

AARON D. FORD  
*Attorney General*

CRAIG A. NEWBY  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900  
Las Vegas, Nevada 89101

TERESA BENITEZ-  
THOMPSON  
*Chief of Staff*

LESLIE NINO PIRO  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

January 31, 2023

Via U.S Mail

Emily Palmer

[REDACTED]  
[REDACTED]

Jamie Sullard

[REDACTED]  
[REDACTED]

Lorena Biassotti

[REDACTED]  
[REDACTED]

Stephanie Kinsley

[REDACTED]  
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-430  
Clark County School District Board of Trustees**

Dear Meses. Palmer, Sullard, Biassotti, and Kinsley:

The Office of the Attorney General (“OAG”) is in receipt of your respective complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Clark County School District Board of Trustees (“Board”) asserting violations as follows:

**Allegation No. 1:** The Board violated the OML by moving the time allotted for general public comment to the end of its meetings.

**Allegation No. 2:** The Board violated the OML by imposing viewpoint-based restrictions on public comment.

**Allegation No. 3:** The Board violated the OML by removing the option afforded to members of the public to leave voicemail public comments.

**Allegation No. 4:** The Board violated the OML by failing to summarize public comments during public meetings that were received via email from members of the public.

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 filed by Lorena Biassotti, Emily Palmer, Jamie Sullard, and Stephanie Kinsley and attachments thereto; the response filed on behalf of the Board, and attachments thereto; and the video recording of the Board's August 26, 2021, meeting.

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

### **FACTUAL BACKGROUND**

At the time of the OAG's investigation, the Board had seven (7) members, with Linda Cavazos sitting as Board President.

The Board noticed an open meeting to be held on August 26, 2021. Prior to the meeting, on or about August 24, 2021, a post was made on an online social media account purportedly used by President Cavazos, which read:

We need timely, effective communication for both parents and employees. Please stay home if you are a wannabe insurrectionist- you will not win. Our focus is kids, and [sic] those of you chasing your few minutes of infamy can only hold one title-desperate attention seekers.

The Board's August 26 meeting agenda listed two public comment periods: Item 2.01 for members of the public to speak on items appearing on the agenda and Item 8.01 for members of the public to speak on non-agendized matters. Item 2.01 of the agenda, titled "Public Comment on Agendized Action Items" noted that if a member of the public wished to speak on matters within the Board's jurisdiction but not listed as an agenda item, such individuals could speak during Item 8.01, "Public Comment Period on Non-Agenda Items." The agenda further noted that speakers who veered away from the agenda topic would be directed to speak during Item 8.01. Additionally, at the beginning of the meeting, Board President Cavazos requested on the record that "everyone conduct themselves professionally," that comments remain "civil and courteous", and that personal attacks and heckling would not be allowed.

## LEGAL ANALYSIS

The Clark County School District Board of Trustees, created under the provisions of NRS Chapter 386, is a public body as defined in NRS 241.015(4) and is subject to the OML.

**1. The Board did not violate the OML for limiting public comment on non-agendized items to the end of its meeting.**

The OML requires that public bodies include on their agendas periods devoted to comments by the general public. NRS 241.020(3)(d)(3). Public comment periods at a minimum must be taken in one of two alternatives: First, a public body may comply by agendizing one public comment period before any action items are heard by the public body and another public comment period before adjournment. NRS 241.020(3)(d)(3)(I). Second, a public body may utilize multiple periods of public comment heard after discussion of each agenda action item but before the public body takes action on the item. NRS 241.020(3)(d)(3)(II). Regardless of the method selected, the public body must allow members of the public some time before adjournment to comment on any matter within the public body's jurisdiction, control, or advisory power. NRS 241.020(3)(d)(3).

Here, the Board afforded two periods of public comment during its August 26 meeting. The first period was devoted to items listed on the Board's agenda. This comports with the first alternative for public comment under NRS 241.020(3)(d)(3)(I). In addition, the Board agendized Item 8.01 for public comments on items within the Board's jurisdiction but not specifically listed on the Board's agenda. This complies with the OML's requirement that the public body allow time for general public comments prior to adjournment under NRS 241.020(3)(d)(3). Accordingly, the OAG finds no violation.

**2. The Board did not impose viewpoint-based limitations on public comments.**

The OAG has previously explained that reasonable rules and regulations during public meetings 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. Jan. 2016, updated Mar. 26, 2019). To that end, public bodies may adopt reasonable restrictions, but the OML requires that all restrictions on public comment be clearly expressed on each agenda. *Id.*; NRS 241.020(3)(d)(7).

Additionally, a public body's restrictions must be neutral as to the viewpoint expressed, 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, amounting to personal attacks or interfering with the rights of other speakers. *Nevada Open Meeting Law Manual*, at Section 7.05; *In re: Regional Transportation Commission*, OMLO 2001-22/AG File No. 00-047 (Dec. 17, 2002).

When public comment is allowed during the consideration of a specific topic, the chairperson may require public comment to be relevant to the topic, provided the restriction is viewpoint neutral. *Nevada Open Meeting Law Manual*, at Section 7.05. When public comment is not allowed during the consideration of a specific topic on the agenda, the public body must allow at least one period of public comment regarding agenda items prior to consideration of any action items and one general period of public comment during the meeting where the public may speak on any subject within the jurisdiction, control, or advisory authority of the public body. *Id.*; *In re: Clark County Board of Commissioners*, OMLO 2001-30/AG File No. 01-022 (May 31, 2001); *In re: Regional Transportation Commission*, OMLO 2001-22/AG File No. 00-047 (December 17, 2002).

In this case, to the extent that the Board appeared to have interrupted public comment, the Board's questions were directed at ascertaining whether the speakers' comments were related to the specific agenda item before the Board. Nothing in the OML prevents a moderator, such as the President of a public body in conducting public meetings, from limiting comments she feels are unrelated to the specific agenda item then-currently pending before the Board. *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.”)). As such, the OAG finds no OML violation.

Similarly, the OAG reviewed the online post referenced in the Complaints wherein President Cavazos provided her personal comment that “wannabe insurrectionists” should stay home. The OAG received no evidence indicating this post was made on behalf of the Board. Further, a review of the video recording of the August 26 meeting indicates the Board did not prevent speakers from providing public comment based on viewpoint. Accordingly, the OAG finds no violation.

**3. The Board did not violate the OML by removing its voicemail public comment option.**

The OML provides minimum requirements for the receipt of public comments. As noted above, the OML allows for two alternatives for public comments. Regardless of which alternative is selected, the public body must take comments from the public on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. NRS 241.020(3)(d)(3). Notably, the OML specifically does not prohibit a public body from taking comments by the general public in addition to what is required. *Id.*

In the case at bar, there is no evidence that the Board failed to take the minimum required public comment periods delineated in NRS 241.020. It is clear from the record that during the Board’s August 26 meeting, it agendized and heard two public comment periods. While in the past, the Board may have accepted public comment via additional means, nothing in the OML requires a public body to accept public comment other than the periods previously discussed. Accordingly, the OAG finds no violation occurred when the Board removed the public’s ability to provide comment via voicemail.

**4. The OML does not require that public bodies summarize public comments received via email.**

Lastly, the complaint filed by Ms. Sullard notes that the Board updated its policy to no longer summarize emailed public comment during its meetings and to only include the same in the record. The OML does not require that a public body summarize emailed public comment during its meetings. Rather, the OML requires that a public body keep written minutes of each of its meetings, including “[t]he substance of remarks made by any member of the

general public who addresses the public if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.” NRS 241.035(1)(d). Here, none of the Complaints assert that the Board failed to include the substance of the public’s comments or failed to include a copy of written remarks requested to be included in the record. Accordingly, the OAG finds no violation.

### **CONCLUSION**

Upon review of your respective Complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD  
Attorney General

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

cc: Nicole Malich, Deputy District Attorney  
Clark County Office of the District Attorney  
500 S. Grand Central Pkwy., Suite 5075  
Las Vegas, NV 89155