

Executive Sessions

All meetings of the Board shall be open to the public except that at any regular or special meeting the Board may proceed into executive session upon affirmative vote of two-thirds of the quorum present.

The Board shall not make final policy decisions nor shall any resolution, policy or regulation be adopted or approved nor shall any formal action of any kind be taken during any executive session.

Prior to convening in executive session, the Board shall announce the topic of the executive session which shall be reflected in the minutes. The Board shall include the specific citation to statute authorizing it to meet in executive session when it announces the session and identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.

The Board may hold an executive session for the sole purpose of considering any of the following matters:

1. Purchase, acquisition, lease, transfer or sale of any real, personal or other property. However, no executive session shall be held to conceal the fact that a member of the Board has a personal interest in such property transaction. C.R.S. 24-6-402 (4)(a).
2. Conferences with an attorney for the purpose of receiving legal advice on specific legal questions. C.R.S. 24-6-402 (4)(b). The mere presence or participation of an attorney at an executive session shall not be sufficient to satisfy this requirement.
3. Matters required to be kept confidential by federal or state law or regulations. C.R.S. 24-6-402 (4)(c). An announcement will be made indicating the specific citation to state or federal law which is the reason the matter must remain confidential.
4. Specialized details of security arrangements or investigations. C.R.S. 24-6-402 (4)(d).
5. Determination of positions relative to matters that may be subject to negotiations, development of strategy for negotiations and instruction of negotiators except that discussion of negotiations relating to collective bargaining or employment contracts shall occur in a public meeting, unless an executive session is otherwise allowed. C.R.S. 24-6-402 (4)(e).
6. Personnel matters except if an employee who is the subject of an executive session requests an open meeting. C.R.S. 24-6-402 (4)(f). If the personnel matter involves more than one employee, all of the employees must request an open meeting. Discussion of personnel policies that do not require discussion of matters specific to particular employees are not considered "personnel matters."

The Teacher Employment, Compensation and Dismissal Act shall prevail in teacher dismissal hearings. (It provides that a dismissal hearing shall be open unless either the administration or employee requests that the hearing be closed.)

Discussions concerning a member of the Board, any elected official or the appointment of a Board member are not considered "personnel matters."

7. Consideration of any documents protected under the mandatory nondisclosure provision of the Open Records Act, except that consideration of work product documents and documents subject to the governmental or deliberative process privilege must occur in a public meeting, unless an executive session is otherwise allowed. C.R.S. 24-6-402 (4)(g).
8. Discussion of individual students where public disclosure would adversely affect the person or persons involved. C.R.S. 24-6-402 (4)(h).

Only those persons invited by the Board may be present during any executive session regardless of the topic of the session (including personnel matters).

The Board shall cause an electronic recording to be made of the executive session in accordance with applicable law. Such record shall be retained by the Board for 90 days following the session.

LEGAL REFS.: C.R.S. 22-32-108 (5) (*meetings of the board*)
C.R.S. 22-32-108 (5)(d) (*executive session minutes*)
C.R.S. 22-32-109.4(4) (*board meeting "at which a collective bargaining agreement is discussed" must be open to the public*)
C.R.S. 24-6-402 (*open meetings law*)

CROSS REFS.: BEDG, Minutes
KDB, Public's Right to Know/Freedom of Information

NOTE 1: School districts must make an "electronic recording" of any executive session, which shall include the specific statutory citation to the executive session law that allows the Board to meet in executive session. However, if the executive session is held to discuss an individual student matter, the Board is not required to make an electronic or written record of the executive session. If the executive session is held to receive legal advice from an attorney on a particular matter, an electronic record must be made of the statutory citation to the executive session law that allows the Board to meet in executive session to receive legal advice, but the Board is not required to make an electronic or written record of the discussion that occurs in the executive session, on the basis that it constitutes privileged attorney-client communication. If no electronic recording is made because the discussion constitutes a privileged attorney-client communication, this must be stated on the electronic recording, or the attorney representing the board must provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication. The board should put a procedure in place to assure that the record of any executive session is routinely destroyed once the 90-day deadline expires.

NOTE 2: Each school board member is required to sign an affidavit stating the board member is aware of and will comply with the confidentiality requirements and restrictions applicable to executive sessions of the board, as described in C.R.S. 24-6-402. The affidavit shall be signed at the board's organizational meeting called pursuant to C.R.S. 22-32-104 (1). The affidavits shall be kept with the minutes of the board meeting. C.R.S. 22-32-108 (5)(a).

NOTE 3: State law requires the minutes of any Board meeting at which the Board convenes in executive session to be posted on the Board's website not later than 10 business days following the meeting at which the minutes are approved by the Board. C.R.S. 22-32-108 (5)(d). If the Board does not maintain a website, the minutes "must be published in the same manner as the Board regularly provides public notice." Id. The law doesn't specify the length of time that the minutes must remain "posted" or "published." At a minimum, CASB suggests keeping the minutes posted/published for at least 90 days following the meeting at which the executive session occurred. This way, the timeline for posting/publishing is the same as the statutory timeline for the retention of electronic recordings of executive sessions. See, C.R.S. 22-32-108 (5)(d); 24-6-402 (2)(d.5)(II)(E).

NOTE 4: Proposition 104, which was passed by voters in November 2014, prohibits school boards from convening in executive session to determine positions relative to matters that may be subject to negotiations, develop strategy for negotiations, and instruct negotiators, IF: (1) negotiations relating to collective bargaining are discussed; or (2) negotiations for "employment contracts" are discussed. C.R.S. 24-6-402(4)(e)(II). School boards are still allowed to convene in executive session under the "negotiations" provision if such discussion relates to "negotiations for an individual's employment contract." C.R.S. 24-6-402(4)(e)(II)(B). There may be other instances when the board may convene in executive session under the negotiations provision, so long as it doesn't involve negotiations concerning "collective bargaining" or "employment contracts."

[Revised November 2014]

Lake County School District R-1, Leadville, Colorado