



# COLORADO COMMISSION ON HIGHER EDUCATION

## ANNUAL BEST PRACTICES TRAINING

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GENERAL

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THIS TRAINING  
WILL COVER:

\* COLORADO SUNSHINE LAWS

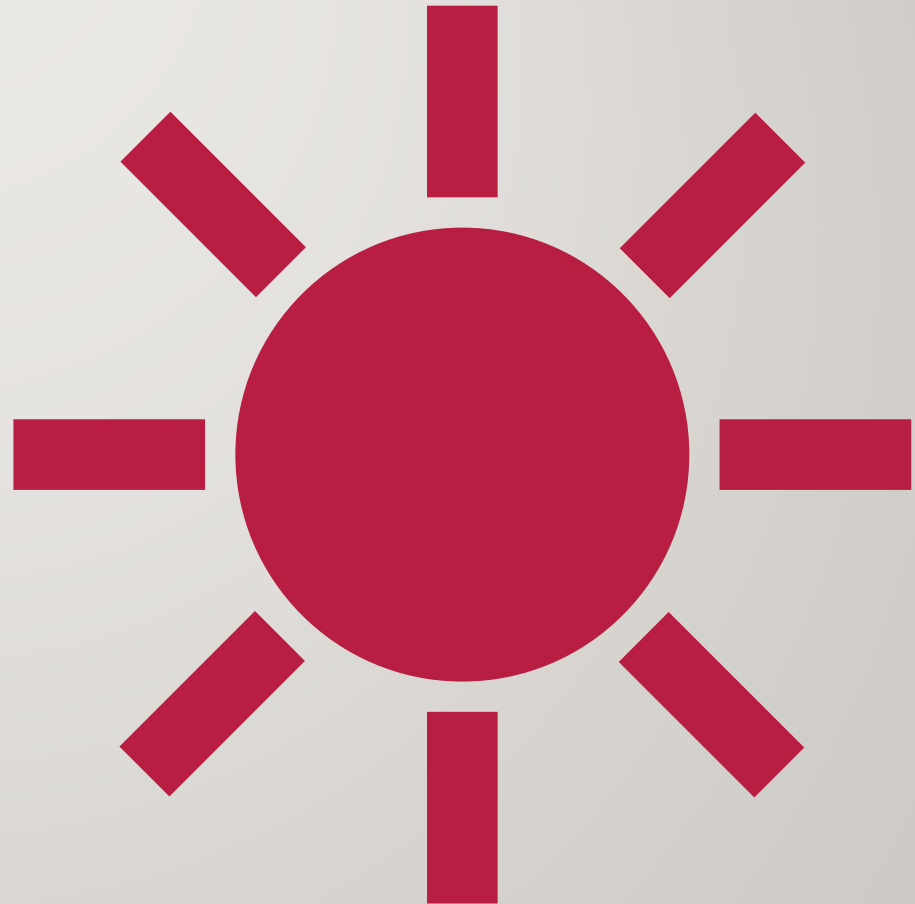
- OPEN MEETINGS LAW
- OPEN RECORDS ACT

\* COMMISSIONER'S STATUTORY  
AND FIDUCIARY DUTIES

# PURPOSE OF SUNSHINE LAWS

TO FOSTER TRANSPARENCY IN GOVERNMENT

Transparency promotes accountability and provides information for citizens about what their government is doing.



# COLORADO OPEN MEETINGS LAW

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An Open Meeting Is:  
TWO or More Commission Members  
Discussing Public Business  
OR  
Taking Formal Action.  
§ 24-6-402(2)(a-d), C.R.S.



***Further, if a quorum or majority of the Commission will be present, or if action will be taken, the Commission can only meet after giving full and timely notice.***

# FORMALITIES OF OPEN MEETINGS

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- Notice of Meeting Should Include:  
Date, Time, Place, and Agenda of Topics
- Public is allowed to listen, but not necessarily participate
- Minutes should be taken and audio should be recorded.







# COLORADO OPEN MEETINGS LAW

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Question: Two commissioners email each other about CCHE business. Could this be an open meeting?

What if a commissioner emails the Executive Director?

# EXAMPLES THAT MAY NOT BE AN OPEN MEETING

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- Emails that do not relate to the merits or substance of public business, such as an email concerning scheduling. § 24-6-402(2)(d)(III).
- Chance meetings of Commissioners or social gatherings at which the discussion of public business is not the central purpose. § 24-6-402(2)(e).



# EXECUTIVE SESSIONS

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At any special or regular Commission meeting, the Commission may by 2/3 of its membership, hold an executive session. Section 24-6-402(3)(a), C.R.S.

Executive session discussions only cover a limited set of topics.



# COLORADO OPEN MEETINGS LAW

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- Which of the following is not a reason to hold an executive session:
  - To seek legal advice on specific legal questions.
  - To discuss confidential personnel matters.
  - To discuss matters that are confidential under federal or state statute.
  - To provide an opinion on a matter that you think may be unpopular to others.

# EXECUTIVE SESSIONS AT OPEN MEETING

## Prior

- The Chair must **announce the topic(s) to be discussed** and **cite the legal basis for discussing the topic(s)** in Executive Session.

## During

- The Board must stick to the topics announced.
- **NO formal action may be taken.**

## After

- If an issue will be subject to a vote, the Board should engage in discussion or otherwise summarize the issue before proceeding to vote.
- The Board's attorney may make a statement affirming that privileged discussion took place.
- The recording must be maintained for 90 days, but can be destroyed thereafter.

# COLORADO OPEN MEETINGS LAW

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## What Happens If There is an OML Violation?

- An action of the state public body may be deemed invalid by a court.
- A person seeking to enforce the OML could be awarded attorneys fees and costs.



# COLORADO OPEN RECORDS ACT

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- All writings are public records if they are:
  - Made, maintained or kept by the state public body or its members.
  - Used in the performance of a public function or involving the receipt of public funds.

§ 24-72-202(6).





## COLORADO OPEN RECORDS ACT

Although some exceptions exist to deny a request for records, it is a best practice to treat all written communications as if they will be subject to disclosure under the Colorado Open Records Act.



# COLORADO OPEN RECORDS ACT

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Question: If a member of the public reaches out to you to request certain CCHE records, what should you do?



# COMMISSION FIDUCIARY DUTIES

- The Commission is created by statute, C.R.S. section 23-1-102. The Commission is established as the “**central policy and coordinating board for higher education in the state of Colorado.**” Its statutory duties include:
  - Prescribing uniform financial reporting policies
  - Adopting policies on student fees
  - Prescribing policies, for the development and approval of capital construction or capital renewal
  - Reviewing potential duplicative programs
  - Establishing a policy-based and continuing systemwide planning, programming, and coordination process to effect the best use of available resources.

# COMMISSION FIDUCIARY DUTIES

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**DUTY OF  
CARE**



**DUTY OF  
LOYALTY**

# STATUTORY CONFLICT OF INTEREST PROVISIONS

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## MANDATORY CONFLICT AVOIDANCE

Pursuant to § 24-18-108.5(2), C.R.S., “[a] member of a Board... 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.” An official act is defined as “... any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” See § 24-18-102(7), C.R.S.

# STATUTORY CONFLICTS OF INTEREST

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## NOT MANDATORY, BUT RECOMMENDED, CONFLICTS AVOIDANCE

- First, avoid significant gifts or benefits from those over which the Commission has oversight. You can accept unsolicited tokens or awards of appreciate or trivial value (FMV of less than \$53.00). See 24-18-109(2)(c); and see § 24-18-104(1)(b), C.R.S.; § 24-18-104(2-3).
- Second, safeguard the important information you receive in your role as a Commissioner. See § 24-18-104(1)(a), C.R.S. This means that you should not share confidential information you receive predicate to your role as a Commissioner.



# CONFLICTS OF INTEREST

## GOV. RITTER EXECUTIVE ORDER – BEST PRACTICES OF CONDUCT TO AVOID

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Engagement in any activity creating a conflict of interest or adverse impact on public trust

Use of authority to preference family, business, or social acquaintances

Use of state property, equipment, or supplies for private gain

Knowing acceptance of a thing of value from a professional lobbyist

Acceptance of a thing of value in influence of faithful and impartial service or as reward

Disclosure or allowance of others to use confidential information for private gain

# THANK YOU!

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