

This policy has been updated to include the updated code sections as well as the 2015 changes regarding labor negotiations. Boards will need to approve and follow this policy prior to labor negotiations with the local teachers' associations in spring, 2016.

Recommendation: All code. Accept as written. New portions are highlighted in red.

An executive session at which members of the public are excluded may be held upon a two-thirds (2/3) individual vote of the board. The motion to go into executive session must identify the specific subsection(s) of Idaho Code § 74-206 that authorize the executive session. The individual vote will be recorded in the meeting minutes.

## **DEFINITIONS**

“Executive session” means any meeting or part of a meeting of a governing body that is closed to any persons for deliberation on certain matters.

“Twenty-four (24) hour notice” means when the period is stated in hours:

1. Begin counting immediately on the occurrence of the event that triggers the period;
2. Count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and
3. If the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

For example, if a special meeting is announced on Friday at 5 p.m. then the special meeting may not be held until Monday at 5 p.m.

"Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

## **NOTICE AND AGENDA**

Notice of an executive session will be given according to the meeting and agenda notice provisions of a regular or special meeting. The agenda may be amended in the same manner as open meeting agenda items.

If an executive session only will be held by the board, a twenty-four (24) hour meeting and agenda notice will be given according to the special meeting notice provisions (*see Policy No. 268, Special Meetings of the Board*). Such notice will state the reason and specific subsection(s) of Idaho Code § 74-206 that authorize the executive session.

Any other provision of law notwithstanding, including any other provisions to the contrary in sections 33-402 and 74-204, Idaho Code, the board shall post notice of all labor negotiation sessions at the earliest possible time practicable. This shall be done by the board by immediately posting notice of the negotiation session on the front page of its official website. If time permits, the board shall also post notice within twenty-four (24) hours at its regular meeting physical posting locations.

### **MATTERS ADDRESSED IN EXECUTIVE SESSION**

The board may hold an executive session for the following purposes:

1. To consider hiring a public officer, employee, staff member, or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need (this does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general).
2. To consider the evaluation, dismissal, or disciplining of; or to hear complaints or charges brought against a public officer, employee, staff member, individual agent, or public school student.
3. To acquire an interest in real property that is not owned by the school district.
4. To consider records that are exempt from disclosure as provided by the Public Records Law, Chapter 1, Title 74, Idaho Code.
5. To communicate with legal counsel for the district to discuss the legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.
6. To engage in communications with a representative of the district's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the district's risk manager or insurance provider at an executive session does not satisfy this requirement.
7. To consider labor contract matters authorized under Idaho Code §74-206A(1)(a) and (b). Such matters include the consideration of labor contract offers or formulation of a counteroffer; or receiving information about a specific employee, when the information has a direct bearing on the issues being negotiated and a reasonable person would conclude that the release of that information would violate that employee's right to privacy.

The consideration of probationary status for a renewable contract employee is consideration of the status of any employee within the meaning of Idaho Code § 74-206 and may be held in executive session.

Notwithstanding the provisions of Idaho Code § § 74-205 and 74-206 a decision to place a Category 3 contract employee on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting.

**PROHIBITION AGAINST DISCUSSING UNIDENTIFIED SUBJECTS**

The board is prohibited from changing the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not authorized.

**FINAL DECISIONS**

No final action or final decision may be made in an executive session except a decision to place a Category 3 contract employee on probationary status.

**MINUTES OF EXECUTIVE SESSION**

The board will record written minutes of all executive session meetings. The minutes must specify the specific subsection of Idaho Code § 74-206 authorizing the executive session and will also provide sufficient detail to identify the purpose and topic of the executive session without compromising the purpose of going into executive session.

If a decision is made in executive session to place a Category 3 contract employee on probationary status or if consideration of the status of a renewable contract employee results in the decision to place the employee on probationary status, the individual will not be named in the minutes of the meeting.

Executive session minutes may be recorded in the body of the written minutes of the open session and are a public record.



**LEGAL REFERENCE:**

Idaho Code Sections

33-514 (Issuance of Annual Contracts – Support Programs – Categories of Contracts – Optional Placement)

33-515 (Issuance of Renewable Contracts)

74-201, *et seq.* (Open Meetings Law)

I.R.C.P. Rule 6(a)

F.R.C.P. Rule 6(a)(2)

*State of Idaho v. Rick Yzaguirre et al.*, 163 P.3d 1183 (Idaho 2007)

**ADOPTED: June 5, 2013**

**AMENDED: October 23, 2013**