

December 19, 2024

Via Email

John Youngquist
John.Youngquist@dpsk12.org

Re: Request for Executive Session Recording

Dear Director Youngquist:

We represent Denver Public Schools (District) regarding your request for the December 12, 2024, recording of the Board of Education's executive session to receive legal advice and your assertion that the Board violated the Colorado Open Meetings Law, C.R.S. §§ 24-6-401 to -402 (2024) (OML).

As an initial matter and as permitted by the OML, the Board did not record the executive session. C.R.S. 24-6-402(2)(d.5)(II)(B). Therefore, the record you seek does not exist. However, even if a recording did exist, you would not be entitled to it because the Board did not violate the OML.

I. The Executive Session Language Complied with the OML.

The OML generally requires local public bodies, including school boards, to conduct meetings publicly and only after public notice. However, a school board is permitted to meet privately in executive session to discuss certain statutorily authorized topics, including legal advice from its attorney. C.R.S. § 24-6-402(4)(b).

To properly convene in executive session, a school board must announce to the public the topic for discussion in executive session, including specific citation to the appropriate statutory provision that authorizes the Board to meet in 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. C.R.S. 24-6-402(4). Following such announcement, there must be an affirmative vote of two-thirds of the quorum present, after which the Board may hold the executive session. C.R.S. 24-6-402(4). When announcing an executive session to receive legal advice and providing as much detail as possible without compromising the purpose for which the session is authorized, Colorado courts have held that identification of the subject matter satisfies this requirement. *Guy v. Whitsitt*, 469 P.3d 546 (2020).

Here, the Board complied with the OML when convening in executive session on December 12, 2024, including by identifying the subject matter of its discussion to receive legal advice.

II. The OML Does Not Require Unanimous Board Attendance at Executive Sessions.

Your absence from the executive session did not violate the OML and, in fact, was required by applicable law and Board Policy. As you know from your discussion with District General Counsel Aaron Thompson and Board President Carrie Olson on December 10, 2024, the Board's December 12, 2024, executive session to receive legal advice was, in part, a response to your request for reimbursement of PERA penalties and costs associated with your Board service. Your request for reimbursement was an action item on the publicly posted agenda for that meeting.

Your desire to be reimbursed for the penalties and costs you incur as a PERA retiree for Board service exceeding 140 days per calendar year is a financial interest personal to you. Therefore, under C.R.S. § 24-18-109(2)(b) and Board Policy GP-11, you may not vote on or attempt to influence the decision of others in voting on the matter. This includes not participating in an executive session on the topic, particularly one in which the Board is receiving legal advice. President Olson and General Counsel Thompson reminded you of this requirement on December 10 and you agreed not to, and did not, participate in the session when it took place.

Beyond the quorum requirements for holding a public meeting, the OML does not require a certain level of board member attendance at an executive session. In fact, for school boards, "[o]nly those persons invited by the board may be present during executive session" C.R.S. § 22-32-108(5)(a). You were necessarily and appropriately excused from the executive session because of your conflict of interest.

For the reasons set forth in this letter, the Board did not violate the OML at its December 12, 2024, executive session and you are not entitled to information discussed in that session.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristin E.", with a long horizontal flourish extending to the right.

Kristin Edgar

KCE/kce

cc: Carrie Olson, Board President (via email)
Aaron Thompson, General Counsel (via email)