

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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January 26, 2017

Espanola Public School District
Eugene I. Zamora
Ortiz & Zamora Attorneys at Law LLC
201 Butulph Road #200
Santa Fe, New Mexico 87505-1106
Email: geno@ortiz-zamora.com

RE: Open Meetings Act Complaint

Dear Mr. Zamora:

On July 5, 2016, the Office of the Attorney General, Open Government Division ("OGD"), received a complaint against the Espanola Public School District alleging violations of the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (as amended through 2013). We have reviewed the complaint and the Espanola Public School District's response. Based upon the complaint, response and applicable law, we conclude that the Espanola Public School District violated OMA when it failed to adequately disclose the subject matters to be discussed during executive session on the agendas with reasonable specificity in violation of NMSA 1978, Section 10-15-1(F) and failed to state with reasonable specificity in the motion calling for the vote to enter into closed session what subject matters were to be discussed during closed session in violation of NMSA 1978, Section 10-15-1(I).

According to the complainant, Ariel Carmona, the Espanola Public School District failed to disclose on its agendas the executive session items to be discussed at its June 22nd and 29th meetings with reasonable specificity. Listed on both agendas were the following executive session agenda items:

1. Limited Personnel Matters, Section 10-15-1(H)(2)
2. Litigation-Section, 10-15-1(H)(7) Board will be in session with legal counsel

The OMA requires that "[m]eeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting." NMSA 1978, 10-15-1(F). Further,

the OMA requires that the motion to enter into executive session must not only state the authority by which the public body may enter executive session, but must also disclose with reasonable specificity sufficient information to give the public a general idea what will be discussed during the closed session without compromising the confidentiality conferred by the exception. NMSA 1978, Section 10-15-1(I)(1).

I. The Espanola School District Failed to List Agenda Items to be Discussed or Transacted at the Meetings with Reasonable Specificity

Agenda Item No. II(A)(1) cites the OMA exception NMSA 1978, Section 10-15-1(H)(2) as the basis to discuss limited personnel matters in closed session. The Espanola Public School District's response to the complaint concerning agenda item 1 states that the specific matter discussed was the status of a personnel discharge hearing set for July 19, 2016 relating to a specific district employee. The Espanola Public School District explains that more specific information was not provided on the agendas because of concerns of "privacy rights of the employee".

The OMA permits public bodies to enter into closed session to discuss hiring, promotion, demotion, dismissal, assignment or reassignment or resignation of an individual public employee of the public body or to discuss the investigation or consideration of complaints or charges against an individual public employee. Public bodies may also discuss matters such as performance appraisals and interviews with job candidates in closed session. NMSA 1978, 10-15-1(H)(2). However, the OMA requires that the agenda contain a list of specific items of business to be discussed or transacted at the meeting. NMSA 1978, Section 10-15-1(F). Merely stating the legal authority permitting the public body to enter closed session is inadequate to support the reasonable specificity requirement under the OMA. Therefore, the Espanola Public School District's disclosure of "Limited Personnel Matters" is too vague citing only generally to the public body's authority to enter closed session. When listing personnel matters on the agenda, the description should give the public a reasonably clear idea about what the public body intends to discuss or actions it may take.

Agenda Item No. II(A)(2) cites the OMA exception NMSA 1978, Section 10-15-1(H)(7) as the basis to discuss litigation issues with legal counsel in closed session. The Espanola Public School District's response to the complaint concerning agenda item 2 states that the specific matter discussed was "the status of a lawsuit filed against the District by Mr. Carmona and his employer . . ." The lawsuit was filed on June 9, 2016, thirteen days prior to the scheduled meeting. The Espanola Public School District explains that more specific information was not included on the agendas because of concerns of "balancing the liability risks of the Board that may arise with a more specific description of pending and threatened litigation items."

The OMA permits public bodies to meet in closed session to discuss threatened or pending litigation involving the public body. NMSA 1978, Section 10-15-1(H)(7). Discussions are limited to legal advice concerning the litigation. However, the OMA requires that the agenda contain a list of specific items of business to be discussed or transacted at the meeting. NMSA 1978, Section 10-15-1(F). Again, merely stating the legal authority permitting a closed session is inadequate to support the reasonable specificity requirement of the OMA. When listing litigation matters on

the agenda, the description should give the public a reasonably clear idea about what the public body intends to discuss or actions it may take. In this case, since litigation had already commenced in this matter, the subject matter was already public record. The agenda should have reflected the case name as the subject matter to be discussed.

II. The Espanola School District Failed to State in the Motion to Enter into Closed Session the Items to be Discussed During Closed Session with Reasonable Specificity

When making the motion to enter closed session, the public body only provided the legal authority to enter executive session. The OMA requires the public body take two steps to enter executive session. In its motion to enter executive session, the public body must state: 1) the legal authority to enter into executive session; and 2) the subject matter to be discussed with reasonable specificity. NMSA 1978, Section 10-15-1(I)(1). Merely stating the legal authority permitting a closed session is inadequate to support the reasonable specificity requirement under the OMA. Therefore, the Espanola Public School District's disclosure of "Limited Personnel Matters" and "Litigation . . . Board will be in session with legal counsel" when making the motion to enter into executive session is insufficient. When making a motion to enter into closed session, the description of matters to be discussed must give the public a reasonably clear idea about what the public body intends to discuss. Similarly, following completion of any closed meeting, the Board must state for the record that the only matters discussed in the closed meeting were limited to those specified in the motion for closure. NMSA 1978, Section 10-15-1(J). Failure to properly state for the record the subject matter discussed during closed session with specificity when re-opening the meeting results in a violation of OMA.

Finally, the complaint included an allegation of a violation of the OMA by the public body for failure to provide proper notice of the meeting. Review of the file reveals no violation was substantiated. Therefore, it is presumed that the Espanola Public School District acted in accordance with the requirements set out in OMA, NMSA 1978, Sections 10-15-1(D) and (F). NMSA 1978, Section 10-15-3(A).

III. Conclusion

Based upon the minutes for the meeting held on June 22, 2016, it appears that the executive session was adjourned prior to any discussion of the agenda items. Based upon the minutes for the meeting held on June 29, 2016, it appears that the public body did go into executive session to discuss agenda items but the public body did not take any action on those items. However, we conclude that there are violations of the OMA in the public body's failure to list agenda items with reasonable specificity in violation of NMSA 1978, Section 10-15-1(F), failure to reasonably specify the matters to be discussed in the motion to enter closed session in violation of NMSA 1978, Section 10-15-1(I)(1) and failure to state for the record the subject matter discussed with specificity during closed session when exiting closed session in violation of and 10-15-1(J).

For more information about OMA you may refer to the Office of the Attorney Open Meetings Act Compliance Guide, available on our website at www.nmag.gov. If you have any specific questions about the matters addressed in this letter or about the Open Meetings Act in general, you may contact me directly or call the Office of the Attorney General Open Government Division at 505-490-4060.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Chavez". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Lori Chavez
Assistant Attorney General

cc: Ariel Carmona

OPEN MEETING ACT ("OMA") COMPLAINT FORM
New Mexico Office of the Attorney General
Open Government Division

Your Contact Information:

First Name: ARIEL ~~CARMONA~~ Last Name: CARMONA

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): ESPAÑOLA SCHOOL DISTRICT

Specific date(s) of OMA violation(s): 6/29/2016 / 6/22/2016

ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY: Please select from the following list the violations you allege the public body committed. Check all that apply.

DEFICIENCIES IN NOTICE OF THE MEETING

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

AGENDA

- Agenda was not available seventy-two (72) hours prior to the meeting

Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity

Public body took action on items that were not listed on the agenda

In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

MINUTES

The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent

The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken

A draft copy of the minutes was not available within ten (10) working days of the meeting

The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

CLOSED MEETINGS

The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)

The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions

Matters not stated in the motion to close were discussed in the closed session.

Final action was taken by the public body in the closed meeting

CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting

A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)

___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS: Please provide a description of the actions taken by the public body that violated the OMA, including specific dates and times, and why you believe the OMA has been violated.

I am the education reporter for the Rio Grande Sun Newspaper

I believe actions violated OMA for the June 29 meeting because

a) although posted in their admin. building, the building is not accessible by the public since Board has moved from the location & building sits unoccupied.

b) Agenda is not specific to items discussed in executive session

I believe actions violated OMA for June 22 meeting because in addition to A & B listed above

c) No notice was posted on agenda prior to June 22 meeting as required per OMA.

ADDITIONAL INFORMATION: Please attach any documentation or evidence you have regarding the alleged OMA violation.

**Española Public School District #55
Special Board Meeting in Executive Session**

Carlos F. Vigil Middle School

June 22, 2016

Special Board Meeting in Executive
Session

6:00 PM

I. OPENING BUSINESS (6:00 p.m.)

- A. Call to Order - Mr. Pablo E. Lujan, President
- B. Pledge of Allegiance
- C. Roll Call - Ms. Annabelle Almager, Board Secretary
- D. Approval of Agenda

II. EXECUTIVE SESSION

NOTICE IS HEREBY GIVEN that the Board of Education of the Española Public Schools may call an Executive Session Pursuant to NMSA 1978, Sec. 10-15-1 (H) (2) (H) (7)

A. Executive Session - As per Open Meetings Act 10-15-1 (H) (2)

1. Limited Personnel Matters-Section 10-15-1 (H) (2)

2. Litigation-Section 10-15-1 (H) (7) Board will be in session with legal counsel

} not
specific

III. ANNOUNCEMENTS

A. Regular Board Meeting, Wednesday, July 6, 2016, 5:30 PM at Carlos F. Vigil Middle School

IV. ADJOURNMENT

**Española Public School District #55
Special Board Meeting with an Executive Session**

Carlos F. Vigil Middle School

June 29, 2016

Special Board Meeting with an
Executive Session

6:00 PM

I. OPENING BUSINESS (6:00 p.m.)

- A. Call to Order - Mr. Pablo E. Lujan, President
- B. Pledge of Allegiance
- C. Roll Call - Ms. Annabelle Almager, Board Secretary
- D. Approval of Agenda

II. ACTION ITEMS

- A. Approval of Salary Schedules 2016-2017
- B. Approval of Final 2016-2017 Operating Budget
- C. Approval of PSA for CES/Myrna Garcia Interim Business Services Director
- D. Approval of PSA for Carol Gonzales, Business Services

III. EXECUTIVE SESSION

NOTICE IS HEREBY GIVEN that the Board of Education of the Española Public Schools may call an Executive Session Pursuant to NMSA 1978, Sec. 10-15-1 (H) (2) (H) (7)

- A. Executive Session - As per Open Meetings Act 10-15-1 (H) (2)
 - 1. Limited Personnel Matters-Section 10-15-1 (H) (2)
 - 2. Litigation-Section 10-15-1 (H) (7) Board will be in session with legal counsel

} not
specific
enough

IV. ANNOUNCEMENTS

- A. Regular Board Meeting, Wednesday, July 6, 2016, 5:30 PM at Carlos F. Vigil Middle School

V. ADJOURNMENT