



**Texas Association of School Boards**

Legal Services

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*Serving Texas Schools Since 1949*

## **Open Meetings Act**

### **Meeting Notice**

*Published online in [TASB School Law eSource](#)*

**Note:** The guidance in this document may be affected by executive order of the Governor. Please visit the [TASB School Law eSource Board Meetings webpage](#) for resources summarizing the suspension of certain open meeting statutes related to the Coronavirus (COVID-19) disaster.

#### **1. What should a school board meeting notice contain to comply with the Texas Open Meetings Act?**

The Texas Open Meetings Act (“OMA” or “the Act”), Chapter 551 of the Texas Government Code, requires governmental bodies, including school boards, to provide advance written notice to the public of all its meetings. The notice must include the date, hour, place, and subjects scheduled to be considered either in open or closed session of each meeting. Tex. Gov’t Code § 551.041.

#### **2. What is an agenda?**

The OMA does not specifically define the term “agenda” although it is used throughout the Act. The attorney general has defined an “agenda” to mean a memoranda of things to be done, as items of business or discussion to be brought up at a meeting, or a list, outline or plan of things to be considered or done at a meeting. Tex. Att’y Gen. Op. No. JM-0840 (1988).

#### **3. Why do some refer to the public posting as an “agenda” while some call it a “notice”?**

It is not uncommon for the terms “agenda” and “notice” to be used interchangeably because of the common practice of posting an agenda that includes or duplicates the contents of the notice as the notice of a meeting or that is added as an appendix to the notice. Tex. Gov’t Code § 551.041; Office of the Tex. Att’y Gen., [2020 Open Meetings Handbook](#) 3 (2020). While some school districts are only required to post a meeting notice, school districts containing all or part of a city with a population of at least 48,000 must specifically also post the agenda for a meeting on its Internet website. Tex. Gov’t Code § 551.056(c)(3).

**4. When and where must a board post notice in advance of an upcoming meeting?**

The OMA requires that notice of a school board meeting be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting. Tex. Gov't Code § 551.043(a).

At a minimum, a school district must post meeting notices:

- On a bulletin board at a place convenient to the public in the central administration office of the district; and
- On the school district's website, if the district has a website.

Tex. Gov't Code §§ 551.051, .056(a), (b)(3).

**5. Due to technical problems beyond our control, the Internet posting was disrupted. Is our meeting notice invalid?**

No. If the technical problem was beyond the school district's control, the validity of a posted notice or agenda on the Internet website will not be affected so long as the school district made a good faith attempt to comply with the posting requirements. Tex. Gov't Code § 551.056(d). *See, e.g., Terrell v. Pampa Indep. Sch. Dist.*, 572 S.W.3d 294 (Tex. App.—Amarillo, Jan. 9, 2019) (holding that a third-party vendor's failure to transfer an old hyperlink to district's new website constituted a technical problem beyond the district's control, and that the secretary's use of known process to create and post meeting notices, even though the posting failed, was a good faith attempt to post its required internet notice).

**6. Must we publish meeting notices in the town newspaper?**

No. The OMA does not require newspaper publication of general meeting notices; however, other laws besides the OMA may require notices of certain meetings to be published in a newspaper. *See, e.g.,* Tex. Educ. Code §§ 44.004 (notice of public hearing on adopting the budget and proposed tax rate), 11.052 (notice of public hearing on ordering single-member district trustee elections); 11.1541 (notice of public hearing on donation of surplus property).

**7. Must the notice or agenda specify whether a topic will be discussed in open session or closed session?**

No. The OMA does not require that a meeting notice or agenda indicate which topics will be discussed in open session and which will be discussed in closed session. If, however, the notices or agendas posted for a governmental body's meetings consistently distinguish between subjects for public deliberation and subjects for closed

session deliberation, an abrupt departure from this practice may raise a question as to adequacy of the notice or agenda. *Rogers v. State Bd. of Optometry*, 619 S.W.2d 603 (Tex. Civ. App.—Eastland 1981, no writ); Tex. Att’y Gen. Op. No. JC-0057 (1999).

**8. Must the meeting notice expressly indicate that a board member will participate in the meeting via videoconference or teleconference?**

**Videoconference Meeting:** The OMA is silent on whether a meeting notice must indicate that the meeting will be held by videoconference; however, the OMA specifically requires that the notice of a meeting to be held by videoconference call must specify as the meeting location the location where a quorum of the school board will be physically present and specify the intent to have a quorum present at that location. If a school district extends into three or more counties, the meeting notice must specify as the meeting location the location where the board member presiding over the meeting will be physically present, and the notice must specify the intent to have the presiding member present at that location. Tex. Gov’t Code § 551.127(e).

In a public training by the attorney general’s office, a representative informally opined that if a meeting is conducted virtually, then the location for the meeting will be the virtual address. Therefore, best practice is for the meeting notice to state that the meeting will be conducted by videoconference call and then provide the videoconference link or website location in order to satisfy the “location” requirement of a meeting notice.

**Teleconference Meeting:** The OMA is also silent on whether a meeting notice must indicate that the meeting will be held by telephone conference; however, an emergency telephone meeting called pursuant to Texas Government Code section 551.125 is also subject to the notice requirements applicable to other open meetings and must specify as the location of the meeting the location where board meetings are usually held. Tex. Gov’t Code § 551.125(c), (d).

**9. Must we provide special notice to news media?**

Yes, if the news media has requested special notice and has agreed to reimburse the district for the cost of providing the special notice. The school must provide special notice by telephone, facsimile transmission, or electronic mail. Tex. Gov’t Code § 551.052.

For emergency meetings, the presiding officer or the board member who calls an emergency meeting of the school board or adds an emergency item to the agenda of a meeting of the school board must also provide special notice of any emergency meeting or emergency item to the media. Notice must be provided by telephone, facsimile transmission, or electronic mail at least one hour before the meeting is convened. Tex. Gov’t Code § 551.047.

**10. Is a meeting notice required for a “workshop”?**

Yes, advance notice to the public is required whenever a board’s deliberation or gathering meets the definition of a *meeting* under the OMA, regardless of the term used to describe an event or activity.

In the public education sector, the word *workshop* is often associated with the practice of dedicating a single board meeting or a portion of a meeting to a complex issue or topic, such as budgets, staffing, bonds, and other specialized subject matters. For example, many boards hold “budget workshops” or “budget workshop sessions.” Many governing bodies also use similar sounding and functional terms like *work session*, or sometimes *working session*, to describe meetings where trustees do not take formal action but conduct other board activities such as previewing future agenda items or discussing previously proposed business items. See, e.g., *City of Beaumont v. Starvin Marvin’s Bar & Grill, L.L.C.*, No. 09-11-00229-CV, 2011 WL 6748506 (Tex. Civ. App.—Beaumont 2011, pet. denied) (mem. op) (referring to the city council’s regular meeting agenda that included a work session to review and discuss proposed amendments to ordinances). Some use “workshop” synonymously with “work session,” perpetuating further confusion.

In any uncertain circumstance, a board would be wise to err on the side of complying with all requirements of the OMA. For more information about the Open Meetings Act, see TASB Legal Services’ [Open Meetings Act: Basic Principles](#).

**11. Must we provide special notice when conducting continuing education training for trustees?**

It depends on whether the training takes place locally at a school board meeting or at a regional, state, or national event.

Continuing education may not take place during a school board meeting unless that meeting is called expressly for the delivery of board member continuing education; however, continuing education may take place prior to or after a legally called board meeting in accordance with the provisions of the Texas Government Code section 551.001(4). 19 Tex. Admin. Code § 61.1(c). Continuing education refers to the orientation and update sessions, an annual team-building session with the local board and the superintendent, specified hours of continuing education based on identified needs, and training on evaluating student academic performance. 19 Tex. Admin. Code § 61.1(a), (b).

Continuing education training that takes place at a regional, state, or national event is excepted from the OMA’s definition of a *meeting* only if there is no formal action and no discussion of school business, or discussion of school business is merely incidental. Tex. Gov’t Code § 551.001(4).

For more detailed discussion on board member training, see TASB Legal Services' [Texas School Board Member Continuing Education](#).

**12. How detailed must an open meeting's notice and agenda be?**

Whether a particular agenda satisfies the OMA is a question of fact and law that can only be addressed by the courts. Generally, meeting notices should be specific enough to notify the public about the subjects that are scheduled to be considered at the meeting. Tex. Att'y Gen. Op. No. H-0662 (1975).

School districts uncertain about the specificity of notice required for a particular matter should consult their school attorneys.

**13. What are some examples of sufficient and insufficient notices?**

Some guidance from the courts or attorney general on required specificity of open meeting notices and agendas includes the following:

- Notices should apprise the general public in general terms of the subjects to be considered, but generalized terms like "old business," "new business," "personnel," or "litigation matters" are not sufficiently detailed. Tex. Att'y Gen. Op. No. H-0662 (1975).
- Notices should include more description of a particular subject if it is of special interest to the community. *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551 (Tex. App.—San Antonio 1986, writ dismissed).
- Notices should alert a reader to the fact that some action would be considered. *Lower Colorado River Authority v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).
- The term "personnel" or phrase "employment of personnel" was not sufficient notice for appointment of a new superintendent, termination of a police chief, or hiring of a principal, but would be sufficient for the hiring of school librarian, part-time counselor, band director, or school teacher. *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986); *Mayes v. City of De Leon*, 922 S.W.2d 200 (Tex. App.—Eastland 1996, writ denied); *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).
- The phrase "discussion of personnel" and "proposed nonrenewal of teaching contract" was sufficient notice regarding a band director. *Stockdale v. Meno*, 867 S.W.2d 123 (Tex. App.—Austin 1993, writ denied).
- The term "litigation" is not sufficient notice of a major desegregation suit that had occupied the school district for a number of years. *Cox Enters. Inc. v. Bd. of Trs.*, 706 S.W.2d 956 (Tex. 1986).

- The term “discussion” is not sufficient notice to indicate board action is planned or scheduled, especially if past practice or prior history of stating “discussion/action” in agenda when action is intended. *Tex. Att’y Gen. Op. No. JC-0057* (1999).
- Notices are not expected to serve as legal notice or service of process for individuals. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).
- Notices do not have to state all consequences that might result from a proposed action. *Tex. Tpk. Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977).
- Notices do not have specify whether or not settlement of a lawsuit would be considered or to disclose “particulars of litigations discussions” or litigation strategies. *Baker v. City of Farmers Branch*, No. 05-13-01174-CV, 2014 WL 3513367 (Tex. App.—Dallas July 15, 2014, no pet.) (mem. op.); *Lone Star Greyhound Park, Inc. v. Tex. Racing Comm’n*, 863 S.W.2d 742 (Tex. App.—Austin 1993, writ denied).
- An item posted as “Presentation by [name of public official]” under “Proclamations & Presentations,” a section traditionally reserved for ceremonial activities, was too vague to give the public notice when the presentation contained comments by the public official related to proposed actions on public business. *Hays County Water Planning P’ship v. Hays County*, 41 S.W.3d 174 (Tex. App.—Austin 2001, pet. denied).

**14. Must we post whether a board member has met individual training requirements?**

Yes. If a trustee has not met his or her training requirements as of the anniversary of the date of the trustee’s election or appointment, the minutes from the last regularly scheduled board meeting held before an election of trustees reflecting this training deficiency must be posted on the district’s internet website within 10 business days of the meeting and maintained online until the trustee meets the requirements. *Tex. Educ. Code § 11.159(b)*. For more information about board member training requirements, see TASB Legal Services’ [Texas School Board Member Continuing Education](#).

**15. Are there any exceptions to the 72-hour posting rule?**

Only for emergencies, as narrowly defined by the Act. Under the OMA, an emergency or an urgent public necessity exists only if immediate action is required of the school board because of (1) an imminent threat to public health and safety, including an imminent threat caused by a reasonably unforeseeable situation; or (2) a reasonably unforeseeable situation, including fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. *Tex. Gov’t Code § 551.045(b), (c)*.

In cases of emergency, the board may meet after posting notice of the date, place and subject of the meeting for not less than one hour prior to the meeting; however, not everything can be considered an emergency, and the board must clearly identify the emergency or urgent public necessity in the notice or supplemental notice.

A governmental body may not deliberate or take action on a matter at an emergency meeting that is not a matter directly related to responding to the emergency or urgent public necessity identified in the notice or supplemental notice of the meeting or a matter for which an agenda item was already listed on a meeting notice posted prior to the posting of a supplemental notice. Tex. Gov't Code § 551.045(a-1).

**16. Isn't everything an emergency when there are deadlines?**

Not exactly. The courts have generally interpreted the term "emergency" to refer to an unforeseen combination of circumstances that calls for immediate action, a sudden or unexpected occasion for action, or a condition arising suddenly and unexpectedly, not caused by any neglect or omission of the person in question, which calls for immediate action. The mere necessity for quick action or desire for immediate decisions does not constitute an emergency, nor are emergencies created by virtue of failing to comply with the notice provisions that would have been applicable in the absence of an emergency. Therefore, the sudden need to act on the purchase of land or the hiring of a lawyer for a lawsuit have not been found to be emergencies as intended by the Act to allow for less than 72-hours of advance notice of a meeting. *Markowski v. City of Martin*, 940 S.W.2d 720 (Tex. App.—Waco 1997, writ denied); *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551 (Tex. App.—San Antonio 1986, writ dismissed w.o.j.).

**17. Is a catastrophe the same as an emergency?**

No, although a catastrophe may create an emergency that necessitates an emergency one-hour posting for the board to meet sooner.

A *catastrophe* is defined as a condition or occurrence that interferes physically with the ability of the school board to conduct a meeting, including: fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence. Tex. Gov't Code § 551.0411(c).

**18. If the board could not convene for a properly posted meeting due to a catastrophe, must the board cancel and repost?**

Not necessarily. If a catastrophe prevents the school board from convening an open meeting that was otherwise properly posted, the board may convene the meeting in a convenient location within 72 hours after the original properly posted date, hour, and place if the action is in good faith and not to circumvent the OMA. Tex. Gov't Code § 551.0411(b).

As noted above, if the board does not meet within 72 hours of the original posting, a new notice must be posted for a new meeting. Or, if the board needs to meet sooner due to an emergency as defined by the Act, a new notice must be posted at least one hour before the emergency meeting specifying the reason(s) for the emergency meeting.

**19. If a meeting has continued too late into the evening, must the board reschedule and repost the meeting?**

No. If the school board recesses a properly posted meeting to the following regular business day, the board does not need to post a new notice of the continued meeting if the continuation is in good faith and not to circumvent the OMA. If the continued meeting is not finished on that following day and is continued to another day, however, then the board must give written notice of this continuation as required by the OMA. Tex. Gov't Code § 551.0411(a).

**20. Must the board re-post a notice or agenda due to typographical errors?**

It will depend on the facts. Some typographical errors result in significant miscommunication; for example, George P. Bush is certainly not George W. Bush, or George H. Bush. Other typos, such as misspelling "discussion" as "discusion" may not be harmful—although embarrassing. Still other clerical errors will cause natural confusion, such as providing the wrong day of the week but the correct calendar date, or vice versa. Districts are encouraged to err on the side of caution by re-posting corrected notices and agendas in a timely manner as required by the Act. The Act requires literal compliance and the notice requirements of the Act are strictly enforced. *See Acker v. Tex. Water Comm'n*, 790 S.W.2d 299 (Tex. 1990) (finding that exact and literal compliance with the terms of the Act is required).

Districts facing challenges in posting a corrected notice should consult their school attorneys.



**21. Once an agenda is posted, may the board add or remove items prior to the 72-hour window?**

Probably. The Act does not restrict notices or agendas to one per meeting so long as the date, hour, place, and subject is provided no later than 72 hours prior to the meeting. As a practical matter, districts may wish to consider using obvious markings to distinguish the added or cancelled items and include additional time stamps to ensure transparent communication with the public.

**22. If an unposted issue arises during a meeting, may the board president ask the board to vote to approve adding the additional item to the meeting?**

No, a board may not deliberate or make any decision about a subject that was not properly posted on the agenda as required by the OMA. The Act requires strict and literal compliance.

In response to an unposted issue raised at an open meeting, a school board may:

- (1) Make a statement of specific factual information given in response to the inquiry;
- (2) Recite existing board policy in response to the inquiry; or
- (3) Propose or decide that the subject be placed on a subsequent meeting agenda.

Tex. Gov't Code § 551.042.

**23. May a meeting begin earlier or later without re-posting?**

Although it is not necessarily a violation of the Act to begin a meeting a little later than the posted start time, districts should bear in mind that the OMA requires strict and literal compliance. Deviations from notice and agenda postings present fact issues subject to legal challenges. Every effort should be made to strictly adhere to meeting notices. Districts finding themselves caught in unexpected delays should promptly communicate to the public in attendance the reasons for the delay and seek to remedy the situation as soon as possible. Where delays appear to be unreasonable or cannot be remedied promptly, the meeting should be cancelled and rescheduled in accordance with the Act.

TASB Legal Services does not recommend that districts begin a meeting any earlier than the time provided in a posted notice.

**24. How should the board cancel a meeting?**

The OMA does not require meetings to be held once notice is provided, or outline procedures for cancellation of meetings. It would not be unreasonable to communicate meeting cancellations using the same methods for the original meeting notices.

**25. If the board wrote on the bulletin board notice “CANCELLED” but forgot to notate the cancellation on the Internet notice, may the meeting proceed?**

No. After any indication that a meeting is cancelled, proper notice must be re-posted for 72 hours before a meeting may be held. *See, e.g., City of Donna v. Ramirez*, No. 13-16-00619-CV, 2017 WL 5184533 (Tex. App.—Corpus Christi Nov. 9, 2017, pet. filed) (finding the city violated the OMA by holding a meeting after the word “Cancelled” was handwritten and prominently depicted on the corresponding meeting notice posted inside city hall even though no cancellation was indicated on notices outside city hall or on the Internet).

**26. Audience attendance at a meeting was greater than expected and exceeded room capacity. May the board move the location of the meeting without re-posting a corrected notice?**

It depends. The Act requires strict compliance. Arguably, relocating a meeting to a larger room that is still accessible and at the same location as originally posted, along with proper personnel or signage to redirect meeting attendees, may comply with the Act. Nonetheless, school districts should consult their attorneys prior to making any changes to an already posted meeting time, date, or location.

**27. What are the consequences of improperly posting a meeting notice or agenda?**

If a school board violates the OMA, any action taken by the school board in violation of the Act is voidable. If a meeting is improperly posted or an unposted subject matter discussed, the school board’s deliberations or actions from that meeting may be challenged and reversed. Subsequent ratification of action taken in violation of the OMA may not render an issue moot as a court could still declare that the school board violated the OMA. A court may require a governmental body found in violation of the OMA to:

- Publicly disclose all transcripts, minutes, recordings and other evidence of closed meetings;
- Comply with the OMA in the future under a court order; or
- Pay attorney fees.

Tex. Gov’t Code § 551.141; *City of Farmers Branch v. Ramos*, 235 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.).

**28. What TASB policies apply to open meetings?**

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

**29. 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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