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August 26, 2015

Jennifer MacLennan
Gust Rosenfeld
One East Washington Street, Suite 1600
Phoenix, AZ 85004-2553

Re: *Open Meeting Law Complaints against Gilbert Public Schools Governing Board*

Dear Ms. MacLennan:

As you are aware, the Attorney General's Open Meeting Law Enforcement Team received several complaints, with supporting materials, alleging that the Gilbert Public Schools Governing Board (the "Board") violated the Open Meeting Law ("OML"). I have concluded my review of the information provided by the complainants and the Board, and set forth my findings in this letter.

Posting Notice and Agenda for Meetings

Several complainants alleged that, in the past, a quorum of the Board has participated in Board retreats without posting proper notice or maintaining minutes or a recording of such meetings.¹ Specifically, the Board met for Governance Board Retreats on August 23, 2014, September 13, 2014, and March 6, 2015. At these retreats, the Board discussed matters such as strategic instructional priorities to guide financial modeling for 2015-2016, the structure of monthly meetings, and linking goals to the Superintendent Evaluation. The Board posted courtesy notices for these retreats and asserted that they did not constitute meetings under the OML. It did not record the meetings or maintain minutes of the meeting.

¹ Some of the complaints alleged that the Board participated in District Policy meetings in the past without posting notice and maintaining a recording or minutes. The Board took action of its own accord to treat the meetings as Board meetings and now posts notice of the meetings and keeps a recording of each meeting in accordance with the OML.

Under the OML, “all discussions, deliberations, considerations, or consultations among a majority of a public body regarding matters that may foreseeably require a final action or a final decision by the governing body, constitute ‘legal action’ and, therefore, must be conducted in a public meeting or executive session.” Ariz. Att’y Gen. Op. 75-8. A “[m]eeting” occurs when there is “the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.” A.R.S. § 38-431(4). The OML requires that all meetings of a public body be held openly where members of the public can attend and listen to the deliberations. All deliberations and legal actions regarding Board business must take place in a public meeting. A.R.S. § 38-431.01(A). Meetings of public bodies must also comply with the notice and agenda requirements set forth in A.R.S. § 38-431.02 and the minute taking requirements in A.R.S. § 38-431.01(B). In this case, the Board violated the OML because it failed to properly post notice of the meetings at the Board retreats and did not take minutes or record the meeting as required by the OML.

Disclosure Statement and Posting on the Website

In the course of investigating the complaints against the Board, it became apparent that there was some confusion regarding the online posting of the Board’s notices and agendas for upcoming meetings. Notices for Board meetings appeared on at least three places on the website, but the postings rarely appeared on one more than one of the locations. If a member of the public checked only one location, he or she would miss the notice that had been posted at a different page. Although the Board adopted policy BEDA specifying a physical posting place and mandating posting of notice on the website, there was no disclosure statement on the website identifying the page on the website that the public could access to find the notices and agendas for meetings. Under A.R.S. § 38-431.02(A)(2), the Board must “[c]onspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.”

Sufficiency of Minutes

The complainants allege that the Board did not properly record in the minutes a presentation to the Board by the Alliance Defending Freedom at the October 28, 2014 meeting. Although the Board recorded the meeting and archived it on the website, the presentation occurred during the “Pre-Meeting Activities,”² which were not recorded. The minutes for the meeting record the following information: “Presentation to Governing Board from ADF regarding Campbell Biology Books.”

The OML requires that minutes contain “the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.” A.R.S. § 38-431.01(B)(4). The minutes must also contain “[a] general description of the matters considered.” A.R.S. § 38-431.01(B)(3). Regarding this requirement, the Arizona Agency Handbook states that “[a]lthough the minutes do not need to be a verbatim transcript of the meeting to satisfy this requirement, they must summarize the discussion, including the topics addressed, and identify all speakers who participated in the discussion, including members of the public body.” Section 7.8.2, at p. 7-17. In this case, the minutes do not identify the speaker, just the organization to which the speaker belongs, and do not provide information about the topics addressed beyond repeating the language of the agenda item. The minutes do not meet the requirements of the OML.

Proposed Resolution

I received your letter dated August 5, 2015 that proposed grounds for resolution of these complaints and find the proposed measures to be acceptable. Thus, the Board agrees to do the following:

1. The Board will conspicuously post on its website a disclosure regarding where posting will occur both physically and electronically.
2. The Board will streamline its website so that all board meetings are in one location online,

² Although the agenda uses the term “Pre-meeting Activities,” the Board should note that these activities constitute a meeting of the Board under the OML if a quorum of the Board participates and thus must comply with the notice, agenda and minutes requirements imposed for a meeting.

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3. The Board will post agendas for all board retreats and comply with all aspects of the OML with respect to any Board retreats or Board trainings.

4. The Board will conduct training for all current Board members, the Governing Board secretary, the Superintendent and an additional administrator designated by the Superintendent of at least two hours regarding the requirements of the OML. The training may be conducted by the Arizona School Boards Association.

5. The Board will submit to compliance monitoring for six months from the date of execution of this letter agreement by the Board, which shall include that the Board shall submit all agendas and draft minutes for review by an attorney approved by the Attorney General's Office prior to posting or finalizing.

Please have the authorized representative of the Board execute this letter agreement in the space provided below. We appreciate your prompt assistance with this matter. Please contact me if you have any questions.

Sincerely,



Christopher A. Munns
Assistant Attorney General

Acknowledged and Agreed
On behalf of the Gilbert Public Schools Governing Board
By:

Name: _____

Title: _____