

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3
4 In the matter of:

5 DISCOVERY CHARTER SCHOOL
6 GOVERNING BOARD.

AG FILE NOS.: 13897-240 & 241

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

7
8
9 **BACKGROUND**

10 Monika Boros and Ron Tetirick filed separate complaints on September 3, 2017, and
11 September 11, 2017, respectively, with the Office of the Attorney General (“OAG”) alleging
12 violations of the Nevada Open Meeting Law (“OML”) by the Discovery Charter School
13 Governing Board (“Board”) and the Receiver of Discovery Charter School, John Haynal
14 (“Receiver”). Mr. Tetirick filed a supplement to his complaint on September 23, 2017
15 (collectively, “Complaints”). The Complaints allege that the Board violated the OML as
16 follows:

17 **ALLEGATION NO. 1:** The agenda for the Board’s June 22, 2017, meeting failed to
18 list the name and contact information for the designated person from whom the public may
19 request supporting material for the meeting and a list of locations where the supporting
20 material is available to the public.

21 **ALLEGATION NO. 2:** The agenda for the Board’s June 22 meeting did not properly
22 denote action items.

23 **ALLEGATION NO. 3:** The agenda for the Board’s June 22 meeting was not posted
24 to the official website of the State, <https://notice.nv.gov>.

25 **ALLEGATION NO. 4:** The Board improperly denied requests for copies of the audio
26 recording of its June 22 meeting.

27 **ALLEGATION NO. 5:** The minutes of the Board’s June 22 meeting were deficient
28 with respect to public comment.

1 **ALLEGATION NO. 6:** Mr. Tetirick was denied an accommodation for his disability
2 when listening to recordings of prior meetings.

3 **ALLEGATION NO. 7:** The Receiver held a meeting on August 8, 2017, that was
4 not properly noticed.

5 **ALLEGATION NO. 8:** The agenda for a meeting to be held by the Receiver on
6 August 30, 2017, was deficient.

7 The OAG has statutory enforcement powers under the OML and the authority to
8 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
9 241.040. The investigation of the Complaints included OAG review of the agenda and
10 recording for the Board’s June 22 meeting, the agenda and notice for the Receiver’s August
11 8, and August 30, events, together with written responses to the Complaints and
12 supporting materials from counsel to the Board and Receiver, including sworn affidavits
13 from the Receiver and Discovery Charter School staff.

14 After investigating this matter, the OAG determines that the Board violated the
15 OML with respect to the public notice agenda for its June 22 meeting and its failure to
16 provide copies of the audio recording of the same meeting. The agenda violated the OML
17 in that it did not include information regarding where and from whom the public could
18 acquire supporting materials as required by NRS 241.020(2)(c), two action items were not
19 properly denoted as required by NRS 241.020(2)(d)(2), and the agenda was not posted to
20 the official website of the State as required by NRS 241.020(3)(d). However, the OAG
21 determines that the Receiver did not violate the OML with respect to the event held on
22 August 8 and the public notice issued for a meeting on August 30 that was canceled.

23 **FINDINGS OF FACT**

24 1. The Board is a “public body” as defined in NRS 241.015(4) and NRS
25 388A.320(4) and is subject to the OML.

26 2. On July 7, 2017, John Haynal was appointed receiver for Discovery Charter
27 School by the Eighth Judicial District Court. After that point, the Board ceased to exist.
28 The Court Order (“Order”) appointing Mr. Haynal as such contemplates the reconstitution

1 of the Board at a future point, but does not refer to Mr. Haynal as the governing body of
2 the school.

3 3. The Receiver is not a “public body” as defined in NRS 241.015(4).

4 4. The July 7 Order requires “that, at least quarterly, the Receiver shall hold a
5 public meeting consistent with the requirements of the Open Meeting Law (NRS Chapter
6 241) to discuss issues related to the exercise of his or her duties and receive public comment
7 regarding the same to allow parents, students, staff and the community to participate.”
8 Thus, although the Receiver is not a public body, public meetings held by the Receiver are
9 subject to the OML.

10 5. The agenda for the Board’s June 22 meeting did not provide any information
11 regarding how the public could acquire supporting materials for the meeting.

12 6. Agenda items 7 and 8 on the Board’s June 22 agenda were listed as “Action
13 Item” and action was taken by the Board on those items.

14 7. The Agenda for the Board’s June 22 meeting was not posted to the official
15 website of the State, <https://notice.nv.gov>.

16 8. On August 29, 2017, Monika Boros and Ron Tetirick made separate requests
17 for copies of the audio recording of the Board’s June 22 meeting. Both were informed that
18 the recording was available for them to review at the Board’s Mesa Vista Campus during
19 office hours, but neither was provided a copy of the recording at that time. Counsel for the
20 Board has since provided copies of the recording to both complainants.

21 9. No public members made comment during the first public comment period of
22 the Board’s June 22 meeting. One individual commented during the second public
23 comment period of the meeting, stating, “Hi, Kristen, I just wanted to briefly say thank
24 you.”

25 ...

26 ...

27 ...

28 ...

1 10. The draft minutes for the Board’s June 22 meeting state the following with
2 respect to public comment:

3 5. Public Comments – There was no public comment at this time.

4 ...

5 10. Public Comments –

6 Kristen Diasparra: Just wanted to thank the Board.

7 11. When requesting a copy of the minutes of the Board’s June 22 meeting by
8 email, Mr. Tetirick stated he would need to transcribe the audio, which might take him a
9 considerable amount of time due to his disability. Mr. Tetirick did not state what his
10 disability was or request an accommodation.

11 12. On August 8, 2017, Discovery Charter School held a “Meet and Greet” for
12 parents to meet the school teachers and administration. There was no agenda or program
13 for the event.

14 13. The Receiver issued an agenda for a public meeting to be held on August 30,
15 2017. However, the meeting was cancelled due to concerns that it would not comply with
16 the OML.

17 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

18 **1. The Agenda for the Board’s June 22 Meeting Did Not Comply With the OML.**

19 The OML requires that agendas for public meetings list the “name and contact
20 information for the person designated by the public body from whom a member of the public
21 body may request the supporting material for the meeting . . . and a list of the locations
22 where the supporting material is available to the public.” NRS 241.020(2)(c). The Board
23 has acknowledged that these items were not present on the agenda for its June 22 meeting.

24 Agendas must also include a list describing the items on which action may be taken
25 and clearly denoting that action may be taken on those items by placing the term “for
26 possible action” next to the appropriate item. NRS 241.020(2)(d)(2). The Nevada
27 Legislature added the term “for possible action” to the statute in 2011, making it a clear

28 ...

1 requirement. Nevada Legislature Act of June 15, 2011, ch. 383 § 1. Thus, agenda items 7
2 and 8 did not comply with the OML.

3 The minimum public notice requirement under the OML includes posting the agenda
4 on the official website of the State not later than 9 a.m. of the third working day before the
5 meeting is held. NRS 241.020(3)(b). The Board has acknowledged that the agenda for its
6 June 22 meeting was not posted to the official website of the State.

7 Thus, the Board violated the OML by conducting a meeting and taking action with
8 a public notice agenda that did not comply with the OML. The OAG notes that while action
9 taken in violation of the OML is void, any suit brought to have an action declared void must
10 be commenced within 60 days after the action objected to was taken. NRS 241.036; NRS
11 241.037(3)(b). Here, the complaints were filed after the 60 day period had elapsed.

12 **2. The Public is Entitled to A Copy of Meeting Recordings.**

13 The legislative intent of the OML is that the actions of public bodies “be taken
14 openly, and that their deliberations be conducted openly.” NRS 241.020(1); *McKay v. Board*
15 *of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind
16 NRS chapter 241 favors open meetings”). To facilitate open government, NRS 241.035(2)
17 requires that minutes and audio recording for public meetings be made available to the
18 public by providing in pertinent part: “[a] copy of the minutes or audio recording must be
19 made available to a member of the public upon request at no charge.” Discovery Charter
20 School staff initially refused a copy of the Board’s June 22 meeting audio recording to the
21 Complainants and instead offered for them to come listen to the recording. The Board’s
22 counsel has since provided copies of the meeting recording to both Complainants. However,
23 because the Board failed to provide copies of the audio recordings within 30 days of the
24 requests, its corrective action was insufficient to avoid an OML violation under NRS
25 241.0365(1).

26 . . .

27 . . .

28 . . .

1 **3. The Draft Minutes of the Board's June 22 Meeting Accurately Reflect**
2 **Public Comment.**

3 Public bodies are required to keep written minutes of each of their meetings. NRS
4 241.035(1). Meeting minutes must include "[t]he substance of remarks made by any
5 member of the general public who addresses the public body if the member of the general
6 public requests that the minutes reflect those remarks or, if the member of the general
7 public has prepared written remarks, a copy of the prepared remarks if the member of the
8 general public submits a copy for inclusion." NRS 241.035(1)(d). The draft minutes of the
9 Board's June 22 meeting accurately reflect the remarks made by the general public and do
10 not violate the OML.

11 **4. Mr. Tetirick Was Not Denied an Accommodation for His Disability.**

12 The OML requires public bodies to "make reasonable efforts to assist and
13 accommodate persons with physical disabilities desiring to attend." NRS 241.020(1). The
14 OAG's investigation found no accommodation requests for any of the Board's meetings and
15 thus the Board did not deny any accommodation.

16 **5. The August 8 Discovery Charter School Meet and Greet Event Was Not a**
17 **Meeting Under the OML.**

18 Under the OML, a "meeting" is "[t]he gathering of members of a public body at which
19 a quorum is present, whether in person or by means of electronic communication, to
20 deliberate toward a decision or to take action on any matter over which the public body has
21 supervision, control, jurisdiction or advisory power." NRS 241.015(3)(a)(1). The August 8
22 event consisted of a venue for parents to meet teachers and administration of Discovery
23 Charter School, but did not include any program conducted by the Receiver or the Board.
24 Thus, the August 8 event was not a meeting under the OML.

25 **6. The Receiver Did Not Violate the OML with the Agenda for the Canceled**
26 **August 30 Meeting.**

27 The OAG need not opine whether the agenda for the Receiver's August 30 meeting
28 contained sufficient information under NRS 241.020 because no meeting was actually held.

1 If the public notice agenda were found to be deficient in its contents or posting, the Receiver
2 protected himself from an OML violation by canceling the meeting.


3 **SUMMARY**

4 Because the OAG finds that the Board has violated the OML, the Receiver must
5 place these Findings of Fact and Conclusions of Law on his next meeting agenda and
6 include them in the supporting material. The agenda item must acknowledge these
7 Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the
8 matter of the Attorney General File Nos. 13897-240 and No. 13897-241, and that they have
9 been placed on the agenda as a requirement of NRS 241.0395.

10 Furthermore, the OAG strongly recommends that when and if the Board is
11 reconstituted, it receives training in the OML. The OAG is available to provide OML
12 training upon request.

13 Dated: December 21, 2017.

14 ADAM PAUL LAXALT
15 Attorney General

16
17 By: 
18 ROSALIE BORDELOVE
19 Deputy Attorney General
20
21
22
23
24
25
26
27
28