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Transparency 101: How to exercise your rights to information and open meetings in your school district

OPEN MEETINGS LAW (SUNSHINE LAW)

Legislative declaration: "The formation of public policy is public business and may not be conducted in secret."

Which meetings are open to the public? "Any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication." For elected school boards and other local public bodies, the law applies to meetings at which three or more members are present, or just two members are present if two constitutes a quorum. The law does not apply to social gatherings.

Does the Sunshine Law apply to meetings of school district employees? No.

When may a school board go into executive session? After the board meets in public and announces the topic to be discussed and the particular matter (providing "as much detail as possible without undermining the purpose for which the executive session is held") and then votes, by two-thirds of the quorum present. Only the following matters may be discussed in an executive session: the purchase or sale of public property; conferences with the board's attorney to receive specific legal advice on specific legal questions; matters required to be kept confidential by state or federal law; details of security arrangements; positions and strategies regarding negotiations with employee organizations (e.g. collective bargaining); personnel matters, unless the employee(s) who is the subject of the executive session requests an open meeting; documents protected by mandatory nondisclosure in the Colorado Open Records Act; discussion of individual students where public disclosure would adversely affect the students.

Can a school board make a decision in an executive session? No. Any decision must be made at a subsequently convened public meeting. Decisions may not be made in private and later "rubber stamped" in public.

Must school board executive sessions be recorded? Yes, except for attorney-client discussions. (State legislation that would have required the electronic recording of ALL portions of school board executive sessions failed during the 2014 session.)

How are discussions by email and text messages treated? Like in-person meetings. The law makes it clear that "if elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements" of the Open Meetings Law. When three or more members of a school board use electronic devices to discuss policy, they deny the public its right to "attend" that meeting.

What can I do if I suspect the school board is violating the Sunshine Law? Any person can ask a court to issue an injunction to enforce the law. If successful, a plaintiff is entitled to an award of his/her costs and reasonable attorney fees. Any decisions made improperly in an executive session can be invalidated, and the court can make public electronic recordings of those portions of executive sessions that were held improperly. If the school board wins, the court can award costs and fees to the school district only if it finds that the suit was frivolous or groundless.

Open Meeting Requirements for School Boards (CASB): www.casb.org/Files/Govt_Relations/open_meetings_memo.pdf
Use of Electronic Mail by School Boards (CASB): <http://coloradofoic.nfoic.net/files/2014/09/CASB-electronic-mail.pdf>
Superintendent Search (CASB): <http://coloradofoic.nfoic.net/files/2014/09/CASB-superintendent-search.pdf>

COLORADO OPEN RECORDS ACT (CORA)

Legislative declaration: "All public records shall be open for inspection by any person at reasonable times."

Which records are open to the public? All "writings" made, maintained or kept by the state or any agency, institution or political subdivision (including a school district) for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. "Writings" include photographs, tapes, recordings and digitally stored data, including electronic mail.

Which records are exempt from disclosure? A custodian of public records must allow any person to inspect any record unless state statutes declare it confidential, federal law forbids its disclosure or a state court has ordered it closed. A custodian is required to deny the inspection of certain records, including medical, psychological, sociological and scholastic achievement data. "Personnel file" information cannot be disclosed, but such information is limited to personal demographic information only, such as home addresses, phone numbers and an individual's personal financial information (not salary or other public compensation). "Personnel files" does not include applications of past or current employees, employment agreements or any compensation information. Teacher evaluation reports are exempt from public disclosure if the teacher is a licensed professional.

Is student information exempt from disclosure? Yes, to the public, but is available to the student's parents or legal guardians. Educational records under the federal Family Educational Rights and Privacy Act (FERPA) cannot be disclosed to the public under CORA.

How are emails and text messages treated? Any emails sent by public employees whose content discusses public business are subject to disclosure under CORA, unless an exemption applies. It doesn't matter if the message was sent using a personal email or text-messaging account or device, rather than a government-owned account or device. Private matters discussed on email can remain private, even if they are sent using government systems or hardware. But if public matters are discussed in the same emails, those portions should be released with the purely private portions redacted. A message from a constituent to an elected official or vice versa is not open for inspection if it clearly implies an expectation of confidentiality.

How much do public records cost? Standard-sized copies may be no more than 25 cents per page. A 2014 law caps research-and-retrieval rates at \$30/hour with the first hour provided at no cost.

How soon must a records custodian comply with a request? Records "not readily available" must be provided within three working days unless the custodian declares in writing that there are "extenuating circumstances." This extends access time to seven days.

What can I do if access is denied? Make sure the records custodian has provided you with a written explanation for the denial, including a citation of the applicable statute (you should request this in your original letter; see template below). If the reason provided to you is not deemed adequate, you may file an application to the district court to review that denial decision. Three days' notice must be given to the custodian before a suit is filed in order to recover attorneys' fees, if successful. In the court proceeding, the custodian must prove that the withholding of the record(s) was proper.

Is there a penalty for violations of CORA? Anyone who willfully and knowingly violates the provisions of the public records law can be prosecuted and, if found guilty of the misdemeanor, punished by a \$100 fine and/or 90 days in jail.

Template for Colorado Open Records Act request:

<http://coloradofoic.org/files/2013/12/Sample-Colorado-Open-Records-Request.pdf>

"Sunshine Laws": 2013 guide to Colorado's open-government laws prepared by CFOIC and the Colorado Press Assn.:

http://coloradofoic.org/files/2013/12/CPA-Sunshine-Laws-Booklet_web.pdf

Open Records Law for School Districts (CASB): <http://coloradofoic.nfoic.net/files/2014/09/CASB-open-records-law.pdf>