

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,

Supreme Court No. 73525

Appellant,

District Court Case No. A750151

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

FILED

AUG 24 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**REPLY IN SUPPORT OF**  
**EMERGENCY MOTION FOR STAY PENDING APPEAL,**  
**OR IN THE ALTERNATIVE STAY PENDING PETITION FOR**  
**WRIT OF MANDAMUS OR PROHIBITION,**  
**FILED UNDER NRAP 27(e)**

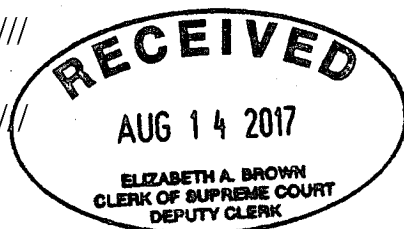
Comes now, Appellant, CLARK COUNTY SCHOOL DISTRICT  
("CCSD"), by and through its undersigned counsel, Carlos McDade, General  
Counsel, and Adam Honey, Assistant General Counsel, hereby submits its  
Reply in Support of Emergency Motion for Stay Pending Appeal, or in the  
Alternative Stay Pending Petition for Writ of Mandamus or Prohibition,  
Filed Under NRAP 27(e).

This Reply is based upon the attached Memorandum of Points and  
Authorities, together with all the pleadings and papers on file herein,

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1 and any testimony and evidence that may be received by the Court.

2 DATED: August 8, 2017

3   
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15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 The Court has broad discretion to stay proceedings. CCSD's Motion  
18 for Stay pending resolution of an appeal to the Supreme Court of Nevada  
19 should be granted. The object of the appeal would be defeated without a  
20 stay, the balance of the hardships strongly favors CCSD, and there is a good  
21 chance CCSD will prevail on the merits in the underlying appeal.

22 This matter involves important public policy concerns regarding the  
23 right of public employees to raise concerns of all forms of sexual harassment  
24 and discriminatory conduct without fear of retaliation from the accused and  
25 without the loss of confidentiality. The portion of the District Court's Order,  
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1 filed on July 11, 2017,<sup>1</sup> requiring CCSD to produce the investigative file of  
2 the Office of Diversity and Affirmative Action will result in irreparable  
3 injury to CCSD employees and may also discourage future reporting of  
4 alleged discrimination.  
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6 CCSD would like to emphasize several key points in this Reply.  
7  
8 First, the investigative file includes the names of CCSD employees who are  
9 **not protected** by the July 11 Order. Even with the redactions allowed by  
10 the District Court, the investigative file would still include the names of  
11 administrators and teachers who were witnesses to sexual harassment (but  
12 not actually a “direct victim”) or complained of other actions by Trustee  
13 Kevin Child.  
14

15 Second, even if the names of all of the victims and witnesses were  
16 redacted, the investigative file is replete with personally identifiable facts  
17 **that lead directly to the identity of victims** of sexual harassment and  
18 witnesses.  
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21 Third, contrary to the assertions of the Las Vegas Review-Journal  
22 (“LVRJ”), the fears of lack of reporting and retaliation are not speculative.  
23 In his declaration, the Director of the Office of Diversity and Affirmative  
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27 <sup>1</sup> The District Court’s Order is “file stamped” on July 11, 2017. CCSD will  
28 refer to the July 11 file stamped date in this Reply and going forward.

1 Action testified to concrete and actual fears of retaliation by CCSD  
2 employees. *See Ex. 3.*

3  
4 Fourth, LVRJ's arguments about delay and an emergency motion for  
5 stay are a red herring. Regardless of any response deadlines or emergency  
6 briefing schedules, the investigative file should not be produced. Once the  
7 documents at issue are released to the LVRJ, it cannot be undone.

8  
9 Therefore, CCSD respectfully requests this Court to stay enforcement  
10 of the District Court's Order to the extent it requires disclosure of the  
11 investigative file. A stay is warranted in order to maintain the status quo  
12 pending appeal.

## 13 14 II. LEGAL ARGUMENT

### 15 A. The Court has broad discretion to stay proceedings.

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17 As set forth in the initial motion, in determining whether to grant a  
18 stay, this Court considers the factors listed in NRAP 8(c). *See* NRAP 8(c);  
19 *Fritz Hansen A/S v. Eighth Judicial District Court*, 116 Nev. 650, 6 P.3d 982  
20 (2000). One or two factors strongly in favor of appellant can be sufficient to  
21 grant a stay. While no one factor is more important, "if one or two factors  
22 are especially strong, they may counterbalance other weak factors." *Mikohn*  
23 *Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36 (2004).

24  
25 The Supreme Court of Nevada has recognized that "[t]he power to  
26 stay proceedings is incidental to the power inherent in every court to control  
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1 the disposition of the causes on its docket with economy of time and effort  
2 for itself, for counsel, and for litigants.” *Maheu v. Eighth Judicial Dist.*  
3 *Court*, 89 Nev. 214, 216-17, 510 P.2d 627, 629 (1973) (quoting *Landis v.*  
4 *North American Co.*, 299 U.S. 248, 254-55 (1936)); *see also Karuk Tribe of*  
5 *California v. United States Forest Serv.*, 2006 U.S. Dist. LEXIS 5908, \*4  
6 (N.D. Cal. 2006) (the court ““has **broad discretion** to stay proceedings as an  
7 incident to its power to control its own docket”) (quoting *Clinton v. Jones*,  
8 520 U.S. 681, 707-08 (1997)) (emphasis added).

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

12 CCSD set forth detailed arguments regarding the NRAP 8(c) factors  
13 in its initial Motion for Stay, and hereby incorporates those arguments by  
14 reference. CCSD does not concede any of its arguments by not restating  
15 them in this Reply. Instead, CCSD will emphasize a few key issues and  
16 clarify several inaccuracies included in LVRJ’s Response.

19 **(1) The purpose of the Nevada Supreme Court’s review**  
20 **will be defeated and CCSD will suffer serious injury if a**  
21 **stay is denied.**

22 If the status quo is not maintained, the subject of the CCSD’s appeal  
23 will become moot and irreparable injury will be suffered. These elements of  
24 the Rule 8(c) test are especially strong in this case and should be given  
25 added significance by the Court. *MiKohn*, 120 Nev. at 251-253, 89 P.3d at  
26 38-39.  
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1 In the July 11, 2017 Order, the District Court directed CCSD to  
2 produce the “withheld documents” and stated: “CCSD may redact the  
3 names of direct victims of sexual harassment or alleged sexual harassment,  
4 students, and support staff.” *See Ex. 1* at ¶ 88. Pursuant to the February 23,  
5 2017 Order: “CCSD may not make any other redactions, and must unredact  
6 the names of schools, all administrative level employees, including but not  
7 limited to deans, principals, assistant principals, program coordinators, and  
8 teachers.” (emphasis added)  
9  
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11 The “withheld documents” consist of the investigative file of CCSD’s  
12 Office of Diversity and Affirmative Action regarding its investigation of  
13 alleged discrimination of CCSD employees by Trustee Kevin Child. *See Ex.*  
14 *1* at ¶ 41. In particular, the District Court’s Order requires the release of all  
15 notes, drafts, memoranda, and chronological summary of the investigation  
16 conducted by Cedric Cole, Director of CCSD, Office of Diversity and  
17 Affirmative Action. *Id.*  
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21 The investigative file includes the names of other CCSD employees  
22 who are **not protected** by the Order. Even with the redactions allowed by  
23 the District Court, the investigative file would still include the names of  
24 administrators and teachers who were witnesses to sexual harassment (but  
25 not actually a “direct victim”) or complained of other actions by Trustee  
26 Child.  
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1 Furthermore, even if the names of all of the victims and witnesses  
2 were redacted, the investigative file is replete with personally identifiable  
3 facts that lead directly to the identity of victims of sexual harassment and  
4 witnesses. It is not possible to redact enough information to protect an  
5 employee who is either a victim or a witness from retaliation as is required  
6 by Title VII, 42 U.S.C. § 2000e-3(a). Further support for withholding the  
7 entire investigative file is that it is still an ongoing investigation, and if  
8 CCSD is required to release the investigative file, it may prejudice future  
9 complaints and/or witness statements.

13 CCSD has a duty to protect employees from retaliation. The fears of  
14 retaliation and persons considering against reporting in the future are not  
15 speculative. In his declaration, the Director of the Office of Diversity and  
16 Affirmative Action Programs testified to concrete and actual fears of  
17 retaliation. Retaliation was a particular concern of administrators because  
18 those are the employees who work in close proximity with Trustee Child and  
19 it is administrators who are required to have their promotions approved by  
20 the Board of Trustees. Specifically, Mr. Cole testified that:

24 6. As part of my investigation, I interviewed several  
25 employees all of whom but one expressed fears of retaliation  
26 from Trustee Child.

26 ///

27 ///

1           7.     Most but not all of the employees I spoke with  
2     referenced Trustee Child's habit of repeatedly telling them and  
3     others that he (Trustee Child) is the "boss" as the basis of their  
4     fears of retaliation.

5           8.     At least two of the employees I spoke with orally  
6     expressed fears of repressed opportunities for promotions or  
7     advancement within the organization as a form of retaliation  
8     from Trustee Child.

9     *See Ex. 3.*

10           CCSD employees' confidence in their ability to report sexual  
11     harassment and discrimination (or provide witness statements on behalf of  
12     such reports) without fear of retaliation, loss of further professional  
13     advancement and public exposure will be undermined if the status quo is not  
14     maintained. The chilling effect of stripping the employees of confidentiality  
15     due to a public records request will irreparably injure CCSD and its  
16     employees and undercut their federally mandated right to be free from  
17     sexual harassment in the workplace. *See* Title VII, 42 U.S.C. § 2000e *et.*  
18     *seq.*; U.S., Equal Employment Opportunity Commission, EEOC Notice No.  
19     915.002, *Enforcement Guidance on Vicarious Employer Liability for*  
20     *Unlawful Harassment by Supervisors*, at § V(D)(1) re Failure to Complain  
21     (dated 6/18/99, in effect until rescinded or superseded) (emphasis added);  
22     *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).

23           Therefore, the Court should conclude that CCSD has satisfied the first  
24     two factors of NRAP 8(c) in favor of granting a stay pending appeal.  
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1                   **(2) Las Vegas Review-Journal will not suffer any serious or**  
2                   **irreparable injury if a stay is granted.**

3           A stay will not cause any serious or irreparable injury to the LVRJ  
4           because the issue is not time sensitive. CCSD has already produced  
5           approximately 174 pages of emails and documents in response to public  
6           record requests and upon which the LVRJ has published articles identifying  
7           Trustee Child and alleging discriminatory conduct over the last year. See  
8           Motion for Stay at pp. 8-9. The LVRJ already knows the nature of Trustee  
9           Child's alleged misconduct, how CCSD responded, and the guidelines that  
10          have been put in place as a result. Therefore, the Court should conclude  
11          CCSD has satisfied the third NRAP 8(c) factor for granting a stay.  
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15                   **(3) CCSD is likely to prevail in these proceedings.**

16          As set forth in detail in the initial Motion, CCSD has a great  
17          likelihood of prevailing on the merits on appeal and has satisfied the final  
18          Rule 8(c) factor for entering a stay. *See* Motion for Stay at pp. 9-15;  
19          *Mikohn*, 120 Nev. at 253-54, 89 P.3d at 40; *Hansen*, 116 Nev. at 659, 6 P.3d  
20          at 987.  
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22  
23                   **III. CONCLUSION**

24          CCSD respectfully requests a stay of enforcement of the Order  
25          Granting Writ of Mandamus as to Withheld Records pending CCSD's  
26          appeal to the Nevada Supreme Court. A stay pending resolution of the  
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1 appeal in this matter will preserve the *status quo* and protect the interests of  
2 public employees.

3  
4 DATED: August 8, 2017

5 Respectfully Submitted,

6 

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