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January 16, 2023

Via U.S Mail

Chelsy M. Fischer
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-441
Clark County School District Board of Trustees**

Dear Mrs. Fischer:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Clark County School District Board of Trustees (“Board”) at its September 1, 2021, 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, the Response, and the agenda, minutes and recording of the Board’s September 1, 2021, meeting.

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

FACTUAL BACKGROUND

The Board held a public meeting on September 1, 2021, at 5:00 p.m. Agenda item 3.01 on the Board’s public notice agenda read:

Discussion and possible action on the approval of the Authorization of COVID-19 Vaccine Mandate for School District Employees (**For Possible Action**) [Contact Person: Jesus F. Jara]

The Board opened the meeting and then began its first public comment period before hearing any other substantive items. This public comment period lasted just under five hours with each speaker given two minutes to speak, including the Complainant. Board President Linda Cavazos repeatedly asked attendees to be quiet and refrain from making noise or shouting while others were speaking. At one point, President Cavazos was required to pause a speaker to ask security for the meeting, Clark County School District (“CCSD”) Police, to remove any attendees who continued to shout while others were making their comment.

During agenda item 3.01, the Board called the Chief Medical Officer, Dr. Courtland Lohff, and the Director of Disease Surveillance and Control, Dr. Cassius Lockett, of the Southern Nevada Health District to answer questions from Board Trustees on the item. President Cavazos continued to have to request silence from the audience so Dr. Lohff could be heard. Board Trustee Lola Brooks asked a question regarding harm to an individual who had been infected with COVID-19 and then received a vaccine, to which Dr. Lohff answered. A large commotion erupted in the audience including Complainant yelling loudly. President Cavazos again asked the audience to be quiet and requested that CCSD Police remove the individual yelling. Complainant was removed from the meeting.

Complainant filed the instant Complaint on December 9, 2021. The Complaint alleges that the Board violated the OML by (1) allowing speakers during agenda item 3.01 who were not listed on the agenda, and (2) removing her from the meeting based upon her viewpoint.

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 by leaving Dr. Lohff and Dr. Lockett’s names off the agenda.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of

government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. Further, “a higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Id.* at 155-56. (quoting *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

The large public attendance at the meeting and extensive public comment indicate that agenda item 3.01 was of significant interest to the public thus requiring a higher degree of specificity. It also indicates that public was aware of what would be discussed. The OML does not contain a requirement that every presenter, subject matter expert, or other speaker that comes before a public body be listed on the agenda for the meeting. Instead, it requires a clear and complete statement of **the topics scheduled to be considered** during the meeting. NRS 241.020(3)(d)(1). Dr. Lohff and Dr. Lockett answered the Board’s questions relating to the COVID-19 vaccine and whether the Board should create a mandate for employees, which was squarely within the topic listed on the agenda. Thus, the OAG does not find a violation of the OML.

2. The Board did not violate the OML when it removed Complainant from the meeting.

Public bodies exist to aid in the conduct of the people’s business and it is the intent of the law that their actions be taken openly. NRS 241.010. All meetings of public bodies must be open and all persons must be permitted to attend any meeting of a public body. NRS 241.020(1). The exception to this general mandate is when a public body removes a person who “willfully disrupts a meeting to the extent that its orderly conduct is made impractical.” NRS 241.030(4)(a).

Whether an individual’s conduct rises to the level of such a disruption is a decision left to the presiding officer of the meeting. *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990). “The role of the moderator involves a great deal of discretion. Undoubtedly, abuses can occur, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like.” *Id.* Under the OML’s rule, a person must actually disrupt a meeting before being ejected. *See Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).

Here, President Cavazos, the presiding officer, repeatedly requested the audience at the meeting refrain from speaking, shouting and making other loud noises when it was not their time to speak to “allow all to express their views.” She further instructed CCSD Police to remove anyone who was shouting during other speakers. She did not specify any content requirement for removal. *See Pinard v. Clatskanie School Dist. 6J*, 467 F.3d 755, 771 (9th Cir. 2006). On numerous occasions during the meeting, public comment speakers were required to pause their speech to be heard due to noise in the crowd and Dr. Lohff was required to pause or repeat answers to questions from Trustees for the same reason. President Cavazos authorized removal of individuals from the room on multiple occasions during the seven-hour meeting. The OAG does not possess evidence of a viewpoint bias in these removals.

Complainant’s outburst was one such occasion. Complainant continued to shout even after President Cavazos asked the crowd to stop and most of the commotion quieted down. Based on the foregoing and the clear disruption that shouting from the Complainant caused, the OAG finds the Board did not violate the OML in its choice to eject Complainant from the meeting. *See Garnier v. O’Connor-Ratcliff*, 41 F.4th 1158, 1181 (9th Cir. 2022) (“The only way to keep unruly speakers from impeding the ability to hear out a broad range of opinions from the public may be to cut off the microphone or to eject the speaker from the room.”).

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
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