

LCSD (Respondent)

**Defendant Lander County School District's
Motion in Limine**

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12 BEFORE THE GOVERNMENT
13 EMPLOYEE-MANAGEMENT RELATIONS BOARD

14 LANDER COUNTY CLASSROOM
15 TEACHERS ASSOCIATION,

16 Appellant,

17 v.

18 LANDER COUNTY SCHOOL DISTRICT,

19 Appellee.

Case No. 2025-014

DEFENDANT LANDER COUNTY
SCHOOL DISTRICT'S MOTION IN
LIMINE

20 The Lander County School District (the "District") hereby moves to exclude and prevent
21 the introduction of inadmissible evidence in connection with Lander County Classroom Teachers
22 Association's ("LCCTA") Appeal of Unit Determination pursuant to NAC 288.375(3) (the
23 "Appeal"). This motion is made and based on the following memorandum of points and authorities.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 Under NRS 288.110(4), the Nevada Government Employee-Management Relations Board
27 (the "Board") "may not consider any complaint or appeal filed more than six months after the
28 occurrence which is the subject of the complaint or appeal." Despite this statutory limitation, the
LCCTA attempts to excuse the untimeliness of its Appeal by relying on evidence that is

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1 unequivocally inadmissible and subject to confidentiality obligations under the federal rules
2 governing FMCS grievance mediations. Specifically, with respect to LCCTA’s request to include
3 long-term substitute teachers (“LTS”) in the bargaining unit, the Board’s jurisdiction over the
4 Appeal now appears to rest entirely on self-serving affidavits submitted by LCCTA. Those
5 affidavits falsely suggest that, during the January 10, 2025, mediation, the District agreed to
6 continue negotiations regarding the inclusion of LTS in a successor Master Agreement. In doing
7 so, LCCTA contends that the limitation period under NRS 288.110(4) was tolled, giving the
8 appearance of a timely appeal. Not only are LCCTA’s assertions factually inaccurate, but its
9 reliance on inadmissible “evidence” is an improper attempt to extend the statutory deadline for
10 filing an appeal under NRS 288.110(4).¹

11 **II. STATEMENT OF FACTS**

12 LCCTA’s reliance on inadmissible evidence is necessitated by its patent failure to file the
13 Appeal timely. The District has long recognized the LCCTA as the bargaining unit, pursuant to
14 NRS 288.133, for all “Teachers,” defined as “all Nevada licensed staff members including
15 counselors and school nurses, eligible for membership in the Lander County Classroom Teacher’s
16 Association excluding the administrative staff.” *See Exhibits 1 and 2 to Motion to Dismiss*
17 *(“Motion”).* LTS have never been included in LCCTA’s bargaining unit, nor has their
18 classification been included in the Master Contract. **Exhibit 2 to Motion, Declaration of Sondra**
19 **Torgerson (“Torgerson Decl.”) at ¶¶ 10-14.** Their salaries and benefits have likewise never been
20 negotiated as part of the Master Contract. *Id.*

21 The District advised LCCTA of this fact on April 26, 2024, when District Superintendent,
22 Mr. Russell Klein emailed that LCCTA’s representative, Mr. Allen Gumm, stating that: “the

23 ¹ While the District recognizes that the rules of evidence governing the Board’s hearing on the
24 above captioned matter, scheduled for March 30, 2026, may be relaxed pursuant to NAC 288.322
25 by the Board, the rules applicable to the immediate hearing establish that the rules of evidence will
26 generally be followed. NAC 288.322(1). Here, the District preemptively objects to the “evidence”
27 that the LCCTA seeks to present at the hearing because as of today, the LCCTA has presented no
28 admissible evidence corroborating their story of events concerning the January 10, 2025 mediation,
and instead, are simply seeking to present self-serving statements concerning what was allegedly
discussed and/or said during mediation. Any court in the state of Nevada, would find this
“evidence” inadmissible on its face. As such, the District asks that the EMRB make an immediate
finding based on its objection, that any such evidence is inadmissible for the hearing.

1 contract limits its application to a bargaining unit comprised of licensed teachers, counselors, and
2 school nurses. This is how this contract has been interpreted for years, if not decades.” **See Exhibit**
3 **5 to Motion.** Mr. Klien noted further that any challenges to the District’s decision would be
4 untimely pursuant to NRS 288 because the contract has been limited to that list of classifications
5 for years. *Id.* Despite being on notice of the District’s position of LTS inclusion in the LCCTA
6 bargaining unit, or lack thereof, the LCCTA did not grieve that decision under the Master Contract
7 based on a theory that the additional classifications were already included in the bargaining unit,
8 nor did it appeal the decision to the Board pursuant to NRS 288.170(5).

9 LCCTA was again placed on notice of the District’s position that LTS are not part of the
10 LCCTA bargaining unit in September 2024. After the District reassigned an LTS from an
11 elementary school classroom to a middle school classroom, the LCCTA filed a grievance under the
12 Master Contract’s grievance procedure. **See Exhibit 6 to the Motion, Grievance** This grievance
13 alleged that the District failed to comply with the contract’s transfer provisions (the “Grievance”).
14 *See id.* On September 26, 2024, the District denied the Grievance, expressly stating that LTS are
15 not included in the LCCTA bargaining unit and therefore are not subject to the Master Contract.²
16 **See Exhibit 7 to the Motion, District Response at 3.**

17 On October 1, 2024, LCCTA responded by again disputing the District’s position that LTS
18 are excluded from the bargaining unit. **See Exhibit 7 to the Motion, LCCTA Response Email.** In

19 ² Notably, the LCCTA’s Grievance does not challenge any District decision establishing that LTS
20 are not included in the LCCTA bargaining unit. **See Mot. to Dismiss, Ex. 1.** Instead, the Grievance
21 challenges the reassignment of a LTS between school buildings/classrooms, arguing that the
22 District’s conduct in connection with the subject LTS’s reassignment violated various provisions
23 of the Master Contract – Article 11, sections 11.1.2 – 11.1.3 to be precise, which have to do with
24 voluntary and involuntary transfers of Teachers. *See id.* The Grievance never argues that the District
25 misapplied or otherwise violated Article 1, section 1.2, of the Master Contract, which deals with
26 the make-up of the bargaining unit and establishes what classifications the LCCTA and the District
27 agree are subject to the Master Contract.

24 Because the parties agreed to mediate the Grievance, mediation was necessarily limited to issues
25 actually raised in the subject grievance. The record confirms that bargaining-unit composition—
26 i.e., whether LTS fall within the LCCTA unit—was not grieved. Therefore, the issue was not
27 properly before the parties for mediation during the Grievance’s mediation. It follows that the
28 parties had no basis to engage in discussions regarding the bargaining unit’s make-up during
mediation because that issue fell well outside the scope of the issues presented for mediation
through the Grievance, and the Parties’ Grievance Procedure. *See id.*; *see also* Exhibit A to Reply
in Support of Motion to Dismiss at 11:02 Email from Katie Vezina dated Oct. 4, 2024.

1 its October 7, 2024, response, the District reiterated that LTS are not included in the bargaining
2 unit, have never been included, and do not share a community of interest with the bargaining unit
3 classifications. **See Exhibit 8 to the Motion, District Response Oct. 7, 2024.** Again, despite the
4 District's position being made unequivocally clear, LCCTA took no action to seek the inclusion of
5 the LTS classification into the bargaining unit. However, instead of grieving the District's decision
6 concerning the application of the Master Contract to LTS, the LCCTA moved the Grievance – a
7 grievance that does not challenge the District's position that LTS are not included in the Master
8 Contract – to mediation.

9 In an improper attempt to restart their long-expired 6-month limitations period, the LCCTA
10 now relies solely upon alleged communications between the parties (which are not related to issues
11 forwarded by the Grievance) at a confidential mediation concerning the Grievance. Following
12 District's denial of the Grievance, LCCTA requested to take the Grievance to FMCS mediation.
13 However, at no point prior to the January 10, 2025, mediation did the District agree to mediate the
14 composition of the bargaining unit to include LTS, as it had already asserted its management right
15 to determine the bargaining unit. **See Exhibit 5 to Motion, Declaration of Russell Klein ("Klein
16 Decl.>").** Furthermore, at no point prior to the mediation did the LCCTA ask to open mediation for
17 discussion of subjects that were outside the scope of the Grievance. Instead, the LCCTA simply
18 asked to mediate the *Grievance*. **See Exhibit A to Reply in Support of Motion to Dismiss
19 ("Reply") at 11:02 AM email from Katie Vezina dated Oct. 4, 2024.**

20 Following the mediation, the LCCTA contacted the District requesting the Grievance be
21 moved to arbitration. **See Reply at Exhibit C.** Given the District's understanding that mediation
22 had resolved all outstanding issues arising out of the Grievance, the District replied that arbitration
23 was unnecessary as no disputed issues remained. *Id.* The District proceeded to list the issues from
24 the Grievance that had been resolved. *See id.* Importantly, this list did not contain an agreement to
25 negotiate the inclusion of LTS into the Master Contract. *Id.* Moreover, after the LCCTA filed its
26 Demand for Arbitration, the LCCTA took no further action with respect to the Grievance, nor did
27 it respond to the District's January 22, 2025, email identifying the issues resolved at the mediation.
28 **Exhibit B to Reply.**

1 Nevertheless, although LCCTA never disputed the District’s position that the mediation
2 resolved all outstanding issues related to the Grievance, LCCTA subsequently proposed the
3 inclusion of LTS in the bargaining unit during negotiations for a successor agreement to the Master
4 Contract in March 2025. *See Exhibit E to Reply, LCCTA Proposal to Amendment Article 1.2.*
5 Once again, the District asserted its management right – as it had done as early as April 2024 –
6 not to negotiate the inclusion of LTS in the Master Contract, reiterating its position in its formal
7 counter proposals to the LCCTA. **Exhibit 5 to Motion.** At no point – including at the January 10,
8 2025, mediation – has the District ever agreed to negotiate or otherwise discuss the inclusion of
9 LTS in LCCTA bargaining unit or the LCCTA Master Contract. **Exhibit B to Reply.**

10 **III. ARGUMENT**

11 ***A. The Board Should Prevent LCCTA from Offering Testimony, Evidence, or***
12 ***Discussion from the Confidential Mediation Proceedings***

13 The federal rules governing a party’s participation in FMCS grievance mediations are set
14 forth in 29 C.F.R. § 1425.2. When a party agrees to participate in an FMCS grievance mediation,
15 it expressly agrees to abide by the guidelines established by the FMCS. *See* 29 C.F.R. §
16 1425.2(d)(9). Those guidelines make clear that the confidentiality of the mediation process is
17 paramount. Specifically, 29 C.F.R. § 1425.2(d)(4) unequivocally prohibits any form of recording
18 of the proceedings – whether by transcript, stenographic means, or audio recording – and further
19 provides that any notes taken by the mediator are confidential and not subject to disclosure. *Id.*
20 These confidentiality requirements are firmly grounded in the core principles of mediation, which
21 are designed to promote candor and the free exchange of information to facilitate resolution of
22 disputes. Courts in Nevada, as well as throughout the country, have consistently recognized and
23 enforced these principles across a variety of contexts. *See e.g., Civil Rights for Seniors v. AOC*, 129
24 Nev. 752, 758, 313 P.3d 216, 219 (2013) (recognizing under Nevada’s Foreclosure Mediation
25 Program that “all discussions during the mediation are confidential, post-mediation documents
26 memorializing or relating to those discussions are also confidential as a matter of law.”); *Controlled*
27 *Contamination Services, LLC v. Second Judicial Dist. Court in & for Cnty. of Washoe*, 576 P.3d
28 354 (Nev. 2025) (Nevada Supreme Court recognizing the mediation privilege and its inability

1 assess information from mediation to determine whether the parties participated in good faith);
2 *Folb v. Motion Picture Indus. Pension & Health Plans*, 16 F. Supp. 2d 1164, 1176 (C.D. Cal. 1998),
3 *aff'd*, 216 F.3d 1082 (9th Cir. 2000) (concluding that a “blanket mediation privilege is rooted in the
4 imperative need for confidence and trust among participants.”); *In re Telignet Services, Inc.*, 09
5 CIV. 09674 (PKC), 2010 WL 2034509, at *5 (S.D.N.Y. May 13, 2010), *aff'd sub nom. In re*
6 *Teligent, Inc.*, 640 F.3d 53 (2d Cir. 2011) (“In order to promote candor, a party must trust that oral
7 and written communications during a mediation will remain confidential.”).

8 Moreover, as it relates to FMCS mediations specifically, courts have rejected requests for
9 disclosure of information disclosed during those proceedings, recognizing the importance of
10 maintaining the confidentiality to foster resolution of labor disputes. *See e.g., Pipefitters, Local*
11 *Union No. 208 v. Mech. Contractors Ass'n of Colorado*, 79-C-1382, 1980 WL 2169, at *1 (D. Colo.
12 June 26, 1980) (“Effective mediation hinges upon whether labor and management negotiators feel
13 free to advance tentative proposals and pursue possible solutions that later may prove unsatisfactory
14 to one side or the other. Such uninhibited interaction may be impaired absent the assurance that
15 mediation proceedings will remain confidential.”). Additionally, various federal courts within the
16 Ninth Circuit have also recognized the existence of a federal mediation privilege under Fed. R.
17 Evid. 501, which applies to all communications made in conjunction with a formal mediation
18 proceeding with a neutral mediator. *Belden v. Cnty. of San Bernardino*, EDCV19900RGKXX,
19 2020 WL 3129208, at *5 (C.D. Cal. June 12, 2020) (noting that Courts in the Ninth Circuit have
20 adopted a federal mediation privilege under Fed. R. Evid. 501 “applicable to all communications
21 made in conjunction with a formal mediation.”) (*citing Folb, supra.* at 1179-80).

22 Despite the confidentiality obligations covering the January 10, 2025, FMCS mediation, the
23 LCCTA argues that during the mediation the District agreed to negotiate the inclusion of LTS into
24 the bargaining unit. This “evidence,” however, cannot be relied upon as credible. More importantly,
25 this “evidence” cannot be presented by LCCTA as it is entirely derived from alleged
26 communications which occurred during a confidential mediation proceeding. Indeed, LCCTA’s
27 argument suggests that despite repeatedly rejecting the LCCTA’s request to discuss the inclusion
28 of LTS into the bargaining unit, the District completely reversed its position during a mediation

1 session wherein it cannot confirm or deny what happened during the FMCS mediation without
2 violating its confidentiality obligations.

3 More troubling is LCCTA's complete lack of evidentiary support for its assertions, which
4 further underscores the need to scrutinize the source of the information and whether LCCTA (and
5 the Board) can disregard its confidentiality obligations under 29 C.F.R. § 1425.2(d)(4). Indeed,
6 LCCTA has failed to identify a single piece of evidence supporting its claim that the District agreed
7 during mediation to negotiate the inclusion of LTS employees into the collective bargaining unit.
8 **See Opposition to Motion to Dismiss ("Opposition"), generally.** Instead, LCCTA relies
9 exclusively on self-serving affidavits prepared for purposes of its Opposition, which – conveniently
10 – are unsupported by any contemporaneous evidence, including a written agreement between the
11 parties or any relevant communications. **See Exhibits 2 and 3 to Opposition.**

12 Ultimately, LCCTA's position rests entirely on an alleged agreement supposedly reached
13 during a confidential mediation, despite the absence of any record memorializing such an
14 agreement before or after the mediation process. This glaring lack of evidentiary support not only
15 exposes the implausibility of LCCTA's argument but also reinforces the necessity of precluding
16 LCCTA from offering any testimony, evidence, or discussion derived from the undisputedly
17 confidential mediation proceedings.

18 IV. CONCLUSION

19 Based on the foregoing, the District respectfully requests that the Board grant the Motion
20 in Limine, and order the exclusion of all evidence presented by the LCCTA which purports to
21 discuss communications which allegedly occurred during the January 10, 2025 mediation
22 concerning the Grievance.

24 Dated: March 13, 2026

LITTLER MENDELSON, P.C.

25 /s/ S. Jordan Walsh, Esq.

26 S. Jordan Walsh, Esq.

27 Attorneys for Respondent
28 LANDER COUNTY SCHOOL DISTRICT

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 501 W. Broadway, Suite 900, San Diego, CA 92101-3577. On March 13, 2026, I served the within document(s):

DEFENDANT LANDER COUNTY SCHOOL DISTRICT'S MOTION IN LIMINE

By **Email** - by e-mailing a copy of the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on March 13, 2026, at San Diego, CA.

/s/ Erin J. Melwak

Erin J. Melwak
Littler Mendelson

LCCTA (Complainant)

Opposition to Respondent's Motion in Limine

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LANDER COUNTY CLASSROOM
TEACHERS ASSOCIATION,

Appellant,

CASE NO. 2025-014

vs.

LANDER COUNTY SCHOOL
DISTRICT,

OPPOSITION TO
RESPONDENT'S MOTION
IN LIMINE

Respondent.
_____ /

COMES NOW, Appellant, Lander County Classroom Teachers Association ("LCCTA" or "Association") and files this Opposition to the Motion in Limine filed by Respondent, Lander County School District ("LCSD" or "District"), which motion may be hereinafter referred to or cited as "MIL." This Opposition is based on the memorandum of points and authorities herein, the pleadings and papers on file in this matter, the Joint Exhibit Index submitted to the Board and any oral argument on the MIL the Board may entertain at the hearing of this matter.

Respectfully, submitted this 24th day of March 2026.

MESSING ADAM JASMINE
& SHORE

By: /s/ Francis C. Flaherty
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MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Apparently appreciating the weakness of its position on the merits of this matter, the District seeks to rehash arguments already rejected by this Board when it denied the District’s motion to dismiss this Appeal in an order dated October 21, 2025. The District mischaracterizes the evidence (exhibits) presented to the Board in the briefing on that motion to dismiss and that will be presented to the Board at the hearing of this matter. The District also re-asserts its tortured interpretation of the well understood rule regarding the confidentiality of statements made by parties and matters discussed *during* mediation to somehow preclude a party from disclosing, and therefore enforcing, an agreement reached as *the result of the mediation*, which is completely non-sensical.

II

FACTS RELEVANT TO THE MIL

In its motion, the District falsely claimed that in April of 2024, LCSD “asserted its management right . . . not to negotiate inclusion of [Interim Educators] in the Master Contract.” MIL at 2:21 - 3:3; at 5:5-6. In support of this fiction, the District relies on Exhibit 4 of its prior motion to dismiss.¹ However, an examination of that exhibit demonstrates that both the email and the attached, proposed MOU from LCCTA dealt with inclusion of School Social Workers

¹ In the MIL, the District cites the Board to Exhibit 5 of its motion to dismiss, but an examination of Exhibits 4 and 5 of the motion dismiss demonstrates that the District’s intent was to cite Exhibit 4.

1 relied upon by the District—*Civil Rights for Seniors v. Administrative Office of the Courts*—
2 corroborates the Association’s understanding of its obligations regarding the confidentiality of
3 mediation proceedings. 129 Nev. 752, 313 P.3d 216 (2013). In that case, the appellant filed a
4 request pursuant to Nevada’s Public Records Act, seeking access to a variety of documents
5 related to Nevada’s Foreclosure Mediation Program (“FMP”). When the respondent failed to
6 provide all the requested documents, the appellant initiated proceedings in district court to
7 compel production of the documents. 129 Nev. at 754, 313 P.3d at 217.

9 The supreme court explained how the FMP works. The court noted that after
10 participating in the program in good faith, the beneficiary of the deed of trust can obtain a
11 mediation certificate, *which is recorded as a public document* and allows the beneficiary to
12 move forward with foreclosure proceedings. 129 Nev. at 755, 313 P.3d at 217-18. The court
13 then cited the FMP Rules: “the rules state that ‘[a]ll documents and discussions presented *during*
14 *the mediation* shall be deemed confidential and inadmissible in any subsequent actions or
15 proceedings, *except* in an action for judicial review.’ FMR 19.” *Id.* at 757-58, 313 P.3d at 219
16 (bold italics added). The court continued, stating that per “FMR 7(3) . . . ‘[a]ny program-issued
17 certificate is considered confidential *until recorded.*’” *Id.* at 758, 313 P.3d at 219 (emphasis
18 added). Thus, with regard to the issue broached in the MIL, the case cited by the District
19 actually supports the common-sense conclusion that what is said during mediation is
20 confidential, but the outcome of mediation is *not* confidential.

21 The other Nevada Supreme Court case cited by the District does not support its
22 remarkable assertion that the parties are precluded from disclosing an agreement reached as a
23 *result* of mediation. In that case the supreme court merely observed that “the mediation privilege
24 could limit a court’s ability to meaningfully assess good-faith *participation* in mediation.”
25
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1 *Controlled Contamination Servs., LLC v. Second Jud. Dist. Ct.*, 2025 Nev. Unpub. LEXIS 655,
2 *7-8, 576 P.3d 354 (2025) LX 360698, 2025 WL 2630331 (emphasis added). “Participation” in
3 mediation is necessarily something that occurs *during* the meditation, *not the outcome* of the
4 mediation.
5

6 The Nevada Supreme Court recently amended Nevada Rule of Appellate Procedure
7 (“NRAP”) 16 on May 27, 2025. A notable feature of NRAP 16 is utilization of a court-
8 appointed mediator to settle cases appealed to the supreme court in order to lessen the court’s
9 caseload. NRAP 16(b) (May 27, 2025). The prior version of NRAP 16 provided in subsection
10 (h) that:
11

12 Papers or documents prepared by counsel or a settlement judge in furtherance of a
13 settlement conference, excluding the settlement conference status report, shall not
14 be available for public inspection or submitted to or considered by the Supreme
15 Court or Court of Appeals. Matters discussed at the settlement conference and
16 papers or documents prepared under this Rule are not admissible in evidence in
17 any judicial proceeding and are not subject to discovery.

18 Note that even the prior version of NRAP 16 did not support the District’s assertion that the
19 *results* of a mediation are confidential. Now, as amended by the court, the confidentiality
20 provision is found at subsection (i) of NRAP 16, and provides:

21 All participants must sign a confidentiality agreement prior to commencement of
22 the settlement conference. Papers or documents prepared by counsel or a
23 settlement judge in furtherance of a settlement conference, excluding the
24 settlement conference status report and stipulation or motion to dismiss appeal,
25 must not be available for public inspection or submitted to or considered by the
26 Supreme Court or Court of Appeals. *Aside from the terms of a settlement
27 reached*, matters discussed at the settlement conference and papers or documents
28 prepared under this Rule are not admissible in evidence in any judicial proceeding
and are not subject to discovery.

NRAP 16(i) (May 27, 2025) (emphasis added). Thus, the Nevada Supreme Court has now made
clear what had been intuitively obvious prior to the rule amendment.

LCSD (Respondent)

**Reply in Support of Defendant Lander County
School District's Motion in Limine**

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12 BEFORE THE GOVERNMENT

13 EMPLOYEE-MANAGEMENT RELATIONS BOARD

14 LANDER COUNTY CLASSROOM
15 TEACHERS ASSOCIATION,

16 Appellant,

17 v.

18 LANDER COUNTY SCHOOL DISTRICT,

19 Appellee.

20 **REPLY IN SUPPORT OF DEFENDANT
21 LANDER COUNTY SCHOOL
22 DISTRICT'S MOTION IN LIMINE**

23 The Lander County School District (the "District") hereby submits its reply in support of
24 its Motion in Limine, which seeks to exclude and prevent the introduction of inadmissible evidence
25 in connection with Lander County Classroom Teachers Association's ("LCCTA") Appeal of Unit
26 Determination pursuant to NAC 288.375(3) (the "Appeal").

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. INTRODUCTION**

Recognizing the complete absence of evidence to support its position, LCCTA has resorted to manufacturing a purported dispute in a desperate – and unnecessarily aggressive – attempt to salvage its untimely Appeal. Notably, LCCTA's Opposition to Respondent's Motion in Limine ("Opposition") largely concedes that mediation proceedings, and any communications or

1 documents derived therefrom, are privileged and confidential. In fact, rather than meaningfully
2 contest that principle, LCCTA attempts to blur the issue by asserting that the evidence it relies upon
3 to establish the timeliness of its Appeal does not originate from the January 10, 2025, mediation
4 itself, but instead is evidence established after the fact, characterized as a “mediation outcome.”
5 LCCTA’s arguments wholly miss the mark.

6 Despite repeatedly and emphatically asserting that an agreement was reached during
7 mediation – and that a definitive “mediation outcome” occurred – LCCTA is unable to identify a
8 single piece of admissible evidence demonstrating that the District agreed to negotiate the inclusion
9 of long-term substitute teachers (“LTS”) into the bargaining unit. That is because no such evidence
10 exists. In reality, the asserted “mediation outcome” is nothing more than an attempt to misuse the
11 mediation privilege to allege the existence of an agreement that cannot be proved or refuted without
12 breaching the mediation privilege. Ultimately, the timeliness of the LCCTA’s Appeal rests solely
13 upon evidence that is inadmissible, and therefore, should be excluded from the Hearing.

14 II. ARGUMENT

15 The District set forth the relevant facts in its Motion in Limine (“Motion”), there is no need
16 to recite them again here. However, the District will initially address the factual inaccuracies set
17 forth in LCCTA’s Opposition. At the outset, LCCTA asserts that the District “falsely claimed” it
18 invoked its management right not to negotiate the inclusion of LTS in the Master Contract as early
19 as April 2024. **Opposition at 2:20–3:3.** This assertion is demonstrably incorrect. A plain reading
20 of Exhibit 4 to the Motion to Dismiss (“MTD”) clearly and unequivocally articulates the District’s
21 longstanding position that the Master Contract “limits its application to a bargaining unit comprised
22 of licensed teachers, counselors, and school nurses,” and that this limitation reflects how the
23 agreement “has been interpreted for years, if not decades.” **Ex. 4 to MTD.**

24 Implicit in Russell Klein’s email to LCCTA representative, Allen Gumm, is the District’s
25 assertion of its management right not to negotiate the inclusion of additional classifications, as the
26 composition of the bargaining unit had long been settled and did not include LTS. *Id.* Indeed, Mr.
27 Klein expressly noted that any challenge to the District’s position would be untimely under NRS
28 288, precisely because the bargaining unit has been limited to those classifications for many years.

1 *Id.* LCCTA’s suggestion that the District mischaracterized its position is flatly contradicted by the
2 documentary evidence itself.

3 LCCTA then offers a strained and inconsistent recitation of its own argument, asserting that
4 it never claimed the District agreed “*during the mediation*” to negotiate the inclusion of LTS into
5 the bargaining unit. **Opposition at 3:4–6.** Instead, LCCTA contends that it has consistently
6 maintained that it is not disclosing anything that occurred during the mediation, but that it relies
7 solely on what it characterizes as the “*outcome*” of the mediation. This distinction is illusory and
8 disregards the evidence it cites in support.

9 Specifically, in its Opposition to the Motion to Dismiss (“Opposition to MTD”), LCCTA
10 cites the Declarations of Milena Parker and Katherine Vezina, who both testify an agreement was
11 reached during the mediation, but these Declarations rely entirely on the Declarant’s allegations
12 concerning what they recall happened during mediation and point to no admissible evidence
13 supporting their position. **Exhibits 2 and 3 to Opposition to MTD.** Through the self-serving
14 declarations, LCCTA attempts to avoid the confidentiality and privilege attaching to mediation
15 proceedings by re-labeling alleged mediation communications as a post-mediation “*outcome,*”
16 while simultaneously disclaiming any reliance on what transpired during the mediation itself. In
17 doing so, LCCTA merely repackages the same inadmissible mediation evidence under a different
18 name, without identifying any independent, non-privileged evidence to support its claim. The
19 Opposition establishes that LCCTA’s argument against dismissal rests entirely on confidential
20 mediation statements presented by its own representatives. These statements are protected,
21 inadmissible, and cannot be considered by the Board as a matter of law because as the LCCTA
22 acknowledges, information concerning what did or did not happen during a mediation is protected
23 from disclosure.

24 By contrast, the non-privileged evidence affirmatively demonstrates that there was no
25 “*mediation outcome*” reflecting an agreement by the parties to discuss the inclusion of LTS in the
26 bargaining unit. Indeed, even accepting LCCTA’s framing of a supposed “*mediation outcome,*”
27 basic logic dictates that such an outcome would have been memorialized in some form following
28 the mediation. No such memorialization exists here.

1 Following the mediation, LCCTA contacted the District and requested that the Grievance
2 be advanced to arbitration. **Ex. C to Reply to Motion to Dismiss (“Reply to MTD”)**. In response,
3 the District specifically stated that it believed all outstanding issues related to the Grievance were
4 resolved and provided an itemized list of those issues. *Id.* Undisputedly absent from that list was
5 **any purported agreement to negotiate the inclusion of long-term substitutes into the Master**
6 **Contract.** *Id.* After the District provided the itemized list of issues that were resolved, LCCTA
7 took no further action. *Id.* This failure to object or clarify further confirms that no agreement
8 concerning the inclusion of LTS was reached, and that no such “mediation outcome” ever existed.

9 LCCTA has produced no admissible evidence that the District ever agreed—before, during,
10 or after mediation—to negotiate the inclusion of long-term substitutes in the Master Contract.
11 Rather than identify any written agreement, post-mediation correspondence, or objective conduct
12 reflecting the existence of a mutual agreement, LCCTA relies exclusively on its own
13 representatives’ declarations describing what they contend occurred during mediation.

14 Confronted with the absence of any evidence outside of what they contend occurred during
15 mediation, LCCTA attempts to avoid well-settled principles of mediation confidentiality, principles
16 they agree apply to mediation communications, by re-labeling its representatives’ recollections of
17 mediation discussions as a purported “mediation outcome.” This semantic reframing does not alter
18 the source or nature of the information. The declarations still derive solely from alleged mediation
19 communications which are confidential and protected from disclosure. Accepting the introduction
20 of recharacterized information about what allegedly occurred during mediation, as the LCCTA now
21 seeks to do, would undermine mediation confidentiality by allowing parties to introduce allegations
22 concerning the content of privileged communications under alternative labels.

23 Importantly, LCCTA’s “mediation outcome” theory merely restates its allegation that the
24 parties agreed to negotiate over long-term substitutes during mediation, attempting to elevate that
25 allegation into evidence of an enforceable agreement. Because this theory depends entirely on
26 LCCTA’s representatives’ allegations concerning alleged mediation communications that are
27 inadmissible and unsupported by any independent, admissible evidence, the evidence cannot be
28 considered by the Board and must be excluded from the record.

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III. CONCLUSION

Based on the foregoing, the District respectfully requests that the Board grant the Motion in Limine and order the exclusion of all evidence presented by the LCCTA which purports to discuss communications which allegedly occurred during the January 10, 2025, mediation concerning the Grievance.

Dated: March 27, 2026

LITTLER MENDELSON, P.C.

/s/ S. Jordan Walsh, Esq.
S. Jordan Walsh, Esq.

Attorneys for Respondent
LANDER COUNTY SCHOOL DISTRICT

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 501 W. Broadway, Suite 900, San Diego, CA 92101-3577. On March 27, 2026, I served the within document(s):

**DEFENDANT LANDER COUNTY SCHOOL DISTRICT'S
REPLY IN SUPPORT OF MOTION IN LIMINE**

By **Email** - by e-mailing a copy of the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on March 27, 2026, at San Diego, CA.

/s/ Erin J. Melwak
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Littler Mendelson