



NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

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Update to the Right to Know Law: RSA 91-A

New changes to the Right to Know Law went into effect July 1, 2008. These changes stand to have a important impact on the way school boards conduct official business. Additionally, these changes may require school boards to implement new language to some of their policies. The bulk of these changes relate to electronic communications, electronic participation at meetings, and the electronic storage of records.

The pertinent changes are as follows.

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

- A “meeting” means:
 - (1) the convening of a quorum 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
 - (2) 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
 - (3) for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.
 - (4) 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.
 - (5) A meeting shall not include circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting.

- Application

- (1) NHSBA Sample Policy BEDC (Revised September 2008)

- A simple majority of the Board shall constitute a quorum for the transaction of business. Board members unable to attend a meeting in person may communicate via electronic means in accordance with Policy BEA and RSA 91-A:2, III. However, in all circumstances, a quorum shall only be met when a quorum of the Board is physically present at the meeting.

- (2) “By means of telephone or electronic communication...”

- The Right to Know Law now allows one or more members of the public body to participate in a meeting via electronic means or other similar means, within some parameters and restrictions, which are explained below.

- (3) Draft Documents

- This new provision now gives boards more flexibility in their ability to communicate without calling a meeting.
 - This provision might apply to the following: contracts the board is entering into; official letters from the school board; policies; etc.
 - Important aspects to remember:
 1. Only pertains to the *circulation* of documents. This does not allow for extended discussion or communication.
 2. The documents are still considered public records once they are circulated to a quorum of the board (provided they are not exempt from disclosure under RSA 91-A:5, IX).
 3. Once the draft is circulated to a quorum, it becomes a public document.

IV. Notice; Emergency Meetings: RSA 91-A:2, II

- (1) 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.
 - This provision was added to the law primarily to address “meetings” being held in places like chat rooms, sequential e-mail communications, and other forms of electronic communication.
 - Communications of this sort among a quorum of the Board are illegal held meetings, subject to penalty.
- (2) 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.

NHSBA Sample Policy BEA (Revised September 2008)

- Notice of all board meetings will be posted in two appropriate places or printed in the local newspaper at least twenty-four (24) hours prior to the meeting. The Superintendent is authorized to post notice of the meeting on the District website.
- (3) Notice and Minutes of Emergency Meetings
 - An emergency shall mean:
 - (1) a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body
 - (2) who shall post a notice of the time and place of such meeting as soon as practicable
 - (3) and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.
 - (4) The minutes of the meeting shall clearly spell out the need for the emergency meeting.

- NHSBA Sample Policy BEB (Revised September 2008)

Emergency meetings may be called by the Chairperson or by action of a majority of the Board. For the purposes of this policy, an emergency is defined as a situation where immediate undelayed action is deemed to be imperative by the Chairperson. In the event of an emergency meeting, the Board will post notice of time and place of the emergency meeting as soon as possible and will also use other reasonable means to inform the public that an emergency meeting is to be held. Minutes of an emergency meeting will clearly state the need and purpose for the emergency meeting.

III. Electronic Participation at Meetings, RSA 91-A:2, III

This entire section is a new provision to the Right to Know Law.

- 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:
 - (1) 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.
 - (2) 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.
 - (3) 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.

- (4) 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.
- (4) 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.

- Key Provisions

- (1) Only when in-person attendance is not reasonably practical.
- (2) Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.
- (3) Except in an emergency, a quorum of the public body shall be physically present at the meeting.
- (4) Each member participating electronically 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 at the meeting.
- (5) Any member participating in such fashion shall identify the persons present in the location from which the member is participating.
- (6) No meeting shall be conducted by any form of communication that does not permit the public to hear, read, or otherwise discern a meeting's discussion.
- (7) 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.

VI. Electronic Records, RSA 91-A:4: (New Provisions)

RSA 91-A:4, III-a. Governmental records created or maintained in electronic form shall remain accessible for the same retention or archival periods as their paper counterparts. Methods that may be used to accomplish this requirement include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

RSA 91-A:4, 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.

Key Provisions

- (1) Electronic documents are treated in the same manner as hard-copy documents for purposes of public access and public photocopying.
- (2) “Initially and legally deleted” means that it has been cleared from your computer. For example, if an e-mail is in your “deleted” box, but still can be accessed or retrieved, it is subject to public disclosure. If a document is still in your “trash” folder, it is subject to access.
- (3) Conversely, if your “deleted box” or “trash” folder has been “emptied” the document need not be “retrieved.”

RSA 91-A:4, V. Any public body or agency may, in lieu of providing original records, copy governmental records requested to electronic media. 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.

Key Provisions

- (1) Rather than print out hundreds of pages of documents, school boards may provide these documents in electronic form (e-mail, CD-ROM, etc.). This may alleviate cost and time.