

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

June 23, 2023

Via U.S Mail and Email

Amber J. Joiner



**Re: Open Meeting Law Complaint, OAG File No. 13897-443
Washoe County School District Board of Trustees Safe and
Healthy Schools Commission**

Dear Dr. Joiner:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Washoe County Safe and Healthy Schools Commission (“Commission”) at its February 7, 2022, meeting.

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 OAG’s investigation of the Complaint included a review of the Complaint, response from the Washoe County School District, and the agenda, minutes and recording of the Commission’s February 7 meeting. After investigating the Complaint, the OAG determines that the Commission did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Commission held a public meeting on February 7, 2022. The meeting had a single physical location available for public to attend and offered

a remote technology system for commissioners who chose to attend virtually. Agenda Item 2.03 stated:

Discussion of family engagement strategies used within the Washoe County School District and parent/family communication as related to the District's Threat Assessment process and COVID-19 mitigation measures and compliance (FOR INFORMATION AND DISCUSSION ONLY)

Agenda Item 3.01, public comment, listed the following public comment restrictions:

Public Comment – Comments from the public are invited at this time on topics not specifically addressed elsewhere on the agenda. A completed 'Citizen's Request to Speak' card should be filled out and submitted before speaking during the Public Comment section, which must at least include the name of the speaker. Prior to any action, the Committee Chair will invite the individual to come forward and speak. Pursuant to Board Policy 9115, Meetings of the Board of Trustees, all persons are limited to 3 minutes per item. The time limit may be altered at the discretion of the Chair of the Committee. Pursuant to NRS 241.035, correspondence or written materials submitted for public comment shall be attached to the minutes of the meeting. The Committee may impose reasonable content-neutral restrictions on public comment such as willfully disruptive comments that are irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, amounting to personal attacks, or interfering with the rights of other speakers. All members of the general public will be expected to wear appropriate face coverings per the Governor's Directives. If members of the public refuse or fail to do so, in order to protect the health, safety, and welfare of all members of the general public, staff and the Committee as well as commiserate with the Governor's Directives, they will be asked to leave the meeting. The Committee will also accept public comments before and during the meeting through SHSCcommittee@washoeschools.net. The Committee will take time to read those comments during the meeting and announce the names of those who provided public comment via email.

Complainant, a commissioner, attended the meeting via the remote technology system.

Item 2.03 was called early in the meeting and began with a presentation from the Department of Family-School Partnerships and questions on the presentation. There was then a brief discussion of the Student Behavior Administrative Procedures Manual. Complainant made comments regarding her view of complaint procedures available to parents when they feel that a school is not following the law. Complainant then began recounting her frustration with her own experience reporting compliance issues. Counsel for the Commission cautioned the commissioners to keep the discussion to the agenda item and not to go into specific situations at specific schools. Complainant then offered to make the rest of her comments during public comment and the Chair agreed that would be more appropriate. The discussion returned to more general topics regarding the complaint process and Complainant made additional comments about the process generally.

When Item 3.01 was called for public comment, counsel to the Commission stated that pursuant to the public comment policy, Complainant would need to make her comments via email as she was not in attendance physically. No public comment was made during the item in person or via email.

Complainant filed the instant Complaint alleging the Commission violated the OML by preventing her from making her comments either during Item 2.03 or during public comment via the remote technology system.

LEGAL ANALYSIS

As a committee created by the Washoe County School District Board of Trustees, the governing body of a public school district, the Commission is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

Complainant alleges that in halting discussion, the Chair violated the OML by preventing her from making her comments. The OAG disagrees. The OML was enacted to ensure public access to government as it conducts the people’s business. NRS 241.010. An agenda for a public meeting must include “A clear and complete statement of the topics scheduled to be considered during the meeting.” NRS 241.020(3)(d)(1). Public bodies must be cognizant of what is written on their agenda to avoid exceeding the scope of the agenda topic during discussion. *Sandoval v. Board of Regents of University*, 119 Nev. 148,

155, 67 P.3d 902, 906 (2003). The role of the moderator of a meeting involves a great deal of discretion. *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990).

Prior to cutting off discussion, Complainant's comments moved from discussion of the general process for health and safety complaints at a school to the specific complaints she had made regarding her son's school and the specific responses, or lack thereof, that she had received. She repeatedly stated that she felt a public meeting was where parents needed to voice their concerns and she was making her comments as a concerned parent. Complainant acknowledged that her comments may be more appropriate as public comment. The Chair acted within his discretion, upon advice of counsel, to prevent the Commission from deviating from the agenda topic.

Complainant further alleges the Commission's requirement that she email her public comment was a violation of the OML. The Commission asserts that they applied the same public comment restrictions to all commenters, including Complainant. The OML requires any restrictions on comments by the general public to be included on the agenda for a meeting. NRS 241.020(3)(d)(7). In addition, "Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint." *Id.* The agenda listed two options for public comment: in person at the physical location for a meeting or via email. Complainant was not present at the physical location and was offered to submit her comments via email, which she did not.

Public bodies are permitted to use a remote technology system to aid in the conduct of their meetings so long as they allow members of the public to attend and participate at a physical location *or* participate and provide live public comment via the remote technology system. NRS 241.023(1)(b). The Commission provided a physical location for members of the public to attend and participate and was not required to allow for public comment via virtual means. Thus, the OAG does not find a violation of the OML when the Commission required Complainant to submit her comments via email.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close its file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

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

cc: Sara Montalvo, General Counsel for the Washoe County School District
P.O. Box 30425
Reno, Nevada 89520-3425