

# DEC Hearings

A Discussion of Issues Regarding the DEC Hearing Process

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# Common Issues

- Notice to everyone that needs to attend
- Open Meetings Act
- Time to tell their side of the story
- Voting
- Minutes



# Give Notice Before the Hearing

- Give prior notice of the allegations to the person/student/parent alleged to have committed violation. Share copies. Name possible witnesses. PARENTS!
- NOT part of Open Meetings Act but important!
- 5 days prior- or what's reasonable under circumstances.
- Share all the facts/allegations that are relevant and may be used at the hearing.

## **Notice of Hearing**

District (#)–(Conf.)

District Executive Committee

TEMPLATES  
AVAILABLE IN  
DEC HANDBOOK

(**Date** – at least 5 days prior)

(**Name** of student/school employee/school supt.)

(**Address**)

The District (#)-(Conf.) District Executive Committee will hold a hearing on (*day, date, time and location*) to consider allegations regarding the following:

(*Insert General Topic of the alleged violation*)

(*Example*) Violation of eligibility rules for varsity athletics.

*(Brief description of the allegations) (Example)*

A hearing will be held on the dates and times listed above to consider allegations that you are in violation of *(relevant section and if need be, subsection)* Section 400 (g), *Student's Eligibility for All UIL Contests (name of section)*, of the UIL Constitution and Contest Rules. It has been alleged that you enrolled in ninth grade more than four years ago.

*(Or – another example)*

*(Insert general topic of the alleged violation) (Example)*  
Engaging in recruiting of a student from another school.

*(Brief description of the allegations) (Example)*

A hearing will be held on the dates and times listed above to consider allegations that you are in violation of Section 1201, (a)(7), *Athletic Codes*, of the UIL Constitution and Contest Rules. It has been alleged that you (and/or name of school) engaged in the recruiting of students to participate in your school's volleyball program.

You are encouraged to attend the hearing. If you do attend, you will be given a reasonable time to present your side of the story. You and others that you ask to appear at the hearing on your behalf, such as parents or other persons with knowledge of relevant facts, may present testimony, documents and other forms of evidence that explain or support your position in this matter. You will be given *(give a reasonable amount of time given topic, etc. typically 30-45 minutes)* to present your case. At the Chair's discretion, irrelevant or repetitive testimony or other evidence may be limited.

The district executive committee does not have the authority to compel anyone to appear before them or to require anyone to provide documents or otherwise participate in the hearing. You are responsible for bringing *(number of copies needed for all DEC members to have one plus two extra)* copies of any documents that you wish the committee to consider and for having all witnesses that you wish to have testify present at the time of the hearing.

A hearing may be rescheduled at the discretion of the committee chair but only for good cause shown. In cases where eligibility is at issue or participation in activities is at risk, a student or school employee whose hearing is rescheduled at their request may not participate in the event or activity in question until a hearing is held and a decision rendered.

The district executive committee expects the following documents or other tangible items to be considered at the hearing:

*(list documents and attach copies that the DEC has in its possession that will be relied on/considered during the hearing)*

*(Example)*

- A certified copy of your birth certificate.
- A video of you and Coach Smith meeting at a local park.
- Emails between you and Coach Smith.

In addition to yourself and others you may ask to appear at the hearing, the district executive committee expects the following persons to testify and otherwise provide evidence at the hearing:

*(Example)* Ms. Smith

If you have any questions regarding the hearing process, please contact (name of district chair) at (phone number) or (email address).

Sincerely,

Chair,

District (#)-(Conf.) District Executive Committee



# Open Meetings Act

- Sec. 551.002. OPEN MEETINGS REQUIREMENT. Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.
- Sec. 551.021. MINUTES OR RECORDING OF OPEN MEETING REQUIRED.
  - (a) A governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
  - (b) The minutes must:
    - (1) state the subject of each deliberation; and
    - (2) indicate each vote, order, decision, or other action taken.
- Sec. 551.043. TIME AND ACCESSIBILITY OF NOTICE; GENERAL RULE. (a) The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044-551.046.

# Open Meetings Act – Penalties

- Violations of the Open Meetings Act may be subject to various penalties/remedies.
- Seek an injunction to stop, prevent or reverse a violation or threatened violation of the Act.
- May assess costs of litigation, attorney' fees.
- No immunity
- Action that violates the Act is voidable.
- Criminal provisions as well for some violations.
- Section 551.145 (a) “A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a recording of the closed meeting is not being made.”



# Open Meetings Act - Penalties

(a) An individual, corporation, or partnership that **without lawful authority knowingly discloses to a member of the public the certified agenda or recording of a meeting that was lawfully closed to the public under this chapter:**

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for

(A) Actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress:

(B) reasonable attorney's fees and court costs: and

(C) at the discretion of the trier of fact, exemplary damages.

**(b) An offense under Subsection (a)(1) is a Class B misdemeanor.**

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a) (2) that:

(1) the defendant had good reason to believe the disclosure was lawful: or

(2) The disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or recording.

# Open Meetings Act - Penalties

In order to find that a person has violated one of these provisions, the trier of fact must determine that the person “knowingly”.

## Section 6.03(b) Texas Penal Code

“A person acts knowingly, or within knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.”

### Elements –

- 1) Lawfully closed meeting.
- 2) a knowing disclosure of the agenda or recording of the lawfully closed meeting to a member of the public.
- 3) Disclosure made without lawful authority.



# Open Meeting - Penalties

Section 551.143 “A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.”

Section 551. 144 “A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:

- Calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
- Closes or aids in closing the meeting to the public, if it's a regular meeting or participates in a closed meeting, whether it is a regular special or called meeting.

**Affirmative Defense** – “The member of the governmental body acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record, the attorney general, or the attorney for the governmental body.”



# Open Meetings Act Training

Under the law, arguably our DEC members should undergo required AG Open Meetings training and we are going to ask the SEC to make that a UIL rule this fall. The Attorney General's training is a 1 hour video. So if you want to get ahead of the game, please look at the AG's training film at the link below. You can print out a certificate once you have completed the training.

<https://www.texasattorneygeneral.gov/og/oma-training>



# Agenda ?

## NOTICE OF MEETING OF THE REGION ~~1~~ DISTRICT ~~1~~ EXECUTIVE FOOTBALL COMMITTEE MEETING

The Division ~~1~~ District ~~1~~ Committee will meet in a regular session on Monday, September 8, 2014, at 10:30 a.m. in the ~~Maya~~. Items to be discussed are as follows:

- I. Call to Order and Announcement of Quorum Present by the Chairman
  - A. Members Present/ Members Absent
  - B. Guests
  - C. New Business
    1. Discuss/Approve PAPFs
- D. Adjourn

~~\_\_\_\_\_~~  
District ~~1~~ Committee

\* Agenda items do not have to be taken in the same order as shown on this meeting notice.

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E. Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. [See BEC(LEGAL)] This notice was posted in compliance with the Texas Open Meetings Act on September 5, 2014 by 10:30 a.m.

# POST a proper agenda

- All DEC meetings fall under the Texas Open Meetings Act (Ch. 551, Tex. Gov't Code).
- Agenda of meeting must be posted at least 72 hours prior to the meeting.
- Agenda must contain date, hour, place and subject of each meeting.
- How specific?

*The subject of the posted notice has to be sufficient to alert the public, in general terms, of the subjects that will be considered. Descriptions such as “old business”, “new business”, “other business”, or “personnel” or “litigation matters” are usually not sufficient.*

- Bugtusle High School: Decision Regarding Eligibility of Student Athlete, Alleged Violation of Section 443, Changing Schools for Athletic Reasons.
- Southern Most High School: Decision Regarding Coach, Alleged Violation of Section 1201 (a) (6), Practicing Out of Season, Coach John Doe.



# Closed or Executive Sessions

- Rarely, if ever, a good reason to go into executive or closed session.
- DEC's acting as UIL committees – not school districts per se.
- Generally nine reasons the Act allows for closed sessions. They don't apply to DEC meetings.



## CLOSED SESSION (cont'd)

- Excerpt from DEC minutes.....

*“DR. JONES THEN MOVED TO ITEM #10 ON THE AGENDA CALLING FOR THE COMMITTEE TO MOVE INTO EXECUTIVE SESSION TO DISCUSS 5 PENDING PAPF’S. THE EXECUTIVE SESSION WAS HELD IN ACCORDANCE WITH THE PROVISIONS FOR THE TEXAS OPEN MEETINGS ACT AND SUBCHAPTER D 551.074 AND 551.071.”*



# The two reasons.....

**Sec. 551.074. PERSONNEL MATTERS; CLOSED MEETING.** (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.

**Sec. 551.071. CONSULTATION WITH ATTORNEY; CLOSED MEETING.** A governmental body may not conduct a private consultation with its attorney except:

- (1) when the governmental body seeks the advice of its attorney about:
  - (A) pending or contemplated litigation; or
  - (B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.



# Real Examples

DEC Hearing on PAPF- Hearing of PAPF for (Student) was initiated by Chairman...who asked for all members involved to rise and be sworn in.

*Members of the committee and parents requested for hearing to be conducted in a closed session.* Members of the committee voted against the request on a 5-3 vote.

*Motion was made for parent to have a chance to rebuttal after sending school presented their statement. Follow UIL procedures in Austin where parents present their statements followed by sending school statements and at the end give parents an opportunity to respond.* Motion passed on 8 votes.

DEC was considering misconduct by a student participant during the course of a contest. After some testimony and discussion, the Chair *“convened into executive session at 11:05 a.m. with committee members, X, Y Z. (Chair) and committee members reconvened from executive session at 11:29 a.m.”*



# Real Examples

DEC hearing an eligibility matter – Changing schools for athletic reasons-

After some discussion with basketball coach and parents the Chair “called executive session @ 10:45. Executive Session ended at 11:23. Two additional questions were asked of parents and parents responded. Chair called for motion.” Eligibility was denied by a 5-0 vote.



# During the hearing

- Opportunity to tell their side of the story – argue their position, present evidence, respond to questions, pose questions, have counsel with limited role.
- Informal process. Pose questions through committee. No cross-ex.
- Can limit time – Equal to both sides –No need for repetition.
- Rules of evidence do not apply – What's reasonable and relevant?



## During the hearing (cont'd)

- No Right of Confrontation
- Swear in all witnesses.
- Proper decorum – set the tone.
- Make recording/take minutes for the hearing and retain per applicable record retention policy (otherwise two years).

# Minutes?

## ~~Executive Meeting Minutes~~

September 4, 2011

### CALL TO ORDER

BE IT REMEMBERED that on this the ~~4th~~ day of September, 2011, a Meeting of the District Executive Committee was called to order by Committee Chairman, ~~\_\_\_\_\_~~ at 10:32 a. m. ~~\_\_\_\_\_~~, and ~~\_\_\_\_\_~~ were present. Guest present were ~~\_\_\_\_\_~~

### PAPF COMMENTS

~~\_\_\_\_\_~~ spoke about the PAPF situation and why ~~\_\_\_\_\_~~ moved to ~~\_\_\_\_\_~~. Members of the committee did ask him questions. Members of the committee and guest discussed information they had on the current situation.

### EXECUTIVE SESSION

The committee moved to executive session starting at 10:44 to discuss student Issue. The committee returned from executive session at 10:55

### PAPF

~~\_\_\_\_\_~~ made a motion to approve the PAPF for ~~\_\_\_\_\_~~. The motion was seconded by ~~\_\_\_\_\_~~. The motion failed 1 - 3 with ~~\_\_\_\_\_~~, ~~\_\_\_\_\_~~ and ~~\_\_\_\_\_~~ voting against. ~~\_\_\_\_\_~~ abstained.

### ADJOURNMENT

~~\_\_\_\_\_~~ made a motion to adjourn, seconded by ~~\_\_\_\_\_~~. The motion carried 5 - 0.

The meeting adjourned at 10:59 a.m.

# MINUTES/OPEN & CLOSED SESSIONS

- Should not be going into closed session
- But if you do – the law requires that you take minutes during the closed session as well.
- Generally, minutes taken in closed session are confidential and may not be released without a court order
- Bottom line – The purpose of minutes is to create a record of what happened – what was said and what was done and by whom.



# Concluding the hearing

- Typically person/school facing allegations goes first and last.
- Before each sides concludes their last opportunity -
  - Ask – Anything else? Is that everything you want to say?
  - Have you given us everything that you want us to consider?



# The Decision

- Decision must have a rational basis – rely on the evidence presented at hearing. Does the preponderance of evidence support the allegations?
- *Credibility is always at issue.*
- Be sure and properly word the motion that is going to be voted on.
- Get an accurate vote count on the record. Make the decision clear.
- Schools with conflict of interest may not vote.

*All votes must be in open session.*



# Conclusion

- Notice to everyone that needs to attend
- Open Meetings Act/Agenda
- Time to tell their side of the story
- Voting
- Minutes



**Caveat** – *The facts always matter.* This is only general advice and not a legal opinion on any particular case.

*Thank you*

