

BOARD POLICY: EXECUTIVE SESSIONS

The policy of the Board of Directors shall be one of strict compliance with Colorado law in the utilization of executive sessions regarding education foundations that are recognized by the IRS as 501(c)(3) entities. **The Board of Directors of the Thompson Education Foundation ("TEF") may hold executive sessions consistent with Colorado law and best practices in nonprofit governance. While TEF is generally not a "public body" under Colorado's Open Meetings Law, the Board elects to follow procedures aligned with C.R.S. § 24-6-402 where applicable.**

Upon the affirmative vote of 2/3 of the membership, the board may go into an executive session to consider any items legally permissible to discuss in executive session. **Upon the affirmative vote of two-thirds (2/3) of the members present, the Board may enter executive session only for purposes permitted by law or by this policy.**

The proceedings of this board shall be in accordance with the following Guidelines and Procedures:

Guidelines and Procedures

Definition of Chair: The President or, in the event the President is not able to carry out his or her duties, the Vice President or the next highest-ranking officer of the Board of Directors.

~~Executive sessions will be held when necessary.~~ **Executive sessions shall be held only when necessary and when the topic qualifies for confidential discussion.**

No executive session may be held for the purpose of taking any final action or making any final decision. If a vote is to be taken on issues discussed during executive session, the vote occurs when the board reconvenes in regular session.

~~The Chair will announce the executive session by identifying the authorization under Board Policy: Executive Sessions for holding such session and by noting the subject of the executive session.~~ **The Chair shall announce the executive session by stating: (a) the general subject matter to be discussed, and (b) when applicable, the specific statutory authority permitting the executive session.** The minutes of the regular meeting shall reflect the general subject matter of the discussion that occurred during an executive session.

The board may hold executive sessions before, during or after regular, special or emergency meetings for any reason permitted by law. However, a regular meeting shall not ordinarily adjourn into executive session before the agenda has been substantially acted upon. There may be circumstances which can require an exception to be made, including but not limited to executive sessions for discussion of matters upon which public board action will be required in the remainder of the regular meeting and executive sessions which cannot reasonably be scheduled for any other time because of the unavailability of invited participants.

Any board member shall communicate to the Chair a desire to discuss a matter in executive session along with an estimate of the time needed for such discussion and the topic or topics for discussion. The Chair shall determine whether suggested topics are properly dealt with in executive session. The Chair will communicate this determination to the person who proposed the topic. If the determination supports consideration of a topic or topics, the Chair will, at the proper time, entertain a motion to adjourn for discussion of that topic or topics only at an executive session. A roll call vote will be recorded on each such motion.

The ~~Board of Director's~~ presiding officer announces when the board goes into executive session and excuses ex-officio members, nonvoting staff, others who do not vote, etc.

The presiding officer announces when the executive session ends.

Non-voting members may be present at executive session by invitation from the Board of Directors.

Voting members may be excused from executive session by the board's presiding officer. The member being excused shall be informed of how the board uses executive sessions. The results of the executive session shall be shared with those who have a need to know.

If during the course of an executive session anyone present feels that the discussion has strayed from permissible topics, that person shall raise a point of order with the Chair, ~~who will determine the question of order. Any member may then move the point of order or the Chair may choose to act upon it on the Chair's own discretion. If the Chair submits the question to the members present, the ruling is final, but an order of the Chair may be appealed with a 2/3 majority vote.~~ **Discussions must remain strictly within the announced subject matter. Any deviation shall be immediately corrected or the discussion shall cease.**

~~Content discussed in executive session is confidential and must not be made public.~~ **Content discussed in executive session is confidential and shall not be disclosed except as authorized by the Board or required by law.** ~~No records are kept during executive session; however, results of the session are announced at the end of the session when the board returns to regular meeting protocol.~~ **Confidential records or recordings of executive sessions may be maintained in accordance with legal requirements and Board policy. The open-meeting minutes shall reflect that an executive session occurred and its general subject matter.**

Record Retention

Executive session records, if created, shall be retained securely and accessed only by authorized individuals.

Policy Review

This policy shall be reviewed periodically to ensure continued alignment with Colorado law and governance best practices.

END OF POLICY

Further Explanation for changes, Page 3

Executive Session Policy Update

Purpose

The Executive Session policy has been updated to better align with Colorado's Open Meetings Law (C.R.S. § 24-6-402) and nonprofit governance best practices while recognizing that TEF, as a private nonprofit, is generally not classified as a "public body" under the statute.

Why Changes Were Needed

The prior policy:

- Implied TEF was legally subject to Colorado open meetings law.
- Prohibited any record-keeping during executive sessions, which conflicts with statutory requirements when the law applies.
- Did not require statutory citations when entering executive session.
- Did not clearly limit discussion strictly to the announced topic.

These inconsistencies could expose the Board to governance and legal risk.

What Changed

The updated policy:

1. Clarifies when Colorado law applies versus best-practice adoption.
2. Requires subject matter and statutory authority announcements.
3. Allows confidential records or recordings when appropriate.
4. Reinforces strict topic limitations.
5. Preserves confidentiality while acknowledging legal disclosure obligations.
6. Maintains the prohibition on votes or final actions in executive session.

Benefits to the Board

- Reduces legal risk.
- Improves transparency and defensibility.
- Aligns TEF with nonprofit governance standards.
- Protects Board members from Sunshine Law challenges if TEF's role is ever questioned.

Recommendation

Approve the revised Executive Sessions policy as presented.