

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION  
POLICY SERVICES  
SPRING 2022 POLICY UPDATE

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Sample Policies Included in this Update

**BBB-F – Certificate of Oath of Office**

*Related Policies: BBB, BBBE & BCA*

*See Also: Technical Advisory BBB-TA*

- NHSBA withdrew sample appendix BBB-R in March 2022 and replaced it with sample appendix BBB-F.

**BBB-TA – Oath of Office**

*Related Policies: BBB, BBBE & BCA*

*See Also: BBB-F*

- New technical advisory issued March 2022.

### **BIE – Board Member Indemnification**

Recommended sample policy

***Related Policies: BBB***

- NHSBA Sample policy BIE was revised to include exception to indemnification when board member violates his or her oath of office, or otherwise acts outside his/her authority. Also included additional legal references.

### **DFGA – Crowdfunding**

Recommended sample policy

***Related Policies: EHAB, GBEC, JJE, JLCF, JRA & KCD***

- NHSBA created new sample policy DFGA in response to requests from multiple NHSBA member districts. While NHSBA recommends that school boards adopt a crowdfunding policy, a board could adopt a policy prohibiting crowdfunding outright. NHSBA can provide a sample of such a policy upon request. Adoption of DFGA requires modifications to sample KCD – Public Gifts/Donations

### **FF – Naming of District Buildings and Facilities and Dedication of Areas**

Optional sample policy

- NHSBA created sample FF after receiving requests from multiple NHSBA member districts. The content of the sample policy may be freely modified according to local board preference.

### **GBCD – Background Investigation and Criminal History Records Check**

Policy is Priority/Required by Law

***Related Policies: EEAE, EEAEA, GBCE, GDF & IJOC***

NHSBA revisions to sample policy GBCD include

- restructured generally
- added and put definitions in front
- added language reflecting 2021 SB134's changes to 189:13-a and new section 189:13-c, both regarding education preparation candidates;
- added language re substitute teachers per 2022 amendment to 189:13-a, VI; and
- added additional policy cross-references;

### **GBCD-R – Technical Advisory (concerning “School Employee Background Investigations Including a Criminal History Records Check”)**

Withdrawn

***Related Policies: GBCD***

- NHSBA withdrew former GBCD-R as obsolete. The sample was a copy of a 2010 TA from the N.H. Dept. of Safety and Dept. of Ed. concerning RSA 189:13-a (criminal history records checks). Prior to 2014, DOE TAs were

difficult to obtain, so NHSBA would include them as “-R” documents to make them more accessible to school districts. N.H. Dept. of Ed. withdrew the TA in 2010 as it did not reflect many post 2010 amendments to RSA 189:13-a. The Dept. of Ed. has since released several TAs regarding 189:13-a, :13-b & 13-c, all of which are available through the Dept. of Ed’s website.

### **GCAA – Highly Qualified Teachers**

Withdrawn

- Former policy GCAA pertained specifically to a requirement under 2001’s No Child Left Behind Act (“NCLB”) that teachers of core academic subjects meet a federal definition of “highly qualified”. NCLB was replaced in 2015 with the Every Student Succeeds Act (“ESSA”), which does not include the requirement for highly qualified teachers.
- Some districts adopted language in collective bargaining agreements that aligned compensation to NCLB’S Highly Qualified Status. Neither the passage of ESSA, nor the withdrawal of former sample GCAA would alone impact such language. Districts with such provisions in their CBA’s should consult with their labor counsel to determine how that language applies post NCLB.

### **IHBB – Programs for Gifted and Talented Students**

Sample optional policy

***Related Policies: IHBH, IHBI, IHCD/LEB, IK, IKFA, IMBC & IMBD***

Sample was revised to:

- include the definition of gifted and talented now provided in RSA 189:29-b (enacted in 2021, see HB321);
- include the requirement under that statute for districts to provide a narrative report to the N.H. Dept. of Education describing the district’s programs for gifted and talented students;
- recategorized as “recommended” because of mandated reporting requirement;
- added provisions to encourage more robust programming/input from boards; and minor edits.

### **IKL – Academic Integrity and Honesty**

Optional NEW sample policy

***Related Policies: EGAD, JICD & JICL***

- New sample policy prepared at the request of multiple NHSBA member boards.

### **IJOC - Volunteers**

Recommended (represents change, see note below)

***Related Policies: ABA, GBCD, GBCE & IJOA***

***See Also: Form IJOC-R***

Revisions include:

- moved definition of designated volunteer to sample GBCD;

- added FLSA definitional standards for “volunteer”;
- included formatting changes to improve useability;
- added information relating to assuring that volunteers are aware of the prohibition under the State human rights laws (RSA 354-A:31 & 32) against advocating or advancing discriminatory concepts (similar but broader than the prohibition against teaching such concepts under 193:40); and
- changed classification to “Recommended” as the former “required” component regarding designated volunteers is now included in sample GBCD.

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### **Special Statement Concerning Removal of Former Sample JBAB**

In February 2022, NHSBA removed former optional sample policy JBAB – *Transgender & Non-Conforming Students* from its sample policy database. Sample JBAB was released in 2015 after NHSBA received requests for such a sample from multiple NHSBA member districts.

Since 2015, when NHSBA first made sample **optional** policy JBAB available in the NHSBA policy database, the legal protections based upon gender identify and the legal landscape relating to gender identity has changed in several important ways. The two most significant developments are:

1. In 2020, the United States Supreme Court decided the case of *Bostock v. Clayton County*. That case concerned employee protections under Title VII of the Civil Rights Act of 1964,. In its opinion the Court stated: "*It is impossible to discriminate against a person for being ... transgender without discriminating ... based on sex.*" *Bostock v. Clayton Co.*, 500 U.S. \_\_\_\_ (2020). Although the *Bostock* decision specifically concerned Title VII, education attorneys and legal commentators throughout the country believe that the rationale in that case extends equally to Title IX of the Education Acts of 1972, which prohibits discrimination against any person “based on sex” relative to any “education program or activity receiving Federal financial assistance.”
2. In 2019, New Hampshire passed RSA 193:38, providing in part: “No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their ... sex, gender identity, sexual orientation, ....”

Although it appears clear from the *Bostock* decision and RSA 198:38 that discrimination of a student or employee based upon gender identity/status is unlawful, what those authorities mean, and what constitutes prohibited discrimination, are still open questions. There are a myriad of issues concerning transgender protections in public schools currently being litigated in New Hampshire and throughout the country. Disputed issues include athletic participation, directed pronoun usage, parent right to information, student privacy, and others.

NHSBA sample policy AC includes the prohibition against discrimination based upon gender identity. However, that policy does not in and of itself provide guidance to school staff or students about how that prohibition is achieved. Former JBAB included a multitude of provisions local districts could consider in the effort to protect against unlawful discrimination based upon gender identity. However, NHSBA believes that the unsettled in this area of law, indicates that local boards should seek advice from private counsel to determine the best course of action in their respective districts to meet the legal requirements and minimize litigation exposure. This suggestion extends to Districts which have previously adopted sample JBAB or other policies addressing protection against discrimination based upon gender identity.

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### **Minor Policy Corrections**

NHSBA has made slight grammatic, typographic, or reference edits to the sample policies/procedures below. The edits do not significantly affect the substance of the policies. To the extent a district chooses to edit its own versions, Board action should not be required, but should be reported to board either for affirmation (after the fact) or approval. Please note that copies of these policies are not included in the update but can be located on the NHSBA policy website.

#### **BEDH – Public Comment and Participation at Board Meetings**

- Updated time limit examples in bullet point one and two to “[e.g. thirty, fifteen, etc.]” and “[e.g. three, five, etc.]”.

#### **EB – Workplace Safety Program & Joint Loss Management Committee**

- NH Code of Administrative Rules changed from “Lab 603.01.04” to “Lab 603.01-04”.

#### **EEA – Student Transportation Services**

- Section A, paragraph 5, at the end of the paragraph it references RSA 199-E:8. Changed the RSA to RSA 188-E:8.

#### **EEAA – Video and Surveillance on School Property**

- Updated second sentence by changing “Notwithstanding other Board policies, the Superintendent is authorized to allow video and/or audio recordings to the extent either required or prohibited by law.” to read the following:  
“... Notwithstanding other Board policies, the Superintendent is authorized to allow video and/or audio recordings to the extent allowed by applicable law.”

#### **GCEB – Professional Instructional Staff**

- Updated title.

**IHCA – Summer Activities**

- Updated legal references and NHSBA note.

**IHCD – Advanced Course Work/Advanced Placement Courses & STEM Dual & Concurrent Enrollment Program**

- Updated legal references and NHSBA note.

**IKF – High School Graduation Requirements**

- Page 3, section C, paragraph 2 – updated graduating date to “after June 20, 2023...”

**IMBC – Alternative Credit Options**

- Page 2 – updated bullet point to read “Distance, online or virtual learning opportunities under...”

**KDA – Public Information Program**

- Updated note at the end of the policy “will include, but not be limited to,...”

**JLCC-R – Communicable Disease**

- Changed the note to the policy being “withdrawn”.

**JLCJ – Concussions and Head Injuries**

- NHSBA revision note from November 2020 included the word “until”:  
“... DOE’s policy/plan will not be available “until” after the beginning of 2021...”

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