



## **SUPERINTENDENT SEARCH**

State law imposes numerous requirements on school districts and other public agencies when hiring a chief executive officer. The superintendent search requirements appear in Colorado's Open Meetings Law, C.R.S. § 24-6-401 *et seq.* (OML). The public record requirements pertaining to superintendent applicants appear in Colorado's Open Records Act, C.R.S. § 24-72-201 *et seq.* (CORA).

The following summarizes these state laws. The board of education should also consider any policies it might have related to the superintendent's position.

### **CONDUCTING A SEARCH**

The OML does not require the board of education to conduct a search for a superintendent. However, if the board chooses to conduct a search or appoints a search committee, the board/committee must comply with the OML's requirements, C.R.S. § 24-6-402(3.5). For purposes of this memorandum, we will refer to the board/committee conducting the superintendent search as "search committee."

The OML requires the search committee to establish the following "job search goals" at a public meeting. Job search goals include:

- writing the job description;
- establishing any other requirements for applicants;
- setting deadlines for applications;
- creating selection procedures; and
- establishing the time frame for appointing or employing a superintendent.

### **CONVENING IN EXECUTIVE SESSION**

As listed above, the OML is specific about the search committee's activities that must be conducted in public. The OML also provides that these restrictions shall not prohibit the search committee from holding an executive session to consider "appointment or employment matters" not covered by the statutory search requirements, to the extent discussion is about matters that may be legally discussed in executive session. C.R.S. § 24-6-402(3.5). Boards may also interview finalists and discuss negotiations concerning the terms of an employment contract with one or more finalists in executive session if the board has named more than one finalist and holds an open, public forum to conduct interviews with each of the finalists. C.R.S. § 24-6-402(4)(i). The search committee must strictly comply with the statutory requirements to convene in executive session; otherwise, the executive session may be considered an open meeting subject to public disclosure. *Gumina v. City of Sterling*, 119 P.3d 527 (Colo. App. 2004).

The media has increasingly focused its attention on school districts' compliance with the OML, particularly regarding superintendent searches. In addition, a Colorado district court has held that



discussion of personnel matters in executive session applies only to discussion of current employees, not applicants for employment. *Freedom Newspapers, Inc. d/b/a/ Colorado Springs Gazette v. Board of County Comm'rs for El Paso County*, Case No. 97-CV-3082 (El Paso Dist. Ct. October 28, 1997). As a result, obtaining legal advice regarding the permissibility of convening in executive session during the various stages of a superintendent search is important.

## **CONFIDENTIALITY OF APPLICATIONS**

Under CORA, records submitted by or on behalf of superintendent applicants are confidential, until the applicant is declared a “finalist.” C.R.S. § 24-72-204(3)(a)(XI)(A). CORA defines a “finalist” as an applicant or candidate who is named as a finalist pursuant to the OML. *Id.* In 2021, the Colorado legislature passed HB21-1051, which clarified that a state or local public body could name a sole finalist. Once an applicant is a “finalist”, their records are subject to public inspection, except letters of reference and medical, psychological, and sociological information remain confidential. C.R.S. § 24-72-204(3)(a)(XI)(B).

## **SCREENING APPLICANTS**

In the initial stages of the search process before any finalists are declared, the search committee may convene in executive session to screen the superintendent applications pursuant to the “confidential documents” provision of the OML. C.R.S. § 24-6-402(4)(g).

## **INTERVIEWING APPLICANTS**

Search committees may conduct the interviews of superintendent applicants in public. This is an excellent way for the search committee to engage the community and show parents, students, and community members that the search committee takes the role of finding the district’s superintendent seriously and seeks to find the best fit for the school district.

We recognize, however, that there may be times when the search committee wishes to conduct the initial round of interviews in executive session. CASB believes this is permissible under the confidential documents provision of the OML. However, we encourage you to consult with the school district’s legal counsel to ensure compliance with the OML.

## **DISCUSSION OF APPLICANTS’ QUALIFICATIONS AFTER INTERVIEWS**

After the interviews are conducted, the search committee may wish to discuss the merits of each applicant’s interview and qualifications before declaring finalists. Here again, CASB believes this is generally permissible under C.R.S. § 24-6-402(4)(g). However, the determination regarding whether the search committee may discuss the applicants’ qualifications in executive session may depend upon the specific facts involved. Therefore, we encourage you to consult with the school district’s legal counsel to ensure compliance with the OML.

## **DETERMINING FINALISTS**



The OML requires the search committee to announce the finalist or finalists at least 14 days before the board of education appoints a candidate as superintendent. C.R.S. § 24-6-402 (3.5). Due to this requirement, there should not ordinarily be a question about which applicants are considered finalists. An offer of appointment cannot be made until the search committee complies with this 14-day waiting period.

If the board decides to consider only an internal candidate for the superintendent vacancy, questions often arise about whether the OML's requirements apply. There is nothing in state law that creates any exceptions for internal candidates. However, in this circumstance, it is unnecessary for the board to go through the formalities of a search. We recommend, though, that the board declare the candidate a finalist and then wait 14 days before making an offer of employment. This gives the public a chance to react to the board's decision, which is the purpose of this waiting period.

## **PUBLIC INSPECTION OF APPLICATIONS**

As discussed above, most records or other materials submitted by or on behalf of finalists are public records and must be open to public inspection and copying. C.R.S. § 24-72-204(3)(a)(XI)(A). Those records submitted by superintendent candidates who do not become finalists are not public records. Some care should be taken to keep those documents that remain confidential under CORA separate from the "public" file of the superintendent candidate. It would be prudent to have two separate files for each superintendent candidate from the time the application is first received to ensure that confidential records are not inadvertently made available to the public because they are included in the same file as public information.

However, certain demographic data of candidates who were interviewed, but not named as a finalist, is subject to public inspection and disclosure. C.R.S. § 24-72-204(3)(a)(XI)(D). This demographic data includes information on a candidate's race and gender that has been legally requested and voluntarily provided on the candidate's application, but does not include a candidate's name or other information. *Id.*

We recommend that the search committee inform the candidate before declaring the finalists so they are aware that the records will be made public. This is not required by statute, but we believe it would be a prudent action.

## **HIRING A SUPERINTENDENT**

Once the finalists have been identified, the statutory procedures for conducting a superintendent search and selecting a superintendent have been satisfied. As mentioned above, the OML permits the search committee or the board to hold executive sessions to "consider appointment or employment matters" not covered in the statutory search requirements. Accordingly, the board or search committee may meet in executive session to discuss the finalists, to the extent this discussion is about matters that may be legally discussed in executive session. C.R.S. § 24-6-402 (3.5). The OML also allows boards that have named more than one finalist and publicly interview each finalist to interview or discuss negotiations concerning the terms of an



employment contract with one or more finalists in executive session. C.R.S. § 24-6-402(4)(i). Again, we recommend that the committee/board seek legal advice regarding how to proceed in compliance with the OML.

If for some reason the most preferred candidate does not take the job of superintendent, the board may hire any of its other finalists without reopening the search and completing the search procedures again. However, if the board does not hire or is unable to hire any of the finalists, the applicable search procedures should be followed again. For example, if the board decides to establish a new slate of finalists based on the applications it had previously received, it must identify and publish a new group of finalists at least 14 days before it appoints one of the finalists as superintendent.

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