

# NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

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## Right to Know Law and Non-Public Sessions

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### I. What is a Non-Public Session? (RSA 91-A:3, II)

RSA 91-A:3. Six grounds upon which school boards may enter non-public session:

- 1) Dismissal, promotion, compensation or disciplining of any public employee, unless that employee has a right to an open meeting and requests the meeting be open;
- 2) Hiring of a public employee;
- 3) Discussion of matters that are likely to adversely affect the reputation of a person other than a member of the school board;
- 4) Consideration of the acquisition, sale or lease of real estate or personal property;
- 5) Consideration or negotiation of pending legal claims or litigation; and
- 6) Consideration of matters relating to the preparation and carrying out of emergency functions.

### II. Procedure for Entering Non-Public Session

A school board's decision to enter non-public session must be included in the minutes of the open meeting. A school board may enter non-public session only if a recorded roll call vote is taken during public session. A motion to enter non-public session must be made, the motion must be seconded, and the motion must state one of the six statutory bases cited above. *It is vital that a specific reference to one of these grounds be made on the record before entering non-public session.*

Once in non-public session, a school board should *only discuss and decide matters set forth in the motion to enter non-public session.* Some school boards choose to discuss numerous matters in a single non-public session. Others choose to discuss one matter at a time. Whatever method your board chooses, the board should only discuss and decide issues that were originally stated in the motion to enter non-public session. *Any issues the board discusses or acts upon that are not within the originally stated reason(s) for entering non-public session must be included in the minutes of the open meeting.*

### III. Minutes of Non-Public Session (RSA 91-A:3, III)

School boards are required to record minutes of all non-public sessions:

*Minutes of non-public sessions must be made publicly available within 72 hours of the meeting, unless the board votes to seal the minutes of the non-public session.*

Minutes of non-public sessions shall include: (1) names of all school board members present; (2) time and place of the non-public session; (3) a brief outline of the matter(s) discussed; and (4) a brief description of all final decisions reached by the board (RSA 91-A:2, II).

Though many boards insist on creating verbatim transcripts of meetings, this is not required as a matter of law. School boards should remember that the goal of having sufficient minutes is to create a record of board decisions and action - not just a record of debate.

#### Sealing Minutes of Non-Public Sessions

School boards may only seal minutes of non-public sessions by a two-thirds vote. Minutes of non-public sessions may be sealed only if divulging such information would:

1. adversely affect the reputation of a person other than a board member;
2. render a proposed board action ineffective; or
3. thwart safety considerations pertaining to terrorism or other emergency functions of a school board.

As with the decision to enter non-public session, it is vital that the vote to seal minutes of non-public sessions adequately state one of these reasons.

Any vote to seal minutes of a non-public session should be taken immediately after the non-public session. The decision to seal minutes of non-public sessions must state one of the statutory bases listed above. Though school board minutes of non-public sessions may be sealed, minutes of the decision to seal are public records - they must be publicly disclosed and made available for inspection.

#### Periodic Review of Sealed Minutes

The decision to seal minutes of non-public sessions does not necessarily mean the minutes are permanently sealed. Over time, school boards must review sealed minutes to determine whether or not the reasons for sealing non-public minutes still exist. If a majority of the board determines sufficient reasons still exist, the minutes may remain sealed. However, if a majority of the board determines that the circumstances giving rise to the decision to seal are no longer applicable, the board may decide to release the sealed minutes of non-public sessions.

#### IV. Common Questions About Non-Public Sessions

Q: May a board enter non-public session to interview candidates filling a board vacancy?

A: No. RSA 91-A:3, II(c) only allows boards to enter non-public session if the matters discussed are “likely to adversely affect the reputation of any person, other than a member of the board.” The interview process of potential board candidates does not adequately fit under this exception. The dialogue between a board and a potential member are important matters of public concern and should therefore be held in public.

Q: May boards enter into non-public session to receive specific training or instruction?

A: It depends on who is doing the training. If the board hires an attorney to facilitate board training, seminars, or retreats, the gathering may not be a “meeting” under RSA 91-A:2, I(c) which states a “meeting shall not include consultation with legal counsel.”

Q: May the board enter non-public session at the end of a public session, in order to continue discussions without the administration present?

A: It depends on the reason(s) stated for entering non-public session. School boards are entitled to have present in non-public session whomever they please. Administrators are not necessarily entitled to be present during non-public sessions.

However, boards cannot state that as their reason for entering non-public session because that reason alone is not included in RSA 91-A:3,II. The board may enter non-public session to discuss administration personnel under RSA 91-A:3, II(a) only if the discussions will focus on the dismissal, promotion or discipline of an administrator.

## CHECKLIST FOR COMPLIANCE:

### Right to Know Law and Non-Public Sessions

- Motion to enter non-public session is made during the open meeting.
- Motion states one of these reasons for entering non-public session:
  - (1) Dismissal, promotion, compensation or disciplining of any public employee, unless that employee has a right to an open meeting and requests the meeting be open;
  - (2) Hiring of a public employee;
  - (3) Discussion of matters that are likely to adversely affect the reputation of a person other than a member of the school board;
  - (4) Consideration of the acquisition, sale or lease of real estate or personal property;
  - (5) Consideration or negotiation of pending legal claims or litigation; or
  - (6) Consideration of matters relating to the preparation and carrying out of emergency functions.
- Motion to enter non-public session is seconded.
- Recorded roll call vote on the motion is taken during the open meeting.
- When in non-public session, the board only discusses and decides matters within the scope of the stated reason(s) for entering non-public session.
- Minutes of non-public sessions are made publicly available within 72 hours (unless the board votes to seal such records).
- Minutes of non-public sessions can be sealed only by a two-thirds vote.
- Vote to seal minutes of non-public sessions is taken immediately after the non-public session and is included in minutes of the open meeting.
- The decision to seal minutes of non-public sessions clearly states one of the following reasons:
  - (1) Releasing information would adversely affect the reputation of a person other than a board member;
  - (2) Releasing information would render a proposed board action ineffective; or
  - (3) Releasing information would thwart safety considerations pertaining to terrorism or other emergency functions of the board.

## CHECKLIST FOR COMPLIANCE:

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(continued)

- Decision to seal minutes of non-public sessions is included in minutes of the open meeting.
- School board regularly reviews sealed minutes of non-public sessions to determine if sufficient reasons still exist for keeping such records sealed.
- School board may vote to release minutes of non-public sessions if no valid reasons exist for keeping the records sealed.