



**Chairing an Effective Meeting
For Board Chairs and Board Members**

April 30, 2024

Index

Slide Index

Slide 03 Role of the Board Chair

Slide 07 Meeting Goals, Meeting Planning & Agenda Setting

Slide 17 Sticking to the Agenda – Practice Tips

Slide 21 Parliamentary Procedure – Rules of Order – Conflicts & Abstentions

Slide 26 Public Comment at School Board Meetings

Slide 34 Public Comment: Policy and Practice Considerations

Handouts

Handout #1 Copy of PowerPoint

Handout #2 Right to Know Law Resources

- Non-Public Sessions Script/Checklist
- At Your Fingertips – Right to Know Law Overview
- Meeting and Communication Flow Chart
- 91-A Excerpts for School Districts

Upcoming Webinars

Right to Know Part 3: Digital Communications, Emails Social Media 5/14/24, Noon-1:30

Role of the Board Chair



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?*
 - ***Have Superintendent or Chair share info in report to board at next meeting?***
 - Committee appointments;
 - Board spokesperson.

Role of the Board Chair

- Meeting responsibilities:
 - enforce board's meeting procedures,
 - Control decorum, 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 board and other participants on the topic;

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!



Meeting Goals, Meeting Planning, and Agenda Setting



Causes or Attributes of Inefficient Meetings

- Failure to have clear objective(s)
- Too long
- Too many
- Failure to make decisions or plans (action items with owners and timelines)
- Failure to stay on point
- Failure to adhere to accepted structure (rules of order and accepted norms)
- Failure to plan meeting logistics
- Personal squabbling, attacks and gotcha games
- Lack of regard for work of committees and designees

Meeting Goals

- Effective and productive meetings require forethought about:
 - Desired objectives and required actions – *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”

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?
 - Discuss the budget?
 - Have a hearing/make a finding & decision?
 - Ratify a CBA?
 - Vote on a committee's recommendation?
 - Review strategic plan or other long/short term goals?

Agenda Setting & Policy

- Refer to the board's rules/policies relative to agenda setting process
- **Common provisions in board agenda policies:**
 - Superintendent – as CEO - responsible for setting first draft of agenda
 - Chair as board's designee helps refine
 - Individual board members might have “right” to have items **placed** on the agenda –
 - *Doesn't mean the rest of the board needs to spend time on the item*
 - *Move to table indefinitely*
 - Deadlines and method of requests

Agenda Setting & Policy

Agenda policies continued...

- Information re where and when agendas will be available/posted
- Members of the public may **request** agenda items:
 - Through
 - communications to superintendent, chair, or members, 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)
 - From public comment, board could have set agenda item “board discussion of public input”

Meeting Planning – Agenda Setting

- Some agenda policies have a template for the regular meeting agenda (*NHSBA sample policy BEDB*)
- **However**, planning the agenda for each 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.

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 specific action or discussion, e.g.
 - Public comment
 - Presentations from student groups

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 5th 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

Agenda Setting – Individual Items

- Items not included on the agenda -
 - Agendas are not “final” until the close of a meeting
 - Some items are identified between the original posting/“draft” agenda and meeting
 - Some items might be identified at the meeting from
 - reports
 - public comment
 - board discussion
 - Unless wholly inconsequential or there is a compelling reason for immediate action, items not on the agenda should not be acted upon, but merely discussed and framed for/as future meeting (**“stay at home” principle**)

Sticking to the Agenda

-

Practice Tips



Sticking to the Agenda Practice Tips

- Start on time
- Stay organized and stay on task
 - Parliamentary procedure/rules of order can help as board members move through the agenda (rules of order discussed later)
 - But procedure should not be the focus
 - Points of order can be used to call attention to “issue creep”
- 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, or
 - move to extend by increments (e.g., 20 min, etc.)
 - Not hard and fast, but a helpful goal to keep folks on task
- Don't ambush – no surprises
 - Effective meetings and good decision making depend on good information
 - Unplanned items - Recipe for contentious, unproductive meetings, ill informed, emotion driven actions

Sticking to the Agenda Practice Tips

- Resolve unnecessary debate.
 - Make a motion – “call the question”.
 - “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, and action is final.
 - “Consent agendas” - limit to non-controversial items.
 - Items can be pulled out in a meeting if one or more members request(s).



Parliamentary Procedure

-

Rules of Order

-

Conflicts & Abstentions

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 – OVER 600 pages
- Roberts Rules, by its own admission, does not apply to small legislative bodies (i.e., less than 12-15)
- Roberts issues new editions every 10 years or so
- Simple rules of order (with commonly understood principles of Roberts Rules) helps maximize meeting efficiency and can engender greater participation and collaboration
- If using Roberts, specify edition, consider simplified or “in plain English”

Rules of Order – Examples/Considerations

- *NHSBA sample policy BEDDA or sample rules BEDD-R*
- 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 substantive motions may be made.
 - No member should speak twice on the same issue under debate until everyone else wishing to speak has spoken to it once.
 - Opportunity to make clarifying point –
 - “Point of Order”

Rules of Order – Examples/Considerations

- Should debate follow or precede a motion? Answer may be different depending on -
 - the board itself
 - the specific issue
 - can help focus conversation right from the start
- Reconsideration –
 - at the same meeting is “motion to reconsider”
 - if later meeting, then amendment to policy, or merely superseding action
- Reconsideration of earlier decisions should be discouraged, absent:
 - new information,
 - experience, or
 - newly constituted boards.

Abstentions & Recusals

- Abstentions are not “votes” but count toward a quorum, present & voting
 - Equivalent to de facto vote in the majority
 - No vote if a tie
- Elected to decide
- Reserve abstention for missed meetings, etc.
- Recusal – when disqualification because of conflict of interest-
 - Legislative = “direct and personal pecuniary interest” – that is “immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative....”
 - Quasi judicial – same PLUS may not be biased/prejudiced re issue or person (both tend to suggest if not equal prejudgment)
 - Board itself cannot force disqualified member to recuse/abstain



**Public Comment
At
School Board Meetings**



Public Meetings v. Meetings of the Public

- Traditionally, the “power” to create the opportunity for public comment had reserved to the public body/board.
- Under the First Amendment and RSA 91-A, 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
- The primary purpose of school board meetings is to conduct the business of the board.
- Distinct from Annual or statutory “public hearings”, e.g.:
 - Budget
 - Unanticipated revenue
 - Capital or Expendable Trust Funds
 - Recording for teacher evaluations

189:74 & First Amendment

- Newly enacted RSA 189:74 (SB 410) requires 30 minutes of public comment at every SCHOOL (& SBOE RSA 21-N:10-a) meeting other than emergency meetings under RSA 91-A:2, II, or a meeting called solely for purpose of addressing non-public issue under 91-A:3
- Whether by legal mandate or board choice, opportunity for public comment at board or other public body meetings creates a “forum” for speech, which in turn implicates First Amendment principles
- Under 1st Amendment, boards may impose **viewpoint neutral** reasonable “time, place and manner” restrictions, as well as content parameters
- Under 189:74 a school board may adopt “reasonable standards for the public comment period, provided such standards are imposed equally for all speakers”

First Amendment – Unprotected Speech

- Limited classes of unprotected speech:
 - speech that incites **imminent** unlawful conduct;
 - speech threatening bodily harm or other "true" threats;
 - child pornography;
 - speech that violates intellectual property;
 - false advertising;
 - defamatory speech; and
 - Obscenity - **NOT MERE VULGARITY????**

“[W]hether the average person, applying contemporary community standards, would find the work appeals on the whole to prurient interests; describes sexual conduct in a patently offensive way; and lacks any serious literary, artistic, political or scientific value.”
Miller v. California, 413 U.S. 15 (1973)

Unprotected Speech - Grey Areas

- Many 1st Amendment nuances have not been settled conclusively by U.S. Supreme Court.
- Traditionally accepted “norms” rejected by various lower courts – while upheld by others.
 - Complaints vs. accolades re individual employees or students.
 - Vulgar language.
 - As disruption
 - One person’s vulgarity is another’s idiolect
 - As political speech
- Residents, citizens vs. public

Time, Place and Manner Restrictions

- Such restrictions are permitted provided (a) they are viewpoint/content neutral, and (b) applied fairly
 - Time: e.g.,
 - particular point(s) on the agenda
 - aggregate time limit
 - individual time limit
 - Place: e.g., stand at certain place or in line.
 - Manner: the mode of communication (spoken, distributing pamphlets, etc).
 - Impartial method of selecting speakers
- **RSA 189:74 bends or sets parameters for some of these.**

SB410 / RSA 189:74

- I. School boards shall provide the opportunity for the public to comment on school district matters at a meeting of the school board held under RSA 91-A:2. The public comment period shall be for no less than 30 minutes. School boards may request that persons register in advance of the meeting, but may not require pre-registration as a condition of participating in the public comment period. School boards may impose reasonable time limits for each speaker, provided such time limits are equal for all speakers. Nothing in this section shall restrict school boards from establishing other reasonable standards for the public comment period, provided such standards are imposed equally for all speakers. School boards may reasonably restrict public comments that disclose student personally-identifiable information, teacher personally-identifiable information, or other confidential or privileged information.
- II. The requirement that a school board shall provide the opportunity for the public to comment on school district matters at a meeting of the school board shall not apply to emergency meetings under RSA 91-A:2, II.
- III. The requirement that a school board shall provide the opportunity for the public to comment on school district matters at a meeting of the school board shall not apply when the sole purpose of the school board meeting is to enter non-public session under RSA 91-A:3.

Questions from SB410 / RSA 189:74

- How is 30 minutes calculated?
- Who is the public?
- Can board define scope of “school district matters”?
- What happens if public does not exhaust the time?
- Apply to committees?
- Allow remote comment?
- Allow written comment?
- What is personally-identifiable information?
- Pre-registration?



Public Comment: Policy and Practice Considerations

Public Comment – Policy/Practice Considerations

- Describe ***desired*** standards of discourse. E.g., “All speakers are to conduct themselves in a civil manner”
- First Amendment **STRONGLY disfavors** “prior restraint” and **prohibits** content bias or discrimination in public comment
 - Be very mindful of prohibitions based upon content
 - Extreme repetition can be deemed “disruptive”; implementation must be equitable; good place for gentle reminders
- Include provisions **DISCOURAGING** repetitive comments, whether by the same or other speakers:
 - ask to simply indicate support of prior speaker, or
 - state support or opposition of matter under consideration

Public Comment – Policy/Practice Considerations

- Provide for public to **request** items to be included on the agenda (See NHSBA policy BEDB)
 - Persons wishing to present longer than X minutes, should contact Superintendent to request agenda time
 - Establish a NEUTRAL – method for speakers to participate (sign-up, first come first serve, line at mic, etc.)
 - Can't require sign-up, but can use it to prioritize
- Need to determine how the Board will calculate/run the 30 minutes
 - Can be flexible so long as opportunity for 30 minutes is clearly provided in the agenda/notice, and reflected in the minutes

Public Comment – Policy/Practice Considerations

- Include language **restricting comments** with “personally identifiable information” (“PII”) of students and staff. (See *RSA 189:65, VII & VII-a, for possible definition.*)
 - Include language indicating the channels for complaints about personnel/students (KEB, JICK, AC, GBK or CBA’s)
 - The chair should be prepared to try to deflect such complaints
 - Language from NHSBA sample BEDH: “... *consistent with RSA 189:74, I, and in the interest of protecting personally identifiable information (“PII”) as well as other confidential information, comments (including complaints) regarding individual students, volunteers, or employees (other than the Superintendent) should be directed to the Superintendent or otherwise as provided under the complaint/grievance resolution processes set forth in School Board policies {**}KE and/or {**}KEB.* “
 - Board is not violating privacy if public discloses, but continuation reduces the shield and may impact due process

Public Forums – The Other Kind

- For important or emotional topics – where you are likely to draw many speakers - consider a separate or special “public forum”.
- Essentially a board meeting comprised solely of a public comment period.
- You can use the same basic rules as for your typical public comment period, with modifications to fit the purpose.
 - Establish an agenda topic (e.g., a forum on a transgender policy, is not an opportunity to talk about the benefits of an artificial turf for the football field);
 - Expand the individual time limits;
 - Set a total time for the forum;
 - Determine how it will be moderated/facilitated.

Barrett Christina
Executive Director
bchristina@nhsba.org

Becky Wilson
Director of Governmental Relations
bwilson@nhsba.org

William Phillips
Staff Attorney &
Director of Policy Services
wphillips@nhsba.org

NHSBA
25 Triangle Park Drive, Suite 101
Concord, NH 03301
(603) 228-2061

DISCLAIMER: The above information is copyrighted to the New Hampshire School Boards Association and is intended for the sole and exclusive use of NHSBA members. The information is provided for general information only and as a resource to assist member districts. School districts and boards of education should consult with legal counsel to address local facts and circumstances.

T-Effective Meetings 2024.4.30

NHSBA © 2024



2023-24 Right to Know Law Meeting Resources

- 1. Non-Public Sessions Script/Checklist2
- 2. Right to Know Law: Meeting and Communication Flow Chart.....4
- 3. At Your Fingertips – Right to Know Law Overview5
- 4. 91-A Excerpts for School Districts.....7



SCRIPT/CHECKLIST FOR NON-PUBLIC SESSIONS & MINUTES 2023-24

THE _____ SCHOOL BOARD

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

Pause public meeting recording (if applicable).

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

SCRIPT/CHECKLIST FOR NON-PUBLIC SESSIONS & MINUTES 2023-24

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 _____ (Reflect how each voted) _____

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

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 review of minutes (w/in 9 years 10 mos.) to be unsealed; (h) date, if any, of a subsequent decision to unseal the minutes.

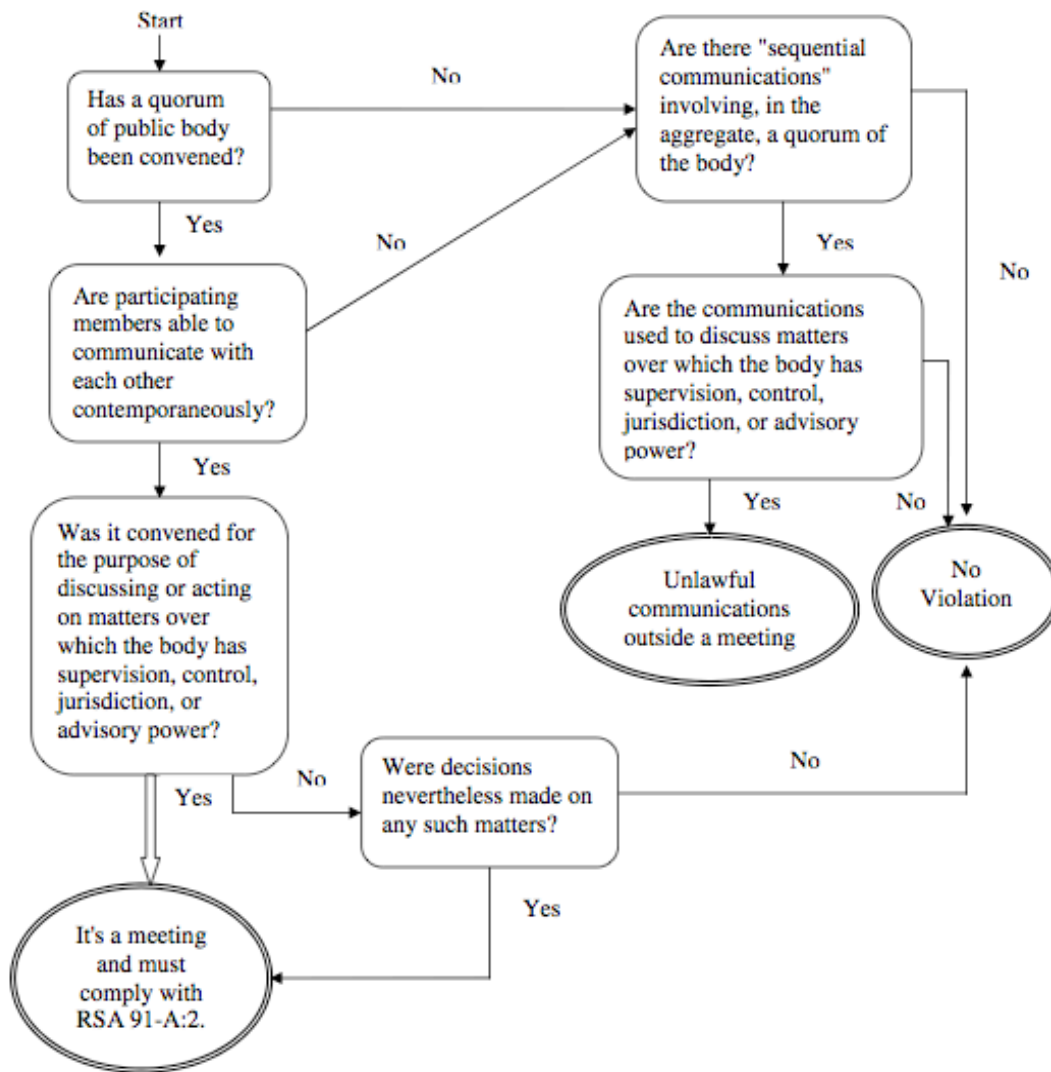
Even if Non-Public Minutes are sealed, the Public Minutes must include the Motion to Enter (with the basis(es), as well as the Motion to Seal (and basis), with roll call votes for each.

These minutes recorded by: _____

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.



Used by permission from the New Hampshire Municipal Association



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;

For more information, call (603) 228-2061 or visit our website: www.nhsba.org

- (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.
- Sealed minutes must be reviewed or unsealed w/in & every 10 years
- 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 public records, incl. e.g., minutes of meetings, & materials used to compile minutes.
- 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.

XI. Court / Right to Know Law Ombudsman: RSA 91-A:7 through 91-A:7

- RSA 91-A:7-7-d. In 2022, the Legislature passed HB481, created 2yr trial period in which “Right to Know Law Ombudsman” and Super Ct. have concurrent jurisdiction re RTK disputes.





RSA 91-A – NH’s RIGHT TO KNOW LAW

Excerpts Pertinent to School Districts and SAUs

As of September 2023

[Parts not pertinent to School Districts or School Administrative Units Omitted]
New language from 2023 Legislative Session bold and italicized.

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) —[parole applications]
 - (g) —[prison/jail security]
 - (h) —[business finance authority]

- (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) [exempt information under 91-A:5, IV in an adjudicative proceeding 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.

IV. [EFFECTIVE 10/3/23 – HB321]

- (a) ***A public body or agency may adopt procedures to review minutes of meetings held in nonpublic session and to determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. If the public body determines that those circumstances no longer apply, the minutes shall be available for release to the public pursuant to this chapter.***

(b) In the absence of an adopted procedure to review and determine whether the circumstances no longer apply for meeting minutes kept from the public, the public body or agency shall review and determine by majority vote whether the circumstances that justified keeping meeting minutes from the public under RSA 91-A:3, III no longer apply. This review shall occur no more than 10 years from the last time the public body voted to prevent the minutes from being subject to public disclosure. Meeting minutes that were kept from the public prior to the effective date of this paragraph that are not reviewed by the public body or agency within 10 years of the effective date of this paragraph shall be subject to public disclosure without further action of the public body.

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. **2023, 189:1, eff. Oct. 3, 2023.**

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. – *[omitted; not pertinent]*

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.

NHSBA NOTE: In 2022, the NH Legislature passed HB481 adopting a temporary amendment to RSA 91-A:7, and adopting temporary sections 91-A:7-a through 91-A:7-d. Together, the provisional sections create a trial “Office of the Right-to-Know Ombudsman”, whose purpose is to “provide the public with a simpler, less expensive, and faster alternative process to resolve complaints under RSA 91-A.” Unless the Legislature takes further action prior to July 1, 2025, the following section 91-A:7, will take replace the above 91-A:7, and 91-A:7-a through 91-A:7-d will expire.

[RSA 91-A:7 effective until July 1, 2025; see also RSA 91-A:7 set out below.]

91-A:7 Violation. –

- I. 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.
- II. In lieu of the procedure under paragraph I, an aggrieved person may file a complaint with the ombudsman under RSA 91-A:7-a and in accordance with RSA 91-A:7-b.
- III. A person's decision to petition the superior court forecloses the ability to file a complaint with the ombudsman pursuant to RSA 91-A:7-b.
- IV. A person's decision to file a complaint with the ombudsman forecloses the ability to petition the superior court until the ombudsman issues a final ruling or the deadline for such a ruling has passed.

[RSA 91-A:7 effective July 1, 2025; see also RSA 91-A:7 set out above.]

The below language is identical to 91-A:7 as it appeared prior to the 2022 amendment, with the exception of the highlighted language, which was added by way of HB481.

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. **Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits.** 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. 2018, 289:1, eff. Jan. 1, 2019. 2022, 250:2, eff. July 1, 2022; 250:5, eff. July 1, 2025.

[RSA 91-A:7-a repealed by 2022, 250:6, effective July 1, 2025.]

91-A:7-a Office Established. –

There is hereby established the office of the right-to-know ombudsman to be administratively attached to the department of state under RSA 21-G:10. The ombudsman shall be appointed by the governor and council and shall have the following minimum qualifications:

- I. Be a member of the New Hampshire bar.*
- II. Have a minimum of 5 years full-time practice of law in any jurisdiction.*
- III. Be experienced with and knowledgeable of the provisions of this chapter and all New Hampshire laws regarding right-to-know.*
- IV. Annually, complete a minimum of 3 hours of continuing legal education courses or other training relevant to the provisions of this chapter.*

Source. 2022, 250:3, eff. July 1, 2022.

[RSA 91-A:7-b repealed by 2022, 250:6, effective July 1, 2025.]

91-A:7-b Complaint Process. –

- I. Any party aggrieved by a violation of this chapter shall have the option to either petition the superior court or file a signed, written complaint, along with a \$25 fee, with the office of the ombudsman, established under RSA 91-A:7-a. The ombudsman shall have the discretion to waive the \$25 fee upon a finding of inability to pay. Any signed, written complaint filed with the ombudsman shall attach, if applicable, the request served on the public agency or official and the written response of the public agency or official. The complaint shall be deemed sufficient if it states facts constituting a violation of this chapter.*
- II. Once a complaint has been filed and provided by the ombudsman to the public body or public agency, the public body or public agency shall have 20 calendar days to submit an acknowledgment of the complaint and an answer to the complaint, which shall include applicable law and, if applicable, a justification for any refusal to or delay in producing the requested governmental records, access to meetings open to the public, or otherwise comply with the provisions of this chapter. This 20-day deadline may be reasonably extended by the ombudsman for good cause.*
- III. In reviewing complaints, the ombudsman shall be authorized to:*
 - (a) Compel timely delivery of governmental records within a period not less than 14 days or more than 30 days unless an expedited hearing is warranted, regardless of medium and format, and conduct a confidential in-camera review of records where the ombudsman concludes that it is necessary and appropriate under the law.*
 - (b) Compel interviews with the parties.*
 - (c) Order attendance at hearings within a reasonable time if the ombudsman determines that a hearing is necessary. Such hearings shall be open subject to the provisions of RSA 91-A.*

- (d) *Issue findings in writing to all parties.*
 - (e) *Order a public body or public agency to disclose requested governmental records within a reasonable time, provide access to meetings open to the public, or otherwise comply with the provisions of this chapter, subject to appeal.*
 - (f) *Make any finding and order any other remedy to the same extent as provided by the court under RSA 91-A:8.*
- IV. *The ombudsman may draw negative inferences from a party's failure to participate and comply with orders during the review process.*
 - IV. *The ombudsman shall determine whether there have been any violations of this chapter and issue a ruling within 30 calendar days following the deadline for receipt of the parties' submissions. This 30-day deadline may be extended to a reasonable time frame by the ombudsman for good cause. The ombudsman may also expedite resolution of the complaint upon a showing of good cause. Rulings on expedited complaints shall be issued within 10 business days, or sooner where necessary.*
 - V. *The ombudsman shall, where necessary and appropriate under the law, access governmental records in camera that a public body or public agency believes are exempt in order to make a ruling concerning whether the public body or public agency shall release the records or portions thereof to the public. The ombudsman shall maintain the confidentiality of records provided to the ombudsman by a public body or public agency under this section and shall return the records to the public body or public agency when the ombudsman's review is complete. All records submitted to the ombudsman for review shall be exempt from the public disclosure provisions of RSA 91-A during such review.*
 - VI. *Nothing in this section shall affect the ability of a person to seek relief in superior court under RSA 91-A:7, I in lieu of this process.*

Source. 2022, 250:3, eff. July 1, 2022.

[RSA 91-A:7-c repealed by 2022, 250:6, effective July 1, 2025.]

91-A:7-c Appeal and Enforcement. –

- I. *Any party may appeal the ombudsman's final ruling to the superior court by filing a notice of appeal in superior court no more than 30 calendar days after the ombudsman's ruling is issued. The ombudsman's ruling shall be attached to the document initiating the appeal, admitted as a full exhibit by the superior court, considered by the judge during deliberations, and specifically addressed in the court's written order. Citizen-initiated appeals shall have no filing fee or surcharge. The public body or public agency shall pay the sheriff's service costs if the public body or public agency, or its attorney, declines to accept service. Nothing in this section shall prevent a superior court from staying an ombudsman's decision pending appeal to the superior court.*
- II. *On appeal, the superior court shall treat all factual findings of the ombudsman as prima facie lawful and reasonable, and shall not set them aside, absent errors of law, unless it is persuaded by a balance of probabilities on the evidence before it that the ombudsman's decision is unreasonable.*
- III. *If the ombudsman's final ruling is not appealed, the ombudsman shall, after the deadline has passed, follow up with all parties, as required, to verify compliance with rulings issued.*
- IV. *The ombudsman's final rulings which are not appealed may be registered in the superior court as judgments and enforceable through contempt of court. If such action is necessary to enforce compliance, all costs and fees, including reasonable attorney fees, shall be paid by the noncompliant public body or public agency.*

Source. 2022, 250:3, eff. July 1, 2022.

[RSA 91-A:7-d repealed by 2022, 250:6, effective July 1, 2025.]

91-A:7-d Rulemaking. –

The ombudsman shall adopt rules pursuant to RSA 541-A relative to:

- I. *Establishing procedures to streamline the process of resolving complaints under this chapter.*
- II. *Hearing procedures.*
- III. *Other matters necessary to the proper administration of RSA 91-A:7-a through RSA 91-A:7-c.*

Source. 2022, 250:3, eff. July 1, 2022.

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. – *[Omitted, not pertinent]*
Compiled by the New Hampshire School Boards Association for NHSBA Members. Note that as RSA 91-A is amended almost every year, NHSBA updates this resource as often as necessary (usually in late Fall or early Spring.) wjp/quick/RSA 91-A as of 2023-3 Excerpts for School Districts

