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Las Vegas, Nevada 89101

February 2, 2022

Via Certified Mail

Erin Phillips
Power2Parent
10300 W. Charleston Blvd.
Las Vegas, Nevada 89135

**Re: Open Meeting Law Complaint, OAG File No. 13897-379
Clark County School District Board of Trustees**

Dear Ms. Phillips:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on October 26, 2020, alleging a violation of the Open Meeting Law (“OML”) by the Clark County School District Board of Trustees (“Board”) alleging that the Board failed to allow members of the public to speak to the Board during its October 22, 2020, meeting. The Complaint further asserts that the Board violated the OML by summarizing the public comment received rather than reading the entirety of the comments during 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 OAG’s investigation of the Complaint included a review of the Complaint and attachments thereto; the response filed on behalf of the Board and all attachments thereto; the recording of the October 22, 2020, meeting; and prior OML decisions, case law, and portions of the Nevada Revised Statutes relevant to the Complaint.

After investigating the Complaint, the OAG determines that the Board did not violate the OML by allowing public comments to be solely submitted via e-mail, as alleged in the Complaint.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

The Board held a meeting via videoconferencing software at 5:00 p.m. on October 22, 2020. Members of the public were permitted to view the meeting via a livestream on the Board’s website. According to the agenda, members of the public were able to submit public comment via e-mail. The agenda further noted that written comments should be limited to 300 words. If the e-mails were received by 2:00 p.m. the same day, the comments would be posted on the Board’s website before the start of the meeting and noted for the record as each action item was heard by the Board.¹ Members of the public were not able to speak to the Board during the meeting. As part of the public comments received, the Board received an e-mail containing an additional 190 correspondences supporting in-person education. During the meeting, the public comments received were summarized instead of being individually read in full.

LEGAL ANALYSIS

1. The Board did not violate the OML by failing to allow “live” in-person or online public comment during its meetings.

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).

Due to the COVID-19 pandemic, the Governor of Nevada issued an emergency directive suspending the physical requirements for public meetings

¹ Although the instant Complaint did not assert an OML violation for the Board’s imposition of a deadline to submit public comment prior to the start of a meeting, the OAG opined that such action by a public body may violate the OML. *See In re: Clark County School District Board of Trustees*, AG File No. 13897-372 (April 14, 2021).

under the OML. Declaration of Emergency Directive 006.² Section 2 of Directive 006 provides:

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.

Id. Thus, Directive 006 required that a public body provide a means for public comment as required by the OML, but allowed for that public comment to take electronic form to protect the health and safety of all during this pandemic.

While the OML generally requires that there be a physical location for meetings of public bodies where members of the public are permitted to attend and participate, including providing in-person public comment, Directive 006 suspended the physical location requirement during the time of the alleged violation. Further, Section 2 of Directive 006 did not require public bodies to afford in-person or real-time online public comment, as asserted in the Complaint.³ Instead, Directive 006 noted that in order for public bodies to comply with the Directive and the OML, public bodies must have afforded alternative means of accepting public comments, and specifically provided such a means may have included receipt of public comments via e-mail. Here, the Board notified the public that individuals could submit public comment by e-mail, and accordingly, the Board complied with the requirements of Directive 006 by providing alternative means for the public to submit public comment. Therefore, the OAG finds that the Board did not violate the OML by failing to allow members of the public to speak during the October 22, 2020, meeting.

2. The Board did not violate the OML by summarizing the written public comment received and failing to read each individual public comment during the meeting.

² A copy of Declaration of Emergency Directive 006 may be retrieved at: [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-_COVID-19_Declaration_of_Emergency_Directive_006/).

³ This Opinion should not be construed to disallow members of the public from providing e-mail public comment up to the public comment periods required under NRS 241.020(3)(d)(3), as well as during the meeting. See *In re: Clark County School District Board of Trustees*, AG File No. 13897-372 (April 14, 2021).

The Complaint further asserts violations of the OML for the Board's failure to read each and every written public comment received verbatim. The Complaint alleges that the Board spent five minutes on the agenda item for public comments, wherein Board staff attempted to summarize the contents of over 400 letters.

It is well-settled law that reasonable rules and regulations during public meetings ensure orderly conduct of a meeting and ensure orderly behavior of individuals attending the meeting. *See Nevada Open Meeting Law Manual*, § 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 restrictions, including time limits on individual comment, but all restrictions on public comment must be clearly expressed on the agenda. NRS 241.020(3)(d)(7). The OAG previously explained that the OML allows considerable discretion to the public body as to the length of time allowed to speakers. *Nevada Open Meeting Law Manual, supra*. However, a public body's restrictions must be neutral as to the viewpoint expressed. *Id.* Nevertheless, a public body may prohibit comment if the content of the comments is willfully disruptive to the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. *Id.* (citing AG File No. 00-047 (April 27, 2001)).

The OML requires each public body to keep written minutes of its meetings, including the substance of remarks made by the general public who address the public body if so requested. NRS 241.035(1)(d). Additionally, if an individual prepared written remarks, the written minutes must attach a copy of the prepared remarks if such remarks were submitted for inclusion. *Id.*

Neither the OML nor Directive 006 require that the Board read the written comments it received during a public meeting. Instead, Directive 006 merely required that a public body provide a means for the public to provide public comment. Inherent in that requirement is that the public body be provided the comments for their review. Review of the available evidence does not indicate that the Board was not provided copies of the written comments. Rather, a copy of the written comments was posted on the Board's website. The meeting minutes of the October 22, 2020, meeting provided approximately four (4) pages of summary of the first public comment portion of the meeting. Based thereon, the OAG finds that the Board did not violate the OML by summarizing the written public comments received instead of reading each remark verbatim during the meeting.

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CONCLUSION

Upon review of your Complaint 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: Mary-Anne Miller, County Counsel

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**AMENDED
CERTIFICATE OF SERVICE
(Amended Copy Sent via U.S. Mail February 7, 2022)**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on February 2, 2022, I mailed the foregoing document via Certified Mail, postage paid to the following:

Erin Phillips
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Las Vegas, Nevada 89135

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Mary-Anne Miller, County Counsel
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/s/ Debra Turman
An Employee of the Office of the
Attorney General