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## **Right to Know Law and Efficient Meetings**

### **AGENDA/TOPICS**

1. Overview of RSA 91-A, New Hampshire’s Right to Know Law
2. Meetings, Non-meetings, and Non-Public Sessions

### **MATERIALS**

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# NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

## AT YOUR FINGERTIPS

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

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

#### **I. General Provisions (meetings and records):**

- The 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,” (91-A:1) a right established under N.H. Const. pt.1 Art. 8.
- RSA 91-A describes the exclusive “reasonable restrictions” restrictions to public access to meetings and records.
- The provisions of the Right to Know Law apply equally to boards and their sub- or advisory committees.
- The meetings requirements apply to communications in whatever form: person-to-person, telephonic, digital, etc. Likewise, the records provisions pertain to information in any physical form – hard copy, digital, electronic, etc.
- Statute only distinguishes between meeting and emergency meetings. Absent an emergency (see discussions in sections IV and V), all meetings are subject to same requirements relative to notice, minutes, location, 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) Chance social encounters not intended for 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.
- Any person may record (video and/or audio) and publish any portion of a public meeting, without prior notice, subject only to limitations regarding meeting disturbances.

#### **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 (3 days for non-public).
- 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 – Regular, Special & Emergency: RSA 91-A:2, II**

- Absent an emergency (see next bullet), notice of the time and place of each meeting shall be posted in 2 places (one of which may be district's website), or a local newspaper, at least 24 hours in advance (excluding Sundays and holidays).
- 24-hour notice may be waived only if the chair determines that “immediate un-delayed action is imperative (i.e., an “emergency”). In such instance, notice must be posted as soon as practicable with additional notice by other means that are available. *See section V for “emergency” for purposes of waiving physical location for meeting.*

#### **V. Public Location & Quorum Required – Special Circumstance Remote Participation: RSA 91-A:2, III**

- All public meetings require a physical location at which the public may attend and see/hear all parts of the meeting.
- A quorum of the public body must be in physical attendance at the meeting location absent a determination by chair that “immediate action is imperative and physical presence of quorum is not practicable” (i.e., an emergency).
- If a quorum is present, the board may allow additional members participate remotely if his/her/their physical attendance is not reasonably practicable. Such members will be deemed present for all purposes, including voting.
- In the instance of remote participation by any board member (1 or more), (a) all votes must be roll call; (b) public and members must be able to hear/see all parts of meeting; (c) members must disclose others present in remote location; and (d) minutes must include the nature of the emergency or the reason a member's attendance is not reasonably practicable.

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

- Boards may only enter non-public session pursuant to 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);
- (8) Consideration of matters relating to the preparation for any carrying out of emergency functions;
- (9) Consideration of whether to unseal minutes due to change in circumstances (vote must be in public).
- 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 sealed.
- Boards may seal minutes of non-public session only if 2/3 majority roll call vote in public that divulgence 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.
- Sealed minutes re: sale/lease/purchase of property must be disclosed when transaction complete/suspended.
- District must keep a log of all sealed non-public minutes (see last sentence of 91-A:3, III for required information).

**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.
- 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 (other exemptions may be found in other laws)**

- Personal school records of students (RSA 91-A:5, III)
- Records pertaining to internal personnel practices, or other records whose disclosure would constitute an invasion of privacy (RSA 91-A:5, IV) (balancing test required);
- Teacher certification records from the Department of Education (RSA 91-A:5, V);
- Records pertaining to the preparation for and carrying out of emergency functions (RSA 91-A:VI);
- Unique pupil identification information collected in accordance with applicable law (RSA 91-A:5, VII);
- Personal notes without official purpose, made before, during, or after public proceedings (RSA 91-A:5, VIII);
- 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/should have known information was exempt from disclosure, divulgence is an invasion of privacy, would adversely affect reputation of non-board member, OR render board action ineffective.



# **RSA 91-A – NH’s RIGHT TO KNOW LAW**

## **Excerpts Pertinent to School Districts and SAUs**

*As of October 2021*

*[Parts not pertinent to School Districts or School Administrative Units Removed]*

*New language from 2021 Legislative Session bold and italicized. **New language highlighted.***

**91-A:1 Preamble.** – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter 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.

**Source.** 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

**91-A:1-a Definitions.** – In this chapter:

- I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.
- II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.
- III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."
- IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.
- V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.
- VI. "Public body" means any of the following:
  - (a) .....
  - (d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.
  - (e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other

political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

**Source.** 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

### **91-A:2 Meetings Open to Public. –**

- I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:
  - (a) Strategy or negotiations with respect to collective bargaining;
  - (b) Consultation with legal counsel;
  - (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
  - (d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.
  
- II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the member who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee

is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

- II-a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.
  
- II-b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.
  
- (b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.
  
- III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.
  - (a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.
  
  - (b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.
  
  - (c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is

participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

- (d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.
- (e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

**Source.** 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018. 2018, 244:1, eff. Jan. 1, 2019.

#### **91-A:2-a Communications Outside Meetings. –**

- I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.
- II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

**Source.** 2008, 303:4, eff. July 1, 2008.

#### **91-A:3 Nonpublic Sessions. –**

- I.
  - (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.
  - (b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.
  - (c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.
- II. Only the following matters shall be considered or acted upon in nonpublic session:
  - (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 meeting and (2) requests that the meeting be open, in which case the request shall be granted.

- (b) The hiring of any person as a public employee.
- (c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to 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.
- (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.
- (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against the public body or any subdivision thereof, or by or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.
- (f) Consideration of applications by the adult parole board under RSA 651-A.
- (g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county or state correctional facilities by county correctional superintendents or the commissioner of the department of corrections, or their designees.
- (h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.
- (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.
- (j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.
- (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. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.
- (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.



***(m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.***

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. 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 the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency 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. This shall include training to carry out such functions. 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. ***For all meetings held in nonpublic session, where the minutes or decisions were determined to not be subject to full public disclosure, a list of such minutes or decisions shall be kept and this list shall be made available as soon as practicable for public disclosure. This list shall identify the public body and include the date and time of the meeting in nonpublic session, the specific exemption under paragraph II on its face which is relied upon as foundation for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session under subparagraph II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.***

**Source.** 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016. 2021, 163:1. 2021, 172:1.

#### **91-A:4 Minutes and Records Available for Public Inspection. –**

- I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.
  - I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.
- II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to

inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

- III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.
- III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.
- III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.
- IV.
  - (a) Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release.
  - (b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:
    - (1) Make such record available;
    - (2) Deny the request; or
    - (3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.
  - (c) A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.
  - (d) If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.
- V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy

governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1. Access to work papers, personnel data, and other confidential information under RSA 91-A:5, IV shall not be provided.

- VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.
- VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

**Source.** 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009. 2016, 283:1, eff. June 21, 2016. 2019, 163:2.

**91-A:5 Exemptions.** – The following governmental records are exempted from the provisions of this chapter:

- I. Records of grand and petit juries.
  - I-a. The master jury list as defined in RSA 500-A:1, IV.
- II. Records of parole and pardon boards.
- III. Personal school records of pupils.
- IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.
- V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.
- VI. Records pertaining to matters relating to the preparation for and the carrying out of all 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.
- VII. Unique pupil identification information collected in accordance with RSA 193-E:5.
- VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

- IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.
- X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:
  - (a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
  - (b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.
  - (c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.
- XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.

***XII. Records protected under the attorney-client privilege or the attorney work product doctrine.***

**Source.** 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017. 2019, 54:1. 2021, 163:2.

**91-A:5-a Limited Purpose Release.** – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall be marked "limited purpose release" and shall not be redisclosed by the recipient.

**Source.** 2002, 222:5, eff. Jan. 1, 2003.

**91-A:6 Employment Security.** –

**91-A:7 Violation.** – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

**Source.** 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008.

**91-A:8 Remedies. –**

- I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.
- II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.
- III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.
- IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than \$250 and not more than \$2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.
- V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

**Source.** 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

**91-A:9 Destruction of Certain Information Prohibited. –** A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

**Source.** 2002, 175:1, eff. Jan. 1, 2003.

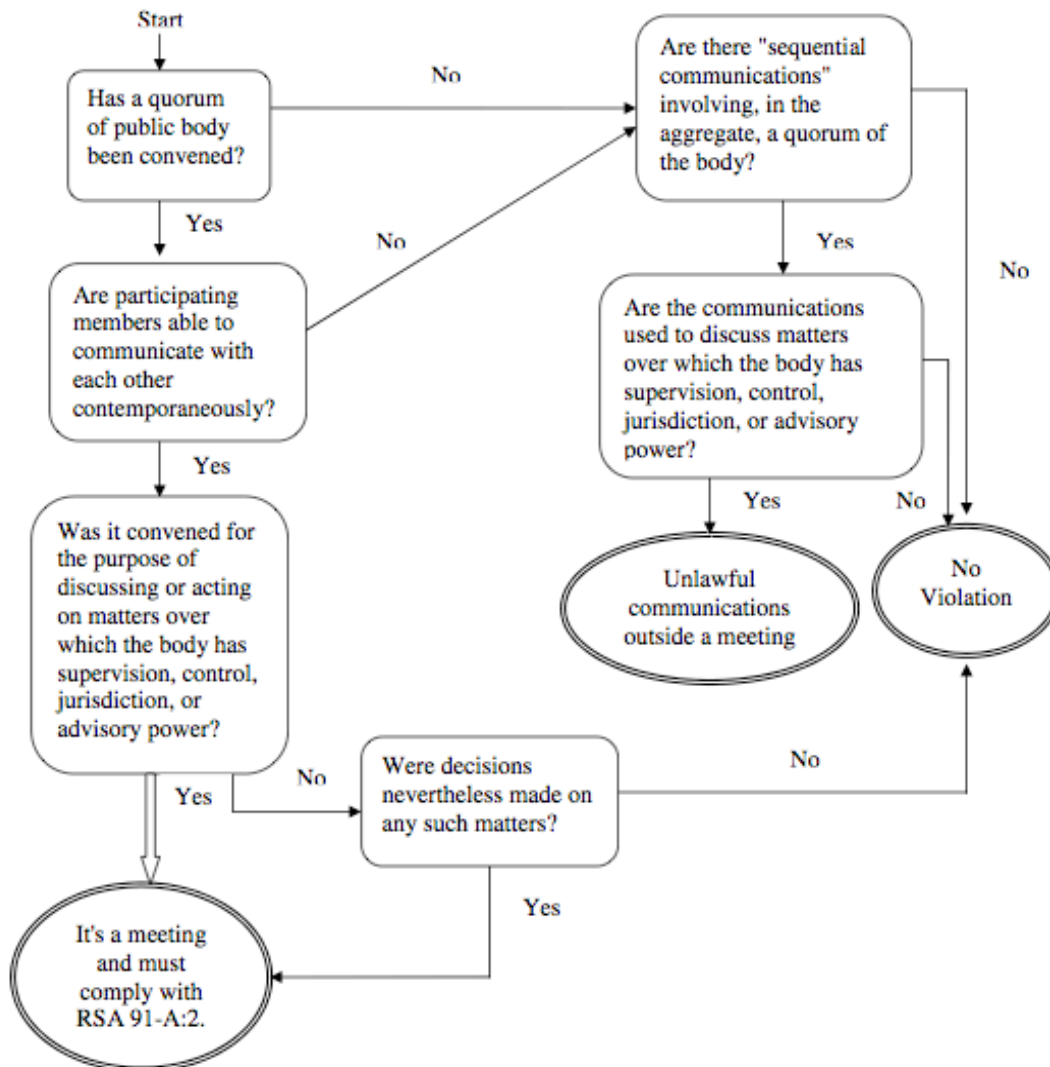
**91-A:10 Release of Statistical Tables and Limited Data Sets for Research. –**

wjp/quick/RSA 91-A as of 2021-10- Excerpts for School Districts

# 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.



New Hampshire Local Government Center, 10/08

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 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 of district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. (Additional language in statute for final votes.)*
- \_\_\_\_\_ 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.*
- \_\_\_\_\_ 91-A:3,II (m): *Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.*

Roll Call vote to enter nonpublic session: \_\_\_\_\_ Y N \_\_\_\_\_ Y N  
 \_\_\_\_\_ Y N \_\_\_\_\_ Y N  
 \_\_\_\_\_ Y N \_\_\_\_\_ Y N

Pause public meeting recording (if applicable).

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

**NON-PUBLIC MINUTES**

Board members present: \_\_\_\_\_

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

Identification of subject matter discussed and final actions taken/decisions made. (All actions or decisions must reflect how each member voted (e.g., roll call/unanimous vote (91-A:3, III), & 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 \_\_\_\_\_. Roll call \_\_\_\_\_

Re-start public meeting recording (if applicable).

Public session reconvened at \_\_\_\_\_ a.m./p.m.

**“SEALING” 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

**NOTE: f sealing regarding a discussion under 91-A:3, II(m), minutes must be unsealed (disclosed) as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.**

Roll Call Vote to seal minutes:

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

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

*The following information to be recorded in the Sealed Minutes Log: (a) name of public body; (b) date, time and location of meeting; (c) start and end time of NP session; (d) grounds under 91-A:3, II to enter NP; (e) basis for sealing minutes; (f) date minutes sealed; (g) date/period, if any, given in motion to seal for minutes to be unsealed; (h) date, if any, of a subsequent decision to unseal the minutes.*

*Even if Non-Public Minutes are sealed, the Public Minutes Sealed must include the Motion to Enter (with the basis(es), as well as Motion to Seal (and basis), with roll call votes for each.*

These minutes recorded by: \_\_\_\_\_





**New Hampshire School Boards Association**  
**25 Triangle Park Drive, Suite 101**  
**Concord, NH 03301**  
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**(603) 228-2351 (fax)**  
**www.nhsba.org**

## **Effective School Board Meetings**

### **A. Establishing Goals of the Board Meeting:**

Effective and productive meetings do not simply happen. They require forethought about the order in which issues should be discussed, the amount of time that will be needed to adequately discuss an issue, the information that board members will need to receive prior to the meeting, and the proper wording of motions or resolutions to be considered by the board. Meeting goals and agenda items should relate to one or more of a school board's responsibilities or functions.

### **B. Agenda-setting:**

#### **B1. Initial Planning.**

The agenda and pre-meeting planning are keys to successful meetings. Set the order in which items will be handled during the board meeting. Create a pace for the board to do business. Allow board members time to study and think about complex or controversial matters before the meeting.

#### **B2. Desired Outcomes.**

What are the board's desired outcomes for the meeting? Generally there will be more than one desired outcome for a meeting, but frequently there is an urgent item that takes priority over all others. In those instances, the agenda should be prepared to assure that ample time is left for the required business, with non-essential items left to another day.

What are the desired outcomes for each For each agenda item? For example, if the desired outcome on an agenda item is to adopt a recommendation, the meeting should be designed so there is a proposal, followed by discussion and a vote.

#### **B3. Agenda Categories.**

Agenda categories help identify the objective for each agenda item. Sample agenda categories include:

- a. **Action items** on which the board is expected to reach a decision during the meeting;
- b. **Consent items** addressing the routine matters, such as minutes and monthly expenses, which can be approved together without discussion;
- c. **Discussion items** that require comment but do not require action; and
- d. **Information items** that require no action or discussion.

When setting the agenda, identify what category each agenda item falls within. Consider whether to include notations for each item. Examples:

- a. Finance Committee report. Discussion item. No action needed.
- b. Volunteer recruitment and philosophy: Anticipated Action: form committee of 3-4 board members.
- c. Public Policy Committee: Anticipated Action: approve organizational statement to city council on zone changes.
- d. Second reading of policies ABC & XYZ. Anticipated action: Review and adopt.
- e. Presentation by 5<sup>th</sup> grade social studies class. Information item. No action required.

## B2. Consent Agenda.

The consent agenda should include only non-controversial items, such as adoption of the minutes, receipt of reports, general information and items that don't require any specific board discussion or board action. The consent agenda allows for all the reports to be received with one motion.

Any member can request that an item be removed from the consent agenda and placed on the regular agenda for consideration and vote. The remaining consent-agenda items are then unanimously approved as a unit without discussion.

*For further information re Consent Agendas, see article "Dos and Don'ts of Consent Agendas" at pp. 9-10, below.*

## B3. Sticking to the Business of the Agenda:

Of course, all the planning in the world will mean nothing if you can't then use that planning to run a smooth, productive meeting.

- a. Stick to the agenda. Stay focused on your desired outcomes by using an agenda. If you're using a timed agenda, stay on track by ending each item on time.

- b. Have an endpoint. Similarly, to avoid unproductive tangents and circular discussions, establish an end time in advance—and adjourn the meeting when you reach it.
- c. Preempt inefficient debate. Resolve non-controversial items through “general consent” or “unanimous consent.” The board chair asks if there is any objection closing discussion on a particular topic. If no one objects, debate is closed. If a member objects, the board can resolve the matter with a motion and vote.
- d. Start on time and stay on task. District administrators, staff and others asked to attend board meetings should understand when meetings begin and that they will always begin on time. Parliamentary procedure can help as board members move through the agenda. Certain situations and topics will cause meetings to go much longer than normal. This is to be expected, but should be the exception rather than the rule. *Some boards will include notations on the agenda for allotted time for an item. E.g., “Second reading of policies ABC & XYZ. Anticipated action: Review and adopt. 15 minutes.*
- e. Organize the meeting to minimize disruption and delay. Issues that will require lengthy debate and discussion should be tackled at the beginning of the meeting, when board members are fresh, and, when possible, limited in number for each meeting.

### **C. Public Comments:**

It is a long standing and important tradition in New Hampshire that local governments allow some form of public comment at regular school board meetings. Unlike a district's annual meeting, or a required public hearing, which is a meeting of the public, a school board meeting is just that, a meeting of the school board. While it is a meeting at which the public has a right under the State Constitution and RSA 91-A to attend, it is not a meeting at which the public has an absolute right to speak. Public input, however, is crucial for good governance, and public confidence. Allowing for public comment during a board is a function of board policy. The scope of such policies is broad: ranging from allowance for free and unfettered comment, to well defined public comment rules, to boards that do not allow public comment at all.

NHSBA believes that the best practice/policy is in the middle. Extremely flexible or absence of rules can lead to significant problems for a school board. A lack of any standards or rules can arguably create a designated wide open "public forum" for First Amendment purposes. This could result in a situation where a single member of the public takes over a meeting and may speak on any issue whether or not related to the issues before the board or even that district. Without any standing rules regarding subject matter, length of time, etc., the board could create a situation where it is risky to try to stop the person from speaking lest a claim arise that the board was infringing on First Amendment because of the content of the speaker's message. On the other hand, extremely restrictive rules could be so inflexible that the public might have little or no input, antithetical to good governance. NHSBA typically recommends allowing public comment on district operational items (e.g., budgets, programs and the like), and a formal policy clearly establishing the guidelines and parameters of the public comment period.

C1. Public comment standards to consider:

- a. A rule limiting comment to matters on the agenda. The public comment policy should clearly identify the other avenues that members of the public have to communicate with the board and or the administration.
- b. A specific portion of the meeting agenda, not to exceed [\_\_\_30?] minutes is set aside to allow comments by members of the public. As needs change meeting to meeting, a board may choose to set aside more or less than the standing policy states, but it should only do so before speakers begin, and not in mid-meeting. If there is a volatile issue, more time may be required or the board may choose to have an additional meeting on the topic.
- c. A set amount of time for each speaker (on all issues, or on each issue). Such an objective provision taken with the preceding suggestion, together allow a board to most safely manage the board's meetings without fear of inadvertently impinging upon First Amendment rights. Guidelines should encourage individuals to be as brief as possible, and that groups assign a single spokesperson.
- d. Create a sign-up protocol such that persons wishing to speak sign-up before the meeting starts. Boards may also consider whether the sign-in sheet requires identification of the issue (agenda or not) upon which the person desires to speak.
- e. Non-agenda comments about specific personnel or students will not be heard. Under the First Amendment, a board is absolutely prohibited from engaging in "viewpoint discrimination". Accordingly, should a board allow comments commending or praising an individual employee or student, it may be difficult to then limit someone's negative comments or complaints. This would not prohibit such things as agenda items under which a school employee or board member recognizes accomplishments of individual students or employees. *The board should have ready access to the board policies addressing complaints or complaints about individuals. NHSBA's sample policies are KE and KED respectively.* Should a member of the public begin to discuss such a complaint, the board chair should redirect any such comments to the superintendent, members of the administrative staff or local administrators to explore/investigate the background and secure a satisfactory solution to any concern.
- f. Board members refrain from responding contemporaneously, if at all, directly to comments or questions posed by citizens during their presentation. While this guideline should not totally prohibit board responses, premature or impromptu responses can suggest official action or position before the full board or administration have addressed an issue. Remember that no single board member can speak on behalf of the board, and while individual board members do not lose their right to speak publicly as individuals, while sitting at the board table, they are not acting as individuals. The recommended practice is for the board to take comments or questions under advisement, with appropriate referral to personnel in attendance (e.g., ask the superintendent to look into an issue raised).

**NOTE: It is imperative that a board enforce its rules fairly and without regard to a speaker's message. While strict adherence to a time limit might not be necessary, trying to impose it on a member of the public who speaks in opposition of a board policy, while allowing a member of the public 10 minutes to speak in favor of it could lead to charges of viewpoint discrimination.**

C2. Additional Tips for Managing Public Comment:

- a. Have copies of your “public comments” policy to distribute (some boards print them on the back/as part of each agenda);
- b. Place controversial issues early on the agenda;
- c. Have sufficient copies of the agenda, summary of reports;
- d. Use language the audience can understand – avoid jargon;
- e. Never argue or engage members of the public in debate;
- f. Read or summarize the policy at the start of the meeting, or before comments are allowed.

**D. Parliamentary Procedure:**

Basic provisions of parliamentary procedure may include:

1. Each motion may deal with only one issue or idea.
2. Debate should follow, not precede, a motion.
3. Debate must be limited to the motion at hand.
4. When a motion is on the floor, no new motions may be made.
5. No member can speak twice on the same issue under debate until everyone else wishing to speak has spoken to it once.
6. Formality imposed by strict adherence to rules of order does not necessarily apply to small legislative bodies.
6. **Board chairs should vote on every issue.**
7. People should know beforehand what they will be discussing.
8. Public meeting does not mean public participation.

D1. Motions for Reconsideration

NHSBA receives many inquiries about motions for reconsideration and the specifics of Robert's Rules of Order. Robert's Rules of Order provides very specific and very restrictive conditions when a motion for reconsideration is or should be allowed, primarily that such a motion must be made at the same meeting as the original motion and must be made by a board member who voted in the majority on the original motion.

NHSBA advises that school boards do not follow these rigid and restrictive rules. However, at the same time, NHSBA advises that school boards limit their practice of reconsidering issues that the board has already voted on and acted upon.

There may be legitimate times when reconsidering past board action is necessary – a new statute or administrative rule is implemented; a certain program is not effective; unanticipated financial changes occur. In these circumstances, it may be prudent to reconsider previous board actions.

However, reconsideration should not be used as a tool for political gain. A change in board membership may change the board's priorities – which is fine. But constant doing and undoing can render a school board ineffective and undermine public trust.

## D2. Abstaining from Voting on a Motion

Abstentions are not votes. Only the number of votes cast is counted in determining a majority or two-thirds vote. For example, if a school board has five members and a motion receives two yes votes, one no vote, and two board members abstain, the motion passes.

NHSBA advises that school board members do not abstain unless a conflict of interest or bias/prejudice issue is present. If board members feel they do not have enough information, knowledge or resources to support the motion, then they should vote against the motion.

## **E. Role of the Board Chair:**

The board chair is responsible for enforcing the procedures that the board has adopted, and to guide the flow of agenda items, discussions on the same and formal board votes:

1. As the moderator of debate, the chair should consider withholding his/her position until after others have spoken.
2. Recognize all who have comments or questions.
3. Keep the group on the topic.
4. Clarify questions. Restate them so that everyone understands. Do not make long speeches.
5. Practice the art of summarization. Clarify and restate motions.
6. Keep order in the discussion and be alert to members' reactions.

Manage discussion. Set the discussion time prior to addressing potentially lengthy issues: “Is there a motion to limit total debate to 30 minutes?” And encourage new discussion—and prevent repetition—by asking for speakers who have not spoken.

Alternate pro and con. After hearing from a proponent, ask if there anyone who wishes to speak against the motion. When no one wishes to speak on a particular side, ask for unanimous consent to end debate: “Is there any objection to closing discussion? Hearing no objection, discussion is closed.” If people from both sides do continue to speak, pay attention to the length and quality of their remarks. When the discussion seems to have reached the point of repetition, ask for a motion to end discussion: “Is there a motion to close debate?”

Encourage and equalize participation. A single person may monopolize discussion at meetings. For example, no one should speak a second time while there are members who wish to speak for the first time.

Control interruptions and digressions. A good board chair might acknowledge a tangential issue that has been raised, but note that it’s not relevant to the discussion and should be taken up later. If a member attempts to monopolize discussion, you may have to nicely state that because the member has already spoken, other opinions are needed.

Manage conflict. During meetings, members should never get into an argument—or even a direct discussion—with each other. If a confrontation begins between two members, your board chair should remind everyone to address all remarks to the chair.

End on a positive note. Thanking members for their time is not only gracious, but also likely will result in greater enthusiasm for the board’s work, including future meetings.

#### **F. Pertinent NHSBA Sample Policies:**

- BBAB – Roles and Duties of the Board Chairperson
- BCB – Board Member Conflict of Interest
- BEA – Regular Board Meetings
- BEDB – Agenda Preparation and Dissemination
- BEDD – Rules of Order
- BEDH – Public Participation at Board Meetings
- KE, KEB – Public Complaints; Public Complaints About School Personnel, Employees, Students or Administration

## **NHSBA Sample Rules of Order: Excerpt from sample policy BEDDA**

1. The Board Chair shall preside over all meetings of the Board. In the Chair's absence the Vice Chair will preside, followed by the most senior member then present.
2. By majority vote, the Board can overrule any ruling of the presiding officer regarding the application of these rules. A board member can raise such a request by a "Point of Order", followed by a motion with respect to the specific decision.
3. The presiding officer may make adjustments to the agenda with the consent of the majority, whether by vote or otherwise. *[Districts should check their current agenda policy to remove or resolve any conflicting language. NHSBA's sample is BEDB].*
4. All speakers should be courteous and should speak on the issue then under discussion, not to the individuals raising them.
5. Each board member has the right to participate in discussion and debate if he/she wishes, before any other member may speak a second time.
6. No one may speak unless he or she has been recognized by the presiding officer. A board member may interrupt only to state a "Point of Order", "Point of Information" or "Point of Inquiry". The presiding officer will then recognize the member for the limited purpose of stating the point of order, etc..
7. The presiding officer may decide, on his/her own initiative, or upon request by a board member, to recognize a non-board member, to address the Board with respect to the matter then under discussion.
8. Agenda items requiring action by the Board should be preceded by a specific motion, clearly articulated, followed by a second. Motions should address only one issue or idea. If a motion is complex, or has conditions, the motion should be written out and read back by the Board's minute taker.
9. If a motion does not receive a second, then the motion is treated as if it were not considered by the Board. Such a matter may be raised again at a later date in accordance with the Board's agenda policy and rules.
10. When a motion is on the floor, no new topics should be debated, and no new motions will be accepted, other than the following motions addressing the main motion or the meeting itself:
11. As provided under RSA 91-A:2, II for open sessions, and 91-A:3, III for non-public sessions, no vote may be taken by secret ballot.
12. The presiding officer should, in accordance with the duties of all board members, vote on every issue.
13. No item may be discussed or decided upon in non-public session except as provided under RSA 91-A:2 and 3.



<b>Motion</b>	<b>Debatable</b>	<b>Votes Required to Pass</b>
Amend Motion	Yes	51%
Limit Debate (e.g., time limits or # of times each member may address the motion)	Non-debatable	2/3 (67%)
Call the question/close debate	Non-debatable	2/3 (67%)
Refer to Committee/Admin Study	Yes	51%
Postpone to a Later Time (Diff. day)	Yes	51%
Postpone Indefinitely (Kill)	Yes	51%
For roll call* vote <i>*All votes in non-public must be by roll call</i>	No	2 members
Recess	Non-debatable	51%
Adjourn	Non-debatable	51%

14. Abstentions are noted and counted, but do not affect the outcome of the vote.

15. Motions for reconsideration are not favored except when new circumstances exist or a perceived error has been made. Motions for reconsideration may only be raised at the same meeting as the original decision by a person who voted in favor of the original motion. Motions for reconsideration at a later meeting may only be considered when approved by a 3/5 super-majority, and only when the proposed motion is posted with the agenda for the subsequent meeting. Only one motion for reconsideration on an issue may be made at a meeting later than the meeting at which the original decision was made, irrespective of whether the first motion for reconsideration is successful. This provision shall only apply to the Board as constituted as of the date of the original decision.

16. The presiding officer may rule any member or other person out of order if such person disrupts the orderly conduct of a meeting, behaves in a disorderly manner, makes unlawful threats, willfully violates any of the above rules of order/procedure, or engages in any unprotected speech. If the board member or other person continues such behavior after being ordered by the presiding officer to cease, the presiding officer is authorized to request that a police officer, warn and then remove such person from the meeting and meeting location.

## **THE DOs AND DON'Ts OF CONSENT AGENDAS**

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[http://www.boardforward.com/201706/The\\_Dos\\_and\\_Donts\\_of\\_Consent\\_Agenda](http://www.boardforward.com/201706/The_Dos_and_Donts_of_Consent_Agenda)

Highly functional boards know that board time is a precious commodity that shouldn't be squandered. A tool that many boards utilize to make their meetings more efficient and productive is a consent agenda—also called a consent calendar.

The consent agenda groups perfunctory, but nonetheless important, items into one agenda item, speeding up the meeting and creating time for more critical issues and previously undiscussed matters. It can either be included as part of the regular agenda or as its own separate agenda. Either way, it is approved in one action and by one vote by the board, rather than requiring motions to be filed on each individual item.

What goes on a consent agenda? The items are typically routine and non-controversial, or matters the board has achieved consensus on after previous discussion. Generally, topics that have not been discussed by the board in the past should not be put on the consent agenda. The board chair prepares the consent agenda, usually in consultation with the executive director. Consent agenda items typically include:

- Committee and previous board meeting minutes;
- Office or committee reports;
- Routine correspondence that require no action;
- Minor changes in a policy or procedure (e.g., for purposes of clarity or to update without changing intent or meaning);
- ...\*
- Updating documents, such as minutes, reports or role descriptions;
- Standard contracts that are used regularly (e.g., confirmation of using the traditional in-house contract with a new vendor);
- ...\*
- Final approval of proposals or reports that have been fully discussed and vetted at past meetings;
- Reports provided for information only.

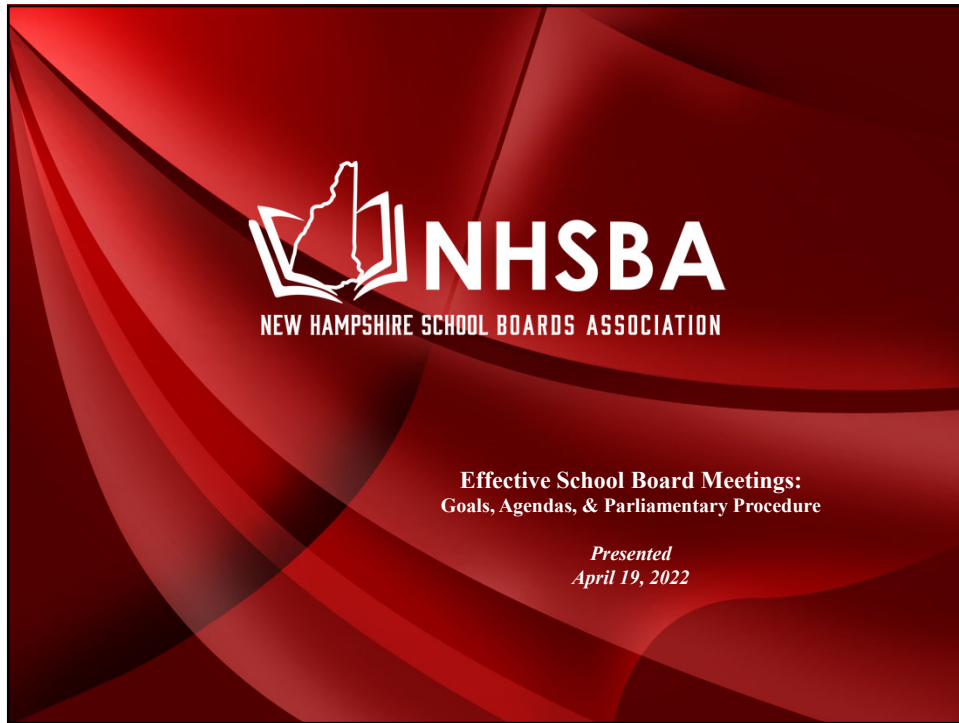
At the meeting, the board chair should first ask members if they wish to move any consent agenda items to the regular agenda for further discussion. This is essential as members should be able to make such a request for any reason. If requested, the board chair would move the item and open it up for discussion during the regular agenda, or make it a “parking lot” item for future debate. Ideally, board members should ask for such a move before the meeting so it can be placed on the regular agenda before the meeting starts. After any items have been moved and the consent agenda is set, the board chair recites the items on the consent agenda and moves to adopt it.

Transparency and accountability are the foundations of successfully employing consent agendas. Even though they are routine and non-controversial items, it is imperative that all supporting

documents be provided and that board members fully review them in advance. Failing to provide them can lead to mistrust. It's also worth noting that items on the consent agenda are still important and deserve board members' full attention—otherwise, they shouldn't be on the agenda at all.

Boards that effectively use a consent agenda will find that meetings are more productive, members are more engaged, and more time is available for strategic issues that require more debate and deliberation.

*\*Deleted as not pertinent to New Hampshire School Boards*



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## How to Participate

- To close or reopen your panel.
- To download today's presentation or any additional documents. Use this to also submit text questions.
- If time permits, we will have a brief Q&A session at the end of this presentation.

A screenshot of a Zoom meeting interface. The main content area displays the NHSBA logo and name on a dark red background. At the bottom of the screen, the Zoom control bar is visible, showing the name 'NH School Boards Association', 'Audio Settings', a 'Chat' button (highlighted with a red box), 'Raise Hand', 'Q&A', and a 'Leave' button. A red arrow points to the window control buttons (minimize, maximize, close) in the top right corner of the Zoom window.

2



## Meeting Goals, Meeting Planning, and Agenda Setting

Slide 3

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### Meeting Goals

- Effective and productive meetings do not simply happen. They require forethought about:
  - Desired objectives and required actions (translation: agenda items)
    - “Agenda” = a list of matters which are to come before the meeting for consideration and/or decision.
    - Distinct from “notice” as used in RSA 91-A:2, which only requires date, time and place of meeting.
    - But published **draft** agenda is important to inform the public what the body “is up to”.

*“Stay at home principle”*

Slide 4

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## Meeting Goals

- What are the board's desired/required - outcomes for each meeting?
- What are the administration's desired/required - outcomes?
- Meeting goals and agenda items should clearly relate to the primary functions of the body.
  - Adopt a policy?
  - Finalize the budget?
  - Have a hearing/make a finding & decision?
  - Receive reports?
  - Ratify a contract?
  - Vote on a committee's recommendation?
- Generally, more than one desired/required outcome.

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## Agenda Setting

- Agenda reflects not only board specific objectives and plans, but all items advisable to enable district and board to provide public education.
  - Programming
  - Personnel
  - Fiscal, etc.
- Refer to the board's rules/policies relative to agenda setting process.
- Superintendent – as CEO is responsible managing compliance and logistics - usually responsible for setting first draft of agenda?
- Chair as board's designee helps refine.

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## Agenda Setting

- Board policies/rules sometimes include provisions to allow:
  - individual board members to have items **placed on the agenda as a matter of right**;
  - members of the public to **request** agenda items :
    - Through communications to board or admin
    - Or through public comment
    - Distinct from public comment in that it is the board's item, not merely receiving input from member of public.
    - Screening of such requests occurs as part of the ordinary agenda setting process (e.g., superintendent and chair)

Slide 7

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## Meeting Planning – Agenda Setting

- Some agenda policies have a template for the regular meeting agenda
- Planning for a specific meeting should involve additional considerations:
  - reduction of transitional disruptions;
  - the audience and necessary or invited participants pertinent to specific items;
  - required space and technology;
  - anticipated non-public sessions;
  - issues warranting extra time or special placement;
  - appropriate amount of time for each item;
  - information board members need prior to the meeting; and
  - wording of anticipated motions or resolutions.

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### Agenda Setting – Individual Items

- Ask: What is the desired outcome for the agenda item?
  - Consent items addressing the routine matters, such as minutes and monthly expenses, which can be approved together in one motion without discussion;
  - Action items on which the board is expected to reach a decision during the meeting;
  - Discussion or presentation items that require comment but do not require action; and
  - Information items that require no action or discussion.
- Items that are not included on the agenda should be acted upon at a subsequent meeting unless wholly inconsequential or there is a compelling reason for more immediate action.

Slide 9

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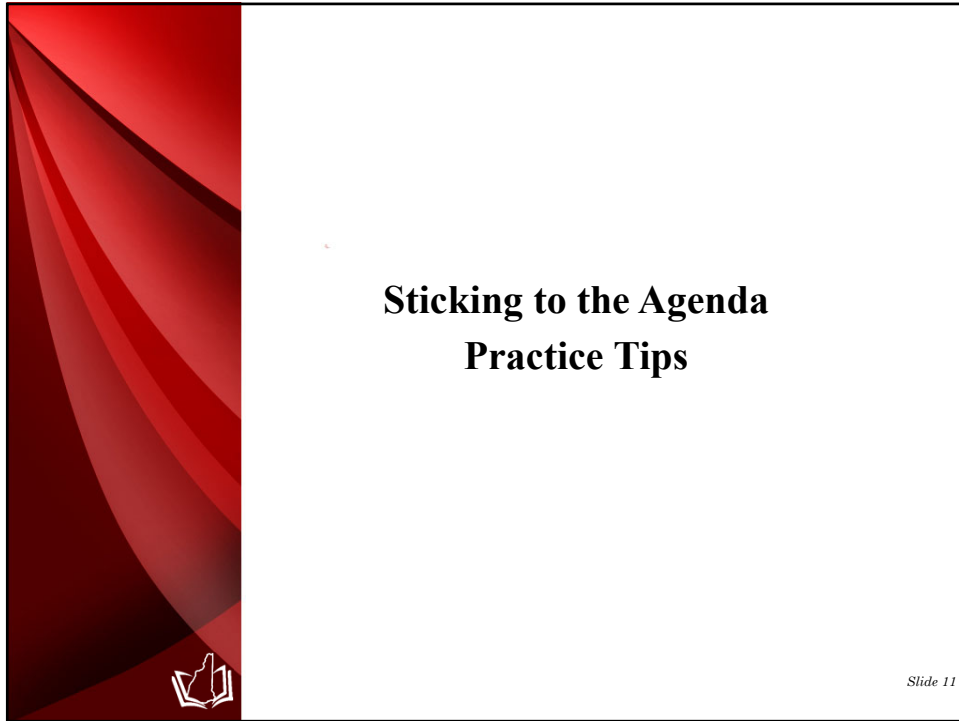
### Agenda Setting – Individual Items

- When setting the agenda, identify agenda category.
- Consider whether to include notations for each item. Examples:
  - Finance Committee report. Discussion item. No action needed.
  - Volunteer recruitment and philosophy: *Anticipated Action: form committee of 3-4 board members.*
  - Policy Committee: Second reading of policies ABC & XYZ. *Anticipated action: Review and adopt.*
  - Presentation by 5<sup>th</sup> grade social studies class. *Information item. No action required.*
- Sketching out the anticipated time for items can be helpful in planning a meeting and constructing the agenda.
  - use only as guides or benchmarks.

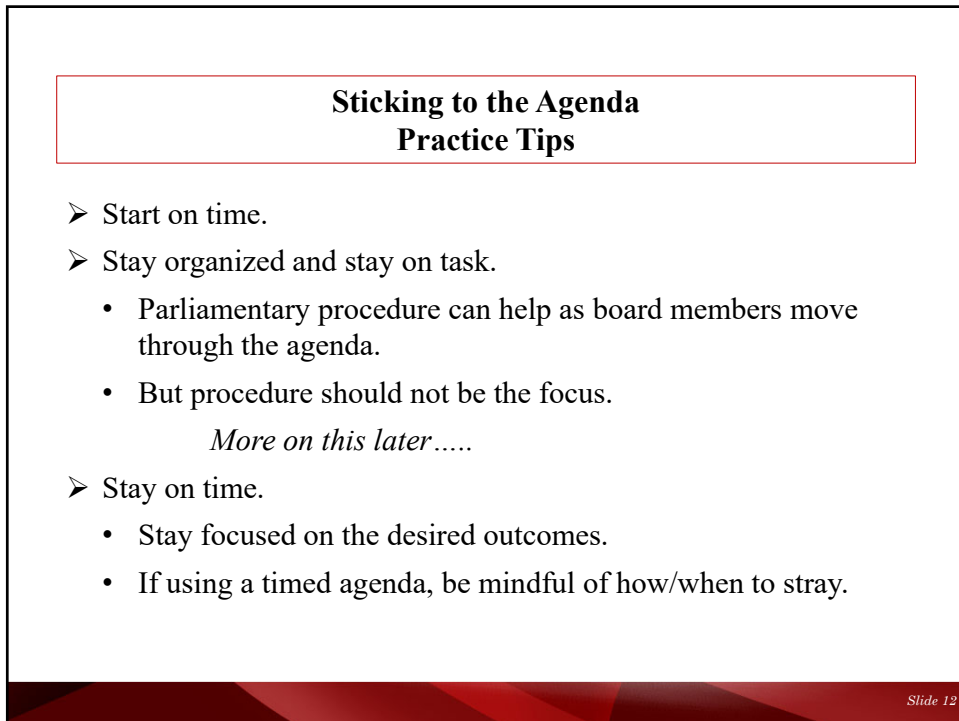
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## Sticking to the Agenda Practice Tips

- Start on time.
- Stay organized and stay on task.
  - Parliamentary procedure can help as board members move through the agenda.
  - But procedure should not be the focus.

*More on this later.....*
- Stay on time.
  - Stay focused on the desired outcomes.
  - If using a timed agenda, be mindful of how/when to stray.

## Sticking to the Agenda Practice Tips

- Have an endpoint.
  - Establish an end time in advance - and adjourn the meeting when you reach it.
  - Not hard and fast usually, but a helpful goal to keep folks on task.
- Don't ambush – no surprises.
  - Effective meetings and good decision making are dependent on good information.
  - Recipe to contentious, unproductive meetings, ill informed, emotion driven actions.

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## Sticking to the Agenda Practice Tips


- Resolve unnecessary debate.
  - “General consent” - The board chair asks if there is any objection to closing discussion on a particular topic. If no one objects, debate is closed.
  - “Consent agendas” - limit to non-controversial items.
    - Items can be pulled out in a meeting if one or more members request(s).

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# Parliamentary Procedure - Rules of Order



*Slide 15*

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## Parliamentary Procedure

- Parliamentary procedure, i.e. rules of order, help keep meetings efficient, and provide a clearer public record of the board's actions.
- Too much process – e.g., Roberts Rules, can lead to sluggish, unproductive meetings.
- Roberts Rules, by its own admission, does not apply to small legislative bodies.
- Simple rules of order (with commonly understood elements of Roberts Rules) helps maximize meeting efficiency and can engender greater participation and collaboration.

*Slide 16*

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## Rules of Order – Examples/Considerations

- Common principles:
  - Each motion may deal with only one issue or idea.
  - Debate must be limited to the motion at hand.
  - When a motion is on the floor, no new motions may be made.
  - No member can speak twice on the same issue under debate until everyone else wishing to speak has spoken to it once.
- *NHSBA sample policy BEDDA or sample rules BEDD-R*

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## Rules of Order – Examples/Considerations

- Limit practice of reconsidering issues that the board has already voted on and acted upon barring:
  - new information, or
  - newly constituted boards.
- Should debate follow or precede a motion???
- Efficiency may depend as much on the board itself as it does the specific issue.
- The late Senator from Arizona, Mo Udall, once said, “Everything has been said, but not everyone has said it.”
- Make a motion – call the question.

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## Abstentions & Recusals

- Abstentions are not votes but count toward a quorum.
  - Present and voting
  - 3-0 w/3 abstentions passes
  - 2-2 w/2 abstentions fails
  - 2-1 w/2 abstentions passes
- Elected to decide.
- Reserve abstention for missed meetings, etc.
- Recusal - vote unless a conflict of interest or bias/prejudice issue is present.
- Board cannot force a member to recuse.

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## Role of the Board Chair

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## Role of the Board Chair

- Functions of a board chair is largely based upon tradition, reformed by board policy.
- Common roles include:
  - Preside at board meetings;
  - Sign documents on behalf of the board;
  - Consult with the administration re agenda setting;
    - *Crucial matters occur between meetings (special or emergency meeting needed?);*
    - *Existing authority?*
    - ***Superintendent should share info in report to board.***
  - Committee appointments;
  - Board spokesperson.

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## Role of the Board Chair

- Meeting responsibilities:
  - enforce board's meeting procedures, and
  - guide the flow of agenda items, discussions on the same and formal board votes.
- As the moderator of debate, the chair should consider withholding his/her position until after others have spoken.
- Recognize all who have comments or questions;
- Keep the group on the topic;

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## Role of the Board Chair

- Clarify record -
  - Restate motions;
  - Summarize key points and questions;
  - Maintain “appropriate” level of formality;
  - **Encourage** points of clarification from minute taker;
  - Discuss minutes content either as policy or specific meeting.
- Demonstrate and request respect for and by all speakers;
- Vote on all matters!

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## Public Participation at Board Meetings - “Public Comment”

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## Public Participation

### *Public Meetings v. Meetings of the Public*

- The primary purpose of most board meetings is to conduct the business of the board as it relates to policies, programs, budget, and operations.
- A board meeting is one that the public has a right to attend, rather than a meeting of the public where everyone might have the right to speak.
- Board “business” meeting is different than:
  - Quasi-judicial hearing, involving the rights of individuals at which certain members of the public have the right to “testify”.
  - A statutory or legislative type hearing, at which the general public has the right to speak (e.g., budget hearing, accepting unanticipated revenue, etc).

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## Public Participation

### *Public Comment at Board Meetings*

- The United States Supreme Court has recognized that nothing in the U.S. Constitution requires public bodies to allow members of the public to speak during meetings of that body.
- Likewise, neither the State’s Constitution, nor the Right-to-Know Law, RSA 91-A, create a public right to speak during or at board meetings. **Pending bill will mandate public comment at school board meetings.**
- As there is no current legal mandate, the “power” to create the opportunity for public comment is reserved to the board.

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**Public Participation**  
***Public Comment at Board Meetings***  
***and the 1<sup>st</sup> Amendment***

- ***Access and input to decision making by public bodies is an important part of our democracy, both by tradition and under the State and Federal Constitutions.***
- Public comment before governing bodies is an important channel for that public input.
- When a board allows time at its meetings for public comment, the board creates a “forum” for speech, which in turn implicates free speech considerations under both the Federal and State Constitutions.

*Note: A full discussion of public comment and the 1<sup>st</sup> Amendment is beyond the scope of this presentation.*

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**Public Comment at Board Meetings**  
**and the 1<sup>st</sup> Amendment**

*Continued...*

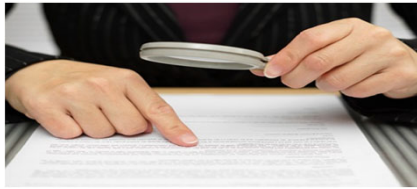
- Boards can enact rules about public comments at their meetings, but when they do so, they must adhere to First Amendment standards.
- Board rules may include “time, place and manner” restrictions, as well as other parameters, provided that in all instances, the limitations are viewpoint neutral.

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## Public Comment

Refer to your own local policy.



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## Public Participation *Practice Tips*

- Make sufficient copies available of the agenda and other items of general concern (e.g., meeting policies, outline of Right-to-Know Law regarding non-public sessions, report summaries, etc.).
- Place controversial issues early on the agenda.
- Similarly, place participation items (staff, student groups, consultants) early.
- Use language the audience can understand – avoid jargon.

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## Public Participation *Practice Tips*

- Summarize public comment rules/policy before the start of public comment period.
- Safest rule to enforce under the 1<sup>st</sup> Amendment is one limiting speakers to X minutes and perhaps aggregate of X minutes for all speakers.
- **Administer public comment rules consistently.**
- *Public comment is for input, not debate* – Avoid exchanges and arguments. Keep exchanges to a minimum, and never argue.
- For highly controversial topics, consider a “public forum” (special board meeting).

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## Public Participation *Practice Tips*

- Be adept at deferring direct response –
  - no single board member can speak for the board until the board has taken a position;
  - deferring reduces the risk of overly emotional responses;
  - deferring – as with agenda setting - helps assure that the information required for meaningful and accurate deliberation is in hand;
  - develop a pattern of integrating meaningful input into future agendas or board business part of the meeting.

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## Dealing with Meeting Disruptions

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### Meeting Disruptions

- Under both the U.S. Constitution, and New Hampshire law, persons who actively disrupt a public meeting and/or continually refuse to follow reasonable meeting rules may lose their right to attend the meeting. (I.e., ordered to leave.)
- If the order to leave is made by a law enforcement officer, then further refusal may lead to criminal charges. See RSA 642:2 (Disorderly Conduct).

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## Meeting Disruptions

- Under RSA 644:2 of the New Hampshire Criminal Code:  
a person is guilty of disorderly conduct if:
  - III. He purposefully causes a breach of the peace, *public inconvenience, annoyance* or alarm, or recklessly creates a risk thereof, by:
    - (b) Disrupting the orderly conduct of business in any public government facility.
    - (c) Disrupting any lawful assembly or meeting of persons without lawful authority.

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## Meeting Disruptions

- Disruptions must be actual, not constructive, technical or anticipatory (i.e., a perception comments could cause a disruption after the fact).
- Examples of actual disruptions:
  - Refusal to stay on agenda items **if the published rules** limit public comment to agenda items;
  - Refusal of a speaker to cease talking after time has expired;
  - Speaking without being recognized by the Chair;
  - Shouting and yelling while others are speaking.

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## Meeting Disruptions

- In *State v. Comely*, 130 N.H. 688 (1988), the New Hampshire Supreme Court upheld a disorderly conduct conviction after the defendant had caused a 1-1½ minute delay to the opening of the gubernatorial inauguration by walking down the aisle and shouting remarks about the Seabrook nuclear facility as guests were being introduced.
- In *State v. Dominic*, 117 N.H. 573 (1977), the Supreme court ruled that a town selectman could be found guilty for refusing an order of a police officer to leave a select board's meeting after the defendant had "continually interrupted" another board member, argued with the chairperson concerning the chair's rulings, and ignored the chair's efforts to regain order.
- In *State v. Jeffrey Clay*, Case No. 2018-0184 (N.H. S.Ct.), a 2019 unpublished order, the N.H. Supreme Court affirmed the convictions for disorderly conduct and resisting detention of a member of the public after he repeatedly refused to comply with a select board's public comment rules.

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## Meeting Disruptions

### PROCEED CAUTIOUSLY

- Keeping in mind the substantial personal right we have to free speech, as well as the **complexity of the intersection** between that right and the public body's right to conduct its meetings and business in order, a decision to exclude a person from a meeting should be taken and carried out with due care.
- Steps to take before exclusion:
  - Provide copies of the public comment rules at each meeting (back of the agenda, stack at the door);
  - Summarize the rules prior to public comment period;
  - Apply the rules equally, with only minor variance;

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## Meeting Disruptions

### ➤ *Steps before exclusion continued...*

- Provide clear warnings and instructions (not mere polite requests) before taking formal action;
  - If disruptions persist, call a recess and try to talk with the person;
  - Before ordering exclusion, call for police presence;
  - Provide one last chance with the officer present;
  - **Clearly** order the person to leave and ask the officer's assistance to enforce that order.
- An order to leave should apply only to that meeting unless the body has obtained an injunction or other judicial order with respect to future meetings.

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