

Board Officers and the Law

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School board members may have questions about board officers: who is eligible to become a board officer, how are they elected, and what are their duties and responsibilities. In Texas, each school district board of trustees must appoint a member to be president of the board and a board secretary, who may, but is not required to be, a board member. Tex. Educ. Code § 11.061(c). A board of trustees may choose to appoint additional officers and to assign specific duties and responsibilities to its officers by adopting local policy or other board action. Similarly, state law requires that some duties be performed specifically by a designated officer (typically the board president), while other duties may be locally assigned. The following paragraphs discuss the areas of board service in which officers are most likely to have assigned responsibilities. This article should be read in conjunction with the relevant policies in your district's local policy manual, as indicated by the TASB Policy codes listed below.

1. Preparing Board Meeting Agendas [TASB Policy BE]

- **Agenda preparation:** The Open Meetings Act (OMA) does not mandate a process for notice preparation, so local policy governs this important procedure. Most policies provide that the superintendent in consultation with the board president will prepare the agenda.
- **Requests from board members:** Local policy should also provide a means by which other board members may place items on a board's agenda. A typical policy provides that the request should be made in writing to the superintendent or board president in advance of the 72-hour deadline for posting. A school board may adopt a policy describing how board members request agenda items, but such a policy may not have the effect of preventing individual board members from placing items of concern on upcoming agendas.
- **Managing the board's calendar:** The board president should work with the superintendent to ensure that major board business is scheduled for the board's consideration in a timely manner. These items sometimes include adopting the budget and tax rate, proposing nonrenewal and termination of contracts, calling for elections, announcing training credits, and conducting the superintendent evaluation. By local policy, the board president is normally given authority to call special or emergency meetings and to appoint special committees.

2. Board Committees [TASB Policy BDB]

- **Appointing committees:** Policy BDB(LOCAL) typically grants the board president the authority to appoint members to special board committees created by the board to fulfill specific assignments.
- **Board committees and OMA:** Whether meetings of board committees involving less than a quorum of the board must be posted under the OMA depends on the function of the committee. A board committee that is purely advisory is probably not subject to the OMA. On the other hand, a committee with authority to make final decisions or to supervise or

control some aspect of public business is likely to be subject to the OMA and must post its meetings. Therefore, the board and its officers should be specific about a committee's charge in order to clarify whether the OMA will apply to committee meetings. *See Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied) (concluding that a committee, convening a group that was one-member short of a quorum of the City Council, was subject to OMA if the City Council merely rubber-stamped the committee's decisions).

3. Closed Meeting Procedure [TASB Policy BEC]

- **Authority for closed meetings:** Before conducting a closed meeting, a quorum of the board must first convene in an open meeting for which notice has been provided and the presiding officer must: (1) announce publicly that a closed meeting will be held; and (2) identify the OMA section that authorizes the closed meeting. Tex. Gov't Code § 551.101. Although it is not necessary for the presiding officer to state the actual section number of the statute that authorizes the closed meeting, the presiding officer must give enough information about the subject matter of the closed meeting to enable the public to identify the board's authority for the meeting. *Lone Star Greyhound Park, Inc. v. Texas Racing Comm'n*, 863 S.W.2d 742 (Tex. App.—Austin 1993, writ denied).
- **Certification of closed session record:** The board must either keep a certified agenda or make a recording of the proceedings of each closed meeting. The presiding officer must certify that a certified agenda is a true and correct record of the proceedings. Tex. Gov't Code § 551.103(a)-(b).
- **Closed meeting date and time:** The certified agenda must include a statement of the subject matter of each deliberation, a record of any further action taken, and an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time. A recording made to satisfy this requirement must also include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time. Tex. Gov't Code § 551.103(c)-(d).

4. Meeting Procedures

- **Minutes [TASB Policy BE]: School boards are required by law to keep minutes or make a recording of all open meetings:** At a minimum, the meeting minutes must state the subject matter of deliberation and indicate each vote, decision, or other action taken, including the board's acceptance or rejection of the superintendent's recommendation regarding personnel. Tex. Gov't Code § 551.021. Like all board members, the board president should carefully review the minutes of the prior meeting for completeness, accuracy, and proper wording. Do not ignore this task or rely solely on administrative staff. The minutes are the official record of the board's actions and may be used as evidence in court to document actions taken by the board. Board meeting minutes must also reflect a board member's attendance or absence from a meeting. Tex. Educ. Code § 11.0621. By local policy, the board president and secretary will sign the minutes after approval by the full board. See TASB Policy BE(LEGAL) for a discussion of the requirements regarding meeting minutes.

- **Presiding at meetings [TASB Policy BDAA]:** The president presides at all general and special meetings. While guiding the conduct of the meeting, the presiding officer must be familiar with Robert’s Rules of Order or other operating procedures adopted by the board. If the president is not present at a meeting, local policy typically authorizes the vice president to act in the capacity of presiding officer.
- **Voting [TASB Policy BE]:** The board president has the same legal right to vote and discuss as any other board member.
- **Calling the budget meeting [TASB Policy BDAA]:** The board president shall call the board’s meeting to discuss and adopt the budget and publish the notice of the meeting. Tex. Educ. Code § 44.004(a)-(b).
- **Calling the meeting with juvenile authorities [TASB Policy FODA]:** The board president shall call the meeting of the board or the board’s designee to meet with the juvenile board for the county or the juvenile board’s designee. Tex. Educ. Code § 37.013.

5. Public Comments [TASB Policy BED]

- **Purpose of public comment:** The OMA requires school districts to allow the public to comment on agenda items at all board meetings. Tex. Gov’t Code § 551.007(b). For more information, see TASB Legal Services’ [Open Meetings Act - Public Comment and Other Rights of the Public](#). Board members are permitted but not required to communicate directly with specific members of the audience during other portions of the meeting on topics that are on the agenda; however, the audience members have no legal right to initiate comments or questions to the board except during the public comment portion of the meeting.
- **Basic ground rules:** Most boards adopt some basic rules for public comments to streamline the process. The presiding officer may be called upon to enforce these rules. Under the U.S. Constitution, a board may set reasonable restrictions on when, where, and how it will receive citizens’ comments, but it may not restrict comments based on whether the board agrees or disagrees with the content of the speaker’s comments. *Cox v. Louisiana*, 379 U.S. 559 (1965); *Dayan v. Bd. of Regents of Univ. Sys. of Ga.*, 491 F. Supp. 138 (M.D. Ga. 1979), *aff’d*, 620 F.2d 107 (5th Cir. 1980). Thus, a board can place time limits on how long a citizen can speak during the public participation portion of the meeting as long as the restrictions are not based on the content of the speech. Tex. Gov’t Code § 551.007(c). School boards may also implement a signup procedure and rules for audience participation of their meetings.
- **Response to public comment:** The presiding officer should make members of the audience aware that the board is not authorized to discuss or act on their comments or complaints if the topic is not on the agenda. Tex. Gov’t Code § 551.042. At any time during a meeting, if a member of the public or the board inquires about a subject for which public notice has not been given, the board may only:
 - **Give factual information:** Make a statement of specific factual information, e.g., “The deadline for submitting bids on that proposal was March 2, 2019.”

- **State existing policy:** 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).”
- **Discuss whether to place the item on future agenda:** Deliberate about or decide whether to place the subject on the agenda for a later meeting.

Tex. Gov’t Code § 551.042.

If the subject of the public comment *is* on the agenda for that meeting, the board is permitted, but not required, to respond substantively to the comments.

- **Public criticism:** A school district may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedure, program or service. Tex. Gov’t Code § 551.007(e). Many trustees express concern about allowing criticism of district staff during public comment. If the criticism is false or constitutes a personal attack, can the board or the presiding officer be held liable? What if the comments name an individual employee or student? As surprising as it may seem, allowing a speaker to make his or her uncensored presentation often presents less legal risk than attempting to stop the speaker.
- **Naming names:** In some districts, the presiding officer will ask a speaker to stop upon the first indication that the speaker has a complaint involving a named school employee, board member, or student. The presiding officer will then direct the speaker to the applicable local grievance procedure. A decision from the Fifth Circuit Court of Appeals, the federal court of appeals with jurisdiction over Texas, has upheld this approach as facially constitutional in limited circumstances:

After instructional aide Julie Fairchild was fired from Liberty ISD, she filed a grievance to complain that she was dismissed for voicing concerns about the performance of Jessica Barrier Lanier, the lead special education teacher in her classroom. On the same night Fairchild’s grievance appeared on the school board’s agenda, Fairchild appeared in public comment. The presiding officer permitted her to speak, but admonished her not to mention any other employee by name, as that aspect of her grievance was to be heard in closed session in accordance with the OMA. Fairchild made both her presentation in public comment and her grievance in closed session, and the board denied her complaints. Fairchild sued, claiming in part that the board violated her First Amendment rights by limiting the scope of her public comment. The Fifth Circuit rejected Fairchild’s argument. In light of the fact that public comment is a limited public forum and in light of the OMA’s exceptions for complaints involving employees and students, the court held that excluding this aspect of Fairchild’s complaint from public comment was not viewpoint discrimination. *Fairchild v. Liberty Indep. Sch. Dist.*, 597 F.3d 747 (5th Cir. 2010).

- **When should a presiding officer stop a speaker?** Based on *Fairchild*, boards with similar public comment policies may be tempted to stop speakers with complaints that name employees or students. Certainly a presiding officer may consider stopping a speaker when the speaker has a pending grievance on the identical issue, especially if the complaint would normally be heard in closed session. However, circumstances differ significantly from case

to case, and even the situation in *Fairchild* could be considered differently now in light of changes in state law regarding public comment. To be safe, consult your school attorney before limiting what a citizen can say in public comment.

- **No liability for defamation:** Slander is a defamatory statement communicated to a third party without legal excuse. A statement is defamatory if the words tend to injure a person’s reputation, exposing the person to public hatred, contempt, ridicule, or financial injury. *Campbell v. Salazar*, 960 S.W.2d 719 (Tex. App.—El Paso 1997, pet. denied) (citing Tex. Civ. Prac. & Rem. Code § 73.001). The school district itself has immunity from claims of slander. Tex. Civ. Prac. & Rem. Code § 101.051. Unless an individual board member repeats defamatory statements to a third party, only the original speaker can be held responsible for defamatory statements made in public comment.

6. Grievances [TASB Policies DBGA, FNG, and GF]

- **Presiding at a Level Three hearing:** The board president presides over the hearing during which the grievant and the administration address the board: A representative of each side makes opening statements on their respective position then questions witnesses, provides rebuttal, and introduces supporting documents. Each side then provides summary statements. Remember that a grievance hearing is an opportunity for a board president to ensure each side a fair opportunity to present to the board.

Tips for Staying in Control: The board president should keep a tight rein on grievance proceedings.

- Prepare by reading all applicable legal and local policies before the meeting begins.
- Do not allow the grievant to stray from the facts stated and remedies sought in the original written complaint form.
- Set and enforce fair time limits. Announce the time limits before proceeding with the complaint.
- Treat the witnesses and attorneys even-handedly and with courtesy.

7. Motions [TASB Policy BE]

State the decision clearly: Generally speaking, for a school board to take action, a motion must be passed by a majority of votes at a meeting at which a quorum of the board is present. Any board member may articulate a motion, but the board president is often tasked with this role. In order to convey the board’s action accurately, motions should state the proposed decision with clarity and specificity. Simple, accurately worded motions will ensure that the meeting minutes comply with the OMA’s requirement to state the subject of each deliberation and indicate each vote, order, decision, or other action taken. Tex. Gov’t Code § 551.021.

8. Delegation of Authority and Binding Action [TASB Policy BBE, BDAA]

- **No independent authority:** Absent action on the part of the board, no board member acting alone, not even the board president, is authorized to take binding action on behalf of the board. *Thermo Prods. Co. v. Chilton Indep. Sch. Dist.*, 647 S.W.2d 726 (Tex. App.—Waco 1983, writ ref'd n.r.e.). For example, in a termination case involving Houston ISD, the Houston Court of Appeals concluded that a notice letter sent by the board president without specific board authorization was ineffective. *Goodie v. Indep. Sch. Dist.*, 57 S.W.3d 646 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).
- **Actual authority:** In most districts, TASB Policy BBE(LOCAL) states, “Except for appropriate duties and functions of the Board President [as listed in TASB Policy BDAA], an individual member may act on behalf of the Board only with express authorization or the Board.”
- **Signing contracts:** State statutes and rules are largely silent as to who in the district signs contracts on behalf of the board. No statute specifies, for example, who should sign employment contracts. Before a contract may be signed, the contract must be authorized by a majority vote of the board in a proper public meeting. Once that has happened, signing the contract is merely a ministerial function that the board normally may delegate to any appropriate person, including the superintendent or the board president.
- **Only the board president can act:** Occasionally, a statute will specify which school official should sign on behalf of the district.
 - When the board has authorized a sale or lease of minerals, the board president has to be the person to execute the lease or sell or exchange the minerals in accordance with the terms authorized by the board. Tex. Educ. Code § 11.153. See TASB Policy CDB(LEGAL).
 - When the district borrows money for current maintenance expenses, the board president or vice-president must sign the notes, as authorized by the board. Tex. Educ. Code § 45.108(c). See TASB Policy CCF(LEGAL).
 - The board president must submit the district’s annual financial statement to the media for publication not more than 150 days after the end of the fiscal year end. Tex. Loc. Gov’t Code § 140.006(a), (d). See TASB Policy CFA(LEGAL).

9. Working with Your School Attorney [TASB Policy BDD]

- **District is the client:** A school district’s attorney represents the district as an entity, not any single person. Under most circumstances, the board acting as a body corporate employs the district’s attorney. Consequently, the attorney owes his or her allegiance to the district, not any individual board member, board officer, or employee, including the superintendent. Tex. Disciplinary R. Prof’l Conduct 1.12.
- **Board president’s role:** Although the board president may in fact have frequent contact with the district’s attorney, the board president should remember that the attorney’s first obligation is to the district (as represented by the board of trustees).

For example, if the board president discloses relevant information to the board's attorney, the attorney will not be able to keep the information secret from the rest of the board. This is because, in advising the school district, the attorney's primary obligation is to the board, not one individual.

- **Limited access to attorney:** To control the flow of information and the cost of legal services, most districts choose to limit who has access to the district's attorney. Both the district and the attorney need a clear understanding of who is authorized to call the attorney and under what conditions. This information is often explicitly stated in the district's representation agreement with the attorney. The information may also be included in a board policy or procedure.
- **How wide a circle?** In almost all districts, the superintendent and the board president are the primary contacts for the school district's attorney. Depending on factors like the size and complexity of the school administration, other people—like business managers, campus principals, and assistant superintendents—may also need access to the attorney.
- **TASB Legal Services:** A district's membership in TASB gives the decision-makers of the district access to legal advice from the attorneys in TASB's Legal Services. Those decision-makers generally include each of the seven trustees, the superintendent, and any administrator that the superintendent has authorized to call TASB for legal advice.

10. Elections [TASB Policy BBB]

- **Canvassing votes:** The board shall canvass the returns at the time set by the presiding officer as required by law. Two members of the board constitute a quorum for purposes of canvassing an election. Tex. Elec. Code § 67.004.
- **Preside over casting lots:** In trustee elections, the board's presiding officer shall supervise the casting of lots if tying candidates agree to cast lots to resolve the tie. Tex. Elec. Code § 2.002(f). See TASB Policy BBB(LEGAL).
- **Issue certificate of election:** After the completion of a canvass, the presiding officer shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass. The presiding officer does not have to be the board president. A certificate of election must contain:
 1. The candidate's name;
 2. The office to which the candidate is elected;
 3. A statement of election to an unexpired term, if applicable;
 4. The date of the election;
 5. The signature of the officer preparing the certificate; and
 6. Any seal used by the officer preparing the certificate to authenticate documents that the officer executes or certifies.

Tex. Elec. Code §§ 67.016, .017(a)-(b).

- **Officer’s statement:** Newly elected and appointed trustees, before taking the oath or affirmation of office and entering upon the duties of office, shall sign the required officer’s statement. The statement shall be retained with the official records of the office. Tex. Const. art. XVI, § 1(b). See TASB Policy BBB(LEGAL).
- **Oath of office:** After the officer’s statement has been signed and certificates of election have been issued, but before entering upon the duties of the office, a new trustee shall take the oath or affirmation of office and shall file it with the president of the board. Tex. Const. art. XVI, § 1(a); Tex. Educ. Code § 11.061(a). See TASB Policy BBB(LEGAL).

11. Electing Board Officers [TASB Policy BDAA]

- **Officer elections:** The law requires the board to reorganize by electing a president and secretary at the first meeting after an election and qualification of trustees. In addition, the board may also decide to reorganize at other times. Tex. Atty. Gen. Op. MW-0531 (1982).
- **Conducting an election without officers:** Districts sometimes have questions about how to conduct officer elections when the president and vice president are no longer on the board due to the election. Some districts have adopted a policy addressing this situation. If not, any board member may conduct an election to appoint a president pro tem (temporary president). Typically, either the secretary or the most veteran board member would serve in this role. The president pro tem then conducts the election of the president and relinquishes the temporary position to the president, who conducts the election for remaining officers.
- **Nominations:** Trustees may nominate more than one candidate for an office. The presiding officer should ensure that all those who wish to make a nomination have had a chance before declaring nominations closed. Unlike a motion, note that a nomination does not require a second in order to be effective. According to Robert’s Rules of Order, a motion to close nominations is not necessary in a meeting to elect new officers because of the size of the school board. However, if such a motion occurs, it requires a second and a two-thirds approval vote in order to cease nominations.
- **Voting methods:** Some local policies may require a certain method of voting for board officers. If not, any member may move to adopt a method or the president may ask consent of the board to use a particular method. Robert’s Rules describes two methods that are appropriate for school boards. In the *Viva Voce* method, if there is more than one nominee, candidates are voted on in the order nominated. If the first nominee does not receive a majority of “yes” votes, then the second name is announced, and so on, until one candidate receives a majority. In a *Roll Call* election, members are called upon one at a time to announce the nominee of their choice. If there is more than one nominee, voting continues until one nominee receives a majority.
- **Closed session:** Board members may wish to discuss the qualifications, experience, or willingness of the officer nominees before voting. An exception to the OMA allows the board to deliberate the appointment of a public officer in a closed meeting. Tex. Gov’t Code § 551.074. Therefore, the board may choose to go into closed session to discuss the merits of nominees for board officer positions prior to returning to open session to vote.

To open nominations from the floor, the trustee who is acting as meeting chair states: “Nominations are now in order for the office of President.”

After hearing a nomination, restate the nomination: “Mr. A is nominated for the office of president.”

Ask if there are other nominations: “Are there any further nominations for the office of president?”

Restate each nomination until it appears that there are no more. To be certain, ask: “Are there further nominations for president?” Pause to allow any additional nominations. If not state: “Nominations are closed.”

12. Board Training [TASB Policy BBD]

- **Required training:** Each board member must complete any training required by the State Board of Education. Tex. Educ. Code § 11.159(b). For more information, see TASB Legal Services’ [Texas School Board Member Continuing Education](#).
- **President’s leadership training:** The board president shall receive continuing education annually that relates to the leadership duties of a board president. 19 Tex. Admin. Code § 61.1(b)(5)(E).
- **Annual compliance statement:** At the last regular meeting of the board of trustees before an election of trustees, the current board president must announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member’s election or appointment to the board. The announcement must state that completing the required continuing education is a basic obligation and expectation of any sitting board member under SBOE rule. The president must cause the minutes of the local board to reflect the announcement. 19 Tex. Admin. Code § 61.1(j).

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