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June 5, 2024

Via U.S Mail

Lawrence Sidney
[REDACTED]

Sheryl McGuffin
[REDACTED]

Robbe Lehmann
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-487
Douglas County School District Board of Trustees**

Dear Mr. Sidney, Mr. Lehmann and Mrs. McGuffin:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Douglas County School District Board of Trustees (“Board”) regarding the Board’s July 19, 2023, 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 Complaints included a review of the Complaints, the Response on behalf of the Board, and the agenda, minutes and video recording for the Board’s July 19, 2023, meeting. After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a special public meeting on July 19, 2023, at 10 a.m. The agenda for the meeting included a physical location for the public to attend at Douglas High School and information on how the public could log into the

meeting via Zoom or telephone. The agenda listed information on how individuals could sign up to make public comment in person but did not include any information regarding public comment via Zoom or telephone.

At the beginning of the meeting, the Board discussed taking agenda items in a different order and a motion was made to do so. Public comment was taken specific to this motion, lasting about 10 minutes. The Chair frequently interrupted commenters, but only to ask them to keep their comments to the topic at hand. The motion passed to hear Items #3, then #5 and then #4.

The Board then took a general public comment period for items not on the agenda. This comment period lasted for about 48 minutes and included commenters in person as well as via the remote technology system, Zoom.

Item #3 related to whether the Board would retain a request for proposal process for selecting legal counsel that it had passed at a previous meeting. A motion was made to retain the process, discussion was held and then about an hour of public comment was taken prior to voting. The motion failed and a new motion was made to terminate the process. Another short period of public comment was taken prior to the motion passing.

Item #5 related to whether the Board would hire a new legal counsel, Joey Gilbert. The Board entertained a presentation from Mr. Gilbert, discussed the item, and then took public comment. Complainant McGuffin was the first speaker. She was interrupted by the Chair once to inquire if her comment was on the agenda item and then again when her time was up. As Mrs. McGuffin walked away from the table, the Chair covered her mouth and spoke quietly, but can be heard saying "He's a piece of sh** and so are you." The public comment period lasted for a total of about an hour and 40 minutes with many speakers, including those with similar viewpoints to Mrs. McGuffin, being able to speak uninterrupted or with interruptions only to ascertain that their comments were on topic or to notify them that their time was up.

A little over an hour into the public comment period on Item #5, the Board attempted to accept public comment from the remote technology system. Garbled noises and other technical difficulties could be heard, and the Board continued with in-person public comment while staff attempted to work on the technical issues. The Board tried again with online public comment a few minutes later and experienced more technical issues. After another 10 minutes of staff being unable to work through the technical issues, the Chair stated that the Board would be moving on and the Board voted on the motion.

The Board took another public comment period specific to Item #4 after discussion and prior to its vote. This period lasted about 20 minutes and included commenters able to comment via the remote technology system. After the Board's vote on the item, one last general public comment period was taken, lasting only a couple of minutes, and the meeting was adjourned.

Complainants allege that the Board violated the OML by (1) holding the meeting at 10 a.m. on a weekday when many parents could not attend; (2) allowing the Chair's comment to Complainant McGuffin during a public comment period; (3) terminating the public comment period on Item #5 before all commenters on the remote technology system were able to comment; and (4) the Chair ignoring other Board members that she did not agree with.

LEGAL ANALYSIS

As the governing body of a public school district, created under the provisions of NRS Chapter 386, the Board 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 holding the meeting at 10 a.m. on a weekday.

The Nevada Legislature intends that the actions of public bodies be taken openly and that their deliberations be conducted openly. NRS 241.010(1); *McKay v. Board of Supervisors*, 102 Nev. 644, 651 (1986). The OML should be liberally construed and broadly interpreted to promote openness in government. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003). However, the OML does not include any prohibitions regarding dates and times for holding public meetings. *In re Nevada Department of Education*, OMLO 13897-272 (Jun. 28, 2018). As such, the OAG cannot find a violation of the OML for the Board's scheduling of the meeting at 10 a.m. on a weekday, despite it being an inconvenient time for many interested members of the public to attend. *Id.* (finding no violation of the OML where a meeting was held at 11 a.m. on a Friday, which was also a religious holiday and during spring break vacation for two Nevada school districts).

2. The Chair's comment to Mrs. McGuffin did not rise to the level of a viewpoint based public comment restriction.

Public bodies in Nevada must include periods devoted to comments by the general public during their meetings. NRS 241.020(3)(d)(3). Once the right to speak has been granted by the Legislature, the protections of free speech in the U.S. Constitution and the Nevada Constitution attach. *In re Las Vegas*

City Council, OMLO 13897-381 at 5-6 (April 14, 2021). Generally, “the right to criticize public officials” is protected by the First Amendment. *Jenkins v. Rock Hill Local Sch. Dist.*, 513 F.3d 580, 588 (6th Cir. 2008). Article 1, Section 9 of the Nevada Constitution also expressly protects a citizen’s right to free speech.

Despite these Constitutional safeguards, an individual’s right to speak at a public meeting is not unfettered. *In re Pahrump Community Library District Board of Trustees*, OMLO 13897-455 at 3 (Jan. 8, 2024). Reasonable time, place and manner restrictions may be placed on public comment periods, but public bodies may not restrict comments based upon viewpoint. NRS 241.020(3)(d)(7).

Here, the issue is whether interruptions to public commenters or statements made in connection with those comments rose to the level of a public comment restriction, and if so, whether that restriction was applied based upon viewpoint. *See In re Pahrump Community Library District Board of Trustees* at 4. While unfortunate to be heard by the Chair of a public body, the OAG does not find that Chair Jensen’s statement following Mrs. McGuffin’s public comment rose to the level of a public comment restriction. Mrs. McGuffin was permitted to make her comments and was only cut off for time after she had spoken for more than 3 minutes, even if the Chair’s first interruption regarding topic was subtracted from the total time.

In the *Pahrump Community Library District* matter, the OAG found a violation where interruptions of the Complainant and others sharing her viewpoint were incredibly hostile, were repeated throughout the meeting and had the effect of making the speakers unable to fully express their views. *Id.* at 4. While the OAG may find that interruptions or comments less than those that occurred in the *Pahrump* matter could rise to the level of a restriction on speech, they did not here. However, the OAG notes that this was a close call and cautions the Board to be careful in how it treats public commenters during meetings.

3. The Board did not violate the OML by terminating the public comment period on Item #5 when it experienced technical difficulties.

As noted previously, public bodies in Nevada must include periods devoted to comments by the general public during their meetings. NRS 241.020(3)(d)(3). A public body is only required to offer public comment via a remote technology system where there is no physical location designated for the meeting where members of the public are permitted to attend and

participate. NRS 241.023(1). However, where the public body is *conducting the meeting* via the remote technology system, the body is required to offer at least a telephone number for public comment. NRS 241.023(5) (as amended by Assembly Bill 219 of the 2023 Legislative Session). For a meeting to be conducted via a remote technology system, the public body must have members participating via the remote technology system or by means of electronic communication. *See* NRS 241.023(1)(a).

Here, there is no dispute that a physical location was available for public to attend and participate. In addition, all members of the Board that were present during the meeting were present and participating at the physical location. Thus, the OAG finds that the meeting was not conducted via a remote technology system and offering public comment via virtual means was not required under the OML. It is worth noting that the Board accepted almost four hours of public comment during a six-hour meeting, both in person and online. While it may have been the Board's practice to accept virtual public comment, the agenda did not specifically list virtual public comment as an option. Because there was no requirement that the Board provide a means of virtual public comment, the OAG cannot find its termination of virtual public comment during Item #5 to be a violation of the OML.

4. The OML does not address members' treatment of each other or how motions are made.

The Complaints allege that the Chair of the Board ignored members she did not agree with and thus violated the OML. The OML was enacted to ensure public access to government as it conducts the people's business. NRS 241.010. The OML is a public facing law. *In re Washoe County Commission et. al.*, OMLO 13897-454 at 3 (May 4, 2023). The law does not address how a public body treats its members, how motions are made or seconded, or how long individual members are permitted to speak. *Id.* As the OML does not address such parliamentary procedure, the OAG cannot step into the shoes of the members in the conduct of meetings and motions. Thus, the OAG does not find a violation of the OML in this respect.

CONCLUSION

Upon review of your Complaints 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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cc: Joey Gilbert, Esq.
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