



Texas Association of School Boards
Leadership Team Services

Serving on the Board

An insider's guide to board service for school board candidates

Questions Often Asked by New School Trustees

800-580-8272

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Questions Often Asked by New School Trustees

Governance

What is the role of the State Board of Education and the Texas Education Agency?

Texas' public education system is governed by federal law, state law, and state regulations. Laws are adopted by the Texas Legislature; rules and regulations are developed and implemented by the State Board of Education, Texas Education Agency, and the commissioner of education. The Texas Education Agency, headed by the commissioner of education, is responsible for guiding and monitoring public education in Texas.

How do you know what is board business and what is staff work?

Law and board policy define the respective powers and duties of the board and the superintendent. Generally, the board delegates specific authority to the superintendent to perform certain responsibilities but remains legally and ethically accountable for the performance of those responsibilities. To ensure effective governance, it is important for school boards to agree on their roles and responsibilities and on those of the superintendent. This agreement is essential if officials are to avoid role confusion and conflict.

Generally speaking, the board's job is policymaking, and the job of the superintendent and his or her staff is policy implementation and administration. Board policy usually speaks to desired outcomes or standards and permits the superintendent or his or her designees to define the means for achieving them. Policy tends to be absolute, while administrative procedures are subject to change as circumstances warrant.

With site-based decision making in place, what role does the board play in district planning?

Site-based decision making does not limit or affect a local school board's power to govern the district. School boards must have adopted a policy that governs site-based decision making. A major responsibility of the district and campus committees is to establish student performance objectives collaboratively with professional staff, parents, and other community residents. The board must approve these objectives. The district and campus committees then work collaboratively to develop plans that are implemented within parameters established by board policy. The board reviews the plans to ensure they are consistent with districtwide education goals and objectives adopted by the board.

What role does the board play in developing the district's budget?

Under state law, the superintendent develops the annual district budget. However, the board has several critical functions to perform in the budget development process. The board helps develop the budget in the following ways:

- Identifying district priorities through adopted goals and discussing them with the superintendent
- Reviewing the budget in light of those priorities
- Making the necessary revisions to advance those priorities
- After conducting a public hearing to receive comments, adopting the budget
- Setting the necessary tax rate to fund the district's local share of the adopted budget

What is the board's role in evaluating school personnel?

The selection and evaluation of the superintendent is one of the most critical roles the school board performs. Each year, the board must conduct a formal evaluation of the superintendent and make compensation and contract decisions thereafter. The board, in delegating the responsibilities to the superintendent, holds him or her accountable for providing an annual evaluation of all other district employees by their supervisors as required by law. The board, however, does not participate in these evaluations.

How can a new board member effect change?

The board governs the district through majority action. An individual board member can do much to facilitate change through consensus building. Each board member should actively participate in establishing education goals for the district. These goals should consider the input and/or participation of the district's professional staff and community members through planning activities such as goal setting or strategic planning. The effective board member works to ensure that the board remains focused on policy making and supports consensus-building efforts.

Is it appropriate for board members to visit schools?

School visitation by the public and members of the school board should be guided by local district policy. Generally, trustees have the same right to visit schools as any member of the public. Most districts require any visitor to a school to obtain the permission of the superintendent or principal. This requirement minimizes disruption, helps protect students and staff from trespassers, and strengthens the legal position of campus administrators to summon police to remove intruders from the school environment.

Board members should bear in mind that campus visits should not be for the purpose of conducting an independent investigation. A board member oversteps his or her authority when he or she promises board or administrative action on any concern brought to his or her attention while visiting any campus. This question is addressed in the TASB ISD Level One course *Teamwork Basics*.

Personal Life

How much time is required to serve as a member of the school board?

School board service includes board meetings and community involvement. Most boards meet once or twice each month with a typical meeting lasting between three and four hours; emergencies may prompt additional meetings. Board members must prepare and study for each meeting. As members of their community, board members will, of course, continue their involvement in community affairs. Additionally, as a public official within a community, a board member will be expected to attend community forums and events as well as school programs and activities.

Can service on the board affect a board member's family or business?

Yes. School boards often deal with difficult and controversial issues that range from those affecting the entire district to hard choices about an individual student or employee. When faced with these decisions, board members should recognize that the best choices require study, sensitivity, deliberation, courage, and the ability to accept responsibility (and shoulder criticism) for necessary, but unpopular choices.

The board member's family and business will inevitably be affected by a board member's investment of time and talent in the schools, and in difficult times, by the criticism that his or her commitment to public service generates. Experienced board members often find that the tremendous personal satisfaction of the job clearly outweighs the negatives.

If I'm elected, can my relatives continue to work for the district?

State law prohibiting nepotism in public employment allows a relative within the prohibited degree (see Policy DBE) who has been continuously employed by the district for at least six months before the trustee is elected to remain in employment. However, a relative subject to the nepotism prohibition cannot be newly employed by the district while the trustee is on the board. There is an exception allowing relatives to serve as substitute teachers, and a limited exception regarding bus drivers for districts located in low-population counties (less than 35,000).

Can individual members of the board be sued because of their role as a member of the board?

Yes. However, those suits are generally defended by asserting that the district and trustee are immune from liability under the doctrine of sovereign immunity. If a trustee is sued as an individual for an action taken as a trustee, he or she can usually assert qualified immunity from suit for actions taken in good faith while fulfilling his or her duties and responsibilities. Districts usually purchase legal liability insurance to cover the cost of defending these suits.

Campaigning

Is it appropriate for current members of the board or the superintendent to write an endorsement for a school board candidate?

An endorsement should not be made or solicited without carefully considering the potential for negative effects on the board or the board-superintendent relationship. A board member's endorsement of a candidate could create tension and division if the person endorsed doesn't win. Because superintendents are employed by and are accountable to the board, they generally refrain from endorsing any candidate.

Candidates should request a copy of policy GKDA (LEGAL) and any local policy regarding campaign literature distribution.

Training Requirements

What training will I need to receive as a board member?

State law requires that new board members participate in an initial local orientation of unspecified length and approximately 16 additional hours of continuing education. These 16 hours include a three-hour orientation to the Texas Education Code, a team-building session (usually three hours) with the board and superintendent team, plus 10 hours in other identified needs during the first year of service. In addition, within 90 days of taking office, a new trustee must receive one hour of training on the Texas open Meetings Act from a source approved by the Texas Attorney General. Thereafter, a trustee must annually complete a minimum of about eight hours of training, generally three of those with the entire team in the required team-building session. In legislative years, they'll also need to attend an update on the education code. These are starting points; however, the complexity of school governance will prompt individual trustees to participate in numerous workshops, seminars, and conventions to strengthen their understanding of current issues facing education.

Questions Often Asked about the Texas Open Meetings Act and other Legal Issues

Thanks go to TASB Legal Services for the following legal material related to board service.

Voting

What is a quorum?

A quorum of a school board is a majority of the number of members set by law—generally four members of a seven-member school board or five members of a nine-member board. *Tex. Gov't Code § 551.001(6)*. In other words, a quorum is a majority of the authorized membership, not the actual membership at any given time. *Op. Tex. Att'y Gen. No. JM-1127 (1989)*.

How many votes does my board need to take action?

In most cases, the vote necessary to pass a motion is a majority of those present and voting, excluding abstentions. *Parker v. Dallas Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 051-R2-1098 (1998)*; *Reyes v. Progreso Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 121-R1-698 (1998)*; *Benton v. Wilmer-Hutchins Indep. Sch. Dist., Tex. Comm'r. of Educ. Decision. No. 149-R1a-883 (1984)*. An effective vote is a majority of the votes actually cast, not a majority of the quorum present.

How does a vacancy on our board affect the quorum?

Vacancies on the board do not reduce the number required for a quorum in order for the board to take valid action.

How do abstentions affect the majority vote?

Abstentions do not count as votes. *Op. Tex. Att'y Gen. No. O-994 (1939)*.

How do open and closed meetings figure into voting?

All voting must take place in an open meeting. Neither secret ballots nor straw polls—or voting of any kind—may be taken in closed meetings. *Op. Tex. Att'y. Gen. No. H-1163 (1978)*.

If I cannot attend an important meeting, may I vote by proxy?

No. Texas Open Meetings Act (TOMA) contemplates that board members will be present at meetings in order to participate. The attorney general has explained that the purpose of requiring the board to act as a body at a meeting is "to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the board, in order that the decision . . . may be the composite judgment of the body as a whole." *Tex. Att'y Gen. LO-94-028 at 2 (1994) (quoting Webster v. Texas & Pac. Motor Transp. Co., 166 S.W.2d 75, 77 (Tex. 1942))*. Board members, therefore, must be present at board meetings to vote.

Recesses

Does a board have to repost a meeting notice if it recesses a meeting?

No, but only if it reconvenes the following day. If the board reconvenes later than that, it must post a new notice of that meeting. *Op. Tex. Att'y Gen. No. DM-482 (1998)*. Also, a governmental body may continue a closed meeting until the following day if on the second day:

1. The governmental body first convenes in open meeting.
2. The presiding officer announces the continuation and the section of the Act that authorizes the meeting before re-entering a closed meeting.
3. If, however, the board needs to recess a closed meeting until a day other than the day immediately following, the board must post 72 hours' notice. *Op. Tex. Att'y Gen. No. JC-0285 (2000)*.

Public Comments

Is a district required to allow public comment or an open forum section at regular board meetings?

No. A district is not required to open a public forum in a particular way for citizens to comment during its regular board meetings. However, a district must provide parents, students, employees, and the general community an opportunity to have their complaints and concerns heard by those in positions of authority. *Tex. Const. art. I, § 27*. Most boards accomplish this by having one or more grievance policies that allow concerned citizens to bring complaints to the district's attention. In addition, most boards provide regular opportunities at their meetings for citizens to address the board and for board members to receive information and feedback from the public. Some boards schedule special meetings just to receive public comment on particular issues.

How may a board restrict public comments at its meetings?

A board may place reasonable restraints on the number, length, and frequency of presentations, so long as it does not unfairly discriminate among views of the people seeking expression. *Tex. Gov't Code § 551.001(5)*; *Op. Tex. Att'y Gen. No. H-188 (1973)*. See *TASB Regulations Resource Manual BED (Exhibit) and TASB Policy BED (LEGAL) (LOCAL)*.

Is there a criminal sanction for disrupting a board meeting?

Yes. It is a criminal offense for a person, with intent to prevent or disrupt a lawful meeting, to substantially obstruct or interfere with the meeting by physical action or verbal utterance. *Tex. Penal Code § 42.05*; *Morehead v. State, 807 S.W. 2d 577 (Tex. Cr. App. 1991)*.

How do we respond to questions and comments from the speakers during public comment?

Very carefully. TOMA allows a very limited response. *Tex. Gov't Code § 551.042*. 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 inquires about a subject for which notice has not been given, the board may only:

- Give factual information or make a statement of specific factual information, e.g., "The deadline for submitting bids on that proposal is March 1, 2002."
- Give policy reference or recite existing policy in response to the inquiry, e.g., "Complaints by a parent against a district employee should be submitted under the district's local policy FNG (LOCAL)."
- Place on a future agenda or deliberate about or decide whether to place the subject on the agenda for a later meeting.

If, however, the subject of the public comment is already on the agenda for that meeting, the board may be authorized to respond substantively to the comments.

What options does a board have when a speaker makes personal attacks or slanderous remarks about a specific school district employee during the public comment section of the meeting?

Districts and their attorneys should plan ahead for ways to handle these situations. Several factors are important.

- First Amendment: Restricting the subject matter of speech in an open forum (for example treating speakers differently based on their viewpoints) may be seen as an unreasonable restriction on public speech protected by the First Amendment. Be sure to uniformly apply any restrictions on time, place, and manner of public speech.
- Local Policy: By adopting its local grievance policies, the board has already adopted procedures to hear and address specific complaints about specific individuals. See, e.g., *TASB Policy DGBA (LEGAL) (LOCAL) (employee complaints/grievances)*; *DFBB (LOCAL) (EXHIBIT) (term contract nonrenewals)*, *BJCF (LOCAL) (EXHIBIT) (superintendent nonrenewals)*; *GF (LOCAL) (public complaints about an employee)*.
- Closed Meeting: Although most boards have adopted local policies that call for certain grievance matters to be heard in a closed meeting, there is no TOMA requirement for a board to move into a closed meeting to hear public comment complaints about an employee. *Marva Dixon v. Grand Prairie Indep. Sch. Dist., Tex. Comm'r of Educ. Decision No. 064-R3-1299 (Nov. 6, 2001)*.
- Agenda: Is the subject matter of the citizen's comment already on the agenda for that meeting?

How do we list the public comment section on our meeting agenda and notice?

A notation such as Public Comment is generally sufficient. But if the board or administration is aware or reasonably should have been aware of specific topics to be raised by the public, the notice must list those topics specifically. *Op. Tex. Att'y Gen. No. JC-0169 (2000)*.

Closed Meeting Subjects

Does TOMA say we have to go into closed meeting if the subject matter fits in one of the TOMA exceptions?

No. TOMA does not *require* a board to go into a closed meeting on any matter. Even if a subject falls within one of the limited statutory exceptions, those exceptions are permissive, not mandatory, such as "This chapter does not require a governmental body to conduct an open meeting..." and "A governmental body may conduct a closed meeting to..." *Tex. Gov't Code §§ 551.071–086*. A board should consult with its attorney as it exercises discretion to invoke or not invoke its option to deliberate in closed a meeting on these subjects.

Does TOMA give the person who is the subject of a complaint a right to have it heard in a closed meeting?

No. Under TOMA he or she has the right to have it heard in an *open* meeting, not a *closed* meeting. TOMA permits closed meeting deliberations on complaints against an employee or public official. *Tex. Gov't Code § 551.074(a)*. But an open meeting is 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 (1987)*.

Similarly, TOMA 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*. An open meeting is required if the board receives a written request for an open hearing from the parent or guardian of the student, or the employee against whom the complaint is brought. *Tex. Gov't Code § 551.082(b)*.

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

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

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

The board may move 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, no writ) (student).

A narrow exception to this rule does exist. A governmental body may be able to go into a closed meeting, over the objection of the subject employee who requested an open meeting, in order to consult with its attorney about the pending lawsuit filed by the employee. *Markowski v. City of Marlin*, 940 S.W.2d 720, 725 (Tex. App.—Waco 1997, writ denied). Before invoking this exception, a board and its attorney should first ensure that their facts fall within the scope of this narrow holding.

Attendance at Closed Meetings

Who decides who can attend closed meetings?

The board has discretion to invite only necessary parties into the board's closed meetings. These may include appropriate school district staff or other agents of the district, such as the board's attorney. *Op. Tex. Att'y Gen. No. GA-511 (2007)*. If a closed meeting is convened under the attorney consultation exception, however, the board may not admit an adversary or individual whose presence would prevent privileged communication between the board and its attorney. *Op. Tex. Att'y Gen. No. JM-0238 (1984)*.

Our district's superintendent says his contract gives him a right to attend closed meetings over the board's objection. Is that true?

A contractual provision imposing a *duty* for a superintendent to attend all closed meetings, except those pertaining to the superintendent's contract or salary and benefits, does not violate TOMA. On the other hand, a contractual provision that confers on him or her a *right*, rather than an obligation, to attend all closed meetings, even over the board's objection, may not be permissible under TOMA. *Op. Tex. Att'y Gen. No. JC-0375 (2001)*.

Closed Meeting Records

May our board release a copy of closed meeting records to a member of the public?

No. An individual, corporation, or partnership that knowingly discloses to a member of the public a certified agenda or tape of a closed meeting may be guilty of a Class B misdemeanor. *Tex. Gov't Code § 551.146*. A certified agenda or tape recording of a closed meeting is available for public inspection and copying only under a court order. *Tex. Gov't Code § 551.104(c)*; *Op. Tex. Att'y Gen. No. JM-995 (1988)*; *Tex. Att'y Gen. ORD-330 (1982)*.

Does a district violate TOMA by submitting the appellate record from a closed meeting grievance hearing?

No. The commissioner of education requires boards to produce a transcript or tape recording of all Level III grievances that are appealed to the commissioner. To protect the confidentiality of other closed-meeting business, boards should make separate tape recordings of each Level III grievance. Legislation in 2001 clarifies that forwarding the record of a closed meeting Level III grievance hearing to the commissioner on appeal is not a violation of TOMA. *Tex. Educ. Code § 7.057(c)*.

May current board members review closed meeting records?

Yes. Current trustees who attended a closed meeting may review the certified agenda or tape recording of that meeting. *Op. Tex. Att'y Gen. No. DM-227 (1993)*. Current board members may also review the tape recording or certified agenda of a closed meeting they did *not* attend. *Op. Tex. Att'y Gen. No. JC-0120 (1999)*. 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 tape or certified agenda. *Id.* While a board member may review the record, she is not authorized to obtain a copy of the tape or certified agenda. *Id.*

May former board members review closed meeting records?

No. Former board members may not review the tape recording or certified agenda after they have left office. *Op. Tex. Att'y Gen. No. JC-0120 (1999)*; *Tex. Att'y Gen. LO-98-033 (1998)*.

May parents of students review closed meeting records?

Maybe. The tape recording of a closed-meeting discussion of a student may be an educational record to which the parent must be granted access under the Family Educational Rights and Privacy Act (FERPA). Even though the tape constitutes a confidential record under TOMA, FERPA is a federal statute that preempts inconsistent provisions of a state law such as TOMA. *Tex. Att'y Gen. OR2001-2727 (June 26, 2001)*; *Letter from Ellen Campbell, Family Compliance Office, U.S. Department of Education, to Robert Patterson, Open Records Division, Office of the Texas Attorney General (April 9, 2001)*.

Caution: This informal opinion cannot be used as binding precedent and is limited to the 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.

May grievants review closed meeting records?

No. The attorney general has issued several informal letter rulings, each limited to its parties and facts, that generally conclude that the tape may not be released to the employee who presented the grievance, regardless of whether the tape satisfies the formal requirements of TOMA or whether the tape was made in addition to a certified agenda. *Tex. Att'y Gen. OR99-3130 (Nov. 4, 1999)*, *OR99-3539 (Dec. 7, 1999)*, *OR2000-1080 (Mar. 20, 2000)*, *OR2000-1424 (Apr. 11, 2000)*, *OR2000-1706 (May 2, 2000)*, *OR2001-2461 (June 12, 2001)*. The recent amendment to Tex. Educ. Code section 7.057(c), above, that allows release to the commissioner of education does not also authorize release to the employee the subject of the grievance against him or her on appeal.

Caution: These informal opinions cannot be used as binding precedent and are limited to the specific facts and parties. Upon receiving an employee'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.

May an attendee make his own record or tape of a board meeting?

In an open meeting, yes. TOMA permits any person in attendance to record all or any part of an open meeting of a board meeting by tape recorder, video camera, or other means of aural or visual reproductions. 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*. In a closed meeting, yes, but not if the board objects. Beyond the official tape recording requirements, neither board members nor other individuals may tape a closed meeting if the 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.).

Consultation with the Board's Attorney

May we consult with our attorney by telephone?

Yes. As a result of legislation in 2001, a board may now consult with its attorney by telephone conference call, video conference call, or via Internet communications during a meeting in an open meeting or by private consultation in a closed meeting. If the consultation takes place in an open meeting, the consultation must be audible to the public. This provision does not apply to consultations between the board and in-house counsel (attorneys who are employees of the district). *Tex. Gov't Code § 551.129.*

Disclosure of Confidential Information

So what might really happen if a trustee discloses confidential district information?

A lot. TOMA itself does not provide for criminal sanctions if a person present in a closed meeting talks about their recollections of the substance of closed meeting deliberations. *Op. Tex. Att'y. Gen. No. JM-1071 (1989)*. However, a board member's disclosure of confidential information at any time may have other serious civil and criminal consequences. Districts should consult with their own attorneys about the types of information board members should not disclose to third parties. Consider the following:

- **Defamation:** A board member who repeats false information discussed in a closed meeting could be held individually liable for false statements that injure a third person's reputation.
- **Code of Ethics:** A board member who reveals closed meeting deliberations may be violating the board's own code of ethics policy and operating procedures. See TASB Policy BBF (LOCAL).
- **Fiduciary Duty:** A trustee may owe a common law fiduciary obligation to act primarily in the interest of the district, including protecting its confidential information.
- **Misuse of Official Information:** Similarly, a trustee who releases official information may violate Texas Penal Code section 39.06.

For more information

TASB Legal Services has posted a number of additional "Legal FAQs" relevant to board service on TASB's Website at <http://www.tasb.org/services/legal/esource/index.aspx>