

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 LYON COUNTY SCHOOL DISTRICT
5 BOARD OF TRUSTEES
6
7

OAG FILE NO.: 13897-405

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Cynthia Darden filed a complaint with the Office of the Attorney General (“OAG”)
10 alleging violations of the Nevada Open Meeting Law (“OML”) by the Lyon County School
11 District Board of Trustees (“Board”). The Complaint alleges that the Board violated the
12 OML by improperly refusing to read Complainant’s public comment during the Board’s
13 January 26, 2021 meeting.

14 The OAG has statutory enforcement powers under the OML and the authority to
15 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
16 241.040. The OAG’s investigation of the Complaint included a review of the Complaint and
17 supplemental information, the response from the Board, and the public notice agenda and
18 minutes of the Board’s January 26, 2021 meeting.

19 After investigating the Complaint, the OAG determines that the Board violated the
20 OML by placing improper viewpoint-based restrictions on public comment.

21 **FINDINGS OF FACT**

22 1. The Board held a public meeting on January 26, 2021. Due to the COVID-19
23 pandemic, the meeting was held by virtual means.

24 2. Agenda item #10 for the January 26 meeting stated the following:¹

25 PUBLIC PARTICIPATION: The public is invited to address the Board on items
26 not listed on the agenda. No action may be taken on any subject raised during
27 public comment until the matter has been properly placed on an agenda for a

28 ¹ The OAG cautions the Board to review its policies to ensure compliance with NRS 241.020(3)(d)(3) for future meetings, particularly regarding public comment prior to action items.

1 properly noticed meeting pursuant to NRS 241 (Nevada's Open Meeting Law).
2 We ask that public comment be emailed to boardmeeting@lyoncsd.org in order
3 to comply with capacity restrictions.²

4 Although this Board does not restrict comments based upon viewpoint,
5 comments will be prohibited if the contents are willfully disruptive,
6 slanderous, amount to personal attacks or interfere with the rights of other
7 speakers. Comments made during this time will be monitored by the Board
8 Chairperson.

9 3. Complainant emailed a public comment statement to the Board prior to the
10 meeting. Complainant's comments related to her opinion that the Superintendent's
11 requirement for teachers and staff to travel to school sites when a snow day is called is
12 unsafe. She concluded her remarks by stating "I would hope you would encourage [the
13 Superintendent] to rethink his actions if a snow day is indeed called. Thank you."

14 4. During the public participation section of the January 26 meeting, Board staff
15 refused to read Complainant's emailed comment and include it in the record. Board staff
16 stated the decision was due to the email containing inappropriate comments regarding an
17 employee. Board staff read other emailed comment and included it in the record.

18 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

19 The Board, as the governing body of a public school district under NRS 386.110, is a
20 public body as defined in NRS 241.015(4) and is subject to the OML.

21 Public bodies in Nevada must include periods devoted to comments by the general
22 public. NRS 241.020(3)(d)(3). The OML does not mandate that members of the public be
23 allowed to speak during meetings, except during those periods statutorily required.
24 However, once the right to speak has been granted by the Legislature, the protections of
25 free speech by the United States Constitution attach. *See In re: Incline Village General
26 Improvement District*, OAG File No. 11-024 (Nov. 21, 2011) (*citing* OMLO 2001-22 (Apr. 27,
27 2001) and discussing the importance of the public's right to address public bodies).

28 ² The OAG notes that while the OML ordinarily requires live public comment for meetings, email-only public
comment was permitted at the time of the meeting at issue pursuant to the Governor's Emergency Directive
006.

1 Freedom of expression upon public questions is secured by the First Amendment. *N.Y.*
2 *Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). Generally, “the right to criticize public
3 officials” is protected by the First Amendment. *Jenkins v. Rock Hill Local School District*,
4 513 F.3d 580, 588 (6th Cir. 2008); *Norse v. City of Santa Cruz*, 629 F.3d 966, 979 (9th Cir.
5 2010) (“government may *never* suppress viewpoints it doesn’t like”). Article 1, Section 9 of
6 the Nevada Constitution also expressly protects a citizen’s freedom of speech.³ The OAG
7 previously stated that Constitutional safeguards were “fashioned to assure unfettered
8 interchange of ideas for bringing about political and social changes desired by the people.”
9 *In re: Incline Village General Improvement District*, *supra*.

10 Despite these Constitutional safeguards, an individual’s right to speak during a
11 public meeting is not unlimited. Rather, the OML allows public bodies to place restrictions
12 on comments made by the general public, but any such restriction must be reasonable and
13 may only restrict the time, place, and manner of the comments. NRS 241.020(2)(d)(7).
14 Restrictions based upon an individual’s viewpoint are strictly prohibited. *Id.* First
15 Amendment protections allow for content-based restrictions – “as long as the content-based
16 restrictions are viewpoint neutral and enforced that way.” *Norse* at 976. Courts have found
17 that restrictions on public comment must not be applied unreasonably or arbitrarily.
18 *Chaffee v. San Francisco Public Library Com.*, 134 Cal. App. 4th 109, 115 (Cal. Ct. of App.
19 1st Dist., Div. 4 Oct. 26, 2005). Should a public body wish to place restrictions on public
20 comment, the OML further instructs that the agenda of the public body clearly express all
21 restrictions on public comment. NRS 241.020(3)(d)(7).

22 The Board’s public comment statement on the agenda for its January 26 meeting
23 prohibited comments that were “willfully disruptive, slanderous, amount to personal
24 attacks or interfere with the rights of other speakers.” The Board contends that it refused
25 to read and include Complainant’s email because it was “derogatory towards [the

26 ³ Sec. 9: **Liberty of speech and the press.** Every citizen may freely speak, write and publish his sentiments
27 on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge
28 the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be
given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true
and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

1 Superintendent] and contain[ed] information which was not accurate.” While a public
2 body may disagree with the factual basis of the comment, should a matter be within the
3 authority of the public body, the issue could have received discussion or rebuttal from staff.
4 *See In re Incline Village General Improvement District, supra.* Complainant’s comments
5 addressed an action taken by the Superintendent in his professional capacity, which is
6 squarely within the authority of the Board. Moreover, if the Board ever intends to discuss
7 the Superintendent’s professional competence at a meeting, such as for an annual
8 performance review, the OML requires that discussion to occur in open session in front of
9 the public. NRS 241.031(1)(b). Complainant’s comments consisted of a recitation of two
10 statements by the Superintendent, her belief that following the Superintendent’s directions
11 may not be safe and may be in contravention to statements by the Governor, and her
12 request to the Board to address the issue. While the Board’s public comment statement
13 does not violate the OML on its face, if it is applied in such a way that comments critical of
14 any Board employee are deemed “derogatory” and prohibited, it is not being applied in a
15 viewpoint-neutral fashion. The OAG finds that, in this instance, the Board’s application of
16 its public comment restrictions violated in the OML.

17 SUMMARY

18 Upon investigating the present Complaint, the OAG makes findings of fact and
19 conclusions of law that the Board violated the OML by placing a viewpoint-based restriction
20 on Complainant’s public comment.

21 If the Attorney General investigates a potential OML violation and makes findings
22 of fact and conclusions of law that a public body has taken action in violation of the OML,
23 “the public body must include an item on the next agenda posted for a meeting of the public
24 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
25 public body must treat the opinion of the Attorney General as supporting material for the
26 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
27 must place an item on its next meeting agenda in which it acknowledges the present
28 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation

1 in this matter. The Board must also include the OAG Opinion in the supporting materials
2 for its next meeting.

3 Dated: April 22, 2022.

4 AARON FORD
5 Attorney General

6 By: /s/ Rosalie Bordelove
7 ROSALIE BORDELOVE
8 Chief Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of April 2022, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

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/s/ Debra Turman
An employee of the Office of the
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