OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:

CLARK COUNTY SCHOOL DISTRICT
BOARD OF TRUSTEES.

AG FILE NO.: 13897-372

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

The Office of the Attorney General (OAG) received a complaint regarding a meeting of the Clark County School District Board of Trustees (Board) on July 9, 2020 (Complaint) alleging violations of the Nevada Open Meeting Law (OML). The Complaint alleges that the Board violated the OML by unlawfully setting a public comment deadline three hours prior to the start of the meeting and posting supporting materials to its website less than one hour prior to the meeting.

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 Complaint included OAG review of the agenda and video of the July 9, 2020 meeting, together with a written response to the Complaint from the Board’s counsel.

After investigating this matter, the OAG determines that the Board violated the OML by failing to provide adequate periods devoted to comments by the general public as required by NRS 241.020(3)(d)(3) and Emergency Directive 006. The Board did not violate the OML with respect to the other allegations.

FINDINGS OF FACT

1. The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML.
2. The Board held a meeting via videoconferencing software at 3:00 p.m. on July 9, 2020. Members of the public were permitted to view the meeting via a livestream on the Board’s website. Public comment was permitted by email only and was required to be submitted by 12:00 p.m. the same day. No additional public comment was accepted during the meeting.

3. Supporting material for one of the agenda items was posted to the Board’s website after 2:00 p.m. before the meeting.

4. Two public comment periods were listed on the agenda: one near the beginning\(^1\) and one at the end of the meeting just prior to adjournment. During the first public comment period, staff summarized the emailed comments that pertained to specific agenda items. During the second public comment period, staff summarized the emailed comments that did not pertain to any specific agenda items. The emails were uploaded to the Board’s website and available to both the public and Board members.

**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”).

**A. The Board violated the OML by failing to meet the public comment and participation requirements of NRS 241.020(3)(d)(3).**

The OML requires public bodies to include periods devoted to comments by the general public during their meetings. NRS 241.020(3)(d)(3). Any restrictions on comments by the general public 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(3)(d)(7).

Public comment periods must be held: “(I) At the beginning of the meeting before any items

---

\(^1\) While not listed as an issue in the Complaint, the OAG reminds the Board that under the two-period public comment format in NRS 241.020(3)(d)(5)(I), the first public comment period should occur “before any items on which action may be taken are heard.”
on which action may be taken are heard by the public body and again before adjournment of the meeting; or (II) 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(3)(d)(3).


If a public body holds a meeting by means of teleconference or video conference and a physical location where members of the public can attend is not provided, the public body must provide a means for the public to provide public comment, and post that means on the public notice agenda posted in accordance with NRS 241.020. Public comment options may include, without limitation, telephonic or email comment.

Directive 006 requires that a public body provide a means for public comment as required by the OML, but allows for that public comment to take electronic form to protect the health and safety of Nevadans during this pandemic. Similar to the emergency exception contained in NRS 241.020(3), public bodies must still attempt to mimic the conditions of a regular in person meeting by complying with every requirement and intent of the OML. This means that if a public body is accepting public comment via email only, it must accept public comment up until the public comment period is called for and again during the meeting to allow for a second public comment period.

Here, the Board cut off acceptance of public comments three hours prior to the start of the meeting. The Board argues that this lead time is necessary so that the public comment may be posted to its website and trustees have time to review comments prior to the meeting.\(^2\) The Board does not offer a reason for its failure to allow for comments to be submitted during the meeting. The public participation outlined in the OML not only allows for the public to have a voice on agenda items prior to a public body determining its

\(^2\) The OAG notes that the Board has lengthened this lead time for later meetings. The Board’s January 19, 2021 meeting agenda lists a public comment cut off four days prior to the meeting.
action on those items, but also allows for the public to make comment during the meeting on items that have occurred or any other matter within the jurisdiction and control of the public body. Requiring all comments to be submitted hours prior to the meeting with no ability to submit comments during the meeting does not meet the requirements of the OML or Directive 006. Thus, the Board violated the OML by failing to meet the public comment and participation requirements of NRS 241.020(3)(d)(3).

B. **The Board did not violate the OML by posting supporting material to its website less than an hour prior to the meeting.**

The OML requires that an agenda list the name and contact information for a person from whom the public may request supporting material and a list of locations where supporting material is available to the public. NRS 241.020(3)(c). Supporting material must be provided to the public upon request at the same time it is provided to the members of the public body, whether prior to or at a public meeting. NRS 241.020(8). Directive 006 states:

If a public body holds a meeting and does not provide a physical location where supporting material is available to the public, the public body must provide on its public notice agenda the name and contact information for the person designated by the public body from whom a member of the public may request supporting material electronically and must post supporting material to the public body's website, if it maintains one.

Review of the available evidence indicates that the supporting material at issue was not provided to members of the public body any sooner than it was made available to the public. Thus, the Board did not violate the OML by posting the supporting material less than an hour prior to the meeting.

**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. 13897-372, and that they have been placed on the agenda as a requirement of NRS 241.0395.

Dated: April 14, 2021.

AARON D. FORD
Attorney General

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

I hereby certify that on the 13th day of April, 2021, I served the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

Shelli Clark

Certified Mail No.: 7020 0640 0000 7651 8190

Clark County School District Board of Trustees
5100 W. Sahara Avenue
Las Vegas, NV 89146

Certified Mail No.: 7020 0640 0000 7651 8190

/s/ Debra Turman
An employee of the Office of the Nevada Attorney General