



Board Policies

ADD 4.9- Executive Sessions/Closed Board Meetings

Policy Type: Additional Policies
Policy No.: ADD 4.9
Policy Title: Executive Session/Closed Board Meetings
Monitoring: Frequency - Three-year Review Cycle

An executive session — sometimes called a *closed meeting* or an *in camera session* — is a useful tool for protecting and advancing the best interests of an organization. Executive sessions provide a venue for handling issues that are best discussed in private, for fostering robust discourse, and for strengthening trust and communication. Distinguished by their purpose and participants, executive sessions serve three core functions: (1) they assure confidentiality, (2) they create a mechanism for board independence and oversight, and (3) they enhance relationships among board members and with the School Director.

By the board and for the board, executive sessions enable the board to manage itself. They create an appropriate forum for board members to talk openly about topics that warrant special treatment. In effect, executive sessions are a kind of special meeting-within-a-meeting. Executive sessions may take place before, in the middle, or at the end of a regular board meeting. They are, by definition, exclusive to board members, but others, such as the School Director or professional advisors, may be invited to join for part or all of the session.

Procedural requirements:

A. All discussions of the charter school board must occur in open session unless there is specific statutory authority for holding an executive session on a topic. The specific statutory reasons for which a charter school board may meet in executive session are listed in C.R.S. § 24-6-402(4) as follows:

- Property sale, purchase, or lease if it gives unfair advantage when made public § 24-6-402(4)(a), C.R.S.: Concerning the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest. Exception: Not available where a member of the governing body has a personal interest in the transaction.

- Attorney present offering legal advice to the board § 24-6-402(4)(b), C.R.S.: Conferences with an attorney for the public entity for the purposes of receiving legal advice on specific legal questions. Notes: 1) Mere presence of the attorney is not sufficient; 2) State topic of the legal questions in as much detail as possible without disclosing confidential information.
- Matters of state or federal confidentiality § 24-6-402(4)(c), C.R.S.: Matters required to be kept confidential by Federal or State law or rules or regulations (citing the specific statute or rule)
- Security arrangements or investigations § 24-6-402(4)(d), C.R.S.: Specialized details of security arrangements or investigations.
- Negotiation discussions § 24-6-402(4)(e), C.R.S.: Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.
- Personnel matters, unless the employee requests an open meeting § 24-6-402(4)(f), C.R.S.: Personnel matters, identifying the person or position to be discussed. Exception: Not available for the following discussions: 1) to discuss general personnel policies; 2) if the employee who is the subject of the executive session has requested an open meeting; An individual employee has a right to require discussions about him or her to be held in an open meeting (but not attend executive session), which means that the employee must receive notice in advance that he or she will be the subject of the executive session discussion.3) if the personnel matter involves more than one employee and all of the affected employees have requested an open meeting; or 4) to discuss any member of the governing body or the appointment of any person to fill the office of a member of the governing body. Note: Both the agenda and motion must identify the employee, either by name or position.
- Consideration of any documents protected under the mandatory non-disclosure provision of the Open Records Act. § 24-6-402(4)(g), C.R.S.: Includes: medical records, personnel files, and privileged documents. See § 24-72-204(3)(a), C.R.S. for a complete list.
- Discussion of individual students § 24-6-402(4)(h), C.R.S.: Discussion of individual students where public disclosure would adversely affect the person or persons involved.

B. Before the Board resolves itself into Executive Session, the statutory reason, identified in step A, for the Executive Session must be announced and placed on the Agenda and in the minutes, along with the statutory citation.

Example: (from

https://www.courts.state.co.us/userfiles/file/Media/Law_School/March%202011/Law%20School%20for%20Journalists%20Checklist%20for%20Executive%20Sessions.pdf

I move, pursuant to Colorado Revised Statutes, Title 24, Article 6, Section 402, at subsection 4(____) [insert the subsection for the applicable exemption] to go into executive session to discuss a _____ [insert an identification of the topic] matter. The particular matter that is to be discussed behind closed doors is _____ [insert a specific

identification of the particular matter, i.e., the identity or job category of an employee in a personnel matter, the specific lawsuit or claim in a legal matter, or the specific contract or agreement in a negotiation matter].

[If the discussion involves an employee and the “personnel matters” exemption has been cited, add the following text:] As this executive session involves a personnel matter, the employee involved has been given an opportunity to require that this discussion be conducted in public, and the employee has indicated that he/she wishes for this discussion to occur in private.

C. The minutes of the meeting must show the necessary 2/3 majority approved going into executive session, and this is impossible if the motion was approved by voice vote. To resolve into executive session the board should vote by roll call. Alternatively, the chair of the meeting may call for objections, and if there are none announce a unanimous vote.

D. 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 charter school board to meet in executive session must be made on the record.

1. Importantly for charter schools, the statute specifically exempts from its provisions discussions of individual students at the school. 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.
2. 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 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.
3. The minutes of an executive session of the charter school board are not open to the public unless the school agrees to open the minutes or is ordered to produce the minutes by a court. The charter school is required to keep the minutes of an executive session for at least 90 days, after which it may discard the minutes.

E. In addition to the procedural requirements listed above, the following are additional prohibitions on what a board may do during the closed session:

1. The board may not discuss a non-exempt topic, such as, for example, an elected official or a sitting board member or a candidate for a vacancy on the board.

2. The board may not discuss a matter that has not been announced and voted upon in advance. (If a closed discussion strays onto a topic that has not been announced and voted upon, the board must reconvene in public, announce the new topic, and then vote on whether to discuss that new topic behind closed doors before it continues with the new topic.)
3. The board may not discontinue the electronic recording of an executive session except, and only, if the board's legal counsel certifies that the discussion involves a matter of attorney-client privilege.
4. The board may not "adopt" any "proposed policy, position, resolution, rule, regulation, or formal action," except the approval of the minutes of a prior executive session.
5. The board may not reach any informal decision on a matter that is then rubber-stamped during the subsequent public session.

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(continue adding Revised/Reviewed dates)