



TCSA Model Board Policy Series

500.020. Texas Open Meetings Act

INTRODUCTION

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

Overall Policy Framework

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

Scope of Service & Copyright Notice

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

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Module 500: Open Government

The Open Government Module 500, is the fifth module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

Module 100: Financial Operations

Module 200: Charter School Governance & Organization

Module 300: General School Operations

Module 400: Students

Module 600: Human Resources

Legal Abbreviations Used In the TCSA Model Board Policy Series

Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

500.020. TEXAS OPEN MEETINGS ACT

A. Definitions (Updated November 2017)

1. Meeting

A “meeting” is a deliberation between a quorum of the board, or between a quorum of the board and another person, during which public business or public policy over which the board has supervision or control is discussed, considered, or during which the board takes formal action.

2. Gathering

A gathering is a meeting:

- a. That is conducted by the board or for which the board is responsible;
- b. At which a quorum of members of the board is present;
- c. That has been called by the board; and
- d. 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.

A gathering does not include a quorum of the board at a social function unrelated to the public business that is conducted by the board, or the attendance by a quorum of the board at a regional, state, or national convention or workshop, ceremonial event, or press conference or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, so long as formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

3. Deliberation

A deliberation is a verbal exchange during a meeting between a quorum of the board, or between a quorum of the board and another person, concerning an issue within the jurisdiction of the board or any public business.

4. Quorum

A quorum is a majority of the board, regardless of the number of vacancies, unless defined differently by applicable law, rule, or the charter of the board.

[Tex. Gov't Code §551.001; Op. Tex. Att'y Gen. No. JM-1127 \(1989\); 85th Leg., R.S. SB 1440](#)

B. Open Meetings Requirement

1. Texas Education Code

The boards of both an open-enrollment charter holder and open-enrollment charter school are considered governmental bodies for purposes of the Texas Open Meetings Act, [Chapter 551 of the Texas Government Code](#) (“TOMA”).

2. Any requirement in TOMA, or another law that concerns open meetings that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school, the boards of both a charter holder and charter school, or students attending an open-enrollment charter school.

[Tex. Educ. Code §12.1051.](#)

3. Texas Government Code
Every regular, special, or called meeting of the board shall be open to the public with the exception of closed meetings as allowed by law.

[Tex. Gov't Code §551.002.](#)

C. Notice

1. General Rule
 - a. The notice of a board meeting, containing the date, hour, place, and subject of each board meeting, must be posted at all times at least 72 hours before the scheduled time of the meeting. The notice must be posted at:
 - i. A place readily accessible to the general public;
 - ii. The central administration office; and
 - b. If the open-enrollment charter school has an Internet website, on the school's Internet website.

[Tex. Gov't. Code §551.041; Tex. Gov't. Code §551.043; Tex. Gov't. Code §551.056.](#)

2. Notice to the Media
 - a. An open-enrollment charter school shall provide notice of each board meeting to any news media that has:
 - i. Requested notice; and
 - ii. Agreed to reimburse the charter school for the cost of providing the notice.
 - iii. The notice shall be made by telephone, facsimile transmission, or electronic mail.

[Tex. Gov't. Code §551.052.](#)

3. Emergency Exception to the General Rule
 - a. In an emergency or when there is an urgent public necessity, the notice, or the

supplemental notice of a subject added as an item to the agenda for a meeting where a notice was posted in accordance with TOMA, is sufficient if it is posted for at least two hours before the meeting is convened.

- b. An emergency or an urgent public necessity only exists if immediate action is required by the board because of:
 - i. An imminent threat to public health and safety; or
 - ii. A reasonably unforeseeable situation.
- c. The emergency or urgent public necessity shall be clearly identified in the notice or supplemental notice.
- d. Emergency Notice to the Media
 - i. The presiding officer of the board, or the board member who has called the emergency board meeting or added the emergency agenda item, shall notify the news media at least one hour before the board meeting.
 - ii. This notice is only required to members of the news media that have previously filed at the headquarters of the charter school a request containing all pertinent information for the notice and have agreed to reimburse the charter school for the cost of providing the notice.
 - iii. The presiding officer or board member shall give the notice by telephone, facsimile transmission, or electronic mail.

[Tex. Gov't. Code §§551.045, 551.047.](#)

4. Inquiry Made at a Meeting

- a. If, at a board meeting, a person inquires about a subject for which proper notice has not been given, the board is limited to responding with:
 - i. A statement of specific factual information given in response to the inquiry; or
 - ii. A recitation of existing policy in response to the inquiry.
- b. Any deliberation or decision about the inquiry shall be limited to a proposal to place the subject on the agenda for the next board meeting.

[Tex. Gov't. Code §551.042.](#)

D. Minutes and Recording

1. Open Meeting

- a. The board shall prepare and keep minutes, or make a tape recording, of each open meeting. A recording is a tangible medium on which audio or a combination of audio and video is recorded and includes a disc, tape, film, electronic storage drive or other medium now existing or later developed.
- b. The minutes must state the subject of each deliberation and indicate each vote, order, decision, or other action taken.
- c. The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the board's chief administrative officer or the officer's designee.

[Tex. Gov't Code §§551.021 - .022.](#)

- d. No vote shall be by secret ballot.

[Op. Tex. Att'y Gen. No. H-1163 \(1978\).](#)

E. Exceptions to Open Meetings Requirement - Closed Meetings (Updated November 2017)

1. Attorney Conference

- a. The board may meet in a closed meeting when seeking the advice of its attorney about pending or contemplated litigation or a settlement offer; or
- b. Any time in which the duty of the attorney to the board under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with TOMA.

[Tex. Gov't Code §551.071.](#)

2. Deliberation Regarding Real Property or Prospective Gifts

- a. The board may meet in a closed meeting to deliberate the purchase, exchange, lease, or value of real property, or to deliberate a negotiated contract for a prospective gift or donation to the school, if deliberation in an open meeting would have a detrimental effect on the position of the board in negotiations with a third person.

[Tex. Gov't Code §§551.072, 551.073; Op. Tex. Att'y Gen. No. MW-417 \(1981\);](#)

3. Personnel Matters

An open meeting is not required to:

- a. Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of an employee;
- b. To hear a complaint or charge against an employee; or

- c. To deliberate a complaint or charge that is brought against an employee by another employee and the complaint or charge directly results in a need for a hearing.
- d. Subsections (a) through (c) do not apply if the employee who is the subject of the deliberation, or who the charge or complaint is against, requests a public hearing.

[Tex. Gov't Code §§551.074, 551.082\(a\)\(2\).](#)

4. Security

- a. Meetings to deliberate the deployment, or specific occasions for implementation of security personnel or devices, may be closed.

[Tex. Gov't Code §551.076.](#)

5. Students

- a. A closed meeting is allowed to deliberate the discipline of a student unless the student's parent requests, in writing, an open meeting.

[Tex. Gov't Code §551.082.](#)

- b. An open meeting is not required when conducting a meeting involving a student if personally identifiable information about the student will be revealed by the deliberation.
 - i. Directory information, as defined by the Family Educational Rights and Privacy Act, is considered to be personally identifiable information.
 - ii. A parent or guardian, or a student at least 18 years of age, may request, in writing, that the meeting be open.

[Tex. Gov't Code §551.0821.](#)

6. Consultation with Employee Group

- a. The TOMA does not require a school board operating under a consultation agreement authorized by Section 13.901, Education Code, to conduct an open meeting to deliberate the standards, guidelines, terms, or conditions the board will follow, or instruct its representatives to follow, in a consultation with a representative of an employee group.

[Tex. Gov't Code §551.083.](#)

7. Witnesses

- a. A witness may be excluded while the board is questioning another witness in an investigation.

[Tex. Gov't Code §551.084.](#)

8. Deliberation Regarding Economic Development Negotiations
TOMA does not require a board to conduct an open meeting:

- a. To discuss or deliberate regarding commercial or financial information that the board has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the school and with which the board is conducting economic development negotiations; or
- b. To deliberate the offer of a financial or other incentive to a business prospect described by Subsection (a).

[Tex. Gov't Code §551.087.](#)

9. Assessment Instruments

The board shall conduct closed meetings to discuss or adopt individual assessment instruments or assessment instrument items.

[Tex. Educ. Code §39.030\(a\).](#)

10. Security Devices or Audits

A governmental body is not required to hold an open meeting to discuss:

- a. security assessments or deployments relating to information resources technology;
- b. network security information as described by Section 2059.055(b); or
- c. the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

[Tex. Gov't Code §551.089](#)

F. Procedures Relating to Closed Meetings

1. A quorum of the board must first meet in an open session, for which notice has been appropriately given, before holding a closed meeting.
2. The presiding officer of the board must announce that a closed meeting will be held and identify the section or sections of the TOMA under which the closed meeting is held.
3. Any final action, decision, or vote must be made in an open meeting.
4. Except for the attorney consultation allowed under TOMA, a certified agenda or tape recording of every closed meeting must be kept.

- a. The presiding officer shall certify that the certified agenda or recording is a true and correct record of the proceedings.
- b. The certified agenda must include:
 - i. A statement of the subject matter of each deliberation;
 - ii. A record of any further action taken; and
 - iii. An announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time.
- c. A tape recording must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.
- d. The certified agenda or tape recording must be kept for at least two years after the date of the meeting. If a legal action involving the closed meeting is brought within the two years, the board shall preserve the certified agenda or tape recording while the action is pending.
- e. The certified agenda or tape recording is available for public inspection and copying only under a court order.
- f. A board member may be guilty of a Class C misdemeanor if the member participates in a closed meeting knowing that a certified agenda or tape recording is not being kept.
- g. An individual, corporation, or partnership may be guilty of a Class B misdemeanor if, without lawful authority, they knowingly disclose to a member of the public the certified agenda or tape recording of a lawfully closed board meeting.

[Tex. Gov't Code §§551.101-.104, 551.145-.146.](#)

G. Meetings Held by Teleconference Call

1. A meeting may be held by telephone conference call only if:
 - a. An emergency or public necessity exists, as defined under “C. Notice” of this section; and
 - b. The convening at one location of a quorum of the board is difficult or impossible; or
 - c. An advisory board holds the meeting.
2. A teleconference call is subject to the same notice requirements as other meetings. The notice must specify the location where the board’s meetings are usually held as the location of the telephone conference call meeting.

3. Each part of the meeting that is required to be open to the public shall be audible in the location specified in the notice and shall be tape-recorded. The tape-recording shall be available to the public.
4. The location of the meeting shall provide two-way communication during the entire telephone conference call and the identification of each party to the call shall be clearly stated prior to speaking.

[Tex. Gov't Code §551.125.](#)

H. Videoconference Call (Updated November 2017)

1. A meeting may be held by video conference provided that:
 - a. The quorum of the board meeting is present at that physical space, unless the governmental body extends into three (3) or more counties, then only the presiding officer must be present at a physical space;
 - b. The board makes available to the public at least one suitable physical space, located in or within the geographic boundary of the school, equipped with videoconference equipment that provides audio and video display, a camera and a microphone, for each board member participating, and so the members of the public can provide testimony or otherwise actively participate during the open portion of the meeting;
 - c. Any member of the public present at that physical space is provided the opportunity to participate in the meeting by means of videoconference call in the same manner as a person who is physically present at a meeting of the board not conducted by conference call; and
 - d. The notice, in addition to notice requirements applicable to all meetings, must specify the location of the physical space where the quorum, or presiding officer of the board will be meeting, and must note that the board intends to use videoconference.
2. Each portion of the meeting must be visible and audible and have two-way communication.
3. The quality of the audio and video signals at each location must meet or exceed minimum standards established by the Department of Information Resources. If technical difficulties cause the quality of the audio or video signal to fall below the minimum standards, the board must recess or adjourn the meeting. The board must adjourn if the technical difficulties are not solved within six (6) hours.
4. A member of a governing body that participates via video conference shall be considered absent from the meeting during any portion of the meeting where the board member loses an audio or visual connection.

5. The board shall make at least an audio recording of the meeting.
6. The board may allow a member of the public to testify at a meeting from a remote location by videoconference.
7. “Videoconference call” means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet.

[Tex. Gov’t Code §551.127; Op. Tex. Att’y Gen. No. DM-480 \(1998\); 85th Leg., R.S. HB 3047](#)

I. Internet Broadcast

1. The board may broadcast a meeting over the Internet provided that:
 - a. The school establishes an Internet site and provides access to the broadcast from that site;
 - b. The school provides on the Internet site the same notice of the meeting that the school is required to post for all meetings and within the same time frames.

[Tex. Gov’t Code §551.128.](#)

2. Online Message Boards. A communication or information exchange between board members about public business or public policy that is posted over an online message board or similar Internet application that is viewable and searchable by the public does not constitute a meeting or deliberation of the board subject to TOMA, if:
 - a. The communication is in writing, displayed in real time on the online message board or Internet application for at least 30 days after the communication is first posted;
 - b. The online message board or Internet application is owned or controlled by the open-enrollment charter school or open-enrollment charter holder and prominently displayed on the school or charter holder’s primary internet page; and
 - c. The online message board or Internet application is used only by board members of the open-enrollment charter school or staff members of the open-enrollment charter school.

[Tex. Gov’t Code §551.006](#)

J. Telephone and Electronic Mail Communication

1. It is possible to violate TOMA, even if there is not a quorum physically present in one place, by having communication regarding the public business of the board via the telephone or electronic mail.

[Op. Tex. Att’y Gen. No. JC-307 \(2000\).](#)

2. Electronic communications could, depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of TOMA.

[Op. Tex. Att'y Gen. No. GA-0896.](#)

K. Consultation Between the Board and its Outside Attorney

1. The board may conduct a telephone conference call, a videoconference call, or communicate via the Internet to conduct a public consultation with its attorney in an open meeting of the board or a private consultation with its attorney in a closed meeting of the board.
2. This section does not apply to an attorney who is an employee of the charter holder/school.

[Tex. Gov't Code §551.129.](#)

L. Criminal Violations

1. It is an offense if a member, or group of members, of the board knowingly conspires to circumvent TOMA by meeting in numbers less than a quorum for the purpose of secret deliberations.
2. A member of the board commits an offense if a closed meeting is not permitted under TOMA and the member knowingly:
 - a. Calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
 - b. Closes or aids in closing the meeting to the public, if it is a regular meeting; or
 - c. Participates in the closed meeting, whether it is a regular, special, or called meeting.

[Tex. Gov't Code §§551.143 - .144.](#)

M. Video Recording of Board Meeting (Updated November 2017)

1. A governing body of an open-enrollment charter school with a student enrollment of more than 10,000 must:
 - a. make a video and audio recording of each:
 - i. regularly scheduled open meeting, and
 - ii. special called meeting or work session, where the board votes on any matter or allows public comment or testimony.
 - b. make available an archived copy on an existing Internet site. The open-enrollment charter school is not required to establish a separate Internet site.

2. Any archived recording must be:
 - a. made available 7 days after the date the recording was made; and
 - b. maintained on the internet for not less than 2 years from the date the recording was made.

[Tex. Gov't Code §551.128; 85th Leg., R.S. HB 523](#)