

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3
4 In the matter of:

5 CLARK COUNTY SCHOOL DISTRICT
6 BOARD OF TRUSTEES.

AG FILE NO.: 13897-372

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 The Office of the Attorney General (OAG) received a complaint regarding a meeting
10 of the Clark County School District Board of Trustees (Board) on July 9, 2020 (Complaint)
11 alleging violations of the Nevada Open Meeting Law (OML). The Complaint alleges that
12 the Board violated the OML by unlawfully setting a public comment deadline three hours
13 prior to the start of the meeting and posting supporting materials to its website less than
14 one hour prior to the meeting.

15 The OAG has statutory enforcement powers under the OML and the authority to
16 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
17 241.040. The investigation of the Complaint included OAG review of the agenda and video
18 of the July 9, 2020 meeting, together with a written response to the Complaint from the
19 Board's counsel.

20 After investigating this matter, the OAG determines that the Board violated the
21 OML by failing to provide adequate periods devoted to comments by the general public as
22 required by NRS 241.020(3)(d)(3) and Emergency Directive 006. The Board did not violate
23 the OML with respect to the other allegations.

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25 **FINDINGS OF FACT**

26 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to
27 the OML.

1 2. The Board held a meeting via videoconferencing software at 3:00 p.m. on July
2 9, 2020. Members of the public were permitted to view the meeting via a livestream on the
3 Board’s website. Public comment was permitted by email only and was required to be
4 submitted by 12:00 p.m. the same day. No additional public comment was accepted during
5 the meeting.

6 3. Supporting material for one of the agenda items was posted to the Board’s
7 website after 2:00 p.m. before the meeting.

8 4. Two public comment periods were listed on the agenda: one near the
9 beginning¹ and one at the end of the meeting just prior to adjournment. During the first
10 public comment period, staff summarized the emailed comments that pertained to specific
11 agenda items. During the second public comment period, staff summarized the emailed
12 comments that did not pertain to any specific agenda items. The emails were uploaded to
13 the Board’s website and available to both the public and Board members.

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15 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

16 The legislative intent of the OML is that actions of public bodies “be taken openly,
17 and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board*
18 *of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind
19 NRS chapter 241 favors open meetings”).

20 **A. The Board violated the OML by failing to meet the public comment and**
21 **participation requirements of NRS 241.020(3)(d)(3).**

22 The OML requires public bodies to include periods devoted to comments by the
23 general public during their meetings. NRS 241.020(3)(d)(3). Any restrictions on comments
24 by the general public must be reasonable and may restrict the time, place and manner of
25 the comments, but may not restrict comments based upon viewpoint. NRS 241.020(3)(d)(7).
26 Public comment periods must be held: “(I) At the beginning of the meeting before any items

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28 ¹ While not listed as an issue in the Complaint, the OAG reminds the Board that under the two-period
public comment format in NRS 241.020(3)(d)(3)(I), the first public comment period should occur “before any
items on which action may be taken are heard.”

1 on which action may be taken are heard by the public body and again before adjournment
2 of the meeting; or (II) After each item on the agenda on which action may be taken is
3 discussed by the public body, but before the public body takes action on the item.” NRS
4 241.020(3)(d)(3).

5 Due to the COVID-19 pandemic, the Governor of Nevada issued a directive
6 suspending the physical requirements for public meetings. Declaration of Emergency
7 Directive 006, available at [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-
8 _COVID-19_Declaration_of_Emergency_Directive_006/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-_COVID-19_Declaration_of_Emergency_Directive_006/). Directive 006 states:

9 If a public body holds a meeting by means of teleconference or video conference
10 and a physical location where members of the public can attend is not provided,
11 the public body must provide a means for the public to provide public comment,
12 and post that means on the public notice agenda posted in accordance with
NRS 241.020. Public comment options may include, without limitation,
telephonic or email comment.

13 Directive 006 requires that a public body provide a means for public comment as required
14 by the OML, but allows for that public comment to take electronic form to protect the health
15 and safety of Nevadans during this pandemic. Similar to the emergency exception
16 contained in NRS 241.020(3), public bodies must still attempt to mimic the conditions of a
17 regular in person meeting by complying with every requirement and intent of the OML.
18 This means that if a public body is accepting public comment via email only, it must accept
19 public comment up until the public comment period is called for and again during the
20 meeting to allow for a second public comment period.

21 Here, the Board cut off acceptance of public comments three hours prior to the start
22 of the meeting. The Board argues that this lead time is necessary so that the public
23 comment may be posted to its website and trustees have time to review comments prior to
24 the meeting.² The Board does not offer a reason for its failure to allow for comments to be
25 submitted during the meeting. The public participation outlined in the OML not only
26 allows for the public to have a voice on agenda items prior to a public body determining its

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28 ² The OAG notes that the Board has lengthened this lead time for later meetings. The Board’s January 19,
2021 meeting agenda lists a public comment cut off four days prior to the meeting.

1 action on those items, but also allows for the public to make comment during the meeting
2 on items that have occurred or any other matter within the jurisdiction and control of the
3 public body. Requiring all comments to be submitted hours prior to the meeting with no
4 ability to submit comments during the meeting does not meet the requirements of the OML
5 or Directive 006. Thus, the Board violated the OML by failing to meet the public comment
6 and participation requirements of NRS 241.020(3)(d)(3).

7 **B. The Board did not violate the OML by posting supporting material to its website less**
8 **than an hour prior to the meeting.**

9 The OML requires that an agenda list the name and contact information for a person
10 from whom the public may request supporting material and a list of locations where
11 supporting material is available to the public. NRS 241.020(3)(c). Supporting material
12 must be provided to the public upon request at the same time it is provided to the members
13 of the public body, whether prior to or at a public meeting. NRS 241.020(8). Directive 006
14 states:

15 If a public body holds a meeting and does not provide a physical location where
16 supporting material is available to the public, the public body must provide on
17 its public notice agenda the name and contact information for the person
18 designated by the public body from whom a member of the public may request
19 supporting material electronically and must post supporting material to the
20 public body's website, if it maintains one.

21 Review of the available evidence indicates that the supporting material at issue was
22 not provided to members of the public body any sooner than it was made available to the
23 public. Thus, the Board did not violate the OML by posting the supporting material less
24 than an hour prior to the meeting.

25 **SUMMARY**

26 Because the OAG finds that the Board has violated the OML, the Board must place
27 these Findings of Fact and Conclusions of Law on its next meeting agenda and include
28 them in the supporting material. The agenda item must acknowledge these Findings of
Fact and Conclusions of Law to be the result of the OAG investigation in the matter of the

1 Attorney General File No. 13897-372, and that they have been placed on the agenda as a
2 requirement of NRS 241.0395.

3 Dated: April 14, 2021.

4 AARON D. FORD
Attorney General

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6 By: /s/ Rosalie Bordelove
7 ROSALIE BORDELOVE
Chief Deputy Attorney General

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 13th day of April, 2021, I served the foregoing
4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same
5 in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
6 addressed as follows:

7 Shelli Clark

8 [REDACTED]
9 [REDACTED]

10 **Certified Mail No.:** [REDACTED]

11 Clark County School District Board of Trustees
12 5100 W. Sahara Avenue
13 Las Vegas, NV 89146

14 **Certified Mail No.:** 7020 0640 0000 7651 8190

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16
17 /s/ Debra Turman
18 An employee of the Office of the
19 Nevada Attorney General
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