

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.: 13897-265

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 The Office of the Attorney General (OAG) received eleven complaints regarding
10 meetings of the Clark County School District Board of Trustees (Board) on January 29 and
11 February 22, 2018, (Complaints) alleging violations of the Nevada Open Meeting Law
12 (OML). The Complaints allege that the Board violated the OML by unlawfully restricting
13 public comment at the meetings, holding the February Meeting at too small of a venue,
14 unlawfully restricting public access to the February Meeting, and creating a subcommittee
15 that did not comply with the OML.

16 The OAG has statutory enforcement powers under the OML and the authority to
17 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
18 241.040. The investigation of the Complaints included OAG review of the agenda and
19 minutes of the June 22, 2017, meeting, the agendas, minutes, and recordings for the
20 January 29 and February 22, 2018, meetings, together with written responses to the
21 Complaints and supporting materials from Clark County Counsel.

22 After investigating this matter, the OAG determines that the Board violated the
23 OML by restricting public comments based upon viewpoint during its January Meeting.
24 The Board did not violate the OML with respect to the other allegations, in part due to
25 remedial actions taken by the Board during the February Meeting.

26 **FINDINGS OF FACT**

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

1 2. During a public meeting on June 22, 2017, the Board directing the
2 Superintendent of Clark County School District to form a working group for the purpose of
3 obtaining public input and consideration to develop a gender diverse District policy
4 (Working Group).

5 3. Board Trustees were able to submit one name each for membership on the
6 Working Group. Clark County School District Staff coordinated the selection of the
7 remaining members and the organization of meetings.

8 4. The Working Group consisted of over 40 members, primarily school principals,
9 administrators, teachers, parents, and students. Only one Board Trustee was a member of
10 the Working Group.

11 5. Initial meetings of the Working Group were not open to the public. The
12 Working Group held five public meetings in the fall of 2017 to gather public input regarding
13 its recommendations to the Board.

14 6. The Working Group presented recommendations to the Board during the
15 Board's January 29, 2018, meeting (January Meeting). The presentation was made by the
16 Chief Communications, Marketing, and Strategy Officer and the Chief Instructional
17 Services Officer of Clark County School District.

18 7. The January Meeting was held in the theatre of Valley High School in Las
19 Vegas. The Chair of the meeting stated at multiple points that the room was filling up and
20 asked people to move over to allow additional people to fit in the room.

21 8. The Board's January Meeting included the following statement regarding
22 restrictions on public comment:

23 "Public comment on agenda item 2.01, GENDER DIVERSE
24 DISCUSSION shall be limited to 90 minutes. Because of the
25 limitations on public comment, speakers will be randomly drawn
26 to speak. Each speaker shall be allowed 1 minute to address the
27 Board."

28 9. Individuals who wanted to make public comment were asked to sign up and
indicate whether they were in support of a gender diversity policy, in opposition to a policy,

1 or neutral on the topic. Names were drawn at random to speak from the respective
2 viewpoint “bags.” First, 35 individuals who had indicated they were in opposition to a
3 policy were brought up to speak, then 35 individuals who had indicated they were in
4 support of a policy. Lastly, 20 names were drawn from the neutral “bag.”

5 10. During the opposition portion of public comment, an individual was called who
6 stated she was in support of a policy, but had been given the wrong form. She was asked
7 to sit down and told she would be allowed to speak later.

8 11. The first individual to speak during the neutral portion of the public comment
9 period began to speak about her religious views and appeared to be in opposition to a policy.
10 The Chair cut off the speaker’s comment and stated that it was because the speaker “was
11 preaching.”

12 12. Multiple other individuals were cut off during the neutral portion of the public
13 comment period because, in the Chair’s view, they were speaking in opposition or support
14 and were not neutral.

15 13. Seven minutes into the neutral public comment period, the Chair ended all
16 public comment, stating it was “because you guys can’t play by the rules.” Not all 20
17 members called out of the neutral “bag” were permitted to speak.

18 14. In total, public comment on the gender diversity issue lasted 99 minutes,
19 including a short period of technical difficulties, discussion regarding the process for taking
20 public comment, and discussion regarding the room filling up.

21 15. The Board did not take action on the agenda item and chose to place it on a
22 future agenda for further discussion. Trustee Child noted that there would likely be a large
23 crowd in attendance again and suggested that the next meeting be held at a larger venue
24 to have adequate space.

25 16. The February 22, 2018, meeting (February Meeting) was held at the Edward
26 A. Greer Education Center Board Room in Las Vegas, the Board’s customary meeting
27 location.

28 . . .

1 17. The February Meeting included the following statement regarding
2 restrictions on public comment:

3 "Public comment on agenda item 4.02 Gender Diverse, shall be
4 limited to 30 minutes due to the fact that public comment on this
5 item has been recorded at five public meetings, within an online
6 survey, as well as at a special meeting of the Clark County School
7 District Board of Trustees on January 29, 2018. Because of the
8 limitations on public comment, speakers will be randomly drawn
9 to speak and allowed 1 minute to address the Board."¹

10 18. At the February Meeting, approximately half of the seating area was reserved
11 for each side of the gender diversity issue, support and opposition. Prior to being granted
12 entry, members of the public were asked their viewpoint and were directed to a particular
13 side of the room.

14 19. When the meeting room filled, public members were directed to an overflow
15 room and then to the lobby of the building, both of which had monitors for public to view
16 the proceedings. However, over 100 people were still denied entry due to space limitations.

17 20. The Board held a general public comment period at the beginning of the
18 meeting and then conducted about an hour of general business. During the general
19 business, the Chair read two lists of speakers that would be called for public comment on
20 the gender diversity issue, one list for each viewpoint.

21 21. Prior to hearing the gender diversity agenda item, the Board took a recess to
22 consult with the Board's counsel. The Board subsequently stated it would not be hearing
23 the gender diversity agenda item and would be rescheduling it for a later meeting at a
24 larger venue. A majority of the public left the meeting at that time and the Board continued
25 with its agenda.

26 22. A second general public comment period was taken at the end of the meeting
27 and public speakers were not restricted on topic or viewpoint. Multiple speakers expressed
28

¹ The five public meetings were held by the Gender Diverse Working Group to gather public input, but were not meetings of the Board. The online survey was also conducted by the Working Group and only a summary of responses was presented to the Board at the January Meeting.

1 a desire to speak at the first public comment period regarding items not related to the
2 gender diversity issue and to observe and participate in the earlier part of the meeting, but
3 noted that they were prevented from entering the building due to capacity issues.

4 LEGAL STANDARDS AND CONCLUSIONS OF LAW

5 The legislative intent of the OML is that actions of public bodies “be taken openly,
6 and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board*
7 *of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind
8 NRS chapter 241 favors open meetings”). Public bodies working on behalf of Nevada
9 citizens must conform to statutory requirements in open meetings under an agenda that
10 provides full notice and disclosure of discussion topics and any possible action. *Sandoval*
11 *v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

12 A. The Working Group Was Not a Public Body Under NRS 241.015(4) and Not Subject 13 to the OML.

14 The term “public body” includes any “administrative, advisory, executive or
15 legislative body of the State . . . which advises or makes recommendations to any entity
16 which expends or disburses or is supported in whole or in part by tax revenue.” NRS
17 241.015(4)(a). The statutory definition was amended in 2011 to clarify that the definition
18 includes bodies created by “an action by the governing body of a political subdivision of this
19 state.” NRS 241.015(4)(a)(7); Assembly Bill 59, 2011 Leg., 76th Sess. Consistent with this
20 statutory definition, the OAG has previously opined that to the extent a multimember
21 group is appointed by a public body and given the task of making recommendations to that
22 public body, that group is also a “public body” subject to the OML. Nevada Attorney
23 General Open Meeting Law Opinion (OMLO) 13897-192, October 19, 2016, at 2.

24 Conversely, the OAG has repeatedly opined that the OML does not apply to internal
25 staff groups or committees reporting to an individual. OMLO 2010-02, April 7, 2010
26 (finding that an advisory committee created by and reporting only to the Superintendent,
27 not the school board, was not a public body); OMLO 2009-02, August 12, 2009 (citizens
28 recruitment committee not a public body because formed by the mayor and reported only

1 to the mayor); OMLO 2007-04, September 10, 2007 (OML did not apply to a citizen's
2 advisory group that was formed by a city manager without any involvement from the city
3 council and reported only to the city manager).

4 In this instance, the Board took action to direct the Superintendent to create the
5 Working Group for the specific purpose of making recommendations to the Board. While
6 the Superintendent appointed most of the members of the Working Group, the Board
7 appointed a few. Most importantly, the Working Group deliberated on and formed
8 recommendations that were presented by Clark County School District staff to the Board
9 during the January meeting. The Board ultimately took action on those recommendations
10 by directing the Superintendent to create a policy during the Board's March 22, 2018,
11 meeting. Because the recommendations were made to the Board by School District staff
12 and there is no evidence that the Board or the Working Group sought to intentionally evade
13 the OML, the OAG finds that the Board and the Working Group did not commit a technical
14 violation of the OML in this instance. Moving forward, the Board should take caution when
15 directing the creation of advisory bodies so that they comply with the OML when necessary.

16 **B. The Board Violated the OML By Restricting Public Comment Based Upon**
17 **Viewpoint.**

18 In Nevada, public bodies exist to aid in the conduct of the people's business. NRS
19 241.010(1). Public bodies must allot time to allow comments from the general public either
20 "at the beginning of the meeting before any items on which action may be taken are heard
21 by the public body and again before the adjournment of the meeting" or "after each item on
22 the agenda on which action may be taken is discussed by the public body, but before the
23 public body takes action on the item." NRS 241.020(2)(d)(3). The OML exists to ensure
24 that the public is able to meaningfully participate in government. *See generally* NRS
25 241.010.

26 Every citizen may freely speak, write and publish his sentiments on all subjects
27 being responsible for the abuse of that right; and no law shall be passed to restrain or
28 abridge the liberty of speech or of the press. Nev. Const. art. I, § 9. The public has

1 important First Amendment interests in its ability to comment before public governmental
2 bodies. *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

3 The OML mandates that any restrictions on public comment “must be reasonable
4 and may restrict the time, place and manner of the comments, but may not restrict
5 comments based upon viewpoint.” NRS 241.020(2)(d)(7). The interpretation and
6 enforcement of rules during public meetings are highly discretionary functions. *See White*,
7 900 F.2d at 1426. A public body may impose restrictions on public comments that are
8 repetitious, irrelevant, or disruptive comment. *Id.*

9 During the January Meeting, public commenters were categorized by viewpoint and
10 limited in their time to speak solely on that basis. Multiple commenters were cut off
11 because their comments reflected a viewpoint different from that which the Board was
12 hearing at the time. The Board violated the OML during the January Meeting because it
13 restricted public comment based upon viewpoint.

14 During the February Meeting, the Board planned to conduct public comment in the
15 same form, but after removing the gender diversity item from the agenda, the majority of
16 public intending to comment left. The Board did conduct a general comment period at the
17 end of the February Meeting and speakers were not restricted based upon viewpoint. Thus,
18 the Board’s conduct of public comment during the February Meeting did not violate the
19 OML.

20 **C. By Removing the Gender Diversity Issue From Its Agenda, the Board**
21 **Avoided a Violation of the OML for Holding Its February Meeting At**
22 **a Venue Not Reasonably Large Enough to Accommodate Anticipated**
Attendance by Members of the Public.

23 The OML’s purpose is to facilitate openness in government and it is the intent of the
24 law that public bodies’ deliberations and actions be taken openly. NRS 241.010. It follows
25 that public meetings should be held in facilities that are reasonably large enough to
26 accommodate anticipated attendance by members of the public. Nevada Open Meeting
27 Law Manual at 67 (Jan. 2016).

1 A public body cannot always accurately anticipate the number of attendees to every
2 public meeting. However, in this instance, the Board was well aware that the gender
3 diversity issue generated significant public interest and attendance. In fact, during the
4 January Meeting, a Board member requested a large venue be used for the February
5 Meeting in anticipation of a large crowd. To allow public bodies to restrict public
6 participation on subjects known to generate significant public interest simply by holding
7 meetings in small venues would be contrary to the intent and spirit of the OML. Because
8 the Board removed the gender diversity issue from its February Meeting and rescheduled
9 it for a later date at a larger venue, it avoided a violation of the OML due to its venue
10 choice.

11 SUMMARY

12 Because the OAG finds that the Board has violated the OML, the Board must place
13 these Findings of Fact and Conclusions of Law on its next meeting agenda and include
14 them in the supporting material. The agenda item must acknowledge these Findings of
15 Fact and Conclusions of Law to be the result of the OAG investigation in the matter of the
16 Attorney General File No. 13897-265, and that they have been placed on the agenda as a
17 requirement of NRS 241.0395.

18 Furthermore, the OAG strongly recommends that the Board and staff receive
19 training in the OML; the OAG is available to provide OML training upon request.

20 Dated: October 5 2018.

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Attorney General

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24 By: 
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