(filed via fax)

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

FILED

AUG 07 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

SUPREME COURT CASE NO.: 73525

DISTRICT COURT CASE NO.: A750151

APPENDIX OF EXHIBITS IN SUPPORT OF RESPONDENT'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL, OR IN THE ALTERNATIVE STAY PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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17-901587

INDEX TO RESPONDENT'S APPENDIX

Exh.	*Documents*	*Date*	*Bates Number*
A	Amended Petition	03/01/2017	RA001-RA057
B	Letter from Mr. McDade to Ms. McLetchie in response to her March 3, 2017 email	03/13/2017	RA058-RA065
C	Email from Ms. McLetchie to Mr. McDade	03/01/2017	RA066
D	Email from Ms. McLetchie to Mr. McDade and Mr. Honey	03/03/2017	RA067-RA068
E	Email communications between Ms. McLetchie and Mr. Honey	03/13/2017	RA069-RA070
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G	Las Vegas Review-Journal Article "CCSD Investigation Say Trustee Kevin Child Created Hostile, Intimidating Environment" With Memo Attached	12/23/2016	RA085-RA093
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I	Clark County School District's Policy 0101	n/a	RA099

CERTIFICATE OF SERVICE

I certify that I am an employee of McLetchie Shell, LLC and that APPENDIX OF EXHIBITS IN SUPPORT OF RESPONDENT'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL, OR IN THE ALTERNATIVE STAY PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION addressed to:

The Honorable Timothy C. Williams — dept16lc@clarkcountycourts.us
Eighth Judicial District Court, Dept. 16
200 Lewis Avenue
Las Vegas, Nevada 89155
Via E-mail and Hand-Delivery

Carlos McDade, General Counsel — clmcdade@interact.ccsd.net
Adam Honey, Asst. General Counsel — ahoney@interact.ccsd.ne
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Appellant, Clark County School District
Via Email and U.S. Mail

Employee of McLetchie Shell LLC

EXHIBIT A

Electronically Filed
03/01/2017 03:37:20 PM

CLERK OF THE COURT

APET
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL, Petitioner, vs. CLARK COUNTY SCHOOL DISTRICT, Respondent.	Case No.: A-17-750151-W Dept. No.: XVI **AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS** **EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011**

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

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Petitioner hereby alleges as follows:

NATURE OF ACTION

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

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

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

PARTIES

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

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

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

JURISDICTION AND VENUE

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

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

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

STANDING

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

FACTS

The Initial Records Requests

11. Almost three months ago, on or around December 5, 2016, Review-Journal reporter Amelia Pak-Harvey (the "Reporter")sent CCSD a request on behalf of the Review-Journal and pursuant to the Nevada Public Records Act, Nev. Rev. Stat. § 239.001 *et seq.* (the "NPRA"). The request sought certain documents pertaining to CCSD Trustee Kevin Child (the "Request"). (*See* Exhibit ("Exh.") 1 to January 26, 2017 Petition.[1])

12. The Request asked CCSD to produce:

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

(*Id.*)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The "inherent chilling effect if names of . . . general public are released."

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

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

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

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

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

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

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

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

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

49. Given these findings, the Court ordered CCSD to provide the Review-Journal with new versions of the Redacted Records and Additional Redacted Records with only "the names of direct victims of sexual harassment or alleged sexual harassment, students, and support staff" redacted. (*Id.* at ¶ 34.)

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

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

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

CCSD Produces Records to the Review-Journal and the Court

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

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

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

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

The Review-Journal Submits a New Records Request to CCSD

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

57. The February Request asked CCSD to produce:

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

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

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

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

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

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

60. On February 17, 2017, CCSD notified the Review-Journal via email that it was unable to provide the records listed in the February Request within the five days mandated by Nev. Rev. Stat. § 239.0107(d). (Exh. 22.)

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

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

63. Those objections were as follows:

> The public records law does not require the release of confidential employee personnel information. See NRS 239.010; NRS 386.350; NAC 284.718; NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990); People for Ethical Treatment of Animals v. Bobby Berosini Ltd., 111 Nev. 615, 629 (Nev. 1995); El Dorado Savings & Loan Assoc. v. Superior Court of Sacramento County, 190 Cal. App. 3d 342 (1987).
>
> Further, to the extent documents are received or gathered by the District in the course of investigating an alleged unlawful discriminatory practice those documents are confidential. See CCSD Regulation 4110(X). Also, to the extent records include personally identifiable student information they are confidential under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029. Other

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

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

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

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

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

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

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(*Id.*)

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

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

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

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

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

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

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

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

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

73. CCSD did not respond to that letter.

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

75. CCSD did not respond to these communications.

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

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

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

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

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

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

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

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

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

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

LEGAL AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

CLAIM FOR RELIEF

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

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

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

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

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

WHEREFORE, the Petitioner prays for the following relief:

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

2. Injunctive relief ordering CCSD to immediately make available complete

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copies of all records requested;

3. Reasonable costs and attorney's fees; and

4. Any further relief the Court deems appropriate.

DATED this the 1st day of March, 2017.

Respectfully submitted,

/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, NV 89101
Telephone: (702)-728-5300
Email: maggie@nvlitigation.com
Counsel for Petitioner

MCLETCHIE SHELL
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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 1st day of March, 2017, I did cause a true copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 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 1st day of March, 2017, I mailed a true and correct copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NRS § 239.001/ PETITION FOR WRIT OF MANDAMUS EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 by depositing the same in the United States mail, first-class postage pre-paid, to the following:

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

/s/ Pharan Burchfield
An Employee of MCLETCHIE SHELL LLC

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

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL, Petitioner, vs. CLARK COUNTY SCHOOL DISTRICT, Respondent.	Case No.: A-17-750151-W Dept. No.: XVI

DECLARATION OF MARGARET A. MCLETCHIE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MARGARET A. MCLETCHIE

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EXHIBIT 16

Alina

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

Adam,

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

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

Regards,

Maggie

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Las Vegas, NV 89101
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EXHIBIT 17

pharan@nvlitigation.com

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

Adam and Carlos-

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

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

MCLETCHIE SHELL

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

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

Adam,

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

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

Regards,

Maggie

MCLETCHIE SHELL

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EXHIBIT 18

pharan@nvlitigation.com

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

Dear Ms. McLetchie:

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

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

EXHIBIT 19

pharan@nvlitigation.com

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

Dear Ms. McLetchie:

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

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

OFFICE OF THE GENERAL COUNSEL

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

CCSD

CLARK COUNTY SCHOOL DISTRICT

February 27, 2017

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

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

Dear Judge Williams:

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

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

Sincerely,

Carlos L. McDade
General Counsel

CLM
Enclosure

cc: Maggie McLetchie, via e-mail

Date: September 13, 2016

Re: Incident Report (Trustee Kevin Child)

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

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

[redacted]
Assistant Principal
Valley High School

EXHIBIT 20

VIA U.S. MAIL AND E-MAIL

February 10, 2017

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

Dear Mr. Honey:

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

Documents requested:

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

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

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

- Records that pertain to, discuss, or reference concerns that Mr. Child's behavior and/or statements have created a hostile work environment;

- Records that pertain to, discuss, or reference the factual bases for CCSD's determination that Mr. Child has violated Title VII of the Civil Rights Act of 1964;

- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding their appearance;

- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD employees regarding sexual orientation;

- Records that pertain to, discuss, or reference concerns that Mr. Child has made inappropriate statements to CCSD students and/or employees regarding suicide;

- Records that pertain to, discuss, or reference concerns about inappropriate comments regarding inappropriate comments made by Mr. Child about race, ethnicity, or national origin;

- Records that pertain to, discuss, or reference concerns that Mr. Child engaged in inappropriate behavior at the Magnet Schools of America Conference that took place in Miami, Florida in May of 2016;

- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at events conducted at CCSD schools as part of CCSD's Professionals and Youth Building A Commitment (PAYBAC) Program;

- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at KidsVentions events;

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

- Records that pertain to, discuss, or reference concerns about Mr. Child's behavior at the CCSD administrative building.

Instructions for Production; Minimizing Burdens

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

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

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

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

Fees and Costs

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

Claims of Confidentiality

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

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

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

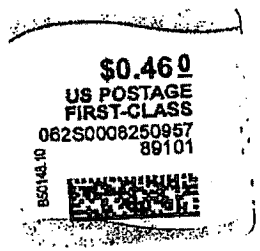
Please provide the records within five (5) business days pursuant to Nev. Rev. Stat. §239.0107. Again, please email your response to efile@nvlitigation.com rather than U.S. Mail so I can review as quickly as possible.

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

Sincerely,

Margaret A. McLetchie

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



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

pharan@nvlitigation.com

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

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

Thank you,

Pharan Burchfield
Paralegal

MCLETCHIE SHELL

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EXHIBIT 21

Alina

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

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

MCLETCHIE SHELL

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

From: Adam Honey [mailto:ahoney@interact.ccsd.net]
Sent: Wednesday, February 15, 2017 12:43 PM
To: maggie <maggie@nvlitigation.com>
Cc: pharan@nvlitigation.com; Carlos L. McDade <clmcdade@interact.ccsd.net>
Subject: Re: RJ v CCSD - Draft ORDER

Hey Maggie,

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

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

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:

Adam –

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

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

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

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

I will speak with you tomorrow.

Regards,

Maggie

image001
Attorneys at Law
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
(702) 728-9300 (T) / (702) 425-8220 (F)
www.nvlitigation.com

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

Maggie,

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

Sincerely,

Adam Honey

maggie <maggie@nvlitigation.com> writes:

Carlos and Adam,

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

Best Regards,

Maggie McLetchie

image001
Attorneys at Law
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

EXHIBIT 22

pharan@nvlitigation.com

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

Ms. McLetchie,

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

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

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

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

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

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

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

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

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

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

Thank you.

Cindy Smith-Johnson

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

EXHIBIT 23

VIA U.S. MAIL AND E-MAIL

February 21, 2017

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

Dear Mr. Honey:

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

Order; Timely Compliance

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

February 10, 2017 Request

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

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

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

involved in that process. I asked you to ask the IT department for information regarding searches and suggested your participation could help ensure a timely production. I also offered to do a joint call with you and your IT department to narrow searches.

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

Regards,

Margaret A. McLetchie

cc: file; Carlos McDade (via email only)

701 E. Bridger Ave., Suite 520 Las Vegas, NV 89101 P: 702.728.5300 F: 702.425.8220 www.nvlitigation.com

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

MAILED
2-21-17

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

pharan@nvlitigation.com

From:	pharan@nvlitigation.com
Sent:	Tuesday, February 21, 2017 5:50 PM
To:	'Adam Honey'
Cc:	maggie; 'clmcdade@interact.ccsd.net'
Subject:	Public Records Act request
Attachments:	CCSD - 2017.02.21 PRA.pdf

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

Thank you,

Pharan Burchfield
Paralegal

MCLETCHIE SHELL

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

EXHIBIT 24

Alina

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

Adam,

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

Maggie

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

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

Adam,

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

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

Regards,

Maggie

MCLETCHIESHELL

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Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

EXHIBIT 25

pharan@nvlitigation.com

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

Carlos:

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

Thank you for your consideration.

Maggie

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EXHIBIT B

pharan@nvlitigation.com

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

Dear Ms. McLetchie:

On behalf of Carlos McDade and Adam Honey, please see attached correspondence regarding the above referenced matter.

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

OFFICE OF THE GENERAL COUNSEL

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

CCSD
CLARK COUNTY
SCHOOL DISTRICT

March 13, 2017

Via U.S. Mail and E-mail
Maggie McLetchie, Esq.
McLetchie Shell
Attorneys at Law
701 East Bridger Avenue, Suite 520
Las Vegas, NV 89101

Re: LVRJ Public Records Requests re Trustee Kevin Child

Dear Ms. McLetchie:

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

A. **Documents Already Provided**

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

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

B. **Search Information**

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

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

C. **Remaining Information**

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

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

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

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

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

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

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

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

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

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

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

It is well-established that "notice of the sexually harassing conduct triggers an employer's duty to take prompt corrective action that is reasonably calculated to end the harassment." Swenson v. Potter, 271 F.3d 1184, 1192 (9th Cir. 2001) (internal quotation marks omitted). Once an employer is on notice of a sexual harassment complaint, it must conduct an investigation. Id. at1193.

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

(b) Liability for the Conduct of Non-Employees

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

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

(c) **Investigation Duties and Confidentiality**

United States Equal Employment Opportunity Commission ("EEOC") has stated that employers are obligated to investigate and address instances of harassment, including sexual harassment. The EEOC also states that employees who are subjected to harassment frequently do not complain to management due to fear of retaliation. See U.S., Equal Employment Opportunity Commission, EEOC Notice No. 915.002, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, at § V(D)(1) re Failure to Complain (dated 6/18/99, in effect until rescinded or superseded); see also Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998).

Regarding confidentiality of an investigation, EEOC states that "[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. Records relating to harassment complaints should be kept confidential on the same basis." See EEOC Notice No. 915.002, at § V(C)(1) re Confidentiality (emphasis added).

"To assure employees that such a fear is unwarranted, the employer must clearly communicate and enforce a policy that no employee will be retaliated against for complaining of harassment." See EEOC Notice No. 915.002, at § V(D)(1) re Failure to Complain.

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

(d) Application of Law to the Facts

Here, as Trustee Child is a corporate officer and not subject to internal employer corrective action, the only manner in which the District may act to fulfill its obligation to protect its employees against potential retaliation is to withhold the identity of the employees and withhold the internal information received or gathered by the District in the course of its investigation of an alleged unlawful practice of discrimination or harassment. The District and public have an interest in a strong system to address complaints of discrimination and harassment that encourages reporting without fear of retaliation. Based upon the above federal law and EEOC guidance related to discrimination and harassment, and a balancing of the interests in this case, the investigatory information should remain confidential. See also NRS 239.010; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

2. CCSD Policy and Regulation 4110

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

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

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

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

3. Deliberative Process Privilege

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

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

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

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

4. **Nonrecord Materials**

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

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

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

5. **Employee Personnel Information**

The public records law does not require the release of confidential employee personnel information. See NRS 239.010; NRS 386.350; NAC 284.718; NAC 284.726; CCSD Regulation 1212; CCSD Regulation 4311; CCSD Regulation 4110; Donrey of Nevada v. Bradshaw, 106 Nev. 630 (1990).

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

6. **Personally Identifiable Student Information**

To the extent that the documents contain personally identifiable student information it is confidential under the Family Educational Rights and Privacy Act (FERPA). See 20 U.S.C. 1232g; 34 C.F.R. Part 99; NRS 392.029.

7. **Personal Information**

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

8. **Donrey Balancing Test**

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

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

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

Sincerely,

Carlos L. McDade
General Counsel

EXHIBIT C

pharan@nvlitigation.com

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

Carlos:

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

Thank you for your consideration.

Maggie

MCLETCHIE SHELL

ATTORNEYS AT LAW
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Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

EXHIBIT D

pharan@nvlitigation.com

From:	maggie
Sent:	Thursday, March 02, 2017 10:19 AM
To:	Adam Honey
Cc:	Carlos L. McDade; pharan@nvlitigation.com
Subject:	RJ v CCSD

Adam and Carlos,

So that we can effectively resolve as many issues before the hearing set for 3/14 at 9 a.m., I would like to propose the following:

1. Please let me know as soon as possible if you will not produce documents tomorrow.

2. Please let me know by Monday whether and when you will provide:
   a. The log (or some similar mechanism to identify anything withheld / redacted without disclosing confidentiality or privilege but explaining basis for withholding/ redaction); and
   b. Search information (terms, sources searched).

3. That will provide us a week to "meet and confer" about any issues and to try to resolve them before 3/14 as Judge Williams instructed. I am happy to set a time to meet sometime next week that is convenient for both of you. I would respectfully suggest that either Adam, needs authority to make commitments or we need participation from Carlos so we can actually resolve issues.

We should also discuss the timing of my planned application for fees (counting from the Order, it's due 3/16), and whether informal resolution may be possible. If further work is needed in this case (briefing, etc.), we should discuss whether the application should be submitted after 3/16 or if you will consider it untimely based on your mootness theory.

Let me know what your thoughts are on the above, and if you have any other suggestions.

Thank you in advance for your cooperation in resolving this matter.

Maggie

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message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender by return e-mail.

EXHIBIT E

pharan@nvlitigation.com

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

Maggie,

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

Adam

maggie <maggie@nvlitigation.com> writes:
Thank you for detailing the privileges you are claiming, Adam and Carlos. Is a log listing the documents withheld forthcoming?

image001
Attorneys at Law
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From: Susan Gerace [mailto:sgerace@interact.ccsd.net]
Sent: Monday, March 13, 2017 4:09 PM
To: maggie <maggie@nvlitigation.com>; pharan@nvlitigation.com
Cc: Carlos L. McDade <clmcdade@interact.ccsd.net>; Adam Honey <ahoney@interact.ccsd.net>
Subject: LVRJ v. CCSD

Dear Ms. McLetchie:

On behalf of Carlos McDade and Adam Honey, please see attached correspondence regarding the above referenced matter.

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

EXHIBIT F

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

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

NOTICE OF ENTRY OF ORDER

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

PLEASE TAKE NOTICE that on the 6th day of June, 2017, an Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters was entered in the above-captioned action. A copy of the Order is attached hereto as Exhibit 1.

DATED this 6th day of June, 2017.

/s/ Margaret A. McLetchie
MARGARET A MCLETCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLETCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 6th day of June, 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 6th day of June, 2017, I mailed a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by depositing the same in the United States mail, first-class postage pre-paid, to the following:

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

/s/ Pharan Burchfield
An Employee of MCLETCHIE SHELL LLC

MCLETCHIE SHELL LLC
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EXHIBIT 1

ORDR
MARGARET A. MCLETCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
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Email: maggie@nvlitigation.com
Counsel for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL, Petitioner, vs. CLARK COUNTY SCHOOL DISTRICT, Respondent.	Case No.: A-17-750151-W Dept. No.: XVI **ORDER GRANTING WRIT OF MANDAMUS AS TO JURISDICTION AND SEARCH PARAMETERS**

The Las Vegas Review-Journal's Amended Petition for Writ of Mandamus having come on for hearing on May 9, 2017 and for a status check on June 6, 2017, the Honorable Timothy C. Williams presiding, Petitioner LAS VEGAS REVIEW-JOURNAL ("Review-Journal") appearing by and through its attorneys, MARGARET A. MCLETCHIE and ALINA M. SHELL, and Respondent CLARK COUNTY SCHOOL DISTRICT ("District Attorney"), appearing by and through his attorneys, CARLOS M. MCDADE and ADAM HONEY, and the Court having read and considered all of the papers and pleadings on file and being fully advised, and good cause appearing therefor, the Court hereby finds it has jurisdiction over the Amended Petition, grants the Amended Petition as to the additional searches requested by the Review-Journal and makes the following findings of fact and conclusions of law:

///

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I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

Facts Pertinent to the Review-Journal's Original Petition

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

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

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

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

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

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

6. Later that same day, CCSD provided a copy of the Redacted Records to

the Review-Journal.

7. On February 10, 2017, CCSD provided the Redacted Records with fewer redactions to both the Court and the Review-Journal. On February 13, 2017, CCSD provided a further version of the Redacted Records to the Court and the Review-Journal, along with an initial log listing the following bases for the redactions: Nev. Rev. Stat. § 386.230 and CCSD Regulations 1212 and 4110. On February 13, 2017, CCSD also provided ten additional pages not previously identified (the "Additional Redacted Records"). On February 13, 2017, CCSD also provided a revised version of the log (the "2/13/17 Log") including the Additional Redacted Records and asserting additional based for redactions. Finally, CCSD provided an unredacted version of the Additional Redacted Records to the Court.

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.

10. 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).)

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

12. 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.

///

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Facts Relevant to the Review-Journal's Amended Petition

13. On February 10, 2017, the Review Journal submitted a new records request to CCSD for records pertaining to Mr. Child (the "February Request").

14. The February Request asked CCSD to produce:

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

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

15. The February Request specifically asked CCSD to provide records on a rolling basis as they became available.

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

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

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

19. On March 3, 2017, CCSD provided documents in response to the February Request.

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

21. That same day, the Review-Journal requested CCSD provide a log of withheld documents, and asked CCSD to provide it with search information.

22. CCSD responded to these requests via letter on March 13, 2017. In its letter, CCSD indicated it had searched for the terms "Kevin Child" and "Trustee Child" in the Interact email boxes of Superintendent Patrick Skorkowsky, Chief Academic Officer Mike Barton, each School Associate Superintendent and each of the school principals in Trustee Child's district.

23. CCSD did not inform the Review-Journal that it had limited the sources or custodians it had searched. Instead, in response to the Review-Journal's inquiry regarding what documents were being withheld, CCSD asserted that "the only information that has

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not been provided is internal information received or gathered by the District in the court of its investigation of an alleged practice of unlawful practice of discrimination, harassment, or hostile work environment which is confidential and not required to be disclosed under the public records law."

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

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

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

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

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

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February Request:

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

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

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

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

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

II.

ORDER

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

32. The Court hereby finds it has jurisdiction over the Review-Journal's Amended Petition because the initial Petition was filed with this Court and was specifically a public information request as it pertained to Trustee Child.

33. The purpose of the NPRA is to "foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law[.]" Nev. Rev. Stat. § 239.001(1). To that end, the NPRA must be construed

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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).

34. 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.*

35. 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)

36. 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).

37. The term "record" as used in the NPRA is to be interpreted broadly. *See* Nev. Rev. Stat. § 239.001(2); *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 183, 878, 266 P.3d 623, 626 (2011) (noting that the Nevada legislature intended the provisions of the NPRA to be "liberally construed to maximize the public's right of access").

38. As the Nevada Supreme Court has explained, the NPRA "considers all records to be public documents available for inspection unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure." *Reno Newspapers v. Sheriff*, 126 Nev. 211,212,234 P.3d 922, 923 (2010).

39. There is nothing in the NPRA that limits "records" to those records CCSD decides are more likely to be responsive.

40. Further, the NPRA requires governmental entities to specifically tell a requester whether it will produce requested public records. *See* Nev. Rev. Stat. § 239.0107(1).

41. Pursuant to Nev. Rev. Stat. § 239.0107(1)(c), if the governmental entity is

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unable to produce requested records by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, the entity must provide to the person (1) written notice of that fact, and e of that fact; and (2) date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person.

42. If the governmental entity intends to deny a records request, it must provide the requester written notice of that facts and a "citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential." Nev. Rev. Stat. § 239.0101(1)(d).

43. Rather than provide such notice in response to either sets of requests as required by Nev. Rev. Stat. § 239.0107(1)(d), CCSD failed to inform the Review-Journal that it was only searching email—and only emails for certain custodians—until March 13, 2017. Moreover, the privilege logs CCSD provided the Review-Journal did not indicate that CCSD had unilaterally limited the December Requests, whose records it had searched, what terms it used in searching for responsive records, or which records it was withholding.

44. Thus, CCSD violated the NPRA by limiting the "records" it searched and ultimately produced, and also violated the NPRA by failing to timely inform the Review-Journal of its unilateral decision to limit its search for responsive records.

45. Accordingly, the Court hereby grants the Review-Journal's Amended Petition as to the request that CCSD conduct email searches responsive to the December Requests and the February Requests for the following additional custodians:

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

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- Hard copy records from the Diversity and Affirmative Action Program's hard copy file on Trustee Child, as well as any other hard copy file CCSD maintains on Trustee Child that are responsive to the December and February Requests.

46. CCSD must complete this search and produce all responsive records it does not contend are confidential to the Las Vegas Review-Journal by June 6, 2017.

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

48. CCSD must also provide the Court with a certification by June 6, 2017 attesting the accuracy of the searches conducted and evidencing that CCSD has fully searched the sources set forth in Paragraph 45 for records responsive to the December Requests and February Request by detailing the sources searched, date searches were conducted, and the search terms used to locate responsive documents. CCSD shall also provide a copy of the updated privilege log and the certification to the Las Vegas Review-Journal by June 6, 2017.

49. The Las Vegas Review-Journal may submit a responsive brief (addressing the claims of confidentiality) before the hearing on this matter.

50. The Court will review all responsive documents submitted *in camera* for

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final determination of which records CCSD may keep confidential.

51. The Court shall conduct a further hearing on this matter on June 15 2017.

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

HONORABLE JUDGE TIMOTHY C. WILLIAMS

Respectfully submitted,

Margaret A. McLetchie, Nevada State Bar No. 10931
Alina M. Shell, Nevada State Bar No. 11711
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701 E. Bridger Avenue, Suite 520
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Email: maggie@nvlitigation.com
Counsel for Petitioner, Las Vegas Review-Journal

EXHIBIT G

LAS VEGAS REVIEW-JOURNAL

Posted December 23, 2016 - 4:52pm Updated December 23, 2016 - 7:16pm

CCSD investigation says Trustee Kevin Child created hostile, intimidating environment

Clark County School District Trustee Kevin Child speaks during a CCSD Board of Trustees meeting at the Edward A. Greer Education Center in Las Vegas on Thursday, Dec. 8, 2016. Jason Ogulnik/Las Vegas Review-Journal

MEMO ON KEVIN CHILD

Memo on CCSD Trustee Kevin Child by Las Vegas Review-Journal on Scribd

TIMELINE

Nov. 2014: Kevin Child beats out state-appointed Clark County School District Board of Trustees member Steven Corbett for the District D seat. A total of 19,877 people voted in that

By AMELIA PAK-HARVEY and MEGHIN DELANEY

A Clark County School District investigation of Trustee Kevin Child said he created a hostile and intimidating work environment and held impromptu "suicide counseling sessions" with young children when he visited schools, according to a memo obtained Friday by the Review-Journal.

Child's behavior also caused anxiety among female employees, who labeled him weird and creepy, because he stared at women,

Most Popular

Raiders accepting fan deposits for 'place in history' at Las Vegas stadium

Don't buy those Las Vegas Raiders season tickets just yet — VIDEO

Trump signs bill killing Obama rule on public lands

Oakland Raiders get NFL's approval to move to Las Vegas

1 arrested after Saturday burglary at Bellagio jewelry store

RA085

MEMO 001

race, according to election results.

Jan. 5, 2015: Child is sworn in for a four-year term.

March 2016: Child meets with the district lawyer and the office of diversity and affirmative action to discuss Child's behavior when visiting schools. Child agrees to stop showing up to schools unannounced.

Sept. 7, 2016: The office of diversity and affirmative action opens a formal investigation into Child's behavior.

Oct. 19, 2016: A four-page memo is sent to Superintendent Pat Skorkowsky about Child from Cedric Cole, the executive manager of diversity and affirmative action program. The memo says Child's behavior could reasonably be construed as causing a "Sexual Harassment/Hostile Work Environment."

Dec. 5, 2016: Six weeks after the memo, Skorkowsky formally bans Child from visiting schools without express written permission. Child does not return calls for comment that day.

Dec. 6, 2016: Child again declines to comment on the issue.

Dec. 7, 2016: Child denies any wrongdoing with his behavior, calling the complaints unfounded and secret. Child says he has not seen copies of any of the alleged complaints. Child said he was exploring his legal options.

commented on the "sexiness" of clothing and talked about which staff members he wanted to date, the memo said.

Allegations about Child's behavior, first reported by the Review-Journal this month, had prompted a meeting with district officials in March. The Office of Diversity and Affirmative Action launched an investigation in September after conduct protocols that Child agreed to were not followed, according to the memo sent to Superintendent Pat Skorkowsky.

The four-page report, dated Oct. 19, says administrators and employees were so uncomfortable with Child that they came to fear him and possible reprisals if they were to report the elected member of the School Board.

According to the memo, the district had not received any official complaints of harassment or sexual harassment regarding Child. Despite the lack of official complaints, the report said it's evident that female employees at all levels are cautious of being alone with Child — so much so that building administrators have been forced to resort to special "Trustee Child protocols" inclusive of unique code words for when he shows up unannounced.

No formal action was taken against Child to halt his behavior until December — more than nine months after concerns were first raised. On Dec. 5, six weeks after the ODAA sent its memo, Skorkowsky formally implemented guidelines specifically banning Child from visiting schools unless he had written permission.

Skorkowsky could not be reached for comment Friday. But last week, when asked by a Review-Journal reporter about mounting allegations that led to Child's ban from school visits, he hinted that reasons existed.

"We're a $2.4 billion corporation," Skorkowsky said. "I wouldn't do anything without evidence."

Child balked at the ban.

"At no time have I engaged in any inappropriate conduct or made 'gestures' toward school administrators, teachers or students during my visits to schools in my district," he said in a statement to the Review-Journal after being banned. "The allegations are difficult to address as I have not been provided copies of any of the alleged complaints."

At that time, Child did not mention the March meeting or that his behavior had been questioned before.

Repeated attempts Friday to reach Child by telephone, email and social media were unsuccessful. Messages left for the six other trustees were not returned.

INTIMIDATING PRESENCE

The memo states that employees have feared the power that Child has as a trustee, as he frequently reminds staff that he is "their boss" and the superintendent's boss.

"In fact, those district administrators who have skittishly come forward with 'confidential' concerns or those who have sought guidance under the guise of 'hypothetical' scenarios involving 'one of the trustees,' have made it clear that they do not want their names shared out of fear of reprisal from Trustee Child," the report reads.

The report revealed behavior by Child that employees said frequently "crosses the line."

The memo also details "suicide counseling sessions" Child held with students. Employees reported the suicide sessions often resulted in the schools initiating suicide protocols with the

RA086

MEMO 002

students involved.

Child's wife, Susan, was found with a gunshot wound along with four dogs in a house fire in March 2008, according to Las Vegas Review-Journal archives. Her death was ruled a suicide.

In the allegations outlined in the memo, Child flirts with female employees by commenting on the "sexiness" of their clothes, talks about employees he would like to date, makes homophobic comments and touts his status as "The Boss."

"Throughout conversations and interviews with employees, there has emerged the 'common theme' that perhaps Trustee Child is incapable of 'filtering out' what is/is not appropriate speech or behavior in the workplace or for a Trustee," the memo states.

Among the findings, it continued, "In essence, Trustee Child has rendered employees at all levels of the organization defenseless."

'NOT FIT TO GOVERN'

In March, after hearing concerns, Child was called into a meeting with the affirmative action office and the district's lawyer to discuss his behavior. At that time, Child agreed not to visit schools unannounced and not to meet with female employees alone.

Child did not abide by those rules.

The Office of Diversity and Affirmative Action, under the management of Executive Manager Cedric Cole, opened a formal investigation into Child's behavior Sept. 7 and finished its report Oct. 19.

The report states Child's behavior could reasonably be construed as causing a sexual harassment/hostile work environment. At minimum, Child was violating district policy 4110, and by extension, Title VII of the Civil Rights Act of 1964. Title VII prohibits employers from discriminating against employees on the basis of sex, race, color, national origin or religion.

John Vellardita, the executive director of the Clark County Education Association — the union which serves teachers — called on Child to resign.

"I've consistently said he's not fit to govern," Vellardita said.

Child's actions highlight a classic power struggle, Vellardita said. Vellardita said his organization has flagged issues with Child's behavior long before March 2016, but because people are not willing to use their names, they haven't been able to provide the evidence the district needs.

"This is the classic case where victims become somewhat fearful of speaking out," he said. "There's nothing surprising with that report, it concurs with what we have already been told by employees who are fearful of this guy."

Child has served as the District D trustee since being elected in 2014. He's butted heads with a number of different groups, including the Clark County Association of School Administrators and Professional-Technical Employees.

His social media posts also have caused controversy.

In July, Child asked on Facebook : "If protesters are in the road and blocking it and not in the crosswalk..,would you run them over?"

In May 2013, Child blamed parents who can't speak English for the district's failure to teach the language to children. He wrote that most of those parents are here illegally, and said it's not right that taxpayers have to pay for these "law breakers."

Review-Journal staff writer Natalie Bruzda contributed to this story. Contact Amelia Pak-Harvey at apak-harvey@reviewjournal.com or 702-383-4630. Follow @ameliapakharvey on Twitter. Contact Meghin Delaney at 702-383-0281. Follow @MeghinDelaney on Twitter.

RA088

MEMO 004

CCSD
CLARK COUNTY
SCHOOL DISTRICT

SUPERINTENDENT'S OFFICE
DIVERSITY AND AFFIRMATIVE ACTION OFFICE
CLARK COUNTY SCHOOL DISTRICT

DATE: **October 19, 2016**

TO: Pat Skorkowsky, Superintendent

FROM: Cedric Cole, Executive Manager, Diversity and Affirmative Action Programs/ADA Coordinator

SUBJECT: Trustee Child

Purpose:

As you know, on September 7, 2016, the Office of Diversity and Affirmative Action *("ODAA")* was tasked with the responsibility of conducting a formal investigation into the alleged inappropriate behavior of School Board Trustee Kevin Child. At issue is whether or not Trustee Child's alleged behavior, which some describe minimally as inappropriate, has or is causing what could reasonably be viewed as a "hostile work environment" for Clark County School District *("CCSD")* employees. As such, the role of ODAA in this process is to make an objective determination as to whether or not Trustee Child's alleged behavior has also violated CCSD policy 4110, and by extension, Title VII of the Civil Rights Act of 1964.

With this understanding, it is the belief of this office that Trustee Child's has in fact caused and is continuing to cause what could reasonably be perceived as a "hostile" or "intimidating" work environment for employees, in particular female employees. It is evident that female employees (at all levels) have grown cautious of being alone with Trustee Child, so much so that building administrators have had to resort to special "Trustee Child protocols," inclusive of unique "code words" for when shows up to their buildings unannounced. It is my understanding that these protocols have been instituted to ensure that Trustee Child is never alone with female employees, most of whom describe him as "overly friendly," "weird," and "creepy."

Not only have the female employees expressed deep anxiety about how he makes them feel, they fear equally the purported "power/authority" he wields as a School Board Trustee, and what their complaints may do to their careers and future employment status. These fears are only reaffirmed

by Trustee Childs frequent and direct reminders that he is "their Boss" and he also "Pat's Boss." In fact, those district administrators who have skittishly come forward with "confidential" concerns or those who have sought guidance under the guise of "hypothetical" scenarios involving "One of the Trustees," have made it clear that they do not want their names shared out of fear of reprisal from Trustee Child.

In March of 2016, the Affirmative Action Officer and General Counsel, met with Trustee Child regarding the concerns and issues that had begun to surface about his behavior and some of the concerns that had been expressed by employees at the time. It was explained in great detail that his unannounced, lengthy office visits, frequent staff interruptions to include those that occurred throughout the instructional day was an issue concern districtwide. It was also explained that though the Affirmative Action Office had not yet received any "official complaints" of "harassment" or "sexual harassment," there were "rumblings" that his visits were making a great many female employees uneasy. Trustee Child was specifically advised that female employees had begun to label him and his behavior as "weird" and "creepy." It was further explained that because we had begun to hear these "rumblings" we were obligated to address those concerns with him directly, with the intended purpose that he would stop this behavior. At the conclusion of the meeting, Trustee Child indicated an understanding of the seriousness of the concerns raised and agreed to the following protocol:

1. Trustee Child agreed that he would not to show up to buildings unannounced.

2. Trustee Child agreed that he would schedule meetings in advance and that he would have a written agenda of what ideas or topics he wanted to discuss.

3. Trustee Child agreed to allow female employees ample opportunity to plan for his arrival and he was to offer that they should have someone else in the meeting with them.

4. Trustee Child agreed to never meet with female employees alone or behind closed doors.

5. Trustee Child agreed to be "mindful of your status (Trustee) within the organization" and he was reminded that he was perceived to have "authority over employees" so it was imperative that he be careful of the comments he made and the behavior he displayed.

Since the meeting with Trustee Child in March of 2016, the ODAA had not heard any other "rumblings" nor had we received any official complaints regarding this trustee. However, it is apparent from interviews conducted with staff and statements received, that Trustee Child either failed to follow or failed to consistently follow the protocols established with him in March of 2016.

Common Theme

Throughout conversations and interviews with employees, there has emerged the "common theme" that perhaps Trustee Child is incapable of "filtering out" what is/is not appropriate speech or behavior in the workplace or for a Trustee. Some employees have stated that they do not believe the intent of his comments or behavior to be "malicious" or "intentionally offensive," however, they also acknowledge that his behavior and speech frequently "crosses the line." For instance, staring at female employees, commenting on their "sexiness" in an article of clothing they are wearing, his alerts about which staff members he wants to date, and/or the statements made that could reasonably be viewed as homophobic, all are believed by employees to have crossed the line. And when asked directly whether or not they felt comfortable pointing this out to Trustee Child, all state that because he is a "Trustee," they would not feel comfortable telling him that his behavior or comments made them uncomfortable or crossed the line, even though they understood they had the right to do so.

Concerns have also been raised about Trustee Child's impromptu suicide "counseling sessions" with young children. In fact, there appears to be a growing concern that Trustee Child will again broach the subject of suicide with students, which in the past has prompted schools to initiate suicide protocols. And while Trustee Child has articulated the "well meaning" intent of these "impromptu" counseling sessions, he typically has these discussions during venues where it is not the most appropriate and against the recommendation of District officials, rendering them powerless in their own buildings.

Findings

Based upon the investigation of the concerns as they have been presented, the ODAA believes that there is sufficient evidence to support that Trustee Child, an Agent of the CCSD, has violated CCSD policy 4110 and by extension Title VII of the Civil Rights Act of 1964. It is also the belief of the ODAA that Trustee Child, because of his status as a Trustee and his frequent declarations to employees that he is "the Boss" and "Pat's Boss," he has also been successful in suppressing employee complaints against him. Whether intentional or not, Trustee Child has created an environment in which his inappropriate behavior goes unchecked because of fear of reprisal. It is indeed evident that most employees, are unwilling to confront him about his behavior and/or they are reluctant to file a formal complaint against him because he is a Trustee and he is perceived to be "The Boss." In essence Trustee Child has rendered employees at all levels of the organization defenseless. Further, it is believed that Trustee Child's actions, inclusive of the pattern of conduct he has displayed towards female employees in particular, constitutes at a minimum a violation of district policy 4110, and that his behavior could be reasonably construed as causing a "Sexual Harassment/Hostile Work Environment."

ODAA Recommendations

It is the responsibility of the CCSD to ensure that employees are protected from harassment and other forms discrimination regardless of who the alleged offender may be. And while it is recognized that Trustee Child may not fully understand the gravity of the concerns levied against him, and/or he may not be able to discern when and where the line between "The Boss" and "Employee" has been crossed, obligation of protecting our employees still remains. Trustee Child in the estimation of this office, has created work environment that is intimidating for employees, and therefore we offer the following recommendations:

1. It is recommended that Trustee Child no longer be allowed in any school throughout the instructional day and that he no longer attend any events outside of formal events or functions needed to perform his duties as a Trustee and representative of District D. **These should be strictly defined.**

2. It is recommended that Trustee Child, no longer be permitted to roam the halls of CCSD administrative building and that he be directed to conduct District D business in the office assigned to him for that purpose.

3. It is recommended that Trustee Child be directed to desist from "flirting" with or "making passes" at district employees. It is also recommended that Trustee Child cease and desist from having conversations with employees who are subordinate to him, that could reasonably be perceived to be homophobic or bigoted, or ones that reveal his intentions for or with female employees.

4. It is noted that although no complaints have been received surrounding the rumors of Trustee Child "dating" employees, it is certainly not an advisable practice for "the Boss," because employees could allege that they were obligated to date him because of his status.

EXHIBIT H

APPEARANCES:

FOR THE PLAINTIFF:

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* * * * *

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

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

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

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

THE COURT: Right.

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

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

MR. HONEY: Today is Tuesday. You want them by Friday?

12:32:35 THE COURT: Is Friday fine, ma'am?

MS. MCLETCHIE: That's fine with us, your Honor.

THE COURT: That's a pretty quick turnaround.

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

THE COURT: What you can do, ma'am, prepare an order with my decision. And we can incorporate in the order not just what I said verbally, but, you know, the

12:32:54 record as well.

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

THE COURT: Absolutely.

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

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

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE 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

EXHIBIT I

CLARK COUNTY SCHOOL DISTRICT POLICY

INTRODUCTION TO POLICIES AND REGULATIONS 0101

The Board of School Trustees has adopted "policy governance" as its method of governing the Clark County School District. Under policy governance, the Board defines and demands educational results, delegates to the Superintendent the authority, with certain boundaries or executive limitations, to accomplish those goals, and then monitors the District's progress to ensure that the ends are accomplished.

In this context, the purpose of these Policies and Regulations is to provide directions regarding the details of District operations. Policies are more general principles, while Regulations contain specific details and procedures. They are effective as of the indicated policy governance review date, which is the date that they are approved by the Board of School Trustees, and remain in effect until canceled or revised. They should be applied consistently and interpreted in a manner which facilitates the accomplishment of the educational ends, within the bounds of the law and executive limitations, as established by the Board of School Trustees.

The Superintendent delegates to appropriate deputy superintendents, assistant superintendents and regional superintendents the authority to make decisions consistent with these policies and regulations.

Questions regarding the interpretation of these Policies and Regulations, as well as recommendations for their improvement and clarification, should be referred to the administrative division identified as having review responsibility.

Review Responsibility:	Superintendent
Adopted:	[8/1/66]
Revised:	(10/26/71;4/1/82)
Pol Gov Rev:	0101:6/28/01

NO. 73525

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FAX

To: State of Nevada Court of Appeals	**From:** Pharan Burchfield, Paralegal
Fax: (775) 684-1601	**Pages:** 112 (including cover page)
Phone:	**Date:** August 4, 2017
Re: NSC # 73525	

Please see attached APPENDIX OF EXHIBITS IN SUPPORT OF RESPONDENT'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL, OR IN THE ALTERNATIVE STAY PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION. Permission to file the APPENDIX OF EXHIBITS IN SUPPORT OF RESPONDENT'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL, OR IN THE ALTERNATIVE STAY PENDING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION via facsimile was granted by July 28, 2017 Order Regarding Motion for Stay.

Should you have any questions, please feel free to contact me at (702) 728-5300.

Thank you.