to handle claims of sexual misconduct.

That would take the burden off administrators, who aren't trained to handle sexual misconduct cases, and put inquiries in the hands of licensed professionals, he said.

## Know the signs



Stop Educator Sexual Abuse, Misconduct & Exploitation provides guidelines for parents to help protect their students from sexual abuse.

### Tips for parents include:

— Educate your child. Children should know which body parts are "private" and to tell a parent if someone touches a private part.

— Never let your child be alone with school employees. Experts suggest telling the school verbally and in writing the parent never wants the child to be alone.

— Educate yourself on the "grooming process." Predators may pay extra attention to potential victims, including giving them small gifts or special opportunities.

— Communicate with your child on a daily basis. Ask specifically about the child's interaction with employees.

— Visit the child's school and class room.

— Physical signs of abuse include trouble sitting, torn clothing, stained or bloody underwear and pain or itching in the genital area.

Source: [sesamenet.org](http://sesamenet.org)

**LAS VEGAS  
REVIEW-JOURNAL**

"At the end of the day, there's a file created — a proper file created," he said. "There's a proper tracking method. Then ultimately we determine whether there was or wasn't anything going on."

The Clark County School District did not explain why it hasn't accepted Pacult's suggestions. A spokeswoman said vendors and consultants regularly reach out to offer services, and a request for proposals process and a vetting of expertise must be done.

Pacult had a meeting with Trustee Kevin Child on Monday to discuss his proposal.

### 27-member working group

In the wake of public outcry over arrests (<https://www.reviewjournal.com/news/education/henderson-parents-demand-ccsd-action-to-protect-students/>) in April, the district created a 27-member internal working group to craft a policy on sexual misconduct, including a social media plan.

The group consists of school police, teachers, administrators, one student, one representative from the Las Vegas Metropolitan Police Department and a representative from the Clark County district attorney's office.

The working group does not include parents or representation from victims.

Chad Jensen, whose daughters have alleged inappropriate behavior by two Brown Academy teachers — leading to the arrest of teacher Jeffrey Schultz — wants parents on the panel.

"We should have some type of say-so and be involved in it."

"I'm glad they're doing something," he said. "They should have done it a long time ago."

The group plans to present a draft proposal to a public community roundtable in (<https://www.reviewjournal.com/news/education/ccsd-plans-discussion-to-address-concerns-of-sexual-misconduct-toward-students/>) June (<https://www.reviewjournal.com/news/education/ccsd-plans-discussion-to-address-concerns-of-sexual-misconduct-toward-students/>), then accept public input, after which it's expected to reach the School Board in July.

"We know the majority of our employees are doing things the right way. But we still have a responsibility to protect students and also protect our employees," said Tammy Malich, assistant superintendent of educational opportunities. "Hopefully that is the message that we will communicate loud and clear, and that is the message that will be heard."

Senate Minority Leader Michael Roberson, R-Henderson, wants the policy to be clear and rigid.

"CCSD must immediately take all necessary steps to put an end to this outrageous sexual misconduct by district employees," Roberson said in an email response to questions from the Review-Journal on Wednesday night. "To the extent social media and texting are being used as tools by sexual predators — and we know they are — CCSD should adopt a zero-tolerance policy on communication between staff and students via social media and texting."

Regardless of how that policy takes shape, Skorkowsky believes a culture exists in which students do not want to "rat on" each other in coming forward with alleged incidents of sexual misconduct.

"If we don't know that these rumors and rumblings are going on, we can't step in," Skorkowsky said. "And so we have to figure out a way to encourage students to come forward with this information to protect their friends as opposed to have it considered ratting them out."

### Recognizing patterns

Good training isn't just about how individuals should behave with students, but also about creating a culture where others can spot and report potential grooming behaviors, according to experts.

"So, what do you do with all that information?" said Billie-Jo Grant, a board member at Stop Educator Sexual Abuse Misconduct and Exploitation. "That's where you do the reporting to the compliance officer, and it's a central recording keeping."

Under federal Title IX law, the training should identify who the school or district-level Title IX coordinator is and how to make a report, Grant said. That's missing from the video for employees.

The Title IX officer can monitor individual employees. If there are complaints about an educator behaving inappropriately or having a strange relationship with students, it may prompt further investigation.

But for complaints to happen, other teachers need to know what to look for and what to report, McGrath said. Often the line between what's appropriate and what's inappropriate is hard to tell.

"Typically what's on the surface is these behaviors that are boundary violations, they're too much," she said. "Too much attention, too much favoritism, too many gifts."

But time and attention can also be a mark of a passionate teacher, McGrath conceded.

"You have to put the same protections in place all the time. That gets to seem like it's a little sad, but it's not. It can work if people are conscious," she said.

Another glaring hole for experts? Excluding students and parents from training efforts.

### A shifting Nevada law

## A shifting Nevada law



Nevada's law governing student-staff sexual relationships in K-12 schools, NRS 201.540, has been amended three times since its enactment 20 years ago.

- 1997** New Nevada law prohibits "a person employed in a position of authority by a public school or private school from engaging in sexual conduct with a pupil who is 16 or 17 years of age."
- 2001** Amended to include both employees and those "volunteering in a position of authority at a public or private school." Also protects 14- and 15-year-old pupils, making sexual conduct with them a category B felony.
- 2013** After Dewey-Stalmach case, amended to forbid sexual conduct with an employee or volunteer's current or former students, or any pupil "with whom the person has had contact in the care of performing his or her duties."
- 2015** Amended to forbid sexual conduct with all current or former students 16 years or older who have not received a high school diploma. Also eliminates vague "position of authority" term.

Source: NRS 201.540

Las Vegas Review-Journal



1

### Passing the Trash

Scrubbed personnel files and an escape clause in teacher contracts allow staff with sexual misconduct complaints to simply switch schools.

2

### Flawed background checks

School employees are fingerprinted and screened for criminal histories, but the Clark County School District does little beyond those limited background checks to uncover past sexual misconduct.

3

### Training failures

CCSD relies on a 9-minute video to train employees on sexual misconduct and lacks policies on appropriate employee behavior.

It wasn't until 1997 that the state banned sexual relationships between school employees and 16- and 17-year-old students.

Before then, the law was unclear on whether employees could engage in sex with students who were older than 16, the state's age of consent.

Nevada law now forbids relationships with current or former students who have not yet graduated from high school, regardless of their age.

Yet the law still holds a potential loophole, applying only to current or former students or those the employee has had contact with "in the course of performing his or her duties."

If a teacher in Boulder City strikes up a relationship with a 17-year-old student in Summerlin who has never been in that teacher's class — or never interacted with the educator on a professional basis in any way — are there grounds for prosecution?

State Superintendent of Instruction Steve Canavero said it would never be appropriate for school employees to have sexual relationships with students, calling it "professional malpractice."

"That just seems too intuitive to have to actually explicate," he said. "But I think districts would agree with that."

Contact Meghin Delaney at [mdelaney@reviewjournal.com](mailto:mdelaney@reviewjournal.com) or 702-383-0281. Follow @MeghinDelaney (<https://twitter.com/MeghinDelaney>) on Twitter. Contact Amelia Pak-Harvey at [apak-harvey@reviewjournal.com](mailto:apak-harvey@reviewjournal.com) or 702-383-4630. Follow @AmeliaPakHarvey (<https://twitter.com/AmeliaPakHarvey>) on Twitter.

## TOP NEWS



**Nevada scholarship program benefits from political deadlock over ...** (<https://www.reviewjournal.com/news/education/nevada-scholarship-program-benefits-from-political-deadlock-over-esas/>)

By Meghin Delaney / RJ



**CCSD to pay \$900K to settle claims over restraint of autistic ...** (<https://www.reviewjournal.com/news/education/ccsd-to-pay-900k-to-settle-claims-over-restraint-of-autistic-student/>)

By Meghin Delaney / RJ



EDUCATION ([HTTPS://WWW.REVIEWJOURNAL.COM/./NEWS/EDUCATION/](https://www.reviewjournal.com/news/education/)) >>



**Clark County School District gets \$17M to upgrade technology** (<https://www.reviewjournal.com/news/education/clark-county-school-district-gets-17m-to-upgrade-technology/>)

By Amelia Pak-Harvey / RJ

## News Headlines

SOUTHWEST ([HTTPS://WWW.REVIEWJOURNAL.COM/./LOCAL/SOUTHWEST/](https://www.reviewjournal.com/local/southwest/))

**Las Vegas police at barricade situation in southwest Las Vegas** (<https://www.reviewjournal.com/local/southwest/las-vegas-police-at-barricade-situation-in-southwest-las-vegas/>)

By Isabelle Delgado / RJ

WEATHER ([HTTPS://WWW.REVIEWJOURNAL.COM/./WEATHER/](https://www.reviewjournal.com/weather/))

**Triple-digit highs expected before weekend in Las Vegas Valley** (<https://www.reviewjournal.com/weather/triple-digit-highs-expected-before-weekend-in-las-vegas-valley/>)

By Isabelle Delgado / RJ

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**NATION AND WORLD** ([HTTPS://WWW.REVIEWJOURNAL.COM/./NEWS/NATION-AND-WORLD/](https://www.reviewjournal.com/news/nation-and-world/)) / Updated 8:05 am

**North Korea releases American student sentenced to prison** (<https://www.reviewjournal.com/news/nation-and-world/north-korea-releases-american-student-sentenced-to-prison/>)

By Matthew Lee The Associated Press

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**CELEBRITY** ([HTTPS://WWW.REVIEWJOURNAL.COM/./ENTERTAINMENT/CELEBRITY/](https://www.reviewjournal.com/entertainment/celebrity/))

**Diddy tops Forbes list; Taylor Swift drops to 49** (<https://www.reviewjournal.com/entertainment/celebrity/diddy-tops-forbes-list-taylor-swift-drops-to-49/>)

The Associated Press

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**BETTING** ([HTTPS://WWW.REVIEWJOURNAL.COM/./SPORTS/BETTING/](https://www.reviewjournal.com/sports/betting/))

**Patriots-Cowboys tops 255 other Super Bowl LII matchups** (<https://www.reviewjournal.com/sports/betting/patriots-cowboys-tops-255-other-super-bowl-lii-matchups/>)

By Todd Dewey / RJ

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**ROBBERIES** ([HTTPS://WWW.REVIEWJOURNAL.COM/./CRIME/ROBBERIES/](https://www.reviewjournal.com/crime/robberies/))

**Las Vegas police investigate robbery attempt at Dotty's** (<https://www.reviewjournal.com/crime/robberies/las-vegas-police-investigate-robbery-attempt-at-dottys/>)

By Mike Shoro / RJ

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**NATION AND WORLD** ([HTTPS://WWW.REVIEWJOURNAL.COM/./NEWS/NATION-AND-WORLD/](https://www.reviewjournal.com/news/nation-and-world/)) / Updated 4:56 am

**Weekend boating accident at Lake Havasu leaves 1 dead, 1 missing** (<https://www.reviewjournal.com/news/nation-and-world/weekend-boating-accident-at-lake-havasu-leaves-1-dead-1-missing/>)

By Dave Hawkins Special / RJ

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**SHOOTINGS** ([HTTPS://WWW.REVIEWJOURNAL.COM/./CRIME/SHOOTINGS/](https://www.reviewjournal.com/crime/shootings/))

**2nd person arrested after central Las Vegas 7-Eleven shooting** (<https://www.reviewjournal.com/crime/shootings/2nd-person-arrested-after-central-las-vegas-7-eleven-shooting/>)

By Mike Shoro / RJ

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**EDUCATION** ([HTTPS://WWW.REVIEWJOURNAL.COM/./NEWS/EDUCATION/](https://www.reviewjournal.com/news/education/))

**Nevada scholarship program benefits from political deadlock over ESAs** (<https://www.reviewjournal.com/news/education/nevada-scholarship-program-benefits-from-political-deadlock-over-esas/>)

By Meghin Delaney / RJ

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**HOUSING** ([HTTPS://WWW.REVIEWJOURNAL.COM/./BUSINESS/HOUSING/](https://www.reviewjournal.com/business/housing/))

**Foreclosure rate in Las Vegas drops sharply from 2016** (<https://www.reviewjournal.com/business/housing/foreclosure-rate-in-las-vegas-drops-sharply-from-2016/>)

By Eli Segall / RJ

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**BASKETBALL** ([HTTPS://WWW.REVIEWJOURNAL.COM/./SPORTS/BASKETBALL/](https://www.reviewjournal.com/sports/basketball/))

**Durant, Curry lead Warriors to NBA title** (<https://www.reviewjournal.com/sports/basketball/durant-curry-lead-warriors-to-nba-title/>)

By Janie McCauley The Associated Press

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**SHOOTINGS** ([HTTPS://WWW.REVIEWJOURNAL.COM/./CRIME/SHOOTINGS/](https://www.reviewjournal.com/crime/shootings/))

**Man charged with attempted murder following parking lot shooting** (<https://www.reviewjournal.com/crime/shootings/man-charged-with-attempted-murder-following-parking-lot-shooting/>)

By Rachel Hershkovitz / RJ

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**EDUCATION** ([HTTPS://WWW.REVIEWJOURNAL.COM/./NEWS/EDUCATION/](https://www.reviewjournal.com/news/education/)) >>



**Tech-savvy students learn new skills at cybersecurity seminar (<https://www.reviewjournal.com/news/education/tech-savvy-students-learn-new-skills-at-cybersecurity-seminar/>)**

By Blake Apgar / RJ

# EXHIBIT MM

**REVIEW-JOURNAL SEQUENTIAL INDEX (OF ALL DOCUMENTS)  
AND ASSESSMENT OF CCSD REDACTIONS**

<b>Bates Range</b>	<b>Description/ Review-Journal Position</b>	<b>Comments</b>
0001A	Produced With Redactions  No Objection	0001A-0033A replaced document previously produced by CCSD with Bates Numbers 0001-0033.
0002A-0028A	Produced Without Redactions	
0029A	Produced With Redactions  No Objection	
0030A-0033A	Produced Without Redactions	
<b>0034-060</b>	<b><i>Withheld Records Should Be Produced (with only redactions consistent with 2/222017 Order). (Each listed below.)</i></b>	<b><i>Documents submitted to Court for in camera review</i></b>
0034-0041	<i>Withheld: Draft of Cole Memo.</i>  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0042-0048	<i>Withheld: Cole Investigation Notes.</i>  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0049-0053	<i>Withheld: Cole Investigation Notes.</i>  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0054-0057	<i>Withheld: Cole Memo.</i>  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0058-0060	<i>Withheld: Cole Investigation Notes.</i>  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0061-0062	n/a	Pages intentionally left blank

Bates Range	Description/ Review-Journal Position	Comments
0063	Produced With Redactions.  <b>Objection:</b> Name of reporting teacher/staff person should not be redacted.	Per the Court's 2/22/2017 Order at ¶ 37, only the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff may be redacted. This email was sent by a complainant who is not a direct victim.
0064	Produced Without Redactions	
0065-0068	Produced With Redactions.  <b>Objection:</b> name of complainant redacted on pages 0065, 0067 without explanation.	Per the Court's 2/22/2017 Order at ¶ 37, only the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff may be redacted. It does appear that the complainant was a direct victim and CCSD has provided no explanation for this redaction.
0069	Produced With Redactions.  No Objection; <i>see comments</i> .	The complainant reported an incident that occurred in 2014 where Trustee Child visited the complainant's second grade class and made inappropriate comments, including "snitches get stitches."  The complainant's identity is not protected pursuant to the Court's 2/22/2017 Order. However, because the complainant requested the complaint be handled anonymously, the Review-Journal has no objection to the redaction.
0070-0071	Produced With Redactions.	
0072-0075	Produced With Redactions.  No Objection.	
0076-0078	Produced With Redactions.  No Objection; <i>see comments</i>	Pages 0077-78 were subsequently produced two additional times by CCSD with no redactions at 130-131 and 151-152.  Page 0076 was also reproduced without redaction at 150.

Bates Range	Description/ Review-Journal Position	Comments
0079-0089	<p>Produced With Redactions.</p> <p><b>Objection:</b> name, position, and school of complainant improperly redacted</p>	<p>Per the Court's 2/22/2017 Order at ¶ 37, only the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff may be redacted.</p> <p>The name of the elementary school is improperly redacted.</p> <p>The complainant appears to be an assistant principal at the redacted school. (See 0088.)</p> <p>The complainant is not a victim of sexual harassment, and is reporting inappropriate/allegedly intimidating behavior.</p>
0090-0108	<p>Produced With Redactions.</p> <p><b>Objection:</b> name of complainant improperly redacted</p>	<p>Per the Court's 2/22/2017 Order at ¶ 37, only the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff may be redacted.</p> <p>The complainant is not a victim of sexual harassment.</p>
0109-0110	<p>Produced With Redactions.</p> <p><b>Objection;</b> <i>see comments</i></p>	<p>Bates 109-110 is an email chain between Trustee Child and Superintendent Skorkowsky in which Trustee Child's phone number is redacted.</p> <p>The Court's 2/22/2017 does not specifically permit redaction of phone numbers.</p> <p>CCSD has not provided an explanation for why the phone number of a public official must be redacted.</p>
0111-0133	Produced Without Redactions.	
0134	<p>Produced With Redactions.</p> <p>No Objection.</p>	Similar version of email produced at 0029A.
0135	Produced Without Redactions.	

Bates Range	Description/ Review-Journal Position	Comments
0136-0138	Produced With Redactions.  No Objection.	
0139-0146	Produced Without Redactions.	
0147-0149	Produced With Redactions.  <b>Qualified Objection; see comments</b>	Bates 147 is another version of the email produced at 0029A and 134.  Bates 148 is redacted in its entirety, but CCSD's privilege log does not specify reason for redaction.  CCSD did provide explanation for redaction in 6/05/2017 email to Margaret McLetchie. Log should be updated to reflect that explanation.
0150-0158	Produced Without Redactions.	
0159-0233	<b><i>Withheld Records Should Be Produced (with only redactions consistent with 2/222017 Order).</i></b>  <b><i>(Each listed below.)</i></b>	<b><i>Documents submitted to Court for in camera review</i></b>
00159-0177	Withheld: "Confidential Case Notes."  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
00178	Withheld: "ID of Employees."  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	<i>What does this mean?</i>
00179-0183	Withheld: Draft of Cole Memo.  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	
0184-0188	Withheld: Investigation Notes.  <b><i>CCSD Has Not Met Burden; Produce.</i></b>	

<b>Bates Range</b>	<b>Description/ Review-Journal Position</b>	<b>Comments</b>
0189-0195	<p><i>Withheld: Draft of Cole Memo.</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0190-0203	<p><i>Withheld: Investigation Notes.</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0204-0223	<p><i>Complaint.</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0224-0225	<p><i>Complaint (Addendum).</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0226-0228	<p><i>Withheld: Draft of Cole Memo.</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0229-0230	<p><i>Cole Memo.</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	
0231-0233	<p><i>Withheld: "Personal notes regarding K. Child site visit interactions."</i></p> <p><b><i>CCSD Has Not Met Burden; Produce.</i></b></p>	

# EXHIBIT NN

maggie

---

**From:** Adam Honey <ahoney@interact.ccsd.net>  
**Sent:** Friday, May 19, 2017 1:17 PM  
**To:** maggie  
**Subject:** Re: LVRJ - CCSD - Order DRAFT 05.19.17 2

Maggie,

I will read the edits and get back to you.

We will provide you with a log and it will have the categories consistent with our previous privilege log and the asserting of privileges/identifying documents as the judge has ordered. I agree with your position on the NV law regarding the same. Nonetheless, the Court did not Order it so it is not appropriately in the Order. I don't think either side should be reading between the lines and taking it upon themselves as to what the court intended. Additionally, the Court is allowing you to file a response to our privilege log, which by any reasonable interpretation requires you to have a copy of the log, which we will provide.

Do you have the transcript? If not would you like me to provide you the transcript?  
As to hard copy searches, we have previously conducted hard copy searches. As indicated on our privilege log dated 3/21, we have withheld hard copies from the Office of Diversity. There were no other hard copy records. Please indicate where in the transcript we were directed to conduct any additional hard copy searches. Regardless, I am not aware as to any previously unsearched location for hard copies, unlike the emails where we had not previously searched principals outside of District D or emails from within the Office of Diversity and Affirmative Action. If you have somewhere in mind for hard copy searches, please let me know and I will tell you if we searched there or not.

Sincerely,

Adam

maggie <maggie@nvlitigation.com> writes:

Adam:

Please see attached. I redlined additional edits and made comments about what I otherwise accepted or rejected. Some of your proposed edits regarding relief confused me. Is it CCSD's position that it shouldn't have to give a copy of the log it provides the Court to the Review-Journal? That would of course be inconsistent with Supreme Court case law.

Also, please note the Court required the hard copy searches as well. Finally, any additional responsive but non-privileged records of course need to be produced to the Review-Journal.

If you would like to discuss further, please give me a call as soon as you get some time. We plan to submit a cleaned-up version of the attached to the Court by around 3 p.m. (without your signature), unless we are able to resolve additional issues by then so please let me know if you are willing to speak.

Maggie

# MCLETSCHIESHELL

## 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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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****June 27, 2017**

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

**June 27, 2017      10:30 AM      Hearing: Search Parameters**

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

**COURT CLERK:** April Watkins

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:**      Honey, Adam      Attorney for Deft.  
                                  McLetchie, Margaret A.      Attorney for Pltff.

**JOURNAL ENTRIES**

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

PRINT DATE: 07/17/2017

Page 1 of 2

Minutes Date: June 27, 2017

RA517

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

Ms. McLetchie to prepare the order.

1 CASE NO. A-17-750151-W

2 DOCKET U

3 DEPT. 16

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6

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

17 HEARING: SEARCH PARAMETERS

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21 DATED TUESDAY, JUNE 27, 2017

22

23

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

25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 MCLEATCHIE SHELL LLC  
4 BY: MARGARET MCLEATCHIE, ESQ.  
5 701 E. BRIDGER AVE.  
6 SUITE 520  
7 LAS VEGAS, NV 89101  
8 (702) 728-5300  
9 (702) 425-8220 Fax  
10 MAGGIE@NVLITIGATION.COM

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, JUNE 27, 2017

2 10:33 A.M.

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

4 \* \* \* \* \*

5  
6 THE COURT: All right. So I see this was a  
7 continuation. And tell me where are we at right now.

8 MS. MCLETHIE: Where we are at is the CCSD  
9 has submitted the documents to your Honor in camera  
10:33:28 10 along with a privilege log and certifications. We now  
11 have received a copy of the privilege log and the  
12 certifications. And we submitted a memorandum  
13 addressing our positions.

14 Last hearing, we got continued. We both  
10:33:44 15 appreciate your accommodating our schedules in light of  
16 the length of the last hearing. And other than that,  
17 the only updates for the Court are that there were a  
18 few documents that were produced to the Court and to  
19 the LVRJ. On June 16, CCSD provided a document to the  
10:34:05 20 Court. They subsequently decided that that document  
21 was not -- was not privileged, and so we now have that.  
22 And that was the May 31st letter from the  
23 superintendent to Mr. Child.

24 Then just yesterday, we did receive -- we did  
10:34:21 25 receive another document from CCSD. And this is a

10:34:27 1 document from November 30, 2016. And I don't think  
2 your chambers received a copy. So if I may approach, I  
3 do have a copy.

4 THE COURT: Yes, you may.

10:34:38 5 MR. HONEY: Is there a second letter on there  
6 as well with the April 24? It's two correspondences in  
7 one, right, Maggie? The last page is a separate  
8 letter.

9 MS. MCLEITCHIE: November 30th. Yes, I'm  
10:34:54 10 sorry. There's a November 30 letter and an April 24,  
11 2017, letter, neither of which was previously produced.  
12 And I'm not clear why. And I -- when we discuss issues  
13 pertaining to the certification, I think this raises  
14 additional -- this -- the late production of these  
10:35:17 15 documents raise additional issues.

16 After the last hearing, counsel for CCSD and  
17 myself were able to discuss some issues by phone. I  
18 did ask counsel for CCSD to provide a word or  
19 electronic version of their search parameters, their  
10:35:35 20 search chart that was attached to a certification. I  
21 never heard back about his decision on that.

22 And the other issues that we discussed about  
23 the certification and production issues, Mr. Honey  
24 indicated that we should let the Court address these  
10:35:51 25 issues today. So the issues before the Court today are

10:35:55 1 the in camera documents and the certification. And I'm  
2 not sure how your Honor wanted to handle those.  
3 Obviously, the Court has looked at those documents in  
4 camera, and I have not.

10:36:06 5 THE COURT: I understand. Let's talk. And so  
6 as far as the search parameters, I want to make sure I  
7 understand that. Is that based upon the certification  
8 that was signed on May 25th, 2017?

9 MS. MCLEATCHIE: Yes. There was -- there was a  
10 certification provided.

11 THE COURT: Yes.

12 MS. MCLEATCHIE: There were two certifications  
13 provided. One from -- one from Mr. Wray, the IT  
14 person, and then one also from Ms. Smith-Johnson, a  
10:36:39 15 public information officer.

16 And our concerns with -- our concerns with the  
17 certifications themselves were as follows: In my view,  
18 it doesn't certify any searches or productions  
19 completely. At best, it certifies the May 17th  
10:36:59 20 production. And from my view, the certifications are  
21 not in compliance with the Court's ordered. And that's  
22 because Ms. Smith Johnson, for example, says she  
23 reviewed 11,907 emails, but she only documents in her  
24 certification the 43 pages that she initially handed  
10:37:18 25 over to CCSD counsel for the May searches that this

1 Court had previously ordered.

2           The other issues that the certification raised  
3 are that not only are we not detailed the information  
4 about the February and December searches, but there's  
5 nothing in there whatsoever that addresses the hard  
6 copy searches that this Court ordered. In paragraph 5  
7 of this -- 45 of this Court's last order, I believe  
8 it's paragraph 45, we -- it was detailed what this  
9 Court -- what -- I'm sorry, what CCSD was required to  
10 further do and to certify. And the certification  
11 requirement said they needed to certify everything in  
12 paragraph 45 which included as well as in the December  
13 and February searches.

14           So I think the issue is that we -- we don't  
15 have a full certification in short, your Honor. And we  
16 briefed this at length in our memorandum.

17           In addition, Exhibit HH to our memorandum  
18 included those certifications as well as the attached  
19 printout that explains what searches were conducted  
20 when. And as this Court recalls, we ended up here  
21 because we were -- the Las Vegas Review Journal was  
22 delayed in receiving documents and was concerned that  
23 it never received full production, and that CCSD was  
24 not acting in good faith.

25           At the first page of their search records, it

10:38:54 1 says that they searched only Mike Barton and Pat  
2 Skorkowski on December 9, 2016. And so the Review  
3 Journal's extensive efforts in this case to get  
4 information about who was searched, what was searched,  
10:39:08 5 and when, was well founded because, in fact, the  
6 only -- the only two email boxes that CCSD had  
7 voluntary searched itself back in December, although  
8 they hadn't handed over the records, were those of  
9 Mr. Barton and Superintendent Skorkowski.

10:39:28 10 Another issue that is raised by the list of  
11 who is searched and when, is that -- and I would  
12 probably have been able to do a better job of analyzing  
13 it if I had received it in electronic form, but another  
14 issue that is raised is that CCSD has taken the  
10:39:46 15 position that the February searches were not  
16 duplicative of the December searches. And this Court  
17 has ordered CCSD to conduct full searches and to  
18 certify those. But when you look at the list of  
19 searches conducted, you see on there that the one and  
10:40:05 20 only time that Mr. Skorkowski's email was searched was  
21 December 9, 2016. I looked this over at length. This  
22 is briefed in our memorandum, and I also discussed this  
23 issue by phone with Mr. Honey. So that's a concern.

24 Another concern that we point out in our brief  
10:40:28 25 is that while we certainly aren't looking to get

10:40:30 1 duplicative copies of emails, usually whenever you do  
2 email searches and productions, you see the emails  
3 produced slightly differently depending on who was the  
4 recipient or the custodian searched. And we pointed  
10:40:42 5 out an example in our memorandum where the document --  
6 we should have expected to see the document. If the  
7 full email search had been conducted, you should have  
8 expected to see it both with somebody as the "to" and  
9 as the "from". For example, your Honor, if we searched  
10:40:57 10 your emails, your department's emails and my emails, my  
11 emails would show that I sent -- that I sent something  
12 to your department, copied Mr. Honey. Your department  
13 would also produce another version of that email.

14 In this case, only one of the emails that you  
10:41:13 15 would have expected. And that was just an  
16 illustration. More globally, while I do greatly  
17 appreciate that Mr. Honey provided these documents to  
18 me yesterday, he only did so yesterday. The  
19 November 30, 2016, memorandum that I -- that I provided  
10:41:32 20 to the Court just now. And that document further  
21 reflects, and I quote, it's a letter to Mr. Child from  
22 Superintendent Skorkowski. And I'm reading now from  
23 the letter. It states:

24 You were counseled on numerous occasions in  
10:41:47 25 the last year that your interactions with

10:41:49 1 district employees made them feel  
2 uncomfortable, especially women, and that your  
3 habit of dropping in on their work environment  
4 impeded their ability to perform their duties  
10:42:00 5 of their assignment.

6 My concern is that we have received no  
7 documentation whatsoever of any of those counseling  
8 sessions or the fact that they occurred. And as I  
9 imagine CCSD, and as they've indicated in their  
10:42:17 10 briefing, they're establishing a Burlington Faragher  
11 defense. And they're documenting that they've  
12 appropriately responded to these complaints. And so  
13 one would certainly have expected that these counseling  
14 sessions between the superintendent and Trustee Child  
10:42:41 15 would have been produced, or if not produced because  
16 the district maintained they were confidential, they  
17 would appear on the log.

18 But we didn't see anything. Anything. In  
19 fact, we don't have anything predating that letter.

10:42:58 20 The letter is a little bit confusing. I think  
21 it's in the last year. I think it means 2016. In any  
22 case, we don't have anything predating that. We do  
23 have some subsequent email exchanges, a few of them,  
24 between Skorkowski and Child. But nothing that would  
10:43:14 25 reflect these counseling sessions.

10:43:16 1 This brings me to another issue with the  
2 certifications too. While CCSD counsel has represented  
3 that it's not possible to search all of the emails,  
4 Mr. Wray did not indicate that in his certification.  
10:43:31 5 So we still have lack of information regarding how, how  
6 their search was really conducted and what was  
7 available to the district to search. And so we're  
8 still a little bit shooting in the dark.

9 To that end, your Honor, we also don't know  
10:43:48 10 exactly what -- what Ms. Smith-Johnson did in  
11 evaluating whether or not something was responsive.  
12 I'm cognizant of the fact that we did not need to  
13 receive 11,907 pages, documents that might indicate  
14 things that are totally irrelevant to this case, but  
10:44:07 15 it's not clear to me, and it's my view that she should  
16 have explained what her -- what her interpretation of  
17 responsive was.

18 Further, her certification indicates that she  
19 handed the documents over to CCSD counsel who made the  
10:44:23 20 final determination for production.

21 So I think in order to kind of fully close the  
22 loop on what was searched and the chain of custody, if  
23 you will, on these documents, I think that we would  
24 need -- we would have needed a CCSD counsel  
10:44:36 25 certification or declaration.

10:44:40 1 Finally, with regard to the production and the  
2 certification, your Honor, there's no emails or  
3 documentation regarding the interviews that Cole did  
4 other than his notes of interviews, the documents that  
10:44:55 5 he put on, that Mr. Honey, that CCSD has put on the  
6 privilege log. And it just seems peculiar to me that  
7 nobody emailed to say we're going to a meeting with  
8 Cedric Cole today.

9 It's my understanding from Mr. Honey that  
10:45:08 10 Mr. Cole doesn't really use email, that he does all of  
11 these interviews over the phone or in person, keeps  
12 notes, and then makes his report.

13 But it does seem that other people would have  
14 been discussing their meetings or what happened during  
10:45:22 15 them. In addition, one would expect that there was  
16 some deliberation regarding the Cole report. They have  
17 claimed the deliberative process privilege. And as  
18 I'll get into later, I don't think it applies to  
19 documents that may have been reviewed in making a  
10:45:40 20 decision, but it does -- the raising of the  
21 deliberative process privilege by the district raises  
22 the whole question to me, which is, where are the  
23 documents in which people were discussing the Cole  
24 report and what to do with this problematic trustee.

10:45:56 25 There are no -- there are no such documents on

10:45:58 1 the log or in the production. So, your Honor, those  
2 are -- those are my issues with regard to the  
3 certification and my related issues with regard to  
4 production issues, and the apparent failure to produce  
10:46:12 5 some documents.

6 My view is they were under a Court order to do  
7 full certifications regarding the -- regarding not just  
8 the most recent production but all of them. And I had  
9 talked to Mr. Honey and had hoped that in advance of  
10:46:28 10 this hearing, we could have gotten updated  
11 certifications, but we have not, your Honor.

12 THE COURT: I understand.

13 MS. MCLEATCHIE: Would you like me to address  
14 with the legal issues with regard to the withheld  
10:46:37 15 documents that the Court has been able to review?

16 THE COURT: Not yet.

17 MS. MCLEATCHIE: Okay, your Honor.

18 THE COURT: We'll do that next. We'll hear  
19 what Mr. Honey has to say in regards to the  
10:46:46 20 certification issue. And then we'll talk about some of  
21 the basis for assertions of privilege. And this is one  
22 of the important distinctions I think we have to make  
23 as far as the documents being requested here.

24 There's not a "traditional employer/employee  
10:47:04 25 relationship" here, right? There's not. And as a

10:47:07 1 result, I want you to both tell me why that would be  
2 different in case of an elected official. Because  
3 that's really and truly what I think the primary issue  
4 here is. Because I understand that under certain  
10:47:22 5 circumstances how employee files would be privileged,  
6 but this wouldn't be an employee file. This is an  
7 elected official. So think about that, both of you.

8 But, Mr. Honey, sir, as far as the  
9 certification is concerned.

10:47:37 10 MR. HONEY: Pardon me real quickly. When it  
11 involves a nonemployee, a trustee and an employee --

12 THE COURT: No. I'm just talking about the  
13 certification.

14 MR. HONEY: I know. But I want to say just  
10:47:48 15 real quickly. For the employee, it is personnel. So I  
16 want to make that distinction because we keep looking  
17 at this with a view of the trustee. And the district,  
18 we're trying to look at this as the view of the  
19 employee, protecting our employee.

10:48:00 20 In regards to the certifications,  
21 Ms. McLetchie and I had an opportunity to speak just  
22 last Wednesday, six days ago. Since that time and  
23 today, we weren't able to get anything further  
24 completed or established. She indicated to me her  
10:48:15 25 concerns with the certifications. I offered for her to

10:48:19 1 tell me what you want the certifications to say.  
2 Because it seems like whatever I put on something isn't  
3 enough. There's always a conspiracy of silence going  
4 on from her camp in regards to the school district. So  
10:48:31 5 I don't really know what else to put.

6 Now, keep in mind that we had to do --

7 THE COURT: No. I understand that. I  
8 understand that. I do.

9 MR. HONEY: Okay. Okay. Also --

10:48:37 10 THE COURT: I was actually thinking about  
11 this, just to wrap it up, if there's any issues  
12 regarding what the thrust and the scope of the search  
13 would be and what the processes are, and I understand  
14 it's kind of tough to prepare a certification without  
10:48:57 15 knowing exactly what is being requested as it relates  
16 to the avenues of discovering, I guess, the procedures  
17 out there with Clark County School District just as  
18 important, too, from counsel on behalf of the RJ's  
19 prospective, it's tough to understand what their  
10:49:17 20 policies and procedures are because you haven't taken  
21 their deposition, right?

22 MS. MCLEITCHIE: Correct, your Honor.

23 THE COURT: Yeah. So I'm sitting here saying  
24 to myself, is this the best, simplest way to put this  
10:49:30 25 part of it to bed, is just take the depositions of the

10:49:34 1 two individuals?

2 MR. HONEY: It seems like unnecessary  
3 additional cost. If Ms. McLetchie would simple tell me  
4 what would satisfy you in a certification? What is it  
10:49:45 5 that you need to know? What term of art are you  
6 looking for? Because whatever term of art I've chosen,  
7 clearly doesn't satisfy her.

8 And I do want to point out that our  
9 certifications were prepared on May 25th, 12 days  
10:49:56 10 before the order. And on the day the order was signed  
11 in open court, I'm getting email, an email asking for  
12 me to provide the documents before the documents even  
13 show up on Odyssey, or what have you.

14 And my point is, and I don't have a problem  
10:50:11 15 with the email -- her wanting the document as quickly  
16 as possible or compliance with the order. But I do  
17 want to point out that those certifications were done  
18 before there was even an order in place for us to  
19 comply with. And then we had literally an hour and a  
10:50:24 20 half. So we weren't going to go back and change the  
21 certifications.

22 THE COURT: I get that.

23 MR. HONEY: Okay.

24 THE COURT: See, what I'm trying to do is  
10:50:30 25 this: I'm trying to be efficient.

10:50:31 1 MR. HONEY: Okay.

2 THE COURT: And the reason why I say that is  
3 this, and it's really this simple. It's kind of like  
4 requesting certifications, and it appears that the  
10:50:45 5 plaintiff wants to make sure they've covered  
6 everything. And when you look at it from a legal  
7 perspective, many times written discovery is  
8 insufficient.

9 MR. HONEY: Sure.

10:51:02 10 THE COURT: Right.

11 MR. HONEY: Sure.

12 THE COURT: It just is. So I'm looking at it,  
13 it's kind of like one of the individuals, Mr -- or,  
14 say, Cynthia Smith-Johnson, and she was involved in  
10:51:13 15 this.

16 I would think a lot of the questions regarding  
17 the certifications, specifically what was done, could  
18 be handled in probably less than an hour in a  
19 deposition. Because all it is is what did you do?  
10:51:26 20 What are the processes? What's difficult? What's not  
21 difficult? I mean, I --

22 Am I missing something there, ma'am?

23 MS. MCLEITCHIE: No, your Honor. With regard  
24 to this conspiracy of silence I've -- I've -- on the  
10:51:41 25 one hand, opposing counsel complains because I email

10:51:44 1 and ask him for too much. On the other, he complains  
2 because I haven't given him enough information. But I  
3 do think that the Court issue here is that I do need  
4 more information about what -- why they conducted the  
10:51:55 5 searches the way they did, how they conducted the  
6 searches. I can't give him language because I didn't  
7 conduct the searches.

8 At the very least, I, obviously, need  
9 information not just about the most recent May  
10:52:07 10 production, in many cases -- not cases, but matters  
11 involving public record disputes, I actually am able to  
12 have a call with an IT department and opposing counsel  
13 and work out some of these issues. And in this case,  
14 they've been unwilling to provide that.

10:52:24 15 And I think that in light of the fact that we  
16 are in litigation, I can see how that could be  
17 problematic. And I think that your Honor's solution of  
18 a deposition, I had proposed that they be required to  
19 have a conference with me. A deposition would  
10:52:37 20 essentially be a conference regarding the searches that  
21 were conducted so that we can get to the bottom of why  
22 there are some of the issues that I noticed.

23 THE COURT: And, you know, here's the thing.  
24 And you got to understand this: Maybe they're issues;  
10:52:53 25 maybe they're not issues, but we don't know until we

10:52:56 1 know what the process is.

2 MR. HONEY: Sure.

3 THE COURT: Right. What was done.

4 MR. HONEY: One of things that Ms. McLetchie  
10:53:01 5 and I discussed last Wednesday was the emails that she  
6 mentioned, that she's surprised that there's no emails  
7 to or from Cedric Cole, director of Office of  
8 Affirmative Action and Diversity. And we talked about  
9 doing a certification from Mr. Cole stating that he  
10:53:17 10 turned over his entire hard copy file, and that that is  
11 represented in the privilege log of withheld documents,  
12 and that he had not received or sent any emails.

13 Now, keep in mind he's on Dan Wray's search.  
14 He has been searched --

10:53:30 15 THE COURT: I understand.

16 MR. HONEY: -- for his emails. That being  
17 said, we spoke last Wednesday. As I told Maggie, I was  
18 in arbitration on Thursday, all day district training  
19 on Friday. Mr --

10:53:39 20 I didn't tell you this because I didn't know  
21 this at the time.

22 When I spoke to Mr. Cole, he was out of work  
23 from yesterday and today. Some of this is timing.  
24 That being said, I'd be -- I could be -- I'll say this.  
10:53:50 25 If the final decision maker for the district which

10:53:53 1 identified as general counsel allowed me to provide a  
2 certification from Mr. Cole, I'd be happy to do that.

3 MS. MCLETHIE: Your Honor, that's -- that  
4 doesn't appear to be a commitment to allowing that.

10:54:03 5 But I also think that rather than have each custodian  
6 have to provide a certification that they handed over  
7 their documents to Ms. Smith, I think the more  
8 efficient thing would be to allow me to take the  
9 depositions of both Mr. Wray and Ms. Smith. And I will

10:54:18 10 do so efficiently. I talk quickly, sometimes too  
11 quickly as the court reporter has pointed out today.  
12 And I think that's an efficient way to resolve some of  
13 these questions once and for all.

14 While there haven't been that many documents  
10:54:32 15 produced or withheld in this case, there's been a lot  
16 of talk over what are -- what are the abilities of the  
17 district to search, and we still are a little bit in  
18 the dark. And I think that is the best solution, your  
19 Honor.

10:54:44 20 THE COURT: Anything you want to -- because  
21 all -- you know, you have to look at it from this  
22 perspective: I just want to have some closure on  
23 concern issues.

24 MR. HONEY: Sure. I understand.

10:54:51 25 THE COURT: I really do. I just want to --

10:54:53 1 because, potentially, if Mr. Wray's deposition is  
2 taken, and it might take half an hour, an hour, I  
3 wouldn't anticipate more than that, after that's done,  
4 maybe all questions have been answered. And based upon  
10:55:11 5 the deposition, there's no further questions of  
6 Mr. Wray. Could be the same thing with Ms. Smith  
7 Johnson too.

8 MR. HONEY: Sure.

9 THE COURT: And then we can take that and not  
10:55:20 10 worry about that anymore. Then I can focus solely on  
11 the privilege log.

12 MR. HONEY: Your Honor.

13 THE COURT: Because I just want to put this to  
14 bed. I really and truly do.

10:55:29 15 MS. MCLEITCHIE: And I'm sure we would as well,  
16 your Honor. I think it's -- I think it's a workable  
17 solution because we'll just get the information we need  
18 to either answer our questions or identify for the  
19 Court what the remaining areas of dispute are.

10:55:42 20 Or maybe -- maybe hopefully, even work with  
21 counsel if there are areas of dispute to resolve them  
22 without further court intervention.

23 THE COURT: I understand.

24 MR. HONEY: Having time to consider the  
10:55:51 25 depositions, I have no oppositions to that.

10:55:53 1 THE COURT: That makes sense.

2 MR. HONEY: Because one of my things was I

3 don't know what languages I could put in a

4 certification that would be the satisfy --

10:55:57 5 THE COURT: Exactly.

6 MR. HONEY: -- satisfaction --

7 THE COURT: Then you're back in front of me

8 again.

9 MR. HONEY: Exactly.

10:56:01 10 THE COURT: And what happens under those

11 circumstances, think about it, Mr. Honey, there's no

12 need to even address the issue after that, right?

13 MR. HONEY: Exactly.

14 THE COURT: There might be a dispute as to

10:56:13 15 maybe a certain search, but as far as what he's done

16 and what she has done, there's no dispute anymore. I

17 just want to just move beyond that. That's kind of

18 what I want to do.

19 And I don't think it would be --

10:56:25 20 How long do you think you would need for the

21 deposition, ma'am?

22 MS. MCLEITCHIE: Perhaps a little more than an

23 hour. But I would certainly think neither would take

24 more than a half day.

10:56:33 25 THE COURT: For both?

10:56:35 1 MS. MCLEATCHIE: Yeah.

2 THE COURT: Okay.

3 MS. MCLEATCHIE: Or half hour. I mean, it  
4 would probably be easier to do them -- I find  
10:56:40 5 depositions extremely tiring if I try to do them  
6 efficiently. So I prefer to do them on two separate  
7 days. And two afternoons, and I would hope that they  
8 would take less -- I mean, Mr. Honey may have follow-up  
9 questions as well. But they're --

10:56:53 10 THE COURT: Probably not.

11 MR. HONEY: Probably not.

12 MS. MCLEATCHIE: It happens sometimes at  
13 depositions.

14 THE COURT: I understand. Not this time.  
10:56:58 15 This is more of a custodian of records deposition;  
16 right?

17 MR. HONEY: Yeah.

18 MS. MCLEATCHIE: So I would hope that it would  
19 only take -- it would -- it would take less than two  
10:57:05 20 hours for each deponent, your Honor.

21 THE COURT: How about this, two hours per  
22 deponent?

23 MS. MCLEATCHIE: Okay, your Honor.

24 THE COURT: All right. That's what it will  
10:57:11 25 be.

10:57:12 1 MR. HONEY: Very good. And if it goes a  
2 little over two hours, of course, I'll extend a  
3 professional courtesy.

4 MS. MCLEATCHIE: Thank you, Mr. Honey.

10:57:17 5 THE COURT: That way, you at least have  
6 something to work towards and get this done. So maybe  
7 the only dispute I might have as a result of the  
8 certification you might say, Look, Judge, they didn't  
9 look into this area. That's fine. We can deal with  
10:57:30 10 that.

11 MS. MCLEATCHIE: Sure.

12 THE COURT: But I don't want to -- I want to  
13 put this to bed.

14 MS. MCLEATCHIE: Sounds good, your Honor.

10:57:36 15 THE COURT: Okay. So you work out a time  
16 period. You can prepare an order. I'm going to permit  
17 the depositions of Mr. Wray and Ms. Smith-Johnson. Is  
18 that it?

19 MS. MCLEATCHIE: Ms. Smith-Johnson. Yes, your  
10:57:45 20 Honor.

21 THE COURT: Yes. All right.

22 MS. MCLEATCHIE: You think we could get this  
23 done over the next month? I know that vacation  
24 schedules are busy, but I would hope we can get them  
10:57:52 25 done over the next 30 days, Mr. Honey.

10:57:54 1 MR. HONEY: Hopefully, but I will represent to  
2 you that I'm out of state from the 8th to the 31st.  
3 MS. MCLEATCHIE: Oh.  
4 MR. HONEY: Yeah. So ...  
10:58:00 5 MS. MCLEATCHIE: Okay. We'll work together on  
6 it --  
7 MR. HONEY: It may be --  
8 MS. MCLEATCHIE: -- scheduling. I don't know  
9 if somebody else can -- that's quite a long time. So  
10:58:06 10 maybe somebody else could handle those depositions.  
11 But we'll work it out.  
12 MR. HONEY: That's what I was thinking. Maybe  
13 somebody else from the office can handle it.  
14 THE COURT: Work it out.  
10:58:15 15 MS. MCLEATCHIE: Okay.  
16 THE COURT: I'm very sensitive to counsel and  
17 their vacations. I'm hyper sensitive to that. I  
18 really am because lawyers work very hard. So if you  
19 have to take a vacation, ma'am, take one.  
10:58:27 20 MS. MCLEATCHIE: I don't have one currently  
21 planned until the end of August.  
22 THE COURT: Well, make sure you take it.  
23 MS. MCLEATCHIE: Thank you, your Honor. Would  
24 you like to address the withheld documents today, your  
10:58:36 25 Honor?

10:58:36 1 THE COURT: Yes. Let's talk about the  
2 withheld documents.

3 MS. MCLETHIE: So, your Honor, I don't want  
4 to -- I wish to be brief because a lot of the legal  
10:58:48 5 issues have been briefed a couple of times, both in my  
6 memorandum, their log, and then our -- and then our  
7 briefing, our briefing in chief in this case.

8 But, of course, as the Court is well aware,  
9 we've discussed many times the burden is squarely on  
10:59:05 10 CCSD to establish not only the existence of a privilege  
11 log, but that the privilege outweighs the interest and  
12 confidentiality. And your Honor instructed us to  
13 specifically address today how this case is different  
14 because we're not talking about a traditional  
10:59:22 15 employer/employee relationship. While some of the  
16 victims may be employees, Mr. Child is a trustee, not  
17 an employee.

18 And I think it's different for two reasons.  
19 First of all, the statutory policy -- and policies  
10:59:38 20 whether or not they trump the Nevada Public Records Act  
21 doesn't even matter because those guidelines and issues  
22 don't apply to things that aren't part of somebody's  
23 personnel records. We haven't requested the personnel  
24 records of the victims. These are -- these are  
10:59:54 25 documents that are separate and apart from the

10:59:57 1 personnel records of CCSD.

2           So while the RJ has disputed that there's an  
3 absolute privilege with regard to personnel records,  
4 has disputed that internal CCSD policy can trump the  
11:00:08 5 Public Records Act, those issues almost don't matter  
6 because Mr. Child is not an employee.

7           And not only does his status make the case  
8 different, his status also urges this Court to require  
9 production of the documents because he's a public  
11:00:29 10 official. I think it was in the Deseret News case  
11 about a similar situation with a school in a sexual  
12 harassment investigation. And in that case, the  
13 Court -- the Court explained that it provides a window  
14 into official acts and official decision making. And  
11:00:49 15 so any interest in confidentiality in that case, the  
16 Court found, was outweighed by the interest in allowing  
17 the public to know not only what the -- what a public  
18 official or public employee had done, but what -- how  
19 public officials had handled this issue.

11:01:07 20           And in both that case and in the Marken case,  
21 which are both cases that address specifically  
22 questions about sexual harassment investigations in the  
23 public records context, they -- both those cases we  
24 didn't even have as compelling facts as we do here  
11:01:25 25 because the people at issue were not a trustee.

11:01:29 1 As we've -- as we've discussed before in the  
2 many hearings in this case, your Honor, Trustee Child  
3 is elected by the voters. The voters are entitled, for  
4 example, to recall him. They're entitled to know what  
11:01:41 5 he does.

6 In addition, Superintendent Skorkowski has an  
7 incredibly important position at the district. He's a  
8 highly paid, important person who has great  
9 responsibility for educating teacher -- I mean,  
11:01:54 10 educating students in Clark County. And CCSD is also  
11 one of the state's largest employers. And so how CCSD  
12 and its officials, like the superintendent, handled  
13 complaints about another high-level official, a  
14 trustee, the highest level official, there's great  
11:02:13 15 public interest in knowing -- in knowing what occurred.

16 In looking at the district's arguments again  
17 and looking at the redaction log, and the pages that  
18 were attached to it, I understand and I respect their  
19 concerns about respecting the victim's confidentiality.  
11:02:33 20 In fact, earlier in this case, even though -- even  
21 though the district hadn't timely asserted any such  
22 privileges, we, the RJ, didn't contest that the names  
23 of victims should be redacted. And so I think that  
24 what the district fails to do, though, is to establish  
11:02:50 25 why redacting doesn't meet that concern.

11:02:56 1 Under the Public Records Act, they are  
2 required to redact wherever possible. That's not even  
3 case law. That's specifically in the statute. And  
4 again, we're supposed to interpret things liberally and  
11:03:08 5 to provide as much information as possible. If the  
6 interest here is protecting the identities of --  
7 identities of the teachers or other people, other  
8 employees who complained, the RJ has no issue with  
9 redacting their names consistent with the February  
11:03:23 10 order.

11 We don't have enough information, your Honor,  
12 on my side to know if there's other identifying  
13 information in those documents, but any identifying  
14 information; although, I think that, historically, CCSD  
11:03:38 15 has interpreted identifying information a little too  
16 broadly to include things like school name, but I do  
17 think that identifying information can be properly  
18 redacted. And I think that it properly meets the  
19 concerns the district has -- I think has fairly voiced  
11:03:55 20 with regard to protecting the names of sexual  
21 harassment complainants that come forward and say we  
22 have an issue with a very important person.

23 But for the same reasons because it's a very  
24 important person and this is a -- and it was very  
11:04:07 25 important people addressing this matter, the public is

11:04:10 1 also entitled to have as much access to information  
2 about how Cedric Cole conducted his investigation and  
3 about what actually occurred, your Honor.

4 THE COURT: I understand.

11:04:26 5 Mr. Honey, sir.

6 MR. HONEY: Thank you. There's a long record  
7 on this case, our opening briefs, answering briefs,  
8 replies, multiple hearings. There are a few things I  
9 want to touch base on that probably haven't been argued  
11:04:43 10 or discussed articulately before.

11 The EEOC at the federal level and the NERC at  
12 the state level both have the same purpose. They're to  
13 protect people from civil rights violations,  
14 discriminations to the point that a person has a right  
11:05:00 15 to file a claim with either one of those organizations.

16 And the laws that make up those two state and  
17 federal divisions, or commissions, or however you want  
18 to call them also require that employee -- or employers  
19 of certain size have a designated person in order to  
11:05:18 20 take these types of complaints.

21 In this case we're a very large employer,  
22 obviously, and so we actually have an office, the  
23 Office of Affirmative Action and Diversity, which  
24 Cedric Cole is the director of. Now, these three work  
11:05:33 25 in conjunction. And as such, they need to be afforded

11:05:38 1 the same protections from one to the other.

2 Now, there's no question from our briefing  
3 that at the federal level, when complaints of  
4 harassment and discrimination such as we have here are  
11:05:49 5 made, an employer has an obligation to investigate it.

6 And that's what we have done here. In their  
7 reply, the Review Journal in discussing non-record  
8 materials, I think on page 23 lines 4 and 5, concede  
9 that the district has a statutory duty to investigate.

11:06:11 10 And that's what we've done in this case.

11 Now, at the federal level, those  
12 investigations and the results thereof are  
13 confidential. At the state level, under Chapter 233,  
14 which is the Nevada Employment Commission --

11:06:27 15 THE COURT: Wait, wait. Hold it. Hold it.

16 I'm going to follow you.

17 MR. HONEY: Sure.

18 THE COURT: That's Chapter 233?

19 MR. HONEY: Yes. That's NRS 233.190.

11:06:39 20 THE COURT: Let me pull it for you. 190.

21 Okay. I got it. I think it opened up right in front  
22 of me.

23 MR. HONEY: And it's entitled confidentiality  
24 of information. So now we go to the next level of  
11:06:49 25 these three entities that do essentially the same

11:06:52 1 things. And at No. 1, any information by the  
2 commission in the course of its investigation of an  
3 alleged discriminatory practice in housing, employment  
4 or public accommodations is confidential.

11:07:05 5 And then at 2(b), To any other person if the  
6 information is provided in a manner which does not  
7 include any information that may be used to identify  
8 the complainant, the party against whom the unlawful  
9 discriminatory action -- practice is alleged or any  
11:07:27 10 persons who provided information to the commission  
11 during the investigation.

12 And then finally under 3(c), Any information  
13 that may be used to identify a person who provided  
14 information to the commission during the investigation  
11:07:40 15 and who was requested anonymity.

16 Now, here we've got lots -- we have several  
17 emails. We have the affidavit of Cedric Cole that  
18 employees are concerned about retaliation. I mean, you  
19 have emails, people straight up saying, We're reporting  
11:07:56 20 this very reluctantly because we're concerned of what  
21 may happen as a result.

22 The protections --

23 THE COURT: Now, here's my question for you.

24 MR. HONEY: Yes.

11:08:05 25 THE COURT: And I understand your position,

11:08:07 1 but when it comes to the application of Chapter 233,  
2 and it appears to me that specifically involves the  
3 Nevada Equal Rights Commission and any complaints filed  
4 with that political subdivision for the State of  
11:08:27 5 Nevada, how does that apply to complaints made on the  
6 school district level regarding an elected official?

7 MR. HONEY: Thank you.

8 THE COURT: Because that is the real question  
9 there. Because that's an important issue. And please  
11:08:46 10 explain that to me.

11 MR. HONEY: Thank you. First of all, I want  
12 to point out that 233.190 is enumerated in Chapter 239  
13 of NRS. It's one of the specified statutes of which  
14 documents are deemed confidential and do not need to be  
11:09:03 15 produced as Public Record Act.

16 In the connection, what I'm trying to get to,  
17 is that our Office of Diversity -- Office of  
18 Affirmative Action and Diversity is, in essence, the  
19 extension of NERC and the EEOC. We're required to have  
11:09:17 20 that office based on the size of our employee, and we  
21 do the same thing.

22 Now if we afford less protections to the  
23 school district employees, regardless of who is  
24 harassing them -- I mean, it could be -- it could be  
11:09:33 25 any nonemployee, even if it's not a trustee. It could

11:09:35 1 be a parent. If a parent is harassing or  
2 discriminating against an employee, and they report it  
3 to us, we need to act on that. We have a duty, a  
4 statutory duty to investigate and do such. Same  
11:09:46 5 difference with the trustee. Because, again, I'm here  
6 to protect the employees here today and throughout this  
7 entire case.

8 And so really what my point is is --

9 THE COURT: But here's my question because I  
11:09:57 10 know a little bit about the Nevada Equal Rights  
11 Commission. And it's my understanding once they  
12 conduct their investigation, at that point the report  
13 of the Nevada Equal Rights Commission is no longer  
14 confidential.

11:10:09 15 So if that's the case then, why wouldn't the  
16 report of, especially regarding an investigation as it  
17 relates to a trustee, be confidential after the  
18 investigation is conducted? And we have a -- I think  
19 we have a Nevada case that specifically deals with the  
11:10:29 20 loss of confidentiality.

21 But go ahead.

22 MR. HONEY: Well, I think at our -- at our  
23 Office of Affirmative Action and Diversity is there is  
24 no final report with an action taken such as there is  
11:10:41 25 with NERC. I think -- I think that's a distinction.

11:10:45 1 And what we end up here is if our Office of Affirmative  
2 Action and Diversity isn't afforded the same  
3 protections to the complainants as NERC, we're then  
4 telling people, yeah, we're required by law to have  
11:10:58 5 this office, but don't report it here because it's not  
6 confidential. You want to skip us and go straight to  
7 NERC or the EEOC.

8 And that's --

9 THE COURT: But if they go to NERC or EEOC,  
11:11:07 10 once the hearing occurs then the report is no longer  
11 confidential, right?

12 MR. HONEY: I'm not sure on that, your Honor.

13 THE COURT: I think that's how it works. I  
14 mean, I'm looking here. And it's a specific case.  
11:11:20 15 Hind versus Caruso. And it's a federal case, Ninth  
16 Circuit. And I think it says once the Nevada Equal  
17 Rights Commission has determined to conduct a hearing  
18 on the matter, the report is no longer confidential.  
19 That's what that case stands for.

11:11:38 20 And so I'm looking at it from this  
21 perspective. Once it goes to hearing -- Well, what we  
22 have here and, I guess, in concern respects, we're  
23 having a hearing now as it relates to the investigation  
24 of a trustee, and this hearing is being conducted  
11:11:59 25 pursuant to Nevada public records law, right?

11:12:03 1 And so I'm wondering -- because I'm looking at  
2 it from this perspective, I understand there's an  
3 investigation, but I'm trying to go figure out  
4 specifically how this section applies to the Office of  
11:12:20 5 Diversity. Because from what I can gather in looking  
6 at the statute, it doesn't appear to cover the Office  
7 of Diversity. I mean, I understand the argument by  
8 analogy.

9 MR. HONEY: And that's really what it is, your  
11:12:37 10 Honor, an argument by analogy.

11 THE COURT: I got you.

12 MR. HONEY: I would say for the record,  
13 though, I do not believe this is the same as a NERC  
14 hearing in regards to alleged discrimination, the  
11:12:46 15 hearing that we're in front of here today.

16 THE COURT: Well, yeah. And I can agree  
17 because, I guess, ultimately, the NERC is going to make  
18 a factual determination as to whether or not there was  
19 harassment and/or determination. I'm not going to do  
11:12:57 20 that. The only thing I'm going to do is decide  
21 whether -- what records should be produced. And I  
22 agree with you one hundred percent on that, Mr. Honey.  
23 I understand.

24 MR. HONEY: Now, the second area that we -- or  
11:13:05 25 another area that we argued is this whole idea of the

11:13:08 1 district regulations. I don't think there's any  
2 dispute here that CCSD is a local government  
3 established by Nevada Revised Statutes, specifically  
4 386.010(2).

11:13:21 5 THE COURT: I can take judicial notice this is  
6 a public subdivision for the state of Nevada.

7 MR. HONEY: Furthermore, I don't think there's  
8 any dispute legally that under NRS 30386.350 --  
9 NRS 386.350, that the legislature has empowered the  
11:13:41 10 school district with rule making authority to make  
11 rules and regulations.

12 Now, our position is that under the portion of  
13 Chapter 239, unless otherwise declared by law, that the  
14 word law is used on purpose instead of statute. And I  
11:13:59 15 briefed that, and we have discussed that before.  
16 There's a distinction between the two.

17 THE COURT: What's the distinction between by  
18 statute and by law? I just want to make sure I'm not  
19 missing anything on that. Because I thought statute  
11:14:10 20 would be the law.

21 MR. HONEY: Well, that's my -- well, law is  
22 more broad. A law would be --

23 THE COURT: Okay. I understand. I understand  
24 what you're saying.

11:14:17 25 MR. HONEY: Okay. So in this case where we

11:14:22 1 have the authority to make enforceable regulations,  
2 we've made an enforceable regulation. And the  
3 particular regulation is CCSD Regulation 4110, which  
4 says all information -- and this is at (x). All  
11:14:37 5 information gathered by the district in the course of  
6 its investigation of an alleged unlawful discriminatory  
7 practice will remain confidential. Except and the  
8 necessary -- except to the extent necessary to conduct  
9 investigation, resolve the complaint, serve other  
11:14:52 10 significant needs, or comply with law.

11 And our position is that Cedric Cole's office,  
12 and by extension those are the records that we have  
13 withheld and asserting a privilege, that they fall  
14 under the rubric of being an investigation of  
11:15:06 15 discrimination.

16 And that this does comply with law,  
17 specifically 239.010, which right in there. After the  
18 enumerated statutes that are confidential, it says:  
19 And other documents.

11:15:21 20 THE COURT: Is there a copy of that  
21 regulation? Can you point me to it? I just want to  
22 take a quick look.

23 MR. HONEY: I don't have the full regulation  
24 with me in my answering brief. The portion that I read  
11:15:33 25 into the record is on page 18.

11:15:42 1 THE COURT: Let me see here. Can I pull a  
2 copy of that off the website real quick?

3 MR. HONEY: Yeah. And, your Honor, it is  
4 Exhibit 6 to my answering brief.

11:16:24 5 THE COURT: Okay. Here's my question: What  
6 do I do with when an administrative regulation is  
7 promulgated by the agency and there's some conflict  
8 and/or tension between the regulation of an agency and  
9 the acts of the Nevada legislature?

11:16:52 10 MR. HONEY: And, I guess, that's kind of what  
11 we need here because it kind of will be controlling on  
12 how, or if, or the matters which may or may not be  
13 appealed. If you -- if you're going to rule on the  
14 regulation and say, no, this regulation is infirm, and  
11:17:08 15 this is why.

16 THE COURT: No, no, no. My question is a  
17 little bit more specific than that. Under the facts of  
18 this case, in listening to your reliance upon the  
19 regulation, I guess, that's 4110 as it relates to  
11:17:25 20 discrimination, I think you said discrimination, that's  
21 confidential.

22 Now, in this case I don't know -- I mean, I'm  
23 just going to tell you what I'm thinking. Are there  
24 any allegations of discrimination, just ordinary  
11:17:39 25 harassment, or conduct unbecoming of a trustee?

11:17:42 1 Because that's the best way I can say it.

2 But assuming there's no allegations of  
3 discrimination, that No. 1, would this regulation  
4 apply? And then No. 2, even if it did apply, if it's  
11:17:57 5 contrary to the public records law, wouldn't the public  
6 records law take precedent over the regulation and be  
7 controlling?

8 MR. HONEY: If that were the case. And two  
9 things. First of all, I think the term discriminatory  
11:18:11 10 is broad here. I think the act -- the actions of the  
11 trustee that could be deemed discriminatory. And  
12 additionally --

13 THE COURT: But can we agree to this, though,  
14 that regulation is limited to discriminatory conduct?

11:18:28 15 MR. HONEY: Without having the entire thing in  
16 front of me, but that is what I briefed, your Honor.

17 THE COURT: Okay. So I'm just -- okay. I get  
18 that. I get that. I understand.

19 MR. HONEY: And so my argument is based on the  
11:18:38 20 language of 239.010, where it has all the enumerated  
21 statutes but then has the catchall, the otherwise  
22 declared by law. That this is a law. It doesn't say  
23 otherwise declared by statute. It does say law. And  
24 that this does comply with that law.

11:18:54 25 I believe the reason that why 239.010 says

11:18:57 1 otherwise declared by law is because they know they  
2 have all of the state employee enacted Nevada  
3 Administrative Code where confidentiality to this type  
4 of information is allowed.

11:19:08 5 And again, that's another argument we made  
6 previously. Why should a local government employees --  
7 again, I'm talking about the employee, not the trustee,  
8 not the elected official. Why should the employees be  
9 given less protections than a state employee?

11:19:21 10 THE COURT: Now, here's my next question:  
11 What acts are contained in the privilege log that would  
12 involve discriminatory conduct of the trustee? I got  
13 4110 in front of me right now.

14 MR. HONEY: I'm going to take the easy way out  
11:20:13 15 and, say, each of them in regards to Cedric Cole.  
16 Because, frankly, the distinction between the word  
17 discriminatory and what's going on here hasn't been  
18 raised in any of the multiple hearings before.

19 THE COURT: And I want to --

11:20:39 20 MR. HONEY: I thought we were beyond that  
21 point.

22 THE COURT: No, no. I just want to make sure  
23 I understand as far as the confidential, which I have  
24 4110 in front of me now. Which?

11:20:48 25 MR. HONEY: Sub-part X.

11:20:50 1 THE COURT: Okay. All right. I understand.  
2 Now, looking at the plain language of the -- of  
3 paragraph F provides as follows:

4 All information gathered by the district in  
11:21:37 5 the course of its investigation of an alleged  
6 unlawful discriminatory practice will remain  
7 confidential except to the extent necessary to  
8 conduct an investigation, resolve the  
9 complaint, serve other significant needs, or  
11:21:57 10 comply with law.

11 What does that mean?

12 MR. HONEY: Did you say X or F, your Honor?

13 THE COURT: X. I'm sorry. X as in x-ray.

14 MR. HONEY: Thank you.

11:22:06 15 THE COURT: Because I think that's the  
16 provision you're relying upon, right? Because it seems  
17 to me it's not like everything is a broad brush of  
18 confidentiality.

19 MR. HONEY: Sure. And I think here, to the  
11:22:19 20 extent necessary to conduct an investigation. Well, if  
21 any of it needed to be disclosed while Mr. Cole was  
22 doing his investigation, I think it gives him room to  
23 do that.

24 To resolve the complaint, I think that speaks  
11:22:31 25 for itself.

11:22:32 1           Serve other significant needs. That's pretty  
2 broad. I'm not sure what other significant needs --

3           THE COURT: That's kind of what I'm getting  
4 to.

11:22:39 5           MR. HONEY: And I understand that to mean the  
6 significant other needs of the district. But I don't  
7 see where any other significant needs have been  
8 demonstrated in this case that would undue the  
9 confidentiality of the regulation or comply with law.

11:22:55 10 And then the law portion, my argument is in regards to  
11 239.010 it precisely complies with the law based on the  
12 same language of the -- of 239.010.

13           THE COURT: But remember, from a statutory  
14 construction perspective it says: Look, the  
11:23:16 15 information gathered will remain confidential except  
16 under these circumstances. And one would be the extent  
17 necessary to conduct an investigation, resolve the  
18 complaint, which is another action, serve other  
19 significant needs, or comply with law.

11:23:36 20           And, I mean, if you looked at that from a  
21 statutory interpretation standpoint, yes -- I mean, it  
22 could be argued, and it could be the basis of a  
23 decision that when I look at this, I can say, Look,  
24 yeah, it's confidential. However, I'm required to  
11:23:50 25 comply with Nevada law, and more specifically,

11:23:52 1 Chapter 239 as it relates to the public records  
2 disclosure requirement.

3 MR. HONEY: And that's --

4 THE COURT: Right?

11:24:03 5 MR. HONEY: That's what I'm trying to say,  
6 your Honor. Under 239.010 it says after the enumerated  
7 statute that things remain confidential. They're  
8 confidential unless otherwise declared by law.

9 This isn't saying that there -- this doesn't  
11:24:19 10 go against that. I say this goes exactly with it  
11 because this is another law. And this law says it's  
12 confidential.

13 THE COURT: Well, it appears to me, and maybe  
14 we can talk about it, but my construction of this  
11:24:34 15 specific regulation would be, yes, it's confidential  
16 unless it serves another significant need or to comply  
17 with the law. That's how I see that.

18 And so, in essence, built in here, it's  
19 inherent that they understand, you know what, there  
11:24:59 20 might be other reasons under the law to require or  
21 compel disclosure. That's kind of how I construe that.  
22 And if I'm wrong, that's okay. You can tell me how you  
23 feel.

24 MR. HONEY: Well, I think I -- I don't want to  
11:25:13 25 keep repeating myself.

11:25:14 1 THE COURT: That's okay.

2 MR. HONEY: I think it's well established on

3 the record.

4 THE COURT: Okay.

11:25:25 5 MR. HONEY: Okay. We also have the

6 deliberative process privilege at issue here today.

7 And under DR Partners, the scales must reflect that the

8 right of a citizen, or in this case Review Journal, to

9 have access of the records is contrasted with

11:25:44 10 incidental right of an agency to be free from

11 unreasonable interference.

12 In order for materials to fall under the

13 deliberative process privilege, they must consist of

14 opinions, recommendations, or advice by agency

11:26:03 15 policies. And it's important that they can be to a

16 specific situation. They don't have to be encompassing

17 policy that goes on indefinitely. It could be a

18 specific situation.

19 Here in this case, we have the affidavit of

11:26:15 20 Cedric Cole saying that he was directed by the

21 superintendent, who is the highest level executive of

22 the school district, hired by the school board, to

23 investigate these allegations that Trustee Child's

24 actions have been inappropriate.

11:26:32 25 He conducted this investigation. He

11:26:35 1 interviewed people. He took notes. And that resulted  
2 in a four-page memorandum to the superintendent that  
3 the Las Vegas Review Journal has had since December of  
4 2016. Page 4 of his report or memorandum to the school  
11:26:55 5 district includes specific recommendations.

6 Now, what policy did this lead to? This led  
7 to the December 5 guidelines for trustee visits. That,  
8 again, already in the possession of Review Journal.  
9 Those guidelines were sent to the executive cabinet,  
11:27:18 10 all the school associate superintendents, and all the  
11 principles, I believe, of District D, which is Trustee  
12 Child's district.

13 So you've got this deliberative process where  
14 the highest executive of the school district is asking  
11:27:34 15 one of his subordinates, the director of the Office of  
16 Affirmative Action and Diversity, to investigate and  
17 look into these allegations and tell me, do they rise  
18 to the level of discrimination, or harassment, or  
19 whatever avenue you want to use to describe the  
11:27:53 20 conduct. And I think that report, again, already in  
21 possession of Review Journal, demonstrates, based on  
22 Mr. Cole's expertise in that area, that there were  
23 issues here. And he had recommendations to help  
24 resolve those issues.

11:28:08 25 Now, in resolving those issues, the district

11:28:11 1 is confined to its authority over the trustee, which is  
2 admittedly very little. He's an elected official, as  
3 has been discussed many times. He's not an employee.

4 So were the steps that we took -- and I think  
11:28:25 5 Ms. McLetchie talked about this, that the public  
6 deserves to know what did the district do about this.  
7 Well, she has the guideline letter of December 5. She  
8 has an additional guideline letter from May 31st, 2017.  
9 She has three specific letters from the superintendent  
11:28:45 10 to the trustee.

11 All of the investigation in the notes  
12 occurring from them were generated once the  
13 superintendent directed Mr. Cole to look into these  
14 allegations. And unless they were all part of the  
11:29:18 15 basis of the, I believe, it's the October 19, four-page  
16 memorandum and then, of course, the guidelines, which  
17 is the act, what did the district do? What did all  
18 this deliberation lead to? So we do have a  
19 deliberative steps taken by district employees to come  
11:29:38 20 up with a specific policy to deal with a specific  
21 situation.

22 Now, it wasn't in the briefing of either of  
23 the parties, but under DR Partners at page 626, once  
24 Clark County School District demonstrates that the  
11:30:02 25 document or documents fall under deliberative process

11:30:05 1 or deliberative privilege, the burden shifts to the  
2 other party seeking disclosure. And it needs to  
3 demonstrate that the needs for the info exceeds the  
4 regulatory interest of the school district.

11:30:17 5 And in this situation, they already have the  
6 October 19 memorandum. They already have what the  
7 district did in order to help resolve this issue and to  
8 hopefully keep it from happening again in the future.

9 They have letters to the trustee. Now, the  
11:30:43 10 important need of the school district -- or of the  
11 Review Journal shouldn't reach to the level of, what I  
12 call, TMZ news reporting.

13 There's no significant need for the details  
14 that start infringing on the privacy of the district  
11:31:06 15 employees. We want them to be able to report this  
16 stuff with us without fear of retaliation.

17 Now, I believe DR Partners also says, well,  
18 these can't be hypothetical fears. And they're not  
19 hypothetical. We've had -- you've had emails that have  
11:31:20 20 been disclosed either in camera or to the other side  
21 where people have written their concerns about  
22 reporting these things. And you have the affidavit of  
23 Mr. Cole saying that in his conversations with people  
24 in doing this investigation have indicated the same  
11:31:39 25 thing.

11:31:40 1 Because one thing that keeps coming up in  
2 this, and I think it was even in one of the letters  
3 that was recently provided to Ms. McLetchie, is  
4 Mr. Child's propensity to tell everybody that he's the  
11:31:54 5 boss. He's Pat's boss. He's everybody's boss. That's  
6 a very chilling effect on people. And I think it makes  
7 sense that these people knowing that, having heard  
8 that, are fearful of what their reporting of what this  
9 type of information is.

11:32:23 10 THE COURT: I just want to make sure. I mean,  
11 I don't know if this has been developed or been  
12 discussed, but, truly, does the trustee have the power  
13 to terminate a school district employee?

14 MR. HONEY: I don't think in and of himself he  
11:32:45 15 would have that power. But if we are realistic that  
16 this is a board of multiple people, like boards  
17 throughout the state and the country, and when majority  
18 rules, I would say anything is possible.

19 To answer your question directly. Can he walk  
11:33:09 20 down to Andre Long, head of human resources for the  
21 school district, and say, I want you to fire this  
22 person right now? No, he doesn't.

23 THE COURT: Right.

24 MR. HONEY: But in reality of how these things  
11:33:23 25 work, can he make things uncomfortable? Can he build a

11:33:26 1 consensus? I think -- I don't think it's out of the  
2 realm of possibility, your Honor.

3 Now, we would also believe that the  
4 deliberative process privilege doesn't apply just to  
11:33:40 5 investigatory notes in regards to the Fall of 2016. It  
6 also pertains to any type of investigation materials  
7 received by Andre Long in 2017 as well. As he did a  
8 second memorandum to the superintendent looking at and  
9 analyzing whether or not the prior steps have been  
11:34:07 10 effective, and if any other additional recommendations  
11 are called for, additional recommendations were made,  
12 and then the superintendent issued another set of  
13 guidelines. This time specifically to Kevin Child on  
14 May 31st.

11:34:26 15 And again, this is a deliberative process of  
16 determining what can we do in this difficult situation?  
17 Situation of first impression where we're getting these  
18 complaints and allegations against a trustee, whom is  
19 not our employee. We can't fire him. We can't get rid  
11:34:44 20 of him. It's not our choice to do that. It's not our  
21 purview. What can we do?

22 And the superintendent is doing everything  
23 that he can within his limited power in regards to this  
24 unique situation.

11:34:58 25 So, again, the deliberative process extends to

11:35:01 1 the 2017 information leading up to the additional  
2 guidelines authored on May 31st, 2017.

3 There's several draft documents in the  
4 privilege documents. The draft documents are not

11:35:35 5 evidence or demonstrate an official action by the  
6 school district. If we have -- if, LVRJ, Review

7 Journal, already has the October 19, 2016, final  
8 memorandum, there's no purpose in then providing them

9 the draft of that. I believe one of them has -- we've

11:35:58 10 argued that it has an attorney-client privilege because  
11 it's written all over by general counsel Carlos McDade.

12 There's others with questions marks on it, and it's  
13 handwritten in. And it's very difficult to see. We  
14 don't have the greatest technology. But it even has

11:36:14 15 the watermark for draft on it, but I admit you have to

16 look hard to see it because it doesn't show up well  
17 when we try to print it. Shows up better in the

18 electronic formats, or the earlier copies. We are  
19 dealing with copies of copies of copies here.

11:36:34 20 Traditionally, non-record materials include --

21 include drafts. Now, it is true it's in a separate

22 section in regards to retention of documents. But if

23 they -- but if they didn't intend it to mean that they  
24 were non-records, meaning non-record, I would think

11:36:51 25 that would mean it was never a record. We're talking

11:36:54 1 about the Public Records Act. If that was an  
2 intention, then they could have called it something  
3 else. They could have said these are documents that no  
4 longer need to be retained, and they don't have to call  
11:37:05 5 them non-records.

6 NAC 299.051 gives a list of non-record  
7 materials. Non-record is their word, not mine.  
8 Non-record materials include informal notes, drafts,  
9 and ad hoc reports.

11:37:36 10 Informal notes and drafts. The notes of  
11 Cedric Cole when interviewing these people. Again,  
12 it's not the final record of the action taken by the  
13 district. It was utilized in him developing this  
14 memorandum and recommendations to the superintendent,  
11:37:56 15 who then took specifically action.

16 These drafts and notes are not served as  
17 official action. Notwithstanding all of the arguments  
18 previously made in answering brief and here today and  
19 at prior hearings, we also have the Donrey balancing  
11:38:22 20 test. So even if none of those other arguments  
21 pertain, the Donrey balancing test still is worth  
22 consideration in weighing the interests of  
23 nondisclosure against the general policy in favor of  
24 open government.

11:38:41 25 And what we have here is based on all the

11:38:43 1 emails that have previously been provided and the  
2 documentation, specifically the 10-19-2016 memorandum  
3 that Review Journal has already had, they already have  
4 the information. And providing this additional  
11:39:03 5 information does not shed any additional light.

6 But it -- but what it does do is it does put  
7 the district's employees, when they're identified  
8 either directly or can be identified by the alleged  
9 wrongdoer Trustee Child, in a position where they're  
11:39:32 10 fearful of retaliation, professional advancement, and  
11 such forth related to their employment status with the  
12 district.

13 In your prior order back in February of 2017,  
14 there were some protections put in by the Court in  
11:39:59 15 these emails. And those protections included alleged  
16 victims of sexual assault, administrators, students,  
17 and, I think, maybe parents. I could be mistaken on  
18 that one.

19 But we decided that -- excuse me. I take that  
11:40:22 20 back. I misstated that. We said that administrators  
21 would not be redacted, but that principals would go  
22 unredacted along with teachers. Support staff would be  
23 redacted. Parents and students would be redacted.

24 I may have made a mess of that. I apologize.

11:40:49 25 THE COURT: I understand, but --

11:40:49 1 MR. HONEY: Okay. Here's what I was going to  
2 say.

3 THE COURT: I don't even know if that's a big  
4 issue, though, because I think the Review Journal,  
11:40:55 5 based upon Ms. McLetchie's earlier statements, they're  
6 not concerned about names.

7 Is that correct, ma'am?

8 MS. MCLETCHE: The names of -- your Honor,  
9 paragraph 34 of the February order says that the  
11:41:07 10 following can be redacted: The names of direct victims  
11 of the sexual harassment or alleged sexual harassment,  
12 students, and support staff.

13 And our position in the subsequent briefing  
14 has also been that we're fine with redactions necessary  
11:41:22 15 to protect those names.

16 THE COURT: Yeah.

17 MR. HONEY: And what I was getting to, so the  
18 way I interpret that is the Las Vegas Review Journal is  
19 okay with the status quo of your prior order of  
11:41:37 20 protecting those limited people.

21 What I would put forth is that we should  
22 mirror Chapter 233.190 which allowed broader  
23 protections.

24 THE COURT: 233.190?

11:41:49 25 MR. HONEY: Yes. Where at 2 -- excuse me,

11:41:52 1 4(c), Any information that may be used to identify a  
2 person who provided information to the commission  
3 during the investigation.

4 And my concern here is that we've got one  
11:42:06 5 specific trustee that it would seem would be able to  
6 identify these people when we don't redact -- when we  
7 redact as little as we have.

8 He's already indicated to administrators  
9 repeatedly that he's the boss, as I talked to before,  
11:42:27 10 and that he's Pat's boss, Pat being the superintendent.  
11 And that I think the matter of redaction should be more  
12 broad, should allow us more redactions on any -- if  
13 any -- in the event any future redactions are  
14 considered in order to protect these people.

11:42:43 15 We've got one. There's one specific one, for  
16 example, it has to do with a function at a school. And  
17 if I remember right, we weren't allowed to redact the  
18 school and we weren't able to redact the name of the  
19 function. I think it's highly likely in that situation  
11:43:02 20 we have failed to protect that employee that made that  
21 complaint. It's a written, like email to somebody.

22 And we leave the name of the school. We leave the name  
23 of the complaint -- or the name of the function it was.  
24 I don't think it's too much of a leap that the  
11:43:17 25 superintendent -- that the trustee is able to identify,

11:43:19 1 Oh, I know who that -- I know where that was. And  
2 leading to the person. I think more -- I think more  
3 protection can be granted to the people.

4 And it doesn't take away from the heart of the  
11:43:31 5 facts of the incident of what exact conduct was  
6 troublesome to an employee.

7 Quickly, by reference, probably doesn't need  
8 to be done, but the additional arguments that we were  
9 made in our answering brief, we still put those forth  
11:44:21 10 in regards to two additional -- in regards to  
11 everything in there that hasn't been specifically  
12 discussed today.

13 Thank you, your Honor.

14 THE COURT: Thank you, sir. And I just have  
11:44:35 15 one, one last question before you sit down. When I  
16 take a look at the privilege log, are there any areas  
17 where a deliberative privilege is being asserted that I  
18 should look at?

19 MR. HONEY: Yes. Just a moment, your Honor.  
11:44:58 20 It's the District's position that pages 34 to 41, which  
21 begin on page 2, or listed on page 2 of the privilege  
22 log, are covered by regulation 4110 X, the EEOC  
23 regulations.

24 THE COURT: No. I understand that.

11:45:30 25 MR. HONEY: Okay.

11:45:31 1 THE COURT: I'm just on --

2 MR. HONEY: Deliberative process --

3 THE COURT: -- deliberative process.

4 MR. HONEY: -- is applicable, we're arguing,

11:45:36 5 in regards to those pages 34 and 31. We also are

6 arguing deliberative process to pages 42 to 48, 49 to

7 53, 54 to 57, 58 to 60, and pages 159 to 177.

8 THE COURT: Any place bolded on the privilege

9 log? Is that basically pretty much -- because I'm

11:46:07 10 looking at the privilege log, and it appears to me that

11 all the areas that are bolded that where it has a

12 section that appears to be the basis for the privilege

13 being asserted, also include Office of Diversity and

14 Affirmative Action privilege.

11:46:23 15 MR. HONEY: Correct.

16 THE COURT: Okay.

17 MR. HONEY: So looking through my notes here,

18 we have the deliberative process to everything that's

19 highlighted but for 231 to 233, which are the last

11:46:49 20 pages, I believe. Let me double check that. Yes.

21 That's correct. The highlighted documents are all

22 Cedric Cole investigation derived other than 231 and

23 233.

24 THE COURT: I understand.

11:47:24 25 MS. MCLETCHIE: Your Honor, may we take a very

11:47:25 1 brief break?

2 THE COURT: Yes. You may, ma'am.

3 MS. MCLEATCHIE: Thank you, your Honor.

4 -o0o-  
(Recess)  
5 -o0o-

6 THE COURT: Okay. We can go back on the  
7 record.

8 MS. MCLEATCHIE: Thank you for your indulgence,  
9 your Honor.

12:02:54 10 I'm going to start with Title 7 -- the Title 7  
11 issues.

12 Unless I missed something, today is the first  
13 time I've heard of this argument. It's interesting,  
14 but I don't think well based that their internal  
12:03:10 15 diversity office is essentially like NERC or the EEOC.  
16 As this Court pointed out, 233 applies not to  
17 investigations by a school district but rather to  
18 specific proceedings by NERC.

19 In addition, your Honor is correct, and we  
12:03:30 20 briefed this in our memorandum as well. There's no  
21 absolute confidentiality with regard to EEOC  
22 proceedings, NERC proceedings, or Title 7 issues in  
23 general. And we gave some examples of that. Not just  
24 the two cases that deal with public records, but also  
12:03:45 25 in other context. There's just no such thing as an

12:03:48 1 absolute Title 7 confidentiality. And this Court  
2 properly pointed out the difference between a current  
3 and a pending investigation.

4 With regard to retaliatory -- retaliation  
12:04:02 5 concerns, they did provide a declaration, a hearsay  
6 declaration, but they did provide a declaration stating  
7 that some of the employees, not all of the employees,  
8 had expressed retaliation concerns.

9 And so one issue more broadly with their  
12:04:17 10 privilege log is they sort of lump everything together.  
11 They say these all fall within, I think they call them  
12 the Office of Diversity and Affirmative Action  
13 privileges. And it's -- they don't link up. This was  
14 the person who said they were concerned about  
12:04:33 15 retaliation. And they don't link up and explain to me  
16 the person who doesn't have the documents but is trying  
17 to assess whether or not the documents are properly  
18 withheld how, in fact, each specific document falls  
19 within each specific privilege that they're claiming  
12:04:51 20 with regard to that, those documents. And on that  
21 basis, your Honor, I would argue that they have not met  
22 their claim of confidentiality.

23 But again, we have not only briefed for the  
24 Court for the fact that Title 7 isn't an absolute  
12:05:10 25 privilege, and, more broadly, we've also pointed out to

12:05:15 1 the Court two specific cases. Unless compelling facts  
2 in which courts in applying public records laws, and  
3 while the district has tried to distinguish those  
4 cases, they did the same kind of balancing test that  
12:05:27 5 we've been talking about in this proceeding, your  
6 Honor. And they both found for very similar reasons,  
7 as we've briefed, that the interest in disclosure  
8 outweighed the interest in secrecy.

9 With regard to the administrative policy, I  
12:05:44 10 think it's important to start with the idea that --  
11 with the structure of -- the statutorily structure of  
12 the Public Records Act itself rather than just look at  
13 some of the language of the administrative policies  
14 they try to rely on.

12:06:01 15 And what the public record law says. Unless  
16 otherwise declared by law to be confidential, it's  
17 subject to disclosure. The Supreme Court has said you  
18 can raise other arguments in favor of confidentiality,  
19 but you need to show that the interest in those  
12:06:18 20 outweigh the interest in secrecy. In this context  
21 there is no absolute declaration of law, even if we're  
22 going to argue that the administrative guidelines that  
23 they've relied on are, in fact, law that can be used  
24 to -- used in this context.

12:06:34 25 There is no absolute declaration of

12:06:37 1 confidentiality. In addition, it's important that we  
2 look at the broader structure of the Public Records Act  
3 that also says any limitations have to be construed  
4 narrowly, any exceptions have to be construed narrowly.

12:06:51 5 And a decision by a court that an  
6 administrative regulation could trump the Public  
7 Records Act could be the exception that would swallow  
8 the rule that would go directly against that  
9 presumption that's not just in case law, but also in  
12:07:03 10 legislative findings and declaration itself.

11 In any case, Exhibit FF to our reply brief is  
12 Clark County School District policy 0101. That policy  
13 discusses the introduction to policies. It's titled  
14 Introduction to Policies and Regulations. And I think  
12:07:27 15 it's illuminating, your Honor, because it explains the  
16 limitations of these policies and how internal they  
17 truly are.

18 It specifically says, The purpose of these  
19 policies and regulations is to provide directions  
12:07:42 20 regarding the details of district operations. Policies  
21 are more general principles while regulations contain  
22 specific details in procedures.

23 This is not -- these are not the type of  
24 things -- we had also previously attached an example of  
12:07:57 25 a policy that dealt with gold cards or something.

12:07:59 1 These are not the type of thing that have the level of  
2 law that can turn what's otherwise presumed by law to  
3 be a public record into a non -- into a nonpublic  
4 record.

12:08:09 5 And as this Court -- as this Court pointed out  
6 and as we pointed out in our memorandum, the  
7 administrative policy that they rely on, in fact,  
8 specifically says: Except to the extent necessary to  
9 serve other significant needs or comply with law.

12:08:28 10 So it can't both be law and also be trumped if  
11 it's necessary to comply with law. The Nevada Public  
12 Records Act is law. And not maintaining the  
13 confidentiality set forth in that policy, even if that  
14 policy applies, is necessary to comply with law and to  
12:08:48 15 serve other significant interests.

16 With regard to deliberative process, there's  
17 just a few issues I wanted to point out. Having  
18 someone go through a factual investigation is not the  
19 same thing as decision making. And as discussed in DR  
12:09:12 20 Partners, and the cases on which -- the cases which DR  
21 Partners, in turn, discusses, the focus is on actual  
22 decision making. So the decision they pointed out --  
23 pointed to in this case is the decision by the  
24 superintendent to exclude Trustee Child. So if  
12:09:31 25 Superintendent Skorkowski was emailing back and forth

12:09:34 1 with Mr. McDade about what action he could legally take  
2 and what action he should take, that would both fall  
3 within the attorney-client privilege as well as under  
4 the deliberative process privilege.

12:09:45 5 But here, they're arguing at the same time  
6 that this -- that their internal diversity office is a  
7 fact-finding investigative agency akin to NERC or the  
8 EEOC. And, yet, they're also arguing that it's somehow  
9 the final decision maker for the district and that  
12:10:02 10 they -- that these documents reflect decision making.

11 I think that -- I think that nothing on their  
12 privilege log itself explains to me, who doesn't have  
13 the documents in front of her again, how any of those  
14 documents actually reflect the deliberative process  
12:10:19 15 that that privilege is designed to protect.

16 Also, I wanted to point out another thing  
17 which is CCSD has contended that if -- that if they  
18 establish the deliberative process privilege, which  
19 they have not, that the burden shifts to us to explain  
12:10:37 20 why we need the information.

21 However, what the Nevada Supreme Court said  
22 after saying: Here, because the county never  
23 demonstrated by evidentiary proofs that a deliberative  
24 process privilege was implicated by the disclosure of  
12:10:53 25 the unredacted records, the burden never shifted to the

12:10:57 1 newspaper. They're talking about the deliberative  
2 process privilege.

3 And then they say: Further, the absence of  
4 such proof prevented the district court from engaging  
12:11:04 5 in the weighing process mandated by Bradshaw.

6 So I wanted to point out to the Court that the  
7 deliberative process privilege, when you raise that in  
8 a public records case, it does not change the fact that  
9 the public entity has the burden of establishing the  
12:11:21 10 confidentiality and also establishing, after the other  
11 side addresses the need issue, of establishing that  
12 even if it exists, that the interest in disclosure is  
13 not greater than the interest in the deliberative  
14 process privilege.

12:11:37 15 So I just wanted to make that clear. And  
16 that's at page, I think it's 471, of the DR Partners  
17 case where they explained that they never got there  
18 because the -- because the governmental entity in that  
19 case had never met their evidentiary burden.

12:11:56 20 And here we do have a declaration from  
21 Mr. Cole, but regarding -- regarding some matters --  
22 but I don't think that they have met their evidentiary  
23 burden of establishing that each document somehow falls  
24 within the deliberative process privilege let alone  
12:12:15 25 that the interest in secrecy is not outweighed by the

12:12:20 1 interest in disclosure.

2           With regard to attorney-client privilege,  
3 there is one document that reflects notes by  
4 Mr. McDade. As the Court is well aware, just because  
12:12:29 5 an attorney does something doesn't mean it's  
6 privileged. And there's nothing on the privilege log  
7 indicating to me that the notes were made to render  
8 advice, preparation of litigation, or anything like  
9 that. It just kind of assumes because these notes were  
12:12:43 10 made by Mr. McDade that they're privileged. And that's  
11 not how the attorney-client privilege works.

12           In thinking about the attorney-client  
13 privilege, I think it's relevant to their deliberative  
14 process argument, your Honor. Because they -- in the  
12:13:00 15 attorney-client privilege, we all know that just  
16 because something is relied upon by an attorney doesn't  
17 turn that document into a privileged document.

18           If I have a client who did something bad, and  
19 there's an email that reflects that, and they send it  
12:13:12 20 to me, I can't all of a sudden claim that that document  
21 is privileged. The same is true here. The diversity  
22 office is separated from the superintendent's office.  
23 And the diversity office was undergoing its usual fact  
24 investigation process when something like this happens.

12:13:29 25           And there's nothing, again, that reflects that

12:13:31 1 these documents are actually the documents that reflect  
2 did the high-level decision making that the  
3 deliberative process is intended to -- is intended to  
4 protect.

12:13:43 5 With regard to I think their final argument  
6 about not -- their final claim of privilege about  
7 non-records. We briefed this at length, and I think  
8 we've argued it before. But I do just want to point  
9 out that that administrative code is -- it's not --  
12:13:58 10 it's not pertinent to the definition of a record for  
11 the public record. It pertains to other aspects  
12 contained in Chapter 239 which pertains to retention of  
13 records that are records of official actions.  
14 Obviously, the Public Records Act is broader than those  
12:14:18 15 records that are records of official action.

16 And we have briefed this both in our briefing  
17 in chief, our opening brief, and our reply brief, and  
18 also in our -- in our memo, your Honor.

19 The last -- the last issue I really want to  
12:14:35 20 talk about is the burden -- is the burden and this idea  
21 that's been put forth today by the district that  
22 somehow they can say, Well, we've given them enough.  
23 And, you know, it's enough that we've given them. Or  
24 it's enough that somehow they got the document through  
12:14:52 25 other sources. They've also indicated concerns about

12:14:56 1 TMZ News reporting. And here's the thing. The Public  
2 Records Act says that we have a presumption in favor of  
3 access. A newspaper never has to show a governmental  
4 agency, Hey, we're going to do reporting that, you  
12:15:12 5 know, that is sound and good reporting, which the RJ  
6 does and has done on this issue and related issues, but  
7 that's no requirement that we establish the need for  
8 each specific document. Instead, what the Public  
9 Records Act says is there's a presumption in favor of  
12:15:27 10 access.

11 And when we talk about weighing the interests,  
12 it's -- we don't need to establish for each document or  
13 even say why we want each document. There's a  
14 presumption that we are entitled to those documents,  
12:15:39 15 and they need to establish otherwise. They can't say,  
16 Well, they've got enough to figure out some of what  
17 we've done. And that's just not the case.

18 And, your Honor, the, Review Journal, and more  
19 importantly the public is entitled to assess not just,  
12:15:56 20 Okay, we know what the superintendent told Mr. Child.  
21 We know that the superintendent wrote Mr. Child letters  
22 and said you can't come to campus. We're entitled to  
23 assess whether that was a sufficient action. We're  
24 entitled to assess all of the underlying facts. We're  
12:16:13 25 entitled to look at what actually happened and to

12:16:16 1 make -- and the public is entitled to assess for itself  
2 whether or not that was the case.

3           Importantly, your Honor, we've talked a lot  
4 today, and the Review Journal, as you know, has  
12:16:29 5 conceded and recognized that protecting certain  
6 person's identity is a valid -- is a valid undertaking  
7 and is something that this Court can act to protect.  
8 However, they haven't met their burden that every  
9 person that came forward is concerned about  
12:16:45 10 retaliation.

11           More importantly, they're concern, and I think  
12 they expressed it as anything is possible when this  
13 Court asked about whether or not Trustee Child could  
14 fire an individual employee. Anything is possible is  
12:17:02 15 necessarily hypothetical and speculative and does not  
16 met their burden. In fact, I think the facts of this  
17 case -- we don't know all the facts, but it seems to me  
18 like the district took some significant steps already  
19 in the guidelines that they issued to Mr. Child to  
12:17:16 20 protect the very interest that they're claiming they're  
21 still concerned about today. And that's protecting  
22 these employees from retaliation and from inappropriate  
23 treatment.

24           Trustee Child can't even contact them. He  
12:17:27 25 can't even go to campus. And so the idea that they're

12:17:30 1 going to somehow lose their jobs or be otherwise  
2 retaliated against by Trustee Child, I think that when  
3 we look at the facts of this case, the district has  
4 taken steps to protect those employees.

12:17:42 5 And further, the compromise that the RJ, you  
6 know, conceded to at the -- some of the earlier  
7 hearings in this matter of protecting the names of  
8 victims, if there were things like social security  
9 numbers or other things that would identify specific  
12:17:59 10 victims of sexual harassment, we also would not object  
11 to that because that truly is identifying information.  
12 I don't think the NRS chapter about NERC applies to  
13 this case.

14 But with regard to information used to  
12:18:14 15 identify a person, again, I think that the district  
16 would bear the burden of showing that any additional  
17 information would need to be redacted to protect their  
18 identity. They haven't done that to date, your Honor.

19 There aren't that many documents in this case.  
12:18:29 20 We've had all kinds of briefing. They've had the  
21 opportunity to specify what needed to be protected and  
22 why. And I think that the idea that, for example,  
23 redacting school names because, again, the Review  
24 Journal is entitled to assess where these incidents  
12:18:42 25 happened goes too far, your Honor.

12:18:45 1 THE COURT: I understand.

2 MR. HONEY: Can I address a couple of points?

3 THE COURT: Yeah, you can.

4 MR. HONEY: Thank you, your Honor.

12:18:51 5 THE COURT: You'll get the last word, ma'am.

6 MR. HONEY: I just want to point out that the

7 district is not arguing that Cedric Cole is the final

8 decision maker. The highest level executive is the

9 superintendent, Pat Skorkowski. And based on the

12:19:06 10 information that he requested, investigation he

11 requested, and the information shared with him with the

12 recommendations from Cedric Cole, he then made the

13 decision making of what those guidelines would be, and

14 he's the one that penned and is the person that

12:19:22 15 authored the guidelines.

16 And then going back to DR Partners and the

17 deliberative process. In that case, the reason why the

18 county didn't establish that deliberative process

19 privilege applied is because the records only contained

12:19:41 20 numbers and billing information. Okay. These records

21 in this case are notes taken from victims or people

22 that are alleging that they experienced bad acts by the

23 school district. Much different.

24 THE COURT: But how -- but that wouldn't come

12:19:57 25 under the purview of deliberative process. Isn't that

12:20:00 1 part of the investigation of the fact-finding function  
2 of the district?

3 MR. HONEY: And that fact finding was done at  
4 the bequest of the superintendent so he could make his  
12:20:09 5 decision. First thing he needed to know was, Hey,  
6 Cedric, are these allegations, are they true? Do they  
7 rise to the level of discrimination and harassment?  
8 And do you have recommendations of what I can do? And  
9 he did an investigation to determine if they had merit,  
12:20:24 10 the allegations. He did the 10-19-2016 memorandum with  
11 recommendations and then that was utilized.

12 Now, sure, the record doesn't reflect the  
13 conversations that Mr. Skorkowski and Mr. Cole had in  
14 regards to this. It doesn't reflect meetings between  
12:20:41 15 individuals, and it doesn't need to. The idea that  
16 somehow conversations don't take place simply because  
17 there's not an email, or there's not a document is just  
18 unfounded speculation.

19 THE COURT: But if that was the case, wouldn't  
12:20:55 20 all public documents come under the deliberative  
21 privilege?

22 MR. HONEY: Not necessarily.

23 THE COURT: I mean, I'm trying to figure out  
24 if it's anything that the government directs or an  
12:21:08 25 agency had directed someone to do, it could be asserted

12:21:12 1 that that's all part of the deliberative process.

2 MR. HONEY: Director of the D.M.V. asks  
3 someone in the D.M.V. I want a list of all of the  
4 driver's license that expired in May of 2017. I don't  
12:21:24 5 think that's a deliberative process-type situation with  
6 something there. I think it falls under the category  
7 of just being numbers and billing information like in  
8 DR Partners.

9 THE COURT: Well, I want the list of all  
12:21:35 10 individuals that made a complaint about a trustee. How  
11 would that be part of the deliberative process?  
12 Because that would be the same thing.

13 MR. HONEY: Well, that wasn't what the  
14 trust -- that isn't what Pat Skorkowski directed his  
12:21:49 15 subordinate to do. He didn't say give me a list of all  
16 the complaints. He said investigate these allegations.  
17 Do they rise to the level of harassment and  
18 discrimination? If so, give me recommendations for  
19 further action in order to protect our employees so  
12:22:02 20 that I can make a final determination and create a  
21 policy to appropriately deal with the situation.  
22 That's what happened in this case.

23 Finally, in regards to the burden, I agree  
24 with Ms. McLetchie's recounting of what Chapter 239  
12:22:23 25 says. But she leaves out the subsequent case law such

12:22:27 1 as DR Partners that says, Okay, once -- once an entity  
2 such as CCSD establishes a deliberative process  
3 privilege that the burden shifts, and then at that  
4 point the RJ needs to demonstrate the need for info  
12:22:43 5 excludes the regulatory interest. That goes beyond  
6 what 239 says.

7 The same with the Donrey balancing test.  
8 Yeah, sure. The statute says what it says. But we  
9 have subsequent case law that says in certain  
12:22:54 10 situations, such as the deliberative process situation  
11 or in the Donrey balancing, that it goes beyond that.  
12 So that's not the end-all.

13 I have nothing further, your Honor.

14 THE COURT: Okay. Ma'am, you get the last  
12:23:07 15 word.

16 MS. MCLEITCHIE: Okay, your Honor. Again, with  
17 regard to the deliberative process, they can't have it  
18 two ways. They can't argue that statutes and other  
19 claims of confidentiality apply because they're acting  
12:23:17 20 like NERC or the EEOC and also say that these qualify  
21 as deliberative process privilege, which reflects  
22 pre-decisional and high-level executive decision  
23 making, not fact finding. In any case I think we've  
24 well addressed the significant public interests that do  
12:23:36 25 weigh in favor of disclosure.

12:23:39 1 And I do just want to correct opposing counsel  
2 again. Deliberative process, no matter what context  
3 you raise it, it's never an absolute privilege. If  
4 this were another kind of case, someone could raise the  
12:23:51 5 deliberative process. In that case, you -- the burden  
6 shifts to the other side requesting the information to  
7 show the need.

8 However, as the Nevada Supreme Court made very  
9 clear, that doesn't change the fact that you then also  
12:24:05 10 still need to analyze it within the framework of  
11 Donrey. And Donrey does not stand for the proposition  
12 that Mr. Honey just said it did. Governmental entities  
13 rely on it all the time. But all that -- Donrey found  
14 in favor of disclosures. And all that Donrey said is  
12:24:21 15 that a governmental agency can rely on nonstatutory  
16 claim of confidentiality, and a non-absolute claim of  
17 confidentiality.

18 They can raise this claim of confidentiality.  
19 And then they have -- if they do so, they have the  
12:24:36 20 burden of establishing that that confidentiality  
21 applies to the documents they're withholding. And they  
22 haven't done that. And no matter what kind of claim it  
23 is, and whether there's an extra step in a case like  
24 the deliberative process privilege in every single  
12:24:53 25 case, including DR Partners, the Nevada Supreme Court

12:24:56 1 has made clear that they also have a second burden.  
2 And the second burden is still on them to establish the  
3 public interests in applying the confidentiality and  
4 keeping the documents secret outweighs the interest in  
12:25:12 5 public disclosure. The requester never has the burden  
6 of establishing the public interest outweighs the  
7 interest in disclosures except for an interim step in  
8 the deliberative process privilege cases, your Honor.

9 And again, they haven't met that burden. They  
12:25:26 10 haven't met that burden with specificity on their log.  
11 We've been through numerous hearings. And I think at  
12 this point, your Honor, the Review Journal is entitled  
13 to allow -- to be allowed assess to these records.

14 THE COURT: All right. This is what I'm going  
12:25:42 15 to do. I think it's important to point out that when  
16 you take a look at the statute, under Nevada law, I'm  
17 focusing, I guess, more specifically on NRS 239.010,  
18 and that would be the public books, public records are  
19 open to inspection. It appears to me to be fairly  
12:26:16 20 clear that what the Nevada legislature wanted to do was  
21 to make sure that public records of our governments are  
22 open to inspection. And there's a very simple reason  
23 for that when it comes to public records, public  
24 decision -- I mean, decisions made by those in  
12:26:39 25 government elected officials, the public has a right to

12:26:42 1 know when it's all said and done. They do. And so  
2 that's the first consideration.

3 Secondly, I've taken a look at Nevada

4 Chapter 233. And that's the NERC or Nevada

12:27:01 5 Employment -- Equal Employment Commission and EEOC from

6 the federal side. And it's going to be my decision

7 that Chapter 233 has no application to the diversity to

8 the school district, a diversity department. Does

9 everyone understand that? Because that's not a

12:27:27 10 governmental agency. It's not a state agency. It's

11 not the federal government. So that doesn't apply.

12 I took a look at the derivative process

13 privilege being applied here. And for the record, once

14 again, it's not an absolute privilege. It's not. And

12:27:48 15 so, ultimately, and this is one of the reasons why I'm

16 going to make the decision I'm going to make regarding

17 what should happen. And, specifically, we have

18 competing interests regarding the statutory interest of

19 disclosure versus the interest of secrecy regarding the

12:28:16 20 acts of the Clark County School District.

21 Now, I think it's important to point out we

22 can't overlook this one fact that the focus of the

23 interests of disclosure is not really focusing on the

24 conduct of an employee, but the conduct of an elected

12:28:42 25 official. And I feel that's significant. And that's

12:28:50 1 on for a couple of reasons. Number one, not only does  
2 the public have a right to know, but anyone that wants  
3 to participate in the election process has a right to  
4 know because they're an elected official.

12:29:05 5 And then we have an interest of secrecy. I  
6 understand that. But it appears to me that the actions  
7 of an elected official is very compelling to know  
8 exactly what happened, and the public has a right to  
9 know that.

12:29:25 10 Regarding the regulation, and I think that's  
11 4110. And for the record I did have a chance to look  
12 at that, and I think that's Roman Numeral X, which  
13 provides as follows:

12:29:42 14 All information gathered by the district in  
15 the course of its investigation of an alleged  
16 unlawful discriminatory practice will remain  
17 confidential except to the extent necessary to  
18 conduct an investigation, resolve the  
19 complaint, serve other significant needs, or  
12:30:00 20 comply with the law.

21 It's going to be my decision that the  
22 information gathered by the district in this case  
23 serves a significant need because it focuses on the  
24 acts of an elected official.

12:30:22 25 And, consequently, this will serve as an

12:30:35 1 exception to the confidentiality requirement under the  
2 regulation. And also, I guess, if I was to make a  
3 decision that there's a conflict between the regulation  
4 and Chapter 239.010, the next provision "or to comply  
12:31:09 5 with the law" would take care of that too. So because  
6 at the end of the day there's an overwhelming mandate  
7 from the Nevada legislature regarding the public's  
8 right to access governmental records. So what I'm --  
9 and I just want to make sure I covered everything.

12:31:33 10 So what I'm going to do is this: Regarding  
11 the documents, I'm going to require them to be  
12 disclosed but redacted in accordance with my prior  
13 decision where applicable. And so before those are  
14 turned over, you can submit them to me with the  
12:31:58 15 redactions, and then I'll review them, and then I'll  
16 submit them to counsel.

17 Is that fine, ma'am?

18 MS. MCLEITCHIE: Yes, your Honor.

19 THE COURT: And how long is it going to take  
12:32:05 20 to do that, do you think, Mr. Honey?

21 MR. HONEY: Give me just a moment.

22 THE COURT: I mean, we'll give you, say, to  
23 the end of the week if you need time. You know, today  
24 is, what, Tuesday. You get them to me with redactions  
12:32:19 25 so I can review them, and then just make sure that

12:32:23 1 we're not missing anything, and the redactions are in  
2 accordance with my decision, then I'll transmit it to  
3 counsel.

4 MR. HONEY: Today is Tuesday. You want them  
12:32:35 5 by Friday?

6 THE COURT: Is Friday fine, ma'am?

7 MS. MCLEATCHIE: That's fine with us, your  
8 Honor.

9 THE COURT: That's a pretty quick turnaround.

12:32:41 10 MS. MCLEATCHIE: Yes. I appreciate it, your  
11 Honor. The Review Journal will appreciate it too.

12 THE COURT: What you can do, ma'am, prepare an  
13 order with my decision. And we can incorporate in the  
14 order not just what I said verbally, but, you know, the  
12:32:54 15 record as well.

16 MS. MCLEATCHIE: Okay, your Honor. With regard  
17 to the deposition, should I include that in the same  
18 order, your Honor?

19 THE COURT: Absolutely.

12:33:01 20 MS. MCLEATCHIE: Okay. And we'll -- Mr. Honey  
21 and I will work together to include in that a schedule  
22 for the depositions to be completed by, and if any  
23 issues persist after that deposition, a briefing  
24 schedule on those issues.

12:33:13 25 THE COURT: And I would hope you don't need to

12:33:15 1 come see me again.

2 MS. MCLEATCHIE: I would hope so, too, your

3 Honor. As enjoyable as this is.

4 MR. HONEY: I want to point out. We won't be

12:33:21 5 disclosing the documents prior to any order being filed

6 with the Court, though.

7 THE COURT: Yeah. How long will it take to

8 get the order done, ma'am?

9 MS. MCLEATCHIE: The order from today?

12:33:30 10 THE COURT: Yes.

11 MS. MCLEATCHIE: I could do it relatively

12 quickly.

13 THE COURT: It will be before Friday, yeah.

14 MS. MCLEATCHIE: Yeah.

12:33:36 15 THE COURT: Okay.

16 MR. HONEY: That's fine. I just want to make

17 sure. I didn't want to get in a situation where

18 there's no order, yet, a deadline talked about in

19 court --

12:33:44 20 THE COURT: I understand.

21 MR. HONEY: -- came beforehand.

22 MS. MCLEATCHIE: I understand.

23 MR. HONEY: Okay.

24 THE COURT: All right. Everyone, enjoy your

12:33:50 25 day.

12:33:51 1 MS. MCLETCHE: Thank you very much, your  
2 Honor. I appreciate it.

3 MR. HONEY: Thank you, your Honor.

12:33:55 5 (Proceedings were concluded.)

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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

<b>MR. HONEY: [85]</b> <b>MS. MCLEITCH:</b> <b>[44]</b> 3/7 4/8 5/8 5/11 12/12 12/16 14/21 16/22 19/2 20/14 21/21 21/25 22/2 22/11 22/17 22/22 23/3 23/10 23/13 23/18 23/21 24/2 24/4 24/7 24/14 24/19 24/22 25/2 53/7 56/24 57/2 57/7 72/15 77/17 78/6 78/9 78/15 78/19 79/1 79/8 79/10 79/13 79/21 79/25 <b>THE COURT: [113]</b>  <b>-</b> <b>-oo [2]</b> 57/4 57/5  <b>0</b> <b>0101 [1]</b> 60/12  <b>1</b> <b>10-19-2016</b> <b>memorandum [2]</b> 52/2 70/10 <b>10:33 [1]</b> 3/2 <b>11,907 [2]</b> 5/23 10/13 <b>12 [1]</b> 15/9 <b>159 [1]</b> 56/7 <b>16 [2]</b> 1/3 3/19 <b>177 [1]</b> 56/7 <b>17th [1]</b> 5/19 <b>18 [1]</b> 37/25 <b>19 [3]</b> 46/15 47/6 50/7 <b>190 [1]</b> 30/20  <b>2</b> <b>2016 [8]</b> 4/1 7/2 7/21 8/19 9/21 45/4 49/5 50/7 <b>2017 [10]</b> 1/21 3/1 4/11 5/8 46/8 49/7 50/1 50/2 52/13 71/4 <b>23 [1]</b> 30/8 <b>231 [2]</b> 56/19 56/22 <b>233 [8]</b> 30/13 30/18 32/1 56/19 56/23 57/16 75/4	75/7 <b>233.190 [4]</b> 30/19 32/12 53/22 53/24 <b>239 [6]</b> 32/12 36/13 43/1 65/12 71/24 72/6 <b>239.010 [8]</b> 37/17 39/20 39/25 42/11 42/12 43/6 74/17 77/4 <b>24 [2]</b> 4/6 4/10 <b>25th [2]</b> 5/8 15/9 <b>27 [2]</b> 1/21 3/1 <b>299.051 [1]</b> 51/6  <b>3</b> <b>30 [4]</b> 4/1 4/10 8/19 23/25 <b>30386.350 [1]</b> 36/8 <b>30th [1]</b> 4/9 <b>31 [1]</b> 56/5 <b>31st [5]</b> 3/22 24/2 46/8 49/14 50/2 <b>34 [3]</b> 53/9 55/20 56/5 <b>386.010 [1]</b> 36/4 <b>386.350 [1]</b> 36/9  <b>4</b> <b>41 [1]</b> 55/20 <b>4110 [6]</b> 37/3 38/19 40/13 40/24 55/22 76/11 <b>42 [1]</b> 56/6 <b>425-8220 [1]</b> 2/6 <b>43 [1]</b> 5/24 <b>45 [3]</b> 6/7 6/8 6/12 <b>471 [1]</b> 63/16 <b>48 [1]</b> 56/6 <b>49 [1]</b> 56/6  <b>5</b> <b>5100 [1]</b> 2/12 <b>520 [1]</b> 2/4 <b>53 [1]</b> 56/7 <b>5300 [1]</b> 2/5 <b>5373 [1]</b> 2/13 <b>54 [1]</b> 56/7 <b>541 [2]</b> 1/24 81/17 <b>57 [1]</b> 56/7 <b>58 [1]</b> 56/7  <b>6</b> <b>60 [1]</b> 56/7 <b>626 [1]</b> 46/23  <b>7</b> <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  <b>8</b> <b>8220 [1]</b> 2/6 <b>89101 [1]</b> 2/5 <b>89146 [1]</b> 2/13 <b>8th [1]</b> 24/2  <b>:</b> <b>:SS [1]</b> 81/2  <b>A</b> <b>A-17-750151-W</b> <b>[1]</b> 1/1 <b>A.M [1]</b> 3/2 <b>abilities [1]</b> 19/16 <b>ability [2]</b> 9/4 81/11 <b>able [9]</b> 4/17 7/12 12/15 13/23 17/11 47/15 54/5 54/18 54/25 <b>about [47]</b> 4/21 4/22 6/4 7/4 12/20 13/7 13/12 14/10 17/4 17/9 18/8 20/10 21/11 22/21 25/1 25/14 26/11 26/22 27/13 27/19 29/2 29/3 31/18 33/10 40/7 43/14 46/5 46/6 47/21 51/1 53/6 58/14 59/5 62/1 63/1 64/12 65/6 65/6 65/20 65/25 66/11 67/9 67/13 67/21 68/12 71/10 79/18 <b>absence [1]</b> 63/3 <b>absolute [9]</b> 26/3 57/21 58/1 58/24 59/21 59/25 73/3 73/16 75/14 <b>Absolutely [1]</b> 78/19 <b>access [5]</b> 29/1 44/9 66/3 66/10 77/8 <b>accommodating</b> <b>[1]</b> 3/15 <b>accommodations</b> <b>[1]</b> 31/4 <b>accordance [2]</b> 77/12 78/2 <b>ACCURATE [1]</b> 81/11	<b>act [16]</b> 25/20 26/5 28/1 32/15 33/3 39/10 46/17 51/1 59/12 60/2 60/7 61/12 65/14 66/2 66/9 67/7 <b>acting [2]</b> 6/24 72/19 <b>action [20]</b> 18/8 29/23 31/9 32/18 33/23 33/24 34/2 42/18 45/16 50/5 51/12 51/15 51/17 56/14 58/12 62/1 62/2 65/15 66/23 71/19 <b>actions [4]</b> 39/10 44/24 65/13 76/6 <b>acts [6]</b> 26/14 38/9 40/11 69/22 75/20 76/24 <b>actual [1]</b> 61/21 <b>actually [7]</b> 14/10 17/11 29/3 29/22 62/14 65/1 66/25 <b>ad [1]</b> 51/9 <b>ADAM [1]</b> 2/12 <b>addition [5]</b> 6/17 11/15 27/6 57/19 60/1 <b>additional [12]</b> 4/14 4/15 15/3 46/8 49/10 49/11 50/1 52/4 52/5 55/8 55/10 68/16 <b>additionally [1]</b> 39/12 <b>address [7]</b> 4/24 12/13 21/12 24/24 25/13 26/21 69/2 <b>addressed [1]</b> 72/24 <b>addresses [2]</b> 6/5 63/11 <b>addressing [2]</b> 3/13 28/25 <b>administrative [8]</b> 38/6 40/3 59/9 59/13 59/22 60/6 61/7 65/9 <b>administrators [3]</b> 52/16 52/20 54/8 <b>admit [1]</b> 50/15 <b>admittedly [1]</b> 46/2 <b>advance [1]</b> 12/9 <b>advancement [1]</b> 52/10	<b>advice [2]</b> 44/14 64/8 <b>affidavit [3]</b> 31/17 44/19 47/22 <b>Affirmative [8]</b> 18/8 29/23 32/18 33/23 34/1 45/16 56/14 58/12 <b>afford [1]</b> 32/22 <b>afforded [2]</b> 29/25 34/2 <b>after [9]</b> 4/16 20/3 21/12 33/17 37/17 43/6 62/22 63/10 78/23 <b>afternoons [1]</b> 22/7 <b>again [22]</b> 21/8 27/16 28/4 33/5 40/5 40/7 45/8 45/20 47/8 49/15 49/25 51/11 58/23 62/13 64/25 68/15 68/23 72/16 73/2 74/9 75/14 79/1 <b>against [7]</b> 31/8 33/2 43/10 49/18 51/23 60/8 68/2 <b>agency [10]</b> 38/7 38/8 44/10 44/14 62/7 66/4 70/25 73/15 75/10 75/10 <b>ago [1]</b> 13/22 <b>agree [4]</b> 35/16 35/22 39/13 71/23 <b>ahead [1]</b> 33/21 <b>AHONEY [1]</b> 2/14 <b>akin [1]</b> 62/7 <b>all [51]</b> 3/6 10/3 11/10 12/8 16/19 18/18 19/13 19/21 20/4 22/24 23/21 25/19 32/11 37/4 37/4 39/9 39/20 40/2 41/1 41/4 45/10 45/10 46/11 46/14 46/17 50/11 51/17 51/25 56/11 56/21 58/7 58/11 64/15 64/20 66/24 67/17 68/20 70/20 71/1 71/3 71/9 71/15 72/12 73/13 73/13 73/14 74/14 75/1 76/14 79/24 81/5 <b>allegations [9]</b> 38/24 39/2 44/23
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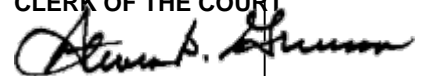
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22/21 23/2 25/18 29/16 36/16 39/8 55/10 57/24	59/1 72/18 <b>type</b> [6] 40/3 48/9 49/6 60/23 61/1 71/5 <b>types</b> [1] 29/20 <b>TYPEWRITING</b> [1] 81/8 <b>U</b> <b>ultimately</b> [2] 35/17 75/15 <b>unbecoming</b> [1] 38/25 <b>uncomfortable</b> [2] 9/2 48/25 <b>under</b> [24] 12/6 13/4 21/10 28/1 30/13 31/12 36/8 36/12 37/14 38/17 42/16 43/6 43/20 44/7 44/12 46/23 46/25 62/3 69/25 70/20 71/6 74/16 77/1 81/9 <b>undergoing</b> [1] 64/23 <b>underlying</b> [1] 66/24 <b>understand</b> [34] 5/5 5/7 12/12 13/4 14/7 14/8 14/13 14/19 17/24 18/15 19/24 20/23 22/14 27/18 29/4 31/25 35/2 35/7 35/23 36/23 36/23 39/18 40/23 41/1 42/5 43/19 52/25 55/24 56/24 69/1 75/9 76/6 79/20 79/22 <b>understanding</b> [2] 11/9 33/11 <b>undertaking</b> [1] 67/6 <b>undue</b> [1] 42/8 <b>unfounded</b> [1] 70/18 <b>unique</b> [1] 49/24 <b>unlawful</b> [4] 31/8 37/6 41/6 76/16 <b>unless</b> [7] 36/13 43/8 43/16 46/14 57/12 59/1 59/15 <b>unnecessary</b> [1] 15/2 <b>unreasonable</b> [1] 44/11 <b>unredacted</b> [2] 52/22 62/25	<b>until</b> [2] 17/25 24/21 <b>unwilling</b> [1] 17/14 <b>up</b> [15] 6/20 14/11 15/13 22/8 29/16 30/21 31/19 34/1 46/20 48/1 50/1 50/16 50/17 58/13 58/15 <b>updated</b> [1] 12/10 <b>updates</b> [1] 3/17 <b>upon</b> [6] 5/7 20/4 38/18 41/16 53/5 64/16 <b>urges</b> [1] 26/8 <b>us</b> [8] 15/18 25/12 33/3 34/6 47/16 54/12 62/19 78/7 <b>use</b> [2] 11/10 45/19 <b>used</b> [7] 31/7 31/13 36/14 54/1 59/23 59/24 68/14 <b>usual</b> [1] 64/23 <b>usually</b> [1] 8/1 <b>utilized</b> [2] 51/13 70/11 <b>V</b> <b>vacation</b> [2] 23/23 24/19 <b>vacations</b> [1] 24/17 <b>valid</b> [2] 67/6 67/6 <b>VEGAS</b> [7] 1/9 2/5 2/13 3/1 6/21 45/3 53/18 <b>verbally</b> [1] 78/14 <b>version</b> [2] 4/19 8/13 <b>versus</b> [2] 34/15 75/19 <b>very</b> [19] 17/8 23/1 24/16 24/18 28/22 28/23 28/24 29/21 31/20 46/2 48/6 50/13 56/25 59/6 67/20 73/8 74/22 76/7 80/1 <b>victim's</b> [1] 27/19 <b>victims</b> [8] 25/16 25/24 27/23 52/16 53/10 68/8 68/10 69/21 <b>view</b> [6] 5/17 5/20 10/15 12/6 13/17 13/18 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CARLOS MCDADE, Nevada Bar No. 11205  
ADAM D. HONEY, Nevada Bar No. 9588  
CLARK COUNTY SCHOOL DISTRICT  
OFFICE OF THE GENERAL COUNSEL  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
Telephone: (702) 799-5373  
*Counsel for Respondent*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

CLARK COUNTY SCHOOL DISTRICT,

**NOTICE OF APPEAL**

Respondent.

**NOTICE OF APPEAL**

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

Respectfully submitted, this 12<sup>th</sup> day of July, 2017.

CLARK COUNTY SCHOOL DISTRICT  
OFFICE OF THE GENERAL COUNSEL



Carlos McDade, Nevada State Bar No. 11205

Adam Honey, Nevada State Bar No. 9588

Clark County School District

Office of General Counsel

*Counsel for Respondent, Clark County School District*

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****July 27, 2017**

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

**July 27, 2017      9:00 AM      Respondent's Motion to Stay Enforcement of  
Order Granting Writ of Mandamus as to  
Withheld Records Pursuant to NRCP 62 (c), (d) 7  
€ Pending Appeal on Order Shortening Time**

**HEARD BY:** Williams, Timothy C.**COURTROOM:** RJC Courtroom 12D**COURT CLERK:** Kory Schlitz**REPORTER:** Peggy Isom**PARTIES**

**PRESENT:**      McDade, Carlos L      Attorney for Clark County School District  
                         McLetchie, Margaret A.      Attorney for Las Vegas Review-Journal

**JOURNAL ENTRIES**

- Mr. McDade argued in support of the Motion stating irreparable harm and indicated the limited redaction allowed by the Court regarding the victims and witnesses will not protect their identities. Mr. McDade further argued that once the police report is released it cannot be unreleased and the victims and the employees will further be discouraged against filing new reports since the report will be made public. Mr. McDade requested the Court to order an emergency stay to allow him to pursue the appeal with the Supreme Court and have a case to return, and that will not be the case if the documents are released now. Ms. McLetchie argued against the Motion, stating the School District has failed to establish the records are confidential and stated the CCSD is only concerned about their policy and what a Court ruling would mean for future cases. Ms. McLetchie stated the School District did not even originally respond appropriately to the Public Service Act and requested the documents be released. COURT STATED ITS FINDINGS and ORDERED Motion to Stay Enforcement DENIED; Court directed all victims' names be REDACTED. Colloquy regarding preparing the Order. Court directed parties if they cannot agree on the language in the Order, then both side can submit and Order to Chambers by August 1, 2017.

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

2                   CLARK COUNTY SCHOOL DISTRICT,

Supreme Court No. 73525

3                   Appellant,

District Court Case No. A730151  
**Electronically Filed**  
**Jul 27 2017 08:07 a.m.**  
**Elizabeth A. Brown**  
**Clerk of Supreme Court**

4                   vs.

5                   LAS VEGAS REVIEW-JOURNAL,

6                   Respondent.

7  
8  
9                   **EMERGENCY MOTION FOR STAY PENDING APPEAL,**  
10                  **OR IN THE ALTERNATIVE STAY PENDING PETITION FOR**  
11                  **WRIT OF MANDAMUS OR PROHIBITION,<sup>1</sup>**  
12                  **FILED UNDER NRAP 27(e)**

13                  **IMMEDIATE ACTION NECESSARY**

14  
15                  COMES NOW, Appellant, CLARK COUNTY SCHOOL DISTRICT  
16                  (hereinafter "CCSD"), by and through its undersigned counsel, Carlos  
17                  McDade, General Counsel, and Adam Honey, Assistant General Counsel,  
18                  and hereby moves this Honorable Court pursuant to Rule 8 and Rule 27 of  
19                  the Nevada Rules of Appellate Procedure ("NRAP") to stay proceedings in  
20                  \_\_\_\_\_


21  
22                  <sup>1</sup> The District Court's July 12, 2017 decision is appealable under NRAP  
23                  3A(b)(1) as a final judgment. If this Court determines it is not a final  
24                  judgment, the Las Vegas Review-Journal requested declaratory and  
25                  injunctive relief in its initial Petition for Writ of Mandamus, therefore the  
26                  District Court's July 12, 2017 decision requiring disclosure of the  
27                  investigative file is an injunction (or injunctive relief) and there is a right to  
28                  appeal under NRAP 3A(b)(3). In the alternative, if this Court determines the  
                    decision is not a final judgment or an injunction, then CCSD reserves the  
                    right to file a Petition for Writ of Mandamus or Prohibition under NRAP 21.  
                    In all scenarios, a stay is necessary to allow review by this Court.

1 the Eighth Judicial District Court pending appeal of District Judge Timothy  
2 C. Williams' Order Granting Writ of Mandamus as to Withheld Records,  
3 which was entered on July 12, 2017.  
4

5 CCSD requests the stay be decided on an emergency basis pursuant to  
6 NRAP 8(a) and NRAP 27(e) because the District Court's Order, entered on  
7 July 12, 2017, required CCSD to produce documents by June 30, 2017,  
8 which has already passed. A stay is necessary to allow CCSD to appeal  
9 without violating the District Court's Order.  
10

11 This Motion is based upon the following Memorandum of Points and  
12 Authorities, Certificate of counsel, and Exhibits attached hereto.  
13

14 DATED: July 26, 2017

15   
16 CARLOS MCDADE,  
17 Nevada Bar No. 11205  
18 ADAM HONEY  
19 Nevada Bar No. 9588  
20 Clark County School District  
21 Office of General Counsel  
22 5100 W. Sahara Avenue  
23 Las Vegas, NV 89146  
24 (702)799-5373  
25 Email: [cmcdade@interact.ccsd.net](mailto:cmcdade@interact.ccsd.net)  
26 [ahoney@interact.ccsd.net](mailto:ahoney@interact.ccsd.net)

## 27 MEMORANDUM OF POINTS AND AUTHORITIES

### 28 I. INTRODUCTION AND PROCEDURAL BACKGROUND

This matter involves important public policy concerns regarding the  
right of public employees to raise concerns of all forms of sexual harassment

1 and discriminatory conduct without fear of retaliation from the accused and  
2 without the loss of confidentiality. These issues are presented in the context  
3 of a public records request made to CCSD by the Las Vegas Review-Journal  
4 (“LVRJ”) under the provisions of NRS Chapter 239.

6 On July 11, 2017, the District Court filed an Order Granting Writ of  
7 Mandamus as to Withheld Records. LVRJ served a Notice of Entry of  
8 Order on July 12, 2017. *See Ex. 1*. In its Order, the District Court directed  
9 CCSD to produce “withheld documents” and stated: “CCSD may redact the  
10 names of direct victims of sexual harassment or alleged sexual harassment,  
11 students, and support staff.” *See Ex. 1* at ¶ 88 (emphasis added). Pursuant  
12 to a February 23, 2017 Order: “CCSD may not make any other redactions,  
13 and must unredact the names of schools, all administrative level employees,  
14 including but not limited to deans, principals, assistant principals, program  
15 coordinators, and teachers.” *See Ex. 2* at ¶ 35 (emphasis added). **Even**  
16 **though the District Court’s Order was not entered until July 12, the**  
17 **Court set a compliance date of June 30, 2017, which has already passed.**

22 On July 12, 2017, CCSD filed a Notice of Appeal to this Court. On  
23 that same date, CCSD filed a Motion for Stay Pending Appeal in the District  
24 Court, which is set for hearing on July 27, 2017. In an abundance of  
25 caution, CCSD filed the instant Motion for Stay with this Court a day before  
26 that hearing so as to not be in contempt if the District Court denies the stay.

1 CCSD hereby seeks a stay, pending appeal, of the District Court's  
2 Order entered on July 12, 2017 that requires disclosure of the "withheld  
3 documents" which consist of the investigative file of CCSD's Office of  
4 Diversity and Affirmative Action regarding its investigation of alleged  
5 discrimination of CCSD employees by Trustee Kevin Child. *See Ex. 1* at ¶¶  
6 41 and 88. The District Court's Order requires the release of all notes, drafts,  
7 memoranda, and chronological summary of the investigation conducted by  
8 CCSD's Office of Diversity and Affirmative Action. *Id.* In this motion, the  
9 "withheld documents" will be referred to as the "investigative file."

13 The District Court's Order will result in the release of the identity of  
14 CCSD employees including any teacher, principal, counselor, dean, or  
15 district administrator unless they were direct victims of sexual harassment.  
16 The District Court's decision will result in irreparable injury to CCSD  
17 employees and may also discourage future reporting of alleged  
18 discrimination. If a stay is not granted, CCSD would be required to  
19 immediately produce the documents at the center of the dispute, thus  
20 extinguishing the dispute and eviscerating the right to appeal.

## 23 II. LEGAL ARGUMENT

### 24 A. Standard for obtaining a stay.

26 In determining whether to grant a stay, this Court considers the four  
27 NRAP 8(c) factors: (1) whether the object of the appeal will be defeated  
28

1 without a stay; (2) whether appellant will suffer irreparable harm/serious  
2 injury without a stay; (3) whether respondent will suffer irreparable  
3 harm/serious injury if a stay is granted; and (4) appellant's likeliness of  
4 prevailing on appeal. *See Fritz Hansen A/S v. Eighth Judicial District*  
5 *Court*, 116 Nev. 650, 6 P.3d 982 (2000). While no one factor is more  
6 important, "if one or two factors are especially strong, they may  
7 counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120  
8 Nev. 248, 251, 89 P.3d 36 (2004).

11 The purpose of a stay is to preserve the status quo, which means the  
12 stay should be granted until this Court has the opportunity to decide whether  
13 the investigative file must be released. *See Nelson*, 121 Nev. at 835, 122  
14 P.3d at 1254; *U.S. v. State of Mich.*, 505 F. Supp. 467 (W.D. Mich. 1980).

17 **B. CCSD has satisfied the NRAP 8(c) factors for granting a stay.**

18 **(1) The purpose of this Court's review will be defeated and**  
19 **CCSD will suffer serious injury if a stay is denied.**

20 If the status quo is not maintained, the subject of CCSD's appeal will  
21 become moot and irreparable injury will be suffered. These elements of the  
22 Rule 8(c) test are especially strong in this case and should be given added  
23 significance by the Court. *MiKohn*, 120 Nev. at 251-253, 89 P.3d at 38-39.

25 The investigation involves complaints and concerns by employees  
26 directed at an elected official, a trustee, one of seven members of the Board  
27

1 of School Trustees, which is the elected governing body of CCSD. In effect,  
2 the investigation concerns complaints by employees against one of their  
3 “bosses.”  
4

5 In the Order entered on July 12, 2017, the District Court directed  
6 CCSD to produce “withheld documents” and stated: “CCSD may redact the  
7 names of direct victims of sexual harassment or alleged sexual harassment,  
8 students, and support staff.” *See Ex. 1* at ¶ 88 (emphasis added). Pursuant  
9 to the February 23, 2017 Order: “CCSD may not make any other redactions,  
10 and must unredact the names of schools, all administrative level employees,  
11 including but not limited to deans, principals, assistant principals, program  
12 coordinators, and teachers.” *See Ex. 2* at ¶ 35 (emphasis added).  
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14  
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16 The “withheld documents” consist of the investigative file of CCSD’s  
17 Office of Diversity and Affirmative Action regarding its investigation of  
18 alleged discrimination of CCSD employees by Trustee Kevin Child. *See Ex.*  
19 *1* at ¶ 41. In particular, the Court’s Order requires the release of all notes,  
20 drafts, memoranda, and chronological summary of the investigation  
21 conducted by the Director of the Office of Diversity and Affirmative Action.  
22  
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24 The investigative file includes names of other CCSD employees who  
25 are not protected by the Order. The file includes the names of administrators  
26 and teachers who were witnesses to sexual harassment (but not actually a  
27 “direct victim”) or complained of other actions by Trustee Child.  
28

1 Even if the names of the victims and witnesses were redacted, the  
2 investigative file is replete with personally identifiable facts that lead  
3 directly to the identity of victims of sexual harassment and witnesses.  
4

5 CCSD has an affirmative obligation under Title VII and IX to protect  
6 employees from retaliation taken in response to a complaint or investigation  
7 of harassment. Further, this is still an ongoing investigation, and if CCSD is  
8 required to release the investigative file, it may prejudice future complaints  
9 and/or witness statements or chill reporting or participation in the  
10 investigation.  
11  
12

13 CCSD has a duty to protect employees from retaliation. In his  
14 declaration, the Director of the Office of Diversity and Affirmative Action  
15 testified to concrete and actual fears of retaliation. Retaliation was a  
16 particular concern of some administrators because they work in close  
17 proximity with Trustee Child. Also, the promotions or advancement of  
18 some administrators must be approved by the Board of Trustees. *See Ex. 3*  
19 *at ¶¶ 6-8.*  
20  
21

22 CCSD employees' confidence in their ability to report sexual  
23 harassment and discrimination (or provide witness statements on behalf of  
24 such reports) without fear of retaliation, loss of further professional  
25 advancement and public exposure will be undermined if the status quo is not  
26 maintained. The chilling effect of stripping the employees of confidentiality  
27  
28

1 due to a public records request will irreparably injure CCSD and its  
2 employees and undercut their federally mandated right to report and have  
3 investigated complaints of sexual harassment in the workplace. *See* Title  
4 VII, 42 U.S.C. § 2000e *et. seq.*; U.S., Equal Employment Opportunity  
5 Commission, EEOC Notice No. 915.002, *Enforcement Guidance on*  
6 *Vicarious Employer Liability for Unlawful Harassment by Supervisors*, at §  
7 V(D)(1) re Failure to Complain (hereinafter “EEOC Notice No. 915.002”)  
8 (dated 6/18/99, in effect until rescinded or superseded) (emphasis added);  
9 *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).

10 Therefore, this Court should conclude that CCSD has satisfied the  
11 first two factors of NRAP 8(c) in favor of granting a stay pending appeal.

12  
13 **(2) Las Vegas Review-Journal will not suffer any serious or**  
14 **irreparable injury if a stay is granted.**

15 The act of seeking a stay pending the resolution of appellate  
16 proceedings does not in and of itself constitute harm to the non-moving  
17 party. *See Hansen*, 116 Nev. at 658, 6 P.3d 982 at 986-87. A stay will not  
18 cause any serious or irreparable injury to the LVRJ because the issue is not  
19 time sensitive. Trustee Child has already been identified in articles  
20 published by the LVRJ regarding allegedly discriminatory conduct over the  
21 course of the last year. Some of the articles were based on social media  
22 posts made by Trustee Child. CCSD has already produced approximately  
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28

1 174 pages of emails and documents in response to public record requests  
2 that are the basis of this court action. Moreover, the LVRJ has had the final  
3 Cole memorandum dated October 19, 2016, with its recommendations to the  
4 Superintendent since mid-December 2016. Additionally, the LVRJ has been  
5 provided all corrective guidelines issued by the Superintendent to Trustee  
6 Child and the Board of School Trustees. *See Ex. 4*. Thus, the LVRJ already  
7 knows the nature of Trustee Child's alleged misconduct, how CCSD  
8 responded to the alleged discrimination, and the guidelines that have been  
9 put in place as a result. Halting the release of the investigative file to allow  
10 this important issue to be resolved will not harm LVRJ. Therefore, this  
11 Court should conclude CCSD has satisfied the third NRAP 8(c) factor for  
12 granting a stay pending appeal.

13  
14  
15  
16  
17 **(3) CCSD is likely to prevail in these proceedings.**

18 In weighing the final factor, this Court has articulated that "a movant  
19 does not always have to show a probability of success on the merits, [but]  
20 the movant must 'present a substantial case on the merits when a serious  
21 legal question is involved and show that the balance of equities weighs  
22 heavily in favor of granting the stay.'" *Hansen*, 116 Nev. at 659, 6 P.3d at  
23 987. CCSD has more than satisfied this final factor for entering a stay.<sup>2</sup>  
24  
25

26  
27 <sup>2</sup> CCSD reserves the right to include additional grounds for non-disclosure  
28 of the investigative file in its Appellate Brief.

1                   **(a) CCSD is required to investigate allegations of**  
2                   **discrimination under federal law, and federal guidelines**  
3                   **call for confidentiality of the investigation.**

4           Internal information received or gathered by CCSD in the course of its  
5 investigation of an alleged unlawful practice of discrimination or harassment  
6 is confidential and not required to be disclosed under the public records law.  
7  
8 Federal statutes concerning discrimination and harassment as well as the  
9 regulations and case law interpreting those statutes provide ample authority  
10 for this proposition.

11           Federal law obligates CCSD to investigate employee complaints of  
12 discrimination and harassment and to protect those employees from  
13 retaliation from persons within the organization. The United States Equal  
14 Employment Opportunity Commission (“EEOC”) has stated **employers are**  
15 **obligated to investigate and address instances of harassment, including**  
16 **sexual harassment. The EEOC has also stated employees who are**  
17 **subjected to harassment frequently do not complain to management due**  
18 **to fear of retaliation.** See EEOC Notice No. 915.002 at § V(D)(1)  
19 (emphasis added); *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).  
20  
21 Regarding confidentiality of an investigation, EEOC has stated that “[a]n  
22 employer should make clear to employees that it will protect the  
23 confidentiality of harassment allegations to the extent possible. An  
24 employer cannot guarantee complete confidentiality, since it cannot conduct  
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26  
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28

1 an effective investigation without revealing certain information to the  
2 alleged harasser and potential witnesses. However, **information about the**  
3 **allegation of harassment should be shared only with those who need to**  
4 **know about it. Records relating to harassment complaints should be**  
5 **kept confidential on the same basis.”** See EEOC Notice No. 915.002, at §  
6 V(C)(1) re Confidentiality (emphasis added). “To assure employees that  
7 such a fear is unwarranted; the employer must clearly communicate and  
8 enforce a policy that no employee will be retaliated against for complaining  
9 of harassment.” See EEOC Notice No. 915.002, at § V(D)(1) re Failure to  
10 Complain. This is a federal law that CCSD is subject to, must comply with,  
11 and may be found in violation of.

12  
13 In this case, the best way for CCSD to enforce a policy of no  
14 retaliation is by not revealing the investigative file which contains employee  
15 names, and other personal information that would lead to the identification  
16 of those employees, to the accused or to the public. As such, the contents of  
17 the investigative file should be confidential under the federal statutes  
18 concerning discrimination and harassment as well as the regulations and  
19 case law interpreting those statutes.

20  
21 ///

22  
23 ///

1 (b) The documents at issue are confidential pursuant to the  
2 legally enforceable regulations of CCSD.

3 NRS 239.010(1) states:

4 Except as otherwise provided in this section . . . and **unless otherwise**  
5 **declared by law to be confidential**, all public books and public  
6 records of a governmental entity must be open at all times . . .  
7 (emphasis added).

8 CCSD Regulation 4410 lies squarely within the “unless otherwise declared  
9 by law to be confidential” language provided in NRS 239.010(1). Pursuant  
10 to NRS 386.350, the District Trustees have enacted numerous regulations.  
11 These include CCSD Regulation 4110 which sets forth the procedures and  
12 requirements related to discriminatory practices. This regulation is entirely  
13 consistent with the federal authorities related to unlawful discrimination  
14 cited above. Regulation 4110(X) states:

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

22 *See Ex. 5*, CCSD Reg. 4110 (emphasis added). Thus, the investigative file  
23 of CCSD’s Office of Diversity and Affirmative Action is confidential under  
24 CCSD Regulation 4110.

25 ///

26 ///

1                   **(c) The investigative file of the Office of Diversity and**  
2                   **Affirmative Action is also confidential under the**  
3                   **deliberative process privilege.**

4                   The investigative file is also not required to be disclosed because it is  
5                   protected under the deliberative process privilege. *DR Partners v. Board of*  
6                   *County Commissioners of Clark County*, 116 Nev. 616, 621 (2000). The  
7                   Nevada Supreme Court has recognized an “executive privilege” in Nevada  
8                   in determining whether public records are “confidential by law.” “The  
9                   deliberative process or ‘executive’ privilege is one of the traditional  
10                  mechanisms that provide protection to the deliberative and decision-making  
11                  processes of the executive branch of government. . . .” *Id.* at 622. This  
12                  privilege “shields from mandatory disclosure ‘inter-agency or intra-agency  
13                  memorandums or letters which would not be available by law to a party  
14                  other than an agency in litigation with the agency[.] It also permits ‘agency  
15                  decision-makers to engage in that frank exchange of opinions and  
16                  recommendations necessary to the formulation of policy without being  
17                  inhibited by fear of later public disclosure.’” *Id.* at 622-23 (quoting *Paisley*  
18                  *v. C.I.A.*, 712 F.2d 686, 697-98 (D.C. Cir. 1983)). “To qualify for non-  
19                  disclosure under this privilege, the requested documents must be both  
20                  predecisional and deliberative.” *Id.* at 623 (citations omitted). Furthermore,  
21                  the material must consist of opinions, **recommendations**, or advice about  
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1 agency policies and the Court must be able to pinpoint an agency decision or  
2 policy to which the documents contributed. *Id.*

3  
4 Here, Mr. Cole's investigation was conducted at the request of CCSD  
5 Superintendent Pat Skorkowsky for the purpose of determining if the  
6 Trustee's behavior amounted to discrimination. *See Ex. 3.* The contents of  
7 the investigative file (including notes, drafts, memoranda, and chronological  
8 summary) formed the basis for Mr. Cole's recommendation to the  
9 Superintendent, which has been utilized in policies directed to all trustees  
10 and specifically Trustee Child. *See Ex. 4.* Therefore, the entire investigative  
11 file is subject to the deliberative process privilege.  
12

13  
14 **(d) The documents are confidential under the *Donrey***  
15 **balancing test.**

16 The Supreme Court of Nevada has recognized that a "limitation on  
17 the general disclosure requirements of NRS 239.010 must be based upon a  
18 balancing or 'weighing' of the interests of non-disclosure against the general  
19 policy in favor of open government." *DR Partners v. Board of County*  
20 *Comm'rs*, 116 Nev. 616, 622 (2000) (citing *Donrey*, 106 Nev. at 635-36).  
21  
22 CCSD's interest in investigating employees' reports of, and protecting them  
23 from, discrimination in all of its forms and retaliation clearly outweighs the  
24 public's interest in obtaining access to internal investigative information  
25 regarding the alleged discriminatory conduct of Trustee Child. The  
26  
27  
28


1 preceding is particularly true given the public's need for the investigative  
2 file is tempered by the fact the information released by CCSD on this topic  
3 is already in the public domain, including documents demonstrating the  
4 nature of the alleged misconduct and CCSD's response to the allegations.  
5

6 CCSD has a great likelihood of prevailing on the merits on appeal and  
7 has satisfied the final Rule 8(c) factor for entering a stay.  
8

### 9 III. CONCLUSION

10 CCSD respectfully requests that this Court grant an immediate stay so  
11 that CCSD is not in contempt of the District Court's order.  
12

13 DATED: July 26, 2017

14   
15 CARLOS MCDADE,  
16 Nevada Bar No. 11205  
17 ADAM HONEY  
18 Nevada Bar No. 9588  
19 Clark County School District  
20 Office of General Counsel  
21 5100 W. Sahara Avenue  
22 Las Vegas, NV 89146  
23 (702)799-5373  
24 Email: [cmcdade@interact.ccsd.net](mailto:cmcdade@interact.ccsd.net)  
25 [ahoney@interact.ccsd.net](mailto:ahoney@interact.ccsd.net)  
26  
27  
28

NRAP 27(e) CERTIFICATE

CARLOS MCDADE,  
Nevada Bar No. 11205  
ADAM HONEY  
Nevada Bar No. 9588  
Clark County School District  
Office of General Counsel  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
(702)799-5373  
Email: [cmcdade@interact.ccsd.net](mailto:cmcdade@interact.ccsd.net)  
[ahoney@interact.ccsd.net](mailto:ahoney@interact.ccsd.net)  
*Attorneys for Appellant,  
Clark County School District*

MARGARET MCLEITCHIE  
Nevada Bar No. 10931  
MCCLEITCHIE SHELL LLC  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
(702) 728-5300  
Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
*Attorneys for Respondent,  
Las Vegas Review-Journal*

The District Court's Order Granting Writ of Mandamus as to  
Withheld Records was entered on July 12, 2017. In its Order, the District  
Court directed CCSD to produce "withheld documents" and stated: "CCSD  
may redact the names of direct victims of sexual harassment or alleged  
sexual harassment, students, and support staff." *See Ex. 1* at ¶ 88 (emphasis  
added). Pursuant to a February 23, 2017 Order: "CCSD may not make any  
other redactions, and must unredact the names of schools, all administrative  
level employees, including but not limited to deans, principals, assistant

principals, program coordinators, and teachers.” *See Ex. 2* at ¶ 35 (emphasis added). The “withheld documents” consist of the investigative file of CCSD’s Office of Diversity and Affirmative Action regarding its investigation of alleged discrimination of CCSD employees by Trustee Kevin Child. Even though the District Court’s Order was not entered until July 12, 2017, the Court set a compliance date of June 30, 2017 which has already passed.

On July 12, 2017, CCSD filed a Notice of Appeal to this Court. On that same date, CCSD filed a Motion for Stay Pending Appeal in the District Court, which is set for hearing on July 27, 2017. In an abundance of caution, CCSD filed the instant Motion for Stay with this Court a day before that hearing so as to not be in contempt if the District Court denies the stay. Intervention by this Court is needed immediately to prevent CCSD from being in contempt of the District Court’s order while awaiting this Court’s ruling on the motion to stay. Counsel for Las Vegas Review-Journal was notified in a telephone conversation on Wednesday, July 26, 2017, that Appellants intended to seek emergency relief from this Court, and they were served with a copy of this Motion on July 26, 2017 via email.


///

///

///

1 I hereby certify that this Emergency Motion for Stay under NRAP  
2 27(e) relies upon issues raised by Appellants in the District Court, and  
3 otherwise complies with the provisions of NRAP 27(e).  
4

5 DATED: July 26, 2017

6   
7 CARLOS MCDADÉ,  
8 Nevada Bar No. 11205  
9 ADAM HONEY  
10 Nevada Bar No. 9588  
11 Clark County School District  
12 Office of General Counsel  
13 5100 W. Sahara Avenue  
14 Las Vegas, NV 89146  
15 (702)799-5373  
16 Email: [cmcdade@interact.ccsd.net](mailto:cmcdade@interact.ccsd.net)  
17 [ahoney@interact.ccsd.net](mailto:ahoney@interact.ccsd.net)  
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## CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion for Stay complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font. I further certify that although the memorandum of points and authorities in support of this Motion for Stay is fifteen pages in length, CCSD has submitted a Motion to Exceed Page Limit requesting that this Court grant permission to file this Motion for Stay in excess of the ten-page limitation set forth in NRAP 27(d)(2).

DATED: July 26, 2017



---

CARLOS MCDADE,  
Nevada Bar No. 11205  
ADAM HONEY  
Nevada Bar No. 9588  
Clark County School District  
Office of General Counsel  
5100 W. Sahara Avenue  
Las Vegas, NV 89146  
(702)799-5373  
Email: [cmcdade@interact.ccsd.net](mailto:cmcdade@interact.ccsd.net)  
[ahoney@interact.ccsd.net](mailto:ahoney@interact.ccsd.net)

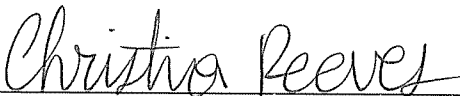
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**CERTIFICATE OF SERVICE**

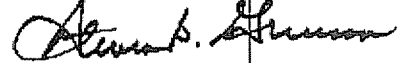
I certify that I am an employee of Clark County School District,  
Office of the General Counsel and that on July 26, 2017, I caused to be  
served at Las Vegas, Nevada, a true copy of the **EMERGENCY MOTION  
FOR STAY PENDING APPEAL, OR IN THE ALTERNATIVE STAY  
PENDING PETITION FOR WRIT OF MANDAMUS OR  
PROHIBITION, FILED UNDER NRAP 27(e)** addressed to:

The Honorable Timothy C. Williams  
Eighth Judicial District Court, Dept. 16  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
*Via Hand Delivery*

Margaret McLetchie  
Nevada Bar No. 10931  
McLetchie Shell LLC  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
(702) 728-5300  
Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
*Attorneys for Respondent,  
Las Vegas Review-Journal  
Via Email*

  
\_\_\_\_\_  
AN EMPLOYEE OF THE CLARK  
COUNTY SCHOOL DISTRICT

# EXHIBIT 1



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 MCLEATCHIE SHELL LLC

5 701 East Bridger Avenue, Suite 520

6 Las Vegas, NV 89101

Telephone: (702)-728-5300

Email: maggie@nvlitigation.com

*Counsel for Petitioner*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

10 Petitioner,

Dept. No.: XVI

11 vs.

12 **NOTICE OF ENTRY OF ORDER**

13 CLARK COUNTY SCHOOL DISTRICT,

14 Respondent.

15 **NOTICE OF ENTRY OF ORDER**

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

17 PLEASE TAKE NOTICE that on the 11<sup>th</sup> day of July, 2017, an Order Granting

18 Writ of Mandamus as to Withheld Records and Requiring Depositions was entered in the

19 above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

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

21 /s/ Margaret A. McLetchie

22 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

23 ALINA M. SHELL, Nevada Bar No. 11711

24 **MCLEATCHIE SHELL LLC**

25 701 East Bridger Avenue, Suite 520

26 Las Vegas, Nevada 89101

27 *Counsel for Petitioner*

**MCLEITCH**  
ATTORNEYS AT LAW  
701 EAST BRIDGER AVE., SUITE 520  
LAS VEGAS, NV 89101  
(702) 728-5300 (T) / (702) 452-8220 (F)  
[WWW.NVLITIGATION.COM](http://WWW.NVLITIGATION.COM)

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*

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# EXHIBIT 1



1 **ORDR**

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

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,  
10  
11 Petitioner,

Case No.: A-17-750151-W

Dept. No.: XVI

12 vs.

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

13 CLARK COUNTY SCHOOL DISTRICT,  
14  
15 Respondent.  
16

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

26 ///

27 ///

28 ///

06:23898P57-68-PMI

## I.

**PROCEDURAL HISTORY AND FINDINGS OF FACT*****Original NPRA Request and Petition***

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

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

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

***Reacted Records, Withheld Records, and Order on Redactions***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           26.     CCSD produced some emails of persons who sent or received prior  
22 responsive documents it indicated were responsive to the February Request on April 28,  
23 2017, and produced some trustee emails it indicated were responsive to the February Request  
24 on May 3, 2017.

25           ***Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters***

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

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

over the Review-Journal's Amended Petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (*Id.* at LVRJ022.)

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

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

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

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

1 under NAC 239.051. (*Id.*)

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

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

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

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

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

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

19 **II.**

20 **ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           ***Deliberative Process Privilege***

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

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

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

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

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

11 *Chapter 233 of the Nevada Revised Statutes*

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

16 *Nonrecords*

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

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

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

3 ***Title VII***

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

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

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

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

### 3 *Other Privileges*

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

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

### 14 *CCSD’s Certifications*

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

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

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

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

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

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

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

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

Respectfully submitted,

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

# EXHIBIT 2



CLERK OF THE COURT

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

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 **NOTICE OF ENTRY OF ORDER**

16 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:  
17 PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of February, 2017, an Order  
18 Granting Writ of Mandate was entered in the above-captioned action. A copy of the Order  
19 is attached hereto as Exhibit 1.

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

21  
22 /s/ Margaret A. McLetchie

MARGARET A MCLEATCHIE, Nevada Bar No. 10931

23 ALINA M. SHELL, Nevada Bar No. 11711

24 **MCLEATCHIE SHELL LLC**

701 East Bridger Ave., Suite 520

25 Las Vegas, Nevada 89101

26 *Counsel for Petitioner*

**CERTIFICATE OF SERVICE**

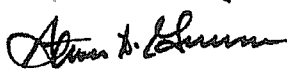
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 23<sup>rd</sup> day of February, 2017, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, 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 MCLETCHE SHELL LLC

# EXHIBIT 1

  
CLERK OF THE COURT

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

10 **EIGHTH JUDICIAL DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

13 Petitioner,

Dept. No.: XVI

14 vs.

**ORDER GRANTING WRIT OF**

15 CLARK COUNTY SCHOOL DISTRICT,

**MANDATE**

16 Respondent.

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

26 ///

27 ///

28 ///

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

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

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

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, excluding charter schools and university schools for profoundly gifted pupils, are established and to promote the welfare of school children, including the establishment and operation of schools and classes deemed necessary and desirable.

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

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

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

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

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

///

///

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

26 30. Second, the Revised Log does not sufficiently articulate that the information  
27  
28

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”

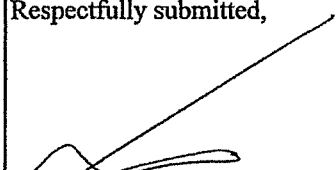
22 34. Accordingly, both because CCSD did not timely assert any claim of  
23 confidentiality and because it still has not met its burden in redacting public records, the  
24 Court orders CCSD to provide the Review-Journal with new versions of the Redacted  
25 Records and Additional Redacted Records, 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  
8  
9

10   
11 \_\_\_\_\_  
12 HONORABLE JUDGE TIMOTHY C. WILLIAMS  
13 

13 Respectfully submitted,  
14  
15  
16 

17 Margaret A. McLetchie, Nevada State Bar No. 10931  
18 Alina M. Shell, Nevada State Bar No. 11711  
19 MCLETCHE SHELL, LLC  
20 701 E. Bridger Avenue, Suite 520  
21 Las Vegas, NV 89101  
22 Counsel for Petitioner, Las Vegas Review-Journal  
23  
24  
25  
26  
27  
28

MCLETCHE SHELL

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

# EXHIBIT 3

## DECLARATION OF CEDRIC COLE

I, CEDRIC COLE, declare as follows:

1. I am employed by Clark County School District ("CCSD" or "the District") as the Executive Manager of the Office of Diversity and Affirmative Action Programs / American Disabilities Act Coordinator. I make this declaration based on my personal knowledge and experience. If called as a witness, I could and would competently testify to the facts set forth herein.

2. The Office of Diversity and Affirmative Action is CCSD's Equal Employment Opportunity Office ("EEO"), meaning it is my office's duty to ensure employees are not discriminated against or subjected to a hostile work environment based upon their status in any protected class in accordance with State and Federal laws including but not limited to Title VII of the Civil Rights Act of 1964

3. I have been in my current position since approximately January 2014. Prior to my current position, I worked for the Nevada Equal Rights Commission as Compliance Investigator for approximately 3 years. I have a Master's Degree in Public Administration from the University of Nevada, Las Vegas.

4. In September 2016, I was directed by Superintendent, Pat Skorkowsky, to investigate the vocalized concerns of employees and members of the community regarding Trustee Child's conduct.

5. The investigation I performed as Executive Manager of the Office of Diversity and Affirmative Action is similar or akin to an investigation conducted by the federal Equal Employment Opportunity Commission and/or Nevada Equal Rights Commission as the purpose of the investigation was to determine if any employees were being subjected to a hostile work environment and what, if any, corrective action is needed to protect the employees.

6. As part of my investigation, I interviewed several employees all of whom but one expressed fears of retaliation from Trustee Child.

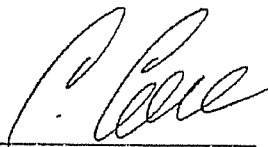
7. Most but not all of the employees I spoke with referenced Trustee Child's habit of repeatedly telling them and others that he (Trustee Child) is the "boss" as the basis of their fears of retaliation.

8. At least two of the employees I spoke with orally expressed fears of repressed opportunities for promotions or advancement within the organization as a form of retaliation from Trustee Child.

9. The recommendations in my investigative report dated October 19, 2016, were used as the basis of the Superintendent's action restricting Trustee Child's access requiring written invitations and prior notices to the Superintendent as memorialized in the memorandum titled, "Guidelines for Trustee Visit" dated December 5, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

Dated 4-12-17

  
Cedric Cole

# EXHIBIT 4



400 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89102 • TELEPHONE (702) 799-8000

## CLARK COUNTY SCHOOL DISTRICT

### BOARD OF SCHOOL TRUSTEES

Dr. Linda L. Dwyer, President  
Anthony J. DePaolis, Vice President  
Cathy Jones, Clerk  
Kevin L. Child, Member  
Dale L. Johnson, Member  
Carolyn Davidson, Member  
Dennis C. Wright, Member

Dr. Mark E. Ly, Superintendent

November 30, 2016

Kevin L. Child  
Member, Clark County School District Board of Trustees  
Office of the Board of School Trustees  
Clark County School District  
5100 W. Sahara Avenue  
Las Vegas, Nevada 89146

Dear Mr. Child:

As you know, the Board of School Trustees has adopted principles and policies that delegate full administrative authority for the day-to-day operation of the Clark County School District to the Superintendent and has committed to provide an environment in which the Superintendent and his staff may function effectively on a thoroughly professional basis.

You were counseled on numerous occasions in the last year that your interactions with District employees made them feel uncomfortable, especially women, and that your habit of dropping in on their work environment impeded their ability to perform the duties of their assignment. It was explained to you that your position as a Trustee and your reference to yourself as "The Boss" could make them uncomfortable with telling you that your actions were objectionable. Finally, you were counseled that the District had an obligation to protect its employees from a hostile environment, and your actions were affecting that obligation. You were given guidelines for your actions to ameliorate those concerns.

The District continues to receive reports from staff members of the same type of inappropriate action on which you were counseled over the past year. You are in repeated violation of the guidelines given to you. Because of the District's obligations to its employees, it now must take further action. Accordingly, as the Superintendent with responsibility over the District's employees and facilities, I am directing you as follows:

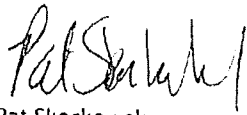
1. You are not to enter the administrative offices of the District without a specific written invitation, and prior to following that invitation, you must check in with the front desk of the administrative office to confirm that you have an invitation.
2. If you wish to meet with a staff member of the District on official business, you are to schedule that meeting to occur at the offices of the Board of School Trustees.

OFFICE OF THE SUPERINTENDENT  
CLARK COUNTY SCHOOL DISTRICT

RA677

Kevin L. Child  
Page 2  
November 30, 2016

3. You are not to appear at any of the District schools unless it is to attend a function which is open to the public or upon the specific written request of the Superintendent or the administrator with authority over that school. In the event that you receive such an invitation from an administrator, you are to forward a copy of that invitation to the Superintendent in a timely manner.
4. If you fail to comply with these directives, you will be trespassed off the premises.
5. The District retains its rights to take formal legal action against you as necessary to protect the employees of the District from a hostile work environment.



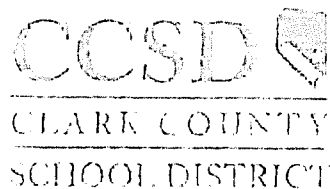
Pat Skorkowsky  
Superintendent of Schools

"Every student in every classroom, without exceptions, without excuses"

ps/ec

By hand delivery (11.30.16)


RA678



*Office of the Superintendent*  
INTEROFFICE MEMORANDUM

**DATE:** December 5, 2016

**TO:** Members, Executive Cabinet  
School Associate Superintendents  
Principals, District D Schools  
CCSD Administrative Center Staff  
Administration, Human Resources Division  
Administration, Transportation Department  
Administration, Food Service Department  
Administration, Instructional Design and Professional Learning Division

**FROM:** Pat Skorkowsky,  Superintendent of Schools

**SUBJECT:** Guidelines for Trustee Visit

---

In order to ensure a safe and respectful working environment, the following guidelines have been implemented:

1. Trustee Child will not enter the administrative offices of the District without a specific written invitation, and prior to following that invitation, he must check in with the front desk of the administrative office to confirm his invitation. The Superintendent must be notified via e-mail or by telephone of all invitations prior to the meeting.
2. If Trustee Child wishes to meet with a staff member of the District on official business, he is to schedule that meeting to occur at the offices of the Board of School Trustees. The Superintendent must be notified via e-mail or by telephone of all invitations prior to the meeting.
3. Trustee Child is not to appear at any of the District schools unless it is to attend a function which is open to the public or upon the specific written request of the Superintendent or the administrator with authority over that school. In the event that you extend such invitation, you are to forward a copy of that invitation to the Superintendent via e-mail or by telephone in a timely manner.

ps/ec  
cc: Board of School Trustees

CLARK COUNTY  
SCHOOL DISTRICT

1.  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$  2.  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$  3.  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$  4.  $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

Chairman: Dennis P. Brown  
 Linda F. Brown, Secretary  
 Robert Brown, Treasurer  
 Robert Brown, Secretary  
 Edward Child, Member  
 David L. Brown, Member  
 John S. Glatzer, Member

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

April 24, 2017

Kevin L. Child  
Member, Clark County School District Board of Trustees  
Office of the Board of School Trustees  
Clark County School District  
5100 W Sahara Avenue  
Las Vegas, Nevada 89146

Dear Mr. Child:

This letter is to reaffirm that the restrictions on access to school district facilities, including administrative buildings and school campuses, as detailed in the Superintendent's memorandum to staff dated December 5, 2016, (attached) are still in effect. The letter from the Superintendent to you dated November 30, 2016, (attached) is also still in effect.

In order to provide a respectful and nondisruptive working environment at the Clark County School District Administrative Center, 5100 W. Sahara Avenue, the following guidelines have been implemented:

- o In addition to the restrictions in the communications to you referenced above, access to the administrative offices of District staff, with the exception of the offices of the Board of School Trustees and Board Office staff, will be restricted to District staff. If you have an appointment with staff in the building, upon verification with the Board Office, an escort will take you directly to meet with the employee(s). Signs indicating the restricted area shall be posted and access to these restricted areas will be controlled. If you access the restricted staff area without escort, you will be violating the trespass restrictions and may be cited criminally. The District reserves the right to take any other legal action available to it.

Sincerely,

Pat Gode

Pat Skorkowsky  
Superintendent of Schools

"Every student in every classroom, without exceptions, without excuses"

ps/ec  
Attachments  
By hand delivery

OFFICE OF THE SUPERINTENDENT  
OF PUBLIC INSTRUCTION

RA680



5100 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89146 • TELEPHONE (702) 799-5000

## CLARK COUNTY SCHOOL DISTRICT

### BOARD OF SCHOOL TRUSTEES

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

Pat Skorkowsky, Superintendent

May 31, 2017

Kevin L. Child  
Member, Clark County School District Board of Trustees  
Clark County School District  
5100 West Sahara Avenue  
Las Vegas, Nevada 89146

Dear Trustee Child:

In previous written directives, you have been provided guidance on the terms by which you may access Clark County School District facilities. That guidance and the procedure by which you may be granted access are still in effect and will remain in effect. This guidance serves to provide you notice of additional guidance and procedures for accessing District properties and events.

With regard to school facilities, the current procedure remains in place with the following additions:

- The principal must invite you to events only through the Office of the Superintendent and/or Office of the Board of School Trustees.
- All events must be approved by the Superintendent prior to your acceptance to attend the event. You may then attend the event, but shall not loiter on the facility after the event is complete.
- If approval to an event is denied, there will be no explanation offered.

You must have permission from the Superintendent prior to entering any CCSD central office facility, with the following two exceptions:

1. You may access portions of the Edward A. Greer Education Center building without prior permission, as follows: You may enter in the east side entrance directly into the Board Conference Room. You may go into the Superintendent's Conference Room, the lobby, the lobby restroom, and the Board Room itself. You may not go into the office of Human Resources unless permission is given by the superintendent.
2. You may access portions of the CCSD Administrative Center at 5100 West Sahara Avenue, without prior permission, as follows: You may enter the front doors, sign in, and you will be escorted to your Board of Trustees Office. You must stay in the Board of Trustees area of the floor and the public restroom; you may not go down any hallways outside of that area. You will be escorted out of the building when you are ready to leave.

OFFICE OF THE SUPERINTENDENT

(702) 799-5310 • FAX (702) 799-5125

Trustee Child Letter  
May 31, 2017  
Page 2

You may not call or text any CCSD employees directly, with the following exceptions: Superintendent, Deputy Chief of Staff/Liaison to the Board of School Trustees, employees assigned to the Office of the Board of School Trustees and Office of the Superintendent employees. These individuals will obtain for you information and documents that you request to perform your duties as a Trustee. You must have written permission of the Superintendent each time prior to contacting any employee who is not mentioned above.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Skorkowsky". The signature is fluid and cursive, with the first name "Pat" being more prominent.

Pat Skorkowsky  
Superintendent of Schools

"Every student in every classroom without exceptions, without excuses"

# EXHIBIT 5

## CLARK COUNTY SCHOOL DISTRICT REGULATION

R-4110

### EMPLOYMENT DISCRIMINATION, HARASSMENT, AND SEXUAL HARASSMENT: ALL EMPLOYEES

- I. The Clark County School District (hereafter the "District") is an equal opportunity employer and does not discriminate in any employment practice on the basis of race, color, sex, age, religion or religious creed, national origin, sexual orientation, gender identity or expression, ancestry, or disability. This regulation extends to recruiting and hiring, working conditions, training, promotion, and terms and conditions of employment.
  - A. Unlawful discrimination, harassment, and sexual harassment will not be tolerated.
  - B. All employees shall cooperate with the investigation, by the District, of an alleged act of discrimination, harassment, or sexual harassment.
  - C. The District will not retaliate against any person who has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted by authorized school district representatives.

### II. HARASSMENT

- A. Harassment of an individual constitutes unlawful discrimination when the victim perceives the work environment to be hostile and the harassing conduct is sufficiently pervasive or severe that a reasonable person would find it hostile or abusive.
- B. Whether conduct constitutes unlawful harassment depends on all of the circumstances of the particular case. Examples of conduct that may, depending on the particular circumstances, constitute unlawful harassment include, but are not limited to:
  1. Slurs, epithets, derogatory or degrading comments, threats, or verbal abuse;
  2. Offensive and unwelcome posters, drawings, pictures, or gestures;
  3. Offensive and unwelcome jokes, stories, rumors, or teasing; and
  4. Any other physical, verbal, or visual conduct that has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment.

RA684

### III. SEXUAL HARASSMENT

- A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute unlawful sexual harassment when:
  - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - 2. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
- B. Examples of conduct that may, depending on the circumstances, constitute unlawful sexual harassment include, but are not limited to:
  - 1. Sexual assault, coerced intercourse, fondling, patting, pinching, or other actual or attempted unwanted physical touching;
  - 2. Sexual propositions, pressure for sex, or insistent and unwelcome invitations for dates;
  - 3. Slurs, epithets, derogatory or degrading comments, sexual innuendoes or remarks, threats, or verbal abuse of a sexual nature;
  - 4. Offensive and unwelcome posters, drawings, pictures, or gestures;
  - 5. Offensive and unwelcome jokes, stories, rumors, sexual horseplay, ogling, or teasing; and
  - 6. Any other physical, verbal, or visual conduct that is related to the individual's sex and has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment.
- C. A harasser may be the victim's supervisor, an agent of the employer, a supervisory employee who does not directly supervise the victim, a non-supervisory employee (coworker), or in some circumstances, even a non-employee.
- D. The victim does not have to be the person at whom the unwelcome conduct is directed. It can also be someone who is offended by such conduct when it is directed toward another person. For example, the harassment or sexual harassment of a female (or male) employee may create an intimidating,

hostile, or offensive working environment for another female (or male) coworker or unreasonably interfere with the coworker's work performance.

#### IV. INTERNAL REPORTING PROCEDURES

- A. In the event employees or applicants for employment believe that they have been or are being victimized as the result of discrimination, harassment, or sexual harassment, they may use the complaint procedures contained in this document, or if the alleged act(s) of discrimination, harassment, or sexual harassment is related to a decision(s) made by a supervisor or administrator, the employee may use the appeal procedures contained in CCSD Regulation 4313.
- B. Applicants or employees who allege discrimination because of a disability under the provisions of the Americans with Disabilities Act of 1990, or who allege that they require a reasonable accommodation, must make their situation known to their appropriate supervising administrator, the ADA Coordinator for the District (Executive Director, Diversity and Affirmative Action Programs) or the Human Resources Division.
- C. Although District employees and applicants are encouraged to avail themselves of this procedure, it is understood they may, at any time during the process or at its completion, seek relief in accordance with the provisions of applicable federal or state statutes.

#### V. VERBAL COMPLAINT

- A. In lodging a verbal complaint, the aggrieved person shall orally present the complaint to his or her immediate supervisor, or if that person is the alleged perpetrator, to the next administrator in line of authority, or to the Executive Manager, Diversity and Affirmation Action Programs. The complaint should be made within a reasonable period of time following the occurrence of the alleged unlawful conduct on which the complaint is based. The complainant shall orally define the nature of the complaint, provide particulars such as names, dates, and a detailed description of the alleged conduct, and state the action desired for resolution.

#### VI. WRITTEN COMPLAINT

- A. All employees or applicants for employment who have complaints regarding alleged discrimination, harassment, or sexual harassment, shall be encouraged to file written complaints with their immediate supervisor or next administrator in line or with the Executive Manager, Diversity and Affirmative Action Programs.

- B. The written complaint should be made within a reasonable period of time following the occurrence of the alleged unlawful conduct. It shall be detailed and shall include the following:
1. A description of the events in question and the date(s) of the occurrence(s).
  2. The name(s) of the individual(s) involved, including persons responsible and witnesses.
  3. The specific alleged unlawful acts which were perpetrated against the complainant and any school district policies or practices which were violated.
  4. The desired action for resolution.
  5. The complainant shall sign and date the written complaint.

#### VII. INTERNAL INVESTIGATIVE PROCEDURES

- A. In the event an employee or applicant for employment has lodged a complaint regarding alleged discrimination, harassment, or sexual harassment, the complaint shall be handled in the following manner:
1. As soon as possible after receiving an oral or written complaint, the supervising administrator will notify the Executive Manager, Diversity and Affirmative Action Programs, or vice versa if the complainant first provides the oral or written complaint to the Executive Manager, Diversity and Affirmative Action Programs. The Executive Manager, Diversity and Affirmative Action Programs and the supervising administrator will determine who will conduct the investigation.
  2. The Executive Manager, Diversity and Affirmative Action Programs or the supervising administrator shall investigate the allegations made by the complainant. The investigator shall, at a minimum, accomplish the following:
    - a. Review all statements, evidence, and documents currently available in order to become acquainted with the facts of the complaint and to help plan the investigation.
    - b. Determine the scope of the inquiry.
    - c. Open and organize an investigative file.

- d. Determine potential witnesses and evidence to gather, if any.
  - e. Determine additional or clarifying information needed, if any.
  - f. Conduct interviews as necessary.
  - g. Gather supporting documentation and evidence as necessary.
  - h. Analyze the evidence.
- 3. Following the investigation, the Executive Manager, Diversity and Affirmative Action Programs or supervising administrator shall make a determination as to whether the complaint is, in whole or in part, justified or unjustified.
  - 4. If the investigation was conducted by the Executive Manager, Diversity and Affirmative Action Programs, the Manager shall submit a written and/or oral report of his or her findings to the supervising administrator with a written and/or oral recommendation for resolution. The supervising administrator shall take into account the recommendation of the Executive Manager, Diversity and Affirmative Action Programs, and shall take appropriate action.
  - 5. If the investigation was conducted by the supervising administrator, the administrator, after consultation with the Executive Manager, Diversity and Affirmative Action Programs, shall determine the resolution and take appropriate action.
- VIII. Employees or applicants who allege discrimination or harassment will not be penalized as a result of their allegations in future consideration for recruitment, hiring, transfer, promotion, and other terms and conditions of employment, and no potential employer will be informed that an employee has filed previous discrimination complaints.
- IX. In determining whether the conduct at issue in the alleged complaint constitutes discrimination or harassment, the District will look at the record as a whole and at the totality of the evidence collected. A determination and remedy, if appropriate, will be based on the facts, on a case-by-case basis. Employees found to have engaged in inappropriate conduct will receive discipline up to and including termination.
- X. All information gathered by the District in the course of its investigation of an alleged unlawful discriminatory practice will remain confidential except to the extent necessary to conduct an investigation, resolve the complaint, serve other significant needs, or comply with law.

XI. EXTERNAL COMPLAINT PROCEDURES

- A. An employee or applicant who believes he or she has suffered discrimination, harassment, or sexual harassment may seek relief through external agency or court proceedings.
- B. Individuals who wish to file an external complaint should consult the relevant local, state, or federal agency for information concerning filing periods and requirements and/or seek legal assistance as necessary.
- C. The Executive Manager, Diversity and Affirmative Action Programs may determine that it is unnecessary to investigate an internal complaint if any county, state, or federal administrative office, which has jurisdiction to adjudicate complaints of discriminatory practices, has previously made a decision upon the complainant's complaint based upon the same facts and legal theory.

Review Responsibility:	Human Resources and Executive Manager, Diversity and Affirmative Action Programs
Adopted:	[4110; 8-14-90]
Revised:	(10-26-93)
Pol Gov Rev:	6/28/01
Revised:	4/12/12

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,  
Appellant,  
vs.  
LAS VEGAS REVIEW-JOURNAL,  
Respondent.

No. 73525

**FILED**

JUL 28 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER REGARDING MOTION FOR STAY*

This appeal, currently pending before the supreme court, challenges the district court's July 11, 2017,<sup>1</sup> "Order Granting Writ of Mandamus as to Withheld Records." On July 27, 2017, the supreme court transferred appellant's emergency motion for a stay of the challenged order pending appeal to this court for resolution.<sup>2</sup> Shortly thereafter, appellant filed a status report indicating that the district court had denied its motion for stay that had been filed with that court. *See* NRAP 8.

Based on our review of the motion and its attachments, it appears that a response to the motion for stay from respondent would be helpful in this court's resolution of the matter. Accordingly, respondent shall have 7 days from the date of this order to file a response to the motion.

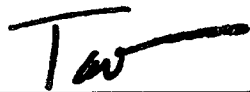
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<sup>1</sup>In the motion, appellant refers to the order "entered on July 12, 2017." We note that the order attached to the motion is file-stamped on July 11, 2017, with the notice of entry of that order being filed-stamped on July 12, 2017.

<sup>2</sup>All other matters related to this appeal were retained by the supreme court. *See Clark Co. School Dist. v. Las Vegas Review-Journal*, Docket No. 73525 (Order, July 27, 2017); NRAP 17.

See NRAP 27. Appellant shall have 5 days from the date of filing of the response to file any reply in support of the motion. *Id.* Pending receipt and consideration of the response and reply to the motion, we temporarily stay enforcement of the district court's July 11, 2017, Order Granting Writ of Mandamus as to Withheld Records. All filings with this court regarding the pending motion for stay shall be made by facsimile transmission on the appropriate due date, with originals of any such documents submitted by mail.<sup>3</sup>

It is so ORDERED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Tao

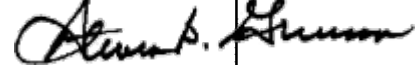
  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Timothy C. Williams, District Judge  
Clark County School District Legal Department  
McLetchie Shell LLC  
Eighth District Court Clerk

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<sup>3</sup>The response and reply shall be faxed to the clerk's office at: (775) 684-1601. See NRAP 25(a)(2) and (4).

<sup>4</sup>The Honorable Abbi Silver, Chief Judge, voluntarily recused herself from this matter and did not participate in this decision.



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

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 LAS VEGAS REVIEW-JOURNAL,  
10  
11 Petitioner,

11 vs.

12 CLARK COUNTY SCHOOL DISTRICT,  
13  
14 Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER**

15 **NOTICE OF ENTRY OF ORDER**

16  
17 TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:  
18 PLEASE TAKE NOTICE that on the 4<sup>th</sup> day of August, 2017, an Order Denying  
19 Stay was entered in the above-captioned action. A copy of the Order is attached hereto as  
20 Exhibit 1.

21 DATED this 4<sup>th</sup> day of August, 2017.

22  
23 /s/ Margaret A. McLetchie

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, Nevada 89101

*Counsel for Petitioner*

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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 4<sup>th</sup> day of August, 2017, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 4<sup>th</sup> day of August, 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 MCLETSCHIE SHELL LLC

# EXHIBIT 1



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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS REVIEW-JOURNAL,

Case No.: A-17-750151-W

Petitioner,

Dept. No.: XVI

vs.

**ORDER DENYING STAY**

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time having come on for an additional hearing on June 27, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorney, MARGARET A. MCLEATCHIE, and Respondent CLARK COUNTY SCHOOL DISTRICT ("CCSD"), appearing by and through its attorney, CARLOS M. MCDADE, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

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08-01-17 16:49 RCVD

**I. PROCEDURAL HISTORY AND FINDINGS OF FACT**

***Original Requests; Filing of Action***

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”) seeking certain documents pertaining to CCSD Trustee Kevin Child; the Reporter supplemented the Request on December 9, 2016 (the “December Requests”).

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

***Initial Proceedings and February 22, 2017 Order***

3. On February 8, 2017, the Court ordered CCSD to either fully produce all the requested records in unredacted form by 12:00 p.m. on Friday, February 10, 2017, or that the matter would proceed to hearing. CCSD did not produce all records in unredacted form. Instead, Starting on February 8, 2017 it began producing some records in redacted form and withheld others. CCSD did not disclose that it had limited the sources it searched for records responsive to the Request or the Supplemental Request.

4. The Court conducted an *in camera* review of the unredacted version of the redacted records provided and then, on February 14, 2017, the Court heard oral argument on the Review-Journal’s Petition. Following that hearing, on February 22, 2017, the Court entered an Order granting the Review-Journal’s Petition. (*See* February 22, 2017 Order (the “February Order”), *see also* February 23, 2017 Notice of Entry of Order).

5. The Court ordered CCSD to provide the Review-Journal with new versions of records it had produced 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 that were not direct

1 victims. (*Id* at ¶ 35.)

2 6. CCSD did not appeal this order, or seek other relief pertaining to the  
3 February Order. To date, CCSD has disclosed 174 pages of documents to the Review-  
4 Journal, redacting consistent with the February Order. CCSD has also withheld 102 pages.  
5 *February Request, and the Review-Journal's Efforts to Obtain a Privilege Log and Search*  
6 *Information*

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

10 8. On February 17, 2017, CCSD notified the Review-Journal via email that it  
11 was unable to provide the records listed in the February Request within the five days  
12 mandated by Nev. Rev. Stat. § 239.0107. On March 1, 2017, Review-Journal filed its  
13 Amended Petition. On March 3, 2017, CCSD provided some documents in response to the  
14 February Request. On March 3, 2017, in a letter to counsel, CCSD stated it had redacted  
15 information pertaining to the names of individuals who reported a complaint or concern  
16 about Trustee Child, information including potentially identifying information about  
17 students, and personal phone numbers. That same day, the Review-Journal requested CCSD  
18 provide a log of withheld documents that were responsive to the February Request and also  
19 asked CCSD to provide it with search information. CCSD responded to these requests via  
20 letter on March 13, 2017. Despite previous requests from the Review-Journal, that was the  
21 first time CCSD provided any search term information.

22 9. In response to the Review-Journal's inquiry regarding what documents  
23 were being withheld, CCSD asserted that "the only information that has not been provided  
24 is internal information received or gathered by the District in the court of its investigation of  
25 an alleged practice of unlawful practice of discrimination, harassment, or hostile work  
26 environment which is confidential and not required to be disclosed under the public records  
27 law." By email on March 13, 2017, CCSD also stated it was withholding one document—a  
28 report prepared by Cedric Cole, CCSD's Executive Manager of Diversity and Affirmative

1 Action, regarding an investigation his office had conducted into hostile work environment  
2 allegations against Trustee Child (the "Cole Report"). The Review-Journal responded to  
3 CCSD by letter on March 21, 2017. In that letter, the Review-Journal requested CCSD  
4 conduct additional email searches for responsive records from additional custodians. The  
5 Review-Journal requested that CCSD search those records for documents pertaining to the  
6 topics outlined in the December and February Requests. The Review-Journal also requested  
7 CCSD produce hard copy records from the Diversity and Affirmative Action Program's hard  
8 copy file on Trustee Child, as well as any other hard copy file CCSD maintains on Trustee  
9 Child that were responsive to the December and February Requests.

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

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

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

21 ***Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters***

22 11. On May 9, 2017, the Court heard oral arguments on the Review-Journal's  
23 Amended Petition for Writ of Mandamus. On June 6, 2017, the Court entered an Order  
24 granting the Review-Journal's Amended Petition as to the request that CCSD complete  
25 additional searches. (June 6, 2017 Order at ¶ 45, ¶ 46.)

26 12. Further, the Court ordered that, with regard to any documents CCSD had  
27 withheld and/or redacted to date and any additional responsive documents it identifies in  
28 response to the additional email and hard copy searches it is required to perform but contends

1 are confidential and/or privileged, CCSD was to create a single log numbering and  
2 identifying each document withheld or redacted (in response to either the December Requests  
3 or the February Request) by providing a factual description of each record withheld (by  
4 listing to, from, date, and general subject) as well as a specific explanation for non-disclosure  
5 for each document withheld or redacted (including confidentiality being claimed, and basis  
6 for claim). The Court further ordered that the log must provide sufficient information to the  
7 Las Vegas Review-Journal to meaningfully contest each claim of confidentiality asserted.  
8 The Court ordered CCSD to provide the final privilege log to the Court by May 30, 2017,  
9 along with all redacted documents and documents being withheld for an *in camera* review.  
10 The Court also directed CCSD to provide a copy of the privilege log to the Las Vegas  
11 Review-Journal. (June 6, 2017 Order at ¶ 47.)

12 ***July 12 Order***

13 13. On May 30, 2017, CCSD submitted the redacted and documents it was  
14 withholding (the "Withheld Records") to the Court for *in camera* review. It additionally  
15 provided the Court with two certifications and a privilege log. ("Final Log")

16 14. Unbeknownst to the Court, and despite its representation to the undersigned,  
17 CCSD counsel did not provide a copy of either of these documents to the Review-Journal at  
18 that time. At a hearing held on June 6, 2017 the Court made clear it has expected CCSD to  
19 engage in the routine practice of providing privilege logs and certifications to opposing  
20 counsel in conjunction with *in camera* submissions. At the hearing, CCSD counsel did finally  
21 provide a copy of the Final Log and, later that day, provided copies of the certifications it  
22 had provided to the Court a week earlier.

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

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

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

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

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

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

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

16 (*Id.* at LVRJ022.)

17           17. CCSD also claims that the NPRA does not require the release of  
18 confidential employee personnel information. (*Id.* at LVRJ023.) In addition, CCSD claims  
19 in its Final Log that the records of its investigation of Trustee Child should be kept  
20 confidential pursuant to Title VII and guidance from the Equal Opportunity Employment  
21 Commission ("EEOC"). (*Id.* at LVRJ019-LVRJ021.) CCSD also claims that withheld  
22 internal information it obtained during its investigation of allegations of discrimination or  
23 harassment by Trustee Child is subject to the deliberative process privilege because the  
24 information "was used as part of the deliberative and decision-making process of District  
25 executives" in crafting the Cole Memorandum. (*Id.* at LVRJ023.) CCSD asserts that any  
26 withheld information which might constitute "worksheets, drafts, informal notes, or ad hoc  
reports," it qualifies as "nonrecord material" under NAC 239.051. (*Id.*)

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

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

3           20.     At that hearing, CCSD asserted for the first time that in addition to the  
4 privileges asserted in its Final Log, Chapter 233 of the Nevada Revised Statutes—which  
5 provides for the creation and regulation of the Nevada Equal Rights Commission—applied  
6 to investigations conducted by CCSD's Office of Diversity and Affirmative Action.  
7 Specifically, CCSD asserted at the hearing that information pertaining to investigation of  
8 allegations against Trustee Child must be kept confidential pursuant to Nev. Rev. Stat. §  
9 233.190.

10           21.     On July 12, 2017 an Order was entered ordering CCSD to produce the  
11 Withheld Records, but allowing CCSD to make redaction consistent with the February Order.  
12 CCSD is explicitly permitted to redact the "names of direct victims of sexual harassment or  
13 alleged sexual harassment, students, and support staff." (*See* February 23, 2017 Order at ¶  
14 34; *see also* July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with  
15 the February 23, 2017 Order).) The Court further specified that "CCSD may not make any  
16 other redactions" and must unredact the names of schools, teachers, and all administrative-  
17 level employees that were not direct victims. (*See* February 23, 2017 Order at ¶ 35; *see also*  
18 July 12, 2017 Order at ¶ 88 (permitting CCSD to redact names consistent with the February  
19 23, 2017 Order).)

20 ***Appeal and Motion to Stay***

21           22.     On July 12, 2017, CCSD filed a Motion to Stay Enforcement of Order  
22 Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d), and (e)  
23 Pending Appeal on Order Shortening Time.

24           23.     On July 12, 2017, CCSD also filed a Notice of Appeal to the Nevada  
25 Supreme Court.

26           24.     On July 19, 2017, Review-Journal filed its Opposition to Motion to Stay  
27 Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to  
28 NRCP 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

26. Only July, 27, 2017, this Court heard and decided on the Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRC 62(c), (d), and (e) Pending Appeal on Order Shortening Time.

27. This Court must consider four factors in deciding whether to issue a stay: (1) “whether the object of the appeal will be defeated if the stay is denied;” (2) “whether appellant will suffer irreparable or serious injury if the stay is denied;” (3) “whether respondent will suffer irreparable or serious injury if the stay is granted;” and (4) “whether appellant is likely to prevail on the merits in the appeal.” Nev. R. App. P. 8(c); *accord Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *accord Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). In addition, as the United States Supreme Court has held, courts must also consider “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted); *accord NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-492-RFB-VCF, 2015 WL 3489684, at \*4 (D. Nev. June 3, 2015).

28. The Nevada Supreme Court has “not indicated that any one factor carries more weight than the others,” and instead “recognizes that if one or two factors are especially strong, they may counterbalance other weak factors. *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)).

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1 ***1. The Object of CCSD's Appeal Will Not Be Defeated.***

2 30. First, the Court finds that the object of the appeal will not be defeated if a  
3 stay is denied.

4 31. CCSD, which has already provided some documents pertaining to Trustee  
5 Child pursuant to the same parameters set forth in this Court's most recent order, has  
6 repeatedly emphasized that appellate review of this Court's decision is necessary to address  
7 the policy question of whether public employees should be able to raise concerns of all forms  
8 of sexual harassment and discriminatory conduct without fear that information concerning  
9 those complaints becomes public. CCSD may still seek this relief without a stay. As the  
10 Nevada Supreme Court has explained in the context of an appeal addressing whether  
11 payment of a monetary judgment pending an appeal renders the appeal moot, "payment of a  
12 judgment only waives the right to appeal or renders the matter moot when the payment is  
13 intended to compromise or settle the matter." *Wheeler Springs Plaza, LLC v. Beemon*, 119  
14 Nev. 260, 265, 71 P.3d 1258, 1261 (2003); *accord Jones v. McDaniel*, 717 F.3d 1062, 1069  
15 (9th Cir. 2013). Under this precedent, compliance with the Court's Order would not moot  
16 CCSD's appeal.

17 ***2. CCSD Will Not Suffer Serious or Irreparable Injury if a Stay is Denied.***

18 32. The Court finds that CCSD will not suffer serious or irreparable harm if a  
19 stay is denied.

20 33. The Court emphasizes that CCSD is not required to reveal the identities of  
21 any victims of sexual harassment. As noted above, CCSD is explicitly permitted to redact  
22 the "names of direct victims of sexual harassment or alleged sexual harassment, students,  
23 and support staff." (See February 23, 2017 Order at ¶ 34; *see also* July 12, 2017 Order at ¶  
24 88 (permitting CCSD to redact names consistent with the February 23, 2017 Order.))

25 34. The United States Supreme Court has held that the *mere possibility* of  
26 irreparable injury is not sufficient to warrant a stay. *See Nken v. Holder*, 556 U.S. 418, 435  
27 (2009) (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)); *accord In re*  
28 *R & S St. Rose Lenders, LLC*, No. 2:17-CV-01322-MMD, 2017 WL 2405368, at \*3 (D. Nev.

June 2, 2017).

35. CCSD has not established that irreparable harm will occur in the interim if it complies with the July 12 Order, for the same reasons that it failed to meet its burden of establishing that the withheld records are not subject to the NPRA. If a governmental entity seeks to withhold a document that is not explicitly made confidential by statute, it must prove by a preponderance of the evidence that the records are confidential or privileged, and must also prove by a preponderance of the evidence that the interest in nondisclosure outweighs the strong presumption in favor public access. *See, e.g., Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d 623, 628 (2011); *see also Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147–48 (1990). In balancing those 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.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (quoting *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421–22 (1961)). The Nevada Supreme Court has made clear that a governmental entity seeking to justify a claim of confidentiality cannot do so by offering hypothetical scenarios in which disclosure of the document could present some harm, either to the entity or to another: “it is insufficient [for the public entity] to hypothesize cases where secrecy might prevail and then contend that the hypothetical controls all cases[.]” *DR Partners*, 116 Nev. at 628 (quoting *Star Pub. Co. v. Parks*, 875 P.2d 837, 838 (Ariz. Ct. App. 1993)). CCSD has not provided evidence to meet this burden.

36. The Court also notes the NPRA’s mandate that a governmental entity cannot resist disclosure of public records which contain confidential information “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). CCSD has not met it burden of establishing what redactions cannot address its concerns.

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1 37. CCSD has submitted a declaration in this matter, which provides:

2 As part of my investigation, I interviewed several employees all of whom  
3 but one expressed fears of retaliation from Trustee Child.

4 Most but not all of the employees I spoke with referenced Trustee Child's  
5 habit of repeatedly telling them and others that he (Trustee Child) is the  
6 "boss" as the basis of their fears of retaliation.

7 At least two of the employees I spoke with orally expressed fears of  
8 repressed opportunities for promotions or advancement within the  
organization as a form of retaliation from Trustee Child.

9 Declaration of Cedric Cole (*see* Exhibit 5 to CCSD's Motion to Stay Enforcement of Order  
10 Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c), (d) & (e)  
11 Pending Appeal on Order Shortening Time, at ¶¶ 6-8.)

12 38. At the hearing conducted in this matter, CCSD counsel also contended that  
13 the documents it submitted *in camera* established that employees feared retaliation.

14 39. Neither the conclusory, hearsay assertions in the declaration nor the *in*  
15 *camera* submissions constitute evidence sufficient to establish CCSD's burden in  
16 withholding records under the NPRA. They also do not merit a stay.

17 40. **A stay is not needed to encourage CCSD employees to report in the**  
18 **future.**

19 41. CCSD argues that other employees may be less likely to report in the future  
20 if it does not receive a stay, and that this constitutes irreparable harm. As noted above, the  
21 policy issues at hand can still be resolved by the Supreme Court.

22 42. CCSD's argument that other employees will not come forward to make  
23 complaints if the records are produced is too speculative to warrant a stay.

24 43. The possibility of injury articulated by CCSD is contradicted by the record  
25 in this case. As noted above, to date, CCSD has disclosed 174 pages of public records relating  
26 to Trustee Child's alleged misbehavior. (July 11, 2017 Order, ¶ 59.) CCSD has not—and  
27 cannot—present any evidence that the release of these public records has resulted in the  
28 supposed injury CCSD fears.

44. A stay is also not needed to protect against retaliation. To support its claim of irreparable harm, CCSD has also asserted that it is “not possible to redact enough information to protect an employee who is either a victim or witness from retaliation.” (Motion at p. 7:9-11.) This contention is speculative and unsupported, and does not merit a stay. As noted above, for example, CCSD, must redact instead of withhold wherever possible and it has failed to explain why redacting would not meet its concerns.

45. Further, while CCSD has argued that secrecy is necessary to protect employees against retaliation by Trustee Child, Trustee Child is not a supervisor of any employees. Instead, he is only one of seven (7) trustees on the CCSD Board of Trustees. Even if the Board of Trustees has the power to make any decisions about employment of any of the persons who complained about Trustee Child, which CCSD has not established, CCSD’s argument assumes that Trustee Child could convince other trustees to conspire with him to retaliate against administrators who may have discussed concerns with his behavior.

46. Finally, the Court also notes that CCSD did not timely provide the Review-Journal with information in response to the NPRA requests it first made in December, resisted providing information, resisted providing information to the Review-Journal about what it was withholding and why before and after litigation commenced, and that the final log it submitted to this Court with *in camera* documents failed to establish any claims of confidentiality with specificity. It would subvert the purpose of the NPRA to allow a governmental entity to fail to meet its burden of timely asserting claims of confidentiality, and to delay responding to NPRA requests and related information, only to then claim it will face irreparable harm if it is required to produce the documents during the pendency of the appeal.

47. CCSD has not established that it will face irreparable harm without a stay.

**3. *The Review-Journal—and the Public—Would Suffer Serious Injury If a Stay Were Granted.***

48. If the Court entered a stay, the Review-Journal and the broader public would suffer injury in two respects. First, on a broader level, the entry of a stay would subvert the

1 NPRA's intent to permit expeditious access to public records. Second, the Review-Journal  
2 and the public would be injured by the continued withholding of the documents because the  
3 full extent of Trustee Child's alleged misconduct and CCSD's response to that misconduct  
4 is not known.

5 49. The legislative intent underpinning the NPRA is to foster democratic  
6 principles by ensuring easy and expeditious access to public records. Nev. Rev. Stat. §  
7 239.001(1); *Gibbons*, 127 Nev. at 878, 266 P.3d at 626 (holding that "the provisions of the  
8 NPRA are designed to promote government transparency and accountability").

9 50. The legislative interest in swift disclosure is woven throughout the NPRA.  
10 For example, Nev. Rev. Stat. § 239.0107(1) mandates that, by not later than the end of the  
11 fifth business day after receiving a records request, a governmental entity must either (1)  
12 make the records available; (2) if the entity does not have custody of the requested records,  
13 notify the requester of that fact and direct them to the appropriate government entity; (3) if  
14 the records are not available by the end of the fifth business day, provide notice of that fact  
15 and a date when the records will be available; or (4) if the records or any part of the records  
16 are confidential, provide the requestor with notice of that fact and a citation to the statute or  
17 law making the records confidential. Nev. Rev. Stat. § 239.0107(1)(a)-(d).

18 51. In addition to this timely notification and disclosure scheme, the NPRA  
19 specifically provides for expedited court consideration of a governmental entity's denial of  
20 a records request. *See* Nev. Rev. Stat. § 239.011(2) (mandating that a court give an  
21 application for public records "priority over other civil matters"). Thus, the NPRA is  
22 designed to provide quick access to withheld public records, not to reward non-compliance,  
23 hiding of information, and delay.

24 52. As to CCSD's argument that this matter is not time sensitive because the  
25 Review-Journal "already knows the nature" of the allegations against Trustee Child's and  
26 CCSD's response, knowing the "nature" of what Trustee Child allegedly did and how CCSD  
27 responded does not comport with the NPRA's goal of promoting transparency and  
28 accountability. However, all records of governmental entities are presumed public and the

public is entitled access to any records that are not confidential, not just the records the governmental entity decides suffices.

53. Here, the Review-Journal is entitled to report on, and the public is entitled to fully assess, the actions of its elected official and how CCSD handled the accusations levied against the trustee.

54. The Review-Journal, as a newspaper, has already faced delays due to CCSD's failure to promptly respond to requests and it should not be subjected to further delays in its reporting.

#### 4. CCSD is Unlikely to Prevail.

55. For the reasons set forth in the July 12 Order, CCSD is unlikely to prevail on the appeal, and this factor weighs against a stay.

56. In accordance with the presumption of openness and "emphasis on disclosure,"<sup>1</sup> that underpins the NPRA, both the Act itself and the Nevada Supreme Court place a high burden on a governmental entity to justify non-disclosure. First, the law requires that, if a governmental entity seeks to withhold or redact a public record in its control it must prove by a preponderance of the evidence that the record or portion thereof that it seeks to redact is confidential. See Nev. Rev. Stat. § 239.0113; *see also Gibbons*, 127 Nev. at 882, 266 P.3d at 629; *accord Nevada Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*, No. 64040, 2015 WL 3489473, at \*2 (D. Nev. May 29, 2015). As a general matter, "[i]t is well settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *DR Partner.*, 116 Nev. at 621, 6 P.3d at 468 (citing *Ashokan v. State, Dept. of Ins.*, 109 Nev. 662, 668, 856 P.2d 244, 247 (1993)). This is especially so in the public records context: pursuant to the mandates of the NPRA, any restriction on disclosure "must be construed narrowly." Nev. Rev. Stat. § 239.001(2)-(3). Second, after establishing the existence of the privilege it asserts and applying it narrowly, unless the privilege is

<sup>1</sup> *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011) ("[T]he provisions of the NPRA place an unmistakable emphasis on disclosure").

absolute, the governmental entity bears the burden of establishing that the interest in withholding documents outweighs the interest in disclosure pursuant to the balancing test first articulated in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). *See DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (“Unless a statute provides an absolute privilege against disclosure, the burden of establishing the application of a privilege based upon confidentiality can only be satisfied pursuant to a balancing of interests.”); *see also Gibbons*, 127 Nev. at 879, 266 P.3d at 627 (“...when the requested record is not explicitly made confidential by a statute, the balancing test set forth in *Bradshaw* must be employed” and “any limitation on the general disclosure requirements of Nev. Rev. Stat. § 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”).

57. CCSD did not meet its burden in this instance, and is unlikely to demonstrate that the presumptively public records at issue in this case should be kept confidential on appeal for the reasons set forth in the July 12 Order, and below.

***5. Title VII Does Not Provide for Blanket Protection.***

58. CCSD’s first argument is that its *Burlington/Faragher* duties under Title VII permit it to withhold the requested public records. CCSD asserts that as part of its duty under Title VII, it is required to keep the Cole Report confidential. Its sole authority for this position is EEOC Notice 915.002, Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors. CCSD asserts that it does not need to release the withheld documents because the EEOC Notice advises that “information about the allegation of harassment should be shared only with those who need to know about it,” and “[r]ecords relating to harassment complaints should be kept confidential on the same basis.” However, the admonition CCSD relies on falls under the heading “Policy and Complaint Procedures.” Indeed, the entire EEOC Notice provides guidance on how to conduct investigations and otherwise act to avoid vicarious liability for sexual harassment. *See* EEOC Notice 915.002. Thus, while it is true that during investigations information is not to be disseminated, here

the investigation is complete. Accordingly, Notice 915.002 is of little moment here.

59. Additionally, CCSD has not established that Notice 915.002 applies to CCSD's investigation of Trustee Child, as Trustee Child is not a "supervisor" of any CCSD employee, and CCCSD has failed to establish he is in any case. Notice 915.002 provide s that "[a]n individual qualifies as an employee's 'supervisor' only if:

- the individual has authority to undertake or recommend tangible employment decisions affecting the employee; or
- the individual has authority to direct the employee's daily work activities.

EEOC Notice 9.15002, § III(A). The United States Supreme Court has refined this definition, holding that "an employee is a 'supervisor' for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim." *Vance v. Ball State Univ.*, 133 S. Ct. 2434, 2439 (2013); *see also Baldenegro v. Tutor-Saliba Corp.*, No. 2:11-CV-00714-JCM, 2013 WL 459203, at \*5 (D. Nev. Feb. 4, 2013) ("An individual will qualify as a supervisor for purposes of imputing liability for sexual harassment onto an employer when that individual has the power and authority to directly affect the terms and conditions of the plaintiff's employment, i.e. the authority to make decisions affecting the plaintiff with regard to hiring, firing, promotion, discipline, or reassignment to significantly different duties.") (citations omitted).

60. CCSD has not established that Trustee Child is a supervisor of any CCSD employee. Trustee Child is only one of seven (7) elected school board trustees.

61. Other courts which have addressed this issue 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. App. 2012) (finding that release of an investigation report and disciplinary record of a sexually harassing teacher was warranted under California's public records act due to the public's right to know, even where an explicit privacy statute was also implicated); *Deseret News Pub. Co. v. Salt Lake County*, 182 P.3d 372, 27 IER Cases 1099 (Utah 2008) (holding that a sexual harassment investigation report should be

1 produced because the report “provides a window ... into the conduct of public officials.”).

2 62. Even if CCSD established the applicability of a privilege, it has not  
3 demonstrated why redaction of identifying information consistent with the Court’s February  
4 Order would not address its concerns about protecting complainants’ privacy.

5 63. Accordingly, CCSD is unlikely to prevail on appeal under this theory.

6 ***6. CCSD Has Not Established That Its Internal Regulations Merit Non-disclosure.***

7 64. CCSD argues that it is likely to prevail on appeal because CCSD Regulation  
8 4110(X) carries the force of law, and requires information gathered during an investigation  
9 of an alleged discriminatory practice must be kept confidential. This argument is not likely  
10 to prevail.

11 65. First, the Court cannot apply Regulation 4110(X) in a manner that conflicts  
12 with the NPRA. Second, CCSD’s internal regulations do not carry the force of law. As CCSD  
13 Policy 0101 states, “the purpose of these Policies and Regulations is to provide directions  
14 regarding the details of District Operations. Policies are more general principles, while  
15 Regulations contain specific details and procedures.” Third, it is unclear that the Regulation  
16 applies. Fourth, Regulation 4110(X) specifically contemplates that the confidentiality of  
17 investigative information is not absolute. Specifically, information gathered during an  
18 investigation may be disclosed to, *inter alia*, “serve other significant needs [] or comply with  
19 law.” In this case, disclosure of the documents serves the “significant need[]” of providing  
20 information to the public regarding the alleged misconduct of an elected official and CCSD’s  
21 handling of the related investigation. Disclosure of the withheld documents is also necessary  
22 to “comply with law”—specifically, to comply with the NPRA.

23 66. Accordingly, CCSD is unlikely to prevail on its argument that its internal  
24 policy renders the requested records confidential.

25 ***7. The Deliberative Process Privilege Does Not Justify Withholding.***

26 67. In *DR Partners v. Board of County Commissioners of Clark County*, 116  
27 Nev. 616, 6 P.3d 465 (2000), the Nevada Supreme Court explained that the deliberative  
28

1 process privilege allows governmental entities to conceal public records if the entity can  
2 prove that the relevant public records were part of a predecisional and deliberative process  
3 that led to a *specific decision or policy*. 116 Nev. 616, 623. “To establish that [the requested  
4 records] are ‘predecisional,’ the [governmental entity] must identify an agency decision or  
5 policy to which the documents contributed.” *Id.* (citation omitted; emphasis added); *see also*  
6 *Nevada v. U.S. DOE*, 517 F. Supp. 2d 1245 (D. Nev. 2007) (noting that the “deliberative  
7 process privilege” applies to draft documents that involve “significant policy decisions”).

8 68. To determine whether a document is predecisional, a court “must be able to  
9 pinpoint an agency decision or policy to which these documents contributed. The agency  
10 bears the burden of establishing the character of the decision, the deliberative process  
11 involved, and the role played by the documents in the course of that process.” *Id.* (quoting  
12 *Paisley v. C.I.A.*, 712 F.2d 686, 698 (D.C.Cir.1983)). As the Supreme Court explained in  
13 *Gibbons*, “state entity cannot meet this burden with a non-particularized showing.” *Gibbons*,  
14 127 Nev. at 880, 266 P.3d at 628. (citing *DR Partners*, 116 Nev. at 627–28, 6 P.3d at 472–  
15 73).

16 69. Here, CCSD asserts that the entire investigative file of CCSD’s Office of  
17 Diversity and Affirmative Action is subject to the deliberative process privilege because it  
18 contains information that formed the basis for Mr. Cole’s recommendations to  
19 Superintendent Pat Skorkowsky in the Cole Memorandum. This does not satisfy the  
20 particularized showing requirement articulated by *DR Partners*.

21 70. Even if this Court were to find CCSD established that the deliberative  
22 process applies to some or all of the documents requested by the Review-Journal, that  
23 privilege is conditional, and the public’s interest in accessing the documents outweighs  
24 CCSD’s interest in preventing their disclosure. As explained in *DR Partners*:

25 Once the court determines that a document is privileged, it must still  
26 determine whether the document should be withheld. Unlike some other  
27 branches of the executive privilege, the deliberative process privilege is a  
28 qualified privilege. Once the agency demonstrates that documents fit within  
it, the burden shifts to the party seeking disclosure. It must demonstrate that

its need for the information outweighs the regulatory interest in preventing disclosure.

*DR Partners*, 116 Nev. at 626, 6 P.3d at 471 (quoting *Capital Info. Group v. Office of the Governor*, 923 P.2d 29, 36 (Alaska 1996)) (other citations omitted). The Review-Journal has met this burden. Trustee Child is an elected official charged with making important decisions about the administration of one of the largest school districts in the country. Trustee Child's alleged behavior towards CCSD students, teachers, administrators, and other employees indicate that Trustee Child may not be the sort of official who should be entrusted with this responsibility. Thus, to the extent the deliberative process privilege applies to any part of the withheld records, the public's interest in this information outweighs any interest in continuing to withhold the documents.

71. CCSD is therefore unlikely to prevail on its deliberative process privilege argument.

**8. The Donrey Balancing Test Weighs in Favor of Disclosure.**

72. In addition to first establishing by a preponderance of the evidence that the records are confidential, CCSD also bears the burden in this case of establishing that the interest in withholding documents outweighs the interest in disclosure pursuant to the balancing test first articulated in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990); see also *DR Partners*, 116 Nev. at 621, 6 P.3d at 468. ("Unless a statute provides an absolute privilege against disclosure, the burden of establishing the application of a privilege based upon confidentiality can only be satisfied pursuant to a balancing of interests.") CCSD has not met its burden of establishing that any of the its asserted rationales for withholding the records outweighs the strong interest in disclosure in this case.

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**74. Accordingly, the Court hereby denies CCSD's Motion.**

IT IS SO ORDERED this 3<sup>rd</sup> day of august, 2017.

J. Williams  
HONORABLE JUDGE TIMOTHY C. WILLIAMS

~~Respectfully submitted,~~

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