

1 OFFICE OF THE ATTORNEY GENERAL

2 STATE OF NEVADA

3 In the matter of:

4 DEMOCRACY PREPARATORY
5 ACADEMY AT THE AGASSI CAMPUS
6 GOVERNING BOARD

OAG FILE NO.: 13897-450

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 David Johnson filed a complaint with the Office of the Attorney General (“OAG”)
10 alleging violations of the Nevada Open Meeting Law (“OML”) by the Democracy
11 Preparatory Academy at the Agassi Campus Governing Board (“Board”) regarding its
12 March 22 and June 30, 2022, meetings.

13 After investigating the Complaint, the OAG determines that the Board violated the
14 OML by failing to have a physical location for the public at its March 22 meeting, as listed
15 on its agenda; failing to send the agenda of its June 30 meeting to the Complainant; and
16 conducting its June 30 meeting without public access. The OAG has insufficient evidence
17 to find violations regarding Complainant’s other allegations, as discussed below.

18 **FINDINGS OF FACT**

19 1. The Board held a public meeting on March 22, 2022. The agenda for the
20 meeting stated: “The meeting will take place at Democracy Prep at the Agassi Campus and
21 available virtually.” A Zoom link was listed on the agenda. In addition, the Zoom link was
22 emailed to Complainant after he requested meeting information.

23 2. Complainant attempted to attend the meeting at the school campus and found
24 that there was no physical location for the meeting. Complainant then attended the
25 meeting via Zoom, where he was able to observe and make public comment.

26 3. The Board held a public meeting on June 21, 2022. Toward the end of the
27 meeting, the Chair noted that a special meeting would need to be held to approve the
28

1 school's budget, which was due on June 30. The Board discussed potential times to hold a
2 meeting on June 30.

3 4. On June 23, 2022, Complainant sent an email to the Board formally
4 requesting to receive meeting notices via U.S. mail.

5 5. On June 30, 2022, the Board held a meeting to approve its budget. The agenda
6 for the meeting was not sent to Complainant ahead of time. The agenda stated: "The
7 meeting will take place at Democracy Prep at the Agassi Campus and available virtually."
8 A Zoom link was included on the agenda, but due to an issue with the school's Zoom
9 account, the link did not work. There was no physical location available to the public.

10 6. The agendas for many of the Board's meetings during the time period at issue
11 were not posted to the Board's website as the Board was having technical difficulties with
12 its website.

13 LEGAL STANDARDS AND CONCLUSIONS OF LAW

14 The Democracy Preparatory Academy at the Agassi Campus Governing Board,
15 created pursuant to NRS Chapter 388A, is a "public body" and subject to the OML. NRS
16 241.015(4); 388A.320(5).

17 **A. The Board violated the OML by failing to have a physical location for its March 22**
18 **meeting as listed on its public notice agenda.**

19 The public notice agenda for a public body must list the "time, place and location of
20 the meeting." NRS 241.020(3)(a). This includes if there will be no physical location for the
21 meeting. *Id.* The agenda for the March 22 meeting listed information on how to access the
22 meeting via a remote technology system and stated that the school's campus would be a

23 /////

24 /////

25 /////

26 /////

1 location for the meeting. By listing a physical location on its agenda and then holding an
2 entirely virtual meeting, the Board violated the OML.¹

3 **B. The Board violated the OML by failing to send notice of its June 30 meeting to**
4 **Complainant.**

5 Public notice agendas must be provided to any person who has requested notice of
6 the meetings of the public body. NRS 241.020(4)(c). This can be a standing request that
7 lasts for 6 months. *Id.* Complainant made a formal request for notice of meetings of the
8 Board on June 23. The Board scheduled and held a meeting on June 30 without providing
9 notice to Complainant per his request. Thus, the Board violated the OML in this respect.

10 **C. The Board violated the OML by holding its June 30 meeting without access to the**
11 **public.**

12 “[A]ll meetings of public bodies must be open and public, and all persons must be
13 permitted to attend any meeting of these public bodies at a physical location or by means
14 of a remote technology system.” NRS 241.020(1). Where there is no physical location for
15 the meeting, members of the public must be permitted to “Hear and observe the meeting,
16 participate in the meeting by telephone and provide live public comment during the
17 meeting using the remote technology system.” NRS 241.023(1)(b)(2). The agenda for the
18 June 30 meeting listed a physical location and information for attending via Zoom.
19 However, the meeting did not have a physical location and the information for Zoom
20 attendance was invalid. Moreover, no telephone number was listed as required by NRS
21 241.020(3)(a)(2) for meetings with no physical location. Thus, members of the public were
22 unable to access the meeting in violation of the OML.

23
24 ¹ The OAG notes that the agendas for the Board’s June 21, June 30, and July 26, 2022,
25 meetings all included the same statement regarding a virtual and a physical location for
26 the meetings. The evidence obtained by the OAG, including statements by Board members
27 at the July 26 meeting that these were “Zoom only meetings” and that the Board would go
28 back to a format with in-person attendance soon, indicates that the Board may have
violated the OML with respect to these additional meetings. However, the Complaint only
included allegations regarding an attempt to attend the March 22 meeting in person and
as such, the OAG finds only one violation at this time.

1 Complainant raised OML concerns regarding the June 30 meeting at the Board's
2 July 26 meeting. The Board explained the errors in Zoom information and the Board's
3 website access issues at that time. However, the Board did not agendize or take corrective
4 action regarding the June 30 meeting as permitted by NRS 241.0365. As such, the Board's
5 OML violation stands.

6 **D. The OAG does not find a violation for the Board's failure to post its agendas to its**
7 **website for the meetings at issue.**

8 Public bodies are required to post their agendas to their website if they maintain
9 one. NRS 241.020(4)(a); 241.020(6). However, the "inability of a public body to post notice
10 of a meeting pursuant to this subsection as a result of technical problems with its website
11 shall not be deemed to be a violation of the provisions of [the OML]." NRS 241.020(6). The
12 Board contends that technical difficulties with the Board's website caused its failure to post
13 agendas in accordance with this provision for the meetings at issue. The OAG does not
14 possess evidence to the contrary and thus does not find a violation of the OML. However,
15 where technical difficulties persist, but a public body has the ability to address them and
16 update other portions of its website, continued failure to post agendas could result in a
17 violation. The OAG asks that the Board be cognizant that the public has access to its
18 meeting agendas.²

19 **SUMMARY**

20 Upon investigating the present Complaint, the OAG makes findings of fact and
21 conclusions of law that the Democracy Preparatory Academy at the Agassi Campus
22 Governing Board violated the OML as described above.

23 If the Attorney General investigates a potential OML violation and makes findings
24 of fact and conclusions of law that a public body has taken action in violation of the OML,
25 "the public body must include an item on the next agenda posted for a meeting of the public
26 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The

27 _____
28 ² At the time of drafting this opinion, the Board's website appeared to be up to date with recent agendas and materials.

1 public body must treat the opinion of the Attorney General as supporting material for the
2 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
3 must place an item on its next meeting agenda in which it acknowledges the present
4 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation
5 in this matter. The Board must also include this Opinion in the supporting materials for
6 its next meeting.

7 Dated: January 5, 2024.

8 AARON FORD
9 Attorney General

10 By: /s/ ROSALIE BORDELOVE
11 Rosalie Bordelove
12 Chief Deputy Attorney General
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2024, 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:

David A. Johnson

[Redacted]
[Redacted]
[Redacted]

Certified Mail No.: [Redacted]

Democracy Preparatory Academy at the Agassi Campus Governing Board
c/o Vivienne Rakowsky
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Email: Vivienne.Rakowsky@lewisbrisbois.com

Certified Mail No.: 7020 2450 0001 1950 7351

/s/ Debra Turman
An employee of the Office of the
Nevada Attorney General