



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Mike Moses, Ph.D.
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Letter Opinion No. 95-082

Re: Whether the Open Meetings Act, Gov't Code ch. 551, requires that a parent's grievance must be heard by a school district board of trustees in open session if the parent so requests, and related questions (ID# 30696)

Dear Commissioner Moses:

On behalf of a school district, your predecessor in office asked several questions about the Open Meetings Act (the "act"), Gov't Code ch. 551. The request stems from a dispute between the school district and a parent regarding whether a parent's grievance must be heard by the school district board of trustees in open session. We have received letters from the attorney representing the school district and the attorney representing the parent and her child. We have also been provided with correspondence between the parties.

We gather from these submissions that the child was disciplined by a coach and the school athletic director on August 18, 1994, and that the discipline included corporal punishment. The parent met with the principal and then made a written request to the school district to meet with the school superintendent. Sometime thereafter her attorney met with the school superintendent regarding the incident. The school district responded with a letter, dated September 9, 1994, stating that the discipline had been justified, that the discipline had been imposed in compliance with school rules, and the school district refused to terminate the athletic director.

The parent's attorney then appealed to the school district board of trustees, asking it to consider the following at its next scheduled meeting: any and all corporal punishment administered to the student on August 18, 1994, including excessive force; the school district's discipline of the student from August 15, 1994, to the present; the contents of

the school district's letter dated September 9, 1994; allegations that the parent made in meetings with school officials; and school district policy pertaining to corporal punishment, student discipline in general, and consent and notification to students' parents. The attorney also asked the board of trustees to vote on the following issue: "Was excessive force used in carrying out corporal punishment on [the student] on the afternoon of August 18, 1994?"

A dispute has arisen between the school district and the parent regarding whether the board of trustees meeting with respect to the foregoing must be open to the public under the act. Section 551.002 of the Government Code provides that "[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter." Section 551.074 provides as follows:

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

Section 551.082 provides as follows:

(a) This chapter does not require a school board to conduct an open meeting to deliberate in a case:

(1) involving discipline of a public school child; or

(2) in which a complaint or charge is brought against an employee of the school district by another employee and the complaint or charge directly results in a need for a hearing.

(b) Subsection (a) does not apply if an open hearing is requested

in writing by a parent or guardian of the child or by the employee against whom the complaint or charge is brought.¹ [Footnote added.]

The parent and her attorney assert that she has the right to insist that the meeting be open to the public under section 551.082, whereas the school district asserts that the board of trustees is authorized to meet in closed session under section 551.074.

First, your predecessor asked, "Who is entitled to make the initial determination of which exception applies or whether both apply?" He also asked, "How may that determination be contested?" Although the act does not expressly address the first question, we believe that the act implicitly vests the governmental body at issue with the authority to make the initial determination whether it is authorized under the act to consider an agenda item in closed session. Section 551.101, for example, requires that a governing body convene in an open meeting before conducting a closed meeting and that the presiding officer of the governing body publicly identify the "section or sections" of that act under which the closed session is held. Furthermore, the act requires governmental bodies to keep a certified agenda or tape recording of a closed meeting. See *id.* §§ 551.103 - .104, .145 - .146. The primary purpose of this requirement is to provide a record in the event the governmental body's determination that it was authorized to meet in closed session is challenged. See *id.* § 551.104(b); Attorney General Opinion JM-840 (1988).

¹Section 551.082 is a codification of former section 2(h) of article 6252-17, which provided as follows:

Nothing in this Act shall be construed to require school boards to hold meetings open to the public:

(1) in cases involving the discipline of public school children unless an open hearing is requested in writing by a parent or guardian of the child; or

(2) in cases in which a complaint or charge is brought against an employee of a school district by another employee, which complaint or charge directly results in a need for a hearing, unless an open hearing is requested in writing by the employee against whom the complaint or charge is brought.

Subsections (1) and (2) of former section 2(h) were completely independent provisions and had no bearing on each other. The repeal of article 6252-17 and the enactment of chapter 551 were a nonsubstantive recodification. See Act of April 30, 1993, 73d Leg., R.S., ch. 268, § 47, 1993 Tex. Sess. Law Serv. 587, 988. Therefore, the inclusion of the language "or by the employee against whom the complaint or charge is brought" in section 551.082(b) of the Government Code has no bearing on the proper construction of the language in the section pertaining to discipline cases.

The act does not provide a mechanism to contest such a determination short of court action. Section 551.142 of the Government Code, however, provides that “[a]n interested person . . . may bring an action by mandamus or injunction to stop, prevent, or reverse a *violation or threatened violation* of this chapter by members of a governmental body.” Gov’t Code § 551.142(a) (emphasis added). It is a criminal offense for a member of a governmental body to call or participate in a closed meeting that is not permitted under the act. *Id.* § 551.144. Section 551.142 clearly provides a mechanism for an interested person to prevent a threatened violation of the act, such as an unauthorized closed meeting, before it occurs.

Finally, your predecessor asked, “If the determination is made that both exceptions apply and that determination is either not contested or is upheld, must the hearing be open if an open hearing is requested by the child’s parent or guardian under Section 551.082 but not by the employee under Section 551.074?” Because the parent’s grievance asks the board of trustees to consider both the appropriateness of the discipline and a complaint about the conduct of a school official, we agree that both section 551.074 and section 551.082(a)(1) and (b) may apply to some of the board’s deliberations.² In such a case, we believe that the first step is for the board of trustees to determine whether it is possible to structure its hearing on the matter to segregate the two issues. If so, then the board could consider the appropriateness of the discipline in open session under section 551.082(a)(1) and (b) and the complaint against the school official in closed session under section 551.074. It is for the board of trustees to determine in the first instance whether it is possible to segregate the two issues. Of course, neither section will apply to the discussion of other matters such as school district policy.

If the board determines that it is not possible to segregate the two issues, then we believe that the entire hearing must be held in open session. Section 551.074 does not give an officer or employee who is the subject of a complaint the right to insist that a

²Although the student at issue has already been disciplined, the parent’s request for a hearing before the board of trustees presents the board with the issue whether the discipline imposed was appropriate. It also asks the board to consider discipline of the student from August 15, 1994, to the present. In addition, the parent has asked the board of trustees to consider whether the athletic director used excessive force in disciplining her child. Indeed, the parent’s request for a hearing, in asking the board of trustees to consider the contents of the school district’s letter dated September 9, 1994, appears to challenge the school district’s refusal to terminate the athletic director as requested by the parent. Thus, the parent’s grievance asks the board of trustees to consider both the conduct of the student that led to the discipline and the conduct of the school official who imposed the discipline, in addition to other matters such as the parent’s subsequent dealings with the school district and school district policy.

meeting be closed to the public. *See* Attorney General Opinions JM-1191 (1990), H-1047 (1977). Therefore, a school board is not required under section 551.074 to hear a parent's complaint against a school official or employee in closed session and may hear it in an open meeting if it so chooses. On the other hand, section 551.082(a)(1) and (b) gives a parent the right to insist that a meeting regarding the discipline of her child be open to the public. *Cf.* Attorney General Opinion JM-1191 (1990) at 3 (stating that statutory predecessor to section 551.074 gives public employee who is subject of hearing right to insist on public hearing) (citing cases).³ Because section 551.074 does not require that an issue be considered in a closed meeting, we believe that section 551.082(a)(1) and (b) must prevail in circumstances such as these where the parent insists on an open meeting.⁴

³We believe that section 551.082(a)(1) and (b) should be interpreted in the same way that section 551.074 has been interpreted given the similar structure of the two provisions.

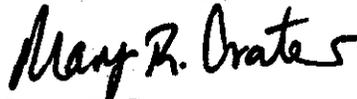
⁴Similarly, under these circumstances, if the school official were to insist upon an open meeting and the parent were to prefer a closed meeting, we believe that the school official's right to an open meeting under section 551.074 would prevail, because section 551.082(a)(1) and (b), like section 551.074, does not give a parent the right to insist upon a closed meeting. *See supra* note 3.

S U M M A R Y

The Open Meetings Act (the "act"), Gov't Code ch. 551, vests the governmental body at issue with the authority to make the initial determination whether it is authorized under the act to consider an agenda item in closed session. Section 551.142 of the Government Code provides that "[a]n interested person . . . may bring an action by mandamus or injunction to stop, prevent, or reverse a *violation or threatened violation* of this chapter by members of a governmental body." (Emphasis added.)

Because section 551.074 of the Government Code does not require that a personnel matter be considered in a closed meeting, section 551.082(a)(1) and (b) of the Government Code, providing that a school board may meet in closed session to consider a case involving the discipline of a public school child unless the parent objects, must prevail in circumstances where both provisions arguably apply and the child's parent insists on an open meeting.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee