



## Attorney General of New Mexico

**HECTOR H. BALDERAS**  
Attorney General

March 4, 2016

Alfred Milligan  
P.O. Box 2223  
Silver City, NM 88062  
Email: [amilligan@zianet.com](mailto:amilligan@zianet.com)

Re: Open Meetings Act Complaint

Dear Mr. Milligan:

On January 19, 2016, the Office of the Attorney General Open Government Division ("OGD") received your complaint alleging that the Board of Regents of Western New Mexico University ("WNMU") violated the Open Meeting Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (2013).

The OGD received correspondence from WNMU on February 8, 2016, regarding the \$25,000 retention incentive of WNMU's President. We have enclosed the correspondence for your review. Based on the information provided, WNMU has relied on the procedure found in Section 4.3.2 of the President's contract regarding the retention incentive in choosing not to vote publicly to approve the retention incentive. However, WNMU also provided a copy of its Resolution Relating to an Open Meetings Act Complaint and the University President's Performance Evaluation. This Resolution was enacted at WNMU's February 4, 2016 meeting to cure the alleged violation regarding the granting of WNMU's President retention incentive. WNMU further stated that they are committed to transparency and to OMA compliance in the future. Therefore, WNMU is in substantial compliance with the OMA. *See, Gutierrez v. City of Albuquerque*, 1981-NMSC-061, 96 N.M. 398, 631 P.2D 304 (S.Ct. 1981). As such, we consider this matter closed.

Thank you for affording our office this opportunity to be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Dylan K. Lange".

Dylan K. Lange  
Assistant Attorney General

cc: R. Daniel Castille

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&  
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OF COUNSEL:  
JOHN F. KENNEDY  
RAMON VIGIL, JR.  
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REPLY TO SANTA FE OFFICE

February 8, 2016

VIA EMAIL ONLY

Dylan K. Lange  
Assistant Attorney General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508  
[dlange@nmag.gov](mailto:dlange@nmag.gov)

***Re: Open Meetings Act Complaint against WNMU***

Dear Mr. Lange:

This firm represents the Board of Regents ("Board" or "Regents") of Western New Mexico University ("WNMU"). This is WNMU's response to your letter dated January 21, 2016, which notified WNMU about an Open Meetings Act ("OMA") complaint ("Complaint") and sought a response. You kindly extended the Board's response deadline to the Complaint to February 8, 2016.

The Board of Regents followed the OMA as it relates to the Regents' September 14, 2015 meeting, as detailed below. [For the avoidance of doubt, however, the Regents enacted the Resolution Relating to an Open Meetings Act Complaint and the University President's Performance Evaluation, attached hereto (with the Agenda) as Exhibit 1, at its February 4, 2016 meeting ("February 4 Resolution").]

**A. Facts relevant to the Board's September Meeting and the President's Contract**

Dr. Joseph Shepard is the President of WNMU and he is employed by the Regents pursuant to an Employment Agreement dated October 14, 2014 ("Contract"). The Contract, as well as the agenda and minutes for the October 14, 2014 meeting at which it was approved, are attached hereto as Exhibits 2, 3, and 4, respectively. The Contract is a public record, as that term is defined by IPRA. Among other provisions, the Contract provides for a "retention incentive," in paragraph 4.3.2, which states:

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

**Your Contact Information:**

First Name: Alfred Last Name: Milligan

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Board of Regents Western New Mexico University

Specific date(s) of OMA violation(s): Sept. 14, 2015

**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

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BY:.....

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)

