

ROTC colonel claims Texas Open Meetings Act violated

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[By Gary Long, The Brownsville Herald](#)

A Rivera High School ROTC instructor is asking the state's 138th District Court to invalidate a grievance hearing that the BISD Board of Trustees held behind closed doors, alleging it violated the Texas Open Meetings Act.

Col. Leighton C. Smith filed a lawsuit against the Brownsville Independent School District on Nov. 18, citing the Texas Open Meetings Act.

According to the lawsuit, on July 28 Smith received a written reprimand from BISD stemming from an incident that occurred in April. Smith appealed the reprimand through the BISD grievance process. On Oct. 8, Smith requested his grievance hearing in front of the board, further requesting that it take place in open session under the provisions of the Texas Open Meetings Act.

However, the grievance hearing was held in closed session. Dr. Enrique Escobedo, who was then president of the board, decided to hold a closed session on Smith's grievance hearing before the district's board. The lawsuit further states that the board gave its reasons for the closed hearing after the meeting had started in contravention of the Open Meetings Act.

After Escobedo had decided to hold the grievance hearing in closed session, Mike Saldaña, the district's counsel, told Smith's attorney, John Shergold, that Smith could make objections to the decision in the closed executive session.

The lawsuit alleges that BISD violated Section 51.074 of the Open Meetings Act, which states that if an officer or employee is the subject of the deliberation or hearing and requests that it take place in open session, the hearing must take place in public.

The lawsuit contends that exceptions to the requirement to hold hearings in open session do not apply, "since the Plaintiff's grievance did not involve a case to deliberate the discipline of a public school child nor was a complaint brought against a fellow district employee."

Additionally, BISD did not state prior to the meeting any reasons for holding the hearing in closed session, as required by the Open Meetings Act, the lawsuit says. BISD cited two justifications for holding the hearing in closed session: Information about a student might be revealed, and that an investigation of the April incident was ongoing. The lawsuit does not identify what incident Smith was involved in and an explanation could not be learned.

Neither justification is valid, the lawsuit states, because the reasons were not stated prior to the start of the meeting "as evidenced by the Agenda."

The Board of Trustees decided to uphold the administration's action against Smith, denying the remedies he had sought, including removal of the written reprimand Smith received on July 28.

The lawsuit contends that the board's action was in violation of the Open Meetings Act "and pursuant to Section 551.141 is an illegal action subject to judicial invalidation as voidable."

In a Dec. 8 court-filed answer to the lawsuit, BISD said it "denies each and every allegation ... and demands strict proof thereof as required by the Texas Rules of Civil Procedure."

The lawsuit will now go through the discovery process, after which either a settlement will be reached or a trial date set, Shergold said.

"Mr. Smith requested that the meeting be conducted in public so that the public could be properly informed," Shergold said. "The school district continues to deny employees their right to have their grievances heard in public. As (former Texas attorney general) Jim Mattox said, "The best disinfectant is the light of day."

BISD's Saldaña has a policy of not commenting on pending litigation.