

Local Orientation for School Trustees: A primer on open meetings, public information, code of ethics and social media guidelines

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Our Road map



1. Role of School Board Members
2. CISD Board Members' Code of Ethics
3. Open Meetings Laws
4. Sunshine/Public Information Laws
5. Social Media Guidelines

Texas school board Trustees



- School board members are unique elected officials.
- They do not serve as representatives of their “constituents” or a group of voters but rather serve in the best interest of the school district as a whole.
- Texas school board trustees serve without compensation.

Texas school board Trustees, Cont'd



- Under Texas law, Trustee = trustee is any person who holds property, authority, or responsibility for the benefit of another, the **beneficiary**.
- Your beneficiaries are the **CISD school children**.
- Broad immunity for actions taken in official capacity.
- The fiduciary duties of trustees include
 - the duty of good faith,
 - prudent investing, and
 - compliance.

Texas school board Trustees, Cont'd



1. Duty of good faith = unwavering duty of good faith, fair dealing, loyalty and fidelity over the affairs of the district

- Forbids conflict between trustee's self-interest and trustee's duty to beneficiaries (school children) and school district.

2. Prudent investing = a duty of prudent investing by exercising reasonable care, skill, and caution.

- Investments must conform with board policies.
- All financial decisions, especially substantial expenditures require prudent decision-making.

Texas school board Trustees, Cont'd



3. Compliance = a trustee owes the beneficiary a duty of compliance with all applicable law and policy.

Role of Trustees v. Superintendent - a few examples (not exhaustive list)



School Board - Governance & Oversight

- Goal setting and evaluation of the superintendent
- Provide oversight regarding student academic achievement and strategic leadership for maximizing student performance.
- Establish performance goals concerning the district's academic performance.
- Enter into contracts
- Adopt an annual budget for the district and tax rate each fiscal year.
- Monitor district finances, and ensure that district fiscal accounts are audited annually
- Make decisions relating to termination or nonrenewal of district employees

Superintendent - Management

- Exclusive management of the day-to-day operations of the district
- Must assume administrative responsibility and leadership for the organization of education programs, services, facilities, and staff appraisal
- Provide leadership for the attainment and improvement of student performance.
- Develop, evaluate, and revise annually a district improvement plan to guide staff in improvement of student achievement.
- Must initiate the termination or suspension of an employee or the non-renewal of an employee's contract

Texas school board Trustees, Cont'd



Oversight of Management

- The legal structure or distinctions between trustees and superintendent are intended to allow the superintendent the necessary freedom to execute his duties.
- Trustees' appropriate role is to provide oversight of management, not micromanagement:
 - ✓ setting the district's vision and goals
 - ✓ establishing policy and
 - ✓ evaluating administrations efforts to meet those goals.

Texas school board Trustees, Cont'd



Avoid Violations of Micromanagement and Special Investigations

- Micromanagement = the attempt by a board or one or more of its members to deal with administrative matters that are the administrative responsibility of the superintendent acting within overall policy set by the board or in conformance with state or federal law. Am. Ass'n of Sch. Administrators and Nat'l Sch. Bds., Roles and Relationships: Sch. Bds. and Superintendents (1994).
- Under Texas law, the commissioner of education may authorize a special accreditation investigation ("SAI") to be conducted in response to an allegation involving a conflict between board members or between the board and the district if it appears that the conflict involves a violation of a role or duty of the board members or the administration. Tex. Educ. Code § 39.057(a)(6).

ETHICS



- CISD Board Members are bound by CISD's Code of Ethics which include being fair, just and impartial in all decisions and actions, respect, encouraging expressions of differing opinions, ensuring prudent and accountable use of district resources, and fulfilling the board's responsibilities of goal setting, policymaking, and evaluation.

Board Members Ethics



As a member of the Board, I shall promote the best interests of the District as a whole and, to that end, shall adhere to the following ethical standards:

Policy BBF (Local)

1. Equity in Attitude



- I will be fair, just, and impartial in all my decisions and actions.
- I will accord others the respect I wish for myself.
- I will encourage expressions of different opinions and listen with an open mind to others' ideas.

Policy BBF (Local)

2. Trustworthiness in Stewardship



- I will be accountable to the public by representing District policies, programs, priorities, and progress accurately.
- I will be responsive to the community by seeking its involvement in District affairs and by communicating its priorities and concerns.
- I will work to ensure prudent and accountable use of District resources.
- I will make no personal promise or take private action that may compromise my performance or my responsibilities.

3. Honor in Conduct



- I will tell the truth.
- I will share my views while working for consensus.
- I will respect the majority decision as the decision of the Board.
- I will base my decisions on fact rather than supposition, opinion, or public favor.

Policy BBF (Local)

4. Integrity of Character



- I will refuse to surrender judgment to any individual or group at the expense of the District as a whole.
- I will consistently uphold all applicable laws, rules, policies, and governance procedures.
- I will not disclose information that is confidential by law or that will needlessly harm the District if disclosed.

Policy BBF (Local)

5. Commitment to Service



- I will focus my attention on fulfilling the Board's responsibilities of goal setting, policymaking, and evaluation.
- I will diligently prepare for and attend Board meetings.
- I will avoid personal involvement in activities the Board has delegated to the Superintendent.
- I will seek continuing education that will enhance my ability to fulfill my duties effectively.

Policy BBF (Local)

6. Student-Centered Focus



- I will be continuously guided by what is best for all students of the District.

Policy BBF (Local)

Board Member Ethics



The Code of Ethics can be found at CISD Policy BBF (Local) (“Board Members’ Ethics”), available online at:
<https://pol.tasb.org/PolicyOnline/PolicyDetails?key=442&code=BBF>

Policy BBF (Local)



Texas Open Meetings Act



What is a meeting?



What is a meeting? Under the Texas Open Meetings Act (“TOMA”), a meeting means either a deliberation OR a gathering defined as follows:

What is a meeting?



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**

iii. during which the governmental body takes **formal action**.

Tex. Gov't Code § 551.001(4)(A).

What is a meeting, cont'd ...



GATHERING

- i. **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).

Social function ≠ Meeting



- Purely social functions are not meetings. The term "meeting" does not include
 - the gathering of a quorum of a governmental body at a social function unrelated to
 - the public business conducted by the governmental body,
 - if no formal action is taken
 - and any discussion of public business is incidental to the social function.

Tex. Gov't Code § 551.001(4)(B).



Trainings/conferences ≠ Meeting

Regional training sessions are not meetings.

- The term "meeting" does **not** include the gathering of a quorum of a governmental body at regional, state, or national workshops or conventions, if
 - no formal action is taken and any
 - discussion of public business is incidental to the workshop or convention.

Tex. Gov't Code § 551.001(4)(B).

Convening a Meeting



A meeting may not be convened unless a quorum of a governmental body is present in the meeting room. Tex. Gov't Code § 551.001(2), (4).

Exceptions: rare emergency teleconference or highly-technical videoconferencing (previously allowed during Covid under Gov.'s suspension of certain TOMA provisions to allow for virtual school board meetings, ended effective Sept. 1, 2021).

Voting in Open Session



A final action, decision, or vote on a matter may only take place in an open session held in compliance with the Act. Tex. Gov't Code § 551.102.

Audio Recording Required



A board must make at least an audio recording of the meeting.

The recording must be made available to the public.

Tex. Gov't Code § 551.127(g)

Public records



The minutes and recordings of an open meeting are public records and must be made available for public inspection and copying on request.

Tex. Gov't Code § 551.022.

Public Comments



The governmental body's response to public comments not otherwise on the agenda is limited to:

- (1) a statement of specific factual information, or
- (2) a recitation of existing policy in response to the inquiry.

Any deliberation shall be limited to a proposal to place the subject on

the agenda for a subsequent meeting. Tex. Gov't Code § 551.042.

Note: Even if an issue addressed in the public comment portion of the meeting is on the agenda, however, the governmental body does not have to respond to the comments.

Public Recordings & Disruption



- The public has a right to record the open session of a meeting.
- The board, however, may adopt reasonable rules to maintain order during its meetings
 - Rules/Policy cannot prevent or unreasonably impair public's right to record

See CISD Policy BED (Local)

Public Recordings & Disruption Cont'd



It is a criminal offense for a person, with the 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

As a last resort, the school district can request the assistance of the police to escort a disruptive individual from a meeting.

What is a quorum?



A quorum means a majority of a governmental body, except in the rare circumstances that another definition is provided by law. Tex. Gov't Code § 551.001(6).

This rule applies regardless of any vacancies in the governmental body. Op. Tex. Att'y Gen. No. JM-1127 (1989).

Therefore, four members of a seven-member school board constitute a quorum, even if there are vacancies on the school board.

Mere Physical Presence



The mere physical presence of a quorum does not constitute a meeting.

The presence of a quorum of a governmental body in the same room is not necessarily a "meeting."

Deliberation of public business or a gathering to receive information from or give information to a third person must occur.

Prohibited “Walking Quorums”

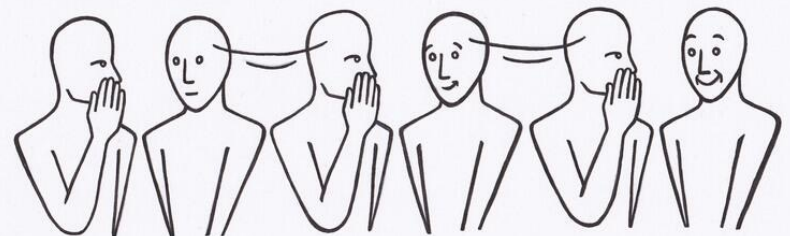


"Walking quorums" are meetings of less than a quorum in an attempt to circumvent the Open Meetings Act.

A "walking quorum" occurs when ...

Members of a governmental body deliberately hold serial meetings of less than a quorum outside of a public meeting and then at a subsequent public meeting ratify the decisions made in private in an attempt to circumvent the Act.

Esperanza Peace & Justice Ctr. v. City of San Antonio, 316 F. Supp. 2d 433
(W.D. Tex. 2001)



Email communications



Written communications, including text and email, between board members outside of a public meeting can constitute illegal “deliberation”

Avoid any written communication regarding district business **among a quorum of board members or resulting in a quorum.**

Consequences - Violations of the TOMA



- **Invalidation:** A court may invalidate a governmental body's action taken in violation of the Act. Tex. Gov't Code § 551.141. Invalidation of one action item does not affect the validity of other actions taken at the same meeting. *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).
- **Ratification:** the action at issue may be corrected and ratified at a subsequent meeting. *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).
- **Criminal Liability:** But actions in violation of the Act, even when subsequently ratified, may still subject a member of that governmental body to civil fines and criminal penalties

Closed Session



Policy BEC (Legal) - A board may conduct a closed meeting for the following purposes

- Attorney consultation
- Real property
- Prospective gift
- Individual personnel matters
- Employee complaints, DGBA Grievances
- PII of students
- Medical or psychiatric records
- Security
- Assessment instruments
- Emergency management
- Economic development negotiations

Closed session recordings



Certified agenda or recording: Either a certified agenda or an official recording must be kept of the proceedings of each closed meeting, except for a board's private consultation with its attorney as permitted under Section 551.071. Tex. Gov't Code § 551.103(a).

Date and time: A certified agenda or official recording must record the board president's statement of the date and time at both the beginning and end of a closed meeting. Tex. Gov't Code § 551.103(c) (3), (d).

Closed session recordings



Subject matter of deliberation: A certified agenda must include a statement of the subject matter of each item actually discussed in closed session, not just each item scheduled for discussion. Tex. Gov't Code § 551.103(c)(I); Op. Tex. Att'y Gen. No. JM-840 (1988).

Subsequent action: A certified agenda must include a record of any further action taken in open session on the closed session items. Tex. Gov't Code § 551.103(c)(2).

Closed session recordings



Record retention: A certified agenda or recording must be maintained for at least two years after the date of the closed meeting. Tex. Gov't Code § 551.104(a).

Disclosure to the public: 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). Forwarding the record of a Level III grievance to the commissioner of education on appeal, however, is not a violation of the Act. Tex. Edu. Code § 7.057(c).

Closed session recordings



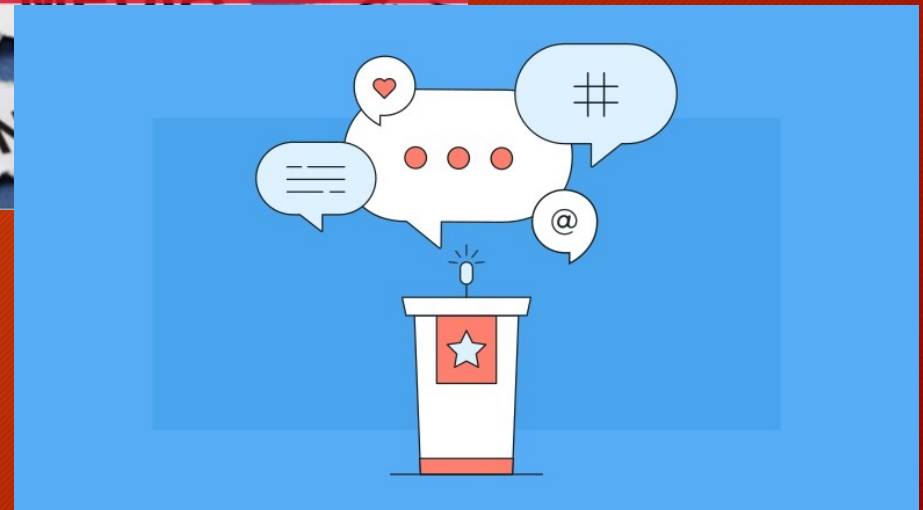
Disclosure to trustees: Current board members may review the recording or certified agenda of a closed meeting even if they did not attend the meeting. Former board members, however, may not review certified agendas or recordings of closed meetings. Op. Tex. Att’y Gen. No JC-120 (1999).

Violations of the Open Meetings Act = Civil AND Criminal Penalties



- Unauthorized closed meeting → \$100-\$500 fine, up to 6 months county jail, or both
- Circumventing the Act → Same
- Failure to record a meeting → Class C misdemeanor, up to \$500 fine
- Disclosing a certified agenda → Class B misdemeanor, up to \$2,000 fine, up to 180 days in jail, or both

Social Media Guidelines for School Board Trustees



Social media guidelines for trustees



1. Be clear that you are communicating as an individual board member, and not as an official district spokesperson.

Social media guidelines for trustees, cont'd.



2. Do NOT deliberate school district business on social media, much less with a quorum of the board.

Social media guidelines for trustees, cont'd.



3. Direct complaints or concerns presented online to the Superintendent.

TASB guidance: “Reviewing evidence in support of a complaint in detail outside of a board proceeding, such as a grievance or personnel hearing, may cause a board member to have to recuse himself when the issue reaches the board because he/she has lost capacity to act as a neutral decision maker.”

Social media guidelines for trustees, cont'd.



4. Do NOT post content that appears or indicates to the public that you have already formed an opinion on pending business/matters.

Social media guidelines for trustees, cont'd.



5. Be cautious about soliciting input from the community, and do NOT allow your social network to direct your decisions as a trustee.

Social media guidelines for trustees, cont'd.



6. Post only content that the district already released to the public.

Social media guidelines for trustees, cont'd.



7. If you plan to restate what happened at a previous board meeting, make it clear that your posting is NOT an official record of that meeting. Make sure that what you share/post is limited to information discussed during open session.

Social media guidelines for trustees, cont'd.



8. Comport yourself in a manner that reflects well on the district; do NOT post information that has not been verified or made public by the district; and do NOT post anonymously any information about district business.

Social media guidelines for trustees, cont'd.



9. Immediately report harassing or defamatory communications to the superintendent if they involve school officials, staff, students or district business.

Social media guidelines for trustees, cont'd.



10. Be aware that the district is required to retain certain electronic records. Please inquire with your district before you destroy a record—including a communication on a personal account (social media post, tweet, text, email from private account, etc.).

Please refer to board policy CPC (“Office Management - Records Management”)

Social media guidelines for trustees, cont'd.



11. Immediately report to the district a potential security breach if you lose control or possession of your personal electronic device on which confidential district records could be accessed.

Please refer to board policy CQ (“Technology Resources”)

Social media guidelines for trustees, cont'd.



12. Comply with the district's BBI policy--
Acceptable use of district-issued devices or
technology resources, including internet access
on a personal device.

Refer to board policy BBI ("Technology
Resources and Electronic Communications")

In the news ...



1. Judge tosses San Francisco school board member's \$87M lawsuit filed after she lost position over tweets, <https://ktla.com/news/california/judge-tosses-san-francisco-school-board-members-87m-lawsuit-filed-after-she-lost-position-over-tweets/>
2. In this Texas school district, officials blame social media for rumors that have hurt their credibility, <https://www.dallasnews.com/news/watchdog/2018/12/13/one-school-district-officials-blame-social-media-rumors-hurt-credibility>
3. **8 Social Media Accounts to Learn From,** <https://www.skyward.com/discover/blog/skyward-blogs/skyward-executive-blog/april-2017/8-top-school-district-social-media-accounts>

Texas Public Information Act



Sunshine Laws



- Open government laws, liberally construed to grant public information requests
- Government is the servant, not the master
- The *People* entitled to complete information **unless an exception applies**
- Public servants do not decide what is good for the people to know and not know

What is “public” information?



Written, produced, collected, assembled, or maintained under law or ordinance or official business

By a governmental body,

For a governmental body that owns the information, has right of access, or spends public money to write, produce, collect, assemble, or maintain the information, or

By an officer or employee in an official capacity and pertaining to official business (added 2013).

May come in any form on which information is recorded.

Personal Cell or Computer



Word of caution:

The definition of *public information* applies to and includes any electronic communication created, transmitted, received, or maintained on any device **if the communication is in connection with the transaction of official business.**



Exceptions to Public Disclosure



- Information made confidential by other law
- Some personnel information
- Settlement negotiations
- Bidding information
- Attorney-client communications
- Trade secrets
- Credit, Debit, Charge and Access Device Numbers
- Certain law enforcement officials' information
- Test items
- Superintendent applicants
- Superintendent evaluations
- Crime victims
- Computer security and infrastructure information
- Information that would subject an employee or trustee to a substantial threat of physical harm

Confidential - Student Education records



- Federal law, commonly known as “FERPA”, **prohibits** school districts’ release of student education records without prior written consent from parent or Eligible Student
- FERPA **Entitles** parents and eligible students with access rights to their own educational records
- Some examples of confidential “education records” include:
 - Grades
 - DOB/birth certificate
 - Immunization records
 - Attendance records
- See CISD Policy FL (Local) for other listed categories



FERPA

Family Educational
Rights & Privacy Act



Personal Information of Trustees and Employees



Trustees and employees may request that certain information not be released:

- Home address
- Home telephone number
- Emergency contact information
- Family information

Requests for Information by Trustees



Trustee acting in official capacity has inherent right of access to district information **(PIA request not required)**.

However, District may withhold confidential information.

Tracking and reporting requirements for requests by trustees.

Tex. Educ. Code § 11.1512(c)
BBE(LEGAL) and (LOCAL)

Employee Files



Majority of information is public: salary, contract, certification, dismissal, demotion, promotion, resignation

Exceptions:

- Performance evaluation (Tex. Educ. Code)
- Date of birth
- Some of transcript (not degree and curriculum)
- Medical information
- Personal financial information (not district's)
- Educator certification examination results (mostly)
- Criminal history record information ("CHRI") and data used to collect the information

Penalties and Consequences



Willful destruction, removal, or alteration of public information → fine up to \$4,000 and 3 days - 3 months

Knowing distribution or misuse of confidential information → fine up to \$1,000 and up to 6 months

Criminally negligent failure or refusal to provide access or permit or provide copies (if ought to be aware of a substantial or unjustifiable risk that violation will occur) → fine up to \$1,000 and up to 6 months

Sources & Resources



- Council of School Attorneys (COSA)
- Texas Association of School Boards (TASB)
- FERPA law/regulations
- DOE Family Policy Compliance Office (FPCO)
- Recommended TASB Guidance:

Powers and Duties of the School Board, available online at <https://www.tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/powers-and-duties-of-the-school-board.pdf>

Board Officers and the Law, available online at <https://www.tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/board-officers-and-the-law.pdf>.



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