Bill as Introduced

SB 168 – AS AMENDED BY THE SENATE

04/10/03 1078s

2003 SESSION

03-1136
04/01

SENATE BILL *168*

AN ACT allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

SPONSORS: Sen. Estabrook, Dist 21

COMMITTEE: Judiciary

ANALYSIS

This bill allows school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 168 – AS AMENDED BY THE SENATE

04/10/03 1078s

03-1136
04/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Access to Public Records and Meetings; Nonpublic Sessions. Amend RSA 91-A:3, II by inserting after subparagraph (i) the following new subparagraph:

(j) Consideration by a school board of any matters that would reveal the content of education records maintained by the school district or disclose personally identifiable information about a student, contrary to 20 United States Code section 1232g.

2 Access to Public Records and Meetings; Nonpublic Sessions. Amend RSA 91-A:3, III to read as follows:

III. Minutes of proceedings 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 body or agency 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. ***Minutes of proceedings that would reveal the content of education records maintained by the school district or disclose personally identifiable information about a student shall not be publicly disclosed at any time, except as permitted by 20 United States Code section 1232g.***

3 Effective Date. This act shall take effect January 1, 2004.

Speakers

Fill in *ONLY* if *SPEAKING* on Bill

Bill # SB 168 Date 5/6/03

Committee Judiciary

I support the bill ✓

I oppose the bill ____

I have written testimony ____

(Number of copies) ____

Time needed to speak: 1 minute

Name Sen. Iris Estabrook

Address ____

____

Phone ____

Representing Dist. 21

Fill in *ONLY* if *SPEAKING* on Bill

Bill # SB 168 Date 5/6/03

Committee Judiciary

I support the bill ✓

I oppose the bill ____

I have written testimony ✓

(Number of copies) 1

Time needed to speak: 4 minutes

Name Raymond Yeagley

Address 44 Cross Road

Rochester, NH 03867

Phone 603-332-7412

Representing Rochester School Department

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 168

BILL TITLE: allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

DATE: April 22, 2003

LOB ROOM: 208 **Time Public Hearing Called to Order:** 10:10 a.m.

Time Recessed: 10:10 a.m.

(please circle if present)

Committee Members: Reps. (Mock) (Rowe) (Jacobson) (Ford) Dudley, Soltani, (Woods) (Rice) Souza, (Desmarais) Haytayan, Mooney, Morris (Sorg) (J. Wheeler) Wall, J. Pratt, Craig, Lasky (Potter) and (Franklin)

Bill Sponsors: Sen. Estabrook

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Robert H. Rowe- Opened the hearing and introduced bill in the absence of the sponsor. Chairman recessed hearing and rescheduled for May 6th at 9:30 a.m.

Respectfully Submitted,

Phyllis Woods

Rep. Phyllis L. Woods for Rep. Terri C. Dudley, Clerk

HOUSE COMMITTEE ON JUDICIARY

RECONVENED PUBLIC HEARING ON SB 168

BILL TITLE: allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

DATE: May 6, 2003

LOB ROOM: 208 **Time Public Hearing Reconvened:** 9:35 a.m.

Time Adjourned: 9:55 a.m.

(please circle if present)

Committee Members: Reps. (Mock), (Rowe), Jacobson, Ford, (Dudley), Soltani, (Woods), Rice, (Souza), Desmarais, Haytayan, Mooney, Morris, Sorg, (J. Wheeler), Wall, (J. Pratt), (Craig), (Lasky), (Potter) and (Franklin)

Bill Sponsors: Sen. Estabrook

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

RECONVENED FROM APRIL 22, 2003

(Family Education Rights and Privacy Act)

Sen. Iris Estabrook, Durham, Prime Sponsor- Supports. Opened the hearing which was a continuation of the hearing that was recessed.

Raymond Yeagley, Superintendent of Schools, Rochester School Department, Rochester- Supports.

**Written testimony in file*

Cited case of pupil who moved from #2 in graduating class to #5. Superintendents in all school districts are facing the same problem addressed in the bill. Records should be sealed.

Chairman Mock- Made statement that he is unhappy with this bill as written. He had hoped that the bill would address disciplinary problems.

Subcommittee Formed:
Chairman: Rep. Franklin
Rep. Rowe
Rep. Lasky

Questions:
Rep. Woods
Rep. Rowe

Rep. Mock
Rep. Craig

Respectfully Submitted,

Rep. Terri C. Dudley, Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON SB 168

BILL TITLE: allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

DATE: May 13, 2003

Subcommittee Members: Reps. Franklin, Rowe, Lasky

Comments and Recommendations: Change title of bill- bill has nothing to do with disciplinary matters. RSA 91 A-5: III- personal school records of pupils are exempt from provisions of Right-to-Know Law. Testimony only in regards to one instance.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Robert H. Rowe

Seconded by Rep. Bette R. Lasky

Vote: 3-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Bette R. Lasky
Subcommittee Clerk

Testimony

FILE

Testimony

Given before the House Judiciary Committee
on May 6, 2003 by Raymond Yeagley

Ladies and Gentlemen:

I am Raymond Yeagley, Superintendent of the Rochester School Department. During nearly fifteen years in this position I have, on several occasions, expressed concern to school attorneys and a few legilsators about a glaring omission in the nonpublic session provisions of New Hampshire's Right to Know Law, RSA 91-A:3.

Currently, there is no provision in the Right to Know Law for school boards to enter non-public session to discuss personal student information, other than disciplinary issues which usually fall under the "matters detrimental to the student's reputation" provision of 91:A. There are, however, many occasions when more positive student information must be discussed by a Board.

An example of such an occasion was a dialog between the Rochester School Board and the parents of an honor student several years ago. We had changed our policy governing the calculation of class rank at Spaulding High School. In spite of our efforts to inform everyone and introduce the change over four years, it was almost inevitable that a few students would feel that the new formula unfairly disadvantaged them. One such student, who would have graduated second in her class under the old formula, was moved to fifth place on the new calculation. Much of the information included in discussions of the issue was protected under federal law.

Specifically, disclosure of student education records is governed by the Family Educational Rights and Privacy Act (FERPA) found at 20 U.S.C. §1232g (codified at 34 CFR Part 99). This law defines education records as those records that are directly related to a student, and are maintained by an educational agency or by a party acting for the agency or institution. With a handful of exceptions specifically enumerated in the law, this includes virtually every piece of information we have about a student.

FERPA requires the express consent of the parent, or of the student if he/she has reached the age of 18, if any education records are to be disclosed to a third party. Disclosure involves not only the documents themselves, but verbal, electronic or other disclosure of the information contained in those documents.

The parents of this student requested an audience with our school board. The board found itself facing a Catch 22 situation. There was no provision in RSA 91-A:3 that fit the situation. Certainly a rank of fifth in a class of more than 300 could not be considered detrimental to the student's reputation. Under FERPA, the issue could not be discussed in public session because it involved the disclosure of grades, course schedules, course difficulty levels, and a host of other personally identifiable educational data about the student. We didn't want to annoy the parents with a request for public discussion, which would, no doubt, have been refused.

Our board took the only route available, which was to enter the nonpublic session and hope that FERPA would be the controlling law in any legal decision should we be challenged. The problem with that approach, and what may leave school boards throughout the state vulnerable to legal challenge, is that FERPA and RSA 91-A may not be in direct conflict. There is a way to comply with both statutes. Specifically, while FERPA does not permit public disclosure of the educational information, it also does not require school boards to discuss the information. Likewise, RSA 91-A:3 does not permit the board to convene a non-public session for any purpose that is not enumerated in Paragraph II, which does not include personally identifiable student information that would not harm a student's reputation. However, it also does not require a public discussion of such information. Thus, to avoid the situation, school boards would simply have to avoid all discussion of personally identifiable student information, except for disciplinary matters. While this might comply with the letter of the law, it certainly is bad public policy.

Although I haven't conducted a formal survey of superintendents throughout the state, a few weeks ago I asked my colleagues in the southeast region if they have experienced similar situations. The response was

unanimous and affirmative. When asked how they handled it, there was no answer that, in my opinion, was in compliance with both statutes.

School boards throughout the state frequently face similar situations. In Rochester, we receive requests from local parents to transfer their children to schools that are outside of their attendance zones. We entertain requests from parents in other districts for admission of their children as tuition students. We hear appeals from students whose absences have resulted in grade reductions. In most cases, there is nothing in the discussion that could be considered "detrimental to the reputation" of the student. However, personal and often sensitive, information about the students and their families is revealed to our school board, including grades, problems in adjusting to new schools and classes, health and medical issues, difficult family situations, family income, and a multitude of other conditions and situations.

While no district has yet been challenged on this basis, it seems almost inevitable to me that the argument will appear in a case at sometime. At best, it will be a distraction and expense to the taxpayers of that community; at worst, the basis for a decision against the school board and even greater expense to taxpayers.

Finally, I support the provision of this bill that automatically seals any minutes of non-public session dealing with protected student information. While there is a means in the current law for Boards to seal those minutes, forgetting to take a required vote could place the Board and community at risk.

I thank you for your attention and for permitting me to speak. I hope that my testimony has been helpful.

Respectfully Submitted,

Raymond Yeagley, Superintendent
Rochester School Department

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on SB 168

BILL TITLE: **allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.**

DATE: May 13, 2003

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Interim Study (Please circle one.)

Moved by Rep. Peter E. Franklin

Seconded by Rep. Bette R. Lasky

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Terri C. Dudley, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

JUDICIARY

Bill #: SB 168 Title: allowing school boards to adjourn to non-public session to consider pupil disciplinary matters

PH Date: 04/22/2003 Exec Session Date: 05/13/03

Motion: _____ Amendment #: _____

MEMBER	YEAS	NAYS
Mock, Henry P, Chairman		
Rowe, Robert H, V Chairman	✓	
Jacobson, Alf E	—	
Ford, Nancy M	—	
Dudley, Terri C, Clerk	✓	
Soltani, Tony F	✓	
Woods, Phyllis L	—	
Rice, Thomas E P	—	
Souza, Kathleen F	—	
Desmarais, Vivian J	✓	
Haytayan, Harry M	✓	
Mooney, Maureen C	✓	
Morris, Richard W	—	
Sorg, Gregory M	—	
Wheeler, James E	✓	
Wall, Janet G	✓	
Pratt, John	✓	
Craig, James W	✓	
Lasky, Bette R	✓	
Potter, Frances D	✓	
Franklin, Peter E	✓	
TOTAL VOTE: Printed: 1/23/2003	13	0

Committee Report

COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **SB 168**

TITLE: allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters.

DATE: May 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The title of this bill does not indicate the subject matter of the bill which is to amend the Right-to-Know Law, RSA 91-A-3 II (exemptions for going into non-public sessions) and III (records of non-public sessions). Personal school records are already exempted by RSA 91-A:5 III and the committee does not believe there is a conflict between RSA 91-A and 20 United States Code section 1232g.

Vote 13-0.

Rep. Peter E. Franklin
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

CONSENT CALENDAR

Judiciary

SB 168, allowing school boards to adjourn to nonpublic session to consider pupil disciplinary matters. **INEXPEDIENT TO LEGISLATE**

Rep. Peter E. Franklin for Judiciary: The title of this bill does not indicate the subject matter of the bill which is to amend the Right-to-Know Law, RSA 91-A-3 II (exemptions for going into non-public sessions) and III (records of non-public sessions). Personal school records are already exempted by RSA 91-A:5 III and the committee does not believe there is a conflict between RSA 91-A and 20 United States Code section 1232g. **Vote 13-0.**

5/13/03

BLURB FOR SB 168

CONSENT CALENDAR

SB 168 ALLOWING SCHOOL BOARDS TO ADJOURN TO NONPUBLIC SESSION TO CONSIDER PUPIL DISCIPLINARY MATTERS. INEXPEDIENT TO LEGISLATE.

REP. PETER FRANKLIN FOR JUDICIARY: THE TITLE OF THIS BILL DOES NOT INDICATE THE SUBJECT MATTER OF THE BILL, WHICH IS TO AMEND THE RIGHT-TO-KNOW LAW, RSA 91-A:3 II (EXEMPTIONS FOR GOING INTO NON-PUBLIC SESSIONS) AND III (RECORDS OF NON-PUBLIC SESSIONS). PERSONAL SCHOOL RECORDS ARE ALREADY EXEMPTED ~~FROM~~ BY RSA 91-A:5 II AND THE COMMITTEE DOES NOT BELIEVE THERE IS A CONFLICT BETWEEN RSA 91-A AND 20 UNITED STATES CODE SECTION 1232g. VOTE 13-0

Peter Franklin

Ole Hall