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Non-public Sessions:

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 against the public body or any subdivision thereof, 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) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(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) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

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 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, 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.

VI. 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. RSA 91-A:3, II(a). 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. RSA 91-A:3, II(b). Hiring of a public employee;
 3. RSA 91-A:3, II(c). Discussion of matters that are likely to adversely affect the reputation of a person other than a member of the school board;
 4. RSA 91-A:3, II(d). Consideration of the acquisition, sale or lease of real or personal property;
 5. RSA 91-A:3, II(d). Consideration or negotiation of pending legal claims or litigation; or
 6. RSA 91-A:3, II(f). 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 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

- 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 reason(s) still exist for keeping such records sealed.

- School board may vote to release minutes of non-public sessions if no valid reason(s) exist for keeping the records sealed.

Nonpublic Session Minutes
[INSERT NAME OF TOWN AND BOARD]
(Page1)

Date: _____

Members Present: [board member name] ____
[board member name] ____
[board member name] ____
[board member name] ____
[board member name] ____

Motion to enter Nonpublic Session made by _____ seconded by _____

Specific Statutory Reason cited as foundation for the nonpublic session:

_____ RSA 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.*

_____ RSA 91-A:3, II(b) *The hiring of any person as a public employee.*

_____ RSA 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.*

_____ RSA 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.*

_____ RSA 91-A:3, II(e) *Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against this board or any subdivision thereof, or against any member thereof because of his or her membership therein, until the claim or litigation has been fully adjudicated or otherwise settled*

_____ RSA 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.*

Roll Call vote to enter nonpublic session: [name] Y N
[name] Y N
[name] Y N
[name] Y N
[name] Y N

Nonpublic Session Minutes
[INSERT NAME OF TOWN AND BOARD]
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Remove public meeting tape (if applicable).

Entered nonpublic session at _____ a.m./p.m.

Other persons present during nonpublic session: _____

Description of matters discussed and final decisions made: _____

*Note: 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, 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? If so, motion made by _____, seconded by _____, because it is determined that divulgence of this information likely 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

Roll Call Vote to seal minutes: [name] Y N
[name] Y N
[name] Y N
[name] Y N
[name] Y N

Nonpublic Session Minutes
[INSERT NAME OF TOWN AND BOARD]
(Page 3)

Motion: PASSED / DID NOT PASS (circle one)

Motion to leave nonpublic session and return to public session by _____,
seconded by _____.

Motion: PASSED / DID NOT PASS (circle one)

Nonpublic meeting tape removed, public meeting tape replaced (if applicable).

Public session reconvened at _____ a.m./p.m.

These minutes recorded by: _____

V. Recommendations for Compliance

The following guidelines and practical tips will help ensure your school board adequately complies with the Right-to-Know Law.

- A school board's decision to enter non-public session must fit squarely within one of the six statutory reasons. Absent one of these reasons, a school board cannot legally enter non-public session.
- A proper motion must be made to enter non-public session, clearly stating one of six reasons. That motion must be seconded.
- Based on such a motion to enter non-public session, a recorded roll call vote must be made in open session.
- When in non-public session, school board members should only discuss the matter(s) that were originally stated as the reason(s) for entering non-public session.
- If a school board discusses matters beyond the reason(s) stated for entering non-public session, only the minutes pertaining to the reason for entering non-public session may be sealed. Matters discussed and decisions made that fall outside the reason(s) given for entering non-public session must be disclosed to the public.
- Minutes of non-public sessions must be made available to the public within 72 hours, unless your school board has voted to seal such minutes.
- Minutes of non-public sessions may be sealed only by a two-thirds vote of the school board. They may be sealed for only three reasons. The reason(s) for sealing such minutes must be stated immediately after the non-public session and must appear on the record of the open meeting.
- School boards should periodically review their sealed minutes of non-public sessions to determine if the reasons for sealing such minutes still exist. If the originally stated reason(s) for sealing the records is no longer pertinent, your school board may vote to unseal such minutes.

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

School boards are required to record minutes of all non-public sessions. The law requires minutes of non-public sessions be made publicly available within 72 hours of the meeting, unless the board votes to seal the minutes of the non-public session.

At a minimum, 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.

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.

Other Points to Address/Common Questions:

1. A right to a hearing versus a right to attend a meeting.
 - RSA 91-A:3, II – School boards may enter non-public session to discuss “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.”
 - Some employees and board members have taken the position that this provision means an employee has a right to attend a non-public session any time the board is discussing employee dismissal or discipline.
 - This is not an accurate interpretation of the statute.
 - Though the wording states “right to a meeting” the statute is intended to relate to disciplinary hearings – not meetings.
 - Reference DOE Rule 204.02(e) (“The hearing shall be either public or nonpublic”; “The choice shall be that of the educator, consistent with the provisions of RSA 91-A:3, II(a)”)
 - Further, there is no “right to a meeting”. Employees have rights to hearings (non-renewal, dismissal, etc.) But there is no right to a meeting.

2. Can boards discuss multiple topics within a single non-public session?
 - Yes – provided all topics under RSA 91-A:3,II are stated in the motion to enter non-public session.
 - The alternative is to enter non-public session for a single reason, conduct the non-public session, re-enter public session, and make a new motion to re-enter non-public session. This is timely and potentially confusing.
 - If that topic or reason has not been included in the initial motion to enter non-public session, that topic or reason should not be discussed in non-public session.

3. Does the superintendent have an unabridged right to attend non-public sessions?
- Ed 303.01(f) requires school boards to “Hold meetings for the transaction of business at least once in 2 months and require the attendance of the superintendent or designee.”
 - NHSBA’s position: public meetings are called by the school board. The right to enter non-public session rests with the school board. The school board, as governing body, can determine who attends a non-public session and can, if necessary, exclude the superintendent from attending a non-public session.
 - However...
 - NHSBA advises its members that, generally, the only two sufficient reasons for excluding a superintendent from a non-public session would be in cases which: (1) the board was considering disciplinary action against the superintendent; or (2) the board was discussing matter relative to the superintendent’s evaluation (either preliminarily or subsequently; not to imply that the superintendent is not involved in his/her evaluation.)
4. Sealed minutes – does the board ever approve them?
- Typically, if the board desires to seal minutes of a non-public session, the vote to seal such minutes is taken during the non-public session or immediately upon return to public session.
 - Also, typically boards review and create “draft” minutes (of a public session) before they approve or adopt the final version.
 - Question – if non-public session minutes are approved during the non-public session, when, if at all, does the board “approve” the non-public minutes?
 - The Right to Know law does not contemplate this. Presumably, the sealed non-public minutes could simply be the initial, written draft, as taken and written during the non-public session.
 - Alternatively, and also presumably, the board could enter non-public session at a subsequent meeting, vote to unseal the minutes, review them, approve them, and then take a subsequent vote to re-seal them.
 - If this question has not arisen in your district, don’t change your current practice – continue doing what works for you and your board.