

20 January 2022

David Binetti
West Ada Parents Association
372 S. Eagle Rd. #195
Eagle, ID 83616

Jan Bennetts
Ada County Prosecutor
200 W. Front St,
Bosie, ID 83702

Dear Ms. Bennetts,

I am writing to report a possible violation of the Idaho Open Meeting Law, Idaho Code Section 74-204.

On 13 December 2021 the West Ada School Board held a Regular Meeting at 1303 E. Central Drive, Meridian, Idaho. The agenda was posted as normal on the West Ada District Calendar. Among other items, the agenda included a Work Session to discuss unspecified matters and a related Action Item to entertain motions on such unspecified matters.

During the multi-hour work session, the Board considered a wide variety of topics, ranging from Board vacancies and the process by which to decide Board Officers, to how future items will be placed on the agenda and the form of allowable public comment at future meetings. As the session progressed, it became evident that the Board was editing a document based on their discussions. The document itself was not available via the agenda or District website (as is customary.)

When they returned to open session, the Board articulated that their work session was related to the codification of board procedures. While reviewing the document at a high level, they discovered certain typographical errors and other components of the document that they wished to review further, and asked for edits. They subsequently amended their agenda to move the item to the end of new business to provide time for the edits to be completed.

When the action item came up again, the Board proceeded to entertain a motion to approve the document, and this is the source of my complaint (and vocal objection at the meeting itself.) Only a cursory overview of what appeared to be several dozen pages of text was provided, which was largely unreadable due to the on-screen format. The public had no opportunity to know what was being decided nor allowed any form of public scrutiny, comment, or review.

Board Members assured the public that nothing was being changed and that it was merely a *pro forma* recitation of existing Board Policy. However, my complaint is not about **what** was decided, but **how** it was decided.

Idaho Open Meeting guidance requires that all actions be properly listed on the agenda and related documentation made available for public scrutiny. Rather than rush this through in the last meeting of the year — with two “lame duck” Board Members no less — the prudent course of action would have been to finalize the document, provide it to the public for some reasonable period of review, and then consider it at a future Board Meeting. Instead, by considering it mere minutes after editing even the Board Trustees themselves had no opportunity to read the language in its final form.

In fact, this was done in so opaque a manner that the Board Clerk herself was unable to provide the document following its adoption. Instead, she said that she would request it and forward to me upon receipt. Request it from whom? The Clerk's primary responsibility is to enter in all decisions to the public record, and it should be clear from the outset what those decisions are. How can the public even be certain of the provenance of what eventually enters the public record if the Board Clerk has to request it from someone after the fact?

All of this speaks directly to Attorney General Wasden's Idaho Open Meeting Law Manual, dated July 2019. I refer you specifically to the answer to Question #16, "What must an agenda contain?" In this, the Attorney General writes,

"Agenda items should be listed with specificity and not buried in catchall categories such as 'director's report'."

Clearly, this standard has not been met. The description of the work session itself was left blank and the associated action item read, "Possible motion(s) to address matters considered in work session". It is difficult to imagine a statement more devoid of specificity.

And, while orthogonal to this complaint, the assurance that no substantive policy changes were made is inaccurate. Most of the document is as was described: a compendium of existing policies, procedures, and statute relevant to Board operations. However, there are two new additions that I can not find in any existing policies or state code, specifically: the process for filling vacancies to the Board, and the selection of Board Officers.

With regard to filling vacancies, here are the relevant changes:

1. The addition of a two-week public notice period prior to any appointment, which will include newspaper articles or other notice.
2. The requirement of a specific application form, which must be submitted prior to a publicly announced deadline.
3. The requirement of an accompanying questionnaire, which must be submitted by applicants in order to be considered for appointment.

With regard to selection of Board Officers, the relevant change is that the Vice-Chair now automatically becomes the Chair if the Chair's seat is vacated. Nothing in the existing West Ada Policy Manual or Idaho statute specify a procedure for how the Board is to be re-organized following a resignation or vacancy, and thus this procedure is new and not codification of existing policy. Moreover, this provision is perhaps in conflict with existing statute Title 33-506, which specifies that the Board must "elect" a Chairman, rather than simply promote one.

Both these changes may be worthy ideas, but my concern is not the substance of the changes themselves but instead how they were implemented and their corresponding "extra-legal" status. For instance, if there were a Board vacancy and an applicant does not fill out a questionnaire, does the protocol document govern (where it is required) or does official District policy (where it is not required)? This lack of clarity is subject to capricious enforcement which weakens the Public Trust, particularly since the protocol document itself reads not as a prose description of existing procedure, but in the language of formal policy.

I can envision no clearer case where the letter and spirit of the Open Meeting Law applies, and would ask that you review this matter at the earliest possible opportunity. Rather than declare the entire meeting null and void, the simplest solution would be for the newly constituted Board to modify official District Policy per the normal procedure, which I hope you can encourage without resorting to more formal action.

Most sincerely,

David Binetti

References:

Idaho Statue 74-204 Transparent and Ethical Government; Open Meetings Law
<https://legislature.idaho.gov/statutesrules/idstat/title74/t74ch2/sect74-204/>

Idaho Open Meeting Law Manual
<https://www.ag.idaho.gov/content/uploads/2018/04/OpenMeeting.pdf>

West Ada School District Agenda 13 December 2021
<https://www.westada.org/site/Default.aspx?PageID=2&DomainID=4#calendar1/20211213/event/772983>

West Ada School Board Meeting Video 13 December 2021
<https://www.youtube.com/watch?v=yy89HxPahAo>