

YOU'RE A NEW BOARD MEMBER AND YOU'VE GOT THIS!



OML, CORA, & Public Comments

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I. LEGALLY SOUND BOARD MEETINGS

A. Colorado Open Meetings Law

“In order to continue the public confidence in the integrity of government officials and to promote trust of the people in the objectivity of their public servants, this open disclosure law is adopted.”

I. LEGALLY SOUND BOARD MEETINGS

A. Colorado Open Meetings Law

All meetings of a quorum (or 3 or more members) of local public body...

- At which public business is discussed; or
- At which any formal action is taken; or
- At which a majority or quorum of the body is in attendance or expected to be in attendance.

... are public meetings open to the public at all times

Question

Question: What is a meeting that must be open to public?

Answer: Any kind of gathering convened to discuss public business, including:

- In person
- By telephone (conference call)
- Electronically (Zoom)
- Or by any other means of communication (email)

Does not include chance meetings or social gatherings at which discussion of public business is not central purpose. C.R.S. 24-6-402(2)(e).

- ▶ **Example 1: What if all the Board members are attending a high school graduation? Does that event need to be noticed?**
- ▶ **Example 2: What if all the Board members are invited to a local rotary club dinner and a quorum are planning to attend?**

B. Notice

Public meetings can only be held after full and timely notice.

Timely notice means:

- posted at least 24 hours in advance for regular and special meetings

Full notice requires the following:

- time, place, purpose of the meeting; and
- agenda of topics to be discussed (Title 24)

Example: School district posts notice of meeting on the Friday before meeting is held on Tuesday.

- On Monday, the Board wants to add an urgent contract to agenda. What should they do?**
- On Tuesday, Board secretary realizes important item was omitted from agenda. What can they do?**

C. Documentation Requirements

Minutes are required for all meetings and recordings are required for meetings at which votes are taken.

All recordings may be destroyed after 90 days, unless Board policy requires otherwise.

D. Executive Session – Board can have non-public/non-open meetings under certain limited circumstances:

1. Purchase, lease, sale of real property
2. Conferences with attorney to receive legal advice on specific legal questions
3. Matters required to be kept confidential by law (sexual harassment complaints, teacher evaluations)
4. Specialized details of security arrangements

D. Executive Session Exceptions Continued

5. Negotiation strategy (but collective bargaining negotiations with union not in exec. session)
6. Personnel matters (non-renewals)
7. Consideration of documents protected by CORA
8. Discussion of individual students
9. Superintendent finalists interviews (must also be public interview forum) and contract negotiations with superintendent finalists

B. Executive Session - *continued*

All executive sessions must be properly noticed with **citation to the specific subsection** under which the executive session is being conducted and **specific** identification of the particular matter to be discussed (*Guy v. Whitsitt*).

Examples of Actual OML Suits against Colorado School Districts alleging Lack of Specificity:

- A. Move into executive session pursuant to C.R.S. § 24-6-402(4)(a) for the purpose of discussing lease of or purchase of real estate.

Complaint alleges that description and motion should have identified:

- ▶ specific real property at issue by physical description and/or parcel number
- ▶ lessees/lessors and owners/sellers

Example A – *continued*

- ❖ Proposed description based on complaint: Move into executive session pursuant to C.R.S. § 24-6-402(4)(a) for purpose of discussing lease and/or purchase of real property - Tract E, Saddle Rock North Subdivision.
- ❖ Alternative Description Option: Move into executive session pursuant to C.R.S. § 24-6-402(4)(a) for purpose of discussing legal duties of board under C.R.S. § 22-32-110(a)(b) for leases and/or purchases of real property.

Examples - *continued*

- B. Move into executive session to discuss personnel matters as it pertains to staff compensation under C.R.S. § 24-6-402(4)(f).

Complaint alleges that description and motion should have indicated that executive session would address:

- salary increases
- benefits
- competitiveness of employee salaries
- exit surveys
- names of employees with impacted salaries

Example B – *continued*

❖ Proposed description based on complaint:

Move into executive session under C.R.S. § 24-6-402(4)(f) to discuss personnel matters as it pertains to staff compensation, proposed salary increases, benefits, employee exit surveys and employees Smith, Martinez, and Jones.

Examples - *continued*

- c. Move into executive session to discuss Superintendent Brown's evaluation.

Complaint alleges that description and motion failed to provide required statutory authority for executive session.

Examples - *continued*

❖ Recommended description:

Move into executive session under C.R.S. § 24-6-402(4)(f) to discuss personnel matters regarding duties of Board to evaluate Superintendent under C.R.S. § 22-9-106(4)(b) and content of Superintendent's evaluation.

PRACTICE POINTERS

Always cite to statutory subsection authorizing executive session in agenda and in motion.

Add one juicy detail.

Executive sessions with counsel and/or sessions involving student matters do not need to be recorded, but statement must be made on record as to why recording is not being made.

II. COLORADO OPEN RECORDS ACT (CORA)

Colorado law establishes the presumption that all public records should be available to the public.

“It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times....”

Public Records include all writings made, maintained or kept for use by the public entity in exercise of functions required or authorized by law.

II. RESPONDING TO OPEN RECORDS REQUESTS

Common CORA Exceptions:

- Ltd. Personnel Records (conf. info., letters of reference)
 - No teacher evaluations
- Student Educational Records
- Sexual Harassment Investigations
- Medical Records
- Work Product prepared for public officials
- Specialized details of security arrangements
- Safe2Tell records



II. RESPONDING TO OPEN RECORDS REQUESTS

- Important to have identified process in policy and posted on website
- Charge fees for research & retrieval (current rate: \$33.50/hr after free first hour)
- Have 3 days to provide documents; can take up to 7 days for extenuating circumstances
- Board Member Emails: “If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.”

III. PUBLIC COMMENTS

A. Time, Place & Manner Restrictions are Permissible

- Only community members may speak
- Limit comment to agenda items only
- Establish a deadline to sign-up
- Set a time limit on length of comments (3 min.)
- Order of public comment on agenda

III. PUBLIC COMMENTS - *continued*

B. Consider an opening script setting parameters for public comment including:

- This is your opportunity for public comment; this is not a question and answer session.
- Confine your comments to matters germane to the business of the district.
- Recognize that students attend most meetings and that all speaker comments should be suitable for K-12 audience.
- Any speaker who disrupts good order of meeting may be asked to leave.

III. PUBLIC COMMENTS - *continued*

C. What about personal attacks on Board members?

Board policies prohibiting personal attacks, abusive comments etc. have been deemed by Courts to be in violation of First Amendment (not viewpoint neutral, particularly when comments are not disruptive to meeting).

III. PUBLIC COMMENTS - *continued*

D. What about signs/t-shirts at Board meetings?

The banning of a sign/t-shirt with unfavorable message would likely be deemed viewpoint discrimination in violation of First Amendment.

- No CRT
- No Left Turn
- Union Plant v. Pro-Union T-shirts



QUESTIONS?