

## Governance support resources

# Trustees missing three consecutive board meetings without prior leave

### Three strikes and you are out!

Section 104(1)(c) of the Education Act 1989, states that an elected, appointed or co-opted trustee's office (on the board) becomes vacant if they are absent from three consecutive meetings of the board without prior leave.

### Giving an apology is not the same as obtaining prior leave

It is important to note that tendering apologies at meetings is not the same as obtaining prior leave from the board. It is appropriate for a trustee to send an apology where they fully intended to attend a meeting but have been prevented from doing so by some unexpected event such as illness. Prior leave is sought where a trustee knows, in advance, that they are going to be absent from one or more board meetings. The leave is sought from the board prior to the period of absence commencing.

### Granting prior leave

The board should consider the request and may grant or decline prior leave by way of a resolution. This will be recorded in the minutes of the relevant meeting. If the board does grant prior leave the trustee concerned can be absent for the agreed duration without their office becoming vacant. If the board declines the request for prior leave and the trustee is absent from three consecutive meetings of the board, their office becomes vacant.

### The board has no discretion over this matter

It is also pertinent to note that the board does not have any discretion as far as the application of the rule is concerned. Once a trustee misses three meetings in a row and prior leave has not been sought from the board, that trustee is, by operation of law, no longer a member of the board. The board will then be left with a casual vacancy which has to be filled in the appropriate manner.

All trustees should be aware of this rule. Remember that ignorance of the law is no excuse.



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### Where do I get advice?

The *Governance advisory and support centre* advisers can also assist and are contacted on 0800 782 435, option 1 or [govadvice@nzsta.org.nz](mailto:govadvice@nzsta.org.nz)