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November 5, 2021

RE: *File No. 21-M-128; Norris School District Board of Education; Multiple Complainants*

Following the August 6, 2021 emergency meeting of the Norris School District Board of Education ("Board"), multiple complaints were registered with this office alleging violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020, 2021 Neb. Laws LB 83, §§ 11-14), by members of the Norris School District ("District") Board. We followed our normal practice and sent notice of all complaints received to the Board through the Board President, Patty Bentzinger, and requested a response. We subsequently received a response on October 29, 2021 from Ms. Bentzinger. We have now completed our review of the complaints and the response we received from Ms. Bentzinger. Our findings and conclusion in this matter are set out below.

ALLEGED VIOLATIONS

Upon review of the complaints, we have identified one alleged violation of the Open Meetings Act, as follows:

The Board's emergency meeting on August 6, 2021 was not of an emergency nature and did not meet notice requirements.

ANALYSIS

Our understanding of the facts in this matter is based upon the complaints received and the Board's response. Three individuals filed complaints with our office regarding the Board's August 6, 2021 meeting. Complainants alleged the August 6, 2021 emergency meeting should not have taken place because there was no emergency. Complainants also allege the Board did not give parents enough notice of the emergency meeting.

In its response, the Board states on Thursday, August 5, 2021, the District received a letter from the Lincoln-Lancaster County Health Department ("LLCHD") which ordered all Lancaster County public school districts to require masks for students in grades PK-6th.

November 5, 2021

Page 2

District staff was scheduled to report back to school on Monday, August 9, 2021 and District students were scheduled to return on Thursday, August 12, 2021. The Board's next regular meeting was scheduled for Wednesday, August 11, 2021. The Board states that due to the timing of the LLCHD letter and the urgent need to advise staff and families of changes to the District's COVID-19 protocols, the Board scheduled an emergency meeting for Friday, August 6, 2021. The Board also states the meeting was necessary due to the role District staff had in implementing COVID-19 protocols as well as open house activities for District families beginning on Monday, August 9, 2021. The Board determined that Friday, August 6, 2021 at 1:00 p.m. would permit more members of the public to attend and participate as opposed to Friday night or over the weekend. The Board states that the local media was aware of the emergency meeting, and *The Voice* newspaper attended and live-streamed the meeting. The Board also posted notice of the meeting on the District's Facebook page. The Board states the emergency meeting was held for the limited purpose of discussing and addressing the COVID-19 guidance in the LLCHD letter.

First, complainants allege the Board did not provide parents with enough notice of the emergency meeting held on August 6, 2021. Neb. Rev. Stat. § 84-1411(5) allows public bodies to hold emergency meetings without reasonable advance public notice. However, § 84-1411(5) also requires compliance with § 84-1411(4), which states that "[t]he secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subject to be discussed at that meeting." In its response, the Board states it notified the media, in accordance with § 84-1411(4), and that *The Voice* newspaper attended and live streamed the meeting. Further, the Board states it provided prompt notice to the public via various means, including posting notice on the District's Facebook page. The Board notes that the meeting was nearly at capacity and several individuals provided public comment. The facts demonstrate the Board exceeded the requirements of the Act by providing notice to the public when notice is not required for emergency meetings. Further, the Board provided notice to the media as required by the Act. Accordingly, the Board complied with the Act's emergency meeting requirements.

Complainants also allege the August 6, 2021 meeting was not of an emergency nature. In *Steenblock v. Elkhorn Township Board*, 245 Neb. 722 (1994), the Court defined an "emergency" in the context of an open meeting as "any event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." The Attorney General has also stated that an item of an emergency nature is one that requires immediate resolution by the public body, and one which has arisen in circumstances impossible to anticipate at a time sufficient to place on the agenda or a regular, called, or special meeting of the body. 1975-76 Rep. Att'y Gen. 150 (Opinion No. 116, dated August 29, 1975). The Board's holding of an emergency meeting on August 6, 2021 was reasonable considering the circumstances. The Board was notified on August 5, 2021 that it would be required to mask students in the upcoming school year

November 5, 2021

Page 3

per the LLCHD. This was an unexpected event that the Board could not have anticipated. The District's COVID-19 plan for the 2021-2022 school year did not include a mask mandate. Therefore, time was of the essence for the Board to implement new COVID-19 policies as District staff and students were returning the following week. It would not have been reasonable for the Board to have waited until its regularly scheduled meeting on August 11, 2021 because District staff would have already returned to school, and students would be returning the following day. Accordingly, we find the Board had sufficient justification to hold an emergency meeting on August 6, 2021 because an unforeseen event occurred that required immediate action. The Board did not violate the Act with respect to any of complainant's allegations.

CONCLUSION

For the reasons discussed above, we plan no further action with respect to these complaints, and we are closing this file. Any complainant who disagrees with our analysis may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Laura A. Nigro
Assistant Attorney General

cc: Patty Bentzinger

35-266-29