

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 30, 2019

VIA ELECTRONIC MAIL ONLY

Ms. Christina J. Aspaas
P.O. Box 2247
Fruitland, NM 87416
Email: aspac@centralschools.org

Re: Open Meetings Act Complaint – Central Consolidated School District

Dear Ms. Aspaas:

This letter addresses the complaint you filed with the Office of the Attorney General alleging that the Central Consolidated School District Board of Education (hereinafter “the Board”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). Your complaint alleges that the Board committed several OMA violations in connection with its action to select an acting superintendent on April 27, 2018. We are also in receipt of the Board’s response to our inquiry regarding this matter. Having reviewed the facts as presented to us, we conclude that, although the Board may very well have violated the Open Meetings Act as alleged in your complaint, it has since taken action to remedy any violation that occurred.

In New Mexico, the Open Meetings Act provides the public with access to “the *greatest possible information* regarding the affairs of government and the official acts of those officers and employees who represent them.” Section 10-15-1(A) (emphasis added). *See also Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 18 (noting that “the public policy of this state, as expressed in the Act, is to conduct the public’s business in the open, allowing persons, so desiring, to attend and listen to the proceedings”). In line with the public policy behind the statute, OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

Your complaint alleges that the Board violated OMA at its special meeting held on April 27, 2018. The agenda for this meeting contained the following agenda item: “Convene in Executive Session: Continuation to Discuss Limited Personnel Matter to conduct the

Ms. Christina J. Aspaas

August 30, 2019

Page 2

Superintendent Evaluation and Contract, as permitted under Section 10-15-1(H)(2), of the New Mexico Open Meetings Act.” The minutes of the meeting reflect that the Board entered into closed session to discuss this agenda item pursuant to a motion that used the same language. After reconvening in open session, the Board voted to accept the then-Superintendent’s resignation and to appoint an interim superintendent. These events were explained by the Board, in response to our inquiry, as unexpected occurrences caused by the Board giving the then-Superintendent a “poor job evaluation” and her resulting decision to resign. The Board emphasized that this was, at the time, a “surprise resignation,” which forced it to find an interim superintendent.

Although your complaint raises a wide array of issues, we discern two related to OMA.¹ First, you argue that the Board’s agenda was not reasonably specific so as to allow it to discuss and take action on appointing an interim superintendent. Secondly, you argue that, by discussing the appointment of an interim superintendent, the Board discussed an item in closed session that had not been specified in the motion to close the meeting. As both of these issues ultimately depend on our review of the language in the Board’s meeting agenda, we will address them together.

OMA requires all meeting agendas to be reasonably specific as to the issues, topics, and decisions that will be discussed or transacted. *See* § 10-15-1(F) (requiring agendas to include “a list of specific items of business to be discussed or transacted at the meeting”). As we explain in our OMA Guide, “The requirement for a list of specific items of business ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting.” OMA Guide, p. 17. Agenda items must give the public a “reasonably clear idea” as to the subject of public business. *Id.* A public body cannot discuss or take action on overly vague or broad agenda items because the interested public would not know in advance the subjects to be discussed or transacted.

The requirement for reasonable specificity also extends to items that the public body might desire to discuss in closed session. In addition to being listed on the agenda with reasonable specificity, however, OMA also requires the motion to close the meeting to state the subject to be discussed with reasonable specificity. *See* § 10-15-1(I)(1) (providing that “the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting”); *see also* OMA Guide, p. 31. The public body may only discuss an item of public business if it is specified in the motion to close the meeting. *See* § 10-15-1(I)(1).

We agree with your complaint insofar as both the item in question on the April 27, 2018, agenda and the motion to close the meeting were lacking in reasonable specificity. Both

¹ We did observe one OMA issue that you did not raise in your complaint. At the April 27, 2018, meeting, the Board did not discuss the minutes of its previous meeting. OMA requires all meeting minutes to be “approved, amended or disapproved at the next meeting where a quorum is present.” Section 10-15-1(G). Special meetings are not exempt from this requirement, meaning that the Board was noncompliant with OMA in at least this respect.

Ms. Christina J. Aspaas

August 30, 2019

Page 3

the agenda and the motion to enter closed session specified that the Board would discuss “the Superintendent Evaluation and Contract” but were silent as to any contingency related to the appointment of an interim superintendent. The interested public would have had no reason to know, based on the agenda, that the Board would consider, as an item of business, the appointment of an interim superintendent. Similarly, the Board’s motion to enter into closed session provided the public with no information or notice that it would discuss the appointment of an interim superintendent. *See* § 10-15-1(I)(1). Although the public was aware that the Board would evaluate the performance of the then-Superintendent and address her contract, the public could not have had a “reasonably clear idea” that the Board might discuss the appointment of an interim superintendent if contract negotiations failed. OMA Guide, p. 17. By failing to include this information in its agenda or in its motion to close the meeting, the Board appears to have violated OMA. This turn of events may very well have been an unexpected and unfortunate surprise, but it was not a sufficient justification to bypass OMA’s procedures and requirements.

Notwithstanding our conclusion that the Board likely violated OMA as alleged in your complaint, we must also recognize that the Board later remedied this violation by voting again to appoint an interim superintendent at its June 6, 2018, meeting, following proper notice. OMA allows, and our Office encourages, public bodies to take action to remedy past violations after they have occurred. *See Kleinberg*, 1988-NMCA-014, ¶ 30 (noting that “procedural defects in the Open Meetings Act may be cured by taking prompt corrective action”); *see also* § 10-15-3(B) (requiring that an individual seeking enforcement action in District Court must provide the public body with fifteen days to take remedial action). Here, by effectively voting again to appoint the same acting superintendent,² the Board almost certainly took “prompt, appropriate and effective” remedial action even assuming a violation occurred.

Thank you for bringing this matter to our attention. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Andrew Sanchez, Esq.

² The Board’s vote at the April 27, 2018, meeting was to appoint an “Acting Superintendent,” and its vote at the June 6, 2018, meeting was to appoint an “Interim Superintendent for the 2018-2019 school year.”

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20180504-5ecb
Final Submit Date	5/4/2018 1:49:49 PM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Open Meetings (OMA) Complaint

Retained Attorney

Parties

Complainant

CCSD Board Member Christina J. Aspaas

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

Central Consolidated School Board - Charlie Jones, Sheldon Pickering, and Ruthda Thomas

Public Body (Government Entity)

Address

P.O. Box 1199
Shiprock, New Mexico 87420

Contact information

(505) 368-4984

Other Party

CCSD Custodial Specialist Supervisor - Gary Montoya

Public Body (Government Entity)

Address

P.O Box 1199
Shiprock, New Mexico 87420

Contact information

Complaint Specifics

Specific date(s) of OMA violation(s)	April 27, 2018
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
Agenda	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
Closed Meetings	Matters not stated in the motion to close were discussed in the closed session.
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

Transaction

Documents



OMA 4-27-18.docx

OMA violation on 4-27-18

Comments



SPECIAL - April 27, 2018.pdf

Press Release and Agenda for Special Meeting on 4-27-18

Comments

*** END OF COMPLAINT ***

Christina J Aspaas

CCSD Board Secretary

Region I Secretary (NMSBA)

Central Consolidated School District

aspac@centralschools.org

PO Box 2247; Fruitland, NM 87416

(505) 977-9015

REGARDING: OMA VIOLATION

As an elected official I am reporting this OMA violation that occurred on April 27, 2018. A special meeting was announced for the continuing evaluation of Superintendent – Dr. Colleen Bowman’s evaluation and contract. However, it appears the Interim Superintendent – Terri Ben was contacted at 1:30 pm and again at 3:30 pm to fill in as Interim Superintendent. Concerning to me is the 1:30 contact, the Board barely entered the Executive Session. (Terri Ben on speaker phone to Dr. Bowman said, “they” contacted me at 1:30 pm.)

- Special Meeting slated for 1:00 pm. Meeting called to order at 1:13 pm.
- Entered Executive Session at 1:15 pm.
- *Call to Interim Superintendent – Terri Ben at 1:30 pm.*
- Reconvene to Open Session at 4:27 pm.
- Adjourned meeting at 4:30 pm.

The Board votes to accept Dr. Colleen Bowman’s resignation: 3 – 1 – 1. Charlie Jones, Ruthda Thomas, and Sheldon Pickering voted Yes. Adam Begay abstained verified by recording. I, Christina J Aspaas voted No. Information released from the District on fb and to the media was inaccurate showing a 4-1 vote.

The Board votes to name Terri Ben Interim Superintendent: 3-1 -1. Charlie Jones, Ruthda Thomas, and Sheldon Pickering voted Yes. Adam Begay abstained verified by recording. I, Christina J Aspaas voted No. Again information released from the District on fb and to the media was inaccurate showing a 4-1 vote.

See attached Agenda:

II. Convene in Executive Session: Continuation to Discuss Limited Personnel Matter to conduct the Superintendent Evaluation and Contract, as permitted under Section 10-15-1(H)(2), of the New Mexico Open Meetings Act.

The “specific items of business” on the agenda (above) does not say to discuss or choose an Interim Superintendent.

So why did the Board name an Interim Superintendent?

IV. Action Item

A. Approve Superintendent's Contract

Mislead the public and all in attendance about the business the Board intends to INACT. According to Agenda Superintendent Dr. Colleen Bowman's contract should have been "APPROVED" by the Board.

According to events it is obvious Board Members: Charlie Jones, Sheldon Pickering and Ruthda Thomas along with CCSD's Custodial Specialist Gary Montoya discussed and decided the choice of the Interim Superintendent prior to the Special Meeting Executive session. There was no intention of "Continuing" the evaluation or the contract negotiation of Superintendent Dr. Colleen Bowman's position. The evaluation conducted was a FARCE! In short, if you or I were ever evaluated in this manner, we would be seeking an attorney or filing with EEOC.

Prior to special meeting at 1:00pm, Board President Adam Begay approached Dr. Bowman to reconsider and accept one year contract, Adam Begay said to Dr. Bowman "to make things easier on him"... "they are pressuring me".

When meeting was adjourned at 4:30 pm, I witnessed physical intimidation by Board Member Ruthda Thomas standing behind Dr. Colleen Bowman's chair and push Dr. Bowman's chair, as Dr. Colleen Bowman remained seated. Dr. Bowman told Ruthda, "Do not touch me". Ruthda Thomas did it again.

All five Board members recently traveled to San Antonio, Texas to attend National School Board Association conference, we each had round trip tickets and hotel reservations from April 6, 2018 to April 10, 2018 purchased by the District. Board Member Sheldon Pickering used this time to purchase a personal vehicle in San Antonio in which Sheldon left a day early (Monday 4- 9-2018) to drive back to Kirtland, NM. Canceling hotel reservations, missing the end of the conference, and not using the round trip ticket already purchased for Sheldon. Our Board Secretary – Sharon Ray had no prior knowledge of Sheldon's plans. Sheldon's actions gives a poor Board Member image.

Futhermore, evidence of CCSD's Custodial Specialist - Gary Montoya calling several persons who are Principals/Administrators in the area to fill in as Interim Superintendent 4-5 weeks prior to Special Meeting on April 27, 2018. I will disclose name to your office separately ... Person fears retaliation, especially when it appears Gary Montoya and Board Members: Charlie Jones, Sheldon Pickering and Ruthda Thomas succeeded to replace Superintendent – Dr. Colleen Bowman.

Board members: Charlie Jones, Sheldon Pickering and Ruthda Thomas are INCOMPETENT! Correction: the entire Board is incompetent, therefore Mr. Randy Manning was placed as the Board's consultant. However, Mr. Manning's advice has been circumvented by Charlie Jones, Sheldon Pickering, and Ruthda Thomas, therefore continued violations of HB2-12, I believe the three Board Member: Charlie Jones, Sheldon Pickering, and Ruthda Thomas expected Dr. Colleen Bowman to EXTEND AND BEND

PROFESSIONAL COURTESY (to look the other way) - for their personal agendas and their own deficiencies Dr. Bowman would not. (This includes Custodial Specialist Gary Montoya). Despite each adversarial attack Dr. Colleen Bowman has endured she has PREVAILED in transforming Central Consolidated School District Fiscally, Ethically, and most importantly inline with NMPED's expectations ... this is what Dr. Bowman's evaluation should have been on. The Board is told the Superintendent is your only employee ... WE FAILED our only employee!

In closing, as a solution I would like to suggest the Board to REDO the evaluation and contract negotiation of Dr. Colleen Bowman with our consultant Mr. Randy Manning present for accountability and for a decent evaluation and contract negotiation in which a person with an Doctorate should expect.

Respectfully,

Christina J Aspaas



Central Consolidated School District

Shiprock Administration Complex

P.O. Box 1199, Shiprock, New Mexico 87420

Voice: (505) 368-4984 / 598-9684

Fax: (505) 368-5232

A Community of Learners Dedicated to Building Lives

SPECIAL SCHOOL BOARD MEETING

April 27, 2018 at 1:00 p.m.

Shiprock Board Room, Shiprock, NM

A G E N D A

- I. Routine Matters**
 - A. Call Meeting to Order and Verify Quorum Present through a Roll Call

- II. Convene in Executive Session: Continuation to Discuss Limited Personnel Matter to conduct the Superintendent Evaluation and Contract, as permitted under Section 10-15-1(H)(2), of the New Mexico Open Meetings Act**

- III. Reconvene in Open Session**

- IV. Action Item**
 - A. Approve Superintendent's Contract

- V. Adjourn**