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New Open Meetings Act Requirements

By Adrienne Stonecypher

On May 27, 2019, the 86th Regular Session of the Texas Legislature adjourned. Out of the 1,429 bills passed during the session, the Legislature made several major changes affecting public education and public school districts in Texas. Several such changes concern the Texas Open Meetings Act (“OMA”). Below are summaries of the major changes and clarifications of OMA as they may affect current open meetings procedures instituted by your board.

House Bill 2840

*Public Testimony at Open Meetings
(Tex. Gov’t Code § 551.007)*

Beginning September 1, 2019, governmental bodies, including school boards, must allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting to address the board regarding the item either before or during the body’s consideration of the item. This bill effectively precludes school boards from satisfying the public comment requirements of OMA by allowing individuals to address agenda items only after they have been considered by the board. School boards have the authority to determine whether public comment will be taken prior to or during the meeting.

The bill also permits your school board to adopt reasonable rules regarding the public’s right to address the board, including rules

that limit the total amount of time that a member of the public may address the board on a given agenda item. In this respect, the bill is a bit ambiguous as to what constitutes “reasonable”. However, we interpret this provision to allow boards to simply enact a broad policy which states that the board has the discretion to institute reasonable limits on the total amount of time that a member of the public may address the board on a given agenda item. In this event, the board’s policy should require that the time limitation be published on the notice and agenda to the meeting. However, should your board wish to enact a policy which specifically sets forth the time limits associated with agenda items (e.g., 30 minutes, 45 minutes, etc.), it should leave room for flexibility on a case-by-case basis.¹ While the bill would permit your board to limit time on a per-person basis (e.g., 3 minutes per person with flexibility to shorten to up to 1 minute on a case-by-case basis, the minimum permissible limit), we discourage this option and instead encourage boards to set limits on a per-agenda item basis. We recommend considering a rule which requires utilization of a sign-up list for individuals who wish to make comments at public meetings. Sign-up sheets may be subject to a reasonable time limit in terms of the amount of time prior to the meeting an individual has to indicate their intent to address the board. Finally, the

¹ If your board does not utilize equipment which simultaneously translates foreign-language as it is given, any time limit rules must be doubled for non-English speakers who require use of a translator.

bill prohibits your board from restricting public criticism of the board, including criticism of any act, omission, policy, procedure, program, or service, unless such criticism is otherwise prohibited by law.

Senate Bill 494

Open Government During Emergencies and Catastrophes

(Tex. Gov't Code §§ 551.045, 551.047, 551.142, & 552.233)

Beginning September 1, 2019, notice of an emergency meeting or supplemental notice of an emergency addition to the agenda of a previously posted notice is sufficient if it is posted at least one hour before the meeting is convened. Thus, the bill reduces the previous two-hour notice requirement. However, boards are prohibited from deliberating or acting on a matter at the emergency meeting that is not directly related to the emergency or urgent public necessity identified in the notice (unless such matter is an agenda item previously listed on a proper notice of the meeting before a supplemental notice was posted).

Existing law provides that an emergency exists if immediate action is required due to an imminent threat to public health and safety or a reasonably unforeseeable situation. Senate Bill 494 clarifies by providing examples of such situations: fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm; power failure, transportation failure, or interruption of communication facilities; epidemic; or riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.

The bill also permits a board to elect up to two suspension time periods during which compliance with the Public Information Act ("PIA") will not be required, if the board is currently impacted by a catastrophe and

complies with the new procedures prescribed by the bill. The definition of catastrophe is the same as that of an emergency, as defined in the preceding paragraph. The suspension period allows a board to consider a request for public information received during the suspension period to be received the first business day after the date the suspension period ends. Additionally, requirements set for PIA requests received prior to the initial suspension period may be tolled until the first business day after the suspension ends. The initial suspension period may be no more than seven consecutive days. If the board determines that it is still impacted by the same catastrophe which necessitated the initial suspension, it may extend the initial suspension period one time immediately following (*i.e.*, beginning the day after the initial suspension has concluded) for up to seven additional, consecutive days. The board must notify the Attorney General's ("AG's") office of its election of an initial suspension period and the subsequent suspension period, using a form provided by the AG's office. The initial suspension may occur as early as two days prior to notification being given to the AG's office, and no later than seven consecutive days after the notice. Additionally, the board must provide public notice of the suspension in a place readily accessible to the public and at each other location where a notice is required. This notice must be maintained at all times during the suspension period.

Senate Bill 1640

Prohibited Series of Communications by Governmental Body Members

(Tex. Gov't Code §§ 551.001 & 551.143)

As of June 10, 2019, it is a crime for a member of a school board to knowingly engage in at least one communication among a series of communications that each

occur outside of an open meeting and that concern an issue within the jurisdiction of the school board in which the members engaging in the individual communications constitute a quorum of members, if the member knew at the time of the communication that the series of communications involved or would involve a quorum and would constitute a deliberation once a quorum of members engaged in the series of communications. The bill effectively revives and clarifies the concept of a “walking quorum”, declared unconstitutionally vague by the Texas Court of Criminal Appeals in *State v. Doyal*.

Under the bill, “deliberation” means a verbal or written exchange between a quorum of a school board, or between a quorum of a school board and another person, concerning an issue within the board’s jurisdiction. Thus, a member commits an offense if the member knowingly engages in: (1) at least one communication among a series of communications; (2) communications that each occur outside of a meeting authorized by OMA; (3) a communication that concerns an issue within the jurisdiction of the governmental body; (4) a communication with members engaged in the *individual* communication constituting *less* than a quorum; (5) communications in which the members in the *series* of communications does constitute a *quorum*.

These changes and updates to the Texas Open Meetings Act may require enactment of new policy, employee training, and/or alteration of current procedures. If you feel that your board would benefit from additional guidance, please do not hesitate to contact our office.

Texas Law Aims to Punish Students Who Harass Teachers

By Emily Boney

Senate Bill (SB) 2432 will go into effect on September 1, 2019, and employers need to be prepared. The new law aims to punish students who harass teachers by removing them from class. The law states that a student shall be removed from class and placed in a disciplinary alternative education program (DAEP) if they harass an employee of the school district. The law was drafted very broadly and has not yet been interpreted by the courts. Schools are urged to use caution when removing students from class and placing them in a DAEP pursuant to SB 2432. Of course, if a teacher’s physical safety is threatened, the school should take steps necessary to ensure that the teacher is not in any danger and that the student does not present a danger to any students, staff, or themselves, which may include removing the student to a DAEP.

Schools should familiarize themselves with the definition of harassment under Section 42.07(a)(1), (2), (3), and (7) of the Penal Code to understand the types of harassment that are covered by SB 2432.

Notably, Section 42.07 states that “A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

- (a) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
- (b) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person’s

family or household, or the person's property;

- (c) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury; or
- (d) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

Regarding Section 42.07(1), schools should look to the state's penal code for the definition of "obscene." Texas Penal Code Section 43.21 defines "obscene" as material or a performance that:

- (a) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- (b) depicts or describes:
 - (1) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (2) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

- (c) taken as a whole, lacks serious literary, artistic, political, and scientific value.

For example, a student yelling "F*** you" to a teacher would not be sufficient to remove the student from class under the new law, as this statement would not be "obscene" because it is not intended to solicit sex. However, if the student repeatedly tries to solicit sex from the teacher, this is more likely to meet the definition of "obscene."

This is a very broadly drafted law that we anticipate will be abused by some schools in order to remove "problem children" rather than work with them to improve their behavior. Always exercise caution when determining whether to remove a student and seek the opinion of your legal counsel if you are unsure whether the behavior rises to the level of harassment outlined in this law.

New Gun Laws HB 1143 and HB 1387

By Emily Boney

House Bill (HB) 1143

As set forth in HB 1143, the legislature enacted a new law loosening restrictions for how guns can be stored in vehicles in the parking lots of both school districts and open-enrollment charter schools. As amended by HB 1143, under Tex. Ed. Code §37.0815(a):

A school district or open-enrollment charter school may not prohibit a person, including a school employee, who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other

parking area provided by the district or charter school and may not regulate the manner in which the handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

Schools should be aware that this law is only applicable to employees who hold a license and store the handgun or firearm in their locked, privately owned or leased vehicle. This does not apply to school vehicles. This new law must be read in conjunction with Texas Penal Code section 46.03, which prohibits firearms, illegal knives, location-restricted knives, clubs or any prohibited weapon on the physical premises of a school, any grounds or building on which an activity sponsored by a school is being conducted, or school transportation vehicle.

It is important for all employees and staff to understand that they may only have a handgun if it is in their own personal vehicle and that it may not be in plain view. Campus security should be aware that if they see a handgun, firearm or ammunition in any vehicle on campus they should report it immediately.

HB 1387

Pursuant to HB 1387, the number of school marshals that may be appointed to serve on a public school campus, open-enrollment charter school or a at a private school has been increased from one marshal per 200 students to one marshal per 100 students. Under Tex. Ed. Code §37.0811(a), the board of trustees of a school district or the governing body of an open-enrollment charter school may appoint not more than the greater of:

- (a) one school marshal per 100 students in average daily attendance per campus; or
- (b) for each campus, one school marshal per building of the campus at which students regularly receive classroom instruction.

To ensure the proper implementation of these changes in law, you should ensure that board policy, administrative procedure and employee handbooks are updated.

Statutorily Required Training

Updated SLHA Schedule

Attached is the Schedule of Statutorily Required Professional Development and Training published by the Firm and updated as of August 7, 2019. Board members and charter school officers, as defined in state rule, should review this schedule to ensure that they have met the training requirements for their respective roles. If you have concerns or questions, please contact Mary Zaiontz at mzaiontz@slhlaw.com.

Have Questions? We'll Answer.

If you have any questions concerning the content in this e-newsletter or any other school law matter, please contact Lori Madla at lmadla@slh-law.com or at (210) 538-5385.

This schedule lists the various professional development and training that members of the governing body of the charter holder and charter school and charter school officers must obtain.

Legend		
M – Mandatory	E – Encouraged	O – Optional

Training	Citation	Audience	Notes	M	E	O
Administration of Epinephrine Auto-Injectors	TEC §38, Subchapter E TEC §38.0151(f)	One or more school personnel members or volunteers on each campus of a district or open-enrollment charter school that adopts a policy for the administration of epinephrine auto-injectors.	How to recognize the signs and symptoms of anaphylaxis, administer an epinephrine auto-injector, implement emergency procedures, and properly dispose of used or expired epinephrine auto-injectors.	X		
Assessment instrument administration	TEC §39.0304 (a), (b), (c); TAC §101.3031 (a) (c)	School district employees involved in the administration of assessment instruments administered under Section 39.023.	May include a qualifying component. Language in TEC is permissive, i.e., the Commissioner may require training. Part of the language in TAC is mandatory.	X		X
Bible Course Training	TEC §21.459 and TEC, §28.011 (f)	Teachers of elective Bible courses.	The Commissioner shall make available training materials and other teacher training resources through access to in-service training.			X
Bilingual Education/ESL	TAC §89.1245 (e)	Teachers of bilingual education and ESL programs that are not fully certified.	Training to improve the skills of the teachers who provide instruction in the alternative bilingual education program, ESL, and/or content area instruction in special classes for ESLs.	X		

Training	Citation	Audience	Notes	M	E	O
Bleeding Control Station	TEC §38.030	School security personnel, school resource officers	HB 496 passed in 2019 added § 38.030; requires agency approved training no later than January 1, 2020	X		
Blood borne Pathogen Control	TAC Title 25, Part 1 Chapter 96; Health & Safety Code, Chapter 81	All school personnel	Legislation passed in 1999 requires districts to develop and blood borne pathogen control exposure plan including awareness training in exposure control.	X		
Bullying; Cyberbullying	TEC § 37.0832	All school personnel	David’s Law passed in 2017 requires a school policy prohibiting bullying		X	
Civil Rights Training	USDA, FNS Instruction Number 113-1, XI	Frontline food service staff and those that supervise frontline staff.	Civil rights training in compliance and complaints on an annual basis.	X		
Concussion Training	TEC §38.154(c)	Each member of the concussion oversight team.	Training must be from an approved provider and must include the evaluation, treatment, and oversight of concussions.	X		
Dyslexia	TAC §74.28(c)(f)	Teachers who screen and treat students with dyslexia and related disorders	Training on instructional strategies described in the “Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders”	X		
Educator Misconduct	Texas Penal Code § 21.12; TEC § 21.006	Directors, superintendents, principals	Senate Bill 7, passed in 2017, requires superintendents and principals to report educator misconduct		X	
English Language Proficiency Assessments	TEC §29.056(b)	Professionals or paraprofessionals who administer English language proficiency tests.	Training required by the test publisher.	X		

Training	Citation	Audience	Notes	M	E	O
Ethics TOT Training	19 TAC § 249.5; 19 TAC § 247.1	Superintendents, Personnel Directors, District and Campus Leadership	To provide Texas educators and administrators, as well as other school personnel, with an understanding and awareness of what behavior constitutes inappropriate educator conduct, as well as strategies to recognize, prevent, and respond to inappropriate conduct.		X	
Extracurricular Athletic Activity Training Program	TEC §33.202 and TAC §76.1003	Coaches, trainers, sponsors of extracurricular athletic activities. Director of the marching band.	Emergency action planning, cardiopulmonary resuscitation, communicating with 9-1-1, recognizing symptoms of potentially catastrophic injuries.	X		
Food Allergy Training	TEC §38.0151; Commissioner of DSHS guidelines	Awareness training for all staff; comprehensive training for food allergy management team.	Training on anaphylaxis and emergency response to anaphylactic reactions.	X		
Gifted/Talented	TAC §89.2	Teachers that provide instruction and services that are part of the program for gifted/talented students. Administrators and counselors who have authority for program decisions.	Minimum of 30 hours. Must be completed within one semester. Minimum of six hours annually.	X		
Hazardous chemicals	Texas Health and Safety Code §502.009	Employees who use or handle hazardous chemicals (including science lab teachers).	Must provide an education and training program with information on interpreting labels and MSDSs, use of protective equipment, first aid.	X		

Training	Citation	Audience	Notes	M	E	O
HIPAA	Texas Health and Safety Code §181.101	Employees where information is necessary to carry out duties.	Training on state and federal law concerning protected health information.	X		
Illegal Steroid Use	TEC §33.091 (c-1)	Each district employee who serves as an athletic coach at or above the 7th grade for an extracurricular athletic activity.	Health effects of steroid use.	X		
Implementing an Aligned Curriculum	TEC §21.4511 (b)	Public school teachers and administrators	Training relating to implementing curriculum and instruction that is aligned with the foundation curriculum and standards and expectations for college readiness.			X
Language Proficiency Assessment Committee	TAC §89.1220(a),(f)	Members of the Language Proficiency Assessment Committee(s)	District must have a policy of file that provides for the selection, appointment and training of LPAC members.	X		
Literacy Achievement Academies	TEC §21.4552	Teachers who provide reading instruction to students in kindergarten and grades K-3.	Training in effective and systematic instructional practices in reading, including phonemic awareness, phonics, fluency, vocabulary, and comprehension.			X
Mathematics Achievement Academies	TEC §21.4553	Teachers who provide mathematics instruction to students in kindergarten or grades K-5.	Training in effective and systematic instructional practices in mathematics, including problem solving, the place value system, whole number operations, and fractions.			X

Training	Citation	Audience	Notes	M	E	O
Migrant New Generation System (NGS)	PL 107-110, Title I, Part C, Section 1304; Texas Manual for the Identification and Recruitment of Migrant Students	All personnel sharing responsibility for implementing NGS activities.	Before November 15.	X		
Migrant Identification and Recruitment (ID&R)	PL 107-110, Title I, Part C, Section 1304; Texas Manual for the Identification and Recruitment of Migrant Students	All recruiters and designated SEA reviewers for the Migrant Education Program.	Training and certification offered by the Regional Education Service Centers. Must be before October 15 or before recruitment efforts begin.	X		
Multi-hazard Emergency Operations Plan	TEC §37.108 (a)(1) and (c-2)(4); §37.2071	All school employees	Training in responding to an emergency. Document type of training, number of employees trained, and person conducting the training. SB 11, passed in 2019, adds charter schools to this requirement	X		
Nature Science Curriculum Project	TEC §28.013	Classroom teachers and state park employees	Staff development course in implementing the curriculum provided by the T-STEM Center at Texas Tech University and the South Llano River State Park. Curriculum available over the Texas Tech website.			X
Open-enrollment Charter Schools Board Members and Officers Training	TEC §12.123	Members of the governing board of open-enrollment charter schools and officers of open-enrollment charter schools.	Training in basic school law including school finance; health and safety issues; requirements related to the use of public funds; and, other requirements related to the public such as open meetings.	X		

Training	Citation	Audience	Notes	M	E	O
Open Records Requirements	Texas Government Code, §552.012	Officer for public information.	Requirements of the law. Training not less than one hour and not more than two hours.	X		
Peace Officer Training Curriculum	TEC §37.0812	Peace officers commissioned by the charter school	Must complete the education and training program required by Texas Occupations Code §1701.263 within 180 days of being commissioned.	X		
School Readiness	TAC §102.1002(a)(10)(D)	Grantees of the Prekindergarten Early Start Grant Program	Joint professional development that focus on proven school readiness components.			X
Reading-to-learn Academies	TEC §21.4554	Teachers who provide reading comprehension instruction to students in 4th or 5th grades.	Effective instructional practices that promote student development of reading comprehension and inferential and critical thinking.			X
Reporting Child Abuse, Maltreatment and Neglect/Sexual Abuse and Sex Trafficking of Children	TAC §61.1051 (c) (d); TEC §38.0041 (b) (1); §38.0041 (c) (1)	Each year as part of new employee orientation.	Copies of Board Policy must be distributed at the beginning of each school year and must address methods for increasing teacher...awareness of issues regarding sexual abuse and sex trafficking of children.	X		
Seizure Management and Treatment Plan	TEC § 38.033	School nurse and all other employees whose duties include regular contact with students	HB 684, passed in 2019, added § 38.033 requiring training on seizure recognition and related first aid.	X		
Student Mental Health	TEC §§ 38.251-256	All school personnel	SB 11, passed in 2019, added §§ 38.251-256 to provide training on practices that support the mental health of students		X	

Training	Citation	Audience	Notes	M	E	O
Suicide Prevention	Health and Safety Code, §161.325 (a-3) (b) (c-1) TEC § 38.351	All new district and open-enrollment charter school educators annually and to existing school district and open-enrollment charter school educators on a schedule adopted by the TEA by rule.	Suicide prevention training to be selected from a list of recommended best practice-based programs and research-based practices provided by the Department of State Health Services (DSHS) in coordination with the TEA. Formerly Health and Safety Code § 161.325, recodified by HB 18, passed in 20129.	X		
Threat Assessment and Safe and Supportive School Program Team	TEC § 37.115	All members assigned to the threat assessment and safe and supportive school program team	SB 11, passed in 2019, added § 37.115 and made it applicable to charters. Each member of the team must complete training provided by the Texas School Safety Center or a regional education service center	X		
Trauma-informed Care	TEC § 38.036	All school educators as part of new employee orientation	SB 11, passed in 2019, added § 38.036. Requires training on awareness and implementation of trauma-informed care as part of all new employee orientation and for all existing educators on a schedule adopted by the Agency;	X		
Use of an automated external defibrillator	TEC §22.902(c)	School nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, other school employee specified by the Commissioner and student athletic trainer	Must receive and maintain certification. School districts to make training available to employees and volunteers annually.	X		

Training	Citation	Audience	Notes	M	E	O
Use of restraint	TAC §89.1053 (d)	School employees, volunteers, independent contractors.	Personnel using restraint in an emergency must receive training within 30 school days after the use of restraint.	X		
Use of time-out	TAC §89.1053 (h)	General or special education personnel who implement time-out based on requirements in a students' IEP	Within 30 school days of being assigned the responsibility of implementing time-out.	X		