

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 LANDER COUNTY SCHOOL
5 DISTRICT BOARD OF TRUSTEES

OAG FILE NO.: 13897-465 & 466

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 The Office of the Attorney General (“OAG”) received Complaints from Anthony Hall
10 and Ashley Ramos alleging violations of the Nevada Open Meeting Law (“OML”) by the
11 Lander County School District Board of Trustees (“Board”). The Complaints allege that
12 the Board violated the OML in its actions during and surrounding meetings occurring
13 between October 2022 and March 2023.

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 Complaints included a review of the Complaints
17 and supplemental information; the response from the Board and attachments; The agenda,
18 minutes and recordings of the Board’s October 18 and November 8, 2022, and January 17,
19 2023, meetings.

20 After investigating the Complaints, the OAG determines that the Board violated the
21 OML by creating a subcommittee that failed to comply with the OML and by refusing to
22 allow Complainant Ramos to attend its February 7 and March 7, 2023, meetings in person
23 as she had requested.

24 **FINDINGS OF FACT**

25 1. On or around August 2022, the School District initiated disciplinary
26 proceedings regarding Complainant Ramos, a District employee. At some point in the
27 proceedings, Ms. Ramos was placed on administrative leave with a condition that she not
28 come on District property without prior written permission.

1 2. In or around October or November 2022, a quorum of the Board held one or
2 more private gatherings with its counsel regarding Ms. Ramos and another employee's
3 disciplinary matters.

4 3. The Board held a public meeting on October 18, 2022. Item F.1 on the public
5 notice agenda for the meeting read: "Approve a Subcommittee to Review Elements within
6 the Superintendent's Contract." During the meeting, the Chair of the Board announced
7 two other members who had volunteered to join him on the Subcommittee. The Board then
8 voted to make those three members constitute the Subcommittee.

9 4. The Board held a public meeting on November 8, 2022. Item F.3 on the public
10 notice agenda for the meeting read: "Superintendent Formal Evaluation." Item F.4 read:
11 "Approval of Superintendent's Contract." During Item F.3, Board members read their
12 performance reviews of the Superintendent, discussed these reviews and his performance,
13 and voted to find a satisfactory evaluation of the Superintendent.

14 5. During Item F.4, the Chair announced that he was part of the Subcommittee
15 that had reviewed the contract and they were proposing a new 4-year contract. The Board
16 then discussed the details of the contract and voted to approve it.

17 6. The Board held a public meeting on January 17, 2023. Item I on the public
18 notice agenda was a closed session to discuss Ms. Ramos' disciplinary matter. Item J read:
19 "Action as a result of closed session."

20 7. During the meeting, the Board moved to go into closed session under Item I.
21 Ms. Ramos and her counsel, Complainant Hall, were permitted to attend. After the closed
22 session, the Board voted to follow the recommendations of the hearing officer under Item
23 J.

24 8. On or around February 1, 2023, Ms. Ramos requested permission to come onto
25 District property to attend the Board's February 7, 2023, meeting. She was denied
26 permission and offered a link to attend the meeting virtually.

27 9. On or around March 3, 2023, Ms. Ramos requested permission to come onto
28 District property to attend the Board's March 7, 2023, meeting. She was denied permission

1 and offered a link to attend the meeting virtually. The only reasons for the denials were
2 that they were consistent with the Board’s past practice, and it would continue “until your
3 employee incident is finalized.”

4 10. Complainants filed the instant complaints alleging:¹

- 5 a. The Board acted outside of a meeting by revoking the Superintendent’s
6 decision-making authority over two employee disciplinary matters during a
7 closed-door meeting.
- 8 b. The Board discussed and deliberated on settlement terms for two employee
9 matters during an attorney-client session.
- 10 c. The Board created a Subcommittee at its October 18, 2022, meeting to review
11 the Superintendent’s contract and the Subcommittee failed to comply with the
12 OML.
- 13 d. The Board violated the OML by refusing permission for Ms. Ramos to attend
14 its February 7 and March 7, 2023, meetings upon her request.

15
16 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

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

19 **A. There is insufficient evidence that any action was taken during the**
20 **attorney-client sessions at issue and the Board acted on the employee**
21 **matters during a public meeting.**

22 The Nevada Legislature has excepted from the OML gatherings of public bodies at
23 which a quorum is present “[t]o receive information from the attorney employed or retained
24 by the public body regarding potential or existing litigation involving a matter over which
25 the public body has supervision, control, jurisdiction or advisory power and to deliberate
26

27 ¹ Ms. Ramos’ Complaints included allegations regarding attendance at meetings and
28 records requests that fell outside the OAG’s 120-day window of investigative power
contained in NRS 241.039. As such, those allegations will not be addressed in this opinion.

1 toward a decision on the matter, or both.” NRS 241.015(3)(b)(2). The OAG has previously
2 held that this exception can apply to deliberations whether a public body would approve
3 certain terms of a settlement agreement, so long as the final agreement is approved by the
4 body at a public meeting. *In re Clark County School District Board of Trustees*, OMLO
5 13897-410 at 3-4 (Dec. 2021).

6 There is no dispute here that a quorum of the Board met on two occasions with its
7 counsel regarding two employee disciplinary matters in which the employees were
8 represented by counsel and contesting the discipline. These meetings were not recorded,
9 nor were they required to be, and the OAG is limited in its inquiry into the meetings as
10 they are covered by the attorney client privilege. NRS 49.095.

11 The Board conducted later hearings into the employee matters, at which the
12 employees were present, and then acted regarding those matters during its January 17
13 public meeting. The OAG has insufficient evidence that the Board took any action to
14 change its policy regarding the Superintendent’s authority over employee matters. Indeed,
15 had the Superintendent had the sole authority to take the employee actions that were taken
16 by the Board, they would not have occurred during a public meeting.

17 **B. The Board is permitted to deliberate on potential or existing litigation**
18 **in an attorney-client session so long as the resulting action is taken**
19 **during a public meeting.**

20 As noted above, NRS 241.015(3)(b)(2) specifically permits a public body to confer
21 with its counsel regarding potential settlement terms that it may accept and includes the
22 term “deliberation” in that permission. Here, the Board clearly took its final action during
23 its January 17 meeting. While the final action did not involve the approval of a settlement
24 agreement, the evidence indicates that no such settlement agreement was reached. The
25 failure of settlement negotiations does not negate a public body’s ability to discuss terms it
26 may or may not accept with its counsel during negotiations. OMLO 13897-410, *supra*.
27 Thus, the OAG does not find a violation of the OML with respect to this allegation.

1 **C. The Board violated the OML when its Subcommittee to Review the**
2 **Superintendent’s Contract failed to comply with the OML.**

3 Subcommittees of public bodies are public bodies themselves and required to comply
4 with the OML. NRS 241.015(4)(d). A subcommittee is a public body under the OML if it
5 consists of at least two persons who are appointed by the public body, a majority of the
6 membership of the subcommittee are members or staff members of the public body, or the
7 subcommittee is authorized to make a recommendation to the public body to take any
8 action. *Id.*

9 Here, at its October 18 meeting, the Board appointed three members to review
10 elements of the Superintendent’s contract by motion and vote. At the Board’s November 8
11 meeting, a member stated he was part of the Subcommittee that reviewed the
12 Superintendent’s contract and that they were recommending a 4-year contract. After some
13 discussion, the Board moved and voted to approve the contract.

14 This group meets the definition of a subcommittee in that it was appointed by the
15 Board, contained only Board members and was authorized to make a recommendation to
16 the Board regarding the contract. The Board does not contend that the Subcommittee was
17 exempt from the OML and the evidence indicates that the Subcommittee did not comply
18 with the OML when it met. Thus, the OAG finds a violation of the OML in this respect.
19 The OAG notes that it does not possess evidence that this failure to comply with the OML
20 was intentional, only that it was based upon a mistaken understanding of the law.

21 **D. The Board violated the OML by refusing to grant permission to Ms.**
22 **Ramos to attend its February 7 and March 7, 2023, meetings in person**
23 **upon her request.**

24 Except as otherwise provided by a specific statute, all meetings of public bodies must
25 be open and public, and all people must be permitted to attend. NRS 241.020(1). The
26 legislative intent of the OML is that actions of public bodies “be taken openly, and that
27 their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board of*
28 *Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS
Chapter 241 favors open meetings”). All exceptions to the OML must be construed

1 narrowly and in favor of openness. *Chanos v. Nevada Tax Comm'n*, 124 Nev. 232, 239, 181
2 P.3d 675, 680 (2008). “[T]he narrow construction of exceptions to the Open Meeting Law
3 stems from the Legislature’s use of the term ‘specific’ in NRS 241.020(1) and that such
4 exceptions must be explicit and definite.” *Id.* The OML “mandates open meetings unless
5 ‘otherwise specified by statute” *McKay*, 102 Nev. at 651. In this instance,
6 Complainant Ramos was prevented from physically attending the two meetings at issue
7 solely because of terms in her administrative leave.

8 In an effort to protect the public’s First Amendment right to free speech, the OML
9 prohibits public comment restrictions that are based upon viewpoint. NRS
10 241.020(3)(d)(7). Restricting speech based upon identity is akin to restricting based on
11 viewpoint and equally prohibited by the First Amendment. *Citizens United v. Federal*
12 *Election Com’n*, 558 U.S. 310, 340 (2010) (“Prohibited, too, are restrictions distinguishing
13 among different speakers, allowing speech by some but not others.”); *Rodgers c. Stachey*,
14 382 F. Supp. 3d 869, 881 (W.D. Ark. 2019) (speech restrictions based on identity of the
15 speaker all too often imply a means to control content). Restrictions on attendance at public
16 meetings necessarily affect the public’s ability to make public comment, even if public
17 comment is offered by other means. As such, neither type of restriction can be based upon
18 viewpoint or identity. *In re Pahrump Community Library District Board of Trustees*,
19 OMLO 13897-455 at 4 (Jan. 2024).

20 Here, Ms. Ramos desired to attend the meetings at issue in person, there was a
21 physical location available to the public and public members were generally permitted to
22 attend at the physical location. Public bodies may apply speech restrictions that operate
23 to the disadvantage of certain persons, but these restrictions must be based on allowing
24 those bodies to perform their functions. *Citizens United* at 341; *Reza v. Pearce*, 806 F.3d
25 497, 504 (9th Cir. 2015) (restrictions on speech during public meetings are permitted to
26 maintain decorum and order in the proceeding). However, the Board did not offer any
27 reason for its refusal to allow Ms. Ramos to attend the meetings in person other than that
28 the terms of her administrative leave permitted such a refusal. This was a public meeting

1 that Ms. Ramos was attempting to attend in her private capacity as a member of the public.
2 Had the meeting occurred off District property, Ms. Ramos would have been able to attend
3 without requesting permission.

4 The Board argues the language of NRS 241.020(1) requiring people to be able to
5 attend any meeting “at a physical location or by means of a remote technology system”
6 means their provision of a virtual link for Ms. Ramos to attend the meeting virtually met
7 all statutory requirements. While the OAG agrees that virtual attendance can be
8 equivalent to in person attendance, a public body is not permitted to decide who may attend
9 virtually and who may attend in person without a compelling reason. Specifically targeting
10 an attendance/speech restriction to one person without serving a governmental function,
11 results in an impermissible identity-based restriction.

12 The Board further argues that it was permitted to take discipline against an
13 employee pursuant to NRS Chapter 391, Chapter 288 and the subject collective bargaining
14 agreement and that these specific provisions control over the OML’s general open meeting
15 provisions. The OAG does not find this persuasive. The Board does not contend that
16 another statutory provision prevented it from permitting Complainant Ramos to attend the
17 meeting, only that it had authority to issue the administrative leave terms and the OML
18 cannot change that. The OAG is not opining on the validity of the administrative leave
19 terms, but on the exercise of the District’s discretion in granting or refusing permission
20 under those terms. The administrative leave terms restricted Ms. Ramos from District
21 property without prior written permission. Ms. Ramos requested that permission for the
22 two meetings at issue and was denied without any reason. It is undisputed that Ms. Ramos
23 was permitted to and did attend the Board’s January 17 meeting, where there was a closed
24 session pertaining to her. The Board offered no argument that Ms. Ramos created a
25 disruption at the January 17 meeting and the recording of the meeting does not reveal one.

26 While this is a very fact specific determination, and a different record of disruption,
27 could justify a Board’s decision to prohibit physical attendance, the Board did not present
28 any facts demonstrating that its denial of Ms. Ramos’s request was serving a governmental

1 function, or necessary to preserve an orderly meeting. Thus, the OAG finds that the Board
2 violated the OML by refusing to grant permission to Ms. Ramos to attend the February 7
3 and March 7 public meetings in person when she requested it.

4 **SUMMARY**

5 Upon investigating the present Complaints, the OAG makes findings of fact and
6 conclusions of law that the Board violated the OML by creating a subcommittee that did
7 not comply with the OML, by discussing and deliberating on the Superintendent’s contract
8 in closed session, and by arbitrarily and without cause prohibiting Ms. Ramos from
9 physically attending a meeting.

10 If the Attorney General investigates a potential OML violation and makes findings
11 of fact and conclusions of law that a public body has taken action in violation of the OML,
12 “the public body must include an item on the next agenda posted for a meeting of the public
13 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
14 public body must treat the opinion of the Attorney General as supporting material for the
15 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
16 must place an item on its next meeting agenda in which it acknowledges the present
17 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation
18 in this matter. The Board must also include the OAG Opinion in the supporting materials
19 for its next meeting.

20 Dated: July 3, 2024.

21 AARON FORD
22 Attorney General

23
24 By: /s/ Rosalie Bordelove
25 ROSALIE BORDELOVE
26 Chief Deputy Attorney General
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2024, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Anthony L. Hall

[Redacted]

Complainant

Certified Mail No.: 7020 2450 0001 1950 [Redacted]

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