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Via U.S. Mail & Certified Mail

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**Re: Open Meeting Law Complaint, OAG File No. 13897-426
In the matter of Washoe County School District Board of
Trustees**

Dear Complainants:

The Office of the Attorney General (“OAG”) is in receipt of nineteen (19) Complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Washoe County School District Board of Trustees (“Board”), related to the OML’s public comment period requirements, disparate treatment of comments by members of the public based upon viewpoint, inappropriate venues for its meetings and removal of agenda items.

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 all attachments; the response filed on behalf of the Board and all attachments; agendas, minutes and video recordings of the Board’s relevant meetings.

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

FACTUAL BACKGROUND

The Washoe County School District Board of Trustees is a “public body” as defined in NRS 241.015(4), and therefore, the Board is subject to the OML. The Board held multiple meetings between March 30, 2021, and August 3,

2021. The Agendas for the Board's meetings included the following language relative to Consent Agenda Items:

All matters listed under the consent agenda are considered routine and may be acted upon by the Board of Trustees with one action and without an extensive hearing. Since approval of the consent agenda maybe approved in one motion, **members of the public wishing to speak on a consent agenda item should submit a "Citizens Request to Speak" card prior to any vote. Members of the public may also email public comments to publiccomments@washoeschools.net.** Any member of the Board may request that an item be taken from the consent agenda, discussed, and acted upon separately during this meeting. The President or Vice President retains the discretion in deciding whether or not an item will be removed from the consent agenda.

(emphasis added).

For each action item listed on the Board's Agenda, the Board's Agenda included the following language relative to public comments:

Public Comment – Any individual may address the Board of Trustees concerning any item indicated for action. A completed "Citizen's Request to Speak" card should be filled out and submitted before speaking during the Public Comment section, which should include the name of the speaker. Prior to any action, the Board President will invite the individual to come forward to speak. Pursuant to Board Policy 9115, Meetings of the Board of Trustees, all persons are limited to 3 minutes per action item. The time limit may be altered at the discretion of the President of the Board. The Board will also accept public comments before and during the meeting through publiccomments@washoeschools.net. The Board will take time to read those comments and announce the names of those who provided public comment via email. Pursuant to NRS 241.035, correspondence or written materials submitted for public comment shall be attached to the minutes of the meeting. The Board of Trustees may impose reasonable content-neutral restrictions on public comment such as willfully disruptive comments that are irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, amounting to personal attacks, or interfering with the rights of other speakers. . . .

For each of the Board's meetings, in addition to the public comments afforded for each action item as noted above, the Board agendized a separate public comment item for "general" public comments, to accept comment from members of the public on topics not specifically addressed in the respective agenda. These general public comment items included a similar direction to members of the public regarding submission of a "Citizen's Request to Speak" card, time limitations, and prohibitions on imposing content-based limitations on comments. Further, these general public comment periods were agendized after action items took place but before adjournment of the meeting.

Prior to March 30, 2021, the Board held its meetings on school grounds located within the District. However, for its Board meetings starting after March 30, 2021, the Board held its meetings at the boardroom in the District's Administration Building, located at 425 East Ninth Street, Reno, Nevada 89520. For the Board meetings that occurred at the Administration Building, the Board also provided an overflow room for use by members of the public to observe and participate in the meeting. Additionally, the Board provided stereo speakers to broadcast the meeting to members of the public choosing to remain outside the Administration Building. The Board also livestreamed the meetings on the Internet and accepted public comment via email.

LEGAL ANALYSIS

A. The Board did not violate the OML's minimum requirements for accepting public comments.

The OML requires that public bodies adopt one of two alternative public comment options. NRS 241.020(3)(d)(3). First, a public body may agendize one public comment period before any action items are heard by the public body and then provide for another period of public comment before adjournment. NRS 241.020(3)(d)(3)(I). The second alternative involves multiple periods of public comment after discussion of each agenda item but before the public body takes action on the item. NRS 241.030(3)(d)(3)(II). Regardless of which option is selected, the public body must allow time for the public to comment on any matter not specifically included on the agenda as an action item some time before adjournment. NRS 241.020(3)(d)(3). Lastly, the OML does not prohibit a public body from taking comments by the general public in addition to the minimum requirements stated in NRS 241.020(3)(d)(3).

In this case, the Board opted to utilize the second alternative noted above and took public comment on all action items prior to any action being taken on those items. The Board also conducted a general public comment

period prior to adjournment of its meetings for items not specifically on the agenda. While the OAG notes that it appears the Board's prior practice included a general public comment period both at the beginning and at the end of its meetings, the OML does not require that the Board provide two periods for general public comments. Accordingly, the OAG finds no violation has occurred.

B. The Board did not violate the OML's minimum requirements for facility sizes to conduct its public meetings.

The OML requires that reasonable efforts be made to "ensure the facilities for meetings are large enough to accommodate the anticipated number of attendees". NRS 241.020(2). No violation will occur if a member of the public is not permitted to attend a public meeting because the facilities for the meeting have reached maximum capacity if reasonable efforts were taken to accommodate the anticipated number of attendees. *Id.*

In the instant case, Complainants allege that the Board moved its public meetings to a location that was too small to accommodate the number of individuals wishing to attend the meetings. Specifically, it is alleged that the Board switched from holding its meetings on school campuses within the District to a boardroom located inside the District's Administration Building.

The Board confirmed that the meetings were moved to the boardroom inside the District's Administration Building. However, the Board explained that the reason for moving the location of the public meetings was out of fear for the safety of the public, students, and other employees. The Board indicated that it had also previously used the boardroom to discuss important public issues, including termination of superintendents, transgender policies, and political speech under the First Amendment. Prior to the move, the District's Chief of Police was consulted and the Board was advised that the Administration Building provided a safer location. It is important to note that in addition to holding the meeting inside the boardroom and opening the same to the public to attend, the Board set up an overflow room inside the Administration Building to allow members of the public to observe the meeting via a livestream and to participate in public comment. Moreover, the Board set up a stereo speaker on the outside of the Administration Building to afford members of the public who chose to stay outside a way to observe and participate in the meeting.

While the Complaints allege that there was insufficient space for members of the public to attend the meetings, based on information provided

by the Board, including affidavits from Board staff, neither the boardroom nor the overflow room opened to the public were always filled to capacity. In fact, the documents provided by the Board showed how many seats were available inside the boardroom and the overflow room at various hours of the Board's several meetings.

The OAG finds that given the array of options the Board provided to members of the public to attend its meetings, the Board complied with the requirements under the OML that the Board make reasonable efforts to ensure meeting facilities were large enough to accommodate the anticipated number of attendees. Indeed, the Board not only opened up the boardroom, it opened up an overflow room, set up speakers outside the Administration Building, and livestreamed the meetings on the Internet. Thus, the OAG finds no violation of the OML in relation to the size of the facilities for the Board meetings.

C. The Board's discussion of public comments is not prohibited by the OML.

One of the violations alleged in the Complaints involves the Board President's response to comments made during public comment. The Complaints also allege the Board President informed other members of the public that the Board did not respond to public comment.

As noted above, the OML requires a public body to take public comments from the general public and permits "discussion of those comments," if any. NRS 241.020(3)(d)(3). Thus, while the OML allows discussion of matters brought up during public comment, the OML does not require that a public body engage in discussion. Therefore, the OAG finds no violation of the OML has occurred.

D. The Board President's interactions with members of the public did not amount to unreasonable viewpoint-based restrictions on public comment.

The OAG previously explained that public bodies may use reasonable rules and regulations during public meetings to ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting. *Nevada Open Meeting Law Manual*, Section 7.05 Reasonable time, place, and manner restrictions apply to public meetings (12th Ed., January 2016, Updated March 26, 2019). To that end, public bodies may adopt reasonable rules and restrictions on public comment but all such restrictions must be clearly expressed on the agenda. *Id.*; NRS 241.020(3)(d)(7).

Additionally, a public body's restrictions must be viewpoint neutral, but the public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. *In re: Regional Transportation Commission*, OMLO 2001-22/OAG File No. 00-047 (December 17, 2002).

Upon review of the recordings of the Board's meetings, the OAG is of the opinion that to the extent the Board President interrupted individual public commenters, the Board's questions were directed at ascertaining whether the speaker's comments were related to the specific agenda item for which the speaker signed up to address the Board. As such, the OAG finds no violation of the OML. However, the OAG cautions the Board to be careful not to enforce its prohibition against personal attacks in a way that restricts viewpoints critical of public officials. *See Jenkins v. Rock Hill Local School District*, 513 F.3d 580, 588 (6th Cir. 2008).

The Complaints also assert that the Board President allowed applause and comment from the public for ideas on which the President agreed but disallowed applause and comment from the public for dissenting opinions. The OAG did not find such viewpoint-restrictive action taking place, as the meeting recordings showed the Board accepted comments from all positions. In allowing comments, the Board's President is able to determine whether applause and comments from the gallery amounted to a disruption of the meeting. *See Saucier v. Katz*, 533 U.S. 194, 202 (2001) (citing *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) ("[T]he point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion.")). Here, the Board President determined that the applause and comments from the gallery disrupted the meeting. The Board President requested decorum in the meeting chambers and attempted to regain control of the meeting by limiting the applause she felt interrupted the Board's meeting. Accordingly, the OAG finds no violation of the OML has occurred.

One complaint alleges that the Board's interruptions of school board candidates during the public meetings on July 6, 2021, and July 13, 2021, amounted to OML violations for restrictions on viewpoint. The OAG notes that the candidates were being interviewed by the Board for appointment on the Board due to a vacancy and the candidates were not speaking during a public comment period. The Board was merely asking candidates questions on their

qualifications and stances on Board positions similar to a job interview. Thus, the OAG finds no violation of the OML in this respect.

E. Removal of agenda items without a Board vote does not violate the OML.

The Complaints allege that Board President's removal of agenda items without a Board vote violates the OML. The OML does not address how agenda items are chosen and leaves that to the discretion of the public body. Further, public bodies are specifically permitted to remove items from an agenda at any time. NRS 241.020(3)(d)(6)(III). Thus, the Board did not violate the OML by removing items from the agenda without a Board vote.

F. The OAG will abstain from providing an opinion on all time-barred allegations and upon those matters not under the purview of the OML.

Mr. John Eppolito's Complaint mentions an allegation stemming from the Board's November 11, 2020, meeting. The OAG is prohibited from investigating or prosecuting any allegations stemming from that meeting, as the Complaint was filed over 120 days after the alleged violation occurred. NRS 241.039(2)(b).

Additionally, the Complaint by Ms. Lorraine Conyac asserts that the overuse of a consent agenda is a "blatant sign of disrespect for the law." A public body's alleged overuse of consent agendas is not governed under the OML. Accordingly, the OAG will refrain providing an opinion on the same. *See id.*

CONCLUSION

Upon investigating the present Complaints, the OAG finds that the Washoe County School District Board of Trustees did not violate the OML. The OAG will close its file on this matter at this time.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

In re: Washoe County School District Board of Trustees
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