



Texas Association of School Boards

Legal Services

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Open Meetings Act

Closed Meeting Topics

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1. What Texas Open Meetings Act (OMA) exceptions permit a school board to meet in closed session instead of open session?

A school board may meet in closed session to deliberate the following topics, if the topic is listed on a meeting agenda in compliance with the OMA:

- **Attorney Consultation:** The board may conduct a private consultation with its attorney only when it seeks the attorney's advice about pending or contemplated litigation or a settlement offer, or on a matter in which the attorney's duty of confidentiality conflicts with the requirement for open meetings. Tex. Gov't Code § 551.071.
- **Real Property Deliberations:** The board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. Tex. Gov't Code § 551.072.
- **Prospective Gifts Negotiations:** The board may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the district if deliberation in an open meeting would have a detrimental effect on the board's position in negotiations with a third person. Tex. Gov't Code § 551.073.
- **Personnel Matters:** The board is not required to conduct an open meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee. However, the board may not conduct a closed meeting for these purposes if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. Tex. Gov't Code § 551.074. The closed meeting exception for personnel matters does not apply when the board discusses an independent contractor who is not a school employee, such as an engineering, architectural, or consultant firm, or when the board discusses a class or group of employees, not a particular employee. Tex. Att'y Gen. Op. No. MW-0129 (1980); Tex. Att'y Gen. Op. No. JH-0496 (1975).

- **Employee v. Employee Complaints:** The board is not required to conduct an open meeting to deliberate in a case in which a complaint or charge is brought against a district employee by another employee and the complaint or charge directly results in the need for a hearing. However, the board may not conduct a closed meeting for this purpose if the employee against whom the complaint or charge is brought makes a written request for an open hearing. Tex. Gov't Code § 551.082.
- **Student Discipline:** The board is not required to conduct an open meeting to deliberate in a case involving discipline of a public school child. However, the board may not conduct a closed meeting for this purpose if the child's parent or guardian makes a written request for an open hearing. Tex. Gov't Code § 551.082.
- **Personally Identifiable Student Information:** The board is not required to conduct an open meeting to deliberate a matter regarding a student if personally identifiable information about the student will necessarily be revealed by the deliberation. Personally identifiable information includes directory information if a parent or guardian of the student, or the student if the student has attained 18 years of age, has informed the district that the directory information should not be released without prior consent. However, the board may not conduct a closed meeting for this purpose if the student's parent or guardian or the student, having attained 18 years of age, makes a written request for an open deliberation. Tex. Gov't Code § 551.0821.
- **Medical or Psychiatric Records:** A board that administers a public insurance, health, or retirement plan is not required to conduct an open meeting to deliberate (1) the medical records or psychiatric records of an individual applicant for a benefit from the plan; or (2) a matter that includes a consideration of information in the medical or psychiatric records of an individual applicant for a benefit from the plan. Tex. Gov't Code § 551.0785.
- **Security Personnel, Devices, Audits:** The board is not required to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices, or to deliberate a security audit. Tex. Gov't Code § 551.076.
- **Information Resource Technology Security:** The board is not required to conduct an open meeting to deliberate security assessments or deployments relating to information resources technology; certain network security information; or the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices. Tex. Gov't Code § 551.089.
- **Emergency Management:** The board is not required to conduct an open meeting to deliberate information confidential under Texas Government Code sections 418.175-.182, relating to emergency management or disaster planning. However, the board must make a tape recording of the proceedings of a closed meeting held to deliberate the information. Tex. Gov't Code § 418.183(f).
- **Assessment Instruments:** The board shall conduct a closed meeting to discuss or adopt individual assessment instruments or assessment instrument items. Tex. Educ. Code § 39.030(a).

- **Economic Development Negotiations:** The board is not required to conduct an open meeting (1) to discuss or deliberate regarding commercial or financial information that the board has received from a business prospect that the board seeks to have locate, stay, or expand in or near the district and with which the board is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to such a business prospect. Tex. Gov't Code § 551.087.

2. Who may attend a closed session of a board meeting?

Generally, a school board may choose whom to allow in a closed session, including district employees whose participation is necessary to the matter under consideration in closed session. Tex. Att'y Gen. Op. Nos. JC-0375 (2001), JM-0238 (1984), JM-0006 (1983). However, members of the public are not allowed in a closed meeting unless a provision in the Texas Open Meetings Act (OMA) or another law allows them to participate. Additionally, a board may exclude from a closed session any person whose attendance is contrary to the legal basis for the closed meeting. In very rare circumstances, a board may need to exclude a trustee who has taken a legal position adverse to the district on a closed meeting subject because disclosure of the deliberation to the adversarial trustee would compromise the district's position as to that matter. Tex. Att'y Gen. Nos. JM-0238 (1984), GA-0511 (2007).

3. Does the OMA require a board to go into a closed meeting if the subject matter fits in one of the OMA exceptions?

Generally, no. With a few exceptions, the OMA does not *require* a board to go into a closed meeting on any matter. The OMA states that every regular, special, or called meeting of the board shall be open to the public, except as provided. Even if a subject falls within one of the limited statutory exceptions, those exceptions are permissive, not mandatory. Many of the exceptions to the requirement that meetings be open, which are found in Subchapter D of the OMA, state that a governmental body *may* conduct a closed meeting or that an open meeting is not required to deliberate a particular subject. *See* Tex. Gov't Code §§ 551.071-.090 (e.g., "This chapter does not require a governmental body to conduct an open meeting . . .," "A governmental body may conduct a closed meeting to . . .," "This chapter does not require [. . .] to conduct an open meeting . . .," etc.).

However, other laws may have the practical effect of requiring a closed meeting. For example, nonrenewal hearings must be held in a closed meeting, unless the teacher requests that the hearing be in an open meeting. Tex. Educ. Code § 21.207(a). A board must go into a closed meeting to discuss legally confidential student records, employee medical records, educator evaluations, or other confidential information is involved, unless the individual waives that confidentiality. Additionally, to protect attorney-client privileged information, a board should consult with its attorneys in a closed meeting.

A board should consult with its attorneys as it exercises its discretion to invoke closed meeting exceptions.

4. Does the OMA give an employee who is the subject of a complaint a right to have it heard in a closed meeting?

No. Under the OMA an employee has the right to have a complaint heard in an *open* meeting, not a *closed* meeting. The OMA permits closed meeting deliberations on complaints against an employee or public official. Tex. Gov't Code § 551.074(a). An open meeting is only required if the officer or employee who is the subject of the deliberation or hearing requests a public hearing. Tex. Gov't Code § 551.074(b). See *Hernandez v. McAllen Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 146-R1-685 (Feb. 6, 1987) (holding that the board properly determined a teacher's grievance was a complaint or charge against a principal and, therefore, the grievance could be held in closed session over teacher's objection).

Similarly, the OMA allows closed meetings to deliberate a matter involving the discipline of a student or complaints or charges brought by one employee against another. Tex. Gov't Code § 551.082. But an open meeting is required if the board receives from the parent or guardian of the student, or the employee against whom the complaint is brought, a written request for an open hearing. Tex. Gov't Code § 551.082(b).

There is no corresponding right under the OMA to have a matter heard in a *closed* meeting. There is only a right to an *open* meeting. This is consistent with the OMA's inherent preference for public access to the meetings of governmental bodies.

5. If a board hears a complaint in an open meeting at a grievant's request, can it deliberate about it in a closed meeting?

Not if the person who is the subject of the complaint objects. If a request for an open hearing is made, both the hearing and the board's deliberation must be in an open meeting. *James v. Hitchcock Indep. Sch. Dist.*, 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied); *Corpus Christi Classroom Teachers Ass'n v. Corpus Christi Indep. Sch. Dist.*, 535 S.W.2d 429 (Tex. Civ. App.—Corpus Christi 1976, no writ).

The board may move, however, from an open hearing to deliberate in a closed meeting if the person fails to object. *Bowen v. Calallen Indep. Sch. Dist.*, 603 S.W.2d 229 (Tex. Civ. App.—Corpus Christi 1980, writ ref'd n.r.e.) (teacher); *United Indep. Sch. Dist. v. Gonzalez*, 911 S.W.2d 118 (Tex. App.—San Antonio 1995), *writ denied*, 940 S.W.2d 593 (Tex. 1996) (per curiam) (student).

Also, a narrow exception to the rule exists if the board convenes in closed session in order to consult with its attorney about the grievant's pending lawsuit. See *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex. App.—Waco 1997, writ denied) (when a pending lawsuit involves unresolved charges or complaints about an officer or employee, it is permissible for the governing body to discuss those charges with its attorney as long as the discussion relates to the lawsuit). Before convening in closed session under the attorney consultation

exception, a board and its attorney should ensure that their situation falls within the scope of this narrow holding, and that the board does not discuss any matters that are not covered by the exception. *See Olympic Waste Servs. v. City of Grand Saline*, 204 S.W.3d 496 (Tex. App.—Tyler 2006, no pet.) (city council violated OMA by discussing non-legal matters while convened in executive session under exception for consultation with attorney).

6. What TASB policies apply?

See TASB Policy BEC(LEGAL) for closed meeting exceptions generally and TASB Policies DGBA(LEGAL) and (LOCAL), FNG(LEGAL) and (LOCAL), and GF(LEGAL) and (LOCAL) for grievance procedures.

7. 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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