

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

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4
5 In the matter of:

6 DISCOVERY CHARTER SCHOOL
7 GOVERNING BOARD.

AG FILE NOS.: 13897-250 & 258

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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10 **BACKGROUND**

11 Ron Tetirick, Monika Boros, and Daniel Boyle filed nine separate complaints with
12 the Office of the Attorney General (“OAG”) alleging violations of the Nevada Open Meeting
13 Law (“OML”) by the Receiver of Discovery Charter School, John Haynal (“Receiver”)
14 regarding a meeting held on October 24, 2017 (collectively, “Complaints”). The Complaints
15 allege that the Receiver violated the OML as follows:

16 **ALLEGATION NO. 1:** The public notice agenda of the October 24, 2017, meeting
17 (“October Meeting”) was not postmarked before 9 a.m. on the third working day before the
18 meeting to members of the public who had requested it.

19 **ALLEGATION NO. 2:** The Receiver did not inform the Complainants of the fact
20 that a request for written notice of meetings lapses after six months.

21 **ALLEGATION NO. 3:** Supporting materials for the October Meeting were not
22 made available to the public.

23 **ALLEGATION NO. 4:** Public notice of the October Meeting was not posted at three
24 separate, prominent places within the Receiver’s jurisdiction.

25 **ALLEGATION NO. 5:** The public notice agenda of the October Meeting did not
26 state that action may not be taken on matters discussed during public comment.

27 **ALLEGATION NO. 6:** The minutes from the Discovery Charter School Governing
28 Board’s June 22, 2017, meeting were not approved at the October Meeting.

1 241) to discuss issues related to the exercise of his or her duties and receive public comment
2 regarding the same to allow parents, students, staff and the community to participate.”
3 Thus, although the Receiver is not a public body, public meetings held by the Receiver are
4 subject to the OML.

5 4. The October Meeting was the first public meeting held by the Receiver.

6 5. Mr. Tetirick received the agenda for the October Meeting via email on October
7 19, 2017, at 8:13 a.m. He requested supporting documents the same day and was told there
8 were none available at that time.

9 6. Discovery Charter School staff placed physical copies of the agenda in their
10 outgoing mail basket at 8:30 a.m. on October 19, 2017. The agendas were postmarked by
11 the U.S. Postal Service in the afternoon of October 19, 2017.

12 7. Notice was not included with the public notice agendas sent to members of the
13 public who had requested it notifying them that their request would lapse in six months.

14 8. The draft minutes of the June 22, 2017, meeting of the Board were available
15 on the Discovery Charter School website and were emailed to Mr. Tetirick on August 30,
16 2017. The draft minutes were also available to the public at the October Meeting.

17 9. The public notice agenda for the October Meeting listed the following physical
18 posting locations: Clark County Library, Whitney Library, Discovery Charter School –
19 Mesa Vista Campus, and Discovery Charter School – Hillpointe Campus.

20 10. Discovery Charter School staff delivered the public notice agenda to the Clark
21 County and Whitney Libraries on the evening of October 18, 2017, for posting and posted
22 the agenda to the Discovery Charter School Mesa Vista and Hillpointe Campuses before
23 9:00 a.m. on October 19, 2017.

24 11. The Receiver did not obtain written documentation from staff at either library
25 that the public notice agenda had been posted.

26 12. Agenda Item #3 on the agenda for the October Meeting stated “Public
27 Comment #1: Public Comment will be taken during this agenda item regarding any item
28 appearing on the agenda. A time limit of three (3) minutes, subject to the discretion of the

1 Receiver, will be imposed on public comments. The Receiver may allow additional public
2 comment at his discretion. Public Comment #2 will provide an opportunity for public
3 comment on any matter not on the agenda.”

4 13. Agenda item #6 stated “Public Comment #2: Public Comment will be taken
5 during this agenda item regarding any matter within the Receiver’s jurisdiction, control or
6 advisory power. A time limit of three (3) minutes, subject to the discretion of the Receiver,
7 will be imposed on public comments.”

8 14. No action was taken on matters raised during either public comment period.

9 15. Agenda item #4 stated “Acknowledgment of Discovery Board Meeting Minutes
10 of June 22, 2017 (Informational only; no decision, deliberation or action will be taken).”

11 16. The Receiver acknowledged the June 22, 2017, meeting and noted that copies
12 of the draft minutes were available to the public.

13 17. The Receiver hired an attorney to represent him and the school outside of a
14 public meeting.

15 18. Draft minutes of the October Meeting were uploaded to the Discovery Charter
16 School website on December 6, 2017. A recording of the meeting was uploaded to the
17 website on January 8, 2018.

18 LEGAL STANDARDS AND CONCLUSIONS OF LAW

19 1. **The Receiver violated the OML by failing to timely deliver Public Notice to**
20 **the Postal Service and failing to properly notify Complainants that a**
21 **Request for Notice of meetings lapses after six months.**

22 Minimum public notice of a meeting includes “Providing a copy of the notice to any
23 person who has requested notice of the meetings of the public body.” NRS 241.020(3)(c).
24 Further, the notice must be: “(1) Delivered to the postal service used by the public body not
25 later than 9 a.m. of the third working day before the meeting for transmittal to the
26 requester by regular mail; or (2) If feasible for the public body and the requester has agreed
27 to receive the public notice by electronic mail, transmitted to the requester by electronic
28 mail sent not later than 9 a.m. of the third working day before the meeting.” *Id.*

1 Mr. Tetirick agreed to receive notice of meetings via email and the agenda was
2 emailed to him prior to 9 a.m. on October 19, 2017, the third working day before the
3 meeting. However, there is no evidence that Mr. Boyle agreed to receive notice by email
4 and thus his notice was required to be mailed. To comply with the OML, a public body
5 must reasonably ensure delivery to the postal service used by the public body prior to 9
6 a.m. of the third working day before the meeting. See AG File No. 00-015 (April 7, 2000);
7 *Mikohn Gaming v. Espinosa*, 122 Nev. 593, 599 (2006). For example, a public body could
8 deposit the notices into a blue United States Postal Service collection box with a listed
9 pickup time prior to 9 a.m. or deliver the notices to a post office prior to 9 a.m. on the
10 required day. There is no evidence to show that the Receiver reasonably believed that by
11 putting the notices in the outgoing mail basket they would be picked up by the postal
12 service prior to 9 a.m. Thus, the Receiver committed a technical violation of the OML.

13 "A request for notice lapses 6 months after it is made. The public body shall inform
14 the requester of this fact by enclosure with, notation upon or text included within the first
15 notice sent." NRS 241.020(3)(c). Notation regarding the lapse of requests was not included
16 with the first notice sent by the Receiver. Thus, the Receiver violated the OML in this
17 respect.

18 **2. The Receiver violated the OML by failing to maintain proper**
19 **documentation of Public Notice postings.**

20 Public bodies must document, in writing, their compliance with the minimum public
21 notice requirements of the OML. NRS 241.020(4).

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

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

27 NRS 241.020(4).

1 The Receiver did not maintain records from the Clark County and Whitney Library
2 staff tasked with posting the public notice. Thus, the Receiver violated the OML.

3 **3. The Receiver did not withhold supporting material from Mr. Tetirick and**
4 **thus did not violate the OML.**

5 The OML requires public bodies to provide to a member of the public, upon request
6 and at no charge, at least one copy of supporting material provided to members of the public
7 body for an item on the agenda. NRS 241.020(6)(c).

8 The draft minutes of the Board's June 22, 2017, meeting were the only supporting
9 materials for the October Meeting. Mr. Tetirick received the draft minutes via email on
10 August 30, 2017. Copies of the draft minutes were also made available to the public at the
11 October Meeting. Thus, the Receiver did not violate the OML regarding Mr. Tetirick's
12 request for supporting materials for the October Meeting.

13 **4. The Receiver did not take action on any matters raised during public**
14 **comment and thus did not violate the OML.**

15 Public notice agendas must include periods devoted to comments by the general
16 public. NRS 241.020(2)(d)(3). Agendas must also list any restrictions on comments by the
17 general public. NRS 241.020(2)(d)(7). "Any such restrictions must be reasonable and may
18 restrict the time, place and manner of the comments, but may not restrict comments based
19 upon viewpoint." *Id.* The OML further provides that "[n]o action may be taken upon a
20 matter raised during a period devoted to comments by the general public until the matter
21 itself has been specifically included on an agenda as an item upon which action may be
22 taken" NRS 241.020(2)(d)(3).

23 The OML does not require agendas to specifically restate the language of NRS
24 241.020(2)(d)(3) regarding action on items raised during public comment. It requires only
25 that the public bodies do not take action on such matters until those items have been
26 properly noticed. The Receiver did not take action on any matter raised during public
27 comment during the October Meeting and thus did not violate the OML.

1 **5. The Receiver did not violate the OML by acknowledging the June 22, 2017,**
2 **Meeting Minutes.**

3 The OML requires public bodies to approve the minutes of a meeting “within 45 days
4 after the meeting or at the next meeting of the public body, whichever occurs later.” NRS
5 241.035(1).

6 The Discovery Charter School Governing Board ceased to exist shortly after its June
7 22, 2017, meeting. The Receiver was not a member of the Board and public meetings held
8 by the Receiver do not qualify as meetings of the Board. Thus, the Receiver did not violate
9 the OML by acknowledging, and not approving, the minutes of the June 22, 2017, Board
10 meeting.

11 **6. The Receiver complied with the OML by making the minutes of the October**
12 **Meeting available to the public within 30 working days.**

13 The OML requires minutes of public meetings to be made available for inspection by
14 the public within 30 working days after adjournment of a meeting. NRS 241.035(2).

15 Discovery Charter School staff uploaded the draft minutes of the October Meeting to
16 the School’s website on December 6, 2017, 27 working days after the meeting. The record
17 is void of any requests from Mr. Tetirick for a copy of the draft minutes. Thus, the Receiver
18 did not violate the OML.

19 **7. The Receiver did not violate the OML by hiring an attorney.**

20 The Receiver hired attorney Africa Sanchez, Esq., to represent him in OML matters.
21 The Receiver hired Ms. Sanchez outside of a public meeting. Because the Receiver is not a
22 public body, he is not required to take actions, such as hiring an attorney, in a public
23 meeting. Thus the Receiver did not violate the OML by hiring Ms. Sanchez.

24 **SUMMARY**

25 The OAG finds that the Receiver violated the OML by failing to timely deliver public
26 notice of the October Meeting to the Postal Service, by failing to provide adequate
27 notification that requests for meeting notices lapse 6 months after the requests, and by
28 failing to properly document the posting of public meeting notices. As such, the Receiver

1 must place these Findings of Fact and Conclusions of Law on his next meeting agenda and
2 include them in the supporting material. The agenda item must acknowledge these
3 Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the
4 matter of the Attorney General File Nos. 13897-250 and No. 13897-258, and that they have
5 been placed on the agenda as a requirement of NRS 241.0395.

6 Dated: May 2, 2018.

7 ADAM PAUL LAXALT
8 Attorney General

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10 By: 
11 ROSALIE BORDELOVE
12 Deputy Attorney General
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