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February 26, 2018

Matt Ray
[REDACTED]

RE: *File No. 18-M-101; Omaha School Employee's Retirement System; Matt Ray, Complainant*

Dear Mr. Ray:

This letter is in response to your correspondence in which you requested that this office investigate alleged violations by the Omaha School Employee's Retirement System ("OSERS") Board of Trustees (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2016, Supp. 2017) ("Act"). In accordance with our normal procedures, we requested a response from the Board after we received your complaint and we subsequently received a response from the Board's Executive Director, Cecelia Carter, who responded on behalf of the Board. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS AND RELEVANT FACTS

Upon review of your complaint, we have identified three alleged violations of the Open Meetings Act, as follows:

1. The Board's notice of meetings is located only on their webpage and does not include a meeting location;
2. The public does not have access to the location in which meetings are held;
3. The agenda for the December 6, 2017 meeting was not sufficiently descriptive regarding item No. 12.

In its response to your complaint, the Board generally denies any violations of the Open Meetings Act have occurred. In the Board's response, it states that a printed notice of the upcoming meeting is posted at the Teacher's Administrative Center ("TAC") main entrance door, located at 3215 Cuming Street in Omaha, Nebraska, at least 24 hours in advance. The Board also states that a notice is posted on the

receptionist desk in the Retirement Office, located in the TAC building, 2nd floor, Room 2-170. Additionally, the Board states that a copy of the meeting schedule for the entire year is posted in the Retirement Office of the TAC and on the OSERS webpage. Also, the Board President gives verbal notice at each meeting of when the next meeting will be held, which is then memorialized in the Board's minutes. The Board states that its notice of meetings includes a location of "Teacher's Administrative Center, Board Hearing Room—2nd floor, 3215 Cuming Street, Omaha, Nebraska." The Board provided us with photographs of notices posted for the January 3, 2018 meeting. These photographs include the above-mentioned location. Lastly, the Board states that meetings are accessible to the public from the second floor via two entryways, and that the doors to the room are not locked during open session meetings.

ANALYSIS

Sufficiency of meeting notices

Your complaint alleges that the only method of publication of meeting notices is via the OSERS website, which fails to provide the meeting location.

Neb Rev. Stat. § 84-1411(1) of the Open Meetings Act provides, in pertinent part:

- (1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

The Board has provided evidence to us that it is providing notice of meeting times and places in multiple ways: (1) by verbal notice at each meeting of when the next meeting will be held, which is then memorialized in the Board's minutes; (2) by placing the yearly schedule for Board meetings both at the Retirement Office and on the OSERS website; (3) by posting a notice on the entrance door to the TAC; and, (4) by posting a notice in the Retirement Office of the TAC. However, we believe that No.1 and No. 2 are insufficient methods of noticing a meeting under the Act. Placing notice

of future meetings in minutes of a prior meeting does not give sufficient notice under the Act. See *Wolf v. Grubbs*, 17 Neb. App 292, 312, 759 N.W.2d 499, 518 (Neb. Ct. App. 2009). Further, the Attorney General has concluded that “advance publicized notice” means a separate, specific advance notice must be given for each meeting. See 1971-72 Rep. Att’y Gen. 314 (Opinion No. 137, dated August 8, 1972). Further, we doubt that No. 3 and No. 4 are sufficient methods of noticing a meeting under the Act. Posting signs at the TAC is not reasonable in light of the number of OSERS members, most of whom are not regularly at the TAC. To ensure future compliance with the Act, the Board should post a complete meeting notice on its website prior to each meeting.

We also question the Board’s compliance with the advanced notice requirement of the Act. The Board states that it is posting the meeting notice on the front entrance to the TAC at least 24 hours in advance. While § 84-1411 does not require a specific number of days to notice a meeting, we do not consider 24 hours to be reasonable. See *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979) (posting notice at 10 p.m. on March 15 before a meeting at 10:30 a.m. March 16 does not constitute reasonable notice; posting one week in advance is reasonable). In the future, the Board should provide notice of meetings more than 24 hours in advance. Additionally, the Board needs to ensure that its notice of meeting includes an agenda or a statement indicating that the agenda is available for inspection at the OSERS principal office pursuant to § 84-1411. Further, we would remind the Board that the agenda must be kept continually current and may not be altered later than 24 hours prior to the meeting. The Board should modify its meeting notices to ensure compliance with the Act.

Public access to meetings

Your next allegation is that the Board meeting room is not accessible to the public. Specifically regarding the December 6, 2017 meeting, you allege that a member of the public could not attend unless they had a personal escort or a master key, and had to go through four locked doors to gain access. Neb. Rev. Stat. § 84-1408 (2014) states that “[e]very meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies.” The Board denies that the public does not have access to its meetings. The Board states that meetings have been held in the same room since 1997. Additionally, the meeting room used by the Board is accessible from two entranceways, and the room remains unlocked and held open during open session meetings. In the absence of clear evidence to the contrary, we must assume that the Board is accurately representing itself and acting in good faith. Without any evidence that the Board’s meetings are not accessible to the public, we cannot find that the Board has violated the Open Meetings Act with respect to this portion of your complaint.

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Agenda Items

Your final allegation is that the agenda for the December 6, 2017 meeting was not sufficiently descriptive regarding item No. 12. Agenda item No. 12 was listed as "Executive Director's Report." More specifically, you claim that during the December 6, 2017 meeting, the Executive Director, Ms. Carter, provided the Board a spreadsheet of over \$500,000 worth of reimbursable travel expenses, with one individual having \$170,000 in travel expenses. As noted above, Neb. Rev. Stat. § 84-1411 requires that "[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." We have reviewed the minutes of the December 6, 2017 meeting for further details regarding the substance of the Executive Director's report. It appears the Executive Director was informing the Board of a recent public records request made to her office regarding travel expenses. While your complaint appears to imply that the Executive Director is attempting to shield expense reimbursements from public view, our review of the minutes reveals that is not the case. In this context, a discussion regarding a public records request made to the Executive Director is not inappropriate during the "Executive Director's Report" portion of the meeting. Thus, we do not believe the Board violated the Open Meetings Act regarding this portion of your complaint.

CONCLUSION

For the reasons stated above, apart from our concerns regarding the provision of notice of the Board's meetings, we do not believe that the Board has violated the Open Meetings Act with respect to the issues raised in your complaint. We request that the Board modify its meeting notices in conformance with this disposition. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Laura A. Nigro
Assistant Attorney General

cc: Donald Erikson