



Open Meetings Act—Public Comment¹

Q: What is the difference between a public comment period and a public hearing?

A: A *public comment* period during an open meeting of a governmental body, sometimes also referred to as *public participation* or *public forum*, is a time or portion of the meeting that is not required by law but designated at the discretion of the board to hear comments or receive information from the public.

A *public hearing* describes a form of board meeting usually required by a specific statute that provides the public an opportunity to provide testimony or comment concerning a specific topic or subject. See *Eudaly v. City of Colleyville*, 642 S.W.2d 75 (1982) (distinguishing between *public comment* and *public hearing*); Tex. Att’y Gen. Op. Nos. JC-169 (2000), H-188(1973), M-220 (1968).

Q: Is a community college required to allow a public comment or open forum section at regular board meetings?

A: No. As long as the requirements of the Texas Open Meetings Act (OMA) are satisfied and the right of citizens to apply to the board for redress of their grievances is not abridged, the board need not provide a public forum for every citizen wishing to express an opinion on a matter. See Tex. Gov’t Code § 551.001(5) (“open” means open to the public); Tex. Att’y Gen. Op. No. H-188 (1973) (“open to the public” does not mean that the public may choose items to be discussed or that they may discuss subjects on the agenda; it merely means that the public may attend the meetings); Tex. Const. art. I, 27 (citizens have the right to petition the government for redress of grievances). However, most boards do set aside a certain amount of time during regular meetings for public comment to allow citizens to address the board and for board members to receive information and feedback from the public.

Q: Is a community college board of trustees required to respond to complaints?

A: No. A college board is not required to negotiate or respond to complaints. However, the board must “stop, look, and listen and must consider the petition, address, or remonstrance.” *Prof’l Ass’n. of Coll. Educators v. El Paso County Cmty District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref’d n.r.e.).

¹ An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/oma-public-comment.pdf.

Q: How does the board list the “public comment” section on its meeting agenda and notice?

A: A notation such as a “Public Comment” is generally sufficient. The attorney general has stated that while public comment sessions constitute meetings for which notice must be given, the terms “public comment,” “public forum,” “open mike,” or some other generic term provide sufficient notice. However, if the board is, prior to the meeting aware, or reasonably should have been aware of specific topics to be raised, such as a local neighborhood association requesting to present a public comment, then the meeting notice should be tailored to reflect that knowledge. Tex. Att’y Gen. Op. No. JC-169 (2000).

Q: Can the board impose limitations on public comments?

A: Yes. If a board chooses to allow a public comment or open forum section, it may adopt reasonable rules governing the public comments. For example, the board may limit the number, length, and frequency of presentations as long as the limitations do not abridge a citizen’s constitutionally guaranteed rights of freedom of speech and to petition. Tex. Att’y Gen. Op. Nos. JC-169 (2000), H-188 (1973); Tex. Att’y Gen. LO-96-111 (1996).

Q: If the board does not like the viewpoint a citizen wants to share, can it prevent the citizen from speaking?

A: A public comment period during a board meeting constitutes a *limited public forum* under the First Amendment. If the board chooses to allow such an opportunity, the board may adopt reasonable rules governing the public comments. For example, boards may limit the number, frequency, and length of presentations. If the board chooses to create a *limited public forum*, it must provide alternative paths for citizens to express categories of protected speech that are excluded from the forum. A board with alternate complaint procedures may also prevent a speaker from mentioning by name an employee or student about whom the speaker is complaining. Tex. Att’y Gen. Op. Nos. JC-1699(2000), H-188(1973); Tex. Att’y Gen. LO-96-111(1996). *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010).

A board must not, however, discriminate between speakers based on the content of their speech or the message it conveys. A board must also not discriminate against speech on the basis of viewpoint. For example, if three speakers arrive to a board meeting to speak about the basketball program, the board cannot agree to hear the individuals who speak favorably of the program and not hear a speaker who criticizes the program. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010).

Q: How should a board respond to questions and comments from speakers during public comment?

A: Very carefully. The OMA allows a very limited response. The board is not authorized to discuss or act on the public's comments or complaints if the subject is not on the agenda. If a member of the public or the board inquire about a subject for which notice has not been given, the board may only:

- **Give factual information:** Make a statement of specific factual information (e.g., "The deadline for submitting bids on that proposal is March 1, 2008.")
- **Give policy reference:** Recite existing policy in response to the inquiry (e.g., "Complaints by a member of the public against a college employee should be submitted under the college's local policy GB(LOCAL).")
- **Place on future agenda:** Respond merely that the matter shall be placed on future agenda.
- **Deliberate placement on agenda:** Discuss only the limited inquiry of a proposal to place the subject on the agenda for a subsequent meeting.

Tex. Gov't Code § 551.042; Tex. Att'y Gen. Op. No. JC-169 (2000).

Q: What can a board do to limit disruptions by members of the public audience?

A: A person who, with the intent to prevent or disrupt a lawful meeting, substantially obstructs or interferes with the meeting by physical action or verbal utterance commits a criminal offense. Tex. Penal Code § 42.05; *Morehead v. State*, 807 S.W.2d 577 (Tex. Crim. App. 1991) (en banc).

A board has a right to insist that persons attending the meeting maintain order and obey the board's rules. Boards may adopt specific operating procedures that set out specific responses that the presiding board member will use when handling disruptions.

The board should take care to warn an individual who is mildly disruptive and remove only those individuals who are substantially interfering with the board's ability to conduct business.

If any person continues to disrupt a meeting after receiving a warning, the presiding board member may request the assistance of local law enforcement to escort the disruptive individual from a meeting.

TASB Community College Services strongly recommends that colleges work in advance of board meetings in consultation with local counsel to adequately plan and prepare for the use of law enforcement at board meetings.

Q: *What TASB Policies apply to public comment periods?*

A: See TASB Policy BDB(LEGAL) and (LOCAL).

Q: *Where can I get more information on public comment periods?*

A: If you have questions about these or other legal issues, community college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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