OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
OPEN MEETING LAW ENFORCEMENT TEAM

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VIA EMAIL AND U.S. MAIL

Liberty Elementary School District Governing Board
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Re: Disposition of Open Meeting Law Investigation
Investigation No. OML2023-0011

Dear Board Members:

As you know, the Office of the Attorney General received complaints alleging Open Meeting Law ("OML") violations by the Liberty Elementary School District Governing Board ("Board").

The Office has reviewed the events discussed below, the Board's March 17, 2025 response to our Inquiry Letter ("Response"), and the materials produced therewith. We conclude that the Board did not violate the OML for any of the reasons asserted in the complaints.

The facts recited in this letter serve as a basis for these conclusions, but are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.*

Analysis

Between February 2023 and December 2024, the Office received approximately 18 complaints from multiple complainants alleging various OML violations by the Board. For ease of discussion and disposition, we have grouped those complaints by subject matter whenever possible.

I. Improper Executive Sessions

Complainants allege a number of OML violations arising from executive sessions held in January and February 2023. The complaints generally raise two concerns: (1) that the executive

session discussions exceeded the scope of the specific authorizing provisions identified in the relevant agendas and (2) that the Board improperly took legal action in executive session.

A. Exceeding the Scope of Executive Session

The Board met in executive session on January 30, February 9, and February 21, 2023 to discuss matters relating to the then-Superintendent's resignation and the Board's process for selecting her replacement. Multiple complainants have alleged that the Board improperly noticed or otherwise exceeded the permissible scope of these three early 2023 executive sessions.

1. January 30

The Board met in executive session on January 30, 2023. Items 8.8 through 8.10 on the January 30 Governing Board Agenda were:

- Item 8.8: Possible Action to Convene an Executive Session pursuant to A.R.S. 38-431.03(A)(3) and (4) for discussion or consultation for legal advice with the Governing Board's attorney and to consider its position and instruct its attorney regarding its position on the Superintendent's Contract and related performance pay goals.
- Item 8.9: Possible action to approve the direction given to the Governing Board's attorney in the executive session identified as Item 8.8 above.
- Item 8.10: Possible Action to Convene an Executive Session pursuant to A.R.S. 38-431.03(A)(1) for discussion or consideration of the Superintendent's Contract and related performance pay goals.

The Board moved to go into executive session as to Item 8.8 (A.R.S. § 38-431.03(A)(3) and (4)) only.[1] Upon resuming regular session, the Board approved direction given to its counsel pursuant to Item 8.8, and no further action was taken by the Board as to Item 8.10.[2]

We have reviewed the confidential minutes of the Board's January 30 executive session and conclude that the agenda's citation to § 38-431.03(A)(3) and (4) was proper. Because Dr. Shough had already tendered her resignation, the executive session was appropriately noticed for

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[1] There seems to have been some confusion among the Board members when Items 8.8-8.10 were called, which resulted in some inconsistencies between the meeting recording and the minutes. The Board first moved to hear Items 8.8-8.10 out of order, ahead of Item 8.3. When it came time to move into executive session, the Board went into executive session as to Item 8.8 only. January 30, 2023 Governing Board Meeting Recording at 4:46-4:47, available at https://www.youtube.com/watch?v=naY4bWlN5ME&t=22015s. Upon return to regular session, the President called "Item 8.9" (which was really 8.10 on the agenda) and no Board member moved for executive session under § 38.431.03(A)(1). *Id.* at 6:06:25-6:07. The President then moved on to call "Item 8.10" (really, Item 8.9) so that the Board could approved the direction given to counsel during executive session. *Id.* at 6:07-6:08.

[2] Complainants do not contend that the Board failed to provide Dr. Shough with advanced written notice required under A.R.S. § 38-431.03(A)(1), and the January 30 Agenda states that the Board "has provided the employee with the required notice of the executive session." *See* January 30 Governing Board Meeting Agenda Item 8.10 "Executive Summary."

legal advice and discussion regarding the "Superintendent's Contract," *i.e,* how to implement the resignation on terms that worked for the Board. That required a confidential discussion with and direction to the Board's attorney outside the presence of Dr. Shough, who is otherwise allowed to participate in executive sessions noticed under A.R.S. § 38-431.03(A)(1). And, by later declining to move into executive pursuant to § 38-431.03(A)(1), the Board publicly signaled that there were no other "employment matters" to discuss with Dr. Shough at that time. We conclude that the January 30 executive session discussion was appropriately limited to legal advice and contract matters and was, therefore, properly noticed pursuant to A.R.S. § 38-431.03(A)(3) and (4).

2. February 9 and 21

Complainants similarly allege that the Board failed to properly notice executive sessions on February 9 and 21.

On February 9, the Board noticed an executive session "for discussion or consultation for legal advice with the Governing Board's attorney and to consider its position and instruct its attorney regarding its position on the Superintendent's Contract and related issues," pursuant to A.R.S. § 38-431.03(A)(3) and (4). *See* February 9, 2023 Special Meeting Agenda Item 2.2. Upon return to open session, the Board approved "the direction given to the Governing Board's attorney in the executive session identified as item 2.1 above." The reference to Item 2.1 was an error—the Board meant to approve the direction given at the executive session, which was pursuant to Item 2.2.[3]

On February 21, the Board noticed executive sessions for the purpose of "discussion or consultation for legal advice with the Governing Board's attorney and to consider its position and instruct its attorney regarding its position on Superintendent Severance Agreement and related documents," again pursuant to A.R.S.§ 38-431.03(A)(3) and (4). *See* February 21, 2023 Special Meeting Agenda Item 2.2. After executive session, the Board approved the form of the severance agreement in open session at its February 21, 2023 meeting. *See* February 21, 2023 Special Meeting Minutes Item 2.5 (approving severance agreement and related letter of resignation by a vote of 3-2).

Unlike the January 30 meeting, however, the Board did not notice any possible executive session pursuant to A.R.S. § 38-431.03(A)(1) at either of the February meetings at issue. Complainants contend, therefore, that the Board violated OML because it cannot "discuss the Superintendent's contract terms without utilizing A.R.S. 38-431.03(A)(1) and providing 24 hours prior notice to the employee allowing the conversation to be had in public if desired."

There is admittedly some overlap between A.R.S. § 38-431.03(A)(1) and subsections (3) and (4) when the contract necessitating an executive session is an employment contract or, as here,

[3] The Board corrected this error at its February 13, 2023 meeting. The February 13 Agenda included Item 6.6: "Possible action to approve the direction given to the Governing Board's attorney during the executive session held on February 9, 2023, which executive session was listed as Item 2.2 on the February 9, 2023 Governing Board Agenda." One complainant contends that this agenda description was deficient because "you would have to refer to the agenda on 2/9/23 for the details." We disagree.

a contract terminating employment. And Complainants are generally correct that the Board's discussion or consideration of an employee's resignation requires compliance with § 38-431.01(A)(1), which includes written notice to the employee and an opportunity for the employee to both participate in the executive session or request that the discussion be had in open session. But the mere fact that Dr. Shough's resignation necessitated a severance agreement does not require that the Board conduct otherwise confidential or privileged discussions regarding the terms of that severance agreement in Dr. Shough's presence pursuant to A.R.S. § 38-431.03(A)(1). To the contrary, A.R.S. § 38-431.03(A)(4) expressly permits the Board to hold an executive session to "consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations[.]" Thus, we must consider whether the agendas provided information that was "reasonably necessary to inform the public of the matters to be discussed" in executive session (A.R.S. § 38-431.09(A)) and that the resulting discussions were appropriately centered on the contract itself, rather than Dr. Shough's employment status.

After review of the February 9 executive session minutes and relevant portions of the February 21 executive session recording, we find that the Board complied with OML. As with the January 30 discussions, the Superintendent had already resigned and the Board was "consider[ing] its position and instruct[ing] its attorneys" about the terms of a severance agreement. That was accurately and adequately conveyed to the public in each of the February 9 and February 21 agendas, which referred to "the Superintendent's Contract" and "Superintendent Severance Agreement." In other words, the discussion was not about whether to take any action on Dr. Shough's employment, but how to effectuate her departure. Because the Board adequately noticed its February 9 and February 21 executive discussions pursuant to A.R.S. § 38-431.03(A)(3) and (4), we find no OML violation.

B. Taking Legal Action During Executive Session

Complaints also identified two instances in which they allege that the Board improperly took legal action during an executive session.

1. January 30

One complainant (then a Board member) contends that the Board improperly authorized then-Board President Todd to "engage with Assistant Superintendents about possible interest into assuming a role as Interim Superintendent." But the January 30 executive session minutes do not reflect that Mr. Todd sought or obtained Board approval to speak with anyone regarding an Interim Superintendent position. Rather, the minutes indicate only [redacted] January 30, 2023 Executive Session Minutes at p. 2, ¶ 12. Because there is no indication that legal action occurred at the January 30 executive session, we find no violation.

2. February 21

The Board noticed an executive session under A.R.S. § 38-431.03(A)(3) and (4) for the purpose of "discussion or consultation for legal advice with the Governing Board's attorney and to consider its position and instruct its attorney regarding its position on procurement / selection of consulting firm to conduct Interim Superintendent search and related matters." February 21,

2023 Special Meeting Agenda Item 2.3. Complainant alleges the Board violated the OML because "[t]here was no discussion in public about which consulting firms were in consideration or the criteria they are going to use for selecting the Interim Superintendent."

Contrary to complainant's assertion, the vetting of search firm candidates included a public process. The Board held two special meetings on March 6 and March 7 to consider "proposals received from consulting firms for Interim Superintendent Search and Board" and conduct "interviews of Consulting Firm(s) representatives." *See, e.g.,* March 6, 2023 Special Meeting Agenda Item 2.1.

But, more to the point, the OML does not require that all information and documentation regarding a topic be "made public." Rather, (1) "legal action" must occur at a public meeting and (2) meeting agendas must "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. §§ 38-431.01(A), 38-431.09(A). The February 21 agenda makes clear that the Board might go into executive session for to obtain legal advice and provide direction to its attorney regarding how to structure the Board's selection process. This is expressly permitted under A.R.S. § 38-431.03(A)(3) and (4). And the minutes do not reflect that the Board took any legal action (such as selecting or eliminating candidates) at the February 21 executive session. We find no OML violation.

II. Activities Outside of Public Meetings

A. Solicitation of Contractors without Board Approval

Complainant alleges that two Board members violated OML by soliciting potential new Board counsel without first receiving Board approval to do so. These allegations are based on an email from Mr. Todd to the Superintendent in which Mr. Todd stated that he met with the law firm Udall-Shumway and they planned to present at an upcoming meeting. There was open discussion about this at the January 30, 2023 meeting at which: (1) prospective new counsel, Udall Shumway made a presentation to the Board, (2) Udall Shumway attorney Denise Lowell-Britt confirmed that Mr. Todd invited her to make a presentation and that the Board would still need to vote on if they would like to retain the firm, and (3) a majority of the Board voted to retain Udall Shumway as counsel for the District.

The OML does not require a single Board member to obtain Board approval before speaking with a potential District contractor.[4] We find no violation.

B. Attendance at School Tours

Complainant alleges that a quorum of Board members attended a tour of Scottsdale Unified School District's Cheyenne Traditional School in February 2023. This complaint appears to be based on an email exchange between then-Board President Bryan Parks and Cheyenne staff indicating that Parks and fellow Board members Todd and Kenyon planned to attend the tour on

[4] District procurement policies may impose such limitations. However, this investigation is limited to the OML.

February 3, 2023. Complainant contends that the purpose of the tour was to "gain information and discuss the traditional/classical education model that Cheyenne uses and possibly make a change to the Liberty educational model." Because the tour involved a quorum of the Board, pertained to District business, and was not a properly noticed public meeting, Complainant asserts that the tour violated OML.

In its Response, the Board states that only two Board members were present at this tour: Mr. Parks and Mr. Todd. However, even if a quorum of Board members had been present, in the absence of any evidence that the Board discussed some legal action at the tour (which the Board also denies, *see* Response at p. 5), we would similarly find no OML violation. This is because a "meeting" requires both that a quorum must "gather" and that it "discuss, propose or take legal action." A.R.S. § 38-431(4)(a). The Board has denied that either occurred with respect to the February 3, 2023 tour. For this reason, we find no OML violation.

C. Written Correspondence

There are three complaints which arise from alleged improper written communications by the same group of three Board members: Mr. Parks, Mr. Todd, and Mr. Kenyon.

1. Email on Behalf of Other Board Members

The first of these complaints pertains to a January 31, 2023 email from Mr. Parks to an individual at the organization Turning Point USA stating: "Michael Todd, Kris Kenyon and I are committed to returning the District to a classic education model. We are focused on removing destructive social programs, implementing a traditional discipline program and getting back to the basics of education." The email also states that "we" have sought the resignation of another Board member, Ms. Paul Bixler. The email purports to have been sent with the approval of "Michael and Kris" but they are not copied.

The email itself is not a meeting because no other Board members are included on the communication. A.R.S. § 38-431(4) (meeting requires a quorum of the public body). And, as an individual Board member, Mr. Parks was permitted to express his personal opinions and vision for the District. A.R.S. § 38-431.09(B). The question, then, is whether the email otherwise evinces a non-public discussion between Messers Parks, Todd, and Kenyon regarding some legal action by the Board. The Board contends that the email does not reflect an improper non-public meeting and, instead demonstrates only that the three Board candidates share a "common platform." Response, p. 4, ¶ 4. And while the email does state that Messers Parks, Todd, and Kenyon requested Ms. Bixler's resignation, there is no indication that they did so (1) jointly on behalf of the Board or (2) as part of a concerted effort to circumvent the OML. On this limited record, and due to the absence of any specific action items proposed in Mr. Parks' email, we conclude that the evidence does not support a conclusion that a quorum of the Board proposed or discussed legal action outside of a properly noticed public meeting. We, therefore, find no violation.

2. Including Bilateral Board Communications in Agenda Packet

The second complaint arises from an email string between two Board members in which one Board member raised concerns about the other Board member's social media activity. The email string was later included in an Agenda packet for the Board's April 10, 2023 meeting. Complainant contends that this converted the bilateral communications between two Board members into impermissible "serial communications"

Serial electronic communications between Board members violate OML can constitute a "meeting" if there is a "concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B)(2). The fact that the remaining Board members might later become aware of a conversation between two Board members does not make the prior conversation impermissible. Here, there is no evidence that the bilateral email exchange or its subsequent inclusion in the April 10 agenda packet was part of a "concerted plan" to engage in collective deliberation regarding a Board member's social media activity without an open meeting. We find no OML violation.

3. Drafting a Letter from the Board

The third complaint relates to a February 28, 2024 agenda item which referenced possible action on a letter from the Board to the Maricopa County School Superintendent. Complainant alleges that this agenda item and the related discussion at the February 28 meeting demonstrates that Board members Todd, Kenyon, and Parks had "met previously to discuss and draft the letter," in violation of the OML.

Both the February 28 meeting recording and the minutes reflect that the Board approved the following motion: "to submit proposed candidate Doni Bond to the County Superintendent's Office to fill the current Governing Board Vacancy. Including a board drafted letter to Mr. Watson indicating that we strongly discourage any appointment by the County Superintendent's Office to any individual that did not participate in the district selection process."

There is no evidence that the letter had been drafted at the time of the meeting. To the contrary, it seems that the meeting itself was the approval authorizing the letter to be drafted, which is appropriate and permissible under the OML. Absent any evidence that a quorum of the Board had drafted or discussed drafting the letter outside of a public meeting, we find no OML violation.

III. Miscellaneous Complaints

A. Work Session Agenda

The Board noticed a "Work Session" to commence immediately prior to the Board's Regular Meeting on November 18, 2024. Items 1.3, 1.4, and 1.5 on the Work Session agenda were: "School Boundary Update; "Budget Discussion;" and "2025 Bond & District Office Repurpose Discussion." Complainant contends that these topics failed to give adequate notice of the topics to be discussed, in violation of A.R.S. § 38-431.02(H) and § 38-431.09(A).

In response, the Board states that "work sessions are separate and apart from public meetings," suggesting that the agenda requirements for a so-called work session are more relaxed than that which is required for a "regular meeting." Response, p. 6, ¶13. But there is no legal distinction between a "work session" and a "regular meeting." *See* Ariz. Att'y Gen. Op. I79-4 (label for gathering does not determine whether OML applies). The Board also contends that, as for the school boundary update, the revised boundary options that the Board discussed at the November 18 Work Session were "posted on a poster board in a public area of the District's office prior to the work session." Response, p. 6, ¶ 13. But the OML does not require that information be generally available to the public, it requires that the agenda itself contain whatever information is "reasonably necessary to inform the public of the matters to be discussed[.]" A.R.S. § 38-431.09(A).

Though the level of specificity required depends on the circumstances, in general, generic agenda items such as "personnel," "new business," "reports," or "other matters" unless the specific items are separately identified in conjunction with the general terms. Ariz. Att'y Gen. Agency Handbook § 7.7.2 (citing *Thurston v. City of Phoenix*, 157 Ariz. 343, 344 (App. 1988)). The Board's agenda descriptions at issue could have been more fulsome. However, a member of the public who was interested in hearing the Board's discussion on school boundaries, the District budget, or the upcoming 2025 bond election would have known to tune into the November 18, 2024 Work Session. We therefore find that the challenged Work Session agenda items are adequate and do not violate OML.

B. Public Comment at a Public Hearing

On December 16, 2024, the Board held a regular public meeting which included a "public hearing" to discuss proposed changes to intra-district boundaries. *See* Dec. 16, 2024 Agenda Item 3.2 ("Hearing to Discuss Considerations for School Attendance Boundaries for LZES, LBA, and BHES beginning the 2025-2026 school year.").[5] The Board did not engage in any discussion on Agenda Item 3.2, and instead proceeded straight to the public comment portion of the hearing, which was separately agendized at Item 3.3. No one made a public comment. Later in the meeting, however, the Board discussed Agenda Item 10.3: "Discussion/Consideration to Approve recommendation for LZES, LBA, and BHES school attendance boundaries beginning the 2025-2026 school year." Complainant contends this was an OML violation because he cannot be expected to comment when there has been no discussion among the Board first. Complainant also challenges the Board's three-minute time limit on public comment.

The OML does not dictate when public comment can be heard during an open meeting, nor does it require a public body to permit public comment at all. A.R.S. § 38-431.01(I) ("A public

[5] A.R.S. § 15-341(27) requires school districts to prescribe a procedure for holding public meetings to discuss attendance boundary changes. District Policy JC sets forth the District's school boundary modification policy which, among other things, requires that the boundary maps and notice of the meeting be posted to the District's Website. Whether the District complied with that policy is beyond the scope of this OML investigation.

body may make an open call to the public[.]). If, however, public comment is allowed, any limitations imposed by the Board must be "reasonable." *Id.*

This Office has consistently found that a three-minute time limit on public comment is reasonable. Absent any evidence or allegation from Complainant that the three-minute limitation was inequitably applied or otherwise unreasonable in these particular circumstances, we conclude that the three-minute limitation was reasonable here as well. We likewise decline to find that timing of the public comment portion of the meeting amounted to an unreasonable limitation on public comment. To the extent that Complainant claims he was deprived of information necessary to form a cogent comment regarding the proposed boundaries, we find no merit to that assertion. The December 16 meeting agenda (at Item 10.3) included an executive summary and PowerPoint presentation with maps demonstrating various scenarios which were being presented to the Board for consideration. For all these reasons, we find no OML violation.

C. Social Media

A complainant alleged that, in 2022 and 2023, then-Board President Parks used social media to articulate his vision for the District and to solicit input from parents regarding matters likely to come before the Board. Because Mr. Parks' fellow Board members were able to see Mr. Parks' posts, complainant contends that the posts violate the OML's prohibition on discussions between Board members outside of a properly noticed public meeting.

The OML does not prohibit a Board member from voicing an opinion or discussing an issue with the public through media outlets or other technological means, so long as the "opinion or discussion is not principally directed at or directly given to another member of the public body," and "there is no concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B); Ariz. Att'y Gen. Op. I07-013. The mere fact that other Board members may be able to view one another's social media activity does not make the posts "directed at or directly given to" the Board members. Likewise, there is no allegation or evidence which demonstrates that Mr. Parks' social media activity was directed at other Board members or was otherwise part of a "concerted plan" among Board members to circumvent OML requirements. Thus, we find no OML violation with respect to the social media posts identified in the complaint.

D. Using a Student's Full Name at a Public Meeting

One complainant alleged that a Board member violated OML by using a student's first and last name when discussing an alleged bullying incident during a February 27, 2023 Board meeting.

The only restriction that the OML places on Board members' use of confidential information is the requirement that information discussed in executive session "be kept confidential." A.R.S. § 38-431.03(B). However, the February 27 meeting recording confirms that the source of the student's name was an email from a parent to the speaking Board member, not an executive session. While there may be other privacy concerns at issue here, a reference in open meeting to a student's name which was learned from sources other than executive session discussion does not violate OML.

E. Discussing a Civil Complaint

A complainant contends that then-Board President Parks violated OML by publicly discussing the contents of former District student Kayleigh Kozak's civil complaint against the District (Maricopa County Superior Court Case No. CV2024-031828). The OML complaint contains a link to an undated video which purports to record Bryan Parks discussing the Kozak lawsuit with a member of the public, but does not articulate why the recorded conversation violates OML. No other Board members appear to be present or involved in the recorded conversation.

Nothing in the OML prohibits a Board member from speaking directly with a constituent regarding District business, unless the information discussed is confidential executive session information. A.R.S. § 38-431.03(B) ("[D]iscussions made at executive sessions shall be kept confidential[.]").[6] In general, the Kozak complaint and related police investigations are all matters of public record. There is no indication from the recording that Mr. Parks disclosed executive session information and Board records do not reflect any executive sessions noticed between the time that the Kozak complaint was filed in early November 2024 and the December 6, 2024 OML complaint. We therefore find no OML violation.

Conclusion

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint, and does not relate to any non-OML matters. The facts recited in this letter are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.* This is not a formal opinion of the Attorney General's Office and should not be cited as authority in other matters.

Sincerely,

Mary M. Curtin
Senior Litigation Counsel

[6] We take no position regarding whether the information shared is attorney-client privileged or otherwise confidential. Because this is an OML investigation, our analysis focuses on whether there is any evidence to suggest that the information is required to be kept confidential by the OML.