

BOARD OF EDUCATION

Special Board Meeting – January 26, 2022

CALL TO ORDER

The special meeting was called to order by Board President David Rusterholtz at 6:06 p.m. with the following members present: Chris Austin, Gary Brovetto, David Illingworth II, Suzanne Patterson, and Mr. Rusterholtz.

APPROVAL OF AMENDED AGENDA

MOTION Brovetto, second Illingworth II, to amend the agenda and add discussion on GP-1, Governance Commitment. MOTION DENIED since no unanimous vote in a special meeting. Voting Aye – Brovetto, Illingworth II, Patterson, Rusterholtz. Voting No – Austin.

APPROVAL OF ORIGINAL AGENDA

MOTION Illingworth II, second Brovetto, to approve the agenda. Before roll call Board Secretary Chris Austin asked about the vagueness of item V. Board Housekeeping and what all that entails and concern about eroding what little trust we may have with our stakeholders and not comfortable with the tone being set. Attorney Brad Miller shared not all items have to be listed on the agenda as long as the Board of Education Directors are aware. MOTION CARRIED; Voting Aye – Brovetto, Illingworth II, Patterson, Rusterholtz. Voting No – Austin.

BOARD TRAINING WITH ATTORNEY BRAD MILLER

Attorney Brad Miller distributed information on Colorado open meeting and open records laws affecting school district boards of directors (Addendum A). He also covered: 1). process for CORA requests. 2). Visitation of Schools - Duty to know what is going on in schools, but be thoughtful about your interactions; make sure you are not tasking, but relation building; don't come across as investigating, probably should communicate you will be in a building, but do not need permission; need to be incredibly respectful; dynamics can change when you enter the room; Dr. Neal recommended use of the district office in lieu of school buildings if 2 members want to meet. 3). Social Media – as elected officials you have limited governmental immunity; recommends to not engage on social media about school related items. 4). Role of Board President - If disruptions occur during a meeting he has the ability to gavel and give warning; can revoke disruptors from attending future meetings; Board President is the primary conduit – Board members go through the President; meeting agenda preparation, if other directors have items, go through the Board President. 5). Communication with Parents - If a community member approaches to complain about coaching as an example; don't make promises; Board Director Suzanne Patterson asked about if contacted about an issue what is the process? Dr. Neal shared in policy it is incumbent upon board members to contact either Dr. Neal or Board President.

GOVERNANCE POLICY REVIEW

Board Secretary Chris Austin provided background information on how GP's are reviewed and the expectations as well as when reviewing them provides the opportunity to self-evaluate. The Board of Education reviewed governance policies GP-8, Agenda Planning & Board Meetings; and GP-10 Monitoring Board Performance. No issues and will be on the February meeting consent calendar for approval of compliance.

BOARD HOUSEKEEPING

Merit Academy MOU – Attorney Brad Miller shared even though there was an anticipated process through Tom Weston of Charter School Institute, and since there has been multiple input and continued dialogue, he supports the suggestion from Dr. Neal that a proposal for the Board of Education to approve a MOU on the front end, and then deal with the essential elements i.e. HR, finances, etc. be addressed in the contract phase. Dr. Neal shared the real work is what is in the contract and once the contract is completed it will be presented to the Board of Education for a vote of approval.

After discussion, Mr. Miller read the MOU to the Board of Education. MOTION Brovetto, second Illingworth II, to accept the memorandum of understanding as read. After discussion, Brovetto and Illingworth II both rescinded since the MOU was amended to make an edit to #4 as well as the effective date. MOTION Brovetto, second Illingworth II, to approve the edited memorandum of understanding. MOTION CARRIED; Voting Aye – Austin, Brovetto, Illingworth II, Patterson, Rusterholtz.

Building Access Badges for Board Directors – Mr. Miller shared there is an interest among several of the board members to have building access badges. After discussion, Board President Rusterholtz deferred to Dr. Neal about whether to have a vote on this. Dr. Neal asked for a formal vote for the record. MOTION Illingworth II, second Brovetto, to have access cards issued to those Board Directors that have completed and passed a successful background check as well as work on rules of engagement at a future meeting. MOTION CARRIED; Voting Aye – Brovetto, Illingworth II, Patterson, Rusterholtz; Voting No – Austin.

Curriculum Review – Mr. Miller introduced this topic as he was not directly involved in the work session involving the presentation about the Summit Learning platform that gave rise to related questions about what curriculum is used and what is the process of selecting curriculum. Dr. Neal shared the discussion on the table is should the Board of Education direct the Superintendent to review all curriculum and its use and effectiveness in our schools? Dr. Neal's thinking is if we go this route would be to limit to core subjects K-12 and have an external auditor/evaluator provide what is and what is not working, identify gaps, etc. After discussion, the Board of Education came to consensus and directed the superintendent to develop a district-wide curriculum review of K-12 core subjects in and out of the Summit platform.

EXECUTIVE SESSION

MOTION Austin, second Illingworth II, to adjourn to executive session at 9:10 p.m. for a personnel matter to review Superintendent Contract as per C.R.S. §24-6-402(4)(f). MOTION CARRIED; Voting Aye – Austin, Brovetto, Illingworth II, Patterson, Rusterholtz.

MOTION Illingworth II, second Rusterholtz, to adjourn from executive session at 9:52 p.m. MOTION CARRIED; Voting Aye – Austin, Brovetto, Illingworth II, Patterson, Rusterholtz.

ADJOURN SPECIAL MEETING

MOTION Illingworth II, second Brovetto, to adjourn the meeting at 9:53 p.m. MOTION CARRIED; Voting Aye – Austin, Brovetto, Illingworth II, Patterson, Rusterholtz.

Attest:



Board of Education Secretary

Board of Education President

Addendum A

COLORADO OPEN MEETINGS AND OPEN RECORDS LAWS AFFECTING SCHOOL DISTRICT BOARDS OF DIRECTORS

The Colorado Open Meetings Law.

1. General Purpose of the Law. The general policy underlying the Colorado Open Meetings Law¹ is stated in section 401 of the law, which states that the formation of public policy in Colorado is public business and may not be done in secret.

2. Local Public Body/State Public Body. The law applies in different ways depending on whether the public body in question is a “state public body” or a “local public body.” A district board of directors is a “local public body.”

3. “Meeting” is Defined Very Broadly. In considering whether the law is applicable to any particular meeting, district board members should keep in mind that the term “meeting” is defined in an extremely broad way in the act. “Meeting” is defined as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.”

4. General Rule of the Open Meetings Law. The general rule of the Open Meetings Law is very simple: “All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.”

The rule simply means that any time three or more members of a district board have a meeting at which they discuss district business, they may not exclude from that meeting any member of the public who wishes to sit in on it.

Very importantly, the statute states that no formal action of any local public body shall be valid unless the action is taken in an open meeting that complies with the Open Meetings Law.

5. E-Mail Discussions. Email discussions among board members are not illegal per se. They are, however, “gatherings” for purposes of the law, and it is unclear how one would invite the public to attend such meetings. Accordingly, email discussions involving more than two board members should be avoided.

This issue was discussed by the Court of Appeal in *Intermountain Rural Elec. Ass’n v. Colo. Public Utilities Commission*, 2012 Colo. App. LEXIS 1136 (Colo.App. 2012). In that case official of the PUC discussed pending legislation in an email string. The court held that the emails constituted a “gathering” for the purposes of the law, but that the particular discussions in the email string did not implicate the PUC’s “policy making” function, and therefore the discussion did not violate the law. The negative implication of the court’s opinion is that where an email discussion does implicate a board’s policy making function, the discussion is subject to the law.

¹ C.R.S. § 24-6-401 *et seq.*

6. Difference Between “Open” Meeting and “Noticed” Meeting. There is sometimes confusion about the difference between an “open” meeting and a “noticed” meeting. This confusion leads to questions such as: “If two other members of the board and I meet in a school lunchroom to discuss district business, do we have to post a notice the day before?” As we saw in the previous section, an “open” meeting is any meeting of three or more board members. A “noticed” meeting, on the other hand, is any meeting where either of the following occurs:

- a. A formal action of the board is taken (e.g., adoption of a policy or other motion); or
- b. A majority (or quorum if less than a majority) of the board is present or is expected to be present.

Thus, the meeting of three² board members in the lunchroom in which they discuss district business may be an open meeting (i.e., any member of the public can sit in on the discussion), but it is not a meeting for which notice must be posted in advance.

For many years the status of “informal meetings” under the Open Meetings Law was subject to doubt. For example, is the annual district Christmas party an open meeting? If a majority of the board members plan to attend the party, it certainly appears to fall within the provisions of the statute and thus must be noticed. On the other hand, posting notice of a party does not appear to serve the purposes of the statute.

The Colorado Supreme Court resolved this issue in *Board of County Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188 (Colo. 2004). In that case a majority of the county commissioners went to a dinner sponsored by a company with business before the board. The commissioners did not participate in the discussion or act in their official capacity in any way. Nevertheless, the county conservancy district sued, claiming that because a majority of the commissioners were at the dinner it was an open meeting that had to be noticed.

The Colorado Supreme Court disagreed. It held that a local public body must give notice of a meeting that is expected to be attended by a quorum of the body only if the meeting is “part of the policy-making process.” A meeting is part of the policy-making process when the meeting is held for the purpose of discussing or undertaking a rule, regulation, ordinance or other formal action.

We have an answer to the “Christmas Party Question.” Even though a majority of the board plans to attend the Christmas party (or picnic or basketball game or any other event), if the board does not expect to discuss or undertake any formal board action, the meeting is not subject to the posting requirements of the Open Meetings Law and there is no need to post advance notice. Obviously, if a quorum is present, the members of the board should not discuss board business as the event.

² Assuming a quorum of the district’s board is more than three.

7. Votes Must be Public. All board votes must be in public. Secret ballots are prohibited. There are two narrow exceptions to this rule. A district board may vote by secret ballot to (1) elect board leadership (officers) and (2) appoint a search committee search for a new chief executive officer.

8. Notice. The Open Meetings Law specifies the type of notice that is sufficient for those meetings where notice is required. The law states that a local public body shall be deemed to have given full and timely notice if the meeting is posted in a designated public place no less than 24 hours prior to the meeting. The designated place must be adopted annually by the district board in its first meeting in January. The posting must include the agenda for the meeting where possible. Therefore, if the district has an agenda prepared in advance it should be posted as part of the notice. However, the "where possible" language of the statute probably means that the district board will not be strictly bound to the posted agenda at its meeting.

9. Minutes. The Open Meetings Law requires district boards to keep minutes of their meetings and make those minutes available for public inspection. The statute states that the minutes shall be recorded "promptly." Thus, there is no specific time limit for making minutes available, but the usual practice is to adopt the minutes for a meeting at the next regularly scheduled meeting. The law does not directly address the question of whether minutes are kept at "work sessions." The Colorado Freedom of Information Coalition and the Colorado Press Association, the most vigilant watchdogs of Open Meetings issues in Colorado, have declared, in their Guide to Colorado Open Meetings and Open Records Laws "*workshops or committee meetings do not necessarily require minutes.*" This statement is supported by the practice and policy of most Colorado school districts.

If a local public body ever records its meetings electronically it must continue to do so from that time forward. This means that districts should be very careful about recording their meetings, because if they do so even once they must continue to do so from that point on.

In 2009 the General Assembly enacted a law requiring boards of education of school districts to record all of their meetings.

10. How to Call an Executive Session. The statute provides that a district board may call an executive session to discuss certain matters. In order to call the executive session the board must (a) announce the general topic that will be discussed in the executive session; and (b) vote by a 2/3 majority to resolve into executive session. The announcement of the general topic must include a specific citation to the part of the law authorizing the executive session and must be as detailed as possible without compromising the purpose of the executive session. **Note:** One of the most common mistakes in this area is approving a motion to resolve into executive session by voice vote. The minutes of the open meeting must show the necessary 2/3 majority. Therefore, unless the motion is approved by unanimous acclamation, the vote must be a roll call.

11. No Formal Action in Executive Session. It is very important to understand that executive sessions are for discussion only. No formal actions can be taken in

executive session. Thus, for example, a district board may never vote on a motion while it is in executive session. If the board wants to adopt a motion after discussing it in executive session, it must first resolve itself out of executive session into an open meeting and then hold the vote.

12. Proper Subjects for Executive Sessions. It is also important to note that a district board may not resolve itself into executive session just because it wants to discuss a matter in private. All discussions of the district board must occur in open session unless there is specific statutory authority for holding an executive session on a topic. The specific grounds for which a district board may meet in executive session are listed in C.R.S. § 24-6-402(4) as follows:

- a. Discussions regarding buying or selling property;
- b. Conferences with an attorney to receive legal advice;
- c. Matters required to be kept confidential by state or federal law (e.g., student academic records);
- d. Security arrangements or investigations;
- e. Determining contract negotiation strategies;
- f. Personnel matters. “Personnel matters” does not include discussions concerning a member of the district board or the appointment of a person to fill a vacancy on the board. Nor does the topic include discussion of general personnel policies like salary schedules. The exception occurs only when an individual employee or group of employees are discussed. An individual employee has a right to require discussions about him or her to be held in an open meeting, which means that the employee must receive notice in advance that he or she will be the subject of the executive session discussion. *Gumina v. City of Sterling*, 119 P.3d 527 (Colo.App. 2004).

There is confusion about whether an employee has a right to attend an executive session in which they are discussed. They do not. They have the right to require the discussion to be held in an open session, but they do not have the right to be present in the executive session if they waive this right. The board of directors may invite the employee into the executive session if it chooses, but is not required to do so.

- g. Consideration of documents protected from disclosure under the Open Records Act (for more on this see the discussion of that act below); or
- h. Discussion of individual students where public discussion would adversely affect the student involved.

13. Minutes of Executive Sessions. The statute has special provisions for the minutes of executive sessions. First, if the district board resolves itself into executive

session the minutes of the regular open meeting must state the general topic of discussion (e.g., "consultations with legal counsel;" "determining contract negotiation strategy;" etc.). The minutes of the regular open meeting should not reflect the actual discussions that occurred in the executive session.

Discussions that occur in executive sessions must be recorded by electronic means. At the beginning of the executive session a statement of the citation to the specific provision of the statute that authorizes the district board to meet in executive session must be made on the record.

The statute specifically excepts from its provisions, any discussions of individual students in the district. Therefore, if the purpose of the executive session is to discuss an individual student (for e.g., discipline, etc.) no recording of the session need be made.

The statute also provides an exception to the executive session recording requirement for consultations with attorneys. However, the recording of the executive session must have a recorded statement from the attorney that the portion of the session that was not recorded, in the opinion of the attorney, constituted a privileged communication. In the alternative, the attorney may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged communication.

The minutes of an executive session of the district board are not open to the public unless the district agrees to open the minutes or is ordered to produce the minutes by a court. The district is required to keep the minutes of an executive session for at least 90 days, after which it may discard the minutes.

A provision of the district board meeting law now requires that each board member sign an affidavit stating that the board member is aware of and will comply with the confidentiality requirements and restrictions applicable to executive sessions. C.R.S. 22-32-108(5)(a).

14. Sunshine List. A little known and little used part of the Open Meetings Law requires the secretary of each local public body to keep a record of each person who has requested specific notice of meetings and to provide individual notice to such persons in advance of any meeting.

The Colorado Open Records Law.

1. General Purpose of the Law. Like the Open Records Law, the Open Records Act³ declares as its general purpose that all public records shall be open for inspection by the public.

³ C.R.S. § 24-72-201 et seq.

2. General Rule. The general rule of the Open Records Act is also quite simple: All public records shall be open for inspection by any person at reasonable times.

3. What is a "Record." The Open Records Act defines the term "record" extremely broadly to include practically any kind of written, electronic or recorded communication or document imaginable. Note that the term specifically includes e-mail. Thus, district board members should assume that any e-mails among board members will be subject to production to any member of the public who wishes to see them.

4. Procedures for Production of Open Records. The Open Records Act contains very specific and detailed instructions for the production of public records to a requesting member of the public. Generally speaking, the procedures require the district to make the records available to the requesting party within three working days of the request unless there are extenuating circumstances justifying a greater time. However, the maximum period of time between the request and the production is seven working days. In no even can extenuating circumstances apply to a request for a single, specifically identified document.

5. Exceptions. While the general policy of the State of Colorado is that all records are open records subject to inspection, there are a number of exceptions. Unless a record falls within a specific exception it must be produced. The exceptions are too numerous to summarize here. However, some of the more important exceptions are the following:

- a. Producing the record would violate state or federal law (i.e., individual student academic records);
- b. Test questions, scoring keys, and other examination data;
- c. Real estate appraisals relating to property acquisitions until title has passed;
- d. Medical, mental health, sociological and scholastic achievement data on individual persons;
- e. Personnel files (Note that notwithstanding this exception, any employment contract or other information regarding amounts paid to individual employees and amounts paid under settlement agreements must be produced);
- f. Letters of reference;
- g. Privileged information (e.g. attorney-client communications);
- h. Addresses and telephone numbers of students (such information may not be provided in, for example, a school directory unless specific authorization is obtained); and
- i. Records of sexual harassment complaints.

Since there are so many exceptions to the Open Records Act, if there is any doubt about whether production of a particular document is permissible, legal counsel should be consulted.

6. Charges for Copies. Recent legislation permits the district to charge up to \$33.58 per hour after the first hour to retrieve, review and produce records, only if the district adopts a policy setting forth the charges. The district may charge up to twenty-five cents per standard page for copies. It may charge actual costs for non-standard pages. It may also charge a reasonable fee, not to exceed \$33.58 per hour, designed to recover its costs for any data manipulation necessary to respond to the request.