

Revised 12.16.10 (updating change in Open Meetings Act only; no vote by board taken, no substantive change)



Colorado State Board of Education Code of Ethics

The Colorado State Board of Education will carry out its mission in accordance with the strictest ethical guidelines to ensure that its members conduct themselves in a manner that fosters public confidence in the integrity of the state board of education, its processes and accomplishments.

I. OUTSIDE EMPLOYMENT AND COMPENSATION

No state board member shall engage in any outside employment or other outside activity incompatible with the proper discharge of the responsibilities of his or her office or position. It shall be deemed incompatible with such discharge of responsibilities for any such person to accept any fee, compensation, gift, payment of expenses, or any other thing of monetary value under circumstances in which the acceptance may result in:

- (A) An undertaking to give preferential treatment to any person;
- (B) Impeding governmental efficiency or economy;
- (C) Any loss of complete independence or impartiality;
- (D) The making of a governmental decision outside official channels;
- (E) The reasonable inference that any of the above may occur or might have occurred;
- (F) Any adverse effect on the confidence of the public in the integrity of the state board of education.

See 24-18-101 and 201 *et seq.* C.R.S.

II. GIFTS AND HONORARIA

No state board member shall knowingly receive or accept any gift of money, including a loan, pledge, or monetary payment or an in-kind gift exceeding \$50 for the purpose of defraying any expenses related to the official duties of the board member, except for compensation paid in connection with the performance of his or her official duties, or reimbursement for actual and necessary expenditures for travel and lodging as provided by law, including scholarships for conferences.

State board members are permitted to receive:

- (A) Awards for meritorious public contribution given by a non-profit organization;
- (B) Honoraria or expenses paid for papers, talks, demonstrations, participation, or appearances made by state board members for which they are not reimbursed by the state and which are not prohibited by this code.

Board members shall report to the Secretary of State on or before January 15, April 15, July 15 and October 15 of each year receipt of all honoraria or expenses paid of \$25 or more, for which they are not reimbursed by the state, and any gift of real or personal property other than money exceeding \$50 in value, as proscribed by law.

III. USE OF STATE PROPERTY

No state board member shall use state time, property, equipment, or supplies for his or her private use, or for any other use not specifically approved in advance by the State Board of Education. It is his or her duty to protect and conserve all property entrusted to him or her.

IV. CONFIDENTIAL INFORMATION

No state board member shall disclose confidential information acquired by virtue of his or her position, nor shall he or she use such information or permit others to use it in furtherance of a private financial interest of a state board member.

No state board member shall accept employment or engage in any business or professional activity which might require him or her to disclose or act on such confidential information.

V. DUTY TO FOLLOW LEGAL STANDARDS

This code shall in no way alter the duty of each state board member to be aware of and adhere to those sections of the Colorado Revised Statutes dealing with standards of conduct, as well as the Open Meetings Act, which are incorporated herein by this reference. In the event of a conflict between this code and the Colorado Revised Statutes, the provisions of the statutes shall prevail.

VI. CONFLICTS OF INTEREST

No state board member shall have a financial interest in actions taken by that board where the member has participated in the action, unless appropriate disclosure has been made and circumstances allow participation. No state board member shall receive compensation or economic benefit from decisions made by that member or in consideration of a vote in which the member was involved. Board members shall be aware of and abide by the Colorado statutes relating to the specific prohibited interests and disclosure requirements.

Although the mere appearance of impropriety will not invalidate a board action or subject a board member to liability, every board member shall be aware of the appearance of impropriety and its consequential damage to public confidence in government, and all board members shall conduct themselves accordingly.

Board members will conduct the affairs of the board impartially in the absence of a personal, financial, or other official stake in the decision. Board members shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such a member has a direct and substantial financial interest. Board members faced with such a situation shall disclose their interest and recuse themselves from any further consideration of the matter.

All board members shall in cases where a board member has declared a conflict of interest:

- ✓ Always disclose their interest/involvement in a matter before the board at the earliest stage.
- ✓ Not vote or take any other action on the matter – either initially or if it comes up again at a later time.
- ✓ Not influence others on the matter, and not discuss the matter with other members outside of a meeting.
- ✓ Disclose their interest before the discussion.
- ✓ Leave the room while the discussion is taking place.
- ✓ Not participate in any discussion -- at the time of the vote or earlier.
- ✓ Vote only if:
 1. Their participation is necessary to achieve a quorum or otherwise enable the body to act.
 2. Written disclosure is made prior to, not after, taking the action.

Financial Interest. For purposes of this code, “financial interest” means a substantial financial interest held by an individual which is:

- (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property;
 - (e) A loan or any other debtor interest; or
 - (f) A directorship or officership in a business.
- See 24-18-102(4) C.R.S.*

See also 24-18-108.5

VII. BOARD MEMBER QUESTIONS CONCERNING ETHICAL ISSUES

The Colorado attorney general is the legal counsel and advisor of the board. The attorney general is not, however, designated as legal counsel to individual board members. Instead, the secretary of state is statutorily authorized to issue advisory opinions to persons subject to Article 24 (relating to boards) concerning issues relating to the requesting person’s conduct and the provisions of the article. Questions concerning the appropriateness of an entire board’s actions, therefore, should be directed to the attorney general’s office, whereas questions pertaining to an individual board member’s conduct should be directed to the secretary of state’s office. *See* § 24-31-101, C.R.S. and § 24-18-111, C.R.S.

VIII. CONFIDENTIALITY

Board members shall remember that all matters discussed in closed sessions of meetings, many materials reviewed by members, and a great deal of information obtained as a member are confidential and may not be disclosed to the public.

The state board is allowed to receive student and teacher records that would otherwise be privileged, but state board members shall not disclose the information to people who are not directly involved in the matter at issue.

In particular, state board members shall not disclose teacher or student information discovered as a result of service on the board. State board members shall handle this material with the greatest of caution and sensitivity, including, but not limited to:

- ✓ Opening the board agenda packages;
- ✓ Shredding documents after reading them;
- ✓ Never mentioning confidential information learned during board work to third parties, especially information gained from teacher or student records.

IX. EX PARTE COMMUNICATIONS

For purposes of this code, ex parte communications are contacts between a party to an educator licensing or charter school action and a state board member acting in a quasi-judicial decision-making capacity in that party's case. No state board member shall engage in ex parte communications.

ATTACHMENT 1

Relevant Colorado Statutes Concerning Standards of Conduct

18-8-308 Failing to Disclose a Conflict of Interest. (1) A public servant commits failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction without having given seventy-two hours' actual advance written notice to the secretary of state and to the governing body of the government which employs the public servant of the existence of a known potential conflicting interest of the public servant in the transaction with reference to which he is about to act in his official capacity.

(2) A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

(3) Failing to disclose a conflict of interest is a class 2 misdemeanor.

18-8-402 Misuse of official information (1) Any public servant, in contemplation of official action by himself or by a governmental unit with which he is associated or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:

(a) Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or

(b) Speculates or wagers on the basis of such information or official action; or

(c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.

(2) Misuse of official information is a class 6 felony.

24-18-101. Legislative declaration The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

24-18-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

- (3) “Employee” means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
- (4) “Financial interest” means a substantial interest held by an individual which is:
- (a) An ownership interest in a business;
 - (b) A creditor interest in an insolvent business;
 - (c) An employment or prospective employment for which negotiations have begun;
 - (d) An ownership interest in real or personal property;
 - (e) A loan or any other debtor interest; or
 - (f) A directorship or officership in a business.
- (5) “Local government” means the government of any county, city and county, city, town, special district, or school district.
- (6) “Local government official” means an elected or appointed official of a local government but does not include an employee of a local government.
- (7) “Official act” or “official action” means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
- (8) “Public officer” means any elected officer, the head of a principal department of the executive branch, and any other state officer. “Public officer” does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
- (9) “State agency” means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

24-18-108.5. Rules of conduct for boards and commissions. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

24-18-110. Voluntary disclosure. A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

24-18-111. Powers of the secretary of state. (1) The secretary of state may:

(a) Issue advisory opinion to persons subject to the provisions of this article concerning issues relating to the requesting person's conduct and the provisions of this article with such deletions as are necessary to protect the identity of the requesting party to the party about whom the opinion is written;

(b) Keep and permit reasonable public access to voluntary disclosure statements;

(c) Make rules for the conduct of his affairs under this part 1.

(2) Any advisory opinion issued by the secretary of state shall take priority over any comment issued by the board of ethics for the executive branch pursuant to section 24-18-112 or any opinion issued by the board of ethics for the general assembly pursuant to section 24-18-113 if the comment or the opinion covers the same circumstances and the same issues as covered by the opinion of the secretary of state and if the comment or the opinion reached a separate conclusion from that reached by the opinion of the secretary of state.

24-18-201. Interests in contracts. (1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members of employees. A former employee may not, within six months following termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term:

(a) "Be interested in" does not include holding a minority interest in a corporation.

(b) "Contract" does not include:

(I) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(II) Merchandise sold to the highest bidder at public auctions;

(III) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;

(IV) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(V) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109(3)(b) or 31-4-404(3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for the members of the general assembly; and to the secretary of state, for all others.

24-18-202. Interest in sales or purchases. Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

24-18-203. Voidable contracts. Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

24-6-201. Declaration of policy.

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.

24-6-401. Declaration of policy.

It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

24-6-402. Meetings – open to public - definitions.

24-6-402 Meeting Open to public – definitions

(1) For the purposes of this section:

- (a) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.
- (b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.
- (c) "Political subdivision of the state" includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.
- (d) "State public body" means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section [23-5-121](#) (2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

(2) (a) All meetings of two or more members of any state public body 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.

(b) 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.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in

attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) 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 this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(d.5) (I) (A) Discussions that occur in an executive session of a state public body shall be electronically recorded. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at an executive session that has been properly announced pursuant to paragraph (a) of subsection (3) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a

privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section [24-72-204](#) (5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section [24-72-204](#) (5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section [24-72-204](#) (5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be retained for at least ninety days after the date of the executive session.

(II) (A) Discussions that occur in an executive session of a local public body shall be electronically recorded. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section [24-72-204](#) (5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section [24-72-204](#) (5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section [24-72-204](#) (5.5).

(E) The record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is

authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;

(IV) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article [21](#) of title [23](#), C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article [21](#) of title [23](#), C.R.S., (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity;

(VII) With respect to nonprofit corporations incorporated pursuant to section [23-5-121](#) (2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b) (I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article [2](#) of title [17](#), C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing one of the finalists to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of section [24-72-204](#) (3) (a) (XI). As used in this subsection (3.5), "finalist" shall have the same meaning as in section [24-72-204](#) (3) (a) (XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;

(b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4).

(c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators;

(f) (I) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. With respect to hearings held pursuant to the "Teacher Employment, Compensation, and Dismissal Act of 1990", article [63](#) of title [22](#), C.R.S., the provisions of section [22-63-302](#) (7) (a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act", part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section [24-72-202](#) (6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(5) (Deleted by amendment, L. 96, p. 691, §1, effective July 1, 1996.)

(6) The limitations imposed by subsections (3), (4), and (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such

action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

(10) Any provision of this section declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this section, and, to this end, the provisions of this section are declared to be severable.