

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3 In the matter of:

4 NEVADA STATE HIGH SCHOOL  
5 GOVERNING BOARD

OAG FILE NO.: 13897-491

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

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7  
8 **BACKGROUND**

9 The Office of the Attorney General (“OAG”) received Complaints from Wendi Hawk  
10 and John Hawk alleging violations of the Nevada Open Meeting Law (“OML”) by the  
11 Nevada State High School Governing Board (“Board”). The Complaints allege that the  
12 Board violated the OML by improperly holding a closed session in June 2023 and by  
13 excluding the Complainants from attending two Board meetings in person in October 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; and the  
18 agenda, minutes and recordings of the Board’s October 19 and October 30, 2023, meetings.

19 After investigating the Complaints, the OAG determines that the Board violated the  
20 OML by refusing to allow Complainants to attend its October 19 and October 30, 2023,  
21 meetings in person. The OAG does not find a violation of the OML with respect to the  
22 Complaints’ other allegations.

23 **FINDINGS OF FACT**

24 1. On or around June 2, 2023, Nevada State High School (“School”) held a private  
25 training session for employees. Complainant Wendi Hawk, a former employee and current  
26 contractor of the School at the time, arrived uninvited to this session, but was permitted to  
27 attend by School administration. She was disruptive during the training session by  
28 interrupting and loudly accusing the school of wrongdoing.

1           2.     On or around June 8, 2023, a quorum of the Board held a closed gathering  
2 with its counsel. Issues relating to the Complainants were discussed.

3           3.     On or around July 10, 2023, Complainants' counsel sent a letter to the Board  
4 threatening litigation regarding Complainants' contract with the Board.

5           4.     On or around July 31, 2023, the Board's counsel sent a letter to Complainants  
6 instructing them to cease and desist from contacting School staff and issuing a no trespass  
7 notice to Complainants to refrain from coming on School property, citing to NRS  
8 207.200(2)(e) ("No Trespass Notice").

9           5.     Over the next couple of months, the Board's counsel and Complainants'  
10 counsel sent letters back and forth regarding the threats of litigation.

11          6.     Some time prior to the October 19 meeting, Complainants, through counsel,  
12 informed the Board that they intended to attend public Board meetings. The Board  
13 responded that it would enforce the No Trespass Notice to exclude Complainants from the  
14 property.

15          7.     The Board held a public meeting on October 19, 2023. The public notice  
16 agenda for the meeting listed a physical location for the meeting located on School property  
17 and stated, "Members of the public are invited to attend the location(s) listed above."  
18 Attendance via a remote technology system was also provided.

19          8.     Complainants attempted to attend the meeting in person but were barred  
20 from admittance to the building by School security. Counsel for the Board informed  
21 Complainants that they were not permitted to attend in person but could attend via the  
22 remote technology system.

23          9.     Complainants attended the meeting via the remote technology system from  
24 the parking lot and were permitted to make public comments and otherwise participate as  
25 members of the public.

26          10.    The Board held a public meeting on October 30, 2023. The public notice  
27 agenda for the meeting contained the same location and statements as the October 19  
28 agenda. Complainants again attempted to attend the meeting in person, were excluded

1 from doing so and attended the meeting via the remote technology system, being able to  
2 make their public comments and otherwise participate.

3 11. Complainants filed the instant Complaints alleging (1) that the closed  
4 gathering of the Board with counsel was a closed session to discuss their character under  
5 NRS 241.030 and their exclusion violated the OML, and (2) that their exclusion from  
6 physically attending the October 19 and October 30 meetings violated the OML.

7 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

8 The Board, as the governing body of a Nevada charter school, is a public body as  
9 defined in NRS 241.015(4) and is subject to the OML. NRS 388A.320(5); NRS 241.015(4).

10 **A. The Board did not violate the OML by holding a closed gathering with**  
11 **its counsel to discuss potential litigation.**

12 The Nevada Legislature has excepted from the OML gatherings of public bodies at  
13 which a quorum is present “[t]o receive information from the attorney employed or retained  
14 by the public body regarding potential or existing litigation involving a matter over which  
15 the public body has supervision, control, jurisdiction or advisory power and to deliberate  
16 toward a decision on the matter, or both.” NRS 241.015(3)(b)(2). The OAG has previously  
17 held that this exception can apply to deliberations whether a public body would approve  
18 certain terms of a settlement agreement, so long as the final agreement is approved by the  
19 body at a public meeting. *In re Clark County School District Board of Trustees*, OMLO  
20 13897-410 at 3-4 (Dec. 2021).

21 There is no dispute here that a quorum of the Board met on June 8, 2023, with its  
22 counsel regarding issues with the Complainants. This gathering was not recorded, nor was  
23 it required to be, and the OAG is limited in its inquiry into the meeting as it is covered by  
24 the attorney client privilege. NRS 49.095.

25 Disputes between the Complainants and the Board had arisen prior to the gathering  
26 at issue, including veiled litigation threats by Complainants themselves regarding their  
27 contract with the Board. The Board submitted declarations from two attendees to the  
28 gathering that its purpose was to receive and discuss advice from counsel regarding this

1 potential litigation. Indeed, formal litigation was actively threatened by Complainants’  
2 counsel shortly after this gathering. The OAG finds sufficient evidence to indicate that the  
3 purpose of the gathering fits within NRS 241.015(3)(b)(2)’s exception to the definition of a  
4 meeting. Thus, the Board did not violate the OML by excluding Complainants from the  
5 gathering.

6 **B. The Board violated the OML by excluding Complainants from in person**  
7 **attendance at its October 19 and October 30 public meetings.**

8 Except as otherwise provided by a specific statute, all meetings of public bodies must  
9 be open and public, and all people must be permitted to attend. NRS 241.020(1). The  
10 legislative intent of the OML is that actions of public bodies “be taken openly, and that  
11 their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board of*  
12 *Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS  
13 Chapter 241 favors open meetings”). All exceptions to the OML must be construed  
14 narrowly and in favor of openness. *Chanos v. Nevada Tax Comm’n*, 124 Nev. 232, 239, 181  
15 P.3d 675, 680 (2008). “[T]he narrow construction of exceptions to the Open Meeting Law  
16 stems from the Legislature’s use of the term ‘specific’ in NRS 241.020(1) and that such  
17 exceptions must be explicit and definite.” *Id.* The OML “mandates open meetings unless  
18 ‘otherwise specified by statute . . . .’” *McKay*, 102 Nev. at 651. In this instance,  
19 Complainants were prevented from physically attending the two meetings at issue solely  
20 because of the No Trespass Notice.

21 In an effort to protect the public’s First Amendment right to free speech, the OML  
22 prohibits public comment restrictions that are based upon viewpoint. NRS  
23 241.020(3)(d)(7). Restricting speech based upon identity is akin to restricting based on  
24 viewpoint and equally prohibited by the First Amendment. *Citizens United v. Federal*  
25 *Election Com’n*, 558 U.S. 310, 340 (2010) (“Prohibited, too, are restrictions distinguishing  
26 among different speakers, allowing speech by some but not others.”); *Rodgers c. Stachey*,  
27 382 F. Supp. 3d 869, 881 (W.D. Ark. 2019) (speech restrictions based on identity of the  
28 speaker all too often imply a means to control content). Restrictions on attendance at public

1 meetings necessarily affect the public’s ability to make public comment, even if public  
2 comment is offered by other means. As such, neither type of restriction can be based upon  
3 viewpoint or identity. *In re Lander County School District Board of Trustees*, OMLO 13897-  
4 465 & 466 at 6 (July 2024); *In re Pahrump Community Library District Board of Trustees*,  
5 OMLO 13897-455 at 4 (Jan. 2024).

6 Here, Complainants desired to attend the meetings at issue in person, there was a  
7 physical location available to the public and public members were generally permitted to  
8 attend at the physical location. Public bodies may apply speech restrictions that operate  
9 to the disadvantage of certain persons, but these restrictions must be based on allowing  
10 those bodies to perform their functions. *Citizens United* at 341; *Reza v. Pearce*, 806 F.3d  
11 497, 504 (9th Cir. 2015) (restrictions on speech during public meetings are permitted to  
12 maintain decorum and order in the proceeding). However, the Board’s only offered reasons  
13 for the exclusion were Wendi Hawk’s prior disruption at the training event and its belief  
14 that Complaints would be disruptive at the meetings.

15 **The No Trespass Notice.** The Board argues that its issuance of the No Trespass  
16 Notice was legal and as such it could exclude Complainants from the meeting. The OAG  
17 disagrees in this instance. NRS 207.200 states that a person can be convicted of a  
18 misdemeanor if they willfully go upon the property of another “with intent to vex or annoy  
19 the owner or occupant” and a sufficient warning has already been given, such as a no  
20 trespass notice. The No Trespass Notice itself does not equate to a determination that an  
21 individual has committed the acts contemplated by NRS 207.200, it is a warning against  
22 trespassing as described by NRS 207.200(2). No court of law had found an improper intent  
23 was present. This was a public meeting that Complainants were attempting to attend in  
24 their private capacity as members of the public. Even after a notice has been sent, the  
25 individuals only commit a crime under NRS 207.200 if they enter the land or building with  
26 an intent to vex or annoy, or to commit an unlawful act. The Board’s ability to send such  
27 a warning does not supersede the OML's requirement that meetings be open to the public.  
28 *Cyr v. Addison Rutland Supervisory Union*, 60 F. Supp. 3d 536, 550, 317 Ed. Law Rep. 140

1 (D. Vt. 2014) (finding a blanket notice against trespass by a school against a parent, where  
2 it prevented the parent from attending school board meetings, insufficiently tailored and  
3 thus violating the parent’s First Amendment rights with respect to freedom of expression).  
4 The lack of due process protections for members of the public creates concerns that would  
5 not be present when a judicial action such as a temporary restraining order is preventing  
6 attendance.

7 **Use of Remote Access.** The Board further argues the language of NRS 241.020(1)  
8 requiring people to be able to attend any meeting “at a physical location or by means of a  
9 remote technology system” means their provision of a remote technology system for  
10 Complainants to attend the meeting virtually met all statutory requirements. While the  
11 OAG agrees that virtual attendance can be equivalent to in person attendance, a public  
12 body is not permitted to decide who may attend virtually and who may attend in person  
13 without a compelling reason. Specifically targeting an attendance/speech restriction to one  
14 person without serving a governmental function, results in an impermissible identity-  
15 based restriction. *In re Lander County School District Board of Trustees* at 7.

16 **Authority to Exclude.** Lastly, the Board argues that NRS 241.030(4)(a) allows  
17 them to exclude an individual from a meeting who they believe will be disruptive. The  
18 OAG disagrees. NRS 241.030(4) states: “This chapter does not: (a) Prevent the removal of  
19 any person who willfully disrupts a meeting to the extent that its orderly conduct is made  
20 impractical.” The statute does not permit the exclusion of any person regardless of whether  
21 a reasonable belief exists that they will be disruptive, only their removal upon such a  
22 disruption. The Board argues that Wendi Hawk’s prior disruption at a training session,  
23 unrelated to a public meeting, demonstrates that *both* Complainants would be disruptive.  
24 Further, the Board repeatedly asserts that Complainants’ “threats” amounted to enough to  
25 exclude them from the meeting for fear they may become violent. However, the only threats  
26 and disruptions actually cited to by the Board in its response were allegations by  
27 Complainants of wrongdoing by the Board or its staff and threats of litigation. The Board  
28 cites to no instance where either Complainant had demonstrated violent behavior,

1 threatened violent behavior or posed a physical threat.<sup>1</sup> The OAG notes that while there  
2 could be a circumstance where exclusion from a meeting might be permitted, such as when  
3 a court has issued a Temporary Restraining Order, mere belief that a person may become  
4 disruptive is insufficient. *See Davison v. Rose*, 19 F. 4th 626, 637, 397 Ed. Law Rep. 459  
5 (4th Cir. 2021) (finding no trespass letters preventing a parent from attending school board  
6 meetings was not First Amendment retaliation where the basis for the letters was  
7 unprotected speech, including statements alluding to gun violence and similar threats).

8 While this is a very fact specific determination, and a different record of disruption,  
9 could justify a Board’s decision to prohibit physical appearance, here the Board did not  
10 present any facts demonstrating that its denial of John Hawk’s attendance was related to  
11 a disruption. While there is a record of disturbance from Wendi Hawk, no Temporary  
12 Restraining Order was sought, nor was their evidence that the prior disturbance was likely  
13 to re-occur or prevent the orderly conduct of the meeting in question. Thus, the OAG finds  
14 that the Board violated the OML by refusing to allow Complainants to attend its October  
15 19 and October 30 meetings in person.

## 16 SUMMARY

17 Upon investigating the present Complaints, the OAG makes findings of fact and  
18 conclusions of law that the Board violated the OML by physically excluding the  
19 Complainants from two of their meetings.

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

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27 <sup>1</sup> Counsel for the Board mentions a handshake he had with Complainant John Hawk that lasted longer than  
28 a “normal time-frame” and chose to interpret the handshake as intimidating. However, Counsel then stated  
the remaining actions with John Hawk “remained civil”.

1 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation  
2 in this matter. The Board must also include the OAG Opinion in the supporting materials  
3 for its next meeting.

4 Dated: July 9, 2024.

5 AARON FORD  
6 Attorney General

7 By: /s/ Rosalie Bordelove  
8 ROSALIE BORDELOVE  
9 Chief Deputy Attorney General

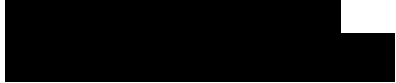
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
**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> 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:

Wendi and John Hawk



*Complainants*

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/s/ Debra Turman  
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