

**MILFORD SCHOOL BOARD
AGENDA
Monday, May 21, 2012
Milford High School – Lecture Hall Room # 182 - 7:00 PM**

1. Call to Order
2. Board Member Comments
3. Public Comments
4. Reports and Presentations
 - a. Superintendent's Report
 - b. Student Intern Presentation – Rich Paiva, Career Development Specialist
 - c. Review of District Goals 2011-2012 **EXHIBIT**
5. New Business
 - a. 2012-2013 Proposed District Goals **EXHIBIT**
 - b. Annual Adoption of Investment policy **EXHIBIT**
 - c. Policy Proposals **EXHIBIT**
 1. Policy 2403 Sexual Harassment (1st Reading) **EXHIBIT**
 2. Policy 2404 Dispute Procedure (1st Reading) **EXHIBIT**
 - d. Bid Award – Waste Disposal Services 2012-2013 **EXHIBIT**
 - e. Bid Award – Buildings and Grounds Truck
6. Old Business
 - a. Policy Proposals **EXHIBIT**
 1. Policy 4020, Communicable Diseases (2nd Reading) **EXHIBIT**
 2. Policy 2164, School Board Communications (2nd Reading) **EXHIBIT**
7. Housekeeping Items
 - a. Approval of Minutes 5/7/12
 - b. Approval of Manifests: 24,1161,1162,1163,1164,1165,1166.
8. Public Comment
9. Nonpublic Session RSA 91-A :3II (a)(b)(c) (if necessary)
 - a. Personnel
 - b. Collective Bargaining (non-meeting)
10. Adjournment

To: Milford School Board
Fr: Bob Suprenant
Re: Proposal, 2011-2012 District Goals
Dt: June 6, 2011

School Board approved 6-6-11

- A. Curriculum and Instruction:** *Use of data, assessment information and student feedback to plan curriculum and instruction based on student strengths and needs.*

The District will develop appropriate School In Need of Improvement (SINI) and District In Need of Improvement (DINI) plans in concert with No Child Left Behind regulations.

- B. Curriculum and Instruction:** *Cyclical and structured review of current practices and curricula to keep pace with changing trends.*

The District will review its curriculum and instructional practices in the area of Language Arts and make appropriate recommendations for implementation to the School Board.

- C. Civic and Community Engagement:** *Effective use of e-communication.*

The District will improve its web-based communication to parents, students, and community.

- D. Use of Resources:** *Operating a safe and appropriate school environment.*

The District will develop a schedule of facility improvements and recommend a list of those items to be implemented over a three-year period to the School Board.

- E. Use of Resources:** *Updating software, infrastructure, and equipment on a regular and scheduled basis.*

The District will assist the School Board in implementing the technology plan.

- F. Use of Resources:** *Providing professional development to maximize the effective use of curriculum, equipment, and technology.*

The District will update its Professional Development Plan in accordance with Department of Education regulations.

- G. Use of Resources:** *Assist the School Board in negotiations with the Milford Educational Support Staff Association (MESSA) for a successor agreement that attracts and retains quality staff at a rate that is acceptable to Milford taxpayers.*

Note: Goals A-F are based on the Local education Improvement Plan, November 2010.

To: Milford School Board
Fr: Bob Suprenant
Re: Proposal, 2012-2013 District Goals
Dt: May 21, 2012

- A. Curriculum and Instruction: Providing each student with the knowledge, skills, and tools needed to succeed in a rapidly changing global environment:

The District will assist the School Board with the review of Applied Technology Center programming to ensure that students are prepared for today's economy.

- B. Use of Resources: Updating software, infrastructure, and equipment on a regular and scheduled basis:

The District will continue with the implementation of technology plans, including upgrading of infrastructure, updating the informational technology curriculum, and implementing the technology component of the Professional Development plan.

- C. Curriculum and Instruction: Use of data, assessment information, and student feedback to plan curriculum and instruction based on student strengths and needs:

The District will update the School and District Improvement Plans (SINI and DINI) and continue to implement those plans. Specifically, the District will participate in the DOE Focused Monitoring Review and implement after-school tutoring for mathematics.

- D. Civic and Community Engagement: Engaging in meaningful two-way communication:

The District's instructional staff will begin to utilize the new website for teacher and/or team page communication.

- E. Use of Resources:

The District will begin implementation of the new USDA regulations governing the National School Lunch Program and the School Breakfast Program.

- F. Use of Resources:

The District will assist the School Board in negotiations with the Milford Teachers' Association (MTA), Milford Educational Support Staff Association (MESSA), and Milford Educational Personnel Association (MEPA) for successor agreements that attract and retain quality staff at rates acceptable to Milford taxpayers.

The School Board authorizes the School District Treasurer, working in conjunction with the Superintendent/designee and pursuant to RSA 197:23, to invest the funds of the District subject to the following objectives and standards of care.

OBJECTIVES:

The three objectives of investment activities shall be safety, liquidity, and yield.

1. Safety of principal is the foremost objective in this policy. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital by mitigating credit and interest rate risk. This will be accomplished by limiting the type of the investments and institutions to those stipulated by statute and fully covered by FDIC insurance or collateral approved pursuant to applicable law.
2. Liquidity of the investment portfolio shall remain sufficient to meet all operating requirements that may be reasonably anticipated.
3. Yield. The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above.

STANDARDS OF CARE:

1. Prudence. The standard of prudence to be used by the District Treasurer and Superintendent/designee involved in the investment process, shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. They are directed to use the Government Finance Officer Association's Recommended Practices and Policy Statements Related to Treasury and Investment Management, as a guide to the prudent investment of public funds.
2. Conflict of Interest. Officials involved in the investment process shall not engage in or have a financial interest in any activity or investment that could conflict with or could create the appearance of conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment officials, Auditors and School Board Members shall disclose to the School Board any material, personal, business-related, or financial interests in financial institutions that conduct business with the district, and they shall further disclose any material financial relationships or business responsibilities that could be related to the impartial management of the District's financial assets. Where conflicts of interest or the appearance of conflict of interest cannot be avoided through policies or procedures approved by the School Board, affected official(s) shall recuse themselves from subject decisions.

3. Internal Controls. The District Treasurer and Superintendent/designee shall establish a system of internal controls which shall be documented in writing. The internal controls shall be reviewed periodically by the School Board and an independent auditor.

The investment of funds is delegated by the School Board to the District Treasurer.

The Board will, at least annually, review and adopt the investment policy.

Reference: RSA 197:23-a, Treasurer's Duties
RSA 383:22, Public Deposit Investment Pool
RSA 386:57 Collateralization of Funds

Adopted: 6/2009

MILFORD POLICY PROPOSAL OVERVIEW – May 21, 2012

POLICY TITLE	PROPOSED CODE	CURRENT CODE	PROPOSAL STATUS	REASON FOR CHANGE / SUBSTANCE OF CHANGE	NHSBA POLICY REFERENCE
Sexual Harassment	2403	2403	First Reading	Revision	GBAA,JBAA
Dispute Procedure	2404	2404	First Reading	Revision	GBK
Communicable Diseases	4020	4020	Second Reading	Revision	JLCC
School Board Communications	2164	N/A	Second Reading	New	BHE

PREAMBLE

The Milford School District seeks to create and provide an educational environment which promotes an atmosphere of mutual respect. Such an environment must be free of sexual harassment.

Sexual harassment of any employee or student, by any other employee or student, or by any other person with whom an employee or student may interact to fulfill employment of **or** school **activities or** responsibilities, is prohibited by State and Federal law and will not be tolerated by the Milford School District.

SEXUAL HARASSMENT

Federal and State law prohibit sexual harassment. Sexual harassment includes unwelcomed sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct of a sexual nature when:

1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, for obtaining employment or education, or
2. Submission to or rejection of that conduct or communication by an individual is used as the basis for decisions affecting that individual's employment or educational performance, or
3. That conduct or communication has the purpose or effect of unreasonably interfering with an individual's employment or educational performance, or
4. That conduct has the purpose or effect of creating an intimidating, hostile, or offensive working or educational environment.

Revised: April 1996, April 2007

The procedures and guidelines outlined in this policy shall be utilized to assist in resolving complaints and grievances* within the following areas; Alleged Discrimination, Sexual Harassment, Violation of Title IX, Section 504, and any other such complaint and/or dispute, or any alleged violation of District Policy 2405.

A complaint is an assertion by an individual (“Aggrieved Individual”) that he or she is the victim of a violation, misinterpretation, or inequitable application of District policies, regulations and procedures, existing laws, or other actions that adversely and directly affect the individual personally.

Complaint processing should be viewed as a positive and constructive effort which seeks to establish the facts upon which the complaint is based and come to a fair conclusion. Any person filing a complaint under this policy or who participates in any investigation of any such complaint, will not be discriminated against nor be the subject of retaliation on account of such complaint or participation. **Retaliation will be deemed a violation of this policy.**

Procedures;

Whenever reasonable, an aggrieved individual is encouraged to discuss his/her grievance with the person involved in an attempt to resolve the matter informally. ~~Should resolution not be achieved, complaints~~ **If the aggrieved party is not comfortable with informal resolution or if informal resolution is not achieved, a complaint must be filed and** will be processed according to the following procedures:

1. Level One

- a. For Complaints of conduct not concerning Sexual Harassment (Sexual Harassment is defined and discussed on Policy #2406) a complaint will be presented orally and informally to the immediate supervisor for review and resolution.
- b. Alleged sexual harassment brought forth by an employee will immediately be referred to the Superintendent of Schools and shall move immediately to Level two.
- c. Alleged sexual harassment brought forth by a student will be brought to the Superintendent of Schools who may proceed to deal with the complaint as he or she sees fit. The Superintendent may omit any or all step(s) of this procedure. The Superintendent shall take any and all actions he or she deems necessary to keep any student safe from harm. Employees of the District may not and shall not engage in a sexual relationship with any student currently enrolled in the Milford School District. Unwelcomed sexual advances, requests for sexual favors, or verbal or physical conduct that has sexual connotations, by students or

employees, will not be tolerated. Depending upon the circumstances and degree of the harassing behavior, the Superintendent may implement any discipline up to and including discharge or expulsion. Additionally, some forms of sexual harassment are considered violations of State criminal law and, as such, shall be referred to law enforcement authorities.

2. Level Two

- a. If, as a result of the informal meeting(s), the matter is not resolved satisfactorily the aggrieved person may within twenty (20) business days after the alleged policy violation present his/her grievance in writing to the Chairperson of the Grievance Committee c/o the Superintendent's Office, specifying the nature of the grievance and dates(s) of the occurrence and the remedy sought.
- b. The Grievance Committee consists of the following personnel, and will be gender balanced;
 1. Human Resources
 2. One member from each school appointed annually by each school's Leadership Team.
- c. The Grievance Committee shall make every effort to investigate and resolve the matter as quickly as possible (within 20 business days from the receipt of the written grievance), the Grievance Committee shall issue a written decision including any corrective action to be taken to the Aggrieved Person.

3. Level Three

- a. If the Aggrieved Person is not satisfied with the decision of the Grievance Committee, he or she may appeal the decision to the Superintendent within ten (10) business days after receipt.
- b. The Superintendent will, within twenty (20) business days of receipt of the appeal, investigate and render a decision, in writing, to the Aggrieved Person.

4. Level Four

- a. If the Aggrieved Person is not satisfied with the decision of the Superintendent of Schools, he or she may appeal the Superintendent's decision to the School Board within ten (10) business days after receipt.
- b. The Board will, within forty (40) business days of receipt of the appeal, investigate and render a decision, in writing, to the aggrieved person.

c. The Board's decision will be considered final.

New Hampshire Commission for Human Rights

In addition to this procedure, or instead of it, any individual may contact the New Hampshire Commission for Human Rights, 2 Chennell Drive, Concord, NH 03301. 603-271-2767. No retaliation or discrimination shall be allowed against any person who does contact the New Hampshire Commission of Human Rights reasonably believing that a violation of any protected rights has occurred.

* Note: Other procedures are followed for the processing of grievances as defined in the collective bargaining agreements. Such procedures are set forth in agreements with staff units.

Adopted: April 2007

MEMORANDUM

TO: Superintendant Suprenant
FROM: Katie Chambers, Business Administrator
Bill Cooper, Director of Buildings & Grounds
SUBJECT: Solid Waste Disposal RFP
DATE: May 15, 2012

A request for proposals (RFP) was issued recently for the District's solid waste disposal for 2013/14. A newspaper ad was run in the Union Leader and proposals were solicited from several vendors.

The recommendation is to award the contract to Casella Waste Services:

- Lowest cost responsive proposal (single stream recycling & mixed trash)
- Positive overall reference check (They were our vendor for several years until lost bid last year)

Solid Waste Disposal - Proposed	
Casella Waste Services	\$35,280.00
Allied Waste Industries	\$39,815.04
Waste Management	\$40,980.00
Monadnock	\$57,840.00
Pinard	\$68,112.00

Solid Waste Disposal – Current Contract	
Waste Management	\$43,500.00

Anticipated Savings	\$8,220.00
----------------------------	------------

Whenever a student exhibits symptoms of contagion and is a hazard to himself or others he/she shall be excluded from the classroom and his/her parents or guardians shall be notified as soon as possible.

Suspected symptoms of contagion shall be verified by a health care provider.

The student who has had symptoms for contagion must be checked by the nurse before re-admission to school. Parents may be required to supply a health care provider's note before re-admission.

Chicken Pox	Keep child home until one week after rash appears.
German Measles	Exclude from school four days after onset of rash. Immunization of susceptible students and adults (particularly women of child bearing age, who are not pregnant and will remain so for 2-3 months). In event of exposure, identify susceptible pregnant woman in first trimester and refer to a health care provider.
Whooping Cough	Exclude from school for five days after onset of therapy. Exclusion of non-immune children from school and public gatherings for fourteen days after last exposure. If cases are known in the community, children shall be observed throughout each school day to detect first sign of infection and immediately excluded.
Impetigo	Exclude from school until forty-eight hours from the time effective treatment with penicillin or other antibiotics has begun. Exclude from school until lesions are dry.
Mumps	Exclude from school for nine days from the onset of swelling; less if the swelling has completely subsided.
Ringworm	Refer to health care provider for treatment. While under treatment minimize contact by excluding from physical education classes, swimming, and activities likely to lead to exposure of others.
Scabies	Exclude infected children from school twenty-four hours after they and their families have been treated adequately.
Head Lice	No student will be excluded from attendance solely based on the grounds that nits may be present. Routine exclusion of children with head lice is not recommended. Though not recommended as routine practice, a student may be excluded from school by the School Principal should that student continue to demonstrate the presence of nits and/or head lice. Instruction will be given to the parent/guardian of each identified student and will include recommendations for treatment consistent with the NH Department of Health and Human Services.

Fifth Disease	A child is contagious before the rash appears. No advanced warning can be given to women of child bearing age. Fifth Disease may cause abortion in early pregnancy or problems for the fetus in the later stages of pregnancy for a small percentage of the population. Fifty percent of all women are immune. Every pregnant woman should be aware of her state of immunity and seek advice from her health care provider regarding exposure.
Strep Throat	Exclude from school. Exclusion may be terminated twenty-four hours after adequate treatment has been started.
Scarlet Fever	Same as Strep Throat.
HIV/AIDS	See Policy 4030
Conjunctivitis	Students with conjunctivitis will be excluded from school during the acute stage (when eyes are draining). The student must be on medication at least twenty-four hours before re-admission is considered. This determination will be made by the School Nurse or health care provider's written statement that the student is no longer contagious.

Ref: RSA 200:39

Adopted: 2/1975
 Revised: 6/1995, 9/2001, 6/2008

JLCC - COMMUNICABLE DISEASES

(Download policy)

Category R

This policy is adopted to carry out the provisions of RSA 200:32, RSA 200:38, and RSA 200:39.

Pediculosis: Screening. Based on recommendations from the American Academy of Pediatrics, the Board recognizes that school-wide screening for nits alone is not an accurate way of predicting which children will become infested with head lice, and screening for live lice has not been proven to have a significant decrease on the incidence of head lice in a school community.

The school nurse will periodically provide information to families of all children on the diagnosis, treatment, and prevention of head lice. Parents are encouraged to check their children's heads for lice if the child is symptomatic. The school nurse may check a student's head if the student is demonstrating symptoms.

Management on the Day of Diagnosis. The Board recognizes that head lice infestation poses little risk to others and does not result in additional health problems. The management of pediculosis should proceed so as to not disrupt the education process. Nonetheless, any staff member who suspects a student has head lice will report this to the school nurse or Principal. Students known to have head lice will remain in class provided the student is comfortable. If a student is not comfortable, he/she may report to the school nurse or principal's office. Such students will be discouraged from close direct head contact with others and from sharing personal items with other students. District employees will act to ensure that student confidentiality is maintained so the child is not embarrassed.

The Principal or school nurse will notify the parent/guardian by telephone or other available means if their child is found to have head lice. Verbal and written instructions for treatment will be given to the family of each identified student. Instructions will include recommendations for treatment that are consistent with New Hampshire Department of Health and Human Services recommendations.

Based upon the school nurse's recommendation, other children who were most likely to have had direct head-to-head contact with the assessed child may be checked or screened for head lice.

Criteria for Return to School. Students will be allowed to return to school after proper treatment as recommended by the school nurse. The Board recognizes that The American Academy of Pediatrics and the National Association of School Nurses discourage "no nit" policies. In alignment with these recommendations, no student will be excluded from attendance solely based on grounds that nits may be present. The school nurse may recheck a child's head. In addition, the school nurse may offer extra help or information to families of children who are repeatedly or chronically infested.

Legal Reference:

RSA 200:32, Physical Examination of Pupils

RSA 200:38, Control and Prevention of Communicable Diseases: Duties of School Nurse

RSA 200:39, Exclusion from School

American Academy of Pediatrics, Clinical Report on Head Lice Infestation, September

The School Board shall not use any form of communication as a substitute for voting, deliberating, or conducting business that is intended to be conducted at Board meetings.

If at any time an electronic communication (email, text, instant message, Twitter, Facebook, etc) is originated by a Board member or administrator and is communicated to a quorum of the Board either directly or by daisy-chaining, the communication shall be considered a public document for purposes of RSA 91-A:3. As such, the contents of the communication shall be publicly disclosed and included in the minutes of the next regularly scheduled Board meeting. Under no circumstances shall communication governed by FERPA and confidentiality regulations, in accordance with 91-A:3, be communicated electronically. Exceptions to this shall be as follows:

1. Reminders to Board members about special school events from the Board Chair or Superintendent/designee.
2. Notification of incidents to Board members by the Chair or Superintendent/designee for awareness purposes.
3. Electronic communication exclusively between two Board members.
4. School newsletters and announcements sent from school administrators.

References:

Family Educational Rights and Privacy Act

RSA 91-A

Miller v. Fremont School Board, Rockingham County Superior Court, No. 03-E-152 (2003)

Recommendation from New Hampshire School Board Association Attorney

I read through the draft policy and made a few changes – nothing substantive, but more just tweaks to certain words or phrases where I put in the terminology used directly from the Right to Know law. I put a strikethrough in language I recommend be removed, and put in bold font language to be added. Read through and let me know if you have any questions, comments or concerns.

Regarding its applicability to committees – yes, the board’s policies and the Right to Know law apply to committees. RSA 91-A:1-a defines “public body” as “ Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.”

So, any committee that is duly established by official board action (board vote, board policy, etc.) falls under the provisions of the Right to Know law, even if there is less than a quorum of school board members on the committee. The quorum requirements of the committee relate to the number of persons on the committee – not the number of board members on the committee. For example, if your facilities committee has 5 members, and quorum is 3 members of the committee.

In order to lessen the impact of the Right to Know law on committees, I advise boards to limit the number of standing committees to as few as necessary. Look through your established, official committee and see how often they meet, what their scope and responsibilities are, etc. If they are “non-essential” then disband the committee. Instead, appoint a single board member as the “designee” or “liaison” to look into the matter and report back to the board, with assistance and input from the Superintendent or his designee.

Another way to lessen the impact of the Right to Know law is simply to have the board charge you with the responsibility of looking into a particular issue and reporting back to the board in 4 weeks, 6 weeks, etc. You can then assemble a “team” of whomever you need to assist – teachers, facilities, manager, etc. It’s not a committee for Right to Know law purposes, but rather an administrative function.

I hope this helps clarify some of the nuances. Let me know if you have any other questions.

-Barrett

--

Barrett M. Christina, Staff Attorney
New Hampshire School Boards Association
25 Triangle Park Drive, Suite 101
Concord, NH 03301
(603) 228-2061
(603) 228-2351 (fax)

Recommendation from New Hampshire School Board Association Attorney

2164

School Board Communications

2164

The School Board shall not use any form of communication as a substitute for voting, deliberating, or conducting business that is intended to be **properly** conducted at Board meetings.

If at any time an electronic communication (email, text, instant message, Twitter, Facebook, etc) is originated by a Board member or administrator and is communicated to a quorum of the Board either directly or by ~~daisy-chaining~~ **sequential communications**, the communication shall be considered a ~~public document~~ **governmental record** for purposes of RSA 91-A:1-a, III. As such, the contents of the communication shall be publicly disclosed and included in the minutes of the next regularly scheduled Board meeting. Under no circumstances shall communication governed by FERPA, and confidentiality regulations, ~~in accordance with~~ **RSA 91-A:3, and/or other applicable law relative to privacy and confidentiality** be communicated electronically. Exceptions to this shall be as follows:

1. Reminders to Board members about special school events from the Board Chair or Superintendent/designee.
2. Notification to Board members by the Chair or Superintendent/designee of incidents **or school district emergencies** for awareness **and informational** purposes.
3. Electronic communication exclusively between two Board members.
4. School newsletters and announcements sent from school administrators.

References:

Family Educational Rights and Privacy Act

RSA 91-A

Miller v. Fremont School Board, Rockingham County Superior Court, No. 03-E-152 (2003)

BHE - SCHOOL BOARD USE OF EMAIL

(Download policy)

Category R

The Board encourages its members to not communicate to each other via electronic communication (e-mail) regarding official school district business. The Board will not use e-mail as a substitute for deliberations at board meetings, for other communications, or for business properly confined to board meetings. Communications via e-mail of private or confidential school district matters is strictly prohibited.

If an e-mail is originated by a Board member, is communicated to a quorum of the Board, and discusses official school district business, the e-mail will be considered a public document for purposes of the Right to Know Law, RSA 91-A. As such, the contents of the email communication will be publicly disclosed and included in the minutes of the next regularly scheduled Board meeting.

Legal references:

RSA 91-A:2-a, Communications Outside Meetings

RSA 189:29-a, Records Retention and Disposition

Miller v. Fremont School Board, Rockingham County Superior Court, No. 03-E-152 (2003)

Revised: October 2008

Revised: May 2007

New Policy: February 2006

DISCLAIMER: This sample policy manual is copyrighted to the New Hampshire School Boards Association and is intended for the sole and exclusive use of NHSBA Policy Service Subscribers. No portion of this manual may be reproduced, copied, transmitted, distributed, in any form, except as needed for the development of policy by a subscribing district. The materials contained in the manual are provided for general information only and as a resource to assist subscribing districts with policy development. School districts and boards of education should consult with legal counsel and revise all sample policies and regulations to address local facts and circumstances prior to adoption. NHSBA continually makes revisions based on school districts' needs and local, state and federal laws, regulations and court decisions, and other relevant education activity.

TITLE VI PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:2-a

91-A:2-a Communications Outside Meetings. –

I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.

II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

Source. 2008, 303:4, eff. July 1, 2008.

**New Hampshire School Boards Association
Dr. Theodore E. Comstock, Esq., Executive Director
Barrett M. Christina, Esq., Staff Attorney**

**HOT TOPICS:
ELECTRONIC DOCUMENTS AND USE OF E-MAIL
COMMUNICATIONS
November 2007**

The following information is intended as instructional and reference material only. It should not be construed as specific legal advice. You are encouraged to seek the advice of your own attorney regarding specific questions you may have about the following material.

I. Common Questions

1. Is an e-mail a public record?
2. What other types of electronic documents are public records?
3. What are the disclosure requirements for electronic documents?
4. Does a quorum of the Board have to receive the e-mail in order for it to be made public?

II. What constitutes a “public record”?

Curiously, the Right to Know Law does not actually define the term “public record.” Essentially, there are three elements to what constitutes a public record for Right to Know purposes. The document must:

- (1) Be created or maintained by the school district;
- (2) Discuss official board business; and
- (3) Be viewed/read by a quorum of the Board.

These elements are relatively easy to distinguish when dealing with traditional paper records and documents. However, questions may arise when an e-mail or other electronic document has not yet been reduced to a paper printout.

A. Electronic Records

Without specifically addressing the issue of e-mails, the New Hampshire Supreme Court did rule that documents do not lose their status as a public record simply because they are stored in a computer system, and that these electronic records must be maintained in a manner that makes them available to the public. Hawkins v. N.H. Dept. of H.H.S., 147 N.H. 376 (2001). (Case dealt with a request seeking records of Medicaid payments.)

B. Internet Logs/History

Under New Hampshire law, Internet logs maintaining the history of Internet use in schools are also considered public records under the Right to Know Law. In Knight v. SAU #16, Merrimack and Rockingham County Superior Courts, No. 00-E-307 (2000) the court held that the public has the right to view Internet logs because:

- The school district maintained the logs;
- The logs pertained to the education of students, which is the district's business;
- The logs contained a log of staff use, and staff use is clearly official business; and
- "The definition of a public record is, in part, any type of document made or received pursuant to law." (The school district was required by law to adopt an "acceptable use" policy; therefore, the Internet log was made "pursuant to law.")

Best Practices and Policy Suggestion: RSA 194:3-d requires only that school districts adopt an "acceptable use" policy regarding Internet use. The statute does not require school districts to maintain a log of such Internet use. NHSBA Model Policy EGA recommends that school districts *do not* maintain Internet usage logs. If the school district does not maintain such a log, there is no duty or requirement to provide a log to

the public. However, if you do maintain Internet usage logs, you will be required to provide them if so requested.

III. School District Use of E-Mails

The New Hampshire Supreme Court has not yet addressed the issue of when an e-mail communication becomes a public record, and more directly, what elements would be necessary to make an e-mail a public record. However, this issue was addressed in Rockingham County Superior Court in 2003.

In Miller v. Fremont School Board, Rockingham County Superior Court, No. 03-E-152, the petitioners sought access to copies of e-mail communications among school board members, claiming that the board had been using e-mail communications in violation of the public meetings provisions of RSA 91-A. The Miller case is instructive in helping school boards and administrators assess whether or not electronic communications are or may become public records subject to public disclosure.

A. Miller case: E-mail as a public record

1. E-mail communications between board members are in the nature of public records governed by RSA 91-A:4.
2. The public is entitled to access of e-mails, not because the e-mails constitute a “meeting” but rather because the substantive written communications are RSA 91-A:4 public records.

B. Miller case: Quorum requirements

1. The court found that the public is entitled to access to e-mails between a quorum of school board members, when the e-mails discuss official board matters.
2. The court specifically did not address the issue of whether substantive e-mail communication between members of the board must be disclosed when no quorum is involved.

C. Miller case: Disclosure requirements

1. RSA 91-A does not require copies of the e-mail communications to be physically attached to the minutes, so long as the substance of the e-mail communications is properly disclosed and included in the minutes of the next board meeting.

IV. Revisiting the Common Questions

Q: Is an e-mail a public record?

A: Yes, e-mails may become public records provided the traditional hallmarks are present: (1) it is created or maintained by the public entity; (2) it discusses official school business; and (3) the e-mail is either created or in the possession of a quorum of the board.

Q: What other types of electronic documents are public records?

A: Internet history logs.

Presumably, the exemptions of RSA 91-A:5 (discussion about personal records of students; records of internal personnel practices; confidential communications; other files whose disclosure would constitute an invasion of privacy; etc.) still apply to e-mails.

Q: What are the disclosure requirements for electronic documents?

A: Actual copies of the electronic communications do not need to be disclosed. However, the substance of the communications must be adequately reported in the minutes of your next public meeting.

Q: Does a quorum of the Board have to receive the e-mail in order for it to be made public?

A: Presumably, but this issue has not been fully addressed by the courts. If a quorum of the board discusses a matter via e-mail, it must be disclosed. The law is unclear as to the disclosure requirements when an e-mail is distributed to less than a quorum.

V. Best Practices and Policies

When considering whether or not to communicate via electronic communication, the New Hampshire School Boards Association recommends the following practices:

1. Avoid electronic communications if possible. Rather than be faced with potential litigation and Right to Know challenges, NHSBA recommends that school boards do not communicate via e-mail. Likewise, administrators should attempt to communicate official school business to the board via traditional means – hard copied written memorandum, letters, etc.
2. If it is necessary to communicate via e-mail, avoid discussing personal, private information about students and staff. The risks outweigh the benefits of communicating in this fashion (accidentally sending the e-mail to an unintended recipient, interception by hackers, etc.).
3. Avoid daisy-chaining the messages (i.e. forwarding a e-mail to one member at a time). Because the law states that the e-mail communication is a public record if received by a quorum of the board, determining when a quorum is established may not be clear if the message is relayed to one board member at a time.
4. As stated above, the school board's acceptable use Internet policy should not contain a statement requiring the district to maintain an Internet usage log. The district should maintain no Internet usage log.
5. When in doubt, fully disclose the contents of e-mail communications between board members that discuss official board business. Include such disclosures in the minutes of the next public meeting, without providing actual copies of the electronic communication.

2002

<http://aappolicy.aappublications.org/cgi/content/full/pediatrics;110/3/638>

Appendix JLCC-R

Revised: February 2007

Reviewed: October, 2004

Revised: July, 1998, November, 1999

DISCLAIMER: This sample policy manual is copyrighted to the New Hampshire School Boards Association and is intended for the sole and exclusive use of NHSBA Policy Service Subscribers. No portion of this manual may be reproduced, copied, transmitted, distributed, in any form, except as needed for the development of policy by a subscribing district. The materials contained in the manual are provided for general information only and as a resource to assist subscribing districts with policy development. School districts and boards of education should consult with legal counsel and revise all sample policies and regulations to address local facts and circumstances prior to adoption. NHSBA continually makes revisions based on school districts' needs and local, state and federal laws, regulations and court decisions, and other relevant education activity.