

## Governance support resources

### Conflict resolution

While the majority of trustees do a wonderful job, and act appropriately, occasionally a trustee acts in a way which is damaging for the board and which can even put the board at risk of legal action being taken against it.

It is often necessary for boards handling sensitive issues, particularly employment ones, to clearly define who has the power to act on behalf of the board. While a trustee may be acting out of a concern for their children, their friends, or simply because they believe that the board is wrong, they must realise that boards are democratic bodies and that actions not approved by the board put the board at risk.

Many boards find it useful to sit down and discuss how each trustee sees their role, responsibilities, and power. This often helps those who have not realised the extent of their responsibilities or are confused about their powers. Included with this article is a code of behaviour that boards can use to document the discussion. The code is not compulsory and is not an individual board's code until it votes to use it.

Another mechanism to clarify the power trustees and staff have is a delegations schedule. If all the powers of staff and trustees are set out on paper then individuals become acutely aware of the need to only act within the scope given by the board.

In extreme cases where trustees go outside the bounds of acceptable behaviour or outside the scope of their authority the board may discuss the matter directly.

Here are a few options on how to handle such situations:

1. An informal discussion is held about the scope of accepted behaviour. This brings the issue out into the open and helps all trustees understand what is expected of them.
2. A formal motion is put setting out that all trustees have no power outside that recorded as being delegated by the board. This may accompany a general discussion on the topic.
3. A motion is put setting out a topic or topics (eg the current personal grievance case) that individual trustees are not to discuss or seek advice on without the board's approval. This puts all trustees on notice.
4. A motion is put expressly removing all power to act on behalf of the board from a particular trustee that has crossed the line. This may also be accompanied by a motion setting out what they are not allowed to do. These motions may be restricted to one problem area (ie personnel) or in extreme cases of conflict they may apply to all issues.
5. The board may also censure a trustee. This has no particular effect but is a political tool and is also useful in confirming that the board does not agree with one trustee's actions.

If the area of concern is around a particular topic then the board can decide to delegate all power on that issue to a committee. This is often done when a trustee who has an obvious conflict of interest or ulterior agenda will not acknowledge that they are putting the board at risk.

#### Bad Faith

Trustees are not usually personally liable for their actions as a board member. The sixth schedule of the Education Act sets out the law on trustee's liability

24. Trustees not personally liable---No trustee is personally liable for-

- (1) Any act done or omitted by the Board; or
- (2) Any loss to the Board arising out of any act done or omitted by the trustee,--- if the act or omission was (so far as the trustee's involvement is concerned) in good faith in pursuance or intended pursuance of the functions of the Board.

This means that trustees acting in a normal fashion are not personally liable.

Trustees that act in "bad faith" could expect to be found liable for their actions. For example a trustee who personally creates an employment problem, through a malicious action, could be expected to pay the board back any money they spend on legal fees or a settlement.

Trustees that operate on behalf of the board without being delegated the power to do so could also be liable. For example if a trustee who hasn't been delegated any powers to deal with employment matters, then tells a staff member that the board will give them a raise they may be liable for the resulting costs of getting out of the promise. Although the trustee may have had good intentions they would not be acting in "good faith" as they knew they had no power to make that decision.

Another common example of bad faith is when a trustee spreads gossip to people in the community breaching the Privacy Act and intruding into employees' privacy.

## Trustees' code of behaviour

As members of an effective governance team, each member of the board of trustees shall:

- ensure the needs of all students and their achievement is paramount
- be loyal to the school and its mission
- maintain and understand the values and goals of the school
- protect the special character of the school
- publicly represent the school in a positive manner
- respect the integrity of the principal and staff
- observe the confidentiality of non-public information acquired in their role as a trustee and not disclose to any other persons such information that might be harmful to the school
- be diligent and attend board meetings prepared for full and appropriate participation in decision making
- ensure that individual trustees do not act independently of the board's decisions
- speak with one voice through board policies and ensure that any disagreements with the board's stance are resolved within the board
- in the course of board meetings, disclose any interests in a transaction or decision where they, their family and/or partner, employer or close associate will receive a benefit or gain and leave the meeting for the duration of discussion and/or voting in relation to the matter
- recognise the lack of authority in any individual trustee or committee/working party of the board in any interaction with the principal or staff
- recognise that only the chair (working within the board's agreed chair role description or delegation) or a delegate working under written delegation can speak for the board
- continually self-monitor their individual performance as trustees against policies and any other current board evaluation tools
- be available to undertake appropriate professional development.



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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)

