

Ana Martinez

CAUSE NO. DC-25-68

MARIA Y. HERNANDEZ
Applicant

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IN THE 229TH DISTRICT COURT

OF

v.

STARR COUNTY, TEXAS

RIO GRANDE CITY GRULLA
INDEPENDENT SCHOOL DISTRICT
Respondent

TEMPORARY RESTRAINING ORDER

On this day, the Court considered the application for temporary relief (ex parte) filed by Applicant, Maria Yvette Hernandez, pursuant to Rule 680 of the Texas Rules of Civil Procedure and Texas Government Code § 551.142. Said application is found with the Applicant’s pleading titled, “VERIFIED APPLICATION FOR TEMPORARY (EX PARTE) RELIEF, AND INJUNCTIVE AND MANDAMUS RELIEF UNDER THE TEXAS OPEN MEETINGS ACT.”

The Court, having reviewed the application and the verified pleadings on file, FINDS that immediate and irreparable injury, loss, or damage will result to the Applicant and the public if the requested relief is not granted.

The Court further FINDS that:

1. The Applicant has demonstrated a likelihood of success on the merits of her claims under the Texas Open Meetings Act (TOMA);
2. The Respondent, Rio Grande City Grulla Independent School District (RGCGISD), has scheduled a meeting on February 20, 2025, with an agenda that improperly, and with insufficient notice to the public, designates certain items for closed session discussion in violation of TOMA’s open meeting requirements;

3. The RGCGISD's actions will irreparably harm the public's statutory right to open government and the Applicant's right as an interested person to attend, observe, and participate in public deliberations concerning matters of heightened concern;

4. No adequate remedy at law exists to restore the lost opportunity for public participation once these closed-session discussions occur.

IT IS THEREFORE ORDERED that:

5. The RGCGISD and its agents, officers, employees, attorneys, and all persons acting in concert or participation with them, are hereby restrained and enjoined from proceeding with closed-session discussions of the topics listed as items 6(a), (b), (c), and (e) at the special meeting, which is scheduled to be held on February 20, 2025.

6. This order does not enjoin RGCGISD from scheduling or holding any other meeting that is properly noticed in accordance with the requirements of the Texas Open Meetings Act.

7. This Temporary Restraining Order is issued with the requirement of a bond for the amount of \$ 1,500.00S.B. which shall be posted by the Applicant either in cash or via surety that is acceptable to the Clerk of this Court.

8. A hearing on the Applicant's request for a temporary injunction is set for the _____ day of March 4, 2025, 2025, at 1:30 ~~xxx~~ a.m./p.m. in this Court.

SIGNED this 20th day of February, 2025, at 3:54 ~~xxx~~ a.m./p.m.



JUDGE PRESIDING

DC-25-68

Ana Martinez

MARIA Y. HERNANDEZ
Applicant

v.

RIO GRANDE CITY GRULLA
INDEPENDENT SCHOOL DISTRICT
Respondent

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IN THE 229th DISTRICT COURT
OF
STARR COUNTY, TEXAS

VERIFIED APPLICATION FOR TEMPORARY (EX PARTE) RELIEF, AND INJUNCTIVE
AND MANDAMUS RELIEF UNDER THE TEXAS OPEN MEETINGS ACT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MARIA YVETTE HERNANDEZ, Applicant in the above-styled and numbered cause, and files this verified application seeking relief pursuant to TX GOVT § 551.142. The Applicant is bringing this legal action to ensure transparency and accountability in the school board’s decision-making process. The board is improperly planning to discuss policy changes affecting the job security of entire groups of district employees in a closed, private meeting, which violates the Texas Open Meetings Act (TOMA). The law requires such discussions to be held in an open, public forum so that community members can stay informed and have a voice in important decisions that impact the school district. Through this action, she seeks to protect the public’s right to know what decisions are being made and why.

In support of her application, Applicant shows unto the Court the following:

4. STATUTORY AUTHORITIES

4.1. Chapter 551 of Texas' Government Code is known as the Texas Open Meetings Act (TOMA). TOMA mandates that, “[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter”. TX GOVT § 551.002. “The provisions of [the Act] are mandatory and are to be liberally construed in favor of open government.”²

4.2. Under TOMA, any “interested person” may seek a mandamus or injunction to stop, prevent, or reverse a violation or threatened TOMA violation. TX GOVT § 551.142. The Applicant is statutorily eligible for litigation costs and reasonable attorney’s fees. TX GOVT § 551.142.

² See *City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex. App.—San Antonio 2006, pet. denied); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 473 (Tex. App.—San Antonio 2003, pet. denied); *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. App.—San Antonio 1971, no writ).

5. FACTUAL BACKGROUND

5.1. On or about February 17, 2025, the RGCGISD posted a notice of a special board meeting. A true and correct copy of the agenda is attached and labeled “Exhibit 1”.

5.2. Section “6” (“Executive Session”) of the agenda that is demonstrated as Exhibit 1 includes the following statement:

By this Notice, the Board of Trustees determines that a closed or executive meeting or session of the Board of Trustees is required as authorized by the Texas Open Meetings Act, Texas Government Sections 551.001, 551.071, 551.072, 551.073, 551.074, 551.075, 551.076, 551.082, 551.083, and 551.084, for any item on this posted agenda and the items listed below:

5.4. The section then lists the following “executive session” agenda items:

The “Texas Government Sections” noted above are found in Subchapter D of TOMA, which outlines specific exceptions to the general requirement that meetings be conducted in open session. The exceptions noted by RGCGISD permit closed meetings for matters such as consultations with legal counsel regarding pending litigation or settlement offers (§551.071); discussions about the purchase, sale, or lease of real property if public discussion would harm the government’s negotiating position (§551.072); and deliberations on contracts under negotiation for commissioners courts and the Texas Facilities Commission (§§551.0725, 551.0726). Closed sessions are also allowed for discussions of prospective gifts or donations (§551.073); personnel matters concerning specific individuals (§551.074); security measures and deployment (§551.076, §551.089); economic development negotiations (§551.087); test items related to licensing exams (§551.088); and sensitive information in sectors like healthcare, insurance, education, and public utilities (§§551.078, 551.0785, 551.079, 551.080, 551.081, 551.086).

5.5. The agenda then lists the following topics for executive session (aka “closed session”)³ discussion:

- a. Discussion with legal counsel on matters related to Board policy DFFA (local).
- b. Discussion with legal counsel on the adoption of the Reduction in Force (RIF) Plan due to financial exigency.
- c. Discussion with legal counsel on matters related to the 2025-2026 Rio Grande City Grulla ISD Staffing Adjustment Plan.
- d. Discussion with legal counsel on authorization for the Superintendent to negotiate with La Union Water Supply for past due water rights for the district and water meters for La Grulla Middle school.
- e. Discussion with legal counsel to authorize the Superintendent to enter into an Interlocal Agreement with neighboring School District for school bus services.
- f. Discussion with legal counsel regarding superintendent contract matters for the Lone Finalist for the Superintendent position.

Items “a” through “c” involve “discussions with legal counsel” on policies, plans, policy changes and staff adjustments impacting classes of employees. Item “e” involves “discussions with legal counsel” regarding an interlocal agreement. Each of these are matters of increased public interest, because they concern budget matters and workforce reductions, which require more specific notice.⁴ RGCGISD, however, is not specific about the reason(s) why discussion of each of the items warrants exception to the open meeting requirements.⁵

5.6. Based on the phrase “Discussion with legal counsel...,” which premises each of the items, the Applicant perceives the RGCGISD will argue that the items are cloaked from the open-meetings requirements under § 551.071 (attorney consultations). The item notices, as tailored, however, indicate policy discussions rather than legal advice regarding pending or contemplated litigation, settlement offers, or matters where attorney-client privilege conflicts

³ The terms “executive” and “closed” are used interchangeably, though TOMA uses the term “closed.” See TEX. GOV'T CODE § 551.101; *Cox Enters., Inc. v. Bd. of Trs.*, 706 S.W.2d 956, 957 (Tex. 1986) (stating that an executive session is a meeting or part of a meeting that is closed to the public)

⁴ *Point Isabel I.S.D. v. Hinojosa*, 797 S.W.2d 176, 180 (Tex.App.—Corpus Christi 1990, writ denied) (c.f., use of the phrase “due to financial exigency” used in item “b” of the agenda).

⁵ See TX GOVT § 551.101 (requiring the identification of the sections or sections of Subchapter D of TOMA under which closed meeting will be held).

with open meeting requirements provide no indication to the public.⁶ Moreover, items (b) and (c) affirm that upon reconvening from closed session, the items will be taken up by RGCGISD without discussion, meaning the discussion with legal counsel, as noted supra., is the only discussion that will be had on each of the items.

7. RECONVENE INTO OPEN SESSION & ACTION ITEMS

- a. Discussion and action to adopt amendments to Board Policy DFFA (local).
- b. Consider and take possible action to adopt a Resolution Declaring Financial Exigency and Authorizing a Reduction in Force (RIF) for Rio Grande City Grulla Independent School District pursuant to Board Policy DFFA(LOCAL), CEA(LEGAL), and Texas Education Code § 44.011.
- c. Consider and take possible action to approve the Superintendent's Reduction in Force (RIF) Plan in accordance to the Resolution Declaring Financial Exigency and Board Policy DFFA(LOCAL).
- d. Discussion and possible action to approve a settlement agreement with La Union Water Supply for the resolution of past-due water rights and water meter expenses for District facilities, including La Grulla Middle School, and to authorize the Superintendent to execute the agreement and process necessary payments.
- e. Discussion and possible action to authorize the Superintendent to enter into an Interlocal Agreement with neighboring school districts for bus driver/transportation services and to approve all necessary expenditures related thereto.
- f. Discussion and possible action to approve the employment contract for the Superintendent of schools of Rio Grande City Grulla Independent School District.

5.7. Because items “a” through “c” deal with personnel related matters, the Applicant alternatively surmises the RGCGISD intends to cloak the topics under § 551.074 (personnel matters); however, any reliance on said provisions is misplaced. §551.071 does not apply because the topics in question involve groups of school employees. Under §551.074 of TOMA, a closed session is permitted only for deliberations concerning a *specific* officer or employee.⁷

⁶ *Tex. State Bd. of Pub. Accountancy v. Bass*, 366 S.W.3d 751, 759 (Tex. App.—Austin 2012, no pet.) (“A governmental body may not engage in a general discussion of policy unrelated to legal matters in a closed session merely because its counsel is present, but it may hold an executive session to seek or receive its attorney’s advice about either matters related to a specific pending or contemplated legal proceeding or matters for which it seeks the attorney’s legal advice.” [citing *Tex. Att’y Gen. Op. No. JC-0233* (2000)]); see also *Tex. Att’y Gen. Op. No. JM-100* (1983) (“[T]he communication must be related to an opinion on law or legal services or assistance in some legal proceeding.”)

⁷ *Tex. Atty. Gen. Op., No. JM-840* (1988); see also, *Op. Tex. Att’y Gen. No. H-496* (1975) (involving predecessor to section 551.074); see also, *Gardner v. Herring*, 21 S.W.3d 767, 777 (Tex. App.—Amarillo 2000, no pet.) (“[S]ection 551.074 of the Act...speaks of deliberation regarding ‘the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee’ or entertaining ‘a complaint or charge against an officer or employee.’...[T]he statute has been construed as referring to particular employees or individuals as opposed to employees in general. That is, it permits a governing body to deliberate behind closed doors when it is addressing the appointment, employment, complaint, etcetera, of a particular person...Discussion about policy and its application to employees in general or a class of unnamed employees is not authorized. (citations omitted).”

Deliberations impacting multiple employees or classes of employees must be conducted in open session.⁸

5.8. Where the RGCGISD intends to declare the Applicant's causes of action moot based on any future rectification, the Applicant herein affirms that she intends to prove the likelihood of future TOMA violations by the RGCGISD by demonstrating a pattern and practice of violations.⁹ For example, in an agenda posted for a February 11, 2025 meeting, the board discussed the following items in section "VIII" (closed session): items G (reclassification/reallocation of bond proposition funds), H (amendments to board policy DGBA), I (amendments to board policy BBE), J (matters related to proposed new board policy DBE), and L (matters related to the 2025-2026 staffing adjustment plan). The foregoing items/topics are subject to open-session discussion for the same reasons as those plead in the preceding paragraphs.

6. APPLICATION FOR TEMPORARY RESTRAINING ORDER (EX PARTE)

6.1. Applicant requests the Court to issue a Temporary Restraining Order under TX RCP Rule 680 directing the RGCGISD to refrain from proceeding with closed-session discussions of the topics as listed on line items 6(a), (b), (c), and (e).

6.2. If the meeting proceeds as scheduled, the RGCGISD will irreparably harm the public's right to observe discussion and consideration on the policymaking process regarding critical staffing, employment, and operational matters.

6.3. No adequate remedy at law exists to restore the public's lost opportunity to participate in and observe the discussion of the topics.

⁸ *Id.*

⁹ A TOMA violation remains a live controversy even if it occurred in the past when it demonstrates a pattern of conduct that supports future injunctive relief. *Kessling v. Friendswood Indep. Sch. Dist.*, 302 S.W.3d 373, 381 (Tex. App.—Houston [14th Dist.] 2009, pet. denied)

6.4. (The Applicant does not seek to enjoin RGCGISD from scheduling or holding any other meeting that is properly noticed in accordance with the requirements of the Texas Open Meetings Act.)

7. REQUEST FOR MANDAMUS & INJUNCTIVE RELIEF

7.1. Applicant is entitled to a mandamus and injunctive relief under § 551.142 to prevent the violation of TOMA.

7.2. After notice and hearing on the Applicant's Temporary Restraining Order, the Applicant seeks a temporary injunction enjoining RGCGISD from illegally conducting discussions of the topics as listed on line items 6(a), (b), (c), and (e) in closed session.

7.3. Applicant requests that the Court order (mandamus) the RGCGISD to reissue the agenda, clarifying that the topics as listed in items 6(a), (b), (c), and (e) will be discussed in open session, if RGCGISD chooses to proceed with any discussion on such items.

7.4. Applicant requests that the Court order (mandamus) the RGCGISD to reissue the agenda, clarifying the applicable statutory exceptions to each of the topics that will be discussed in closed session, if RGCGISD chooses to proceed with any closed session discussion or deliberation on such items.

7.5. Applicant further requests that the Court prohibit (by mandamus or injunction) RGCGISD from engaging in future TOMA violations.

8. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Court grant the following relief:

- 8.1. Issue a Temporary Restraining Order (ex parte), as plead;
- 8.2. Issue a Temporary Injunction and/or mandamus, as plead;
- 8.3. Grant Applicant reasonable costs and attorney's fees; and
- 8.4. Grant Applicant such other and further relief to which Applicant may be justly entitled.

Respectfully Submitted,

POPE & PEÑA, P.C.
200 N. Britton Ave
Rio Grande City, Texas 78582
(956) 266-7858 | info@popepena.com



Jay Peña, MBA | SBN: 24093853
j.pena@popepena.com

[VERIFICATION OF MARIA YVETTE HERNANDEZ FOLLOWS]

VERIFICATION

STATE OF TEXAS

COUNTY OF STARR

BEFORE ME, the undersigned authority, on this day personally appeared MARIA YVETTE HERNANDEZ, who, being by me duly sworn, deposed as follows:

“My name is MARIA YVETTE HERNANDEZ. I am the Applicant in the above-styled cause of action. I have read the foregoing VERIFIED APPLICATION FOR TEMPORARY (EX PARTE) RELIEF, AND INJUNCTIVE AND MANDAMUS RELIEF UNDER THE TEXAS OPEN MEETINGS ACT and state that the facts contained therein are true and correct to the best of my knowledge. Furthermore, the ‘Exhibit 1’ demonstrated therein is a true and correct copy of the agenda notice for the meeting that is scheduled to be held on February 20, 2025. I downloaded the copy on February 18, 2025 at 2:15pm from the RGCGISD website at the following link: <https://www.myrgcgisd.org/o/rgccisd/page/board-agendas/>.”


MARIA YVETTE HERNANDEZ

SWORN AND SUBSCRIBED before me this 20th day of February, 2025.


Notary Public, State of Texas
My Commission Expires: 04/23/2025

