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Introduction School Board Sub-Committees
Introduction
Committee Basics

➢ Today’s presentation concerns committees established by, and subordinate to school boards –
  • Distinct from independent committees established by statute; e.g., “Official” Budget Committee (RSA 32:14), or SAU “Planning Committee” (RSA 194-C);
  • Distinct from administrative committees (public agency committees)

➢ Very little guidance from state laws or court decisions concerning establishment or breadth other than recognition under RSA 91-A (more on that later)

Introduction
Committee Basics

School board committees can divide the labor of governing into manageable categories, enabling board members to delve into governing matters in greater detail than is possible at the full board level. Healthy committee use helps
  • Board members to be better prepared for board meetings;
  • Boards to have greater ownership in the fact-finding aspect of policy development; and
  • To make board meetings more efficient;
all of which tend to improve the quality of board decision making and the experience of board service more positive.

Introduction
Committee Basics

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

- Two general types of committees – Delegating Authority
  - School Board – “public body” committees, task forces, or other subordinate bodies created to inform or, in some instances fulfill, board functions;
    - Include:
      - Sub-committees (sub-part of board, may include delegated authority, e.g., grievance or student discipline);
      - Advisory committees (need not include board members).
  - Administration – established by the superintendent or her/his staff in support of administrative functions

RSA 91-A
Right to Know Law

Key Concepts Relevant to Board Committees

- The two core areas of right of access under 91-A are “meetings” of “public bodies”, and access to “governmental records”.
- The statutory definitions of those three words/phrases, along with a few others, are key to understanding the breadth of 91-A as it applies generally to school boards and board committees.
Right To Know Law
Public Bodies Defined

“Public body” - Includes “Any ... governing body, board ... school district, [or] school administrative unit, ... or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.” 91-A:1-a, VI.

“Advisory committee” – includes any “committee ... whose primary purpose is to consider ... issues designated by the [public body] so as to provide such [body] with advice or recommendations concerning” a jurisdictional matter. 91-A:1-a, I.

Right to Know Law
Meeting Defined

RSA 91-A:2, I establishes a three prong test for whether a board communication (of whatever medium or form) should be deemed a meeting. A **meeting** occurs when:

1. A **quorum** of the body convenes;
2. In **any manner** in which the participating members are able to communicate contemporaneously;
3. For the purpose of discussing or acting upon something over which the public body has supervision, control, **jurisdiction** or advisory power. “Jurisdictional Matters”

Right to Know Law
Meeting Requirements

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

“Communications outside a meeting, including, but not limited to sequential communications … shall not be used to circumvent the spirit of this chapter…” 91-A:2-a, II.

➢ Applies to forwarded emails, telephone calls, and any other mode of communication;
➢ Could also apply to the “passive majority”;
➢ What about the situation where you know someone will be recused, but the communications occur prior to the meeting.

Right to Know Law
Meeting Requirements

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

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

Right To Know Law
Meeting Exceptions and Non-Meetings

Are all contemporaneous communications about jurisdictional matters by a quorum of a body subject to the meeting requirements of 91-A?

NO. Remember, the meeting requirements under 91-A are triggered by those communications which fall within the definition of a “meeting” (quorum, public body, ability to communicate contemporaneously, discussion about a jurisdictional matter).
Right To Know Law
Meeting Exceptions and Non-Meetings

When a meeting is not a meeting…

91-A:2, I - excludes from the definition of “meeting”, “chance, social or other encounter not convened for the purpose of discussing or acting upon [jurisdiction] matters” provided that “no decisions are made regarding such matters.”

Right To Know Law
Non-Meetings

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

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

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

Right To Know Law
Public Meetings and Non-Public Sessions

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

**Governmental Records Defined**

“Governmental records” means any information created, accepted, or obtained by, or on behalf of any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term “governmental records” includes any written communication or other information, whether in paper, electronic or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body…”  91-A:1-a, III

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**Right to Know Law**

**Committee Records as Governmental Records**

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

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**Considerations and Recommended Practices for Board Committees**
Committee Benefits

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

Committees - Considerations

Query: What committees should your board have?
- There is no universal answer. Board size, member experience and skills, district needs, ongoing and current, relevant stakeholders, are all factors to consider when determining committee usefulness.
  - Many boards maintain the same standing committee structure year-to-year, with little thought given to what the committees do or whether they are still relevant.
  - Another common problem is committees with vague objectives, poorly defined membership/leadership, and resulting ineffectiveness.
- The result being endless committee meetings, lack of productivity, and bored and frustrated members.

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

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

Committee – Recommended Practices

Continued:

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

- School board policies are statements of the board, as governing body of a school district, which prescribe as and in general terms, the organization and program of the school system.
- Policies communicate to various school constituent groups students, instructional and administrative staff, parents, and boards themselves, various legal requirements, with local parameters as determined by the board.
- Policies create a framework within which the superintendent and his/her staff can discharge duties with positive direction.

Like committees, there is very little specific guidance under state laws or regulations regarding the establishment of board policy.

- While state laws and regulations largely use “policy” as the term reflecting legislative action by school boards, some statutes or regulations use the terms “rules” or “regulations”.
- NHSBA, like most other such organizations and authors, use the term “policy” to refer to official legislative expressions of the governing body.
- NHSBA typically uses “administrative procedures” to refer to mandates, or directives of the Superintendent implementing board policies. The terms “rule” and “regulation” also typically refer to administrative, rather than legislative edicts.

NHSBA’s policies are classified as “Priority/Required by Law”, “Recommended”, or “Optional”.
- Priority policies reflect specific mandates by statute or regulation (state and/or federal) directing local boards to have a policy.
  - In some instances, the mandate is just to have a policy, with little direction as to substance;
  - Other mandates are very specific relative to substance, and the NHSBA policies in those instances tend to be much longer and specific.
- Boards/policy committees should review the NHSBA revisions notes and legal references, and/or consult with NHSBA or local counsel.
Introduction
Policy Basics

- Policies designated by NHSBA as **recommended** generally reflect either:
  - Substantive legal mandates imposed upon districts or boards when the mandates don’t include the magic language “the local board shall establish a policy….”;
  - Guidance derived from legal precedent, insurance experts or other such sources.
- Policies designated as “optional” are generally informational only, and were created and published only after multiple requests from member school boards.
  - All sample policies should be reviewed by the board/policy committee, to reflect local needs, titles, and other district specific information.

Considerations and Recommended Practices for Board Policies

Policy Process Recommendations

- As policies are the actions by which the board expresses its philosophies and direction for the district, and in view of the constantly evolving legal policy mandates, it is important that every board have a formal and well functioning policy development and review process.
- The policy process – articulated by policy - should include:
  - Outline of responsibilities – e.g., committee, board, administration;
  - Research, drafting, editing and draft review;
  - Opportunity for public comment and input from stakeholders;
Policy Process Recommendations

- A specific numbering or coding system (if using something other than NEPN/NHSBA codes, include a cross reference);
- A schedule for reviewing existing policies;
- A method of receiving notices and information regarding new mandated policy requirements (e.g., NHSBA Policy Updates).

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