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July 31, 2023

Via email to [REDACTED]  
Loreen Reynante  
1108 Parc Drive  
Papillion, NE 68046

RE: *File No. 23-M-109; Papillion La Vista Community Schools Board of Education; Loreen Reynante, Complainant*

Dear Ms. Reynante:

This letter is in response to your complaint alleging violations of the Nebraska Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), by the Papillion La Vista Community Schools Board of Education ("Board"). In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint to Board President Skip Bailey and requested a response. We received a response to your complaint from attorney Karen A. Haase, KSB School Law, who represents the Board. We have completed our review of your complaint, and our findings and conclusions are set out below.

### **BACKGROUND & ALLEGED VIOLATIONS**

On February 27, 2023, the Board held an American Civics Hearing ("Hearing"), followed by a regularly scheduled Board Meeting ("Meeting"). Our understanding of the facts in this case is based on your complaint, the Board's response, and the published agendas,<sup>1</sup> minutes,<sup>2</sup> and video recording<sup>3</sup> of the Hearing and the Meeting.

<sup>1</sup> <https://www.plcschools.org/site/default.aspx?PageType=14&DomainID=35&PageID=3425&ModuleInstanceID=5336&ViewID=1e008a8a-8e8a-4ca0-9472-a8f4a723a4a7&IsMoreExpandedView=True>.

<sup>2</sup> <https://www.plcschools.org/site/default.aspx?PageType=14&DomainID=35&PageID=3425&ModuleInstanceID=5337&ViewID=1e008a8a-8e8a-4ca0-9472-a8f4a723a4a7&IsMoreExpandedView=True>.

<sup>3</sup> <https://www.youtube.com/watch?v=5cxaQPerBFk>.

Bailey called the Hearing to order at 6:00 p.m. The Hearing agenda stated that “[t]he purpose of the annual hearing is to allow public comment on the district’s compliance to Neb. [Rev.] Stat. § 79-724 regarding American Civics Curriculum relative to the 2022-2023 school year.” According to the Hearing minutes and the video recording, a presentation on civics curriculum was given, followed by brief discussion of the Board. No public comment was offered at the Hearing. The Hearing was adjourned at approximately 6:10 p.m. Immediately thereafter, Bailey called the Meeting to order, and the Board proceeded with the Meeting agenda. The Meeting agenda contained two agenda items set aside for public comment: item II.B (“Public Comment on Items Not on the Agenda”), and item II.E (“Public Comment on Items on the Agenda”).<sup>4</sup> According to the minutes and the video recording, during both of the above agenda items, public comment was allowed and received at the Meeting.

In your complaint, you allege that you were denied the opportunity to speak during the Meeting. You allege that you entered the meeting room at the beginning of the Hearing during the pledge of allegiance, and “[a]fter the pledge, [you] filled out [your] form to speak at the meeting on a topic on the agenda and turned it in to the clerk.” According to your complaint, and observable in the video recording, at the conclusion of agenda item II.E reserved for public comment, Bailey denied you the opportunity to speak and asked you to sit down.

In its response to your complaint, the Board admitted that it denied you the opportunity to speak. However, the Board cited Board Policy 8420 in support of its decision. Under Policy 8420, members of the public must, as a prerequisite to speaking at a Board meeting, “complete a Guidelines for Public Comment form with the date, topic addressing, name, address and organization representing (if appropriate) and give it to the Board clerk *prior to the start of the meeting*.”<sup>5</sup> (Emphasis added.) “All requests for public comment must be submitted *prior to Call to Order* by the presiding officer.”<sup>6</sup> (Emphasis added.)

The Board maintains that on February 27, 2023, “[t]he district had one meeting with two parts.” The Board alleges that “[t]he first part of the meeting was an American Civics Curriculum Hearing,” and “[t]he second part of the meeting was the regular meeting.” The Board argues that you did not comply with Policy 8420, because you “did not submit [your public comment form] until after the meeting started.” Therefore, the Board argues, under Policy 8420, it was authorized to deny your request to speak.

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<sup>4</sup> <https://www.plcschools.org/site/handlers/filedownload.ashx?moduleinstanceid=5336&dataid=9068&FileName=Board%20Agenda%202.27.23.pdf>.

<sup>5</sup> <https://www.plcschools.org/site/default.aspx?PageType=2&PageModuleInstanceID=3117&ViewID=838b13a1-2ccb-4c74-83cb-0b9f098d6937&RenderLoc=0&FlexDataID=1732&SearchKeywords=>.

<sup>6</sup> *Id.*

## DISCUSSION

The Act is a statutory commitment to openness in government. *Wasikowski v. Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 515 N.W.2d 128 (1994); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984). “The purpose of the open meeting law is to insure that public policy is formulated at open meetings of the bodies to which the law is applicable.” *Pokorny v. City of Schuyler*, 202 Neb. 334, 339, 275 N.W.2d 281, 284 (1979). “[T]he open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public.” *Schauer v. Grooms*, 280 Neb. 426, 441, 786 N.W.2d 909, 922 (2010).

The Act contains several provisions concerning the public’s right to speak at open meetings of public bodies. Relevant provisions are set out in the following subparts of Neb. Rev. Stat. § 84-1412:

- (1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies ....
- (2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, [or] speaking at ... its meetings, including meetings held by virtual conferencing. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.
- (3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

The Board’s requirement that members of the public complete and submit a “Guidelines for Public Comment” form prior to the start of a meeting appears to fall within the Board’s authority under the Act “to make and enforce reasonable rules and regulations regarding the conduct of persons attending, [or] speaking at ... its meetings[.]” Here, however, the relevant issue is not whether the Board’s policy was reasonable under the Act, but whether the Board adhered to its own policy. To answer, we must determine whether the Hearing and Meeting were separate meetings under the Act.

Neb. Rev. Stat. § 84-1409(2) defines “meeting” as “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public

body[.]” Each year, the Board is required to “appoint from its members a committee of three, to be known as the committee on American civics.” Neb. Rev. Stat. § 79-724(1). The American civics committee is required to “[h]old no fewer than *two public meetings* annually, at least one when public testimony is accepted.” Neb. Rev. Stat. § 79-724(1)(a) (emphasis added).<sup>7</sup> The committee is also required to “[k]eep minutes of each meeting showing the time and place of the meeting, which members were present or absent, and the substance and details of all matters discussed.” Neb. Rev. Stat. § 79-724(1)(b). The statutory language suggests that the American civics meetings required under Neb. Rev. Stat. § 79-724 are distinct from the Board’s regularly scheduled meetings. The facts in this case confirm the point.

Here, the Board expressly stated in the Hearing agenda that “[t]he purpose of the annual hearing is to allow public comment on the district’s compliance to Neb. Rev. Stat. § 79-724[.]” The Hearing and the Meeting were separately noticed with separate agendas, separately called to order, and separately adjourned. Unsurprisingly, therefore, the Board recorded and published separate minutes for the Hearing and the Meeting. A single meeting does not have two public notices, two agendas, and two sets of recorded minutes. Nor is a single meeting called to order twice and adjourned twice. For these reasons, we find the Board’s argument unpersuasive that there was “one meeting with two parts.” We conclude that the Hearing and the Meeting were separate meetings under the Act.

### ***Board Policy 8420***

The Board asserts, and we agree, that it is statutorily authorized “to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording board meetings.” See Neb. Rev. Stat. § 84-1412(2). However, the authority granted under Neb. Rev. Stat. § 84-1412(2) contemplates that the Board adheres to the rules and regulations it establishes. Under Board Policy 8420, members of the public will be allowed to speak if a completed “Guidelines for Public Comment” form is submitted “*prior to Call to Order by the presiding officer.*” (Emphasis added.) Here, you allege, and the Board does not deny, that you submitted your completed form during the Hearing. As explained above, by completing and submitting your form during the Hearing, you completed and submitted your form prior to the Meeting being called to order. For that reason, we disagree with the Board that you “did not comply with the reasonable rule adopted by the [B]oard for public comment.” Rather, we find that the Board did not adhere to its own policy when it denied you the opportunity to speak at the Meeting, but we also find no intentional violation of the Act.<sup>8</sup>

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<sup>7</sup> As evident in the Board’s Hearing agenda, the purpose of the Hearing was to comply with the meeting requirements under Neb. Rev. Stat. § 79-724, which indicates the Hearing was a separate meeting, distinct from the Board’s regularly scheduled meeting.

<sup>8</sup> See Neb. Rev. Stat. § 84-1414(4).

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## CONCLUSION

For the reasons stated, we conclude that this case concerns the Board's misapplication of its own policy, and not an intentional violation of the Open Meetings Act. Consequently, no further action by this office is necessary and we are closing our file. If you disagree with this conclusion, you may wish to consult with your private attorney to see what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

MIKE HILGERS  
Attorney General



Darrin Schultz  
Assistant Attorney General

cc: Karen A. Haase  
80-030-30