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June 20, 2017

James Reinsch
[REDACTED]

RE: *File No. 17-M-123; Fillmore Central Public Schools Board of Education;
James Reinsch, Complainant*

Dear Mr. Reinsch:

This letter is in response to your correspondence in which you requested that this office investigate alleged violations by the Fillmore Central Public Schools Board of Education (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014, Cum. Supp. 2016). In accordance with our normal procedures, we requested a response from the Board after we received your complaint and we subsequently received a response from the Board's attorney, Steve Williams. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS AND RELEVANT FACTS

We have identified the following Open Meetings Act complaints made by you:

1. The agenda for the March 6, 2017 meeting of the Board lacked sufficient description to alert the public as to what would be discussed at the meeting;
2. The meeting minutes from the March 6, 2017 meeting were not published in the local paper;
3. The agenda for the March 27, 2017 meeting of the Board lacked sufficient description to alert the public as to what would be discussed at the meeting;
4. The minutes from the March 27, 2017 meeting were not posted on the Board's website by April 6, 2017;
5. The Board did not provide notice or an agenda for a quorum of Board members who toured schools in other districts on April 3, 2017 and April 4, 2017; and

6. The minutes of the March 13, 2017 meeting lacked sufficient detail as to the report of the Finance Committee and the recommendation as to the salary for a new school principal.

In its response to your complaints, the Board generally denies any violations of the Open Meetings Act have occurred. The Board has provided us copies of Board policies, agendas, and minutes in support of its position that at no time did it violate the Open Meetings Act. Our office also accessed agendas and minutes found on the Board's website both when your complaint was received and after the Board's response was received.

Your complaints concern the three Board meetings in March 2017 and tours held at other schools on April 3 and 4, 2017. Your complaints as to the March 6 and March 27 meetings concern the adequacy of the agendas and the availability of the minutes of the meetings. Your complaint as to the March 13 meeting concerns the adequacy of the minutes of the meeting, particularly item 7H regarding salary information for a new school principal. As to the April 3 and 4 meetings, you complain about the lack of notice and agendas for these meetings. When we accessed the agendas and minutes for the relevant Board meetings when your complaint was received on April 18, 2017, the Board website reflected the following, as relevant to your complaints:

- (a) March 6, 2017 agenda, item 3 "Discussion Items, Information Item";
- (b) Minutes were available for the March 6 meeting;
- (c) March 13, 2017 meeting minutes, item 7.H. "Motion Passed: Recommendation that the Board approve the 2017-2018 High School Principal/AD Salary offer as presented by the Finance Committee passed with a motion by Christin Lovegrove and a second by Shaun Farmer";
- (d) March 27, 2017 agenda, item 5 "Discussion Items, Information Item";
- (e) Minutes were available for the March 27 meeting;
- (f) Agendas and minutes were available for the April 3 and 4 meetings.

The Board, in its response, provided differing versions of the agendas for the March 6 and March 27 meetings than those provided by you and initially found online. Those agendas have since been amended on the Board's website. The agendas provided by the Board state as relevant:

- (a) March 6, 2017, agenda item 4: "Individual Board Member Goals, Discussion, Information Item" which replaces the prior agenda item 3, referenced above;
- (b) March 27, 2017 agenda item 3: "Jay Spearman, Ameritas (A) Tax Anticipation notes, lease purchase, Information Item"; and agenda item 4: "Goal Setting, Information Item" with three separate sub-items:

“(A) Review Special Building Fund financials for 2017, (B) Locker Room addition/and-or Weight-Fitness Room/and-or Wrestling Room, (C) Other.”

In addition, the Board supplied its policy regarding meeting notification, which provides that the Board gives notice in *The Nebraska Signal* newspaper or by posting notice in at least three public places in the district. Additionally, the agenda for the meeting “shall be readily available for public inspection at the superintendent’s office during normal business hours.” The Board points out that its website is not an official means of notice of meetings, nor is it the place designated as where the official agenda may be found for any given meeting.

ANALYSIS

Sufficiency of agendas of the March 6, 2017 and March 27, 2017 meetings

The Open Meetings Act, Neb Rev. Stat. § 84-1411(1) (2013) provides that:

Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

Your complaints regarding the March 6 and March 27 meetings relate to whether the agenda items were “sufficiently descriptive” to provide notice to the public of the matters to be discussed by the Board at these meetings. The materials you provided, and the agendas which were found on the Board’s website on the date your complaint was received by this office, would suggest that the Board’s agendas for these two meetings were not “sufficiently descriptive” as required by the Open Meetings Act. The agendas each included an agenda item which simply stated “Discussion Items, Information Item”. However, the Board provided the copies of the agendas as were found in the superintendent’s office prior to the two meetings in question, and the website has also been updated to reflect the relevant agenda items as follows:

- (a) March 6, 2017, agenda item 4: "Individual Board Member Goals, Discussion, Information Item";
- (b) March 27, 2017 agenda item 3: "Jay Spearman, Ameritas (A) Tax Anticipation notes, lease purchase, Information Item;" and agenda item 4: "Goal Setting, Information Item" with three separate sub-items: "(A) Review Special Building Fund financials for 2017, (B) Locker Room addition/and-or Weight-Fitness Room/and-or Wrestling Room, (C) Other."

The Board has also provided its policy on notice and agenda of meetings, which provides that notice shall be in *The Nebraska Signal* or in three locations around the district, and that the official agenda shall be located at the superintendent's office and may be viewed during normal business hours. In compliance with this policy, the Board noticed the two meetings of March 6 and March 27 in *The Nebraska Signal* and kept the official agenda at the office of the superintendent. While agendas were also placed on the Board's website, per its policy the website is not an official mode of notice or the place of the current agenda. We understand that placing an agenda online which is not accurate might be confusing for members of the public, and we question why the Board would place an inaccurate or incomplete agenda on its website. However, the Board followed its policy on notice and agenda for these meetings.

From the agendas provided by you, the March 6 and 27 meeting agendas appear to lack sufficient description as to what would be discussed during those meetings. However, those agendas differ than the official agendas kept in the office of the superintendent. As to the March 27 agenda kept by the superintendent, that agenda is sufficiently descriptive on its face. While the March 6 agenda item four initially appears to lack sufficient description, the Board describes that portion of the meeting as a work session in which each member of the Board brought his or her individual goals to the meeting to discuss. Based on this, we believe this agenda item to be sufficient for notice to the public of what would be discussed at the meeting. The Open Meetings Act does not require us to judge the eloquence of the notice, only whether members of the public were sufficiently informed as to the topic of the meeting. In this instance, there is no clear violation of the Open Meetings Act. Based on the information provided by the Board as to the March 6 and March 27 agendas, we believe that the agenda items kept at the superintendent's office were "sufficiently descriptive" under the Open Meetings Act.

Based on our analysis, we do not believe there was a violation of the Open Meetings Act with respect to the notice and agendas of the March 6 and March 27 Board meetings. However, we will encourage the Board, through a copy of this letter, to ensure that any agendas posted on its website prior to its meetings are the most current and accurate versions of the agenda. We understand that the Board's official policy is to have the most current version of the agenda available at the superintendent's office upon request. However, the Board must realize that members of the public will check

the Board's website for information concerning its meetings, and if agendas and minutes are found online, they should be as accurate and up-to-date as possible.

Availability and content of meeting minutes

Your next complaints concern minutes from the March 6, March 13, and March 27 meetings of the Board. The Open Meetings Act, Neb. Rev. Stat. § 84-1413 states:

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Additionally, we have consistently stated that the Open Meetings Act does not require a public body to transcribe its meetings in its minutes. The Board's minutes are only required to show the "substance of all matters discussed" by the Board, not each detail of every discussion.

As to the minutes from the March 6, 2017 meeting, you complain that the meeting minutes were not published in the local newspaper. However, the Open Meetings Act places no such requirement on public bodies. According to the Board, the minutes from March 6 were prepared and available for inspection on March 7, which was within the ten working day requirement and before the next convened meeting of the Board which occurred on March 13. There is no requirement that the meeting minutes be "posted" or published, only that they are written and available for inspection within the requisite time frame. You do not indicate whether you made any request to inspect the minutes of the March 6, 2017 Board meeting, or whether you only looked for them in the local newspaper. Your letter only makes the complaint that the minutes were not published in the newspaper, which is not required of the Board. We do not have any evidence that the minutes of this meeting were not available for inspection within the required timeframe. Thus, we cannot conclude that there was a violation of the Open Meetings Act relating to this portion of your complaint.

As to the minutes from the March 27, 2017 meeting, you complain that the minutes were not posted on the Board's website as of April 6, 2017. Again, that is not what is required of the Board. The Board states that the hard copy of the minutes was available in the superintendent's office on March 28, 2017, well within ten days and before the next meeting on April 3, 2017 to tour schools in other districts. The Board

posts its minutes on its website only after they are approved by the Board at a regularly called meeting, which in this case occurred on April 10, with the minutes posted on the website on April 11. There is no violation of the Open Meetings Act with respect to this portion of your complaint.

Your final complaint concerning minutes of Board meetings relates to the March 13, 2017 meeting minutes. You complain that the meeting minutes lacked sufficient detail as to what was presented by the finance committee to the Board regarding the salary for a future school principal. The minutes reflect the following: item 7.H. "Motion Passed: Recommendation that the Board approve the 2017-2018 High School Principal/AD Salary offer as presented by the Finance Committee passed with a motion by Christin Lovegrove and a second by Shaun Farmer." The Open Meetings Act requires that a public body document the "substance of all matters discussed," and does not require a transcription of the meeting. The Open Meetings Act requires documents discussed at a meeting to be available for inspection at the meeting, but does not require the substance of those documents to be in the minutes of the meeting. The Board assures us that a copy of the finance committee report was available at this meeting for members of the public to view. The Board also states that you were not present at this meeting. The Board has documented the "substance of the matter discussed" at its meeting -- the motion and vote to adopt the finance committee recommendation relating to the salary of the next district principal. While it may have been helpful to those not in attendance to have the Board document the precise salary in the minutes, the Board has not violated the Open Meetings Act with respect to this portion of your complaint.

Notice of April 3 and 4, 2017 meetings

Finally, you complain that the tours held by a quorum of Board members on April 3 and 4, 2017 at schools outside the district were not properly noticed and agendas were not available for these meetings. The Open Meetings Act requires a public body to give "reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes." Neb. Rev. Stat. § 84-1411(1). The Board denies any impropriety in the way it has provided notice of these meetings and states that it posted notice on March 29 of these two meetings at three schools within the school district, in compliance with its policy on notice of meetings. The notice for these meetings contained the agenda for the meetings. The agenda was also available in the superintendent's office on March 29, also in compliance with the Board's policy for availability of the agenda. The Board states that the agendas were not on its website until April 3, however, the website is not one of the official methods of notice of Board meetings. It appears to us that the Board followed its policies for notice of and availability of the agenda for these two meetings, and was also in compliance with the Open Meetings Act in so doing.

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CONCLUSION

For the reasons stated above, we do not believe that the Board has violated the Open Meetings Act. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Steve Williams

02-662-29