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January 6, 2022

RE: *File No. 21-M-126; Omaha Public Schools Board of Education; Multiple Complainants*

Following the August 2, 2021, meeting of the Omaha Public Schools 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 and Supp. 2001), by members of the Board. We followed our normal practice and sent notice of all complaints received to the Board through the Board President, Dr. Shavonna Holman, and requested a response. We subsequently received a response on December 22, 2021 from the Board's attorney, David Kramer, who responded on behalf of the Board. We have now completed our review of the complaints and the response we received from Mr. Kramer. Our findings and conclusion in this matter are set out below.

ALLEGED VIOLATION

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

The Board denied members of the public the right to speak at its August 2, 2021 meeting based on the content of the speech or an individual's unwillingness to state their address.

ANALYSIS

Our understanding of the facts in this matter is based upon the complaints received, the Board's response, and a video review of the August 2, 2021 meeting. Two individuals filed complaints with our office regarding the Board's August 2, 2021 meeting. Complainants first allege that individuals were denied the right to speak based on the content of their speech. Next, complainants allege individuals were unlawfully denied the right to speak based on their unwillingness to state their address. A review of the video of the August 2, 2021 meeting shows that thirteen members of the public requested to speak at the meeting. All members of the public wishing to speak were able to do so except for two speakers—Cheryl Adamson and Justin Riddle. The video shows that at

the beginning of Ms. Adamson's comments, she was asked for her address and responded, "my husband wouldn't appreciate that." Ms. Adamson was allowed to continue and spoke for approximately one minute. She then began playing an audio recording from her phone. Board President Holman told Ms. Adamson that the Board needed her public comment and not someone else's. Ms. Adamson did not respond and continued to play the audio recording. Ms. Adamson was then escorted from the podium by security shortly thereafter. Later during the public comment session, the video shows Mr. Riddle approach the podium and state his name, but also stating that his address was irrelevant, and he was not required to give it. Dr. Holman responded that it was a statutory requirement that he give his address. Mr. Riddle continued to argue and state that he was not required to give his address. Mr. Riddle attempted to proceed with his comments and the Board cut his microphone. Mr. Riddle remained at the podium for approximately twenty seconds and then appeared to speak to members of the audience before approaching the Board table. At that time, Dr. Holman asked security to remove Mr. Riddle and he was escorted out of the room.

While Neb. Rev. Stat. § 84-1412(1) provides that "the public has the right to attend and speak at meetings of public bodies...", § 84-1412(2) allows public bodies to "make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, including meetings held by virtual conferencing." Subsection E of Internal Board Policy No. 8346 states that "[m]embers of the public will be permitted to speak at Board meetings at which a public comment is on the Agenda, and may speak during the time at which the public comment agenda item is being addressed." In addition, Policy No. 8346 "requires that members of the public identify themselves, spelling their name, stating an address and the name of any organization the member of the public is representing." This address requirement comes from Neb. Rev. Stat. § 84-1412(3) which states "[t]he 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 video shows Ms. Adamson declined to provide her address when requested. She nevertheless continued to speak for a period before playing an audio recording on her phone. Dr. Holman informed Ms. Adamson that she needed to give her own public comment and not play the audio recording. Ms. Adamson did not do so and continued to play the recording. Policy No. 8346 permits members of the public to "speak" at meetings and give public comment. It does not permit members of the public to play audio recordings during the public comment period. Ms. Adamson was not removed from the podium due to the content of her speech but rather because she did not provide her address and continued to play an audio recording rather than speaking during public comment. With regard to Mr. Riddle, he was not allowed to speak because he refused to state his address. Neb. Rev. Stat. § 84-1412(3) as well as Policy No. 8346 requires speakers to give their address. Mr. Riddle refused to do so and did not request a waiver

for security purposes. As such, the Board did not improperly deny Ms. Adamson or Mr. Riddle the right to speak at the meeting on August 2, 2021 and did not violate the Act.

The requirement that a speaker provide an address when appearing before a public body was part of 2021 Neb. Laws LB 83, § 13 (*codified at* Neb. Rev. Stat. § 84-1412 (Supp. 2021)). Subsection (3) of § 84-1412 previously provided a public body “may” require a member of the public speaking to the body to identify themselves. As amended, this subsection now states a public body “shall” require a member of the public speaking to the body to identify themselves and provide an address unless the address requirement is waived to protect the security of the individual. “As a general rule, in the construction of statutes, the word ‘shall’ is considered mandatory and inconsistent with the idea of discretion.” *Loup City Public Schools v. Nebraska Dep’t of Revenue*, 252 Neb. 387, 393, 562 N.W.2d 551, 555 (1997). LB 83 now mandates that a speaker provide their address unless that requirement is waived to protect the individual’s security. This requirement was relatively new at the time of the Board’s meeting on August 2, 2021. It is not clear whether the waiver provision could have applied, and neither speaker requested a waiver. The Board has updated its “Request to Be Heard” form to include a section allowing persons wishing to speak during public comment to request a waiver of the address requirement and provide a description of their security concern. Prior to hearing public comment, the Board will consider and act on the waiver requests. This procedure should clarify application of the address requirement going forward.

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
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cc: David Kramer