

**Reporter's Transcript of Nevada Equal Rights Commission - February 17, 2012  
Public Meeting**

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REPORTER'S TRANSCRIPT OF  
NEVADA EQUAL RIGHTS COMMISSION  
PUBLIC MEETING

Taken at Department of Employment, Training  
& Rehabilitation  
Stanley P. Jones Building, Conference Room C  
2800 East St. Louis Avenue  
Las Vegas, Nevada

On Friday, February 17, 2012

At 9:04 a.m.

Reported by: Jane V. Efaw, CCR #601, RPR

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1 COMMISSIONERS IN ATTENDANCE:

2

PATRICIA CAFFERATA, Chair (via video conference)

3

SWADEEP NIGAM, Commissioner

4

LEE PLOTKIN, Commissioner

5

TIFFANY YOUNG, Commissioner (via video conference)

6

7

ALSO PRESENT:

8

9 SHELLEY CHINCHILLA, Administrator

10 ROSEMARY REYNOLDS, Deputy Attorney General

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1 Friday, February 17, 2012; Las Vegas, Nevada

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

3 \* \* \* \* \*

4

5 COMMISSION CHAIR CAFFERATA: I'm going to  
6 call to order the Nevada Equal Rights Commission  
7 meeting. And where's our secretary?

8 MS. CHINCHILLA: She's here.

9 COMMISSIONER PLOTKIN: We're having a little  
10 trouble hearing.

11 COMMISSION CHAIR CAFFERATA: Could the  
12 secretary please call the roll?

13 MS. DELANEY: Pat Cafferata.

14 COMMISSION CHAIR CAFFERATA: Here.

15 MS. DELANEY: Tiffany Young.

16 COMMISSIONER YOUNG: Here.

17 MS. DELANEY: Swadeep Nigam.

18 COMMISSIONER NIGAM: Present.

19 MS. DELANEY: Lee Plotkin.

20 COMMISSIONER PLOTKIN: Here.

21 COMMISSION CHAIR CAFFERATA: We have a  
22 quorum?

23 MS. DELANEY: Yes, we do.

24 COMMISSION CHAIR CAFFERATA: And you posted  
25 the agenda in compliance with the open meeting law?

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1 MS. DELANEY: Yes, I have.

2 COMMISSION CHAIR CAFFERATA: My agenda says  
3 we're now going to have a public hearing on the  
4 petition for a declaratory order. Is that correct,  
5 Shelley?

6 MS. CHINCHILLA: Yes.

7 COMMISSION CHAIR CAFFERATA: All right. Is  
8 there someone there who's going to make the argument  
9 for the petition that they filed?

10 MS. CHINCHILLA: Yes. We'll have them come  
11 up to the table.

12 COMMISSION CHAIR CAFFERATA: And I would  
13 just like everybody to know that Ms. Young has to  
14 leave to catch a plane and probably will be leaving  
15 at noon. We will still have a quorum, but it will  
16 require that we have three votes to pass anything.

17 Could you please state your name and spell  
18 your name for the record?

19 MS. ROGERS: My name is Katrina Rogers,  
20 K-a-t-r-i-n-a, R-o-g-e-r-s. And I'm legal counsel  
21 with the ACLU of Nevada.

22 COMMISSION CHAIR CAFFERATA: Okay. Go  
23 ahead.

24 MS. ROGERS: Good morning, everyone. First  
25 off I'd like to thank you for having this hearing and

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1 recognizing the petition that we filed regarding the  
2 definition of public schools as places of public  
3 accommodation. I believe everyone has the materials  
4 that include our petition that was filed and then  
5 written testimony that we have filed in support of  
6 that petition. I'll go over the written testimony  
7 briefly.

8           But before I start that, I would like to  
9 thank Shelley for forwarding the information that was  
10 received from other school districts in response to  
11 the petition that we filed. And I'd briefly like to  
12 address that first.

13           I believe that there were two letters that  
14 we received from Nye County and from Clark County  
15 objecting, in part, to the issue of standing, whether  
16 or not we are able to bring this issue before the  
17 Commission without an actual case before us.

18           In response to that, the Nevada  
19 Administrative Code 233.260 states that a person may  
20 petition the Commission for a declaratory order  
21 concerning the applicability of a statute. And the  
22 Nevada Revised Statute 233B.037 goes on to define  
23 "person" to include any political subdivision or  
24 public or private organization of any character other  
25 than an agency. So it's clear that we do fit into

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1 the definition of "person," and we can petition this  
2 Commission for action.

3 Now I'm going into our actual petition that  
4 we filed. In our work it came to our attention that  
5 there are some school districts in the State of  
6 Nevada who are unclear about the applicability of the  
7 new public accommodations law in their school system.  
8 The law states in NRS 651.050 it defines places of  
9 public accommodation.

10 And then Subsection 3, Subsection K, of that  
11 defines places of public accommodation as any  
12 nursery, private school, or other place of public  
13 education. It does not state in the public  
14 accommodations statute that schools are places of  
15 public accommodation. In the case entitled Clark  
16 County School District vs. Buchanan, the Supreme  
17 Court did extend the definition of other places of  
18 education to include public schools.

19 Now, we believe the law is very clear that  
20 public schools do fall under the category of places  
21 of public accommodation and, as such, are under the  
22 jurisdiction of the new public accommodation laws  
23 preventing discrimination in the public schools.

24 Why we petitioned NERC for this declaratory  
25 order was to explicitly get a definition that defines

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1 places of public accommodation to include public  
2 schools. So if the issues of discrimination in  
3 public schools were to arise, we could point to an  
4 order that clearly encompasses NERC's jurisdiction  
5 and the law to state to the public schools, "You are  
6 required to abide by the laws defining public  
7 accommodations."

8           In the written materials that we have  
9 submitted, I'll just briefly go over some of the  
10 headings and some of the more important points. And  
11 we believe that the Nevada Equal Rights Commission is  
12 better suited to address remedy and eliminate  
13 unlawful student discrimination in public schools  
14 than the Nevada Department of Education and the 17 in  
15 Nevada school districts.

16           The Nevada Department of Education lacks the  
17 ability to effectively and comprehensively respond to  
18 discrimination complaints in the public schools  
19 because under Nevada law, the Department of Education  
20 is the policy-making body. It's not designed to  
21 address and remedy discrimination and complaints in  
22 public schools.

23           And, in fact, through our research for this,  
24 we discovered that -- when we contacted the Nevada  
25 Department of Education, they explicitly said -- and

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1 I hope I pronounce his name right -- Keith Rheault,  
2 the Department of Education Superintendent of Public  
3 Instruction, he confirmed that the Department of  
4 Education -- and this is a quote -- does not directly  
5 provide services to students and therefore students  
6 are not considered beneficiaries under the  
7 Department's discrimination policy.

8 So it's clear that the overarching of  
9 education is not designed to address issues of  
10 student discrimination in the public schools. They  
11 do say that each of the 17 school districts has had a  
12 Title 9 specialist and has their own policies to  
13 address the discrimination in a local setting in the  
14 school.

15 And, in fact, the Department of Education  
16 Title 9 specialist who has overarching oversight of  
17 the school district has retired, and they have yet to  
18 fill the vacancy. So there currently is no acting  
19 Title 9 specialist at the Department of Education.

20 It's concerning to us that the school  
21 districts are left to their own to define policies  
22 and procedures to address student discrimination.  
23 And through our research, we found that the majority  
24 of the school districts nondiscrimination policies  
25 are completely outdated.



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1           11 out of 17 of the school districts  
2 policies failed to provide protection for  
3 discrimination based on sexual orientation, even  
4 though sexual orientation was explicitly added to the  
5 public accommodations law in 2009. Some school  
6 districts have not revised their policies in over  
7 five years, and at least two have not updated their  
8 policies since 2001.

9           The complaint policies and procedures that  
10 are in place are also significantly outdated. And,  
11 for example, Clark County school districts have not  
12 updated their complaint policy or procedure since  
13 2004.

14           By defining public schools to be places of  
15 public accommodation, NERC could utilize the full  
16 extent of its jurisdiction and provide students and  
17 parents with an alternative method to address the  
18 unlawful discrimination in public schools because as  
19 of now, students who face discrimination really have  
20 nowhere to go. They can go to the principal, who can  
21 pull out an updated policy. They may not even notice  
22 that this category of discrimination is a protected  
23 class. And if it doesn't go anywhere, the students  
24 have nothing left to do. Now, they could file a  
25 private action, but I'm sure a lot of students don't

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1 know that.

2 NERC is explicitly authorized to have the  
3 jurisdiction to remedy and address issues of  
4 discrimination pursuant to NRS 233.150. NERC has the  
5 power to investigate allegations of discrimination,  
6 mediate any disputes, coerce the discriminating party  
7 to cease and desist and persuade other agencies to  
8 delete discriminatory practices. So we're having the  
9 Commission to include public schools in places of  
10 public accommodation.

11 We have information about other schools.  
12 And I won't go into that today, but I just wanted to  
13 make reference to the materials there and that if the  
14 Commission had any questions or was seeking some  
15 guidance in other states, the information is included  
16 in our packet.

17 And backing up a little, I wanted to point  
18 out the charts that we have on page 20 and 21 of our  
19 written information that shows what schools include  
20 in their nondiscrimination policy. And you can see  
21 some of them are substantially lacking.

22 Lander County School District only provides  
23 protection for discrimination on race, sex,  
24 disability and national origin. They completely  
25 ignore religious creed, color, age, sexual

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1 orientation, ancestry, and gender identity and  
2 expression.

3           And if there was an issue to arise with  
4 student discrimination based on those categories and  
5 the school district did not address it, we would like  
6 the Commission to be in a place to say, "We have the  
7 authority to investigate these complaints and remedy  
8 these complaints" to give students an outside channel  
9 to address those issues.

10           The specific wording of the Order that we  
11 are asking NERC to authorize today would be to issue  
12 an order stating the plain terms of NRS 651.050,  
13 Subsection 3, Subsection K, defining other places of  
14 education to encompass public schools. Therefore,  
15 public schools are subject to Nevada laws prohibiting  
16 discrimination in public accommodations.

17           Public school students possess the legal  
18 right to file associated complaints with the Nevada  
19 Equal Rights Commission. And we believe by issuing  
20 this order, NERC will make it clear that the  
21 Commission has the authority and the ability to  
22 address these issues.

23           And if there are any further questions or  
24 comments I would be able to respond to throughout  
25 this meeting, I would be happy to do that. Thank you

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1 so much for your time, and if you have any questions,  
2 let me know.

3 COMMISSION CHAIR CAFFERATA: Does anybody  
4 have any questions?

5 COMMISSIONER PLOTKIN: I have a basic  
6 question for our Deputy Attorney General just on the  
7 basic issue that we're discussing here today. Is it  
8 merely whether public schools should be considered  
9 places of public accommodation? Is that the only  
10 question we're looking at at this time?

11 MS. REYNOLDS: Yes.

12 MS. ROGERS: And the material I provided is  
13 merely to show you why that's important and some of  
14 the ways that the Commission could address these in  
15 the future.

16 COMMISSION CHAIR CAFFERATA: Other  
17 questions? Well, I have a couple questions. The  
18 Supreme Court of Nevada has already ruled on this  
19 issue. As a lawyer, I have a hard time with us  
20 saying to the Nevada Supreme Court, "Yeah, you're  
21 right." Where is our jurisdiction here?

22 MS. ROGERS: The jurisdiction is to issue  
23 the Order.

24 COMMISSION CHAIR CAFFERATA: The Supreme  
25 Court has already said public schools are places of

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1 public accommodation. So where do we get any  
2 authority to say to the Supreme Court, "Yeah, we  
3 agree with you." That's a real stretch for me.

4 MS. ROGERS: Well, what I believe the  
5 authority is is that the Commission has the ability  
6 to issue orders to a certain applicability of a  
7 statute. And in this case the applicability --

8 COMMISSION CHAIR CAFFERATA: I have no  
9 problem with that. I understand that. I'm not  
10 challenging that. What I'm questioning is where does  
11 NERC get any authority to confirm what the Supreme  
12 Court has already ruled? Why do you need this?

13 And you pointed it out. The law is clear.  
14 Buchanan has already said these are places of public  
15 accommodation. What role do we have here?

16 MS. ROGERS: What I believe the Commission's  
17 role is is by encompassing what the Supreme Court has  
18 already decided and by explicitly defining public  
19 accommodations to include public schools, it allows  
20 NERC, who already has the jurisdiction and authority  
21 to address the complaints, to be in a position that  
22 is more visible to public schools and public school  
23 students and to make sure that the Department of  
24 Education understands that they are under the  
25 authority of what the Supreme Court has decided.

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1           And I believe that by issuing this, the  
2 Order, the issue is not one of jurisdiction to create  
3 new law. It's merely an issue of jurisdiction to  
4 say, "We have the authority over this. And school  
5 districts, if you're not abiding by these policies,  
6 we can address them."

7           COMMISSION CHAIR CAFFERATA: Okay. Well, it  
8 seems to me what you're trying to do is expand our --  
9 just for sake of argument, suppose we say, "Okay.  
10 They are places of public accommodation." But what  
11 you really want is for us to expand our jurisdiction  
12 to something that the legislature has not given us.  
13 Schools are not in our statute at all. And there are  
14 provisions for this.

15           The school districts, you don't like what  
16 they're doing apparently. But it seems to me you  
17 need to go to the legislature to ask them to fix this  
18 if you want us to have the jurisdiction because  
19 there's nowhere in our statute that talks about  
20 school districts.

21           MS. ROGERS: What the jurisdiction would be  
22 is to have students that have issues of  
23 discrimination in schools and are not getting the  
24 remedies to be able to go outside to the Commission  
25 that does have the jurisdiction to hear complaints of

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1 discrimination in places of public accommodation.

2 And by making it explicitly clear, you allow students  
3 to have this ability.

4 COMMISSIONER YOUNG: So you want us to be  
5 placed in a position to hear students beyond being  
6 able to hear them in the districts?

7 MS. ROGERS: Yes, because it's clear that  
8 school districts are not hearing issues of  
9 discrimination like they're supposed to. So by  
10 having a remedial channel, the students can find some  
11 relief.

12 COMMISSIONER YOUNG: Because I would have  
13 some concern about that as well. And I'm not an  
14 attorney. I would have some concern about students  
15 and their families. Because I heard you say that  
16 parents and students, you would like them to have an  
17 alternative with what's happening in their districts.

18 So if, in fact, this happens and students  
19 come here, parents come here, a hearing is held, then  
20 what weight does that carry, depending on what  
21 judgment we make here at the Commission, if it's  
22 already been a decision made in the Supreme Court?

23 MS. ROGERS: The weight that it carries with  
24 the Commission -- and let me refer again to NRS  
25 233.150 -- is that NERC has the authority to

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1 investigate -- mediate disputes and coerce the  
2 discriminating party to cease and desist. You have  
3 that jurisdiction to do that. And if public schools  
4 are defined explicitly as places of public  
5 accommodation, so you coerce the school districts to  
6 cease and desist this discriminatory action.

7 COMMISSION CHAIR CAFFERATA: She is looking  
8 at the NRS that you just cited. And "she" for the  
9 record is Ms. Young, for the court reporter.

10 COMMISSIONER YOUNG: I guess my concern  
11 still stands on that with regard to public  
12 accommodation, and it's still not clear.

13 MS. ROGERS: What part isn't clear? Can I  
14 help clarify anything?

15 COMMISSIONER YOUNG: I'm still trying to  
16 understand and my question is similar to our Chair in  
17 that whether or not we have that authority based on  
18 what the Supreme Court ruling is.

19 THE WITNESS: The authority to address  
20 issues of discrimination in public schools?

21 COMMISSIONER YOUNG: Yes.

22 MS. ROGERS: Well, NERC has the authority to  
23 address discrimination in places of public  
24 accommodation. And as of right now to some school  
25 districts in the State of Nevada, it is unclear



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1 whether or not they fall into that category of public  
2 accommodation. We're asking NERC to issue an order  
3 explicitly defining and saying, "Yes, public schools,  
4 you are places of public accommodation. Not only do  
5 the laws say that, but NERC's authority to address  
6 issues of discrimination in places of public  
7 accommodation do include public schools. And if the  
8 public schools are unable to adequately address  
9 these, the Commission has the weight and authority to  
10 do so."

11 COMMISSIONER PLOTKIN: I do have a question  
12 if it gets to that point.

13 COMMISSION CHAIR CAFFERATA: Sure, go ahead.

14 COMMISSIONER PLOTKIN: And I'm looking over  
15 the chart that she pointed out in the information  
16 provided on page 20 and 21 that she referred to  
17 earlier. Perhaps both the Deputy Attorney General  
18 and the representative from ACLU could respond to  
19 this. Is there an argument to be made that this  
20 issue is significant to NERC in that NERC would  
21 provide consistency for protected classes statewide  
22 where currently county to county there's tremendous  
23 variants in protected classes covered within the  
24 school district that differ from state law?

25 For instance, the fact that Lander County

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1 was cited as not including age, color or religion.

2 So in Lander County it would seem to be a much  
3 greater challenge than other counties for those  
4 protected classes.

5 And if it's relevant, would NERC have a  
6 viable role in providing a statewide consistent  
7 agency for reporting complaints? And if the ACLU  
8 could respond, and maybe Rosemary could respond after  
9 that.

10 MS. ROGERS: It would be our hope that that  
11 is an ultimate goal. What we're asking the  
12 Commission to do today is just to issue the  
13 Declaratory Order to ensure that there is  
14 jurisdiction over school districts.

15 We understand that there is probably a lot  
16 of work to be done in the school districts. Like you  
17 said, it's clear that the 17 school districts are not  
18 even complying with state law based on their  
19 anti-discrimination policies.

20 It would be our hope that NERC would be in a  
21 position to provide consistency or to at least  
22 provide, like I said, an alternative avenue since  
23 it's clear that if there's a student in these school  
24 districts that do not apply or do not include the  
25 full breadth of protections that the state law

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1 includes, that they're not going to get the remedies  
2 that they deserve.

3 So going to the Commission as an out body  
4 who has the authority to address these would either  
5 help provide consistency to the schools and maybe in  
6 the hope of revising policies or at least to ensure  
7 that the students that should be protected by state  
8 law are done so.

9 COMMISSIONER PLOTKIN: And if our Deputy  
10 Attorney General has any thoughts.

11 MS. REYNOLDS: I just want to reiterate what  
12 the ACLU has said. You're here on a very narrow  
13 question. And you're really looking at a definition  
14 under 651.050(3)(K). All of this discussion  
15 regarding policy, while it's important, that's really  
16 not why you're here.

17 And I also have to point out that the  
18 Commission is a limited jurisdiction. The duties and  
19 what they're able to do are not wide ranging. If you  
20 look at NRS 651.070, which is what governs  
21 discrimination in places of public accommodation,  
22 that's very narrow.

23 COMMISSIONER PLOTKIN: I guess that kind of  
24 goes to the first question I had, which is if the  
25 scope of why we're here today is limited to that

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1 single question, would all of this other policy  
2 discussion, as it's just been called, everything  
3 besides the question before us, would that not be the  
4 material for a subsequent public meeting where that  
5 element is specifically stated in an open meeting  
6 law, that we're going to be discussing the policy  
7 aspects of the question that we're going to consider  
8 today?

9 MS. REYNOLDS: Correct.

10 MS. ROGERS: And we would be more than  
11 willing to provide any information or assistance in  
12 any future meetings.

13 The reason that we included this material  
14 today was to show the importance behind the decision.  
15 And if there needed to be any future meetings or  
16 policy discussions, the material will already be  
17 present in the Commission.

18 COMMISSIONER PLOTKIN: Thank you.

19 COMMISSION CHAIR CAFFERATA: Okay. Well,  
20 are you changing what your question is? The question  
21 you're saying is just the definition?

22 MS. ROGERS: Correct.

23 COMMISSION CHAIR CAFFERATA: And not the  
24 expansion. Okay. So then you're not asking for us  
25 to expand our jurisdiction into the schools?

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1 MS. ROGERS: No, ma'am.

2 COMMISSION CHAIR CAFFERATA: You're just  
3 asking us to --

4 MS. ROGERS: We're asking for a  
5 clarification of the definition of public  
6 accommodations, the definitions.

7 COMMISSION CHAIR CAFFERATA: Period?

8 MS. ROGERS: Period.

9 COMMISSION CHAIR CAFFERATA: Period.

10 MS. ROGERS: The definition says other  
11 places of education. It has come to our attention  
12 that there are some public schools that believe they  
13 do not fall in that definition. So we're asking for  
14 an order to explicitly define public schools as  
15 places of public accommodation.

16 COMMISSION CHAIR CAFFERATA: Period?

17 MS. ROGERS: And that's it.

18 COMMISSION CHAIR CAFFERATA: You're not  
19 asking us to expand our jurisdiction into the  
20 schools?

21 MS. ROGERS: No, ma'am, because I believe  
22 that that jurisdiction already exists.

23 COMMISSION CHAIR CAFFERATA: All right. So  
24 we're back to square one, which is the Supreme Court  
25 has already ruled. Why should we? Because we're not

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1 in a position to tell the Supreme Court that, yes,  
2 they're right.

3 MS. ROGERS: I don't believe that by issuing  
4 this Order it has any reflection on whether or not  
5 the Supreme Court is correct. We're asking the  
6 Commission to issue the Declaratory Order concerning  
7 the applicability of a statute, the public  
8 accommodation statute. The applicability in this  
9 case is, yes, it does apply to public schools. And  
10 that's what we're asking the Commission to do.

11 COMMISSION CHAIR CAFFERATA: More questions?

12 COMMISSIONER PLOTKIN: I guess maybe it's  
13 just an observation because I can sense the Chair's  
14 point -- if I'm wrong, correct me -- that this would  
15 almost seem redundant for us if we were to concur  
16 with what's before us. Although the element of NERC  
17 impacting public policy with public education, I  
18 guess if it's redundant, at least it's redundant  
19 coming from the Nevada Equal Rights Commission, the  
20 way that I'm hearing it.

21 I appreciate the Supreme Court basically  
22 already saying this. But to me, and for lack of a  
23 better phrase, it would be in essence the Nevada  
24 Equal Rights Commission affirming that it is public  
25 policy in Nevada. That's the way I'm hearing it.

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1           COMMISSION CHAIR CAFFERATA: Okay. Well,  
2 you know lawyers are sworn officers of the court.  
3 And I'm not going to tell the Supreme Court, "Gee,  
4 you're really right." I'm simply not going to go  
5 there.

6           I think if this is an issue and if you look  
7 at your attachments and so forth, I think you need to  
8 go back to the legislature and get them to do  
9 something because our statute now does not cover  
10 schools. The schools have their procedures, and  
11 apparently they're not so hot.

12           So you need to either have that enforced at  
13 the school district level, or you need to have the  
14 legislature tell us that we have jurisdiction over  
15 this because we don't. The schools are never  
16 mentioned in here.

17           MS. ROGERS: I understand the issue of  
18 concern with jurisdiction. And like it has been said  
19 before, we're not asking NERC to get into the issue  
20 of whether or not they can go into public schools.

21           What we're merely asking is by a  
22 clarification of terms, students, who could just be  
23 persons under the law that already have the ability  
24 to get whatever limited remedy from the school  
25 districts, they're also covered by the law of public

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1 accommodation. And NERC has the authority to  
2 investigate and remedy issues of discrimination in  
3 places of public accommodations.

4 I don't believe that we're asking any  
5 different jurisdictional issues whether or not the  
6 Commission can affect school district policy. We're  
7 merely asking that the definition include public  
8 schools, because it seems that the clarification of  
9 the statute is lacking in some jurisdictions. So by  
10 clarifying the statute, NERC would make it clear that  
11 students are covered by public accommodations law.

12 COMMISSION CHAIR CAFFERATA: Doesn't a  
13 student -- Ms. Young has a question.

14 COMMISSIONER YOUNG: I keep reading through  
15 the statement, and I'm still confused because it  
16 seems like it's already clear. So I'm not clear on  
17 what we're clarifying if the statement has already  
18 been made clear.

19 MS. ROGERS: Oh, I understand. And I agree  
20 that the law is clear too. Unfortunately, in some  
21 school districts in Nevada, the law is not clear.  
22 They do not believe that they fall under places of  
23 public accommodations because it's not explicitly  
24 said in the statute.

25 We're not asking the Commission to redefine



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1 the statute. We're asking the Commission for a  
2 clarification on the applicability of that statute  
3 and by saying --

4 COMMISSIONER YOUNG: Let me ask you this.  
5 If it's already clear in the law but you're saying  
6 the districts don't have it clear in their minds,  
7 what then are we going to be able to do to clarify  
8 any better than it already says?

9 MS. ROGERS: By having public schools  
10 clarified as places of public accommodation, it would  
11 not only allow students -- well, not allow, but it  
12 would help students realize that there is an avenue  
13 to address issues of discrimination outside of the  
14 schools. And it would also show the school districts  
15 that there is another body that can be a watchdog or  
16 that can enforce issues of -- remedy issues of  
17 discrimination in the public schools.

18 By making it explicitly clear if there are  
19 issues of discrimination, instead of getting into  
20 litigation with the school or instead of going above  
21 and beyond what already can be done, if the ACLU  
22 personally is given a complaint of discrimination in  
23 public schools, what we could do then is say to the  
24 public schools, "The law is clear that you're places  
25 of public accommodations. And there is an alternate

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1 remedy to the students that would hopefully address  
2 these issues of public accommodations through the  
3 Nevada Equal Rights Commission." And it would also  
4 say to the schools, "This is yet another body that  
5 addresses discrimination that explicitly defines  
6 public schools as places of public accommodation.  
7 And you can't get around that."

8           COMMISSIONER NIGAM: Well, I have a comment  
9 regarding the Supreme Court. They never directed  
10 NERC to go into this. And the legislature also never  
11 directed us to get into this. It is public  
12 accommodations, but they are not telling us to get  
13 directly into school discrimination cases. Don't you  
14 think you should go to the state legislature so they  
15 can direct us?

16           MS. ROGERS: I don't believe so because I  
17 think you are already directed to go into the school  
18 districts to address the law of public accommodations  
19 and that public accommodations includes public  
20 schools.

21           So by stating through NERC's Declaratory  
22 Order concerning the applicability of places of  
23 public accommodations, you do have the jurisdiction  
24 and authority to address discrimination in public  
25 schools.

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1           And what may not be clear here is the  
2 Commission would not be issuing or changing school  
3 policy. The Commission would be there to be an  
4 alternate route to address issues of discrimination.

5           COMMISSIONER PLOTKIN: I have a question and  
6 a comment.

7           COMMISSION CHAIR CAFFERATA: Go ahead.

8           COMMISSIONER PLOTKIN: The comment first is  
9 what might be creating some confusion since I see the  
10 level of redundancy with the Supreme Court and state  
11 law, that perhaps more applicable than clarifying the  
12 situation, it would seem that NERC is being asked to  
13 affirm what is already there.

14           The other element of the comment is if we  
15 are solely here today to respond to the question, it  
16 would seem that either the Commissioners present are  
17 going to say that public schools are public  
18 accommodation, which is state law by the Supreme  
19 Court, or NERC is going to say, no, public schools  
20 are not places of public accommodation, and then we  
21 will be going counter to the Supreme Court. That to  
22 me is where I see a little bit of a conundrum.

23           And the one question I have is, repeatedly  
24 I'm hearing students, students, students. But are we  
25 not talking about student, staff and faculty?

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1 MS. ROGERS: Absolutely. Anyone that is  
2 facing discrimination in places of public  
3 accommodation is included. I apologize. I've said  
4 students because that's often the case where we see  
5 discrimination. But it would apply to students,  
6 faculty, staff, adjunct staff.

7 COMMISSIONER PLOTKIN: I think that's an  
8 important distinction that we're not simply talking  
9 about students, but we are talking about everything  
10 within any given public school. And that's all for  
11 now.

12 COMMISSION CHAIR CAFFERATA: Doesn't a  
13 student or employee of a school district have a right  
14 of appeal to somebody if they don't like the answer  
15 they get from the school district?

16 MS. ROGERS: It's not clear. School  
17 districts are left up to their own devices to  
18 determine whether or not their policy -- what their  
19 policy should be and what their remedies should be.

20 It's clear from talking with the Department  
21 of Education that they are completely hands off.  
22 They don't believe that their role is to address  
23 specific issues of student conduct.

24 So if there was to be an appeal and it went  
25 to the Department of Education, they don't believe

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1 that they have that authority or the desire to get  
2 into issues on that. So if it's to appeal to the  
3 superintendent --

4 COMMISSION CHAIR CAFFERATA: Can't they go  
5 to court?

6 MS. ROGERS: They absolutely could go to  
7 court.

8 COMMISSION CHAIR CAFFERATA: So you do have  
9 a right of appeal.

10 MS. ROGERS: I don't necessarily know if it  
11 would be a right of appeal. It would then be  
12 bringing a new suit, a new challenge in civil court,  
13 instead of taking a different avenue that doesn't  
14 involve litigation.

15 COMMISSIONER PLOTKIN: And to the degree  
16 that I've had some history with the school district  
17 dating back many years, the analogy on that last  
18 point I would make is, if someone in Nevada has an  
19 issue with simply employment discrimination,  
20 certainly they could go to EEOC and not NERC unless  
21 it's sexual orientation.

22 But I think NERC was set up to address  
23 issues as is outlined under 233 before people have to  
24 go to the extent of a federal lawsuit. And I want to  
25 say it was in 2004 in Washoe County where a student

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1 was harassed and bullied and had no recourse in  
2 Washoe County. Ultimately, it had to go to federal  
3 court. And it ultimately cost Washoe County  
4 \$451,000. So I can see where there is an argument to  
5 be made, much as NERC deals with employment  
6 discrimination. That as the State's equal rights  
7 organization within the state, it allows a citizen to  
8 do the same thing they would on the basis of  
9 employment law with NERC.

10 COMMISSION CHAIR CAFFERATA: Well, this is  
11 what lawyers would call forum shopping. "I don't  
12 like what that judge is going to do. So I go over  
13 and get this judge."

14 So that's it. That's what basically your  
15 argument is. "I don't like what the schools are  
16 going to do so. Let's go to NERC." Isn't that what  
17 you're trying to do?

18 MS. ROGERS: No, ma'am. There are  
19 alternative remedies here. It's not that we're forum  
20 shopping. It's saying that if you don't want to sue,  
21 if you don't want to go through the litigation, not  
22 necessarily because of who the judge or the  
23 decision-maker may be, but because of the process and  
24 the expense of litigation, you can have a remedy  
25 that's in place through the Commission without going

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1 to that extent.

2 COMMISSION CHAIR CAFFERATA: Other  
3 questions? Last chance, everybody. Here she is.

4 MS. ROGERS: Thank you very much.

5 COMMISSION CHAIR CAFFERATA: Thank you.  
6 Thank you for your time and all your hard work here.

7 MS. ROGERS: Thank you.

8 COMMISSION CHAIR CAFFERATA: Do we want to  
9 have public comment now before we decide?

10 MS. CHINCHILLA: Yes. We have to.

11 MS. REYNOLDS: Yes. It's required by the  
12 open meeting law.

13 COMMISSION CHAIR CAFFERATA: We have one  
14 witness up here. So I thought we'd start with him.  
15 And then it looks like you have several witnesses  
16 down there. Is that correct?

17 MS. CHINCHILLA: Yes.

18 COMMISSION CHAIR CAFFERATA: Do you have any  
19 witnesses down there?

20 MS. CHINCHILLA: Yes.

21 COMMISSION CHAIR CAFFERATA: Okay. Our  
22 witness is going to sit over here. We have him set  
23 up. And hopefully you can hear him. We may have to  
24 move the microphone to see if you can hear him.

25 Can you state your name and spell your last

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1 name for the record and please tell us who you are?

2 MR. REICH: Again, my name is Christopher B.  
3 Reich, R-e-i-c-h. I'm general counsel for the Washoe  
4 County School District. Chairman Cafferata,  
5 Commissioners, thank you for allowing me to speak.

6 First, the Washoe County School District  
7 agrees with and joins in fully with the Clark County  
8 School District letter from February 3rd, 2012 that  
9 was sent to Administrator Chinchilla regarding this  
10 matter. That there is no rape issue case and  
11 controversy here that would allow for a declaratory  
12 order. And as well as that the Clark County School  
13 District vs. Buchanan case is dispositive on the  
14 issue about the petition that was brought, the  
15 question which has been defined by the Chairman.

16 Second, I just want to bring this up. I  
17 have not had a chance to go through the information  
18 that was presented by the petitioner at the hearing  
19 today, but I did receive the petition originally.  
20 And I went through it. And according to  
21 NAC 233.260(2)(D), it requests petitioner to include  
22 a statement of facts that relate to the issue  
23 described in paragraph C.

24 Washoe County School District will submit  
25 that the petition is defective in that it doesn't



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1 really state any facts whatsoever but simply broad  
2 conclusionary statements. And I think that's why  
3 there's been issues we're trying to grapple here with  
4 the Commission on what the role is.

5           If, in fact, there were problems with the  
6 specific school districts' administrative remedies  
7 for students and there were issues brought to courts  
8 of law or to the Department of Education or  
9 conflicting applications, then there may be a case of  
10 controversy for this Commission to clarify something.  
11 But there are no facts about that.

12           Whether school districts have updated their  
13 policies fast enough or accurately is one thing. But  
14 the Washoe County School District doesn't see it  
15 controversy to anything to clarify over and above  
16 what the Supreme Court already has. With that, I'd  
17 like to thank the Commission for taking the  
18 statement.

19           COMMISSION CHAIR CAFFERATA: Okay. Thank  
20 you. Do any of the Commissioners have any questions?

21           COMMISSIONER PLOTKIN: We're able to ask  
22 questions on public comment?

23           MS. REYNOLDS: Sure.

24           COMMISSIONER PLOTKIN: The basic question I  
25 would have is -- and I think I heard that the

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1 gentleman is with Washoe County.

2 COMMISSION CHAIR CAFFERATA: Correct.

3 MR. REICH: Correct.

4 COMMISSIONER PLOTKIN: Because it was just  
5 earlier that I referred to Washoe County. And it was  
6 a case filed in 2000 that wound up compensating the  
7 victim \$451,000 because the victim apparently did not  
8 get recourse through the Washoe County School  
9 District.

10 So I think that makes the case that there  
11 obviously was not countywide or school-district-wide  
12 remedy if it necessitated that plaintiff going to  
13 federal court. And I just am curious if the  
14 gentleman has any comment on that.

15 MR. REICH: I became general counsel for  
16 Washoe County School District in 2007. And I believe  
17 I know the case you're referring to. I was not  
18 involved with it, and I don't know the particulars.  
19 I know that it was a settlement agreement, and the  
20 facts I'm not sure of.

21 But as you can see, I did look at the  
22 information that was provided by the petitioner. I  
23 believe our policy was updated in November or  
24 September of 2011. So we are cognizant of the need  
25 for students to have remedies. I think our school

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1 district has been on top of making sure that those  
2 remedies are provided. If the student does or  
3 doesn't exhaust those administrative remedies, again,  
4 anybody could take an issue to a court of law.

5 COMMISSIONER PLOTKIN: All right. I  
6 appreciate the feedback.

7 COMMISSION CHAIR CAFFERATA: \$400,000 sounds  
8 like a pretty good remedy.

9 COMMISSIONER PLOTKIN: Correct. And,  
10 granted, this is 12 years ago when the incident  
11 occurred, and it was several years after.

12 But I guess the point I'm making is should a  
13 victim be forced to go to that extreme if under  
14 Nevada law there is a recourse with the Nevada Equal  
15 Rights Commission? The discrimination policies  
16 immediately changed in Washoe as a result of that  
17 case.

18 COMMISSION CHAIR CAFFERATA: That's a good  
19 thing. Right?

20 COMMISSIONER PLOTKIN: Absolutely.

21 COMMISSION CHAIR CAFFERATA: And we couldn't  
22 give anybody \$400,000.

23 COMMISSIONER PLOTKIN: Well, yeah. It was  
24 kind of a tragic case that it got to that point. And  
25 it was something that Washoe settled out of court on

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1 because -- well, I'm not going to question the  
2 motives. But a victim shouldn't necessarily have to  
3 go to the supreme or federal court if they're aware  
4 that there is a statewide recourse.

5 MR. REICH: If I may, just to respond to  
6 that. A school district shouldn't have to defend  
7 itself when there are remedies. So I don't know the  
8 particular facts of that case.

9 But as you know, there are court cases that  
10 are brought all the time not only against school  
11 districts but other employees, whether public or  
12 private, that may or may not have merit. So I guess  
13 anybody could sue, and anybody could defend.

14 COMMISSIONER PLOTKIN: All right. Thank  
15 you.

16 MR. REICH: Thank you.

17 COMMISSION CHAIR CAFFERATA: Anybody else?  
18 Okay. Now, you have some witnesses down there?

19 MS. CHINCHILLA: Yes.

20 COMMISSION CHAIR CAFFERATA: Or people who  
21 want to make comments. Would you please state and  
22 spell your last name for the record.

23 MS. HEENAN: Yes. My name is Jane Heenan,  
24 H-e-e-n-a-n. I'm a licensed family and marriage  
25 therapist in the state of Nevada since 2002. I am an

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1 adjunct instructor at the College of Southern Nevada  
2 since 2001 and Codirector of the aggressive  
3 association Gender Justice Nevada. I'm here mostly  
4 to add a human face to some of the earlier testimony  
5 that there is indeed a problem in Nevada schools and  
6 that there's no effective support for students when  
7 they seek relief.

8           In particular, I want to address the  
9 experiences of LGBT and gender non-conforming  
10 students. As a therapist and as an activist, I've  
11 had the privilege of working with hundreds of LGBT  
12 and gender non-conforming students for many years in  
13 this state. And I can tell you that these students  
14 are subjected to harassment and bullying on a regular  
15 basis by peers as well as by faculty and  
16 administrative staff. Further and more specifically,  
17 transgender-identified students. Gender identity and  
18 expression are not respected. And I would maybe site  
19 some specifics.

20           But broadly speaking in my experience since  
21 the late 1990s in the Clark County School District,  
22 the school district has forced transgender-identified  
23 students to use the nurse's bathroom, referred to  
24 transgender students by their birth name and  
25 pronounced when asked not to, and have not addressed

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1 bullying and harassment which is perpetrated by  
2 students against LGBT and gender non-conforming  
3 students, has not reprimanded faculty and staff for  
4 outing LGBT and gender non-conforming students to  
5 others against the student's wishes, has not  
6 reprimanded faculty and staff for ridiculing and  
7 harassing LGBT and gender non-conforming students,  
8 has denied transgender students access to appropriate  
9 gym classes, and has not provided any LGBT and gender  
10 non-conforming inclusive training for faculty or  
11 staff.

12 I would estimate that about one-third of  
13 LGBT and gender non-conforming students I've had  
14 contact with through the years have decided to leave  
15 school as a result of this kind of treatment. All of  
16 the persons that I've had contact with have had  
17 significant developmental problems as a consequence  
18 of going to school in an unsafe environment.

19 In addition -- and I want to emphasize this  
20 because of the earlier testimony -- students have a  
21 significant fear of retaliation when they consider  
22 bringing these things up to the school district  
23 personnel, to teachers, to administration, and  
24 others. And I believe that having a remedy that  
25 exists beyond either working these things through the

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1 school districts, which clearly these school  
2 districts are not addressing these issues, or going  
3 to court, it seems to me appropriate when those are  
4 the two options.

5           And maybe you're right. We have to go to  
6 the legislature, and we have to address these things  
7 there. But people are being significantly harmed. I  
8 don't want to go into much detail. But there are now  
9 transgender identified students that I am currently  
10 working with.

11           And just to tell you a little bit about  
12 their stories. One is a high school senior. This  
13 person is on track to graduate and comes to school  
14 dressed as atypical member of their identified  
15 gender. There has been trouble for this person with  
16 regards to confidentiality and outing his name and  
17 pronounced use and ridiculing and harassment and  
18 bathroom use. This person has decided not to  
19 confront anyone about these things because they want  
20 to graduate and fear that raising these issues with  
21 faculty and staff would jeopardize that.

22           Another is a sixth-grader who is failing  
23 their classes despite being academically capable.  
24 This is both my judgment and the judgment of the  
25 parent. They are not choosing to wear clothing that

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1 is more similar to their gender identity but choosing  
2 to wear clothing which is not too gender specific,  
3 such as a tie or dress. Their physical behavior is  
4 not specifically gender non-conforming. They use the  
5 bathroom that they would use at birth. This person  
6 has one friend, is afraid to communicate with one  
7 student they have a crush on, and is significantly  
8 depressed, in my opinion. And I have a significant  
9 fear that this person indeed will commit suicide.

10 Another student is in 8th grade. This  
11 person has been gender non-conforming throughout  
12 their life. This person is not out in any explicit  
13 way and has confronted harassment throughout their  
14 school years. This harassment has been so regular  
15 that it seems at this point this person has simply  
16 accepted this as normal. This person is socially  
17 isolated and has attempted suicide once in the past.  
18 Currently they are in an upswing, having recently  
19 started hormonal treatment. They use the bathroom  
20 which corresponds to the gender they were labeled at  
21 birth and have faced bullying and harassment by other  
22 students and faculty and staff. Their school  
23 performance is average.

24 Another is a sophomore in high school. This  
25 person is socially isolated, and it's difficult to



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1 draw out conversation. Although they are quite  
2 capable in relationships, they feel they can't trust.  
3 They came out as transgender about a year ago to  
4 their parents, who are supportive. And they will be  
5 starting hormones very soon. They do not attend  
6 regular high school, choosing instead an alternative  
7 school which allows them to be in class only one day  
8 a week for a few hours. When in school, they never  
9 use the bathroom because they are uncomfortable in  
10 using either one. They have chosen to remain hidden  
11 as much as possible at school to peers and teachers  
12 and report they are ultimately referred to as "he" or  
13 "she," depending on the person they're engaging with.  
14 They state that they are both happy that persons do  
15 not recognize them and that they would very much like  
16 to have more numerous and developed friendships.

17 I've heard many stories like this through  
18 the past 15 years, reports of staff and  
19 administration stating that policies that restrict  
20 bathroom use of transgender students to a segregated  
21 facility such as a nurse's bathroom are, quote, for  
22 the student's own good, even when the student states  
23 that they would prefer to use the regular bathroom  
24 that correspondence with their gender identity or  
25 expression.

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1           And there are many instances I'm aware of in  
2       which faculty and administrative staff have stated to  
3       colleagues and others that, quote, We don't worry  
4       about the use of words like "fag" among students.  
5       This is just the way they have of socializing and of  
6       determining social status.

7           In the end from my experience with hundreds  
8       of LGBT and gender non-conforming students, there are  
9       no effective remedies currently available. It is it  
10      seems, if I'm understanding earlier conversation,  
11      both NERC's charge to address issues of public  
12      accommodations discrimination and that NERC is  
13      curiously unable to address issues of public  
14      accommodations discrimination when such  
15      discrimination happens in public schools in Nevada.

16           I don't know how to say this, but clearly  
17      this is not enough if we are to meet the goal that I  
18      think all of us have, including educators,  
19      administrators, legal people at schools, all of us.  
20      What we want are safe schools for all of Nevada  
21      students to learn and grow together.

22           I want to assert, as I said, that if the  
23      Nevada Equal Rights Commission decides that they  
24      would play a role in some of these things into the  
25      future -- and again maybe this is something I have to

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1 go to the legislature about -- that you don't have to  
2 be alone in that. Our organization, Gender Justice  
3 of Nevada, can provide support in identifying  
4 remedies for students currently experiencing  
5 disparate treatment, along with assisting and  
6 implementing best practices and policies and training  
7 school district employees in these policies.

8 We are also able and willing to bring  
9 together other local, regional and national  
10 organizations to support such efforts in order to  
11 make Nevada public schools safe for all of Nevada  
12 students. And that's my testimony.

13 COMMISSION CHAIR CAFFERATA: Does anybody  
14 have any questions? We thank you again for your  
15 time.

16 MS. HEENAN: Thank you.

17 COMMISSION CHAIR CAFFERATA: Is there  
18 another person who wants to make comments?

19 Please state your name and spell your last  
20 name for the record.

21 MR. STEVENS: Certainly. My name is Craig  
22 Stevens, S-t-e-v-e-n-s. I'm the Government Relations  
23 Director for the Nevada State Education Association.  
24 I'm going to read a brief statement.

25 I thank you for this opportunity to --

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1           COMMISSION CHAIR CAFFERATA:  Would you  
2 please go slowly because the court reporter will be  
3 taking down your testimony.

4           MR. STEVENS:  I'd be happy to.

5           COMMISSION CHAIR CAFFERATA:  Thank you.

6           MR. STEVENS:  Thank you for the opportunity  
7 to give testimony on this important matter.

8           I'm here to speak on behalf of Nevada State  
9 Education Association, which represents more than  
10 26,000 educators who work in the Nevada K through 12  
11 public school system.  We are the faces and voices of  
12 those educators whose values and principals demand  
13 that every single child be treated with the dignity  
14 and respect that they deserve and need in order to  
15 succeed in life.

16           That is the mission of our members, the  
17 reason why being an educator is a calling and not  
18 merely a job for most of them.  It is why our  
19 association strongly supports the passage of the more  
20 inclusive public accommodations law that was enacted  
21 during the last legislative session and why we are  
22 disappointed at the failure of school districts to  
23 follow this law.

24           The meaning of the public accommodations law  
25 we advocated for is plain on its face.  It is not

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1   ambiguous.  It is straightforward.  Public schools in  
2   Nevada should obey it, and I hope that NERC could  
3   make it clear that they need to do so.  The impetus  
4   to obey the law is not just a legal one but it is one  
5   that is grounded in the core principles of public  
6   education and educators, such as inclusiveness,  
7   fairness, a belief in the dignity of each student to  
8   enter the schoolhouse doors and the need to tolerate  
9   and even embrace differences and diversity.

10           For all of these reasons, I am here on  
11   behalf of NSEA, its many thousands of members, and  
12   anyone else who embraces our association's values to  
13   urge NERC to issue the opinion that is being  
14   requested so that students who are being vandalized  
15   and diminished will flourish in a K-12 system that  
16   follows the law and lives up to its own values by  
17   making everyone feel welcome and whole when they go  
18   to school.

19           I again want to thank you for this  
20   opportunity to appear before you on this very  
21   important issue.  Thank you.

22           COMMISSION CHAIR CAFFERATA:  Thank you.  
23   Does anyone have any questions?  Thank you very much  
24   for your time.  Anybody else?

25           MS. CHINCHILLA:  No.

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1           COMMISSION CHAIR CAFFERATA: Okay. That  
2 closes the public comments portion. So let's have  
3 some questions.

4           COMMISSIONER PLOTKIN: I would just make a  
5 comment. And all the information has been very  
6 helpful. But the first paragraph of the petition is  
7 merely asking for NERC to do a formal order that  
8 public schools in Nevada qualify as a place of public  
9 accommodation. If that, as I understand from our  
10 Deputy Attorney General, is the only question that's  
11 before us, then I think that's what we should be  
12 focusing on at this meeting and perhaps in a future  
13 meeting consider all the other implications. Thanks.

14           COMMISSION CHAIR CAFFERATA: Any other  
15 comments?

16           COMMISSIONER PLOTKIN: If there's no other  
17 comment, I'd be prepared to make a motion.

18           COMMISSION CHAIR CAFFERATA: Okay. What's  
19 your motion?

20           COMMISSIONER PLOTKIN: I would make a motion  
21 that NERC consider public schools in Nevada as places  
22 of public accommodations for purposes of NRS 651.050.

23           COMMISSION CHAIR CAFFERATA: Is there a  
24 second?

25           COMMISSIONER PLOTKIN: Do we need a second,

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1 or can we just take a vote on the motion?

2 MS. REYNOLDS: You need a second.

3 COMMISSION CHAIR CAFFERATA: So the motion  
4 fails for lack of a second. Someone else want to  
5 make a motion?

6 I move we dismiss this petition. Is there a  
7 second?

8 COMMISSIONER YOUNG: Second.

9 COMMISSION CHAIR CAFFERATA: Tiffany Young  
10 seconds. Discussion?

11 MS. REYNOLDS: I think it would be helpful  
12 if you state the reasons why you're dismissing the  
13 petition.

14 COMMISSION CHAIR CAFFERATA: Yes. I think  
15 that's appropriate in that any motion should not be  
16 arbitrary and capricious. There should be a factual  
17 basis.

18 The reason for my motion is that the Nevada  
19 Supreme Court has already ruled on this issue. I do  
20 not believe that we have any authority to confirm or  
21 deny what the Supreme Court has said. So that's my  
22 basis.

23 Any other discussion? Okay. We will call  
24 the roll on the vote. Do we still have a secretary  
25 there?

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1 MS. CHINCHILLA: Yes.

2 MS. REYNOLDS: You don't need to voice vote.  
3 You can just follow your standard procedures.

4 COMMISSION CHAIR CAFFERATA: All in favor  
5 say "aye"?

6 COMMISSIONER YOUNG: Aye.

7 COMMISSIONER NIGAM: Aye.

8 COMMISSION CHAIR CAFFERATA: All opposed say  
9 "nay"?

10 COMMISSIONER PLOTKIN: Nay.

11 COMMISSION CHAIR CAFFERATA: Okay. The ayes  
12 have it. The "nay" is Lee Plotkin, and the "ayes"  
13 are the rest of the members of the Commission.

14 Deputy Attorney General, do we need to do  
15 anything else here?

16 MS. REYNOLDS: You have to again have public  
17 comment pursuant to the open meeting law.

18 COMMISSION CHAIR CAFFERATA: Does anyone  
19 else want to comment?

20 MS. HEENAN: Can I ask a question for  
21 clarification? Can a comment include a question of  
22 the Commission?

23 COMMISSION CHAIR CAFFERATA: Sure, why not.

24 MS. HEENAN: My name is Jane Heenan,  
25 H-e-e-n-a-n.



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1           My question is if the petition is moot  
2 because the Supreme Court has already ruled, then is  
3 NERC able to regulate public schools in the State of  
4 Nevada as places of public accommodation as they  
5 would any other place of public accommodation,  
6 allowing persons who are harmed and who have  
7 exhausted other remedies to approach NERC and file  
8 with NERC for relief in that place of public  
9 accommodation, whether it's a public school or a  
10 restaurant or a hotel?

11           COMMISSION CHAIR CAFFERATA: Does our Deputy  
12 Attorney General want to answer that, or do you want  
13 me to answer it?

14           MS. REYNOLDS: Anybody in Nevada can file a  
15 complaint with the Commission. The Commission will  
16 have to look at the complaint to determine whether or  
17 not what has been alleged comes within their  
18 jurisdiction.

19           So, in essence, yesterday somebody could  
20 have come in and filed a complaint with the  
21 Commission if they were a student. That's always  
22 been available to them.

23           Now, whether or not NERC will be able to  
24 remedy that situation, it depends on whether or not  
25 it's within their jurisdiction.

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1           COMMISSION CHAIR CAFFERATA: As I understand  
2 it now, what procedurally happens if we get an  
3 education complaint from the schools -- and  
4 Ms. Chinchilla can tell you if I'm correct what I'm  
5 just going to say. But she refers those to the  
6 school district. Is that correct? That's the  
7 procedure now because the law does not list the  
8 schools under our statute.

9           And if you really want us to do this, then  
10 you really need to go to the legislature and get them  
11 to change the law.

12           MS. HEENAN: And if I may, the law is both  
13 covered and not covered. Am I understanding that  
14 correctly?

15           COMMISSION CHAIR CAFFERATA: Yeah, that's  
16 probably about right.

17           MS. HEENAN: And that's why this petition  
18 was important to us, to clarify that. And your  
19 refusal --

20           COMMISSION CHAIR CAFFERATA: What we're  
21 saying is we don't have jurisdiction to do that. You  
22 need to either go to the Supreme Court, or you need  
23 to go to the legislature.

24           MS. ROGERS: May I please make a quick  
25 record?

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1           First I'd like to be on record that the UCLA  
2 objects to the Commission's action this morning. And  
3 I believe what the question is is if NERC was  
4 presented with a case of discrimination by a student  
5 or employee in the school district, would the  
6 Commission address or remedy that complaint?

7           MS. REYNOLDS: Again, everything is done on  
8 a case-by-case basis. You can't just make a blanket  
9 statement. It all depends on what the underlying  
10 complaint is. All you can do is -- the Commission  
11 can accept a complaint. They look at it, and they  
12 determine whether it lies within their jurisdiction.  
13 And that's always been what the Commission has done.

14           MS. ROGERS: Correct. And I guess my  
15 question is, does NERC's jurisdiction cover students  
16 and employees in schools?

17           COMMISSION CHAIR CAFFERATA: I think she  
18 just answered your question. It could be.

19           MS. ROGERS: I don't think you can make two  
20 different arguments here. One you're saying that the  
21 Supreme Court has the decision whether or not to  
22 extend public accommodation laws to students or  
23 employees at the public schools.

24           But what you're also saying today is that  
25 the Commission may not have the authority to address

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1 those. And I don't understand that because if you're  
2 arguing that the law is clear -- or if the petition  
3 was denied because you believe the law is clear  
4 already that places of public accommodation includes  
5 public schools, then what I'm understanding is that  
6 you don't think you have the authority to address  
7 those issues because it's entitled in this realm of  
8 schools, not because it's entitled in this realm of  
9 public accommodations. And maybe I'm confused then  
10 and could help with some clarification on that.

11 COMMISSION CHAIR CAFFERATA: Basically what  
12 our decision was is that we dismissed it because the  
13 Supreme Court has already ruled, and we're not in a  
14 position to affirm or deny what the Supreme Court has  
15 done.

16 MS. ROGERS: I respectfully disagree and  
17 believe that you are in the position to clarify a  
18 statute. And that's what we are here asking for  
19 today. And thank you again for your time.

20 COMMISSION CHAIR CAFFERATA: Thank you.

21 MR. ESPANOL: My name is Franz, F-r-a-n-z.  
22 Last name is Espanol, E-s-p-a-n-o-l. My comment goes  
23 to NRS 233.310. We had some discussions about going  
24 to the legislature, about what they think about this  
25 particular issue. And this particular statute in the

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1 NRS makes it public policy of the State of Nevada to  
2 protect the welfare, prosperity, health and peace of  
3 all people of the state and to foster the right of  
4 all persons reasonably to seek and be granted  
5 services in places of public accommodation.

6 And the Commission has just concluded that  
7 the Supreme Court has made it clear that the public  
8 school is a place of public accommodation. And NRS  
9 233.010 seems to make it clear also that it's  
10 Nevada's intent through the legislature to protect  
11 places of public accommodation.

12 And I just want to ask the Commission to  
13 clarify the inconsistency between your decision today  
14 and the public policy of Nevada pursuant to 233.010.

15 COMMISSION CHAIR CAFFERATA: I'm not sure I  
16 understand your question. That's the law. So what  
17 is your question?

18 MR. ESPANOL: My question is the Commission  
19 has made it clear that the Supreme Court has already  
20 ruled on this issue, meaning that public schools are  
21 places of public accommodation.

22 And you're also asking the ACLU and other  
23 organizations to approach the legislature to see what  
24 their opinion on this matter is. But it seems, as  
25 you said, the law is clear. The legislature's intent

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1 is to protect places of public accommodation, of  
2 which the Supreme Court has made the decision that  
3 public schools are places of public accommodation.

4 So my question is, why are you ruling  
5 otherwise and not accepting -- or stating that cases  
6 from public schools will be addressed on a  
7 case-by-case basis when it seems that the law is  
8 clear?

9 COMMISSION CHAIR CAFFERATA: We address all  
10 cases.

11 MS. REYNOLDS: The Commission can only rule  
12 on what is in the petition. So what you're asking  
13 for is beyond the scope of the petition. We're just  
14 answering as far as what the Commission's practice  
15 is. Did I cut you off, Patty? I'm sorry.

16 COMMISSION CHAIR CAFFERATA: There are two  
17 bodies who make laws. And one is the legislature,  
18 and the other is the Supreme Court. And the Supreme  
19 Court has already ruled. They've answered the  
20 question.

21 If you want NERC to have jurisdiction over  
22 these kinds of cases, you need to go to the  
23 legislature and get them to change the law.

24 MR. HOOPER: May I make a comment?

25 COMMISSION CHAIR CAFFERATA: Please state

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1 your name and spell it for the record.

2 MR. HOOPER: My first name is Phil. My last  
3 name is Hooper, H-o-o-p-e-r.

4 My understanding based on this decision  
5 today is that the Commission has ruled the ACLU's  
6 petition moot because the Nevada Supreme Court has  
7 already decided that public schools are included  
8 under the definition of public accommodations in the  
9 State of Nevada.

10 Logically to me it would flow from that that  
11 since the Nevada Equal Rights Commission is the body  
12 that is empowered to address complaints of  
13 discrimination in public accommodations, then the  
14 Commission would be able to -- it is within the  
15 jurisdiction of this Commission to review complaints  
16 of discrimination in public schools.

17 I don't necessarily see how this whole  
18 discussion of an expansion of jurisdiction is  
19 relevant, and any discussion of needing to go back to  
20 the legislature really wouldn't seem applicable. The  
21 legislature's job was to say that in the State of  
22 Nevada in places of public accommodation, we want  
23 people to be protected from discrimination within the  
24 given classes that have been defined in the statute.

25 And the State of Nevada via the legislature

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1 has empowered NERC to investigate and address claims  
2 of discrimination within places of public  
3 accommodation. And the Nevada Supreme Court has  
4 ruled that places of public accommodation include  
5 public schools.

6 Therefore, it would seem clear to us from an  
7 outsider's perspective that the Nevada Equal Rights  
8 Commission is empowered to review complaints of  
9 discrimination in public schools as a public  
10 accommodation as defined by the Nevada Supreme Court.

11 The ACLU's petition today was to simply  
12 request, as Ms. Rogers stated, a clarification from  
13 the Commission affirming that their interpretation --  
14 that they would review complaints of discrimination  
15 in public schools because as the language of the  
16 petition stated, the definition of public  
17 accommodations does include public schools.

18 It was a point of clarification that was  
19 meant to send a signal to the Nevada school districts  
20 and to students and everyone else who suffers from  
21 discrimination that this is an avenue that is already  
22 available to them, not an expansion of jurisdiction,  
23 but already something that is within their rights as  
24 citizens of this state.

25 And, therefore, based on the Commission's



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1 decision that this petition is moot, our  
2 understanding would be then that the Commission is  
3 acknowledging its obligation to review complaints and  
4 that the jurisdiction of the Commission does include  
5 places of public accommodation and by definition of  
6 law and interpretation of law, does include public  
7 schools as well.

8           So I find it unfortunate that the Commission  
9 is unwilling to take a public stance affirming this  
10 definition, but we believe that the law speaks for  
11 itself.

12           COMMISSION CHAIR CAFFERATA: Thank you.  
13 Does anybody have any questions?

14           COMMISSIONER PLOTKIN: I just have two  
15 comments hopefully brief. And it's a distinction. I  
16 know the first couple public comments spoke to the  
17 Chair's successful motion as a denial of the  
18 petition. And I just want to make sure that I  
19 understand that dismissal means that it was neither  
20 approval nor denial. Am I correct?

21           COMMISSION CHAIR CAFFERATA: Correct. We  
22 did not make a decision on the substance.

23           COMMISSIONER PLOTKIN: I just wanted to  
24 clarify that as a dismissal as opposed to a denial.

25           And the other element is we referred to NRS

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1 233.010 several times but also referenced the fourth  
2 paragraph for NERC as far as public policy. That  
3 it's recognized that people of the state should get  
4 accurate and full information concerning actual and  
5 alleged practices of discrimination and acts of  
6 prejudice. And that information may provide the  
7 basis for formulating statutory remedies of equal  
8 protection.

9           So at the very least, information gathering  
10 is something that is, I think, unambiguously clear.  
11 That NERC at the very least can gather, as it says,  
12 actual or alleged practices of discrimination.  
13 Thanks.

14           COMMISSION CHAIR CAFFERATA: And I think  
15 just for the record it was NRS 233.010, Subsection 3.  
16 And I think you said 4.

17           COMMISSIONER PLOTKIN: I did say 4.

18           COMMISSION CHAIR CAFFERATA: It is 3.

19           COMMISSIONER PLOTKIN: And I reference 4  
20 only -- just with the point that at the very least,  
21 NERC is charged with gathering information of actual  
22 or alleged discrimination. It's not a practice that  
23 has been practiced, at least in my time, on the  
24 Commission, but certainly 233.010, Section 4, does  
25 say that the information gathering is within the

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1 purview of NERC.

2 COMMISSION CHAIR CAFFERATA: Correct. Okay.

3 Any other comments? Do we have a motion to adjourn?

4 COMMISSIONER PLOTKIN: So move.

5 COMMISSION CHAIR CAFFERATA: All right.

6 Swadeep, Ms. Young, and Lee. Did you second it?

7 COMMISSIONER PLOTKIN: I actually made the

8 motion, but we talked over.

9 COMMISSIONER NIGAM: I seconded it.

10 COMMISSION CHAIR CAFFERATA: All right.

11 Somebody first it, and Swadeep seconded it. All in

12 favor?

13 COMMISSIONER PLOTKIN: Aye.

14 COMMISSIONER YOUNG: Aye.

15 COMMISSIONER NIGAM: Aye.

16 COMMISSION CHAIR CAFFERATA: All said "aye."

17 All right. It's unanimous. Thank you very much to

18 everyone for participating.

19 (Thereupon the proceedings

20 were concluded at 10:28 a.m.)

21 \* \* \* \* \*

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )

3 SS:

4 COUNTY OF CLARK. )

5 I, Jane V. Efaw, certified shorthand  
6 reporter, do hereby certify that I took down in  
7 shorthand (Stenotype) all of the proceedings had in  
8 the before-entitled matter at the time and place  
9 indicated; and that thereafter said shorthand notes  
10 were transcribed into typewriting at and under my  
11 direction and supervision and the foregoing  
12 transcript constitutes a full, true and accurate  
13 record of the proceedings had.

14 IN WITNESS WHEREOF, I have hereunto affixed  
15 my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

16

17

18

19 \_\_\_\_\_  
Jane V. Efaw, CCR #601

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