

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

AT YOUR FINGERTIPS

Overview of New Hampshire's Right to Know Law – RSA 91-A

Summary only, refer to statute or contact NHSBA or local counsel for specifics



I. General Provisions:

- The express purpose of the law “is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” (RSA 91-A:1)
- The provisions of the Right to Know Law apply equally to all board sub- and advisory committees.
- The statute’s provisions regarding meetings applies equally to communications in whatever form – in person, telephonic, digital, etc.. Likewise, the provisions regarding records pertain to information in any physical form – hard copy, digital, electronic, etc.

II. Meetings Open to the Public: RSA 91-A:2, I

A "meeting" means the convening of a quorum of a board/board committee to discuss or act upon matters over which the board has supervision, control, or jurisdiction. A meeting does *NOT* include:

- (1) A chance social encounter not intended for the purpose of discussing or acting upon official matters (provided no decisions are made);
- (2) Strategy or negotiations with respect to collective bargaining; or
- (3) Consultation with legal counsel.

III. Minutes of Public Meetings: RSA 91-A:2, II

- Minutes shall be recorded and open to public inspection within 5 business days of the meeting.
- Minutes should include the names of board members, persons appearing before the board, a brief description of the subject matter discussed, all final decisions made, and the identities of persons who first or seconded any motion.
- The district’s website must either include meeting minutes, or indicated when/where minutes may be inspected.

IV. Notice of Public Meetings: RSA 91-A:2, II

- Absent an emergency, notice of the time and place of each meeting shall be posted in two places, or shall be printed in a newspaper of general circulation, at least 24 hours prior to such meetings (excluding Sundays and legal holidays).
- Sufficient posting may include the school district's website.

V. Emergency Meetings: RSA 91-A:2, II

- The board may call an emergency meeting when immediate action is imperative.
- The board shall use any means available to inform the public that an emergency meeting is to be held.
- The minutes shall clearly state the reason(s) for the emergency meeting.

VI. Non-Public Sessions: RSA 91-A:3, I and II

- Boards may only enter non-public session pursuant to an affirmative majority vote, roll-call, upon motion first and seconded.
- The vote to enter non-public session shall state the statutory reference for entering non-public session.
- Non-public sessions may only include matters permitted under 91-A:3, II; Only the following matters may be discussed in non-public session (the statute includes others which do not pertain to schools):
 - (1) The dismissal, promotion, compensation, disciplining, or investigation of changes of a public employee;
 - (2) The hiring of any person as a public employee;
 - (3) Matters that would adversely affect the reputation of any person, other than a member of the board;
 - (4) Consideration of the acquisition, sale, or lease of real estate or personal property;
 - (5) Consideration of pending claims or litigation against the school district;
 - (6) Consideration of entering a tuition agreement to the extent necessary to maintain competitive position;
 - (7) Consideration of legal advice (even when counsel is not present); and

(8) Consideration of matters relating to the preparation for any carrying out of emergency functions.

- Discussions and decisions shall be confined to the matters set out in the motion to enter non-public session.

VII. Minutes of Non-Public Sessions: RSA 91-A:3, III

- Minutes and decisions made in non-public session must be available within 72 hours of the meeting, unless the board, by two-thirds roll call vote, determines to keep the minutes sealed.
- Boards may only vote to seal minutes of a non-public session if divulging the information would:
 - (1) Adversely affect the reputation of a person, other than a member of the board;
 - (2) Render a proposed action ineffective; or
 - (3) Relate to carrying out emergency functions.

VIII. Minutes and Records Available for Public Inspection: RSA 91-A:4

- Every citizen has the right to inspect all public records, including the minutes of meetings, notes, materials, tapes or sources used for compiling minutes of public meetings.
- Citizens have the right to make memoranda, abstracts and photographic copies of the records or minutes.
- School boards shall allow inspection and copying of all public records available for immediate release.
- If records are not available for immediate release, the school district must:
 - (1) Make the records available within 5 business days;
 - (2) Deny the request in writing with the reason the records are not or will not be made available; or
 - (3) Provide a written acknowledgement of the request and a statement of the time necessary to determine whether the request shall be granted or denied.
- No fees are permitted for assembling, producing or allowing inspection. The district may, however, charge the “actual” cost of physical reproduction (e.g., per page copies, flash drive).

IX. Records Exempt from Public Disclosure: RSA 91-A:5

- (1) Personal school records of students (RSA 91-A:5, III)
- (2) Records pertaining to internal personnel practices (RSA 91-A:5, IV)
- (3) Files whose disclosure would constitute an invasion of privacy (RSA 91-A:5, IV)
- (4) Teacher certification records from the Department of Education (RSA 91-A:5, V)
- (5) Records pertaining to the preparation for and carrying out of emergency functions (RSA 91-A:VI)
- (6) Unique pupil identification information collected in accordance with applicable law (RSA 91-A:5, VII)
- (7) Personal notes without official purpose, made before, during, or after public proceedings (RSA 91-A:5, VIII)
- (8) Preliminary drafts, notes, memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum (RSA 91-A:5, IX)

X. Remedies, Violations, Breaches of Confidentiality

- RSA 91-A:8, I. The district will be liable for attorney fees and costs incurred in a lawsuit if the court finds the lawsuit was necessary to make public documents available.
- RSA 91-A:8, I. The court may award fees personally against school officials if the board officer or district employee acted in bad faith in refusing to allow access to a public meeting or to provide a public record.
- RSA 91-A:8, II. The court may invalidate board action taken at a meeting held in violation of the Right to Know Law.
- RSA 42:1-a, II. A board member or district officer may be removed from office if he/she divulges information that:
 - (1) The school board voted to withhold from the public pursuant to RSA 91-A:3, III; or

- (2) The board member knew or should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence constitutes an invasion of privacy, would adversely affect the reputation of a person (other than a school board member), or would render board action ineffective.

