



## **Open Meetings Act**

### **Basic Principles**

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#### **1. What is the Texas Open Meetings Act?**

The Texas Open Meetings Act (“OMA”), Chapter 551 of the Texas Government Code, requires that meetings of all governmental bodies must be open to the public except for expressly authorized closed sessions. Among other requirements, the OMA generally provides that the public must be given notice of the time, place, and subject matter of meetings of governmental bodies. Tex. Gov’t Code §§ 551.002, .041.

The purpose of the OMA is to ensure that when governmental bodies hold meetings to exercise their powers, the public will have access to these meetings and have the opportunity to be informed concerning the transactions of public business. *Fielding v. Anderson*, 911 S.W.2d 858, 864 (Tex. App.—Eastland 1995, writ denied); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. Civ. App.—San Antonio 1971, no writ).

#### **2. Is the board of trustees of an independent school district subject to the OMA?**

Yes. A school district board of trustees is defined as a governmental body subject to the OMA. Therefore, the board of trustees of a public independent school district must comply with the requirements of the OMA when holding a meeting. Tex. Gov’t Code § 551.001(3)(E).

#### **3. Is the board of trustees of an open-enrollment charter school subject to the OMA?**

Yes. The attorney general has ruled that an open-enrollment charter school (OECS) is required by the Texas Education Code to comply with the OMA and, therefore, is considered to be a governmental body for the purpose of complying with the OMA. Tex. Att’y Gen. Op. No. GA-1079 (Sept. 12, 2014).

#### **4. Must a school board hold meetings to act?**

Yes. A school board must hold meetings in order to exercise its statutory powers. A common-law rule predating enactment of the OMA established that decisions entrusted to governmental bodies must be made by the body as a whole at a properly called meeting. Meetings allow each board member an opportunity to state his or her views to

other board members so that the public can see that the final decision by the board of trustees reflects a composite judgment of the body as a whole. Furthermore, the authority vested in a governmental body may be exercised only at a meeting of a quorum of its members in order to bind the body to any decision. *Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75 (Tex. 1942).

State law subsequently clarified that a member of the board may not, individually, act on behalf of the board unless authorized by the board to do so, and that the board of trustees may act only by majority vote of the members present at a meeting held in compliance with the OMA at which a quorum of the board is present and voting. Tex. Educ. Code § 11.051(a-1).

## 5. **When is a meeting subject to the OMA?**

A **meeting** of the school board is required to comply with the OMA if the meeting:

(1) is a ***deliberation***:

- (i) between a quorum of a governmental body, or between a quorum of a governmental body and another person; and
- (ii) during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action. Tex. Gov't Code § 551.001(4)(A).

or

(2) is a ***gathering***:

- (i) that is conducted by the governmental body or for which the governmental body is responsible;
- (ii) at which a quorum of members of the governmental body is present;
- (iii) that has been called by the governmental body; and
- (iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control. Tex. Gov't Code § 551.001(4)(B).

Additionally, a meeting conducted by the school district's Safety and Security Committee is subject to the OMA and notice of such a meeting must be posted in the same manner as posting notice of a board meeting. Tex. Educ. Code § 37.109(d).

**6. What is public business?**

The term “public business” is not specifically defined, although it is referenced several times in the OMA in the definition of a meeting. Black’s Law Dictionary defines the term “public” as “relating or belonging to an entire community, state, or nation; open or available for all to use, share, or enjoy.” *Black’s Law Dictionary* (9th ed. 2010). Interpreted broadly, the “public business” of a school district could include virtually any subject area in which a school district has any type of interest.

*A deliberation*, as defined by the OMA, specifically refers to a verbal or written exchange concerning an issue within the jurisdiction of the governmental body. Tex. Gov’t Code § 551.001(2).

**7. What may be considered public business of a school district?**

Public business of a school district that would be covered by the OMA would certainly include matters over which a school board has been given authority to govern. In general, the Texas Education Code authorizes the creation of independent school districts to implement the state’s public education and ensure student performance. To fulfill this obligation, a board of trustees as a body corporate is vested with full legal authority to oversee management of its school district. This includes selecting a superintendent to implement and monitor plans, procedures, programs, and systems to achieve the board’s desired results in district operations. The board’s oversight of the superintendent, together with the superintendent’s oversight of campus administrators and district- and campus-level committees, all contribute to overall operation and progress of the district. Tex. Educ. Code §§ 11.002, .011, .051.

Examples of other public business over which the board of trustees may govern include, but are not limited to:

- Acquire and hold real and personal property;
- Sue and be sued;
- Receive bequests and donations or other moneys or funds coming legally into their hands;
- Exclusively govern and oversee the management of the public schools of the district;
- Adopt rules and bylaws necessary to carry out its powers and duties; and
- Request the assistance of the attorney general on any legal matter and pay any costs associated with the assistance.

Additionally, the board of trustees are vested with other specific powers and duties that include adopting annual budgets and tax rates, and conducting elections as required by law. See Tex. Educ. Code §§ 11.151-.1511 (enumerating general and specific powers and duties of the board of trustees of a school district).

**8. Are there any times that a quorum of the school board may communicate about school business outside of a properly called meeting?**

The only method by which board members may communicate as a quorum outside of a properly called meeting, without violating the OMA, is to communicate on an online message board established by the district that meets all requirements of Texas Government Code section 551.006.

**9. What are the consequences of not complying with the OMA?**

**Voidable actions:** If a school board violates the OMA, any action taken by the school board in violation of the OMA is voidable and may be invalidated or reversed by the courts. Tex. Gov't Code § 551.141; Tex. Att'y Gen. Op. No. JM-0985 (Nov. 23, 1988).

**Legal violation:** Although a board can attempt to later ratify prior action that may not have fully complied with the OMA, it does not render an issue moot as a court may still declare that the school board violated the OMA and compel it to publicly disclose all transcripts, minutes, recordings and other evidence of closed meetings; require it to comply with the OMA in the future; or order it to pay attorney fees. See *Lower Colo. River Auth. V. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975) (finding the Authority's action to increase electric rates was effectuated only from the date of the subsequent lawful meeting); but see *City of Farmers Branch v. Ramos*, 235 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.) (finding that repealing an action resulting from an illegal deliberation and retaking it at a later date does not vindicate the rights protected by the OMA and will not moot the issue).

**Regulatory sanctions:** Additionally, the Texas attorney general has opined that the Texas Education Agency may investigate a school district board of trustees as authorized by Section 39.057 of the Texas Education Code. If the TEA investigation concludes that the board has violated their duty to comply with the OMA, TEA may take all appropriate civil action authorized by subsection 39.057(d) of the Texas Education Code. See Tex. Att'y Gen. Op. No. KP-0254 (May 24, 2019) (providing, as an example, that TEA may take regulatory action against a board found to have violated Education Code section 11.051(a-1), which requires school boards to act only by a majority vote of the members present at a meeting held in compliance with the OMA). The commissioner of education may also authorize a special accreditation investigation to be conducted for sixteen

enumerated reasons, including “as the commissioner otherwise determines necessary” and, based on the results of the investigation, take any appropriate actions under Texas Education Code chapter 39A and/or lower the school district’s accreditation status or a district’s or campus’s accountability rating. Tex. Educ. Code § 39.003(a), (d).

**10. May violations of the OMA result in criminal and civil penalties against the board or individual board members?**

Yes. Violations of the OMA may result in the following penalties:

- A board member found to knowingly call or aid in calling, closing or aiding in closing, or participating in a closed meeting that is not authorized by the OMA, commits a criminal offense punishable by a fine of \$100 to \$500, imprisonment in the county jail for one to six months, or both. A member will be subject to criminal penalties for violating this statute even if the member was not aware that the meeting was not authorized by the OMA. Tex. Gov’t Code § 551.144(a)-(b); *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App. 1998) (en banc).
- A board member commits a criminal offense punishable by a fine of \$100 to \$500, imprisonment in the county jail for one to six months, or both, if the member knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by the OMA and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum (but the members engaging in the series of communications constitute a quorum of members) and that member knew at the time of communicating that the series of communications involved or would involve a quorum and would constitute a deliberation once a quorum of members engaged in the series of communications. Tex. Gov’t Code § 551.143.
- A board member who participates in a closed meeting knowing that a certified agenda or recording of the closed meeting is not being kept commits a Class C misdemeanor, punishable by a fine not to exceed \$500. Tex. Gov’t Code § 551.145; Tex. Penal Code § 12.23.
- Any individual without lawful authority who knowingly discloses to a member of the public a certified agenda or recording of a closed meeting commits a Class B misdemeanor punishable by a fine not to exceed \$2,000, jail confinement not to exceed 180 days, or both. Tex. Gov’t Code § 551.146; Tex. Penal Code § 12.22.

**11. Who may bring an action against the school district for OMA violations?**

Any interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the OMA by board members, the district may have to pay costs of litigation and

reasonable attorney fees if it does not substantially prevail in the action. Tex. Gov't Code § 551.142(a).

The attorney general may also bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation by members of a governmental body, concerning the deliberation of emergency meetings and emergency agenda item additions. Tex. Gov't Code § 551.142(c).

**12. In disputes, must the courts construe the OMA liberally in favor of open government?**

Yes. The provisions of the OMA have been found to require literal compliance, and courts will interpret the OMA liberally in favor of open government when in dispute. *City of Farmers Branch v. Ramos*, 235 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.); *City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex. App.—San Antonio 2006, pet. denied); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 473 (Tex. App.—San Antonio 2003, pet. denied); *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299 (Tex. 1990).

**13. Which policies in our board policy manual address the OMA?**

Review the BE series in your district's policy manual.

**14. Where can I get more information about the OMA?**

The [office of the attorney general](#) is the primary source of information related to the OMA. Supplemental resources from TASB related to school board meetings are available on the [TASB Store](#) or [TASB School Law eSource](#). School district trustees and administrators may contact TASB Legal Services at 800.580.5345.

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