

1
2 OFFICE OF THE ATTORNEY GENERAL
3 STATE OF NEVADA
4

5 In the matter of:

6 NEVADA SYSTEM OF HIGHER
7 EDUCATION BOARD OF REGENTS
8
9

OAG FILE NO.: 13897-384

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

10 Dr. Sandra Owens filed a Complaint (“Complaint”) with the Office of the Attorney
11 General (“OAG”) alleging violations of the Nevada Open Meeting Law (“OML”) by the
12 Nevada System of Higher Education Board of Regents (“NSHE”). The Complaint alleges
13 NSHE violated the OML when it: 1) failed to provide adequate written notice of the
14 meeting; 2) denied testimony of two witnesses; 3) failed to call a witness at the meeting; 4)
15 failed to provide notice of a witness; 5) permitted participation of a witness in an
16 inappropriate manner; 6) exceeded the scope of the issues to be discussed; 7) failed to
17 provide written notice of Dr. Owen’s ability to provide evidence at the hearing; 8) discussed
18 matters not specified in the written notice; 9) inappropriately handled the exclusion of
19 witnesses; 10) exceeded the bounds of the written notice during discussion and action; and
20 11) failed to provide Dr. Owens with minutes of the meeting.¹

21 The OAG has statutory enforcement powers under the OML, and the authority to
22 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
23 In response to the complaint, the OAG reviewed the complaint and its attachments
24 (“Complaint”), NSHE’s response and its attachments (“Response”), the agenda and minutes
25 for NSHE’s November 13, 2020 meeting, the transcript for the NSHE November 13, 2020
26 Closed Session Meeting, the video and audio recordings of the November 13, 2020 meeting,
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28 ¹ Dr. Owens made several other allegations, including violations of Chapter 6, which are beyond the scope of the OML and will not be addressed in this Opinion.

1 the disciplinary hearing transcript from March 13, 2020, the Special Hearing Officer's
2 Findings, the Special Hearing Committee's Recommendations, and NSHE Code Title 2,
3 Chapter 6 ("Chapter 6"). All of the above herein is collectively referred to as the "Record."

4 After investigating the Complaint, the OAG finds that NSHE violated the OML by
5 failing to provide Dr. Owens with a copy of the transcript of the closed session as required
6 by NRS 241.035(2)(a). The OAG does not find violations of the OML with respect to the
7 other allegations contained in the Complaint.

8 **FINDINGS OF FACT**

9 1. Dr. Owens was a tenured 20-year former Associate Professor at the University
10 of Nevada, Las Vegas ("UNLV") School of Social Work, whose employment was terminated
11 following alleged violations of Chapter 6.

12 2. Dr. Owens initially submitted allegations regarding misconduct by her
13 supervisor, Dr. Carlton Craig to management and human resources. However, after no
14 action was taken against Dr. Craig, Dr. Owens emailed her allegations to colleagues,
15 faculty, and staff. Dr. Owens allegedly engaged in a campaign of harassment and
16 retaliation against Dr. Craig, after Dr. Craig denied Dr. Owens' request for grant funds.

17 3. In accordance with Chapter 6, UNLV appointed an Administrative Code
18 Officer, Dr. David Hatchett ("ACO Hatchett"), to investigate Dr. Owens' misconduct. ACO
19 Hatchett presented his findings at a disciplinary hearing on March 13, 2020.

20 4. Pursuant to Chapter 6, a disciplinary hearing is heard by an appointed Special
21 Hearing Officer to make factual findings, and then a Special Hearing Committee composed
22 of five UNLV faculty members to recommend an appropriate sanction, if any, to the UNLV
23 President. The President has the ultimate authority to decide whether to impose sanctions.
24 Dr. Owens attended the hearing, accompanied by her faculty representative Dr. Kent
25 Ervin, assigned by the Nevada Faculty Alliance ("NFA"), who presented witnesses and
26 evidence on Dr. Owens' behalf.

27 5. On April 20, 2020, the Special Hearing Officer issued his findings that Dr.
28 Owens had committed all the charged misconduct in violation of Chapter 6. On April 28,

1 2020, the Special Hearing Committee issued its recommendations, finding unanimously
2 that Dr. Owens had committed the charged misconduct in violation of Chapter 6. Two
3 members of the Committee recommended termination of employment, two members
4 recommended a department transfer or other type of discipline, and one member abstained.
5 On June 22, 2020, UNLV President Marta Meana affirmed these factual findings and
6 imposed the sanction of termination.

7 6. On June 29, 2020, Dr. Owens submitted an appeal of President Meana’s
8 decision. Dr. Owens was represented by attorney Adam Levine throughout her appeal. At
9 its Special Meeting on November 13, 2020, NSHE considered Dr. Owens’ appeal.² Dr.
10 Owens’ appeal was publicly called on the agenda, considered in a closed session and then
11 returned to open session, where NSHE took a roll call vote and by split decision upheld
12 President Meana’s sanction of termination.

13 7. On or about July 8, 2020, NSHE, on behalf of UNLV, sought an order of
14 protection pursuant to Nevada Revised Statute (“NRS”) 33.240, et. seq. from the Justice
15 Court of Las Vegas based on several faculty and staff receiving harassing emails from Dr.
16 Owens. An extended order of protection was issued by the Justice Court on July 27, 2020.

17 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

18 The legislative intent of the OML is that actions of public bodies “be taken openly,
19 and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board*
20 *of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind
21 NRS chapter 241 favors open meetings”). Public bodies working on behalf of Nevada
22 citizens must conform to statutory requirements in open meetings under an agenda that
23 provides full notice and disclosure of discussion topics and any possible action. *Sandoval v.*
24 *Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). Public bodies may hold a closed
25 meeting to consider the character, alleged misconduct, professional competence, or physical
26 or mental health of a person. NRS 241.030(1)(a).

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² Due to the COVID-19 pandemic, this meeting was held via videoconference.

1 **A. NSHE provided adequate notice of the November 13, 2021 meeting as**
2 **required by NRS 241.033.**

3 Dr. Owens alleges NSHE violated the OML by failing to provide written notice to
4 her and her attorney of the November 13, 2020 meeting. The OML requires that written
5 notice be given to a person whose character, alleged misconduct, professional competence,
6 or physical or mental health is going to be discussed during a public meeting. NRS 241.033.

7 Dr. Owens' appeal was initially scheduled to be heard at NSHE's September 10, 2020
8 meeting. On August 11, 2020, NSHE sent Dr. Owens and her attorney, Mr. Levine, written
9 notice of the upcoming meeting via email and certified mail. On August 13, 2020, Mr.
10 Levine contacted NSHE's counsel, Zelalem Bogale, to request that Dr. Owens' appeal be
11 heard at a later date due to Mr. Levine's own scheduling conflicts. Mr. Levine requested
12 that Dr. Owens' appeal instead be heard at the October 16, 2020 Special Meeting.

13 The parties agreed and Mr. Bogale asked Mr. Levine if a new written notice for the
14 NSHE meeting should be sent to Mr. Levine and Dr. Owens, or if their email exchange
15 regarding a rescheduled date would suffice. During a telephone conversation, Mr. Levine
16 stated that the email would suffice. Mr. Levine subsequently confirmed via email that this
17 conversation occurred, and that he and Mr. Bogale "agreed for NSHE not to send new Open
18 Meeting Law notices" for the rescheduled meeting dates.

19 On September 16, 2020, Dr. Owens directly contacted Mr. Bogale regarding why she
20 and her attorney had not received written notice of the meeting. Mr. Bogale did not respond
21 directly to Dr. Owens but instead forwarded Dr. Owens' email to Mr. Levine and referred
22 to their discussion in which Mr. Levine agreed that further written notices would not be
23 sent. Subsequently, on October 6, 2020, Mr. Bogale informed Mr. Levine via email that
24 NSHE's Special Meeting was moved to November 13, 2020, at 10:00 a.m., and that NSHE
25 intended to hear Dr. Owens' appeal at that Special Meeting. While NSHE did not issue a
26 new written notice, they did confirm via email in accordance with Mr. Levine's prior
27 request.
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1 Dr. Owens, through her counsel, acknowledged that the original written notice sent
2 on August 11, 2020 fully complied with the requirements of OML and waived further
3 mailed notices. Thus, the OAG does not find a violation of the OML.

4 **B. NSHE did not violate the OML when its chair denied a request for Mr.**
5 **Noland and Dr. Ervin to attend the closed session as witnesses.**

6 Dr. Owens alleges that John Noland and Dr. Kent Ervin were not permitted by
7 NSHE to attend the closed session of the hearing as requested by Attorney Adam Levine.
8 The OML provides that if a public body holds a closed meeting to consider the character,
9 alleged misconduct, professional competence, or physical or mental health of a person, the
10 public body must allow that person to (1) attend the closed session, (2) have an attorney or
11 other representative of the person's choosing present, and (3) present witnesses during the
12 closed meeting. NRS 241.033(4).

13 Board Chair Doubrava determined that NFA assigned Dr. Ervin as Dr. Owens'
14 faculty representative for her initial hearing on March 13, 2020. Dr. Ervin is a Professor of
15 Chemistry at the University of Nevada, Reno ("UNR") and the Vice President of NFA. Dr.
16 Ervin did not witness Dr. Owens' alleged misconduct or any of the events leading to Dr.
17 Owens' termination. Mr. Nolan, likewise, was identified as the President of NFA. He is at
18 UNR's College of Business, with no firsthand knowledge of Dr. Owens' alleged misconduct
19 or the events leading to Dr. Owens' termination. Seeing as neither individual was a party
20 to the events, Chair Doubrava determined that both Dr. Ervin and Mr. Nolan were not
21 "witnesses" as defined by NRS 241.033(4)(c) as neither had knowledge related to her
22 character, alleged misconduct, professional competence, or physical or mental health.

23 Chair Doubrava further reasoned that under NRS 241.033(4)(b), Dr. Owens was
24 entitled to only have "an attorney *or* other representative" (emphasis added) in attendance
25 during the closed session. Because Mr. Levine was already attending as her attorney, the
26 Chair was not required to permit Dr. Ervin or Mr. Nolan to attend as representatives. Thus,
27 pursuant to NRS 241.033(5)(a), the Chair of the Board had the authority *at any time* to
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1 “determine which additional persons, if any, are allowed to attend the closed meeting or
2 portion thereof.” Chair Doubrava determined no further persons were necessary.

3 It should be noted that on November 10, 2020, when Mr. Levine emailed Mr. Bogale
4 with his list of witnesses, he included five letters that he requested to be either accepted as
5 statements or read during public comment. It appears that all of these letters were read
6 during public comment, including public comment from Mr. Nolan. During the closed
7 session, Mr. Levine fully used his time for argument and did not attempt to call any
8 witnesses. Thus, the OAG does not find a violation of the OML.

9 **C. NSHE did not violate the OML by failing to call Mr. Miller as a witness.**

10 Dr. Owens alleges: “Sandra Owens’ attorney submitted the name of Glenn Miller to
11 testify as a witness, but NSHE failed to call him as a witness.” As stated previously, NSHE
12 was required under the OML to allow Dr. Owens to present witnesses relating to her
13 character, alleged misconduct, professional competence, or physical or mental health. NRS
14 241.033(4)(c). NSHE granted Dr. Owens’ request that Mr. Miller be allowed to attend the
15 closed session.

16 On November 12, 2020, the day before the Special Meeting, Mr. Miller was provided
17 the confidential link to access the closed session. However, Mr. Miller did not attend the
18 meeting and Mr. Levine did not call him as a witness during the closed session. NSHE had
19 no duty to call Mr. Miller as a witness. Thus, no violation occurred regarding NSHE’s
20 failure to call Mr. Miller as a witness.

21 **D. NSHE did not violate the OML by failing to send notice of Provost**
22 **Heavey’s intended participation and the specific content of Mr.**
23 **Hatchett’s argument.**

24 Dr. Owens asserts that NSHE violated the OML by failing to notify her of Provost
25 Heavey’s intended participation as a witness and the content of the argument made by Mr.
26 Hatchett. The OML grants the Chair of the Board the authority *at any time* to “determine
27 which additional persons, if any, are allowed to attend the closed meeting or portion
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1 thereof.” NRS 241.033(5)(a). Therefore, NSHE had no duty under the OML to notify Dr.
2 Owens of any additional persons.³ Thus, the OAG does not find a violation of the OML.

3 **E. NSHE provided notice to Dr. Owens that she was able to present**
4 **evidence at the hearing on her appeal.**

5 Dr. Owens asserts that she was not given written notice of her ability to present
6 evidence at the hearing. NRS 241.033(4)(c) requires NSHE to permit Dr. Owens to “present
7 written evidence, provide testimony and present witnesses relating to the character,
8 alleged misconduct, professional competence, or physical or mental health of the person to
9 the public body during the closed meeting.”

10 On August 11, 2020, NSHE sent Dr. Owens written notice that specifically stated,
11 “pursuant to NRS 241.033, you are entitled to present written evidence relevant to your
12 appeal to the Board during the closed meeting.” Also, on August 11, 2020, Mr. Bogale sent
13 Dr. Owens a letter titled: **IMPORTANT INFORMATION AND DATES – Board of**
14 **Regents meeting September 10, 2020.** This letter provided: “Pursuant to NRS 241.033,
15 you are entitled to present written evidence relevant to your appeal”. It further indicated:
16 “NRS 241.033 also allows you to present testimony and witnesses relevant to your appeal.”

17 Dr. Owens was informed twice that she was able to present evidence at the Special
18 Meeting related to her appeal. In fact, she requested Mr. Miller, Dr. Ervin and Mr. Nolan
19 as witnesses on her behalf. Thus, no violation occurred regarding notice of her ability to
20 provide evidence during the hearing.

21 **F. Discussion during the November 13, 2020 meeting did not exceed the**
22 **scope of the notice sent pursuant to NRS 241.033.**

23 Dr. Owens alleges that discussion of the protective order obtained by UNLV against
24 her violated the OML as it was not listed in the written notice of the meeting. NRS
25 241.033(2)(c)(1), requires the written notice of the meeting include a “list of the *general*
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27 ³ Further, the original written notice of the hearing stated: “It is anticipated that you and Administrative Officer (“AO”) David
28 Hachett on behalf of UNLV will have 15 minutes to present your case.” As the investigator, ACO Hatchett provided a
summary of the evidence of Dr. Owens’ alleged misconduct, which led to the initial findings that she violated Chapter 6.

1 **topics** concerning the person that will be considered by the public body during the closed
2 meeting.” (emphasis added). As previously stated, Dr. Owens received written notice that
3 her termination would be discussed at the meeting.

4 During open session, the Board entertained a motion to return Dr. Owens to work
5 immediately. Ms. Sidhu reminded NSHE that there was a legally issued protective order
6 against Dr. Owens in place. In part, Dr. Owens was prohibited from entering UNLV
7 property and contacting UNLV faculty and staff until July 2021. If Dr. Owens were to
8 return to work, they would need to include what should be done with the protective order.
9 Thus, the OAG does not find a violation of the OML regarding discussion of the protective
10 order.

11 **G. No violation occurred regarding the exclusion of witnesses.**

12 Dr. Owens claims: the “exclusion of the witnesses was not handled properly. If there
13 was any oversight then it should have been remedied, or at least acknowledge by the Chair
14 of the Board or his legal counsel at NSHE.” NRS 241.030(4)(b) permits, but does not
15 require, the exclusion of witnesses from a public or closed meeting during the examination
16 of another witness.

17 Neither party presented witnesses during the Special Meeting. Thus, the OAG does
18 not find a violation of the OML.⁴

19 **H. Discussion during the November 13, 2020 meeting did not exceed the**
20 **scope of the agendized topics.**

21 Dr. Owens asserts that NSHE’s discussion of who was paying her attorney’s fees and
22 her correspondence with a journalist strayed beyond the scope of the agenda item. Public
23 bodies must follow a public notice agenda that includes clear and complete statements of
24 the topics scheduled to be considered at the meeting. NRS 241.020(3)(d)(1).

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28 ⁴ As mentioned above, during the first period of public comment at the November 13, 2020 Special Meeting, five individuals commented in favor of Dr. Owens and requested that she be reinstated.

1 NSHE's November 13, 2020 meeting read:

2 **8. APPEAL OF EMPLOYMENT ACTION TAKEN BY FOR POSSIBLE**
3 **ACTION UNLV WITH RESPECT TO SANDRA OWENS****

4 **8.1 OPEN SESSION FOR POSSIBLE ACTION** Pursuant to Nevada
5 Revised Statutes (NRS) 241.030, 241.033 and 241.034, an open or closed
6 session will be held for the purpose of hearing an appeal of Professor Sandra
7 Owens from an employment action taken by UNLV. The Chair will discuss
8 the process for the appeal, recusal of Regents, if any, and other preliminary
9 matters. A determination will also be made by the Chair as to who may be
10 present in any closed session. Unless closure of the meeting is waived in
11 accordance with NRS 241.030(2), a motion will be made to hear the matter
12 in closed session. (Ref. BOR-8)

13 **8.2 CLOSED SESSION INFORMATION ONLY** In compliance with NRS
14 241.030, 241.033 and 241.034, a closed session may be held for the purpose
15 of hearing an appeal by Professor Sandra Owens from an employment
16 action taken by UNLV.

17 **8.3 OPEN SESSION FOR POSSIBLE ACTION** Following any closed
18 session, the Board will reconvene in open session to consider and decide the
19 appeal of Professor Sandra Owens. In accordance with NSHE Code, Title 2,
20 Chapter 6, Section 6.13.2(d), the Board's action is limited to dismissing or
21 affirming the charge, imposing a lesser sanction or ordering a new hearing.
22 **

23 On March 20, 2020, prior to their recommendation to President Meana, Dr. Owens
24 emailed the Special Hearing Committee that if she was "not returned to work," she would
25 go to "local news via the Review Journal and Art Kane the crime reporter, as well as
26 national outlet," and that the Special Hearing Committee members should be "very careful"
27 in deciding her case. This topic was included in ACO Hatchett's investigation and
28 addressed at the disciplinary hearing. Discussion of these actions surrounded the behavior
that ultimately led to President Meana's decision to terminate and was within the agenda
description. Thus, the OAG does not find a violation of the OML with respect to this
discussion.

The matter of Dr. Owen's attorney's fees was raised by Dr. Owens and her counsel's
statements. "The purpose of the clear and complete requirement is to give clear public
notice of the meeting's subject matter so that the public can attend when subjects of interest
are discussed." *Northwest Area Residents Assn. v. City of Las Vegas*, 134 Nev. 990, 2, 432

1 P.3d 191, 2 (2018) (finding an agenda adequate because it apprised the public of the item
2 on which action was to be taken). An agenda does not fail the clear and complete standard
3 when it does not list each point that may be discussed as part of a larger action item, such
4 as an administrative hearing. The discussion here was brief and surrounded issues
5 relating to the agenda item at issue. Thus, the OAG does not find a violation of the OML
6 with respect to agenda item 8.

7 **I. NSHE violated the OML by failing to provide Dr. Owens with a copy of**
8 **the transcript of the closed session.**

9 Dr. Owens asserts she requested minutes of the closed session, which she had not
10 received at the time of her Complaint. NSHE asserts it provided Dr. Owens with the audio
11 recording of the closed session and that this satisfies the requirements of NRS
12 241.035(2)(a). NRS 241.033(6) obligates NSHE to provide the record of the closed meeting
13 upon Dr. Owens' request. While NRS 241.035(2)(a) provides that minutes of a meeting
14 closed to discuss a person's character are not initially public records, "that person is entitled
15 to a copy of the minutes upon request whether or not they become public records." The
16 provisions of NRS 241.030, NRS 241.033 and NRS 241.035 regarding portions of meetings
17 closed to discuss a person's character, alleged misconduct, professional competence, or
18 physical or mental health, are designed for the protection of the individual being discussed.
19 Minutes of the Senate Committee on Government Affairs at 21 (Apr. 4, 2005); Minutes of
20 the Senate Committee on Government Affairs at 18-19 (April 13, 2005); Minutes of the
21 Senate Committee on Government Affairs at 19-20 (May 4, 2005).

22 NSHE provided Dr. Owens an audio recording of the closed session. However, it did
23 not provide her with a copy of the transcript of the closed session, which was kept in lieu of
24 minutes.⁵ Pursuant to NRS 241.035(2)(a), Dr. Owens was entitled to a copy of the minutes
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26 ⁵ The OAG notes that there may have been some confusion as to what Dr. Owens was requesting in her initial
27 request. However, the OML complaint filed with the OAG, and reviewed by NSHE, made clear that she was
28 requesting minutes. NSHE provided the transcript to Dr. Owens in July 2021, approximately six months
after receiving and responding to her OML complaint, despite NSHE's possession of the transcript as early
as January 2021.

1 or transcript of the closed session, whichever existed. Thus, the OAG finds that NSHE
2 violated NRS 241.035(2)(a) by failing to give a copy of the transcript to Dr. Owens upon her
3 request.

4 **SUMMARY AND INCLUSION OF AGENDA ITEM**

5 If the Attorney General investigates a potential OML violation and makes findings
6 of fact and conclusions of law that a public body has taken action in violation of the OML,
7 “the public body must include an item on the next agenda posted for a meeting of the public
8 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
9 public body must treat the opinion of the Attorney General as supporting material for the
10 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, NSHE must
11 place an item on its next board meeting agenda in which the Board acknowledges the
12 present Findings of Fact and Conclusions of Law (Opinion) which results from the OAG
13 investigation in the matter of Attorney General File No. 13897-384. The Board must also
14 include the OAG Opinion in the supporting materials for its next meeting.

15 Lastly, Dr. Owens has requested the OAG void the affirmance of her termination by
16 NSHE. NRS 241.037 confers upon the OAG the power to bring suit “in any court of
17 competent jurisdiction to have an action taken by a public body declared void.” The action
18 taken by NSHE during the meeting at issue occurred prior to and separate from the OML
19 violation found. Therefore, the OAG will abstain from bringing suit in this matter.

20 DATED: August 6, 2021.

21 AARON D. FORD
22 Attorney General

23 By: /s/ Sophia G. Long
24 SOPHIA G. LONG
25 Senior Deputy Attorney General
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 6th day of August, 2021, I served the foregoing
3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same
4 in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
5 addressed as follows:

6
7 Dr. Sandra Owens
8 [REDACTED]
9 [REDACTED]

9 **Certified Mail No.** [REDACTED]

10
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21 /s/ Debra Turman
22 An Employee of the
23 Office of the Attorney General
24 State of Nevada
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