




**New Hampshire
School Boards Association**
Excellence in Public Education Through School Board Leadership

NHSBA Webinar Series:
**Right to Know Law: School Board
Advisory & Other Committees**
Monday, February 10, 2020



**Introduction
School District Committees**

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Introduction - Committee Basics

- Today's discussion includes a general discussion of how certain characteristics pertinent to a committee within a district have an important impact on how that committee is governed the New Hampshire Right to Know Law (RSA 91-A).
- A district's various committees can divide the labor of governing or administering into manageable categories. For boards specifically, this board members to focus in greater detail than is possible at the full board level. Healthy committee use helps
 - Board members to be better prepared for board meetings;
 - Boards to have greater ownership in the fact-finding aspect of policy development; and
 - To make board meetings more efficient;
 all of which tend to improve the quality of board decision making and the experience of board service more positive.

Introduction Committee Basics

- Other than a few "statutory" committees, there is very little guidance from state laws or court decisions concerning establishment or breadth of the various committees found within a school district.
- But where a committee finds its authority – statutory, board, or administrative is one of the key factors in determining how the Right to Know Law applies to that school district committee.

Introduction Committee Basics

- Some “statutory” committees are required by law:
 - Wellness (federal Richard B. Russell National School Lunch Act),
 - Joint Loss Management (RSA 281-A:64).
- Other statutory committees are created when a district’s legislative body (voters) adopt the provisions of a particular statute, for example:
 - Municipal - or Cooperative - Budget Committees, (RSA 32:14 or 195:12-a, respectively) (**NOTE:** not all budget committees are statutory, some are advisory, and are more akin to a board level committee); and
 - SAU “Planning Committee” (RSA 194-C).

Introduction - Committee Basics


- But most committees within a district are discretionary, and are created either by the school board or building level administration.
- Delegating Authority:
 - School Board – “public body” committees, task forces, or other subordinate bodies created to inform or, in some instances fulfill, board functions, e.g.:
 - Sub-committees (sub-part of board, may include delegated authority, e.g., grievance or student discipline);
 - Advisory committees (need not include board members).
 - Administration or Agency – established by the superintendent or her/his staff in support of administrative functions.

Introduction - Committee Basics

- Irrespective of whether statutory, board or administrative, the different committees might share similar characteristics which may or may not have any bearing on how the Right to Know Law applies to a specific committee's operations.

Introduction Committee Basics

- Two general types of committees - temporal
 - Standing – Permanent
 - Common examples:
 - Policy
 - Finance
 - Ad hoc – “for this” specific purpose and limited duration
 - Common examples:
 - Collective bargaining negotiations
 - Building project




RSA 91-A

Right to Know Law

Key Concepts

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Right to Know Law Key Concepts

- As stated in RSA 91-A:1, the purpose of the Right to Know 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.”*
- The two core areas of right of access under 91-A are *“meetings”* of *“public bodies”*, and access to *“governmental records”*.
- While the governmental records provisions apply to all of the various types of committees found in a school district, the meetings provisions apply only to committees meeting the definition of a “public body.”

Right to Know Law Key Concepts www.nhsba.org Slide 9

Right to Know Law Key Concepts

- While the governmental records provisions apply to all of the various types of committees found in a school district, the meetings provisions apply only to committees meeting the definition of a “public body.”
- RSA 91-A:1-a, III defines “**governmental records**” to include 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.
- RSA 91-A:2, I, however, applies the “meeting” definition (discussed later) only to a “**public body**”, or a quorum of such body.

Right To Know Law Public Bodies Defined

- “**Public body**” - Includes “*Any ... governing body, board ... agency ... school district, [or] school administrative unit, ... or any committee, subcommittee, or subordinate body thereof, or **advisory committee** thereto.*” 91-A:1-a, VI.
- “**Advisory committee**” – includes any “*committee ... whose primary purpose is to consider ... issues designated by the [public body] so as to provide such [body] with advice or recommendations concerning*” a jurisdictional matter. 91-A:1-a, I.
- Notwithstanding the use of the word agency in the definition of public body, the N.H. Attorney General has opined that the meeting provisions do not apply to purely administrative committees.

Right To Know Law Public Bodies Defined

- “Applying public meeting requirements to an agency would be impractical and it is expected a court would find application of the public meeting requirement on a municipal public agency an absurd construction of the statute.”
Attorney General’s Memorandum on N.H.’s Right to Know Law, RSA Chapter 91-A, (March 2015), at page 5, note 4.
- Rather, the use of “public agency” in this context has been interpreted to mean statutory commissions or committees (e.g., the district’s wellness committee). Despite the Attorney General’s opinion, the issue has not been settled by the New Hampshire Supreme Court.

Is the Committee a Public Body?

Right To Know Law Is the Committee a Public Body?

- What a committee is called, how long it is constituted, or even populated is not determinative as to whether it is a public body.
- If the indicia for a “public body” committee under 91-A:2, VI are present, then it does not matter what you call it – the duck is still a duck. If a committee falls within the definition of “public body”, then the committee is subject to all of the meeting requirements of the Right to Know (“RTK”) law (e.g., notice, minutes, public location, quorum presence, etc.).
- As discussed above, the creating authority is a significant determinant: if the committee is required by law, or created by or to serve on behalf of or advise the governing body, then it is almost certainly a “public body”.

“Public Body”

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Right To Know Law Is the Committee a Public Body?

- Whether a court might find that a committee is in fact a board committee, rather than an administrative or agency committee might turn on one or more of several indicators:
 - *Who runs the committee?*
 - *Who determines who serves on the committee?*
 - *Is there an official board presence – e.g., voting member, or even liaison?*

“Public Body”

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Right To Know Law Is the Committee a Public Body?

- *What is the function of the committee? Does it assist the administration fulfilling its primary responsibilities, or assist the board in fulfilling its responsibilities (e.g., policy making)?*
 - If dual, then that would point to a board committee.
 - But, if it is to only to assist the administration fulfill its duties, then that points to administrative. To make the point, think about a task that the Board directs the Superintendent to accomplish. The Superintendent, determines that the best way to accomplish that task is to consult and meet with a number of persons based upon their respective skills, experiences, etc..

"Public Body"

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Right To Know Law Is the Committee a Public Body?

...Function continued...

- How the Superintendent fulfills the function is up to the Superintendent. Once the board begins intervening not in the direction given to the Superintendent, but in the process by which the Superintendent exercises discretion in fulfilling it, then it looks much more like a board function.
- *Are the administrative committee meetings open to members of the public?* If the meeting is not, but there is an official board presence – aka liaison – that may point more toward an advisory committee of the board.

"Public Body"

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Right To Know Law Is the Committee a Public Body?

...Board member presence continued...

- While it might be the case that the mere presence of a board member at an administrative committee does not change the nature of a committee from administrative to board, such presence certainly makes it harder to make a distinction.
- Concerns with allowing board members to attend administrative committee meetings:
 - How many board members would change the answer?
 - If members attend “only in their individual capacities”, what happens if there is a quorum? Wouldn’t such an exception swallow the rule?

“Public Body”

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Right to Know Law: Meetings

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Right to Know Law Meeting Defined

- If a committee falls within the definition of a “public body”, then in addition to the governmental records requirements, the committee must also comply with all of 91-A’s provisions relative to meetings.
- RSA 91-A:2, I establishes a three prong test for whether communications among members of a public body (board or committee) constitute a meeting. *A **meeting** occurs when:*
 1. *A **quorum** of the public body convenes;*
 2. *In **any manner** in which the participating members **are able to communicate contemporaneously**;*
 3. *For the **purpose of discussing or acting** upon something over which the public body has supervision, control, **jurisdiction** or advisory power. “Jurisdictional Matters”*

Right to Know Law Meeting Requirements

- “... **all meetings**, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public.” 91-A:2, II

Right to Know Law Meeting Requirements

If/when the elements of a meeting are present, then 91-A:2, II requires:

- Posted notice (24 hours, absent an emergency);
- Board deliberations (discussion) and decisions occur only during the meeting;
- That no votes occur by secret ballot (except for annual meetings & elections);
- The public is able to physically attend (subject to 91-A:3);
- Physical presence of a quorum at the location specified in the meeting notice, except in cases of emergency, 91-A:2, II & II-a; and
- Appropriate minutes (*specifics in 91-A:2, II and 91-A:3, III*).

Right to Know Law: Non-Meetings and Non-Public Sessions

Right To Know Law Open Meeting Exceptions

- The core principle of the Right to Know Law as it applies to meetings is the presumption that any quorum discussion by a public body should occur in a meeting open to the public.
- There are two types of exceptions to that principle:
 - *Non-meetings*, which are described in 91-A:2, I as exceptions to the definition of a “meeting”; and
 - *Non-public sessions* - portions of public meetings which due to the sensitivity of the subject area (only if specified as one of 91-A:3, II).

Non-Meetings

The first non-meeting situation is for the “unintended” and “inconsequential” social discussion. RSA 91-A:2, I states in part:

- *A chance, social or other encounter*
- *not convened for the purpose of discussing or acting upon [jurisdictional] matters*
- *shall not constitute a meeting*
- *If no decisions are made regarding such matters.*

This exception applies only when the quorum discussion was not convened with the intent of discussing a jurisdictional matter, AND no decisions are made.

Right To Know Law Non-Meetings

“Non-meetings” - 91-A:2, I also carves out four specific categories of communications which, notwithstanding meeting the criteria above, are excluded from the definition of “meeting”. Only three apply to school boards, they are:

- Strategy and negotiations regarding collective bargaining;
- Consultation with legal counsel (must include ability for contemporaneous communication); and
- Circulation of draft documents.

NOTE: The concept of a “non-meeting” is not to be confused with non-public sessions under 91-A:3, which are beyond the scope of this presentation.

Right To Know Law Public Meetings and Non-Public Sessions

- “Under 91-A:2, I, all “meetings” of a board committee are public.
- A board committee may only enter non-public sessions for the reasons permitted, and in the manner prescribed, under 91-A:3. *(Non-public sessions are beyond the scope of this presentation.)*
- Most non-public sessions occur as part of a regular public meeting.
- However, a public meeting can be held solely for the purpose of going into a non-public session – with no other discussion of business in the public session of the meeting.
- Either way, the board must first meet in public and then vote to enter the non-public session.
- Unlike a “non-meeting”, the notice and minute requirements of a public meetings apply to any public meeting that includes a non-public session.

Right To Know Law Governmental Records Defined

“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...* 91-A:1-a, III

Right to Know Law Committee Records as Governmental Records

- From that definition, it should be clear that all records, documents and other printed information pertaining to committee membership and committee work are subject to the same rules as those relating school boards and school board work.
- Written information (in whatever form) is a governmental record if it is:
 - *created, accepted, or obtained by, or on behalf a board committee,*
 - *or a quorum or majority thereof, and is*
 - *in furtherance of its official function.*



Considerations and Recommended Practices for Board Committees

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Committee Benefits

- Benefits/purposes of committees
 - Divide up the work of the board;
 - Expedite work and reduce board meeting time by removing routine tasks from monthly board consideration;
 - Utilize the specific talents and knowledge of board members;
 - Permit specific participation by all board members;
 - Allow flexibility regarding external resources (meeting times, information requests, etc.).

Recommended Practices for Board Committees www.nhsba.org *Slide 31*

Committees - Considerations

Query: What committees should your board have?

- There is no universal answer. Factors to consider when determining committee creation, usefulness:
 - board size,
 - member experience, interest and skills
 - district needs
 - ongoing and current, relevant stakeholders.
- Some larger districts maintain student conduct committees, which under 193:13, may make expulsion and long term suspension determinations on behalf of the whole board.

Committees - Considerations

- Most common standing committees are facilities, policy, and finance. Negotiation committees are also common, but they are usually established according to the negotiation schedule (i.e., ad hoc).
- Many boards maintain the same standing committee structure year-to-year, with little thought given to what the committees do or whether they are still relevant.
- Another common problem is committees with vague objectives, poorly defined membership/leadership, and resulting ineffectiveness.
- The result being endless committee meetings, lack of productivity, and bored and frustrated members.

Committees - Considerations

- A larger board can sustain more committees, which in turn helps assure that all board members can serve on a committee in a meaningful way.
- To be effective (and to avoid burnout), board members should generally not serve on more than two committees.
- Limiting individual member service to one or two committees gives board members the opportunity to focus on an area and develop expertise that can further the work of the board.
- Some boards take an alternative approach, and rotate committee service to further board member development.

Committee – Recommended Practices

- Boards should periodically review committee structure for efficiency and relevance.
 - Organizational meeting?
 - Board retreat/workshop?
- When establishing - or reviewing existing – committees, the board action (policy) should:
 - Clearly describe the committee's:
 - Purpose;
 - Scope;
 - Expected work product / reporting expectations;

Committee – Recommended Practices

Continued:

- Establish **a fixed number of committee members**, with either specific appointments and terms, or a very specific process for appointing (many committees include staff which generally should be appointed or nominated by the Superintendent);
- Designate a committee chair, and assure that the chair has the proper knowledge, skills and resources to fulfill the charge of the committee while at the same time complying with applicable laws (e.g., 91-A);
- Clearly indicate the committee’s duration, or a date/manner by which the board will review the committee’s charge. *Note: absent a law/regulation to the contrary, a board may dissolve its committees at any time.*

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NHSBA'S UPCOMING WORKSHOPS

- MAR. 3, 2020

THE WHOLE PICTURE OF PUBLIC EDUCATION
6:30-7:45pm
Online Webinar
- MAR. 26, 2020

SCHOOL BOARDS AS JUDGE & JURY: EMPLOYEE & STUDENT HEARINGS
12:00-1:00pm
Online Webinar
- APR. 6, 2020

RTK LAW FOR BEGINNERS: OVERVIEW & RECORDS
12:00-1:00pm
Online Webinar
- APR. 13, 2020

EXPLORING THE LANDSCAPE OF SPECIAL ED. IN NH: A SCHOOL BOARD MEMBERS GUIDE TO THE BASICS
6:30-8:30pm
25 Triangle Park Dr., Concord NH
- APR. 15, 2020

RTK LAW FOR BEGINNERS: NON-PUBLIC SESSIONS & NON-MEETINGS
12:00-1:00pm
Online Webinar
- MAY 5, 2020

NHSBA NEW BOARD MEMBER ORIENTATION & BOARD CHAIR WORKSHOP (CONCORD)
5:30-8:30pm
25 Triangle Park Dr., Concord NH
- MAY 7, 2020

ANNUAL NEW BOARD MEMBER ORIENTATION
5:30-8:30pm
127 Regional Rd, Whitefield NH
- MAY 12, 2020

STRATEGIES FOR EFFECTIVE COMMUNITY ENGAGEMENT
6:30-8:30pm
25 Triangle Park Dr., Concord NH
- MAY 18, 2020

ENHANCING YOUR DISTRICTS' EXTENDED LEARNING OPPORTUNITY PROGRAM
6:30-8:30pm
25 Triangle Park Dr., Concord NH

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