



January 28, 2025

**VIA ELECTRONIC MAIL ONLY:**

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Dr. Adam Amador, Chief Academic Officer ([aamador@almadarte.org](mailto:aamador@almadarte.org))  
Alma D'Arte Charter High School Governance Council  
402 W Court Ave  
Las Cruces, NM 88005

Re: Filing #'s: NMDOJ-ECS-20240711-a044; NMDOJ-ECS-20240823-ec0c; NMDOJ-ECS-20240906-c481; NMDOJ-ECS-20241003-8c3a; NMDOJ-ECS-20241003-1099; NMDOJ-ECS-20241024-48d0  
Filing Date: July 11, 2024; August 30, 2024; September 9, 2024; October 3, 2024; October 6, 2024; October 27, 2024  
Filer: Jana Holguin  
Respondent: Alma d'Arte Charter High School Governance Council  
Type: Open Meetings Act Complaint

Dear Alma D'Arte Charter High School Governance Council:

The Government Counsel and Accountability Division (the "GCA") of the New Mexico Department of Justice (the "NMDOJ") recently completed a review of complaints received regarding your public body. The allegations in the complaints raised concerns with your public body's compliance with New Mexico's government transparency laws – specifically, the Open Meetings Act (the "OMA"), NMSA 1978, Sections 10-15-1 to -4. Public bodies across our state at every level of government are required to comply with both the written requirements and spirit and intent behind our sunshine laws, which provide the public a fundamental right to obtain information regarding the affairs and business of our representative government.

The Attorney General has statutory authority to enforce this law, and we rely on concerns brought forward by the public to help identify and resolve issues of noncompliance by means of informal resolution. Through this process, our agency clarifies explicit requirements as well as best practices and directs such action needed to cure violations and help ensure future compliance with the law. Serious issues of noncompliance or repeated noncompliance may result in further action from our agency.

The GCA received multiple complaints against Alma d'Arte Charter High School Governance Council (the "Governance Council") regarding allegations of noncompliance with the OMA. The GCA received the following complaints:

1. NMDOJ-ECS-20240711-a044, filed on July 11, 2024.

2. NMDOJ-ECS-20240823-ec0c, filed on August 30, 2024.
3. NMDOJ-ECS-20240906-c481, filed on September 9, 2024.
4. NMDOJ-ECS-20241003-8c3a, filed on October 3, 2024.
5. NMDOJ-ECS-20241003-1099, filed on October 6, 2024.
6. NMDOJ-ECS-20241024-48d0, filed on October 27, 2024.

As discussed below, the GCA notes several issues that may implicate violations of the OMA that require your immediate attention.

#### **I. NMDOJ-ECS-20240711-a044**

This OMA complaint alleges the draft copy of the minutes of the Governance Council's June 3, 2024, and June 17, 2024, meetings were not available within ten (10) working days of the meeting and the approved minutes were not made available for public inspection.

The GCA reviewed the following:

1. Ms. Holguin's complaint which included a screenshot of the AACHSGC's website from July 10, 2024.
2. A copy of the AACHSGC's June 3, 2024, meeting minutes.
3. A copy of the AACHSGC's June 17, 2024, meeting minutes.

According to Section 10-15-1(G), all public bodies subject to the provisions of the OMA are required to keep written minutes of all open meetings and draft minutes shall be prepared within ten (10) working days. The OMA does not require that minutes be posted to the public body's website or anywhere else. Rather, the OMA only requires that the minutes be available for public inspection. *Id.*

Based on our review of the evidence provided, the GCA does not find an OMA violation. As to the allegation regarding the draft minutes, there is insufficient evidence to find that the draft meeting minutes for the June 3, 2024, and June 17, 2024, meetings were not made available for public inspection within ten (10) working days. As to the allegation that the approved minutes were not made available for public inspection, the filer included in their complaint a screenshot of the Governance Council's website from July 10, 2024, indicating the public body had not posted the minutes of the meetings. As mentioned above, the OMA only requires that the approved minutes are available for public inspection. *Id.* While the screenshot shows the minutes were not posted on the Governance Council's website, the Governance Council's approved minutes are not required to be posted on its website. Upon inquiry, the Governance Council provided the GCA with copies of the June 3, 2024, and June 17, 2024, meeting minutes. Since the public body provided both meeting minutes for public inspection, the GCA does not find the public body violated the OMA.

#### **II. NMDOJ-ECS-20240823-ec0c**

The allegations in this complaint concern the AACHSGC's August 5, 2024, meeting. Specifically, the complainant alleges that: (1) the meeting notice did not comply with the Governance Council's OMA Resolution, (2) a council member did not comply with telephonic participation as required by Section 10-15-1(C), (3) the public body wanted to limit the public's access to virtual meetings, and (4) the agenda did not comply with Section 10-15-1(F).

The GCA reviewed the following:

1. Governance Council's OMA Resolution.
2. Ms. Holguin's complaint which included a link to the August 5, 2024, meeting agenda and meeting notice.
3. Recording of the Governance Council's August 5, 2024, meeting.

Regarding the first allegation, the complainant alleges that the August 5, 2024, meeting notice did not comply with the Governance Council's OMA Resolution as it did not state how to obtain a copy of the agenda or have the ADA disclaimer notice. While the OMA requires notice of a meeting to include information on where to locate the agenda, the link the complainant provided to the August 5, 2024, agenda, had the meeting notice attached. These notices comply with Section 10-15-1(F). However, the agenda did not include the ADA disclaimer notice, as required by the Governance Council's OMA Resolution. In order to fully comply with its OMA Resolution, the GCA urges the public body to include the ADA disclaimer notice in its future meeting notices.

Regarding the second allegation, the complainant alleges that council member Martin Swafford attended the August 5, 2024, virtually and could not be identified or heard during the meeting. Additionally, the complainant alleges that Mr. Swafford's votes were sent and recorded via text message. Pursuant to Section 10-15-1(C), public members can attend meetings by means of a conference telephone or other similar communications equipment provided that "each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting."

After the GCA's review of the evidence, the GCA finds Mr. Swafford's virtual participation and voting via text message constitutes a violation of the OMA. The recording of the August 5, 2024, meeting, supports the complainant's allegation that Mr. Swafford could not be identified or heard during the meeting. Additionally, the video recording confirms that Mr. Swafford's votes were sent and recorded via text message. Foremost, the purpose of the OMA is to require 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. *See* § 10-15-1(A). For a council member to participate during the meeting without personally identifying themselves or not allowing the public to hear their discussion or voting record, is not only a violation of the OMA, *see* Section 10-15-1(C), but goes against the spirit and purpose of our transparency laws.

As a result, Mr. Swafford's actions taken at that meeting are invalid pursuant to Section 10-15-3(A). To remedy such violation, the Governance Council should repeat all of Mr. Swafford's August 5, 2024, meeting votes at the next properly noticed, public meeting. The public body should place the ratification of votes as an agenda item that explains such ratification. To ensure compliance in the future, the GCA urges the public body to ensure that if a council member has to participate virtually for meetings, that their participation complies with the OMA.

Regarding the third allegation, the complainant alleges that Dr. Adam Amador, Chief Academic Officer, wants the Governance Council to have virtual meeting where the public cannot be present and attend. Furthermore, the complainant cited Section 22-8B-5.5 (2024) in their complaint, which states "...live audio and video webcasts of governing body meetings shall be

accessible through the charter school's website and shall include a user interface that allows members of the public to submit written or verbal comments.” After the GCA’s review, there is insufficient evidence to find that the public body took action based on the alleged statement. Additionally, the OMA is silent regarding a public body providing virtual access to its meeting. While the complainant has directed the GCA to Section 22-8B-5.5 (2024), the GCA does not have the authority to enforce the statute.

Regarding the fourth allegation, the complainant alleges that the August 5, 2024, agenda item listed as “14. New Business (a) Approval of PO’s - Action” does not meet the reasonably specific standard, as required by Section 10-15-1(F). According to the OMA, the requirement to list specific items of business ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting. As such, a public body should avoid describing agenda items in general, broad, or vague terms. *Id.*

After the GCA’s review of the evidence, the GCA finds that the agenda item in question is not reasonably specific, as required by Section 10-15-1(F). While the GCA assumes the term “PO” refers to “purchase order”, the agenda item lacks detail regarding the scope, context, or specific purchase orders to be acted upon by the public body.

As a result, any action taken on the August 5, 2024, agenda item No. 14 are invalid pursuant to Section 10-15-3(A). To remedy such violation, the Governance Council should ratify the action at its next properly noticed, public meeting through an agenda item that explains such ratification. At the meeting, we advise that the Governance Council discuss the matter and hold a valid vote. To ensure compliance in the future, the GCA urges the public body to refrain from describing agenda items in general, broad, or vague terms.

### **III. NMDOJ-ECS-20240906-c481 and NMDOJ-ECS-20241003-8c3a**

These OMA complaints allege that the meeting notice for the Governance Council’s September 16, 2024, meeting did not comply with the deadlines or procedures for meeting notices adopted by the public body.

The GCA reviewed the following:

1. Governance Council’s OMA Resolution.
2. Ms. Holguin’s complaints which included screenshots of the Governance Council’s website from June 6, 2024, and October 3, 2024, and a copy of an email to the Governance Council to be added to the meeting notice email list.

According to the Governance Council’s OMA Resolution, regular meeting notices shall be provided to the public no less than ten (10) calendar days prior to the regular meeting. Additionally, meeting notices shall include the time, date, location of the meeting, and information on how to obtain a copy of the agenda. The meeting notices shall be provided to the public through its website, physical location, emailed to stations and newspapers, and emailed to individuals who have requested in writing to be added to its email list.

Based on our review of the evidence, which included screenshots of the Governance Council’s website on September 6, 2024, after 6:00 p.m., sufficiently support the allegation that notice of

the September 16, 2024, regular meeting was not posted within ten (10) days of the meeting. Additionally, the evidence also supports the complainant's allegation that the meeting notice that was ultimately posted on Governance Council's website did not include the (1) meeting agenda or how to obtain the meeting agenda and (2) the ADA disclaimer notice, as required by its OMA resolution. If the Governance Council has any information or documentation contrary to the above, please inform us. Otherwise, it appears that the Governance Council has violated OMA by failing to adhere to its definition of reasonable notice as determined in its OMA Resolution.

As a result, all actions taken at that meeting are invalid pursuant to Section 10-15-3(A). To remedy such violation, the Governance Council should ratify any actions taken at a properly noticed subsequent public meeting through an agenda item that explains such ratification. To ensure compliance in the future, the GCA urges the public body to post its meeting notices according to its deadline requirements and include the meeting agenda or how to obtain the agenda, location, date, time, ADA disclaimer, and all requirements required by the OMA and/or its OMA resolution.

In addition, the Governance Council's OMA Resolution states that meeting notices shall be sent to a person who requests to receive meeting notices via email. The complainant provided a copy of the email sent to Governance Council requesting to be put on the email list. The complainant also asserts the same allegation in following complaints: NMDOJ-ECS-20241003-1099 and NMDOJ-ECS-20241024-48d0. While the complainant alleges that she never received the meeting notices via email, there is insufficient evidence to conclusively support this allegation. Nevertheless, the GCA urges the Governance Council to adhere to its OMA Resolution's reasonable notice methods. If an individual requests to be included on the email list, then the Governance Council must provide meeting notices via email to that person.

#### **IV. NMDOJ-ECS-20241003-1099**

The allegations in this complaint concern the Governance Council's meeting on September 27, 2024. Specifically, the complainant alleges: (1) noncompliance with meeting notice requirements, (2) failure to post the meeting agenda at the office entrance per the Governance Council's OMA Resolution, and (3) the Governance Council "gatekeeping" virtual public attendance.

The GCA reviewed the following:

1. Governance Council's OMA Resolution.
2. Ms. Holguin's complaint which included photos, with date and time stamps, of the Governance Council's presumed front doors on September 26, 2024, and September 27, 2024, and photos regarding the September 27, 2024, virtual meeting.

Regarding the first allegation, the complainant's allegations of noncompliance with meeting notice requirements is similar to those discussed in Section II and III. *Supra* Sections II, III. As to the second allegation, according to the Governance Council's OMA Resolution, the meeting agenda shall be posted no less than seventy-two (72) hours prior to the meeting, and made available via its website, emailed to those who request it, and posted at the office entrance.

After our review of the evidence, which included a screenshot of the Governance Council's presumed front doors on September 26, 2024, and September 27, 2024, it is clear that the agenda

was not posted at the office entrance at least seventy-two (72) hours prior to the meeting. If the Governance Council has any information or documentation contrary to the above, please inform us. However, since the complainant only alleged that the agenda was not posted via one method in its OMA Resolution, the GCA will assume the public body posted it via the other methods as required by Section 10-15-1(F). While the GCA does not find a violation of the OMA, the public body did not comply with its OMA Resolution. As such, the GCA urges the Governance Council to comply fully with its OMA Resolution in efforts to ensure transparency to the public and provide reasonable notice of its meetings via all methods the public body has considered itself bound to.

Regarding the third allegation, the complainant alleges that the Governance Council was not permitting members of the public into the September 27, 2024, meeting as their requests to join the meeting were ignored. Additionally, the complainant also alleges that a person that was attending the meeting virtually was disconnected from the meeting because they did not identify themselves.

Pursuant to Section 10-15-1(A) NMSA 1978, “all meetings of any public body except the legislature and the courts shall be public meetings, *and all persons desiring shall be permitted to attend and listen to the deliberations and proceedings.*” It is our office’s belief that when a public body provides virtual access to the public for its public meetings, it must follow the spirit and intent of the law and allow all persons desiring to attend and listen whether or not their attendance is anonymous.

The GCA finds that since the intent of OMA is to protect the public and ensure their access to such meetings, for the Governance Council to create any limitations towards accessing public meetings virtually is a violation of the OMA. If the Governance Council is going to provide the public with access to attend its meetings virtually, then it must not hinder the public’s access to the meeting. Additionally, the OMA does not require or permit public bodies to require each attendee to identify themselves. The OMA only requires that all persons shall be permitted to attend and listen. As such, requiring individuals to identify themselves or risk getting removed from the meeting, is contrary to the spirit and intent of our transparency laws. Therefore, the GCA urges the public body to refrain from creating any standards or limitations towards the public’s access to public meetings to prevent being in violation of the law.

## **V. NMDOJ-ECS-20241024-48d0**

The allegations in this complaint concern the Governance Council’s October 21, 2024, meeting. Specifically, the complainant alleges that: (1) the meeting notice did not comply with the Governance Council’s OMA Resolution, (2) the motion made to enter into executive session was made improperly, and (3) the AACHSGC took an improper final action.

The GCA reviewed the following:

1. A video recording of the October 21, 2024, regular meeting.
2. Ms. Holguin’s complaint.
3. A copy of the Governance Council’s October 21, 2024, meeting agenda.
4. A copy of the Governance Council’s October 21, 2024, meeting minutes.

Regarding the first allegation, the complainant's allegations of noncompliance with meeting notice requirements is similar to those discussed in Section II and III. *Supra* Sections II, III. As to the second allegation, the complainant alleges that authority cited to enter into executive session was improper and the motion itself was not reasonably specific.

According to the OMA, a motion for closure to enter into closed session must be made by a member of the public body stating the authority for closure and the reason for closing the meeting with reasonable specificity. § 10-15-1(I). The subject announced will comply with the "reasonable specificity" requirement if it provides sufficient information to give the public a general idea about what will be discussed without compromising the confidentiality conferred by the exception.

Here, the video recording of the Governance Council's October 21, 2024, meeting showed that a motion was made to enter into executive session by Richelle Swafford. Specifically, Ms. Swafford stated: "...based on the provisions of NMSA 1978, 10-15-1 through -4 of the Open Meetings Act the Governing Council will now move into executive session to discuss limited personnel matters and pending litigation." The GCA finds this statement proper and reasonably specific, as required by Section 10-15-1(I).

Regarding the third allegation, the complainant alleges that upon returning into open session, the public body took a final vote on action that was not listed on the agenda. According to the October 21, 2024, agenda, the public body had listed the following:

11. Executive Session to Discuss Limited Personnel Matters Pursuant to 10-15-1 (H)(2)(H) of the New Mexico Open Meetings Act.

All Items below are listed for discussion and possible action:

CAO Compensation

Item 7 under DUTIES rework wording to other duties as assigned

Potential / Pending Litigation Limited to Personnel Matters and School Business

Before addressing the allegations in the complaint, the legal citation to the limited personnel matters is incorrect. The correct citation is NMSA 1978, Section 10-15-1(H)(2). In response to the complainant's allegations, the GCA finds it important to clarify the proceedings following the public body's return to open session. According to the minutes of the October 21, 2024, meeting the following items were listed under "Unfinished/Recurring Business":

- a. Discussion / Action on Matters discussed in closed Session
- b. CAO Compensation

Upon returning to open session, a motion was made to approve Dr. Adam Amador's contract with amendments, and this motion was subsequently voted upon.

The GCA finds this final action to be appropriate, as it falls within the scope of the "CAO Compensation" discussion listed in the agenda, which was conducted under the limited

personnel exception. Therefore, the decision to approve Dr. Amador's contract with amendments is consistent with the parameters of the closed session discussion.

Additionally, while not addressed by the complainant, the required statement, *see* Section 10-15-1(J), was not included in the October 21, 2024, minutes. According to Section 10-15-1(J), "[f]ollowing completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting." Here, the October 21, 2024, meeting minutes did not include the required statement, and, therefore, the GCA urges the Governance Council to include the required statement in its future meeting minutes to ensure compliance with the OMA.

## VI. CONCLUSION

Over the past year, the GCA has received other complaints regarding the public body's compliance with the OMA. In other closure/disposition letters to the public body, this office has stated that future complaints related to your public body will be examined with increased attention, and further information regarding your public body's training and policies may be requested in order to determine what additional intervention may be needed. Additionally, our office has reminded the public body that our office reserves the right to take additional enforcement action pursuant to NMSA 1978, § 10-15-1(D).

While the GCA will not be taking enforcement action at this time, it is *imperative* that the public body addresses the concerns raised above and ensure compliance in the future regarding the matters addressed in this letter. **The GCA requests that the Governance Council alert the GCA of all the public body's corrective action and/or decision stemming from these violations. The GCA also requests all the members of the public body, including applicable staff, attend training on the OMA and IPRA. Please schedule the training within three (3) months of receipt of this letter and update the NMDOJ when the training is complete by all members and staff.**

**If the Governing Council fails to comply with the NMDOJ requests and/or engages in future noncompliance of the OMA, our office reserves the right to take additional enforcement action pursuant to NMSA 1978, § 10-15-1(D).**

Based on our analysis provided here, we consider these matters closed pending acceptance of the corrective action. However, if any issues raised in this complaint remain unresolved, we encourage the complainant, who is copied here, to contact our office or submit a new complaint on our website with any additional information.

Thank you for your attention to this important matter. If our agency can answer any questions or be of further assistance, please do not hesitate to contact our Government Counsel and Accountability Division or visit our website for additional resources at <https://nm DOJ.gov/about-the-office/civil-affairs/#government-counsel-and-accountability>.

Sincerely,



/s/ Isabelle Lopez  
Honors Attorney  
Government Counsel and Accountability

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