

Executive Sessions

All meetings of the EC BOCES Board shall be open to the public except that at any regular or special meeting the EC BOCES Board may proceed into executive session upon affirmative vote of two-thirds of the quorum present. However, the EC BOCES Board shall not convene in executive session if the meeting is being held through video teleconferencing.

The EC BOCES Board shall not make final policy decisions nor shall any resolution, policy or regulation be adopted or approved nor shall any formal action of any kind be taken during any executive session.

Prior to convening in executive session, the EC BOCES Board shall announce the topic of the executive session which shall be reflected in the minutes. The EC BOCES Board shall include the specific citation to statute authorizing it to meet in executive session when it announces the session and identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.

The EC BOCES Board may hold an executive session for the sole purpose of considering any of the following matters:

1. Purchase, acquisition, lease, transfer or sale of any real, personal or other property. However, no executive session shall be held to conceal the fact that a member of the Board has a personal interest in such property transaction. C.R.S. 24-6-402 (4)(a).
2. Conferences with an attorney for the purpose of receiving legal advice on specific legal questions. C.R.S. 24-6-402 (4)(b). The mere presence or participation of an attorney at an executive session shall not be sufficient to satisfy this requirement.
3. Matters required to be kept confidential by federal or state law or regulations. C.R.S. 24-6-402 (4)(c). An announcement will be made indicating the specific citation to state or federal law which is the reason the matter must remain confidential.
4. Specialized details of security arrangements or investigations. C.R.S. 24-6-402 (4)(d).
5. Determination of positions relative to matters that may be subject to negotiations, development of strategy for negotiations and instruction of negotiators. C.R.S. 24-6-402 (4)(e).
6. Personnel matters except if an employee who is the subject of an executive session requests an open meeting. C.R.S. 24-6-402 (4)(f). If the personnel matter involves more than one employee, all of the employees must request an open meeting. Discussion of personnel policies that do not require discussion of matters specific to particular employees are not considered "personnel matters." Discussions concerning a member of the Board, any elected official or the appointment of a Board member are not

considered “personnel matters.”

7. Consideration of any documents protected under the mandatory nondisclosure provision of the Open Records Act, except that consideration of work product documents and documents subject to the governmental or deliberative process privilege must occur in a public meeting, unless an executive session is otherwise allowed. C.R.S. 24-6-402 (4)(g).
8. Discussion of individual students where public disclosure would adversely affect the person or persons involved. C.R.S. 24-6-402 (4)(h).
9. Negotiations concerning the terms of an employment contract with one or more executive director finalists if the Board has named more than one candidate as a finalist and has held a forum open to the public to conduct interviews with each of the finalists. C.R.S. 24-6-402 (4)(i)(I).

In addition to interviewing finalists in a public forum, the Board may interview finalists in executive session. C.R.S. 24-6-402 (4)(i)(II).

The Board may also instruct personnel and representatives to begin contract negotiations with one or more candidates in executive session, including the necessary process to prioritize, for the purposes of negotiation, one or more finalists after public forums have been completed. C.R.S. 24-6-402 (4)(i)(III).

Prioritizing among the finalists and beginning negotiations with one or more of the finalists shall not constitute formal action or adoption by the board or governing body. Such formal action occurs only when the board or governing body comes into public session and casts votes on their preferred next chief executive officer. No formal adoption is deemed to have taken place until a public vote has occurred.

Only those persons invited by the EC BOCES Board may be present during any executive session regardless of the topic of the session (including personnel matters).

The EC BOCES Board shall cause an electronic recording to be made of the executive session in accordance with applicable law. Such record shall be retained by the EC BOCES Board for 90 days following the session.

EAST CENTRAL BOCES BOARD POLICY

Adopted: June 18, 2014

Revised: January 25, 2023

LEGAL REFS.: C.R.S. 22-5-104(5) (*board cannot convene in executive session if conducting a meeting via video conferencing*)
C.R.S. 22-32-108 (5) (*meetings of the board*)
C.R.S. 24-6-402 (*open meetings law*) CROSS REF.: KDB, Public's Right to Know/Freedom of Information

NOTE 1: BOCES must make an “electronic recording” of any executive session, which shall include the specific statutory citation to the executive session law that allows the Board to meet in executive session. However, if the executive session is held to discuss an individual student matter, the Board is not required to make an electronic or written record of the executive session. If the executive session is held to receive legal advice from an attorney on a particular matter, an electronic record must be made of the statutory citation to the executive session law that allows the Board to meet in executive session to receive legal advice, but the Board is not required to make an electronic or written record of the discussion that occurs in the executive session, on the basis that it constitutes privileged attorney-client communication. If no electronic recording is made because the discussion constitutes a privileged attorney-client communication, this must be stated on the electronic recording, or the attorney representing the board must provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication. The board should put a procedure in place to assure that the record of any executive session is routinely destroyed once the 90-day deadline expires.

NOTE 2: Each member of the BOCES board of directors is required to sign an affidavit stating the board member is aware of and will comply with the confidentiality requirements and restrictions applicable to executive sessions of the board, as described in C.R.S. 24-6-402. The affidavit shall be signed at each meeting at which the BOCES board elects officers pursuant to C.R.S. 22-5-105 (1). The affidavits shall be kept with the minutes of the board meeting. C.R.S. 22-5-105(2).

NOTE 3: State law requires the minutes of any Board meeting at which the Board convenes in executive session to be posted on the Board’s website not later than 10 business days following the meeting at which the minutes are approved by the Board. C.R.S. 22-32-108 (5)(d). If the Board does not maintain a website, the minutes “must be published in the same manner as the [B]oard regularly provides public notice.” Id. The law doesn’t specify the length of time that the minutes must remain “posted” or “published.” At a minimum, CASB suggests keeping the minutes posted/published for at least 90 days following the meeting at which the executive session occurred. This way, the timeline for posting/publishing is the same as the statutory timeline for the retention of electronic recordings of executive sessions. See, C.R.S. 22-32-108 (5)(d); 24-6-402 (2)(d.5)(II)(E).

NOTE 4: Beginning April 4, 2022, state law permits BOCES boards to convene in executive session to discuss negotiations concerning the terms of an employment contract with one or more executive director finalists if (1) the board has named more than one candidate as a finalist and (2) the board holds an open public forum to conduct interviews with each of the finalists. C.R.S. 24-6-402(4)(i)(I). The bill also allows a board to, in addition to interviewing finalists in a public forum, interview finalists in executive session. C.R.S. 24-6-402(4)(i)(II).

Additionally, the bill authorizes boards to instruct personnel and representatives to begin contract negotiations with one or more candidates in executive session, including the necessary process to prioritize, for the purposes of negotiation, one or more finalists after public forums have been completed. C.R.S. 24-6-402(4)(i)(III). Prioritizing among the finalists and beginning negotiations with one or more of the finalists does not constitute formal action or adoption by the board; such formal action only occurs when the board votes during a public session and no formal adoption is deemed to have taken place until a public vote has occurred. C.R.S. 24-6-402(4)(i)(IV).