

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 DOUGLAS COUNTY SCHOOL
5 DISTRICT BOARD OF TRUSTEES
6

OAG FILE NO.: 13897-473

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7 **BACKGROUND**

8 The Office of the Attorney General (“OAG”) has received your complaint
9 (“Complaint”) alleging that the Douglas County School District Board of Trustees
10 (“Board”) violated Nevada’s Open Meeting Law (“OML”) at its February 14, 2023, open
11 meeting. Your complaint alleges that the Board failed to include a clear and complete
12 statement of Item 11 on its public notice agenda in violation of NRS 241.020(3)(d)(1). The
13 OAG has statutory enforcement powers under the OML, and the authority to investigate
14 and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. To
15 investigate the complaint, the OAG reviewed the complaint, responses from the Board,
16 and the agenda, minutes and recording of the Board’s February 14, 2023, meeting.

17 After investigating the complaint, the OAG determines that the Board violated the
18 OML by failing to include a clear and complete statement of Item 11 on its public notice
19 agenda.

20 **FACTUAL BACKGROUND**

21 The Douglas County School District Board of Trustees is a “public body” as defined
22 in NRS 241.015(4); therefore, the Board is subject to the OML. The Board held a public
23 meeting on February 14, 2023. Agenda Item No. 11 on the public notice agenda read as
24 follows:

25 11. Grant Funding for Calendar Year 2023 SG-G (Discussion and For
26 Possible Action) The District requests authorization to apply for grant
27 funding for the 2023 calendar year, and the Board will discuss the terms
28 under which they authorize district staff to apply for funding.

1 During the Agenda Item No. 11 discussion, the Board discussed a proposed
2 resolution that detailed terms under which they would authorize district staff to apply for
3 grant funding for the 2023 calendar year. The Board discussed and ultimately passed a
4 resolution that was a prohibition on staff to apply for grant funding that included specific
5 components of “critical race theory” (“CRT”). The prohibitions on applying for funding
6 relating to CRT were the “terms” Agenda Item No. 11 omitted to reference. The
7 Complainant argues that because the agenda item did not state the terms to be discussed
8 related to CRT, it failed to meet the clear and complete standard. The Board contends
9 that the description of this agenda item was sufficient under the OML because it stated
10 that grant terms would be discussed at the meeting and that individuals who attended
11 the meeting received a copy of the proposed resolution containing those terms.

12 In addition, in response to the OAG’s inquiry into this matter, the Board further
13 acknowledged that, while not adopting the language contained in the proposed resolution
14 that passed at the February 14, 2023, Board meeting, the Board did ultimately approve a
15 CRT grant funding application policy on May 16, 2023, that states, in relevant part, as
16 follows,

17 “The Board of Trustees authorizes district staff to apply for entitlement and
18 competitive grant funds, as well as other grant opportunities so long as
19 accepting funds through those grant opportunities does not require conditions
20 to be set upon the Douglas County School District that violate any board
21 policy or promote intersectionality (oppressed and oppressors), equity of
outcomes, or the sexualization of students including, but not limited to, the
teaching of nontraditional pronouns or genders.”

22 Although this policy was adopted, an affidavit of Ms. Jeanette Dwyer, the
23 Superintendent of the District, dated February 26, 2024, states, in part, that to the best
24 of her knowledge, this policy has not precluded the District from applying for and/or
25 receiving any grants. Further, in the affidavit she stated that this policy has not had any
26 negative financial or any quantifiable effect on the District as it applies to grant funding.

LEGAL ANALYSIS

1
2 An agenda for a meeting of a public body must include a “clear and complete
3 statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The
4 clear and complete statement requirement of the OML stems from the legislature’s belief
5 that “incomplete and poorly written agendas deprive citizens of their right to take part in
6 government” and “interferes with the ‘press’ ability to report the actions of government.”
7 *Sandoval v. Board of Regents of University*, 119 Nev. 148, 154 (2003). Strict adherence to
8 the clear and complete standard for agenda items is required for compliance under the
9 OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at
10 public meetings so that the public can attend a meeting when an issue of interest will be
11 discussed.” *Id.* at 155. Further, “a higher degree of specificity is needed when the subject
12 to be debated is of special or significant interest to the public.” *Id.* at 155-56 (quoting
13 *Gardner v. Herring*, 21 S.W.3rd 767, 733 (Tex. App. 2000)).

14 Here, given that the agenda failed to describe the grant terms, specifically CRT,
15 that would be discussed at the meeting as it related to the grant funding conditions, the
16 clear and complete standard was not met. The OAG finds that the item at issue was of
17 significant interest to the public at the time it was proposed to the Board. Due to the
18 controversy that CRT discussions caused at prior Board meetings, the Board knew that
19 the topic of CRT was of great public interest yet it failed to detail that CRT would be a
20 grant funding term to be discussed at the meeting at issue. The fact that the proposed
21 resolution containing the CRT grant terms was disseminated to attendees of the meeting
22 bolsters the argument that individuals in the community were particularly interested in
23 this topic. Those individuals, not in attendance, that may have been interested but did
24 not know CRT grant terms would be discussed at the meeting, were unfairly denied the
25 ability to provide their input.

26 Public bodies should apply a reasonableness standard in determining whether an
27 agenda item is clear and complete. See *In re Nevada State Board of Veterinary Medical*
28 *Examiners*, OMLO No. 13897-363 at 5 (Jan. 8, 2021). The agenda item at issue did not

1 give the public any way to know that CRT would be a term of grant funding that would be
2 discussed. By stating on the agenda only that terms of grant funding would be discussed
3 with no details provided as to the terms, does not meet the reasonableness standard set
4 forth in *In re Nevada State Board of Veterinary Medical Examiners*. The Board knew of
5 the interest that the public, including national news organizations, had relating to CRT
6 given the attention it received at prior Board meetings when CRT was discussed. At
7 those prior Board meetings, there was significant discussion and divergent opinions about
8 CRT and its use in academic curriculum. Therefore, it was unreasonable for the Board to
9 fail to state that CRT was a term of grant funding to be discussed.

10 Further, given that the Board had prepared a proposed resolution to prohibit staff
11 from applying for grant funding with ties to CRT prior to the meeting, there is evidence
12 that the Board knew that CRT was a term to be discussed at the meeting, and, therefore,
13 should have specified that CRT as a term to be discussed on the agenda. Thus, OAG
14 finds that a discussion of CRT as a term relating to grant funding required a higher
15 degree of specificity on the agenda and its omission was a violation of the OML.

16 SUMMARY

17 Upon investigating the present Complaint, the OAG makes findings of fact and
18 conclusions of law that the Board violated the OML by failing to meet the clear and
19 complete requirement in connection with Agenda Item No. 11 on the Board's February 14,
20 2023, agenda by its failure to state that the grant funding term to be discussed that the
21 meeting related to CRT.

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

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

4
5 Dated: June 7, 2024

6 AARON FORD
7 Attorney General

8
9 By: /s/ Cris Maher
10 Cris Maher
11 Deputy Attorney General
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 7th day of June, 2024, I served the foregoing
3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the
4 same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
5 addressed as follows:
6

7
8 Mr. Robbe Lehman
9 [Redacted]
10 *Complainant*

11 **Certified Mail No.:** 7020 0640 0000 7651 9036

12
13 Joey Gilbert, Esq.
14 Joey Gilbert Law
15 405 Marsh Avenue
16 Reno, Nevada 89509
17 *Counsel to the Douglas County School District Board of Trustees*

18
19 **Certified Mail No.:** 7020 0640 0000 7651 9043

20 /s/ Debra Turman
21 An employee of the Office of the
22 Nevada Attorney General
23
24
25
26
27
28