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Via U.S Mail

Jeanne M. Shizuru
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-439
Douglas County School District Board of Trustees**

Dear Ms. Shizuru:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Douglas County School District Board of Trustees (“Board”) at its November 9 and November 22, 2021, meetings. Particularly, the Complaints allege:

1. Item 14 on the agenda for the Board’s November 9 meeting failed to include a clear and complete statement of the topics scheduled to be considered.
2. The Board failed to disseminate to the public a document brought up during discussion at the meeting.
3. The Board failed to adequately document timely posting of the agenda for its November 22 meeting.
4. The Board’s policy regarding dissemination of supporting material to Board members and the public violates the OML.
5. Item 4 on the agenda for the Board’s November 22 meeting failed to include a clear and complete statement of the topics scheduled to be considered.
6. The Board discussed the character of an individual without providing adequate notice to that individual.
7. The draft minutes for the Board’s November 22 meeting insufficiently describe the discussion under Item 4.

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 Complaints included a review of the following: the Complaints and attachments thereto; the response filed on behalf of the Board, and attachments thereto; the agendas, minutes and video recordings of the Board's November 9 and November 22, 2021, meetings; and the minutes of the Board's December 14, 2021, meeting.

After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a public meeting on November 9, 2021. Item 14 on the public notice agenda stated:

**14. Process for Addressing Critical Race Theory SG-AS
(Discussion and For Possible Action)**

Description: As a standing item, the Board may discuss the process they will use to address the future agenda item related to Critical Race Theory.

At the beginning of the meeting, the Board accepted about 40 minutes of general public comment. When Item 14 was called, Board President Gilkerson opened discussion amongst Board members on the issue. Each Board member took an opportunity to speak and share his or her views on the topic. Board Member Englekirk brought up a resolution that had been passed by the Lyon County School District and made a comment that he believed the members had all seen the document. This document was not included in the supporting material for the meeting.

Board Member Lehmann made a motion to put the topic to rest and move forward. Board President Gilkerson called for public comment specific to the item and then called for a vote. The motion passed unanimously.

The Board held a public meeting on November 22, 2021. A copy of the public notice agenda was posted at the Gardnerville Post Office and included a certification signed by Board Member Chichester that the posting complied

with the OML. The Board retained a separate document signed by the Executive Secretary of the Board certifying that she had posted the agenda to three physical locations and two internet locations. Item 4 on the agenda stated:

4. Reconsideration of Agenda Item No. 14 (“Process for Addressing Critical Race Theory”) (*Discussion and For Possible Action*)

Description: The Board of Trustees will examine the process used to address Critical Race Theory and may determine whether additional processes are necessary at this time.

The Board took approximately 50 minutes of general public comment at the beginning of the meeting, then about 30 minutes specific to Item 3, which related to rescinding the action taken on November 9.

When Item 4 was called, the Board discussed the issue extensively. Board Member Englekirk made a motion to work on a revised version of the Lyon County School District resolution, but the motion failed to receive a second. Board Member Lehmann then made a motion to remove Critical Race Theory as a standing agenda item. The Board took another 30 minutes of public comment specific to the item. The District Superintendent then made a statement in response to comments from a district employee during public comment. Finally, the Board voted and approved the motion.

The draft minutes of the Board’s November 22 meeting, presented at the Board’s December 14 meeting for approval, did not include the statements made by Superintendent Lewis during Item 4 regarding a District employee. During the December 14 meeting, at Complainant’s request, the Board discussed and voted to instruct staff to include a summary of Superintendent Lewis’ comments in the minutes. The final minutes include such a summary.

LEGAL ANALYSIS

The Douglas County School District Board of Trustees is a “public body” as defined in NRS 241.015(4); therefore, the Board is subject to the OML.

- A. Item 14 on the Board’s November 9 meeting agenda met the clear and complete standard under the OML.**

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The clear and complete statement requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Board of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence to the clear and complete standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. In addition, “a ‘higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Id.* at 155-56 (*quoting Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

Agenda Item 14 was of significant public interest as most of the public attendance and comment related to the item, it had gained significant public interest at past meetings and the Board had received attention from national news organizations regarding the issue. Thus, the OAG finds it required a higher degree of specificity on the agenda. However, the actual discussion by the Board was limited to general opinions on the teaching of Critical Race Theory (“CRT”), whether CRT was actually being taught in Douglas County schools, if more time should be spent discussing the issue and if future action was necessary. The ultimate decision of the Board was to refrain from acting and to stop discussing the issue for the time being.

Complainant argues that because the agenda item did not state that the Board may choose not to approve a process for future agenda items, it failed to meet the clear and complete standard. Public bodies in Nevada are permitted to remove an item from an agenda or delay discussion of an item at any time without violating the OML. NRS 241.020(3)(d)(6)(III). The Board’s vote that they were “putting the topic to rest and moving forward” was essentially a vote to remove the item from the agenda as removal would have garnered the same result. Thus, the OAG finds that Item 14 on the Board’s November 9 agenda did not violate the OML’s clear and complete requirement.

B. The Lyon County School District Resolution was not required to be disseminated to the public as supporting material for the November 9 meeting.

The OML requires public bodies to provide a copy of supporting material for a meeting to a member of the public, upon request. NRS 241.020(7). Supporting material means “material that is provided to at least a quorum of the members of a public body by a member of or staff to the public body and that the members of the public body would reasonably rely on to deliberate or take action on a matter contained in a published agenda.” NRS 241.015(7).

The document at issue in the present complaint was a resolution passed by a neighboring school district. To meet the definition of supporting material, the document must first have been provided to a quorum of the public body *by a member or staff of the body*. The basis for the complaint was Board Member Englekirk’s statement that the Board had seen the document. There is no allegation that a Board member or staff member provided the document to the Board prior to the November 9 meeting. The OAG does not possess evidence that such dissemination occurred prior to or during the November 9 meeting. Thus, the OAG finds that the Lyon County School District resolution was not “supporting material” as defined in the OML for the Board’s November 9 meeting and not required to be provided to the public as such.

The OAG notes that the Complainant does not allege she requested a copy of the report and was denied. Moreover, the resolution at issue was included in the Board packet as supporting material for the Board’s November 22 meeting.

C. The Board adequately documented the posting of the agenda for its November 22 meeting.

The Complaints allege that the certification signed by Board Member Chichester and included on the posted agenda for the Board’s November 22 meeting failed to adequately document posting as required by the OML. Particularly, the OML requires the following:

5. For each of its meetings, a public body shall document in writing that the public body complied with the minimum public notice required by paragraph (a) of subsection 4. The

documentation must be prepared by every person who posted a copy of the public notice and include, without limitation:

- (a) The date and time when the person posted the copy of the public notice;
- (b) The address of the location where the person posted the copy of the public notice; and
- (c) The name, title and signature of the person who posted the copy of the notice.

NRS 241.020(5). The OML does not require this information to be included on the posted agenda. The posted agenda must simply include “A list of locations where the notice has been posted”. NRS 241.020(3)(b).

The posted agenda for the Board’s November 22 meeting included a list of locations where the agenda was posted. The Board provided the AGO with a separate certificate of posting created and signed by the individual who performed the posting and including the date, times and locations posted. Thus, the OAG finds that the Board complied with the posting documentation required by the OML.

D. Allegations 4, 5 and 6 fail to state a claim under the OML.

The Complaints allege that the Board’s Policies and Procedures state timelines when Supporting material is available to the public that does not comply with the OML. However, the Complaints do not allege that a request for supporting material that has been provided to Board members was denied. Thus, the allegation fails to state a claim under the OML. The OAG cautions the Board to ensure up to date policies regarding availability of supporting material to the public.

The Complaints further allege that the Superintendent discussed the character of a District employee without such discussion being on the agenda for the Board’s November 22 meeting. The OML requires the agenda for a meeting to include “A clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(3)(d)(1). The Complaints do not allege that members of the Board participated in the discussion at issue and a review of the recording of the meeting indicates that the Board did not collectively discuss the individual. Thus, the OAG finds this allegation fails to state a claim under the OML.

Lastly, Allegation 6 states that the Superintendent discussed the character of a District employee without providing notice. The OML requires notice to be provided to an individual whose character, alleged misconduct, professional competence, or physical or mental health will be discussed at a meeting. NRS 241.033. The OAG has previously opined that the ability to claim notice under NRS 241.033 was insufficient resides only with the person entitled to the notice. *Price v. Lander County School District*, Open Meeting Law Opinion 13897-428 (Jan. 16, 2023). Thus, 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.

E. Minutes of Item 4 for the November 22 meeting include the substance of all matters proposed, discussed or decided.

Complainant alleges the draft minutes for the Board's November 22 meeting, provided as supporting material for their approval during the Board's December 14 meeting, do not include remarks made by the Superintendent regarding a District employee. The OML requires public bodies to keep written minutes including the "substance of all matters proposed, discussed or decided." NRS 241.035(c). The OML does not require verbatim comments be included. *Id.* Minutes of public meetings must be available for inspection by the public within 30 working days after the meeting and must be approved by the public body within 45 days of the meeting or at its next meeting, whichever is later. NRS 241.035(1)-(2).

Here, the final minutes included the substance of the Superintendent's comments and were approved prior to both the 30-working day and 45-calendar day deadlines in the OML. Thus, the OAG does not find a violation of the OML.

CONCLUSION

Upon review of your Complaints 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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cc: Rick R. Hsu, Esq., Counsel to the Douglas County School
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