



**School District Governance Association of New Hampshire**

Model Policy approved Apr. 15 2024

**School District Legal Counsel**

Policy Code(s) BCG

Policy Text	Annotations
<p>It is the policy of this School District that attorney-client privilege shall vest with the School Board, not the Superintendent. The engagement letter for school district counsel shall be drafted and signed accordingly.</p> <p>The engagement letter shall be approved by vote of the School Board before being signed.</p>	<p>The intent of this policy is to ensure that the Superintendent is prevented from abusing the legal resources of the school district in a manner contrary to or in opposition to the elected representatives. Each of the provisions of this policy has emerged from instances of such abuse.</p> <p>A counterpart to this policy may be needed at the SAU level to ensure the rights of the SAU Board with respect to legal counsel.</p>
<p>The Superintendent shall have no authority to engage counsel on behalf of the School District other than under the terms of this policy. The Superintendent acting on behalf of the SAU shall not engage SAU counsel in any matter respecting this school district.</p>	<p>This provision prevents the Superintendent from sidestepping the policy by engaging separate counsel from the school district's counsel of record, in order to have a public/private source of advice and ability to take legal actions.</p>
<p>Legal opinions provided by School District counsel shall be shared simultaneously with all members of the School Board.</p>	<p>This provision prevents the Superintendent from gaining untoward influence over Board deliberations by providing preferential access to legal advice for favored insiders.</p>
<p>The school district shall not initiate a legal proceeding without a vote of the School Board. The school district shall not substantively defend against a legal proceeding without a vote of the School Board, although district counsel may take procedural steps for no more than 2 weeks to protect the school district interests pending the opportunity to meet with the full School Board.</p>	<p>When a decision of the school district is disputed, the administration is sometimes willing to use the public legal funds to fight a scorched-earth battle of vindication for the original decision. In many cases, the School Board is entirely unaware that a dispute exists, and might prefer to settle at a lower cost to the taxpayer.</p> <p>A school board adopting this provision should select a timeframe they are comfortable with – 2 weeks is an arbitrary default.</p> <p>The term “legal proceeding” is intended to be inclusive of lawsuits, arbitrations, special ed hearings etc.</p>
<p>The School Board may deputize the Chair of the Board, in consultation with the Superintendent, to provide direction to counsel between meetings of the School Board. Chair shall notify all the Board members of any substantive action within 24 hours.</p>	<p>The School Board needs to create a means to be kept aware of legal situations between meetings. With this awareness, the School Board Chair or other members would have the information to call an emergency Board meeting if warranted.</p>

<p>The School Board shall meet with Counsel in open session whenever that is possible, consistent with protecting the interests of the school district in an adversarial situation, and consistent with the requirements of student and employee confidentiality.</p>	<p>NH Open Meeting law (RSA 91-A) allows for non-public meetings with counsel, but does not require that meetings with counsel be non-public. This policy encourages public meetings whenever possible.</p>
<p>The letter of engagement shall specify that all legal invoices be written with the intent of public access without redaction. Any confidential information related to employees or students should be included as a confidential annex to the invoice, which could still be open to challenge under RSA 91-A.</p>	
<p><b>References</b></p>	
<p>NH RSA 91-A</p>	<p>91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:</p> <p>...</p> <p>(b) Consultation with legal counsel;</p>