In this article, the terms *executive session*, *closed meeting*, and *closed session* all refer to a portion of the board’s meeting that is not open to the public, when authorized by law.

1. **Must closed session attendance be documented?**

   Yes. The certified agenda of a school board meeting must reflect each board member’s attendance or absence. Tex. Educ. Code § 11.0621.

   Although the OMA does not require a closed meeting certified agenda to record the attendance of non-board members, it is common for most districts to include an accurate record of which individuals were in attendance for each agenda item.

2. **What records must be kept concerning the closed session of a board meeting?**

   The board must either keep a certified agenda or make a recording of the proceedings of each closed meeting, except for a governmental body’s private consultation with its attorney. Tex. Gov’t Code § 551.103(a). The requirements for a certified agenda are limited. If a board keeps a certified agenda rather than a recording, the certified agenda must include the following:

   - A record of any further action taken in open session on the closed session items. Tex. Gov’t Code § 551.103(c)(2).
   - An announcement by the presiding officer at the beginning and ending of the closed meeting indicating the date and time. Tex. Gov’t Code § 551.103(c)(3).
   - Certification by the presiding officer that the certified agenda is a true and correct record of the closed session proceedings. Tex. Gov’t Code § 551.103(b).
   - As applicable, a record of the board’s acceptance or rejection of the superintendent’s recommendation for selecting district personnel. Tex. Educ. Code § 11.1513(b).
If a board chooses to make a recording rather than keep a certified agenda, the recording must include announcements by the presiding officer at the beginning and ending of the closed meeting indicating the date and time. Tex. Gov’t Code § 551.103(d).

However, if the board relied on Texas Government Code sections 418.175-.182 to deliberate in a closed meeting regarding emergency management information covered by those sections, then the board must make a tape recording of the proceedings of the closed meeting deliberating that information. Tex. Gov’t Code § 418.183(f).

3. **How detailed must the certified agenda be?**

The OMA does not address the level of detail required in a certified agenda. The attorney general has opined that the term *agenda* does not require a verbatim transcript of a meeting, but requires at least a brief summary of each deliberation, and that the certified agenda’s primary purpose is to document the fact that the governmental body did not discuss unauthorized topics in closed session. Tex. Att’y Gen. Op. No. JM-0840 (1988).

4. **May closed meeting records be released to the public?**

No. A certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order. Tex. Gov’t Code § 551.104(c); Tex. Att’y Gen. Op. No. JM-0995 (1988); Tex. Att’y Gen. ORD-330 (1982). An individual, corporation, or partnership that knowingly discloses to a member of the public a certified agenda or recording of a closed meeting may be guilty of a Class B misdemeanor and may be liable for damages to a person injured or damaged. Tex. Gov’t Code § 551.146.

5. **May current board members review closed meeting records?**

Yes. Current trustees who attended a closed meeting are permitted to review the certified agenda or recording of that meeting. Tex. Att’y Gen. Op. No. DM-0227 (1993). Current board members may also review the recording or certified agenda of a closed meeting they did not attend. Although a board may adopt reasonable procedures for review of closed meeting records, the board may not absolutely prohibit a board member from reviewing the recording or certified agenda. While a board member may review the record, this does not include the authority to obtain a copy of the recording or certified agenda. Tex. Att’y Gen. Op. No. JC-0120 (1999). A trustee, when acting in the trustee’s official capacity, is not required to submit a public information request under Chapter 552, Texas Government Code, to access information, documents and records maintained by the district. Tex. Educ. Code § 11.1512(c).
6. **May former board members review closed meeting records?**


7. **May parents of students review closed meeting records?**

Maybe. A recording of a closed meeting discussion that directly relates to a student may be considered an *education record* to which the parent must be granted access under the federal Family Educational Rights and Privacy Act (FERPA). Even though the recording constitutes a confidential record under the OMA, FERPA is a federal statute that preempts inconsistent provisions of state law. *Letter from Ellen Campbell, Family Policy Compliance Office, U.S. Department of Education, to Robert Patterson, Open Records Division, Office of the Texas Attorney General (Apr. 9, 2001)*; see, e.g., Tex. Att’y Gen. OR2001-2727 (2001) (concluding that a tape recording of the district’s executive session during which the parent’s child was discussed as part of the parent’s complaint constituted an education record under FERPA and granting the parent access to the recording); *but see Letter from Frank E. Miller, Jr., Student Privacy Protection Office, U.S. Dep’t of Education, to Dr. Howard Gillman, University of California at Irvine* (July 28, 2019) (permitting the university to withhold education records from a student based on the attorney-client privilege doctrine).

Caution: The attorney general’s informal opinion is provided as an example only, cannot be used as binding precedent, and is limited to specific facts and parties. Upon receiving a parent’s request, a district should immediately contact its attorney and consider a timely request for an opinion from the attorney general on the facts of the specific request.

8. **May a person who has presented a grievance in closed session review closed meeting records?**

Typically, no. The attorney general has issued several informal letter rulings that generally conclude that the Texas Public Information Act (PIA) does not require a school district to release a certified agenda or recording to an employee who presented a grievance, regardless of whether the agenda or recording satisfies the formal requirements of the OMA or whether a recording was made in addition to a certified agenda. *See, e.g.*, Tex. Att’y Gen. OR1999-3130 (1999), OR1999-3539 (1999), OR2000-1080 (2000), OR2000-1424 (2000), OR2000-1706 (2000), OR2001-2461 (2001). However, a court may order disclosure of a certified agenda or recording. *See, e.g.*, *Fairchild v. Liberty Indep. Sch. Dist.*, 466 F. Supp. 2d 817 (E.D. Tex. 2006) (mem.) (ordering release of an audiotape of a closed meeting grievance under a protective order.)
9. **May an attendee make a personal recording of a board meeting?**

Yes, in an open meeting. The OMA permits any person in attendance to record all or any part of an open meeting of the school board by tape recorder, video camera, or other means of aural or visual reproduction. The board may adopt reasonable rules to maintain order during any such recording, such as the location of the recording equipment and the manner in which the recording is conducted. Tex. Gov’t Code § 551.023.

The OMA does not permit a person who is authorized to attend a closed meeting to make a recording in a closed meeting if a majority of the board objects to an attendee making a recording. Beyond the official recording requirements, neither board members nor other individuals may record a closed meeting if a majority of the board objects. *Zamora v. Edgewood Indep. Sch. Dist.*, 592 S.W.2d 649 (Tex. Civ. App.—Beaumont 1980, writ ref’d n.r.e.).

10. **Does a district violate the OMA by submitting to TEA the record from a closed meeting grievance hearing?**

No. The commissioner of education requires boards to produce a transcript or recording of all grievances presented to the board that are appealed to the commissioner. Forwarding the record of a closed meeting grievance hearing to the commissioner on appeal is not a violation of the OMA. Tex. Educ. Code § 7.057(c). To protect the confidentiality of other items discussed in the closed session, a board should make a separate recording of a closed meeting grievance hearing, in addition to the official record of the entire closed session, for the purpose of providing the recording or transcript to the commissioner.

11. **How long must we retain certified agendas or certified recordings of closed meetings?**

These records must be kept for a minimum of two years, unless there is a lawsuit that concerns the meeting. If there is a lawsuit that concerns the meeting, then the agenda or recording of that meeting must be preserved while the lawsuit is pending. Tex. Gov’t Code § 551.104; Texas State Library and Archives Commission, *Local Schedule GR - Retention Schedule for Records Common to All Local Governments* (Revised 5th ed., eff. Apr. 17, 2016); 13 Tex. Admin. Code § 7.125(a)(1).

11. **What TASB policies apply?**

For more information, see TASB Policy BEC(LEGAL).
12. Where can I get more information about the Open Meetings Act?

The office of the attorney general is the primary source of information related to the Open Meetings Act. 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.