

1 Phillip N. Smith Jr., Esq.  
 2 Nevada Bar No. 10233  
 3 psmithjr@wwhgd.com  
 Jacqueline V. Nichols, Esq.  
 4 Nevada Bar No. 14246  
 jnichols@wwhgd.com  
 5 WEINBERG, WHEELER, HEDGINS,  
     GUNN & DIAL, LLC  
 6 6385 South Rainbow Blvd., Suite 400  
     Las Vegas, Nevada 89118  
 Telephone: (702) 938-3838  
 Facsimile: (702) 938-3864

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 8 *Attorneys for Defendant*  
 Clark County School District

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 10 **UNITED STATES DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 THE AMERICAN CIVIL LIBERTIES UNION  
 13 OF NEVADA, a domestic nonprofit  
 organization; CORIE HUMPHREY, an  
 individual,

14 Plaintiffs,  
 vs.  
 15 CLARK COUNTY SCHOOL DISTRICT, a  
 political subdivision of the State of Nevada,  
 16  
 Defendant.

Case No.: 2:25-cv-00892-RFB-MDC

(Removed from the District Court of Clark County, Nevada, Case No. A-25-919151-C, Dept. 16)

**CCSD'S MOTION TO SET ASIDE  
 ENTRY OF DEFAULT PURSUANT TO  
 FRCP 55(C)**

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 18 Defendant CLARK COUNTY SCHOOL DISTRICT ("CCSD"), by and through its  
 19 counsel of record, the law firm of WEINBERG, WHEELER, HEDGINS, GUNN & DIAL, LLC, hereby  
 20 submits this Motion to Set Aside Entry of Default Pursuant to FRCP 55(c) (the "Motion").  
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22 This Motion is made and based upon the following Memorandum of Legal Points and  
 23 Authorities, the Declaration of Jacqueline V. Nichols, and any arguments made by counsel at the  
 24 time of any hearing.

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**MEMORANDUM OF LEGAL POINTS AND AUTHORITIES****I. INTRODUCTION**

CCSD seeks to set aside the default that was entered on December 1, 2025, the attorney primarily handling this matter underwent significant health issues, which started on October 7, 2025, and then participated in a jury trial before the honorable Judge Miranda Du. *See Declaration, Exhibit A.*<sup>1</sup> Moreover, the parties agreed to stay the proceedings and never agreed on an answering deadline, including during the FRCP 26.1 conference.

The inadvertent clerical error referenced above combined with Mrs. Nichols' unexpected health issues constitute good cause to set aside the entry of default, pursuant to FRCP 55(c). What's more, Plaintiffs will not suffer any prejudice, as CCSD's participation in the litigation is not only clear from the record, but also through the extensive discovery conducted in this case to date. CCSD has responded to written discovery, the parties participated in meet and confer efforts and the parties further agreed to the continuance of discovery. Finally the parties are scheduled to participate in a settlement conference next month. For the reasons set forth below, CCSD requests that the Court set aside the entry of default.

**II. DISCUSSION**

“[J]udgment by default is a drastic step **appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits.**” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (emphasis added). Under FRCP 55, a court has the discretion to set aside an entry of default for good cause. Fed. R. Civ. P. 55(c). “Good cause” is a liberal and mutable standard. Because defaults are generally disfavored, courts resolve such motions so as to encourage a decision on the merits.” *McMillen v. J.C. Penney Co.*, 205 F.R.D. 557, 558 (D. Nev. 2002). “Good cause” does not exist if one of the three factors are present: (1) the party seeking to set aside default engaged in culpable conduct that led to the default; (2) the defendant does not have a meritorious defense; or (3) reopening the default judgment would prejudice plaintiff.” *United States v. Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) (citing *Franchise Holding II*, 375 F.3d 922, 925-26 (9th Cir.

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<sup>1</sup> Exhibit A will be filed under seal, contemporaneously with CCSD's Motion.

1 2004)). “Where timely relief is sought from a default . . . and the movant has a meritorious defense,  
 2 doubt, if any, should be resolved in favor of the motion to set aside the default so that cases may be  
 3 decided on their merits.” *O’Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (quoting *Mendoza*  
 4 *v. Wight Vineyard Management*, 783 F.2d 941, 945-45 (9th Cir. 1986)).

5 **A. CCSD DID NOT ENGAGE IN CULPABLE CONDUCT THAT LED TO THE  
 6 DEFAULT.**

7 “Culpable conduct is intentional conduct.” *Bd. of Trs. Of the Teamsters Loc. 631 §. Fund  
 8 for S. Nev. v. World Wide Exhibits, Inc.*, 770 F. Supp. 3d 1245, 1250 (D Nev. Mar. 14, 2025) (citing  
 9 *Mesle*, 615 F.3d at 1092)). Here, for the reasons set forth in the declaration in support of the instant  
 10 motion, CCSD’s conduct was not intentional, nor culpable. It was the result of an administrative  
 11 error, including a stay of the proceedings agreed to by the parties, following and combined with  
 12 several weeks of Mrs. Nichols’ health issues that unexpectedly arose, as well as no agreement on  
 13 when an answering deadline was imminent. **Ex. A.**

14 **B. CCSD HAS MERITORIOUS DEFENSES.**

15 “A defendant seeking to vacate a default judgment must present specific facts that would  
 16 constitute a defense.” *Bd of Trs. Of the Teamsters*, 770 F. Supp.3d at 1250. “But the burden on a  
 17 party seeking to vacate a default judgment is not extraordinarily heavy.” *Id.* “A meritorious defense  
 18 is one which, if proven at trial, will bar plaintiff’s recovery.” *Aristocrat Techs., Inc. v. High Impact  
 19 Design & Entm’t*, 642 F.Supp. 2d 1228, 1233 (D. Nev. 2009). “The defendant is not required to  
 20 prove beyond the shadow of a doubt that it will win at trial, but merely to show that it has a defense  
 21 to the action which at least has merit on its face.” *Id.* *Aristocrat Techs., Inc.* involved a breach of  
 22 contract, where entry of default against the defendant occurred. *Id.* There, the defendant argued  
 23 that it had a meritorious defense because it performed under the terms of the agreement, among  
 24 other reasons, and the court determined that these defenses at least had merits on their face. *Id.*  
 25 Moreover, the district court is not required to decide the merits of the defenses; it need only be  
 26 persuaded that a defense would be meritorious on its face.

27 In this case, Plaintiffs ask the Court to (1) enjoin CCSD from “enforcing provisions of the  
 28 District’s Regulation R-5129” [ECF No. 6, pg 1:22-23]; and (2) order CCSD to allow Plaintiff



1 Corie Humphrey “wear the specific regalia as requested in [Plaintiffs] motion.” [ECF No. 6, pg.  
2 2:2-4]. While students do not shed their constitutional rights of freedom of speech or expression  
3 at the schoolhouse gate, the Constitution also “does not compel ‘teachers, parents, and elected  
4 school officials to surrender control of the American public school system to public school  
5 students.’” *Henery v. City of St. Charles*, 200 F3d 1128, 1131-1132 (8th Cir. 1999) The  
6 constitutional rights of public school students “are not automatically coextensive with the rights  
7 of adults in other settings, … and a school need not tolerate speech that is inconsistent with its  
8 pedagogical mission, even though the government could not suppress that speech outside the  
9 schoolhouse.” *Id.* As such, “courts must analyze First Amendment violations alleged by students  
10 ‘in light of the special characteristics of the school environment.’” *Id.*

11 The First Amendment protects not only verbal and written expression, but also symbols  
12 and conduct that constitute symbolic speech. *Littlefield v. Forney Independent School Dist.*, 268  
13 F.3d 275, 282 (5th Cir. 2001) (citing *Tinker v. Des Moines Indep. Cnty. Sch. Dist.*, 393 U.S. at  
14 505–06 (1969)). The First Amendment inquiry is two-fold. *Zalewska v. County of Sullivan, New*  
15 *York*, 316 F.3d 314, 319 (2d Cir. 2003). First, the Court must determine whether Plaintiff’s actions  
16 would constitute expressive conduct to warrant First Amendment protection. *Id.* Second, the Court  
17 must determine whether CCSD’s graduation regalia policy impermissibly denies protection to  
18 Plaintiffs. *Id.* (citing *Texas v. Johnson*, 491 U.S. 397, 403. (1989)).

19 While this Court entered a preliminary injunction regarding a portion of CCSD’s regalia  
20 policy, it did recognize that the policy was not entirely unconstitutional. Specifically, the Court  
21 recognized the importance of ensuring that the school or CCSD provide approval of regalia that  
22 could fall outside the policy to avoid disruptions and disappointments during ceremonies.  
23 Furthermore, the parties stipulated to certain portions of the policy as reflected in a stipulation  
24 submitted to this Court. ECF No. 24. It is also worth noting that Plaintiff Humphrie has since  
25 graduated and no longer has standing to seek injunctive relief as she is no longer harmed by the  
26 policy since graduating. Thus, there is a colorable argument regarding whether injunctive relief is  
27 proper at this stage as Plaintiffs have no presented any evidence of actual harm, or even the  
28 potential of harm, since last years graduation ceremony. Accordingly, CCSD have ample defenses

1 available to them that warrant the Court granting the instant motion. See also, CCSD's Response  
2 to Motion for Temporary Restraining Order, ECF No. 19..

3 **C. PLAINTIFFS WOULD NOT SUFFER PREJUDICE IF ENTRY OF**  
4 **DEFAULT WAS SET ASIDE.**

5 A party's ability to pursue a claim can be prejudiced by "loss of evidence, increased  
6 difficulties of discovery, or greater opportunity for fraud or collusion." *Id.* None of those concerns  
7 are present here. Moreover, "[p]rejudice exists if circumstances have changed since entry of the  
8 default such that [a] plaintiff's ability to litigate its claim is not impaired in some material way or  
9 if relevant evidence has become lost or unavailable." *Aristocrat Techs., Inc.*, 642 F.Supp. 2d at  
10 1233. Here, CCSD has filed the instant motion as soon as practicable after the entry of default.

11 Plaintiff has suffered no prejudice from CCSD's delay in filing its Answer, since CCSD  
12 has been involved in this matter for several months. Specifically, the parties have met and  
13 conferred and submitted a stipulation before this Court. Moreover, Plaintiffs' ability to litigate  
14 their claims has not changed in the last few weeks, and certainly not since the time the motion for  
15 default was filed and this Court granting it. CCSD intends on filing its Answer to Plaintiffs'  
16 Complaint no later than December 17, 2025. **Ex. A.** Conversely, if the entry of default is not set  
17 aside, CCSD will suffer great prejudice, as it has significantly participated in this litigation since  
18 its inception, and as outlined above, it has meritorious defenses.

19 CCSD's active participation in this litigation is not only apparent from the record, but also  
20 its discovery efforts. CCSD has responded to discovery and met and conferred with opposing  
21 counsel and is making continuing efforts to discuss discovery. The parties are also working on  
22 conducting searches on emails and search terms to further discovery efforts prior to the upcoming  
23 settlement conference.

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### III. CONCLUSION

For the foregoing reasons, CCSD respectfully requests that this Court GRANT CCSD's Motion and that the default entered against CCSD be set aside.

Dated this 16th day of December, 2025.

/s/ Jacqueline v. Nichols  
Phillip N. Smith, Jr., Esq.  
Jacqueline V. Nichols, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 South Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
*Attorneys for Defendant*  
*Clark County School District*

WEINBERG WHEELER  
HUDGINS GUNN & DIAL

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16<sup>th</sup> day of December, 2025, I served a true and correct copy of  
3 the foregoing **CCSD'S MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO**  
4 **FRCP 55(C)** by e-service, in accordance with the Electronic Filing Procedures of the United States  
5 District Court, to the following:

6 Jacob T. S. Valentine, Esq.  
7 Christopher M. Peterson, Esq.  
American Civil Liberties Union of Nevada  
8 4362 West Cheyenne Avenue  
North Las Vegas, Nevada 89032  
9 *Attorneys for Plaintiffs*

10  
11 */s/ Victoria Gomez*  
12 An employee of WEINBERG, WHEELER, HEDGINS,  
13 GUNN & DIAL, LLC

WEINBERG WHEELER  
HEDGINS GUNN & DIAL  


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