



NZSTA

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Governance support resources

Conflicts of interest

A conflict of interest is where a board member's work overlaps or coincides with their other interests and interferes with their ability to operate in the public interest.

That conflict can be:

- Actual – it clearly exists
- Potential – it could exist
- Perceived – where others could reasonably think that the board member is compromised

For school boards, conflicts of interest are defined in [regulation 15\(1\)](#) of the Education (School Boards) Regulations 2020 as either:

- Pecuniary – where there is potential for the decision maker or someone close to them to gain financial benefit or experience financial loss as a result of the decision

Or

- Other interest – where the decision maker might have a motive around the decision to be made

Conflicts of interest often coincide with high-stakes situations such as dealing with a complaint, staff disciplinary matter or student suspension. Board members work hand-in-glove with the school's community and there is plenty of scope for accusations of having a predisposition to make a decision in a certain way, or of predetermination and not approaching the matter with an open mind.

Recognising, declaring and dealing with conflicts of interest

A good starting point is for boards to maintain a current register of potential areas of conflict for each board member. Examples include; being on the board of another school; owning a company that might tender for work to be done at the school at some time in the future; being related to a staff member.

A board conflicts of interest policy is recommended.

The presiding member should call for any conflicts to be declared at the start of each board meeting. This is where some board members, who are accustomed to declaring and managing conflicts of interest in the commercial world, could be tripped up. Regulation 15(1) is clear – any member who has a pecuniary or other conflict of interest “must be excluded from a meeting of the board while it discusses, considers, considers anything relating to, or decides the matter”

In addition, a board member who is also a member of the board's staff “must be excluded from a meeting of the board while it discusses, considers, considers anything relating to, or decides any

matter relating to their own employment by the board or a complaint against them in capacity as a member of the board staff”.

Likewise a board member who is enrolled at the school as a student, “must be excluded from any meeting of the board while it discusses, considers, considers anything relating to, or decides any matter relating to the board member as an individual student”.

There are no exceptions, no discretion, and no judgement call is required of the board.

Natural Justice

Why does it matter if there is an accusation of predisposition or predetermination?

This is because everyone has the right to the observance of the principles of natural justice by any public authority (which a school board is under the Bill of Rights Act 1990) that has the power to make determination about their rights, obligations or interests.

The key principles here are freedom from bias on the part of the person making the decision and fairness of procedure. In other words, the right to a fair and impartial determination.

For school boards this means:

- Ensuring no decision maker has a conflict of interest
- They keep an open mind until they have heard from everyone
- They have looked at all relevant information and disregarded and irrelevant information

Not following these principles can lay the board, its process and decision open to challenge. If a board’s decision is challenged and escalated to an independent investigation it may be that the decision is upheld but the process is found to be flawed and the challenge is successful.

What do we do if most, or all, of the board is conflicted?

Committees:

The board could appoint delegated a committee to deal with the matter:

- Ad hoc committees – could be delegated to deal with a one-off issues
- Standing committees – could be appointed at the start of the year, for instance a student behaviour management committee

Board committees must comprise at least two people, at least one of whom must be a board member. So, appointment relies on at least one board member not being conflicted. If only one member is not conflicted the committee will need to comprise appointed members from outside of the board (subject to disclosing any disqualifying interest).

All committees need terms of reference detailing their purpose, membership and delegated authority.

Co-option:

If all members are conflicted, the board could consider co-opting an additional member (assuming the board is in a position to do so).

If co-option is not an option, the board will need to seek external assistance such as an external investigator, which would be at cost to the board.

Useful links:

[NZSTA Governance framework](#) :

Policy B4 – Conflict of interest policy

Procedure C2 – Delegation and committee principles

NZSTA Governance support resource – [Principles of natural justice](#)



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For further advice please contact the *Advisory and Support Centre* on

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