

1                                   **OFFICE OF THE ATTORNEY GENERAL**  
2                                   **STATE OF NEVADA**

3  
4 In the matter of:  
5 I CAN DO ANYTHING HIGH SCHOOL  
6 BOARD OF DIRECTORS

OAG FILE NO.: 13897-295 & 300

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

7  
8                                   **BACKGROUND**

9           Michael Patterson filed two complaints with the Office of the Attorney General  
10 (OAG) alleging violations of the Nevada Opening Meeting Law (OML) by the I Can Do  
11 Anything Charter High School, Board of Directors (ICDA). Complaint No. 13897-295  
12 alleges that the ICDA violated the OML at public meetings on June 6, 2018 and June 28,  
13 2018. Complaint No. 13897-300 alleges that ICDA violated the OML at a public meeting  
14 held on July 24, 2018.

15           On or about August 6, 2018, the OAG sent a letter to Michael Patterson relaying  
16 that ICDA did not violate the OML during its June 6, 2018 meeting. This letter further  
17 explained that his OML complaint concerning ICDA's June 28, 2018 meeting would be  
18 consolidated with his complaint concerning ICDA's July 24, 2018 meeting (13897-300). The  
19 complaints concerning ICDA's June 28, 2018 and July 24, 2018 meetings (hereinafter  
20 collectively referred to as the "Complaints") allege that ICDA violated the OML as follows:

21           **ALLEGATION 1:** ICDA violated the OML by failing to post its June 28, 2018  
22 meeting notice/agenda on its website prior to the meeting.

23           **ALLEGATION 2:** The ICDA improperly closed a portion of its July 24, 2018  
24 meeting to discuss its response to a complaint filed with the Attorney General's Office.

25           The OAG has statutory enforcement powers under the OML and the authority to  
26 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
27 241.040. In response to the Complaints, the OAG reviewed ICDA's agendas for its June  
28 28, 2018 and July 24, 2018 meetings, ICDA's website, the State of Nevada's official website,

1 correspondence with the Nevada Department of Administration and the Nevada  
2 Department of Education, correspondence with ICDA staff, the audio recording of ICDA's  
3 July 24, 2018 meeting, ICDA's written responses to the Complaints, as well as the  
4 responses' supporting material.

### 5 FINDINGS OF FACT

6 1. ICDA is a "public body" as defined in NRS 241.015(4) and is subject to OML.

7 2. On June 25, 2018, at 8:03 a.m., ICDA emailed its June 28, 2018 agenda to the  
8 Nevada Department of Education and the Washoe County School District requesting that  
9 it be posted. ICDA's response to Complaint #13897-295 states that the agenda was also  
10 hand delivered to the Truckee Meadow Community College and ICDA's "principal office."<sup>1</sup>

11 3. ICDA maintains a website on which it has posted several agendas/notices for  
12 its meetings. ICDA did not post the agenda for its June 28, 2018 meeting on its website  
13 prior to the meeting.<sup>2</sup>

14 4. ICDA's June 28, 2018, meeting agenda lists the locations at which it was  
15 posted. The State of Nevada's official website was not on this list.

16 5. On June 28, 2018, ICDA held a public meeting.

17 6. On July 24, 2018, ICDA held a public meeting.

18  
19 <sup>1</sup> NRS 241.020(4) requires a public body to document in writing that it satisfied NRS 241.020's minimum  
public notice requirement. NRS 241.020(4) states:

20 4. For each of its meetings, a public body shall document in writing that  
21 the public body complied with the minimum public notice required by  
22 paragraph (a) of subsection 3. The documentation must be prepared by every  
person who posted a copy of the public notice and include, without limitation:

23 (a) The date and time when the person posted the copy of the public notice;

24 (b) The address of the location where the person posted the copy of the  
public notice; and

25 (c) The name, title and signature of the person who posted the copy of the  
notice.

26 When ICDA responded to Complaint No. 13897-295, it did not provide this document. Instead, ICDA provided  
as support material the email it sent to the above referenced entities asking that its June 28, 2018 agenda be  
27 posted. ICDA is advised that providing the document specified in NRS 241.020(4) would have been the  
appropriate document to support its position that it satisfied minimum public notice.

28 <sup>2</sup> At the time this Findings of Fact and Conclusions of Law was drafted, ICDA's June 28, 2018 agenda had  
been uploaded to its website.

1           7.       In ICDA’s July 24, 2018 meeting agenda, ICDA included as “Discussion and  
2 Possible Action Items” the “Reading of Nevada Attorney General Complaint,” and “Action  
3 Item – response to Attorney General Complaint – Closed Session.”

4           8.       During ICDA’s July 24, 2018 meeting, when ICDA called the “Reading of  
5 Nevada Attorney General Complaint” agenda item, a July 12, 2018 letter sent from the  
6 OAG to ICDA was read into the record. This letter requested ICDA to “prepare a response  
7 and/or defense to the allegations contained” in OML complaint file number 13897-295.

8           9.       After the July 12, 2018 OAG letter was read into the record, ICDA went into  
9 closed session. The stated basis to close the session was to receive and discuss information  
10 from ICDA’s counsel regarding ICDA’s response to Complaint No. 13897-295.

11          10.       Subsequent to ICDA’s closed session receipt and deliberation of information  
12 from legal counsel, ICDA passed a motion to accept/issue its response to Complaint No.  
13 13897-295 as drafted by itself and legal counsel.

#### 14                               **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

##### 15          **1. ICDA violated the OML by Failing to Post its June 28, 2018 Meeting** 16                               **Notice/Agenda on its Website Prior to the Meeting.**

17               NRS 241.020(2) states that the public body must provide notice of the meeting at  
18 least 3 working days before a meeting. NRS 241.020(3) further requires that public notice  
19 be posted no later than 9 a.m. of the third working day before the meeting, that public  
20 notice be posted at the office of the public body or the location of the meeting and not less  
21 than three other separate, prominent places within the jurisdiction, that public notice be  
22 posted to the official website of the State pursuant to NRS 232.2175, and that the public  
23 notice be provided to any person who has requested notice. Additionally, if the public body  
24 maintains a website, it must post notice of its meetings on the website unless the public  
25 body is unable to do so because of “technical problems relating to the operation or  
26 maintenance of its website.” NRS 241.020(5).

27               In the instant case, ICDA maintains a website that, per NRS 241.020(5), it is  
28 statutorily required to update with notices for its meetings. ICDA concedes that it did not

1 post the June 28, 2018 notice/agenda to this website prior to the meeting. ICDA's response  
2 to the Complaint explains that this failure was "due to lack of funds to hire a full-time  
3 webmaster" and that their internet security protocols prevented it from editing the website  
4 without the webmaster. Budgetary issues do not fall within NRS 241.020(5)'s exception to  
5 the website-notice requirement because such are not "technical problems relating to the  
6 operation or maintenance of its website." NRS 241.020(5). Due to the existence ICDA's  
7 website, its prior active nature, and ICDA's failure to take down the website or put a notice  
8 on the website that it was no longer an active website, ICDA violated the OML when it held  
9 a public meeting without posting notice to the website as required by NRS 241.020(5).

10  
11 **2. ICDA Violated the OML By Failing to Post Notices of Its Meetings on the  
12 Official Website of the State.**

13 As noted above, the minimum public notice requirement under the OML includes  
14 posting notice of a public body's meeting on the official website of the State not later than  
15 9 a.m. of the third working day before the meeting is held. NRS 241.020(3)(b). ICDA did  
16 not post a notice of its June 28, 2018 meeting on the State's official website prior to the  
17 meeting. Furthermore, the State of Nevada Department of Administration, the  
18 department that oversees the website, indicated that ICDA has never posted a notice on  
19 the website, nor is it even registered to do so. While ICDA has stated in correspondence  
20 that it will hereafter comply with this notice requirement, ICDA's failure to post its  
21 notices/agendas on the State's official website is a violation of the OML. While this is not  
22 a violation that was specifically alleged in the Complaints, the OAG has jurisdiction to  
23 make this finding as the OAG is mandated to investigate *any* violation of the OML. NRS  
24 241.039(2).

25 **3. ICDA Did Not Violate the OML by Closing a Portion of Its July 24, 2018  
26 Meeting to Receive and Discuss Information From Legal Counsel  
27 Regarding Potential Litigation.**

28 The Nevada Legislature intends that the actions of public bodies "be taken openly  
and that their deliberations be conducted openly." NRS 241.010(1); see also *McKay v. Bd.*

1 *Of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“[t]he spirit and policy behind  
2 NRS chapter 241 favors open meetings.”)

3 All exceptions to the OML must be construed narrowly and in favor of openness.  
4 *Chanos v. Nevada Tax Comm’n*, 124 Nev. 232, 239, 181 P.3d 675, 680 (2008). “[T]he narrow  
5 construction of exceptions to the Open Meeting Law stems from the Legislature’s use of the  
6 term ‘specific’ in NRS 241.0201(1) and that such exceptions must be explicit and definite.”  
7 *Id.* “Exceptions to the Open Meeting Law extend only to the portions of a proceeding  
8 specifically, explicitly, and definitely excepted by statute.” *Id.* The OML “mandates open  
9 meetings unless ‘otherwise specified by statute...” *McKay*, 102 Nev. At 651, 730 P.2d at  
10 127.

11 Amongst the exceptions of the OML’s application to public body meetings is the  
12 exception for specific attorney-client communications. This exception is codified in NRS  
13 241.015(3)(b)(2) which provides:

14 3. “Meeting”:

15 ...

16 (b) Does not include a gathering or series of gatherings of  
17 members of a public body, as described in paragraph (a), at which  
18 a quorum is actually or collectively present, whether in person or  
19 by means of electronic communication:

20 ...

21 (2) To receive information from the attorney employed  
22 or retained by the public body regarding potential or existing  
23 litigation involving a matter over which the public body has  
24 supervision, control, jurisdiction or advisory power and to  
25 deliberate toward a decision on the matter, or both.

26 ICDA’s response to the Complaint states a portion of its July 24, 2018 meeting was  
27 closed to the public to receive communication from ICDA legal counsel. A review of the  
28 record shows that this communication was specific to ICDA’s response to OML Complaint  
No. 13897-295. ICDA’s receipt and deliberation of information from legal counsel regarding  
its response to OML Complaint 13897-295 falls within NRS 241.015(3)(b)(2)’s penumbra.  
This is a necessary conclusion where the discussion concerned potential litigation that

1 could arise from a lawsuit brought by the OAG for ICDA’s alleged noncompliance with the  
2 OML. Therefore, ICDA did not violate the OML when it closed a portion of its July 24,  
3 2018 meeting to receive and deliberate information from legal counsel regarding potential  
4 litigation involving the OML and complaint No. 13897-295.

5 **CONCLUSION**

6 If the Attorney General investigates a potential OML violation and makes findings  
7 of fact and conclusions of law that a public body has taken action in violation of the OML,  
8 “the public body must include an item on the next agenda posted for a meeting of the public  
9 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The  
10 public body must treat the opinion of the Attorney General as supporting material for the  
11 agenda item in question for the purpose of NRS 241.020. *Id.*

12 Here, upon investigating the Complaint, the OAG makes a findings of fact and  
13 conclusions of law that ICDA committed an OML violation by: 1.) failing to post its June  
14 28, 2018 meeting notice/agenda on its website prior to the meeting; and 2.) failing to post  
15 its June 28, 2018 meeting notice/agenda on the State’s official website. Therefore, ICDA  
16 must place an item on the agenda of its next meeting in which ICDA acknowledges the  
17 present Findings of Fact and Conclusions of Law (“Opinion”) which results from the OAG  
18 investigation in the matter of Attorney General File No. 13897-295 and 13897-300. ICDA  
19 must also hereinafter post its agendas to the State’s official website.

20 DATED: July 20, 2020.

21 AARON D. FORD  
22 Attorney General

23 By: /s/ Michael D. Detmer  
24 MICHAEL D. DETMER  
25 Deputy Attorney General  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada,  
3 and that on August 21, 2020, a true and correct copy of the foregoing **FINDINGS OF FACT**  
4 **AND CONCLUSIONS OF LAW** was deposited by way of certified mail with return receipt  
5 to the following parties:

6  
7 Michael S. Patterson  
8 [REDACTED]  
9 [REDACTED]

10 Jason Standish, Board of Directors President  
11 I Can Do Anything Charter High School  
12 1195 Corporate Blvd.  
13 Reno, NV 89502

14 Certified Mail No.: 7019 0160 0000 0498 6377

15 /s/ Debra Turman  
16 Secretary Name, an employee of  
17 the office of the Nevada Attorney General  
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