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January 16, 2023

Via U.S. Mail

Alicia Price
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-428
Lander County School District Board of Trustees**

Dear Ms. Price:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Lander County School District Board of Trustees (“Board”) regarding its May 11 and May 25, 2021, meetings.¹

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The Complaint alleges that the Board violated the OML by:

1. Posting different agendas online than were printed and sent out to requestors;
2. Listing the name of an employee regarding whom action may be taken, but failing to give notice to that employee;
3. Including personnel actions in the consent calendar portion of the agenda;

¹ Allegations were also made regarding the Board’s January 12, February 16, March 9 and April 13, 2021, meetings. However, due to the time limitations contained in NRS 241.039(2), the OAG is not permitted to investigate and opine on these allegations.

4. Adding individuals to an agenda item during the May 11 meeting without their inclusion on the posted agenda;
5. Asking some individuals to move to an overflow room due to exceeding capacity in the May 25 meeting's main room; and
6. Taking action on items with insufficient supporting material.²

The OAG's investigation of the Complaint included a review of the Complaint and all attachments thereto; the response filed on behalf of the Board and all attachments thereto; and the agendas, minutes and recordings of the Board's May 11 and May 25, 2021, meetings. After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Board held public meetings on May 11 and May 25, 2021, at the Austin Schools in Austin, Nevada and the Board's District Office Building in Battle Mountain, Nevada, respectively. The public notice agendas for each meeting listed the single physical location for the meeting and did not list virtual attendance information. The Board used computer software for the online management of its agendas and materials, BoardDocs. When accessing the agenda through the Board's website, a video link was available to view the meeting virtually.

When viewed through the BoardDocs software, the Board's agendas appeared in a different format than the printed agenda. The agenda items were the same for both versions of the agendas. Each agenda listed an item "E. Consent Items" and listed the section as "For Possible Action." Each agenda also included an item entitled "Approval of Employee Resignations and/or new Hires". These items included the names of staff members regarding whom action would be taken.

During the May 11 meeting, public comment was received at the physical location of the meeting and offered virtually. During discussion of item E.3., regarding employee resignations and new hires, two additional resignations were brought up. A discussion ensued regarding whether the

² The Complaint also made allegations regarding ethics issues, management of the District and potential violations of Board policy. These allegations do not fall within the purview of the OML and are not addressed in this opinion.

Board could act on those resignations because the names were not listed on the agenda. The Board took action regarding one individual, whose name was listed on the agenda, and tabled any further action on the item.

The Board learned prior to the May 25 meeting that it would receive a larger than normal turnout. To accommodate the anticipated number of attendees, the Board opened additional rooms with a video link for public attendees to view the meeting. Public was rotated from the overflow rooms to make public comment without violating capacity restrictions. Upon numerous members of the public stating that they were only present for one informational item and did not desire to attend the rest of the meeting, the Board heard the informational item out of order to allow attendance to reduce.

The agenda for the May 25 meeting include an item titled “3. Direct the Superintendent to Create an Assistant Principal Position at BMES and Further Direct the Superintendent to Place Ashley Ramos into that Position.” During the item, the Board listened to a statement from Ms. Ramos, discussed its process for making personnel decisions and the role of the Superintendent in those decisions, whether or not to extend the temporary position and ultimately took action to form a committee to review the matter and come back to the Board with a recommendation.

LEGAL ANALYSIS

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

As a preliminary matter, allegations 3 and 6, above, fail to state a claim under the OML. A public body’s use of a “consent calendar” is an organizational tool to alert the public and public body members that certain items are likely to be combined for consideration with minimal to no discussion on the items. The OML does not require any particular level of discussion prior to action being taken and specifically allows for items to be taken out of order, tabled or combined for consideration at any time. NRS 241.020(3)(d)(6). In addition, the OML requires that supporting material be available to the public but does not require that a public body have supporting material for any particular item. NRS 241.020(7)(c).

A. The Board did not violate the OML by posting agendas online in a different format.

Public bodies in Nevada must post notice of their meetings including the location of the meeting and clear and complete statements of the topics scheduled to be considered. NRS 241.020(3). If a public body maintains a website, the public body shall post notice of each of its meetings to its website. NRS 241.020(6). The public body must also post its agenda at its principal office and send copies of the agenda to individuals who have requested them. NRS 241.020(4).

Here, the Board posted the agenda for its May 11 and May 25 meetings to its website but did so via an internet based application that included links to supporting material and virtual attendance. The agenda on the Board's website contained the same agenda items and met the same requirements as the physically posted agenda but appeared in a different format. The OML does not require that all copies of an agenda appear identical, so long as the various copies all meet the agenda requirements in the OML. *See* NRS 241.020. Thus, the OAG does not find a violation of the OML for the Board's differing agendas.

B. The OAG will not opine as to whether adequate notice was provided to someone other than the Complainant.

Complainant does not have standing to challenge whether another person was provided adequate notice under the OML. The OML requires specific notice to be given to individuals whose character, alleged misconduct, or physical or mental health will be discussed during the meeting. NRS 241.033. In addition, the OML requires specific notice to be given to individuals if the public body intends to take administrative action against them. NRS 241.034. The OAG has previously opined that the subject of a meeting may waive this statutory right to notice. *In re Douglas County Board of Commissioners*, Open Meeting Law Opinion No. 13897-312 (Oct. 2, 2019).

The question of standing concerns whether the party seeking relief has a sufficient interest in the matter. *Nevada Policy Research Institute, Inc. v. Cannizzaro*, 507 P.3d 1203, 1207, 138 Nev. Adv. Op. 28 (2022). To establish standing, a complainant must have suffered some actual or threatened injury resulting from the challenged activity. *Valley Forge Christian College v.*

Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982). To sue in a district court to have an action of a public body declared void or require compliance with or prevent violations of the OML, a person must have been denied a right conferred by the OML. NRS 241.037(2).

Here, the Complaint asserts that Ashley Ramos, the subject of the agenda item at issue, was not provided notice as required by NRS 241.033 and/or 241.034. The notice requirements in the OML are specific to the individual person whose character will be discussed or against whom administrative action will be taken. See *Stockmeier v. Nevada Department of Corrections Psychological Review Panel*, 122 Nev. 385, 396, 135 P.3d 220 (2006), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). As the notice requirements conferred by NRS 241.033 and 241.034 are considered waivable, such a waiver could occur prior to or after the meeting. Thus, the ability to claim the notice was insufficient resides only with the person entitled to the notice. The OAG finds that Complainant does not have standing to challenge the sufficiency of notice to another person and will not further opine on the matter.

C. The Board only acted regarding an individual listed on the agenda for the Board’s May 11 meeting.

The Complaint alleges that individuals were added to a consent agenda item during the Board’s May 11 meeting who were not listed on the agenda. If a public body will consider whether to take administrative action regarding a person during a meeting, the name of that person is required to be listed on the meeting’s agenda. NRS 241.020(3)(d)(5). Agenda item E.3. for the May 11 meeting read “Approval of Employee Resignations and/or New Hires” and listed the names of two individuals. During discussion of the agenda item, two additional names were brought up. The Board discussed the fact that the additional names were not listed on the agenda and acted only regarding one individual, who was listed. Thus, the OAG does not find a violation of the OML.

D. The Board did not violate the OML in its use of overflow rooms for attendees.

Complainant alleges that the Board’s use of overflow rooms to accommodate the large turnout for its May 25 meeting violated the OML. The

OML requires public bodies to make reasonable efforts to ensure the facilities for a meeting are large enough to accommodate the anticipated number of attendees. NRS 241.020(2). Reasonableness is determined by examining the facts and circumstances of each meeting. *In re: Washoe County School District Board of Trustees*, Open Meeting Law Opinion No. 13897-437 at 4 (May 11, 2022).

In the instant case, the Board was aware prior to the meeting that it would have a larger turnout than normal. In preparation, it set up additional meeting rooms and a procedure for accepting public comment from all members of the public. Indeed, the Board received over an hour of public comment during the three and a half hour meeting and specifically checked if there were additional commenters from the overflow rooms prior to closing out public comment. The OAG does not possess evidence that anyone was prevented from attending the meeting due to capacity restrictions or that anyone was prevented from making public comment. Thus, the OAG does not find a violation of the OML.

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
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