

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 CLARK COUNTY SCHOOL DISTRICT
5 BOARD OF TRUSTEES
6
7

OAG FILE NO.: 13897-388

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Steven Cohen filed a complaint with the Office of the Attorney General (“OAG”)
10 alleging violations of the Nevada Open Meeting Law (“OML”) by the Clark County School
11 District Board of Trustees (“Board”), alleging that the Board violated the OML by changing
12 the time of the Board’s February 3, 2021, meeting without providing sufficient notice to the
13 public.

14 The OAG has statutory enforcement powers under the OML and the authority to
15 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
16 241.040. The OAG’s investigation of the Complaint included a review of the Complaint and
17 supplemental information from Mr. Cohen, the response from the Board, the public notice
18 of the February 3, 2021, meeting and the Board’s website before and during public
19 meetings.

20 After investigating the Complaint, the OAG determines that the Board violated the
21 OML by changing the time of its February 3, 2021, meeting from 8:00 a.m. to 4:00 p.m.
22 without providing sufficient notice to the public.

23 **FINDINGS OF FACT**

24 1. The Board, as the governing body of a public school district under NRS
25 386.110, is a public body as defined in NRS 241.015(4) and is subject to the OML.

26 2. The Board posted notices for a virtual meeting to occur at 8:00 a.m. on
27 February 3, 2021. Due to scheduling conflicts with one of its presenters, the Board re-issued
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1 its agenda on February 2, 2021, moving the time of the meeting to 4:00 p.m. The meeting
2 occurred on February 3, 2021, at 4:00 p.m.

3 3. Both agendas stated that members of the public wishing to view the meeting
4 could do so via live stream at <https://www.ccsd.net/>, the Board's home page. One hour prior
5 to and during meetings of the Board, the home page includes a prominent link to the
6 Board's Eduvision page, where the meetings are actually viewable.

7 4. When a meeting is not occurring, the Eduvision page lists the date and time
8 of the next upcoming meeting. At 8:00 a.m. on February 3, 2021, the Eduvision page listed
9 a start time for the meeting of 4:00 p.m.

10 5. The evidence indicates that the Board's home page did not include a
11 prominent link to the Eduvision page or notice regarding the meeting time change at 8:00
12 a.m. on February 3. The public notice agendas and links to Eduvision are accessible two
13 to three steps from a tab located on the Board's home page labelled "Trustees".

14 6. The Complaint alleges that the Board's amended notice changing the meeting
15 time was insufficient to give the public notice of the changed time.

16 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

17 Public bodies in Nevada must issue a public notice agenda for their meetings at least
18 3 working days prior to the meeting. NRS 241.020(3). The notice must include the time,
19 place and location of the meeting. NRS 241.020(3)(a). Due to the COVID-19 pandemic, the
20 Governor of Nevada issued an emergency directive suspending the physical requirements
21 for public meetings. Declaration of Emergency Directive 006, *available at*
22 [https://gov.nv.gov/News/Emergency Orders/2020/2020-03-22 - COVID-](https://gov.nv.gov/News/Emergency Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/)
23 [19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/) (*hereinafter* "Directive 006"). For purposes
24 of virtual meetings permitted under Directive 006, the OAG has interpreted the OML's
25 requirement that an agenda list the "location of the meeting" to mean information on how
26 the public can access the meeting virtually.

27 The OAG has previously opined that a public body may not start a meeting prior to
28 the agendaized start time, but that starting a meeting late may be permitted. *See In re*

1 *Lander County Convention and Tourism Authority Board*, Nev. OMLO 13897-176 (Apr. 21,
2 2016); *In re City of Las Vegas Real Estate Committee*, Nev. OMLO 04-040 (Jul. 13, 2004).
3 “A public body may begin a meeting at a reasonable time after the time listed on an agenda
4 if the body takes measures to inform the public of the delay, and there is nothing to suggest
5 the body was attempting to avoid the notice requirements of the Open Meeting Law.”
6 OMLO 04-040 at 3. In OML Opinion 04-040, the OAG found no violation of the OML where
7 a public body postponed a meeting’s start time by 1.5 hours. *Id.* The public body posted a
8 notice on the meeting room door indicating the start time would be later and placed staff
9 at the meeting location at the originally noticed start time to inform any public who
10 appeared that the meeting would have a delayed start. *Id.*

11 Here, the Board’s agenda listed telephonic and email public comment options and a
12 web address where public could view a live video stream of the meeting. However, the web
13 address listed on the agenda was the Board’s home page and not the exact web address
14 where the meeting was to be broadcast. If a member of the public went to the web address
15 listed on the Board’s agenda at the original 8:00 a.m. start time, they would not have seen
16 a notice that the meeting would be delayed by 8 hours. A member of the public would have
17 to have opened a drop-down menu entitled “Trustees”, selected a link entitled “2021 Board
18 Meeting Agendas”, scrolled down to find the correct meeting date and then clicked a link
19 to the agenda for that date to see the updated notice regarding the time change. If a
20 member of the public had received the original agenda through a means other than the
21 Board’s website, such as it being emailed by a fellow parent, they would not have known
22 where to look for a notice regarding the time change.

23 The Board has argued that they could permissibly have started the meeting at 8:00
24 a.m. and then immediately recessed to 4:00 p.m. and be in compliance with the OML, but
25 that such a step would be unnecessary. The OAG disagrees. A meeting may be recessed
26 and reconvened later the same date without violating the OML and in this case, such a
27 step would have avoided a violation. NEVADA OPEN MEETING LAW MANUAL at 66 (12th Ed.
28 2016). A member of the public who watched the live stream at 8:00 a.m. would have been

1 made aware that the meeting was reconvening at 4:00 p.m.¹ A bold notice viewable when
2 accessing the web address on the agenda at 8:00 a.m. would have served the same purpose.

3 Thus, the OAG finds that the Board did not notice the time change in a method
4 reasonably calculated to ensure the public received it. Due to the virtual nature of the
5 notice and meeting, along with the changing technology and circumstances surrounding
6 virtual meetings due to the COVID-19 pandemic, this is a very close case and a fact specific
7 decision.

8 Lastly, the Complainant has asked the OAG to void the entire meeting due to the
9 notice issue. NRS 241.037 confers upon the OAG the power to bring suit “in any court of
10 competent jurisdiction to have an action taken by a public body declared void or for an
11 injunction against any public body or person to require compliance with or prevent violation
12 of [NRS 241].” Taking action to have an entire meeting declared void is an extreme
13 remedy. As the Complainant in this matter received actual notice of the change in time of
14 the meeting prior to the meeting, the OAG chose not to bring an action in this matter.

15 SUMMARY

16 Upon investigating the present Complaint, the OAG makes findings of fact and
17 conclusions of law that the Board violated the OML by failing to give adequate notice to
18 the public of the time change for its February 3, 2021, meeting.

19 If the Attorney General investigates a potential OML violation and makes findings
20 of fact and conclusions of law that a public body has taken action in violation of the OML,
21 “the public body must include an item on the next agenda posted for a meeting of the public
22 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
23 public body must treat the opinion of the Attorney General as supporting material for the
24 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
25 must place an item on its next meeting agenda in which it acknowledges the present
26 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation

27 ¹ The OAG notes that convening the meeting at the posted start time would not be required in situations
28 where there is a clear notice of the time change at the location of the meeting or by visiting the web address
on the agenda.

1 in this matter. The Board must also include the OAG Opinion in the supporting materials
2 for its next meeting.

3 Dated: January 13, 2023.

4 AARON FORD
5 Attorney General

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

1 I hereby certify that on the 13th day of January, 2023, I served the foregoing
2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the
3 same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
4 addressed as follows:
5

6
7 Nichole R. Malich
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11 *Counsel for the Clark County School District Board of Trustees*

12 **Certified Mail No.:** 7009 3410 0002 3253 1758

13 Steven Cohen
14 [REDACTED]
15 [REDACTED]

16 **Certified Mail No.:** [REDACTED]

17
18 /s/ Debra Turman
19 An employee of the Office of the
20 Nevada Attorney General
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