



June 17, 2025

Gallup-McKinley County Public Schools Board of Education
Christopher Mortensen, President (cmortens@gmcs.org)
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640 S. Boardman
Gallup, NM 87301

President Mortensen and Mr. Sanchez:

The Government Counsel and Accountability Bureau (“GCA”) of the New Mexico Department of Justice (the “NMDOJ”) is aware of a special meeting held by the Gallup-McKinley County School District Board of Education (the “Board”) on May 16, 2025. This office has concerns regarding compliance with the Open Meetings Act (the “OMA”), NMSA 1978, §§ 10-15-1 to –4 (1953, as amended through 2013). After a review of the May 16, 2025, special meeting agenda, videorecording, and information available on the Board’s website, our office notes several concerns of the Board’s compliance with OMA and Public School Code, NMSA 1978, §§ 22-1-1 to 22-35-5 (1953, as amended through 2024) that require your immediate attention.

I. ANALYSIS

The OMA is one of our state’s transparency laws, which establishes the basic public policy of our state that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public. The Attorney General has statutory authority to enforce OMA, *see* NMSA 1978, § 10-15-3(b), and our office relies on concerns brought forward by the public to help identify and resolve issues of noncompliance.

The NMDOJ has identified concerns with the Board’s compliance with OMA during its May 16, 2025, special meeting. Particularly, the NMDOJ finds concern in the Board’s compliance with meeting notice and agenda requirements, restricting or limiting access to its meetings, procedural requirements to enter into closed session, and taking invalid actions at its May 16, 2025, special meeting. While a majority of this letter concerns the Board’s May 16, 2025, special meeting, our office also has concerns regarding the public body’s compliance with virtual access to its meetings, public comment, and maintaining meeting minutes, as required by § 22-5-4.16 of the Public School Code. Each of these concerns will be individually addressed below.

a. The Board's May 16, 2025, meeting notice does not comply with the Board's 2025-2026 OMA Resolution.

Pursuant to NMSA 1978, § 10-15-1(D), a public body must determine its notice procedures at least once a year in a public meeting. This is commonly referred to as an "OMA Resolution", in which a public body annually reviews and adopts reasonable notice procedures during a regularly scheduled open meeting. It is our office's interpretation of OMA that when a public body adopts notice requirements in its OMA Resolution, the public body must comply with it.

According to the Board's 2025-2026 OMA Resolution, all notices shall include:

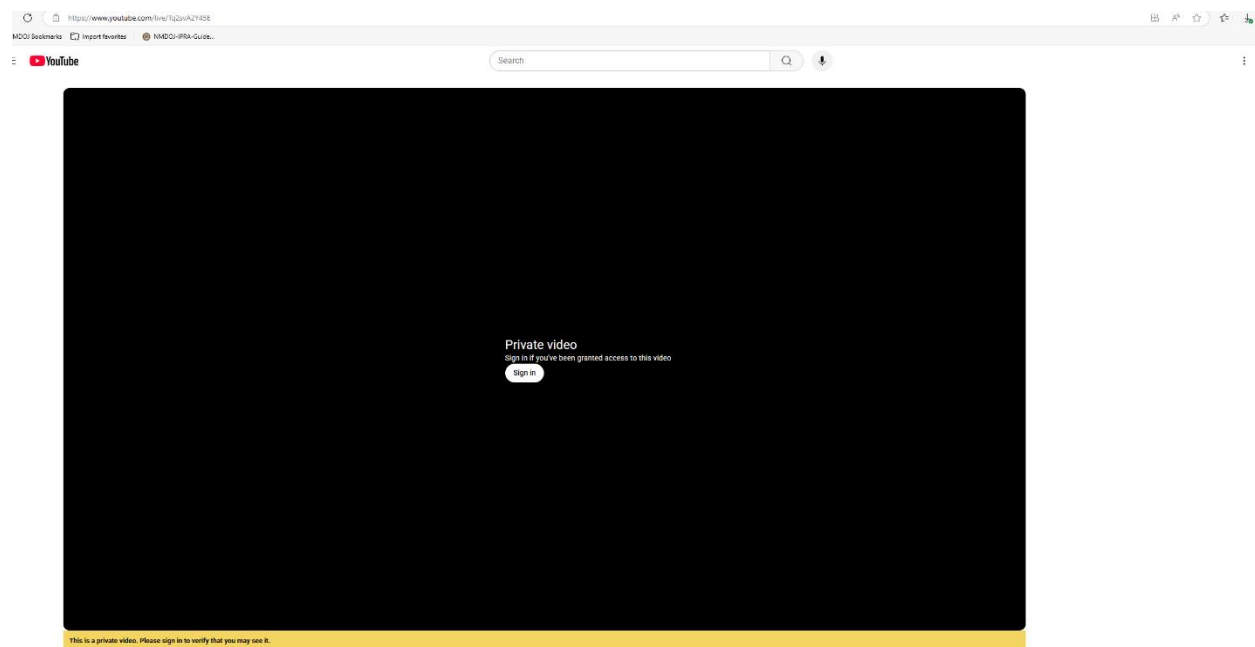
If you are an individual with a disability or other needs requiring a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the Superintendent's Office at (505) 721-1000 extension 11189 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Superintendent's Office at (505) 721-1000 extension 11189 if a summary or type of accessible format is needed.

After a review of the May 16, 2025, meeting notice, the following language regarding ADA accommodations is not included. Our office finds that the Board's May 16, 2025, meeting notice does not comply with the Board's established notice procedures, set forth in its OMA Resolution.

b. The Board denying virtual access to its May 16, 2025, special meeting violates NMSA 1978, § 22-5-4.16 and goes against the spirit and intent of OMA.

According to OMA, all persons desiring to attend a public body's meetings shall be permitted to attend and listen to the proceedings. NMSA 1978, § 10-15-1(A). While OMA is silent on providing members of the public virtual access to its meetings, when a public body offers that its meetings will be accessible by virtual means, the public body must ensure that virtual access is provided in a manner equivalent to in-person attendance. Thus, to advertise virtual access and then restrict or limit members of the public virtual access to a meeting would run contrary to the spirit and intent of OMA, which is grounded in the basic public policy of openness, accessibility, and transparency in government.

Our office has become aware that virtual access to the May 16, 2025, special meeting was limited or restricted for members of the public without special permission. Members of the public who attempted to attend the live webcast instead were directed to the following message indicating that the video is private and that sign in was required for those who had been granted access:



This is concerning given that the public body’s own website, under “Board Meetings & Agendas”, includes a link labeled “Watch it LIVE” beneath the May 6, 2025, special meeting listing. This link, and its language, reasonably lead members of the public to believe that the meeting would be accessible in real time through virtual means. Further, NMSA 1978, § 22-5-4.16 (2024), mandates “live audio and video webcasts of local school board meetings shall be accessible through the school district’s website and shall include a user interface that allows members of the public to submit written or verbal comments.” However, neither the May 16, 2025, meeting notice nor agenda contain any language advising the public that the public body provides virtual access to its meetings, nor any instructions on how to attend and listen to the meeting remotely.

As stated, when a public body offers virtual public access to its meetings, it assumes the responsibility to ensure that virtual access is not restricted or limited. The Board’s restriction or limitation of the public’s virtual access to the meeting after advertising its availability is contrary to the spirit and intent of OMA, particularly and violates the express mandates of § 22-5-4.16.

Additionally, the failure to include information about virtual access in the Board’s May 16, 2025, meeting notice and agenda, regardless of whether access was provided, further compounds our office’s concern. Meeting notices and agendas are the public’s primary source of information on how to attend and participate in government deliberations and proceedings. When a public body offers virtual access to its meetings, the public should be informed of its opportunity to attend and listen to the meeting virtually in the meeting notice and agenda. Omitting these details from the meeting notice and agenda goes against the ethos of transparency and accountability that OMA is designed to uphold and violates the access required by law.

c. The Board's motion to enter into closed session at its May 16, 2025, special meeting did not comply with OMA.

Pursuant to NMSA 1978, § 10-15-1(I)(1), a public body must follow specific procedures to enter into closed session. When an agenda item is presented for discussion that may be considered in closed session, a motion for closure must be made by a member of the public body stating the authority for closure and the subject to be discussed with reasonable specificity. *Id.*

According to the Board's May 16, 2025, meeting videorecording¹, the following statements were made by the Board to enter into closed session:

President: Okay. So, the first item on our agenda is the executive session. So, I'll hear a motion to go into executive session.

Member 1: Motion to enter executive session.

President: Okay. Second down there.

Member 2: Second.

Videorecording, at 1:50. As required by NMSA 1978, § 10-15-1(I)(1), the motion to enter into closed session must contain the authority for closure and the subject to be discussed stated with reasonable specificity. The Board's motion contained neither the authority for closure nor the subject to be discussed stated with reasonable specificity. As such, the NMDOJ finds the Board's procedures to enter into closed session at it May 16, 2025, special meeting is in violation of § 10-15-1(I)(1).

d. The Board's action to ratify agenda item no. 3(A) is improper, and as a result the Board's following actions for agenda item no. 3(B)-(H) is invalid.

Pursuant to NMSA 1978, § 10-15-1(B), any discussion of public business or any final action taken within the delegated authority of a public body *must* take place in an open meeting. The OMA makes this requirement unambiguous, by stating: "[n]o resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, § 10-15-1." § 10-15-3(A).

The Board's May 16, 2025, meeting agenda has the following listed for agenda item no. 3(A): "[r]atify the actions of the Administration to provide notice to Stride Inc./K12 of material breaches of the contract and to demand a remedy." This language indicates that the Administration—not

¹ Gallup-McKinley County Public Schools Board of Education, *Gallup McKinley County Schools Board of Education 05-16-2025*, YouTube (May 15, 2025), https://www.youtube.com/watch?v=VHKdzqqN_SM.

the Board—unilaterally issued a formal notice and demand to Stride Inc./K12. What the Board then voted on was a post hoc ratification of an action taken by the Administration.

To be clear, this letter’s intention is not to address any matters related to the Board’s contractual relationship with Stride Inc./K12 or the New Mexico Procurement Act. Rather, our office’s concern lies strictly with compliance with OMA and the validity of the Board’s action.

As stated above, the agenda item reveals that the Administration sent the notice to Stride Inc./K12. However, if the Board is the entity in a contractual relationship with Stride Inc./K12, which our office presumes to be the case given the context of the additional agenda items, then the authority to issue formal notice of a contract breach and demand for a remedy rests solely with the Board. Under OMA, such final action, such as issuing notice, must take place in an open meeting, as required by § 10-15-1(B). Without evidence to the contrary, the Board never took action to issue the notice to Stride Inc./K12, during an open meeting. Rather, this was a unilateral action by the Administration that the Board was trying to ratify.

This leads directly to our office’s main concern: *a public body cannot ratify a decision it never made*. Ratification, also known as corrective action, is generally an action taken by a public body to affirm or adopt a prior action that was deemed invalid under § 10-15-3(A). Here, there is insufficient evidence to find that the Board sent the notice and demand to Stride Inc./K12, prior to its ratification. Absent such an action, there was nothing for the Board to lawfully ratify. Accordingly, the ratification vote itself is likely invalid. If the Board has any evidence to contrary, please inform the NMDNJ immediately. Otherwise, an agenda item that announces an improper final action on public business, coupled with an indication that the public body intends to ratify that improper final action through a sham “vote” in open session, can only be understood as an OMA violation.

Since the Board’s effort to “ratify” the Administration unilateral issuance of a notice of breaches of contract and demand for a remedy appear to be invalid, a reasoned result is that the actions the Board took on agenda items no. 3(B)-(H) are also invalid. Agenda items no. 3(B)-(H) appear to rely on the presumption that proper notice of breach and demand had been already properly issued to Stride Inc./K12. Since our office finds that the ratification of agenda item no. 3(A) is likely invalid and notice and demand was never lawfully voted on during an open meeting by the Board, then any subsequent actions taken in reliance on the notice and demand, such as agenda items no. 3(B)-(H), are also invalid.

Even if the ratification of the Administration’s unilateral decision was valid, it does not operate retroactively. A ratified decision takes effect on the date of the ratification. In this case, the action of sending Stride Inc./K12 the notice and demand would be effective May 19, 2025, due to ratification, not the date the Administration sent the notice and demand. Presuming that agenda items no. 3(B)-(H) appear to rely on that proper notice of breach and demand had been issued to Stride Inc./K12, then any Board action on these agenda items may be invalid.

e. GCA's concern with the Board's procedures for public comment

While OMA is silent on public comment, according to NMSA 1978, § 22-5-4.16 (2024), “live audio and video webcasts of local school board meetings shall be accessible through the school district's website and *shall include a user interface that allows members of the public to submit written or verbal comments.*” (emphasis added).

The Gallup McKinley County Schools Policy Manual, Section B, School Board Governance and Operations, outlines the policy and procedures of public participation at Board meetings. According to the Policy Manual, “[t]he open meetings of the Board of Education for the Gallup McKinley County Schools are traditionally a closed forum with regard to public comment,” and therefore, “the Board of Education creates only a limited open forum for its meetings in which the Board will only accept public comment when it is placed on its agenda and public comment shall be limited to the subject matter of its agenda items only.” The Board has the current policies and procedures for public comment:

- Pursuant to Subsection C, “...the Board shall not permit comment on any other matters not listed by the Board on the [a]genda, and the Board and/or Board President may limit repetitious questions and comments not related to an agenda topic.”
- Pursuant to Subsection D, “Public comment on limited subject matter at open Board meetings shall be permitted only if the Board’s agenda has a section entitled Public Comment and the Board’s agenda lists the subject matter open for public comment. There is no obligation or requirement for the Board of Education to have a public comment section on its agenda for every open meeting of the Board of Education. The Board of Education may or may not, at its discretion, place the Public Comment section on its agenda for any or all open Board meetings.” (internal quotations omitted).
- Pursuant to Subsection E, “The Board of Education welcomes public comment during the Public Comment section of the Board meeting limited to the subject matter open for public comment listed on the [a]genda for the meeting. Individuals wishing to make public comment shall complete a Public Comment form and submit it to the Board President prior to the Public Comment section of the open meeting...”
- Pursuant to Subsection F, “At the Board meeting, each person who has timely submitted a Public Comment Form shall wait to be recognized by the Board President to present his or her comments to the Board of Education. Upon recognition by the Board President to address the Board, the individual will state his or her name, and address, and identify the general topic of his or her remarks.”

Our office notes several concerns with the Board’s policies and procedures governing public participation at its meetings. First, while this letter has already addressed virtual access to Board meetings, the Board's current practices for public participation further conflict with § 22-5-4.16. According to § 22-5-4.16, the live stream of the Board’s meeting must contain “a user interface that allows members of the public to submit written or verbal comments.” Here, it is evident the Board is not meeting this requirement. The Board’s Policy Manual states the Board “may or may not, at its discretion, place the Public Comment section on its agenda for any or all open Board meetings.” Furthermore, even when public comment is placed on the agenda, an individual must

fill out a “Public Comment Form” prior to the meeting in order to provide public comment at the Board’s meeting. These policies directly violate § 22-5-4.16, to the extent that they improperly restrict public comment entirely or deny individuals the opportunity to comment upon a meeting solely because they did not complete a form in advance.

The fact that Board's meetings are likely considered a limited public forum does not give the public body the unlimited authority to restrict speech. When OMA is read in conjunction with NMSA §§ 22-5-1 to -18 of the Public Education Act, it reflects a clear legislative intent to ensure that the public has both in-person and virtual access to observe and comment upon the decision-making processes of local school boards. If local school board meetings are a limited public forum from the standpoint of First Amendment rights a school board may, but is not required to, impose content-based or viewpoint restrictions on speech. However, failing to provide a “user interface that allows members of the public to submit written or verbal comments” directly conflicts with § 22-5-4.16 which provides a higher standard for public participation than OMA.

f. GCA’s concern with the Board’s compliance with meeting minutes.

According to OMA, all public bodies subject to OMA are required to keep written minutes of all open meetings and meeting minutes shall be available for public inspection. NMSA 1978, § 10-15-1(G). While OMA only requires meeting minutes to be available for public inspection, § 22-5-4.16 requires that “[r]ecordings of the webcasts and an electronic copy of any minutes approved at the meeting shall be posted on the school district's website within one week of the meeting's conclusion and shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise.”

After a review of the Board’s website, the Board has uploaded copies of prior meeting notices and agendas but does not have copies of its meeting minutes uploaded on its website. While this is not a violation of OMA, the public body not having its minutes posted on its website is in violation of § 22-5-4.16.

II. CONCLUSION

As outlined in this letter, the NMDOJ has identified key violations and concerns with the Board’s compliance with OMA and § 22-5-4.16 of the Public School Code. To address the concerns raised above the public body shall ensure compliance with OMA moving forward and take corrective action to remedy the OMA violations identified in this letter. Our office advises the public body to do the following:

a. Advisory Action

To ensure future compliance with OMA, the Board should take the following advisory action:

1. As discussed in Section I(a), *see supra*, for Board’s meeting notices, the public body will ensure that its meeting notices are meeting the notice requirements set forth in § 10-15-1(D) and notice procedures outlined in its OMA Resolution that is adopted annually.

2. As discussed in Section I(b), *see supra*, for virtual access to its meetings, the Board must allow the public to have virtual access to its meetings, and that information on how to access the meeting virtually is included in meeting notices and agenda, as required by § 22-5-4.16.
3. As discussed in Section I(d), *see supra*, ensure the public body is only ratifying, or taking corrective action, on decisions it made that are invalid.
4. As discussed in Section I(e), *see supra*, for public comment at its meetings, the Board must ensure it is allowing members of the public to provide written or oral public comment at its meetings and placing public comment as an agenda item on its meeting agendas. Additionally, the Board should not restrict members of the public ability to engage in public comment by making them fill out a form prior to the meeting and not limit their speech to what is only listed on the agenda.
5. As discussed in Section I(f), *see supra*, for meeting minutes, the Board must ensure that copies of its meeting minutes for the past three years be uploaded to its website, as required by § 22-5-4.16.

b. Corrective Action

As outlined in Section I(c) of this letter, *see supra*, the NMDNJ finds that the Board's motion to enter into closed session at its May 16, 2025, special meeting was in violation of the OMA. Also, the Board's announcement that they planned to ratify the Administration's past action was in violation of OMA.

To remedy these OMA violations, the public body shall take prompt corrective action. "[P]rocedural defects in [compliance with the OMA] may be cured by taking prompt corrective action." *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 86 (quoting *Kleinberg v. Bd. of Educ.*, 1988-NMCA-014, ¶ 30, 107 N.M. 38) (alteration in original). Accordingly, at its next properly noticed public meeting, the public body should include an agenda item that will allow the public body to provide a corrective statement to cure the OMA violations. The corrective statement should include, at a minimum: (1) a summary of the OMA violations, (2) a restatement of the May 16, 2025, motion that complies with § 10-15-1(I)(1), which must include the authority for closure and the subject to discussed with reasonable specificity, and (3) an open, final action by the Board regarding whether to issue notice and demand, delegate the authority to the Superintendent to engage in that action on behalf of the Board, or take some other official action.

The NMDNJ has authority to enforce OMA through injunction, mandamus, or other appropriate order. Therefore, while this letter has outlined advisory action for the Board to take and corrective action to cure the OMA violation, our office reserves the right to pursue any further enforcement necessary to ensure compliance with OMA. More importantly, please note that this review is limited solely to the Board's compliance with OMA. This letter does not address or make any findings regarding the legality of other Board actions that may fall under separate statutes, such as the Governmental Conduct Act or the New Mexico Procurement Code.

Based on our analysis provided here, we will consider the matter closed pending acceptance of corrective action. **Please provide our office with documentation of the corrective action, including but not limited to, the meeting agenda, meeting minutes, and link to the meeting videorecording.** Please send all documentation to: oma-ipracomplaint@nmdoj.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blaine', followed by a long horizontal line extending to the right.

Blaine Moffatt

Director of Government Counsel & Accountability

Government Counsel & Accountability Bureau

cc: Charles Long, Vice President (chase4long@yahoo.com)
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