



More policy questions

4 messages

Jennifer Heywood <j.heywood@sau33.com>
To: Will Phillips <wphillips@nhsba.org>

Wed, Feb 9, 2022 at 12:57 PM

Good afternoon. May I ask a couple of quick questions on behalf of our School Board Policy Committee about NHSBA sample policy BEC?

1. This statement: *"The motion calling for a non-public session will state the matter(s) to be discussed and will state the statutory reason(s) for entering non-public session."* Normally, their motion states the RSA as "RSA 91-A:3 II (c)" but doesn't state in full sentences what "c" refers to. Is that okay, or should their motion state fully what the "c" (or whatever letter they're going in under" refers to?

And, when this says "state the matter(s) to be discussed" - what exactly does that mean? Does that mean that they have to actually say something like "resignations" or "student matter" *in addition* to the statutory reason in their motion to enter non-public?

2. The last paragraph of that policy states "Each year the Superintendent is directed to obtain and provide to each Board member copies of any NHSBA Non-Public Session Checklist, and update the same during the year as made available by NHSBA." I assume this is a recommendation by NHSBA and not required by law? Or, is it - or a version of it - required by law?

Thank you. :)

-Jennifer.

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Jennifer Heywood <j.heywood@sau33.com>
To: Will Phillips <wphillips@nhsba.org>

Tue, Mar 15, 2022 at 3:10 PM

Hi, Will. I know it's been busy with Deliberative Sessions, sorry not trying to be pesky. I just wanted to bump my email if you happen to have a chance to take a look? Thank you very much. :)

-Jennifer.

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Will Phillips <wphillips@nhsba.org>
To: Jennifer Heywood <j.heywood@sau33.com>

Tue, Mar 15, 2022 at 6:49 PM

Hello Jennifer,

I apologize for the delay, and thank you for the reminder. I will answer the questions in the order presented.

1. This statement: *"The motion calling for a non-public session will state the matter(s) to be discussed and will state the statutory reason(s) for entering non-public session."* Normally, their motion states the RSA as "RSA 91-A:3 II (c)" but doesn't state in full sentences what "c" refers to. Is that okay, or should their motion state fully what the "c" (or whatever letter they're going in under" refers to?

And, when this says "state the matter(s) to be discussed" - what exactly does that mean? Does that mean that they have to actually say something like "**resignations**" or "student matter" *in addition* to the statutory reason in their motion to enter non-public?

At a minimum the motion should either state the specific sub-paragraph of 91-A:3 (e.g., "...under 91-A:3, II (c)"), **OR** a specific summary of the statutory basis (e.g., "... to discuss the hiring of an employee").

We suggest that stating both is a better practice, because too often we see board motions which either: (1) are not specific enough (e.g., "... to discuss personnel"); (2) get the exact applicable sub-paragraph incorrect, or (3) state a string of paragraphs, without really attempting to distinguish which (if any) actually apply (e.g., "... under 91-A:3, II (a) – (c)", when the topic was overall staffing.)

A good example of the over generalization of the bases to enter non-public is "resignations". There is no provision of 91-A:3, II which per se supports a non-public discussion of resignations. There may be circumstances regarding a specific resignation that might warrant such a discussion (e.g., resignation in lieu of), but resignation alone does not fit within (a), (b) or (c).

2. The last paragraph of that policy states "Each year the Superintendent is directed to obtain and provide to each Board member copies of any NHSBA Non-Public Session Checklist, and update the same during the year as made available by NHSBA." I assume this is a recommendation by NHSBA and not required by law? Or, is it - or a version of it - required by law?

Recommendation only. There have been 9 separate amendments to RSA 91-A:3 since 2016, alone. Most amendments of 91-A are effective within 14-90 days of signing by the governor (roughly in the July 1-September 30 timeframe). Most boards don't/can't review, let alone adopt, policies in that span of time. (You would not need to check too many other district policy manuals or even board agendas to find the list of reasons limited to those in the pre-2016 version of the statute.) Additionally, because of the ever-frequent updates to the statute, and the lag time for policy changes, NHSBA stopped including the specific grounds in sample policy BEC. The law applies whether a board updates its policy or not.

The AG's office has been providing a "Memorandum" on the Right to Know law for close to 20 years, but the memorandum has **not been updated since 2015**.

Accordingly, and to help boards assure compliance with 91-A:3, we include the recommendation to check with NHSBA so that boards and administrators at least know they should check and where to look. This is especially important when there is turnover on the board and/or in the central office.

Again, I apologize any inconvenience associated with the delay of my response. Please feel free to call or write with any additional questions.

Will Phillips

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Jennifer Heywood <j.heywood@sau33.com>
To: Will Phillips <wphillips@nhsba.org>

Thu, Mar 17, 2022 at 10:57 AM

Oh, no problem at all. :) Thank you very much!

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