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August 7, 2015

Mr. Hunter R. Hughes
Arbitration Panel Chair
2200 Century Parkway NE #300
Atlanta, Georgia 30345
hhughes@rh-law.com

VIA EMAIL hhughes@rh-law.com

Re: Open Meetings Act Complaint by David Schick of the Macon Telegraph

Dear Mr. Hughes:

I am writing to you in your capacity as the Chairman for the Arbitration Panel ("Panel") for the dispute between the Bibb County School District and Romain Dallemand. This Office has received an inquiry from David Schick of the Macon Telegraph regarding the American Arbitration Association's confidentiality policy and how it relates to Georgia's Open Meetings Act. Specifically, Mr. Schick, as a member of the media, would like to be present at the arbitration of the above stated matter. Mr. Schick has provided me with copies of briefs submitted to the Panel regarding this issue from the Bibb County School District, Mr. Dallemand, and the Macon Telegraph, and a copy of an Order issued by the Panel dated July 7, 2015.

Under Georgia law the Attorney General, as an independent constitutional officer, has the discretionary authority to enforce the Open Meetings Act. O.C.G.A. § 50-14-5(a). The Attorney General has chosen to exercise that discretion by establishing a mediation program where citizens may raise issues and concerns with us regarding the Acts and we will attempt to resolve disputes. This office also reserves the right to pursue litigation in these matters where it deems doing so is appropriate.

After reviewing the Panel's July 7, 2015, Order, I understand that the Panel has come to the decision that the proceedings will be conducted in accordance with the American Arbitration Association's ("AAA") confidentiality policy which prevents in-person access by members of the public or press. Order p. 27. It is my understanding that the Panel came to this decision based on AAA Employment Rule 23 which requires confidentiality unless the parties agree

otherwise or the law provides to the contrary. Order p. 11. The Panel determined that the Open Meetings Act does not apply to this arbitration. Order p. 15.

Respectfully, I cannot agree with this determination. The Bibb County School District has indicated that it expects a quorum of members will be present at the arbitration. It is not in dispute that the business of the Bibb County School District will be presented and discussed. Thus, when a quorum of board members is present, this arbitration meets the definition of a meeting for the purposes of the Open Meetings Act and should be open to the public. The Panel's analysis contains a basic misapprehension about what constitutes a meeting under the Open Meetings Act. While the Panel finds persuasive that a quorum of the Board "cannot conduct the adjudicatory business of the arbitration," that is not the *sine qua non* of a meeting under the Open Meetings Act. Once a quorum of the school board has gathered, if "any official business, policy, or public matter of the [board] is formulated, *presented, discussed*, or voted upon," it is a public meeting under the Open Meetings Act. O.C.G.A. § 50-14-1(a)(3)(A)(i) (emphasis added).

Further, a government agency may not use a private agreement to avoid its statutory responsibilities under the Open Meetings Act. *See Board of Regents of University System v. Atlanta Journal*, 259 Ga. 214 (1989); *see also* 1989 Op. Att'y Gen. 89-32 ("Information is not confidential under the Open Records Act simply because the parties submitting the information anticipate or request that the agency will maintain the information in such a way as to preserve special status"); *accord* 2005 Op. Att'y Gen. U05-1.

I agree with the Panel's assertion that this arbitration is most similar to a judicial proceeding, and judicial proceedings are not covered by Georgia's Open Meetings Act. However, the arbitration is not a judicial proceeding; thus, when it meets the definition of a meeting under the Open Meetings Act, it is covered by that law. Even if it were a judicial evidentiary hearing, it would be open, as noted below.

I agree with the Panel's conclusion that the arbitration process is sufficiently dissimilar to the express exemption for mediation proceedings so as to not apply to the proceedings in front of the Panel, but I disagree that this somehow places the proceedings outside the scope of the Open Meetings Act. The General Assembly exempted mediation proceedings from coverage under the Act because a mediator will oversee negotiation between the parties, and the General Assembly explicitly set out a system whereby a mediator could caucus with one or more agencies under the Act while maintaining the confidentiality of the negotiations and the offers that were being made and considered. There is *no* such exemption for arbitration proceedings, either in the receiving of evidence or testimony before an arbitration panel nor in an arbitration panel's interaction with one or more agencies that may be appearing before the panel as parties to the arbitration.[1] Furthermore, the Panel's comparison between arbitration and a judicial proceeding is

[1] As it is the presence of a quorum of a covered agency before the arbitration panel that makes this proceeding subject to the Open Meetings Act, rather than the status of the Panel itself, any deliberations of the Panel which take place outside of the presence of the parties would fall outside the coverage of the Open Meetings Act. The Act instead covers the interactions between the parties and the Panel, including the receiving of evidence or testimony, that occur while a quorum of a public agency is present.

inappropriate. A judicial proceeding is not subject to the requirements of the Open Meetings Act *solely* because the Open Meetings Act is not applicable to the judicial or legislative branch of state government. *See Fathers Are Parents, Too v. Hunstein*, 202 Ga. App. 716, 717 (1992); *Green v. Drinnon*, 262 Ga. 264, 265 (1992). The Act is instead applicable by definition only to the executive branch agencies of state government and all elements of local government falling within the definition of "agency" in the Open Meetings Act, including often *quasi-legislative* city councils, county commissions, and school boards. It is the presence of a quorum of the school board that brings this proceeding within the reach of the Open Meetings Act. To the extent that the Panel feels that this would also be the case if a quorum of the school board were to attend judicial proceedings, it is critical to note that most court proceedings must be open to the public. *See Page v. Lumpkin*, 249 Ga. 576 (1982); *see also In re Motion of the Atlanta Journal-Constitution*, 271 Ga. 436 (1999). The openness of judicial proceedings was contemplated at the time the Open Meetings Act was enacted.

In light of the above, I would ask the Panel to allow access to members of the public at any time the arbitration meets the definition of a meeting under the Act. Please respond within ten days to confirm that you will allow access to any part of the arbitration where a quorum of Bibb County School District board members will be present. To do otherwise places the members of the school district as well as the members of this Panel in peril of potential civil and criminal penalties under the provisions of O.C.G.A. § 50-14-6 should the arbitration take place, a quorum of the board attend, and this Panel continue to assert that the internal operating rules of the AAA override the compulsory provisions of the Open Meetings Act.

Thank you for your attention to this matter. Please call me if you have any questions.

Sincerely,

Amanda S. Jones
Assistant Attorney General

cc: Mr. David Schick, Macon Telegraph
Dr. Thelma Dillard, President, Bibb County Board of Education