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Via Email & By Certified Mail, Return Receipt Requested

Willow Creek Charter School Governing Board
c/o Jessica Sanchez, Board Attorney
Udall Shumway PLC
1138 N. Alma School Rd., Ste. 101
Mesa, AZ 85201

Re: Open Meeting Law and the Willow Creek Charter School Governing Board

Board Members and Ms. Sanchez:

As you know, the Office of the Attorney General (the "Office") received two complaints alleging that the Willow Creek Charter School Governing Board (the "Board") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegations and determined that there was an Open Meeting Law violation in connection with the October 14, 2021 meeting. The facts recited in this letter serve as a basis for this conclusion, 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.*

Violation

The complaints alleged that the Board physically posted its meeting notices and agendas behind a locked gate, and that this physical posting location prevented parents from receiving notice of Board meetings. Specifically, the complaints alleged that this physical posting location purportedly prevented parents from receiving proper notice of the Board's October 14, 2021 meeting.

Here, the Board's response stated that prior to November 10, 2021, the Board's meeting notices and agendas were available on the Board's website, and that the physical postings were available at the school office during business hours. *See* Board's Response at 1-2. The Board's Response further noted that during the week of October 14, 2021, the school office was open during business hours, and that the notice and agenda for the October 14, 2021 Board meeting was posted on the website at least 48 hours prior to the meeting. *See id.* at 2-3. Additionally, the Board's response stated that the physical posting location has been moved to the school office

window so that the public can view the agenda outside of business hours. Accordingly, after reviewing the Board's response and supporting documents, the Office is unable to substantiate a violation of the Open Meeting Law in connection with this allegation.

One complaint also alleged that during the October 14, 2021 meeting, the Board enacted a four-day mask mandate that was not listed on the agenda. Here, the Board's Response stated that the vote to enact the four-day mask mandate was properly noticed as it fell under the agenda item "Review and update mitigation plan." *See* Board's Response at 2-3. However, the Open Meeting Law requires that a public body specifically list on its agenda all matters that it intends to discuss, consider, and/or take legal action on at a public meeting. *See* A.R.S. § 38-431.02(H). When a public body takes legal action on a matter not listed on the agenda, then that legal action is null and void. *See generally id.*; *Ariz. Agency Handbook* § 7.7.6 (Ariz. Att'y Gen. 2018).

Here, the agenda item simply referred to the Board's mitigation plan, and did not include any information that the Board intended to enact a four-day mask mandate. Because the October 14, 2021 meeting agenda did not provide specific enough information to the public that the Board intended to implement a four-day mask mandate, the Board violated the Open Meeting Law.

Remedy

To remedy this violation, the Office considered the readily available records documenting whether the Board has had any recent open meeting violations, the Board's response and supporting documentation.

Having weighed these factors, and in order to resolve this matter, the Office has determined that the Board must share the contents of this violation letter with the public at the next practicable public meeting, and a copy of this letter must be posted on the Board's website for at least one year from the date of this letter. The Office has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the Board and its current members.

Furthermore, pursuant to A.R.S. § 38-431.05(A), "[a]ll legal action transacted by any public body during a meeting held in violation of any provision of [the Open Meeting Law] is null and void," unless subsequently ratified pursuant to section 38-431.05(B). Legal action taken to adopt the four-day mask mandate at the October 14, 2021 meeting is therefore considered "null and void" in the absence of ratification.

A.R.S. § 38-431.05(B) provides a process by which "[a] public body may ratify legal action taken in violation" of the Open Meeting Law. Ratification of legal action "shall take place at a public meeting within thirty days after discovery of the violation[.]" A.R.S. § 38-431.05(B)(1). The Board has thirty days from the date of receipt of this letter to ratify any legal action taken by the Board at the October 14, 2021 meeting. The procedure for ratification is

provided in A.R.S. § 38-431.05(B). *See also Arizona Agency Handbook* § 7.12 (Ariz. Att’y Gen. 2014).

If the Board chooses to ratify any legal action which occurred at the October 14, 2021 meeting, the Board must provide verification to the Office within seven days of such ratification. In the absence of statutorily valid ratification, the legal action previously taken by the Board regarding the four-day mask mandate at the October 14, 2021 meeting is null and void.

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General’s Office and should not be cited as authority in other matters.



Michael S. Catlett
Deputy Solicitor General
Open Meeting Law Enforcement Team