OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of: CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES. AG FILE NO.: 13897-265

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

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

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 investigation of the Complaints included OAG review of the agenda and minutes of the June 22, 2017, meeting, the agendas, minutes, and recordings for the January 29 and February 22, 2018, meetings, together with written responses to the Complaints and supporting materials from Clark County Counsel.

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

FINDINGS OF FACT

1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to the OML.
2. During a public meeting on June 22, 2017, the Board directing the Superintendent of Clark County School District to form a working group for the purpose of obtaining public input and consideration to develop a gender diverse District policy (Working Group).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. The February 22, 2018, meeting (February Meeting) was held at the Edward A. Greer Education Center Board Room in Las Vegas, the Board’s customary meeting location.
17. The February Meeting included the following statement regarding restrictions on public comment:

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

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

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

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

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

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

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

LEGAL STANDARDS AND CONCLUSIONS OF LAW

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

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

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

Conversely, the OAG has repeatedly opined that the OML does not apply to internal
staff groups or committees reporting to an individual. OMLO 2010-02, April 7, 2010
(finding that an advisory committee created by and reporting only to the Superintendent,
not the school board, was not a public body); OMLO 2009-02, August 12, 2009 (citizens
recruitment committee not a public body because formed by the mayor and reported only
to the mayor; OMLO 2007-04, September 10, 2007 (OML did not apply to a citizen’s advisory group that was formed by a city manager without any involvement from the city council and reported only to the city manager).

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

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

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

Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. *Nev. Const. art. I, § 9.* The public has
important First Amendment interests in its ability to comment before public governmental bodies. *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

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

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

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

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

The OML’s purpose is to facilitate openness in government and it is the intent of the law that public bodies’ deliberations and actions be taken openly. NRS 241.010. It follows that public meetings should be held in facilities that are reasonably large enough to accommodate anticipated attendance by members of the public. Nevada Open Meeting Law Manual at 67 (Jan. 2016).
A public body cannot always accurately anticipate the number of attendees to every public meeting. However, in this instance, the Board was well aware that the gender diversity issue generated significant public interest and attendance. In fact, during the January Meeting, a Board member requested a large venue be used for the February Meeting in anticipation of a large crowd. To allow public bodies to restrict public participation on subjects known to generate significant public interest simply by holding meetings in small venues would be contrary to the intent and spirit of the OML. Because the Board removed the gender diversity issue from its February Meeting and rescheduled it for a later date at a larger venue, it avoided a violation of the OML due to its venue choice.

**SUMMARY**

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

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

Dated: October 5 2018.

ADAM PAUL LAXALT
Attorney General

By:

ROSALIE BORDELOVE
Deputy Attorney General