



**Texas Association of School Boards**

Legal Services

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*Serving Texas Schools Since 1949*

## **Open Meetings Act**

### **Public Comment and Other Rights of the Public**

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#### **Public Comment Basics**

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**1. Must a board allow public comment at board meetings?**

Yes, each member of the public who desires to address the board regarding an item on an open meeting agenda must be allowed to do so before or during the body's consideration of the item at the meeting. Tex. Gov't Code §§ 551.001(3)(B)-(L), .007(b).

**2. Must a board allow public comment for board "workshops" or "work sessions" where voting may not be taking place?**

Yes, if the board is going to consider an item on the agenda for an open meeting, as defined by the OMA. A board must allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting of the board to address the board regarding the item at the meeting before or during the board's consideration of the item. The OMA defines *open* to mean open to the public, and *meeting* to mean any deliberation or gathering that meets the definition of a meeting under Section 551.001(4) of the OMA. Tex. Gov't Code § 551.001(4), (5). This may include special called meetings, workshops, or other board meetings.

TASB Model Policy BED(LOCAL) provides for public comment at every school board meeting. Boards can choose between a local policy option that limits public comments to agenda items or a local policy that allows public comments on any topic related to school district business.

**3. Must a board allow public comment for subject matters not listed on the board's meeting agenda?**

No. The board is not required to provide a public forum for every person wishing to express an opinion on any matter whatsoever. *See* Tex. Gov't Code § 551.001(5) ("open" means open to the public). *See also* Tex. Att'y Gen. Op. No. JH-0188 (Dec. 27, 1973) ("open to the public" does not mean that the public may choose the items to be discussed; it means that the public is permitted to attend the meetings). Boards may choose to allow members of the public to provide information and feedback to the board about matters not listed on the board's agenda as a matter of local practice.

**4. How may the board identify the public comment segment on its meeting agenda and notice?**

A notation such as “Public Comment” or “Audience Participation” on the meeting notice as a separate agenda item is generally sufficient to inform the public that the board has designated time to receive public input. The attorney general has opined that while such public comment sessions constitute meetings for which notice must be given, the terms “public comment,” “public forum,” “open mic,” or some other generic term, provide sufficient notice for such sessions. If, prior to a meeting, the board is aware or reasonably should be aware of specific topics to be raised, such as a local neighborhood association requesting to present a public comment that is not already on the board’s agenda, then the meeting notice should be tailored to reflect that knowledge. Tex. Att’y Gen. Op. No. JC-0169 (Jan. 24, 2000). Furthermore, a district that chooses to distinguish between separate public comment periods for agenda and non-agenda items may wish to clarify the difference on its meeting notice.

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**Reasonable Rules**

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**1. May a board reasonably regulate public comments at its meetings?**

Yes, a board may adopt reasonable rules governing public comments, including rules that limit the total amount of time that a member of the public may address the board on a given item. Tex. Gov’t Code § 551.007(c). For example, boards may require speakers to sign up in advance and may establish reasonable limits on the length of presentations or the total time a member of the public can address the board on a given item. Boards may also designate a single public comment period at the beginning of a meeting to address all items on the agenda, and may place a reasonable limit on the total amount of time one speaker has to address all items on the agenda. Tex. Att’y Gen. Op. No. KP-0300 (Apr. 22, 2020).

However, if a board adopts rules limiting the amount of time a member of the public has available to address the board but does not use simultaneous translation equipment to hear the translated testimony, then the board must provide at least twice the amount of time for non-English speakers who need a translator to relay their testimony. Tex. Gov’t Code § 551.007(d).

Additionally, a board may change the order in which it will address agenda items in order to accommodate public comment in an efficient manner. Public comment on agenda items must, however, take place prior to or during the board’s consideration of the agenda items. Tex. Gov’t Code § 551.007(b). In other words, a board may not place the public comment portion or portions of the meeting after the board’s consideration of an item or at the very end of the meeting if a speaker has indicated at the time of sign-up that the speaker desires to address the board about an item on the meeting’s agenda.

In adopting and implementing reasonable restrictions, a board must not discriminate for or against a specific viewpoint. For example, if speakers arrive to speak about the football program, the board cannot provide more time to the individuals who speak favorably of the program than to the speakers who criticize the program. *See Leventhal v. Vista Unified Sch. Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997) (concluding that public comment periods at school board meetings are limited public forums). *See also City of Madison Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167 (1976) (stating that permitting one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees).

See TASB Policy Service's Regulations Resource Manual BED(EXHIBIT) for sample board procedures.

**2. May a board require speakers who wish to address the board to reside within the school district?**

A residency requirement for participation in public comment is a risky proposition. The OMA does not restrict or define the meaning of "a member of the public" in requiring school boards to allow a member of the public to address the board concerning an agenda item. Tex. Gov't Code § 551.007(b). One out-of-state court has determined that a residency requirement for public comment was constitutional. *See Rowe v. City of Cocoa, Fla.*, 358 F.3d 800 (11th Cir. 2004) (holding that city council rule limiting speech during public comment to residents or taxpayers of the city did not violate the First or Fourteenth Amendments because such a rule did not discriminate against speakers on the basis of viewpoint). However, a Texas court may view a residency requirement differently.

Enforcing a residency requirement on speakers may present both legal and practical challenges when non-district residents—including parents, volunteers, vendors, donors, corporate sponsors, business representatives, and others—desire to address the board concerning their involvement with district business. TASB Legal Services does not recommend that a board require speakers at public comment to reside within the district's boundaries. Furthermore, at no time should a district publicly reveal residence addresses at an open meeting, as such information may be protected by confidentiality laws. *See, e.g., Tex. Gov't Code § 552.1175(b)* (making home addresses of certain individuals confidential).

**3. May a board limit public comment to certain topics or subject matters?**

Yes, in compliance with the law. As long as limitations do not discriminate against particular viewpoints or deny speakers the opportunity to address the board about an agenda item to be considered at an open meeting, school boards may limit public comment to subjects listed on a meeting's agenda or to matters that are within the

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