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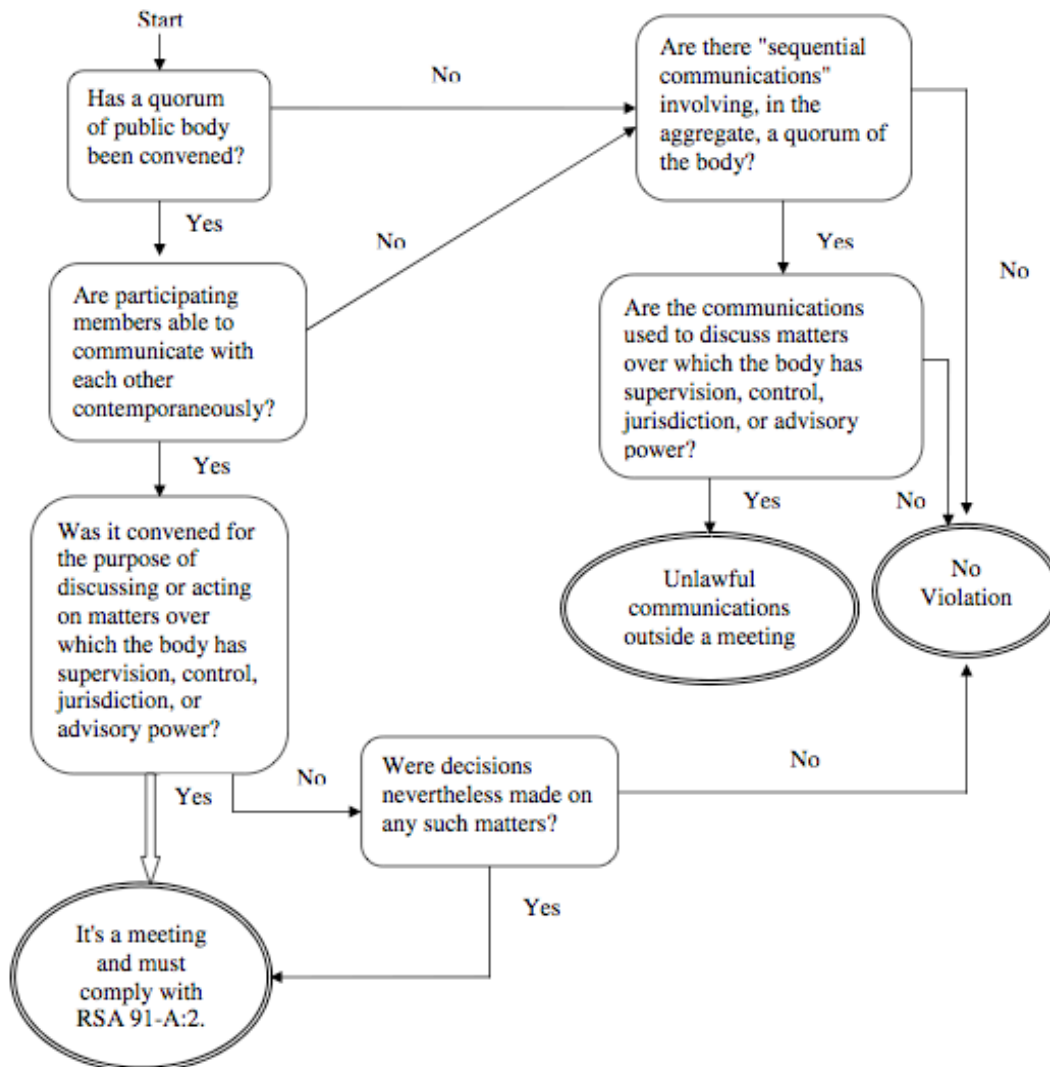
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MEETING AND COMMUNICATION FLOWCHART

Is It a Meeting?

Use this flow chart to determine whether communications among members of a public body constitute a meeting subject to the Right to Know Law, or, if they do not constitute a meeting, whether they are unlawful communications outside a meeting.



THE _____ SCHOOL BOARD
[And if applicable] _____ COMMITTEE

MINUTES OF NON-PUBLIC SESSION

DATE: _____

Issue # _____ (If more than one issue to be discussed in same non-public)

Members Present: (Name each) _____

Motion to enter Nonpublic Session made by _____ seconded by _____

Specific Statutory Reason cited as foundation for the nonpublic session:

___ 91-A:3, II (a): *The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, **unless** the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.*

___ 91-A:3, II(b): *The hiring of any person as a public employee.*

___ 91-A:3, II(c): *Matters which, if discussed in public, would likely affect adversely the reputation of any person, **other than a member of this board**, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.*

___ 91-A:3, II(d): *Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.*

___ 91-A:3, II(e): *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against this board or any subdivision thereof, or by or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

___ 91-A:3, II(i): *Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.*

___ 91-A:3,II (k): *Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, **which, if discussed in public, would likely benefit** a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations.*

___ 91-A:3,II (l): *Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.*

Roll Call vote to enter nonpublic session: _____ Y N
_____ Y N
_____ Y N
_____ Y N

Remove public meeting tape (if applicable).

Entered nonpublic session @ ____ am/pm Discussion regarding Issue # began @ ____ am/pm.

Other persons present during nonpublic session (necessary personnel only): _____

Identification of subject matter discussed and final actions taken/decisions made. (All actions/decisions must reflect the vote of each member - roll call or unanimous vote (91-A:3, III), & and - the first and second of every motion 91-A:2, II): _____

Discussion on Issue ended @ ____ a.m./p.m.

Motion to leave nonpublic session and return to public session by _____, seconded by _____.

Motion: PASSED / DID NOT PASS (circle one)

Nonpublic meeting tape removed, public meeting tape replaced (if applicable).

Public session reconvened at _____ a.m./p.m.

NON-PUBLIC MINUTES

Under RSA 91-A:3, III. *Minutes of proceedings in nonpublic sessions shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of this board, or render the proposed action of the board ineffective, or pertain to terrorism. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.*

Motion made to seal these minutes ____ indefinitely or for ____ years, because publication would:

- ____ Affect adversely the reputation of any person other than a member of this board
- ____ Render a proposed action ineffective
- ____ Pertains to preparation or carrying out of actions regarding terrorism

Roll Call Vote to seal minutes:

_____	Y	N
_____	Y	N
_____	Y	N
_____	Y	N
_____	Y	N

Motion to Seal (Requires 2/3 Vote): PASSED / DID NOT PASS (circle one)

Even if Non-Public Minutes are Sealed, Public Minutes Must Include the Motion to Enter Non-Public, As Well as Motion to Seal, With Record of Votes for Each

These minutes recorded by: _____



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 apply to communications in whatever form – person-to-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 indicate 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 chair/presiding officer 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 specific exemption authorizing the withholding and a brief explanation of how the exemption applies to the record withheld; 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, etc. not in final form & not circulated or made 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.

