

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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February 3, 2020

**VIA ELECTRONIC MAIL ONLY**

Questa Independent School District Board of Education  
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**Re: Open Meetings Act Complaint – New Mexico Foundation for Open Government**

Dear Ms. Adams:

Thank you for your response to our inquiry regarding the complaint submitted to the Office of the Attorney General by Ms. Melanie Majors, Executive Director of the New Mexico Foundation for Open Government, alleging that the Questa Independent 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). As you know, Ms. Majors alleges that the Board violated OMA at its September 13, 2019, meeting. Having carefully considered both Ms. Majors’ complaint and your response, we conclude that the Board did indeed violate OMA by failing to provide reasonable specificity in its meeting agenda. We strongly caution the Board to be more cognizant of its statutory responsibilities moving forward, particularly in light of the other complaints our Office has received regarding its previous meetings.

**Background**

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 (8<sup>th</sup> ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

This complaint involves two wildly divergent accounts of the Board’s meeting on September 13, 2019. Although both Ms. Majors and the Board agree that the complaint involves a closed session discussion and the hiring of an interim superintendent (following the resignation of the District’s current superintendent), both factual accounts have significant differences.

Ms. Majors’ complaint alleges that, at the meeting, the Board “asked the public to clear the room for a closed session, without providing specifics,” and then held a closed session discussion on hiring an interim superintendent. According to Ms. Majors, it was only upon reentering the open portion of the meeting (following the closed session discussion) that the Board actually voted to appoint an interim superintendent. She also alleges that this item was not listed on the agenda. Finally, Ms. Majors stated that FOG received a phone call from an unidentified individual stating that “the school board president was meeting privately with individual school board members” and that this indicated that a rolling quorum occurred.

The Board’s account of the meeting, which is supported from an evidentiary standpoint by its meeting agenda and minutes, is quite different. The agenda included as items of business: “Accept Superintendent Resignation” and “Approve appropriate transition for superintendent resignation.” The Board argues that this latter item of business was reasonably specific so as to allow it to appoint an interim superintendent. The minutes of the meeting reflect that, far from discussing the appointment of an interim superintendent in closed session, the Board actually voted on that item and resolved it entirely before entering into closed session. However, the agenda separately listed a closed session discussion of “threatened or pending litigation.” At the meeting itself, the minutes show that one of the members of the Board moved to enter into closed session to discuss “threatened litigation in which the public body is or may become a participant,” and that upon reentering open session the Board President affirmed that “only the matters stated in the motion to close were discussed in Executive Session.” Neither the agenda nor the motion to close the meeting specified which particular litigation the Board discussed. Following this closed session discussion, the Board apparently did not take any action on whatever litigation it had discussed.<sup>1</sup>

Based on these conflicting accounts, we discern two OMA issues that we will review. The first of these is whether the Board’s agenda was reasonably specific, both as to the appointment of an interim superintendent and as to the Board’s closed session discussion of unidentified litigation.

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<sup>1</sup> The caveat to this is that public bodies may in certain circumstances, consistent with OMA, take action on pending or threatened litigation in closed session. *See, e.g., Bd. of Cty. Comm’rs, Luna Cty. v. Ogden*, 1994-NMCA-010, ¶ 17 (holding that OMA “does not require that a decision regarding litigation be made in an open meeting”) and *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 80 (holding that a public body may make the decision to settle an ongoing court case in closed session). *See also* OMA Guide, p. 32 (explaining, as an example that, “A final decision as to how to defend the charges alleged in the lawsuit, however, could remain confidential under the litigation exception.”). For this reason, it is possible that the Board did effectively take action in closed session at its meeting on September 13, 2019, and we are not aware of it.

Secondly, Ms. Majors alleges that the Board violated OMA by entering into closed session “without providing specifics.” We will address each of these in turn.

### Reasonable Specificity

As a rule, OMA requires that all items of business that a public body intends to discuss or act upon at a meeting be listed on the agenda with reasonable specificity. *See* § 10-15-1(F) (requiring agendas to include “a list of specific items of business to be discussed or transacted at the meeting”). We explain in our OMA Guide that, “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. Our Office has addressed this issue on quite a number of occasions, and our past opinions have generally stated that public bodies must avoid overly broad or vague agenda item descriptions in the interest of conveying a “reasonably clear idea” as to the subject of public business. OMA Guide, p. 17. *Compare* N.M. Atty. Gen. Letter to Pete Dunavant, at 3 (Apr. 15, 2019) (opining that the Village of Angel Fire Council did not violate OMA by discussing the possibility of renaming a road pursuant to the agenda item description “Discussion on Renaming a Village Road Bill Burgess Boulevard”) *with* N.M. Atty. Gen. Letter to Kevin Gick, University of New Mexico, at 4 (Aug. 8, 2018) (concluding that the agenda item for “Discussion and Action on Athletics” was not reasonably specific enough to permit the Board of Regents to eliminate a number of specific athletics programs) (hereinafter “UNM Determination”).

In applying these principles to the Board’s meeting on September 13, 2019, the agenda item description of “Approve appropriate transition for superintendent resignation” was, in all likelihood, reasonably specific enough to permit the Board to appoint an interim superintendent. Although this is a close case and one in which reasonable minds may disagree, our opinion is that this description was specific enough to inform the public that the Board would be discussing a transition plan for the period of time following the then-current Superintendent’s resignation. This was probably sufficient to allow the Board to appoint an interim superintendent. In reaching this conclusion, we contrast this with a recent determination of our Office that the Central Consolidated School District Board of Education had violated OMA by appointing an interim superintendent without a sufficient item of business on the agenda. N.M. Atty. Gen. Letter to Christina Aspaas, at 3 (Aug. 30, 2019). In that case, we emphasized that the agenda listed only that the public body would discuss “the Superintendent Evaluation and Contract” but was otherwise completely silent as to “any contingency related to the appointment of an interim superintendent.” *Id.* Here, the Board *did* notify the public in its agenda by stating that it would be discussing the “appropriate transition for superintendent resignation.” This was probably not a violation of OMA.

However, this does not end our analysis because the agenda contained an additional item of business that was not sufficient for OMA purposes. Much of the confusion surrounding Ms. Majors’ complaint appears to stem from the Board’s closed session discussion of, according to the agenda, “threatened or pending litigation in which the public body is or may become a participant.” This item, as it appeared on the agenda and in the motion to close the meeting, did not specify which particular litigation the Board intended to discuss. For this reason alone, our opinion is that the agenda and the motion to close the meeting were not reasonably specific. In order to properly

discuss threatened or pending litigation, whether in closed or open session, the Board needed to identify the specific litigation at issue. We note that our Office has reached the same conclusion in reviewing OMA's other exceptions for discussions of limited personnel matters and purchases of real property. *See* N.M. Atty. Gen. Letter to Tanya Mangum (Apr. 29, 2019) (concluding that the agenda item for "discussion of the purchase, acquisition or disposal of real property" did not "rise to the level of reasonable specificity because no public member could possibly know which real property the Town intended to discuss based on the agenda") and UNM Determination, at 4 (concluding that "to satisfy the reasonable specificity requirement, the public body must list the specific individual employee to be discussed").

We are unpersuaded by the Board's argument that attorney-client privilege authorized it to decline to identify the specific litigation it intended to discuss. The Board was free to engage in attorney-client privileged discussions, but it was not legally permitted to do so without notifying the public of the subject of those discussions. Although we are of the opinion, as we state in our OMA Guide, that "[p]ublic bodies, no less than private parties to litigation, are entitled to effective representation of counsel," OMA Guide, p. 28, we are also *strongly* of the opinion that the public is entitled to "the greatest possible information regarding the affairs of government," as OMA itself specifically states. Section 10-15-1(A). This required the Board, as a matter of law, to identify the specific "threatened or pending litigation" in both its meeting agenda and its motion to close the meeting itself. Section 10-15-1(H)(7). The fact that it failed to do so represented a violation of the statute.<sup>2</sup>

#### Closed Session

Because we have concluded that the Board entered into closed session pursuant to a motion that lacked reasonable specificity, we find merit in Ms. Majors' remaining allegation that the Board improperly entered into closed session at its meeting on September 13, 2019. Although we reiterate that the parties in this case present us with wildly divergent accounts of the Board's meeting, the minutes from the Board's meeting confirm that the motion to enter into closed session failed to specify the specific litigation the Board intended to discuss. In that light and to that extent only, we concur with Ms. Majors that "the board asked the public to clear the room for a closed session, without providing specifics." (Based on our review of the Board's meeting minutes, however, we do not find any basis for Ms. Majors' contention that the Board took action on the appointment of an interim superintendent follow its closed session discussion.)

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<sup>2</sup> If, as discussed in the previous footnote, the Board *did* effectively take action in closed session, it is our recommendation that it consider holding a new meeting to ensure that its previous action was valid. *See Kleinberg*, 1988-NMCA-014, ¶ 30 (noting that "procedural defects in the Open Meetings Act may be cured by taking prompt corrective action"). Even if it did exclusively discuss litigation without taking any action, however, we still would advise the Board to rectify its OMA violation by discussing this situation at another open meeting in order to clarify what litigation it discussed in closed session on September 13, 2019. *See* N.M. Atty. Gen. Letter to Adán E. Trujillo, Rio Arriba County Attorney, at 4 (recommending that the Española/Rio Arriba E-911 Center Board of Directors discuss its violation of OMA at an upcoming meeting even if it had not taken action in closed session in order to "clarify for the public the subject of its closed session discussion" and "comply with the spirit of OMA").

In addition, the Board's minutes suggest that it might not have taken a roll call vote prior to entering into closed session. As we explain in our OMA Guide, public bodies must take a roll call vote of all members prior to closing an open meeting. *See* OMA Guide, p. 31 (explaining that, "A roll call vote of the members present must be taken on the motion and the vote of each individual member recorded in the minutes."). Our Office has consistently maintained that this a requirement in order to enter into closed session. *See* UNM Determination, at 4 (stating that the University of New Mexico Board of Regents' failure to take a roll call vote was "a violation of OMA, which requires a roll call vote for entering into closed session"). The minutes from the Board's September 13, 2019, are somewhat unclear on this point, so we cannot definitively conclude that this constituted another OMA violation. However, we would remind the Board to abide by its statutory obligation to take a roll call vote prior to closing any open meeting in the future.

### Conclusion

We have concluded that the Questa Independent School District Board of Education engaged in multiple violations of the Open Meetings Act by failing to provide enough information to the public in its agenda and motion language for the meeting on September 13, 2019. As a result, and in light of the reality that our Office has received a significant number of troubling complaints against the Board in the past few years from members of the public, we implore the Board to thoroughly familiarize itself with OMA and commit itself to fully complying with state law. In New Mexico, it is a matter of public policy that the people are entitled to "the greatest possible information" about its government, and this requires the Board to adhere to all of OMA's requirements. Section 10-15-1(A). The Board simply must provide enough information in all of its meeting agendas to convey to the public the subject of its discussions and actions, and we expect the Board to be more cognizant of this obligation in the future.

For your reference, a copy of the OMA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov). If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Melanie Majors, New Mexico Foundation for Open Government



FOUNDATION FOR  
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Hector Balderas sent by email: [Hbalderas@nmag.gov](mailto:Hbalderas@nmag.gov)  
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Santa Fe, NM 87501

Dear Mr. Balderas,

It has come to the attention of the New Mexico Foundation for Open Government (FOG) that the Questa Independent School District Board may have violated the state's Open Meetings Act (OMA) at their meeting on Sept. 13, 2019. The school board acted on an item not listed on the agenda and the board also conducted a closed session. However, the agenda had no specific information as to why the closed session was needed – a violation of OMA.

In open session, the board asked the public to clear the room for a closed session, without providing specifics. After returning to open session, the board approved a motion to hire an interim superintendent, the item not listed on the agenda. We believe both of the actions taken on Sept. 13 are null and void and ask that your office take appropriate action to ensure that the Questa Independent School District complies with state law.

We have also had a call that the school board president was meeting privately with individual school board members – indications of a rolling quorum.

The Open Meetings Act was enacted for the benefit of all New Mexicans to ensure that the policies, records, votes, actions and deliberations be open to the public. Any attempt to engage in a public decision-making process without including the public as outlined in the state's guidelines is a violation of the law and just as important, the public's trust. It's basically a question of accountability and being transparent.

Sincerely,

Melanie J. Majors  
NMFOG Executive Director

Cc: John Kreienkamp, Office of the NM Attorney General, [jkreienkamp@nmag.gov](mailto:jkreienkamp@nmag.gov)  
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[https://www.santafenewmexican.com/news/education/superintendent-switches-continue-in-troubled-questa-school-district/article\\_259a26b6-a097-5417-b435-5702e802d79b.html](https://www.santafenewmexican.com/news/education/superintendent-switches-continue-in-troubled-questa-school-district/article_259a26b6-a097-5417-b435-5702e802d79b.html)

## Superintendent switches continue in troubled Questa school district

By Dillon Mullan | [dmullan@sfnewmexican.com](mailto:dmullan@sfnewmexican.com) Sep 21, 2019 Updated Sep 22, 2019

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Then-Superintendent Michael Lovato, left, assured parents and community members in June that things were about to change the better in Questa schools. Jesse Moya/Taos News file photo

QUESTA — Billy Vigil wakes his daughter long before the sun rises to get her to school.

The school the fifth grader used to attend, Rio Costilla Southwest Learning Academy, closed this fall, and instead of attending Alta Vista Elementary — part of the Questa Independent School District — Vigil started a car pool with two other families to transport their kids across the state line to a bus stop about 35 miles north of town. From there, five former Rio Costilla students catch a bus to Sierra Grande School in Blanca, Colo.

“She wakes up at 5:30 a.m., and she doesn’t get off the bus until 4:25 in the afternoon,” Vigil said of his daughter. “She wasn’t used to waking up that early. I really do feel bad. I can tell she’s exhausted in the morning. As far as Questa goes though, their board members are so immature. It would be crazy for me to keep sending my kid there.”

Dissatisfaction and infighting at the highest levels of leadership are nothing new in Questa, which recently hired its seventh superintendent in just over two years. And though unhappy parents, board members and former employees agree the constant turnover and disruptions are not good for the educational process, it hasn’t stopped the merry-go-round at a far-flung school district that serves about 345 students.

School Board President Daryl Ortega bid farewell to Superintendent Michael Lovato without hesitation at a special board meeting Sept. 13. It was Lovato who made the decision to temporarily close the Rio Costilla school north of Questa this summer amid health concerns at the building before the board officially closed it Tuesday.

Although the board acknowledged it could have asked Lovato to stay on for a month, it signed off, 4-1, on both his resignation and his wish to leave in just seven days. His interim successor is Questa High School Principal Kathy Gallegos.

Some critics say it’s Ortega who deserves much of the blame for the turmoil in Questa, contending he has created a toxic work environment and micromanages the district in ways that far exceed his role as a board member. For his part, Ortega, who co-owns a local plumbing company, said the turnover in the superintendent’s office is a result of other board members’ actions — and the difficulty of attracting and keeping qualified employees in a rural community 30 miles north of Taos.

“Getting somebody from the community would be great, but we can’t get anybody from the community to step up to be principal. Why would they want to be superintendent?” Ortega said. “There’s so much politics in this area. Anybody knows you won’t be here long if you don’t go with the flow.”

Lovato, who was hired in February, accepted a job as director of special education at Lowell Public Schools in Massachusetts, where former Santa Fe Public Schools Superintendent Joel Boyd is the boss. In a phone interview with *The New Mexican* on Sept. 12, Lovato said he was leaving because the job on the East Coast was too good to pass up.

“It’s just a great opportunity,” Lovato said, though he added: “Whatever superintendent comes in next, I think the school board and superintendent have to agree on the overall mission of the district.”

At the Sept. 13 board meeting, Lovato and Ortega pinned the resignation on board member Tammy Jaramillo, who earlier this month requested the mileage on the district-owned vehicle that she said Lovato’s contract allowed him to use for school-related business.

Jaramillo said she wanted to ensure Lovato was not using the vehicle for personal reasons.

“I asked, but I don’t think they would ever actually give me an answer to that question. The current board that is in place, we’re dysfunctional, bottom line,” Jaramillo said. “If our community does not trust us, it’s going to be very difficult to educate our kids because it trickles down.”

In New Mexico districts, whether small or large, school board infighting is far from uncommon. The state Public Education Department has the authority to suspend the authority of a board and take over a school district’s finances. But state officials say elected school boards are granted substantial leeway before state intervention.

“Educational systems face challenges of maintaining leadership. It’s not unique to Questa, but I would say Questa is an outlier as far as the spectrum of turnover that we’ve seen,” Public Education Department Deputy Secretary of Finance and Operations Adán Delgado said.

“From the PED’s point of view, the threshold for intervention is pretty high,” he added. “Boards are locally elected officials, and the public has lots of latitude in terms of who they elect.”

Ortega was a sitting board member in 2012 when the Public Education Department suspended the authority of the Questa school board for behavior that exceeded the powers and duties granted under state law and encroached on the authority of the superintendent. A decision from then-department Secretary-designate Hanna Skandera specifically identified Ortega for “pressuring superintendents to fire school personnel and engaging in conflicts of interest” — namely, a contract for services that would have directly benefited his company, according to *The Taos News*.

Ortega lost a reelection bid in 2013 before winning his seat back by seven votes in 2015. At the time, Taos County Clerk Anna Martínez told *The Taos News* that 49 absentee ballots were submitted outside of normal business hours and Ortega and “a helper” delivered handfuls of absentee ballots to the clerk’s office before Election Day. According to the Secretary of State’s Office, an unrelated third party may not deliver a voter’s ballot.

In April 2016, the Questa school board voted 4-1 to censure Ortega, asking that he be investigated by the Attorney General’s Office and the secretary of state. The censure statement alleged Ortega improperly influenced contract negotiations to benefit his family, improperly involved himself in student and staff matters, and belittled staff members at board meetings. But the statement did not result in any further action by the district or a state agency.

“Nothing came of that statement. It was nothing but false allegations,” Ortega said. “I’m the board member who is here for the kids the most. Anything they ask. I’m here for staff. I’m here for kids.”

Megan Jenkins, who began working with the Questa district in 2013, said she served as a secretary, high school counselor’s assistant, librarian, assistant business manager and first grade teacher before resigning in August. She and Joe Ben Mandonado, a custodian and maintenance staff member who said he was in the district for 23 years before submitting his resignation, said Ortega visits the district’s central office on a daily basis, where he frequently makes comments about district employees’ job performance and meddles in student discipline.

Ortega is running for reelection in November and has a challenger.

“There’s a lot of micromanaging,” Mandonado said. “As long as Ortega is president, the district is one big hostile working environment.”

Ortega said he visits the central office only when the superintendent requests his assistance, and he added that the consistent changes in leadership are harmful for students.

“Stability is a necessity for this district. We need that. The staff needs that. Our principals need that. Our students need that,” Ortega said. “All this turnover, its not good for anybody, it’s not a healthy environment.”

## Questa superintendent timeline

**July 2017** — Superintendent Valerie Trujillo resigns.

**July 2017** — Questa High School Principal Michelle Gonzales is named interim superintendent.

**August 2017** — David Albert hired as superintendent.

**March 2018** — Albert is placed on leave by unanimous vote by the board for undisclosed reasons.

**March 2018** — LeAnne Salazar is hired as superintendent.

**January 2019** — Salazar is fired days after the state Public Education Department announced Questa Junior High was in need of stringent interventions.

**January 2019** — Longtime school employee Felipe Blea is named interim superintendent.

**February 2019** — Michael Lovato is hired.

**September 2019** — Lovato resigns, takes job in Massachusetts.

**September 2019** — Questa High School Principal Cathy Gallegos is hired as interim superintendent.

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Dillon Mullan